

6075

I N S E N A T E

(PREFILED)

January 4, 2012

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to denial of parole to certain inmates who have been convicted of a felony sex 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 felony sex offenders contingent upon their not being an 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 CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY
19 SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A FELONY SEX OFFENSE, AS
20 DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THIS ARTICLE, WOULD POSE
21 AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDITIONALLY
22 RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER TERM,

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

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1 MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREATEST.
2 The conditions of release, including those governing post-release super-
3 vision, shall be such as may be imposed by the state board of parole in
4 accordance with the provisions of the executive law.

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

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

12 (b) A person who is serving one or more than one indeterminate
13 sentence of imprisonment shall, if he or she so requests, be condi-
14 tionally released from the institution in which he or she is confined
15 when the total good behavior time allowed to him or her, pursuant to the
16 provisions of the correction law, is equal to the unserved portion of
17 his or her maximum or aggregate maximum term; PROVIDED, HOWEVER, THAT IN
18 THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING AND BY
19 CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY SENTENCE
20 OF IMPRISONMENT FOR THE CONVICTION OF A FELONY SEX OFFENSE, AS DEFINED
21 IN SUBDIVISION ONE OF SECTION 70.80 OF THIS ARTICLE, WOULD POSE AN IMMI-
22 NENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDITIONALLY RELEASED
23 OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER MAXIMUM TERM OR
24 AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREATER. The conditions of
25 release, including those governing post-release supervision, shall be
26 such as may be imposed by the state board of parole in accordance with
27 the provisions of the executive law.

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

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

35 (a) Every person confined in an institution of the department or a
36 facility in the department of mental hygiene serving an indeterminate or
37 determinate sentence of imprisonment, except a person serving a sentence
38 with a maximum term of life imprisonment, may receive time allowance
39 against the term or maximum term of his or her sentence imposed by the
40 court. Such allowances may be granted for good behavior and efficient
41 and willing performance of duties assigned or progress and achievement
42 in an assigned treatment program, and may be withheld, forfeited or
43 canceled in whole or in part for bad behavior, violation of institu-
44 tional rules or failure to perform properly in the duties or program
45 assigned. PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO
46 THIS SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A FELONY
47 SEX OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THE PENAL LAW
48 SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRIT-
49 ING AND BY CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN IMMINENT
50 THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

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

54 (a) Every person confined in an institution of the department or a
55 facility in the department of mental hygiene serving an indeterminate
56 sentence of imprisonment, except a person serving a sentence with a

1 maximum term of life imprisonment, may receive time allowance against
2 the maximum term or period of his sentence not to exceed in the aggre-
3 gate one-third of the term or period imposed by the court. Such allow-
4 ances may be granted for good behavior and efficient and willing
5 performance of duties assigned or progress and achievement in an
6 assigned treatment program, and may be withheld, forfeited or canceled
7 in whole or in part for bad behavior, violation of institutional rules
8 or failure to perform properly in the duties or program assigned.
9 PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO THIS
10 SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A FELONY SEX
11 OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.80 OF THE PENAL LAW
12 SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRIT-
13 ING AND BY CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN IMMINENT
14 THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

15 S 5. This act shall take effect immediately and shall apply to crimi-
16 nal offenses committed on or after such date; provided that the amend-
17 ments 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.