STATE OF NEW YORK

4326

2023-2024 Regular Sessions

IN SENATE

February 7, 2023

- Introduced by Sens. SEPULVEDA, SALAZAR -- 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, chapter 738 of the laws of 2004 amending the correction law and other laws relating to controlled substances and indeterminate sentences, and the executive law, in relation to expanding eligibility in the merit time allowance program for all inmates except those serving a sentence of life imprisonment without parole, murder in the first degree, incest, an act of terrorism, aggravated harassment of an employee by an inmate, or an attempt or conspiracy to commit any such offense, to earn merit time allowance; and to repeal section 803-b of the correction law relating to limited credit time allowances

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

1 Section 1. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdi-2 vision 1 of section 803 of the correction law, subparagraph (i) as added 3 by section 7 of chapter 738 of the laws of 2004, subparagraphs (ii) and 4 (iv) as amended by section 224 of chapter 322 of the laws of 2021 and 5 subparagraph (iv) as separately amended by section 1 of chapter 242 of 6 the laws of 2021, are amended to read as follows:

(i) Except as provided in subparagraph (ii) of this paragraph, every 8 person under the custody of the department or confined in a facility in 9 the department of mental hygiene serving an indeterminate sentence of 10 imprisonment with a minimum period of one year or more or a determinate 11 sentence of imprisonment of one year or more [imposed pursuant to 12 section 70.70 or 70.71 of the penal law,] may earn a merit time allow-13 ance.

14 (ii) Such merit time allowance shall not be available to any person 15 serving [an indeterminate] <u>a</u> sentence [authorized for an A-I felony 16 offense, other than an A-I felony offense defined in article two hundred

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

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twenty of the penal law, or any sentence imposed for a violent felony 1 offense as defined in section 70.02 of the penal law, manslaughter in 2 the second degree, vehicular manslaughter in the second degree, vehicu-3 4 lar manslaughter in the first degree, criminally negligent homicide] 5 imposed for murder in the first degree as defined in section 125.27 of 6 the penal law, an offense defined in article one hundred thirty of the 7 penal law, incest, [or] an offense defined in article two hundred sixty-three of the penal law, [or] an act of terrorism as defined in 8 9 article four hundred ninety of the penal law, aggravated harassment of 10 an employee by an incarcerated individual, or an attempt or conspiracy 11 to commit any such offense. 12 (iv) Such merit time allowance may be granted when an incarcerated individual successfully participates in the work and treatment program 13 14 assigned pursuant to section eight hundred five of this article and when 15 such incarcerated individual [obtains a] achieves one of the following: (1) completes his or her general equivalency diploma, his or her educa-16 17 tional requirements as determined by the department or satisfactorily completes coursework sponsored by an institution of higher learning 18 representing a semester of academic training; (2) completes an alcohol 19 and substance abuse treatment [certificate, a vocational trade certif-20 21 icate following at least six months of vocational programming,] program, 22 or completes a comparable program of a different type as determined by the department, including, but not limited to, anger management, family 23 violence, or parenting; (3) completes a vocational training program or a 24 25 comparable and equivalent training program as determined by the depart-26 ment; (4) performs satisfactorily for at least six months in a skilled 27 job assignment, including but not limited to, Incarcerated Individual 28 Program Aide (IIPA), law library clerk, medical/infirmary aide, children's center aide, and food service worker; (5) completes at least 29 30 eighteen credits in a program registered by the state education depart-31 ment from a degree-granting higher education institution; or (6) 32 performs at least four hundred hours of service as part of a community 33 work crew. 34 Such allowance shall be withheld for any serious disciplinary infrac-35 tion or upon a judicial determination that the person, while an incar-36 cerated individual, commenced or continued a civil action, proceeding or 37 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 38 39 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 40 41 commenced by a person, while an incarcerated individual, against a state 42 agency, officer or employee. 43 § 2. Subparagraphs (i), (ii) and (iv) of paragraph (d) of subdivision 44 1 of section 803 of the correction law, subparagraph (i) as added by section 10-a of chapter 738 of the laws of 2004, subparagraphs (ii) and 45 46 (iv) as amended by section 224-a of chapter 322 of the laws of 2021 and 47 subparagraph (iv) as separately amended by section 2 of chapter 242 of 48 the laws of 2021, are amended to read as follows: 49 (i) Except as provided in subparagraph (ii) of this paragraph, every person under the custody of the department or confined in a facility in 50 51 the department of mental hygiene serving an indeterminate sentence of 52 imprisonment with a minimum period of one year or more or a determinate 53 sentence of imprisonment of one year or more [imposed pursuant to 54 section 70.70 or 70.71 of the penal law, may earn a merit time allow-55 ance.

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1 (ii) Such merit time allowance shall not be available to any person 2 serving [an indeterminate] a sentence [authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred 3 4 twenty of the penal law, or any sentence imposed for a violent felony 5 offense as defined in section 70.02 of the penal law, manslaughter in б the second degree, vehicular manslaughter in the second degree, vehicu-7 lar manslaughter in the first degree, criminally negligent homicide] 8 imposed for murder in the first degree as defined in section 125.27 of 9 the penal law, an offense defined in article one hundred thirty of the 10 penal law, incest, [or] an offense defined in article two hundred 11 sixty-three of the penal law, [or] an act of terrorism as defined in 12 article four hundred ninety of the penal law, aggravated harassment of an employee by an incarcerated individual, or an attempt or conspiracy 13 14 to commit any such offense. 15 (iv) Such merit time allowance may be granted when an incarcerated 16 individual successfully participates in the work and treatment program 17 assigned pursuant to section eight hundred five of this article and when such incarcerated individual [obtains a] achieves one of the following: 18 (1) completes his or her general equivalency diploma, his or her educa-19 20 tional requirements as determined by the department or satisfactorily 21 completes coursework sponsored by an institution of higher learning 22 representing a semester of academic training; (2) completes an alcohol 23 and substance abuse treatment [certificate, a vocational trade certificate following at least six months of vocational programming,] program, 24 25 or completes a comparable program of a different type as determined by the department, including, but not limited to, anger management, family 26 27 violence, or parenting; (3) completes a vocational training program or a 28 comparable and equivalent training program as determined by the depart-29 ment; (4) performs satisfactorily for at least six months in a skilled job assignment, including but not limited to, Incarcerated Individual 30 31 Program Aide (IIPA), law library clerk, medical/infirmary aide, chil-32 dren's center aide, and food service worker; (5) completes at least 33 eighteen credits in a program registered by the state education depart-34 ment from a degree-granting higher education institution; or (6) 35 performs at least four hundred hours of service as part of a community 36 work crew. 37 Such allowance shall be withheld for any serious disciplinary infrac-38 tion or upon a judicial determination that the person, while an incar-39 cerated individual, commenced or continued a civil action, proceeding or 40 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 41 42 and rules, or an order of a federal court pursuant to rule 11 of the 43 federal rules of civil procedure imposing sanctions in an action 44 commenced by a person, while an incarcerated individual, against a state 45 agency, officer or employee. 46 § 3. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803 47 of the correction law, as added by section 7 of chapter 738 of the laws 48 of 2004, is amended to read as follows: 49 (v) The provisions of this paragraph shall apply to persons in custody

serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an 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.

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§ 4. Subparagraph (v) of paragraph (d) of subdivision 1 of section 803 1 of the correction law, as added by section 10-a of chapter 738 of the 2 3 laws of 2004, is amended to read as follows: 4 (v) The provisions of this paragraph shall apply to persons in custody 5 serving an indeterminate sentence on the effective date of this para-6 graph as well as to persons sentenced to an indeterminate sentence on 7 and after the effective date of this paragraph and prior to September 8 first, two thousand five and to persons sentenced to a determinate 9 sentence [prior to September first, two thousand eleven] for a felony as 10 defined in article two hundred twenty or two hundred twenty-one of the 11 penal law. 12 § 5. Paragraph (g) of subdivision 2-a of section 803 of the correction law, as added by section 9 of chapter 738 of the laws of 2004, 13 is 14 amended to read as follows: 15 The provisions of this subdivision shall apply to persons in (q) custody serving an indeterminate sentence on the effective date of this 16 17 subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to Septem-18 19 ber first, two thousand five and to persons sentenced to a determinate sentence [prior to September first, two thousand eleven] for a felony as 20 21 defined in article two hundred twenty or two hundred twenty-one of the 22 penal law. 23 § 6. Paragraph (g) of subdivision 2-a of section 803 of the correction 24 law, as added by section 11 of chapter 738 of the laws of 2004, is amended to read as follows: 25 26 (g) The provisions of this subdivision shall apply to persons in 27 custody serving an indeterminate sentence on the effective date of this 28 subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to Septem-29 30 ber first, two thousand five and to persons sentenced to a determinate 31 sentence [prior to September first, two thousand eleven] for a felony as 32 defined in article two hundred twenty or two hundred twenty-one of the 33 penal law. 34 § 7. Section 803-b of the correction law is REPEALED. § 8. Subdivision (c-1) of section 41 of chapter 738 of the laws of 35 36 2004 amending the correction law and other laws relating to controlled 37 substances and indeterminate sentences, is amended to read as follows: 38 (c-1) the provisions of sections seven, eight, nine, ten and ten-a of 39 this act, and subdivision 2-a of section 803 of the correction law, as added by section eleven of this act shall apply to persons in custody 40 serving an indeterminate sentence on the effective date of 41 such 42 provisions as well as to persons sentenced to an indeterminate sentence 43 on and after the effective date of such provisions and prior to Septem-44 ber 1, 2005 and to persons sentenced to a determinate sentence [prior to 45 September 1, 2011] for a felony as defined in article 220 or 221 of the 46 penal law; 47 9. Clause (C) of subparagraph (i) of paragraph (e) of subdivision 1 § 48 of section 632-a of the executive law, as amended by section 24 of part A-1 of chapter 56 of the laws of 2010, is amended to read as follows: 49 (C) [an offense for which a merit time allowance may not be received 50 against the sentence pursuant to paragraph (d) of subdivision one of 51 section eight hundred three of the correction law] an A-I felony 52 offense, other than an A-I felony offense defined in article two hundred 53 twenty of the penal law, manslaughter in the second degree, vehicular 54 manslaughter in the second degree, vehicular manslaughter in the first 55 degree, criminally negligent homicide, an offense defined in article one 56

1 hundred thirty of the penal law, incest, an offense defined in article 2 two hundred sixty-three of the penal law, aggravated harassment of an 3 employee by an inmate; § 10. This act shall take effect on the ninetieth day after it shall 4 5 have become a law and shall apply to: (i) persons in custody serving an 6 indeterminate or determinate sentence or sentences on the effective 7 date; (ii) persons sentenced to an indeterminate or determinate sentence or sentences on or after the effective date; and (iii) persons who have 8 9 not completed service of an indeterminate or determinate sentence or 10 sentences imposed prior to the effective date; provided, however, that 11 the amendments to section 803 of the correction law made by sections 12 one, three, and five of this act shall be subject to the expiration and 13 reversion of such section pursuant to subdivision d of section 74 of 14 chapter 3 of the laws of 1995, as amended, when upon such date the 15 provisions of sections two, four and six of this act shall take effect.