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

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2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to fixing sentences for persons committing crimes while on parole, conditional release or temporary release

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

Section 1. Paragraph (b) of subdivision 1 of section 70.30 of the penal law, as amended by chapter 481 of the laws of 1978, is amended to read as follows:

(b) If the sentences run consecutively, the minimum periods of imprisonment are added to arrive at an aggregate minimum period of imprisonment equal to the sum of all the minimum periods, and the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms, provided, however, that both the aggregate maximum term and the aggregate minimum period of imprisonment shall be subject to the limitations set forth in paragraphs (c) [and], (d) AND (G) of this subdivision, where applicable;

S 2. 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 OR TEMPORARY RELEASEE, HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF SUCH PAROLE, CONDITIONAL RELEASE OR TEMPORARY RELEASE, 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 3. Paragraphs (a) and (b) of subdivision 1 of section 70.40 of the penal law, paragraph (a) as amended by chapter 261 of the laws of 1987, paragraph (b) as separately amended by chapter 467 of the laws of 1979 and chapter 1 of the laws of 1998 and the closing paragraph of paragraph

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

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(b) as separately amended by chapter 148 of the laws of 1975 and chapter 1 of the laws of 1998, are 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, OR TEMPORARY RELEASE, A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he 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 twenty-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 sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law.

(b) [A] EXCEPT FOR A PERSON WHO HAS BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, OR TEMPORARY RELEASE, A person who is serving one or more than one indeterminate sentence of imprisonment shall, if he so requests, be conditionally released from the institution in which he is confined when the total good behavior time allowed to him, pursuant to the provisions of the correction law, is equal to the unserved portion of his 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 4. 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, OR TEMPORARY RELEASE, 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 OR TEMPORARY RELEASE CONSIDERATION UNTIL SAID MAXIMUM TERM PLUS THE MINIMUM TERM IMPOSED UPON THE SUBSEQUENT FELONY SHALL HAVE BEEN SERVED.

S 5. 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 one of this act shall take effect on the same date as the reversion of paragraph (b) of subdivision 1 of section 70.30 of the penal law pursuant to chapter 3 of the laws of 1995, as amended; and provided, further, however, that section three of this act shall take effect on the same date as the reversion of paragraphs (a) and (b) of subdivision 1 of section 70.40 of the penal law pursuant to chapter 3 of the laws of 1995, as amended.