

# STATE OF NEW YORK

6725

2023-2024 Regular Sessions

## IN SENATE

May 5, 2023

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to crimes committed during periods of post-release supervision

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

1 Section 1. Paragraph (a) of subdivision 3 of section 70.40 of the  
2 penal law, as amended by chapter 427 of the laws of 2021, is amended to  
3 read as follows:

4 (a) When a person is alleged to have violated the terms of presumptive  
5 release [~~or~~], parole, or conditional release from an indeterminate  
6 sentence by absconding, and the state board of parole has declared such  
7 person to be delinquent, the declaration of delinquency shall interrupt  
8 the person's sentence as of the date of the delinquency and such inter-  
9 ruption shall continue until the [~~releasee's~~] person's appearance in  
10 response to a notice of violation or the date of the execution of a  
11 warrant, whichever is earlier; provided however that when a person who  
12 has been presumptively released, paroled, conditionally released from an  
13 indeterminate sentence or is serving a period of post-release super-  
14 vision is charged with a crime committed while under supervision, and  
15 the charge or charges culminate in a new determinate or indeterminate  
16 sentence, the board's rules shall provide for a declaration of delin-  
17 quency pursuant to subparagraph (iii) of paragraph (d) of subdivision  
18 three of section two hundred fifty-nine-i of the executive law and the  
19 period of presumptive release, parole, conditional release or post-re-  
20 lease supervision shall be deemed interrupted for any period of time in  
21 which the person was held in pre-trial detention on the charge or charg-  
22 es that culminated in such indeterminate or determinate sentence.

23 § 2. Paragraph (c) of subdivision 3 of section 70.40 of the penal law,  
24 as amended by chapter 427 of the laws of 2021, is amended to read as  
25 follows:

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

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1 (c) Any time spent by a person in custody from the time of execution  
2 of a warrant pursuant to paragraph (a) of subdivision three of section  
3 two hundred fifty-nine-i of the executive law to the time service of the  
4 sentence resumes shall be credited against the term or maximum term of  
5 the interrupted sentence; provided however that when a person who is  
6 subject to an undischarged term of imprisonment or post-release super-  
7 vision following parole release, presumptive release or conditional  
8 release from an indeterminate sentence, or conditional release or maxi-  
9 mum expiration of a determinate sentence, and is held in pre-trial  
10 custody in a local correctional facility on a new charge or charges that  
11 culminate in a new indeterminate or determinate sentence, the time spent  
12 in pre-trial custody on such charge or charges, from the date custody  
13 commenced to the date of commencement of the subsequently imposed inde-  
14 terminate or determinate sentence, shall be credited to the new sentence  
15 as jail time pursuant to subdivision three of section 70.30 of this  
16 article, except for any time that has been credited to the previously  
17 imposed sentence as a time assessment by the board of parole for a  
18 violation of presumptive release, parole, conditional release or post-  
19 release supervision between the date of the arrest on the new felony and  
20 the date of sentencing for such felony.

21 § 3. Paragraph (d) of subdivision 5 of section 70.45 of the penal law,  
22 as amended by chapter 427 of the laws of 2021, is amended to read as  
23 follows:

24 (d) When a person is alleged to have violated a condition of post-re-  
25 lease supervision by absconding, or by committing a new crime during the  
26 period of post-release supervision that culminates in a new indetermi-  
27 nate or determinate sentence, and the department of corrections and  
28 community supervision has declared such person to be delinquent: (i) the  
29 declaration of delinquency shall interrupt the period of post-release  
30 supervision; (ii) such interruption shall continue until the person is  
31 restored to post-release supervision; (iii) if the person is restored to  
32 post-release supervision without being returned to the department of  
33 corrections and community supervision, any time spent in custody from  
34 the date of delinquency until restoration to post-release supervision  
35 shall first be credited to the maximum or aggregate maximum term of the  
36 sentence or sentences of imprisonment, but only to the extent authorized  
37 by subdivision three of section 70.40 of this article. Any time spent  
38 in custody solely pursuant to such delinquency after completion of the  
39 maximum or aggregate maximum term of the sentence or sentences of impri-  
40 sonment shall be credited to the period of post-release supervision, if  
41 any; and (iv) if the person is ordered returned to the department of  
42 corrections and community supervision, the person shall be required to  
43 serve the time assessment before being re-released to post-release  
44 supervision. If the person is detained pursuant to paragraph (a) of  
45 subdivision three of section two hundred fifty-nine-i of the executive  
46 law pending a preliminary or final revocation hearing, the time assess-  
47 ment imposed following such hearing shall commence upon the execution of  
48 the warrant. If a warrant was executed pursuant to paragraph (a) of  
49 subdivision three of section two hundred fifty-nine-i of the executive  
50 law but a court released the person pending a preliminary or final revo-  
51 cation hearing, the time assessment shall commence upon the issuance of  
52 a determination after a final hearing that the person has violated one  
53 or more conditions of community supervision in an important respect, and  
54 shall include the time period between execution of the warrant and  
55 release of the person pending a preliminary or final revocation hearing.  
56 If a [~~releasee~~] person is committed to the custody of the sheriff pursu-

1 ant to article five hundred thirty of the criminal procedure law, the  
2 time assessment, if any, shall include any time the [~~releasee~~ person  
3 spent in such custody. If a notice of violation was issued pursuant to  
4 subdivision three of section two hundred fifty-nine-i of the executive  
5 law, the time assessment shall commence upon the issuance of a determi-  
6 nation after a final hearing that the person has violated one or more  
7 conditions of supervision. While serving such assessment, the person  
8 shall not receive any good behavior allowance pursuant to section eight  
9 hundred three of the correction law. Any time spent in custody from the  
10 date of delinquency until return to the department of corrections and  
11 community supervision shall first be credited to the maximum or aggre-  
12 gate maximum term of the sentence or sentences of imprisonment, but only  
13 to the extent authorized by subdivision three of section 70.40 of this  
14 article. The maximum or aggregate maximum term of the sentence or  
15 sentences of imprisonment shall run while the person is serving such  
16 time assessment in the custody of the department of corrections and  
17 community supervision. Any time spent in custody solely pursuant to such  
18 delinquency after completion of the maximum or aggregate maximum term of  
19 the sentence or sentences of imprisonment shall be credited to the peri-  
20 od of post-release supervision, if any.

21 § 4. This act shall take effect immediately and shall apply to  
22 sentences imposed before, on and after such date.