

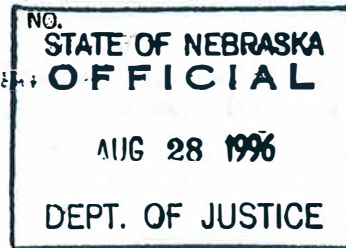
STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

#96066

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL



DATE: August 28, 1996
SUBJECT: Application of Good Time to Mandatory Minimum Terms
REQUESTED BY: Senator Don Wesely
WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

You have asked whether good time applies to mandatory minimum sentences. We conclude that good time does not apply to mandatory minimum sentences, and that an inmate may not be paroled or discharged before the completion of the mandatory minimum term.

In 1989, the Nebraska Legislature enacted LB592, which provided mandatory minimum terms for certain drug offenses. The bill specified that any person convicted of an offense carrying such a mandatory minimum term "shall not be eligible for parole prior to serving the mandatory minimum sentence." Neb. Rev. Stat. § 28-416(10)(1989).

On January 25, 1994, this office advised the Director of the Nebraska Department of Correctional Services and the Chairperson of the Nebraska Board of Parole that, whether or not the Department applied good time to mandatory minimum terms, inmates could not be paroled prior to serving their mandatory minimum sentences. Attached for your reference is a copy of my letter to Harold Clarke and Ethel Landrum.

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper

Lauren L. Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Joseph P. Loudon

Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Nelson
Ronald D. Moravec
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne

Paul N. Potadle
Jonathan Robitaille
Hobert B. Rupe
James D. Smith
James H. Spears
Mark D. Starr
Martin Swanson

Timothy J. Texel
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittmore-Mantzios
Linda L. Willard

In 1995, LB371 re-classified several criminal offenses, causing them to carry mandatory minimum terms. The bill noted that a "person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation", and the bill re-wrote Nebraska's good time laws, effective July 1, 1996, so that good time is no longer applicable to minimum terms:

[E]very committed;offender shall be eligible for parole when the offender has served one-half the minimum term of his or her sentence. No such reduction of sentence shall be applied to any sentence imposing a mandatory minimum term.

Neb. Rev. Stat. § 83-1,110 (Supp. 1995).

The legislative history of LB592 (1989) and LB371 (1995) makes clear the fact that the Nebraska Legislature expected inmates who were sentenced for offenses carrying mandatory minimum terms to serve the full mandatory minimum term before being paroled or discharged. The introducers' statements of intent, their introductions of the bills before the Judiciary Committee, and the discussion of the bills both before the Committee and during floor debate, support this conclusion. For example, when introducing LB595 in 1989, Senator Chris Abboud said that "the bill requires a mandatory prison sentence upon conviction . . . ". In his Statement of Intent for LB371 in 1995, Senator John Lindsay described the mandatory minimum terms as "the minimum penalty" of "years imprisonment". He represented that: "No person sentenced to a mandatory term under these statutes would be eligible for probation or reductions for good time." During floor debate, there was discussion of (unsuccessful) amendments which would have allowed inmates to serve less than the mandatory minimums prescribed under LB371. Senator Kristensen said: "[Those amendments] will give them the opportunity for good time, so instead of 25 years in prison, they could be out in 12, and that is something we cannot let happen in Nebraska."

Although it is apparent from the Legislative History of LB592 and LB371 that the Nebraska Legislature expected inmates sentenced to mandatory minimum terms to be incarcerated for the full mandatory minimum term, inmates could be discharged before the expiration of a mandatory minimum term if the Department of Correctional Services were to apply good time to the inmates' maximum terms and were to use the maximum terms to determine the date of discharge, without consideration of whether or not the inmate had been sentenced to a mandatory minimum term.

Senator Don Wesely
August 28, 1996
Page -3-

Based on the Legislative History of LB592 (1989) and LB371 (1995), we conclude that an inmate who has been sentenced to a mandatory minimum term can neither be paroled nor discharged from custody of the Nebraska Department of Correctional Services prior to serving the full mandatory minimum term.

Sincerely,

DON STENBERG
Attorney General



Laurie Smith Camp
Deputy Attorney General

APPROVED:



Attorney General

44-397-18



STATE OF NEBRASKA

Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682

DON STENBERG
ATTORNEY GENERAL

January 25, 1994

Harold Clarke, Director
Nebr. Dept. of Correctional Services
P.O. Box 94661
Lincoln, NE 68509

Ethel Landrum, Chairperson
Nebraska Board of Parole
P.O. Box 94754
Lincoln, NE 68509

Re: Application of Good Time to Mandatory Minimum Sentences

Dear Mr. Clarke & Ms. Landrum:

It recently came to my attention that the Department of Correctional Services may be applying good time to the mandatory minimum sentences imposed for drug offenses under Neb.Rev.Stat. §28-416 (1993). You will note that subsection (13) provides that no person convicted of violating subsections (4), (5), (7), or (8) of §28-416 shall be eligible for parole prior to serving the mandatory minimum sentence. So, whether or not good time has been applied to the minimum terms of such offenders, it is apparent that no such offender can be paroled prior to serving the mandatory minimum sentence. You will note that §28-416 has contained a provision prohibiting the parole of certain drug offenders prior to the service of their mandatory minimum terms since LB592 (1989) went into effect.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Stenberg".

Don Stenberg
Attorney General

DS:bs