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**CORRECTIONS — COURTS AND JUDGES — EFFECT OF
CONSECUTIVE SENTENCES ON JUDGE'S AUTHORITY TO COMMIT
DEFENDANT TO LOCAL DETENTION FACILITY**

September 13, 1996

*The Honorable Jerry F. Barnes
State's Attorney for Carroll County*

You have requested our opinion whether a defendant can be sentenced to a local detention facility for consecutive sentences under the following circumstances: no single sentence exceeds eighteen months, but the total time to be served exceeds eighteen months.

In our opinion, the law does not permit a judge to commit a defendant to a local detention facility for more than eighteen months, even if that period of confinement derives from consecutive sentences, rather than a single sentence.

I

Applicable Statutory Provision

Article 27, §705(g) of the Maryland Code provides as follows:

Notwithstanding any other provisions of the Annotated Code of Maryland, a judge of the circuit court for any county or any judge of the District Court may sentence a convicted offender to a local detention center, if the sentence to be then executed is for a period of not more than 18 months and the court imposing the sentence is located within a jurisdiction which is a party to the operation and maintenance of the facility to which the person is sentenced.

Thus, under Article 27, §705(g), a judge may sentence an offender to a local detention center, but only if the sentence to be then executed is for a period of not more than eighteen months. A converse time restriction applies to sentences to the jurisdiction of the Division of Correction: With the exception of one category of offenses, a judge may not sentence an offender to the jurisdiction of the Division if the sentence is twelve months or fewer. Article 27, §690(c).

II

Sentencing Limit

In 68 *Opinions of the Attorney General* 194 (1983), Attorney General Sachs interpreted the predecessor to Article 27, §705(g). At the time, the provision was codified as §705F, applicable to “regional detention centers,” but was otherwise identical.¹

The Attorney General was asked whether “the law permit[ted] a court to sentence an offender to a regional detention center for a period in excess of 18 months — the limit specified in Article 27, § 705F.” Discussing the legislative history, Attorney General Sachs noted that language in question differed from that in the statute when it was originally enacted in 1968:

The language then was as follows: “[A] judge ... may sentence a convicted offender to a Regional Detention Center ... provided the *sentence imposed* is for a period of not more than 18 months.”

This change in § 705F was effected by — and was the express purpose of — Chapter 205, Laws of Maryland 1975. The title of the Act states its purpose, in relevant part, as follows: “F[or] the purpose of repealing the provision that the length of the sentence imposed is a basis for determining that a convicted offender may be sentenced to a regional detention center; [and] providing that the length of the sentence to be executed is a basis for determining that a convicted offender may be sentenced to a regional detention center.”

68 *Opinions of the Attorney General* at 203. In concluding that no law permits a judge to commit an offender to a regional detention center for more than eighteen months, the Attorney General observed “that, by placing an 18-month limit on the sentence ‘to be then executed,’ the General Assembly intended the commitments to regional detention centers be limited to 18 months or less of *actual confinement*.” *Id.* See also *Minovich v. State*, 18 Md. App. 368, 375, 306 A.2d 642 (1973). We are aware of no development in the law since 1983 that would cause us to reach a different conclusion.²

However, the eighteen-month limit on sentence length in §705(g) applies only to the act of sentencing. 68 *Opinions of the Attorney General* at 204. This limit, Attorney General Sachs wrote, is not “a flat prohibition against the incarceration of an offender with a sentence of more than 18 months in a [local] detention center.”

¹The section was renumbered by Chapter 128, Laws of Maryland 1986.

²Several later out-of-state decisions likewise conclude that consecutive sentences are to be added together for purposes of a cap on sentencing to local jails. See *Fleming v. State*, 637 So. 2d 945, 946 (Fla. Dist. Ct. App. 1994); *State v. Morris*, 416 N.W.2d 688, 690 (Iowa 1987); and *State v. Musgrave*, 692 P.2d 534 (N.M. App. 1984). These cases are of limited value in resolving the interpretive question posed here, however, because in each of them a statute expressly addressed the impact of consecutive sentences.

Indeed, § 705E [now §705(f)] provides that State prisoners may be housed in [local] detention centers pursuant to agreement between the Commissioner of Correction and the jurisdictions administering the regional detention center. Nothing in §705 imposes any limit — as to length of sentence or otherwise — on the category of State prisoners that may, by agreement, be housed in [local] detention centers. Similarly, State inmates with sentences of more than 18 months actual confinement may be transferred to regional detention centers pursuant to the provisions of Article 27, §690(e) or §700(c).

Obviously, these provisions do not *require* the jurisdictions operating a regional detention center to accept prisoners with unsuspended sentences of more than 18 months. But neither does Article 27, § 705F *forbid* the incarceration of such prisoners by agreement.

Id. (citation and footnotes omitted). Nothing in what is now §705(g), Attorney General Sachs concluded, forbids a county to accept in its local facility prisoners whose sentences (consecutive or otherwise) exceed eighteen months. *Id.*

IV

Conclusion

In summary, it is our opinion that Article 27, §705(g) does not authorize a judge to commit to a local detention facility a defendant whose consecutive sentences exceed eighteen months.

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