

Attachment 1

WS-1

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.

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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.

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 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.

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