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

2618

2013-2014 Regular Sessions

I N A S S E M B L Y

January 17, 2013

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Correction

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 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:

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

(b) A person who is serving one or more than one indeterminate or determinate sentence of imprisonment shall, if he or she so requests, be conditionally released from the institution in which he or she is confined when the total good behavior time allowed to him or her, pursuant to the provisions of the correction law, is equal to the unserved portion of his or her term, maximum term or aggregate maximum term; provided, however, that (i) in no event shall a person serving one or more indeterminate sentence of imprisonment and one or more determinate sentence of imprisonment which run concurrently be conditionally released until serving at least six-sevenths of the determinate term of imprisonment which has the longest unexpired time to run; and (ii) in no event shall a person be conditionally released prior to the date on which such person is first eligible for discretionary parole release; AND (III) IN THE EVENT THAT THE STATE BOARD OF PAROLE FINDS, IN WRITING AND BY CLEAR AND CONVINCING EVIDENCE, THAT THE RELEASE OF A PERSON SERVING ANY SENTENCE OF IMPRISONMENT FOR THE CONVICTION OF A VIOLENT FELONY OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE,

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

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WOULD POSE AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE CONDITIONALLY RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR HER TERM, MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE GREATEST. The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of parole in accordance with the provisions of the executive law.

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

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

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

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

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

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

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

(a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the maximum term or period of his sentence not to exceed in the aggregate one-third of the term or period imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned. PROVIDED, HOWEVER, THAT ANY TIME ALLOWANCE EARNED PURSUANT TO THIS SECTION BY A PERSON SERVING A SENTENCE FOR CONVICTION OF A VIOLENT FELONY OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW SHALL BE WITHHELD BY THE STATE BOARD OF PAROLE UPON A FINDING, IN WRITING AND BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN IMMINENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

S 5. This act shall take effect immediately; provided that the amendments to paragraph (b) of subdivision 1 of section 70.40 of the penal law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; and provided, further that the amendments to section 803 of the correction law, made by section three 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 section four of this act shall take effect.