

4198

2013-2014 Regular Sessions

I N A S S E M B L Y

February 1, 2013

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

AN ACT to amend the correction law, chapter 738 of the laws of 2004
amending the correction law and other laws relating to controlled
substances and indeterminate sentences, the executive law, in relation
to merit time, and to repeal section 803-b of the correction law
relating to limited credit time allowances

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

1 Section 1. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdi-
2 vision 1 of section 803 of the correction law, as added by section 7 of
3 chapter 738 of the laws of 2004, are amended to read as follows:
4 (i) Except as provided in subparagraph (ii) of this paragraph, every
5 person under the custody of the department or confined in a facility in
6 the department of mental hygiene serving an indeterminate sentence of
7 imprisonment with a minimum period of one year or more or a determinate
8 sentence of imprisonment of one year or more [imposed pursuant to
9 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-
10 ance.
11 (ii) Such merit time allowance shall not be available to any person
12 serving [an indeterminate] A sentence [authorized for an A-I felony
13 offense, other than an A-I felony offense defined in article two hundred
14 twenty of the penal law, or any sentence imposed for a violent felony
15 offense as defined in section 70.02 of the penal law, manslaughter in
16 the second degree, vehicular manslaughter in the second degree, vehicu-
17 lar manslaughter in the first degree, criminally negligent homicide,]
18 IMPOSED FOR MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF
19 THE PENAL LAW, an offense defined in article one hundred thirty of the
20 penal law, incest, [or] an offense defined in article two hundred
21 sixty-three of the penal law, [or] AN ACT OF TERRORISM AS DEFINED IN
22 ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, aggravated harassment of

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

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1 an employee by an inmate, OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY SUCH
2 OFFENSE.

3 (iv) Such merit time allowance may be granted when an inmate success-
4 fully participates in the work and treatment program assigned pursuant
5 to section eight hundred five of this article and when such inmate
6 [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER
7 general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS
8 DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK
9 SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER
10 OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse
11 treatment [certificate, a vocational trade certificate following at
12 least six months of vocational programming or performs] PROGRAM, OR
13 COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE
14 DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY
15 VIOLENCE, OR PARENTING; (3) COMPLETES A VOCATIONAL TRAINING PROGRAM OR A
16 COMPARABLE AND EQUIVALENT TRAINING PROGRAM AS DETERMINED BY THE DEPART-
17 MENT; (4) PERFORMS SATISFACTORILY FOR AT LEAST SIX MONTHS IN A SKILLED
18 JOB ASSIGNMENT, INCLUDING BUT NOT LIMITED TO, INMATE PROGRAM AIDE (IPA),
19 LAW LIBRARY CLERK, MEDICAL/INFIRMARY AIDE, CHILDREN'S CENTER AIDE, AND
20 FOOD SERVICE WORKER; OR (5) COMPLETES at least four hundred hours of
21 service as part of a community work crew.

22 Such allowance shall be withheld for any serious disciplinary infrac-
23 tion or upon a judicial determination that the person, while an inmate,
24 commenced or continued a civil action, proceeding or claim that was
25 found to be frivolous as defined in subdivision (c) of section eight
26 thousand three hundred three-a of the civil practice law and rules, or
27 an order of a federal court pursuant to rule 11 of the federal rules of
28 civil procedure imposing sanctions in an action commenced by a person,
29 while an inmate, against a state agency, officer or employee.

30 S 2. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision
31 1 of section 803 of the correction law, as added by section 10-a of
32 chapter 738 of the laws of 2004, are amended to read as follows:

33 (i) Except as provided in subparagraph (ii) of this paragraph, every
34 person under the custody of the department or confined in a facility in
35 the department of mental hygiene serving an indeterminate sentence of
36 imprisonment with a minimum period of one year or more or a determinate
37 sentence of imprisonment of one year or more [imposed pursuant to
38 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-
39 ance.

40 (ii) Such merit time allowance shall not be available to any person
41 serving [an indeterminate] A sentence [authorized for an A-I felony
42 offense, other than an A-I felony offense defined in article two hundred
43 twenty of the penal law, or any sentence imposed for a violent felony
44 offense as defined in section 70.02 of the penal law, manslaughter in
45 the second degree, vehicular manslaughter in the second degree, vehicu-
46 lar manslaughter in the first degree, criminally negligent homicide,]
47 IMPOSED FOR MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF
48 THE PENAL LAW, an offense defined in article one hundred thirty of the
49 penal law, incest, [or] an offense defined in article two hundred
50 sixty-three of the penal law, [or] AN ACT OF TERRORISM AS DEFINED IN
51 ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, aggravated harassment of
52 an employee by an inmate, OR AN ATTEMPT OR CONSPIRACY TO COMMIT ANY SUCH
53 OFFENSE.

54 (iv) Such merit time allowance may be granted when an inmate success-
55 fully participates in the work and treatment program assigned pursuant
56 to section eight hundred five of this article and when such inmate

1 [obtains a] ACHIEVES ONE OF THE FOLLOWING: (1) COMPLETES HIS OR HER
2 general equivalency diploma, HIS OR HER EDUCATIONAL REQUIREMENTS AS
3 DETERMINED BY THE DEPARTMENT OR SATISFACTORILY COMPLETES COURSEWORK
4 SPONSORED BY AN INSTITUTION OF HIGHER LEARNING REPRESENTING A SEMESTER
5 OF ACADEMIC TRAINING; (2) COMPLETES an alcohol and substance abuse
6 treatment [certificate, a vocational trade certificate following at
7 least six months of vocational programming or performs] PROGRAM, OR
8 COMPLETES A COMPARABLE PROGRAM OF A DIFFERENT TYPE AS DETERMINED BY THE
9 DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, ANGER MANAGEMENT, FAMILY
10 VIOLENCE, OR PARENTING; (3) COMPLETES A VOCATIONAL TRAINING PROGRAM OR A
11 COMPARABLE AND EQUIVALENT TRAINING PROGRAM AS DETERMINED BY THE DEPART-
12 MENT; (4) PERFORMS SATISFACTORILY FOR AT LEAST SIX MONTHS IN A SKILLED
13 JOB ASSIGNMENT, INCLUDING BUT NOT LIMITED TO, INMATE PROGRAM AIDE (IPA),
14 LAW LIBRARY CLERK, MEDICAL/INFIRMARY AIDE, CHILDREN'S CENTER AIDE, AND
15 FOOD SERVICE WORKER; OR (5) COMPLETES at least four hundred hours of
16 service as part of a community work crew.

17 Such allowance shall be withheld for any serious disciplinary infrac-
18 tion or upon a judicial determination that the person, while an inmate,
19 commenced or continued a civil action, proceeding or claim that was
20 found to be frivolous as defined in subdivision (c) of section eight
21 thousand three hundred three-a of the civil practice law and rules, or
22 an order of a federal court pursuant to rule 11 of the federal rules of
23 civil procedure imposing sanctions in an action commenced by a person,
24 while an inmate, against a state agency, officer or employee.

25 S 3. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803
26 of the correction law, as added by section 7 of chapter 738 of the laws
27 of 2004, is amended to read as follows:

28 (v) The provisions of this paragraph shall apply to persons in custody
29 serving an indeterminate sentence on the effective date of this para-
30 graph as well as to persons sentenced to an indeterminate sentence on
31 and after the effective date of this paragraph and prior to September
32 first, two thousand five and to persons sentenced to a determinate
33 sentence [prior to September first, two thousand eleven] for a felony as
34 defined in article two hundred twenty or two hundred twenty-one of the
35 penal law.

36 S 4. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803
37 of the correction law, as added by section 10-a of chapter 738 of the
38 laws of 2004, is amended to read as follows:

39 (v) The provisions of this paragraph shall apply to persons in custody
40 serving an indeterminate sentence on the effective date of this para-
41 graph as well as to persons sentenced to an indeterminate sentence on
42 and after the effective date of this paragraph and prior to September
43 first, two thousand five and to persons sentenced to a determinate
44 sentence [prior to September first, two thousand eleven] for a felony as
45 defined in article two hundred twenty or two hundred twenty-one of the
46 penal law.

47 S 5. Paragraph (g) of subdivision 2-a of section 803 of the correction
48 law, as added by section 9 of chapter 738 of the laws of 2004, is
49 amended to read as follows:

50 (g) The provisions of this subdivision shall apply to persons in
51 custody serving an indeterminate sentence on the effective date of this
52 subdivision as well as to persons sentenced to an indeterminate sentence
53 on and after the effective date of this subdivision and prior to Septem-
54 ber first, two thousand five and to persons sentenced to a determinate
55 sentence [prior to September first, two thousand eleven] for a felony as

1 defined in article two hundred twenty or two hundred twenty-one of the
2 penal law.

3 S 6. Paragraph (g) of subdivision 2-a of section 803 of the correction
4 law, as added by section 11 of chapter 738 of the laws of 2004, is
5 amended to read as follows:

6 (g) The provisions of this subdivision shall apply to persons in
7 custody serving an indeterminate sentence on the effective date of this
8 subdivision as well as to persons sentenced to an indeterminate sentence
9 on and after the effective date of this subdivision and prior to Septem-
10 ber first, two thousand five and to persons sentenced to a determinate
11 sentence [prior to September first, two thousand eleven] for a felony as
12 defined in article two hundred twenty or two hundred twenty-one of the
13 penal law.

14 S 7. Section 803-b of the correction law is REPEALED.

15 S 8. Subdivision (c-1) of section 41 of chapter 738 of the laws of
16 2004 amending the correction law and other laws relating to controlled
17 substances and indeterminate sentences is amended to read as follows:

18 (c-1) the provisions of sections seven, eight, nine, ten and ten-a of
19 this act, and subdivision 2-a of section 803 of the correction law, as
20 added by section eleven of this act shall apply to persons in custody
21 serving an indeterminate sentence on the effective date of such
22 provisions as well as to persons sentenced to an indeterminate sentence
23 on and after the effective date of such provisions and prior to Septem-
24 ber 1, 2005 and to persons sentenced to a determinate sentence [prior to
25 September 1, 2011] for a felony as defined in article 220 or 221 of the
26 penal law;

27 S 9. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1
28 of section 632-a of the executive law, as amended by section 24 of part
29 A-1 of chapter 56 of the laws of 2010, is amended to read as follows:

30 (C) [an offense for which a merit time allowance may not be received
31 against the sentence pursuant to paragraph (d) of subdivision one of
32 section eight hundred three of the correction law] AN A-I FELONY
33 OFFENSE, OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED
34 TWENTY OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR
35 MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE FIRST
36 DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN OFFENSE DEFINED IN ARTICLE ONE
37 HUNDRED THIRTY OF THE PENAL LAW, INCEST, AN OFFENSE DEFINED IN ARTICLE
38 TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AGGRAVATED HARASSMENT OF AN
39 EMPLOYEE BY AN INMATE;

40 S 10. This act shall take effect on the ninetieth day after it shall
41 have become a law and shall apply to: (i) persons in custody serving an
42 indeterminate or determinate sentence or sentences on the effective
43 date; (ii) persons sentenced to an indeterminate or determinate sentence
44 or sentences on or after the effective date; and (iii) persons who have
45 not completed service of an indeterminate or determinate sentence or
46 sentences imposed prior to the effective date; provided, however, that
47 the amendments to section 803 of the correction law made by sections
48 one, three, and five of this act shall be subject to the expiration and
49 reversion of such section pursuant to subdivision d of section 74 of
50 chapter 3 of the laws of 1995, as amended, when upon such date the
51 provisions of sections two, four and six of this act shall take effect.