S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. CALHOUN, KOLB, ALFANO -- Multi-Sponsored by -- M. of A. CONTE, CROUCH, ERRIGO, FINCH, MILLER, RAIA, TEDISCO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to fixing sentences for persons committing crimes while on parole, conditional release, temporary release, participating in a post release supervision program or a parole supervision sentence

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

Section 1. Subdivision 1 of section 70.30 of the penal law is amended by adding a new paragraph (g) to read as follows:

(G) WHERE A PAROLEE, A CONDITIONAL RELEASEE, TEMPORARY RELEASEE, PERSON PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING A PAROLE SUPERVISION SENTENCE, HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF SUCH PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, POST RELEASE SUPERVISION PROGRAM OR PAROLE SUPERVISION SENTENCE, THE MINIMUM SENTENCE IMPOSED UPON SUCH SUBSEQUENT FELONY SHALL NOT COMMENCE UNTIL THE MAXIMUM TERM OF IMPRISONMENT FOR THE PREVIOUS FELONY HAS BEEN SERVED.

S 2. Paragraph (a) of subdivision 1 of section 70.40 of the penal law, as amended by chapter 261 of the laws of 1987, is amended to read as follows:

(a) [A] EXCEPT FOR A PERSON WHO HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE OR A PERSON PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING A PAROLE SUPERVISION SENTENCE, A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he OR SHE is confined at any time after the expiration of the minimum or the aggregate minimum period of imprisonment of the sentence or sentences or after the successful completion of a shock incarceration program, as defined in article twen-

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

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ty-six-A of the correction law, whichever is sooner. Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of his OR HER sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law.

S 3. Paragraph (b) of subdivision 1 of section 70.40 of the penal law, as amended by chapter 1 of the laws of 1998, is amended to read as follows:

(b) [A] EXCEPT FOR A PERSON WHO HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, A PERSON PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING A PAROLE SUPERVISION SENTENCE, A person who is serving one or more than one indeterminate or determinate sentence of imprisonment shall, if he OR SHE so requests, be conditionally released from the institution in which he OR SHE is confined when the total good behavior time allowed to him OR HER, pursuant to the provisions of the correction law, is equal to the unserved portion of his OR HER term, maximum term or aggregate maximum term; provided, however, that (i) in no event shall a person serving one or more indeterminate sentence of imprisonment and one or more determinate sentence of imprisonment which run concurrently be conditionally released until serving at least six-sevenths of the determinate term of imprisonment which has the longest unexpired time to run and (ii) in no event shall a person be conditionally released prior to the date on which such person is first eligible for discretionary parole release. The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of parole in accordance with the provisions of the executive law.

Every person so released shall be under the supervision of the state board of parole for a period equal to the unserved portion of the term, maximum term, aggregate maximum term, or period of post-release supervision.

S 4. Paragraph (b) of subdivision 1 of section 70.40 of the penal law, as separately amended by chapter 467 of the laws of 1979 and chapter 1 of the laws of 1998 and the closing paragraph as separately amended by chapter 148 of the laws of 1975 and chapter 1 of the laws of 1998, is amended to read as follows:

(b) [A] EXCEPT FOR A PERSON WHO HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, A PERSON PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING A PAROLE SUPERVISION SENTENCE, A person who is serving one or more than one indeterminate sentence of imprisonment shall, if he OR SHE so requests, be conditionally released from the institution in which he OR SHE is confined when the total good behavior time allowed to him OR HER, pursuant to the provisions of the correction law, is equal to the unserved portion of his OR HER maximum or aggregate maximum term. The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of parole in accordance with the provisions of the executive law.

Every person so released shall be under the supervision of the state board of parole for a period equal to the unserved portion of the maximum, aggregate maximum term, or period of post-release supervision.

S 5. Subdivision 1 of section 70.40 of the penal law is amended by adding a new paragraph (d) to read as follows:

(D) ANY PERSON, WHO HAS BEEN CONVICTED OF A FELONY WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, A PERSON PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING

A PAROLE SUPERVISION SENTENCE, SHALL BE RECOMMITTED TO SERVE HIS OR HER MAXIMUM TERM OF IMPRISONMENT IMPOSED BY THE COURT FOR THE INITIAL FELONY, AND SHALL NOT BE ELIGIBLE FOR PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, POST RELEASE SUPERVISION PROGRAM OR A PAROLE SUPERVISION SENTENCE CONSIDERATION UNTIL SAID MAXIMUM TERM PLUS THE MINIMUM TERM IMPOSED UPON THE SUBSEQUENT FELONY SHALL HAVE BEEN SERVED.

S 6. Subdivision 5 of section 70.45 of the penal law is amended by adding a new paragraph (g) to read as follows:

(G) ANY PERSON, WHO HAS BEEN CONVICTED OF A FELONY WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, OR PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING A PAROLE SUPERVISION SENTENCE, SHALL BE RECOMMITTED TO SERVE HIS MAXIMUM TERM OF IMPRISONMENT IMPOSED BY THE COURT FOR THE INITIAL FELONY, AND SHALL NOT BE ELIGIBLE FOR PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, POST RELEASE SUPERVISION PROGRAM OR A PAROLE SUPERVISION SENTENCE CONSIDERATION UNTIL SAID MAXIMUM TERM PLUS THE MINIMUM TERM IMPOSED UPON THE SUBSEQUENT FELONY SHALL HAVE BEEN SERVED.

S 7. Section 410.91 of the criminal procedure law is amended by adding a new subdivision 9 to read as follows:

9. WHERE A PAROLEE, A CONDITIONAL RELEASEE OR TEMPORARY RELEASEE, PERSON PARTICIPATING IN A POST RELEASE SUPERVISION PROGRAM OR A PERSON SERVING A PAROLE SUPERVISION SENTENCE, HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF SUCH PAROLE, CONDITIONAL RELEASE, TEMPORARY RELEASE, POST RELEASE SUPERVISION PROGRAM OR PAROLE SUPERVISION SENTENCE, THE MINIMUM SENTENCE IMPOSED UPON SUCH SUBSEQUENT FELONY SHALL NOT COMMENCE UNTIL THE MAXIMUM TERM OF IMPRISONMENT FOR THE PREVIOUS FELONY HAS BEEN SERVED.

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided however, that section two of this act shall take effect upon the reversion of paragraph (a) of subdivision 1 of section 70.40 of the penal law pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended; and provided further that the amendment to paragraph (b) of subdivision 1 of section 70.40 of the penal law, made by section three 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, when upon such date the provisions of section four of this act shall take effect; and provided further that the amendments to section 410.91 of the criminal procedure law, made by section seven of this act, shall not affect the repeal of such section and shall be deemed repealed therewith.