

STATE OF NEW YORK

9122

IN SENATE

June 22, 2018

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

ARTICLE 24-A

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

Section 810. Definitions.

7 811. Merit time allowance credit accrual and application.

8 812. Forfeiture of merit time allowance credit.

9 813. Certain administrative privileges credits for ineligible
10 inmates.

11 814. Record keeping.

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

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

17 2. "Eligible inmate" means an inmate in the custody of the sheriff of
18 a local correctional facility who is serving one or more definite
19 sentences of one year or less or who is detained pending trial, sentence
20 or other disposition and who participates in the merit time allowance
21 credit program established pursuant to this article, provided that such
22 inmate is not convicted on the instant charges of an A-1 felony offense,
23 other than an A-1 felony offense defined within article two hundred
24 twenty of the penal law, a violent felony offense as defined in section
25 70.02 of the penal law, manslaughter in the second degree, vehicular
26 manslaughter in the second degree, vehicular manslaughter in the first
27 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

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

4 § 811. Merit time allowance credit accrual and application. 1. Upon
5 successful participation, including active involvement, satisfactory
6 attendance and compliance with program requirements, as reasonably
7 determined by the sheriff, in an educational, vocational, work, or reha-
8 bilitative program approved for credit by the sheriff, an eligible
9 inmate shall accrue credits applied to his or her sentence in the same
10 manner as jail time credit pursuant to subdivision three of section
11 70.30 of the penal law in accordance with the following schedule:

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

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

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

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

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

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

46 5. All participation by an inmate in the merit time allowance credit
47 program and administrative privileges credit program is voluntary.
48 Except in administrative proceedings concerning the inmate's opportunity
49 to participate in, or continue to participate in, such a voluntary
50 program administered by a correctional facility, evidence of an inmate's
51 failure to successfully participate in or complete a merit time allow-
52 ance credit program or administrative privileges credit program, pursu-
53 ant to this article, shall not be admissible against the inmate,
54 provided, however, that the inmate may present information concerning
55 successful participation for the purposes of mitigation, where relevant,
56 in any court or proceeding. Upon admission to a local correctional

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

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

11 2. An inmate who loses a merit time allowance credit pursuant to
12 subdivision one of this section is eligible for subsequent participation
13 in a merit time allowance credit program at the discretion of the sher-
14 iff.

15 § 813. Certain administrative privileges credits for ineligible
16 inmates. 1. Any inmate not eligible to receive a merit time allowance
17 credit pursuant to this article may nonetheless accrue administrative
18 privileges credits, in a manner consistent with the accrual schedule set
19 forth in subdivision one of section eight hundred eleven of this arti-
20 cle, provided that such administrative privileges credits shall only
21 apply toward obtaining certain administrative privileges, pursuant to a
22 lawful program established and administered by the sheriff, at the sher-
23 iff's discretion. Upon admission to a local correctional facility, each
24 inmate shall be notified by the sheriff, in writing, of the existence,
25 criteria and rules governing participation in the administrative privi-
26 leges credit program. Eligible inmates may also receive such adminis-
27 trative privileges credits.

28 2. Administrative privileges credits accrued pursuant to this section
29 shall be applied, at the request of the inmate and with consent of the
30 sheriff, toward privileges not generally accorded to the general popu-
31 lation of inmates at the local correctional facility. The rules govern-
32 ing participation in the program shall describe in detail the types of
33 privileges to which such credits may be applied and the number of cred-
34 its required for each type.

35 § 814. Record keeping. A contemporaneous record shall be kept by the
36 sheriff of all merit time allowance credits and administrative privi-
37 leges credits an inmate accrues pursuant to this article. In any case
38 where the sheriff has the duty to deliver an inmate to the custody of
39 the department, or a sheriff or similar department in another jurisdic-
40 tion, whether under an order of sentence and commitment or otherwise,
41 the sheriff shall also deliver to the state correctional facility, sher-
42 iff or similar department to which the inmate is delivered, and to the
43 inmate, a certified record of merit time allowance credits accrued by
44 the inmate.

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

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

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

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

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

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

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

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

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

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

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

50 § 4. This act shall take effect on the first of November next succeed-
51 ing the date on which it shall have become a law; provided that the
52 amendments to subdivision 3 of section 70.30 of the penal law made by
53 section two of this act shall be subject to the expiration and reversion
54 of such subdivision pursuant to subdivision d of section 74 of chapter 3
55 of the laws of 1995, as amended, when upon such date the provisions of
56 section three of this act shall take effect.