

# STATE OF NEW YORK

216--A

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD01764-04-9

1 inmate is not convicted on the instant charges of an A-1 felony offense,  
2 other than an A-1 felony offense defined within article two hundred  
3 twenty of the penal law, a violent felony offense as defined in section  
4 70.02 of the penal law, manslaughter in the second degree, vehicular  
5 manslaughter in the second degree, vehicular manslaughter in the first  
6 degree, criminally negligent homicide, any offense defined in article  
7 one hundred thirty of the penal law, incest, any offense defined in  
8 article two hundred sixty-three of the penal law, or aggravated harass-  
9 ment of an employee by an inmate.

10 § 811. Merit time allowance credit accrual and application. 1. Upon  
11 the active participation in an educational, vocational, work, or rehabi-  
12 litative program that has been assigned by the chief administrative  
13 officer, an eligible inmate shall accrue credits applied to his or her  
14 sentence in the same manner as jail time credit pursuant to subdivision  
15 three of section 70.30 of the penal law in accordance with the following  
16 schedule:

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

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

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

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

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

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

51 5. All participation by an inmate in the merit time allowance credit  
52 program and administrative privileges credit program is voluntary.  
53 Except in administrative proceedings concerning the inmate's opportunity  
54 to participate in, or continue to participate in, such a voluntary  
55 program administered by a correctional facility, evidence of an inmate's  
56 failure to successfully participate in or complete a merit time allow-

1 ance credit program or administrative privileges credit program, pursu-  
2 ant to this article, shall not be admissible against the inmate,  
3 provided, however, that the inmate may present information concerning  
4 successful participation for the purposes of mitigation, where relevant,  
5 in any court or proceeding. Upon admission to a local correctional  
6 facility, each inmate shall be notified by the sheriff, in writing, of  
7 the existence, criteria and rules governing participation in the merit  
8 time allowance credit program.

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

16 2. An inmate who loses a merit time allowance credit pursuant to  
17 subdivision one of this section is eligible for subsequent participation  
18 in a merit time allowance credit program at the discretion of the sher-  
19 iff.

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

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

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

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

53 3. Jail time. The term of a definite sentence, a determinate sentence,  
54 or the maximum term of an indeterminate sentence imposed on a person  
55 shall be credited with and diminished by the amount of time the person  
56 spent in custody prior to the commencement of such sentence as a result

1 of the charge that culminated in the sentence. In the case of an inde-  
2 terminate sentence, if the minimum period of imprisonment has been fixed  
3 by the court or by the board of parole, the credit shall also be applied  
4 against the minimum period. The credit herein provided shall be calcu-  
5 lated from the date custody under the charge commenced to the date the  
6 sentence commences and shall not include any time that is credited  
7 against the term or maximum term of any previously imposed sentence or  
8 period of post-release supervision to which the person is subject. The  
9 credit herein provided shall also include any additional merit time  
10 allowance credit accrued in a local correctional facility pursuant to  
11 article twenty-four-A of the correction law. Where the charge or charges  
12 culminate in more than one sentence, the credit shall be applied as  
13 follows:

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

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

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

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

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

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

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

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

55 § 4. This act shall take effect on the first of November next succeed-  
56 ing the date on which it shall have become a law; provided that the

1 amendments to subdivision 3 of section 70.30 of the penal law made by  
2 section two of this act shall be subject to the expiration and reversion  
3 of such subdivision pursuant to subdivision d of section 74 of chapter 3  
4 of the laws of 1995, as amended, when upon such date the provisions of  
5 section three of this act shall take effect.