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:

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

(a) When a person is alleged to have violated the terms of presumptive release [~~or~~], parole**, or conditional release from an indeterminate sentence** by absconding, and the state board of parole has declared such person to be delinquent, the declaration of delinquency shall interrupt the person's sentence as of the date of the delinquency and such interruption shall continue until the [~~releasee's~~] **person's** appearance in response to a notice of violation or the date of the execution of a warrant, whichever is earlier**; provided however that when a person who has been presumptively released, paroled, conditionally released from an indeterminate sentence or is serving a period of post-release supervision is charged with a crime committed while under supervision, and the charge or charges culminate in a new determinate or indeterminate sentence, the board's rules shall provide for a declaration of delinquency pursuant to subparagraph (iii) of paragraph (d) of subdivision three of section two hundred fifty-nine-i of the executive law and the period of presumptive release, parole, conditional release or post-release supervision shall be deemed interrupted for any period of time in which the person was held in pre-trial detention on the charge or charges that culminated in such indeterminate or determinate sentence**.

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

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

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(c) Any time spent by a person in custody from the time of execution of a warrant pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law to the time service of the sentence resumes shall be credited against the term or maximum term of the interrupted sentence**; provided however that when a person who is subject to an undischarged term of imprisonment or post-release supervision following parole release, presumptive release or conditional release from an indeterminate sentence, or conditional release or maximum expiration of a determinate sentence, and is held in pre-trial custody in a local correctional facility on a new charge or charges that culminate in a new indeterminate or determinate sentence, the time spent in pre-trial custody on such charge or charges, from the date custody commenced to the date of commencement of the subsequently imposed indeterminate or determinate sentence, shall be credited to the new sentence as jail time pursuant to subdivision three of section 70.30 of this article, except for any time that has been credited to the previously imposed sentence as a time assessment by the board of parole for a violation of presumptive release, parole, conditional release or post-release supervision between the date of the arrest on the new felony and the date of sentencing for such felony**.

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

(d) When a person is alleged to have violated a condition of post-release supervision by absconding**, or by committing a new crime during the period of post-release supervision that culminates in a new indeterminate or determinate sentence,** and the department of corrections and community supervision has declared such person to be delinquent: (i) the declaration of delinquency shall interrupt the period of post-release supervision; (ii) such interruption shall continue until the person is restored to post-release supervision; (iii) if the person is restored to post-release supervision without being returned to the department of corrections and community supervision, any time spent in custody from the date of delinquency until restoration to post-release supervision shall first be credited to the maximum or aggregate maximum term of the sentence or sentences of imprisonment, but only to the extent authorized by subdivision three of section 70.40 of this article. Any time spent in custody solely pursuant to such delinquency after completion of the maximum or aggregate maximum term of the sentence or sentences of imprisonment shall be credited to the period of post-release supervision, if any; and (iv) if the person is ordered returned to the department of corrections and community supervision, the person shall be required to serve the time assessment before being re-released to post-release supervision. If the person is detained pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law pending a preliminary or final revocation hearing, the time assessment imposed following such hearing shall commence upon the execution of the warrant. If a warrant was executed pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law but a court released the person pending a preliminary or final revocation hearing, the time assessment shall commence upon the issuance of a determination after a final hearing that the person has violated one or more conditions of community supervision in an important respect, and shall include the time period between execution of the warrant and release of the person pending a preliminary or final revocation hearing. If a [~~releasee~~] **person** is committed to the custody of the sheriff pursu-

ant to article five hundred thirty of the criminal procedure law, the time assessment, if any, shall include any time the [~~releasee~~] **person** spent in such custody. If a notice of violation was issued pursuant to subdivision three of section two hundred fifty-nine-i of the executive law, the time assessment shall commence upon the issuance of a determination after a final hearing that the person has violated one or more conditions of supervision. While serving such assessment, the person shall not receive any good behavior allowance pursuant to section eight hundred three of the correction law. Any time spent in custody from the date of delinquency until return to the department of corrections and community supervision shall first be credited to the maximum or aggregate maximum term of the sentence or sentences of imprisonment, but only to the extent authorized by subdivision three of section 70.40 of this article. The maximum or aggregate maximum term of the sentence or sentences of imprisonment shall run while the person is serving such time assessment in the custody of the department of corrections and community supervision. Any time spent in custody solely pursuant to such delinquency after completion of the maximum or aggregate maximum term of the sentence or sentences of imprisonment shall be credited to the period of post-release supervision, if any.

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