TEXAS DEPARTMENT OF CRIMINAL JUSTICE

ID#16564
MBJ

James A. Lynaugh
Executive Director

June 26, 1992

RQ-406

RECEIVED

Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Opinion - Is Defendant entitled to credit for the time confined in the substance abuse treatment facility toward the satisfaction of the term of confinement in the institutional division of the Texas Department of Criminal Justice?

Dear Sir:

When a sentence is imposed under Section 12.422, Penal Code, for an indeterminate term of not more than one year or less than six months (or for a minimum term of 30 days where applicable), in a substance treatment facility, followed by a term of confinement in the institutional division of the Texas Department of Criminal Justice to begin not later than the 30th day after release from the substance abuse facility, and the court suspends the imposition of the term in the institutional division and places the defendant on probation, and the probation is later revoked, is the defendant entitled to credit for the time confined in the substance abuse treatment facility toward the satisfaction of the term of confinement in the institutional division of the Texas Department of Criminal Justice?

Article 42.03, Code of Criminal Procedure, requires, in Section 2(a), that the judge give the defendant credit on his sentence for the time spent in jail from the time of his arrest and confinement until his sentence by the trial court.

Ex Parte Pizzatola, 610 S.W. 2d 486 (Tex. Crim. App. 1980) advises us that credit must be given for confinement in other jurisdictions, if a detainer was lodged.

Article 42.12, Section 18(c) and Section 19(d) provide that a defendant is not entitled to credit on a prison sentence for time spent in a restitution center or other community corrections facility as a condition of probation, if the probation is later revoked.

( ) P. O. Box 99 Huntsville, Texas 77342-0099 • (409) 294-2159 • FAX (409) 294-2123
(✓) P. O. Box 13084 Austin, Texas 78711 • (512) 475-4250 • FAX (512) 475-4251

The sentencing scheme created by Section 12.422, Penal Code, contemplates two separate and distinct periods of confinement. The first period is in a substance abuse treatment facility and the next period does not begin until completion of the first period. The second period of confinement is in the institutional division of the Texas Department of Criminal Justice. The length of confinement in the institutional division is determined at the time of sentencing, but it is limited to a period of not less than 2 years or more than 10 years. If the judge does not probate the prison confinement within 30 days after the release from the substance abuse treatment facility, the punishment is discharged and the issue of credit for time in the substance abuse treatment facility is moot. If the court probates the sentence and later revokes it, however, the issue of credit for that confinement is extremely important.

CCP Art. 42.12 § 6 (e)

Since Article 42.03 Section 2(a), Code of Criminal Procedure, only requires credit for jail confinement and since there are two separate and distinct punishments available under Sec. 12.422, Penal Code, it logically follows that confinement in the substance abuse treatment facility should not be available as credit on the separate and distinct confinement in the institutional division of the Texas Department of Criminal Justice in the event probation is revoked.

Sincerely,

Jackee Cox
General Counsel

"credit... for the time that the Δ has spent in jail in said cause, from the time of his arrest and confinement until his sentence by the trial court."

cc: Selden Hale
Jim Lynaugh

H-240

12.422 comes into effect Oct. 1, 1992
Created by Acts 1991, 72nd Leg 2nd CS, ch. 10, § 19.01.
Cross ref- probation CCP 42.12 § 6(e).