STATE OF NEW YORK

1128--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. KELLES, WEPRIN, REYES, JACKSON, EPSTEIN, BURDICK, MEEKS, CRUZ, MAMDANI, AUBRY, SIMON, GLICK, ANDERSON, DAVILA, CARROLL, WALKER, BURGOS, GONZALEZ-ROJAS, L. ROSENTHAL, GALLAGHER, MITAYNES, GIBBS, LUCAS, HEVESI, COOK, DARLING, SEPTIMO, JEAN-PIERRE, FORREST, CLARK, TAYLOR, TAPIA, ARDILA, BORES, SHRESTHA, DICKENS, KIM, SIMONE, ALVAREZ, ZINERMAN, RAGA, CUNNINGHAM, SHIMSKY, CHANDLER-WATERMAN, PRETLOW, LUNSFORD, LEVENBERG, DE LOS SANTOS, RIVERA, SOLAGES, BICHOTTE HERMELYN, ZACCARO, HUNTER, SEAWRIGHT, LEE, STIRPE, BRONSON, FAHY, DAIS, STECK, BURKE, O'DONNELL, GUNTHER -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- 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 the early release of incarcerated individuals

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

Section 1. Short title. This act shall be known and may be cited as the "earned time act".

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

§ 802. Data collection. The department shall report annually to the governor and the legislature with respect to each instance in which time allowance credit has been withheld, forfeited or cancelled. The report shall provide the following information: the name, department identification number and race of each incarcerated individual who has been denied credit and the amount of credit involved, the reason or reasons for the denial, including, where applicable, a description of the bad behavior or institutional rule violation or violations, including the corresponding numerical code in the department's inmate rule handbook, and, where applicable, a description of the assigned duty and/or iden-

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

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tification of assigned treatment program in which the incarcerated person was determined to have failed to perform properly. The report shall additionally specify the department facility in which the recommendation to withhold, forfeit or cancel good time was made and the names of the department personnel on such facility's time allowance committee who made such recommendation.

§ 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 subdivision 2-a as added by chapter 738 of the laws of 2004, subparagraph (ii) of paragraph (d) of subdivision 1 as amended by chapter 322 of the laws of 2021, subparagraph (iv) of paragraph (d) of subdivision 1 as separately amended by chapters 242 and 322 of the laws of 2021 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 a time allowance against the term or maximum term of [~~his or her~~] their sentence imposed by the court. Such allowances [~~may be granted 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~~] shall be credited toward a person's sentence on an annual pro rata basis, and any credit awarded over the course of the calendar year shall vest on the final day of the calendar year. Once vested, such credit shall not be withheld, forfeited, or canceled.

(a-1) Time allowances that have not yet been credited toward a person's sentence may be withheld, forfeited or canceled in whole or in part for violation of institutional rules, as demonstrated at a hearing by a preponderance of the evidence. Such restrictions shall be limited to the pro rata share of credit within the calendar year that the offense is committed. If such time allowance is withheld, forfeited or canceled in whole or in part, further allowances, not to exceed the allowances set forth in paragraphs (b) and (c) of this subdivision, may be reinstated for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program. Following any final determination withholding, forfeiting, or canceling a time allowance, the incarcerated person shall have the right to take an administrative appeal to the central office of the department and shall be advised of the right to seek legal assistance in the taking of such appeal. The department shall adopt regulations in accordance with this provision.

(b) A person serving an indeterminate sentence of imprisonment [~~may~~] shall receive a time allowance against the maximum term of [~~his or her~~] their sentence [~~not to exceed one-third~~] of one-half of the maximum term imposed by the court.

(c) A person serving a determinate sentence of imprisonment [~~may~~] shall receive a time allowance against the term of [~~his or her~~] their sentence [~~not to exceed one-seventh~~] of one-half of the term imposed by the court.

(d) (i) [~~Except as provided in subparagraph (ii) of this paragraph, every~~] **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 earn a merit time allowance.

(ii) [~~Such merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an incarcerated individual.~~

~~(iii)~~] The merit time allowance credit against the minimum period of the indeterminate sentence shall be [~~one-sixth~~] **one-half** of the minimum period imposed by the court [~~except that such credit shall be one-third of the minimum period imposed by the court for an A-I felony offense defined in article two hundred twenty of the penal law~~]. In the case of such a determinate sentence, in addition to the time allowance credit authorized by paragraph (c) of this subdivision, the merit time allowance credited against the term of the determinate sentence pursuant to this paragraph shall be [~~one-seventh~~] **one-quarter** of the term imposed by the court.

[~~(iv)~~] **(iii)** Such merit time allowance [~~may~~] **shall** be granted when an incarcerated individual successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article [~~and~~]**, including but not limited to** when such incarcerated individual obtains a general equivalency diploma, an alcohol and substance abuse treatment certificate, a vocational trade certificate [~~following at least six months of vocational programming~~], at least eighteen credits in a program registered by the state education department from a degree-granting higher education institution or performs at least four hundred hours of service as part of a community work crew**, or successfully completes one or more "significant programmatic accomplishments" as defined in paragraph (c) of subdivision one of section eight hundred three-b of this article. The commissioner may designate additional programs and achievements for which merit time shall be granted. Once granted, such allowances shall not be withheld, forfeited, or cancelled. Where the institution in which the incarcerated individual is confined does not provide opportunities for every incarcerated individual to earn merit time allowances, such merit time allowance shall be automatically credited against the incarcerated individual's sentence according to subparagraph (ii) of this paragraph**.

[~~Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an incarcerated individual, 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~~

~~commenced by a person, while an incarcerated individual, against a state agency, officer or employee.~~

~~(v)~~] (iv) The provisions of this paragraph shall apply to persons in custody serving [~~an~~] a determinate or indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to [~~an~~] a determinate or indeterminate sentence on and after the effective date of this paragraph [~~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~~]. The time allowances set forth in this paragraph shall apply retroactively and shall be credited toward every incarcerated individual's sentence within ninety days of the chapter of the laws of two thousand twenty-four that amended this paragraph.

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

(a) A person serving two or more indeterminate sentences which run concurrently [~~may~~] shall receive a time allowance [~~not to exceed one-third~~] of one-half of the indeterminate sentence which has the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively [~~may~~] shall receive a time allowance [~~not to exceed one-third~~] of one-half of the aggregate maximum term.

(c) A person serving two or more determinate sentences which run concurrently [~~may~~] shall receive a time allowance [~~not to exceed one-seventh~~] of one-half of the determinate sentence which has the longest unexpired time to run.

(d) A person serving two or more determinate sentences which run consecutively [~~may~~] shall receive a time allowance [~~not to exceed one-seventh~~] of one-half of the aggregate maximum term.

(e) A person serving one or more indeterminate sentence and one or more determinate sentence which run concurrently [~~may~~] shall receive a time allowance [~~not to exceed one-third~~] of one-half of the indeterminate sentence which has the longest unexpired term to run or [~~one-seventh~~] one-half of the determinate sentence which has the longest unexpired time to run, whichever allowance is greater.

(f) A person serving one or more indeterminate sentence and one or more determinate sentence which run consecutively [~~may~~] shall receive a time allowance [~~not to exceed~~] of the sum of [~~one-third~~] one-half of the maximum or aggregate maximum of the indeterminate sentence or sentences and [~~one-seventh~~] one-half of the term or aggregate maximum of the determinate sentence or sentences.

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

(a) A person serving two or more indeterminate sentences which run concurrently may receive a merit time allowance not to exceed [~~one-sixth~~] one-half 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, or 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, whichever allowance results in the longest unexpired time to run~~] by the court.

(b) A person serving two or more indeterminate sentences which run consecutively may receive a merit time allowance not to exceed the amount of [~~one-third~~] one-half of the minimum or aggregate minimum period of the sentences imposed [~~for an A-I felony offense defined in article two hundred twenty of the penal law, plus one-sixth of the minimum or aggregate minimum period of the sentences imposed for an offense other than such A-I felony offense~~] by the court.

(c) A person serving two or 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-seventh~~] one-quarter of the term of the determinate sentence which has the longest unexpired time to run.

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

(e) A person serving one or more indeterminate sentences and one or 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~~] one-half 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~~] one-quarter 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~~] one-half 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~~] one-quarter 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~~] a determinate or indeterminate sentence on the effective date of this subdivision as well as to persons sentenced to [~~an~~] a determinate or 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~~]. The merit time allowances set forth in this subdivision shall apply retroactively, and shall be credited toward every incarcerated individual's sentence within ninety days of the effective date of the chapter of the laws of two thousand twenty-four that amended this subdivision.

[~~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 **fair and equitable** granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall **specify procedures to ensure that similarly situated incarcerated persons are treated similarly with respect to the granting, withholding, forfeiture or cancellation of allowances, and** include provisions designating the person or committee in each correctional institution delegated to make discretionary determinations with respect to the allowances, the books and records to be kept, and a procedure for review of the institutional determinations by the commissioner.

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.~~] Time allowances granted prior to any release to community supervision shall 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, however, subsequently receive time allowances against the remaining portion of [~~his or her~~] **their** 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~~].

[~~6.~~] **5.** 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~~] **them** by a person designated by the commissioner to perform such duty.

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

§ 804. Good behavior allowances against definite sentences. 1. Every person confined in an institution serving a definite sentence of imprisonment [~~may~~] **shall** receive **a** time [~~allowances as discretionary reductions of the term of his sentence not to exceed in the aggregate one-third~~] **allowance of one-half** of the term imposed by the court. Such allowances [~~may be granted 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 cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned~~] **shall be credited toward a person's sentence on an annual pro rata basis, and any credit awarded over the course of the calendar year shall vest on the final day of the calendar year. Once vested, such credit shall not be withheld, forfeited, or canceled**.

1-a. Time allowances that have not yet been granted toward a person's sentence may be withheld, forfeited or canceled in whole or in part for violation of institutional rules, as demonstrated at a hearing by a preponderance of the evidence. Such restrictions shall be limited to the pro rata share of credit within the calendar year that the offense is committed. If such time allowance is withheld, forfeited or canceled in whole or in part, further allowances, not to exceed one-half of the term imposed by the court, may be reinstated for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program. Following any final determination withholding, forfeiting, or canceling a time allowance, the incarcerated person shall have the right to take an administrative appeal to the sheriff and shall be advised of the right to seek legal assistance in the taking of such appeal. The sheriff shall adopt regulations in accordance with this provision.

2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the term of each sentence or, where consecutive sentences are involved, against the aggregate term. Allowances based upon sentences of less than one month may be granted, and in such case the maximum allowance shall be one day for every [~~three~~] **two** days of the sentence. In no case, however, shall the total of all allowances granted to any such person exceed [~~one-third~~] **one-half** of the time [~~he~~] **they** would be required to serve, computed without regard to this section.

3. [~~No person shall have the right to demand or require the allowances authorized by this section. The decision of the sheriff, superintendent, warden or other person in charge of the institution, or where such institution is under the jurisdiction of a county or city department the decision of the head of such department, 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.~~

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

[~~5.~~] 4. The state commission of correction shall promulgate record keeping rules and regulations for the fair and equitable granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section. Such rules and regulations shall specify procedures to ensure that similarly situated incarcerated persons are treated similarly with respect to the granting, withholding, forfeiture or cancellation of allowances.

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

[~~7.~~] 6. Upon commencement of any definite 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~~] them by an officer designated in the regulation to perform such duty.

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

§ 804-a. Good behavior allowances for certain civil commitments. 1. Every person confined in an institution serving a civil commitment for a fixed period of time, whose release is not conditional upon any act within [~~his~~] their power to perform, [~~may~~] shall receive time allowances as discretionary reductions of the term of [~~his~~] their commitment not to exceed, in the aggregate, [~~one-third~~] one-half of the term imposed by the court. Such allowances [~~may be granted 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 cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned~~] shall be credited toward a person's sentence on an annual pro rata basis, and any credit awarded over the course of the calendar year shall vest on the final day of the calendar year. Once vested, such credit shall not be withheld, forfeited, or canceled.

1-a. Time allowances that have not yet been granted toward a person's sentence may be withheld, forfeited or canceled in whole or in part for violation of institutional rules, as demonstrated at a hearing by a preponderance of the evidence. Such restrictions shall be limited to the pro rata share of credit within the calendar year that the offense is committed. If such time allowance is withheld, forfeited or canceled in whole or in part, further allowances, not to exceed one-half of the term imposed by the court, may be reinstated for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program. Following any final determination withholding, forfeiting, or canceling a time allowance, the incarcerated person shall have the right to take an administrative appeal to the central office of the department and shall be advised of the right to seek legal assistance in the taking of such appeal. The department shall adopt regulations in accordance with this provision.

2. Allowances based upon commitments of less than one month may be granted, and in such case the maximum allowances shall be one day for

every [~~three~~] **two** days of the commitment. In no case, however, shall the total of all allowances granted to any such person exceed [~~one-third~~] **one-half** of the time [~~he~~] **they** would be required to serve, computed without regard to this section.

3. [~~No person shall have the right to demand or require the allowances authorized by this section. The decision of the sheriff, superintendent, warden or other person in charge of the institution, or where such institution is under the jurisdiction of a county or city department the decision of the head of such department, 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.~~

~~4.~~] The state commission of correction shall promulgate record keeping rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section.

[~~5.~~] **4.** Upon commencement of any civil commitment as described in subdivision one of this section, the provisions of this section shall be furnished to the person serving the commitment and the meaning of same shall be fully explained to [~~him~~] **them** by an officer designated in the regulation to perform such duty.

§ 6. Section 865 of the correction law, as added by chapter 261 of the laws of 1987, subdivisions 1 and 2 as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 865. Definitions. As used in this article, [~~the following terms mean:~~

~~1. "Eligible incarcerated individual" means a person sentenced to an indeterminate term of imprisonment who will become eligible for release on parole within three years or sentenced to a determinate term of imprisonment who will become eligible for conditional release within three years, who has not reached the age of fifty years, who has not previously been convicted of a violent felony as defined in article seventy of the penal law, or a felony in any other jurisdiction which includes all of the essential elements of any such violent felony, upon which an indeterminate or determinate term of imprisonment was imposed and who was between the ages of sixteen and fifty years at the time of commission of the crime upon which his or her present sentence was based. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be deemed eligible to participate in this program: (a) a violent felony offense as defined in article seventy of the penal law; provided, however, that a person who is convicted of burglary in the second degree as defined in subdivision two of section 140.25 of the penal law, or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, or an attempt thereof, is eligible to participate, (b) an A-I felony offense, (c) any homicide offense as defined in article one hundred twenty-five of the penal law, (d) any felony sex offense as defined in article one hundred thirty of the penal law and (e) any escape or absconding offense as defined in article two hundred five of the penal law.~~

~~2. "Shock~~] **"shock** incarceration program" means a program pursuant to which eligible incarcerated individuals are selected to participate in the program and serve a period of six months in a shock incarceration facility, which shall provide rigorous physical activity, intensive regimentation and discipline and rehabilitation therapy and programming. Such incarcerated individuals may be selected either: (i) at a reception center; or (ii) at a general confinement facility [~~when the otherwise eligible incarcerated individual then becomes eligible for release on parole within three years in the case of an indeterminate term of impri-~~

~~sonment, or then becomes eligible for conditional release within three years in the case of a determinate term of imprisonment~~].

§ 7. Section 867 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 867. Procedure for selection of participants in shock incarceration program. 1. An [~~eligible~~] incarcerated individual may make an application to the shock incarceration screening committee for permission to participate in the shock incarceration program.

2. If the shock incarceration screening committee determines that an incarcerated individual's participation in the shock incarceration program is consistent with the safety of the community, the welfare of the applicant and the rules and regulations of the department, the committee shall forward the application to the commissioner or [~~his~~] **a** designee for approval or disapproval.

2-a. Subdivisions one and two of this section shall apply to a judicially sentenced shock incarceration incarcerated individual only to the extent that the screening committee may determine whether the incarcerated individual has a medical or mental health condition that will render the incarcerated individual unable to successfully complete the shock incarceration program, and the facility in which the incarcerated individual will participate in such program. Notwithstanding subdivision five of this section, an incarcerated individual sentenced to shock incarceration shall promptly commence participation in the program [~~when such incarcerated individual is an eligible incarcerated individual pursuant to subdivision one of section eight hundred sixty-five of this article~~].

3. Applicants cannot participate in the shock incarceration program unless they agree to be bound by all the terms and conditions thereof and indicate such agreement by signing the memorandum of the program immediately below a statement reading as follows:

"I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand that my participation in the program is a privilege that may be revoked at any time at the sole discretion of the commissioner. I understand that I must successfully complete the entire program to obtain a certificate of earned eligibility upon the completion of said program, and in the event that I do not successfully complete said program, for any reason, I will be transferred to a nonshock incarceration correctional facility to continue service of my sentence."

4. An incarcerated individual who has successfully completed a shock incarceration program shall be eligible to receive such a certificate of earned eligibility pursuant to section eight hundred five of this chapter. Notwithstanding any other provision of law, an incarcerated individual sentenced to a determinate sentence of imprisonment who has successfully completed a shock incarceration program shall be eligible to receive such a certificate of earned eligibility and shall be immediately eligible to be conditionally released.

5. Participation in the shock incarceration program shall be a privilege. Nothing contained in this article may be construed to confer upon any incarcerated individual the right to participate or continue to participate therein.

§ 8. Clause (B) of subparagraph (ii) of paragraph (e) of subdivision 1 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(B) if the aggregate maximum term of the determinate sentence or sentences is less than twenty years, the defendant shall be deemed to be

serving an indeterminate sentence the maximum term of which shall be deemed to be twenty years. In such instances, the minimum sentence shall be deemed to be ten years or [~~six-sevenths~~] **one-half** of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

§ 9. Clause (B) of subparagraph (iii) of paragraph (e) of subdivision 1 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(B) if the aggregate maximum term of the determinate sentence or sentences is less than thirty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be thirty years. In such instances, the minimum sentence shall be deemed to be fifteen years or [~~six-sevenths~~] **one-half** of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

§ 10. Clause (B) of subparagraph (v) of paragraph (e) of subdivision 1 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(B) if the aggregate maximum term of the determinate sentence or sentences is less than forty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be forty years. In such instances, the minimum sentence shall be deemed to be twenty years or [~~six-sevenths~~] **one-half** of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

§ 11. Clause (B) of subparagraph (vii) of paragraph (e) of subdivision 1 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(B) if the aggregate maximum term of the determinate sentence or sentences is less than fifty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be fifty years. In such instances, the minimum sentence shall be deemed to be twenty-five years or [~~six-sevenths~~] **one-half** of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

§ 12. Paragraph (b) of subdivision 4 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(b) In the case of a person serving a definite sentence, the total of such allowances shall not exceed [~~one-third~~] **one-half** of [~~his~~] **their** term or aggregate term and the allowances shall be applied as a credit against such term.

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

(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~~] **one-half** of the term of imprisonment of the determinate sentence or sentences, whichever is later.

(iv) 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 consecutively may be paroled at any time after

the expiration of the sum of the minimum or aggregate minimum period of the indeterminate sentence or sentences and [~~six-sevenths~~] **one-half** of the term or aggregate term of imprisonment of the determinate sentence or sentences.

§ 14. Paragraph (b) of subdivision 1 of section 70.40 of the penal law, as amended by section 127-d-1 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(b) A person who is serving one or more than one indeterminate or determinate sentence of imprisonment shall, if [~~he or she so requests~~] **they request**, be conditionally released from the institution in which [~~he or she is~~] **they are** confined when the total good behavior time allowed to [~~him or her~~] **them**, pursuant to the provisions of the correction law, is equal to the unserved portion of [~~his or her~~] **their** term, maximum term or aggregate maximum term; provided, however, that (i) in no event shall a person serving one or more indeterminate sentence of imprisonment and one or more determinate sentence of imprisonment which run concurrently be conditionally released until serving at least [~~six-sevenths~~] **one-half** of the determinate term of imprisonment which has the longest unexpired time to run and (ii) in no event shall a person be conditionally released prior to the date on which such person is first eligible for discretionary parole release. The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of parole in accordance with the provisions of the executive law.

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

§ 15. This act shall take effect immediately; provided, however, that the amendments to section 803 of the correction law made by section three of this act shall not affect the expiration of such section and shall be deemed to expire therewith; provided, further that the amendments to subdivision 2-b of section 803 of the correction law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; provided further, however, that the amendments to paragraph (e) of subdivision 1 of section 70.30 of the penal law made by sections eight, nine, ten and eleven of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith; provided further, however, that the amendments to paragraph (b) of subdivision 4 of section 70.30 of the penal law made by section twelve of this act shall not affect the expiration of such subdivision and shall expire therewith; and provided further, however, that the amendments to paragraphs (a) and (b) of subdivision 1 of section 70.40 of the penal law made by sections thirteen and fourteen of this act shall not affect the expiration of such paragraphs and shall be deemed to expire therewith.