



Attorney General's Office

Report of Internal Review of Department of Corrections Sentencing Error April 7, 2016

Introduction:

In December 2015, Department of Corrections (DOC) officials notified the Governor's Office that since 2002, DOC's computer system had been miscalculating release dates for certain types of offenders. These errors resulted in the early release of thousands of felons. On December 16, 2015, DOC Deputy Secretary Jody Becker-Green briefed Senior Assistant Attorney General Tim Lang on the issue. The next day, Mr. Lang located the advice that Assistant Attorney General Ronda Larson provided to DOC in December of 2012 when the miscalculation error was first discovered. On December 18, 2015, Mr. Lang briefed senior leadership at the Attorney General's Office (AGO).

Shortly after learning of this issue, Chief Deputy David Horn ordered an internal review of any advice given by the AGO to DOC on this subject.

Scope of Review:

The internal review included the following tasks:

- Locate and review information related to DOC's request to Assistant Attorney General Ronda Larson regarding the early release error, and any advice on this specific issue that Ms. Larson provided to the DOC;
- Identify and contact other current and former AGO employees who may have been aware of the early release error prior to December 2015, and determine if there were any other communications between the AGO and DOC regarding this issue; and
- Examine the expectations within the AGO Corrections Division for staff to report significant client advice questions to the division chief.

Executive Summary:

Issuance of In re King (July 3, 2002 through December 6, 2012): In 2002, DOC changed the way it sequenced offender sentences in an effort to comply with *In re King*, a Washington State Supreme Court ruling. On July 3, 2002, the day the *King* decision was issued, AGO Senior Counsel Paul Weisser sent an email to DOC leadership, including then-Secretary Joe Lehman, correctly opining that DOC would likely need to individually recalculate offender sentences because the Offender Based Tracking System (OBTS), DOC's electronic sentence tracking system at the time, would not be able to accommodate the requirements of the *King* decision. (Attachment 1).

DOC's subsequent changes to the sequencing process inadvertently resulted in offenders receiving more so-called "good time" credit than allowed by statute. The resulting sentence errors led to the early release of thousands of offenders. After Mr. Weisser's email on July 3, 2002, we found no evidence of further communications between the AGO and DOC regarding the implementation of the *King* decision until December 7, 2012.

Discovery of early release error and AGO advice (December 7, 2012 through February 7, 2013): In December of 2012, a decade after the *King* decision, a victim's family contacted DOC with concerns that an offender named Curtis Robinson was scheduled to be released prematurely from prison. After reviewing Offender Robinson's release date, Ms. Larson informed DOC's Statewide Records Manager, Wendy Stigall, that offender release dates were not being calculated correctly. Ms. Larson advised Ms. Stigall that the agency needed to fix its sentence tracking program, the Offender Management Network Information (OMNI) System. Based on her understanding from Ms. Stigall that DOC had already been making these errors for a decade and would make necessary corrections to the system within "a few months," Ms. Larson opined that DOC did not need to manually calculate offender release dates while the system was being reprogrammed. Ms. Larson believed that the system would be reprogrammed in two months. (Attachment 2). Ms. Stigall believed it would take six months.

Although Ms. Larson was aware that DOC had been releasing offenders early from prison for a decade, she failed to recognize the risk to public safety when she advised DOC that it did not need to manually calculate offender release dates until a computer fix was implemented. She failed to recognize the potential tort liability to the state, even though her email acknowledged that if Offender Robinson were released early and harmed someone, then liability would ensue. She also failed to recognize that inmates had already been improperly released who should be returned to prison.

Ms. Larson summarized her communications with DOC on the matter in an email to Ms. Stigall, on which she copied her supervisor, Mr. Weisser. Ms. Larson did not discuss the matter with Mr. Weisser, her Division Chief Mr. Lang, Deputy Attorney General Christina Beusch, Chief Deputy Brian Moran, Attorney General Rob McKenna, or anyone else in the AGO. Following Ms. Larson's initial advice, there is no record of further communication between Ms. Larson and DOC about the need for manual calculation of offender release dates. At least one member of DOC staff interpreted Ms. Larson's advice to mean that, except for Offender

Robinson's release date, manual calculations of offender release dates were unnecessary while DOC was reprogramming OMNI. Ms. Larson did provide some additional advice to Ms. Stigall on December 26, 2012, related to reprogramming OMNI to correct the sentencing error. (Attachment 3). The reprogramming did not occur for another three years, during which time felons continued to be released early.

After Ms. Larson and Ms. Stigall's December 26, 2012 email exchange, the last communication that we found relating to the early release error between DOC and the AGO was an email from Ms. Stigall to Ms. Larson on February 7, 2013. (Attachment 4). Although the subject of this email did not involve the early release error, Ms. Stigall does mention that DOC is still working on the programming fix.

February 7, 2013 until December 2015: We conclude that there were no communications between the AGO and DOC regarding the early release error following Ms. Stigall's February 7, 2013 email until December 2015.

Expectation of Corrections Division staff to notify division chief: The AGO Corrections Division Team members understand that division managers and the agency's upper managers should be notified promptly of significant legal issues or concerns. While Ms. Larson understood this expectation, she did not recognize the significance of the early release error and failed to notify her division chief.

Activities Conducted as Part of this Review:

Staff interviews: We interviewed 17 current and former AGO staff and two DOC staff. At the time we were conducting our review, the Governor's Office was also conducting an investigation. Our office cooperated with that investigation and the Senate investigation.

AGO Email: We conducted 33 different email searches, which returned approximately 20,000 results. We used our Discovery Accelerator tool to run the searches of the AGO's archived emails. We took an expansive approach to our email searches, and then conducted additional targeted searches within the results.

Because of records retention procedures, the email migration to Consolidated Technology Services in October 2013 and limits on retention of telephone records, we could not restore deleted emails nor any telephone data from the period during and before December 2012.

Law Manager: We performed nine searches in Law Manager, AGO's case management system, which returned approximately 12,000 results. As with the email searches, we took an expansive approach and then conducted additional targeted searches within the results.

Requests to AGO staff: As part of this review, we met with the divisions that serve DOC as a client — specifically the Torts, Corrections, and Labor and Personnel divisions — and asked any staff who may have information relevant to our investigation to contact us. We also identified staff who had transferred to other divisions or left AGO employment since 2012 who might have relevant information, and made a similar request to them. We purposely made a very broad request and did not limit it to the specific circumstances that are the subject of this review.

Findings of Fact:

The following findings of fact are based upon the information that we were able to corroborate:

- Upon receiving the Washington Supreme Court decision *In re King*, 146 Wn. 2d 658 (2002), on July 3, 2002, Senior Counsel Paul Weisser sent an email to DOC Secretary Joe Lehman opining, “The decision probably won’t result in the offenders serving more or less time than they otherwise would have served, but implementing the rule the court adopted might involve changes to OBTS and record keeping functions. The correctional records managers may have their hands full with this one. I suspect that many offenders’ (hundreds or thousands) time structure will have to be individually recalculated, because I don’t think OBTS can accommodate the rule the court announced in *King* on a systemwide basis.” (Attachment 1).
- Mr. Weisser’s advice was appropriate.
- Ms. Larson emailed Leora McDonald, DOC Records Supervisor of the Warrants Unit, on October 12, 2007, asking, “Why does the DOC reduce enhancement time (and mandatory minimum term time) by the amount of time an offender spent in jail?” (Attachment 5). Ms. Larson was concerned because she believed that DOC was essentially allowing offenders to earn good time during their enhancement in contravention of state law. Ms. Larson advised Ms. McDonald that DOC should subtract the jail time (including jail good time) from the non-mandatory term and start the enhancement term at the point when the offender enters DOC custody. We were not able to find any evidence that Ms. McDonald responded to this message or that Ms. Larson had further communications with her on this topic.

In January 2016, Ms. Larson explained that the error she identified in October 2007 did not pertain to the early release error identified in the Robinson sentencing matter. Although on the surface it appears that the 2007 and 2012 issues are the same, Ms. Larson is clear that the 2007 issue only involved earning good time credit during an enhancement and that she was not aware at that time that OMNI was allowing offenders to earn more good time credit than the statutory maximum of 33%. We agree that the 2007 email addresses a different issue than the 2012 early release issue.

- There is no indication that any AGO employee knew, prior to December 7, 2012, that OMNI was miscalculating the early release dates of offenders with sentence enhancements.
- On December 7, 2012, DOC Victim Services Program Manager Steve Eckstrom contacted Ms. Larson to notify her of the issue with Offender Robinson’s early release date calculation. (Attachment 6).
- Ms. Larson communicated with Mr. Eckstrom and Ms. Stigall on December 7, 2012. Ms. Larson sent Ms. Stigall an email on December 7, 2012, and advised her that OMNI

had miscalculated Offender Robinson's early release date. Ms. Larson also advised Ms. Stigall that DOC should manually recalculate Offender Robinson's early release date. Ms. Larson's advice concluded that DOC needed to reprogram OMNI but that in the interim, DOC did not need to begin manually calculating release dates of offenders with sentence enhancements before OMNI was fixed. (Attachment 2).

- Although Ms. Larson correctly analyzed the error in the way OMNI was calculating release dates of offenders with a sentence enhancement, her December 7, 2012, legal advice email to Ms. Stigall contained the following errors:

- Ms. Larson failed to recognize the extent of the problem because she did not understand that the length of the base sentence was not a factor in the miscalculation. She believed that the calculation error made in Offender Robinson's sentence occurred because of his short base sentence, and that the error would not occur in cases with a long base sentence. It is unclear why she believed this, but nevertheless, her thinking was incorrect.

This error led Ms. Larson to underestimate the magnitude of the problem because, in her experience, it is unusual for offenders to have short base sentences. Ms. Larson should have realized this error after reading Ms. Stigall's December 26, 2012, email in which Ms. Stigall wrote, "I also find that it is making a change regardless if this is a short base sentence or not." (Attachment 3). It was not until early 2016 that Ms. Larson realized that the length of the base sentence to the enhancement was not a factor in the miscalculation of offender release dates.

- Ms. Larson failed to recognize the public safety implications of DOC continuing to release offenders early when she advised DOC that they did not need to manually calculate release dates before the OMNI error was addressed. Ms. Larson gave two reasons to support her advice. First, because DOC had been releasing offenders early for a decade, "a few more months is not going to make that much difference" Second, Ms. Larson reasoned that because DOC "has identified internally" the error, instead of it being "something that is being forced upon it by an outside entity such as the court," the issue was not so "urgent as to require the large input of personnel resources to do hand-calculations of hundreds of sentences." Both of these reasons indicate that Ms. Larson was focused on the effects manual calculations would have on DOC staff, instead of on public safety.
- Ms. Larson failed to recognize the liability implications of the error. In explaining why DOC should manually calculate Offender Robinson's sentence, Ms. Larson warned DOC that they would be subject to tort liability "if Robinson were to [be] release[d] and immediately go and kill the victim" She reasoned that because DOC knew that Offender Robinson was getting more good time than allowed by statute and if DOC did not act to correct the problem, "the likelihood that DOC will be sued and lose in a tort lawsuit is unreasonably high" However, she failed to recognize that this same liability analysis could apply to

every offender with an enhancement who was released early because of the OMNI calculation error. In addition, Ms. Larson did not offer any advice regarding how DOC should handle the offenders who had been released early during the previous ten years.

- Based on her email and our interviews, Ms. Larson believed the programming error would be corrected within a few months. Ms. Stigall's experience was that such a fix would normally take six months, and in fact labeled the request to implement the fix "ASAP" in the hope that it might be done in only three. (Attachment 7).¹ Ms. Larson believed Ms. Stigall would raise these issues with DOC management.
- Upon receiving Ms. Larson's advice, DOC manually recalculated Offender Robinson's release date. In accordance with Ms. Larson's advice, Ms. Stigall determined that DOC did not need to hand calculate any other offender release dates and could wait until OMNI was reprogrammed. Ms. Stigall believed that if Ms. Larson would have advised DOC to hand calculate offender sentences, then DOC would have done so.
- In determining how to reprogram OMNI, Ms. Stigall sent an email to Ms. Larson on December 26, 2012, with three scenarios of offender sentence calculations. Ms. Larson provided advice on which scenarios complied with the law. (Attachment 3).
- Mr. Weisser was copied on Ms. Larson's email to Ms. Stigall on December 7, 2012. He was also copied on the email exchange between Ms. Larson and Ms. Stigall on December 26, 2012. Mr. Weisser does not recall the issue. He does not recall speaking with Ms. Larson about it, and we did not find any evidence that Mr. Weisser read these messages.
- Ms. Larson also does not recall speaking to Mr. Weisser about it.
- We did not find any evidence that Ms. Larson discussed the OMNI calculation error with any AGO staff prior to December 2015.
- Mr. Lang recalled that Ms. Larson did not always recognize the broader implications of her legal advice. He has, prior to December 2012, addressed with Mr. Weisser the need to provide oversight of Ms. Larson's work.
- On February 7, 2013, Ms. Stigall sent an email to Ms. Larson asking if DOC could correct an error of law on jail good time credits. Although this question did not relate to the early release issue, Ms. Stigall wrote, "Part of what brought this up was I ran a list of offenders with mandatories and enhancements to get an idea of how many of these will be affected when we get the programming fixed for the *King* Decision." Ms. Larson did not comment on the program fix for the early release issue in her response to Ms. Stigall,

¹ Attachment 7 was included as part of a Public Disclosure Request that was released by DOC on December 24, 2015. The DOC tracking number for this request is PDU-39525. The request can be found at: <http://www.doc.wa.gov/news/pressreleases/2015/12222015-sentencing-error-information.asp>.

but instead simply answered Ms. Stigall's question regarding correction of good time credits from county jails. (Attachment 4).

- Ms. Stigall's February 7, 2013, email to Ms. Larson was the last communication that we were able to corroborate between DOC and the AGO about the OMNI calculation error for offenders with enhanced sentences until December 11, 2015. On the latter date, Ms. Stigall sent an email to Ms. Larson stating that DOC was "finally getting the programming into OMNI to correct the erroneous dates from the original *King* decision." (Attachment 8).
- AGO Senior Counsel Dan Judge, a member of the Torts Division, recalled that Kathy Gastreich, DOC's Risk Management Director, called him on December 7, 2012, to request his opinion on DOC's tort liability for offenders being released early because of the OMNI calculation error.² Mr. Judge recalled telling Ms. Gastreich that DOC would have liability if an offender who was mistakenly released early reoffended, and that DOC should fix the programming error. There is some evidence to suggest that Ms. Gastreich may not have learned of the early release issue until December 11, 2012, in which case Mr. Judge and Ms. Gastreich could not have discussed the issue on December 7, 2012. Ms. Gastreich has no recollection of such a call. Ms. Gastreich believes Mr. Judge may be confusing this issue with another DOC issue. We are not able to locate any information to corroborate that Ms. Gastreich called Mr. Judge to ask about this particular issue.
- Mr. Judge recalled having a telephone conversation with Mr. Lang on December 7, 2012, during which he conveyed to Mr. Lang his conversation with Ms. Gastreich about the OMNI calculation error. He also recalled emailing Mr. Lang about the issue following the phone call. As previously noted, there is some evidence that Ms. Gastreich did not learn of the early release issue until December 11, 2012, in which case Mr. Judge and Ms. Gastreich could not have discussed the issue on December 7, 2012, nor could Mr. Judge have subsequently discussed this issue with Mr. Lang on December 7, 2012. Mr. Lang has no recollection of such a call with Mr. Judge. The contents of Mr. Judge's email to Mr. Lang were not retained and cannot be restored, nor were we able to locate any other information to corroborate that Mr. Judge informed Mr. Lang of this particular issue.
- Mr. Lang disagrees with Mr. Judge's recollection that the two had a telephone conversation on December 7, 2012, regarding the early release error. Mr. Lang does not recall having any knowledge of this issue until his conversation with DOC Deputy Secretary Jody Becker-Green on December 16, 2015. It is possible that Mr. Judge is confusing this issue with another case, *Blick v. DOC*, a case he was working on in 2012 and 2013 that involved an allegation that offenders were losing jail earned release credit.

² Mr. Judge's recollection of December 7, 2012 as the date of the purported telephone conversations with Ms. Gastreich and Mr. Lang is based on his memory, two unrelated emails that he received from Mr. Lang on December 7, 2012, and media reports of the issue in December 2015. (Attachment 9).

Ms. Larson was helping Mr. Judge with this case, and we found email communications related to this case that were sent or received by Mr. Judge, Ms. Larson, Ms. Stigall, Ms. Gastreich and Mr. Lang during the same time period.

- Mr. Judge and Mr. Lang are valued, long-term AGO employees. We appreciate Mr. Judge's willingness to come forward and share his recollections, but we are unable to draw any factual conclusions about this purported conversation between Mr. Judge and Mr. Lang. Based upon our interviews with Corrections Division staff and our own experience, we find, however, that it would be highly unlikely that Mr. Lang would not have raised the issue with AGO senior management and DOC management if he had knowledge of the matter.
- Mr. Lang learned of the early release error from Ms. Becker-Green on December 16, 2015. The next day, Mr. Lang located Ms. Larson's advice to DOC in December of 2012 when the miscalculation error was first discovered. On December 18, 2015, Mr. Lang briefed AGO senior leadership.
- Based upon our interviews, we find that employees in the Corrections Division understand they are required to elevate important issues. In this case, Ms. Larson acknowledges she did not recognize the early release error issue as a significant issue and did not raise the issue with her supervisors except to copy Mr. Weisser on her email advice.

Summary of Information Reviewed:

We have organized our summary of the information we reviewed and interviews we conducted to correspond with the three areas of review. This summary is not a verbatim recitation of the interviews we conducted, but reflects our view of the most salient facts within the scope of this review.

1. Locate and review information related to DOC's request to Ronda Larson regarding the early release error and any advice on this specific issue that Ms. Larson provided to the DOC.

The Washington Supreme Court issued their decision in *In re King* on July 3, 2002, which established that DOC must preserve good time earned by inmates prior to their booking with DOC. In an email to Mr. Lehman later that day, Mr. Weisser opined, "The decision probably won't result in the offenders serving more or less time than they otherwise would have served, but implementing the rule the court adopted might involve changes to OBTS and record keeping functions. The correctional records managers may have their hands full with this one. I suspect that many offenders' (hundreds or thousands) time structure will have to be individually recalculated because I don't think OBTS can accommodate the rule the court announced in *King* on a systemwide basis." (Attachment 1).

On December 7, 2012, Steve Eckstrom spoke with Wendy Stigall about a telephone call he received from a victim's family, who were concerned that the scheduled early release date for Offender Robinson was much earlier than it should be. Ms. Stigall checked in OMNI and told Mr. Eckstrom that Offender Robinson's record looked correct. She suggested that Mr. Eckstrom speak with Ms. Larson.

Mr. Eckstrom left a voicemail for Ms. Larson on December 7, 2012, stating that the victim's family called him about the release date of Offender Robinson. Mr. Eckstrom followed up the voicemail with an email to Ms. Larson that same day. (Attachment 6). The email from Mr. Eckstrom that was retained in Ms. Larson's email account indicates that Ms. Larson replied to his email on the same day at 11:22 a.m., but a copy of the reply was not retained. Ms. Larson believes that she likely returned Mr. Eckstrom's call later that day.

On that same day, December 7, 2012, Ms. Larson and Ms. Stigall had a telephone conversation in which they discussed Offender Robinson's release date. Following their telephone call, Ms. Larson summarized their conversation in an email. (Attachment 2). In the email, Ms. Larson wrote that she agreed that OMNI miscalculated Offender Robinson's early release date by giving him too many early release credits. Ms. Larson also wrote that "[t]his case revealed a problem with OMNI's calculation method for sentences with an enhancement" Ms. Larson instructed Ms. Stigall to hand calculate Offender Robinson's release date, and then begin the process of reprogramming OMNI, which she understood would take a "few months."

Finally, Ms. Larson also wrote in the email to Ms. Stigall that "it would be reasonable to not manually fix the hundreds of sentences that have enhancements and instead wait for the

reprogramming to occur so that OMNI can do the recalculation automatically.” She also acknowledged that although this would “result in offenders being released earlier than the law allows for the time being, until OMNI gets fixed, the DOC has been releasing them earlier for a decade (since the *In re King* decision), and a few more months is not going to make that much difference”

Ms. Larson reports that she had no specific memory of this issue arising or the advice she gave until after she reviewed her December 7, 2012, email three years later, in December 2015. When she sent her email on December 7, 2012, Ms. Larson copied the message to her supervisor, Mr. Weisser and to the “ATG MI COR Oly Advice” mailbox. At that time, it was the practice of attorneys in the Corrections Division to send advice items to that mailbox for entry into the AGO’s Law Manager system by a legal assistant. The mailbox is no longer in use. It was deleted when the AGO email system migrated to Consolidated Technology Services in October 2013. However, Ms. Larson’s email was stored in Law Manager.

In our interview with Ms. Stigall, she told us that based on Ms. Larson’s advice, she believed that it was acceptable to wait until the OMNI system was reprogrammed, and that it was not necessary to manually calculate offenders’ release dates in the meantime.

Ms. Stigall confirmed that she learned of Offender Robinson’s early release date error from Mr. Eckstrom, who also contacted Ms. Larson. Ms. Stigall was on planned leave between December 12 and 25, 2012. When she returned to work on December 26, 2012, she sent an email to Ms. Larson with the records of three offenders, asking for Ms. Larson’s confirmation that her planned sequencing modification would affect the change needed in OMNI. Ms. Larson responded to Ms. Stigall’s email on the same day and provided advice on which scenarios complied with the law. (Attachment 3). On December 27, 2012, Ms. Stigall prepared an Information Technology Service Request to have OMNI reprogrammed and marked that request “ASAP.” (Attachment 7). She said that at DOC, it normally took six months to process this kind of request, and that she marked the request ASAP in the hope that it would take only three months. Ms. Stigall explained that if Ms. Larson would have advised DOC to hand calculate offender sentences, then she would have directed DOC staff to follow this direction.

On February 7, 2013, Ms. Stigall sent another email to Ms. Larson, asking for advice regarding good time credits from county jails. In her email Ms. Stigall wrote, “Part of what brought this up was I ran a list of offenders with mandatorics and enhancements to get an idea of how many of these will be affected when we get the programming fixed for the *King* decision.” Ms. Larson replied that DOC could “correct the jail good time no matter how old the jail cert. is.” (Attachment 4).

After Ms. Stigall’s February 7, 2013 email, Ms. Larson does not recall any additional communications with DOC regarding the early release error until December 11, 2015, when Ms. Stigall sent an email stating that DOC was “finally getting the programming into OMNI to correct the erroneous dates from the original *King* decision.” (Attachment 8). In this email, Ms. Stigall requests that Ms. Larson review an offender’s record in order to be sure that the updated OMNI programming would correctly calculate sentences such as his. Ms. Larson

reports she did not read the email in its entirety on the day it was received, but did so a couple of days later. By that time, her managers in the Corrections Division were handling matters related to the early release errors.

Ms. Larson worked as an AAG in the Corrections Division for thirteen years. While her practice always included sentencing litigation, throughout her thirteen years with the AGO she grew into an experienced attorney in this highly technical and frequently changing area of the law.

2. *Identify and contact other current and former AGO employees who may have been aware of the early release error prior to December 2015, and determine if there were any other communications between the AGO and DOC regarding this issue.*

Senior Counsel Paul Weisser, Ms. Larson's direct supervisor, was copied on Ms. Larson's early release error advice email to Ms. Stigall on December 7, 2012. Mr. Weisser was also copied on Ms. Stigall's advice request to Ms. Larson on December 26, 2012 related to the OMNI fix of the early release issue and Ms. Larson's reply on the same date. Mr. Weisser does not recall if Ms. Larson discussed her advice with him before she responded to Ms. Stigall's request on December 7 or December 26, 2012, nor does he recall reading these emails. Ms. Larson would sometimes consult with Mr. Weisser before providing advice to DOC, so it would not surprise him if they did discuss the early release issue; however, he does not have a specific recollection of doing so. During our interview, Mr. Weisser stated that Ms. Larson's assessment that DOC did not need to do manual calculations of offender sentences was incorrect and the final two paragraphs of her advice email should have been omitted. Mr. Weisser did not retain the December 7 and December 26, 2012 emails, so we were unable to determine whether Mr. Weisser opened the emails. Mr. Weisser does not recall having any conversations with DOC staff regarding the early release issue until after the issue came to light in December 2015.

After the media coverage of the early release error in December 2015, Mr. Judge notified his supervisor, Senior Assistant Attorney General Pam Anderson, that he had information related to this issue. When we interviewed Mr. Judge, he told us that he recalled having a five to ten minute telephone conversation with DOC Risk Management Director Kathy Gastreich in the early afternoon of December 7, 2012. Mr. Judge told us that Ms. Gastreich called him and told him that DOC was working on a "glitch" regarding the early release of prisoners which took place over a long period of time. According to Mr. Judge, Ms. Gastreich relayed Ms. Larson's advice that if this error had been occurring for over a decade, a couple of additional months were not going to make a difference. Mr. Judge recalls that Ms. Gastreich did not get into the details regarding the number of offenders involved or how long the problem had persisted. He also recalls that Ms. Gastreich indicated that DOC was weighing whether to start doing a manual calculation of offender release dates or to keep with the status quo until a fix was made to the OMNI system. Mr. Judge remembers telling Ms. Gastreich that DOC had tort liability if offenders who are mistakenly released early reoffend and that DOC should fix the problem. Mr. Judge did not document this conversation. Although Mr. Judge's recollection is based solely on his memory, his recall was initially prompted by media reports of the issue and reading the emails and documents that were released by DOC. Ms. Gastreich does not have any memory of the early release issue, nor did she have any recollection of this conversation with Mr. Judge.

Although he did not mention this situation to his division chief at the time, Mr. Judge told us that after his conversation with Ms. Gastreich on December 7, 2012, he recalls a telephone conversation with Mr. Lang, Division Chief of the Corrections Division, regarding the early release issue. He said it was a more recent recollection. Mr. Judge said he left a voicemail message for Mr. Lang earlier on December 7, 2012, and Mr. Lang returned the telephone call late in the afternoon. Mr. Judge said he called Mr. Lang for two reasons. First, to request that Mr. Lang send him the briefing in the *Talon* case because Assistant Attorneys General Mark Jobson and Eric Miller were working on a case that involved a gaming issue and Mr. Judge knew that the *Talon* briefing would be helpful to them. Second, Mr. Judge wanted to inform Mr. Lang about the conversation he had with Ms. Gastreich earlier that day.

Mr. Judge recalled telling Mr. Lang about a “distressing call” he had received from Ms. Gastreich earlier in the day. Mr. Judge remembers telling Mr. Lang that there was a problem with early releases over a long period of time and that Ms. Larson was working on the issue. Mr. Judge does not think he got into the details with Mr. Lang, but does remember telling Mr. Lang about the nature of the problem with early releases over a period of time. Mr. Judge recalls that Mr. Lang asked if Ms. Larson was advising on the issue and asked Mr. Judge to send him a reminder email. Mr. Judge did not take any notes of this conversation. His recollection is based on his memory and two emails that he received from Mr. Lang on December 7, 2012. (Attachment 9). He did not talk to anyone else about the call.

Mr. Lang sent the emails at 4:30 p.m. and 4:34 p.m. and attached the *Talon* briefs. (Attachment 9). Mr. Lang did not include any text in the emails. The email sent at 4:34 p.m. does contain information that Mr. Judge replied to Mr. Lang at 4:49 p.m. Mr. Judge does not remember what he wrote in his reply email, but he thinks it was a quick note to remind Mr. Lang of their conversation about the early release error. We were not able to recover Mr. Judge’s reply email, as neither Mr. Lang nor Mr. Judge retained it in their email accounts.

Mr. Lang is certain that he did not learn about the early release issue in 2012, because if he had, he would have discussed the issue with Ms. Larson and Mr. Weisser. Mr. Lang does not recall having a conversation with Mr. Judge about the early release error. In addition, Mr. Lang attends a weekly meeting with DOC Executive Staff, which comprises the direct reports to the Secretary of the DOC. According to Mr. Lang, the early release issue was never raised during those meetings that he attended. He does not receive copies of any minutes from the meetings.

According to the AGO’s Chief Information Officer, Rick Griffith, telephone records are only retained for 30 days, so we were not able to confirm these conversations by reviewing these records. Our review of the email system did not yield any additional information, apart from the two *Talon* emails that Mr. Lang sent to Mr. Judge on December 7, 2012. (Attachment 9).

On December 10 or December 11, 2012, Ms. Stigall recalls having a conversation with her supervisor, Assistant Secretary Denise Doty. Ms. Stigall reports she briefed Ms. Doty on the early release issue. Ms. Doty directed Ms. Stigall to forward Ms. Larson’s December 7, 2012, advice email to Ms. Gastreich. Ms. Stigall forwarded Ms. Larson’s email to Ms. Gastreich on

December 11, 2012. (Attachment 10).³ Ms. Stigall does not recall ever having an oral conversation with Ms. Gastreich regarding the early release issue, either before or after sending her the email on December 11, 2012.

Mr. Judge also recalls that Ms. Gastreich mentioned the early release issue again in 2015. Mr. Judge does not remember specifically when this occurred, but he believes that it was either at a mediation on August 24, 2015, or during a meeting on possible changes to the Swift and Certain law on October 16, 2015 or November 10, 2015. According to Mr. Judge, Ms. Gastreich mentioned the early release glitch. Mr. Judge responded to this comment by asking, "Did you fix that?" According to Mr. Judge, Ms. Gastreich told him that it had not been fixed and that she was less than pleased about it. Mr. Judge did not notify anyone within the AGO or at DOC regarding this conversation.

Ms. Gastreich has no recollection of the early release issue, nor does she have a recollection about the December 7, 2012, email. Accordingly, she also did not recall mentioning the early release issue to Mr. Judge in December 2012 or in 2015. She opined that Mr. Judge might be confusing it with a different issue.⁴

AGO Paralegal Joan Kross and Assistant Attorney General Ameer Tilger attended the mediation on August 24, 2015. Neither of them remembers Ms. Gastreich mentioning the early release issue. Ms. Gastreich was not present for most of the mediation. Ms. Larson was present during the Swift and Certain meetings on October 16 and November 10, 2015. Ms. Larson did not recall Ms. Gastreich raising the early release issue during the meetings.

3. *Examine expectations within the Corrections Division to report significant client advice questions to the Division Chief.*

We asked Ms. Larson and Mr. Weisser what their understanding was regarding the expectations within the Corrections Division to report issues to the Division Chief, Mr. Lang. Ms. Larson explained that she would report any issues where there was potential for tort liability or if the issue might attract media attention. Ms. Larson recalls Mr. Lang telling the division to keep him informed of significant issues that may come up at the DOC Leadership meeting that Mr. Lang regularly attended. Ms. Larson told us that she did not identify the early release error as an issue that she should raise to Mr. Lang when she was providing the advice in December 2012.

Mr. Weisser told us that Mr. Lang's expectation is that any issue that will have a big impact on DOC should be raised to him. Mr. Weisser said that non-supervisory attorneys know that they should raise these issues to Mr. Lang and that they will typically speak with Mr. Lang. Mr. Weisser said that the early release error is an issue that should have been raised to Mr. Lang.

³ Attachment 10 was included as part of a Public Disclosure Request that was released by DOC on December 24, 2015. The DOC tracking number for this request is PDU-39525. The request can be found at: <http://www.doc.wa.gov/news/pressreleases/2015/12222015-sentencing-error-information.asp>.

⁴ During 2012 and 2013, Mr. Judge was working on a case, *Blick v. DOC*, with Ms. Larson, that involved an allegation that offenders were losing jail earned release credits. We recovered emails related to *Blick* that were sent or received by Mr. Judge, Ms. Larson, Ms. Stigall, Ms. Gastreich, and Mr. Lang during this time period.

April 7, 2016

Page 15

We also asked Mr. Lang about his expectation for his staff to raise issues to him. He explained that the division talks a lot about expectations in this regard, and that everyone understands those expectations. He does not have a written policy or guidance.

Mr. Lang and Mr. Weisser were generally complimentary of Ms. Larson's work. But Mr. Lang did comment that Ms. Larson did not always appreciate the broader implications of her advice and that he had discussed with Mr. Weisser the need to provide oversight of her work prior to December 2012.

Cooper, Ranae A.
From: Yates, Cindi
Sent: Wednesday, July 03, 2002 5:22 PM
To: Fiala, Anne L.
Cc: Lehman, Joe D.; Vail, Eldon W.; Robinson-Martin, Patria N.
Subject: RE: In re David L. King, Wash. Supreme Ct. #70595-0

I recommend we have someone from records (Janice?), IT staff and Melanie review the the impact of this decision. Do you agree? If so I will ask Don Price to designate someone from IT.

-----Original Message-----

From: Lehman, Joe D.
Sent: Wednesday, July 03, 2002 12:59 PM
To: Yates, Cindi
Cc: Vail, Eldon W.
Subject: FW: In re David L. King, Wash. Supreme Ct. #70595-0

Maybe the question I asked you in the previous e-mail has already been answered. See Paul's comment below. Unfortunately he points out a real potential problem with work that will have to be done by records staff.

-----Original Message-----

From: Weisser, Paul (ATG) [mailto:PaulW@ATG.WA.GOV]
<mailto:[mailto:PaulW@ATG.WA.GOV]>
Sent: Wednesday, July 03, 2002 12:24 PM
To: Van Wagenen, Dick; Lehman, Joe D.
Subject: RE: In re David L. King, Wash. Supreme Ct. #70595-0

The decision probably won't result in the offenders serving more or less time than they otherwise would have served, but implementing the rule the court adopted might involve changes to OBTS and record keeping functions. The correctional records managers may have their hands full with this one. I suspect that many offenders' (hundreds or thousands) time structure will have to be individually recalculated, because I don't think OBTS can accommodate the rule the court announced in King on a systemwide basis. PDW

-----Original Message-----

From: Van Wagenen, Dick
Sent: Wednesday, July 03, 2002 12:10 PM
To: Lehman, Joe D.; Weisser, Paul (ATG)
Subject: RE: In re David L. King, Wash. Supreme Ct. #70595-0

Sounds like a typically murky Supreme Court decision, though in fairness the issue itself is murky enough. It doesn't appear to affect the actual amount of prison time an inmate would serve in such a case, but if I'm wrong about that we should look at budget implications either way.

Also, if this presents either practical or fiscal problems we might consider request legislation.

-----Original Message-----

From: Lehman, Joe D.
Sent: Wednesday, July 03, 2002 10:49 AM
To: Van Wagenen, Dick
Subject: FW: In re David L. King, Wash. Supreme Ct. #70595-0
Importance: High

ATTACHMENT - 2

From: [Larson, Ronda \(ATG\)](#)
To: [Stigall, Wendy S. \(DOC\)](#)
Cc: [ATG MI COR Oly Advice](#); [Weisser, Paul \(ATG\)](#)
Subject: Should DOC reprogram OMNI to run jail time off base rather than off enhancement? / Robinson #357042
Date: Friday, December 07, 2012 2:29:19 PM

DOC

Headquarters

Time credits

Sentences

Requestor: Wendy Stigall

Issue: If a sentence contains an enhancement during which no good time can be earned, OMNI subtracts jail time served from the enhancement and subtracts jail good time from the base. When the base is short (e.g., 6 months), OMNI's method results in offenders getting more good time (e.g., 58% in Robinson's case) than allowed by law.

Attorney-Client Privileged Communication. Do not copy, disseminate, forward, or divulge the contents of this communication to anyone other than addressee.

This is to memorialize our phone conversation today. Because the parents of the victim of Robinson are worried about when their son's aggressor is going to be released, they did their own calculation of his early release date. They realized his actual early release date is far sooner than it should be. As a result, they called victim coordinator Steve Eckstrom about the problem. He explained the early release problem to me and I agree that OMNI is calculating an ERD that gives Robinson too much early release credits (i.e., 58% of the sentence rather than 33%).

This case revealed a problem with OMNI's calculation method for sentences with an enhancement where the base is short. I would recommend that the DOC do a hand-calculation fix of Robinson's sentence now, and that it start the long process of reprogramming OMNI for everyone else. I don't believe it is necessary, from a risk management perspective, to do hand calculations now of everyone in prison with an enhancement. Waiting for OMNI to be reprogrammed should be sufficient, except for in Robinson's case.

The fix to OMNI would result in OMNI subtracting the jail time served from the base rather than from the enhancement. This would have the effect of starting the enhancement time on the time start date (i.e., the day the offender arrives at the DOC), rather than at time of arrest.

Before *In re King*, 146 Wn.2d 658, 49 P.3d 854 (2002), DOC started the enhancement time at date of arrest (i.e., it applied the jail time served to the

ATTACHMENT - 2

enhancement). But it did not credit the jail good time toward the base. Thus, offenders received no jail good time and received only DOC time. Overall, the amount of good time never exceeded the $1/3^{\text{rd}}$ allowed by statute, and offenders did not lose good time overall. This is the proper way to run enhancements because it avoids the mathematical problem we now face and also results in the best use of the offender's early release time—DOC can use it for offering them work release, for example, because every offender will be guaranteed to serve their base at the end of their sentence, and thus will be earning early release at the end of their sentence. However, the WSSC tried to fix a problem that didn't exist and thus prohibited the DOC from doing it this way. We are stuck with it now.

After *In re King*, the DOC continued to start the enhancement time at the date of arrest by subtracting the jail time served from the enhancement rather than from the base. But because of *King*, the DOC took the jail good time and subtracted it from the base, rather than simply eliminating the jail good time.

This is resulting in offenders with short bases receiving more good time than allowed by statute. In Robinson's case, his base is a mere 183 days (6 months) long. This results in 60 days of early release credits that he can earn by statute (33% rate). However, his jail time is 134 days and jail good time is 67 days because the jail gave him good time at a rate of 33% ($67 \div 134 = 0.33 \div 0.66$). Thus, he already exceeded his maximum amount of good time at the jail by 7 days. Even so, OMNI is giving him another 39 days of DOC early release credits, for a total of 106 days of early release time. His sentence is 183 days long and he's getting 106 days of early release time. Thus, he is getting early release credits at a rate of 58%. ($106/183 = 58\%$).

This mathematical problem occurs because OMNI is subtracting 67 days of jail good time from a base of 183 days, resulting in a remaining sentence to serve in the DOC of 116 days. Multiplying 116 by 33% results in 39 days of DOC early release credits. So it appears to be correct on its face. But when you look at how much good time he should be getting overall by merely multiplying 33% by the 183-day sentence, and considering he already got 67 days of jail good time, you realize that he is getting way too much good time.

This would not happen if the base were long. It happens because the base is shorter than the total jail credits. His total jail credits are $134 + 67 = 201$. Because DOC applies those jail credits of 134 to the enhancement, it enables him to preserve his base sentence (less 67 days) to continue to earn early release time after coming to the DOC. So he gets to earn early release time both at the jail and at the DOC and ends up with more than 33% overall.

Robinson's victim's parents are concerned because they have figured out that Robinson is getting more than 33% good time and thus will be releasing sooner than what they had anticipated.

If the DOC does not fix Robinson's sentence, the likelihood that DOC will be sued and lose in a tort lawsuit is unreasonably high, if Robinson were to release and immediately go and kill the victim, for example. In such a scenario, because the

ATTACHMENT - 2

DOC knew that Robinson was getting 58% good time illegally, and didn't fix it, the DOC would lose such a lawsuit and sustain a lot of monetary damages.

OMNI will not allow records staff to fix Robinson's sentence until OMNI is reprogrammed. This would take a long time and would almost certainly occur after Robinson's current (and erroneous) ERD of February 5, 2013. Thus, the only way to fix Robinson's sentence before he is released on February 5th is to override OMNI.

One would apply 60 of the 67 days of jail good time to the base (because only 60 days of total good time is allowed on a 183-sentence at a rate of 33%: $183 \times 0.33 = 60$), apply 123 of the 134 days of jail time served to the base (because 123 days wipes out the 183-day sentence after adding in 60 days of good time), and apply the remaining 11 days of jail time served to the enhancement (134 days of jail time less 123 days of jail time applied to the base equals 11 days of jail time to apply to the enhancement). This removes 46 days of early release credits from Robinson's current ERD, adding a month and a half to his ERD (106 days of overall good time currently minus 60 days of correct good time equals 46 days surplus he should not get). Hence, he should have a resulting ERD of about March 19, 2012.

As to the long process of reprogramming OMNI, it would be reasonable to not manually fix the hundreds of sentences that have enhancements and instead wait for the reprogramming to occur so that OMNI can do the recalculation automatically. Although this will result in offenders being released earlier than the law allows for the time being, until OMNI gets fixed, the DOC has been releasing them earlier for a decade (since the *In re King* decision), and a few more months is not going to make that much difference in light of this (with the exception of Robinson's case).

Furthermore, this is something that the DOC has identified internally, rather than something that is being forced upon it by an outside entity such as the court. It is therefore not so urgent as to require the large input of personnel resources to do hand-calculations of hundreds of sentences.

Ronda D. Larson

Assistant Attorney General

Corrections Division

PO Box 40116

Olympia WA 98504-0116

' (360) 586-1445

Fax (360) 586-1319

☐ Ronda.Larson@atg.wa.gov

ATTACHMENT - 3

From: Larson, Ronda (ATG)
To: Stigall, Wendy S. (DOC)
Cc: ATG MI COR Oly Advice; Weisser, Paul (ATG)
Subject: RE: Should DOC reprogram OMNI to run jail time off base rather than off enhancement?
Date: Wednesday, December 26, 2012 5:37:26 PM

DOC

Headquarters

Time credits

Sentences

Requestor: Wendy Stigall

Issue: Please review the three options OMNI has for calculating the ERD in cases where there is an enhancement.

Attorney-Client Privileged Communication. Do not copy, disseminate, forward, or divulge the contents of this communication to anyone other than addressee.

These are really good examples. Thanks for coming up with them.

Example 1 is lawful. It comes up with the correct ERD, in contrast to OMNI's current calculation, and it doesn't violate *King*—the offender still gets his jail good time. But it is less desirable from the policy perspective since DOC, as you mentioned, cannot take advantage of confinement alternatives such as work release, because the enhancement is served last.

Example 2 is unlawful. Although it produces the correct ERD, in contrast to OMNI's current calculation, it violates *King*. And it is how DOC calculated the ERD prior to *King*. It is desirable from a policy perspective (if it were lawful) because the enhancement is served first.

Example 3 is lawful. It produces the correct ERD, and it does not violate *King*—the offender still gets his jail good time. And it is desirable from a policy perspective because the enhancement is served last.

As you mentioned, the current ERD of 9/4/2020 is not correct because it gives too much good time. It gives 80 days too many. The overall good time allowed in this sentence is 659 days, which is 33.333% of the 1,977-day base. But the current calculation by OMNI gives a total of 739 days of good time (119 JGT + 207 DOC earned time + 413 DOC good conduct time). That is a good time rate of 37.379%, which is too much ($739/1977 = 0.37379$).

ATTACHMENT - 3

Ronda D. Larson

Assistant Attorney General
Corrections Division
PO Box 40116
Olympia WA 98504-0116
' (360) 586-1445
Fax (360) 586-1319
✉ Ronda.Larson@atg.wa.gov

From: Stigall, Wendy S. (DOC)
Sent: Wednesday, December 26, 2012 3:58 PM
To: Larson, Ronda (ATG)
Cc: Weisser, Paul (ATG)
Subject: FW: Should DOC reprogram OMNI to run jail time off base rather than off enhancement? / Robinson #357042

I have been trying to come up with the information that I need to have OMNI programmed. The issue I have been having is that regardless of which way I would have it programmed (with the exception of the current programming) it seems that they would be losing their jail good time. I have attached three different examples of calculations along with the current calcs.

Example 1. I ran the base first and applied all of the county jail credit and jail good time to that portion of the sentence (Page 1) and ran the enhancement consecutively with no credits (Page 2). Overall ERD: 11-23-20

Example 2. I ran the enhancement 1st and applied the county jail credits. (Page 1) and then ran the base sentence consecutive with no good time (Page 2). Overall ERD: 11-23-20.

Example 3. If I followed right this is your suggestions. I ran the enhancement first with no jail time or jail good time (Page 1) and then ran the base consecutive and applied all of the jail time/jail good time credits to the base. Overall ERD: 11-23-20.

The last page attached is the current calculations from OMNI with an overall ERD of 09/04/20.

I believe the 11-23-20 ERD should be correct because any other way is giving him too much overall good time but it seems that what we are really doing in taking away the county jail good time and then we would not be following the King decision. If the calculations are all going to come out the same, it would be much easier not to apply the jail good time than to make any other changes.

Please review and when you get a chance maybe give me a call to discuss before I request programming changes. My supervisors are interested in this because it will

ATTACHMENT - 3

be adding time to offenders sentences. I also find that it is making a change regardless if this is a short base sentence or not.

Thanks for your help.

Wendy

<< File: DOC1PTUM148@doc.wa.gov_20121226_164633.pdf >>

From: Larson, Ronda (ATG)
Sent: Friday, December 07, 2012 2:29 PM
To: Stigall, Wendy S. (DOC)
Cc: ATG MI COR Oly Advice; Weisser, Paul (ATG)
Subject: Should DOC reprogram OMNI to run jail time off base rather than off enhancement? / Robinson #357042

DOC

Headquarters

Time credits

Sentences

Requestor: Wendy Stigall

Issue: If a sentence contains an enhancement during which no good time can be earned, OMNI subtracts jail time served from the enhancement and subtracts jail good time from the base. When the base is short (e.g., 6 months), OMNI's method results in offenders getting more good time (e.g., 58% in Robinson's case) than allowed by law.

Attorney-Client Privileged Communication. Do not copy, disseminate, forward, or divulge the contents of this communication to anyone other than addressee.

This is to memorialize our phone conversation today. Because the parents of the victim of Robinson are worried about when their son's aggressor is going to be released, they did their own calculation of his early release date. They realized his actual early release date is far sooner than it should be. As a result, they called victim coordinator Steve Eckstrom about the problem. He explained the early release problem to me and I agree that OMNI is calculating an ERD that gives Robinson too much early release credits (i.e., 58% of the sentence rather than 33%).

This case revealed a problem with OMNI's calculation method for sentences with an enhancement where the base is short. I would recommend that the DOC do a hand-

ATTACHMENT - 3

calculation fix of Robinson's sentence now, and that it start the long process of reprogramming OMNI for everyone else. I don't believe it is necessary, from a risk management perspective, to do hand calculations now of everyone in prison with an enhancement. Waiting for OMNI to be reprogrammed should be sufficient, except for in Robinson's case.

The fix to OMNI would result in OMNI subtracting the jail time served from the base rather than from the enhancement. This would have the effect of starting the enhancement time on the time start date (i.e., the day the offender arrives at the DOC), rather than at time of arrest.

Before *In re King*, 146 Wn.2d 658, 49 P.3d 854 (2002), DOC started the enhancement time at date of arrest (i.e., it applied the jail time served to the enhancement). But it did not credit the jail good time toward the base. Thus, offenders received no jail good time and received only DOC time. Overall, the amount of good time never exceeded the 1/3rd allowed by statute, and offenders did not lose good time overall. This is the proper way to run enhancements because it avoids the mathematical problem we now face and also results in the best use of the offender's early release time—DOC can use it for offering them work release, for example, because every offender will be guaranteed to serve their base at the end of their sentence, and thus will be earning early release at the end of their sentence. However, the WSSC tried to fix a problem that didn't exist and thus prohibited the DOC from doing it this way. We are stuck with it now.

After *In re King*, the DOC continued to start the enhancement time at the date of arrest by subtracting the jail time served from the enhancement rather than from the base. But because of *King*, the DOC took the jail good time and subtracted it from the base, rather than simply eliminating the jail good time.

This is resulting in offenders with short bases receiving more good time than allowed by statute. In Robinson's case, his base is a mere 183 days (6 months) long. This results in 60 days of early release credits that he can earn by statute (33% rate). However, his jail time is 134 days and jail good time is 67 days because the jail gave him good time at a rate of 33% ($67 \div 134 = 0.33 \div 0.66$). Thus, he already exceeded his maximum amount of good time at the jail by 7 days. Even so, OMNI is giving him another 39 days of DOC early release credits, for a total of 106 days of early release time. His sentence is 183 days long and he's getting 106 days of early release time. Thus, he is getting early release credits at a rate of 58%. ($106/183 = 58\%$).

This mathematical problem occurs because OMNI is subtracting 67 days of jail good time from a base of 183 days, resulting in a remaining sentence to serve in the DOC of 116 days. Multiplying 116 by 33% results in 39 days of DOC early release credits. So it appears to be correct on its face. But when you look at how much good time he should be getting overall by merely multiplying 33% by the 183-day sentence, and considering he already got 67 days of jail good time, you realize that he is getting way too much good time.

This would not happen if the base were long. It happens because the base is shorter

ATTACHMENT - 3

than the total jail credits. His total jail credits are $134+67=201$. Because DOC applies those jail credits of 134 to the enhancement, it enables him to preserve his base sentence (less 67 days) to continue to earn early release time after coming to the DOC. So he gets to earn early release time both at the jail and at the DOC and ends up with more than 33% overall.

Robinson's victim's parents are concerned because they have figured out that Robinson is getting more than 33% good time and thus will be releasing sooner than what they had anticipated.

If the DOC does not fix Robinson's sentence, the likelihood that DOC will be sued and lose in a tort lawsuit is unreasonably high, if Robinson were to release and immediately go and kill the victim, for example. In such a scenario, because the DOC knew that Robinson was getting 58% good time illegally, and didn't fix it, the DOC would lose such a lawsuit and sustain a lot of monetary damages.

OMNI will not allow records staff to fix Robinson's sentence until OMNI is reprogrammed. This would take a long time and would almost certainly occur after Robinson's current (and erroneous) ERD of February 5, 2013. Thus, the only way to fix Robinson's sentence before he is released on February 5th is to override OMNI.

One would apply 60 of the 67 days of jail good time to the base (because only 60 days of total good time is allowed on a 183-sentence at a rate of 33%: $183 \times 0.33 = 60$), apply 123 of the 134 days of jail time served to the base (because 123 days wipes out the 183-day sentence after adding in 60 days of good time), and apply the remaining 11 days of jail time served to the enhancement (134 days of jail time less 123 days of jail time applied to the base equals 11 days of jail time to apply to the enhancement). This removes 46 days of early release credits from Robinson's current ERD, adding a month and a half to his ERD (106 days of overall good time currently minus 60 days of correct good time equals 46 days surplus he should not get). Hence, he should have a resulting ERD of about March 19, 2012.

As to the long process of reprogramming OMNI, it would be reasonable to not manually fix the hundreds of sentences that have enhancements and instead wait for the reprogramming to occur so that OMNI can do the recalculation automatically. Although this will result in offenders being released earlier than the law allows for the time being, until OMNI gets fixed, the DOC has been releasing them earlier for a decade (since the *In re King* decision), and a few more months is not going to make that much difference in light of this (with the exception of Robinson's case).

Furthermore, this is something that the DOC has identified internally, rather than something that is being forced upon it by an outside entity such as the court. It is therefore not so urgent as to require the large input of personnel resources to do hand-calculations of hundreds of sentences.

Ronda D. Larson

Assistant Attorney General

ATTACHMENT - 3

Corrections Division
PO Box 40116
Olympia WA 98504-0116
' (360) 586-1445
Fax (360) 586-1319
✉ Ronda.Larson@atg.wa.gov

Example 1

Pg. 1

ATTACHMENT - 3

Analyze Prison Calculations : ADEM, Liban Hassen (361058)

Cause: ---
Consecutive To Cause:
Count:

Calculation Type: Base	Length: Y, 65 M, D	Consecutive to:	
ERT% 33	ERD	Max Ex Date	Original ERD
Time Start	12/11/2012	12/11/2012	12/11/2012
(+) Length	1977	1977	1977
(-) Cause Credits	239	239	239
(-) Good Time Credits	119		119
(-) Potential Earned Time Release Credits	179.85		179.85
(+) Earned Time not Earned			
(-) Potential Good Conduct Time	360		360
(+) Good Conduct Time Lost	0		
(+) Out Time	0	0	0
Expiration Date	11/25/2015	09/14/2017	11/25/2015
Remaining Days To Be Served	1,063	1,722	1,063

Date Printed: 12/26/2012

logged on user: Wendy Stigall

Pg. 1
Base /ST
w/ JT / JGT
Pg. 2 Enhancement CS
Overall ERD 11-23-20

Example 1 Pg. 2

ATTACHMENT - 3

Analyze Prison Calculations : ADEM, Liban Hassen (361058)

Cause: -----
Consecutive To Cause:
Count:

Calculation Type: Enhancement		Length: Y, 60 M, D	Consecutive to:	
ERT% 0	ERD	Max Ex Date	Original ERD	
Time Start	11/25/2015	11/25/2015	11/25/2015	
(+) Length	1825	1825	1825	
(-) Cause Credits	0	0	0	
(+) Out Time	0	0	0	
Expiration Date	11/23/2020	11/23/2020	07/27/2020	
Remaining Days To.Be Served	1,825	1,825	1,825	

Date Printed: 12/26/2012

logged on user: Wendy Stigall

Example 2

pg. 1

ATTACHMENT - 3

Analyze Prison Calculations : ADEM, Liban Hassen (361058)

Cause: ---
Consecutive To Cause:
Count:

Calculation Type: Enhancement	Length: Y, 60 M, D	Consecutive to:	
ERT% 0	ERD	Max Ex Date	Original ERD
Time Start	12/11/2012	12/11/2012	12/11/2012
(+) Length	1825	1825	1825
(-) Cause Credits	239	239	239
(+) Out Time	0	0	0
Expiration Date	04/15/2017	04/15/2017	04/15/2017
Remaining Days To Be Served	1,570	1,570	1,570

Date Printed: 12/26/2012

logged on user: Wendy Stigall

pg. 1 Enhancement w/ Jail time
pg. 2 base sentence CS w/ no good time
Overall ERD: 11-23-20

Example 2 Pg. 2

ATTACHMENT - 3

Analyze Prison Calculations: ADEM, Liban Hassen (361058)

Cause: -----
Consecutive To Cause:
Count:

Calculation Type: Base	Length: Y, 65 M, D	Consecutive to:	
ERT% 33	ERD	Max Ex Date	Original ERD
Time Start	04/15/2017	04/15/2017	04/15/2017
(+) Length	1977	1977	1977
(-) Cause Credits	0	0	0
(-) Good Time Credits	0		0
(-) Potential Earned Time Release Credits	219.62		219.62
(+) Earned Time not Earned			
(-) Potential Good Conduct Time	439		439
(+) Good Conduct Time Lost	0		
(+) Out Time	0	0	0
Expiration Date	11/23/2020	09/13/2022	11/23/2020
Remaining Days To Be Served	1,977	1,977	1,977

Date Printed: 12/26/2012

logged on user: Wendy Stigall

Example 3 Pg. 1

ATTACHMENT - 3

Analyze Prison Calculations: ADEM, Liban Hassen (361058)

Cause: ---
Consecutive To Cause:
Count:

Calculation Type: Enhancement	Length: Y, 60 M, D	Consecutive to:	
ERT% 0	ERD	Max Ex Date	Original ERD
Time Start	12/11/2012	12/11/2012	12/11/2012
(+) Length	1825	1825	1825
(-) Cause Credits	0	0	0
(+) Out Time	0	0	0
Expiration Date	12/10/2017	12/10/2017	12/10/2017
Remaining Days To Be Served	1,809	1,809	1,809

Date Printed: 12/26/2012

logged on user: Wendy Stigall

Pg 1 Enhancement 1st
No JT / JGT

Pg 2 Base CS
w/ JT / JGT

Overall ERD
11-23-20

Example 3

Pg. 2

ATTACHMENT - 3

22

Analyze Prison Calculations : ADEM, Liban Hassen (361058)

Cause: -----
Consecutive To Cause:
Count:

Calculation Type: Base	Length: Y, M, D	Consecutive to:	
ERT% 33	ERD	Max Ex Date	Original ERD
Time Start	12/10/2017	12/10/2017	12/10/2017
(+) Length	1977	0	0
(-) Cause Credits	239	239	239
(-) Good Time Credits	119		119
(-) Potential Earned Time Release Credits	179.85		0.00
(+) Earned Time not Earned			
(-) Potential Good Conduct Time	360		0
(+) Good Conduct Time Lost	0		
(+) Out Time	0	0	0
Expiration Date	11/23/2020	12/10/2017	12/17/2016
Remaining Days To Be Served	1,977	0	0

Date Printed: 12/26/2012

logged on user: Wendy Stigall

Current OMNI Calculations

ATTACHMENT - 3

Analyze Prison Calculations : ADEM, Liban Hassen (361058)

Cause: AA-121007591-King-CCP
Consecutive To Cause:
Count: 1

Calculation Type: Enhancement		Length: Y, 60 M, D	Consecutive to:	
ERT% 0	ERD	Max Ex Date	Original ERD	
Time Start	12/11/2012	12/11/2012	12/11/2012	12/11/2012
(+) Length	1825	1825	1825	1825
(-) Cause Credits	239	239	239	239
(+) Out Time	0	0	0	0
Expiration Date	04/15/2017	04/15/2017	04/15/2017	04/15/2017
Remaining Days To Be Served	1,570	1,570	1,570	1,570

Calculation Type: Base		Length: Y, 65 M, D	Consecutive to: Enhancement (12/11/2012)	
ERT% 33	ERD	Max Ex Date	Original ERD	
Time Start	04/15/2017	04/15/2017	04/15/2017	04/15/2017
(+) Length	1977	1977	1977	1977
(-) Cause Credits	0	0	0	0
(-) Good Time Credits	119			119
(-) Potential Earned Time Release Credits	206.40			206.40
(+) Earned Time not Earned	0.00			
(-) Potential Good Conduct Time	413			413
(+) Good Conduct Time Lost	0			
(+) Out Time	0	0	0	0
Expiration Date	09/04/2020	09/13/2022	09/04/2020	09/04/2020
Remaining Days To Be Served	1,977	1,977	1,977	1,977

Date Printed: 12/26/2012

logged on user: Wendy Stigall

ATTACHMENT - 4

From: [Larson, Ronda \(ATG\)](#)
To: [Stigall, Wendy S. \(DOC\)](#)
Subject: RE: Good time credits from the county jails.
Date: Thursday, February 07, 2013 5:23:17 PM

Attorney-Client Privileged Communication. Do not copy, disseminate, forward, or divulge the contents of this communication to anyone other than addressee.

Yes, you can correct the jail good time no matter how old the jail cert. is.

Ronda D. Larson

Assistant Attorney General
Corrections Division
PO Box 40116
Olympia WA 98504-0116
☎ (360) 586-1445
Fax (360) 586-1319
✉ Ronda.Larson@atg.wa.gov

From: Stigall, Wendy S. (DOC)
Sent: Thursday, February 07, 2013 5:21 PM
To: Larson, Ronda (ATG)
Subject: RE: Good time credits from the county jails.

Part of what brought this up was I ran a list of offenders with mandatories and enhancements to get an idea of how many of these will be affected when we get the programming fixed for the King Decision. (Changing the jail time and jail good time to come off of the base). When I ran this list I found a lot of sentences where the jail time exceeded the maximum allowed by law. We went through and changed them to either 10 or 15% depending on the date of offense. We will now change them to 15% (17.6). We have offenders whose sentences hadn't been audited in years and they don't feel that the manifest error of law should apply to them if the jail certified 33 1/3%. I have to respond to a family member tomorrow and before I give the Records staff any more direction I want to be clear. Can we correct a manifest error of law on jail good time credits for any date or is there a certain date we need to follow?

Thanks.

Wendy

ATTACHMENT - 5

From: Larson, Ronda (ATG)
Sent: Friday, October 12, 2007 8:01 PM
To: ATG MI CJD Oly Advice
Cc: Weisser, Paul (ATG)
Subject: FW: reducing enhancement terms with jail time

DOC
Headquarters
Sentences
Inmate records

Requestor: Leaora McDonald

Issue: Is the DOC improperly subtracting jail time served from periods of flat time (mandatory minimum terms and enhancements)?

From: Larson, Ronda (ATG)
Sent: Friday, October 12, 2007 1:13 PM
To: McDonald, Leaora R. (DOC)
Cc: Mullen, Donna (ATG)
Subject: reducing enhancement terms with jail time

Attorney-Client Privileged Communication. Do not copy, disseminate, forward, or divulge the contents of this communication to anyone other than addressee.

Leaora,

Why does the DOC reduce enhancement time (and mandatory minimum term time) by the amount of time an offender spent in jail? The statute requires that an offender receive no good time on an enhancement term. But the way DOC calculates sentences, it subtracts jail time from the enhancement term, and then on top of that gives the offender the jail good time toward the non-enhancement term. So he gets the best of both worlds. He gets good time on that portion of the enhancement that is reduced by jail time served.

In re King, 146 Wn.2d 658, 49 P.3d 854 (2002), does not require this. Rather, it merely requires that the DOC give an offender his jail good time somewhere in the sentence, which the DOC now does-it credits it toward his non-mandatory term. Furthermore, the mandatory minimum term and enhancement statutes (e.g., RCW 9.94A.728(1), RCW 9.94A.533 and RCW 9.94A.540) say an offender cannot receive good time during the mandatory and enhancement terms. DOC is violating these statutes by its current method of calculating flat time periods.

In fact, the way DOC does things now sets up an equal protection problem. Offenders who serve time in jail get to have shortened periods of flat time by virtue of their time in jail, whereas offenders who happen to spend less time in jail have to serve longer flat time periods. The only reason this hasn't been brought out in the courts is that offenders haven't figured it out yet because the DOC's calculation screens are so

ATTACHMENT - 5

difficult to understand for the lay person (and for most lawyers and judges).

The DOC instead should keep the mandatory term intact and subtract the jail time (as it does with jail good time) from the non-mandatory term. I realize this would require reprogramming OBTS. But it is the correct thing, as far as the law is concerned.

Ronda D. Larson
Assistant Attorney General
Criminal Justice Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
Fax (360) 586-1319
RondaL1@atg.wa.gov

ATTACHMENT - 6

From: Eckstrom, Steven J. (DOC)
To: Larson, Ronda (ATG)
Subject: Offender Robinson DOC 357042
Date: Friday, December 07, 2012 10:44:50 AM

Hi Ronda-

I just left you a VMM regarding the application of the David L. King decision to this offender's sentence. The parent of a young stabbing victim has contacted me about this offender's release date, which is significantly sooner (2/5/2013) than he was led to believe it should be. I have concerns that we have not calculated the ERD correctly, and after consulting with Wendy Stigall in Records, I concluded I should speak with you so that either we can correct our calculation, or I can be clear on the rationale for existing calculation if it is in fact correct now. Please give me a call when you have an opportunity to do so.

Thanks!

Steve Eckstrom, Manager
Victim Services Program
Department of Corrections
PO Box 41119
Olympia, Washington 98504-1119
360.725.8678
800.322.2201 (toll-free)
360.586.9055 (fax)
seckstrom@doc1.wa.gov



ATTACHMENT - 7

Information Technology Service Request

Request # _____
Applied by Gatekeeper

Contact Information

Requested By: Wendy Stigall <small>(The person named here will be sent all notifications and follow-up information regarding this request.)</small>		Date: 12/27/2012
Job Title: Statewide Correctional Records Program Administrator	Location: HQ	Phone #: 725-8881

Division or Contractor: *(Please select one)*

- | | |
|--|---|
| <input checked="" type="checkbox"/> Administrative Services Division | <input type="checkbox"/> Organizational Development |
| <input type="checkbox"/> Community Corrections Division | <input type="checkbox"/> Policy Support |
| <input type="checkbox"/> Correctional Industries | <input type="checkbox"/> Prisons Division |
| <input type="checkbox"/> Health Services Division | <input type="checkbox"/> Secretary's Office |
| <input type="checkbox"/> ISRB | <input type="checkbox"/> Contractor _____ |

Why must this request go forward?

- Legislative mandate: Bill # _____
- RCW change: RCW # _____
- Cost Savings: estimated savings \$ _____
- Other: AAG Advice

Which Strategic Goal does this request address?

- Maintain core correctional operations
- Focus on the workforce
- Increase successful re-entry of offenders to communities
- Improve business practices and performance

What is your business need? *(Please be specific with details so we understand your need.)*

The application of jail credits in OMNI when there is a mandatory/enhancement that are being served as flat time needs to be changed. The current programming is allowing more than the maximum amount of good time to be applied to the base sentences. Current programming applies the jail time to the mandatory/enhancement and the jail good time to the base sentence. Programming needs to be changed to apply the jail time and jail good time to the base sentence. If the number of jail days exceeds the base sentence, the remainder would then be applied to the mandatory/enhancement. The mandatory/enhancement would still run first in the system. Any jail good time in excess of the base sentence would not be applied to the mandatory/enhancement.

Do you have a suggested solution? Yes No

If yes, then please explain? See business need.

Funding:

Is funding secured? Yes No

If yes, then what is the source?

If no, then please explain: Not sure if funding would be from ASD or Prisons as this is a prison calculation issue.

Is this request time-sensitive?

Yes No

If yes, then when must it be completed by? ASAP. This needs to be a Records/SSTA priority.

Why must it be done by this date? All current ERD's when there is a mandatory/enhancement are in error.

Required Signature *(Please check one)*

- Statewide Request-Assistant Secretary _____
- Facility Request-Superintendent _____
- Field Request-FA or Program Manager _____

(Electronic signatures must be contained in the email thread submitted with the completed IT Request form.)

TRB Representative ONLY

IT Consultant needed

TRB Representative Recommendation & Signature: _____

IT Executive Review ONLY

- Approved to move forward-Signature _____
- Return to TRB Representative
- Needs assessment

Notes:

ATTACHMENT - 7

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: Outlook e-mail to docitgatekeeper@doc1.wa.gov - OR - Send to: IT Request Gatekeeper at DOC HQ
 P.O.B. 41109 Mall stop: 41109
 Olympia, WA 98504-1109

Instructions for Filling Out the IT Service Request

Section	Description
Contact Information	Please fill out all sections.
Division or Contractor	Please check one box. If you represent a contracted organization, then please check the Contractor box and type the organization represented.
Why must this request go forward?	Check one or more boxes. Please enter the follow-on information after each box checked.
Which Strategic Goal does this request address?	The DOC Strategic Plan lists 4 primary goals for the agency. Check the box that indicates what goal this request will help attain.
What is your business need?	What issue do you need resolved? What are you attempting to accomplish with the request? Please describe as clear as possible.
Do you have a suggested solution?	If you have a specific way you would like to meet the need, then please enter it here.
Funding	Many requests require funding. Is funding available? And from what source?
Is this request time-sensitive?	If the request is time-sensitive, please enter the date and explain why the request must be completed by that date.
Required Signature	Based on the type of request, have the appropriate person sign. Forwarding the completed form to the approver and having the approver forward stating their approval will work. Or, print and have them physically sign the request.
TRB Representative Only	This section is to be used by IT and the Technology Resource Board (TRB) representative. Each area (Prisons, CCD, ASD, etc...) of DOC has a TRB representative who chooses whether or not to sponsor the request.
IT Executive Review Only	IT executives review the request to ensure it fits into the overall IT architecture.

ATTACHMENT - 8

From: Stigall, Wendy S. (DOC)
Sent: Friday, December 11, 2015 12:49 PM
To: Larson, Ronda (ATG)
Subject: FW: 357510 LOVE, Tyair King Decision Credits applying to the base and not the enhancement with enhancements running CS between causes
Attachments: LG01 - Judgment and Sentence - Warrant of Commitment & Appendices - 4-20....pdf;
LG01 - Judgment and Sentence - Warrant of Commitment & Appendices - 4-20....pdf;
DOC1PTUM148@doc.wa.gov_20151103_104336 (002).pdf
Importance: High

Ronda,

We are finally getting the programming into OMNI to correct the erroneous dates from the original King decision. It is tentatively set to come out next month. I was helping test the screen to make sure everything was working correctly which in most cases it seems to be. There is one issue that I didn't foresee though and I would like you to review. In this offenders case he has two causes. His AB cause ordered the enhancement to run consecutively to the enhancement on AA. In our current programming we apply the jail credits to the enhancement and the jail good time to the base sentence but with the new programming the jail credits and jail good time credits are both applied to the base sentence. Once the offender is received in prison the enhancement runs first but in this case it extended his enhancement by 450 days because we applied the jail credit to the base sentence instead of the enhancement. I have attached his J&S's and the email exchange that we had prior to me requesting this programming change (3 years ago). I am not sure at this point how many sentences it will be affecting but I want to be prepared and make sure everything is correct when the letters start coming in. I think in most cases, causes are consecutive and not just the enhancement so overall it won't make that much of a difference but there are at least a few of these cases.

Thanks.

Wendy

From: Stigall, Wendy S. (DOC)
Sent: Friday, December 11, 2015 12:07 PM
To: 'Ardiel, Mark' (MarkArdiel@sierrasystems.com) <MarkArdiel@sierrasystems.com>; Gale, David C. (DOC) <dcgale@DOC1.WA.GOV>
Subject: 357510 LOVE, Tyair

This is the first one I have seen like this where it is impacting the ERD almost solely because we are crediting the base rather than the enhancement.

In production his 450 days comes off of the enhancement. In King it comes off the base. His AB cause is consecutive with the enhancement so when it was extended by 450 days his overall ERD was changed by that amount.

Production:

ATTACHMENT - 8

Offender Overall

<input type="radio"/> AA-111004092-Pierce-MON	Active	0Y, 180M, 0D	04/24/2012	10/28/
<input type="radio"/> 1- Attempt - Assault 1	Active	0Y, 120M, 0D	04/24/2012	05/02/
Enhancement -1-Firearm	-	0Y, 36M, 0D	04/24/2012	01/29/
Base	AB-1-Enhancement -	0Y, 84M, 0D	01/29/2016	05/02/
<input type="radio"/> AB-111005480-Pierce-CCP	Active	0Y, 144M, 0D	01/29/2014	10/28/
<input type="radio"/> 1- Robbery 1	Active	0Y, 144M, 0D	01/29/2014	10/28/
Enhancement -1-Deadly Weapon	AA-1-Enhancement -	0Y, 24M, 0D	01/29/2014	01/29/
Base	AB-1-Enhancement -	0Y, 120M, 0D	01/29/2016	10/28/

Sanctions

QUAL:

<input type="radio"/> AA-111004092-Pierce-MON	Active	0Y, 120M, 0D	04/24/2012	
<input type="radio"/> 1- Attempt - Assault 1	Active	0Y, 120M, 0D	04/24/2012	
Enhancement -1-Firearm	-	0Y, 36M, 0D	04/24/2012	
Base	AB-1-Enhancement -	0Y, 84M, 0D	04/23/2017	
<input type="radio"/> AB-111005480-Pierce-CCP	Active	0Y, 144M, 0D	04/24/2015	
<input type="radio"/> 1- Robbery 1	Active	0Y, 144M, 0D	04/24/2015	
Enhancement -1-Deadly Weapon	AA-1-Enhancement -	0Y, 24M, 0D	04/24/2015	
Base	AB-1-Enhancement -	0Y, 120M, 0D	04/23/2017	

Wendy Stigall

Correctional Records Program Administrator
 Washington State Department of Corrections
 7345 Linderson Way SW
 Tumwater, WA 98504
 360-725-8881
wendy.stigall@doc.wa.gov

ATTACHMENT - 9

You forwarded this message on 12/7/2012 4:44 PM.

Red Category

From: Lang, Timothy (ATG) **Sent:** Fri 12/7/2012 4:30 PM
To: Judge, Dan (ATG)
Cc:
Subject: SJ Motion and Mem FINAL jal.doc

 SJ Motion and Mem FINAL jal....

ATTACHMENT - 9

 You replied to this message on 12/7/2012 4:49 PM.

Red Category

From: Lang, Timothy (ATG) Sent: Fri 12/7/2012 4:34 PM
To: Judge, Dan (ATG)
Cc:
Subject:

 
SJ Reply-amended.doc SJ Response.doc

ATTACHMENT - 10

From: [Stigall, Wendy S. \(DOC\)](#)
To: [Gastreich, Kathy E. \(DOC\)](#)
Cc: [Doty, Denise H. \(DOC\)](#)
Subject: FW: Should DOC reprogram OMNI to run jail time off base rather than off enhancement? / Robinson #357042 2
Date: Tuesday, December 11, 2012 11:24:29 AM

Kathy,

Before I do an IT request to have the programming changed I wanted to run this past you for your input. OMNI has been calculating these sentences the same for approximately 10 years now (since the King decision). We are going to manually adjust Robinson's case but this has the potential to add time to several hundred offenders. We are not talking huge amounts of time but in this case as an example it will add about a month. Implementing these changes is always a lot easier if it is going the offenders favor.

Let me know what you think.

Thanks.

Wendy

Wendy Stigall

Correctional Records Program Administrator

7345 Linderson Way SW

Tumwater, WA 98501

360-725-8881

wendy.stigall@doc.wa.gov

From: Larson, Ronda (ATG)
Sent: Friday, December 07, 2012 2:29 PM
To: Stigall, Wendy S. (DOC)
Cc: ATG MI COR Oly Advice; Weisser, Paul (ATG)
Subject: Should DOC reprogram OMNI to run jail time off base rather than off enhancement? / Robinson #357042

DOC

Headquarters

Time credits

ATTACHMENT - 10

Sentences

Requestor: Wendy Stigall

Issue: If a sentence contains an enhancement during which no good time can be earned, OMNI subtracts jail time served from the enhancement and subtracts jail good time from the base. When the base is short (e.g., 6 months), OMNI's method results in offenders getting more good time (e.g., 58% in Robinson's case) than allowed by law.

Attorney-Client Privileged Communication. Do not copy, disseminate, forward, or divulge the contents of this communication to anyone other than addressee.

This is to memorialize our phone conversation today. Because the parents of the victim of Robinson are worried about when their son's aggressor is going to be released, they did their own calculation of his early release date. They realized his actual early release date is far sooner than it should be. As a result, they called victim coordinator Steve Eckstrom about the problem. He explained the early release problem to me and I agree that OMNI is calculating an ERD that gives Robinson too much early release credits (i.e., 58% of the sentence rather than 33%).

This case revealed a problem with OMNI's calculation method for sentences with an enhancement where the base is short. I would recommend that the DOC do a hand-calculation fix of Robinson's sentence now, and that it start the long process of reprogramming OMNI for everyone else. I don't believe it is necessary, from a risk management perspective, to do hand calculations now of everyone in prison with an enhancement. Waiting for OMNI to be reprogrammed should be sufficient, except for in Robinson's case.

The fix to OMNI would result in OMNI subtracting the jail time served from the base rather than from the enhancement. This would have the effect of starting the enhancement time on the time start date (i.e., the day the offender arrives at the DOC), rather than at time of arrest.

Before *In re King*, 146 Wn.2d 658, 49 P.3d 854 (2002), DOC started the enhancement time at date of arrest (i.e., it applied the jail time served to the enhancement). But it did not credit the jail good time toward the base. Thus, offenders received no jail good time and received only DOC time. Overall, the amount of good time never exceeded the 1/3rd allowed by statute, and offenders did not lose good time overall. This is the proper way to run enhancements because it avoids the mathematical problem we now face and also results in the best use of the offender's early release time—DOC can use it for offering them work release, for example, because every offender will be guaranteed to serve their base at the end of their sentence, and thus will be earning early release at the end of their sentence. However, the WSSC tried to fix a problem that didn't exist and thus prohibited the DOC from doing it this way. We are stuck with it now.

ATTACHMENT - 10

After *In re King*, the DOC continued to start the enhancement time at the date of arrest by subtracting the jail time served from the enhancement rather than from the base. But because of *King*, the DOC took the jail good time and subtracted it from the base, rather than simply eliminating the jail good time.

This is resulting in offenders with short bases receiving more good time than allowed by statute. In Robinson's case, his base is a mere 183 days (6 months) long. This results in 60 days of early release credits that he can earn by statute (33% rate). However, his jail time is 134 days and jail good time is 67 days because the jail gave him good time at a rate of 33% ($67 \div 134 = 0.33 + 0.66$). Thus, he already exceeded his maximum amount of good time at the jail by 7 days. Even so, OMNI is giving him another 39 days of DOC early release credits, for a total of 106 days of early release time. His sentence is 183 days long and he's getting 106 days of early release time. Thus, he is getting early release credits at a rate of 58%. ($106/183 = 58\%$).

This mathematical problem occurs because OMNI is subtracting 67 days of jail good time from a base of 183 days, resulting in a remaining sentence to serve in the DOC of 116 days. Multiplying 116 by 33% results in 39 days of DOC early release credits. So it appears to be correct on its face. But when you look at how much good time he should be getting overall by merely multiplying 33% by the 183-day sentence, and considering he already got 67 days of jail good time, you realize that he is getting way too much good time.

This would not happen if the base were long. It happens because the base is shorter than the total jail credits. His total jail credits are $134 + 67 = 201$. Because DOC applies those jail credits of 134 to the enhancement, it enables him to preserve his base sentence (less 67 days) to continue to earn early release time after coming to the DOC. So he gets to earn early release time both at the jail and at the DOC and ends up with more than 33% overall.

Robinson's victim's parents are concerned because they have figured out that Robinson is getting more than 33% good time and thus will be releasing sooner than what they had anticipated.

If the DOC does not fix Robinson's sentence, the likelihood that DOC will be sued and lose in a tort lawsuit is unreasonably high, if Robinson were to release and immediately go and kill the victim, for example. In such a scenario, because the DOC knew that Robinson was getting 58% good time illegally, and didn't fix it, the DOC would lose such a lawsuit and sustain a lot of monetary damages.

OMNI will not allow records staff to fix Robinson's sentence until OMNI is reprogrammed. This would take a long time and would almost certainly occur after Robinson's current (and erroneous) ERD of February 5, 2013. Thus, the only way to fix Robinson's sentence before he is released on February 5th is to override OMNI.

One would apply 60 of the 67 days of jail good time to the base (because only 60 days of total good time is allowed on a 183-sentence at a rate of 33%: $183 \times 0.33 = 60$), apply 123 of the 134 days of jail time served to the base (because 123 days wipes out the 183-day sentence after adding in 60 days of good time), and apply the

ATTACHMENT - 10

remaining 11 days of jail time served to the enhancement (134 days of jail time less 123 days of jail time applied to the base equals 11 days of jail time to apply to the enhancement). This removes 46 days of early release credits from Robinson's current ERD, adding a month and a half to his ERD (106 days of overall good time currently minus 60 days of correct good time equals 46 days surplus he should not get). Hence, he should have a resulting ERD of about March 19, 2012.

As to the long process of reprogramming OMNI, it would be reasonable to not manually fix the hundreds of sentences that have enhancements and instead wait for the reprogramming to occur so that OMNI can do the recalculation automatically. Although this will result in offenders being released earlier than the law allows for the time being, until OMNI gets fixed, the DOC has been releasing them earlier for a decade (since the *In re King* decision), and a few more months is not going to make that much difference in light of this (with the exception of Robinson's case).

Furthermore, this is something that the DOC has identified internally, rather than something that is being forced upon it by an outside entity such as the court. It is therefore not so urgent as to require the large input of personnel resources to do hand-calculations of hundreds of sentences.

Ronda D. Larson

Assistant Attorney General
Corrections Division

PO Box 40116

Olympia WA 98504-0116

Phone (360) 586-1445

Fax (360) 586-1319

✉ Ronda.Larson@atg.wa.gov

