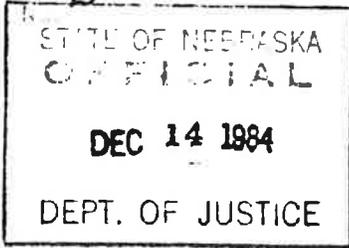


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

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December 13, 1984

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SUBJECT: Sentence Reduction Provisions of Neb.Rev.Stat. §47-502 (Reissue 1984)

REQUESTED BY: Boyd W. Strobe
Holt County Attorney

OPINION BY: Paul L. Douglas, Attorney General
J. Kirk Brown, Assistant Attorney General

QUESTION: Do the sentence reductions provisions of Neb.Rev.Stat. §47-502 (Reissue 1984) apply to persons sentenced to probation?

CONCLUSION: No.

You have inquired whether the sentence reduction provisions of Neb.Rev.Stat. §47-502 (Reissue 1984) are applicable to persons sentenced to probation, but whose conditions of probation include periods of incarceration in a local jail facility. Section 47-502 states in pertinent part: "Any person sentenced to a city or county jail shall have his or her term reduced"

Neb.Rev.Stat. §29-2246 (Reissue 1979) defines the term "probation" as follows:

Probation shall mean a sentence under which a person found guilty of a crime upon verdict or plea, . . . is released by a court subject to conditions imposed by the court and subject to supervision.

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Neb.Rev.Stat. §29-2262 (Reissue 1979) states in pertinent part:

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life.

(2) The court, as a condition of its sentence, may require the offender:

. . .

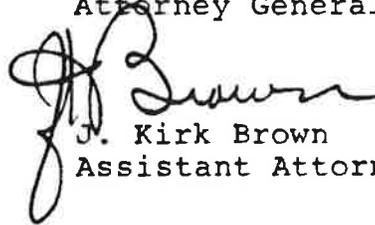
(b) To be confined periodically in the county jail or to return to custody after specified hours, but not to exceed ninety days;

(Emphasis added.)

In our opinion, the sentence reduction provisions of §47-502 are applicable only to persons sentenced to a jail. Under the statutes of this state, probationers are not sentenced to jail but are sentenced to probation. Any incarceration ordered pursuant to §29-2262(2)(b) is a "condition of probation" and not a sentence to a city or county jail as contemplated by §47-502. Therefore, persons whose sentence of probation might include periods of incarceration pursuant to §29-2262(2)(b) are not entitled to the sentence reduction provisions of §47-502.

Yours truly,

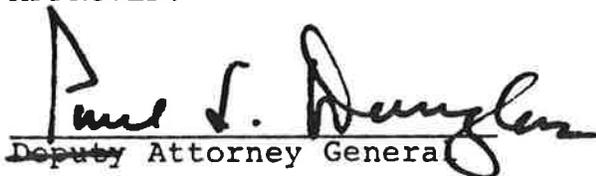
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APPROVED:


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