



Wednesday, December 8, 2004

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S T A T E O F N E W Y O R K

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S E N A T E - A S S E M B L Y

December 7, 2004

IN SENATE -- Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Aubry, Lentol, Weinstein, Espaillat, Silver, Wright, Benjamin, Bing, Boyland, Bradley, Brennan, Brodsky, Christensen, Clark, A. Cohen, Cook, Cymbrowitz, Dinowitz, Glick, Gordon, Gottfried, Gran- nis, Lafayette, Lifton, Lopez, McEneny, McLaughlin, Millman, Nolan, Norman, O'Donnell, Paulin, Peoples, Peralta, Perry, Powell, Pretlow, Ramos, P. Rivera, Robinson, Stringer, Sweeney, Titus, Tokasz, Tonko) -- read once and referred to the Committee on Codes

AN ACT to amend the correction law, the criminal procedure law, the penal law and the executive law, in relation to controlled substances and indeterminate sentences; and repealing certain provisions of the correction law, the criminal procedure law and the penal law relating to controlled substances and indeterminate sentences

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 18 of section 2 of the correction law, as  
2 amended by chapter 60 of the laws of 1994, is amended to read as  
3 follows:  
4 18. "Alcohol and substance abuse treatment correctional annex." A  
5 medium security correctional facility consisting of one or more residen-  
6 tial dormitories which provide intensive alcohol and substance abuse  
7 treatment services to inmates WHO: (I) ARE otherwise eligible for tempo-  
8 rary release, OR (II) STAND CONVICTED OF A FELONY DEFINED IN ARTICLE TWO  
9 HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, AND ARE WITH-  
10 IN SIX MONTHS OF BEING AN ELIGIBLE INMATE AS THAT TERM IS DEFINED IN  
11 SUBDIVISION TWO OF SECTION EIGHT HUNDRED FIFTY-ONE OF THIS CHAPTER  
12 INCLUDING SUCH INMATES WHO ARE PARTICIPATING IN SUCH PROGRAM PURSUANT TO  
13 SUBDIVISION SIX OF SECTION 60.04 OF THE PENAL LAW. NOTWITHSTANDING THE  
14 FOREGOING PROVISIONS OF THIS SUBDIVISION, ANY INMATE TO BE ENROLLED IN  
15 THIS PROGRAM PURSUANT TO SUBDIVISION SIX OF SECTION 60.04 OF THE PENAL  
16 LAW SHALL BE GOVERNED BY THE SAME RULES AND REGULATIONS PROMULGATED BY

EXPLANATION: Matter in ITALICS (underlined) is new; matter in brackets

EXPLANATION--MATTER IN ITALICS (UNDERSCORED) IS NEW; MATTER IN BRACKETS { } IS OLD LAW TO BE OMITTED.

LBD18939-03-4

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1 THE DEPARTMENT, INCLUDING WITHOUT LIMITATION THOSE RULES AND REGULATIONS  
 2 ESTABLISHING REQUIREMENTS FOR COMPLETION AND THOSE RULES AND REGULATIONS  
 3 GOVERNING DISCIPLINE AND REMOVAL FROM THE PROGRAM. NO SUCH PERIOD OF  
 4 COURT ORDERED CORRECTIONS BASED DRUG ABUSE TREATMENT PURSUANT TO THIS  
 5 SUBDIVISION SHALL BE REQUIRED TO EXTEND BEYOND THE DEFENDANT'S CONDI-  
 6 TIONAL RELEASE DATE. Such treatment services may be provided by one or  
 7 more outside service providers pursuant to contractual agreements with  
 8 both the department and the division of parole, provided, however, that  
 9 any such provider shall be required to continue to provide, either  
 10 directly or through formal or informal agreement with other providers,  
 11 alcohol and substance abuse treatment services to inmates who have  
 12 successfully participated in such provider's incarcerative treatment  
 13 services and who have been paroled or conditionally released under the  
 14 supervision of the division of parole and who are, as a condition of  
 15 their parole or conditional release, required to participate in alcohol  
 16 or substance abuse treatment. Such incarcerative services shall be  
 17 provided in the facility in accordance with minimum standards promulgat-  
 18 ed by the department after consultation with the office of alcoholism  
 19 and substance abuse services. Such services to parolees shall be  
 20 provided in accordance with standards promulgated by the division of  
 21 parole after consultation with the office of alcoholism and substance  
 22 abuse services. Notwithstanding any other provision of law, any person  
 23 who has successfully completed no less than six months of intensive  
 24 alcohol and substance abuse treatment services in one of the depart-  
 25 ment's eight designated alcohol and substance abuse treatment correc-  
 26 tional annexes having a combined total capacity of two thousand five  
 27 hundred fifty beds may be transferred to a program operated by or at a  
 28 residential treatment facility, PROVIDED HOWEVER, THAT A PERSON UNDER A  
 29 DETERMINATE SENTENCE AS A SECOND FELONY DRUG OFFENDER FOR A CLASS B  
 30 FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW,  
 31 WHO WAS SENTENCED PURSUANT TO SECTION 70.70 OF SUCH LAW, SHALL NOT BE  
 32 ELIGIBLE TO BE TRANSFERRED TO A PROGRAM OPERATED AT A RESIDENTIAL TREAT-  
 33 MENT FACILITY UNTIL THE TIME SERVED UNDER IMPRISONMENT FOR HIS OR HER  
 34 DETERMINATE SENTENCE, INCLUDING ANY JAIL TIME CREDITED PURSUANT TO THE  
 35 PROVISIONS OF ARTICLE SEVENTY OF THE PENAL LAW, SHALL BE AT LEAST EIGH-  
 36 TEEN MONTHS. The commissioner shall report annually to the temporary  
 37 president of the senate and the speaker of the assembly commencing Janu-  
 38 ary {1, 1992} FIRST, NINETEEN HUNDRED NINETY-TWO as to the efficacy of  
 39 such programs including but not limited to a comparative analysis of  
 40 state-operated and private sector provision of treatment services and  
 41 recidivism. SUCH REPORT SHALL ALSO INCLUDE THE NUMBER OF INMATES  
 42 RECEIVED BY THE DEPARTMENT DURING THE REPORTING PERIOD WHO ARE SUBJECT  
 43 TO A SENTENCE WHICH INCLUDES ENROLLMENT IN SUBSTANCE ABUSE TREATMENT IN  
 44 ACCORDANCE WITH SUBDIVISION SIX OF SECTION 60.04 OF THE PENAL LAW, THE  
 45 NUMBER OF SUCH INMATES WHO ARE NOT PLACED IN SUCH TREATMENT PROGRAM AND  
 46 THE REASONS FOR SUCH OCCURRENCES.

47 S 2. Subdivision 18 of section 2 of the correction law, as added by  
 48 chapter 338 of the laws of 1989, is amended to read as follows:

49 18. "Alcohol and substance abuse treatment correctional annex." A  
 50 medium security correctional facility consisting of one or more {resi-  
 51 dentials} RESIDENTIAL dormitories which provide intensive alcohol and  
 52 substance abuse treatment services to inmates WHO: (I) ARE otherwise  
 53 eligible for temporary release, OR (II) STAND CONVICTED OF A FELONY  
 54 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 55 PENAL LAW, AND ARE WITHIN SIX MONTHS OF BEING AN ELIGIBLE INMATE AS THAT  
 56 TERM IS DEFINED IN SUBDIVISION TWO OF SECTION EIGHT HUNDRED FIFTY-ONE OF

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1 THIS CHAPTER INCLUDING SUCH INMATES WHO ARE PARTICIPATING IN SUCH  
 2 PROGRAM PURSUANT TO SUBDIVISION SIX OF SECTION 60.04 OF THE PENAL LAW.  
 3 NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBDIVISION, ANY INMATE  
 4 TO BE ENROLLED IN THIS PROGRAM PURSUANT TO SUBDIVISION SIX OF SECTION  
 5 60.04 OF THE PENAL LAW SHALL BE GOVERNED BY THE SAME RULES AND REGU-  
 6 LATIONS PROMULGATED BY THE DEPARTMENT, INCLUDING WITHOUT LIMITATION  
 7 THOSE RULES AND REGULATIONS ESTABLISHING REQUIREMENTS FOR COMPLETION AND  
 8 THOSE RULES AND REGULATIONS GOVERNING DISCIPLINE AND REMOVAL FROM THE  
 9 PROGRAM. NO SUCH PERIOD OF COURT ORDERED CORRECTIONS BASED DRUG ABUSE  
 10 TREATMENT PURSUANT TO THIS SUBDIVISION SHALL BE REQUIRED TO EXTEND  
 11 BEYOND THE DEFENDANT`S CONDITIONAL RELEASE DATE. Such treatment  
 12 services may be provided by one or more outside service providers pursu-  
 13 ant to contractual agreements with both the department and the division  
 14 of parole, provided, however, that any such provider shall be required  
 15 to continue to provide, either directly or through formal or informal  
 16 agreement with other providers, alcohol and substance abuse treatment  
 17 services to inmates who have successfully participated in such provid-  
 18 er`s incarcerative treatment services and who have been paroled or  
 19 conditionally released under the supervision of the division of parole  
 20 and who are, as a condition of their parole or conditional release,  
 21 required to participate in alcohol or substance abuse treatment. Such  
 22 incarcerative services shall be provided in the facility in accordance  
 23 with minimum standards promulgated by the department after consultation  
 24 with the {division} OFFICE of alcoholism and {alcohol abuse and the  
 25 division of} substance abuse services. Such services to parolees shall  
 26 be provided in accordance with standards promulgated by the division of  
 27 parole after consultation with the {division} OFFICE of alcoholism and  
 28 {alcohol abuse and the division of} substance abuse services. The  
 29 commissioner shall report annually to the majority leader of the senate  
 30 and the speaker of the assembly commencing January {1, 1992} FIRST,  
 31 NINETEEN HUNDRED NINETY-TWO as to the efficacy of such programs includ-  
 32 ing but not limited to a comparative analysis of state-operated and  
 33 private sector provision of treatment services and recidivism. SUCH  
 34 REPORT SHALL ALSO INCLUDE THE NUMBER OF INMATES RECEIVED BY THE DEPART-  
 35 MENT DURING THE REPORTING PERIOD WHO ARE SUBJECT TO A SENTENCE WHICH  
 36 INCLUDES ENROLLMENT IN SUBSTANCE ABUSE TREATMENT IN ACCORDANCE WITH  
 37 SUBDIVISION SIX OF SECTION 60.04 OF THE PENAL LAW, THE NUMBER OF SUCH  
 38 INMATES WHO ARE NOT PLACED IN SUCH TREATMENT PROGRAM AND THE REASONS FOR  
 39 SUCH OCCURRENCES.

40 S 3. Section 851 of the correction law is amended by adding a new  
 41 subdivision 2-b to read as follows:

42 2-B. WHEN CALCULATING IN ADVANCE THE DATE ON WHICH A PERSON IS OR  
 43 WILL BE ELIGIBLE FOR RELEASE ON PAROLE OR CONDITIONAL RELEASE, FOR  
 44 PURPOSES OF DETERMINING ELIGIBILITY FOR TEMPORARY RELEASE OR FOR PLACE-  
 45 MENT AT AN ALCOHOL AND SUBSTANCE ABUSE TREATMENT CORRECTIONAL ANNEX, THE  
 46 COMMISSIONER SHALL CONSIDER AND INCLUDE CREDIT FOR ALL POTENTIAL CREDITS  
 47 AND REDUCTIONS INCLUDING BUT NOT LIMITED TO MERIT TIME AND GOOD BEHAVIOR  
 48 ALLOWANCES. NOTHING IN THIS SUBDIVISION SHALL BE INTERPRETED AS  
 49 PRECLUDING THE CONSIDERATION AND INCLUSION OF CREDIT FOR ALL POTENTIAL  
 50 CREDITS AND REDUCTIONS INCLUDING, BUT NOT LIMITED TO, MERIT TIME AND  
 51 GOOD BEHAVIOR ALLOWANCES WHEN CALCULATING IN ADVANCE FOR ANY OTHER  
 52 PURPOSE THE DATE ON WHICH A PERSON IS OR WILL BE ELIGIBLE FOR RELEASE ON  
 53 PAROLE OR CONDITIONAL RELEASE.

54 S 4. Subdivision 5 of section 439-c of the correction law, as added by  
 55 chapter 477 of the laws of 1967, is amended to read as follows:

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1 5. In the event that a person transferred pursuant to this section is  
 2 under an indeterminate OR DETERMINATE sentence of imprisonment, the  
 3 provisions of subdivisions three, four and five of section four hundred  
 4 thirty-nine-a OF THIS ARTICLE shall apply to such transfer in lieu of  
 5 the provisions of subdivisions three and four of this section.

6 S 5. Subdivision (a) of section 601 of the correction law, as amended  
 7 by chapter 227 of the laws of 1981, is amended to read as follows:

8 (a) Whenever an inmate shall be delivered to the superintendent of a  
 9 state correctional facility pursuant to an indeterminate OR DETERMINATE  
 10 sentence, the officer so delivering such inmate shall deliver to such  
 11 superintendent, a certified copy of the sentence received by such offi-  
 12 cer from the clerk of the court by which such inmate shall have been  
 13 sentenced, a copy of the report of the probation officer's investigation  
 14 and report or a detailed statement covering the facts relative to the  
 15 crime and previous history certified by the district attorney, a copy of  
 16 the inmate's fingerprint records, a detailed summary of available  
 17 medical records, psychiatric records and reports relating to assaults,  
 18 or other violent acts, attempts at suicide or escape by the inmate while  
 19 in the custody of the local correctional facility; any such medical or  
 20 psychiatric records in the possession of a health care provider other  
 21 than the local correctional facility shall be summarized in detail and  
 22 forwarded by such health care provider to the medical director of the  
 23 appropriate state correctional facility upon request; the superintendent  
 24 shall present to such officer a certificate of the delivery of such  
 25 inmate, and the fees of such officer for transporting such inmate shall  
 26 be paid from the treasury upon the audit and warrant of the comptroller.  
 27 Whenever an inmate of the state is delivered to a local facility, the  
 28 superintendent shall forward summaries of such records to the local  
 29 facility with the inmate.

30 S 6. Subdivision (b) of section 601 of the correction law, as added by  
 31 chapter 39 of the laws of 1977, is amended to read as follows:

32 (b) Whenever an inmate is sentenced by a court of this state to an  
 33 indeterminate OR DETERMINATE sentence, but the inmate is immediately  
 34 returned to a correctional facility under the jurisdiction of the United  
 35 States or of a sister state, the clerk of the court shall immediately  
 36 send to the commissioner of the department a certified copy of the  
 37 sentence, a copy of the probation report and a copy of the fingerprint  
 38 records of the inmate.

39 S 7. Paragraph (d) of subdivision 1 of section 803 of the correction  
 40 law is REPEALED and a new paragraph (d) is added to read as follows:

41 (D) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,  
 42 EVERY PERSON UNDER THE CUSTODY OF THE DEPARTMENT OR CONFINED IN A FACIL-  
 43 ITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE  
 44 SENTENCE OF IMPRISONMENT WITH A MINIMUM PERIOD OF ONE YEAR OR MORE OR A  
 45 DETERMINATE SENTENCE OF IMPRISONMENT OF ONE YEAR OR MORE IMPOSED PURSU-  
 46 ANT TO SECTION 70.70 OR 70.71 OF THE PENAL LAW, MAY EARN A MERIT TIME  
 47 ALLOWANCE.

48 (II) SUCH MERIT TIME ALLOWANCE SHALL NOT BE AVAILABLE TO ANY PERSON  
 49 SERVING AN INDETERMINATE SENTENCE AUTHORIZED FOR AN A-I FELONY OFFENSE,  
 50 OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 51 OF THE PENAL LAW, OR ANY SENTENCE IMPOSED FOR A VIOLENT FELONY OFFENSE  
 52 AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND  
 53 DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR  
 54 MANSLAUGHTER IN THE FIRST DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN  
 55 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, INCEST,

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1 OR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL  
 2 LAW, OR AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE.

3 (III) THE MERIT TIME ALLOWANCE CREDIT AGAINST THE MINIMUM PERIOD OF  
 4 THE INDETERMINATE SENTENCE SHALL BE ONE-SIXTH OF THE MINIMUM PERIOD  
 5 IMPOSED BY THE COURT EXCEPT THAT SUCH CREDIT SHALL BE ONE-THIRD OF THE  
 6 MINIMUM PERIOD IMPOSED BY THE COURT FOR AN A-I FELONY OFFENSE DEFINED IN  
 7 ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW. IN THE CASE OF SUCH A  
 8 DETERMINATE SENTENCE, IN ADDITION TO THE TIME ALLOWANCE CREDIT AUTHOR-  
 9 IZED BY PARAGRAPH (C) OF THIS SUBDIVISION, THE MERIT TIME ALLOWANCE  
 10 CREDITED AGAINST THE TERM OF THE DETERMINATE SENTENCE PURSUANT TO THIS  
 11 PARAGRAPH SHALL BE ONE-SEVENTH OF THE TERM IMPOSED BY THE COURT.

12 (IV) SUCH MERIT TIME ALLOWANCE MAY BE GRANTED WHEN AN INMATE SUCCESS-  
 13 FULLY PARTICIPATES IN THE WORK AND TREATMENT PROGRAM ASSIGNED PURSUANT  
 14 TO SECTION EIGHT HUNDRED FIVE OF THIS ARTICLE AND WHEN SUCH INMATE

15 OBTAINS A GENERAL EQUIVALENCY DIPLOMA, AN ALCOHOL AND SUBSTANCE ABUSE  
16 TREATMENT CERTIFICATE, A VOCATIONAL TRADE CERTIFICATE FOLLOWING AT LEAST  
17 SIX MONTHS OF VOCATIONAL PROGRAMMING OR PERFORMS AT LEAST FOUR HUNDRED  
18 HOURS OF SERVICE AS PART OF A COMMUNITY WORK CREW.

19 SUCH ALLOWANCE SHALL BE WITHHELD FOR ANY SERIOUS DISCIPLINARY INFRAC-  
20 TION OR UPON A JUDICIAL DETERMINATION THAT THE PERSON, WHILE AN INMATE,  
21 COMMENCED OR CONTINUED A CIVIL ACTION, PROCEEDING OR CLAIM THAT WAS  
22 FOUND TO BE FRIVOLOUS AS DEFINED IN SUBDIVISION (C) OF SECTION EIGHT  
23 THOUSAND THREE HUNDRED THREE-A OF THE CIVIL PRACTICE LAW AND RULES, OR  
24 AN ORDER OF A FEDERAL COURT PURSUANT TO RULE 11 OF THE FEDERAL RULES OF  
25 CIVIL PROCEDURE IMPOSING SANCTIONS IN AN ACTION COMMENCED BY A PERSON,  
26 WHILE AN INMATE, AGAINST A STATE AGENCY, OFFICER OR EMPLOYEE.

27 (V) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO PERSONS IN CUSTODY  
28 SERVING AN INDETERMINATE SENTENCE ON THE EFFECTIVE DATE OF THIS PARA-  
29 GRAPH AS WELL AS TO PERSONS SENTENCED TO AN INDETERMINATE SENTENCE ON  
30 AND AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH AND PRIOR TO SEPTEMBER  
31 FIRST, TWO THOUSAND FIVE AND TO PERSONS SENTENCED TO A DETERMINATE  
32 SENTENCE PRIOR TO SEPTEMBER FIRST, TWO THOUSAND ELEVEN FOR A FELONY AS  
33 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
34 PENAL LAW.

35 S 8. Subdivision 1 of section 803 of the correction law is amended by  
36 adding a new paragraph (d) to read as follows:

37 (D) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,  
38 EVERY PERSON UNDER THE CUSTODY OF THE DEPARTMENT OR CONFINED IN A FACIL-  
39 ITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE  
40 SENTENCE OF IMPRISONMENT WITH A MINIMUM PERIOD OF ONE YEAR OR MORE OR A  
41 DETERMINATE SENTENCE OF IMPRISONMENT OF ONE YEAR OR MORE IMPOSED PURSU-  
42 ANT TO SECTION 70.70 OR 70.71 OF THE PENAL LAW, MAY EARN A MERIT TIME  
43 ALLOWANCE.

44 (II) SUCH MERIT TIME ALLOWANCE SHALL NOT BE AVAILABLE TO ANY PERSON  
45 SERVING AN INDETERMINATE SENTENCE AUTHORIZED FOR AN A-I FELONY OFFENSE,  
46 OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
47 OF THE PENAL LAW, OR ANY SENTENCE IMPOSED FOR A VIOLENT FELONY OFFENSE  
48 AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND  
49 DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR  
50 MANSLAUGHTER IN THE FIRST DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN  
51 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, INCEST,  
52 OR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL  
53 LAW, OR AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE.

54 (III) THE MERIT TIME ALLOWANCE CREDIT AGAINST THE MINIMUM PERIOD OF  
55 THE INDETERMINATE SENTENCE SHALL BE ONE-SIXTH OF THE MINIMUM PERIOD  
56 IMPOSED BY THE COURT, EXCEPT THAT SUCH CREDIT SHALL BE ONE-THIRD OF THE

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1 MINIMUM PERIOD IMPOSED BY THE COURT FOR AN A-I FELONY OFFENSE DEFINED IN  
2 ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW. IN THE CASE OF SUCH A  
3 DETERMINATE SENTENCE, IN ADDITION TO THE TIME ALLOWANCE CREDIT AUTHOR-  
4 IZED BY PARAGRAPH (C) OF THIS SUBDIVISION, THE MERIT TIME ALLOWANCE  
5 CREDITED AGAINST THE TERM OF THE DETERMINATE SENTENCE PURSUANT TO THIS  
6 PARAGRAPH SHALL BE ONE-SEVENTH OF THE TERM IMPOSED BY THE COURT.

7 (IV) SUCH ALLOWANCE MAY BE GRANTED WHEN AN INMATE SUCCESSFULLY PARTIC-  
8 IPATES IN THE WORK AND TREATMENT PROGRAM ASSIGNED PURSUANT TO SECTION  
9 EIGHT HUNDRED FIVE OF THIS ARTICLE AND WHEN SUCH INMATE OBTAINS A GENER-  
10 AL EQUIVALENCY DIPLOMA, AN ALCOHOL AND SUBSTANCE ABUSE TREATMENT CERTIF-  
11 ICATE, A VOCATIONAL TRADE CERTIFICATE FOLLOWING AT LEAST SIX MONTHS OF  
12 VOCATIONAL PROGRAMMING OR PERFORMS AT LEAST FOUR HUNDRED HOURS OF  
13 SERVICE AS PART OF A COMMUNITY WORK CREW.

14 SUCH ALLOWANCE SHALL BE WITHHELD FOR ANY SERIOUS DISCIPLINARY INFRAC-  
15 TION OR UPON A JUDICIAL DETERMINATION THAT THE PERSON, WHILE AN INMATE,  
16 COMMENCED OR CONTINUED A CIVIL ACTION, PROCEEDING OR CLAIM THAT WAS  
17 FOUND TO BE FRIVOLOUS AS DEFINED IN SUBDIVISION (C) OF SECTION EIGHT  
18 THOUSAND THREE HUNDRED THREE-A OF THE CIVIL PRACTICE LAW AND RULES, OR  
19 AN ORDER OF A FEDERAL COURT PURSUANT TO RULE 11 OF THE FEDERAL RULES OF  
20 CIVIL PROCEDURE IMPOSING SANCTIONS IN AN ACTION COMMENCED BY A PERSON

20 CIVIL PROCEDURE IMPOSING SANCTIONS IN AN ACTION COMMENCED BY A PERSON,  
21 WHILE AN INMATE, AGAINST A STATE AGENCY, OFFICER OR EMPLOYEE.

22 (V) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO PERSONS IN CUSTODY  
23 SERVING AN INDETERMINATE SENTENCE ON THE EFFECTIVE DATE OF THIS PARA-  
24 GRAPH AS WELL AS TO PERSONS SENTENCED TO AN INDETERMINATE SENTENCE ON  
25 AND AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH AND PRIOR TO SEPTEMBER  
26 FIRST, TWO THOUSAND FIVE AND TO PERSONS SENTENCED TO A DETERMINATE  
27 SENTENCE PRIOR TO SEPTEMBER FIRST, TWO THOUSAND ELEVEN FOR A FELONY AS  
28 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
29 PENAL LAW.

30 S 9. Subdivision 2-a of section 803 of the correction law is REPEALED  
31 and a new subdivision 2-a is added to read as follows:

32 2-A. IF A PERSON IS SERVING MORE THAN ONE SENTENCE, THE AUTHORIZED  
33 MERIT TIME ALLOWANCES MAY BE GRANTED AGAINST THE PERIOD OR AGGREGATE  
34 MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES, OR AGAINST  
35 THE TERM OR AGGREGATE TERM OF THE DETERMINATE SENTENCE OR SENTENCES, OR  
36 WHERE CONSECUTIVE DETERMINATE AND INDETERMINATE SENTENCES ARE INVOLVED,  
37 AGAINST THE AGGREGATE MINIMUM PERIOD AS CALCULATED PURSUANT TO SUBPARA-  
38 GRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.40 OF THE  
39 PENAL LAW. SUCH ALLOWANCES SHALL BE CALCULATED AS FOLLOWS:

40 (A) A PERSON SERVING TWO OR MORE INDETERMINATE SENTENCES WHICH RUN  
41 CONCURRENTLY MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED ONE-SIXTH  
42 OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE IMPOSED FOR AN  
43 OFFENSE OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
44 TWENTY OF THE PENAL LAW, OR ONE-THIRD OF THE MINIMUM PERIOD OF THE INDE-  
45 TERMINATE SENTENCE IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE  
46 TWO HUNDRED TWENTY OF THE PENAL LAW, WHICHEVER ALLOWANCE RESULTS IN THE  
47 LONGEST UNEXPIRED TIME TO RUN.

48 (B) A PERSON SERVING TWO OR MORE INDETERMINATE SENTENCES WHICH RUN  
49 CONSECUTIVELY MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED THE  
50 AMOUNT OF ONE-THIRD OF THE MINIMUM OR AGGREGATE MINIMUM PERIOD OF THE  
51 SENTENCES IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO  
52 HUNDRED TWENTY OF THE PENAL LAW, PLUS ONE-SIXTH OF THE MINIMUM OR AGGRE-  
53 GATE MINIMUM PERIOD OF THE SENTENCES IMPOSED FOR AN OFFENSE OTHER THAN  
54 SUCH A-I FELONY OFFENSE.

55 (C) A PERSON SERVING TWO OR MORE DETERMINATE SENTENCES FOR AN OFFENSE  
56 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE

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1 PENAL LAW WHICH RUN CONCURRENTLY MAY RECEIVE A MERIT TIME ALLOWANCE NOT  
2 TO EXCEED ONE-SEVENTH OF THE TERM OF THE DETERMINATE SENTENCE WHICH HAS  
3 THE LONGEST UNEXPIRED TIME TO RUN.

4 (D) A PERSON SERVING TWO OR MORE DETERMINATE SENTENCES FOR AN OFFENSE  
5 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
6 PENAL LAW WHICH RUN CONSECUTIVELY MAY RECEIVE A MERIT TIME ALLOWANCE NOT  
7 TO EXCEED ONE-SEVENTH OF THE AGGREGATE TERM OF SUCH DETERMINATE  
8 SENTENCES.

9 (E) A PERSON SERVING ONE OR MORE INDETERMINATE SENTENCES AND ONE OR  
10 MORE DETERMINATE SENTENCES FOR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
11 TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW WHICH RUN CONCURRENTLY  
12 MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED ONE-SIXTH OF THE MINI-  
13 MUM PERIOD OF THE INDETERMINATE SENTENCE IMPOSED FOR AN OFFENSE OTHER  
14 THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE  
15 PENAL LAW, ONE-THIRD OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE  
16 IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
17 OF THE PENAL LAW, OR ONE-SEVENTH OF THE TERM OF THE DETERMINATE  
18 SENTENCE, WHICHEVER ALLOWANCE RESULTS IN THE LARGEST UNEXPIRED TIME TO  
19 RUN.

20 (F) A PERSON SERVING ONE OR MORE INDETERMINATE SENTENCES AND ONE OR  
21 MORE DETERMINATE SENTENCES WHICH RUN CONSECUTIVELY MAY RECEIVE A MERIT  
22 TIME ALLOWANCE NOT TO EXCEED THE SUM OF ONE-SIXTH OF THE MINIMUM OR  
23 AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES  
24 IMPOSED FOR AN OFFENSE OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTI-  
25 CLE TWO HUNDRED TWENTY OF THE PENAL LAW, ONE-THIRD OF THE MINIMUM OR

26 AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES  
 27 IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 28 OF THE PENAL LAW AND ONE-SEVENTH OF THE TERM OR AGGREGATE TERM OF THE  
 29 DETERMINATE SENTENCE OR SENTENCES.

30 (G) THE PROVISIONS OF THIS SUBDIVISION SHALL APPLY TO PERSONS IN  
 31 CUSTODY SERVING AN INDETERMINATE SENTENCE ON THE EFFECTIVE DATE OF THIS  
 32 SUBDIVISION AS WELL AS TO PERSONS SENTENCED TO AN INDETERMINATE SENTENCE  
 33 ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION AND PRIOR TO SEPTEMBER  
 34 FIRST, TWO THOUSAND FIVE AND TO PERSONS SENTENCED TO A DETERMINATE  
 35 SENTENCE PRIOR TO SEPTEMBER FIRST, TWO THOUSAND ELEVEN FOR A FELONY AS  
 36 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 37 PENAL LAW.

38 S 10. Section 803 of the correction law is amended by adding a new  
 39 subdivision 2-a to read as follows:

40 2-A. IF A PERSON IS SERVING MORE THAN ONE SENTENCE, THE AUTHORIZED  
 41 MERIT TIME ALLOWANCES MAY BE GRANTED AGAINST THE PERIOD OR AGGREGATE  
 42 MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES, OR AGAINST  
 43 THE TERM OR AGGREGATE TERM OF THE DETERMINATE SENTENCE OR SENTENCES, OR  
 44 WHERE CONSECUTIVE DETERMINATE AND INDETERMINATE SENTENCES ARE INVOLVED,  
 45 AGAINST THE AGGREGATE MINIMUM PERIOD AS CALCULATED PURSUANT TO SUBPARA-  
 46 GRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.40 OF THE  
 47 PENAL LAW. SUCH ALLOWANCES SHALL BE CALCULATED AS FOLLOWS:

48 (A) A PERSON SERVING TWO OR MORE INDETERMINATE SENTENCES WHICH RUN  
 49 CONCURRENTLY MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED ONE-SIXTH  
 50 OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE IMPOSED FOR AN  
 51 OFFENSE OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
 52 TWENTY OF THE PENAL LAW, OR ONE-THIRD OF THE MINIMUM PERIOD OF THE INDE-  
 53 TERMINATE SENTENCE IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE  
 54 TWO HUNDRED TWENTY OF THE PENAL LAW, WHICH HAS THE LONGEST UNEXPIRED  
 55 TIME TO RUN.

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1 (B) A PERSON SERVING TWO OR MORE INDETERMINATE SENTENCES WHICH RUN  
 2 CONSECUTIVELY MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED THE  
 3 AMOUNT OF ONE-THIRD OF THE MINIMUM OR AGGREGATE MINIMUM PERIOD OF THE  
 4 SENTENCES IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO  
 5 HUNDRED TWENTY OF THE PENAL LAW, PLUS ONE-SIXTH OF THE MINIMUM OR AGGRE-  
 6 GATE MINIMUM PERIOD OF THE SENTENCES IMPOSED FOR AN OFFENSE OTHER THAN  
 7 SUCH A-I FELONY OFFENSE.

8 (C) A PERSON SERVING TWO OR MORE DETERMINATE SENTENCES FOR AN OFFENSE  
 9 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 10 PENAL LAW WHICH RUN CONCURRENTLY MAY RECEIVE A MERIT TIME ALLOWANCE NOT  
 11 TO EXCEED ONE-SEVENTH OF THE TERM OF THE DETERMINATE SENTENCE WHICH HAS  
 12 THE LONGEST UNEXPIRED TIME TO RUN.

13 (D) A PERSON SERVING TWO OR MORE DETERMINATE SENTENCES FOR AN OFFENSE  
 14 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 15 PENAL LAW WHICH RUN CONSECUTIVELY MAY RECEIVE A MERIT TIME ALLOWANCE NOT  
 16 TO EXCEED ONE-SEVENTH OF THE AGGREGATE TERM OF SUCH DETERMINATE  
 17 SENTENCES.

18 (E) A PERSON SERVING ONE OR MORE INDETERMINATE SENTENCES AND ONE OR  
 19 MORE DETERMINATE SENTENCES FOR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
 20 TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW WHICH RUN CONCURRENTLY  
 21 MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED ONE-SIXTH OF THE MINI-  
 22 MUM PERIOD OF THE INDETERMINATE SENTENCE IMPOSED FOR AN OFFENSE OTHER  
 23 THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE  
 24 PENAL LAW, ONE-THIRD OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE  
 25 IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 26 OF THE PENAL LAW, OR ONE-SEVENTH OF THE TERM OF THE DETERMINATE  
 27 SENTENCE, WHICHEVER ALLOWANCE IS GREATEST.

28 (F) A PERSON SERVING ONE OR MORE INDETERMINATE SENTENCES AND ONE OR  
 29 MORE DETERMINATE SENTENCES WHICH RUN CONSECUTIVELY MAY RECEIVE A MERIT  
 30 TIME ALLOWANCE NOT TO EXCEED THE SUM OF ONE-SIXTH OF THE MINIMUM OR  
 31 AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES  
 32 IMPOSED FOR AN OFFENSE OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTI-

33 CLE TWO HUNDRED TWENTY OF THE PENAL LAW, ONE-THIRD OF THE MINIMUM OR  
 34 AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES  
 35 IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 36 OF THE PENAL LAW AND ONE-SEVENTH OF THE TERM OR AGGREGATE TERM OF THE  
 37 DETERMINATE SENTENCE OR SENTENCES.

38 (G) THE PROVISIONS OF THIS SUBDIVISION SHALL APPLY TO PERSONS IN  
 39 CUSTODY SERVING AN INDETERMINATE SENTENCE ON THE EFFECTIVE DATE OF THIS  
 40 SUBDIVISION AS WELL AS TO PERSONS SENTENCED TO AN INDETERMINATE SENTENCE  
 41 ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION AND PRIOR TO SEPTEMBER  
 42 FIRST, TWO THOUSAND FIVE AND TO PERSONS SENTENCED TO A DETERMINATE  
 43 SENTENCE PRIOR TO SEPTEMBER FIRST, TWO THOUSAND ELEVEN FOR A FELONY AS  
 44 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 45 PENAL LAW.

46 S 10-a. The opening paragraph of subdivision 1 of section 803 of the  
 47 correction law is designated paragraph (a) and a new paragraph (d) is  
 48 added to read as follows:

49 (D) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,  
 50 EVERY PERSON UNDER THE CUSTODY OF THE DEPARTMENT OR CONFINED IN A FACIL-  
 51 ITY IN THE DEPARTMENT OF MENTAL HYGIENE SERVING AN INDETERMINATE  
 52 SENTENCE OF IMPRISONMENT WITH A MINIMUM PERIOD OF ONE YEAR OR MORE OR A  
 53 DETERMINATE SENTENCE OF IMPRISONMENT OF ONE YEAR OR MORE IMPOSED PURSU-  
 54 ANT TO SECTION 70.70 OR 70.71 OF THE PENAL LAW, MAY EARN A MERIT TIME  
 55 ALLOWANCE.

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1 (II) SUCH MERIT TIME ALLOWANCE SHALL NOT BE AVAILABLE TO ANY PERSON  
 2 SERVING AN INDETERMINATE SENTENCE AUTHORIZED FOR AN A-I FELONY OFFENSE,  
 3 OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 4 OF THE PENAL LAW, OR ANY SENTENCE IMPOSED FOR A VIOLENT FELONY OFFENSE  
 5 AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND  
 6 DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR  
 7 MANSLAUGHTER IN THE FIRST DEGREE, CRIMINALLY NEGLIGENT HOMICIDE, AN  
 8 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, INCEST,  
 9 OR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL  
 10 LAW, OR AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE.

11 (III) THE MERIT TIME ALLOWANCE CREDIT AGAINST THE MINIMUM PERIOD OF  
 12 THE INDETERMINATE SENTENCE SHALL BE ONE-SIXTH OF THE MINIMUM PERIOD  
 13 IMPOSED BY THE COURT EXCEPT THAT SUCH CREDIT SHALL BE ONE-THIRD OF THE  
 14 MINIMUM PERIOD IMPOSED BY THE COURT FOR AN A-I FELONY OFFENSE DEFINED IN  
 15 ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW. IN THE CASE OF SUCH A  
 16 DETERMINATE SENTENCE, IN ADDITION TO THE TIME ALLOWANCE CREDIT AUTHOR-  
 17 IZED BY PARAGRAPH (C) OF THIS SUBDIVISION, THE MERIT TIME ALLOWANCE  
 18 CREDITED AGAINST THE TERM OF THE DETERMINATE SENTENCE PURSUANT TO THIS  
 19 PARAGRAPH SHALL BE ONE-SEVENTH OF THE TERM IMPOSED BY THE COURT.

20 (IV) SUCH MERIT TIME ALLOWANCE MAY BE GRANTED WHEN AN INMATE SUCCESS-  
 21 FULLY PARTICIPATES IN THE WORK AND TREATMENT PROGRAM ASSIGNED PURSUANT  
 22 TO SECTION EIGHT HUNDRED FIVE OF THIS ARTICLE AND WHEN SUCH INMATE  
 23 OBTAINS A GENERAL EQUIVALENCY DIPLOMA, AN ALCOHOL AND SUBSTANCE ABUSE  
 24 TREATMENT CERTIFICATE, A VOCATIONAL TRADE CERTIFICATE FOLLOWING AT LEAST  
 25 SIX MONTHS OF VOCATIONAL PROGRAMMING OR PERFORMS AT LEAST FOUR HUNDRED  
 26 HOURS OF SERVICE AS PART OF A COMMUNITY WORK CREW.

27 SUCH ALLOWANCE SHALL BE WITHHELD FOR ANY SERIOUS DISCIPLINARY INFRAC-  
 28 TION OR UPON A JUDICIAL DETERMINATION THAT THE PERSON, WHILE AN INMATE,  
 29 COMMENCED OR CONTINUED A CIVIL ACTION, PROCEEDING OR CLAIM THAT WAS  
 30 FOUND TO BE FRIVOLOUS AS DEFINED IN SUBDIVISION (C) OF SECTION EIGHT  
 31 THOUSAND THREE HUNDRED THREE-A OF THE CIVIL PRACTICE LAW AND RULES, OR  
 32 AN ORDER OF A FEDERAL COURT PURSUANT TO RULE 11 OF THE FEDERAL RULES OF  
 33 CIVIL PROCEDURE IMPOSING SANCTIONS IN AN ACTION COMMENCED BY A PERSON,  
 34 WHILE AN INMATE, AGAINST A STATE AGENCY, OFFICER OR EMPLOYEE.

35 (V) THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO PERSONS IN CUSTODY  
 36 SERVING AN INDETERMINATE SENTENCE ON THE EFFECTIVE DATE OF THIS PARA-  
 37 GRAPH AS WELL AS TO PERSONS SENTENCED TO AN INDETERMINATE SENTENCE ON  
 38 AND AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH AND PRIOR TO SEPTEMBER  
 39 FIRST, TWO THOUSAND FIVE AND TO PERSONS SENTENCED TO A DETERMINATE



40 SENTENCE PRIOR TO SEPTEMBER FIRST, TWO THOUSAND ELEVEN FOR A FELONY AS  
 41 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 42 PENAL LAW.

43 S 11. Section 803 of the correction law is amended by adding two new  
 44 subdivisions 1-a and 2-a to read as follows:

45 1-A. A PERSON SERVING A DETERMINATE SENTENCE IMPOSED PURSUANT TO  
 46 SECTION 70.70 OR 70.71 OF THE PENAL LAW MAY RECEIVE A TIME ALLOWANCE  
 47 AGAINST THE TERM OF HIS OR HER SENTENCE NOT TO EXCEED ONE-SEVENTH OF THE  
 48 TERM IMPOSED BY THE COURT.

49 2-A. IF A PERSON IS SERVING MORE THAN ONE SENTENCE, THE AUTHORIZED  
 50 MERIT TIME ALLOWANCES MAY BE GRANTED AGAINST THE PERIOD OR AGGREGATE  
 51 MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES, OR AGAINST  
 52 THE TERM OR AGGREGATE TERM OF THE DETERMINATE SENTENCE OR SENTENCES, OR  
 53 WHERE CONSECUTIVE DETERMINATE AND INDETERMINATE SENTENCES ARE INVOLVED,  
 54 AGAINST THE AGGREGATE MINIMUM PERIOD AS CALCULATED PURSUANT TO SUBPARA-  
 55 GRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.40 OF THE  
 56 PENAL LAW. SUCH ALLOWANCES SHALL BE CALCULATED AS FOLLOWS:

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1 (A) A PERSON SERVING TWO OR MORE INDETERMINATE SENTENCES WHICH RUN  
 2 CONCURRENTLY MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED ONE-SIXTH  
 3 OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE IMPOSED FOR AN  
 4 OFFENSE OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
 5 TWENTY OF THE PENAL LAW, OR ONE-THIRD OF THE MINIMUM PERIOD OF THE INDE-  
 6 TERMINATE SENTENCE IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE  
 7 TWO HUNDRED TWENTY OF THE PENAL LAW, WHICHEVER ALLOWANCE RESULTS IN THE  
 8 LONGEST UNEXPIRED TIME TO RUN.

9 (B) A PERSON SERVING TWO OR MORE INDETERMINATE SENTENCES WHICH RUN  
 10 CONSECUTIVELY MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED THE  
 11 AMOUNT OF ONE-THIRD OF THE MINIMUM OR AGGREGATE MINIMUM PERIOD OF THE  
 12 SENTENCES IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO  
 13 HUNDRED TWENTY OF THE PENAL LAW, PLUS ONE-SIXTH OF THE MINIMUM OR AGGRE-  
 14 GATE MINIMUM PERIOD OF THE SENTENCES IMPOSED FOR AN OFFENSE OTHER THAN  
 15 SUCH A-I FELONY OFFENSE.

16 (C) A PERSON SERVING TWO OR MORE DETERMINATE SENTENCES FOR AN OFFENSE  
 17 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 18 PENAL LAW WHICH RUN CONCURRENTLY MAY RECEIVE A MERIT TIME ALLOWANCE NOT  
 19 TO EXCEED ONE-SEVENTH OF THE TERM OF THE DETERMINATE SENTENCE WHICH HAS  
 20 THE LONGEST UNEXPIRED TIME TO RUN.

21 (D) A PERSON SERVING TWO OR MORE DETERMINATE SENTENCES FOR AN OFFENSE  
 22 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
 23 PENAL LAW WHICH RUN CONSECUTIVELY MAY RECEIVE A MERIT TIME ALLOWANCE NOT  
 24 TO EXCEED ONE-SEVENTH OF THE AGGREGATE TERM OF SUCH DETERMINATE  
 25 SENTENCES.

26 (E) A PERSON SERVING ONE OR MORE INDETERMINATE SENTENCES AND ONE OR  
 27 MORE DETERMINATE SENTENCES FOR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
 28 TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW WHICH RUN CONCURRENTLY  
 29 MAY RECEIVE A MERIT TIME ALLOWANCE NOT TO EXCEED ONE-SIXTH OF THE MINI-  
 30 MUM PERIOD OF THE INDETERMINATE SENTENCE IMPOSED FOR AN OFFENSE OTHER  
 31 THAN AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE  
 32 PENAL LAW, ONE-THIRD OF THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE  
 33 IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 34 OF THE PENAL LAW, OR ONE-SEVENTH OF THE TERM OF THE DETERMINATE  
 35 SENTENCE, WHICHEVER ALLOWANCE RESULTS IN THE LARGEST UNEXPIRED TIME TO  
 36 RUN.

37 (F) A PERSON SERVING ONE OR MORE INDETERMINATE SENTENCES AND ONE OR  
 38 MORE DETERMINATE SENTENCES WHICH RUN CONSECUTIVELY MAY RECEIVE A MERIT  
 39 TIME ALLOWANCE NOT TO EXCEED THE SUM OF ONE-SIXTH OF THE MINIMUM OR  
 40 AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES  
 41 IMPOSED FOR AN OFFENSE OTHER THAN AN A-I FELONY OFFENSE DEFINED IN ARTI-  
 42 CLE TWO HUNDRED TWENTY OF THE PENAL LAW, ONE-THIRD OF THE MINIMUM OR  
 43 AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE OR SENTENCES  
 44 IMPOSED FOR AN A-I FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
 45 OF THE PENAL LAW AND ONE-SEVENTH OF THE TERM OR AGGREGATE TERM OF THE

45 OF THE PENAL LAW AND ONE SEVENTH OF THE TERM OR AGGREGATE TERM OF THE  
46 DETERMINATE SENTENCE OR SENTENCES.

47 (G) THE PROVISIONS OF THIS SUBDIVISION SHALL APPLY TO PERSONS IN  
48 CUSTODY SERVING AN INDETERMINATE SENTENCE ON THE EFFECTIVE DATE OF THIS  
49 SUBDIVISION AS WELL AS TO PERSONS SENTENCED TO AN INDETERMINATE SENTENCE  
50 ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION AND PRIOR TO SEPTEM-  
51 BER FIRST, TWO THOUSAND FIVE AND TO PERSONS SENTENCED TO A DETERMINATE  
52 SENTENCE PRIOR TO SEPTEMBER FIRST, TWO THOUSAND ELEVEN FOR A FELONY AS  
53 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE  
54 PENAL LAW.

55 S 11-a. The correction law is amended by adding a new section 803-a to  
56 read as follows:

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1 S 803-A. CERTAIN CALCULATIONS. NOTWITHSTANDING THE PROVISIONS OF ANY  
2 OTHER LAW, NO MERIT TIME ALLOWANCE ACCRUED, EARNED OR CREDITED TO ANY  
3 PERSON, PURSUANT TO ANY EXISTING OR FORMER SECTION EIGHT HUNDRED THREE  
4 OF THIS ARTICLE, WHILE IN THE CUSTODY OF THE COMMISSIONER, SHALL BE  
5 WITHDRAWN, CANCELLED, FORFEITED OR OTHERWISE LOST BY VIRTUE OF THE  
6 SUNSET OR EXPIRATION OF ANY PROVISION OF LAW.

7 S 12. The opening paragraph of subdivision 2 of section 851 of the  
8 correction law, as amended by chapter 92 of the laws of 1996, is amended  
9 to read as follows:

10 "Eligible inmate" means: a person confined in an institution who is  
11 eligible for release on parole or who will become eligible for release  
12 on parole or conditional release within two years. Provided, however,  
13 that a person under sentence for an offense defined in paragraphs (a)  
14 and (b) of subdivision one of section 70.02 of the penal law, where such  
15 offense involved the use or threatened use of a deadly weapon or danger-  
16 ous instrument shall not be eligible to participate in a work release  
17 program until he or she is eligible for release on parole or who will be  
18 eligible for release on parole or conditional release within eighteen  
19 months. PROVIDED, FURTHER, HOWEVER, THAT A PERSON UNDER A DETERMINATE  
20 SENTENCE AS A SECOND FELONY DRUG OFFENDER FOR A CLASS B FELONY OFFENSE  
21 DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, WHO WAS  
22 SENTENCED PURSUANT TO SECTION 70.70 OF SUCH LAW, SHALL NOT BE ELIGIBLE  
23 TO PARTICIPATE IN A TEMPORARY RELEASE PROGRAM UNTIL THE TIME SERVED  
24 UNDER IMPRISONMENT FOR HIS OR HER DETERMINATE SENTENCE, INCLUDING ANY  
25 JAIL TIME CREDITED PURSUANT TO THE PROVISIONS OF ARTICLE SEVENTY OF THE  
26 PENAL LAW, SHALL BE AT LEAST EIGHTEEN MONTHS. In the case of a person  
27 serving an indeterminate sentence of imprisonment imposed pursuant to  
28 the penal law in effect after September one, nineteen hundred sixty-sev-  
29 en, for the purposes of this article parole eligibility shall be upon  
30 the expiration of the minimum period of imprisonment fixed by the court  
31 or where the court has not fixed any period, after service of the mini-  
32 mum period fixed by the state board of parole. If an inmate is denied  
33 release on parole, such inmate shall not be deemed an eligible inmate  
34 until he OR SHE is within two years of his or her next scheduled appear-  
35 ance before the state parole board. In any case where an inmate is  
36 denied release on parole while participating in a temporary release  
37 program, the department shall review the status of the inmate to deter-  
38 mine if continued placement in the program is appropriate. No person  
39 convicted of any escape or absconding offense defined in article two  
40 hundred five of the penal law shall be eligible for temporary release.  
41 Further, no person under sentence for aggravated harassment of an  
42 employee by an inmate as defined in section 240.32 of the penal law, any  
43 homicide offense defined in article one hundred twenty-five of the penal  
44 law or of any sex offense defined in article one hundred thirty of the  
45 penal law or of section 255.25 of the penal law shall be eligible to  
46 participate in a work release program as defined in subdivision three of  
47 this section. Notwithstanding the foregoing, no person who is an other-  
48 wise eligible inmate who is under sentence for a crime involving: (a)  
49 infliction of serious physical injury upon another as defined in the  
50 penal law or (b) any other offense involving the use or threatened use

51 or a deadly weapon may participate in a temporary release program with-  
52 out the written approval of the commissioner. The commissioner shall  
53 promulgate regulations giving direction to the temporary release commit-  
54 tee at each institution in order to aid such committees in carrying out  
55 this mandate.

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1 S 13. The opening paragraph of subdivision 2 of section 851 of the  
2 correction law, as amended by chapter 447 of the laws of 1991, is  
3 amended to read as follows:

4 "Eligible inmate" means: a person confined in an institution who is  
5 eligible for release on parole or who will become eligible for release  
6 on parole or conditional release within two years. PROVIDED, THAT A  
7 PERSON UNDER A DETERMINATE SENTENCE AS A SECOND FELONY DRUG OFFENDER FOR  
8 A CLASS B FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE  
9 PENAL LAW, WHO WAS SENTENCED PURSUANT TO SECTION 70.70 OF SUCH LAW,  
10 SHALL NOT BE ELIGIBLE TO PARTICIPATE IN A TEMPORARY RELEASE PROGRAM  
11 UNTIL THE TIME SERVED UNDER IMPRISONMENT FOR HIS OR HER DETERMINATE  
12 SENTENCE, INCLUDING ANY JAIL TIME CREDITED PURSUANT TO THE PROVISIONS OF  
13 ARTICLE SEVENTY OF THE PENAL LAW, SHALL BE AT LEAST EIGHTEEN MONTHS. In  
14 the case of a person serving an indeterminate sentence of imprisonment  
15 imposed pursuant to the penal law in effect after September one, nine-  
16 teen hundred sixty-seven, for the purposes of this article parole eligi-  
17 bility shall be upon the expiration of the minimum period of imprison-  
18 ment fixed by the court or where the court has not fixed any period,  
19 after service of the minimum period fixed by the state board of parole.  
20 If an inmate is denied release on parole, such inmate shall not be  
21 deemed an eligible inmate until he OR SHE is within two years of his or  
22 her next scheduled appearance before the state parole board. In any case  
23 where an inmate is denied release on parole while participating in a  
24 temporary release program, the department shall review the status of the  
25 inmate to determine if continued placement in the program is appropri-  
26 ate. No person convicted of any escape or absconding offense defined in  
27 article two hundred five of the penal law shall be eligible for tempo-  
28 rary release. Notwithstanding the foregoing, no person who is an other-  
29 wise eligible inmate who is under sentence for a crime involving: (a)  
30 infliction of serious physical injury upon another as defined in the  
31 penal law, (b) a sex offense involving forcible compulsion, or (c) any  
32 other offense involving the use or threatened use of a deadly weapon may  
33 participate in a temporary release program without the written approval  
34 of the commissioner. The commissioner shall promulgate regulations  
35 giving direction to the temporary release committee at each institution  
36 in order to aid such committees in carrying out this mandate.

37 S 14. Subdivision 1 of section 865 of the correction law, as amended  
38 by chapter 264 of the laws of 2003, is amended to read as follows:

39 1. "Eligible inmate" means a person sentenced to an indeterminate term  
40 of imprisonment WHO WILL BECOME ELIGIBLE FOR RELEASE ON PAROLE WITHIN  
41 THREE YEARS OR SENTENCED TO A DETERMINATE TERM OF IMPRISONMENT WHO WILL  
42 BECOME ELIGIBLE FOR CONDITIONAL RELEASE WITHIN THREE YEARS, who has not  
43 reached the age of forty years, {who will become eligible for release on  
44 parole within three years,} who has not previously been convicted of a  
45 felony upon which an indeterminate OR DETERMINATE term of imprisonment  
46 was imposed and who was between the ages of sixteen and forty YEARS at  
47 the time of commission of the crime upon which his or her present  
48 sentence was based EXCEPT, HOWEVER, AN ELIGIBLE INMATE SHALL NOT INCLUDE  
49 A PERSON SENTENCED TO A DETERMINATE SENTENCE OF THREE AND ONE-HALF YEARS  
50 OR MORE AS A SECOND FELONY DRUG OFFENDER PURSUANT TO SUBDIVISION THREE  
51 OF SECTION 70.70 OF THE PENAL LAW FOR A CONVICTION OF A CLASS B FELONY  
52 OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW.  
53 Notwithstanding the foregoing, no person who is convicted of any of the  
54 following crimes shall be deemed eligible to participate in this  
55 program: (a) a violent felony offense as defined in article seventy of  
56 the penal law, (b) an A-I felony offense, (c) manslaughter in the second

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1 degree, vehicular manslaughter in the second degree, vehicular  
 2 manslaughter in the first degree, and criminally negligent homicide as  
 3 defined in article one hundred twenty-five of the penal law, (d) rape in  
 4 the second degree, rape in the third degree, criminal sexual act in the  
 5 second degree, criminal sexual act in the third degree, attempted sexual  
 6 abuse in the first degree, attempted rape in the second degree and  
 7 attempted criminal sexual act in the second degree as defined in arti-  
 8 cles one hundred ten and one hundred thirty of the penal law and (e) any  
 9 escape or absconding offense as defined in article two hundred five of  
 10 the penal law.

11 S 15. Subdivision 4 of section 867 of the correction law, as amended  
 12 by chapter 55 of the laws of 1992, is amended to read as follows:

13 4. An inmate who has successfully completed a shock incarceration  
 14 program shall be eligible to receive such a certificate of earned eligi-  
 15 bility pursuant to section eight hundred five of this chapter. NOTWITH-  
 16 STANDING ANY OTHER PROVISION OF LAW, AN INMATE SENTENCED TO A DETERMI-  
 17 NATE SENTENCE OF IMPRISONMENT WHO HAS SUCCESSFULLY COMPLETED A SHOCK  
 18 INCARCERATION PROGRAM SHALL BE ELIGIBLE TO RECEIVE SUCH A CERTIFICATE OF  
 19 EARNED ELIGIBILITY AND SHALL BE IMMEDIATELY ELIGIBLE TO BE CONDITIONALLY  
 20 RELEASED.

21 S 16. Subparagraph (ii) of paragraph (a) of subdivision 5 of section  
 22 220.10 of the criminal procedure law is REPEALED and subparagraph (i) of  
 23 paragraph (a) of such subdivision 5, as amended by chapter 410 of the  
 24 laws of 1979, is amended to read as follows:

25 (i) Where the indictment charges one of the class {A-I} A felonies  
 26 defined in article two hundred twenty of the penal law or the attempt to  
 27 commit any such class {A-I} A felony, then any plea of guilty entered  
 28 pursuant to subdivision three or four OF THIS SECTION must be or must  
 29 include at least a plea of guilty {of class A-II felony, except that an  
 30 eligible youth, as defined in subdivision two of section 720.10 of this  
 31 chapter, may upon consent of the district attorney, plea to a class B  
 32 felony for purposes of adjudication as a youthful offender} OF A CLASS B  
 33 FELONY.

34 S 17. Subdivision 7 of section 220.50 of the criminal procedure law,  
 35 as added by chapter 3 of the laws of 1995, is amended to read as  
 36 follows:

37 7. Prior to accepting a defendant's plea of guilty to a count or  
 38 counts of an indictment or a superior court information charging a felo-  
 39 ny offense, the court must advise the defendant on the record, that if  
 40 the defendant is not a citizen of the United States, the defendant's  
 41 plea of guilty and the court's acceptance thereof may result in the  
 42 defendant's deportation, exclusion from admission to the United States  
 43 or denial of naturalization pursuant to the laws of the United States.  
 44 Where the plea of guilty is to a count or counts of an indictment charg-  
 45 ing a felony offense other than a violent felony offense as defined in  
 46 section 70.02 of the penal law or an A-I felony offense other than an  
 47 A-I felony as defined in article two hundred twenty of the penal law,  
 48 the court must also, prior to accepting such plea, advise the defendant  
 49 that, if the defendant is not a citizen of the United States and is or  
 50 becomes the subject of a final order of deportation issued by the United  
 51 States Immigration and Naturalization Service, the defendant may be  
 52 paroled to the custody of the Immigration and Naturalization Service for  
 53 deportation purposes at any time subsequent to the commencement of any  
 54 indeterminate OR DETERMINATE prison sentence imposed as a result of the  
 55 defendant's plea. The failure to advise the defendant pursuant to this  
 56 subdivision shall not be deemed to affect the voluntariness of a plea of

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1 guilty or the validity of a conviction, nor shall it afford a defendant  
 2 any rights in a subsequent proceeding relating to such defendant's  
 3 deportation, exclusion or denial of naturalization.

4 S 18. Section 400.21 of the criminal procedure law, as added by chap-

5 ter 277 of the laws of 1973 and subdivision 4 as amended by chapter 1051  
6 of the laws of 1973, is amended to read as follows:

7 S 400.21 Procedure for determining whether defendant is a second felony  
8 offender OR A SECOND FELONY DRUG OFFENDER.

9 1. Applicability. The provisions of this section govern the procedure  
10 that must be followed in any case where it appears that a defendant who  
11 stands convicted of a felony has previously been convicted of a predi-  
12 cate felony and may be a second felony offender as defined in section  
13 70.06 of the penal law OR A SECOND FELONY DRUG OFFENDER AS DEFINED IN  
14 EITHER PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.70 OF THE PENAL  
15 LAW, OR PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.71 OF THE PENAL  
16 LAW.

17 2. Statement to be filed. When information available to the court or  
18 to the people prior to sentencing for a felony indicates that the  
19 defendant may have previously been subjected to a predicate felony  
20 conviction, a statement must be filed by the prosecutor before sentence  
21 is imposed setting forth the date and place of each alleged predicate  
22 felony conviction AND WHETHER THE PREDICATE FELONY CONVICTION WAS A  
23 VIOLENT FELONY AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION  
24 70.02 OF THE PENAL LAW, OR IN ANY OTHER JURISDICTION OF AN OFFENSE WHICH  
25 INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY SUCH FELONY FOR WHICH A  
26 SENTENCE TO A TERM OF IMPRISONMENT IN EXCESS OF ONE YEAR OR DEATH WAS  
27 AUTHORIZED AND IS AUTHORIZED IN THIS STATE REGARDLESS OF WHETHER SUCH  
28 SENTENCE WAS IMPOSED. Where the provisions of subparagraph (v) of para-  
29 graph (b) of subdivision one of section 70.06 of the penal law apply,  
30 such statement also shall set forth the date of commencement and the  
31 date of termination as well as the {place of imprisonment} STATE OR  
32 LOCAL INCARCERATING AGENCY for each period of incarceration to be used  
33 for tolling of the ten year limitation set forth in subparagraph (iv) of  
34 paragraph (b) of such subdivision.

35 3. Preliminary examination. The defendant must be given a copy of  
36 such statement and the court must ask him OR HER whether he OR SHE wish-  
37 es to controvert any allegation made therein. If the defendant wishes to  
38 controvert any allegation in the statement, he must specify the partic-  
39 ular allegation or allegations he wishes to controvert. Uncontroverted  
40 allegations in the statement shall be deemed to have been admitted by  
41 the defendant.

42 4. Cases where further hearing is not required. Where the uncontro-  
43 verted allegations in the statement are sufficient to support a finding  
44 that the defendant has been subjected to a predicate felony conviction  
45 the court must enter such finding, INCLUDING A FINDING THAT THE PREDI-  
46 CATE FELONY CONVICTION WAS OF A VIOLENT FELONY AS THAT TERM IS DEFINED  
47 IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW, OR IN ANY OTHER  
48 JURISDICTION OF AN OFFENSE WHICH INCLUDES ALL OF THE ESSENTIAL ELEMENTS  
49 OF ANY SUCH FELONY FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT IN  
50 EXCESS OF ONE YEAR OR DEATH WAS AUTHORIZED AND IS AUTHORIZED IN THIS  
51 STATE REGARDLESS OF WHETHER SUCH SENTENCE WAS IMPOSED, and when imposing  
52 sentence must sentence the defendant in accordance with the APPLICABLE  
53 provisions of section 70.06, 70.70 OR 70.71 of the penal law.

54 5. Cases where further hearing is required. Where the defendant  
55 controverts an allegation in the statement and the uncontroverted alle-  
56 gations in such statement are not sufficient to support a finding that

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1 the defendant has been subjected to SUCH a predicate felony conviction  
2 the court must proceed to hold a hearing.

3 6. Time for hearing. In any case where a copy of the statement was not  
4 received by the defendant at least two days prior to the preliminary  
5 examination, the court must upon request of the defendant grant an  
6 adjournment of at least two days before proceeding with the hearing.

7 7. Manner of conducting hearing. (a) A hearing pursuant to this  
8 section must be before the court without jury. The burden of proof is  
9 upon the people and a finding that the defendant has been subjected to  
10 SUCH a predicate felony conviction must be based upon proof beyond a

10 such a predicate felony conviction must be based upon proof beyond a  
11 reasonable doubt by evidence admissible under the rules applicable to a  
12 trial of the issue of guilt.

13 (b) A previous conviction in this or any other jurisdiction which was  
14 obtained in violation of the rights of the defendant under the applica-  
15 ble provisions of the constitution of the United States must not be  
16 counted in determining whether the defendant has been subjected to SUCH  
17 a predicate felony conviction. The defendant may, at any time during  
18 the course of the hearing hereunder controvert an allegation with  
19 respect to such conviction in the statement on the grounds that the  
20 conviction was unconstitutionally obtained. Failure to challenge the  
21 previous conviction in the manner provided herein constitutes a waiver  
22 on the part of the defendant of any allegation of unconstitutionality  
23 unless good cause be shown for such failure to make timely challenge.

24 (c) At the conclusion of the hearing the court must make a finding as  
25 to whether or not the defendant has been subjected to a predicate felony  
26 conviction, INCLUDING A FINDING AS TO WHETHER OR NOT THE PREDICATE FELO-  
27 NY CONVICTION WAS OF A VIOLENT FELONY AS THAT TERM IS DEFINED IN SUBDI-  
28 VISION ONE OF SECTION 70.02 OF THE PENAL LAW, OR IN ANY OTHER JURISDIC-  
29 TION OF AN OFFENSE WHICH INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY  
30 SUCH FELONY FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT IN EXCESS OF  
31 ONE YEAR OR DEATH WAS AUTHORIZED AND IS AUTHORIZED IN THIS STATE REGARD-  
32 LESS OF WHETHER SUCH SENTENCE WAS IMPOSED.

33 8. Subsequent use of predicate felony conviction finding. Where a  
34 finding has been entered pursuant to this section, such finding shall be  
35 binding upon that defendant in any future proceeding in which the issue  
36 may arise.

37 S 19. Intentionally omitted.

38 S 20. The penal law is amended by adding a new section 60.04 to read  
39 as follows:

40 S 60.04 AUTHORIZED DISPOSITION; CONTROLLED SUBSTANCES AND MARIHUANA  
41 FELONY OFFENSES.

42 1. APPLICABILITY. NOTWITHSTANDING THE PROVISIONS OF ANY LAW, THIS  
43 SECTION SHALL GOVERN THE DISPOSITIONS AUTHORIZED WHEN A PERSON IS TO BE  
44 SENTENCED UPON A CONVICTION OF A FELONY OFFENSE DEFINED IN ARTICLE TWO  
45 HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER OR WHEN A  
46 PERSON IS TO BE SENTENCED UPON A CONVICTION OF SUCH A FELONY AS A MULTI-  
47 PLE FELONY OFFENDER AS DEFINED IN SUBDIVISION FIVE OF THIS SECTION.

48 2. CLASS A FELONY. EVERY PERSON CONVICTED OF A CLASS A FELONY MUST BE  
49 SENTENCED TO IMPRISONMENT IN ACCORDANCE WITH SECTION 70.71 OF THIS  
50 TITLE, UNLESS SUCH PERSON IS CONVICTED OF A CLASS A-II FELONY AND IS  
51 SENTENCED TO PROBATION FOR LIFE IN ACCORDANCE WITH SECTION 65.00 OF THIS  
52 TITLE.

53 3. CLASS B FELONIES. EVERY PERSON CONVICTED OF A CLASS B FELONY MUST  
54 BE SENTENCED TO IMPRISONMENT IN ACCORDANCE WITH THE APPLICABLE  
55 PROVISIONS OF SECTION 70.70 OF THIS TITLE, UNLESS SUCH PERSON IS

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1 CONVICTED OF A CLASS B FELONY AND IS SENTENCED TO PROBATION IN ACCORD-  
2 ANCE WITH SECTION 65.00 OF THIS TITLE.

3 4. ALTERNATIVE SENTENCE. WHERE A SENTENCE OF IMPRISONMENT OR A  
4 SENTENCE OF PROBATION AS AN ALTERNATIVE TO IMPRISONMENT IS NOT REQUIRED  
5 TO BE IMPOSED PURSUANT TO SUBDIVISION TWO, THREE OR FIVE OF THIS  
6 SECTION, THE COURT MAY IMPOSE ANY OTHER SENTENCE AUTHORIZED BY SECTION  
7 60.01 OF THIS ARTICLE, PROVIDED THAT WHEN THE COURT IMPOSES A SENTENCE  
8 OF IMPRISONMENT, SUCH SENTENCE MUST BE IN ACCORDANCE WITH SECTION 70.70  
9 OF THIS TITLE. WHERE THE COURT IMPOSES A SENTENCE OF IMPRISONMENT IN  
10 ACCORDANCE WITH THIS SECTION, THE COURT MAY ALSO IMPOSE A FINE AUTHOR-  
11 IZED BY ARTICLE EIGHTY OF THIS TITLE AND IN SUCH CASE THE SENTENCE SHALL  
12 BE BOTH IMPRISONMENT AND A FINE.

13 5. MULTIPLE FELONY OFFENDER. WHERE THE COURT IMPOSES A SENTENCE UPON A  
14 SECOND FELONY DRUG OFFENDER, AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION  
15 ONE OF SECTION 70.70 OF THIS TITLE, IT MUST SENTENCE SUCH OFFENDER TO  
16 IMPRISONMENT IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF SECTION  
17 70.70 OF THIS TITLE.

17 70.70 OF THIS TITLE.

18 6. SUBSTANCE ABUSE TREATMENT. WHEN THE COURT IMPOSES A SENTENCE OF  
 19 IMPRISONMENT WHICH REQUIRES A COMMITMENT TO THE STATE DEPARTMENT OF  
 20 CORRECTIONAL SERVICES UPON A PERSON WHO STANDS CONVICTED OF A CONTROLLED  
 21 SUBSTANCE OR MARIHUANA OFFENSE, THE COURT MAY, UPON MOTION OF THE  
 22 DEFENDANT IN ITS DISCRETION, ISSUE AN ORDER DIRECTING THAT THE DEPART-  
 23 MENT OF CORRECTIONAL SERVICES ENROLL THE DEFENDANT IN THE COMPREHENSIVE  
 24 ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM IN AN ALCOHOL AND  
 25 SUBSTANCE ABUSE CORRECTIONAL ANNEX AS DEFINED IN SUBDIVISION EIGHTEEN OF  
 26 SECTION TWO OF THE CORRECTION LAW, PROVIDED THAT THE DEFENDANT WILL  
 27 SATISFY THE STATUTORY ELIGIBILITY CRITERIA FOR PARTICIPATION IN SUCH  
 28 PROGRAM. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBDIVISION,  
 29 ANY DEFENDANT TO BE ENROLLED IN SUCH PROGRAM PURSUANT TO THIS SUBDIVI-  
 30 SION SHALL BE GOVERNED BY THE SAME RULES AND REGULATIONS PROMULGATED BY  
 31 THE DEPARTMENT OF CORRECTIONAL SERVICES, INCLUDING WITHOUT LIMITATION  
 32 THOSE RULES AND REGULATIONS ESTABLISHING REQUIREMENTS FOR COMPLETION AND  
 33 THOSE RULES AND REGULATIONS GOVERNING DISCIPLINE AND REMOVAL FROM THE  
 34 PROGRAM. NO SUCH PERIOD OF COURT ORDERED CORRECTIONS BASED DRUG ABUSE  
 35 TREATMENT PURSUANT TO THIS SUBDIVISION SHALL BE REQUIRED TO EXTEND  
 36 BEYOND THE DEFENDANT'S CONDITIONAL RELEASE DATE.

37 S 21. The opening paragraph and subdivision 1 of section 220.18 of the  
 38 penal law, as amended by chapter 75 of the laws of 1995, are amended to  
 39 read as follows:

40 A person is guilty of criminal possession of a controlled substance in  
 41 the second degree when he OR SHE knowingly and unlawfully possesses:

42 1. one or more preparations, compounds, mixtures or substances  
 43 containing a narcotic drug and said preparations, compounds, mixtures or  
 44 substances are of an aggregate weight of {two} FOUR ounces or more; or

45 S 22. The opening paragraph and subdivision 1 of section 220.21 of the  
 46 penal law, as amended by chapter 75 of the laws of 1995, are amended to  
 47 read as follows:

48 A person is guilty of criminal possession of a controlled substance in  
 49 the first degree when he OR SHE knowingly and unlawfully possesses:

50 1. one or more preparations, compounds, mixtures or substances  
 51 containing a narcotic drug and said preparations, compounds, mixtures or  
 52 substances are of an aggregate weight of {four} EIGHT ounces or more; or

53 S 23. Notwithstanding any contrary provision of law, any person in the  
 54 custody of the department of correctional services convicted of a class  
 55 A-I felony offense defined in article 220 of the penal law which was  
 56 committed prior to the effective date of this section, and sentenced

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1 thereon to an indeterminate term of imprisonment with a minimum period  
 2 not less than fifteen years pursuant to provisions of the law in effect  
 3 prior to the effective date of this section, may, upon notice to the  
 4 appropriate district attorney, apply to be resentenced in accordance  
 5 with section 70.71 of the penal law in the court which imposed the  
 6 original sentence. Such application shall be referred for determination  
 7 to the judge or justice who imposed the original sentence upon such  
 8 person. If at the time of the application the original sentencing judge  
 9 or justice is a judge or justice of a court of competent jurisdiction,  
 10 but such court is not the court in which the original sentence was  
 11 imposed, then the application shall be randomly assigned to another  
 12 judge or justice of the court in which the original sentence was  
 13 imposed, provided that the district attorney and applicant may agree  
 14 that the application be referred to the original sentencing judge. If  
 15 the original sentencing judge is no longer a judge or justice of a court  
 16 of competent jurisdiction, then the application shall be randomly  
 17 assigned to another judge or justice of the court. If the court deter-  
 18 mines that such person does not stand convicted of such a class A-I  
 19 felony offense, it shall issue an order denying the application. If the  
 20 court determines that such person does stand convicted of such a class  
 21 A-I felony offense, it may consider any facts or circumstances relevant  
 22 to the imposition of a new sentence which are submitted by such person

23 or the people and may, in addition, consider the institutional record of  
 24 confinement of such person, but shall not order a new pre-sentence  
 25 investigation and report or entertain any matter challenging the under-  
 26 lying basis of the subject conviction. The court shall offer an opportu-  
 27 nity for a hearing and bring the applicant before it. The court may also  
 28 conduct a hearing, if necessary, to determine whether such person quali-  
 29 fies to be resentenced or to determine any controverted issue of fact  
 30 relevant to the issue of sentencing. Upon its review of the submissions  
 31 and the findings of fact made in connection with the application, the  
 32 court shall, unless substantial justice dictates that the application  
 33 should be denied, in which event the court shall issue an order denying  
 34 the application, specify and inform such person of the term of a deter-  
 35 minate sentence of imprisonment it would impose upon such conviction, as  
 36 authorized for a class A-I felony by and in accordance with section  
 37 70.71 of the penal law, in the event of a resentence and shall enter an  
 38 order to that effect. The court shall notify the person that, unless he  
 39 or she withdraws the application or appeals from such order, the court  
 40 will enter an order vacating the sentence originally imposed and impos-  
 41 ing a determinate sentence of imprisonment authorized to be imposed upon  
 42 such conviction by section 70.71 of the penal law; provided that the  
 43 term thereof shall be the same as the court previously specified. Any  
 44 order issued by a court pursuant to this section must include written  
 45 findings of fact and the reasons for such order. An appeal may be taken  
 46 as of right in accordance with applicable provisions of the criminal  
 47 procedure law: (a) from an order denying resentencing; or (b) from a new  
 48 sentence imposed under this provision and may be based on the grounds  
 49 that (i) the term of the new sentence is harsh or excessive; or (ii)  
 50 that the term of the new sentence is unauthorized as a matter of law.  
 51 An appeal in accordance with the applicable provisions of the criminal  
 52 procedure law may also be taken as of right by the defendant from an  
 53 order specifying and informing such person of the term of the determi-  
 54 nate sentence the court would impose upon resentencing on the ground  
 55 that the term of the proposed sentence is harsh or excessive; upon  
 56 remand to the sentencing court following such appeal the defendant shall

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1 be given an opportunity to withdraw an application for resentencing  
 2 before any resentence is imposed. Subdivision 1 of section 717 and  
 3 subdivision 4 of section 722 of the county law and the related  
 4 provisions of article 18-A of such law shall apply to the preparation of  
 5 and proceedings on applications pursuant to this section. In calculat-  
 6 ing the term of imprisonment to be served by the person pursuant to the  
 7 determinate sentence imposed, such person shall be credited for any jail  
 8 time credited towards the subject conviction as well as any period of  
 9 incarceration credited toward the sentence originally imposed.

10 S 24. The section heading and subdivisions 1, 2, 3, 4 and 5 of section  
 11 60.05 of the penal law, the section heading and subdivisions 3 and 5 as  
 12 amended by chapter 410 of the laws of 1979, subdivision 1 as amended by  
 13 chapter 233 of the laws of 1980, subdivision 2 as amended by chapter 1  
 14 of the laws of 1995 and subdivision 4 as amended by chapter 711 of the  
 15 laws of 1981, are amended to read as follows:

16 Authorized dispositions; OTHER class A, B, certain C and D felonies  
 17 and multiple felony offenders.

18 1. Applicability. {This} EXCEPT AS PROVIDED IN SECTION 60.04 OF THIS  
 19 ARTICLE GOVERNING THE AUTHORIZED DISPOSITIONS APPLICABLE TO FELONY  
 20 OFFENSES DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE  
 21 OF THIS CHAPTER, THIS section shall govern the dispositions authorized  
 22 when a person is to be sentenced upon a conviction of a class A felony,  
 23 a class B felony or a class C, class D or class E felony specified here-  
 24 in, or when a person is to be sentenced upon a conviction of a felony as  
 25 a multiple felony offender.

26 2. Class A felony. Except as provided in subdivisions three and four  
 27 of section 70.06 of this chapter, every person convicted of a class A  
 28 felony must be sentenced to imprisonment in accordance with section



29 70.00 OF THIS TITLE, unless such person is convicted of {either} murder  
 30 in the first degree and is sentenced in accordance with section 60.06  
 31 {or of a class A-II felony and is sentenced to probation in accordance  
 32 with section 65.00} OF THIS ARTICLE.

33 3. Class B felony. Except as provided in subdivision six OF THIS  
 34 SECTION, every person convicted of a class B violent felony offense as  
 35 defined in subdivision one of section 70.02 OF THIS TITLE, must be  
 36 sentenced to imprisonment in accordance with SUCH section 70.02; and,  
 37 except as provided in subdivision six OF THIS SECTION, every person  
 38 convicted of any other class B felony must be sentenced to imprisonment  
 39 in accordance with section 70.00{, unless such person is convicted of a  
 40 class B felony defined in article two hundred twenty and is sentenced to  
 41 a period of probation for life in accordance with section 65.00} OF THIS  
 42 TITLE.

43 4. Certain class C felonies. Except as provided in subdivision six,  
 44 every person convicted of a class C violent felony offense as defined in  
 45 subdivision one of section 70.02 OF THIS TITLE, must be sentenced to  
 46 imprisonment in accordance with section 70.02 OF THIS TITLE; and, except  
 47 as provided in subdivision six OF THIS SECTION, every person convicted  
 48 of the class C felonies of: attempt to commit any of the class B felo-  
 49 nies of bribery in the first degree as defined in section 200.04, bribe  
 50 receiving in the first degree as defined in section 200.12, conspiracy  
 51 in the second degree as defined in section 105.15 and criminal mischief  
 52 in the first degree as defined in section 145.12; criminal usury in the  
 53 first degree as defined in section 190.42, rewarding official misconduct  
 54 in the first degree as defined in section 200.22, receiving reward for  
 55 official misconduct in the first degree as defined in section 200.27,  
 56 {criminal possession of a controlled substance in the fourth degree as

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1 defined in subdivision one, two, three, four, five, six, seven, eight or  
 2 nine of section 220.09, or criminal sale of a controlled substance in  
 3 the fourth degree as defined in subdivision one or two of section  
 4 220.34,} attempt to promote prostitution in the first degree as defined  
 5 in section 230.32, promoting prostitution in the second degree as  
 6 defined in section 230.30, arson in the third degree as defined in  
 7 section 150.10 OF THIS CHAPTER, must be sentenced to imprisonment in  
 8 accordance with section 70.00 OF THIS TITLE.

9 5. Certain class D felonies. Except as provided in subdivision six OF  
 10 THIS SECTION, every person convicted of the class D felonies of {attempt  
 11 to commit assault in the first degree as defined in section 120.10, or}  
 12 assault in the second degree as defined in section 120.05{,} OR attempt  
 13 to commit a class C felony as defined in section 230.30 OF THIS CHAPTER,  
 14 must be sentenced in accordance with section 70.00 or 85.00 OF THIS  
 15 TITLE.

16 S 25. The opening paragraph of paragraph (a) of subdivision 1 of  
 17 section 65.00 of the penal law, as amended by chapter 471 of the laws of  
 18 1980, is amended to read as follows:

19 Except as otherwise required by section 60.04 OR 60.05 OF THIS TITLE,  
 20 and except as provided by paragraph (b) hereof, the court may sentence a  
 21 person to a period of probation upon conviction of any crime if the  
 22 court, having regard to the nature and circumstances of the crime and to  
 23 the history, character and condition of the defendant, is of the opinion  
 24 that:

25 S 26. Subparagraph (ii) of paragraph (a) of subdivision 3 of section  
 26 65.00 of the penal law, as amended by chapter 264 of the laws of 2003,  
 27 is amended to read as follows:

28 (ii) For a class A-II felony CONTROLLED SUBSTANCE OFFENDER AS DEFINED  
 29 IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.71 OF THIS CHAPTER or  
 30 a class B SECOND felony {defined in article two hundred twenty} DRUG  
 31 OFFENDER AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.70  
 32 of this chapter, the period of probation shall be life, AND FOR A CLASS  
 33 B FELONY DRUG OFFENDER AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF  
 34 SECTION 70 70 OF THIS CHAPTER THE PERIOD OF PROBATION SHALL BE TWENTY-

35 FIVE YEARS;

36 S 27. Intentionally omitted.

37 S 28. Subdivisions 1, 2, 3 and 4 of section 70.00 of the penal law,  
38 subdivision 1 as amended by chapter 3 of the laws of 1995, subdivisions  
39 2 and 3 as amended by chapter 276 of the laws of 1973, paragraph (b) of  
40 subdivision 2 as amended by chapter 280 of the laws of 1986, subpara-  
41 graph (i) of paragraph (a) of subdivision 3 as amended by chapter 459 of  
42 the laws of 2004, subparagraph (ii) of paragraph (a) of subdivision 3 as  
43 amended by chapter 410 of the laws of 1979, paragraph (b) of subdivision  
44 3 and subdivision 4 as amended by chapter 1 of the laws of 1998, are  
45 amended to read as follows:

46 1. Indeterminate sentence. Except as provided in subdivisions four,  
47 five and six OF THIS SECTION, a sentence of imprisonment for a felony,  
48 OTHER THAN A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED  
49 TWENTY-ONE OF THIS CHAPTER, shall be an indeterminate sentence. When  
50 such a sentence is imposed, the court shall impose a maximum term in  
51 accordance with the provisions of subdivision two of this section and  
52 the minimum period of imprisonment shall be as provided in subdivision  
53 three of this section.

54 2. Maximum term of sentence. The maximum term of an indeterminate  
55 sentence shall be at least three years and the term shall be fixed as  
56 follows:

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1 (a) For a class A felony, the term shall be life imprisonment;

2 (b) For a class B felony, the term shall be fixed by the court, and  
3 shall not exceed twenty-five years; {provided, however, that where the  
4 sentence is for a class B felony offense specified in subdivision two of  
5 section 220.44, the maximum term must be at least six years and must not  
6 exceed twenty-five years;}

7 (c) For a class C felony, the term shall be fixed by the court, and  
8 shall not exceed fifteen years;

9 (d) For a class D felony, the term shall be fixed by the court, and  
10 shall not exceed seven years; and

11 (e) For a class E felony, the term shall be fixed by the court, and  
12 shall not exceed four years.

13 3. Minimum period of imprisonment. The minimum period of imprisonment  
14 under an indeterminate sentence shall be at least one year and shall be  
15 fixed as follows:

16 (a) In the case of a class A felony, the minimum period shall be fixed  
17 by the court and specified in the sentence.

18 (i) For a class A-I felony, such minimum period shall not be less than  
19 fifteen years nor more than twenty-five years; provided, however, that  
20 (A) where a sentence, other than a sentence of death or life imprison-  
21 ment without parole, is imposed upon a defendant convicted of murder in  
22 the first degree as defined in section 125.27 of this chapter such mini-  
23 mum period shall be not less than twenty years nor more than twenty-five  
24 years, and, (B) where a sentence is imposed upon a defendant convicted  
25 of murder in the second degree as defined in subdivision five of section  
26 125.25 of this chapter the sentence shall be life imprisonment without  
27 parole.

28 (ii) For a class A-II felony, such minimum period shall not be less  
29 than three years nor more than eight years four months.

30 (b) {Where the sentence is for a class B felony offense specified in  
31 subdivision two of section 220.44, the minimum period must be fixed by  
32 the court at one-third of the maximum term imposed and must be specified  
33 in the sentence. Where the sentence is for any other} FOR A CLASS B  
34 felony, the minimum period shall be fixed by the court and specified in  
35 the sentence and shall be not less than one year nor more than one-third  
36 of the maximum term imposed.

37 4. Alternative definite sentence for class D{,} AND E{, and certain  
38 class C} felonies. When a person, other than a second or persistent  
39 felony offender, is sentenced for a class D or class E felony, {or to a  
40 class C felony specified in article two hundred twenty or article two

40 class C felony specified in article two hundred twenty or article two  
41 hundred twenty-one,} and the court, having regard to the nature and  
42 circumstances of the crime and to the history and character of the  
43 defendant, is of the opinion that a sentence of imprisonment is neces-  
44 sary but that it would be unduly harsh to impose an indeterminate or  
45 determinate sentence, the court may impose a definite sentence of impris-  
46 sonment and fix a term of one year or less.

47 S 29. Subdivision 1 of section 70.00 of the penal law, as amended by  
48 chapter 1 of the laws of 1995, is amended to read as follows:

49 1. Indeterminate sentence. Except as provided in subdivisions four and  
50 five OF THIS SECTION, a sentence of imprisonment for a felony, OTHER  
51 THAN A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWEN-  
52 TY-ONE OF THIS CHAPTER, shall be an indeterminate sentence. When such a  
53 sentence is imposed, the court shall impose a maximum term in accordance  
54 with the provisions of subdivision two of this section and the minimum  
55 period of imprisonment shall be as provided in subdivision three of this  
56 section.

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1 S 30. 1. Notwithstanding any contrary provision of law, any person  
2 convicted of a felony defined in article 220 or 221 of the penal law,  
3 other than a class A-I felony offense defined in article 220 of the  
4 penal law, which was committed prior to the effective date of this  
5 section, and sentenced thereon to an indeterminate term of imprisonment  
6 pursuant to provisions of the law in effect prior to the effective date  
7 of this section and who meets the eligibility requirements of paragraph  
8 (d) of subdivision 1 of section 803 of the correction law as it existed  
9 on the effective date of this section, may receive an additional merit  
10 time allowance not to exceed one-sixth of the minimum term or period  
11 imposed by the court provided the inmate either: (i) successfully  
12 participates or has participated in two or more of the four program  
13 objectives set forth in paragraph (d) of subdivision 1 of section 803 of  
14 the correction law, or (ii) successfully participates in one of the  
15 program objectives set forth in paragraph (d) of subdivision 1 of  
16 section 803 of the correction law and successfully maintains employment  
17 while in a work release program for a period of not less than three  
18 months.

19 2. Such allowance shall be withheld for any serious disciplinary  
20 infraction or upon a judicial determination that the person, while an  
21 inmate, commenced or continued a civil action, proceeding or claim that  
22 was found to be frivolous as defined in subdivision (c) of section  
23 8303-a of the civil practice law and rules, or an order of a federal  
24 court pursuant to Rule 11 of the federal rules of civil procedure impos-  
25 ing sanctions in an action commenced by a person, while an inmate,  
26 against a state agency, officer or employee.

27 S 31. Subdivision 5 of section 70.06 of the penal law is REPEALED.

28 S 32. Subdivision 7 of section 70.06 of the penal law, as added by  
29 chapter 3 of the laws of 1995, is amended to read as follows:

30 7. Notwithstanding any other provision of law, in the case of a person  
31 sentenced for a specified offense or offenses as defined in subdivision  
32 five of section 410.91 of the criminal procedure law, who stands  
33 convicted of no other felony offense, who has not previously been  
34 convicted of either a violent felony offense as defined in section 70.02  
35 of this article, a class A felony offense or a class B felony offense,  
36 and is not {subject to an undischarged term of imprisonment} UNDER THE  
37 JURISDICTION OF OR AWAITING DELIVERY TO THE DEPARTMENT OF CORRECTIONAL  
38 SERVICES, the court may direct that such sentence be executed as a  
39 parole supervision sentence as defined in and pursuant to the procedures  
40 prescribed in section 410.91 of the criminal procedure law.

41 S 33. Subdivision 2-a of section 70.25 of the penal law, as amended by  
42 chapter 3 of the laws of 1995, is amended to read as follows:

43 2-a. When an indeterminate or determinate sentence of imprisonment is  
44 imposed pursuant to section 70.04, 70.06, 70.08 {or}, 70.10, SUBDIVISION  
45 THREE OR FOUR OF SECTION 70.70 OR SUBDIVISION THREE OR FOUR OF SECTION

46 70.71 OF THIS ARTICLE, and such person is subject to an undischarged  
 47 indeterminate or determinate sentence of imprisonment imposed prior to  
 48 the date on which the present crime was committed, the court must impose  
 49 a sentence to run consecutively with respect to such undischarged  
 50 sentence.

51 S 34. Subdivision 2-a of section 70.25 of the penal law, as added by  
 52 chapter 481 of the laws of 1978, is amended to read as follows:

53 2-a. When an indeterminate OR DETERMINATE sentence of imprisonment is  
 54 imposed pursuant to section 70.04, 70.06, 70.08 {or}, 70.10, SUBDIVISION  
 55 THREE OR FOUR OF SECTION 70.70 OR SUBDIVISION THREE OR FOUR OF SECTION  
 56 70.71 OF THIS ARTICLE, and such person is subject to an undischarged

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1 indeterminate sentence of imprisonment imposed prior to the date on  
 2 which the present crime was committed, the court must impose a sentence  
 3 to run consecutively with respect to such undischarged sentence.

4 S 35. Subdivision 2 of section 70.45 of the penal law, as added by  
 5 chapter 1 of the laws of 1998, is amended to read as follows:

6 2. Period of post-release supervision. The period of post-release  
 7 supervision for a determinate sentence shall be five years{, except that  
 8 such period shall be three years whenever a determinate sentence of  
 9 imprisonment is imposed pursuant to section 70.02 of this article upon a  
 10 conviction for a class D or class E violent felony offense; provided,  
 11 however, that when a determinate sentence is imposed pursuant to section  
 12 70.02 of this article, the court, at the time of sentence, may specify a  
 13 shorter period of post-release supervision of not less than two and  
 14 one-half years upon a conviction for a class B or class C violent felony  
 15 offense and a shorter period of post-release supervision of not less  
 16 than one and one-half years upon a conviction for a class D or class E  
 17 violent felony offense.} EXCEPT THAT:

18 (A) SUCH PERIOD SHALL BE ONE YEAR WHENEVER A DETERMINATE SENTENCE OF  
 19 IMPRISONMENT IS IMPOSED PURSUANT TO SUBDIVISION TWO OF SECTION 70.70 OF  
 20 THIS ARTICLE UPON A CONVICTION OF A CLASS D OR CLASS E FELONY OFFENSE;

21 (B) SUCH PERIOD SHALL BE NOT LESS THAN ONE YEAR NOR MORE THAN TWO  
 22 YEARS WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED PURSU-  
 23 ANT TO SUBDIVISION TWO OF SECTION 70.70 OF THIS ARTICLE UPON A  
 24 CONVICTION OF A CLASS B OR CLASS C FELONY OFFENSE;

25 (C) SUCH PERIOD SHALL BE NOT LESS THAN ONE YEAR NOR MORE THAN TWO  
 26 YEARS WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED PURSU-  
 27 ANT TO SUBDIVISION THREE OR FOUR OF SECTION 70.70 OF THIS ARTICLE UPON  
 28 CONVICTION OF A CLASS D OR CLASS E FELONY OFFENSE;

29 (D) SUCH PERIOD SHALL BE NOT LESS THAN ONE AND ONE-HALF YEARS NOR MORE  
 30 THAN THREE YEARS WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS  
 31 IMPOSED PURSUANT TO SUBDIVISION THREE OR FOUR OF SECTION 70.70 OF THIS  
 32 ARTICLE UPON CONVICTION OF A CLASS B FELONY OR CLASS C FELONY OFFENSE;

33 (E) SUCH PERIOD SHALL BE NOT LESS THAN ONE AND ONE-HALF YEARS NOR MORE  
 34 THAN THREE YEARS WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS  
 35 IMPOSED PURSUANT TO SUBDIVISION THREE OF SECTION 70.02 OF THIS ARTICLE  
 36 UPON A CONVICTION OF A CLASS D OR CLASS E VIOLENT FELONY OFFENSE;

37 (F) SUCH PERIOD SHALL BE NOT LESS THAN TWO AND ONE-HALF YEARS NOR MORE  
 38 THAN FIVE YEARS WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS  
 39 IMPOSED PURSUANT TO SUBDIVISION THREE OF SECTION 70.02 OF THIS ARTICLE  
 40 UPON A CONVICTION OF A CLASS B OR CLASS C VIOLENT FELONY OFFENSE.

41 S 36. The penal law is amended by adding two new sections 70.70 and  
 42 70.71 to read as follows:

43 S 70.70 SENTENCE OF IMPRISONMENT FOR FELONY DRUG OFFENDER OTHER THAN A  
 44 CLASS A FELONY.

45 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL MEAN:

46 (A) "FELONY DRUG OFFENDER" MEANS A DEFENDANT WHO STANDS CONVICTED OF  
 47 ANY FELONY, DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWEN-  
 48 TY-ONE OF THIS CHAPTER OTHER THAN A CLASS A FELONY.

49 (B) "SECOND FELONY DRUG OFFENDER" MEANS A SECOND FELONY OFFENDER AS  
 50 THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 70.06 OF THIS ARTI-  
 51 CLE, WHO STANDS CONVICTED OF ANY FELONY, DEFINED IN ARTICLE TWO HUNDRED

52 TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER OTHER THAN A CLASS A  
53 FELONY.

54 (C) "VIOLENT FELONY" SHALL HAVE THE SAME MEANING AS THAT TERM IS  
55 DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE.

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1 2. EXCEPT AS PROVIDED IN SUBDIVISION THREE OR FOUR OF THIS SECTION, A  
2 SENTENCE OF IMPRISONMENT FOR A FELONY DRUG OFFENDER SHALL BE A DETERMI-  
3 NATE SENTENCE AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION.

4 (A) TERM OF DETERMINATE SENTENCE. EXCEPT AS PROVIDED IN PARAGRAPH (B)  
5 OR (C) OF THIS SUBDIVISION, THE COURT SHALL IMPOSE A DETERMINATE TERM OF  
6 IMPRISONMENT UPON A FELONY DRUG OFFENDER WHICH SHALL BE IMPOSED BY THE  
7 COURT IN WHOLE OR HALF YEARS, WHICH SHALL INCLUDE AS A PART THEREOF A  
8 PERIOD OF POST-RELEASE SUPERVISION IN ACCORDANCE WITH SECTION 70.45 OF  
9 THIS ARTICLE. THE TERMS OF IMPRISONMENT AUTHORIZED FOR SUCH DETERMINATE  
10 SENTENCES ARE AS FOLLOWS:

11 (I) FOR A CLASS B FELONY, THE TERM SHALL BE AT LEAST ONE YEAR AND  
12 SHALL NOT EXCEED NINE YEARS, EXCEPT THAT FOR THE CLASS B FELONY OF CRIM-  
13 INAL SALE OF A CONTROLLED SUBSTANCE IN OR NEAR SCHOOL GROUNDS AS DEFINED  
14 IN SUBDIVISION TWO OF SECTION 220.44 OF THIS CHAPTER, THE TERM SHALL BE  
15 AT LEAST TWO YEARS AND SHALL NOT EXCEED NINE YEARS;

16 (II) FOR A CLASS C FELONY, THE TERM SHALL BE AT LEAST ONE YEAR AND  
17 SHALL NOT EXCEED FIVE AND ONE-HALF YEARS;

18 (III) FOR A CLASS D FELONY, THE TERM SHALL BE AT LEAST ONE YEAR AND  
19 SHALL NOT EXCEED TWO AND ONE-HALF YEARS; AND

20 (IV) FOR A CLASS E FELONY, THE TERM SHALL BE AT LEAST ONE YEAR AND  
21 SHALL NOT EXCEED ONE AND ONE-HALF YEARS.

22 (B) PROBATION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COURT  
23 MAY SENTENCE A DEFENDANT CONVICTED OF A CLASS B, CLASS C, CLASS D OR  
24 CLASS E FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO  
25 HUNDRED TWENTY-ONE OF THIS CHAPTER TO PROBATION IN ACCORDANCE WITH THE  
26 PROVISIONS OF SECTION 65.00 OF THIS CHAPTER.

27 (C) ALTERNATIVE DEFINITE SENTENCE FOR CLASS C, CLASS D, AND CLASS E  
28 FELONIES. IF THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF  
29 THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE  
30 OPINION THAT A SENTENCE OF IMPRISONMENT IS NECESSARY BUT THAT IT WOULD  
31 BE UNDULY HARSH TO IMPOSE A DETERMINATE SENTENCE UPON A PERSON CONVICTED  
32 OF A CLASS C, CLASS D OR CLASS E FELONY OFFENSE DEFINED IN ARTICLE TWO  
33 HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER, THE COURT MAY  
34 IMPOSE A DEFINITE SENTENCE OF IMPRISONMENT AND FIX A TERM OF ONE YEAR OR  
35 LESS.

36 3. SENTENCE OF IMPRISONMENT FOR SECOND FELONY DRUG OFFENDER.

37 (A) APPLICABILITY. THIS SUBDIVISION SHALL APPLY TO A SECOND FELONY  
38 DRUG OFFENDER WHOSE PRIOR FELONY CONVICTION WAS NOT A VIOLENT FELONY.

39 (B) AUTHORIZED SENTENCE. EXCEPT AS PROVIDED IN PARAGRAPH (C) OR (D) OF  
40 THIS SUBDIVISION, WHEN THE COURT HAS FOUND PURSUANT TO THE PROVISIONS OF  
41 SECTION 400.21 OF THE CRIMINAL PROCEDURE LAW THAT A DEFENDANT IS A  
42 SECOND FELONY DRUG OFFENDER WHO STANDS CONVICTED OF A CLASS B, CLASS C,  
43 CLASS D OR CLASS E FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY  
44 OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER THE COURT SHALL IMPOSE A  
45 DETERMINATE SENTENCE OF IMPRISONMENT. SUCH DETERMINATE SENTENCE SHALL  
46 INCLUDE AS A PART THEREOF A PERIOD OF POST-RELEASE SUPERVISION IN  
47 ACCORDANCE WITH SECTION 70.45 OF THIS ARTICLE. THE TERMS OF SUCH DETER-  
48 MINATE SENTENCE SHALL BE IMPOSED BY THE COURT IN WHOLE OR HALF YEARS AS  
49 FOLLOWS:

50 (I) FOR A CLASS B FELONY, THE TERM SHALL BE AT LEAST THREE AND  
51 ONE-HALF YEARS AND SHALL NOT EXCEED TWELVE YEARS;

52 (II) FOR A CLASS C FELONY, THE TERM SHALL BE AT LEAST TWO YEARS AND  
53 SHALL NOT EXCEED EIGHT YEARS;

54 (III) FOR A CLASS D FELONY, THE TERM SHALL BE AT LEAST ONE AND  
55 ONE-HALF YEARS AND SHALL NOT EXCEED FOUR YEARS; AND

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1 (IV) FOR A CLASS E FELONY, THE TERM SHALL BE AT LEAST ONE AND ONE-HALF  
2 YEARS AND SHALL NOT EXCEED TWO YEARS.

3 (C) LIFETIME PROBATION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
4 THE COURT MAY SENTENCE A DEFENDANT CONVICTED OF A CLASS B FELONY DEFINED  
5 IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER TO LIFETIME PROBATION IN  
6 ACCORDANCE WITH THE PROVISIONS OF SECTION 65.00 OF THIS CHAPTER.

7 (D) SENTENCE OF PAROLE SUPERVISION. IN THE CASE OF A PERSON SENTENCED  
8 FOR A SPECIFIED OFFENSE OR OFFENSES AS DEFINED IN SUBDIVISION FIVE OF  
9 SECTION 410.91 OF THE CRIMINAL PROCEDURE LAW, WHO STANDS CONVICTED OF NO  
10 OTHER FELONY OFFENSE, WHO HAS NOT PREVIOUSLY BEEN CONVICTED OF EITHER A  
11 VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS ARTICLE, A  
12 CLASS A FELONY OFFENSE OR A CLASS B FELONY OFFENSE, AND IS NOT UNDER THE  
13 JURISDICTION OF OR AWAITING DELIVERY TO THE DEPARTMENT OF CORRECTIONAL  
14 SERVICES, THE COURT MAY DIRECT THAT A DETERMINATE SENTENCE IMPOSED  
15 PURSUANT TO THIS SUBDIVISION SHALL BE EXECUTED AS A PAROLE SUPERVISION  
16 SENTENCE AS DEFINED IN AND PURSUANT TO THE PROCEDURES PRESCRIBED IN  
17 SECTION 410.91 OF THE CRIMINAL PROCEDURE LAW.

18 4. SENTENCE OF IMPRISONMENT FOR SECOND FELONY DRUG OFFENDER PREVIOUSLY  
19 CONVICTED OF A VIOLENT FELONY.

20 (A) APPLICABILITY. THIS SUBDIVISION SHALL APPLY TO A SECOND FELONY  
21 DRUG OFFENDER WHOSE PRIOR FELONY CONVICTION WAS A VIOLENT FELONY.

22 (B) AUTHORIZED SENTENCE. WHEN THE COURT HAS FOUND PURSUANT TO THE  
23 PROVISIONS OF SECTION 400.21 OF THE CRIMINAL PROCEDURE LAW THAT A  
24 DEFENDANT IS A SECOND FELONY DRUG OFFENDER WHOSE PRIOR FELONY CONVICTION  
25 WAS A VIOLENT FELONY, WHO STANDS CONVICTED OF A CLASS B, CLASS C, CLASS  
26 D OR CLASS E FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO  
27 HUNDRED TWENTY-ONE OF THIS CHAPTER, THE COURT SHALL IMPOSE A DETERMINATE  
28 SENTENCE OF IMPRISONMENT. SUCH DETERMINATE SENTENCE SHALL INCLUDE AS A  
29 PART THEREOF A PERIOD OF POST-RELEASE SUPERVISION IN ACCORDANCE WITH  
30 SECTION 70.45 OF THIS ARTICLE. THE TERMS OF SUCH DETERMINATE SENTENCE  
31 SHALL BE IMPOSED BY THE COURT IN WHOLE OR HALF YEARS AS FOLLOWS:

32 (I) FOR A CLASS B FELONY, THE TERM SHALL BE AT LEAST SIX YEARS AND  
33 SHALL NOT EXCEED FIFTEEN YEARS;

34 (II) FOR A CLASS C FELONY, THE TERM SHALL BE AT LEAST THREE AND  
35 ONE-HALF YEARS AND SHALL NOT EXCEED NINE YEARS;

36 (III) FOR A CLASS D FELONY, THE TERM SHALL BE AT LEAST TWO AND  
37 ONE-HALF YEARS AND SHALL NOT EXCEED FOUR AND ONE-HALF YEARS; AND

38 (IV) FOR A CLASS E FELONY, THE TERM SHALL BE AT LEAST TWO YEARS AND  
39 SHALL NOT EXCEED TWO AND ONE-HALF YEARS.

40 S 70.71 SENTENCE OF IMPRISONMENT FOR A CLASS A FELONY DRUG OFFENDER.

41 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL MEAN:

42 (A) "FELONY DRUG OFFENDER" MEANS A DEFENDANT WHO STANDS CONVICTED OF  
43 ANY CLASS A FELONY AS DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS  
44 CHAPTER.

45 (B) "SECOND FELONY DRUG OFFENDER" MEANS A SECOND FELONY OFFENDER AS  
46 THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 70.06 OF THIS ARTI-  
47 CLE, WHO STANDS CONVICTED OF AND IS TO BE SENTENCED FOR ANY CLASS A  
48 FELONY AS DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER.

49 (C) "VIOLENT FELONY OFFENSE" SHALL HAVE THE SAME MEANING AS THAT TERM  
50 IS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE.

51 2. SENTENCE OF IMPRISONMENT FOR A FIRST FELONY DRUG OFFENDER.

52 (A) APPLICABILITY. EXCEPT AS PROVIDED IN SUBDIVISION THREE OR FOUR OF  
53 THIS SECTION, THIS SUBDIVISION SHALL APPLY TO A PERSON CONVICTED OF A  
54 CLASS A FELONY AS DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER.

55 (B) AUTHORIZED SENTENCE. THE COURT SHALL IMPOSE A DETERMINATE TERM OF  
56 IMPRISONMENT WHICH SHALL BE IMPOSED BY THE COURT IN WHOLE OR HALF YEARS

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1 AND WHICH SHALL INCLUDE AS A PART THEREOF A PERIOD OF POST-RELEASE  
2 SUPERVISION IN ACCORDANCE WITH SECTION 70.45 OF THIS ARTICLE. THE TERMS  
3 AUTHORIZED FOR SUCH DETERMINATE SENTENCES ARE AS FOLLOWS:

4 (I) FOR A CLASS A-I FELONY, THE TERM SHALL BE AT LEAST EIGHT YEARS AND  
5 SHALL NOT EXCEED TWENTY YEARS;

6 (II) FOR A CLASS A-II FELONY, THE TERM SHALL BE AT LEAST THREE YEARS

6 (11) FOR A CLASS A-II FELONY, THE TERM SHALL BE AT LEAST THREE YEARS  
7 AND SHALL NOT EXCEED TEN YEARS.

8 (C) LIFETIME PROBATION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
9 THE COURT MAY SENTENCE A DEFENDANT CONVICTED OF A CLASS A-II FELONY  
10 DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER TO LIFETIME  
11 PROBATION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 65.00 OF THIS  
12 CHAPTER.

13 3. SENTENCE OF IMPRISONMENT FOR A SECOND FELONY DRUG OFFENDER.

14 (A) APPLICABILITY. THIS SUBDIVISION SHALL APPLY TO A SECOND FELONY  
15 DRUG OFFENDER WHOSE PRIOR FELONY CONVICTION OR CONVICTIONS DID NOT  
16 INCLUDE ONE OR MORE VIOLENT FELONY OFFENSES.

17 (B) AUTHORIZED SENTENCE. WHEN THE COURT HAS FOUND PURSUANT TO THE  
18 PROVISIONS OF SECTION 400.21 OF THE CRIMINAL PROCEDURE LAW THAT A  
19 DEFENDANT IS A SECOND FELONY DRUG OFFENDER WHO STANDS CONVICTED OF A  
20 CLASS A FELONY AS DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED  
21 TWENTY-ONE OF THIS CHAPTER, THE COURT SHALL IMPOSE A DETERMINATE  
22 SENTENCE OF IMPRISONMENT. SUCH DETERMINATE SENTENCE SHALL INCLUDE AS A  
23 PART THEREOF A PERIOD OF POST-RELEASE SUPERVISION IN ACCORDANCE WITH  
24 SECTION 70.45 OF THIS ARTICLE. SUCH DETERMINATE SENTENCE SHALL BE  
25 IMPOSED BY THE COURT IN WHOLE OR HALF YEARS AS FOLLOWS:

26 (I) FOR A CLASS A-I FELONY, THE TERM SHALL BE AT LEAST TWELVE YEARS  
27 AND SHALL NOT EXCEED TWENTY-FOUR YEARS;

28 (II) FOR A CLASS A-II FELONY, THE TERM SHALL BE AT LEAST SIX YEARS AND  
29 SHALL NOT EXCEED FOURTEEN YEARS.

30 (C) LIFETIME PROBATION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
31 THE COURT MAY SENTENCE A DEFENDANT CONVICTED OF A CLASS A-II FELONY  
32 DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER TO LIFETIME  
33 PROBATION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 65.00 OF THIS  
34 CHAPTER.

35 4. SENTENCE OF IMPRISONMENT FOR A SECOND FELONY DRUG OFFENDER PREVI-  
36 OUSLY CONVICTED OF A VIOLENT FELONY OFFENSE.

37 (A) APPLICABILITY. THIS SUBDIVISION SHALL APPLY TO A SECOND FELONY  
38 DRUG OFFENDER WHOSE PRIOR FELONY CONVICTION WAS A VIOLENT FELONY.

39 (B) AUTHORIZED SENTENCE. WHEN THE COURT HAS FOUND PURSUANT TO THE  
40 PROVISIONS OF SECTION 400.21 OF THE CRIMINAL PROCEDURE LAW THAT A  
41 DEFENDANT IS A SECOND FELONY DRUG OFFENDER WHOSE PRIOR FELONY CONVICTION  
42 WAS A VIOLENT FELONY, WHO STANDS CONVICTED OF A CLASS A FELONY AS  
43 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS  
44 CHAPTER, THE COURT SHALL IMPOSE A DETERMINATE SENTENCE OF IMPRISONMENT.  
45 SUCH DETERMINATE SENTENCE SHALL INCLUDE AS A PART THEREOF A PERIOD OF  
46 POST-RELEASE SUPERVISION IN ACCORDANCE WITH SECTION 70.45 OF THIS ARTI-  
47 CLE. SUCH DETERMINATE SENTENCE SHALL BE IMPOSED BY THE COURT IN WHOLE  
48 OR HALF YEARS AS FOLLOWS:

49 (I) FOR A CLASS A-I FELONY, THE TERM SHALL BE AT LEAST FIFTEEN YEARS  
50 AND SHALL NOT EXCEED THIRTY YEARS;

51 (II) FOR A CLASS A-II FELONY, THE TERM SHALL BE AT LEAST EIGHT YEARS  
52 AND SHALL NOT EXCEED SEVENTEEN YEARS.

53 S 37. Section 259-j of the executive law is amended by adding a new  
54 subdivision 3-a to read as follows:

55 3-A. THE DIVISION OF PAROLE MUST GRANT TERMINATION OF SENTENCE AFTER  
56 THREE YEARS OF UNREVOKED PAROLE TO A PERSON SERVING AN INDETERMINATE

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1 SENTENCE FOR A CLASS A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
2 TWENTY OF THE PENAL LAW, AND MUST GRANT TERMINATION OF SENTENCE AFTER  
3 TWO YEARS OF UNREVOKED PAROLE TO A PERSON SERVING AN INDETERMINATE  
4 SENTENCE FOR ANY OTHER FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
5 TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW.

6 S 38. Section 259-j of the executive law, as amended by section 11 of  
7 part F of chapter 62 of the laws of 2003, is amended to read as follows:

8 S 259-j. Discharge from parole and conditional release. 1. Except  
9 where a determinate sentence IS IMPOSED FOR A VIOLENT FELONY OFFENSE AS  
10 DEFINED IN SECTION 70.02 OF THE PENAL LAW, or a sentence with a maximum  
11 term of life imprisonment was imposed for a felony other than a felony

12 defined in article two hundred twenty of the penal law, if the board of  
13 parole is satisfied that an absolute discharge from parole or from  
14 conditional release is in the best interests of society, the board may  
15 grant such a discharge prior to the expiration of the full maximum term  
16 to any person who has been on unrevoked parole or conditional release  
17 for at least three consecutive years. A discharge granted under this  
18 section shall constitute a termination of the sentence with respect to  
19 which it was granted. No such discharge shall be granted unless the  
20 board of parole is satisfied that the parolee, otherwise financially  
21 able to comply with an order of restitution and the payment of any  
22 mandatory surcharge, sex offender registration fee or DNA databank fee  
23 previously imposed by a court of competent jurisdiction, has made a good  
24 faith effort to comply therewith.

25 2. THE DIVISION OF PAROLE MUST GRANT TERMINATION OF SENTENCE AFTER  
26 THREE YEARS OF UNREVOKED PAROLE TO A PERSON SERVING AN INDETERMINATE  
27 SENTENCE FOR A CLASS A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
28 TWENTY OF THE PENAL LAW, AND MUST GRANT TERMINATION OF SENTENCE AFTER  
29 TWO YEARS OF UNREVOKED PAROLE TO A PERSON SERVING AN INDETERMINATE  
30 SENTENCE FOR ANY OTHER FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED  
31 TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW.

32 S 39. Subdivision 1 of section 508 of the executive law, as amended by  
33 chapter 303 of the laws of 1981 and such section as renumbered by chap-  
34 ter 465 of the laws of 1992, is amended to read as follows:

35 1. The {division for youth} OFFICE OF CHILDREN AND FAMILY SERVICES  
36 shall maintain secure facilities for the care and confinement of juve-  
37 nile offenders committed for an indeterminate, DETERMINATE or definite  
38 sentence pursuant to the sentencing provisions of the penal law. Such  
39 facilities shall provide appropriate services to juvenile offenders  
40 including but not limited to residential care, educational and voca-  
41 tional training, physical and mental health services, and employment  
42 counseling.

43 S 40. Severability. If any section, part or provision of this act  
44 shall be declared unconstitutional or invalid or ineffective by any  
45 court of competent jurisdiction, such declaration shall be limited to  
46 the section, part or provision directly involved in the controversy in  
47 which such declaration was made and shall not affect any other section,  
48 part or provision thereof.

49 S 41. This act shall take effect immediately, provided that:

50 (a) the amendments to subdivision 18 of section 2 of the correction  
51 law, made by section one of this act, shall be subject to the expiration  
52 and reversion of such subdivision pursuant to subdivision (c) of section  
53 46 of chapter 60 of the laws of 1994, as amended, and subdivision (q) of  
54 section 427 of chapter 55 of the laws of 1992, as amended, when upon  
55 such date the provisions of section two of this act shall take effect;

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1 (b) the amendments to section 851 of the correction law made by  
2 section three of this act shall not affect the expiration of such  
3 section pursuant to section 10 of chapter 339 of the laws of 1972, as  
4 amended, and shall be deemed to expire therewith;

5 (c) section five of this act shall take effect on the same date as the  
6 reversion of subdivision (a) of section 601 of the correction law as  
7 provided in subdivision d of section 74 of chapter 3 of the laws of  
8 1995, as amended when upon such date the provisions of section six of  
9 this act shall take effect;

10 (c-1) the provisions of sections seven, eight, nine, ten and ten-a of  
11 this act, and subdivision 2-a of section 803 of the correction law, as  
12 added by section eleven of this act shall apply to persons in custody  
13 serving an indeterminate sentence on the effective date of such  
14 provisions as well as to persons sentenced to an indeterminate sentence  
15 on and after the effective date of such provisions and prior to Septem-  
16 ber 1, 2005 and to persons sentenced to a determinate sentence prior to  
17 September 1, 2011 for a felony as defined in article 220 or 221 of the  
18 penal law;



19 (d) sections seven and nine of this act shall only take effect if  
 20 paragraph (d) of subdivision 1 and subdivision 2-a of section 803 of the  
 21 correction law, as added by chapter 435 of the laws of 1997, have not  
 22 been repealed prior to the effective date of this act; however if such  
 23 provisions of section 803 of the correction law are repealed prior to  
 24 the effective date of this act, only then shall sections eight and ten  
 25 of this act take effect; provided, further, that upon the expiration of  
 26 section 803 of the correction law, pursuant to subdivision d of section  
 27 74 of chapter 3 of the laws of 1995, sections seven, eight, nine and ten  
 28 of this act shall be repealed, when upon such date the provisions of  
 29 sections ten-a and eleven of this act shall take effect;

30 (d-1) the provisions of sections, twelve, fourteen, fifteen, eighteen,  
 31 twenty, twenty-four, twenty-five, twenty-nine, thirty-three, thirty-five  
 32 and thirty-six of this act shall take effect on the thirtieth day after  
 33 it shall have become a law, and such provisions, with the exception of  
 34 subdivision 6 of section 60.04 of the penal law as added by section  
 35 twenty of this act, shall apply to crimes committed on or after the  
 36 effective date thereof;

37 (e) the amendments to the opening paragraph of subdivision 2 of  
 38 section 851 of the correction law made by section twelve of this act  
 39 shall not affect the expiration of such paragraph pursuant to chapter 60  
 40 of the laws of 1994, as amended and shall be deemed to expire therewith,  
 41 when upon such date section thirteen of this act shall take effect;  
 42 provided that the amendments to the opening paragraph of subdivision 2  
 43 of section 851 of the correction law made by section thirteen of this  
 44 act shall not affect the expiration of such paragraph pursuant to chap-  
 45 ter 339 of the laws of 1972, as amended, and shall be deemed to expire  
 46 therewith;

47 (e-1) the provisions of sections sixteen, seventeen, twenty-three,  
 48 twenty-six, thirty and thirty-one of this act shall take effect on the  
 49 thirteenth day after it shall have become a law;

50 (f) the amendments to subdivision 7 of section 220.50 of the criminal  
 51 procedure law, made by section seventeen of this act shall not affect  
 52 the expiration and repeal of such subdivision pursuant to chapter 3 of  
 53 the laws of 1995, as amended, and shall expire and be deemed repealed  
 54 therewith;

55 (g) the amendments to subdivision 1 of section 70.00 of the penal law  
 56 made by section twenty-eight of this act shall be subject to the expira-

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1 tion and reversion of such subdivision pursuant to subdivision d of  
 2 section 74 of chapter 3 of the laws of 1995, as amended, when upon such  
 3 date the provisions of section twenty-nine of this act shall take  
 4 effect;

5 (h) the amendments to subdivision 7 of section 70.06 of the penal law  
 6 made by section thirty-two of this act shall not affect the expiration  
 7 and repeal of such subdivision pursuant to chapter 3 of the laws of  
 8 1995, as amended, and shall expire and be deemed repealed therewith;

9 (i) the amendments to subdivision 2-a of section 70.25 of the penal  
 10 law made by section thirty-three of this act shall be subject to the  
 11 expiration and reversion of such subdivision pursuant to subdivision d  
 12 of section 74 of chapter 3 of the laws of 1995, as amended, when upon  
 13 such date the provisions of section thirty-four of this act shall take  
 14 effect;

15 (i-1) section thirty-seven of this act shall take effect on the sixti-  
 16 eth day after it shall have become a law; and

17 (j) the amendments to section 259-j of the executive law, made by  
 18 section thirty-seven of this act shall not affect the expiration of such  
 19 section pursuant to chapter 3 of the laws of 1995, as amended, and shall  
 20 expire therewith, when upon such date the provisions of section thirty-  
 21 eight shall take effect.

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\*END\*

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Contact Webmaster