STATE OF NEW YORK

210

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

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

AN ACT to amend the correction law and the penal law, in relation to establishing merit time allowance credits for local correctional facilities

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

Section 1. The correction law is amended by adding a new article 24-A to read as follows:

ARTICLE 24-A
MERIT TIME ALLOWANCE CREDITS
FOR LOCAL CORRECTIONAL FACILITIES

Section 810. Definitions.
811. Merit time allowance credit accrual and application.
812. Forfeiture of merit time allowance credit.
813. Record keeping.

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

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

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

§ 811. Merit time allowance credit accrual and application. 1. Upon the active participation in an educational, vocational, work, or rehabi-

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

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litative program that has been assigned by the chief administrative officer, an eligible incarcerated individual shall accrue credits applied to his or her sentence in the same manner as jail time credit pursuant to subdivision three of section 70.30 of the penal law. One credit shall accrue for every four days in which the incarcerated individual successfully participates in the program.

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

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

4. All participation by an incarcerated individual in the merit time allowance credit program is voluntary. Except in administrative proceedings concerning the incarcerated individual's opportunity to participate in, or continue to participate in, such a voluntary program administered by a correctional facility, evidence of an incarcerated individual's failure to successfully participate in or complete a merit time allowance credit program, pursuant to this article, shall not be admissible against the incarcerated individual, provided, however, that the incarcerated individual may present information concerning successful participation for the purposes of mitigation, where relevant, in any court or proceeding. Upon admission to a local correctional facility, each incarcerated individual shall be notified by the sheriff, in writing, of the existence, criteria and rules governing participation in the merit time allowance credit program.

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

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

§ 813. Record keeping. A contemporaneous record shall be kept by the sheriff of all merit time allowance credits an incarcerated individual accrues pursuant to this article. In any case where the sheriff has the duty to deliver an incarcerated individual to the custody of the department, or a sheriff or similar department in another jurisdiction, whether under an order of sentence and commitment or otherwise, the sheriff shall also deliver to the state correctional facility, sheriff or similar department to which the incarcerated individual is delivered, and to the incarcerated individual, a certified record of merit time allowance credits accrued by the incarcerated individual.

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

3. Jail time. The term of a definite sentence, a determinate sentence, or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of parole, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. **The credit herein provided shall also include any additional merit time allowance credit accrued in a local correctional facility pursuant to article twenty-four-A of the correction law.** Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

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

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

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

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

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

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

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

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