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:

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the incarcerated individual's eligibility to be paroled pursuant to subdivision one of section 70.40 of the penal law, the commissioner shall review the incarcerated individual's institutional record to determine whether he or she has complied with the assigned program. If the commissioner determines that the incarcerated individual has successfully participated in the program he or she may issue the incarcerated individual a certificate of earned eligibility. Notwithstanding any other provision of law, an incarcerated

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

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

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

§ 9. 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 section 803 of the correction law made by sections one, three and five of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of sections two, four and six of this act shall take effect; and provided further, however, that the amendments to section 805 of the correction law made by section seven of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section eight of this act shall take effect.