

**Prisoners, Computing Time Confined in Insane Asylum. Insane Asylum, Confinement of State Prisoners in.**

The period of time that a person sentenced to the state prison is confined in the insane asylum is computed as a part of his term in the prison.

Helena, Montana, February 18, 1910.

Hon. Frank Conley,  
Warden, Montana State Prison,  
Deer Lodge, Montana.

Dear Sir:—

I am in receipt of your letter of February 16, in which you state that a certain prisoner was received at the state prison on November 25, 1902, to serve a term of 12 years; that thereafter, upon order of the board of prison commissioners, this prison was transferred to the insane asylum on March 24, 1904, and on May 25, 1904, it having been determined that the prisoner was sane, he was again returned to the state prison.

Upon the above state of facts you request an opinion as to whether the time such prisoner was confined in the insane asylum should be considered as a part of his term of imprisonment, or should be deducted from the time acquired to be served by him before completing his term.

Section 9742 provides for the transferring of prisoners who become insane from the state prison to the insane asylum, and for their return to the state prison when it is ascertained that they are not insane or have been restored to sanity. And the latter part of this section provides that when it is ascertained that such person is not insane that

“The warden must cause such prisoner to be at once

returned to the prison, if his term of imprisonment has not expired."

It is apparent from the phrase "if his term of imprisonment has not expired," that it was the intention of the legislature that the time he was confined in the insane asylum should be considered a part of his term, the same as if he was confined continuously in the state prison. In other words, if he should have been confined in the insane asylum for a period long enough to have completed his 12 year term, then, under said section 9742, it would have been your duty to immediately discharge him upon his return to the state prison.

Very truly yours,

ALBERT J. GALEN,

Attorney General.