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

S. 49 A. 172

2009-2010 Regular Sessions

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

(PREFILED)

January 7, 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

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

AN ACT to amend the correction law, in relation to merit time allowances; and to repeal subdivision 2-b of section 803 of such law relating thereto

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

Section 1. Paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 7 of chapter 738 of the laws of 2004, is amended to read as follows:

(d) (i) [Except as provided in subparagraph (ii) of this paragraph, every] EVERY person, EXCEPT A PERSON SERVING A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE, under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more [imposed pursuant to section 70.70 or 70.71 of the penal law,] may earn a merit time allowance.

(ii) [Such merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest,

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

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or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an inmate.

(iii)] The merit time allowance credit against [the minimum period of the indeterminate sentence shall be one-sixth of the minimum period] AN INDETERMINATE SENTENCE SHALL BE ONE-THIRD OF THE MINIMUM AND MAXIMUM PERIODS, RESPECTIVELY, imposed by the court [except that such credit shall be one-third of the minimum period imposed by the court for an A-I felony offense defined in article two hundred twenty of the penal law]. In the case of such a determinate sentence, in addition to the time allowance credit authorized by paragraph (c) of this subdivision, the merit time allowance credited against the term of the determinate sentence pursuant to this paragraph shall be [one-seventh] ONE-THIRD of the term imposed by the court.

[(iv)] (III) Such merit time allowance may be granted when an inmate successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such inmate [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse treatment [certificate, a vocational trade certificate following at least six months of vocational programming or performs] PROGRAM, OR COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY VIOLENCE, OR PARENTING; (3) PARTICIPATES IN A VOCATIONAL TRAINING PROGRAM AND EARNS A JOB TITLE FROM THE DICTIONARY OF OCCUPATIONAL TITLES PUBLISHED BY THE DEPARTMENT OF LABOR, PARTICIPATES IN A COMPARABLE AND EQUIVALENT VOCATIONAL TRAINING PROGRAM AS DETERMINED BY THE DEPARTMENT AND DEMONSTRATES A LEVEL OF COMPETENCY EQUAL TO A JOB TITLE FROM THE DICTIONARY OF OCCUPATIONAL TITLES PUBLISHED BY THE DEPARTMENT OF LABOR; (4) DEMONSTRATES A DEGREE OF COMPETENCY IN A JOB ASSIGNMENT AS DETERMINED BY THE DEPARTMENT EQUAL TO A JOB TITLE FROM THE DICTIONARY OF OCCUPATIONAL TITLES PUBLISHED BY THE DEPARTMENT OF LABOR; OR (5) COMPLETES at least four hundred hours of service as part of a community work crew.

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

[(v) The provisions of this paragraph shall apply to persons in custody serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an indeterminate sentence on and after the effective date of this paragraph 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.]

S 2. Paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 10-a of chapter 738 of the laws of 2004, is amended to read as follows:

(d) (i) [Except as provided in subparagraph (ii) of this paragraph, every] EVERY person, EXCEPT A PERSON SERVING A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE, under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more [imposed pursuant to section 70.70 or 70.71 of the penal law,] may earn a merit time allowance.

(ii) [Such merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an inmate.

(iii)] The merit time allowance credit against [the minimum period of the indeterminate sentence shall be one-sixth of the minimum period] AN INDETERMINATE SENTENCE SHALL BE ONE-THIRD OF THE MINIMUM AND MAXIMUM PERIODS, RESPECTIVELY, imposed by the court [except that such credit shall be one-third of the minimum period imposed by the court for an A-I felony offense defined in article two hundred twenty of the penal law]. In the case of such a determinate sentence, in addition to the time allowance credit authorized by paragraph (c) of this subdivision, the merit time allowance credited against the term of the determinate sentence pursuant to this paragraph shall be [one-seventh] ONE-THIRD of the term imposed by the court.

[(iv)] (III) Such merit time allowance may be granted when an inmate successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such inmate [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse treatment [certificate, a vocational trade certificate following at least six months of vocational programming or performs] PROGRAM, OR COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY VIOLENCE, OR PARENTING; (3) PARTICIPATES IN A VOCATIONAL TRAINING PROGRAM AND EARNS A JOB TITLE FROM THE DICTIONARY OF OCCUPATIONAL TITLES PUBLISHED BY THE DEPARTMENT OF LABOR, PARTICIPATES IN A COMPARABLE AND EQUIVALENT VOCATIONAL TRAINING PROGRAM AS DETERMINED BY THE DEPARTMENT AND DEMONSTRATES A LEVEL OF COMPETENCY EQUAL TO A JOB TITLE FROM THE DICTIONARY OF OCCUPATIONAL TITLES PUBLISHED BY THE DEPARTMENT OF LABOR; (4) DEMONSTRATES A DEGREE OF COMPETENCY IN A JOB ASSIGNMENT AS DETERMINED BY THE DEPARTMENT EQUAL TO A JOB TITLE FROM THE DICTIONARY OF OCCUPATIONAL TITLES PUBLISHED BY THE DEPARTMENT OF LABOR; OR (5) COMPLETES at least four hundred hours of service as part of a community work crew.

Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an inmate, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight

thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by a person, while an inmate, against a state agency, officer or employee.

[(v) The provisions of this paragraph shall apply to persons in custody serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an indeterminate sentence on and after the effective date of this paragraph 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.]

S 3. Subdivision 2-a of section 803 of the correction law, as added by section 9 of chapter 738 of the laws of 2004, is amended to read as follows:

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] AND MAXIMUM PERIODS 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] AND MAXIMUM PERIODS 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] ONE-THIRD of the minimum [period] AND MAXIMUM PERIODS 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 of the minimum AND MAXIMUM or aggregate minimum [period] AND MAXIMUM PERIODS of the sentences imposed [for an A-I felony offense defined in article two hundred twenty of the penal law, plus one-sixth 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] ONE-THIRD 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] ONE-THIRD 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] ONE-THIRD of the minimum [period] AND MAXIMUM PERIODS 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 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] ONE-THIRD 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] ONE-THIRD of the minimum AND MAXIMUM or aggregate minimum [period] AND MAXIMUM PERIODS 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] ONE-THIRD 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.]

S 4. Subdivision 2-a of section 803 of the correction law, as added by section 11 of chapter 738 of the laws of 2004, is amended to read as follows:

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] AND MAXIMUM PERIODS 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] AND MAXIMUM PERIODS 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] ONE-THIRD of the minimum [period] AND MAXIMUM PERIODS 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 of the minimum AND MAXIMUM or aggregate minimum [period] AND MAXIMUM PERIODS of the sentences imposed [for an A-I felony offense defined in article two hundred twenty of the penal law, plus one-sixth 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] ONE-THIRD 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] ONE-THIRD 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] ONE-THIRD 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 of the minimum [period] AND MAXIMUM PERIODS of the indeterminate sentence OR SENTENCES imposed for an [A-I felony] offense [defined in article two hundred twenty of the penal law,] or [one-seventh] ONE-THIRD 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] ONE-THIRD of the minimum AND MAXIMUM or aggregate minimum [period] AND MAXIMUM PERIODS 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] ONE-THIRD 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.]

S 5. Subdivision 2-b of section 803 of the correction law is REPEALED.

S 6. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to (i) persons in custody serving an indeterminate or determinate sentence or sentences on the effective date; (ii) persons sentenced to an indeterminate or determinate sentence or sentences on or after the effective date; and (iii) persons who have not completed service of an indeterminate or determinate sentence or sentences imposed prior to the effective date; provided that the amendments to paragraph (d) of subdivision 1 and subdivision 2-a of section 803 of the correction law made by sections one and three 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 and four of this act shall take effect.