

2657

2011-2012 Regular Sessions

I N S E N A T E

January 27, 2011

Introduced by Sen. KRUGER -- 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 fixing sentences for persons committing crimes while on parole, conditional release or temporary 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 70.30 of the
2 penal law, as amended by chapter 481 of the laws of 1978, is amended to
3 read as follows:

4 (b) If the sentences run consecutively, the minimum periods of impri-
5 sonment are added to arrive at an aggregate minimum period of imprison-
6 ment equal to the sum of all the minimum periods, and the maximum terms
7 are added to arrive at an aggregate maximum term equal to the sum of all
8 the maximum terms, provided, however, that both the aggregate maximum
9 term and the aggregate minimum period of imprisonment shall be subject
10 to the limitations set forth in paragraphs (c) [and], (d) AND (G) of
11 this subdivision, where applicable;

12 S 2. Subdivision 1 of section 70.30 of the penal law is amended by
13 adding a new paragraph (g) to read as follows:

14 (G) WHERE A PAROLEE, A CONDITIONAL RELEASEE OR TEMPORARY RELEASEE, HAS
15 BEEN CONVICTED OF A FELONY COMMITTED WHILE UNDER THE TERMS OF SUCH
16 PAROLE, CONDITIONAL RELEASE OR TEMPORARY RELEASE, THE MINIMUM SENTENCE
17 IMPOSED UPON SUCH SUBSEQUENT FELONY SHALL NOT COMMENCE UNTIL THE MAXIMUM
18 TERM OF IMPRISONMENT FOR THE PREVIOUS FELONY HAS BEEN SERVED.

19 S 3. Paragraphs (a) and (b) of subdivision 1 of section 70.40 of the
20 penal law, paragraph (a) as separately amended by chapter 261 of the
21 laws of 1987 and chapter 55 of the laws of 1992, paragraph (b) as sepa-
22 rately amended by chapter 467 of the laws of 1979 and chapter 1 of the
23 laws of 1998 and the closing paragraph of paragraph (b) as separately

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

LBD07407-01-1

1 amended by chapter 148 of the laws of 1975 and chapter 1 of the laws of
2 1998, are amended to read as follows:

3 (a) [A] EXCEPT FOR A PERSON WHO HAS BEEN CONVICTED OF A FELONY COMMIT-
4 TED WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, OR TEMPORARY
5 RELEASE, A person who is serving one or more than one indeterminate
6 sentence of imprisonment may be paroled from the institution in which he
7 is confined at any time after the expiration of the minimum or the
8 aggregate minimum period of imprisonment of the sentence or sentences or
9 after the successful completion of a shock incarceration program, as
10 defined in article twenty-six-A of the correction law, whichever is
11 sooner. Release on parole shall be in the discretion of the state board
12 of parole, and such person shall continue service of his sentence or
13 sentences while on parole, in accordance with and subject to the
14 provisions of the executive law.

15 (b) [A] EXCEPT FOR A PERSON WHO HAS BEEN CONVICTED OF A FELONY COMMIT-
16 TED WHILE UNDER THE TERMS OF A PAROLE, CONDITIONAL RELEASE, OR TEMPORARY
17 RELEASE, A person who is serving one or more than one indeterminate
18 sentence of imprisonment shall, if he so requests, be conditionally
19 released from the institution in which he is confined when the total
20 good behavior time allowed to him, pursuant to the provisions of the
21 correction law, is equal to the unserved portion of his maximum or
22 aggregate maximum term. The conditions of release, including those
23 governing post-release supervision, shall be such as may be imposed by
24 the state board of parole in accordance with the provisions of the exec-
25 utive law.

26 Every person so released shall be under the supervision of the state
27 board of parole for a period equal to the unserved portion of the maxi-
28 mum, aggregate maximum term, or period of post-release supervision.

29 S 4. Subdivision 1 of section 70.40 of the penal law is amended by
30 adding a new paragraph (d) to read as follows:

31 (D) ANY PERSON, WHO HAS BEEN CONVICTED OF A FELONY WHILE UNDER THE
32 TERMS OF A PAROLE, CONDITIONAL RELEASE, OR TEMPORARY RELEASE, SHALL BE
33 RECOMMITTED TO SERVE HIS MAXIMUM TERM OF IMPRISONMENT IMPOSED BY THE
34 COURT FOR THE INITIAL FELONY, AND SHALL NOT BE ELIGIBLE FOR PAROLE,
35 CONDITIONAL RELEASE OR TEMPORARY RELEASE CONSIDERATION UNTIL SAID MAXI-
36 MUM TERM PLUS THE MINIMUM TERM IMPOSED UPON THE SUBSEQUENT FELONY SHALL
37 HAVE BEEN SERVED.

38 S 5. This act shall take effect on the first of November next succeed-
39 ing the date on which it shall have become a law; provided, however,
40 that section one of this act shall take effect on the same date as the
41 reversion of paragraph (b) of subdivision 1 of section 70.30 of the
42 penal law pursuant to chapter 3 of the laws of 1995, as amended; and
43 provided, further, however, that section three of this act shall take
44 effect on the same date as the reversion of paragraphs (a) and (b) of
45 subdivision 1 of section 70.40 of the penal law pursuant to chapter 3 of
46 the laws of 1995, as amended.