

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

March 12, 1985

Donald L. Allen  
Commissioner  
Department of Corrections  
State House - Station #111  
Augusta, Maine 04333

Dear Commissioner Allen:

This will respond to your letter of February 27, 1985 in which you seek an opinion, prompted by the recent Maine Law Court decision of Bossie v. State, No. 3730 (Me. Feb. 27, 1985), addressing itself to the following two questions. First, whether the statutory formula for the calculation of good-time deductions for inmates sentenced prior to May 1, 1976, the effective date of the Maine Criminal Code, pursuant to 17-A M.R.S.A. § 1254(3) (1983), is constitutional. Second, whether the retrospective application of the "extra" (meritorious) good-time deductions authorized by 17-A M.R.S.A. § 1253(4) and (5) (Supp. 1984) to those inmates sentenced prior to September 23, 1983, the effective date of P.L. 1983, ch. 456, §§ 6 and 7, is constitutional. In response to your first question, it is the Opinion of this Department that subsection 3 of section 1254 of Title 17-A (1983) is unconstitutional, constituting the prohibited exercise by the Legislature of a power belonging exclusively to the Governor, to wit, the power to grant a commutation (Me. Const. art. V, pt. 1, § 11). In response to your second question, it is the Opinion of this Department that if subsections 4 and 5 of section 1253 of Title 17-A (Supp. 1984) were to be applied retrospectively they would

be similarly unconstitutional. However, since the Legislature has not expressly directed that 17-A M.R.S.A. § 1253(4) and (5) be applied retrospectively, the latter subsections can be construed to be prospective only, thereby avoiding an unconstitutional interpretation. The reasoning undergirding these opinions immediately follows.

Turning first to the calculation of good-time deductions for inmates sentenced prior to the effective date of the Maine Criminal Code - up to May 1, 1976 "good time" deductions for inmates sentenced to the Maine State Prison were controlled by 34 M.R.S.A. § 705 (Supp. Pamph. 1973). Section 705, in critical part, provided as follows:

Each convict, whose record of conduct shows that he has faithfully observed all the rules and requirements of the State Prison, shall be entitled to a deduction of 7 days a month from the minimum term of his sentence, commencing on the first day of his arrival at the Maine State Prison. ... This section shall apply to the sentences of all convicts now or hereafter confined within the State Prison, and shall not be construed to prevent the allowance of good time from maximum sentences or definite sentences.  
(emphasis supplied)

Under this method of calculating good-time, 7 days per month is deducted up front from the term (if definite) or terms (if minimum/maximum) of imprisonment. The effect of section 705 is potentially to reduce the term (or terms) of imprisonment by about 23%, 30 days credit for every 23 days served. The above-emphasized portion of section 705 was repealed by P.L. 1975, ch. 499, § 58. At the same time, 17-A M.R.S.A. § 1254(3)(1983) became effective. Subsection 3 of section 1254 provides:

All persons in the custody of the Bureau of Corrections pursuant to a sentence imposed under the law in effect prior to the effective date of this code shall be released and discharged according to the law as it was in force prior to the effective date of this code and such law shall

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continue in force for this purpose as if this code were not enacted; provided that any such person who is entitled to a deduction of 7 days a month from his sentence under the provisions of Title 34, section 705, may elect to have 10 days a month deducted instead of 7. Any such election shall apply to the entire sentence, including that portion of the sentence served prior to the effective date of this code. (emphasis supplied)

Under this new method of calculating good-time, 10 days per month is deducted up front from the term (if definite) or terms (if minimum/maximum) of imprisonment. The effect of subsection 3 of section 1254 is potentially to reduce the term (or terms) of imprisonment by about 33-1/3%, 30 days credit for every 20 days served. Although the effective date of subsection 3 was May 1, 1976, it expressly makes the subsection applicable to inmates sentenced to the Maine State Prison before that date and, as to such inmates, it applies to the entire sentence, including that portion of the sentence served prior to May 1, 1976.

In Bossie v. State, No. 3730 (Me. Feb. 27, 1985) the Maine Law Court struck down the final sentence of 17-A M.R.S.A. § 1253(3) (Supp. 1984)<sup>1</sup> as an unconstitutional legislative

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<sup>1</sup> Beginning October 1, 1983, each person sentenced, to imprisonment for more than 6 months shall be entitled to receive a deduction of 10 days per month calculated from the first day of his delivery into the custody of the department, to include the full length of the unsuspended portion of his sentence, for observing all the rules of the department and institution, except this provision shall not apply to the suspended portion of a person's sentence pursuant to split sentences under section 1203. All persons committed to the custody of the Department of Corrections prior to the effective date of this subsection shall have these provisions applied prospectively to the portion of their sentences remaining to be served. (emphasis supplied)

encroachment on the executive's exclusive power of commutation.<sup>2</sup> It did so, in critical part,

[b]ecause good-time credits affect the lengths of sentences<sup>3</sup> and because the legislature purported [in the final sentence of subsection 3 of section 1253] to increase the amount of good-time credits available for prisoners already in the custody of the

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<sup>2</sup> The Court found that

[e]ven if the legislature does have a general amnesty power, something we do not decide, the legislature's power could not extend to the commutation of sentences, an act explicitly and exclusively granted to the executive. See Me. Const. art. V, pt. 1, § 11; State v. Hunter, 447 A.2d 800, 803 [Me. 1982]. The very fact of a branch other than the executive branch acting to commute sentences is an interference with the executive's explicit and exclusive grant of the commutation power. See Me. Const. art. III, § 2.

Bossie v. State, No. 3730, slip op. at 6 (Me. Feb. 27, 1985)

<sup>3</sup> The Court found that

[a]s a practical matter, good time credits have the undeniable effect of reducing the length of sentences. See Weaver v. Graham, 450 U.S. 24, 31-32 (1981). Thus, good-time credits are an integral part of the sentence, and changing the calculation of good-time changes the effective length of a sentence. See id. at 32; State v. Blanchard, 156 Me. 30, 50-51, 159 A.2d 304, 315 (1960).

Id. at 4.

Department of Corrections at the effective date of the statute,... [thereby shortening (commuting)] the length of [such] existing sentences... . (emphasis supplied)

Id. slip op. at 4 (Me. Feb. 27, 1985). Since the new method of calculating good-time in subsection 3 of section 1254 also purports "to increase the amount of good-time credits available to prisoners already in the custody of the Department of Corrections at the effective date of the statute" it too constitutes an unconstitutional legislative encroachment on the executive's exclusive power of commutation.<sup>4</sup>

In view of the fact that the unconstitutional portion of 17-A M.R.S.A. § 1254(3) (1983) is without legal force, every inmate sentenced prior to the effective date of the Maine Criminal Code is entitled to deductions for good-time calculated pursuant to the good-time provision in effect at the time of sentencing.<sup>5</sup>

Turning second, and finally, to the calculation of "extra" (meritorious) good-time deductions for inmates sentenced prior to the effective date of P.L. 1983, ch. 456, §§ 6 and 7 - up to

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<sup>4</sup> Note that the subsection at issue here would allow for a greater exercise of the commutation power than would the final sentence of 17-A M.R.S.A. § 1253(3) (Supp. 1984) since the former purports to apply to the "entire sentence" while the latter purports to apply only to "the portion... remaining to be served."

<sup>5</sup> As an aside, a single exception does potentially exist to this general rule. In the instance where a given good-time provision in effect at the time of sentencing would, as applied to a given individual, constitute an ex post facto law prohibited by the United States and the Maine Constitutions (U.S. Const., art. I, § 10, ch. 1; Me. Const. art. I, § 11), good-time deductions are controlled by the provisions in effect at the time of the commission of the crime. Weaver v. Graham, 450 U.S. 24 (1981) To trigger this exception the good-time provisions in effect at the time of sentencing must be more onerous than those in effect on the date of the criminal offense.

September 23, 1983 "extra" (meritorious) good-time deductions for sentenced inmates at the Maine State Prison were controlled by 17-A M.R.S.A. § 1253(4)(1983). Subsection 4 of section 1253 provided as follows:

An additional 2 days a month may be deducted in the case of those who are assigned duties outside the institution or who are assigned to work within the institution which is deemed to be of sufficient importance and responsibility to warrant such deduction.<sup>6</sup>

Under this method of calculating extra (meritorious) good-time, a deduction of up to 2 days at the end of each month of incarceration could be earned. The effect of subsection 4 of section 1253 is potentially to reduce the term of imprisonment by about 7% per year or approximately 24 days credit for every 12 months served. Subsection 4 was repealed by P.L. 1983, ch. 456, § 6. At the same time, 17-A M.R.S.A. § 1253(4) and (5) (Supp. 1984) became effective. Subsections 4 and 5 of section 1253 provide:

4. Up to an additional 3 days per month may be deducted in the case of those inmates committed to the Maine State Prison, the Maine Correctional Center or assigned elsewhere by the Department of Corrections, who are assigned work and responsibilities within the institution or program which are deemed to be of sufficient importance to warrant those deductions by the institution head in accordance with policy and guidelines established by the Department of Corrections.

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<sup>6</sup> 17-A M.R.S.A. § 1253(4) was enacted by P.L. 1975, ch. 499, § 1. Its statutory precursor was 34 M.R.S.A. § 705 (Supp. Pamph. 1973), which provided in critical part:

An additional 2 days a month may be deducted from the sentence of those convicts who are assigned duties outside the prison walls or security system, or those convicts within the prison walls who are assigned to work deemed by the Warden of the State Prison to be of sufficient importance and responsibility to warrant such deduction.  
(repealed by P.L. 1975, ch. 499, § 58)

5. In addition to the provisions contained in subsection 4, up to 2 days per month may also be deducted in the case of those inmates assigned to and participating in minimum security community programs administered by the Department of Corrections outside the Maine State Prison or the Maine Correctional Center. These deductions may also apply in the case of those inmates assigned to or participating in minimum security community programs through agencies providing services to the Department of Corrections. These deductions may be authorized for work and responsibilities to include public restitution which are deemed to be of sufficient importance to warrant those deductions by the institution head in accordance with the Department of Corrections policy and guidelines.

Under this new method of calculating extra (meritorious) good-time, a deduction of up to 5 days at the end of each month of incarceration could be earned. The combined effect of subsections 4 and 5 of section 1253 is potentially to reduce the term of imprisonment by about 17% per year or approximately 60 days credit for every 12 months served. The effective date of subsections 4 and 5 was September 23, 1983. The 111th Legislature did not expressly make these subsections applicable to inmates sentenced before that date.

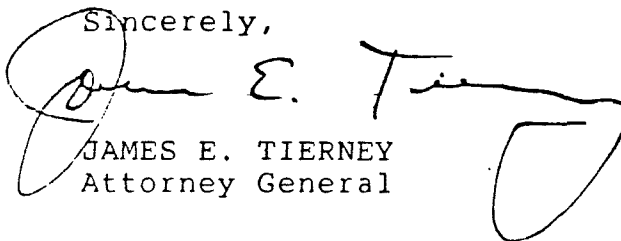
Since 17-A M.R.S.A. § 1253(4) and (5) (Supp. 1984) increases the amount of "extra" (meritorious) good-time credits available, application of these subsections to inmates sentenced prior to September 23, 1983 would be unconstitutional. However, unlike either the first sentence of 17-A M.R.S.A. § 1253(3) (Supp. 1984) or 17-A M.R.S.A. § 1254(3) (1983), neither subsection 4 or 5 of section 1253 (Supp. 1984) expressly purports to apply retrospectively to inmates already sentenced. As a consequence, it is both possible and reasonable to construe such provisions as prospective only, thereby avoiding an unconstitutional interpretation. For those inmates sentenced prior to September 23, 1983, extra (meritorious) good-time deductions is calculated pursuant to



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the extra (meritorious) good-time provision in effect at the time of sentencing.<sup>7</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney", is written over the typed name. The signature is fluid and cursive, with a large loop at the end of the last name.

JAMES E. TIERNEY  
Attorney General

JET/sbr

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<sup>7</sup> As an aside, note that a single exception does potentially exist to this general rule. See again footnote no. 5 at page 5.