



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Dana Lawhorne  
Sheriff, City of Alexandria  
2003 Mill Road  
Alexandria, Virginia 22314

Dear Sheriff Lawhorne:

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 a jail sentence being served by an inmate in the Alexandria Detention Center is tolled for a period when that inmate is temporarily transferred to another jurisdiction for a court appearance.

## Response

It is my opinion that the jail sentence is not tolled during the period when the inmate is temporarily transferred to another jurisdiction for a court appearance. As a result, the outside jurisdiction may not prohibit the Alexandria Detention Center from giving the inmate credit for the period of his temporary transfer out of Alexandria.

## Background

You describe a situation in which a defendant is convicted of a misdemeanor and sentenced to serve twelve months in the Alexandria Detention Center. The individual begins his sentence on May 1, 2012. After computing his time, staff at the Alexandria Detention Center establish a projected release date of October 31, 2012. Between June 1, 2012, and June 2, 2012, the inmate is transferred out of Alexandria in order to make a court appearance in an outside jurisdiction. Your concern is whether this period of transportation tolls the individual's sentence in Alexandria, thus requiring an upward adjustment to his projected release date.

## Applicable Law and Discussion

A prior opinion of this Office concluded "that an inmate be given credit for *all* time spent in jail awaiting trial regardless of the jurisdiction so long as there is no duplication."<sup>1</sup> That opinion interprets and applies § 53.1-187, which provides:

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<sup>1</sup> 1995 Op. Va. Att'y Gen. 219, 219 (quoting 1974-75 Op. Va. Att'y Gen. 129, 129).

Any person who is sentenced to a term of confinement in a correctional facility shall have deducted from any such term all time actually spent by the person in a state hospital for examination purposes or treatment prior to trial, in a state or local correctional facility awaiting trial or pending an appeal, or in a juvenile detention facility awaiting trial for an offense for which, upon conviction, such juvenile is sentenced to an adult correctional facility.

In light of the foregoing authority, it is the responsibility of the Alexandria Detention Center to ensure that the inmate receive all appropriate credit for time spent in confinement, including time spent temporarily confined in the facility of an outside jurisdiction while awaiting trial or court appearance. The Alexandria sentence does not toll during the period of transfer and temporary confinement. Should the inmate fail to receive all appropriate credit for such time, the Alexandria Detention Center, as custodian, risks the issuance of a writ of habeas corpus by the appropriate court.<sup>2</sup> For these reasons, the outside jurisdiction may not prohibit the Alexandria Detention Center from giving the inmate credit.

In the event the inmate is convicted and sentenced to serve time in the outside jurisdiction, that jurisdiction may only credit the inmate for his stay from June 1, 2012, to June 2, 2012, if the court of that jurisdiction orders this period of time to be treated as concurrent with that of Alexandria.<sup>3</sup> All sentences in Virginia are presumed to run consecutively unless otherwise "expressly ordered" by the sentencing court.<sup>4</sup>

#### Conclusion

Accordingly, it is my opinion that the sentence served in Alexandria is not tolled during the period in which the inmate is temporarily transferred to another jurisdiction for court, and that the outside jurisdiction may not prohibit Alexandria from giving the inmate credit for the period of his transfer and temporary confinement.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>2</sup> VA. CODE ANN. § 8.01-654 (2007).

<sup>3</sup> See 1995 Op. Va. Att'y Gen. 219 (prohibiting duplication of sentences).

<sup>4</sup> VA. CODE ANN. § 19.2-308 (2008).