

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY**

EARL COGDILL, WALTER BRADFORD, MICHAEL)
GALIOTO, and RODNEY WILLIAMS, individually)
and on behalf of all similarly situated persons,)

Plaintiffs,)

v.)

DONALD N. SNYDER, JR., in his official capacity as)
the Director of the Illinois Department of Corrections,)

Defendant.)

No. 1 MR 1

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs, Earl Cogdill, Walter Bradford, Michael Galioto, and Rodney Williams, by their attorneys, as their complaint against defendant Donald N. Snyder, Jr., state as follows:

NATURE OF THE CASE

1. This is an action brought by prisoners housed in facilities across the state administered by the Illinois Department of Corrections (“the Department”) who have been denied eligibility for good conduct credit for meritorious service (“Meritorious Good Time”) because their criminal records contain an arrest, charge, or prior conviction for domestic battery or the existence of an order of protection.

2. The legislature has provided that the Department shall establish rules and regulations for awarding Meritorious Good Time implementing the legislature’s directive (a) that prisoners serving sentences for conviction of certain specified crimes are eligible for no more than 90 days Meritorious Good Time or are not eligible at all, and (b) that the director of the Department may award Meritorious Good Time for eligible prisoners based on their “meritorious

service” during their incarceration, as he deems proper. 730 ILCS 5/3-6-3(a)(3) (the “MGT Statute”). Pursuant to the MGT Statute, the Department has established rules and regulations for awarding Meritorious Good Time. Ill. Admin. Code Tit. 20 § 107.210, “Awarding of Meritorious Good Time.”

3. The Department has also established an unwritten, non-public rule whereby it denies Meritorious Good Time on the basis of purported evidence of domestic violence in a prisoner’s criminal record, namely whether the record contains an arrest, charge, or prior conviction for domestic battery or the existence of an order of protection (the “Unwritten Domestic Policy”). Defendant, as director of the Department, uses the Unwritten Domestic Policy to deny eligibility for Meritorious Good Time while ignoring the requirements of the MGT Statute.

4. In basing eligibility on criminal indicia of low reliability, as embodied in the Unwritten Domestic Policy, defendant exceeds his authority because the MGT Statute itself provides the exclusive indicia of criminal activity for eligibility for Meritorious Good Time and because the Statute confines the Department’s discretion to considering the prisoner’s “meritorious service” during incarceration. In addition, the Unwritten Domestic Policy violates the MGT Statute’s requirement that Meritorious Good Time be awarded pursuant to rules and regulations promulgated by the Department and not through unwritten, non-public rules. Further, the Unwritten Domestic Policy violates the Illinois Administrative Procedure Act, 5 ILCS 100/1, *et seq.* (the “APA”), because the APA requires the Department to promulgate statements of general applicability which implement laws or policies, such as the Unwritten Domestic Policy, pursuant to the APA’s rulemaking procedures (so that the statements are subjected to public comment and available for public inspection), and also requires the

Department to exercise discretionary power through precise and clear standards in rules promulgated pursuant to the APA.

5. In acting in the manner described above, defendant has exceeded his authority and abused his discretion and acted arbitrarily and capriciously. On behalf of themselves and all other prisoners in Department institutions who have been or will be denied eligibility for Meritorious Good Time based on the Unwritten Domestic Policy, plaintiffs seek a declaration that defendant's use of the Policy violates state law.

FACTS COMMON TO ALL COUNTS

The Parties

6. Plaintiff Earl Cogdill is incarcerated at Illinois River Correctional Center in Canton, Fulton County, Illinois, an institution run by the Department.

7. Plaintiff Walter Bradford is incarcerated at Robinson Correctional Center in Robinson, Crawford County, Illinois, an institution run by the Department.

8. Plaintiff Michael Galioto is incarcerated at Graham Correctional Center in Hillsboro, Christian County, Illinois, an institution run by the Department.

9. Plaintiff Rodney Williams is incarcerated at Jacksonville Correctional Center, Morgan County, Illinois, an institution run by the Department.

10. Defendant Donald N. Snyder, Jr. is the director of the Department. His offices are located in Chicago, Cook County, Illinois, and in Springfield, Sangamon County, Illinois.

11. Defendant is responsible for awarding Meritorious Good Time to prisoners based on statutory criteria. Defendant is also responsible for approving all rules and regulations of the Department and for ensuring that all Department employees comply with applicable state law and administrative regulations. He is sued in his official capacity.

Venue

13. Defendant resides in Cook County and it is the place where part of the transaction out of which the cause of action arose occurred. Therefore, venue is proper in Cook County.

14. Plaintiffs are represented on a pro bono basis by attorneys from the MacArthur Justice Center, a public interest law firm in Chicago, Cook County, Illinois. The offices of the Department's general counsel and most of its attorneys are located in Chicago. Therefore, venue in Cook County best serves the convenience of parties and the ends of justice because Cook County is where counsel for plaintiffs and defendant are located.

Description of the Plaintiff Class

15. Plaintiffs seek to represent a class consisting of all prisoners who have been or may in the future be denied eligibility for Meritorious Good Time because their criminal records contain an arrest, charge, or prior conviction for domestic battery or the existence of an order of protection.

16. Plaintiffs are informed and believe that the class contains at least 200 people.

17. Joinder of all persons who are or will become members of the plaintiff class is impracticable.

18. The questions of fact and law which are common to the class predominate over any questions affecting the individual members of the class.

19. The named plaintiffs will fairly and adequately protect the interest of the class.

20. A class action is an appropriate method for the fair and efficient adjudication of the claims in this lawsuit.

The Unwritten Domestic Policy

21. The Department has established the Unwritten Domestic Policy whereby a prisoner is denied eligibility for Meritorious Good Time based on the existence in his or her criminal record of certain factors possibly related to domestic violence, namely an arrest, charge, or prior conviction for domestic battery or the existence of an order of protection. The Policy is applied whether or not the event involved physical violence and whether it was recent or some time in the past. In the case of domestic battery, the Policy is applied without regard to whether the prisoner was convicted and whether the conviction was a felony or misdemeanor. In the case of an order of protection, the Policy is applied whether or not the order of protection has expired or was violated.

22. The Unwritten Domestic Policy is unwritten and non-public. Judges and lawyers are not informed about it and indeed may make sentencing decisions or give legal advice based on the assumption that prisoners will be eligible for Meritorious Good Time when in fact, because of the Policy, they are not. The unwritten, non-public nature of the Policy also means that prisoners who are denied eligibility for Meritorious Good Time on account of the Policy have no meaningful way of contesting the denial.

Denial of Plaintiffs Through Application of the Unwritten Domestic Policy

Earl Cogdill

23. Earl Cogdill is serving a four-year sentence that ends on or about December 2, 2002, on a charge of burglary. He was arrested in 1998 and spent a year and a half out on bond awaiting trial. During this time, he worked and supported his children and had no problems with the law. He plans to return to his work and his family in Rockford, Illinois, when he is released from prison.

24. In March 1999, Mr. Cogdill pled guilty to the charge of burglary and accepted a four-year sentence, based on his lawyer's representation that he would likely be eligible for 180 days of Meritorious Good Time.

25. Within ten days of his arriving at the Department on April 2, 1999, Mr. Cogdill was informed verbally by his institutional counselor that he had been denied Meritorious Good Time. The counselor and other Department employees informed Mr. Cogdill that the denial was based on a domestic battery charge and an order of protection in his background.

26. On September 8, 1999, Mr. Cogdill received official notice from the institutional record office that "the Director" (defendant) had denied him Meritorious Good Time. The notice contained no explanation for the decision.

27. In the fall of 1999, Mr. Cogdill filed a post-conviction motion asking the trial judge to vacate his plea bargain because it was based on his incorrect assumption that he would be eligible for Meritorious Good Time. On about February 25, 2000, the judge dismissed the motion on the ground of timeliness.

28. The domestic battery charges noted in Mr. Cogdill's record were filed in 1993 and 1998 and promptly dismissed. The order of protection was entered in 1997 and expired that year. Mr. Cogdill has never been convicted of domestic battery.

Walter Bradford

29. Walter Bradford is serving a six-year sentence that ends on January 12, 2006, on a charge of reckless homicide.

30. Before he was incarcerated, Mr. Bradford lived with his wife and six children and was employed at a local large equipment manufacturer. He was charged with reckless homicide in 1997 and spent three years between his arrest and sentencing (in February 2000) working and

supporting his family. He plans to return to his family and job in Peoria, Illinois, when he finishes his sentence.

31. Mr. Bradford's incarceration in the Department began on February 17, 2000. In early April he was informed verbally by his counselor that he had been denied Meritorious Good Time on the institutional level in early March, approximately three weeks after he had been incarcerated.

32. In conversations with his counselor and other Department employees over the next few days, Mr. Bradford was told that the denial was based on an order of protection. This was confirmed on April 14 when a staff member responded to his request by writing, "your good time was denied due to an order of protection on your rap sheet."

33. On about April 19, 2000, Mr. Bradford received a letter from the Department transfer coordinator (dated April 5, 2000) officially notifying him that he had been denied Meritorious Good Time because "it has been determined that you are not an appropriate candidate for an award of Meritorious Good Time."

34. An order of protection was entered against Mr. Bradford in 1995 and expired in 1997. He was found guilty of violating the order in 1996 and was given a misdemeanor sentence of twelve months supervision, which he served uneventfully.

Michael Galioto

35. Michael Galioto is serving a four-year sentence that ends on October 12, 2003, on a charge of conspiracy to commit vehicle theft.

36. Before he was incarcerated, Mr. Galioto worked at his own businesses in Mattoon, Illinois, doing fiber optics networking and construction work. He plans to return to these jobs when he is released.

37. On about February 25, 2000, about three months after he was incarcerated in the Department, Mr. Galioto's institutional counselor informed him verbally and in an informal memo that he was being considered for Meritorious Good Time but that he would not be considered for electronic detention or work release because "You have a Domestic Batt in your file."

38. On approximately March 6, 2000, Mr. Galioto received a memorandum from the institutional warden officially notifying him that defendant had denied him an award of Meritorious Good Time. The notice did not state a reason for the decision. In conversations with Department employees, however, Mr. Galioto was informed that the denial was based on the domestic battery charge in his file.

39. Mr. Galioto pled guilty to a misdemeanor charge of domestic battery in about 1995 and received a sentence of probation, including the entry of an order of protection. He was found guilty of violating the order, which extended his term of probation. The order of protection expired in 1997. Neither the domestic battery conviction nor the order of protection involved allegations of physical violence.

Rodney Williams

40. Rodney Williams is serving a six-year sentence that ends on May 17, 2005, on charges of manufacturing and/or delivering cocaine.

41. Between Mr. Williams' indictment in 1996 and his incarceration in 1999, he worked in Chicago at his business of repairing computers to help support his seven children. He plans to return to this work and his children when his sentence is completed.

42. Mr. Williams was found guilty of manufacturing and/or delivering cocaine in April 1999. In giving him a six-year sentence on May 17, the trial judge observed that Mr.

Williams could be out of prison in 29 months because he could receive 36 months day-for-day good time and six months Meritorious Good Time.

43. In July 1999, approximately two months after he was incarcerated, Mr. Williams' institutional counselor told him that he had been turned down for Meritorious Good Time because of a domestic battery in his background. Later, he received official notice from the institutional clinical services office that defendant had denied Meritorious Good Time.

44. In 1997, Mr. Williams was charged with domestic battery; the charge was dismissed. Mr. Williams has never been convicted of domestic battery.

Demand for Compliance

45. The Department rules and regulations provide, "The grievance procedure shall not be utilized for complaints regarding decisions which are outside the authority of the Department such as parole decisions, clemency, or orders regarding length of sentence or decisions which have been rendered by the Director." Ill. Admin. Code Tit. 20 § 504.810(a). Because awards of Meritorious Good Time are "orders regarding length of sentence or decisions which have been rendered by the Director," they are not subject to review in the prison grievance process. Therefore, plaintiffs have no obligation to exhaust their remedies under the prison grievance process before filing suit about the Unwritten Domestic Policy.

Harm to Plaintiffs

46. Plaintiffs have a tangible legal interest and a legitimate desire to be considered for Meritorious Good Time based on their meritorious service while incarcerated, but defendant has refused to consider them because of the Unwritten Domestic Policy.

47. There is an actual controversy between the parties admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination

of the controversy.

48. Plaintiffs have no adequate remedy at law and will suffer continuing harm absent relief from the court.

COUNT I
(Violation of Authority Granted Under MGT Statute)

1-48. Plaintiffs reallege the facts set forth in paragraphs 1 –48 of the Facts Common to All Counts as if they were fully set forth in Count I.

49. The operation of the Department is governed by the provisions of the Unified Code of Corrections (730 ILCS 5/1-1, *et seq.*, the “Code”) The Code provides that the Department shall have the power “[t]o establish rules and regulations for administering a system of good conduct credits, established in accordance with Section 3-6-3, subject to review by the Prisoner Review Board” (730 ILCS 5/3-2-2(1)(n)) and further provides that the Department “shall prescribe rules and regulations for the early release on account of good conduct of persons committed to the Department . . .” 730 ILCS 5/3-6-3(a)(1).

50. Pursuant to the Code, these rules and regulations shall provide for two kinds of good conduct credit. One, “statutory good time” or “day-for-day good time,” is awarded automatically on a day-for-day basis and may be revoked if the prisoner is found guilty of violating Department rules. 730 ILCS 5/3-6-3(a)(2.1) and 20 Ill. Admin. Code § 107.150(g). The other, Meritorious Good Time, is awarded “*for meritorious service*” by the prisoner during incarceration (emphasis supplied). 730 ILCS § 5/3-6-3(a)(3) (the MGT Statute).

51. The provisions of the MGT Statute are as follows:

“The rules and regulations [on early release] shall also provide that the Director may award up to 180 days additional good conduct credit for meritorious service in specific instances as the Director deems proper; except that no more than 90 days of good conduct credit for meritorious service shall be awarded to any prisoner who is serving a sentence for

conviction of [various crimes.]. Notwithstanding the foregoing, good conduct credit for meritorious service shall not be awarded on a sentence of imprisonment imposed for conviction of [various crimes].”

52. As recited above, the MGT Statute authorizes the Director to make awards of Meritorious Good Time for “meritorious service” of the prisoner during incarceration. It does not authorize him to deny eligibility for Good Time based on factors in the prisoner’s criminal record.

53. Moreover, the MGT Statute itself enumerates the indicia of criminality that will exclude prisoners from eligibility for Meritorious Good Time by specifying that a prisoner “serving a sentence for conviction of” various felonies shall be ineligible for Meritorious Good Time or eligible for an award of only 90 days. Domestic battery is not one of the offenses enumerated in the MGT Statute. Nor does the MGT Statute enumerate any of the other indicia of criminality included in the Unwritten Domestic Policy, namely arrests or charges or prior convictions for domestic battery or the existence of orders of protection.

54. By excluding prisoners from consideration for Meritorious Good Time based on the Unwritten Domestic Policy, defendant has exceeded his authority and abused his discretion under the MGT Statute and has acted arbitrarily and capriciously. This is so because the MGT Statute itself provides the exclusive indicia of criminality for exclusion from eligibility for Meritorious Good Time, thus prohibiting defendant’s use of criminal indicia of low reliability such as those in the Unwritten Domestic Policy, and because the Statute confines the Department’s discretion to factors that are relevant to “meritorious service.”

55. By acting in the manner described above, defendant has violated the MGT Statute.

COUNT II
(Violation of Rules and Regulations Requirement of MGT Statute)

1-53. Plaintiffs reallege the facts set forth in paragraphs 1-53 of Count I as if they were fully set forth in Count II.

54. As recited above, the Code and the MGT Statute require that Meritorious Good Time be awarded pursuant to rules and regulations promulgated by the Department (under the APA).

55. The Unwritten Domestic Policy is not set forth in any rules or regulations promulgated by the Department.

56. By failing to include the Policy in Department rules and regulations and instead keeping the Policy unwritten and non-public, while at the same time denying eligibility for Meritorious Good time based on the Policy, defendant has exceed his authority under the MGT Statute, abused his discretion under the Statute, and acted arbitrarily and capriciously.

57. By acting in the manner described above, defendant has violated the MGT Statute.

COUNT III
(Violation of APA Rulemaking Procedures)

1-53. Plaintiffs reallege the facts set forth in paragraphs 1 – 53 of Count I as if they were fully set forth in Count III.

54. The APA defines an agency as “each administrative unit or corporate outgrowth of the State government that is created by or pursuant to statute” 5 ILCS 100/1-20.

55. The Department is an agency for purposes of the APA.

56. The APA provides that agencies shall promulgate all rules pursuant to its rulemaking procedures, which require that proposed rules be available for public comment and

that final rules be available for public inspection.

57. The APA defines “rule” as “each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy.” 5 ILCS 100/1-10.

58. The Unwritten Domestic Policy is a rule for purposes of the APA.

59. Defendant and the Department have failed to adopt the Unwritten Domestic Policy pursuant to APA rulemaking procedures, including failing to subject a proposed version of the Policy to public comment and failing to make the final version available for public inspection. Instead, defendant has kept the Policy unknown to the public, including the prisoners affected by it, the attorneys who represent them, and the judges who preside over their criminal trials and sentencing. At the same time, defendant and the Department have excluded prisoners from consideration for Meritorious Good Time pursuant to the Unwritten Domestic Policy.

60. By acting in the manner described above, defendant has exceeded the authority granted to him under the APA, abused his discretion under the statute, and acted arbitrarily and capriciously. In so doing, defendant has violated the APA.

COUNT IV
(Violation of APA Provision Governing Discretionary Power)

1-59. Plaintiffs reallege paragraphs 1 – 59 of Count III as if they were fully set forth in Count IV.

60. The APA provides, “Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected.” 5 ILCS 100/5-20.

61. The power to award Meritorious Good Time is a discretionary power to be exercised by the Department, for purposes of the APA.

62. The Department has promulgated a rule, “Awarding of Meritorious Good Time” (Ill. Admin. Code Tit. 20 § 107.210), which implements the Department’s discretionary powers to award Meritorious Good Time.

63. The Awarding of Meritorious Good Time Rule sets forth the standards the Department uses in awarding Meritorious Good Time, stating:

In determining whether or not to award good conduct credits for meritorious service, the Director may examine or consider, among other matters:

- 1) The complete master record file of the committed person.
- 2) Reports or recommendations made concerning the committed person.
- 3) The fact that the committed person has not violated any rule of the Department over a period of time.
- 4) The job performance of the committed person while in the custody of the Department.
- 5) The educational program or achievements of the committed person while in the custody of the Department.
- 6) The action of the committed person in :
 - A) Saving the life of an employee or other committed person;
 - B) Performing heroic service during a flood, tornado, or act of God;
 - C) Volunteering for an exceptionally hazardous or dangerous assignment;
 - or
 - D) Assisting in maintaining control during a general disturbance.

64. Defendant, as director of the Department, has not set forth The Unwritten Domestic Policy in the Awarding of Meritorious Good Time Rule. Instead, defendant has maintained the Policy as an unwritten and non-public rule, although he exercises his discretionary power to award Meritorious Good Time through the Unwritten Domestic Policy.

65. By failing to include the Unwritten Domestic Policy in the Awarding of Meritorious Good Time Rule, defendant has exceeded his authority and violated the requirement of the APA that a rule implementing discretionary power include the standards by which the power is exercised, stating them as precisely and clearly as practicable under the conditions to inform fully those persons affected.

66. By the foregoing acts, defendant has abused the discretion granted him under the APA and acted arbitrarily and capriciously. In so doing, defendant has violated the APA.

WHEREFORE plaintiffs request that the court do as follows:

- a. Certify a class consisting of all prisoners who have been or may in the future be denied eligibility for Meritorious Good Time because their records contain an arrest, charge, or prior conviction for domestic battery or the existence of an order of protection.
- b. Issue a declaratory judgment holding that the Unwritten Domestic Policy is invalid;
- c. Issue a declaratory judgment holding that the Awarding of Meritorious Good Time Rule is invalid in light of the Unwritten Domestic Policy;
- d. Issue an injunction barring defendant from enforcing the Unwritten Domestic Policy and clarifying that the Policy will no longer be enforced;
- e. Award plaintiffs their reasonable expenses of this litigation, including their reasonable attorney's fees; and
- f. Provide such other relief as the court deems just and proper.

Respectfully submitted,

EARL COGDILL, WALTER BRADFORD, MICHAEL GALIOTO, and RODNEY WILLIAMS, individually and on behalf of all other similarly situated persons

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