

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL



Memo From

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ASSISTANT ATTORNEY GENERAL  
COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: 6 June 1974

To: Garrell Mullaney, Warden Dept: Maine State Prison

Subject: Interpretation of 15 M.R.S.A. § 1701-A

SYLLABUS:

The provisions of 15 M.R.S.A. section 1701-A, as enacted by Chapter 144 of the Public Laws of 1973, provide, inter alia, that credit shall be given against a sentence to the Maine State Prison, Men's Correctional Center, Women's Correctional Center, or a county jail for time spent in a jail pending appeal, after judgment and sentence have been entered.

FACTS:

The opinion of this office has been requested in reference to the following question.

QUESTION:

Does 15 M.R.S.A. section 1701-A, as enacted by Chapter 144 of the Public Laws of 1973, allow credit against a sentence to the Maine State Prison, Men's Correctional Center, Women's Correctional Center, or a county jail for time spent pending appeal, after judgment and sentence have been entered?

ANSWER:

Yes.

REASON:

Section 1701-A of Title 15 of the Maine Revised Statutes, in relevant part,

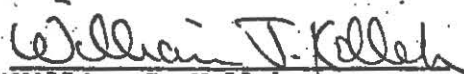
provides:

"Any person who is sentenced to the Maine State Prison, Men's Correctional Center, Women's Correctional Center, or to any county jail and is in execution thereof, shall be granted credit against the maximum term and minimum term, if applicable, of his sentence during which such person was confined in jail awaiting and during trial prior to the imposition of sentence, pending appeal, and not under any sentence of confinement." (emphasis supplied)

On its face, the wording of this section seems to clearly provide that credit shall be given for time spent in a jail "pending appeal". There may exist some ambiguity, however, in that the clause immediately preceding "pending appeal" might condition those instances when credit could be given for time spent in jail pending appeal. If this construction obtained, credit could only be given for time spent in jail pending appeal prior to the imposition of sentence. These situations would occur, albeit infrequently, when an appeal is allowed on the denial of a defense motion and trial is interrupted pending the disposition of the appeal. It is important to note, however, that punctuation separates the phrase "pending appeal" from the immediately preceding clause. It is a rule of statutory construction to give some weight to the punctuation employed by the legislature and here, the legislature separated the phrase under consideration and the clause immediately preceding it by the use of a comma. This would appear to indicate an intent on the part of the legislature to make time spent in jail pending appeal independent of the immediately preceding conditions.

There does exist, however, in the legislative history a clear indication of the legislative intent behind the phrase under consideration. This phrase did not appear in the original legislative document introduced in the House of Representatives and referred to the Committee on the Judiciary. L.D. 582 merely provided that credit should be given for time spent "in jail awaiting and during trial prior to the imposition of sentence and not under any sentence of confinement". The

Jucidiary Committee amended this bill, inter alia, by inserting the phrase under consideration and the punctuation surrounding it. The Committee intent behind this amendment is reflected in the Statement of Fact accompanying the amendment. It reads in relevant part, "The purpose of this amendment is to include as a time period for which credit should be allowed against the term of a sentence, the time that a person may spend in a county jail pending an appeal on his conviction and sentence." (emphasis supplied) Since the Legislature adopted the bill as amended, it is reasonable to conclude, and it is the opinion of this office, that it was the Legislature's intent that time should be given for time spent in a jail pending appeal after judgment and sentence have been entered.



William J. Kelleher  
Assistant Attorney General

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