S T A T E O F N E W Y O R K

S. 338 A. 154

2011-2012 Regular Sessions

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

(PREFILED)

January 5, 2011

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, chapter 738 of the laws of 2004 amending the correction law and other laws relating to controlled substances and indeterminate sentences, the executive law, in relation to merit time, and to repeal section 803-b of the correction law relating to limited credit time allowances

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

Section 1. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 7 of chapter 738 of the laws of 2004, are amended to read as follows:

(i) Except as provided in subparagraph (ii) of this paragraph, every person under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more [imposed pursuant to section 70.70 or 70.71 of the penal law,] may earn a merit time allowance.

(ii) Such merit time allowance shall not be available to any person serving [an indeterminate] A sentence [authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide,]

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

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IMPOSED FOR MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF THE PENAL LAW, an offense defined in article one hundred thirty of the penal law, incest, [or] an offense defined in article two hundred sixty-three of the penal law, [or] AN ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, aggravated harassment of an employee by an inmate, OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY SUCH OFFENSE.

(iv) Such merit time allowance may be granted when an inmate successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such inmate [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse treatment [certificate, a vocational trade certificate following at least six months of vocational programming or performs] PROGRAM, OR COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY VIOLENCE, OR PARENTING; (3) COMPLETES A VOCATIONAL TRAINING PROGRAM OR A COMPARABLE AND EQUIVALENT TRAINING PROGRAM AS DETERMINED BY THE DEPARTMENT; (4) PERFORMS SATISFACTORILY FOR AT LEAST SIX MONTHS IN A SKILLED JOB ASSIGNMENT, INCLUDING BUT NOT LIMITED TO, INMATE PROGRAM AIDE (IPA), LAW LIBRARY CLERK, MEDICAL/INFIRMARY AIDE, CHILDREN'S CENTER AIDE, AND FOOD SERVICE WORKER; OR (5) COMPLETES at least four hundred hours of service as part of a community work crew.

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

S 2. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 10-a of chapter 738 of the laws of 2004, are amended to read as follows:

(i) Except as provided in subparagraph (ii) of this paragraph, every person under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more [imposed pursuant to section 70.70 or 70.71 of the penal law,] may earn a merit time allowance.

(ii) Such merit time allowance shall not be available to any person serving [an indeterminate] A sentence [authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide,] IMPOSED FOR MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF THE PENAL LAW, an offense defined in article one hundred thirty of the penal law, incest, [or] an offense defined in article two hundred sixty-three of the penal law, [or] AN ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, aggravated harassment of

an employee by an inmate, OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY SUCH OFFENSE.

(iv) Such merit time allowance may be granted when an inmate successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such inmate [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse treatment [certificate, a vocational trade certificate following at least six months of vocational programming or performs] PROGRAM, OR COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY VIOLENCE, OR PARENTING; (3) COMPLETES A VOCATIONAL TRAINING PROGRAM OR A COMPARABLE AND EQUIVALENT TRAINING PROGRAM AS DETERMINED BY THE DEPARTMENT; (4) PERFORMS SATISFACTORILY FOR AT LEAST SIX MONTHS IN A SKILLED JOB ASSIGNMENT, INCLUDING BUT NOT LIMITED TO, INMATE PROGRAM AIDE (IPA), LAW LIBRARY CLERK, MEDICAL/INFIRMARY AIDE, CHILDREN'S CENTER AIDE, AND FOOD SERVICE WORKER; OR (5) COMPLETES at least four hundred hours of service as part of a community work crew.

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

S 3. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 7 of chapter 738 of the laws of 2004, is amended to read as follows:

(v) The provisions of this paragraph shall apply to persons in custody serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an indeterminate sentence on and after the effective date of this paragraph and prior to September first, two thousand five and to persons sentenced to a determinate sentence [prior to September first, two thousand eleven] for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

S 4. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 10-a of chapter 738 of the laws of 2004, is amended to read as follows:

(v) The provisions of this paragraph shall apply to persons in custody serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an indeterminate sentence on and after the effective date of this paragraph and prior to September first, two thousand five and to persons sentenced to a determinate sentence [prior to September first, two thousand eleven] for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

S 5. Paragraph (g) of subdivision 2-a of section 803 of the correction law, as added by section 9 of chapter 738 of the laws of 2004, is amended to read as follows:

(g) The provisions of this subdivision shall apply to persons in custody serving an indeterminate sentence on the effective date of this

subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to September first, two thousand five and to persons sentenced to a determinate sentence [prior to September first, two thousand eleven] for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

S 6. Paragraph (g) of subdivision 2-a of section 803 of the correction law, as added by section 11 of chapter 738 of the laws of 2004, is amended to read as follows:

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

S 7. Section 803-b of the correction law is REPEALED.

S 8. Subdivision (c-1) of section 41 of chapter 738 of the laws of 2004 amending the correction law and other laws relating to controlled substances and indeterminate sentences is amended to read as follows:

(c-1) the provisions of sections seven, eight, nine, ten and ten-a of this act, and subdivision 2-a of section 803 of the correction law, as added by section eleven of this act shall apply to persons in custody serving an indeterminate sentence on the effective date of such provisions as well as to persons sentenced to an indeterminate sentence on and after the effective date of such provisions and prior to September 1, 2005 and to persons sentenced to a determinate sentence [prior to September 1, 2011] for a felony as defined in article 220 or 221 of the penal law;

S 9. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1 of section 632-a of the executive law, as amended by section 24 of part A-1 of chapter 56 of the laws of 2010, is amended to read as follows:

(C) [an offense for which a merit time allowance may not be received against the sentence pursuant to paragraph (d) of subdivision one of section eight hundred three of the correction law] AN A-I FELONY OFFENSE, OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, INCEST, AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE;

S 10. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to: (i) persons in custody serving an indeterminate or determinate sentence or sentences on the effective date; (ii) persons sentenced to an indeterminate or determinate sentence or sentences on or after the effective date; and (iii) persons who have not completed service of an indeterminate or determinate sentence or sentences imposed prior to the effective date; provided, however, that the amendments to section 803 of the correction law made by sections one, three, and five of this act shall be subject to the expiration and reversion of such section pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of sections two, four and six of this act shall take effect.