

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

8915--A

I N A S S E M B L Y

(PREFILED)

January 4, 2012

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to denial of parole to certain inmates who have been convicted of a violent felony offense when the state board of parole finds, by convincing evidence, that the release of such inmate would pose an imminent threat to society; and to amend the correction law, in relation to making the earning of good behavior allowances for violent felony offenders contingent upon their imminent threat to society upon release

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

1 Section 1. Paragraph (b) of subdivision 1 of section 70.40 of the
2 penal law, as amended by section 127-d-1 of subpart B of part C of chap-
3 ter 62 of the laws of 2011, is amended to read as follows:
4 (b) A person who is serving one or more than one indeterminate or
5 determinate sentence of imprisonment shall, if he or she so requests, be
6 conditionally released from the institution in which he or she is
7 confined when the total good behavior time allowed to him or her, pursu-
8 ant to the provisions of the correction law, is equal to the unserved
9 portion of his or her term, maximum term or aggregate maximum term;
10 provided, however, that (i) in no event shall a person serving one or
11 more indeterminate sentence of imprisonment and one or more determinate
12 sentence of imprisonment which run concurrently be conditionally
13 released until serving at least six-sevenths of the determinate term of
14 imprisonment which has the longest unexpired time to run; and (ii) in no
15 event shall a person be conditionally released prior to the date on
16 which such person is first eligible for discretionary parole release;
17 AND (III) IN THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING
18 AND BY CLEAR AND CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERV-
19 ING ANY SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A VIOLENT FELONY
20 OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE,
21 WOULD POSE AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE

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

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1 CONDITIONALLY RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR
2 HER TERM, MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE
3 GREATEST. The conditions of release, including those governing post-re-
4 lease supervision, shall be such as may be imposed by the state board of
5 parole in accordance with the provisions of the executive law.

6 Every person so released shall be under the supervision of the state
7 department of corrections and community supervision for a period equal
8 to the unserved portion of the term, maximum term, aggregate maximum
9 term, or period of post-release supervision.

10 S 2. Paragraph (b) of subdivision 1 of section 70.40 of the penal law,
11 as amended by section 127-e of subpart B of part C of chapter 62 of the
12 laws of 2011, is amended to read as follows:

13 (b) A person who is serving one or more than one indeterminate
14 sentence of imprisonment shall, if he or she so requests, be condi-
15 tionally released from the institution in which he or she is confined
16 when the total good behavior time allowed to him or her, pursuant to the
17 provisions of the correction law, is equal to the unserved portion of
18 his or her maximum or aggregate maximum term; PROVIDED, HOWEVER, THAT IN
19 THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING AND BY CLEAR
20 AND CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY
21 SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A VIOLENT FELONY OFFENSE,
22 AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE, WOULD
23 POSE AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDI-
24 TIONALLY RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER
25 MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREATER. The
26 conditions of release, including those governing post-release super-
27 vision, shall be such as may be imposed by the state board of parole in
28 accordance with the provisions of the executive law.

29 Every person so released shall be under the supervision of the depart-
30 ment of corrections and community supervision for a period equal to the
31 unserved portion of the maximum, aggregate maximum term, or period of
32 post-release supervision.

33 S 3. Paragraph (a) of subdivision 1 of section 803 of the correction
34 law, as amended by section 37 of subpart B of part C of chapter 62 of
35 the laws of 2011, is amended to read as follows:

36 (a) Every person confined in an institution of the department or a
37 facility in the department of mental hygiene serving an indeterminate or
38 determinate sentence of imprisonment, except a person serving a sentence
39 with a maximum term of life imprisonment, may receive time allowance
40 against the term or maximum term of his or her sentence imposed by the
41 court. Such allowances may be granted for good behavior and efficient
42 and willing performance of duties assigned or progress and achievement
43 in an assigned treatment program, and may be withheld, forfeited or
44 canceled in whole or in part for bad behavior, violation of institu-
45 tional rules or failure to perform properly in the duties or program
46 assigned. PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO
47 THIS SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A VIOLENT
48 FELONY OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL
49 LAW SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN
50 WRITING AND BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH PERSON WOULD
51 POSE AN IMMINENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

52 S 4. Paragraph (a) of subdivision 1 of section 803 of the correction
53 law, as amended by chapter 126 of the laws of 1987 and as designated by
54 chapter 738 of the laws of 2004, is amended to read as follows:

55 (a) Every person confined in an institution of the department or a
56 facility in the department of mental hygiene serving an indeterminate

1 sentence of imprisonment, except a person serving a sentence with a
2 maximum term of life imprisonment, may receive time allowance against
3 the maximum term or period of his sentence not to exceed in the aggregate
4 one-third of the term or period imposed by the court. Such allowances
5 may be granted for good behavior and efficient and willing
6 performance of duties assigned or progress and achievement in an
7 assigned treatment program, and may be withheld, forfeited or canceled
8 in whole or in part for bad behavior, violation of institutional rules
9 or failure to perform properly in the duties or program assigned.
10 PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO THIS
11 SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A VIOLENT FELONY
12 OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW
13 SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRITING
14 AND BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN
15 IMMINENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.
16 S 5. This act shall take effect immediately; provided that the amendments
17 to paragraph (b) of subdivision 1 of section 70.40 of the penal
18 law made by section one of this act shall be subject to the expiration
19 and reversion of such paragraph pursuant to subdivision d of section 74
20 of chapter 3 of the laws of 1995, as amended, when upon such date the
21 provisions of section two of this act shall take effect; and provided,
22 further that the amendments to section 803 of the correction law, made
23 by section three of this act, shall be subject to the expiration and
24 reversion of such section pursuant to subdivision d of section 74 of
25 chapter 3 of the laws of 1995, as amended, when upon such date the
26 provisions of section four of this act shall take effect.