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**ONLY IN THE  
WORLD-HERALD**  
**Questions  
mount in  
sentence  
mistakes**

Officials wonder how attorneys across justice system didn't notice inmates being freed early

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WORLD-HERALD STAFF WRITERS

The Nebraska prison system has two sets of attorneys to advise it on incarceration issues.

The Legislature is chock full of attorneys — and has a Judiciary Committee that specializes in legal matters.

And, of course, prosecutors and judges are attorneys — many of whom voraciously read Nebraska Supreme Court opinions.

None of them noticed what The World-Herald discovered in a monthlong investigation: that the Nebraska Department of Corrections failed to follow sentencing steps that the high court has laid out since 2002.

In turn, hundreds of the state's worst inmates received early releases or early release dates of anywhere from six

months to 15 years.

"My question is, why did it take The World-Herald to figure this out?" Douglas County Attorney Don Kleine asked.

As Corrections figures out how to clean up the mess — including whether or how to re-

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# Prison: Attorney general says his office kept Corrections informed

capture 101 prisoners released early — those sorting out what went wrong narrowed their focus Tuesday to the two sets of attorneys who have direct contact with Corrections.

» Corrections' own in-house staff of three attorneys, including longtime general counsel George Green. Green and his staff generally handle department legal matters, advising the director and overseeing inmate complaints through prison administrative proceedings.

» Nebraska Attorney General Jon Bruning and his staff of 65 attorneys — some of whom represent the state in contesting appeals by inmates.

Nebraska Corrections Director Michael Kenney said his office relies on the Attorney General's Office for advice on State Supreme Court decisions.

That advice was given, Bruning said.

Bruning said his staff — under both his administration in 2013 and former Attorney General Don Stenberg in 2002 — repeatedly informed Corrections officials about high court rulings that spelled out how to calculate sentences.

Bruning noted that Kenney himself was named as the defendant in a 2002 case that was the "seminal case" in how to calculate sentences with mandatory terms.

"It was not a particularly difficult decision to discern," Bruning said. "We can't do their

they heed the advice."

Kenney, a longtime prison official who took over as Corrections director in September, has said he will look into who was responsible for the failure to follow the Supreme Court decisions. Kenney said he wasn't aware that the Nebraska Supreme Court had laid out the correct way to calculate sentences until The World-Herald informed him Friday.

The missteps go back 20 years, to Nebraska's formation of a three-strikes-and-you're-out law.

In 1995, the Legislature instituted a 10-year mandatory term for habitual criminals.

After that law took effect, one of the habitual criminals, drug dealer James Johnson, sued the state, saying he should be released after five years under another state law that gives an inmate "good-time" — day-off-for-day-served credit.

Johnson's argument: A judge gives each defendant a minimum and maximum sentence. The habitual criminal law said nothing about the maximum term; it only said the minimum must be 10 years. Therefore his maximum sentence should be cut to five years.

A Lancaster County judge initially agreed, ordering Corrections to release Johnson.

Corrections appealed — using then-Attorney General Don Stenberg's assistant attorneys.

In December 2002, the Nebraska Supreme Court sided with the state, ordering Johnson to serve the full mandatory term on both the minimum and maximum sentences.

The high court noted that if Johnson prevailed, his sentence would be a nonsensical 10 years until he was eligible for parole but just five years until he was released.

"It would not serve the Legislature's intent if a defendant

could be mandatorily discharged before being eligible for parole," the high court wrote.

In the wake of that ruling, memos and emails obtained by The World-Herald show that Corrections officials were, at best, conservative and, at worst, confused as they calculated sentences.

Corrections followed the ruling when it came to minimum sentences for parole. However, it came up with a three-step method of calculating a prisoner's maximum sentence:

1. Cut the prisoner's maximum sentence in half.
2. Compare that number with the mandatory term for the crime.
3. Impose the greater of those two numbers.

In a 2010 email obtained by The World-Herald, a Corrections record-keeper referred to that method as "somewhat confusing and involved."

It also ignored large chunks of a prisoner's remaining sentence.

Green, the Corrections attorney, said he believed the 2002 ruling was more about good-time reductions in which an inmate gets a day off for every day served. (It primarily concerned mandatory terms, not good-time calculations.)

"There had been a lot of ambiguity and confusion in how to do this," Green said. "Now the (2013) ruling gives us clarity. For the first time, it's very succinct and clear."

Oakland, Nebraska, defense attorney Clarence Mock, a former prosecutor, said both rulings were straightforward and succinct. The 2013 ruling simply reinforced the 2002 ruling spelling out how Corrections should calculate sentences.

"It is ironic that people who are trained and whose job is to interpret the law could be so

objectly erroneous about its application," Mock said. "It's befuddling how a colossal mistake of this nature could happen."

State Sen. Scott Lautenbaugh noted that the Legislature's Judiciary Committee apparently didn't catch the oversight or alert Corrections, either.

"We don't need a witch hunt at Corrections," Lautenbaugh said.

Gov. Dave Heineman has called for an investigation, but first he wants a manhunt. The governor said he expects authorities to round up all 101 released prisoners.

Kenney said Corrections officials have corrected improper release dates — adding months or years to the sentences of prisoners who were set to be released this month and next. And, he said, the whole computer system is being "recalibrated" to issue correct release dates.

Bruning said he has about five attorneys trying to sort through those 101 cases of prisoners who have been released early. He said he expects to split them into categories, based on how much time they have left and whether they've committed more crimes.

The attorney general said policymakers will have to decide whether taxpayers' money should be spent sending law enforcement officers across the country to fetch prisoners. Some of the prisoners may have less than six months left on their sentences. Some may have started over with jobs and families, he said.

"It was (Corrections') erroneous interpretation that led to this," Bruning said. "But, look, there's no malice here. People make mistakes. I think everybody's trying to do the right thing now."

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**Michael L. Kenney**

The Department of Corrections director was a defendant in a 2002 case that set sentencing guidelines.

jobs for them. We can only advise them as to what the law requires — and you assume