

STATE BOARD OF PROBATION
AND PAROLE:
PAROLEES:
THREE-FOURTHS LAW:

Under the provisions of Senate Bill No. 132, 69th General Assembly, time served on a parole counts toward time required to be served in the penitentiary and that, consequently, the three-fourths law (House Bill No. 318, 69th General Assembly) is applicable to inmates paroled by the State Board of Probation and Parole.



September 26, 1957

Honorable Lewis M. Means
Chairman
Board of Probation and Parole
Jefferson City, Missouri

Dear General Means:

This will acknowledge receipt of your opinion request of August 28, 1957, in which you asked the following:

"The new probation and parole law, Senate Bill No. 132, states on page 10, Section 8, paragraph 3, lines 40 to 41, that 'time served on parole shall be counted as time served under the sentence'; and in the same bill on page 10, Section 20, paragraph 1, lines 1-2, it is stated that 'the period served on parole shall be determined service of the term of imprisonment.'

"The Board of Probation and Parole would like very much to have your opinion as to whether the three-fourths rule for inmates in correctional institutions, as set out in House Bill No. 318, is applicable to inmates paroled under the new probation and parole law as set out in Senate Bill No. 132.

"Your opinion will determine whether inmates will be kept on parole beyond the expiration of three-fourths of their terms."

Certain provisions in the various sections of Senate Bill No. 132, 69th General Assembly (hereinafter referred to as

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"Senate Bill No. 132"), as pointed out in the opinion request, if read in connection with House Bill No. 318, 69th General Assembly, (hereinafter referred to as "Section 216.355 (1)"), give rise to the question as to whether or not time served while on parole is to be counted as time served under the sentence so that a parolee shall be discharged after three-fourths of the period for which he was sentenced has expired, in accordance with the provisions relating to a discharge under the three-fourths law (Section 216.355 (1)).

In order that the question may appear clearly, certain statutes, or parts thereof, shall be set forth.

Section 216.355 (1) reads as follows:

"1. Any person who is now or may hereafter be confined in any institution within the division and who shall serve three-fourths of the time for which he was sentenced in an orderly and peaceable manner, without having any infraction of the rules or laws of the institution recorded against him, shall be discharged in the same manner as if he had served the full time for which sentenced. In such case no pardon from the governor shall be required."

Senate Bill No. 132 pertains to probations, pardons and paroles. In said bill there appear the following provisions:

Section 18 (3):

" * * * In all other cases, time served on parole shall be counted as time served under the sentence."

Section 20 (1):

"1. The period served on parole shall be deemed service of the term of imprisonment and, subject to the provisions of section 21 of this act relating to a prisoner who is or has been a fugitive from justice, the total time served may not exceed the maximum term or sentence."

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Section 20 (2):

"2. When a prisoner on parole, before the expiration of the term for which he was sentenced, has performed the obligations of his parole * * *, the board * * * may make a final order of discharge and issue a certificate of discharge to the prisoner. * * *"

A strong and rather convincing, but not sound, argument can be made that the provisions of the three-fourths law and those of Senate Bill No. 132 in question are in nowise related. We do not take up the space here, however, to go into the same.

Time served on parole shall be counted as time served under the sentence. There can be no question about this; the law under scrutiny (Senate Bill No. 132) plainly states so. We believe that the term "sentence" as used in the law under examination means that fixed or determined by law, and not that imposed by court. To hold otherwise would give rise, in practical application, to absurd results in view of the provisions of Senate Bill No. 132. To illustrate, assume that a person was sentenced by the court to serve four years in the penitentiary. Assume further that he served without violating any of the rules or laws of the institution and, therefore, under the provisions of the three-fourths law for a period of two years and nine months, at which time he was paroled. Going one step further, assume that six months after the parole was issued, it was revoked and the party was recommitted to the penitentiary. If it were held that the sentence had not expired such would amount to a failure to count the time while on parole for, under the three-fourths law, the sentence expired at the end of three years, and adding the time served on parole, as the law in question requires, to the two years and nine months served prior to the issuance of the parole, it is obvious the sentence expired three months after the parole was issued.

If there is any doubt that a party paroled while serving under the three-fourths law loses the benefits of the three-fourths law, i.e., that by accepting a parole the provisions of the three-fourths law become inapplicable to his sentence, see the case of *Ex parte Carney*, 122 S.W. 2d 888, where it was held that such did not cause the three-fourths law to be inapplicable and in which case the Court stated "* * * the provisions of Sec. 8442 (three-fourths law), supra, become a part of every judgment of conviction with as much effect as if actually written therein, * * *." In other words, under the three-fourths law (Section 216.355 (1)), a person who serves

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three-fourths of sentence without any infractions of the rules or laws of the institution has served his sentence.

We are not unaware that the three-fourths law states that "any person who is now or may hereafter be confined" and serves three-fourths of his sentence in an orderly and peaceable manner, etc., shall be discharged as if he had served the full sentence. A party on parole, of course, is not confined, in fact. Whether or not he is, in law, we do not decide for we believe that the General Assembly may, in other laws, extend, expressly or by necessary implication as we hold it has done in this instance, the coverage of the three-fourths law.

It necessarily follows from the foregoing that, although the time served on parole counts as time served on the sentence, a person who has violated the rules and laws of the institution, or, in other words, a person who is not entitled to the benefits of the three-fourths law, and who is paroled, has no right to demand a discharge as a parolee or otherwise at the expiration of three-fourths of his sentence. (He might be discharged but not because he has a right, in law, to a discharge.)

It is concluded, then, that the terms "sentence" and "term of imprisonment" as used in Senate Bill No. 132, refer to that fixed by law and not that imposed by the sentencing court.

CONCLUSION

It is, therefore, the opinion of this office that under the provisions of Senate Bill No. 132, 69th General Assembly, time served on a parole counts toward time required to be served in the penitentiary and that, consequently, the three-fourths law (House Bill No. 318, 69th General Assembly) is applicable to inmates paroled by the State Board of Probation and Parole.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Yours very truly,

John M. Dalton
Attorney General

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