

HOUSE BILL NO. 261: House Bill No. 261 enacted by the 70th General Assembly applies to prisoners in an institution of the Department of Corrections who have been confined in a state mental hospital but who have been returned to the institution prior to the effective date of the act.

August 11, 1959



Warden E. V. Nash
Missouri State Penitentiary
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"An official opinion is requested in regard to House Bill #261 passed by the 70th General Assembly.

"Attention is directed to Section 2, page 3 of the Bill. 'The provisions of this act also apply to any prisoner conveyed to the state mental hospital by order of the Governor as provided by Section 549.040, Revised Statutes of Missouri, prior to the effective date of this act.'

"Does this section mean that a prisoner who had been transferred to the state mental hospital prior to the date of August 29, 1959, and since been returned to the state penitentiary is to receive credit on his penitentiary sentence for the time he may have spent in the mental hospital, thereby, making this bill retroactive and effecting all prisoners now held in the state penitentiary who have in the past been transferred to the mental hospital and later returned to the penitentiary."

The general purport of House Bill No. 261, supra, is to apply to the term of a person committed to the Department of Corrections the time spent by such person in a state mental hospital. This is set forth in Section 549.050 of the bill, which section reads:

"When a prisoner becomes mentally ill or incapacitated and is committed or transferred to a state mental hospital, the

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time spent at the mental hospital shall be calculated as a part of the sentence imposed upon him whether the sentence is an indeterminate one or for a definite period of time. The time spent at the mental hospital shall, in addition to any reduction of time allowed under section 216.355, RSMo, be deducted from the term of the sentence."

The portion which we have to construe is subsection 2 of numbered paragraph 3 of Section 549.051 of the bill, which section reads:

"The provisions of this act also apply to any prisoner conveyed to the state mental hospital by order of the governor as provided by section 549.040, RSMo, prior to the effective date of this act."

The specific part of this section which must be construed are the words "prior to the effective date of this act."

We see nothing in the bill which would limit the application of the word "prior" to any particular time. Neither is there anything in the bill which would indicate that it applies only to prisoners who are still in the state mental hospital upon the effective date of this bill and not to prisoners who have been in the state mental hospital but who have been conveyed back to the prison at the time this act becomes effective. We believe, therefore, that the bill does apply to persons presently in prison who have spent time in a state mental hospital, and that after the effective date of the act, time so spent in the mental hospital should be applied upon their sentence. We do not consider that this holding is equivalent to a holding that the bill is retroactive.

CONCLUSION

It is the opinion of this department that House Bill No. 261 enacted by the 70th General Assembly applies to prisoners in an institution of the Department of Corrections who have been confined in a state mental hospital but who have been returned to the institution prior to the effective date of the act.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:bw