



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

July 10, 2014

The Honorable Robert L. Bushnell
Judge, Juvenile and Domestic Relations District Court,
City of Martinsville and Counties of Henry and Patrick
Post Office Drawer 751
Municipal Building
55 West Church Street
Martinsville, Virginia 24114

Dear Judge Bushnell:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-205 of the *Code of Virginia*.

Issue Presented

You inquire whether the good conduct credit established in § 53.1-116 of the *Code of Virginia* applies to a prisoner who commits an offense while a juvenile, is charged pursuant to a juvenile petition, and is adjudicated delinquent in Juvenile and Domestic Relations District Court ("juvenile court"), but who is over the age of eighteen at the time of disposition and therefore is sentenced to a term of imprisonment in a local jail pursuant to § 16.1-284 of the *Code of Virginia*.

Response

It is my opinion that a prisoner charged as a juvenile but sentenced under § 16.1-284 is eligible for the good conduct credit established in § 53.1-116 if the offense for which he is being sentenced would be classified as a misdemeanor if committed by an adult. However, if the offense for which he is being sentenced would be classified as a felony if committed by an adult, the good conduct credit established in § 53.1-116 does not apply. It further is my opinion that, in the event the prisoner has received a sentence arising from multiple offenses, one or more of which would be a misdemeanor if committed by an adult, and one or more of which would be a felony if committed by an adult, the good conduct credit applies to the misdemeanor sentence(s), but not to the felony sentence(s). As to good conduct credit for violating a court order or the terms of probation or parole, the underlying offense governs in the same way.

Applicable Law and Discussion

Pursuant to § 16.1-284, when a juvenile court "sentences an adult who has committed, before attaining the age of eighteen, an offense which would be a crime if committed by an adult," the court

“may impose the penalties which are authorized to be imposed on adults for such violation.”¹ The court, however, may not “exceed the punishment for a Class 1 misdemeanor for a single offense or multiple offenses.”² Accordingly, when a criminal defendant is charged in juvenile court for an offense that would have been a crime if committed by an adult,³ and is adjudicated delinquent by the court,⁴ but already has attained the age of eighteen by the time of the dispositional hearing, the juvenile court is limited in terms of the sentence it may impose. Regardless of the number or nature of the charged offenses, the court may impose a total sentence of up to twelve months imprisonment, a fine of not more than \$2500, or both.⁵

The provisions of § 16.1-284 also apply when the juvenile court is sentencing an offender for violation of a court order or a violation of probation or parole, but, at the time of disposition, that offender is “eighteen years of age or older.”⁶ That is, regardless of the nature of the underlying adjudication of delinquency, once the offender reaches the age of eighteen, the juvenile court may impose a jail term of up to twelve months imprisonment.⁷

Your question concerns whether a defendant who is sentenced to a term of imprisonment pursuant to § 16.1-284 is eligible for good conduct credit under § 53.1-116. Good conduct credits “are a statutorily authorized method by which correctional officials may shorten the confinement of eligible prisoners without court approval.”⁸ Pursuant to § 53.1-116,

¹ VA. CODE ANN. § 16.1-284 (2010).

² *Id.*

³ A defendant would not necessarily be charged by petition in the juvenile and domestic relations district court simply because he was a juvenile at the time of the commission of the offense. Specifically, if, at the time of the new offense, that juvenile previously had been “tried and convicted in a circuit court as an adult,” the matter would proceed in all respects as though the defendant were an adult at the time of the commission of the offense. Section 16.1-271 (Supp. 2014). Similarly, if the defendant is charged with committing an offense when he was a juvenile, but the prosecution of that offense was not initiated until after the defendant attained the age of twenty-one, the juvenile court would not have jurisdiction, and the matter would proceed as though the defendant were an adult at the time of the commission of the offense. Section 16.1-242 (2010).

⁴ If the defendant is transferred or certified for trial as an adult, the provisions of § 16.1-284 do not apply automatically. *See* § 16.1-284 (providing for sentencing “[w]hen *the juvenile court* sentences an adult” (emphasis added)); *see also* § 16.1-269.1 (Supp. 2014) (providing for the transfer or certification of a juvenile for trial in circuit court). When a defendant who was a juvenile at the time of the charged offense is tried in the circuit court, the circuit court utilizes a separate statutory provision to fashion an appropriate sentence for the offender. *See* § 16.1-272 (2010). Nonetheless, if the juvenile ultimately is convicted of a misdemeanor in circuit court, the circuit court “*shall* deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.” Section 16.1-272(A)(3) (emphasis added). Thus, if a juvenile is transferred to or certified for trial in circuit court, but is convicted of a misdemeanor rather than a felony, and if that defendant already has attained the age of eighteen by the date of sentencing, the circuit court, too, would be confined by the provisions of § 16.1-284 and could impose an aggregate sentence of up to twelve months imprisonment and/or a fine of up to \$2,500. *See* § 16.1-284; *see also* VA. CODE ANN. § 18.2-11(a) (2014).

⁵ Section 16.1-284; *see also* § 18.2-11(a) (establishing punishment for a Class 1 misdemeanor).

⁶ Section 16.1-291(E) (2010).

⁷ *See id.*; *see also* 2005 Op. Va. Att’y Gen. 71 (opining that a probation violation arising from a juvenile adjudication properly would be heard in juvenile court even though the defendant was now over the age of twenty-one, reasoning that a probation violation is simply a continuation of the earlier criminal proceedings).

⁸ 1992 Op. Va. Att’y Gen. 72; *see also* 2004 Op. Va. Att’y Gen. 173, 173 (“Section 53.1-116(A) embodies the legislative intent that prisoners sentenced to 12 months or less in jail for misdemeanors shall earn good conduct credits to reduce the length of their imprisonment.”).

Unless he is serving a mandatory minimum sentence of confinement, each prisoner sentenced to 12 months or less for a misdemeanor or any combination of misdemeanors shall earn good conduct credit at the rate of one day for each one day served, including all days served while confined in jail prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail.^{9]}

The statute at issue here specifically permits a sentence reduction for “each prisoner” being held in a local jail who is serving a sentence of “12 months or less for a misdemeanor or any combination of misdemeanors.”¹⁰ According to the plain language of the statute,¹¹ in order to qualify for good conduct credit under § 53.1-116, then, the detained individual must be: (1) a “prisoner” being held in a local jail, and (2) serving a misdemeanor sentence of twelve months or less. The second requirement of the statute - serving a misdemeanor sentence - is the governing principle for answering your inquiry.

Section 53.1-116 draws no distinction between prisoners who were convicted in general district court, those who were convicted in circuit court, and those who were convicted in juvenile and domestic relations district court, nor does it differentiate between prisoners based on their age at the time of incarceration or at the time of the commission of the offense. Further, no distinction is made regarding whether that individual was charged by petition, warrant, complaint, or indictment. Rather, the statute plainly states, “each prisoner.”¹² Because the wording of § 53.1-116 unambiguously encompasses any prisoner who is confined at a local jail,¹³ I conclude that an inmate who was a juvenile at the time of the commission of the offense but is sentenced to a jail term under § 16.1-284 qualifies as a “prisoner” within the meaning of § 53.1-116.¹⁴

Moreover, the General Assembly clearly knows how to express its intent when it comes to permitting sentence-reducing credits. For example, the legislature specifically has provided that a juvenile who is convicted of a felony as an adult and, in addition to imposition of an adult sentence, is committed to the Department of Juvenile Justice as a serious offender, is eligible to earn sentence credits for the portion of his sentence that is served with the Department of Juvenile Justice;¹⁵ while, by contrast, a juvenile who is indeterminately committed to the Department of Corrections as a youthful offender is not eligible for good conduct credits and other sentence-reducing measures.¹⁶ In addition, when the legislature has intended for good conduct credit to be unavailable to a prisoner serving a particular type of

⁹ VA. CODE ANN. § 53.1-116(A) (2013).

¹⁰ Section 53.1-116(A).

¹¹ “A principal rule of statutory interpretation is that courts will give statutory language its plain meaning.” *Davenport v. Little-Bowser*, 269 Va. 546, 555, 611 S.E.2d 366, 371 (2005) (citing *Jackson v. Fidelity & Deposit Co.*, 269 Va. 303, 313, 608 S.E.2d 901, 904 (2005)).

¹² *Id.* (emphasis added).

¹³ “When the language of a statute is unambiguous, we are bound by the plain meaning of that language.” *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Kozmina v. Commonwealth*, 281 Va. 347, 349, 706 S.E.2d 860, 862 (2011)) (further citation and internal quotation marks omitted).

¹⁴ A previous Opinion of this Office lends support to this interpretation: in applying § 53.1-116 to prisoners serving their sentences on the weekends, we concluded that such prisoners are entitled to good conduct credit, because “the language of the statute applies equally to *all* jail prisoners.” 1982-83 Op. Va. Att’y Gen. 293 (emphasis added).

¹⁵ Section 53.1-202.2(B) (2013).

¹⁶ Section 53.1-67 (2013).

sentence, it expressly has said so.¹⁷ Here, the General Assembly did not include a provision in § 16.1-284 indicating that good conduct credits would be unavailable to prisoners sentenced under that statutory provision. I therefore conclude that an adult sentenced to a term of imprisonment under § 16.1-284 will qualify as a “prisoner” within the meaning of this statute as long as the other express terms of the legislative mandate are fulfilled.¹⁸

Turning to the second qualification, § 53.1-116 provides that good conduct credit is available only for those prisoners who are serving a misdemeanor sentence of twelve months or less.¹⁹ Consequently, under the express terms of the statute, if the prisoner is serving a felony sentence, the misdemeanor good conduct credit is not available.²⁰

Here, § 16.1-284 provides that, when a juvenile court sentences an offender who was a juvenile at the time of the commission of the offense but has since attained the age of eighteen, that sentence shall not “exceed the punishment for a Class 1 misdemeanor for a single offense or multiple offenses.”²¹ This statutory provision does not automatically transform the offense charged in the juvenile petition into a misdemeanor. It affects the sentence only, not the nature of the charge. Where the General Assembly specifically has intended for a particular offense to be deemed a misdemeanor or a felony, it has provided statutory language to that effect.²² Section 16.1-284 does not provide that the offender will be, upon sentencing, “guilty of a Class 1 misdemeanor;” rather, it simply sets a statutory maximum punishment for the charged offense if the juvenile offender is an adult at the time of sentencing.

As a result, when a prisoner is sentenced under § 16.1-284, the good conduct credit established by § 53.1-116 applies if that sentence arose from an adjudication of delinquency for a crime that would have been a misdemeanor if committed by an adult. Accordingly, when deciding whether good conduct credit should be available for a prisoner sentenced under § 16.1-284, the sheriff or jail superintendent responsible for determining the length of a jail inmate’s term of confinement must ascertain whether the

¹⁷ See *id.*; see also § 53.1-203 (Supp. 2014) (providing that a prisoner serving a sentence for escape will not receive any form of sentence-reducing credit for that sentence); see also 1992 Op. Va. Att’y Gen. 72 (“[W]hen the General Assembly has intended conviction under a penal statute to prohibit parole or good conduct credits, it expressly has said so.”).

¹⁸ See *Osman v. Osman*, 285 Va. 384, 389, 737 S.E.2d 876, 878-79 (2013) (“When the language of a statute is unambiguous, we are bound by the plain meaning of that language.” (quoting *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007))); see also 1982-83 Op. Va. Att’y Gen. 320, 320-21 (discussing the predecessor statute to current § 16.1-284 and opining that, “[w]hen a juvenile . . . attains the age of 18 years, he may be confined in jail in the same manner as other adult prisoners”).

¹⁹ Section 53.1-116(A).

²⁰ See *id.* (“[A]ny prisoner committed to jail upon a felony offense . . . shall not earn good conduct credit . . . in excess of that permissible under Article 4 (§ 53.1-202.2 et seq.) of Chapter 6 of this title.”). Moreover, that sentence-reducing measures for felony charges are contemplated elsewhere in the Code further evinces that an adjudication of delinquency for a crime that would have been a felony if committed by an adult does not fall within the ambit of this statute. Prisoners accrue earned sentence credits for felony offences pursuant to the provisions of Title 53.1, Chapter 6, Article 4 of the *Code of Virginia*. See §§ 53.1-202.2 through 53.1-202.4 (2013).

²¹ Section 16.1-284.

²² Title 18.2 of the *Code of Virginia* is replete with statutes designating certain offenses as felonies or misdemeanors by utilizing the language “shall be guilty of.” See, e.g., §§ 18.2-19 (2014) (accessory after the fact in a felony offense “shall be guilty of a Class 1 misdemeanor”); 18.2-22 (2014) (conspiracy to commit a capital offense “shall be guilty of a Class 3 felony,” and conspiracy to commit a non-capital offense “shall be guilty of a Class 5 felony”).

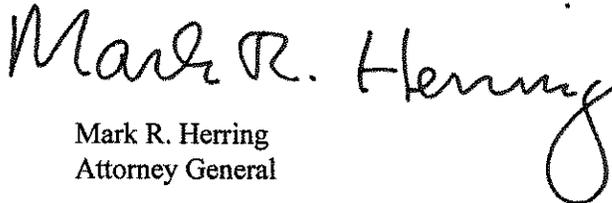
prisoner's sentence resulted from a misdemeanor or a felony charge. If the prisoner's sentence is predicated on a mixture of misdemeanor and felony adjudications, good conduct credit should be available only for the misdemeanor portion of that sentence. If the prisoner's sentence under § 16.1-284 is predicated on a finding, under § 16.1-291(E), that the prisoner is in violation of his probation, the sheriff or jail superintendent should look to the nature of the underlying charge to ascertain whether the inmate is serving time for a felony probation violation or a misdemeanor probation violation, and award good conduct credit only if the underlying charge is in the nature of a misdemeanor.²³

Conclusion

Accordingly, it is my opinion that, a prisoner charged as a juvenile but sentenced under § 16.1-284 is eligible for the good conduct credit established in § 53.1-116 if the offense for which he is being sentenced would be classified as a misdemeanor if committed by an adult. If the offense for which he is being sentenced would be classified as a felony if committed by an adult, the good conduct credit established in § 53.1-116 would not apply. If the prisoner has received a sentence arising from multiple offenses, one or more of which would be a misdemeanor if committed by an adult, and one or more of which would be felony if committed by an adult, the good conduct credit would apply to the misdemeanor sentence(s), but not the felony sentence(s). And if the prisoner is sentenced for violating a court order or the terms or probation or parole, the nature of the underlying conviction (felony or misdemeanor) governs eligibility for good conduct credit in the same way.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

²³ Cf. 2004 Op. Va. Att'y Gen. at 173 (opining that, when deciding whether good conduct credit is available to an inmate who is serving a sentence for contempt, the sheriff must first "ascertain whether the individual is being detained pursuant to a civil or a criminal contempt finding and award only those prisoners serving criminal contempt sentences the good conduct credits prescribed in § 53.1-116(A)").