



# COMMONWEALTH of VIRGINIA

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July 20, 2012

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The Honorable Harvey L. Bryant  
Commonwealth's Attorney, City of Virginia Beach  
2425 Nimmo Parkway  
Virginia Beach, Virginia 23456-9050

Dear Mr. Bryant:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether, pursuant to § 53.1-131.1, a person convicted of a felony and sentenced to confinement in jail may serve this time on the weekends or nonconsecutive days.

## Response

It is my opinion that a trial court may not order a person convicted of a felony to serve any confinement in jail on weekends or nonconsecutive days.

## Applicable Law and Discussion

Section 53.1-131.1 provides, in relevant part:

Any court having jurisdiction for the trial of a person charged with a misdemeanor or traffic offense or charged with any offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and sentenced to confinement in jail, impose the time to be served on weekends or nonconsecutive days to permit the convicted defendant to retain gainful employment.

In construing § 53.1-131.1, the primary objective is "to ascertain and give effect to legislative intent," as expressed by the language used in the statute.<sup>1</sup> You relate that some construe the statute to mean that a court may impose on felony convictions a sentence to be served on weekends or nonconsecutive days provided the court has jurisdiction over misdemeanor and traffic cases. The plain language,<sup>2</sup> however, limits the court's authority to impose such a sentence only to convictions for misdemeanors, traffic offenses and violations of Chapter 5 Title 20.

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<sup>1</sup> Commonwealth v. Amerson, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011).

<sup>2</sup> "When the language of a statute is unambiguous, [courts] are bound by the plain meaning of that language." Ford Motor Co. v. Gordon, 281 Va. 543, 549, 708 S.E.2d 846, 850 (2011).

The dispositive portion of the statute is the phrase modifying “court”: the court must be one “having jurisdiction for the trial of a person charged with a misdemeanor or traffic offense or charged with any offense under Chapter 5 (§ 20-61 et seq.) of Title 20[.]” Note that the General Assembly did not grant the authority to a court having jurisdiction over cases involving such charges generally. Rather, a court must have jurisdiction for “*the* trial of a person” so charged who is thereafter convicted. As the Court of Appeals of Virginia has explained:

The word “the” is used grammatically in the statute as a definite article -- a word that, when used before a noun, specifies or particularizes the meaning of the noun that follows, as opposed to the indefinite article “a.” See American Bus Ass’n v. Slater, 231 F.3d 1, 4-5, 343 U.S. App. D.C. 367 (D.C. Cir. 2000) (explaining that “[i]t is a rule of law well established that the definite article ‘the’ particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of ‘a’ or ‘an.’” (citing Black’s Law Dictionary 1477 (6th ed. 1990))).<sup>[3]</sup>

The application of § 53.1-131.1, therefore, clearly is limited to a court presiding over one of the enumerated offenses.<sup>4</sup>

This interpretation is further bolstered by the provision’s legislative history. Prior to 1999, the relevant portion of the statute read, “[a]ny court having jurisdiction for the trial of a person charged with a *criminal offense* or traffic offense . . .”<sup>5</sup> In 1999, the legislature changed the language, thereby limiting the provision to courts exercising jurisdiction over the specifically enumerated offenses. When the legislature amends a particular statute, it is normally presumed that “a change in law was intended.”<sup>6</sup> Moreover, “it is well established that every act of the legislature should be read so as to give reasonable effect to every word and to promote the ability of the enactment to remedy the mischief at which it is directed.”<sup>7</sup>

Here, the legislature clearly intended to limit the applicability of this statute. By intentionally changing the language from “criminal offense” to “misdemeanor” the intent was to limit the statute to only cases involving misdemeanors, traffic offense and violations of Chapter 5 of Title 20.<sup>8</sup>

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<sup>3</sup> Grafmuller v. Commonwealth, 57 Va. App. 58, 65-66, 698 S.E.2d 276, 280 (2010).

<sup>4</sup> Also applicable here is the principle *expressio unius est exclusio alterius*, the “mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute.”<sup>4</sup> GEICO v. Hall, 260 Va. 349, 355, 533 S.E.2d 615, 617 (2000). As there are no felony crimes mentioned in the section, the legislature did not intend for a trial court to sentence a defendant to weekend time or nonconsecutive days for a felony conviction.

<sup>5</sup> See 1999 Va. Acts ch. 9.

<sup>6</sup> Wisniewski v. Johnson, 223 Va. 141, 144, 286 S.E.2d 223, 225 (1982).

<sup>7</sup> Jones v. Conwell, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984).

<sup>8</sup> Cf. VA. CODE ANN. § 53.1-131.2 (2011), which provides in relevant part:

Any court having jurisdiction for the trial of a person charged with a *criminal offense*, a traffic offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20, or failure to pay child support pursuant to a court order may, if the defendant is convicted and sentenced to confinement in a state or local correctional facility, and if it appears to the court that such an offender is a suitable candidate for home/electronic incarceration, assign the offender to a home/electronic incarceration program as a condition of probation, if such program exists, under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole district office established pursuant to § 53.1-141. (emphasis added).

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**Conclusion**

Accordingly, it is my opinion that § 53.1-131.1 does not authorize a trial court to order a person convicted of a felony to serve any confinement in jail on weekends or nonconsecutive days.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the second name "C" being prominent, followed by "II" in a smaller font.

Kenneth T. Cuccinelli, II  
Attorney General