

APPLICABLE PROVISIONS OF LAW

These provisions are accurate as of May 1998. Because future statutory amendments may alter the provisions, users of this manual are strongly encouraged to verify the current provisions.

Correction Law §600-a

A record shall be kept by the sheriff, or in counties within the city of New York by the commissioner of correction of such city, of all jail time to which the defendant is entitled under subdivision three of section 70.30 of the penal law. In any case where the sheriff or the commissioner of correction of the city of New York has the duty of delivering a defendant to an institution not under his jurisdiction pursuant to sentence and commitment, such person shall deliver a certified transcript of such record to the person to whom the defendant is to be delivered.

Penal Law §70.30(1) [effective until 9/30/05]

1. Indeterminate or determinate sentences. An indeterminate or determinate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the state department of correctional services. Where a person is under more than one indeterminate sentence, the sentences shall be calculated as follows:

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

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

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

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

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

Penal Law §70.30(2)

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

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

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

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

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

Penal Law §70.30(3)

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

(a) If the sentences run concurrently, the credit

shall be applied against each such sentence;

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

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

Penal Law §70.30(5)

5. Time served under vacated sentence. When a sentence of imprisonment that has been imposed on a person is vacated and a new sentence is imposed on such person for the same offense, or for an offense based upon the same act, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time credited against the vacated sentence shall be credited against the new sentence.

Penal Law §70.40(3)(c)

3.(c) With regard to a violation of parole, any time spent by a person in custody from the time of delinquency to the time service of the sentence resumes shall be credited against the term or maximum term of the interrupted sentence, provided:

(i) that such custody was due to an arrest or surrender based upon the delinquency; or

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

(iii) that such custody arose from an arrest on another charge which culminated in a conviction, but in such case, if a sentence of

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

Penal Law §70.35 Merger of certain definite and indeterminate or determinate sentences

The service of an indeterminate or determinate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate or determinate sentence was imposed, except as provided in paragraph (b) of subdivision five of section 70.25 of this article. A person serving a definite sentence at the time an indeterminate or determinate sentence is imposed shall be delivered to the custody of the state department of correctional services to commence service of the indeterminate or determinate sentence immediately unless the person is serving a definite sentence pursuant to paragraph (b) of subdivision five of section 70.25 of this article. In any case where the indeterminate or determinate sentence is revoked or vacated, the person shall receive credit against the definite sentence for each day spent in the custody of the state department of correctional services.

Penal Law §85.00 Sentence of intermittent imprisonment

1. Definition. A sentence of intermittent imprisonment is a revocable sentence of imprisonment to be served on days or during certain periods of days, or both, specified by the court as part of the sentence.

2. Authorization for use of sentence. The court may impose a sentence of intermittent imprisonment in any case where:

(a) the court is imposing sentence, upon a person other than a second or persistent felony offender, for a class D or class E felony or for any offense that is not a felony; and

(b) the court is not imposing any other sentence of imprisonment upon the defendant at the same time; and

(c) the defendant is not under any other sentence of imprisonment with a term in excess of fifteen days imposed by any other court.

3. Duration of sentence. A sentence of intermittent imprisonment may be for any term that could be imposed as a definite sentence of imprisonment for the offense for which such sentence is imposed. The term of the sentence shall commence on the day it is imposed and shall be calculated upon the basis of the duration of its term, rather than upon the basis of the days spent in confinement, so that no person shall be subject to any such sentence for a period that is longer than a period that commences on the date the sentence is imposed and ends on the date the term of the longest definite sentence for the offense would have expired, after deducting the credit that would have been applicable to a definite sentence for jail time but without regard to any credit authorized to be allowed against the term of a definite sentence for good behavior. The provisions of section five hundred-1 of the correction law shall not be applicable to a sentence of intermittent imprisonment.

4. Imposition of sentence. (a) When the court imposes a sentence of intermittent imprisonment the court shall specify in the sentence:

(i) that the court is imposing a sentence of intermittent imprisonment;

(ii) the term of such sentence;

(iii) the days or parts of days on which the sentence is to be served, but except as provided in paragraph (iv) hereof such specification need not include the dates on which such days fall; and

(iv) the first and last dates on which the defendant is to be incarcerated under the sentence.

(b) The court, in its discretion, may specify any day or days or parts thereof on which the defendant shall be confined and may specify a period to commence at the commencement of the sentence not to exceed fifteen days during which the defendant is to be continuously confined.

Penal Law §85.05(1)

1. Authorization. A sentence of intermittent imprisonment may be modified by the court in its discretion upon application of the defendant; and the court on its own motion may modify or revoke any such sentence if:

(a) the court is satisfied during the term of the sentence that the defendant has committed another offense during such term;

(b) the defendant has failed to report to the institution to which he has been committed, or to the institution designated by the head of the agency to which he has been committed, on a day or dates specified in the commitment and is unable or unwilling to furnish a reasonable and acceptable explanation for such failure; or

(c) the defendant has violated a rule or regulation of the institution or agency to which he has been committed and the head of such institution or agency or someone delegated by him has reported such violation in writing to the court.

Penal Law §85.05(4)

4. Jail time. Where a sentence of intermittent imprisonment is revoked and a sentence of imprisonment is imposed in its place for the same offense, time spent in confinement under the sentence of intermittent imprisonment shall be calculated as jail time under subdivision three of section 70.30 of this chapter and shall be added to any jail time accrued against such sentence prior to imposition thereof.

Executive Law §259-c(12)

12. In any case where a person is entitled to jail time credit under the provisions of paragraph (c) of subdivision three of section 70.40 of the penal law, to certify to the person in charge of the institution in which such person's sentence is being served the amount

of such credit.