

# STATE OF NEW YORK

3289

2023-2024 Regular Sessions

## IN SENATE

January 30, 2023

Introduced by Sen. MYRIE -- 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, in relation to authorizing certain inmates serving indeterminate sentences to receive good time allowances against the minimum terms of their sentences not to exceed one third of the actual minimum term imposed

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

1 Section 1. Section 803 of the correction law is amended by adding a  
2 new subdivision 1-a to read as follows:

3 1-a. Every person confined in an institution of the department or a  
4 facility in the department of mental hygiene serving an indeterminate  
5 sentence of imprisonment, for an offense contained in article two  
6 hundred twenty of the penal law, may receive time allowance against the  
7 minimum term or period of his or her sentence not to exceed in the  
8 aggregate one-third of the term or period imposed by the court. Such  
9 allowances may be granted for good behavior and efficient and willing  
10 performance of duties assigned or progress and achievement in an  
11 assigned treatment program, and may be withheld, forfeited or canceled  
12 in whole or in part for bad behavior, violation of institutional rules  
13 or failure to perform properly in the duties or program assigned.

14 § 2. Section 803 of the correction law is amended by adding a new  
15 subdivision 1-b to read as follows:

16 1-b. Every person confined in an institution of the department or a  
17 facility in the department of mental hygiene serving an indeterminate  
18 sentence of imprisonment, for an offense contained in article two  
19 hundred twenty of the penal law, may receive time allowance against the  
20 minimum term or period of his or her sentence not to exceed in the  
21 aggregate one-third of the term or period imposed by the court. Such  
22 allowances may be granted for good behavior and efficient and willing

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

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1 performance of duties assigned or progress and achievement in an  
2 assigned treatment program, and may be withheld, forfeited or canceled  
3 in whole or in part for bad behavior, violation of institutional rules  
4 or failure to perform properly in the duties or program assigned.

5 § 3. The opening paragraph of subdivision 2 of section 803 of the  
6 correction law, as amended by chapter 3 of the laws of 1995, is amended  
7 to read as follows:

8 If a person is serving more than one sentence, the authorized allow-  
9 ances may be granted separately against the term or [~~maximum-term~~] terms  
10 of each sentence or, where consecutive sentences are involved, against  
11 the aggregate [~~maximum-term~~] terms. Such allowances shall be calculated  
12 as follows:

13 § 4. Subdivision 2 of section 803 of the correction law, as amended by  
14 chapter 126 of the laws of 1987, is amended to read as follows:

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

22 § 5. Section 803 of the correction law is amended by adding a new  
23 subdivision 7 to read as follows:

24 7. The expiration of the minimum period of imprisonment, as set forth  
25 in paragraph (a) of subdivision one of section 70.40 of the penal law,  
26 paragraph (a) of subdivision two of section two hundred fifty-nine-i of  
27 the executive law, and section eight hundred five of this article, shall  
28 be deemed to mean the minimum period of imprisonment reduced by any time  
29 allowance granted pursuant to subdivision one-a of this section. The  
30 eligibility of an inmate to receive any time allowance pursuant to  
31 subdivision one-a of this section shall not otherwise affect such  
32 inmate's eligibility to participate in any department program.

33 § 6. Subdivision 7 of section 803 of the correction law, as added by  
34 section five of this act, is amended to read as follows:

35 7. The expiration of the minimum period of imprisonment, as set forth  
36 in paragraph (a) of subdivision one of section 70.40 of the penal law,  
37 paragraph (a) of subdivision two of section two hundred fifty-nine-i of  
38 the executive law, and section eight hundred five of this article, shall  
39 be deemed to mean the minimum period of imprisonment reduced by any time  
40 allowance granted pursuant to subdivision [~~one-a~~] one-b of this section.  
41 The eligibility of an inmate to receive any time allowance pursuant to  
42 subdivision [~~one-a~~] one-b of this section shall not otherwise affect  
43 such inmate's eligibility to participate in any department program.

44 § 7. Section 805 of the correction law, as amended by section 226 of  
45 chapter 322 of the laws of 2021, is amended to read as follows:

46 § 805. Earned eligibility program. Persons committed to the custody of  
47 the department under an indeterminate or determinate sentence of impri-  
48 sonment shall be assigned a work and treatment program as soon as prac-  
49 ticable. No earlier than two months prior to the incarcerated individ-  
50 ual's eligibility to be paroled pursuant to subdivision one of section  
51 70.40 of the penal law, the commissioner shall review the incarcerated  
52 individual's institutional record to determine whether he or she has  
53 complied with the assigned program. If the commissioner determines that  
54 the incarcerated individual has successfully participated in the program  
55 he or she may issue the incarcerated individual a certificate of earned  
56 eligibility. Notwithstanding any other provision of law, an incarcerated

1 individual who is serving a sentence with a minimum term of not more  
2 than eight years and who has been issued a certificate of earned eligi-  
3 bility, shall be granted parole release at the expiration of his or her  
4 minimum term, or where applicable, at the expiration of the minimum term  
5 reduced by any time allowances, or as authorized by subdivision four of  
6 section eight hundred sixty-seven of this chapter unless the board of  
7 parole determines that there is a reasonable probability that, if such  
8 incarcerated individual is released, he or she will not live and remain  
9 at liberty without violating the law and that his or her release is not  
10 compatible with the welfare of society. Any action by the commissioner  
11 pursuant to this section shall be deemed a judicial function and shall  
12 not be reviewable if done in accordance with law.

13 § 8. Section 805 of the correction law, as amended by section 226-a of  
14 chapter 322 of the laws of 2021, is amended to read as follows:

15 § 805. Earned eligibility program. Persons committed to the custody of  
16 the department under an indeterminate sentence of imprisonment shall be  
17 assigned a work and treatment program as soon as practicable. No earlier  
18 than two months prior to the expiration of an incarcerated individual's  
19 minimum period of imprisonment, the commissioner shall review the incar-  
20 cerated individual's institutional record to determine whether he or she  
21 has complied with the assigned program. If the commissioner determines  
22 that the incarcerated individual has successfully participated in the  
23 program he or she may issue the incarcerated individual a certificate of  
24 earned eligibility. Notwithstanding any other provision of law, an  
25 incarcerated individual who is serving a sentence with a minimum term of  
26 not more than six years and who has been issued a certificate of earned  
27 eligibility, shall be granted parole release at the expiration of his or  
28 her minimum term, or where applicable, at the expiration of the minimum  
29 term reduced by any time allowances, or as authorized by subdivision  
30 four of section eight hundred sixty-seven of this chapter unless the  
31 board of parole determines that there is a reasonable probability that,  
32 if such incarcerated individual is released, he or she will not live and  
33 remain at liberty without violating the law and that his or her release  
34 is not compatible with the welfare of society. Any action by the commis-  
35 sioner pursuant to this section shall be deemed a judicial function and  
36 shall not be reviewable if done in accordance with law.

37 § 9. This act shall take effect on the first of November next succeed-  
38 ing the date on which it shall have become a law, provided that the  
39 amendments to section 803 of the correction law made by sections one,  
40 three and five of this act shall be subject to the expiration and rever-  
41 sion of such section pursuant to section 74 of chapter 3 of the laws of  
42 1995, as amended, when upon such date the provisions of sections two,  
43 four and six of this act shall take effect; and provided further, howev-  
44 er, that the amendments to section 805 of the correction law made by  
45 section seven of this act shall be subject to the expiration and rever-  
46 sion of such section pursuant to section 74 of chapter 3 of the laws of  
47 1995, as amended, when upon such date the provisions of section eight of  
48 this act shall take effect.