

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

S. 2932--B

A. 6487--B

2009-2010 Regular Sessions

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

March 6, 2009

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 -- 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 -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. AUBRY, TOWNS, PRETLOW -- Multi-Sponsored by -- M. of A. GOTTFRIED, HEASTIE -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, the executive law, in relation to merit time, and to repeal section 803-b of the correction law relating to limited credit time allowances

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

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

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1 sentence of imprisonment of one year or more [imposed pursuant to
2 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-
3 ance.

4 (ii) Such merit time allowance shall not be available to any person
5 serving [an indeterminate] A sentence [authorized for an A-I felony
6 offense, other than an A-I felony offense defined in article two hundred
7 twenty of the penal law, or any sentence imposed for a violent felony
8 offense as defined in section 70.02 of the penal law, manslaughter in
9 the second degree, vehicular manslaughter in the second degree, vehicu-
10 lar manslaughter in the first degree, criminally negligent homicide,]
11 IMPOSED FOR MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF
12 THE PENAL LAW, an offense defined in article one hundred thirty of the
13 penal law, incest, [or] an offense defined in article two hundred
14 sixty-three of the penal law, [or] AN ACT OF TERRORISM AS DEFINED IN
15 ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, aggravated harassment of
16 an employee by an inmate, OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY SUCH
17 OFFENSE.

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

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

45 S. 2. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision
46 1 of section 803 of the correction law, as added by section 10-a of
47 chapter 738 of the laws of 2004, are amended to read as follows:

48 (i) Except as provided in subparagraph (ii) of this paragraph, every
49 person under the custody of the department or confined in a facility in
50 the department of mental hygiene serving an indeterminate sentence of
51 imprisonment with a minimum period of one year or more or a determinate
52 sentence of imprisonment of one year or more [imposed pursuant to
53 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-
54 ance.

55 (ii) Such merit time allowance shall not be available to any person
56 serving [an indeterminate] A sentence [authorized for an A-I felony

1 offense, other than an A-I felony offense defined in article two hundred
2 twenty of the penal law, or any sentence imposed for a violent felony
3 offense as defined in section 70.02 of the penal law, manslaughter in
4 the second degree, vehicular manslaughter in the second degree, vehicu-
5 lar manslaughter in the first degree, criminally negligent homicide,]
6 IMPOSED FOR MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF
7 THE PENAL LAW, an offense defined in article one hundred thirty of the
8 penal law, incest, [or] an offense defined in article two hundred
9 sixty-three of the penal law, [or] AN ACT OF TERRORISM AS DEFINED IN
10 ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, aggravated harassment of
11 an employee by an inmate, OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY SUCH
12 OFFENSE.

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

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

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

43 (v) The provisions of this paragraph shall apply to persons in custody
44 serving an indeterminate sentence on the effective date of this para-
45 graph as well as to persons sentenced to an indeterminate sentence on
46 and after the effective date of this paragraph and prior to September
47 first, two thousand five and to persons sentenced to a determinate
48 sentence [prior to September first, two thousand eleven] for a felony as
49 defined in article two hundred twenty or two hundred twenty-one of the
50 penal law.

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

54 (v) The provisions of this paragraph shall apply to persons in custody
55 serving an indeterminate sentence on the effective date of this para-
56 graph as well as to persons sentenced to an indeterminate sentence on

1 and after the effective date of this paragraph and prior to September
2 first, two thousand five and to persons sentenced to a determinate
3 sentence [prior to September first, two thousand eleven] for a felony as
4 defined in article two hundred twenty or two hundred twenty-one of the
5 penal law.

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

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

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

20 (g) The provisions of this subdivision shall apply to persons in
21 custody serving an indeterminate sentence on the effective date of this
22 subdivision as well as to persons sentenced to an indeterminate sentence
23 on and after the effective date of this subdivision and prior to Septem-
24 ber first, two thousand five and to persons sentenced to a determinate
25 sentence [prior to September first, two thousand eleven] for a felony as
26 defined in article two hundred twenty or two hundred twenty-one of the
27 penal law.

28 S 7. Section 803-b of the correction law is REPEALED.

29 S 8. Subdivision (c-1) of section 41 of chapter 738 of the laws of
30 2004 amending the correction law and other laws relating to controlled
31 substances and indeterminate sentences is amended to read as follows:

32 (c-1) the provisions of sections seven, eight, nine, ten and ten-a of
33 this act, and subdivision 2-a of section 803 of the correction law, as
34 added by section eleven of this act shall apply to persons in custody
35 serving an indeterminate sentence on the effective date of such
36 provisions as well as to persons sentenced to an indeterminate sentence
37 on and after the effective date of such provisions and prior to Septem-
38 ber 1, 2005 and to persons sentenced to a determinate sentence [prior to
39 September 1, 2011] for a felony as defined in article 220 or 221 of the
40 penal law;

41 S 9. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1
42 of section 632-a of the executive law, as amended by chapter 62 of the
43 laws of 2001, is amended to read as follows:

44 (C) [an offense for which a merit time allowance may not be received
45 against the sentence pursuant to paragraph (d) of subdivision one of
46 section eight hundred three of the correction law] AN A-I FELONY
47 OFFENSE, OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED
48 TWENTY OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR
49 MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE FIRST
50 DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN OFFENSE DEFINED IN ARTICLE ONE
51 HUNDRED THIRTY OF THE PENAL LAW, INCEST, AN OFFENSE DEFINED IN ARTICLE
52 TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AGGRAVATED HARASSMENT OF AN
53 EMPLOYEE BY AN INMATE;

54 S 10. This act shall take effect on the ninetieth day after it shall
55 have become a law and shall apply to: (i) persons in custody serving an
56 indeterminate or determinate sentence or sentences on the effective

1 date; (ii) persons sentenced to an indeterminate or determinate sentence
2 or sentences on or after the effective date; and (iii) persons who have
3 not completed service of an indeterminate or determinate sentence or
4 sentences imposed prior to the effective date; provided, however, that
5 the amendments to section 803 of the correction law made by sections
6 one, three, and five of this act shall be subject to the expiration and
7 reversion of such section when upon such date the provisions of sections
8 two, four and six of this act shall take effect.