

S. 2932

A. 6487

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

March 6, 2009

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IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

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

AN ACT to amend the correction law, chapter 738 of the laws of 2004 amending the correction law and other laws relating to controlled substances and indeterminate sentences, and the executive law, in relation to merit time

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

1     Section 1. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdi-  
2 vision 1 of section 803 of the correction law, as added by section 7 of  
3 chapter 738 of the laws of 2004, are amended to read as follows:  
4     (i) Except as provided in subparagraph (ii) of this paragraph, every  
5 person under the custody of the department or confined in a facility in  
6 the department of mental hygiene serving an indeterminate sentence of  
7 imprisonment with a minimum period of one year or more or a determinate  
8 sentence of imprisonment of one year or more [imposed pursuant to  
9 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-  
10 ance.  
11     (ii) Such merit time allowance shall not be available to any person  
12 serving an indeterminate sentence authorized for an A-I felony offense,  
13 other than an A-I felony offense defined in article two hundred twenty  
14 of the penal law, or any sentence imposed for [a violent felony offense  
15 as defined in section 70.02 of the penal law, manslaughter in the second  
16 degree, vehicular manslaughter in the second degree, vehicular  
17 manslaughter in the first degree, criminally negligent homicide,] an  
18 offense defined in article one hundred thirty of the penal law, incest,  
19 [or] an offense defined in article two hundred sixty-three of the penal

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

LBD09964-02-9

1 law, AN ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF  
2 THE PENAL LAW, or aggravated harassment of an employee by an inmate.

3 (iv) Such merit time allowance may be granted when an inmate success-  
4 fully participates in the work and treatment program assigned pursuant  
5 to section eight hundred five of this article and when such inmate  
6 [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER  
7 general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS  
8 DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK  
9 SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER  
10 OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse  
11 treatment [certificate, a vocational trade certificate following at  
12 least six months of vocational programming or performs] PROGRAM, OR  
13 COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE  
14 DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY  
15 VIOLENCE, OR PARENTING; (3) COMPLETES A VOCATIONAL TRAINING PROGRAM OR A  
16 COMPARABLE AND EQUIVALENT TRAINING PROGRAM AS DETERMINED BY THE DEPART-  
17 MENT; (4) PERFORMS SATISFACTORILY FOR AT LEAST SIX MONTHS IN A SKILLED  
18 JOB ASSIGNMENT, INCLUDING BUT NOT LIMITED TO, INMATE PROGRAM AIDE (IPA),  
19 LAW LIBRARY CLERK, MEDICAL/INFIRMARY AIDE, CHILDREN'S CENTER AIDE, AND  
20 FOOD SERVICE WORKER; OR (5) COMPLETES at least four hundred hours of  
21 service as part of a community work crew.

22 Such allowance shall be withheld for any serious disciplinary infrac-  
23 tion or upon a judicial determination that the person, while an inmate,  
24 commenced or continued a civil action, proceeding or claim that was  
25 found to be frivolous as defined in subdivision (c) of section eight  
26 thousand three hundred three-a of the civil practice law and rules, or  
27 an order of a federal court pursuant to rule 11 of the federal rules of  
28 civil procedure imposing sanctions in an action commenced by a person,  
29 while an inmate, against a state agency, officer or employee.

30 S 2. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision  
31 1 of section 803 of the correction law, as added by section 10-a of  
32 chapter 738 of the laws of 2004, are amended to read as follows:

33 (i) Except as provided in subparagraph (ii) of this paragraph, every  
34 person under the custody of the department or confined in a facility in  
35 the department of mental hygiene serving an indeterminate sentence of  
36 imprisonment with a minimum period of one year or more or a determinate  
37 sentence of imprisonment of one year or more [imposed pursuant to  
38 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-  
39 ance.

40 (ii) Such merit time allowance shall not be available to any person  
41 serving an indeterminate sentence authorized for an A-I felony offense,  
42 other than an A-I felony offense defined in article two hundred twenty  
43 of the penal law, or any sentence imposed for [a violent felony offense  
44 as defined in section 70.02 of the penal law, manslaughter in the second  
45 degree, vehicular manslaughter in the second degree, vehicular  
46 manslaughter in the first degree, criminally negligent homicide,] an  
47 offense defined in article one hundred thirty of the penal law, incest,  
48 [or] an offense defined in article two hundred sixty-three of the penal  
49 law, AN ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF  
50 THE PENAL LAW, or aggravated harassment of an employee by an inmate.

51 (iv) Such merit time allowance may be granted when an inmate success-  
52 fully participates in the work and treatment program assigned pursuant  
53 to section eight hundred five of this article and when such inmate  
54 [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER  
55 general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS  
56 DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK

1 SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER  
2 OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse  
3 treatment [certificate, a vocational trade certificate following at  
4 least six months of vocational programming or performs] PROGRAM, OR  
5 COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE  
6 DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY  
7 VIOLENCE, OR PARENTING; (3) COMPLETES A VOCATIONAL TRAINING PROGRAM OR A  
8 COMPARABLE AND EQUIVALENT TRAINING PROGRAM AS DETERMINED BY THE DEPART-  
9 MENT; (4) PERFORMS SATISFACTORILY FOR AT LEAST SIX MONTHS IN A SKILLED  
10 JOB ASSIGNMENT, INCLUDING BUT NOT LIMITED TO, INMATE PROGRAM AIDE (IPA),  
11 LAW LIBRARY CLERK, MEDICAL/INFIRMARY AIDE, CHILDREN'S CENTER AIDE, AND  
12 FOOD SERVICE WORKER; OR (5) COMPLETES at least four hundred hours of  
13 service as part of a community work crew.

14 Such allowance shall be withheld for any serious disciplinary infrac-  
15 tion or upon a judicial determination that the person, while an inmate,  
16 commenced or continued a civil action, proceeding or claim that was  
17 found to be frivolous as defined in subdivision (c) of section eight  
18 thousand three hundred three-a of the civil practice law and rules, or  
19 an order of a federal court pursuant to rule 11 of the federal rules of  
20 civil procedure imposing sanctions in an action commenced by a person,  
21 while an inmate, against a state agency, officer or employee.

22 S 3. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803  
23 of the correction law, as added by section 7 of chapter 738 of the laws  
24 of 2004, is amended to read as follows:

25 (v) The provisions of this paragraph shall apply to persons in custody  
26 serving an indeterminate sentence on the effective date of this para-  
27 graph as well as to persons sentenced to an indeterminate sentence on  
28 and after the effective date of this paragraph and prior to September  
29 first, two thousand five and to persons sentenced to a determinate  
30 sentence [prior to September first, two thousand eleven] for a felony as  
31 defined in article two hundred twenty or two hundred twenty-one of the  
32 penal law.

33 S 4. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803  
34 of the correction law, as added by section 10-a of chapter 738 of the  
35 laws of 2004, is amended to read as follows:

36 (v) The provisions of this paragraph shall apply to persons in custody  
37 serving an indeterminate sentence on the effective date of this para-  
38 graph as well as to persons sentenced to an indeterminate sentence on  
39 and after the effective date of this paragraph and prior to September  
40 first, two thousand five and to persons sentenced to a determinate  
41 sentence [prior to September first, two thousand eleven] for a felony as  
42 defined in article two hundred twenty or two hundred twenty-one of the  
43 penal law.

44 S 5. Paragraph (g) of subdivision 2-a of section 803 of the correction  
45 law, as added by section 9 of chapter 738 of the laws of 2004, is  
46 amended to read as follows:

47 (g) The provisions of this subdivision shall apply to persons in  
48 custody serving an indeterminate sentence on the effective date of this  
49 subdivision as well as to persons sentenced to an indeterminate sentence  
50 on and after the effective date of this subdivision and prior to Septem-  
51 ber first, two thousand five and to persons sentenced to a determinate  
52 sentence [prior to September first, two thousand eleven] for a felony as  
53 defined in article two hundred twenty or two hundred twenty-one of the  
54 penal law.

1 S 6. Paragraph (g) of subdivision 2-a of section 803 of the correction  
2 law, as added by section 11 of chapter 738 of the laws of 2004, is  
3 amended to read as follows:

4 (g) The provisions of this subdivision shall apply to persons in  
5 custody serving an indeterminate sentence on the effective date of this  
6 subdivision as well as to persons sentenced to an indeterminate sentence  
7 on and after the effective date of this subdivision and prior to Septem-  
8 ber first, two thousand five and to persons sentenced to a determinate  
9 sentence [prior to September first, two thousand eleven] for a felony as  
10 defined in article two hundred twenty or two hundred twenty-one of the  
11 penal law.

12 S 7. Subdivision c-1 of section 41 of chapter 738 of the laws of 2004  
13 amending the correction law and other laws relating to controlled  
14 substances and indeterminate sentences is amended to read as follows:

15 (c-1) the provisions of sections seven, eight, nine, ten and ten-a of  
16 this act, and subdivision 2-a of section 803 of the correction law, as  
17 added by section eleven of this act shall apply to persons in custody  
18 serving an indeterminate sentence on the effective date of such  
19 provisions as well as to persons sentenced to an indeterminate sentence  
20 on and after the effective date of such provisions and prior to Septem-  
21 ber 1, 2005 and to persons sentenced to a determinate sentence [prior to  
22 September 1, 2011] for a felony as defined in article 220 or 221 of the  
23 penal law;

24 S 8. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1  
25 of section 632-a of the executive law, as amended by chapter 62 of the  
26 laws of 2001, is amended to read as follows:

27 (C) [an offense for which a merit time allowance may not be received  
28 against the sentence pursuant to paragraph (d) of subdivision one of  
29 section eight hundred three of the correction law] AN A-I FELONY  
30 OFFENSE, OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
31 TWENTY OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR  
32 MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE FIRST  
33 DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN OFFENSE DEFINED IN ARTICLE ONE  
34 HUNDRED THIRTY OF THE PENAL LAW, INCEST, AN OFFENSE DEFINED IN ARTICLE  
35 TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AGGRAVATED HARASSMENT OF AN  
36 EMPLOYEE BY AN INMATE;

37 S 9. This act shall take effect on the ninetieth day after it shall  
38 have become a law and shall apply to: (i) persons in custody serving an  
39 indeterminate or determinate sentence or sentences on the effective  
40 date; (ii) persons sentenced to an indeterminate or determinate sentence  
41 or sentences on or after the effective date; and (iii) persons who have  
42 not completed service of an indeterminate or determinate sentence or  
43 sentences imposed prior to the effective date; provided, however, that  
44 the amendments to section 803 of the correction law made by sections  
45 one, three, and five of this act shall be subject to the expiration and  
46 reversion of such section when upon such date the provisions of sections  
47 two, four and six of this act shall take effect.