STATE OF NEW YORK

7718

2021-2022 Regular Sessions

IN ASSEMBLY

May 20, 2021

Introduced by M. of A. BURGOS -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the penal law in relation to the allocation of jail time credit

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

Section 1. 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**; provided however that when a person is subject to an undischarged term of imprisonment or post-release supervision following parole release, presumptive release or conditional release from an indeterminate sentence, or conditional release or maximum expiration of a determinate sentence, and is held in pre-trial custody in a local correctional facility on a new charge or charges that culminate in an indeterminate or determinate term of imprisonment, the time spent in pre-trial custody in a local correctional facility on such charge or charges, from the date custody commenced to the date of commencement of the subsequently imposed indeterminate or determinate sentence, shall be credited as jail**

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

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time, and provided further, that when jail time is credited in such manner the time spent in pre-trial custody shall not be credited to the previously imposed sentence to which the person is subject. 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.

§ 2. 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; provided however that when a person is subject to an undischarged term of imprisonment or post-release supervision following parole release, presumptive release or conditional release from an indeterminate sentence, or conditional release or maximum expiration of a determinate sentence, and is held in pre-trial custody in a local correctional facility on a new charge or charges that culminate in an indeterminate or determinate term of imprisonment, the time spent in pre-trial custody in a local correctional facility on such charge or charges, from the date custody commenced to the date of commencement of the subsequently imposed indeterminate or determinate sentence, shall be credited as jail time, and provided further, that when jail time is credited in such manner the time spent in pre-trial custody shall not be credited to the previously imposed sentence to which the person is subject. 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. This act shall take effect immediately and shall apply to any person subject to an undischarged term of imprisonment or post-release supervision following parole release, presumptive release or conditional release from an indeterminate sentence, conditional release or maximum expiration of a determinate sentence on or after the date this act takes effect; provided that the amendments to subdivision 3 of section 70.30 of the penal law made by section one 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 two of this act shall take effect.