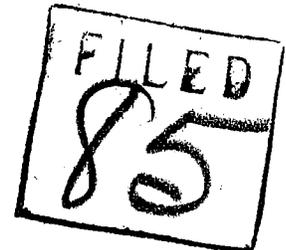


TIME OF PAROLE
APPLICATION:

It is the meaning of House Bill No. 262, enacted by the 70th General Assembly, that allowed time served in jail does apply as time served on a sentence to the Department of Corrections for parole application purposes.

August 18, 1959



Hon. Ben B. Stewart, Member
Board of Probation and Parole
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"In reference to House Bill #262 of the 70th General Assembly, the question has arisen relative to eligibility of prisoners for parole hearing.

"In paragraph 1 of Section 549.261 MoRS Cumulative Supplement 1957, it states, in part, 'Any person confined in any correctional institution administered by state authorities.'

"In paragraph 2 of Section 549.261 MoRS Cumulative Supplement 1957, it states, in part, 'Any person who has been committed to a penal or correctional institution under the administration of the department of corrections, who has served either one-third of his time or twelve months of the time for which he was sentenced, whichever is a shorter period, in an orderly and peaceable manner without having any infraction of the rules or laws of the institution recorded against him shall be eligible to make application for parole and shall be given a hearing.'

"The question is, does the allowed time served in jail apply as time served for parole hearing purposes, or must the individual actually be committed to the Department of Corrections and serve the necessary required time in the Department of Corrections before being eligible for a parole hearing?"

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Because of its comparative brevity we shall here set forth in full House Bill No. 262, referred to by you above, which we are called upon to construe. This bill reads:

"Section 1. When a person has been convicted of a criminal offense in this state

(1) the time spent by him in prison or jail subsequent to the date of his sentence and prior to his delivery to the state department of corrections shall be calculated as a part of the sentence imposed upon him; and

(2) the time spent by him in prison or jail prior to his conviction and the date on which sentence is pronounced may, in the discretion of the judge pronouncing sentence, be calculated as a part of the term of the sentence imposed upon him.

"2. When the time spent in prison or jail is calculated as a part of the term of the sentence under the provisions of subdivision 1 of this section, the time so spent in prison or jail shall, in addition to any reduction of time allowed under section 216.355, RSMo, be deducted from the term of the sentence.

"3. It is the duty of the officer required by law to deliver a convicted person to the state department of corrections to endorse upon the commitment papers the length of time spent by the person in a prison or jail subsequent to the date of his sentence and prior to his delivery to the state department of corrections, and if, by the terms of the sentence, the time spent in prison or jail prior to conviction and sentence is to be calculated as a part of the term, the officer shall also endorse upon the commitment papers the length of time spent in prison or jail prior to the person's conviction and sentence."

Numbered paragraphs 1 and 2 of Section 549.261, MoRS, Cum. Supp. 1957, referred to by you above reads:

"1. When in its opinion there is reasonable probability that the prisoner can be released without detriment to the community or to himself, the board shall release or parole any

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person confined in any correctional institution administered by state authorities. All paroles shall issue upon order of the board, duly adopted.

"2. Any person who has been committed to a penal or correctional institution under the administration of the department of corrections, who has served either one-third of his time or twelve months of the time for which he was sentenced, whichever is a shorter period, in an orderly and peaceable manner without having any infraction of the rules or laws of the institution recorded against him shall be eligible to make application for parole and shall be given a hearing. Any person who has served two-thirds of his time or two years of the time for which he was sentenced, whichever is the shorter period, shall be eligible to make application for parole and shall be given a hearing. Paroles may be granted, however, before the minimum period specified has been served."

Section 549.261, supra, relates to the time when a person who has been committed to a penal or correctional institution under the administration of the Department of Corrections may apply for a parole. Under the terms of this section, numbered paragraph 2, we note that such application may be made by one "who has served either one-third of his time or twelve months of the time for which he was sentenced, whichever is the shorter period. . . ." Also "Any person who has served two-thirds of his time or two years of the time for which he was sentenced, whichever is the shorter period. . . ."

House Bill No. 262 states that the time spent in jail (1) "shall be calculated as a part of the sentence imposed upon him. . . ." and (2) "be calculated as a part of the term of the sentence imposed upon him." Why the word "term" is inserted in paragraph 2 and is omitted in paragraph 1 we do not know, but we do not see any reason to believe that the insertion of the word "term" makes the meaning any different than in paragraph 1. It would seem that both simply mean that "jail time" shall be "calculated" or figured in as a part of the sentence. We note also that there is nothing to indicate that this "jail time" shall be deducted from the latter end of the sentence rather than from the first part of the sentence.

It may be pertinent to note here that while, from the standpoint of the prisoner, this matter is one of importance, that

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from the standpoint of the state it is not fraught with any particular consequences because all that House Bill No. 262 does so far as a parole hearing is concerned is simply to affect the date when a prisoner may make an application for a parole. Whether or not the application will be granted is wholly a matter within the discretion of the parole board.

CONCLUSION

It is the opinion of this department that it is the meaning of House Bill No. 262, enacted by the 70th General Assembly, that allowed time served in jail does apply as time served on a sentence to the Department of Corrections for parole application purposes.

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