



## The Attorney General of Texas

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Mr. Fred Toler  
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Opinion No. JM-73

Re: Whether sheriff may  
reduce jail time pursuant to  
article 5118a, V.T.C.S., for  
time inmate serves prior to  
judgment

Dear Mr. Toler:

You ask three questions concerning a sheriff's authority and discretion to award good time credits pursuant to article 5118a, V.T.C.S., and the effect of such an award on other allowances or credits.

You first ask whether a sheriff may include a deduction based on the time an inmate is confined to jail prior to judgment and sentence in his commutation for good conduct.

Article 5118a, V.T.C.S., provides in pertinent part:

Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one (1) day for each day of the original sentence actually served may be made from the term or terms of sentences when no charge of misconduct has been sustained against the prisoner.

The statute grants a sheriff discretion in such an award. Kopeski v. Martin, 629 S.W.2d 743, 746 (Tex. Crim. App. 1982).

Article 4.03, section 2(a) of the Code of Criminal Procedure applies to all criminal cases and provides that

the judgment of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail in said cause, from the time of his

arrest and confinement until his sentence by the trial court.

This provision is mandatory in giving credit for time served after arrest but prior to sentencing. Jones v. State, 545 S.W.2d 771, 772 (Tex. Crim. App. 1975).

When the two statutes are considered together, it is apparent that pre-judgment time is to be treated as part of the original sentence and as such may be considered for good time credit. Case law supports this conclusion. In Kopeski v. Martin, supra, the court stated that an inmate is entitled to credit for good conduct under article 5118a for time served prior to sentencing to a term in the county jail. Likewise, the absence of a formal sentence may not be used to deny a prisoner credit under the statute. Ex parte Minjares, 582 S.W.2d 105, 109 (Tex. Crim. App. 1978). See also Gardner v. State, 542 S.W.2d 127, 130 (Tex. Crim. App. 1976); Attorney General Opinion C-310 (1964). Accordingly, we conclude that a sheriff may award good time credits under article 5118a for time served prior to sentencing to a term in the county jail.

Your second question concerns whether a sheriff must consider pre-judgment time for good time credit in order to prevent denial of equal protection.

Since we have recognized that pre-judgment time is considered part of the sentence for purposes of commutation, it follows that all time actually served must be given equal weight. A sheriff must "consider each inmate's conduct for such credits, and consideration must be given equitably." Kopeski v. Martin, supra, at 746. Denial of equal protection is likely to result if only post-sentencing time is considered for good time credit. See Pruett v. State of Texas, 470 F.2d 1182 (5th Cir.), aff'd, 414 U.S. 802 (1973).

Your final question is whether an award of good time credit precludes any other time allowance or credits such as manual labor credit.

Article 5118a provides in part that:

No other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences. (Emphasis added).

This limitation has remained a part of the statute since it was first enacted. See Acts 1955, 64th Leg., ch. 461, §1, at 1183.

Where a statute is unambiguous, the language is determinative of the legislative intent. Mrs. Tucker's Foods v. Calvert, 296 S.W.2d 787, 789 (Tex. Civ. App. - Austin 1956, writ ref'd n.r.e.). There is nothing ambiguous or unclear about this provision. It plainly states that, where an inmate accumulates credits for good behavior, no other credits will be allowed.

The legislative history of the most recent amendment to the statute is further evidence that the legislature intended to so limit credits for jail sentences. The original version of the bill as passed by the Texas House of Representatives changed this part of article 5118a to read:

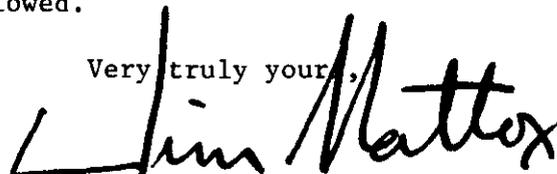
Except as provided in Article 43.10, Code of Criminal Procedure, 1965, as amended, no [No] other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences.

Engrossed Third Reading of House Bill No. 647, Bill File for House Bill No. 647, 67th Leg., Legislative Reference Library. However, the final version, passed by both houses, left the sentence as it read when article 5118a was enacted by the Fifty-fourth Legislature. See V.T.C.S. art. 5118a. The only reasonable conclusion is that a county jail inmate may receive good time credits under article 5118a, V.T.C.S., or manual labor credits under article 43.10, Code of Criminal Procedure, but not both.

S U M M A R Y

A sheriff may award good time credits pursuant to article 5118a for time served prior to sentencing. He must give equal consideration to all time served in order to avoid denial of equal protection. Where good time credits are awarded, no other credits are allowed.

Very truly yours,



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