

4417

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

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

AN ACT to amend the correction law, in relation to good behavior allowances

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

Section 1. Section 803 of the correction law is amended by adding a new subdivision 1-a to read as follows:

1-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, FOR AN OFFENSE CONTAINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, MAY RECEIVE TIME ALLOWANCE AGAINST THE MINIMUM TERM OR PERIOD OF HIS OR HER SENTENCE NOT TO EXCEED IN THE AGGREGATE ONE-THIRD 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.

S 2. Section 803 of the correction law is amended by adding a new subdivision 1-b to read as follows:

1-B. EVERY PERSON CONFINED IN AN INSTITUTION OF THE DEPARTMENT OR A FACILITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE SENTENCE OF IMPRISONMENT, FOR AN OFFENSE CONTAINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, MAY RECEIVE TIME ALLOWANCE AGAINST THE MINIMUM TERM OR PERIOD OF HIS OR HER SENTENCE NOT TO EXCEED IN THE AGGREGATE ONE-THIRD 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,

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

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1 FORFEITED OR CANCELED IN WHOLE OR IN PART FOR BAD BEHAVIOR, VIOLATION OF  
2 INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE DUTIES OR  
3 PROGRAM ASSIGNED.

4 S 3. Subdivision 2 of section 803 of the correction law, as amended by  
5 chapter 126 of the laws of 1987, is amended to read as follows:

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

13 S 4. The opening paragraph of subdivision 2 of section 803 of the  
14 correction law, as amended by chapter 3 of the laws of 1995, is amended  
15 to read as follows:

16 If a person is serving more than one sentence, the authorized allow-  
17 ances may be granted separately against the term or [maximum term] TERMS  
18 of each sentence or, where consecutive sentences are involved, against  
19 the aggregate [maximum term] TERMS. Such allowances shall be calculated  
20 as follows:

21 S 5. Section 803 of the correction law is amended by adding a new  
22 subdivision 7 to read as follows:

23 7. THE EXPIRATION OF THE MINIMUM PERIOD OF IMPRISONMENT, AS SET FORTH  
24 IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.40 OF THE PENAL LAW,  
25 PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED FIFTY-NINE-I OF  
26 THE EXECUTIVE LAW, AND SECTION EIGHT HUNDRED FIVE OF THIS ARTICLE, SHALL  
27 BE DEEMED TO MEAN THE MINIMUM PERIOD OF IMPRISONMENT REDUCED BY ANY TIME  
28 ALLOWANCE GRANTED PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION. THE  
29 ELIGIBILITY OF AN INMATE TO RECEIVE ANY TIME ALLOWANCE PURSUANT TO  
30 SUBDIVISION ONE-A OF THIS SECTION SHALL NOT OTHERWISE AFFECT SUCH  
31 INMATE'S ELIGIBILITY TO PARTICIPATE IN ANY DEPARTMENT PROGRAM.

32 S 6. Subdivision 7 of section 803 of the correction law, as added by  
33 section five of this act, is amended to read as follows:

34 7. The expiration of the minimum period of imprisonment, as set forth  
35 in paragraph (a) of subdivision one of section 70.40 of the penal law,  
36 paragraph (a) of subdivision two of section two hundred fifty-nine-i of  
37 the executive law, and section eight hundred five of this article, shall  
38 be deemed to mean the minimum period of imprisonment reduced by any time  
39 allowance granted pursuant to subdivision [one-a] ONE-B of this section.  
40 The eligibility of an inmate to receive any time allowance pursuant to  
41 subdivision [one-a] ONE-B of this section shall not otherwise affect  
42 such inmate's eligibility to participate in any department program.

43 S 7. Section 805 of the correction law, as amended by section 4 of  
44 part E of chapter 62 of the laws of 2003, is amended to read as follows:

45 S 805. Earned eligibility program. Persons committed to the custody of  
46 the department under an indeterminate or determinate sentence of impri-  
47 sonment shall be assigned a work and treatment program as soon as prac-  
48 ticable. No earlier than two months prior to the inmate's eligibility to  
49 be paroled pursuant to subdivision one of section 70.40 of the penal  
50 law, the commissioner shall review the inmate's institutional record to  
51 determine whether he OR SHE has complied with the assigned program. If  
52 the commissioner determines that the inmate has successfully partic-  
53 ipated in the program he may issue the inmate a certificate of earned  
54 eligibility. Notwithstanding any other provision of law, an inmate who  
55 is serving a sentence with a minimum term of not more than eight years  
56 and who has been issued a certificate of earned eligibility, shall be

1 granted parole release at the expiration of his OR HER minimum term, OR  
2 WHERE APPLICABLE, AT THE EXPIRATION OF THE MINIMUM TERM REDUCED BY ANY  
3 TIME ALLOWANCES, or as authorized by subdivision four of section eight  
4 hundred sixty-seven of this chapter unless the board of parole deter-  
5 mines that there is a reasonable probability that, if such inmate is  
6 released, he OR SHE will not live and remain at liberty without violat-  
7 ing the law and that his release is not compatible with the welfare of  
8 society. Any action by the commissioner pursuant to this section shall  
9 be deemed a judicial function and shall not be reviewable if done in  
10 accordance with law.

11 S 8. This act shall take effect on the first of November next succeed-  
12 ing the date on which it shall have become a law, provided that the  
13 amendments to section 803 of the correction law made by sections one and  
14 four of this act shall be subject to the expiration and reversion of  
15 such section pursuant to section 74 of chapter 3 of the laws of 1995, as  
16 amended, when upon such date the provisions of sections two, three and  
17 six of this act shall take effect; provided, further, that the amend-  
18 ments made to section 803 of the correction law by section five of this  
19 act shall not be subject to the expiration of such section and shall  
20 survive such expiration and reversion; and provided, further, the amend-  
21 ments to section 805 of the correction law made by section seven of this  
22 act shall not affect the expiration of such section and shall be deemed  
23 to expire therewith.