

6075--A

Cal. No. 711

I N S E N A T E

(PREFILED)

January 4, 2012

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to denial of parole to certain inmates who have been convicted of a felony sex 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 felony sex 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 CLEAR AND CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERV-
19 ING ANY SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A FELONY SEX

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

LBD13711-07-2

1 OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THIS ARTICLE,
2 WOULD POSE AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE
3 CONDITIONALLY RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR
4 HER TERM, MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE
5 GREATEST. The conditions of release, including those governing post-re-
6 lease supervision, shall be such as may be imposed by the state board of
7 parole in accordance with the provisions of the executive law.

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

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

15 (b) A person who is serving one or more than one indeterminate
16 sentence of imprisonment shall, if he or she so requests, be condi-
17 tionally released from the institution in which he or she is confined
18 when the total good behavior time allowed to him or her, pursuant to the
19 provisions of the correction law, is equal to the unserved portion of
20 his or her maximum or aggregate maximum term; PROVIDED, HOWEVER, THAT IN
21 THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING AND BY CLEAR
22 AND CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY
23 SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A FELONY SEX OFFENSE, AS
24 DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THIS ARTICLE, WOULD POSE
25 AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDITIONALLY
26 RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER MAXIMUM
27 TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREATER. The condi-
28 tions of release, including those governing post-release supervision,
29 shall be such as may be imposed by the state board of parole in accord-
30 ance with the provisions of the executive law.

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

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

38 (a) Every person confined in an institution of the department or a
39 facility in the department of mental hygiene serving an indeterminate or
40 determinate sentence of imprisonment, except a person serving a sentence
41 with a maximum term of life imprisonment, may receive time allowance
42 against the term or maximum term of his or her sentence imposed by the
43 court. Such allowances may be granted for good behavior and efficient
44 and willing performance of duties assigned or progress and achievement
45 in an assigned treatment program, and may be withheld, forfeited or
46 canceled in whole or in part for bad behavior, violation of institu-
47 tional rules or failure to perform properly in the duties or program
48 assigned. PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO
49 THIS SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A FELONY
50 SEX OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THE PENAL LAW
51 SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRIT-
52 ING AND BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN
53 IMMINENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

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

1 (a) Every person confined in an institution of the department or a
2 facility in the department of mental hygiene serving an indeterminate
3 sentence of imprisonment, except a person serving a sentence with a
4 maximum term of life imprisonment, may receive time allowance against
5 the maximum term or period of his sentence not to exceed in the aggregate one-third of the term or period imposed by the court. Such allowances may be granted for good behavior and efficient and willing
6 performance of duties assigned or progress and achievement in an
7 assigned treatment program, and may be withheld, forfeited or canceled
8 in whole or in part for bad behavior, violation of institutional rules
9 or failure to perform properly in the duties or program assigned.
10 PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO THIS
11 SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A FELONY SEX
12 OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THE PENAL LAW
13 SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRIT-
14 ING AND BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN
15 IMMINENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

16 S 5. This act shall take effect immediately and shall apply to criminal offenses committed on or after such date; provided that the amendments to paragraph (b) of subdivision 1 of section 70.40 of the penal law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; and provided, further that the amendments to section 803 of the correction law, made by section three of this act, shall be subject to the expiration and reversion of such section pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section four of this act shall take effect.