



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 107

Charles E. Simmons
Chief Legal Counsel
Department of Corrections
900 S.W. Jackson, Suite 400-N
Topeka, Ks 66612

Re: Criminal Procedure--Code; Release Procedures--The
Effect of Good Time Credits on Those Sentenced
Prior to July 1, 1982 Under K.S.A. 21-4618

Synopsis: L. 1988, ch. 115, which allocates good time
credits for the purpose of determining parole
eligibility and conditional release should be
applied retroactively to those sentenced under
K.S.A. 21-4618 prior to July 1, 1982.
Cited herein: K.S.A. 21-4618; K.S.A. 1987 Supp.
22-3717 as amended by L. 1988, ch. 115, §2.

* * *

Dear Mr. Simmons:

As chief legal counsel for the department of corrections you request our opinion concerning the applicability of 1988 House Bill No. 3079, (L. 1988, ch. 115,) to individuals sentenced prior to July 1, 1982. Specifically, you inquire whether new section 2 of the bill which allocates good time credits for the purpose of determining parole eligibility and conditional release applies retroactively to those sentenced under K.S.A. 21-4618 prior to July 1, 1982.

K.S.A. 21-4618 became effective in July, 1976, and provided at that time that individuals sentenced for crimes committed with a firearm were to serve the entire sentence without

entitlement to good time credits to determine parole. In July, 1982, K.S.A. 22-3717 was amended to allow individuals sentenced under K.S.A. 21-4618 to earn good time credits. These credits were awarded only on a prospective basis. Mitchell v. Rayl, 8 Kan. App. 2d 690 (1983).

"The general rule of statutory construction is that a statute will operate prospectively unless its language clearly indicates that the legislature intended that it operate retrospectively." Nitchals v. Williams, 225 Kan. 285, 290 (1979). L. 1988, ch. 115, §2 clearly indicates that the legislature intended for the bill to operate retroactively with regard to all crimes regardless of when they occurred. Section 2 states:

"For the purpose of determining an inmates' eligibility for parole or conditional release, regardless of when the inmate was sentenced or committed the crime for which sentenced, good time credits shall be allocated as follows.
. . . ." (Emphasis added).

Thus, good time credits should be applied retroactively to those sentenced under K.S.A. 21-4618 prior to July 1, 1982.

In summary, it is our opinion that L. 1988, ch. 115, §2 clearly shows the intent of the legislature that good time credits are to be applied retroactively to all crimes. This statute will allow those who were sentenced under K.S.A. 21-4618 prior to July 1, 1982 to use good time credits in order to be eligible for parole prior to serving their entire minimum sentence. Although this appears to be a significant departure from the current practice, the intent of the legislature is clear in the statute that good time credits are now to be applied retroactively to all crimes.

Very truly yours,



Robert T. Stephan
Attorney General of Kansas



Brenda L. Braden
Deputy Attorney General