



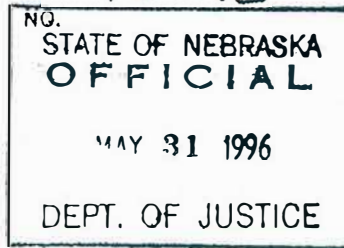
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STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL



DATE: May 29, 1996
SUBJECT: LB371 Restrictions on Parole Eligibility
REQUEST BY: Ronald L. Barte, Chairman
Nebraska Board of Parole
WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

You have asked whether the amendment to Neb. Rev. Stat. § 83-1,110 contained in Legislative Bill 371, 1995 Legislative Session, will restrict the parole eligibility of inmates who have refused to be tested for drug or alcohol use. We conclude that the restriction on parole eligibility enacted through LB371 applies to inmates who have refused testing for drug or alcohol use as well as those who have been found to be under the influence of drugs or alcohol.

LB371, contained the following amendment to Neb. Rev. Stat. § 83-1,110:

- (3) A committed offender who has been found guilty of a violation of the rules and regulations of the department for drug or alcohol use pursuant to sections 83-4,109 to 83-4,123 shall not be eligible for parole for twelve months following the imposition of the disciplinary action.

The bill gave an effective date of July 1, 1996, to this provision which is now codified at Neb. Rev. Stat. § 83-1,110 (Supp. 1995).

At the time LB371 was enacted, and through the present date, the rules and regulations of the Department of Correctional Services' have defined drug or intoxicant abuse as follows:

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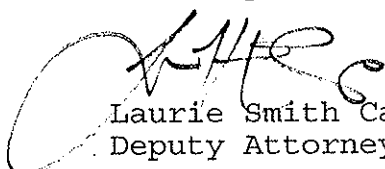
Drug or Intoxicant Abuse. Use, possession, manufacture, or sale of drugs, narcotics, or medication not prescribed by facility personnel, or of intoxicants; being under the influence of any intoxicant, or refusal to submit to a breath, blood, or urine test upon instruction from authorized personnel. Tampering with test procedures, contaminating the evidence, or intentionally invalidating the urinalysis in any manner. [Emphasis added]

Title 68 Nebraska Administrative Code [NAC], Chapter 5, paragraph 005 I(H) (December 20, 1994).

So, it is clear that an inmate may be "found guilty of a violation of the rules and regulations of the department for drug and alcohol use" if the inmate has been found guilty of the offense of "Drug or Intoxicant Abuse" which includes by definition the refusal to submit to a breath, blood, or urine test upon instruction from authorized personnel. As long as the inmate's actions have resulted in a finding of guilt pursuant to Neb. Rev. Stat. §§ 83-4,109 to 83-4,123, the inmate cannot be paroled for at least twelve months following the imposition of the disciplinary action for this offense.

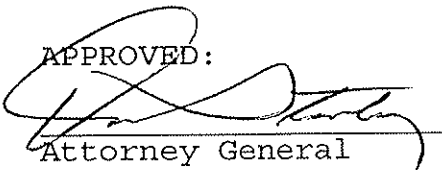
Sincerely,

DON STENBERG
Attorney General



Laurie Smith Camp
Deputy Attorney General

APPROVED:



Attorney General