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

975

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

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

AN ACT to amend the correction law and the penal law, in relation to the minimum amount of time served of an indeterminate sentence and repealing certain provisions of the correction law and the executive law relating thereto

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

Section 1. Paragraphs (a), (b) and (c) of subdivision 1 and subdivisions 2 and 5 of section 803 of the correction law, paragraph (a) of subdivision 1 and subdivisions 2 and 5 as amended and paragraphs (b) and (c) of subdivision 1 as added by chapter 3 of the laws of 1995, are amended to read as follows:

(a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate or determinate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the term or maximum term of his OR HER sentence 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.

(b) A person serving an indeterminate sentence of imprisonment may receive time allowance against the maximum term of his OR HER sentence not to exceed [one-third] FIFTEEN PERCENT of the maximum term imposed by the court.

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

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(c) A person serving a determinate sentence of imprisonment may receive time allowance against the term of his OR HER sentence not to exceed one-seventh of the term imposed by the court.

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

(a) A person serving two or more indeterminate sentences which run concurrently may receive time allowance not to exceed [one-third] FIFTEEN PERCENT of the indeterminate sentence which has the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively may receive time allowance not to exceed [one-third] FIFTEEN PERCENT of the aggregate maximum term.

(c) A person serving two or more determinate sentences which run concurrently may receive time allowance not to exceed one-seventh of the determinate sentence which has the longest unexpired time to run.

(d) A person serving two or more determinate sentences which run consecutively may receive time allowance not to exceed one-seventh of the aggregate maximum term.

(e) A person serving one or more indeterminate sentence and one or more determinate sentence which run concurrently may receive time allowance not to exceed [one-third] FIFTEEN PERCENT of the indeterminate sentence which has the longest unexpired term to run or one-seventh of the determinate sentence which has the longest unexpired time to run, whichever allowance is greater.

(f) A person serving one or more indeterminate sentence and one or more determinate sentence which run consecutively may receive time allowance not to exceed the sum of [one-third] FIFTEEN PERCENT of the maximum or aggregate maximum of the indeterminate sentence or sentences and one-seventh of the term or aggregate maximum of the determinate sentence or sentences.

5. Time allowances granted prior to any release on parole or prior to any conditional release shall be forfeited and shall not be restored if the paroled or conditionally released person is returned to an institution under the jurisdiction of the [state] department [of correctional services] for violation of parole, violation of the conditions of release or by reason of a conviction for a crime committed while on parole or conditional release. A person who is so returned may, however, subsequently receive time allowances against the remaining portion of his OR HER term, maximum term or aggregate maximum term pursuant to this section and provided such remaining portion of his OR HER term, maximum term, or aggregate maximum term is more than one year.

S 2. Paragraph (a) of subdivision 1 and subdivisions 2, 2-a and 5 of section 803 of the correction law, as amended by chapter 126 of the laws of 1987, paragraph (a) of subdivision 1 as designated and subdivision 2-a as added by chapter 738 of the laws of 2004, are amended to read as follows:

(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, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the maximum term or period of his OR HER sentence not to exceed in the aggregate [one-third] FIFTEEN PERCENT 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.

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

2-a. If a person is serving more than one sentence, the authorized merit time allowances may be granted against the period or aggregate minimum period of the indeterminate sentence or sentences, or against the term or aggregate term of the determinate sentence or sentences, or where consecutive determinate and indeterminate sentences are involved, against the aggregate minimum period as calculated pursuant to subparagraph (iv) of paragraph (a) of subdivision one of section 70.40 of the penal law. Such allowances shall be calculated as follows:

(a) A person serving two or more indeterminate sentences which run concurrently may receive a merit time allowance not to exceed [one-sixth] FIFTEEN PERCENT of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, or one-third of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law, whichever allowance results in the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively may receive a merit time allowance not to exceed the amount of [one-third] FIFTEEN PERCENT of the minimum or aggregate minimum period of the sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law, plus [one-sixth] FIFTEEN PERCENT of the minimum or aggregate minimum period of the sentences imposed for an offense other than such A-I felony offense.

(c) A person serving two or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run concurrently may receive a merit time allowance not to exceed one-seventh of the term of the determinate sentence which has the longest unexpired time to run.

(d) A person serving two or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run consecutively may receive a merit time allowance not to exceed one-seventh of the aggregate term of such determinate sentences.

(e) A person serving one or more indeterminate sentences and one or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run concurrently may receive a merit time allowance not to exceed [one-sixth] FIFTEEN PERCENT of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, [one-third] FIFTEEN PERCENT of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law[, or one-seventh of the term of the determinate sentence, whichever allowance results in the largest unexpired time to run].

(f) A person serving one or more indeterminate sentences and one or more determinate sentences which run consecutively may receive a merit time allowance not to exceed the sum of [one-sixth] FIFTEEN PERCENT of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one-third of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law and one-seventh of the term or aggregate term of the determinate sentence or sentences.

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

5. Time allowances granted prior to any release on parole or prior to any conditional release shall be forfeited and shall not be restored if the paroled or conditionally released person is returned to an institution under the jurisdiction of the [state] department [of correctional services] for violation of parole, violation of the conditions of release or by reason of a conviction for a crime committed while on parole or conditional release. A person who is so returned may, however, subsequently receive time allowances against the remaining portion of his OR HER maximum or aggregate maximum term or period not to exceed in the aggregate [one-third] FIFTEEN PERCENT of such portion provided such remaining portion of his OR HER maximum or aggregate maximum term or period is more than one year.

S 3. Paragraph (d) of subdivision 1 of section 803 of the correction law is REPEALED.

S 4. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1 of section 632-a of the executive law is REPEALED.

S 5. Subparagraph (i) of paragraph (a) of subdivision 1 of section 70.40 of the penal law, as amended by chapter 435 of the laws of 1997, is amended to read as follows:

(i) 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 the sentence or sentences [or, where applicable, the minimum or aggregate minimum period reduced by the merit time allowance granted pursuant to paragraph (d) of subdivision one of section eight hundred three of the correction law].

S 6. This act shall take effect on the thirtieth day after it shall have become a law, provided that the amendments to paragraphs (a), (b) and (c) of subdivision 1, and subdivisions 2 and 5 of section 803 of the correction law made by section one of this act shall be subject to the expiration and reversion of such section pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; provided further that the amendments to subparagraph (i) of paragraph (a) of subdivision 1 of section 70.40 of the penal law made by section five of this act shall not affect the repeal of such subparagraph and shall be deemed repealed therewith.