

# STATE OF NEW YORK

8150

## IN SENATE

January 26, 2022

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law and the penal law, in relation to establishing merit time allowance 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

#### 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. Record keeping.

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

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

15 2. "Eligible incarcerated individual" means an incarcerated individual  
16 in the custody of the sheriff of a local correctional facility who is  
17 serving one or more definite sentences of one year or less or who is  
18 detained pending trial, sentence or other disposition and who partic-  
19 ipates in the merit time allowance credit program established pursuant  
20 to this article.

21 § 811. Merit time allowance credit accrual and application. 1. Upon  
22 the active participation in an educational, vocational, work, or rehabi-  
23 litative program that has been assigned by the chief administrative  
24 officer, an eligible incarcerated individual shall accrue credits  
25 applied to his or her sentence in the same manner as jail time credit  
26 pursuant to subdivision three of section 70.30 of the penal law. One

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

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1 credit shall accrue for every four days in which the incarcerated indi-  
2 vidual successfully participates in the program.

3 2. Accrued credits shall, in accordance with this section, be applied  
4 against an eligible incarcerated individual's sentence or, if pre-trial,  
5 against the sentence ultimately imposed, and shall diminish the incar-  
6 cerated individual's period of imprisonment according to the schedule  
7 set forth in subdivision one of this section.

8 3. If an eligible incarcerated individual accrues credits pursuant to  
9 subdivision one of this section during a period of pre-trial or pre-sen-  
10 tence detention for a felony offense, and is later convicted of and  
11 sentenced to a period of imprisonment in a state correctional facility  
12 for such a felony offense, the credits accrued by the incarcerated indi-  
13 vidual shall be applied by the department as additional jail time credit  
14 pursuant to subdivision three of section 70.30 of the penal law to the  
15 sentence served by the incarcerated individual for such felony offense.

16 4. All participation by an incarcerated individual in the merit time  
17 allowance credit program is voluntary. Except in administrative  
18 proceedings concerning the incarcerated individual's opportunity to  
19 participate in, or continue to participate in, such a voluntary program  
20 administered by a correctional facility, evidence of an incarcerated  
21 individual's failure to successfully participate in or complete a merit  
22 time allowance credit program, pursuant to this article, shall not be  
23 admissible against the incarcerated individual, provided, however, that  
24 the incarcerated individual may present information concerning success-  
25 ful participation for the purposes of mitigation, where relevant, in any  
26 court or proceeding. Upon admission to a local correctional facility,  
27 each incarcerated individual shall be notified by the sheriff, in writ-  
28 ing, of the existence, criteria and rules governing participation in the  
29 merit time allowance credit program.

30 § 812. Forfeiture of merit time allowance credit. 1. Any merit time  
31 allowance credit accrued pursuant to the program established pursuant to  
32 this article may, after notice and an opportunity to be heard, be with-  
33 held, forfeited or cancelled in whole or in part for bad behavior,  
34 violation of institutional rules or failure to participate successfully  
35 in the program. The sheriff shall notify the incarcerated individual  
36 promptly in writing of the reasons for any such determination.

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

41 § 813. Record keeping. A contemporaneous record shall be kept by the  
42 sheriff of all merit time allowance credits an incarcerated individual  
43 accrues pursuant to this article. In any case where the sheriff has the  
44 duty to deliver an incarcerated individual to the custody of the depart-  
45 ment, or a sheriff or similar department in another jurisdiction, wheth-  
46 er under an order of sentence and commitment or otherwise, the sheriff  
47 shall also deliver to the state correctional facility, sheriff or simi-  
48 lar department to which the incarcerated individual is delivered, and to  
49 the incarcerated individual, a certified record of merit time allowance  
50 credits accrued by the incarcerated individual.

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

54 3. Jail time. The term of a definite sentence, a determinate sentence,  
55 or the maximum term of an indeterminate sentence imposed on a person  
56 shall be credited with and diminished by the amount of time the person

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

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

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

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

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

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

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

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

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

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