

# Jail Time Manual:

## A HANDBOOK FOR LOCAL CORRECTIONAL ADMINISTRATORS

Revised Edition



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## FOREWORD

The State Commission of Correction is required by Correction Law §45(2) "to make recommendations to administrators of correctional facilities for improving the administration of such correctional facilities and the delivery of services therein."

Correction Law §45(11) also mandates the Commission to "collect and disseminate statistical and other information and undertake research, studies and analyses ... in respect to the administration, programs, effectiveness and coordination of correctional facilities."

The Commission is assisted in the fulfillment of these mandates through its Office of Counsel which provides advisory legal opinions and guidance on correctional issues.

## Introduction

What is jail time? Simply stated, it is the amount of time spent in custody prior to the commencement of a sentence. Jail time is credited pursuant to applicable statutes and case law. This manual will review the basic principles of jail time calculations and discuss the more common applications of these principles. Although almost all of the provisions of this document are based on statutes and case law, this manual is advisory in nature due to the uniqueness of calculating jail time. Accordingly, we strongly recommend that you discuss questions regarding jail time calculations with your county attorney.

Jail time calculations are extremely important because they affect release dates for all inmates in both State and local correctional facilities. Jail time records are required to be kept by each sheriff pursuant to Correction Law §600-a. The sheriff is also required to certify jail time records and deliver such records with an inmate in those instances where the inmate is to be transferred to another institution. The chief administrative officer of the receiving institution must rely on the sending jurisdiction for the correct jail time credit because such receiving officer is not bound to know or inquire as to what transpired prior to receiving the inmate. Failure to understand and apply jail time provisions accurately could result in individuals being held in custody beyond the maximum authorized term or in inmates being released too early. This manual explains the general rules regarding jail time calculations, and gives examples of how each rule is applied. It is intended as a guide in understanding the more common jail time calculations that the local correctional facility staff face daily.

## Pre-Sentence Time

### Rule #1:

An inmate is entitled to have all time spent in custody on a criminal charge credited to the sentence that the inmate receives upon conviction of that charge. [Penal Law §70.30(3)]

This rule requires that an inmate's sentence of imprisonment be credited with all time spent in custody prior to the commencement of the sentence. Pursuant to Penal Law §70.30(2), a definite sentence is deemed to commence when the inmate is received by the institution specified in the commitment. An indeterminate or determinate sentence commences when the inmate is received by the New York State Department of Correctional Services (DOCS) pursuant to §70.30(1) of the Penal Law. The day the sentence commences is counted as "sentence" time, not jail time.

### Example A:\*

May 1st - Inmate is arrested and jailed.  
June 15th - Inmate is convicted and sentenced to 90 days.  
- Inmate commences his sentence.  
July 29th - Inmate is discharged.

The inmate is entitled to the time from May 1st through June 14th as jail time credit against his sentence.

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\*NOTE -- All examples in this manual regarding discharge dates shall be calculated without regard to credit for good behavior allowances.

### Example B:

May 1st - Inmate is arrested and jailed.

June 15th - Inmate convicted and sentenced.

July 1st - Inmate is received by the State DOCS.

The inmate is entitled to the time from May 1st through June 30th as jail time credit against his sentence. This is because his indeterminate sentence does not formally commence until July 1st when he is received by State DOCS.

Rule #2:

An inmate shall not receive jail time credit for time served after the commencement of a sentence because this time is "sentence time."

Example:

May 1st - Inmate is arrested and jailed.

June 15th - Inmate convicted and sentenced.

July 1st - Inmate is received by the State DOCS.

The inmate will receive the time from May 1st through June 30th as jail time credit. Jail time credit is cut off after June 30th. This is because the inmate commences his sentence on July 1st upon receipt in DOCS' custody. (Remember that a definite sentence commences when the inmate is received at the institution named in the commitment.) Time served from July 1st forward is sentence time, not jail time.

Multiple Charges

Rule #3:

Where an inmate is held on charges which

culminate in more than one sentence, jail time credit must be applied against all of the charges on which he is held as long as there are no previously imposed sentences to which the person is subject.

When an inmate is held on several charges and has not begun the service of a sentence for any of the charges, jail time credit must be applied against all of the charges on which he is held.<sup>i</sup>

Example:

- May 1st - Inmate is arrested and held on charge #1.
- June 1st - A warrant is lodged for charge #2.
- July 15th - The inmate is sentenced on charges #1 and #2 and begins service of two six month sentences on this day.

The inmate will receive the time from May 1st through July 14th as jail time credit against charge #1. The inmate will also receive the time from June 1st through July 14th as jail time credit against the sentence imposed for charge #2. No time after July 14th can be applied as jail time against charge #1 or #2 because this is sentence time.

Previously Imposed Sentences

Rule #4:

Jail time credit shall not include any time that is credited against the term of any

previously imposed sentence to which the person is subject. [Penal Law §70.30(3)]

This rule applies to definite, indeterminate, and determinate sentences. The period between commencement and satisfaction of a sentence cannot be credited as jail time for any subsequent sentences. This issue arises in the situation where an inmate is facing two or more charges or where the inmate is facing a charge while already serving a sentence. It is possible that an inmate will be sentenced on one charge while another charge remains unresolved. In this case, commencement of the sentence on the one charge will cut off any jail time credit for the remaining charge.<sup>ii</sup>

Example A:

- May 1st - Inmate is arrested and jailed on charge #1.
- A warrant is also lodged against the inmate on this date for charge #2.
- June 15th - Inmate is sentenced to four months on charge #1 and formally begins his sentence.
- July 1st - Inmate is sentenced on charge #2.

The inmate will receive the time from May 1st through June 14th as jail time credit against charge #1 and charge #2. However, the time after June 14th is sentence time credited to a "previously imposed sentence" (charge #1). Thus, it cannot be credited against charge #2.

In some cases, an inmate may be convicted on a charge and completely satisfy his sentence while another charge is pending. As with the last example, commencement of a sentence on one charge will cut off jail time credit for another unresolved charge. However, jail time will again begin to accrue if the unresolved charge is still pending when the sentence expires. Thus, the time from the expiration of the first sentence through commencement of the sentence on the remaining charge must be credited as jail time against the remaining charge. This is because there no longer is a

"previously imposed sentence."

Example B:

- May 1st - Inmate is arrested and jailed on charge #1.
- June 1st - Inmate is sentenced to 90 days on charge #1. He begins service of the sentence on this day.
- July 1st - A warrant is lodged against the inmate for charge #2.
- July 29th - Inmate satisfies charge #1 and remains in jail on charge #2.
- Sept. 1st - The inmate is sentenced to a 60 day term on charge #2. Inmate begins service of sentence.

The inmate will receive jail time credit on charge #2 for the period from July 30th through August 31st because charge #1 is satisfied on July 29th. The time from July 30th through August 31st must be applied as jail time credit against charge #2 because after July 30th there is no "previously imposed sentence" in place.

Time Served

Rule #5:

Credit for "time served" shall be equated to jail time credit, not sentence time credit.

Occasionally an inmate will be sentenced to "time served" if he has accrued enough jail time credit to satisfy his sentence. In

these cases, the courts have held that such time, even though used to satisfy a sentence, may be credited as jail time.<sup>iii</sup> Therefore, the previously imposed sentence rule does not apply in such situations.

Example:

- May 1st - Inmate is arrested and jailed on charge #1.
- May 15th - A warrant is lodged against the inmate for charge #2.
- Sept. 15th - Inmate pleads guilty to charge #2 and is sentenced to "time served."
- Sept. 30th - Inmate pleads guilty and is sentenced on charge #1. He begins serving the sentence on this day.

The time from May 1st through September 29th is jail time applicable to the sentence for charge #1. Although part of this time (May 15th through September 15th) was used to satisfy the sentence on charge #2, it was not applied to a "previously imposed sentence" because the inmate was sentenced to "time served."

Concurrent and Consecutive Sentences

Often an inmate will receive multiple sentences based on different charges. The sentences will either run concurrently or consecutively, depending on how the court directs the sentences to run. If the court does not direct how multiple sentences are to run, Penal Law §70.25(1) specifies how the sentences will run. An indeterminate or determinate sentence shall run concurrently with all other terms. A definite sentence shall run concurrently with any sentence imposed at the same time and shall be consecutive to any other term. The application of jail time credit is applied differently depending on whether the sentences are concurrent or

consecutive.

Rule #6:

If the sentences run concurrently, the credit shall be applied against each such sentence.

If the sentences run concurrently, Penal Law §70.30(3)(a) requires that jail time accrued on any charge be applied to each sentence. This provision states where the charge or charges culminate in more than one sentence which are to be served concurrently, the credit shall be applied against each such sentence.

This is true regardless of whether the crimes were committed at different times or the sentences were imposed at different times, so long as the sentences are to run concurrently.<sup>iv</sup> Pursuant to §70.30, subdivisions (1)(a), 2(a), and 2(b), concurrent sentences merge and are satisfied by service of the sentence with the longest unexpired term.

Example:

- May 1st - Inmate is arrested and jailed solely on charge #1.
- June 30th - Inmate is released on bail.
- Aug. 1st - While on bail, inmate commits a second crime (charge #2), and thereafter is held on both charges.
- Sept. 1st - Inmate pleads guilty to both charges and is sentenced to a 180 day term and a 270 day term to be served concurrently in the same facility. Inmate begins serving his sentences on this date.

Because the inmate received concurrent sentences, he must be given jail time credit from May 1st through June 30th and from August 1st through August 31st against each sentence.

Under §70.30(2)(a), the sentences merge and are satisfied by service of the sentence with the longest unexpired term. Thus, both the 180 day term and the 270 day term are reduced by 92 days (the cumulative total of jail time). This reduces the sentences to 88 and 178 days, respectively. Service of 178 days, the longest unexpired term, satisfies both sentences.

Note that the inmate clearly is entitled to receive the time from August 1st through August 31st against both charges because he was being held on both charges during that time. He is also entitled to the time from May 1st through June 30th as credit against both charges pursuant to §70.30(3)(a), even though his custody during this period was due solely to charge #1. This is because the charges culminated in more than one sentence, and the sentences were directed to run concurrently.

Although calculating jail time in this manner appears to give the inmate "double" jail time, the courts have held that this is proper and in keeping with the recent trends favoring concurrent sentences.<sup>v</sup>

Rule #7:

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.

The situation with consecutive sentences is different from that of concurrent sentences. Pursuant to §70.30, subdivisions (1)(b), (2)(b), and (2)(d), consecutive sentences are added together to arrive at an aggregate term. The amount of time actually spent in confinement is credited as jail time and is subtracted from the aggregate term.<sup>6</sup> Thus, the inmate does not receive the benefit of "double" credit with a consecutive sentence.

Example:

- May 1st - Inmate is arrested and jailed on charge #1.
- May 31st - Inmate is released on bail.
- July 1st - Inmate is arrested on charge #2 and thereafter held on both charges.
- Aug. 1st - Inmate is sentenced to one year on each charge to be served consecutively.

Since the sentences are to be served consecutively, the terms are added together to get an aggregate term, which in this case is two years. The inmate has jail time credit from May 1st through May 31st and July 1st through July 31st (62 days) that is subtracted from the aggregate term of two years.

Rule #8

A definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate or determinate sentence was imposed merges into the indeterminate or determinate sentence and is satisfied by service of that indeterminate or determinate sentence, except if the definite sentence is imposed for an assault committed while incarcerated.

Pursuant to §70.35, if an inmate serving an indeterminate or determinate sentence receives a definite sentence for an offense committed prior to the time the indeterminate or determinate sentence was imposed, the definite sentence must run concurrently with the indeterminate or determinate sentence. Likewise, an inmate serving a definite sentence at the time an indeterminate or determinate sentence is imposed must be delivered to DOCS to

commence service of the indeterminate or determinate sentence immediately. The only exception to this rule occurs when the definite sentence was imposed for an assault committed within a correctional facility [paragraph (b) of subdivision five of section 70.25 of this article].

#### Example

- May 1st - Inmate is arrested and held on charge #1.
- May 15th - A detainer is lodged against the inmate for charge #2
- Aug. 1st - Inmate is sentenced to an indeterminate sentence on charge #1 and is transferred to DOCS' custody.
- Sept. 1st - While in DOCS' custody, the inmate is sentenced to a definite sentence of imprisonment for charge #2.

Because the definite sentence was imposed for an offense committed prior to the time the indeterminate sentence was imposed, the definite sentence merges into the indeterminate sentence. Service of the indeterminate sentence will satisfy the definite sentence.

#### Acquittal or Dismissal of Charges

##### Rule #9:

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

Pursuant to §70.30(3), when an inmate is held in custody on a

charge that culminates in acquittal or dismissal, the jail time that would have been applied to such sentence, had one been imposed for such charge, must be applied against any sentence that is based on a charge for which a detainer was lodged during the pendency of such custody.

Example:

- May 1st - Inmate is arrested on charge #1 and held without bail.
- Aug. 1st - A detainer is lodged against the inmate for charge #2.
- Aug. 31st - Charge #1 is dismissed, but the inmate continues to be held on charge #2.
- Oct. 1st - Inmate is sentenced on charge #2 and begins service of his sentence.

Because charge #1 resulted in a dismissal, the jail time which would have been applied against a sentence imposed on charge #1 (May 1st through July 31st) must be applied to charge #2. This is because a detainer on charge #2 was lodged during the pendency of a dismissed charge (charge #1). Thus, the inmate would receive the time between May 1st and July 31st (92 days) plus the time from August 1st through September 30th (61 days) against charge #2. The total jail time applicable to charge #2 is 184 days.

Vacated Sentences

Rule #10:

Time spent by an inmate on a sentence which is subsequently vacated shall be credited against the new sentence.

A vacated sentence is a sentence which is annulled and

replaced by another sentence. Pursuant to §70.30(5), time spent in custody by an inmate on a sentence which is subsequently vacated must be credited against the new sentence.

This situation most commonly occurs with sentences of probation or split sentences of imprisonment and probation, the so-called "shock probation." It is the opinion of Counsel's Office that revocation of probation is not a new crime. Rather, the imposition of another sentence upon revocation of shock probation is a replacement for the original sentence and is based on the original underlying crime.

Example:

- May 1st - Inmate is arrested on a misdemeanor and jailed.
- June 1st - Inmate is sentenced to 60 days and one year probation (shock probation).
- June 1st - Inmate begins service of his sentence.
- June 29th - The sentence of imprisonment is satisfied (60 days - 31 days jail time leaves 29 days left to serve).
- March 1st - Inmate's shock probation sentence is revoked.
- March 1st - Inmate is re-sentenced to one year straight time.

Under §70.30(5), the inmate must have his newly imposed one year sentence reduced by the amount of time credited against the revoked shock probation sentence (60 days). Note that none of the time served on probation is credited because this was "street time."

Intermittent Sentences

An intermittent sentence of imprisonment is a revocable sentence of imprisonment that is served on days or during certain

periods of days, or both, as specified by the court. Unlike a definite sentence, an intermittent sentence commences on the day it is imposed. An intermittent sentence is calculated upon the basis of the duration of its term, rather than upon the basis of the days spent in confinement. Therefore, no person may be subject to any intermittent 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.

When a court imposes an intermittent sentence of imprisonment Penal Law §85.00(4) requires that the court specify:

- 1) the court is imposing an intermittent sentence;
- 2) the term of such sentence;
- 3) the days or parts of days on which the sentence is to be served; and
- 4) the first and last dates on which the defendant is to be incarcerated.

Rule #11:

Jail time credit is subtracted from the duration of the term to arrive at a new term.  
Good time is not applicable.

Pursuant to Penal Law §85.00(3), jail time credit is applicable to intermittent sentences. Good time, however, is not. The jail time credit is subtracted from the duration of the term to arrive at a "new" term. Even though intermittent sentences are generally only served on weekends or certain days of the week, the term of an intermittent sentence is calculated "upon the basis of the duration of the term" and not upon the actual number of days spent in confinement, as per §85.00(3).

Example:

(Refer to a 1998 calendar attached as Appendix C-1)

May 21st - Inmate is arrested and held on a charge.  
May 31st - Inmate is released on his own recognizance.  
June 30th - Inmate is sentenced to a 60 day

intermittent sentence of imprisonment commencing on June 30th and ending on August 28, 1998. The inmate is to serve weekends from 5 p.m. on Fridays until 5 p.m. on Sundays. The court also specified, in accordance with §85.00(4), that the first day of incarceration was to be Friday, July 3rd and the last day of incarceration was to be Sunday, August 23rd.

The inmate has 11 days of jail time (May 21st - May 31st) to be applied against the 60 day term. This reduces the intermittent sentence to 49 days. Although the inmate will still be first incarcerated on Friday, June 30th, his last day of incarceration must be redetermined in light of the jail time credit. Applying the jail time credit, the term expires on August 17th, a Monday. This means that the last day the inmate will be incarcerated is Sunday, August 16th. Thus, the inmate will serve seven weekends: July 3,4,5; July 10,11,12; July 17,18,19; July 25,26,27; August 1,2,3; August 8,9,10; and August 15,16,17.

Rule #12:

Time spent in confinement under the sentence of intermittent sentence shall be credited as jail time if the intermittent sentence is revoked and a definite sentence of imprisonment imposed in its place.

Intermittent sentences are revocable and may be revoked by the court if the inmate commits another crime during the term, fails to report to the facility as he is required, or violates a rule or regulation of the facility and such violation is reported in writing to the court.

Section 85.05(4) provides that, where an intermittent sentence is revoked and a sentence of imprisonment imposed in its place, time served under the intermittent sentence shall be calculated as jail time and added to any jail time accrued against such newly

imposed sentence.

There is disagreement among some lower courts regarding the amount of time that should be credited to a definite sentence when an intermittent sentence is revoked. One court has held that an inmate should be given credit for a full week for each weekend spent in jail.<sup>7</sup> Subsequent lower courts have declined to follow this case, however, ruling instead that the credit is limited to the time actually spent in physical custody.<sup>8</sup> Although this issue has not been addressed by an appellate court, it is the opinion of Counsel's Office that the jail time is limited to the time actually spent in custody. This interpretation is consistent with a plain reading of §85.05(4).

Example:

- May 1st - Inmate is arrested and held on a charge.
- May 5th - Inmate is released on bail.
- May 8th - A 20 day intermittent sentence is imposed to run from this day until May 27th. The inmate is to be incarcerated on May 9 and 10; May 16 and 17; and May 23 and 24. The first day of incarceration is to be May 9th and the last May 24th. The inmate reports to the jail May 9-10.
- May 11th - The court revokes the intermittent sentence pursuant to §85.05(1) and imposes a "straight" six month definite sentence.
- May 15th - Inmate begins service of the six month term.

The inmate should have 7 days credited against the six month sentence. This includes five days of jail time (May 1st-5th) prior to imposition of the intermittent sentence, and two days served pursuant to the intermittent sentence (May 9-10).

## 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.

### Case Law References

1. People ex rel. Bridges v. Malcolm, 44 N.Y.2d 875, 877, 407 N.Y.S.2d 628 (1978).
2. Kalamis v. Smith, 42 N.Y.S.2d 191, 200, 397 N.Y.S.2d 690, 694 (1977).
3. People ex rel. Davis v. Arnette, 44 N.Y.2d 877, 879, 407 N.Y.S.2d 629, 630 (1978).
4. Colon v. Vincent, 49 A.D.2d 939, 374 N.Y.S.2d 125, 127-28 (2d Dept. 1975), aff'd 41 N.Y.2d 1084, 396 N.Y.S.2d 363 (1977).
5. Id.
6. Kintz v. Coughlin, 175 A.D.2d 670, 573 N.Y.S.2d 945, 945 (4th Dept. 1991), leave app. denied 78 N.Y.2d 862, 576 N.Y.S.2d 220 (1991).
7. People v. Becker, 98 Misc.2d 1081, 415 N.Y.S.2d 329, 330 (Sup.Ct., Queens Co. 1979).
8. People ex rel. Bailey v. Netzel, 169 Misc.2d 623, 647 N.Y.S.2d 343, 344 (Sup.Ct., Erie Co. 1995).

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