

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. SAMPSON -- 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, in relation to good behavior allowances

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

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

3 1-A. EVERY PERSON CONFINED IN AN INSTITUTION OF THE DEPARTMENT OR A  
4 FACILITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE  
5 SENTENCE OF IMPRISONMENT, FOR AN OFFENSE CONTAINED IN ARTICLE TWO  
6 HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, MAY RECEIVE  
7 TIME ALLOWANCE AGAINST THE MINIMUM TERM OR PERIOD OF HIS OR HER SENTENCE  
8 NOT TO EXCEED IN THE AGGREGATE ONE-THIRD OF THE TERM OR PERIOD IMPOSED  
9 BY THE COURT. SUCH ALLOWANCES MAY BE GRANTED FOR GOOD BEHAVIOR AND EFFI-  
10 CIENT AND WILLING PERFORMANCE OF DUTIES ASSIGNED OR PROGRESS AND  
11 ACHIEVEMENT IN AN ASSIGNED TREATMENT PROGRAM, AND MAY BE WITHHELD,  
12 FORFEITED OR CANCELED IN WHOLE OR IN PART FOR BAD BEHAVIOR, VIOLATION OF  
13 INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE DUTIES OR  
14 PROGRAM ASSIGNED.

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

17 1-B. EVERY PERSON CONFINED IN AN INSTITUTION OF THE DEPARTMENT OR A  
18 FACILITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE  
19 SENTENCE OF IMPRISONMENT, FOR AN OFFENSE CONTAINED IN ARTICLE TWO  
20 HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, MAY RECEIVE  
21 TIME ALLOWANCE AGAINST THE MINIMUM TERM OR PERIOD OF HIS OR HER SENTENCE  
22 NOT TO EXCEED IN THE AGGREGATE ONE-THIRD OF THE TERM OR PERIOD IMPOSED  
23 BY THE COURT. SUCH ALLOWANCES MAY BE GRANTED FOR GOOD BEHAVIOR AND EFFI-

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

1 CIENT AND WILLING PERFORMANCE OF DUTIES ASSIGNED OR PROGRESS AND  
2 ACHIEVEMENT IN AN ASSIGNED TREATMENT PROGRAM, AND MAY BE WITHHELD,  
3 FORFEITED OR CANCELED IN WHOLE OR IN PART FOR BAD BEHAVIOR, VIOLATION OF  
4 INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE DUTIES OR  
5 PROGRAM ASSIGNED.

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

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

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

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

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

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

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

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

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

47 S 805. Earned eligibility program. Persons committed to the custody of  
48 the department under an indeterminate or determinate sentence of impri-  
49 sonment shall be assigned a work and treatment program as soon as prac-  
50 ticable. No earlier than two months prior to the inmate's eligibility to  
51 be paroled pursuant to subdivision one of section 70.40 of the penal  
52 law, the commissioner shall review the inmate's institutional record to  
53 determine whether he OR SHE has complied with the assigned program. If  
54 the commissioner determines that the inmate has successfully partic-  
55 ipated in the program he may issue the inmate a certificate of earned  
56 eligibility. Notwithstanding any other provision of law, an inmate who

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

13 S 8. This act shall take effect on the first of November next succeed-  
14 ing the date on which it shall have become a law, provided that the  
15 amendments to subdivision 2 of section 803 of the correction law made by  
16 sections one and four of this act shall be subject to the expiration and  
17 reversion of such section pursuant to section 74 of chapter 3 of the  
18 laws of 1995, as amended, when upon such date the provisions of sections  
19 two, three and six of this act shall take effect; provided, further,  
20 that the amendments made to section 803 of the correction law by section  
21 five of this act shall not be subject to the expiration of such section  
22 and shall survive such expiration and reversion; and provided, further,  
23 the amendments to section 805 of the correction law made by section  
24 seven of this act shall not affect the expiration of such section and  
25 shall be deemed to expire therewith.