

3871

2013-2014 Regular Sessions

I N   S E N A T E

February 26, 2013

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Introduced by Sens. GRIFFO, DeFRANCISCO, LARKIN, SAVINO, SEWARD -- 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 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:

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

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

LBD06502-01-3

1 OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE,  
2 WOULD POSE AN IMMINENT THREAT TO SOCIETY, SUCH PERSON SHALL NOT BE  
3 CONDITIONALLY RELEASED OR PAROLED AND SHALL REMAIN IMPRISONED FOR HIS OR  
4 HER TERM, MAXIMUM TERM OR AGGREGATE MAXIMUM TERM, WHICHEVER SHALL BE  
5 GREATEST. The conditions of release, including those governing post-re-  
6 lease supervision, shall be such as may be imposed by the state board of  
7 parole in accordance with the provisions of the executive law.

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

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

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

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

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

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

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

1 (a) Every person confined in an institution of the department or a  
2 facility in the department of mental hygiene serving an indeterminate  
3 sentence of imprisonment, except a person serving a sentence with a  
4 maximum term of life imprisonment, may receive time allowance against  
5 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  
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 AND BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH PERSON WOULD POSE AN  
14 IMMINENT THREAT TO SOCIETY IF RELEASED FROM INCARCERATION.

15 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  
16 law made by section one of this act shall be subject to the expiration  
17 and reversion of such paragraph pursuant to subdivision d of section 74  
18 of chapter 3 of the laws of 1995, as amended, when upon such date the  
19 provisions of section two of this act shall take effect; and provided,  
20 further that the amendments to section 803 of the correction law, made  
21 by section three of this act, shall be subject to the expiration and  
22 reversion of such section pursuant to subdivision d of section 74 of  
23 chapter 3 of the laws of 1995, as amended, when upon such date the  
24 provisions of section four of this act shall take effect.