

1974 WL 27441 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 27, 1974

*1 William C. Lucius, Esquire
Legal Advisor
South Carolina Department of Corrections
P. O. Box 766
Columbia, South Carolina 29202

Dear Will:

You have requested the opinion of this Office concerning the interpretation of the recent amendment to Section 55-11, amended to add the following language

In every case in computing the time served by a prisoner, full credit against sentence shall be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense. (Emphasis added)

This office has previously issued an opinion concerning this amendment wherein it was stated that the benefit of this act should be afforded to all prisoners who were convicted and sentenced prior to the effective date of the act as well as those sentenced subsequent thereto.

It is my understanding that your question now pertains to a situation where a man, for instance, spent seventy-five (75) days incarcerated awaiting trial and the trial judge after conviction and sentence states that he is not to receive credit for pre-sentence jail time. In my opinion the statement of the judge at the time of sentencing would be ineffective in view of the statutory language. The original statute, after setting forth the general proposition, that, the computation of sentences shall be reckoned from the date the sentence was imposed, states exceptions to that general proposition in which cases the sentences is reckoned from the date service is actually commenced. In my opinion these exceptions apply to the general proposition and not to the matter with which the most recent amendment deals.

The word shall is generally considered to have a mandatory connotation. There are many factors which go to determine whether the word shall is to be given a mandatory or discretionary connotation. When used in remedial legislation directed to a public officer requiring him to perform acts regarding the rights of others and whereby a public benefit or private right accrues from the operation of that act, it is usually given the imperative meaning. See 39 Words and Phrases, 'Shall'. Where the terms of a statute are clear and not ambiguous, a literal meaning should be applied to the statute's terms. [Home Building and Loan Association v. City of Spartanburg, et al.](#), 185 S.C. 312, 194 S.E. 139.

The amendment, in my opinion, states in mandatory terms that, in every case when computing the time served by a prisoner, full credit shall be given for the time served prior to trial and sentencing. The proviso, thereafter, gives only two exceptions to that mandatory provision. It is my opinion that, as a matter of law, every prisoner sentenced in this State is entitled to full credit against the sentence imposed for the time served prior to trial and sentencing. Prior to the enactment of the amendment, a prisoner was not entitled as a matter of right to credit for pre-sentence jail time. [State v. Sanders](#), 251 S.C. 431, 163 S.E.2d 220. It was left entirely to the discretion of the sentencing court. The amendment now removes this from the discretionary power of the sentencing court and places the burden on the administrative officials in whose

custody the inmate is placed. The burden of computing a prisoner's time and the date of his release is the responsibility of the administrative authorities. Pursuant to the previous opinion of this office in May of 1973, to which I have previously referred, there are at least five (5) occasions when the Department of Corrections makes computations of an inmate's record for the purpose of determining his release date or parole eligibility. On any one of those occasions an inmate would be entitled to the benefit of the amendment enacted by the General Assembly as a matter of law.

*2 I hope this answers any questions that you may have and provides sufficient guidance and information. If there is anything further concerning this matter, please do not hesitate to let me know.

With kindest regards,
Yours very truly,

Emmet H. Clair
Assistant Attorney General

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