

7335

2011-2012 Regular Sessions

I N A S S E M B L Y

April 29, 2011

Introduced by M. of A. BARRON -- read once and referred to the Committee on 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-
24 CIENT AND WILLING PERFORMANCE OF DUTIES ASSIGNED OR PROGRESS AND
25 ACHIEVEMENT IN AN ASSIGNED TREATMENT PROGRAM, AND MAY BE WITHHELD,

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

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1 FORFEITED OR CANCELED IN WHOLE OR IN PART FOR BAD BEHAVIOR, VIOLATION OF
2 INSTITUTIONAL RULES OR FAILURE TO PERFORM PROPERLY IN THE DUTIES OR
3 PROGRAM ASSIGNED.

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

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

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

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

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

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

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

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

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

45 S 805. Earned eligibility program. Persons committed to the custody of
46 the department under an indeterminate or determinate sentence of impri-
47 sonment shall be assigned a work and treatment program as soon as prac-
48 ticable. No earlier than two months prior to the inmate's eligibility to
49 be paroled pursuant to subdivision one of section 70.40 of the penal
50 law, the commissioner shall review the inmate's institutional record to
51 determine whether he OR SHE has complied with the assigned program. If
52 the commissioner determines that the inmate has successfully partic-
53 ipated in the program he may issue the inmate a certificate of earned
54 eligibility. Notwithstanding any other provision of law, an inmate who
55 is serving a sentence with a minimum term of not more than eight years
56 and who has been issued a certificate of earned eligibility, shall be

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

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