STATE OF NEW YORK

10360

IN ASSEMBLY

April 17, 2018

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

AN ACT to amend the correction law and the penal law, in relation to establishing merit time allowance credits and certain administrative privileges credits for local correctional facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The correction law is amended by adding a new article 24-A to read as follows:

ARTICLE 24-A

MERIT TIME ALLOWANCE CREDITS AND CERTAIN ADMINISTRATIVE PRIVILEGES CREDITS FOR LOCAL CORRECTIONAL FACILITIES

Section 810. Definitions.

811. Merit time allowance credit accrual and application.

812. Forfeiture of merit time allowance credit.

813. Certain administrative privileges credits for ineligible inmates.

814. Record keeping.

§ 810. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Credit" means a reduction of twenty-four hours in the amount of time an inmate must serve in a correctional facility on the inmate's sentence upon conviction; and

2. "Eligible inmate" means an inmate in the custody of the sheriff of a local correctional facility who is serving one or more definite sentences of one year or less or who is detained pending trial, sentence or other disposition and who participates in the merit time allowance credit program established pursuant to this article, provided that such inmate is not convicted on the instant charges of an A-1 felony offense, other than an A-1 felony offense defined within article two hundred twenty of the penal law, 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, any offense defined in article

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

LBD15399-01-8

one hundred thirty of the penal law, incest, any offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an inmate.

§ 811. Merit time allowance credit accrual and application. 1. Upon successful participation, including active involvement, satisfactory attendance and compliance with program requirements, as reasonably determined by the sheriff, in an educational, vocational, work, or rehabilitative program approved for credit by the sheriff, an eligible inmate shall accrue credits applied to his or her sentence in the same manner as jail time credit pursuant to subdivision three of section 70.30 of the penal law in accordance with the following schedule:

(a) one credit shall accrue for every four days in which the inmate successfully participates in the program if the inmate's highest crime of conviction for the sentence to which the credit will apply is a violation offense;

(b) one credit shall accrue for every nine days in which the inmate successfully participates in the program if the highest crime of conviction for the sentence to which the credit will apply is a misdemeanor offense; and

(c) one credit shall accrue for every fifteen days in which the inmate successfully participates in the program if the highest crime of conviction for the sentence to which the credit will apply is a felony offense.

2. Accrued credits shall, in accordance with this section, be applied against an eligible inmate's sentence or, if pre-trial, against the sentence ultimately imposed, and shall diminish the inmate's period of imprisonment according to the schedule set forth in subdivision one of this section; provided, however, that if the inmate is convicted of a crime that renders him or her ineligible to receive merit time allowance credit under this article, any such credits accrued shall be considered administrative privileges credits pursuant to section eight hundred thirteen of this article.

3. If an eligible inmate accrues credits pursuant to paragraph (c) of subdivision one of this section during a period of pre-trial or pre-sentence detention for a felony offense, and is later convicted of and sentenced to a period of imprisonment in a state correctional facility for such a felony offense, the credits accrued by the inmate shall be applied by the department as additional jail time credit pursuant to subdivision three of section 70.30 of the penal law to the sentence served by the inmate for such felony offense.

4. An inmate who is not eligible to participate in the merit time allowance credit program established by this article may, in the discretion of the sheriff, nonetheless be permitted to participate in an administrative privileges credit program pursuant to section eight hundred thirteen of this article.

5. All participation by an inmate in the merit time allowance credit program and administrative privileges credit program is voluntary. Except in administrative proceedings concerning the inmate's opportunity to participate in, or continue to participate in, such a voluntary program administered by a correctional facility, evidence of an inmate's failure to successfully participate in or complete a merit time allowance credit program or administrative privileges credit program, pursuant to this article, shall not be admissible against the inmate, provided, however, that the inmate may present information concerning successful participation for the purposes of mitigation, where relevant, in any court or proceeding. Upon admission to a local correctional

facility, each inmate shall be notified by the sheriff, in writing, of the existence, criteria and rules governing participation in the merit time allowance credit program.

§ 812. Forfeiture of merit time allowance credit. 1. Any merit time allowance credit accrued pursuant to the program established pursuant to this article may, after notice and an opportunity to be heard, be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to participate successfully in the program. The sheriff shall notify the inmate promptly in writing of the reasons for any such determination.

2. An inmate who loses a merit time allowance credit pursuant to subdivision one of this section is eligible for subsequent participation in a merit time allowance credit program at the discretion of the sheriff.

§ 813. Certain administrative privileges credits for ineligible inmates. 1. Any inmate not eligible to receive a merit time allowance credit pursuant to this article may nonetheless accrue administrative privileges credits, in a manner consistent with the accrual schedule set forth in subdivision one of section eight hundred eleven of this article, provided that such administrative privileges credits shall only apply toward obtaining certain administrative privileges, pursuant to a lawful program established and administered by the sheriff, at the sheriff's discretion. Upon admission to a local correctional facility, each inmate shall be notified by the sheriff, in writing, of the existence, criteria and rules governing participation in the administrative privileges credit program. Eligible inmates may also receive such administrative privileges credits.

2. Administrative privileges credits accrued pursuant to this section shall be applied, at the request of the inmate and with consent of the sheriff, toward privileges not generally accorded to the general population of inmates at the local correctional facility. The rules governing participation in the program shall describe in detail the types of privileges to which such credits may be applied and the number of credits required for each type.

§ 814. Record keeping. A contemporaneous record shall be kept by the sheriff of all merit time allowance credits and administrative privileges credits an inmate accrues pursuant to this article. In any case where the sheriff has the duty to deliver an inmate to the custody of the department, or a sheriff or similar department in another jurisdiction, whether under an order of sentence and commitment or otherwise, the sheriff shall also deliver to the state correctional facility, sheriff or similar department to which the inmate is delivered, and to the inmate, a certified record of merit time allowance credits accrued by the inmate.

§ 2. Subdivision 3 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, the opening paragraph as amended by chapter 1 of the laws of 1998, is amended to read as follows:

3. Jail time. The term of a definite sentence, a determinate sentence, or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of parole, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the

sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. **The credit herein provided shall also include any additional merit time allowance credit accrued in a local correctional facility pursuant to article twenty-four-A of the correction law.** Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

(a) If the sentences run concurrently, the credit shall be applied against each such sentence;

(b) If the sentences run consecutively, the credit shall be applied against the aggregate term or aggregate maximum term of the sentences and against the aggregate minimum period of imprisonment.

In any case where a person has been in custody due to a charge that culminated in a dismissal or an acquittal, the amount of time that would have been credited against a sentence for such charge, had one been imposed, shall be credited against any sentence that is based on a charge for which a warrant or commitment was lodged during the pendency of such custody.

§ 3. Subdivision 3 of section 70.30 of the penal law, as amended by chapter 648 of the laws of 1979, the opening paragraph as separately amended by chapter 1 of the laws of 1998, is amended to read as follows:

3. Jail time. The term of a definite sentence or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of parole, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. **The credit herein provided shall also include any additional merit time allowance credit accrued in a local correctional facility pursuant to article twenty-four-A of the correction law.** Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

(a) If the sentences run concurrently, the credit shall be applied against each such sentence;

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In any case where a person has been in custody due to a charge that culminated in a dismissal or an acquittal, the amount of time that would have been credited against a sentence for such charge, had one been imposed, shall be credited against any sentence that is based on a charge for which a warrant or commitment was lodged during the pendency of such custody.

§ 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided that the amendments to subdivision 3 of section 70.30 of the penal law made by section two of this act shall be subject to the expiration and reversion of such subdivision 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 three of this act shall take effect.