

OPINION NO. 66-145**Syllabus:**

Under the provisions of section 2967.191 of the Revised Code the adult parole authority may reduce the minimum sentence of a prisoner by only the number of days prisoner was confined at the county jail or workhouse after a verdict or plea of guilty and before commitment, and may reduce the minimum sentence of a prisoner being processed as provided in section 2947.25 of the Revised Code by only the number of days the prisoner was confined at a state facility for a pre-sentence examination after a verdict or plea of guilty and before commitment.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William B. Saxbe, Attorney General, August 29, 1966

Your request for my opinion is as follows:

"A question has arisen in Lucas County as to the correct application of the provisions of Ohio Revised Code Section 2967.191, especially to prisoners who are sentenced to the Penitentiary without a prior referral for an examination under Ohio Revised Code Section 2947.25. Our problem can be solved by your

opinion as to the application of the section in the following hypothetical situations:

"1. A defendant is confined in the county jail awaiting trial, for thirty days. He then pleads guilty and his case is referred to the county probation department for a report and recommendation. Thirty days thereafter, the defendant having been confined in the county jail for a total of sixty days, he is sentenced to the Ohio Penitentiary.

"2. A defendant is confined in the county jail awaiting trial for thirty days then pleads guilty. He is then referred to three local psychiatrists for an examination under the provisions of Ohio Revised Code Section 2947.25. Sixty days thereafter, the defendant having been confined in the county jail a total of ninety days, he is sentenced to the Ohio Penitentiary.

"In each of the above cases may the Court recommend, for purposes of reducing the minimum sentence, consideration of all or any portion of the time of confinement in the county jail?"

Section 2967.191 of the Revised Code provides:

"The adult parole authority upon proper certification by the trial judge of time served, in the journal entry of sentence and upon recommendation of the trial judge may reduce the minimum sentence of a prisoner by the number of days the prisoner was confined at the county jail or workhouse or confined at a state facility for a pre-sentence examination as provided in section 2947.25 of the Revised Code after a verdict or plea of guilty and before commitment."

The concept involved in the foregoing provision is quite new and consequently there have neither been interpretations of this legislation by the courts of Ohio nor does there appear to be comparative legislation or consequent interpretations thereof in other states.

The questions posed, of course, resolve themselves into whether the phrase "* * * after a verdict or plea of guilty and before commitment" applies to both of the identified situations in which the trial judge may recommend a reduction in the minimum sentence, whether it applies only to a confinement for a pre-sentence examination or whether it is merely descriptive surplusage which can be ignored.

With respect to whether the phrase can be ignored, we are confronted with the maxim "ut res magis valeat quam pereat" which requires not merely that a statute should be given effect as a whole, but that effect should be given to each of its express provisions. The court commented in State ex rel Myers v. Board of Education, 95 Ohio St. 367 (372):

"There are some well-settled rules of con-

struction which we think must be applied to the proviso in question, and which control. It must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative."

Again in Rockfield v. Bank, 77 Ohio St. 311 (326) it was said:

"* * * Had these words been left out of the section the construction claimed would not seem an unnatural one. But we are required, by the inexorable rule of construction, to give them some signification, some meaning consistent with a rational purpose in placing them in the statute. The law makers were making law. They cannot be presumed to have been simply dealing with legal terms in a loose, popular sense. * * *"

See also discussion and cases in 50 Am. Jur. Statutes, Section 358, p. 361.

On the basis of the foregoing we cannot ignore the phrase under discussion.

The question of whether the section involved should be considered to be in the conjunctive or disjunctive is disposed of by a consideration of the bill which was introduced and the bill which was enacted as amended. S. B. No. 133 as introduced provided:

A BILL

To enact section 2967.191 of the Revised Code relative to control by adult parole authority over minimum sentence.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. That section 2967.191 of the Revised Code be enacted to read as follows:

Section 2967.191. The adult parole authority upon recommendation of the trial judge may further reduce the minimum sentence of a prisoner by the number of days the prisoner was confined at the county jail or workhouse after a verdict or plea of guilty and before commitment.

It is obvious that the inserted phraseology regarding proceedings under Section 2947.25 of the Revised Code was merely to cover another situation to which the same ground

rules should apply. In addition, if the section were to be interpreted in the disjunctive it would deprive individuals being processed under Section 2947.25, Revised Code, of benefits granted for county jail time prior to conviction and allow such time to individuals who were not so processed. This would cast grave doubts on the constitutionality of the section.

Applying the above to your hypothetical situations, the first defendant, upon proper certification and recommendation by the trial judge would upon approval by the adult parole authority have his minimum sentence reduced by the thirty days during which he was awaiting probation investigation after his plea. Likewise, the second defendant would have his minimum sentence reduced by sixty days.

It is, therefore, my opinion and you are hereby advised that under the provisions of Section 2967.191 of the Revised Code the adult parole authority may reduce the minimum sentence of a prisoner by only the number of days prisoner was confined at the county jail or workhouse after a verdict or plea of guilty and before commitment, and may reduce the minimum sentence of a prisoner being processed as provided in Section 2947.25 of the Revised Code by only the number of days the prisoner was confined at a state facility for a pre-sentence examination after a verdict or plea of guilty and before commitment.