

FROM:

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To AMERICAN PRISON Writing Archive

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DEAR APWA: I am in receipt of your response to my Essay. This letter of response you sent me dated 9/21/18 is acknowledged here in the "Form" of A Supplement to the Essay

AS Follows:

"ESSAY"
Supplemental Statement

My Apologies, it seems in my Cover letter to the Essay I must have told you its liable to be difficult to understand and I certainly was right as I just re-read the "Copy" you sent me. I see you "Agree" the piece was NO EASY READ! I Am Embarrassed. I wanted to have it easily understandable to a wide Audience and I CAN see I have miserably Failed. However, everything I have tried to explain ^{Respecting} ~~respecting~~ this provision in Section 498.00"5" of TEXAS GOVERNMENT Code is 100% CORRECT. I have called it

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The Texas Prison "Overcrowding Review Provision".

The cases I cite in Ex Parte "Hallmark", 883 S.W.2d 672 (Tex. Crim. App. 1994), Ex Parte "Montgomery", 894 S.W.2d 324 (Tex. Crim. App. 1995), and "Hallmark v. Johnson", 118 F.3d 1073 (5th Cir. 1997) all refer to the piece of legislation as the Overcrowding Review Provision, too!

The provision provides: (AS FOLLOWS)

→ AT LEAST ANNUALLY, THE BOARD SHALL REVIEW THE INSTITUTIONAL DIVISION'S RULES RELATING TO THE RESTORATION OF GOOD CONDUCT TIME THAT HAS BEEN FORFEITED, THE MANNER IN WHICH INMATES ARE RECLASSIFIED, AND THE MANNER IN WHICH ADDITIONAL GOOD CONDUCT TIME IS AWARDED RETROACTIVELY TO INMATES WHO HAVE BEEN RECLASSIFIED. THE BOARD SHALL CONSIDER IN ITS REVIEW WHETHER THE INMATE OVERCROWDING IN THE INSTITUTIONAL DIVISION HAS DECREASED AND WHETHER IT IS NECESSARY FOR PURPOSES OF DECREASING OVERCROWDING TO CLASSIFY INMATES ACCORDING TO SECTION 498.002 TO RESTORE GOOD CONDUCT TIME UNDER SECTION 498.004, OR TO AWARD ADDITIONAL GOOD CONDUCT TIME RETROACTIVELY TO INMATES WHO HAVE BEEN RECLASSIFIED.

(provision is cont. to p. 3)

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continuation

... If the Board determines that the OVERCROWDING has DECREASED and it is "NOT" necessary to "Restore" good Conduct Time OR to AWARD additional good Conduct Time, it shall (direct) the INSTITUTIONAL DIVISION to DISCONTINUE those Practices. ****

(The continuation[↑] of the OVERCROWDING Review Provision)

The above provision is section 498.005, Texas Government Code. The Texas Legislature here impliments ^{spell?} (implements) what appears to be a "Stop Gap" MEASURE of practice to assist these OVERCROWDING concerns plaguing the prison system especially in the 1980's and help decrease OVERCROWDING. The provision refers to sections 498.002 and 498.004 as provisions within the Texas Prison Management Act which are instrumental to REWARDING and Punishing Prisoner Behaviors through CLASSIFICATION MEASURES which employ the AWARDING of Good Conduct[★] Time, AND "FORFEITURES" of such Time Credits, also.

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Okay, the provision "SAYS" that the BOARD
— that's the TEXAS BOARD of CRIMINAL JUSTICE (TBCJ) —
"Shall" DIRECT the INSTITUTIONAL DIVISION to "DISCONTINUE"
those PRACTICES [if] the PERIODIC REVIEW concludes
with a PARTICULAR TYPE of "DETERMINATION". That's to
"DISCONTINUE" those PRACTICES (Now employed (All)
(Throughout) the PRISON SYSTEMS many different units
so as to DECREASE OVERCROWDING!) This may sound rather
odd yet it's true respecting the INMATE POPULATIONS "MINDSET."

The TBCJ sees how it CAN MISCONSTRUE the statutory
provision to hopefully ELIMINATE the PRISON "POLICY" of
MAKING RESTORATIONS [.] PERIOD while the statutory provision
(Merely) CALLS FOR A "DISCONTINUANCE" of the (USE) of these
PRACTICES to the LEGISLATIVE MATERIALS ADOPTION of them to
BE EMPLOYED AS SPECIALS TOOLS to ASSIST DECREASE in
OVERCROWDING, and thus means to make a "TEMPORARY"

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"Discontinuance" of them strictly related to their use and special purpose within the overcrowding Review provision; the Tx. Bd. Crim. Justice and the Courts [instead]

"postulate" the provision as Authorizing Some MAJOR Adjustments TO current PRISON Policy, e.g. "Existing" Texas Department of Criminal Justice - Institutional Division Policy* Respecting the Restoration of "Forfeitures" of Accrued Good Conduct Time

Authorized by Section 498.004 of the Texas Gov. Code. This is NOT TRUE. The Statutory Material Authorized No Such Action at All. None. Section 498.004 ~~is~~ ^{entails} a special MEASURE of Disciplinary Misconduct

punitive sanctions which permits the "Director" of the Institutional Division to Forfeit [ALL] OR ANY PART of ones

"Accrued" Good Conduct Time Credits - e.g. Good Conduct Time which Inmates have "Already" (EARNED) AND had AWARDED to them.

This is AN "ENHANCEMENT" measure of punitive sanctions which may be employed (along with) the more ordinary and traditional measure of "Demoting" ONES in their Good Conduct Time-EARNING classification "Status" so that they MAY NOT "EARN" AS MUCH Good Conduct Time Credits AS they had been able to EARN prior.

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to the Disciplinary Violation, and MAY NOT in some cases be allowed to EARN ANY Good Time Credits AT ALL For Designate periods of Time, until they ARE eventually promoted BACK UPWARD once Again AFTER MAINTAINING Good Behavior without Further Violations. This method of punitive SANction is such that these "Forfeitures" of Good Conduct Time Credits ARE essentially "Demotions" that prevent the EARNING and Accumulation of such Credits in the First Instance, But would have been AVOIDed and allowed such EARNINGS if NOT FOR A Disciplinary Violation! This MEASURE is "seen" AS A (FAIR) method of punitive SANction, But this EXTRA PUNITIVE MEASURE "ENHANCES" ONES ordinary and Traditional method of SANctions such that it constitutes punitive "OVERREACH" and violates Due Process of LAW in our Constitution's Fourteenth Amendment, KNOWN AS the Constitutional "Doctrine" of FUNDAMENTAL FAIRNESS.

IN the Same Statutory Provision which permits such Forfeitures of [EARNED] Credits already AWARDED, the material also allows the "Restoration" of such Forfeitures!

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AS SUCH, any Constitutional "challenge" to the measure would be difficult, because the State could ARGUE that Good Conduct Time is only good to ASSIST in ones EARLY RELEASE to "PAROLE" OR, Mandatory Supervision. The Loss of such Credits has NO EFFECT on the Actual length of ones "Sentence", as imposed. It CAN merely act to ~~exp~~ expedite EARLY RELEASE to PAROLE! AND PAROLE is NOT MEANT FOR those who Commit these Disciplinary Violations anyhow! But PAROLE is A Reward in EARLY RELEASE FOR Good Behaviors! AND so, the State CAN ARGUE that should ^{you} change your Conduct and REFRAIN FROM such Violations these Forfeitures can be Restored to you! However, here where section 498.00"5", this OVERCROWDING REVIEW PROVISION is at concern, the Board of Criminal Justice and Courts MISCHARACTERIZE the provisions limited call for A "TEMPORARY" DISCONTINUANCE in the SPECIALLY AUTHORIZED USE of these PRACTICES as tools to employ to assist the decrease of OVERCROWDING, to be instead some specially delegated measure of Authority allowing the COMPLETE END of the (use) of the practices, "GENERALLY", as HISTORICALLY EMPLOYED in the prison system. of course the measure

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seen in the overcrowding provision, 498.005 of
Tex. Gov. Code, does NOT AUTHORIZE ANY SUCH "Discontinuance!"

But instead merely commands the Board to "DIRECT" the
Institutional Divisions CURRENT "use" of them all throughout
the prison system in this special Role to "ASSIST" the decrease
of overcrowding — to CEASE — STOP — "TEMPORARILY", UNTIL
SOME FUTURE PERIODIC REVIEW concludes with a determination
they (need) to be employed once again within 498.005

to assist the ~~decrease~~ decrease of AN OVERCROWDING EMERGENCY!

You should "Recognize" that ALTHOUGH the statutory
material doesn't initiate the INITIAL USE of these practices

all throughout the prison system in these special Roles,

it does INSTRUCT (when) A TEMPORARY "DISCONTINUANCE" of their
special use must OCCUR. These practices are wholly Indep-
endant of and APART FROM the special use they play in

498.005 and its concerns respecting OVERCROWDING emergencies!

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AS SUCH they must immediately be Discontinued
in such special use upon A Finding they are NO
longer currently needed to this end. These PRACTICES
are strictly geared to the PRISON MANAGEMENT Act in
A GENERAL "Use" and "Role" of Rewarding and Punishing
Inmate Behavior, and they are Continuously in "current"
use, all through the prison system, All day, 24/7, and
365 DAYS A YEAR, and their GENERAL Use is "NOT"
dependant upon section 498.005 OR its objective at
decreasing emergency overcrowding! OKAY, this
Statutory PROVISION 498.005 HAS MOST ASSUREDLY "NOT"

(IN ANY MANNER) AUTHORIZED the (Type) of Discontinuance

ORDERED OF THE INSTITUTIONAL DIVISION IN THE NOVEMBER 1993
"STATE DIRECTIVE"

By the BOARD OF CRIMINAL JUSTICE. (SEE) EX PARTE MONTGOMERY

894 S.W.2d 324 [Tex. CRIM. App. 1995] AS I HAVE

STATED SEVERAL TIMES NOW, THE Discontinuance IS

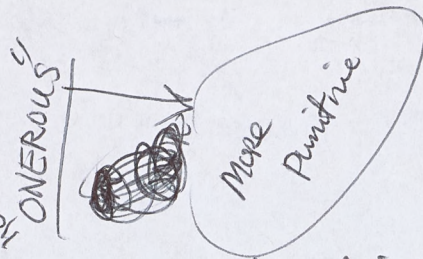
SUPPOSED TO BE A MERE "Discontinuance", Temporarily [.] PERIOD

Inserted

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The (8) inmate Pro Se Litigants we see depicted by the Consolidated Appeals challenging the statute, 498.005, in Hallmark vs. Johnson, 118 F.3d 1073 (5th Cir. 1997) all lack constitutional standing to make their challenges because section 498.005, Government Code, fails to authorize the type of discontinuance (the Board) has ordered of the prison system in this 1993 Directive. Because the statutory provision has NOT authorized the actions taken by the Tex. Board Crim. Justice, these (pro se) litigants' claims are misplaced and have NO BASIS (in FACT). Thus there is NO REAL (Live) Controversy between them and the state! As such the Respective Courts, ALL LACK Subject-Matter Jurisdiction over the litigation, and this resulted in a series of Constitutionally prohibited Advisory opinions. In short, it's all Figned and collusive, Fraudulent.

But the Tx. Bd. Criminal Justice and these
 Courts have successfully pulled the wool over the
 eyes of everyone and they have gotten away with
 this FRAUDULENT Escapade until the present date!
 This explains pretty much why I am still in prison
 some (40) years since my conviction. See 629 S.W.2d
 786 ¶ 14th Judicial Dist [Houston] December 1981. I am
 missing over 4000 days of Forfeited Good Time Because of
 Section 498.004" permitting the Forfeitures due to Disciplinary
 violations over the years. But Section 498.004 also is
 supposed to authorize the Restorations of such Good Time Credits too.
 And it did so, until it had AFFIRMATIVELY APPEARED to the
 Legislature the TBCJ and Courts have obviously gotten smooth
 away with the FRAUDULENT Escapade, at which time the Legislature
 decided to play along to the Escapade and had thought it
 safe to go ahead and (Amend) sec. 498.004 in conformance
 with the FRAUDULENT pretext postulated by the TBCJ and Courts
 respecting 498.005. If 498.005 had truly authorized



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is supposed to spell

P.S. the 20 page Essay I mean to Supplement here

at page #3 Fourth Line marked by ARROW

any such Adjustments to currently existing prison Policy dealing with Restorations, it would violate Substantive Due Process which Limits enactments By Legislatures to what's FAIR and REASONABLE in Content and Furthers A Legitimate Governmental objective.

It would Also Impact offensively with Sec. 498.004 which had continued to (permit) "Restorations" up until September of 1995, Two YEARS (AFTER) the TBCJ had issued its State Directive of Nov. 1993. (See Montgomery

894 S.W.2d 324. This AMAZING ESCAPE of FRAUD has continued to the present date! Hopefully this may help somewhat with my EARLIER ESSAY and its uneasy Read! Thank you.

Please Tell me if this helps you understand the EARLIER ESSAY.

Tommy Garboff