

S. 5

A. 5

Twentieth Extraordinary Session

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

November 10, 2009

IN SENATE -- Introduced by Sens. VALESKY, SCHNEIDERMAN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Magnarelli, Lentol, Russell, DelMonte, Stirpe, Ramos, Alessi, Hyer-Spencer, Titone, Gordon, Skartados, Reilly) -- (at request of the Governor) -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to consecutive sentences for certain felony offenders and their eligibility for parole and medical parole

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

1 Section 1. Subdivision 2-a of section 70.25 of the penal law, as
2 amended by section 40 of chapter 7 of the laws of 2007, is amended to
3 read as follows:
4 2-a. When an indeterminate or determinate sentence of imprisonment is
5 imposed pursuant to section 70.04, 70.06, 70.07, 70.08, 70.10, subdivi-
6 sion three or four of section 70.70, subdivision three or four of
7 section 70.71 or subdivision five of section 70.80 of this article, OR
8 IS IMPOSED FOR A CLASS A-I FELONY PURSUANT TO SECTION 70.00 OF THIS
9 ARTICLE, and such person is subject to an undischarged indeterminate or
10 determinate sentence of imprisonment imposed prior to the date on which
11 the present crime was committed, the court must impose a sentence to run
12 consecutively with respect to such undischarged sentence.
13 S 2. Subdivision 2-a of section 70.25 of the penal law, as amended by
14 section 41 of chapter 7 of the laws of 2007, is amended to read as
15 follows:
16 2-a. When an indeterminate or determinate sentence of imprisonment is
17 imposed pursuant to section 70.04, 70.06, 70.07, 70.08, 70.10, subdivi-
18 sion three or four of section 70.70, subdivision three or four of

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

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1 section 70.71 or subdivision five of section 70.80 of this article, OR
2 IS IMPOSED FOR A CLASS A-I FELONY PURSUANT TO SECTION 70.00 OF THIS
3 ARTICLE, and such person is subject to an undischarged indeterminate
4 sentence of imprisonment imposed prior to the date on which the present
5 crime was committed, the court must impose a sentence to run consec-
6 utively with respect to such undischarged sentence.

7 S 3. Paragraph (a) of subdivision 1 of section 259-r of the executive
8 law, as amended by section 1 of part J of chapter 56 of the laws of
9 2009, is amended to read as follows:

10 (a) The board shall have the power to release on medical parole any
11 inmate serving an indeterminate or determinate sentence of imprisonment
12 who, pursuant to subdivision two of this section, has been certified to
13 be suffering from a terminal condition, disease or syndrome and to be so
14 debilitated or incapacitated as to create a reasonable probability that
15 he or she is physically or cognitively incapable of presenting any
16 danger to society, provided, however, that no inmate serving a sentence
17 imposed upon a conviction for murder in the first degree or an attempt
18 or conspiracy to commit murder in the first degree shall be eligible for
19 such release, and provided further that no inmate serving a sentence
20 imposed upon a conviction for any of the following offenses shall be
21 eligible for such release unless in the case of an indeterminate
22 sentence he or she has served at least one-half of the minimum period of
23 the sentence and in the case of a determinate sentence he or she has
24 served at least one-half of THE TERM OF his or her DETERMINATE sentence:
25 murder in the second degree, manslaughter in the first degree, any
26 offense defined in article one hundred thirty of the penal law or an
27 attempt to commit any of these offenses. SOLELY FOR THE PURPOSE OF
28 DETERMINING MEDICAL PAROLE ELIGIBILITY PURSUANT TO THIS SECTION, SUCH
29 ONE-HALF OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE AND
30 ONE-HALF OF THE TERM OF THE DETERMINATE SENTENCE SHALL NOT BE CREDITED
31 WITH ANY TIME SERVED UNDER THE JURISDICTION OF THE STATE DEPARTMENT OF
32 CORRECTIONAL SERVICES PRIOR TO THE COMMENCEMENT OF SUCH SENTENCE PURSU-
33 ANT TO THE OPENING PARAGRAPH OF SUBDIVISION ONE OF SECTION 70.30 OF THE
34 PENAL LAW OR SUBDIVISION TWO-A OF SECTION 70.30 OF THE PENAL LAW, EXCEPT
35 TO THE EXTENT AUTHORIZED BY SUBDIVISION THREE OF SECTION 70.30 OF THE
36 PENAL LAW.

37 S 4. Paragraph (a) of subdivision 1 of section 259-r of the executive
38 law, as amended by section 2 of part J of chapter 56 of the laws of
39 2009, is amended to read as follows:

40 (a) The board shall have the power to release on medical parole any
41 inmate serving an indeterminate or determinate sentence of imprisonment
42 who, pursuant to subdivision two of this section, has been certified to
43 be suffering from a terminal condition, disease or syndrome and to be so
44 debilitated or incapacitated as to create a reasonable probability that
45 he or she is physically or cognitively incapable of presenting any
46 danger to society, provided, however, that no inmate serving a sentence
47 imposed upon a conviction for murder in the first degree or an attempt
48 or conspiracy to commit murder in the first degree shall be eligible for
49 such release, and provided further that no inmate serving a sentence
50 imposed upon a conviction for any of the following offenses shall be
51 eligible for such release unless in the case of an indeterminate
52 sentence he or she has served at least one-half of the minimum period of
53 the sentence and in the case of a determinate sentence he or she has
54 served at least one-half of THE TERM OF his or her DETERMINATE sentence:
55 murder in the second degree, manslaughter in the first degree, any
56 offense defined in article one hundred thirty of the penal law or an

1 attempt to commit any of these offenses. SOLELY FOR THE PURPOSE OF
2 DETERMINING MEDICAL PAROLE ELIGIBILITY PURSUANT TO THIS SECTION, SUCH
3 ONE-HALF OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE AND
4 ONE-HALF OF THE TERM OF THE DETERMINATE SENTENCE SHALL NOT BE CREDITED
5 WITH ANY TIME SERVED UNDER THE JURISDICTION OF THE STATE DEPARTMENT OF
6 CORRECTIONAL SERVICES PRIOR TO THE COMMENCEMENT OF SUCH SENTENCE PURSU-
7 ANT TO THE OPENING PARAGRAPH OF SUBDIVISION ONE OF SECTION 70.30 OF THE
8 PENAL LAW OR SUBDIVISION TWO-A OF SECTION 70.30 OF THE PENAL LAW, EXCEPT
9 TO THE EXTENT AUTHORIZED BY SUBDIVISION THREE OF SECTION 70.30 OF THE
10 PENAL LAW.

11 S 5. Paragraph (a) of subdivision 1 of section 259-s of the executive
12 law, as added by section 6 of part J of chapter 56 of the laws of 2009,
13 is amended to read as follows:

14 (a) The board shall have the power to release on medical parole any
15 inmate serving an indeterminate or determinate sentence of imprisonment
16 who, pursuant to subdivision two of this section, has been certified to
17 be suffering from a significant and permanent non-terminal condition,
18 disease or syndrome that has rendered the inmate so physically or cogni-
19 tively debilitated or incapacitated as to create a reasonable probabili-
20 ty that he or she does not present any danger to society, provided,
21 however, that no inmate serving a sentence imposed upon a conviction for
22 murder in the first degree or an attempt or conspiracy to commit murder
23 in the first degree shall be eligible for such release, and provided
24 further that no inmate serving a sentence imposed upon a conviction for
25 any of the following offenses shall be eligible for such release unless
26 in the case of an indeterminate sentence he or she has served at least
27 one-half of the minimum period of the sentence and in the case of a
28 determinate sentence he or she has served at least one-half of THE TERM
29 OF his or her DETERMINATE sentence: murder in the second degree,
30 manslaughter in the first degree, any offense defined in article one
31 hundred thirty of the penal law or an attempt to commit any of these
32 offenses. SOLELY FOR THE PURPOSE OF DETERMINING MEDICAL PAROLE ELIGIBIL-
33 ITY PURSUANT TO THIS SECTION, SUCH ONE-HALF OF THE MINIMUM PERIOD OF THE
34 INDETERMINATE SENTENCE AND ONE-HALF OF THE TERM OF THE DETERMINATE
35 SENTENCE SHALL NOT BE CREDITED WITH ANY TIME SERVED UNDER THE JURISDIC-
36 TION OF THE STATE DEPARTMENT OF CORRECTIONAL SERVICES PRIOR TO THE
37 COMMENCEMENT OF SUCH SENTENCE PURSUANT TO THE OPENING PARAGRAPH OF
38 SUBDIVISION ONE OF SECTION 70.30 OF THE PENAL LAW OR SUBDIVISION TWO-A
39 OF SECTION 70.30 OF THE PENAL LAW, EXCEPT TO THE EXTENT AUTHORIZED BY
40 SUBDIVISION THREE OF SECTION 70.30 OF THE PENAL LAW.

41 S 6. This act shall take effect immediately; provided that:

42 (a) the amendments to subdivision 2-a of section 70.25 of the penal
43 law made by section one of this act shall apply to offenses committed on
44 or after the effective date of this act; and

45 (b) the amendments to subdivision 2-a of section 70.25 of the penal
46 law made by section one of this act shall be subject to the expiration
47 and reversion of such subdivision pursuant to subdivision d of section
48 74 of chapter 3 of the laws of 1995, as amended, when upon such date the
49 provisions of section two of this act shall take effect; and

50 (c) the amendments to paragraph (a) of subdivision 1 of section 259-r
51 of the executive law made by section three of this act shall be subject
52 to the expiration and reversion of such paragraph pursuant to subdivi-
53 sion d of section 74 of chapter 3 of the laws of 1995, as amended, when
54 upon such date the provisions of section four of this act shall take
55 effect.