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

4417

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. TOWNS -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to good behavior allowances

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

Section 1. Section 803 of the correction law is amended by adding a new subdivision 1-a to read as follows:

1-A. EVERY PERSON CONFINED IN AN INSTITUTION OF THE DEPARTMENT OR A FACILITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE SENTENCE OF IMPRISONMENT, FOR AN OFFENSE CONTAINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, MAY RECEIVE TIME ALLOWANCE AGAINST THE MINIMUM TERM OR PERIOD OF HIS OR HER 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 PERFORMANCE OF DUTIES ASSIGNED OR PROGRESS AND ACHIEVEMENT IN AN ASSIGNED TREATMENT PROGRAM, AND MAY BE WITHHELD, FORFEITED OR CANCELED IN WHOLE OR IN PART FOR BAD BEHAVIOR, VIOLATION OF INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE DUTIES OR PROGRAM ASSIGNED.

S 2. Section 803 of the correction law is amended by adding a new subdivision 1-b to read as follows:

1-B. EVERY PERSON CONFINED IN AN INSTITUTION OF THE DEPARTMENT OR A FACILITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE SENTENCE OF IMPRISONMENT, FOR AN OFFENSE CONTAINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, MAY RECEIVE TIME ALLOWANCE AGAINST THE MINIMUM TERM OR PERIOD OF HIS OR HER 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 PERFORMANCE OF DUTIES ASSIGNED OR PROGRESS AND ACHIEVEMENT IN AN ASSIGNED TREATMENT PROGRAM, AND MAY BE WITHHELD,

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

LBD01937-02-9

FORFEITED OR CANCELED IN WHOLE OR IN PART FOR BAD BEHAVIOR, VIOLATION OF INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE DUTIES OR PROGRAM ASSIGNED.

S 3. Subdivision 2 of section 803 of the correction law, as amended by chapter 126 of the laws of 1987, is amended to read as follows:

2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the [maximum term] TERMS of each sentence or, where consecutive sentences are involved, against the aggregate [maximum term] TERMS. In no case, however, shall the total of all allowances granted to any such person under this section exceed one-third of the time he would be required to serve, computed without regard to this section.

S 4. The opening paragraph of subdivision 2 of section 803 of the correction law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

If a person is serving more than one sentence, the authorized allowances may be granted separately against the term or [maximum term] TERMS of each sentence or, where consecutive sentences are involved, against the aggregate [maximum term] TERMS. Such allowances shall be calculated as follows:

S 5. Section 803 of the correction law is amended by adding a new subdivision 7 to read as follows:

7. THE EXPIRATION OF THE MINIMUM PERIOD OF IMPRISONMENT, AS SET FORTH IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.40 OF THE PENAL LAW, PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW, AND SECTION EIGHT HUNDRED FIVE OF THIS ARTICLE, SHALL BE DEEMED TO MEAN THE MINIMUM PERIOD OF IMPRISONMENT REDUCED BY ANY TIME ALLOWANCE GRANTED PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION. THE ELIGIBILITY OF AN INMATE TO RECEIVE ANY TIME ALLOWANCE PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION SHALL NOT OTHERWISE AFFECT SUCH INMATE'S ELIGIBILITY TO PARTICIPATE IN ANY DEPARTMENT PROGRAM.

S 6. Subdivision 7 of section 803 of the correction law, as added by section five of this act, is amended to read as follows:

7. The expiration of the minimum period of imprisonment, as set forth in paragraph (a) of subdivision one of section 70.40 of the penal law, paragraph (a) of subdivision two of section two hundred fifty-nine-i of the executive law, and section eight hundred five of this article, shall be deemed to mean the minimum period of imprisonment reduced by any time allowance granted pursuant to subdivision [one-a] ONE-B of this section. The eligibility of an inmate to receive any time allowance pursuant to subdivision [one-a] ONE-B of this section shall not otherwise affect such inmate's eligibility to participate in any department program.

S 7. Section 805 of the correction law, as amended by section 4 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

S 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the inmate's eligibility to be paroled pursuant to subdivision one of section 70.40 of the penal law, the commissioner shall review the inmate's institutional record to determine whether he OR SHE has complied with the assigned program. If the commissioner determines that the inmate has successfully participated in the program he may issue the inmate a certificate of earned eligibility. Notwithstanding any other provision of law, an inmate who is serving a sentence with a minimum term of not more than eight years and who has been issued a certificate of earned eligibility, shall be

granted parole release at the expiration of his OR HER minimum term, OR WHERE APPLICABLE, AT THE EXPIRATION OF THE MINIMUM TERM REDUCED BY ANY TIME ALLOWANCES, or as authorized by subdivision four of section eight hundred sixty-seven of this chapter unless the board of parole determines that there is a reasonable probability that, if such inmate is released, he OR SHE will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

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 that the amendments to section 803 of the correction law made by sections one and four of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of sections two, three and six of this act shall take effect; provided, further, that the amendments made to section 803 of the correction law by section five of this act shall not be subject to the expiration of such section and shall survive such expiration and reversion; and provided, further, the amendments to section 805 of the correction law made by section seven of this act shall not affect the expiration of such section and shall be deemed to expire therewith.