

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:

1 Section 1. Paragraph (d) of subdivision 1 of section 803 of the
2 correction law, as added by section 7 of chapter 738 of the laws of
3 2004, is amended to read as follows:
4 (d) (i) [Except as provided in subparagraph (ii) of this paragraph,
5 every] EVERY person, EXCEPT A PERSON SERVING A SENTENCE OF LIFE IMPRI-
6 SONMENT WITHOUT PAROLE, under the custody of the department or confined
7 in a facility in the department of mental hygiene serving an indetermi-
8 nate sentence of imprisonment with a minimum period of one year or more
9 or a determinate sentence of imprisonment of one year or more [imposed
10 pursuant to section 70.70 or 70.71 of the penal law,] may earn a merit
11 time allowance.
12 (ii) [Such merit time allowance shall not be available to any person
13 serving an indeterminate sentence authorized for an A-I felony offense,
14 other than an A-I felony offense defined in article two hundred twenty
15 of the penal law, or any sentence imposed for a violent felony offense
16 as defined in section 70.02 of the penal law, manslaughter in the second
17 degree, vehicular manslaughter in the second degree, vehicular
18 manslaughter in the first degree, criminally negligent homicide, an
19 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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1 or an offense defined in article two hundred sixty-three of the penal
2 law, or aggravated harassment of an employee by an inmate.

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

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

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

45 [(v)] The provisions of this paragraph shall apply to persons in custo-
46 dy serving an indeterminate sentence on the effective date of this para-
47 graph as well as to persons sentenced to an indeterminate sentence on
48 and after the effective date of this paragraph and prior to September
49 first, two thousand five and to persons sentenced to a determinate
50 sentence prior to September first, two thousand eleven for a felony as
51 defined in article two hundred twenty or two hundred twenty-one of the
52 penal law.]

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

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

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

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

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

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

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

5 [(v) The provisions of this paragraph shall apply to persons in custo-
6 dy serving an indeterminate sentence on the effective date of this para-
7 graph as well as to persons sentenced to an indeterminate sentence on
8 and after the effective date of this paragraph and prior to September
9 first, two thousand five and to persons sentenced to a determinate
10 sentence prior to September first, two thousand eleven for a felony as
11 defined in article two hundred twenty or two hundred twenty-one of the
12 penal law.]

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

16 2-a. If a person is serving more than one sentence, the authorized
17 merit time allowances may be granted against the period or aggregate
18 minimum [period] AND MAXIMUM PERIODS of the indeterminate sentence or
19 sentences, or against the term or aggregate term of the determinate
20 sentence or sentences, or where consecutive determinate and indetermi-
21 nate sentences are involved, against the aggregate minimum [period] AND
22 MAXIMUM PERIODS as calculated pursuant to subparagraph (iv) of paragraph
23 (a) of subdivision one of section 70.40 of the penal law. Such allow-
24 ances shall be calculated as follows:

25 (a) A person serving two or more indeterminate sentences which run
26 concurrently may receive a merit time allowance not to exceed [one-
27 sixth] ONE-THIRD of the minimum [period] AND MAXIMUM PERIODS of the
28 indeterminate sentence [imposed for an offense other than an A-I felony
29 offense defined in article two hundred twenty of the penal law, or one-
30 third of the minimum period of the indeterminate sentence imposed for an
31 A-I felony offense defined in article two hundred twenty of the penal
32 law, whichever allowance results in the longest unexpired time to run].

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

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

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

50 (e) A person serving one or more indeterminate sentences and one or
51 more determinate sentences for an offense defined in article two hundred
52 twenty or two hundred twenty-one of the penal law which run concurrently
53 may receive a merit time allowance not to exceed [one-sixth] ONE-THIRD
54 of the minimum [period] AND MAXIMUM PERIODS of the indeterminate
55 sentence OR SENTENCES imposed for an offense [other than an A-I felony
56 offense defined in article two hundred twenty of the penal law, one-

1 third of the minimum period of the indeterminate sentence imposed for an
2 A-I felony offense defined in article two hundred twenty of the penal
3 law,] or [one-seventh] ONE-THIRD of the term of the determinate
4 sentence, whichever allowance results in the largest unexpired time to
5 run.

6 (f) A person serving one or more indeterminate sentences and one or
7 more determinate sentences which run consecutively may receive a merit
8 time allowance not to exceed the sum of [one-sixth] ONE-THIRD of the
9 minimum AND MAXIMUM or aggregate minimum [period] AND MAXIMUM PERIODS of
10 the indeterminate sentence or sentences imposed for an offense [other
11 than an A-I felony offense defined in article two hundred twenty of the
12 penal law, one-third of the minimum or aggregate minimum period of the
13 indeterminate sentence or sentences imposed for an A-I felony offense
14 defined in article two hundred twenty of the penal law] and [one-sev-
15 enth] ONE-THIRD of the term or aggregate term of the determinate
16 sentence or sentences.

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

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

28 2-a. If a person is serving more than one sentence, the authorized
29 merit time allowances may be granted against the period or aggregate
30 minimum [period] AND MAXIMUM PERIODS of the indeterminate sentence or
31 sentences, or against the term or aggregate term of the determinate
32 sentence or sentences, or where consecutive determinate and indetermi-
33 nate sentences are involved, against the aggregate minimum [period] AND
34 MAXIMUM PERIODS as calculated pursuant to subparagraph (iv) of paragraph
35 (a) of subdivision one of section 70.40 of the penal law. Such allow-
36 ances shall be calculated as follows:

37 (a) A person serving two or more indeterminate sentences which run
38 concurrently may receive a merit time allowance not to exceed [one-
39 sixth] ONE-THIRD of the minimum [period] AND MAXIMUM PERIODS of the
40 indeterminate sentence [imposed for an offense other than an A-I felony
41 offense defined in article two hundred twenty of the penal law, or one-
42 third of the minimum period of the indeterminate sentence imposed for an
43 A-I felony offense defined in article two hundred twenty of the penal
44 law, whichever allowance results in the longest unexpired time to run].

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

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

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

6 (e) A person serving one or more indeterminate sentences and one or
7 more determinate sentences for an offense defined in article two hundred
8 twenty or two hundred twenty-one of the penal law which run concurrently
9 may receive a merit time allowance not to exceed [one-sixth] ONE-THIRD
10 of the minimum period of the indeterminate sentence imposed for an
11 offense other than an A-I felony offense defined in article two hundred
12 twenty of the penal law, one-third of the minimum [period] AND MAXIMUM
13 PERIODS of the indeterminate sentence OR SENTENCES imposed for an [A-I
14 felony] offense [defined in article two hundred twenty of the penal
15 law,] or [one-seventh] ONE-THIRD of the term of the determinate
16 sentence, whichever allowance results in the largest unexpired time to
17 run.

18 (f) A person serving one or more indeterminate sentences and one or
19 more determinate sentences which run consecutively may receive a merit
20 time allowance not to exceed the sum of [one-sixth] ONE-THIRD of the
21 minimum AND MAXIMUM or aggregate minimum [period] AND MAXIMUM PERIODS of
22 the indeterminate sentence or sentences imposed for an offense [other
23 than an A-I felony offense defined in article two hundred twenty of the
24 penal law, one-third of the minimum or aggregate minimum period of the
25 indeterminate sentence or sentences imposed for an A-I felony offense
26 defined in article two hundred twenty of the penal law] and [one-sev-
27 enth] ONE-THIRD of the term or aggregate term of the determinate
28 sentence or sentences.

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

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

38 S 6. This act shall take effect on the ninetieth day after it shall
39 have become a law and shall apply to (i) persons in custody serving an
40 indeterminate or determinate sentence or sentences on the effective
41 date; (ii) persons sentenced to an indeterminate or determinate sentence
42 or sentences on or after the effective date; and (iii) persons who have
43 not completed service of an indeterminate or determinate sentence or
44 sentences imposed prior to the effective date; provided that the amend-
45 ments to paragraph (d) of subdivision 1 and subdivision 2-a of section
46 803 of the correction law made by sections one and three of this act
47 shall be subject to the expiration and reversion of such section pursu-
48 ant to section 74 of chapter 3 of the laws of 1995, as amended, when
49 upon such date the provisions of sections two and four of this act shall
50 take effect.