

6020

I N   S E N A T E

(PREFILED)

January 4, 2012

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Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to denial of parole to certain inmates who have been convicted of a violent felony offense when the state board of parole finds, by convincing evidence, that the release of such inmate would pose an imminent threat to society; and to amend the correction law, in relation to making the earning of good behavior allowances for violent felony offenders contingent upon their not being an imminent threat to society upon release

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph (b) of subdivision 1 of section 70.40 of the  
2     penal law, as amended by section 127-d-1 of subpart B of part C of chap-  
3     ter 62 of the laws of 2011, is amended to read as follows:  
4     (b) A person who is serving one or more than one indeterminate or  
5     determinate sentence of imprisonment shall, if he or she so requests, be  
6     conditionally released from the institution in which he or she is  
7     confined when the total good behavior time allowed to him or her, pursu-  
8     ant to the provisions of the correction law, is equal to the unserved  
9     portion of his or her term, maximum term or aggregate maximum term;  
10    provided, however, that (i) in no event shall a person serving one or  
11    more indeterminate sentence of imprisonment and one or more determinate  
12    sentence of imprisonment which run concurrently be conditionally  
13    released until serving at least six-sevenths of the determinate term of  
14    imprisonment which has the longest unexpired time to run; and (ii) in no  
15    event shall a person be conditionally released prior to the date on  
16    which such person is first eligible for discretionary parole release;  
17    AND (III) IN THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING  
18    AND BY CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY  
19    SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A VIOLENT FELONY OFFENSE,  
20    AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE, WOULD  
21    POSE AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDI-  
22    TIONALLY RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 TERM, MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREAT-  
2 EST. The conditions of release, including those governing post-release  
3 supervision, shall be such as may be imposed by the state board of  
4 parole in accordance with the provisions of the executive law.

5 Every person so released shall be under the supervision of the state  
6 department of corrections and community supervision for a period equal  
7 to the unserved portion of the term, maximum term, aggregate maximum  
8 term, or period of post-release supervision.

9 S 2. Paragraph (b) of subdivision 1 of section 70.40 of the penal law,  
10 as amended by section 127-e of subpart B of part C of chapter 62 of the  
11 laws of 2011, is amended to read as follows:

12 (b) A person who is serving one or more than one indeterminate  
13 sentence of imprisonment shall, if he or she so requests, be condi-  
14 tionally released from the institution in which he or she is confined  
15 when the total good behavior time allowed to him or her, pursuant to the  
16 provisions of the correction law, is equal to the unserved portion of  
17 his or her maximum or aggregate maximum term; PROVIDED, HOWEVER, THAT IN  
18 THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING AND BY  
19 CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY SENTENCE  
20 OF IMPRISONMENT FOR THE CONVICTION OF A VIOLENT FELONY OFFENSE, AS  
21 DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE, WOULD POSE  
22 AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDITIONALLY  
23 RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER MAXIMUM  
24 TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREATER. The condi-  
25 tions of release, including those governing post-release supervision,  
26 shall be such as may be imposed by the state board of parole in accord-  
27 ance with the provisions of the executive law.

28 Every person so released shall be under the supervision of the depart-  
29 ment of corrections and community supervision for a period equal to the  
30 unserved portion of the maximum, aggregate maximum term, or period of  
31 post-release supervision.

32 S 3. Paragraph (a) of subdivision 1 of section 803 of the correction  
33 law, as amended by section 37 of subpart B of part C of chapter 62 of  
34 the laws of 2011, is amended to read as follows:

35 (a) Every person confined in an institution of the department or a  
36 facility in the department of mental hygiene serving an indeterminate or  
37 determinate sentence of imprisonment, except a person serving a sentence  
38 with a maximum term of life imprisonment, may receive time allowance  
39 against the term or maximum term of his or her sentence imposed by the  
40 court. Such allowances may be granted for good behavior and efficient  
41 and willing performance of duties assigned or progress and achievement  
42 in an assigned treatment program, and may be withheld, forfeited or  
43 canceled in whole or in part for bad behavior, violation of institu-  
44 tional rules or failure to perform properly in the duties or program  
45 assigned. PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO  
46 THIS SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A VIOLENT  
47 FELONY OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL  
48 LAW SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN  
49 WRITING AND BY CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN IMMI-  
50 NENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

51 S 4. Paragraph (a) of subdivision 1 of section 803 of the correction  
52 law, as amended by chapter 126 of the laws of 1987 and as designated by  
53 chapter 738 of the laws of 2004, is amended to read as follows:

54 (a) Every person confined in an institution of the department or a  
55 facility in the department of mental hygiene serving an indeterminate  
56 sentence of imprisonment, except a person serving a sentence with a

1 maximum term of life imprisonment, may receive time allowance against  
2 the maximum term or period of his sentence not to exceed in the aggre-  
3 gate one-third of the term or period imposed by the court. Such allow-  
4 ances may be granted for good behavior and efficient and willing  
5 performance of duties assigned or progress and achievement in an  
6 assigned treatment program, and may be withheld, forfeited or canceled  
7 in whole or in part for bad behavior, violation of institutional rules  
8 or failure to perform properly in the duties or program assigned.  
9 PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO THIS  
10 SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A VIOLENT FELO-  
11 NY OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW  
12 SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRIT-  
13 ING AND BY CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN IMMINENT  
14 THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

15 S 5. This act shall take effect immediately; provided that the amend-  
16 ments to paragraph (b) of subdivision 1 of section 70.40 of the penal  
17 law made by section one of this act shall be subject to the expiration  
18 and reversion of such paragraph pursuant to subdivision d of section 74  
19 of chapter 3 of the laws of 1995, as amended, when upon such date the  
20 provisions of section two of this act shall take effect; and provided,  
21 further that the amendments to section 803 of the correction law, made  
22 by section three of this act, shall be subject to the expiration and  
23 reversion of such section pursuant to subdivision d of section 74 of  
24 chapter 3 of the laws of 1995, as amended, when upon such date the  
25 provisions of section four of this act shall take effect.