§ 70.30 Calculation of terms of imprisonment.

1. * Indeterminate or determinate sentences.

* NB Effective until September 1, 2027

* Indeterminate sentences.

* NB Effective September 1, 2027

* An indeterminate or determinate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the state department of corrections and community supervision. Where a person is under more than one indeterminate or determinate sentence, the sentences shall be calculated as follows:

* NB Effective until September 1, 2027

* An indeterminate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the state department of corrections and community supervision. Where a person is under more than one indeterminate sentence, the sentences shall be calculated as follows:

* NB Effective September 1, 2027

* (a) If the sentences run concurrently, the time served under imprisonment on any of the sentences shall be credited against the minimum periods of all the concurrent indeterminate sentences and against the terms of all the concurrent determinate sentences. The maximum term or terms of the indeterminate sentences and the term or terms of the determinate sentences shall merge in and be satisfied by discharge of the term which has the longest unexpired time to run;

* NB Effective until September 1, 2027

* (a) If the sentences run concurrently, the time served under imprisonment on any of the sentences shall be credited against the minimum periods of all the concurrent sentences, and the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run;

* NB Effective September 1, 2027

* (b) If the defendant is serving two or more indeterminate sentences which run consecutively, the minimum periods of imprisonment are added to arrive at an aggregate minimum period of imprisonment equal to the sum of all the minimum periods, and the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum

terms, provided, however, that both the aggregate maximum term and the aggregate minimum period of imprisonment shall be subject to the limitations set forth in paragraphs (e) and (f) of this subdivision, where applicable;

* NB Effective until September 1, 2027

* (b) If the sentences run consecutively, the minimum periods of imprisonment are added to arrive at an aggregate minimum period of imprisonment equal to the sum of all the minimum periods, and the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms, provided, however, that both the aggregate maximum term and the aggregate minimum period of imprisonment shall be subject to the limitations set forth in paragraphs (c) and (d) of this subdivision, where applicable;

* NB Effective September 1, 2027

* (c) If the defendant is serving two or more determinate sentences of imprisonment which run consecutively, the terms of the determinate sentences are added to arrive at an aggregate maximum term of imprisonment, provided, however, that the aggregate maximum term of imprisonment shall be subject to the limitations set forth in paragraphs (e) and (f) of this subdivision, where applicable.

* NB Effective until September 1, 2027

* (c) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the aggregate maximum term of consecutive sentences imposed for two or more crimes, other than two or more crimes that include a class A felony, committed prior to the time the person was imprisoned under any of such sentences shall, if it exceeds twenty years, be deemed to be twenty years, unless one of the sentences was imposed for a class B felony, in which case the aggregate maximum term shall, if it exceeds thirty years, be deemed to be thirty years. Where the aggregate maximum term of two or more consecutive sentences is reduced by calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced;

(ii) Notwithstanding subparagraph (i) of this paragraph, the aggregate maximum term of consecutive sentences imposed for the conviction of two violent felony offenses committed prior to the time the person was

imprisoned under any of such sentences and one of which is a class B violent felony offense, shall, if it exceeds forty years, be deemed to be forty years;

(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph, the aggregate maximum term of consecutive sentences imposed for the conviction of three or more violent felony offenses committed prior to the time the person was imprisoned under any of such sentences and one of which is a class B violent felony offense, shall, if it exceeds fifty years, be deemed to be fifty years;

* NB Effective September 1, 2027

* (d) If the defendant is serving one or more indeterminate sentences of imprisonment and one or more determinate sentence of imprisonment which run consecutively, the minimum term or terms of the indeterminate sentence or sentences and the term or terms of the determinate sentence or sentences are added to arrive at an aggregate maximum term of imprisonment, provided, however, (i) that in no event shall the aggregate maximum so calculated be less than the term or maximum term of imprisonment of the sentence which has the longest unexpired time to run; and (ii) that the aggregate maximum term of imprisonment shall be subject to the limitations set forth in paragraphs (e) and (f) of this subdivision, where applicable.

* NB Effective until September 1, 2027

* (d) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A felony, committed before he has reached the age of sixteen, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree or for the class A felony of kidnapping in the first degree, then the aggregate maximum term of such sentences shall, if it exceeds fifteen years, be deemed to be fifteen years. Where the aggregate maximum term of two or more consecutive sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced.

* NB Effective September 1, 2027

* (e) (i) Except as provided in subparagraph (ii), (iii), (iv), (v),

(vi) or (vii) of this paragraph, the aggregate maximum term of consecutive sentences, all of which are indeterminate sentences or all of which are determinate sentences, imposed for two or more crimes, other than two or more crimes that include a class A felony, committed prior to the time the person was imprisoned under any of such sentences shall, if it exceeds twenty years, be deemed to be twenty years, unless one of the sentences was imposed for a class B felony, in which case the aggregate maximum term shall, if it exceeds thirty years, be deemed to be thirty years. Where the aggregate maximum term of two or more indeterminate consecutive sentences is reduced by calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced;

(ii) Where the aggregate maximum term of two or more consecutive sentences, one or more of which is a determinate sentence and one or more of which is an indeterminate sentence, imposed for two or more crimes, other than two or more crimes that include a class A felony, committed prior to the time the person was imprisoned under any of such sentences, exceeds twenty years, and none of the sentences was imposed for a class B felony, the following rules shall apply:

(A) if the aggregate maximum term of the determinate sentence or sentences exceeds twenty years, the defendant shall be deemed to be serving to a determinate sentence of twenty years.

(B) if the aggregate maximum term of the determinate sentence or sentences is less than twenty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be twenty years. In such instances, the minimum sentence shall be deemed to be ten years or six-sevenths of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

(iii) Where the aggregate maximum term of two or more consecutive sentences, one or more of which is a determinate sentence and one or more of which is an indeterminate sentence, imposed for two or more crimes, other than two or more crimes that include a class A felony, commmitted prior to the time the person was imprisoned under any of such sentences, exceeds thirty years, and one of the sentences was imposed

for a class B felony, the following rules shall apply:

(A) if the aggregate maximum term of the determinate sentence or sentences exceeds thirty years, the defendant shall be deemed to be serving a determinate sentence of thirty years;

(B) if the aggregate maximum term of the determinate sentence or sentences is less than thirty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be thirty years. In such instances, the minimum sentence shall be deemed to be fifteen years or six-sevenths of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

(iv) Notwithstanding subparagraph (i) of this paragraph, the aggregate maximum term of consecutive sentences, all of which are indeterminate sentences or all of which are determinate sentences, imposed for the conviction of two violent felony offenses committed prior to the time the person was imprisoned under any of such sentences and one of which is a class B violent felony offense, shall, if it exceeds forty years, be deemed to be forty years

(v) Notwithstanding subparagraphs (ii) and (iii) of this paragraph, where the aggregate maximum term of two or more consecutive sentences, one or more of which is a determinate sentence and one or more of which is an indeterminate sentence, and where such sentences are imposed for the conviction of two violent felony offenses committed prior to the time the person was imprisoned under any such sentences and where one of which is a class B violent felony offense, the following rules shall apply:

(A) if the aggregate maximum term of the determinate sentence or sentences exceeds forty years, the defendant shall be deemed to be serving a determinate sentence of forty years;

(B) if the aggregate maximum term of the determinate sentence or sentences is less than forty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be forty years. In such instances, the minimum sentence shall be deemed to be twenty years or six-sevenths of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

(vi) Notwithstanding subparagraphs (i) and (iv) of this paragraph, the

aggregate maximum term of consecutive sentences, all of which are indeterminate or all of which are determinate sentences, imposed for the conviction of three or more violent felony offenses committed prior to the time the person was imprisoned under any of such sentences and one of which is a class B violent felony offense, shall, if it exceeds fifty years, be deemed to be fifty years;

(vii) Notwithstanding subparagraphs (ii), (iii) and (v) of this paragraph, where the aggregate maximum term of two or more consecutive sentences, one or more of which is a determinate sentence and one or more of which is an indeterminate sentence, and where such sentences are imposed for the conviction of three or more violent felony offenses committed prior to the time the person was imprisoned under any such sentences and one of which is a class B violent felony offense, the following rules shall apply:

(A) if the aggregate maximum term of the determinate sentence or sentences exceeds fifty years, the defendant shall be deemed to be serving a determinate sentence of fifty years.

(B) if the aggregate maximum term of the determinate sentence or sentences is less than fifty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be deemed to be fifty years. In such instances, the minimum sentence shall be deemed to be twenty-five years or six-sevenths of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

(viii) Notwithstanding any provision of this subdivision to the contrary where a person is serving two or more consecutive sentences, one or more of which is an indeterminate sentence and one or more of which is a determinate sentence, and if he would be eligible for a reduction provision pursuant to this subdivision if the maximum term or aggregate maximum term of the indeterminate sentence or sentences were added to the term or aggregate maximum term of the determinate sentence or sentences, the person shall be deemed to be eligible for the applicable reduction provision and the rules set forth in this subdivision shall apply.

* NB Effective until September 1, 2027

* (f) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A

felony, committed before he has reached the age of sixteen, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree or for the class A felony of kidnapping in the first degree, then the aggregate maximum term of such sentences shall, if it exceeds fifteen years, be deemed to be fifteen years. Where the aggregate maximum term of two or more consecutive sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced.

* NB Effective until September 1, 2027

2. Definite sentences. A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. Where a person is under more than one definite sentence, the sentences shall be calculated as follows:

(a) If the sentences run concurrently and are to be served in a single institution, the terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run;

(b) If the sentences run consecutively and are to be served in a single institution, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of two years imprisonment plus any term imposed for an offense committed while the person is under the sentences, whichever is less;

(c) If the sentences run concurrently and are to be served in more than one institution, the term of each such sentence shall be credited with the portion of any concurrent term served after that sentence was imposed;

(d) If the sentences run consecutively and are to be served in more than one institution, the aggregate of the time served in all of the institutions shall not exceed two years plus any term imposed for an offense committed while the person is under the sentences.

2-a. Undischarged imprisonment in other jurisdiction. Where a person who is subject to an undischarged term of imprisonment imposed at a previous time by a court of another jurisdiction is sentenced to an

additional term or terms of imprisonment by a court of this state, to run concurrently with such undischarged term, such additional term or terms shall be deemed to commence when the said person is returned to the custody of the appropriate official of such other jurisdiction where the undischarged term of imprisonment is being served. If the additional term or terms imposed shall run consecutively to the said undischarged term, such additional term or terms shall commence when the prisoner is received in the appropriate institution as provided in subdivisions one and two of this section. The term or terms of such imprisonment shall be calculated and such other pertinent provisions of this section applied in the same manner as where a person is under more than one sentence in this state as provided in this section.

* 3. Jail time. The term of a definite sentence, a determinate sentence, or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of parole, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

(a) If the sentences run concurrently, the credit shall be applied against each such sentence;

(b) If the sentences run consecutively, the credit shall be applied against the aggregate term or aggregate maximum term of the sentences and against the aggregate minimum period of imprisonment.

In any case where a person has been in custody due to a charge that culminated in a dismissal or an acquittal, the amount of time that would have been credited against a sentence for such charge, had one been imposed, shall be credited against any sentence that is based on a charge for which a warrant or commitment was lodged during the pendency

of such custody.

* NB Effective until September 1, 2027

* 3. Jail time. The term of a definite sentence or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of parole, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

(a) If the sentences run concurrently, the credit shall be applied against each such sentence;

(b) If the sentences run consecutively, the credit shall be applied against the aggregate term or aggregate maximum term of the sentences and against the aggregate minimum period of imprisonment.

In any case where a person has been in custody due to a charge that culminated in a dismissal or an acquittal, the amount of time that would have been credited against a sentence for such charge, had one been imposed, shall be credited against any sentence that is based on a charge for which a warrant or commitment was lodged during the pendency of such custody.

* NB Effective September 1, 2027

* 4. Good behavior time. Time allowances earned for good behavior, pursuant to the provisions of the correction law, shall be computed and applied as follows:

(a) In the case of a person serving an indeterminate or determinate sentence, the total of such allowances shall be calculated as provided in section eight hundred three of the correction law and the allowances shall be applied as provided in paragraph (b) of subdivision one of section 70.40;

(b) In the case of a person serving a definite sentence, the total of such allowances shall not exceed one-third of his term or aggregate term and the allowances shall be applied as a credit against such term.

* NB Effective until September 1, 2027

* 4. Good behavior time. Time allowances earned for good behavior, pursuant to the provisions of the correction law, shall be computed and applied as follows:

(a) In the case of a person serving an indeterminate sentence, the total of such allowances shall not exceed one-third of his maximum or aggregate maximum term and the allowances shall be applied as provided in subdivision one (b) of section 70.40;

(b) In the case of a person serving a definite sentence, the total of such allowances shall not exceed one-third of his term or aggregate term and the allowances shall be applied as a credit against such term.

* NB Effective September 1, 2027

5. Time served under vacated sentence. When a sentence of imprisonment that has been imposed on a person is vacated and a new sentence is imposed on such person for the same offense, or for an offense based upon the same act, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time credited against the vacated sentence shall be credited against the new sentence. In any case where a vacated sentence also includes a period of post-release supervision, all time credited against the period of post-release supervision shall be credited against the period of post-release supervision included with the new sentence. In the event a period of post-release supervision is not included with the new sentence, such period shall be credited against the new sentence.

6. Escape. When a person who is serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence and such interruption shall continue until the return of the person to the institution in which the sentence was being served or, if the sentence was being served in an institution under the jurisdiction of the state department of corrections and community supervision, to an institution under the jurisdiction of that department. Any time spent by such person in custody from the date of escape to the date the sentence resumes

shall be credited against the term or maximum term of the interrupted sentence, provided:

(a) That such custody was due to an arrest or surrender based upon the escape; or

(b) That such custody arose from an arrest on another charge which culminated in a dismissal or an acquittal; or

(c) That such custody arose from an arrest on another charge which culminated in a conviction, but in such case, if a sentence of imprisonment was imposed, the credit allowed shall be limited to the portion of the time spent in custody that exceeds the period, term or maximum term of imprisonment imposed for such conviction.

* 7. Absconding from temporary release or furlough program. When a person who is serving a sentence of imprisonment is permitted to leave an institution to participate in a program of work release or furlough program as such term is defined in section six hundred thirty-one of the correction law, or in the case of an institution under the jurisdiction of the state department of corrections and community supervision or a facility under the jurisdiction of the state office of children and family services to participate in a program of temporary release, fails to return to the institution or facility at or before the time prescribed for his or her return, such failure shall interrupt the sentence and such interruption shall continue until the return of the person to the institution in which the sentence was being served or, if the sentence was being served in an institution under the jurisdiction of the state department of corrections and community supervision or a facility under the jurisdiction of the state office of children and family services to an institution under the jurisdiction of that department or a facility under the jurisdiction of that office. Any time spent by such person in an institution from the date of his or her failure to return to the date his or her sentence resumes shall be credited against the term or maximum term of the interrupted sentence, provided:

(a) That such incarceration was due to an arrest or surrender based upon the failure to return; or

(b) That such incarceration arose from an arrest on another charge which culminated in a dismissal or an acquittal; or

(c) That such custody arose from an arrest on another charge which

culminated in a conviction, but in such case, if a sentence of imprisonment was imposed, the credit allowed shall be limited to the portion of the time spent in custody that exceeds the period, term or maximum term of imprisonment imposed for such conviction.

* NB Expires September 1, 2027