

**AG Op. PRISONS AND OTHER METHODS OF CORRECTION, 1995 Va. AG 224**

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES — DUTIES OF SHERIFFS.**

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY — DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED.

Inmate ineligible for parole may not earn good conduct credit when mandatory minimum sentence is imposed. Intent of General Assembly is to ensure that inmate convicted of crime carrying mandated minimum sentence must serve entire time. Inmate is ineligible to receive good conduct credit for 30 days of 90-day sentence served as mandatory minimum sentence for third conviction of driving motor vehicle while intoxicated within five-year period, but is eligible to earn good conduct credit on last 60 days of three-month sentence.

DATE: September 1, 1995

SDATE: 950901

REQUESTOR: The Honorable A.D. Mathews Sr., Sheriff for Henrico County

CITE: 1995 224

You ask whether an individual who receives a three-month sentence upon conviction of driving a motor vehicle while intoxicated for the third time within less than five years may earn good conduct credit under the provisions of § [53.1-116](#) of the *Code of Virginia*<sup>1</sup> for the mandatory minimum sentence of thirty days as required by § [18.2-270](#).<sup>2</sup>

You relate that a question has arisen regarding computation of good conduct credit for an inmate convicted of driving a motor vehicle while intoxicated for the third time within less than five years. The circuit court sentenced the inmate to a total sentence of ninety days in jail.<sup>3</sup>

When the language of a statute is clear and unambiguous, resort to rules of statutory construction is unnecessary.<sup>4</sup> The language in § [53.1-116](#) is clear and unambiguous in providing that an inmate who is ineligible for parole shall earn good conduct credit “*unless* a mandatory minimum sentence is imposed by law.” (Emphasis added.) Therefore, inmates ineligible for parole may *not* earn good conduct credit on mandatory minimum sentences. The obvious intent of the General Assembly is to ensure that an inmate convicted of a crime carrying a mandatory minimum sentence must serve, without exception, the mandatory minimum time.

Section [18.2-270](#) provides that “[t]hirty days of confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years.” An inmate serving such a mandatory minimum sentence is not eligible to earn good conduct credit for the mandatory sentence under the provisions of § [53.1-116](#). **[Page 225]**

Under the facts you present, it is my opinion that the inmate is not eligible to receive good conduct credit for the thirty days of confinement served as a mandatory minimum sentence under the provisions of § [18.2-270](#). It is further my opinion, however, that because the remaining two months are not part of the mandatory minimum sentence, the inmate is eligible to earn good conduct credit on the last two months of the three-month sentence.

## FOOTNOTES

<sup>1</sup> Section [53.1-116\(A\)](#) provides, in part: “The jailer shall keep a record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into jail. The jailer shall keep a record of each prisoner. Each prisoner not eligible for parole under §§ [53.1-151](#), [53.1-152](#) or § [53.1-153](#) shall earn good conduct credit at the rate of one day for each one day served, including all days served while confined in jail prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail unless a mandatory minimum sentence is imposed by law; however, any prisoner committed to jail upon a felony offense committed on or after January 1, 1995, shall not earn any good conduct credit.”

<sup>2</sup> Section [18.2-270](#) imposes mandatory, minimum sentences for driving while intoxicated: “Any person convicted of a second offense committed within less than five years after a first offense under § [18.2-266](#) shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to ten years of a first offense under § [18.2-266](#) shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within ten years of an offense under § [18.2-266](#) shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such suspension shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.”

<sup>3</sup> The Department of Corrections assumes responsibility for computing the sentences for parole eligibility of all inmates in either the state prison system or a local jail. I assume for the purpose of this opinion that, under the facts you present, the total sentence to be served is less than twelve months. Therefore, the inmate would not be eligible for parole under the provisions of §§ [53.1-151](#), [53.1-152](#) or § [53.1-153](#).

<sup>4</sup> See *Vaughan v. Murray*, [247 Va. 194, 198](#), 441 S.E.2d 24, 26 (1994).