

STATE OF NEW YORK

7442

2021-2022 Regular Sessions

IN ASSEMBLY

May 10, 2021

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 providing for good behavior allowance credits to inmates; and to repeal certain provisions of the correction law relating thereto

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

Section 1. Section 800 of the correction law, as amended by chapter 653 of the laws of 1974, is amended to read as follows:

§ 800. Applicability. The provisions of this article shall apply, to the exclusion of all other provisions of this chapter relating to good behavior [~~allowances~~] allowance credits, where sentence has been imposed pursuant to the provisions of the penal law as enacted by chapter ten hundred thirty of the laws of nineteen hundred sixty-five, as amended, or where the sentence is a reformatory sentence of imprisonment. Matters not expressly covered herein or covered in such penal law shall be governed by such other provisions of law as may be applicable.

§ 2. The correction law is amended by adding a new section 802 to read as follows:

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

(a) "Institution" means any institution under the jurisdiction of the department or an institution designated by the commissioner pursuant to section seventy-two-a of this chapter.

(b) "Eligible inmate" means an inmate confined in an institution who is not serving a sentence for a class A-I felony offense pursuant to sections 125.25, 125.26 and 125.27 of the penal law.

§ 3. Section 803 of the correction law, as amended by chapter 3 of the laws of 1995, paragraphs (a), (b) and (c) of subdivision 1 and subdivisions 3, 4 and 5 as amended by section 37 of subpart B of part C of chapter 62 of the laws of 2011, paragraph (d) of subdivision 1 and

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

LBD10953-01-1

subdivision 2-a as added by chapter 738 of the laws of 2004, and subdivision 2-b as added by section 3 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

§ 803. Good behavior allowances against indeterminate and determinate sentences. 1. (a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate or determinate sentence of imprisonment, except a person serving a sentence with a ~~[maximum]~~ term of life imprisonment, ~~[may]~~ shall receive ~~[time allowance]~~ one-third time credit upon an inmate's entry into the department's custody against the ~~[term or]~~ minimum and the maximum term or period of his or her sentence imposed by the court so as to encourage good behavior. Such ~~[allowances may be granted]~~ credit shall be kept for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be ~~[withheld,]~~ forfeited ~~[or canceled]~~ in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned. Within thirty days of beginning his or her incarceration, each inmate shall receive the calculation of his or her good time credit to include the calculated release date. If at any point throughout his or her incarceration there is a recommendation to change an inmate's good behavior credit and proposed release date due to alleged bad behavior, the inmate shall be notified of such recommended changes within thirty days of the date of such recommendation.

(b) A person serving an indeterminate sentence of imprisonment ~~[may]~~ shall receive one-third time [allowance] credit upon entry into the department's custody against the minimum term and the maximum term of his or her sentence ~~[not to exceed one-third of the maximum term]~~ imposed by the court.

(c) A person serving a determinate sentence of imprisonment ~~[may]~~ shall receive one-third time [allowance] credit upon entry into the department's custody against the term or maximum term of his or her sentence ~~[not to exceed one-seventh of the term]~~ imposed by the court.

(d) (i) The department shall enter into partnerships with, but not limited to:

(A) nonprofit and other private organizations, including faith-based, art, and community-based organizations that will deliver merit program activities and programming on a paid or volunteer basis;

(B) institutions of higher education that will deliver instruction on a paid or volunteer basis;

(C) private entities that will:

(1) deliver vocational training and certifications;

(2) provide equipment to facilitate vocational training or employment opportunities for prisoners;

(3) employ prisoners; or

(4) assist prisoners who are in pre-release custody or supervised release in finding employment; and

(D) industry-sponsored organizations that will deliver workforce development and training, on a paid or volunteer basis. Except as provided in subparagraph (ii) of this paragraph, every person under the custody of the department or confined in a facility in the department of mental hygiene ~~[serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more imposed pursuant to section 70.70 or 70.71 of the penal law, may]~~ shall earn ~~[a]~~ merit time allowance credits. Inmates shall be given a merit plan within two months of the beginning

1 of their incarceration. Merit program activities and programming part-
2 nerships shall be offered at every facility within the department, which
3 shall provide funding for such activities and programming.

4 (ii) Such merit time allowance credits shall not be available to any
5 person serving [~~an indeterminate~~] a sentence [~~authorized~~] for an A-I
6 felony offense[, ~~other than an A-I felony offense defined in article two~~
7 ~~hundred twenty of the penal law, or any sentence imposed for a violent~~
8 ~~felony offense as defined in section 70.02 of the penal law, manslaught-~~
9 ~~er in the second degree, vehicular manslaughter in the second degree,~~
10 ~~vehicular manslaughter in the first degree, criminally negligent homi-~~
11 ~~cide, an offense defined in article one hundred thirty of the penal law,~~
12 ~~incest, or an offense defined in article two hundred sixty three]~~ pursu-
13 ant to sections 125.25, 125.26 and 125.27 of the penal law[, ~~or aggra-~~
14 ~~vated harassment of an employee by an inmate~~].

15 (iii) [~~The merit time allowance~~] (A) After application of time credit
16 [~~against the minimum period of the indeterminate sentence shall be one~~
17 ~~sixth of the minimum period imposed by the court except that such credit~~
18 ~~shall be one-third of the minimum period imposed by the court for an A-I~~
19 ~~felony offense defined in article two hundred twenty of the penal law.~~
20 ~~In the case of such a determinate sentence, in addition to the time~~
21 ~~allowance credit authorized by paragraph (c) of this subdivision, the~~
22 ~~merit time allowance credited against the term of the determinate~~
23 ~~sentence pursuant to this paragraph shall be one-seventh of the term~~
24 ~~imposed by the court]~~ for good behavior pursuant to paragraphs (a), (b)
25 and (c) of this subdivision, an inmate shall receive an additional month
26 of credit off of their sentence for every month of participation in the
27 activities described pursuant to subparagraph (iv) of this paragraph as
28 follows:

29 (1) if the sentence is determinate, the authorized allowance credits
30 shall be one month off the remainder of the sentence for every month of
31 participation, after application of credit earned for good behavior as
32 set forth pursuant to paragraph (a) of this subdivision;

33 (2) if the sentence is indeterminate, the authorized allowance credits
34 shall be one month off both the minimum and maximum terms of the
35 sentence for every month of participation, after application of credit
36 earned for good behavior as set forth pursuant to paragraph (a) of this
37 subdivision;

38 (3) if an individual is serving two or more indeterminate sentences
39 which run concurrently, the authorized allowance credits shall be one
40 month off both the aggregate maximum and aggregate minimum terms of the
41 sentences for every month of participation, after the application of
42 credit earned for good behavior as set forth pursuant to paragraph (a)
43 of this subdivision;

44 (4) if an individual is serving two or more indeterminate sentences
45 which run consecutively, the authorized allowance credits shall be one
46 month off the maximum or aggregate maximum and minimum or aggregate
47 minimum terms of the sentences for every month of participation, after
48 the application of credit earned for good behavior as set forth pursuant
49 to paragraph (a) of this subdivision;

50 (5) if an individual is serving two or more determinate sentences
51 which run concurrently, the authorized allowance credits shall be one
52 month off the aggregate maximum sentence for every month of partic-
53 ipation after the application of credit earned for good behavior as set
54 forth pursuant to paragraph (a) of this subdivision;

55 (6) if an individual is serving two or more determinate sentences
56 which run consecutively, the authorized allowance credits shall be one

1 month off the aggregate maximum sentence for every month of partic-
2 ipation, after the application of credit earned for good behavior as set
3 forth pursuant to paragraph (a) of this subdivision;

4 (7) if an individual is serving one or more indeterminate sentences
5 and one or more determinate sentences which run concurrently, the
6 authorized allowance credits shall be one month off the aggregate mini-
7 mum and aggregate maximum sentences for every month of participation,
8 after the application of credit earned for good behavior as set forth
9 pursuant to paragraph (a) of this subdivision; and

10 (8) if an individual is serving one or more indeterminate sentences
11 and one or more determinate sentences which run consecutively, the
12 authorized allowance credits shall be one month off the aggregate mini-
13 mum and aggregate maximum sentences for every month of participation,
14 after application of credit earned for good behavior as set forth pursu-
15 ant to paragraph (a) of this subdivision.

16 (B) By participating in the activities set forth pursuant to subpara-
17 graph (iv) of this paragraph, inmates shall also earn:

18 (1) expanded phone privileges and benefits;
19 (2) the ability to participate in video conferencing where available;
20 (3) additional visiting privileges as determined by the warden;
21 (4) consideration for placement upon the inmate's request closer to
22 the inmate's release address, subject to bed availability, security, and
23 the warden's recommendation;

24 (5) more commissary spending limits and product offering;

25 (6) more e-mail time;

26 (7) unit transfer consideration; or

27 (8) other incentives to be determined by the department.

28 (iv) Such merit time allowance ~~[may be granted when an inmate success-~~
29 ~~fully participates in the]~~ credits shall be earned, accrued and shall
30 not be taken away for every month of participation in any productive
31 activity pursuant to the merit program activities and programming part-
32 nerships, which shall include, but not be limited to, the following:

33 (A) the work and treatment program assigned pursuant to section eight
34 hundred five of this article ~~[and when such inmate obtains];~~

35 (B) work towards obtaining a general equivalency diploma~~[7];~~

36 (C) work towards obtaining an alcohol and substance abuse treatment
37 certificate~~[7];~~

38 (D) participation in faith-based correspondence courses, programs or
39 services, and inmate work assignments;

40 (E) work towards obtaining a vocational trade certificate following
41 ~~[at least six months of]~~ vocational programming ~~[or performs at least~~
42 ~~four hundred hours of service as part of a community work crew];~~

43 (F) participation through an institution of higher education by either
44 working towards completion of an associate's or bachelor's degree from a
45 college or participation in a college offered program;

46 (G) performance of at least four hundred hours of service as part of a
47 community work crew;

48 (H) participation as an inmate program associate;

49 (I) work towards receiving a certification from the department of
50 labor for participation in an apprenticeship program;

51 (J) work as an inmate hospice aid;

52 (K) work in the division of correctional industries' optical program
53 toward receiving a certification as an optician from the American board
54 of opticianry;

55 (L) work towards receiving an asbestos handling certificate from the
56 department of labor upon completion of the training program and then

1 work in the division of correctional industries' asbestos abatement
2 program as a hazardous materials removal worker or group leader;

3 (M) work towards completing the course curriculum and passing the
4 minimum competency screening process performance examination for sign
5 language interpreter, and if a passing score has been obtained, then
6 work as a sign language interpreter for deaf inmates;

7 (N) work in the puppies behind bars program;

8 (O) participation in a vocational culinary arts program and work
9 toward earning a serve safe certificate that is recognized by the
10 national restaurant association;

11 (P) completion of four hundred ninety hours of training in a motor
12 vehicle call center, and work at a call center for an additional twen-
13 ty-one months;

14 (Q) work towards receiving a certificate from the food production
15 center in an assigned position; or

16 (R) participation in any program that promotes rehabilitation and
17 personal growth and healthy living lifestyles, provides job training,
18 education and re-entry skills and reduces recidivism.

19 [Such allowance shall be withheld] Participants may be removed from
20 the merit program activities and programming partnerships for any seri-
21 ous disciplinary infraction or upon a judicial determination that the
22 person, while an inmate, commenced or continued a civil action, proceed-
23 ing or claim that was found to be frivolous as defined in subdivision
24 (c) of section eight thousand three hundred three-a of the civil prac-
25 tice law and rules, or an order of a federal court pursuant to rule 11
26 of the federal rules of civil procedure imposing sanctions in an action
27 commenced by a person, while an inmate, against a state agency, officer
28 or employee.

29 ~~[(v) The provisions of this paragraph shall apply to persons in custo-~~
30 ~~dy serving an indeterminate sentence on the effective date of this para-~~
31 ~~graph as well as to persons sentenced to an indeterminate sentence on~~
32 ~~and after the effective date of this paragraph and prior to September~~
33 ~~first, two thousand five and to persons sentenced to a determinate~~
34 ~~sentence prior to September first, two thousand eleven for a felony as~~
35 ~~defined in article two hundred twenty or two hundred twenty one of the~~
36 ~~penal law.]~~

37 2. ~~[If a person is serving more than one sentence, the authorized~~
38 ~~allowances may be granted separately against the term or maximum term of~~
39 ~~each sentence or, where consecutive sentences are involved, against the~~
40 ~~aggregate maximum term. Such allowances shall be calculated as follows:~~

41 ~~(a) A person serving two or more indeterminate sentences which run~~
42 ~~concurrently may receive time allowance not to exceed one third of the~~
43 ~~indeterminate sentence which has the longest unexpired time to run.~~

44 ~~(b) A person serving two or more indeterminate sentences which run~~
45 ~~consecutively may receive time allowance not to exceed one third of the~~
46 ~~aggregate maximum term.~~

47 ~~(c) A person serving two or more determinate sentences which run~~
48 ~~concurrently may receive time allowance not to exceed one seventh of the~~
49 ~~determinate sentence which has the longest unexpired time to run.~~

50 ~~(d) A person serving two or more determinate sentences which run~~
51 ~~consecutively may receive time allowance not to exceed one seventh of~~
52 ~~the aggregate maximum term.~~

53 ~~(e) A person serving one or more indeterminate sentence and one or~~
54 ~~more determinate sentence which run concurrently may receive time allow-~~
55 ~~ance not to exceed one third of the indeterminate sentence which has the~~
56 ~~longest unexpired term to run or one seventh of the determinate sentence~~

1 ~~which has the longest unexpired time to run, whichever allowance is~~
2 ~~greater.~~

3 ~~(f) A person serving one or more indeterminate sentence and one or~~
4 ~~more determinate sentence which run consecutively may receive time~~
5 ~~allowance not to exceed the sum of one third of the maximum or aggregate~~
6 ~~maximum of the indeterminate sentence or sentences and one seventh of~~
7 ~~the term or aggregate maximum of the determinate sentence or sentences.~~

8 ~~2-a. If a person is serving more than one sentence, the authorized~~
9 ~~merit time allowances may be granted against the period or aggregate~~
10 ~~minimum period of the indeterminate sentence or sentences, or against~~
11 ~~the term or aggregate term of the determinate sentence or sentences, or~~
12 ~~where consecutive determinate and indeterminate sentences are involved,~~
13 ~~against the aggregate minimum period as calculated pursuant to subpara-~~
14 ~~graph (iv) of paragraph (a) of subdivision one of section 70.40 of the~~
15 ~~penal law. Such allowances shall be calculated as follows:~~

16 ~~(a) A person serving two or more indeterminate sentences which run~~
17 ~~concurrently may receive a merit time allowance not to exceed one sixth~~
18 ~~of the minimum period of the indeterminate sentence imposed for an~~
19 ~~offense other than an A-I felony offense defined in article two hundred~~
20 ~~twenty of the penal law, or one third of the minimum period of the inde-~~
21 ~~terminate sentence imposed for an A-I felony offense defined in article~~
22 ~~two hundred twenty of the penal law, whichever allowance results in the~~
23 ~~longest unexpired time to run.~~

24 ~~(b) A person serving two or more indeterminate sentences which run~~
25 ~~consecutively may receive a merit time allowance not to exceed the~~
26 ~~amount of one third of the minimum or aggregate minimum period of the~~
27 ~~sentences imposed for an A-I felony offense defined in article two~~
28 ~~hundred twenty of the penal law, plus one sixth of the minimum or aggre-~~
29 ~~gate minimum period of the sentences imposed for an offense other than~~
30 ~~such A-I felony offense.~~

31 ~~(c) A person serving two or more determinate sentences for an offense~~
32 ~~defined in article two hundred twenty or two hundred twenty one of the~~
33 ~~penal law which run concurrently may receive a merit time allowance not~~
34 ~~to exceed one seventh of the term of the determinate sentence which has~~
35 ~~the longest unexpired time to run.~~

36 ~~(d) A person serving two or more determinate sentences for an offense~~
37 ~~defined in article two hundred twenty or two hundred twenty one of the~~
38 ~~penal law which run consecutively may receive a merit time allowance not~~
39 ~~to exceed one seventh of the aggregate term of such determinate~~
40 ~~sentences.~~

41 ~~(e) A person serving one or more indeterminate sentences and one or~~
42 ~~more determinate sentences for an offense defined in article two hundred~~
43 ~~twenty or two hundred twenty one of the penal law which run concurrently~~
44 ~~may receive a merit time allowance not to exceed one sixth of the mini-~~
45 ~~imum period of the indeterminate sentence imposed for an offense other~~
46 ~~than an A-I felony offense defined in article two hundred twenty of the~~
47 ~~penal law, one third of the minimum period of the indeterminate sentence~~
48 ~~imposed for an A-I felony offense defined in article two hundred twenty~~
49 ~~of the penal law, or one seventh of the term of the determinate~~
50 ~~sentence, whichever allowance results in the largest unexpired time to~~
51 ~~run.~~

52 ~~(f) A person serving one or more indeterminate sentences and one or~~
53 ~~more determinate sentences which run consecutively may receive a merit~~
54 ~~time allowance not to exceed the sum of one sixth of the minimum or~~
55 ~~aggregate minimum period of the indeterminate sentence or sentences~~
56 ~~imposed for an offense other than an A-I felony offense defined in arti-~~

~~ele two hundred twenty of the penal law, one third of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law and one seventh of the term or aggregate term of the determinate sentence or sentences.~~

~~(g) The provisions of this subdivision shall apply to persons in custody serving an indeterminate sentence on the effective date of this subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to September first, two thousand five and to persons sentenced to a determinate sentence prior to September first, two thousand eleven for a felony as defined in article two hundred twenty or two hundred twenty one of the penal law.~~

~~2-b. Notwithstanding the foregoing, if a person is serving more than one indeterminate sentence, at least one of which is imposed for a class A-I felony offense defined in article two hundred twenty of the penal law, the authorized merit time allowance granted pursuant to paragraph (d) of subdivision one of this section shall be calculated as follows:~~

~~(a) In the event a person is serving two or more indeterminate sentences with different minimum periods which run concurrently, the merit time allowance shall be based upon the sentence with the longest unexpired minimum period. If the sentence with the longest unexpired minimum period was imposed for a class A-I felony, the merit time credit shall be one third of such sentence's minimum period; if such sentence was imposed for an offense other than a class A-I felony, such merit time credit shall be one sixth of such sentence's minimum period. Provided, however, that where the minimum period of any other concurrent indeterminate sentence is greater than such reduced minimum period, the minimum period of such other concurrent indeterminate sentence shall also be reduced but only to the extent that the minimum period of such other concurrent sentence, as so reduced, is equal to the reduced minimum period of such sentence with the longest unexpired minimum period to run.~~

~~(b) A person serving two or more indeterminate sentences with the same minimum periods which run concurrently, and no concurrent indeterminate sentence with any greater minimum period, shall have the minimum period of each such sentence reduced in the amount of one third of such minimum period if all such sentences were imposed for a class A-I felony.~~

~~(c) A person serving two or more indeterminate sentences that run consecutively shall have the aggregate minimum period of such sentences reduced in the amount of one third of such aggregate minimum period of the sentences imposed for a class A-I felony, plus one sixth of such aggregate minimum period of the sentences imposed for an offense other than a class A-I felony.~~

~~3.]~~ The commissioner of corrections and community supervision shall promulgate rules and regulations for the [~~granting, withholding, forfeiture, cancellation and restoration of allowances~~] calculation of allowance credits earned by each participant as authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating [~~the~~] a person or committee in each correctional institution [~~delegated~~] to [~~make discretionary determinations with respect to the allowances~~] log and record the allowance credits, determine the books and records to be kept, and a procedure for review of the institutional determinations by the commissioner. Merit programs and the ability to accrue allowance credits shall be made available to every inmate in all correctional institutions.

~~[4. No person shall have the right to demand or require the allowances authorized by this section. The decision of the commissioner of corrections and community supervision as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.~~

~~5.]~~ 3. Time ~~[allowances granted]~~ credits accrued prior to any release to community supervision shall not be forfeited and shall ~~[not]~~ be restored if the released person is returned to an institution under the jurisdiction of the state department of corrections and community supervision for violation of community supervision or by reason of a conviction for a crime committed while on community supervision. A person who is so returned ~~[may]~~ shall, however, subsequently ~~[receive]~~ continue to earn time ~~[allowances]~~ allowance credits against the remaining portion of his or her ~~[term,]~~ maximum ~~[term]~~ or aggregate maximum term ~~[pursuant to this section and provided such remaining portion of his or her term, maximum term, or aggregate maximum term is more than one year]~~ or period.

~~[6.]~~ 4. Upon commencement of an indeterminate or a determinate sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by a person designated by the commissioner to perform such duty.

5. The provisions of this section shall be deemed in effect and applied retroactively to each eligible inmate, beginning at the time he or she began serving his or her sentence.

§ 4. Section 803 of the correction law, as amended by chapter 126 of the laws of 1987, paragraph (a) of subdivision 1 as designated and paragraph (d) of subdivision 1 and subdivisions 1-a and 2-a as added by chapter 738 of the laws of 2004, and subdivisions 3, 4 and 5 as amended by section 38 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 803. Good behavior allowances against indeterminate sentences. 1. (a) Every person confined in an institution of the department or a facility in the department of mental hygiene ~~[serving an indeterminate sentence of imprisonment]~~, except a person serving a determinate sentence with a ~~[maximum]~~ term of life imprisonment, ~~[may]~~ shall receive one-third time ~~[allowance]~~ credit upon an inmate's entry into the department's custody, against the minimum and the maximum term or period of his or her sentence ~~[not to exceed in the aggregate one-third of the term or period]~~ so as to encourage good behavior. Such ~~[allowances may be granted]~~ credit shall be kept for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be ~~[withheld,]~~ forfeited ~~[or canceled]~~ in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned. Within thirty days of beginning his or her incarceration, each inmate shall receive the calculation of his or her good time credit to include the calculated release date. If at any point throughout his or her incarceration there is a recommendation to change an inmate's good behavior credit and proposed release date due to alleged bad behavior, the inmate shall be notified of such recommended changes within thirty days of the date of such recommendation.

(b) A person serving an indeterminate sentence of imprisonment shall receive one-third time credit upon entry into the department's custody against the minimum term and the maximum term of his or her sentence imposed by the court.

1 (c) A person serving a determinate sentence of imprisonment shall
2 receive one-third time credit upon entry into the department's custody
3 against the term or maximum term of his or her sentence imposed by the
4 court.

5 (d) (i) The department shall enter into partnerships with, but not
6 limited to:

7 (A) nonprofit and other private organizations, including faith-based,
8 art, and community-based organizations that will deliver merit program
9 activities and programming on a paid or volunteer basis;

10 (B) institutions of higher education that will deliver instruction on
11 a paid or volunteer basis;

12 (C) private entities that will:

13 (1) deliver vocational training and certifications;

14 (2) provide equipment to facilitate vocational training or employment
15 opportunities for prisoners;

16 (3) employ prisoners; or

17 (4) assist prisoners who are in pre-release custody or supervised
18 release in finding employment; and

19 (D) industry-sponsored organizations that will deliver workforce
20 development and training, on a paid or volunteer basis. Except as

21 provided in subparagraph (ii) of this paragraph, every person under the
22 custody of the department or confined in a facility in the department of

23 mental hygiene [~~serving an indeterminate sentence of imprisonment with a~~
24 ~~minimum period of one year or more or a determinate sentence of impri-~~

25 ~~sonment of one year or more imposed pursuant to section 70.70 or 70.71~~
26 ~~of the penal law, may] shall earn [a] merit time allowance credits.~~

27 Inmates shall be given a merit plan within two months of the beginning
28 of their incarceration. Merit program activities and programming part-
29 nerships shall be offered at every facility within the department, which
30 shall provide funding for such activities and programming.

31 (ii) Such merit time allowance credits shall not be available to any
32 person serving [~~an indeterminate~~] a sentence [~~authorized~~] for an A-I

33 felony offense[, ~~other than an A-I felony offense defined in article two~~
34 ~~hundred twenty of the penal law, or any sentence imposed for a violent~~

35 ~~felony offense as defined in section 70.02 of the penal law, manslaughter~~
36 ~~in the second degree, vehicular manslaughter in the second degree,~~

37 ~~vehicular manslaughter in the first degree, criminally negligent homi-~~
38 ~~cide, an offense defined in article one hundred thirty of the penal law,~~

39 ~~incest, or an offense defined in article two hundred sixty-three] pursu-~~

40 ant to sections 125.25, 125.26 and 125.27 of the penal law[, ~~or aggra-~~
41 ~~vated harassment of an employee by an inmate].~~

42 (iii) [~~The merit time allowance~~] (A) After application of time credit
43 [~~against the minimum period of the indeterminate sentence shall be one-~~

44 ~~sixth of the minimum period imposed by the court except that such credit~~
45 ~~shall be one-third of the minimum period imposed by the court for an A-I~~

46 ~~felony offense defined in article two hundred twenty of the penal law.~~
47 ~~In the case of such a determinate sentence, in addition to the time~~

48 ~~allowance credit authorized by paragraph (c) of this subdivision, the~~
49 ~~merit time allowance credited against the term of the determinate~~

50 ~~sentence pursuant to this paragraph shall be one-seventh of the term~~
51 ~~imposed by the court] for good behavior pursuant to paragraphs (a), (b)~~

52 and (c) of this subdivision, an inmate shall receive an additional month
53 of credit off of his or her sentence for every month of participation in

54 the activities described pursuant to subparagraph (iv) of this paragraph
55 as follows:

1 (1) if the sentence is determinate, the authorized allowance credits
2 shall be one month off the remainder of the sentence for every month of
3 participation, after application of credit earned for good behavior as
4 set forth pursuant to paragraph (a) of this subdivision;

5 (2) if the sentence is indeterminate, the authorized allowance credits
6 shall be one month off both the minimum and maximum terms of the
7 sentence for every month of participation, after application of credit
8 earned for good behavior as set forth pursuant to paragraph (a) of this
9 subdivision;

10 (3) if an individual is serving two or more indeterminate sentences
11 which run concurrently, the authorized allowance credits shall be one
12 month off both the aggregate maximum and aggregate minimum terms of the
13 sentences for every month of participation, after the application of
14 credit earned for good behavior as set forth pursuant to paragraph (a)
15 of this subdivision;

16 (4) if an individual is serving two or more indeterminate sentences
17 which run consecutively, the authorized allowance credits shall be one
18 month off the maximum or aggregate maximum and minimum or aggregate
19 minimum terms of the sentences for every month of participation, after
20 the application of credit earned for good behavior as set forth pursuant
21 to paragraph (a) of this subdivision;

22 (5) if an individual is serving two or more determinate sentences
23 which run concurrently, the authorized allowance credits shall be one
24 month off the aggregate maximum sentence for every month of partic-
25 ipation after the application of credit earned for good behavior as set
26 forth pursuant to paragraph (a) of this subdivision;

27 (6) if an individual is serving two or more determinate sentences
28 which run consecutively, the authorized allowance credits shall be one
29 month off the aggregate maximum sentence for every month of partic-
30 ipation, after the application of credit earned for good behavior as set
31 forth pursuant to paragraph (a) of this subdivision;

32 (7) if an individual is serving one or more indeterminate sentences
33 and one or more determinate sentences which run concurrently, the
34 authorized allowance credits shall be one month off the aggregate mini-
35 mum and aggregate maximum sentences for every month of participation,
36 after the application of credit earned for good behavior as set forth
37 pursuant to paragraph (a) of this subdivision; and

38 (8) if an individual is serving one or more indeterminate sentences
39 and one or more determinate sentences which run consecutively, the
40 authorized allowance credits shall be one month off the aggregate mini-
41 mum and aggregate maximum sentences for every month of participation,
42 after application of credit earned for good behavior as set forth pursu-
43 ant to paragraph (a) of this subdivision.

44 (B) By participating in the activities set forth pursuant to subpara-
45 graph (iv) of this paragraph, inmates shall also earn:

46 (1) expanded phone privileges and benefits;

47 (2) the ability to participate in video conferencing where available;

48 (3) additional visiting privileges as determined by the warden;

49 (4) consideration for placement upon the inmate's request closer to
50 the inmate's release address, subject to bed availability, security, and
51 the warden's recommendation;

52 (5) more commissary spending limits and product offering;

53 (6) more e-mail time;

54 (7) unit transfer consideration; or

55 (8) other incentives to be determined by the department.

(iv) Such merit time allowance ~~[may be granted when an inmate successfully participates in]~~ credits shall be earned, accrued and shall not be taken away for every month of participation in any productive activity pursuant to the merit program activities and programming partnerships, which shall include, but not be limited to, the following:

(A) the work and treatment program assigned pursuant to section eight hundred five of this article ~~[and when such inmate obtains];~~

(B) work towards obtaining a general equivalency diploma~~;~~

(C) work towards obtaining an alcohol and substance abuse treatment certificate~~;~~

(D) participation in faith-based correspondence courses, programs or services, and inmate work assignments;

(E) work towards obtaining a vocational trade certificate ~~[following at least six months of vocational programming or performs at least four hundred hours of service as part of a community work crew];~~

(F) participation through an institution of higher education by either working towards completion of an associate's or bachelor's degree from a college or participation in a college offered program;

(G) performance of at least four hundred hours of service as part of a community work crew;

(H) participation as an inmate program associate;

(I) work towards receiving a certification from the department of labor for participation in an apprenticeship program;

(J) work as an inmate hospice aid;

(K) work in the division of correctional industries' optical program toward receiving a certification as an optician from the American board of opticianry;

(L) work towards receiving an asbestos handling certificate from the department of labor upon completion of the training program and then work in the division of correctional industries' asbestos abatement program as a hazardous materials removal worker or group leader;

(M) work towards completing the course curriculum and passing the minimum competency screening process performance examination for sign language interpreter, and if a passing score has been obtained, then work as a sign language interpreter for deaf inmates;

(N) work in the puppies behind bars program;

(O) participation in a vocational culinary arts program and work toward earning a serve safe certificate that is recognized by the national restaurant association;

(P) completion of four hundred ninety hours of training in a motor vehicle call center, and work at a call center for an additional twenty-one months;

(Q) work towards receiving a certificate from the food production center in an assigned position; or

(R) participation in any program that promotes rehabilitation and personal growth and healthy living lifestyles, provides job training, education and re-entry skills and reduces recidivism.

~~[Such allowance shall be withheld]~~ Participants may be removed from the merit program activities and programming partnerships for any serious disciplinary infraction or upon a judicial determination that the person, while an inmate, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action

1 commenced by a person, while an inmate, against a state agency, officer
2 or employee.

3 ~~[(v) The provisions of this paragraph shall apply to persons in custo-~~
4 ~~dy serving an indeterminate sentence on the effective date of this para-~~
5 ~~graph as well as to persons sentenced to an indeterminate sentence on~~
6 ~~and after the effective date of this paragraph and prior to September~~
7 ~~first, two thousand five and to persons sentenced to a determinate~~
8 ~~sentence prior to September first, two thousand eleven for a felony as~~
9 ~~defined in article two hundred twenty or two hundred twenty-one of the~~
10 ~~penal law.~~

11 ~~1-a. A person serving a determinate sentence imposed pursuant to~~
12 ~~section 70.70 or 70.71 of the penal law may receive a time allowance~~
13 ~~against the term of his or her sentence not to exceed one-seventh of the~~
14 ~~term imposed by the court.]~~

15 ~~2. [If a person is serving more than one sentence, the authorized~~
16 ~~allowances may be granted separately against the maximum term of each~~
17 ~~sentence or, where consecutive sentences are involved, against the~~
18 ~~aggregate maximum term. In no case, however, shall the total of all~~
19 ~~allowances granted to any such person under this section exceed one-~~
20 ~~third of the time he would be required to serve, computed without regard~~
21 ~~to this section.~~

22 ~~2-a. If a person is serving more than one sentence, the authorized~~
23 ~~merit time allowances may be granted against the period or aggregate~~
24 ~~minimum period of the indeterminate sentence or sentences, or against~~
25 ~~the term or aggregate term of the determinate sentence or sentences, or~~
26 ~~where consecutive determinate and indeterminate sentences are involved,~~
27 ~~against the aggregate minimum period as calculated pursuant to subpara-~~
28 ~~graph (iv) of paragraph (a) of subdivision one of section 70.40 of the~~
29 ~~penal law. Such allowances shall be calculated as follows:~~

30 ~~(a) A person serving two or more indeterminate sentences which run~~
31 ~~concurrently may receive a merit time allowance not to exceed one-sixth~~
32 ~~of the minimum period of the indeterminate sentence imposed for an~~
33 ~~offense other than an A-I felony offense defined in article two hundred~~
34 ~~twenty of the penal law, or one-third of the minimum period of the inde-~~
35 ~~terminate sentence imposed for an A-I felony offense defined in article~~
36 ~~two hundred twenty of the penal law, whichever allowance results in the~~
37 ~~longest unexpired time to run.~~

38 ~~(b) A person serving two or more indeterminate sentences which run~~
39 ~~consecutively may receive a merit time allowance not to exceed the~~
40 ~~amount of one-third of the minimum or aggregate minimum period of the~~
41 ~~sentences imposed for an A-I felony offense defined in article two~~
42 ~~hundred twenty of the penal law, plus one-sixth of the minimum or aggre-~~
43 ~~gate minimum period of the sentences imposed for an offense other than~~
44 ~~such A-I felony offense.~~

45 ~~(c) A person serving two or more determinate sentences for an offense~~
46 ~~defined in article two hundred twenty or two hundred twenty-one of the~~
47 ~~penal law which run concurrently may receive a merit time allowance not~~
48 ~~to exceed one-seventh of the term of the determinate sentence which has~~
49 ~~the longest unexpired time to run.~~

50 ~~(d) A person serving two or more determinate sentences for an offense~~
51 ~~defined in article two hundred twenty or two hundred twenty-one of the~~
52 ~~penal law which run consecutively may receive a merit time allowance not~~
53 ~~to exceed one-seventh of the aggregate term of such determinate~~
54 ~~sentences.~~

55 ~~(e) A person serving one or more indeterminate sentences and one or~~
56 ~~more determinate sentences for an offense defined in article two hundred~~

~~twenty or two hundred twenty one of the penal law which run concurrently may receive a merit time allowance not to exceed one sixth of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one third of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law, or one seventh of the term of the determinate sentence, whichever allowance results in the largest unexpired time to run.~~

~~(f) A person serving one or more indeterminate sentences and one or more determinate sentences which run consecutively may receive a merit time allowance not to exceed the sum of one sixth of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one third of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law and one seventh of the term or aggregate term of the determinate sentence or sentences.~~

~~(g) The provisions of this subdivision shall apply to persons in custody serving an indeterminate sentence on the effective date of this subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to September first, two thousand five and to persons sentenced to a determinate sentence prior to September first, two thousand eleven for a felony as defined in article two hundred twenty or two hundred twenty one of the penal law.~~

~~3.]~~ The commissioner of corrections and community supervision shall promulgate rules and regulations for the ~~[granting, withholding, forfeiture, cancellation and restoration of allowances]~~ calculation of allowance credits earned by each participant as authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating ~~[the]~~ a person or committee in each correctional institution ~~[delegated]~~ to ~~[make discretionary determinations with respect to the allowances]~~ log and record the allowance credits, determine the books and records to be kept, and a procedure for review of the institutional determinations by the commissioner. Merit programs and the ability to accrue allowance credits shall be made available to every inmate in all correctional institutions.

~~[4. No person shall have the right to demand or require the allowances authorized by this section. The decision of the commissioner of corrections and community supervision as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.~~

~~5.]~~ 3. Time ~~[allowances granted]~~ allowance credits accrued prior to any release to community supervision shall not be forfeited and shall ~~[not]~~ be restored if the released person is returned to an institution under the jurisdiction of the state department of corrections and community supervision for violation of community supervision or by reason of a conviction for a crime committed while on community supervision. A person who is so returned ~~[may]~~ shall, however, subsequently ~~[receive]~~ continue to earn time ~~[allowances]~~ allowance credits against the remaining portion of his maximum or aggregate maximum term or period ~~[not to exceed in the aggregate one third of such portion provided such remaining portion of his or her maximum or aggregate maximum term or period is more than one year]~~.

1 ~~[6-]~~ 4. Upon commencement of an indeterminate sentence the provisions
2 of this section shall be furnished to the person serving the sentence
3 and the meaning of same shall be fully explained to him by a person
4 designated by the commissioner to perform such duty.

5 § 5. Section 803-a of the correction law, as added by chapter 738 of
6 the laws of 2004, is amended to read as follows:

7 § 803-a. Certain calculations. Notwithstanding the provisions of any
8 other law, no merit time allowance credits accrued, earned or credited
9 to any person, pursuant to any existing or former section eight hundred
10 three of this article, while in the custody of the commissioner, shall
11 be withdrawn, cancelled, forfeited or otherwise lost by virtue of the
12 sunset or expiration of any provision of law.

13 § 6. Section 803-b of the correction law is REPEALED.

14 § 7. Section 804 of the correction law, as added by chapter 680 of the
15 laws of 1967, subdivisions 1 and 2 as amended by chapter 145 of the laws
16 of 1976, and subdivision 6 as amended by section 39 of subpart B of part
17 C of chapter 62 of the laws of 2011, is amended to read as follows:

18 § 804. Good behavior [~~allowances~~] credits against definite sentences.
19 1. Every person confined in an institution serving a definite sentence
20 of imprisonment [~~may~~] shall receive one-third time [~~allowances as~~
21 ~~discretionary reductions of the term of his sentence not to exceed in~~
22 ~~the aggregate one-third of the term imposed by the court~~] credit against
23 the term of his or her sentence imposed by the court upon an inmate's
24 entry into the department's custody so as to encourage good behavior.
25 Such [~~allowances may~~] credit shall be [~~granted~~] kept for good behavior
26 and efficient and willing performance of duties assigned or progress and
27 achievement in an assigned treatment program, and may be [~~withheld,~~
28 forfeited [~~or cancelled~~] in whole or in part for bad behavior, violation
29 of institutional rules or failure to perform properly in the duties or
30 program assigned.

31 2. If a person is serving more than one sentence, the authorized
32 [~~allowances may~~] credits shall be [~~granted~~] given separately against the
33 term of each sentence or, where consecutive sentences are involved,
34 against the aggregate term. [~~Allowances~~] Credits based upon sentences of
35 less than one month may be [~~granted~~] accrued, and in such case the maxi-
36 mum allowance shall be one day for every three days of the sentence. [~~In~~
37 ~~no case, however, shall the total of all allowances granted to any such~~
38 ~~person exceed one-third of the time he would be required to serve,~~
39 ~~computed without regard to this section.~~]

40 3. [~~No person shall have the right to demand or require the allowances~~
41 ~~authorized by this section. The decision of the sheriff, superintendent,~~
42 ~~warden or other person in charge of the institution, or where such~~
43 ~~institution is under the jurisdiction of a county or city department the~~
44 ~~decision of the head of such department, as to the granting, withhold-~~
45 ~~ing, forfeiture, cancellation or restoration of such allowances shall be~~
46 ~~final and shall not be reviewable if made in accordance with law.~~]

47 4.] A person who has earned a reduction of sentence pursuant to this
48 section and who has been conditionally released under subdivision two of
49 section 70.40 of the penal law shall not forfeit such reduction by
50 reason of conduct causing his return to the institution. [~~Provided,~~
51 ~~nevertheless, that such reduction may be forfeited by reason of subse-~~
52 ~~quent conduct while serving the remainder of his term.~~]

53 5-] 4. The state commission of correction shall promulgate record
54 keeping rules and regulations for the [~~granting, withholding, forfei-~~
55 ~~ture, cancellation and restoration of allowances~~] calculation of credits
56 kept as authorized by this section for each participant.

1 ~~[6-]~~ 5. Notwithstanding anything to the contrary in this section, in
2 any case where a person is serving a definite sentence in an institution
3 under the jurisdiction of the state department of corrections and commu-
4 nity supervision, subdivisions three and four of section eight hundred
5 three of this chapter shall apply.

6 ~~[7-]~~ 6. Upon commencement of any definite sentence the provisions of
7 this section shall be furnished to the person serving the sentence and
8 the meaning of same shall be fully explained to him by an officer desig-
9 nated in the regulation to perform such duty.

10 § 8. Section 804-a of the correction law, as added by chapter 220 of
11 the laws of 1987, is amended to read as follows:

12 § 804-a. Good behavior allowances for certain civil commitments. 1.
13 Every person confined in an institution serving a civil commitment for a
14 fixed period of time, whose release is not conditional upon any act
15 within his power to perform, ~~[may]~~ shall receive one-third time ~~[allow-~~
16 ~~ances as discretionary reductions of]~~ credit against the term of his
17 ~~[commitment not to exceed, in the aggregate, one-third of the term]~~ or
18 her sentence imposed by the court upon an inmate's entry into the
19 department's custody so as to encourage good behavior. Such ~~[allowances~~
20 ~~may]~~ credits shall be ~~[granted]~~ given for good behavior and efficient
21 and willing performance of duties assigned or progress and achievement
22 in an assigned treatment program, and may be ~~[withheld,]~~ forfeited ~~[or~~
23 ~~cancelled]~~ in whole or in part for bad behavior, violation of institu-
24 tional rules or failure to perform properly in the duties or program
25 assigned.

26 2. ~~[Allowances based upon commitments of less than one month may be~~
27 ~~granted, and in such case the maximum allowances shall be one day for~~
28 ~~every three days of the commitment. In no case, however, shall the total~~
29 ~~of all allowances granted to any such person exceed one-third of the~~
30 ~~time he would be required to serve, computed without regard to this~~
31 ~~section.~~

32 3. ~~No person shall have the right to demand or require the allowances~~
33 ~~authorized by this section. The decision of the sheriff, superintendent,~~
34 ~~warden or other person in charge of the institution, or where such~~
35 ~~institution is under the jurisdiction of a county or city department the~~
36 ~~decision of the head of such department, as to the granting, withhold-~~
37 ~~ing, forfeiture, cancellation, or restoration of such allowances shall~~
38 ~~be final and shall not be reviewable if made in accordance with law.~~

39 4. ~~The state commission of correction shall promulgate record keeping~~
40 ~~rules and regulations for the [granting, withholding, forfeiture,~~
41 ~~cancellation and restoration]~~ calculation of ~~[allowances]~~ credits
42 authorized by this section for each participant.

43 ~~[5-]~~ 3. Upon commencement of any civil commitment as described in
44 subdivision one of this section, the provisions of this section shall be
45 furnished to the person serving the commitment and the meaning of same
46 shall be fully explained to him by an officer designated in the regu-
47 lation to perform such duty.

48 § 9. The correction law is amended by adding a new section 804-b to
49 read as follows:

50 § 804-b. Merit time pre-allowance credits against pre-sentencing time
51 served. Every person confined in an institution waiting for a court
52 appearance, trial or sentencing shall be assigned a work and treatment
53 program as soon as practicable. Detainees shall receive an additional
54 day of credit off their potential sentence for every day of partic-
55 ipation in programs that promote rehabilitation and personal growth and

1 healthy living lifestyles, provides job training, education and re-entry
2 skills, and reduces recidivism.

3 § 10. Section 805 of the correction law, as amended by section 4 of
4 part E of chapter 62 of the laws of 2003, is amended to read as follows:

5 § 805. Earned eligibility program. Persons committed to the custody of
6 the department under an indeterminate or determinate sentence of impris-
7 sonment shall be assigned a work and treatment program as soon as prac-
8 ticable. No earlier than two months prior to the inmate's eligibility to
9 be paroled pursuant to subdivision one of section 70.40 of the penal
10 law, the commissioner shall review the inmate's institutional record to
11 determine whether he has complied with the assigned program. If the
12 commissioner determines that the inmate has successfully participated in
13 the program he may issue the inmate a certificate of earned eligibility
14 within thirty days. Notwithstanding any other provision of law, an
15 inmate who is serving a sentence with a minimum term of not more than
16 eight years and who has been issued a certificate of earned eligibility,
17 shall be granted parole release at the expiration of his minimum term or
18 as authorized by subdivision four of section eight hundred sixty-seven
19 of this chapter unless the board of parole determines that there is a
20 reasonable probability that, if such inmate is released, he will not
21 live and remain at liberty without violating the law and that his
22 release is not compatible with the welfare of society. ~~[Any action by~~
23 ~~the commissioner pursuant to this section shall be deemed a judicial~~
24 ~~function and shall not be reviewable if done in accordance with law.]~~

25 § 11. Section 805 of the correction law, as amended by chapter 262 of
26 the laws of 1987, is amended to read as follows:

27 § 805. Earned eligibility program. Persons committed to the custody of
28 the department under an indeterminate sentence of imprisonment shall be
29 assigned a work and treatment program as soon as practicable. No earlier
30 than two months prior to the expiration of an inmate's minimum period of
31 imprisonment, the commissioner shall review the inmate's institutional
32 record to determine whether he has complied with the assigned program.
33 If the commissioner determines that the inmate has successfully partic-
34 ipated in the program he may issue the inmate a certificate of earned
35 eligibility within thirty days. Notwithstanding any other provision of
36 law, an inmate who is serving a sentence with a minimum term of not more
37 than six years and who has been issued a certificate of earned eligibil-
38 ity, shall be granted parole release at the expiration of his minimum
39 term or as authorized by subdivision four of section eight hundred
40 sixty-seven unless the board of parole determines that there is a
41 reasonable probability that, if such inmate is released, he will not
42 live and remain at liberty without violating the law and that his
43 release is not compatible with the welfare of society. ~~[Any action by~~
44 ~~the commissioner pursuant to this section shall be deemed a judicial~~
45 ~~function and shall not be reviewable if done in accordance with law.]~~

46 § 12. Section 89-b of the correction law, as added by chapter 549 of
47 the laws of 1987, is amended to read as follows:

48 § 89-b. Good behavior time [~~allowances~~] credits against definite
49 sentences served in alternate correctional facilities. Notwithstanding
50 any other provision of law, the commissioner shall be authorized to
51 ~~[grant, withhold, cause to be forfeited,]~~ keep or ~~[cancel time allow-~~
52 ~~ances]~~ forfeit credits as provided in and in compliance with section
53 eight hundred four of the correction law.

54 § 13. Subdivision 4 of section 70.30 of the penal law, as amended by
55 chapter 3 of the laws of 1995, is amended to read as follows:

4. Good behavior time. Time [~~allowances~~] allowance credits earned for good behavior, pursuant to the provisions of the correction law, shall be computed and applied as follows:

(a) In the case of a person serving an indeterminate or determinate sentence, [~~the total of such allowances shall be calculated as provided in section eight hundred three of the correction law~~] upon entry into the department's custody, shall receive a one-third time credit against the minimum and maximum or aggregate maximum term and the [~~allowances~~] credits shall be applied as provided in paragraph (b) of subdivision one of section 70.40;

(b) In the case of a person serving a definite sentence, [~~the total of such allowances~~] upon entry into the department's custody, shall [~~not exceed~~] receive one-third [~~of~~] time credit against his term or aggregate term [~~and the allowances shall be applied as a credit against such term~~].

§ 14. Subdivision 4 of section 70.30 of the penal law, as amended by chapter 1030 of the laws of 1965, paragraph (b) as amended by chapter 145 of the laws of 1976, is amended to read as follows:

4. Good behavior time. Time [~~allowances~~] allowance credits earned for good behavior, pursuant to the provisions of the correction law, shall be computed and applied as follows:

(a) In the case of a person serving an indeterminate sentence, [~~the total of such allowances~~] upon entry into the department's custody, shall [~~not exceed~~] receive a one-third [~~of his~~] time credit against the minimum and maximum or aggregate maximum term and the [~~allowances~~] credits shall be applied as provided in subdivision one (b) of section 70.40;

(b) In the case of a person serving a definite sentence, [~~the total of such allowances~~] upon entry into the department's custody, shall [~~not exceed~~] receive one-third [~~of~~] time credit against his term or aggregate term [~~and the allowances shall be applied as a credit against such term~~].

§ 15. Paragraphs (a) and (b) of subdivision 1 of section 70.40 of the penal law, paragraph (a) as amended by section 127-c and paragraph (b) as amended by section 127-d-1 of subpart B of part C of chapter 62 of the laws of 2011, are amended to read as follows:

(a) Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of his or her sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law and the correction law.

(i) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he or she is confined at any time after the expiration of the minimum or the aggregate minimum period of the sentence or sentences reduced by the good behavior credits kept pursuant to paragraph (d) of subdivision one of section eight hundred three of the correction law or, where applicable, the minimum or aggregate minimum period reduced by the merit time allowance granted pursuant to paragraph (d) of subdivision one of section eight hundred three of the correction law.

(ii) A person who is serving one or more than one determinate sentence of imprisonment shall be ineligible for discretionary release on parole.

(iii) A person who is serving one or more than one indeterminate sentence of imprisonment and one or more than one determinate sentence of imprisonment, which run concurrently may be paroled at any time after the expiration of the minimum period of imprisonment of the indeterminate sentence or sentences, or upon the expiration of six-sevenths of

1 the term of imprisonment of the determinate sentence or sentences,
2 whichever is later.

3 (iv) A person who is serving one or more than one indeterminate
4 sentence of imprisonment and one or more than one determinate sentence
5 of imprisonment which run consecutively may be paroled at any time after
6 the expiration of the sum of the minimum or aggregate minimum period of
7 the indeterminate sentence or sentences and six-sevenths of the term or
8 aggregate term of imprisonment of the determinate sentence or sentences.

9 (v) Notwithstanding any other subparagraph of this paragraph, a person
10 may be paroled from the institution in which he or she is confined at
11 any time on medical parole pursuant to section two hundred fifty-nine-r
12 or section two hundred fifty-nine-s of the executive law or for deporta-
13 tion pursuant to paragraph (d) of subdivision two of section two hundred
14 fifty-nine-i of the executive law or after the successful completion of
15 a shock incarceration program pursuant to article twenty-six-A of the
16 correction law.

17 (b) A person who is serving one or more than one indeterminate or
18 determinate sentence of imprisonment shall, if he or she so requests, be
19 conditionally released from the institution in which he or she is
20 confined ~~[when the total good behavior time allowed to him or her,~~
21 ~~pursuant to the provisions of the correction law, is equal to the~~
22 ~~unserved portion of his or her term, maximum term or aggregate maximum~~
23 ~~term]~~ after application of good time credit reduced by the merit time
24 allowance earned pursuant to paragraph (d) of subdivision one of section
25 eight hundred three of the correction law; provided, however, that (i)
26 in no event shall a person serving one or more indeterminate sentence of
27 imprisonment and one or more determinate sentence of imprisonment which
28 run concurrently be conditionally released until serving at least six-
29 sevenths of the determinate term of imprisonment which has the longest
30 unexpired time to run and (ii) in no event shall a person be condi-
31 tionally released prior to the date on which such person is first eligi-
32 ble for discretionary parole release. The conditions of release, includ-
33 ing those governing post-release supervision, shall be such as may be
34 imposed by the state board of parole in accordance with the provisions
35 of the executive law.

36 Every person so released shall be under the supervision of the state
37 department of corrections and community supervision for a period equal
38 to the unserved portion of the term, maximum term, aggregate maximum
39 term, or period of post-release supervision.

40 § 16. Paragraphs (a) and (b) of subdivision 1 of section 70.40 of the
41 penal law, paragraph (a) as amended by section 127-d and paragraph (b)
42 as amended by section 127-e of subpart B of part C of chapter 62 of the
43 laws of 2011, are amended to read as follows:

44 (a) (i) A person who is serving one or more than one indeterminate
45 sentence of imprisonment may be paroled from the institution in which he
46 or she is confined at any time after the expiration of the minimum or
47 the aggregate minimum period of imprisonment of the sentence or
48 sentences reduced by the good behavior credits kept and the merit time
49 allowance credits earned pursuant to paragraphs (a) and (d) of subdivi-
50 sion one of section eight hundred three of the correction law or after
51 the successful completion of a shock incarceration program, as defined
52 in article twenty-six-A of the correction law, whichever is sooner.
53 Release on parole shall be in the discretion of the state board of
54 parole, and such person shall continue service of his or her sentence or
55 sentences while on parole, in accordance with and subject to the
56 provisions of the executive law and the correction law.

1 (ii) A person who is serving one or more than one indeterminate
2 sentence of imprisonment may be paroled from the institution in which he
3 or she is confined at any time after the expiration of the minimum or
4 the aggregate minimum period of the sentence or sentences reduced by the
5 good behavior credits kept and the merit time allowance credits earned
6 pursuant to paragraphs (a) and (d) of subdivision one of section eight
7 hundred three of the correction law.

8 (b) A person who is serving one or more than one indeterminate
9 sentence of imprisonment shall, if he or she so requests, be condi-
10 tionally released from the institution in which he or she is confined
11 ~~[when the total good behavior time allowed to him or her, pursuant to~~
12 ~~the provisions of the correction law, is equal to the unserved portion~~
13 ~~of his or her maximum or aggregate maximum term]~~ after application of
14 good time credit reduced by the merit time allowance earned pursuant to
15 paragraph (d) of subdivision one of section eight hundred three of the
16 correction law. The conditions of release, including those governing

17 post-release supervision, shall be such as may be imposed by the state
18 board of parole in accordance with the provisions of the executive law.

19 Every person so released shall be under the supervision of the depart-
20 ment of corrections and community supervision for a period equal to the
21 unserved portion of the maximum, aggregate maximum term, or period of
22 post-release supervision.

23 § 17. This act shall take effect immediately, provided, however, that:

24 (a) the amendments to section 803 of the correction law made by
25 section three of this act shall be subject to the expiration and rever-
26 sion of such section pursuant to section 74 of chapter 3 of the laws of
27 1995, as amended, when upon such date the provisions of section four of
28 this act shall take effect;

29 (b) the amendments to section 805 of the correction law made by
30 section ten of this act shall be subject to the expiration and reversion
31 of such section pursuant to section 74 of chapter 3 of the laws of 1995,
32 as amended, when upon such date the provisions of section eleven of this
33 act shall take effect;

34 (c) the amendments to subdivision 4 of section 70.30 of the penal law
35 made by section thirteen of this act shall be subject to the expiration
36 and reversion of such subdivision pursuant to section 74 of chapter 3 of
37 the laws of 1995, as amended, when upon such date the provisions of
38 section fourteen of this act shall take effect; and

39 (d) the amendments to paragraphs (a) and (b) of subdivision 1 of
40 section 70.40 of the penal law made by section fifteen of this act shall
41 be subject to the expiration and reversion of such paragraphs pursuant
42 to section 74 of chapter 3 of the laws of 1995, when upon such date the
43 provisions of section sixteen shall take effect.