

# STATE OF NEW YORK

3351

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. PERRY --  
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 Assembly, do enact as follows:

Section 1. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 7 of chapter 738 of the laws of 2004, are amended to read as follows:

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

(ii) Such merit time allowance shall not be available to any person serving [~~an indeterminate~~] a sentence [~~authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide,~~] imposed for murder in the first degree as defined in section 125.27 of the penal law, an offense defined in article one hundred thirty of the penal law, incest, [~~or~~] an offense defined in article two hundred sixty-three of the penal law, [~~or~~] an act of terrorism as defined in 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/infirmarary 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 § 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/infirmarary 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 § 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 § 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 § 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 § 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 § 7. Section 803-b of the correction law is REPEALED.

15 § 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 § 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 § 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.