

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. KRUGER -- 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 and the penal law, in relation to the minimum amount of time served of an indeterminate sentence and repealing certain provisions of the correction law and the executive law relating thereto

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

1 Section 1. Paragraphs (a), (b) and (c) of subdivision 1 and subdivi-
2 sions 2 and 5 of section 803 of the correction law, paragraph (a) of
3 subdivision 1 and subdivisions 2 and 5 as amended and paragraphs (b) and
4 (c) of subdivision 1 as added by chapter 3 of the laws of 1995, are
5 amended to read as follows:

6 (a) Every person confined in an institution of the department or a
7 facility in the department of mental hygiene serving an indeterminate or
8 determinate sentence of imprisonment, except a person serving a sentence
9 with a maximum term of life imprisonment, may receive time allowance
10 against the term or maximum term of his OR HER sentence imposed by the
11 court. Such allowances may be granted for good behavior and efficient
12 and willing performance of duties assigned or progress and achievement
13 in an assigned treatment program, and may be withheld, forfeited or
14 canceled in whole or in part for bad behavior, violation of institu-
15 tional rules or failure to perform properly in the duties or program
16 assigned.

17 (b) A person serving an indeterminate sentence of imprisonment may
18 receive time allowance against the maximum term of his OR HER sentence
19 not to exceed [one-third] FIFTEEN PERCENT of the maximum term imposed by
20 the court.

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

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1 (c) A person serving a determinate sentence of imprisonment may
2 receive time allowance against the term of his OR HER sentence not to
3 exceed one-seventh of the term imposed by the court.

4 2. If a person is serving more than one sentence, the authorized
5 allowances may be granted separately against the term or maximum term of
6 each sentence or, where consecutive sentences are involved, against the
7 aggregate maximum term. Such allowances shall be calculated as follows:

8 (a) A person serving two or more indeterminate sentences which run
9 concurrently may receive time allowance not to exceed [one-third]
10 FIFTEEN PERCENT of the indeterminate sentence which has the longest
11 unexpired time to run.

12 (b) A person serving two or more indeterminate sentences which run
13 consecutively may receive time allowance not to exceed [one-third]
14 FIFTEEN PERCENT of the aggregate maximum term.

15 (c) A person serving two or more determinate sentences which run
16 concurrently may receive time allowance not to exceed one-seventh of the
17 determinate sentence which has the longest unexpired time to run.

18 (d) A person serving two or more determinate sentences which run
19 consecutively may receive time allowance not to exceed one-seventh of
20 the aggregate maximum term.

21 (e) A person serving one or more indeterminate sentence and one or
22 more determinate sentence which run concurrently may receive time allow-
23 ance not to exceed [one-third] FIFTEEN PERCENT of the indeterminate
24 sentence which has the longest unexpired term to run or one-seventh of
25 the determinate sentence which has the longest unexpired time to run,
26 whichever allowance is greater.

27 (f) A person serving one or more indeterminate sentence and one or
28 more determinate sentence which run consecutively may receive time
29 allowance not to exceed the sum of [one-third] FIFTEEN PERCENT of the
30 maximum or aggregate maximum of the indeterminate sentence or sentences
31 and one-seventh of the term or aggregate maximum of the determinate
32 sentence or sentences.

33 5. Time allowances granted prior to any release on parole or prior to
34 any conditional release shall be forfeited and shall not be restored if
35 the paroled or conditionally released person is returned to an institu-
36 tion under the jurisdiction of the [state] department [of correctional
37 services] for violation of parole, violation of the conditions of
38 release or by reason of a conviction for a crime committed while on
39 parole or conditional release. A person who is so returned may, however,
40 subsequently receive time allowances against the remaining portion of
41 his OR HER term, maximum term or aggregate maximum term pursuant to this
42 section and provided such remaining portion of his OR HER term, maximum
43 term, or aggregate maximum term is more than one year.

44 S 2. Paragraph (a) of subdivision 1 and subdivisions 2, 2-a and 5 of
45 section 803 of the correction law, as amended by chapter 126 of the laws
46 of 1987, paragraph (a) of subdivision 1 as designated and subdivision
47 2-a as added by chapter 738 of the laws of 2004, are amended to read as
48 follows:

49 (a) Every person confined in an institution of the department or a
50 facility in the department of mental hygiene serving an indeterminate
51 sentence of imprisonment, except a person serving a sentence with a
52 maximum term of life imprisonment, may receive time allowance against
53 the maximum term or period of his OR HER sentence not to exceed in the
54 aggregate [one-third] FIFTEEN PERCENT of the term or period imposed by
55 the court. Such allowances may be granted for good behavior and effi-
56 cient and willing performance of duties assigned or progress and

1 achievement in an assigned treatment program, and may be withheld,
2 forfeited or canceled in whole or in part for bad behavior, violation of
3 institutional rules or failure to perform properly in the duties or
4 program assigned.

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

12 2-a. If a person is serving more than one sentence, the authorized
13 merit time allowances may be granted against the period or aggregate
14 minimum period of the indeterminate sentence or sentences, or against
15 the term or aggregate term of the determinate sentence or sentences, or
16 where consecutive determinate and indeterminate sentences are involved,
17 against the aggregate minimum period as calculated pursuant to subpara-
18 graph (iv) of paragraph (a) of subdivision one of section 70.40 of the
19 penal law. Such allowances shall be calculated as follows:

20 (a) A person serving two or more indeterminate sentences which run
21 concurrently may receive a merit time allowance not to exceed [one-
22 sixth] FIFTEEN PERCENT of the minimum period of the indeterminate
23 sentence imposed for an offense other than an A-I felony offense defined
24 in article two hundred twenty of the penal law, or one-third of the
25 minimum period of the indeterminate sentence imposed for an A-I felony
26 offense defined in article two hundred twenty of the penal law, whichev-
27 er allowance results in the longest unexpired time to run.

28 (b) A person serving two or more indeterminate sentences which run
29 consecutively may receive a merit time allowance not to exceed the
30 amount of [one-third] FIFTEEN PERCENT of the minimum or aggregate mini-
31 mum period of the sentences imposed for an A-I felony offense defined in
32 article two hundred twenty of the penal law, plus [one-sixth] FIFTEEN
33 PERCENT of the minimum or aggregate minimum period of the sentences
34 imposed for an offense other than such A-I felony offense.

35 (c) A person serving two or more determinate sentences for an offense
36 defined in article two hundred twenty or two hundred twenty-one of the
37 penal law which run concurrently may receive a merit time allowance not
38 to exceed one-seventh of the term of the determinate sentence which has
39 the longest unexpired time to run.

40 (d) 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 consecutively may receive a merit time allowance not
43 to exceed one-seventh of the aggregate term of such determinate
44 sentences.

45 (e) A person serving one or more indeterminate sentences and one or
46 more determinate sentences for an offense defined in article two hundred
47 twenty or two hundred twenty-one of the penal law which run concurrently
48 may receive a merit time allowance not to exceed [one-sixth] FIFTEEN
49 PERCENT of the minimum period of the indeterminate sentence imposed for
50 an offense other than an A-I felony offense defined in article two
51 hundred twenty of the penal law, [one-third] FIFTEEN PERCENT of the
52 minimum period of the indeterminate sentence imposed for an A-I felony
53 offense defined in article two hundred twenty of the penal law[, or
54 one-seventh of the term of the determinate sentence, whichever allowance
55 results in the largest unexpired time to run].

1 (f) A person serving one or more indeterminate sentences and one or
2 more determinate sentences which run consecutively may receive a merit
3 time allowance not to exceed the sum of [one-sixth] FIFTEEN PERCENT of
4 the minimum or aggregate minimum period of the indeterminate sentence or
5 sentences imposed for an offense other than an A-I felony offense
6 defined in article two hundred twenty of the penal law, one-third of the
7 minimum or aggregate minimum period of the indeterminate sentence or
8 sentences imposed for an A-I felony offense defined in article two
9 hundred twenty of the penal law and one-seventh of the term or aggregate
10 term of the determinate sentence or sentences.

11 (g) The provisions of this subdivision shall apply to persons in
12 custody serving an indeterminate sentence on the effective date of this
13 subdivision as well as to persons sentenced to an indeterminate sentence
14 on and after the effective date of this subdivision and prior to Septem-
15 ber first, two thousand five and to persons sentenced to a determinate
16 sentence prior to September first, two thousand eleven for a felony as
17 defined in article two hundred twenty or two hundred twenty-one of the
18 penal law.

19 5. Time allowances granted prior to any release on parole or prior to
20 any conditional release shall be forfeited and shall not be restored if
21 the paroled or conditionally released person is returned to an institu-
22 tion under the jurisdiction of the [state] department [of correctional
23 services] for violation of parole, violation of the conditions of
24 release or by reason of a conviction for a crime committed while on
25 parole or conditional release. A person who is so returned may, however,
26 subsequently receive time allowances against the remaining portion of
27 his OR HER maximum or aggregate maximum term or period not to exceed in
28 the aggregate [one-third] FIFTEEN PERCENT of such portion provided such
29 remaining portion of his OR HER maximum or aggregate maximum term or
30 period is more than one year.

31 S 3. Paragraph (d) of subdivision 1 of section 803 of the correction
32 law is REPEALED.

33 S 4. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1
34 of section 632-a of the executive law is REPEALED.

35 S 5. Subparagraph (i) of paragraph (a) of subdivision 1 of section
36 70.40 of the penal law, as amended by chapter 435 of the laws of 1997,
37 is amended to read as follows:

38 (i) A person who is serving one or more than one indeterminate
39 sentence of imprisonment may be paroled from the institution in which he
40 is confined at any time after the expiration of the minimum or the
41 aggregate minimum period of the sentence or sentences [or, where appli-
42 cable, the minimum or aggregate minimum period reduced by the merit time
43 allowance granted pursuant to paragraph (d) of subdivision one of
44 section eight hundred three of the correction law].

45 S 6. This act shall take effect on the thirtieth day after it shall
46 have become a law, provided that the amendments to paragraphs (a), (b)
47 and (c) of subdivision 1, and subdivisions 2 and 5 of section 803 of the
48 correction law made by section one of this act shall be subject to the
49 expiration and reversion of such section pursuant to subdivision d of
50 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
51 date the provisions of section two of this act shall take effect;
52 provided further that the amendments to subparagraph (i) of paragraph
53 (a) of subdivision 1 of section 70.40 of the penal law made by section
54 five of this act shall not affect the repeal of such subparagraph and
55 shall be deemed repealed therewith.