

# MAINE STATE LEGISLATURE

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RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

80-6

TO: Joseph McClay, Jail Inspector  
FROM: William H. Laubenstein, III, Assistant Attorney General  
DATE: 15 January 1980  
SUBJECT: Deductions from split sentences

SYLLABUS:

It has come to the attention of the Bureau of Corrections that persons sentenced pursuant to the split-sentencing provisions of the Criminal Code may or may not be awarded deductions for good behavior depending either on the institution to which they are sentenced or on the length of the unsuspended portion of their sentence. This disparity in calculation of time of imprisonment arises from the initial silence of the Criminal Code on the eligibility of persons receiving split-sentences to earn deductions for good behavior and confusion over the effect of subsequent amendments to the split-sentencing provisions of the Code which addressed the question of eligibility.

QUESTIONS:

1. What time, if any, may be deducted from the initial term of imprisonment of a person sentenced pursuant to 17-A M.R.S.A. §1203 for a crime committed on or before July 5, 1978?

2. What time, if any, may be deducted from the initial term of imprisonment of a person sentenced pursuant to 17-A M.R.S.A. §1203 for a crime committed on or after July 6, 1978, and on or before September 13, 1979?

3. What time, if any, may be deducted from the initial term of imprisonment of a person sentenced pursuant to 17-A M.R.S.A. §1203 for a crime committed on or after September 14, 1979?

4. What time, if any, may be deducted from the initial term of imprisonment of a person sentenced pursuant to 17-A M.R.S.A. §1203-A?

ANSWERS:

1. A person sentenced pursuant to 17-A M.R.S.A. §1203 for a crime committed on or before July 5, 1978, may earn deductions in accordance with 17-A M.R.S.A. §1253 or in accordance with 34 M.R.S.A. §952. (See attached chart)

2. A person sentenced pursuant to 17-A M.R.S.A. §1203 for a crime committed on or after July 6, 1978, and on or before September 13, 1979, may earn deductions only for the performance of certain assigned duties in accordance with 17-A M.R.S.A. §1253.4. (See attached chart)

3. A person sentenced pursuant to 17-A M.R.S.A. §1203 for a crime committed on or after September 14, 1979, may earn deductions only for the performance of certain assigned duties in accordance with 17-A M.R.S.A. §1253.4. (See attached chart)

4. A person sentenced pursuant to 17-A M.R.S.A. §1203-A may earn deductions in accordance with 17-A M.R.S.A. §1253.

DISCUSSION:

I. GOOD TIME DEDUCTIONS FOR PERSONS SENTENCED PURSUANT TO 17-A M.R.S.A. §1203.

The question of the eligibility to earn good time deductions of persons sentenced pursuant to the split-sentencing provisions of the Criminal Code has arisen, in part, because there have been two revisions of the provisions since the Code was adopted in 1976. As originally enacted 17-A M.R.S.A. §1203, split sentences, permitted the court to imprison a person placed on probation for any portion of the probation, provided only that imprisonment at the State Prison should not exceed 90 days. The section was silent on eligibility to earn deductions for good behavior or work performed. P.L. 1975, c. 499.

Section 1203 was repealed and replaced by P.L. 1977, c. 671, §27, effective July 6, 1978. The new section extended initial terms of imprisonment to the State Prison to 120 days and declared persons sentenced pursuant to the split-sentencing provisions ineligible to earn deductions for good behavior. The new section was silent on eligibility to earn deductions for work performed as provided in 17-A M.R.S.A. §1253.4. The legislature rewrote portions of Section 1203 by P.L. 1979, c. 512. These revisions made it clear persons sentenced pursuant to the split-sentencing provisions of the Code were ineligible to earn deductions for good behavior, but were eligible to earn deductions for work performed.

In addition, the rewritten section limited to 120 days the initial term of imprisonment regardless of the institution in which a person was imprisoned.

The apparent legislative changes in the eligibility of persons serving the unsuspended portion of a split sentence to earn good time deductions makes it necessary to determine the law applicable to each person sentenced pursuant to 17-A M.R.S.A. §1203. This necessity arises because the availability of good time deductions bears directly on the length of sentence to be served and "is considered an essential element of the sentence." Greenfield v. Scafati, 277 F.Supp. 644, 645 (D.Mass. 1967), aff'd. 390 U.S. 713 (1968). The law to be applied in each case is the law in effect at the time the underlying crime was committed. The choice of law is dictated by the ex post facto clause of the Constitutions of the United States and Maine. This clause protects, among other things, against laws which make more burdensome the punishment for a crime than the law annexed to the crime when committed, Calder v. Bull, 3 U.S. (3 DAL) 385, 390 (1798); In re Stanley, 133 Me. 91, 93-4, 174A. 93 (1934), aff'd Stanley v. P.U.C., 295 U.S. 76 (1935), and against laws which alter "the situation of the accused to his disadvantage[.]" In re Medley, 134 U.S. 160, 171 (1890). The denial of the right to earn good time to a person eligible at the time he commits a crime could substantially increase his term of imprisonment and would effect a materially disadvantageous change in his position. See Greenfield v. Scafati, supra.

A. CRIMES COMMITTED PRIOR TO JULY 6, 1978

The Criminal Code as enacted by P.L. 1975, c. 499, provided for the deduction for good behavior of 10 days per month from the sentence of each person sentenced to a term of imprisonment for more than 6 months. 17-A M.R.S.A. §1253.3 <sup>1/</sup> The Code further provided for the deduction of 2 days per month for persons who satisfactorily performed certain assigned duties. 17-A M.R.S.A. §1253.4.

Prior to passage of P.L. 1977, c. 671, §27, effective July 6, 1978, all persons sentenced to more than 6 months imprisonment were eligible to earn good time deductions. The Criminal Code made no distinction for the purpose of determining eligibility for good time between persons sentenced to a period of imprisonment under chapter 51 of the Code, the general sentencing provisions; and persons sentenced to imprisonment as part of a split sentence under chapter 49 of the Code, 17-A M.R.S.A. §1203.1. Thus, a person sentenced pursuant to 17-A M.R.S.A. §1203.1 for a crime committed on or before July 5, 1978, may earn deductions for good behavior in accordance with the effective subsections of 17-A M.R.S.A. §1253, and 34 M.R.S.A. §952. Such a person is eligible also to earn deductions for the performance of assigned duties pursuant to 17-A M.R.S.A. §1253.4.

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<sup>1/</sup> This 10-day provision has been construed to apply to persons sentenced to the Maine State Prison, to the Maine Correctional Center and to a county jail. See Opinion of Attorney General Joseph Brennan, dated October 4, 1977 (copy attached). Persons sentenced to a county jail for six months or less may have had deducted 3 days a month. 34 M.R.S.A. §952, prior to repeal by P.L. 1977, c. 671, §38.

B. CRIMES COMMITTED ON OR AFTER JULY 6, 1978, AND ON OR BEFORE SEPTEMBER 13, 1979

The legislature changed the categories of persons eligible to earn deductions for good behavior with the passage of P.L. 1977, c. 671, §27. This public law repealed and replaced 17-A M.R.S.A. §1203, as amended by P.L. 1977, c. 510, §69. <sup>2/</sup> Subsection 3 of the new provision made persons sentenced pursuant to 17-A M.R.S.A. §1203.1 ineligible for good time deductions:

The deduction authorized by section 1253, subsection 2, for detention pending trial shall apply to an initial term of imprisonment under subsection 1. The deduction authorized by section 1253, subsections 3, 3-A and 3-B, for observance of the rules and requirements of the institution, shall not apply to an initial term of imprisonment under subsection 1.

17-A M.R.S.A. §1203.3

This ineligibility applies regardless of the facility to which a person is sentenced or in which the initial term of imprisonment is served; and regardless of the length of the initial term of imprisonment.

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<sup>2/</sup> 17-A M.R.S.A. §1253 was also amended by P.L. 1977, c. 510 and P.L. 1977, c. 671. These amendments do not effect the conclusions reached herein.

Effective July 6, 1978, a person given a split sentence for a crime committed on or after July 6, 1978, was ineligible to earn deductions for good behavior. A person given a split sentence for a crime committed prior to July 6, 1978, regardless of when sentenced, is eligible to earn deductions for good behavior.

The question of whether a person who commits a crime between July 6, 1978, and September 14, 1979, and is given a split sentence may have his sentence reduced for the performance of assigned duties is more troublesome. Section 1253.4 of Title 17-A provides for the deduction of an "additional" 2 days a month for a satisfactory performance of certain work. The use of the word "additional" suggests that only if a person earns a deduction for good behavior may he receive a deduction for work assigned and performed. But the split-sentence provisions of the Code as enacted by P.L. 1977, c. 671, §27, do not expressly deny a person the right to earn such a deduction. In resolving this conflict, consideration must be given to the fact that the interpretation adopted will affect the length of time a person will be deprived of his liberty. Under these circumstances the United States Supreme Court has indicated that doubts should be resolved "against the imposition of a harsher punishment." Bell v. United States, 349 U.S. 81, 83 (1955). It is therefore the opinion of this office that persons serving the initial term of imprisonment under a split sentence for a crime committed between July 6, 1978,



and September 14, 1979, may earn deductions of 2 days a month for work assigned and performed.

C. CRIMES COMMITTED ON OR AFTER SEPTEMBER 14, 1979 <sup>3/</sup>

The first regular session of the 109th Legislature amended the split sentencing provisions of the Code to make it clear persons serving split sentences are eligible to earn deductions for work performed by adding the following sentence to 17-A M.R.S.A. §1203.3:

The deductions authorized by section 1253, subsection 4, for the performance of duties outside the institution shall apply to the initial unsuspended portion of the term of imprisonment under subsection 1.

P.L. 1979, c. 512, §40, effective September 15, 1979.

Thus, persons receiving a split sentence as authorized by 17-A M.R.S.A. §1203.1, regardless of the time the underlying crime was committed, may earn deductions for work performed. The legislature made no changes regarding eligibility to earn deductions for good behavior. Persons committing crimes on or after July 6, 1978, who are sentenced pursuant to 17-A M.R.S.A. §1203.1 remain ineligible to earn deductions for good behavior pursuant to subsections 3, 3-A and 3-B of 17-A M.R.S.A. §1253.

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<sup>3/</sup> P.L. 1979, c. 512, §45, provides: "Sections 4 and 38 to 40 shall take effect 91 days after adjournment. All other sections shall take effect 90 days after adjournment."

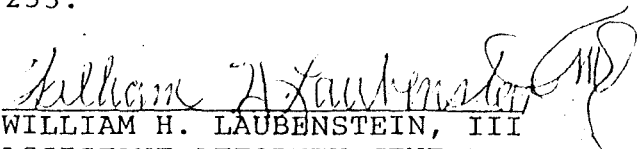
II. GOOD TIME DEDUCTIONS FOR PERSONS SENTENCED PURSUANT TO 17-A M.R.S.A. §1203-A

The legislature made another change to the split-sentencing provisions of the Code by adding a new section 1203-A of Title 17-A of the Maine Revised Statutes Annotated:

1. The court may, at the time of imposing an unsuspended term of imprisonment pursuant to section 1252, impose a term of probation, not to exceed one year, and a suspended term of imprisonment, not to exceed 2 years, to follow the initial unsuspended term of imprisonment. At the time of sentencing, the court shall attach conditions of probation as authorized by section 1204.
2. The total of the initial unsuspended term of imprisonment and the suspended term of imprisonment shall not exceed the maximum term authorized for the crime.

P.L. 1979, c. 512, §41

Unlike 17-A M.R.S.A. §1203, the new section does not contain a provision limiting a person's eligibility to earn deductions for good behavior. It is, therefore, the opinion of this office that persons sentenced pursuant to section 1203-A may earn deductions from their unsuspended term of imprisonment in accordance with the provisions of 17-A M.R.S.A. §1253.

  
WILLIAM H. LAUBENSTEIN, III  
ASSISTANT ATTORNEY GENERAL

DEDUCTIONS AUTHORIZED BY 17-A M.R.S.A. §1203

Date of Offense	Good Behavior	Work Performed
Prior to July 6, 1978	17-A M.R.S.A. §1253.3: 10 days per month if sentenced for more than 6 months  OR  34 M.R.S.A. §952: 3 days per month if sentenced for 6 months or less to a county jail	17-A M.R.S.A. §1253.4: 2 days per month for performance of assigned duties  OR  34 M.R.S.A. §952: 3 days per month if sentenced for 6 months or less to a county jail
On or after July 6, 1978 and on or before Sept. 13, 1978	NOT AUTHORIZED	17-A M.R.S.A. §1253.4: 2 days per month for performance of assigned duties
On or after Sept. 14, 1978	NOT AUTHORIZED	17-A M.R.S.A. §§1203.3, 1253.4: 2 days per month for performance of assigned duties

Good Time & County Jails  
17-A M.R.S.A. §1253(3)  
34 M.R.S.A. §952

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

October 4, 1977

Alton L. Howe  
Sheriff, Oxford County  
Sheriff's Office  
South Paris, Maine 04281

Dear Sheriff Howe:

You have requested an opinion on the proper method of computing "good time" deductions for persons sentenced to county jails for terms of more than six months. The problem stems from the apparent applicability of two statutes which conflict in the amount of good time they would allow those inmates. 17-A M.R.S.A. §1253(3) provides for deductions of 10 days a month, whereas 34 M.R.S.A. §952 provides for deductions of 3 days a month.

It is the opinion of this Office that 17-A M.R.S.A. §1253(3) applies to persons sentenced to the county jail for terms of more than six months. Accordingly, those inmates are entitled to "good time" deductions of 10 days a month if they satisfy the other requirements of the statute. 34 M.R.S.A. §952 remains in effect for county jail inmates with sentences of six months or less.

The reasoning behind this opinion will be explained in the remaining portion of this letter.

The Statutes

17-A M.R.S.A. §1253(3) and 34 M.R.S.A. §952 are set out below.

§1253 Calculation of period of imprisonment

3. Each person sentenced to imprisonment for more than 6 months whose record of conduct shows that he has observed all the rules and requirements of the institution in which he has been imprisoned shall

be entitled to a deduction of 10 days a month from his sentence, commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the department.

#### §952 Deductions from sentence

Each inmate, who, in the opinion of the sheriff, has faithfully observed all the rules and requirements of the jail, shall be entitled to a deduction of 3 days a month from the term of his sentence, commencing on the first day of his arrival at the jail. An additional 3 days a month may be deducted from the sentence of those inmates who are assigned duties outside the jail, or those inmates within the jail who are assigned to work deemed by the sheriff to be of sufficient importance and responsibility to warrant such deduction. Any portion of the time deducted from the sentence of any inmate for good behavior may be withdrawn by the sheriff for the violation of any law of the State. Such withdrawal of good time may be made at the discretion of the sheriff, who may restore any portion thereof if the inmate's later conduct and outstanding effort warrant such restoration. This section shall apply to the sentences of all inmates now or hereafter confined within the jail.

It seems beyond dispute that if these provisions are read independently of each other, they each appear to include county jail inmates serving sentences of more than six months. In addition to the statute's express reference to each inmate, the last sentence of 34 M.R.S.A. §952 leaves no room for doubt as to the legislative intent at the time the section was enacted. That sentence reads as follows: "This section shall apply to all inmates now or hereafter confined within the jail."

17-A M.R.S.A. §1253(3) is equally explicit on the subject of applicability. The section clearly states that it applies to "(e)ach person sentenced to imprisonment for more than 6 months. . ." Under the Criminal Code, imprisonment means incarceration in any penal or correctional institution. See 17-A M.R.S.A. §1252(1) (providing that the sentence of the Court shall specify the place of imprisonment). Thus, there is no basis for excluding county jail inmates from the language quoted above.

It might be argued that the phrase in §1253(3), "commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the department," evidences a legislative intent that the section apply only to persons incarcerated in institutions under the authority of the Department of Mental Health and Corrections. Since a county jail is not such an institution, its inmates would not fall within §1253(3).

This argument does not withstand close scrutiny. The phrase which references the "custody of the department" deals with the method of computing the deductions and not with the issue of who is entitled to them. It is

unreasonable to conclude that a provision which sets forth when good time commences was intended to modify an express statutory declaration that the right to the good time extends to every person sentenced to imprisonment for more than 6 months. At most, it introduces an element of ambiguity into the meaning of the statute. This ambiguity is easily resolved, however, by the first sentence in the comment to §1253, which is the only relevant legislative history on the section.

This section provides for the good time deductions in all cases where the sentence exceeds six months. (Emphasis added).

### Resolution of the Statutory Conflict

The question of whether these statutes can truly be reconciled need not be answered for purposes of this opinion. Whether or not they are reconcilable, the relevant rules of statutory construction militate in favor of the applicability of 17-A M.R.S.A. §1253(3).

Assuming arguendo that these provisions can be reconciled, the guiding principle is that the enactments should be read so as to produce a consistent legislative scheme.

All statutes on one subject are to be viewed as one and such a construction should be made as will as nearly as possible make all the statutes dealing with one subject consistent and harmonious. Inhabitants of the Town of Turner v. City of Lewiston, 135 Me. 431, 433 (1938).

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1. There is a strong policy reason against deciding this question on the basis of the reference to the "custody of the department." During the past session, the Legislature enacted a new good time statute which makes no mention of the custody of the department. See P.L. 1977, c. 510, §81, which reads as follows:

Sec. 81 17-A M.R.S.A. §1253, sub-§3-A is enacted to read:  
3-A. Each person sentenced, on or after January 1, 1978, to imprisonment for more than 6 months shall earn a reduction of 10 days from his sentence for each month during which he has faithfully observed all the rules and requirements of the institution in which he has been imprisoned. Each month the supervising officer of each institution shall cause to be posted a list of all such persons who have earned reductions from their sentences during the previous month. If any such person does not earn all of his reduction from his sentence in any month, a notation of such action shall be entered on a cumulative record of such actions in the person's permanent file.

The enactment of this provision means that §1253(3) will have no applicability to persons sentenced on or after January 1, 1978. Accordingly, reliance on the reference to the "custody of the department" would require a reconsideration of this question within a few months.

The above mandate supports the proposition that §1253(3) should be controlling. To decide otherwise is to conclude that persons sentenced to the county jail for more than six months are to receive less good time than persons given identical sentences to other institutions. That would lead to an inherently inconsistent legislative scheme for which there is no discernible explanation.<sup>2</sup>

The interpretation most conducive to consistency, then, is that §1253(3) applies to all imprisonment sentences of more than six months, whereas §952 applies only to county jail imprisonment sentences of six months or less. This construction also comports with the Criminal Code's objective of eliminating irrational distinctions from criminal sentences. See Me.Rev.Stat. Ann. tit. 17-A, Introduction to the Proposed Code at XXIII (Supp. 1976).

It can be maintained with some plausibility that, in light of their explicit language, 17-A M.R.S.A. §1253(3) and 34 M.R.S.A. §952 are not amenable to a reasonable reconciliation. If that position were taken, the same conclusion would be reached, in light of the fact that §1253(3) is the later enactment.<sup>3</sup> As stated in a leading text on statutory construction, "if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression of the legislature." 2A Sutherland, Statutory Construction, §51.02 (4th ed. 1973).

In resolving this conflict, it is impossible to ignore the fact that the interpretation given these statutes will affect the length of time that individuals will be deprived of their liberty. The United States Supreme Court has clearly articulated the significance of this factor.

It may fairly be stated to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment. Bell v. United States, 349 U.S. 81, 83 (1955).

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2. Under prior law, differential treatment could have been justified on the grounds that county jail sentences were generally limited to terms of less than one year. However, the statute which placed this limit on county jail sentences (15 M.R.S.A. §1703) was repealed by the same legislation which enacted 17-A M.R.S.A. §1253(3). See P.L. 1975, c. 499, §2.

3. The present version of 34 M.R.S.A. §952 was originally enacted in 1961. P.L. 1961, c. 97. It was amended in 1974 to increase the amount of the deductions, P.L. 1973, c. 688, and again in 1975 to allow for withdrawal of the deductions. P.L. 1975, c. 187. Although 17-A M.R.S.A. §1253(3) was enacted in 1975, P.L. 1975, c. 499, §1, this occurred after the last amendment to 34 M.R.S.A. §952. Thus, 17-A M.R.S.A. §1253(3) is the latest expression of the Legislature on the subject. In addition, the most recent amendment to §952 took effect on October 1, 1975, whereas §1253(3) did not become effective until May 1, 1976.

Alton L. Howe  
October 4, 1977  
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Given the direct conflict between the statutes and the dearth of legislative history, the approach followed by the Supreme Court is entitled to considerable weight. The result to which that approach leads, moreover, is that §1253(3) applies.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

JEB:ld