

S 66005 VALESKY Same as Uni. [A 40005](#) Rules (Magnarelli)

Governor Program # 200

ON FILE: 11/10/09 Penal Law

TITLE....Relates to eligibility of certain felony offenders for parole and medical parole

Currently on Senate Committee Agenda

Senate Standing Committee on Rules

Senator Malcolm Smith, Chair

November 10, 2009

Off the Floor

11/10/09 REFERRED TO RULES

11/10/09 ORDERED TO THIRD READING CAL.2

11/10/09 MESSAGE OF NECESSITY - 3 DAY MESSAGE

11/10/09 PASSED SENATE

11/10/09 DELIVERED TO ASSEMBLY

11/10/09 referred to codes

11/10/09 substituted for a40005

11/10/09 ordered to third reading rules cal.680

11/10/09 ruling of chair on point of order

11/10/09 message of necessity - 3 day message

11/10/09 passed assembly

11/10/09 returned to senate

11/10/09 DELIVERED TO GOVERNOR

A40005 Rules (Magnarelli) Same as Uni. [S 66005](#) VALESKY

Governor Program # 200

Penal Law

TITLE....Relates to eligibility of certain felony offenders for parole and medical parole

Currently on Assembly Committee Agenda

Codes (LENTOL)

OFF THE FLOOR, Tuesday, November 10, 2009

EXTRAORDINARY SESSION

11/10/09 referred to codes

11/10/09 reported referred to rules

11/10/09 reported

11/10/09 rules report cal.680

11/10/09 substituted by s66005

S66005 VALESKY

11/10/09 REFERRED TO RULES

11/10/09 ORDERED TO THIRD READING CAL.2

11/10/09 MESSAGE OF NECESSITY - 3 DAY MESSAGE

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VALESKY, SCHNEIDERMAN, ESPADA

Amd S70.25, Pen L; amd SS259-r & 259-s, Exec L

Relates to eligibility of certain felony offenders for parole and medical parole; requires consecutive sentences for certain A-1 felony offenders and child sexual assault crimes.

CRIMINAL SANCTION IMPACT.

Governor's Program

STATE OF NEW YORK

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A. 5

Twentieth Extraordinary Session

SENATE - ASSEMBLY

November 10, 2009

IN SENATE -- Introduced by Sens. VALESKY, SCHNEIDERMAN -- (at request of the Governor) -- 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. Magnarelli, Lentol, Russell, DelMonte, Stirpe, Ramos, Alessi, Hyer-Spencer, Titone, Gordon, Skartados, Reilly) -- (at request of the Governor) -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to consecutive sentences for certain felony offenders and their eligibility for parole and medical parole

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 2-a of section 70.25 of the penal law, as
2 amended by section 40 of chapter 7 of the laws of 2007, is amended to
3 read as follows:
4 2-a. When an indeterminate or determinate sentence of imprisonment is
5 imposed pursuant to section 70.04, 70.06, **70.07**, 70.08, 70.10, subdivi-
6 sion three or four of section 70.70, subdivision three or four of
7 section 70.71 or subdivision five of section 70.80 of this article, **or**
8 **is imposed for a class A-I felony pursuant to section 70.00 of this**
9 **article**, and such person is subject to an undischarged indeterminate or
10 determinate sentence of imprisonment imposed prior to the date on which
11 the present crime was committed, the court must impose a sentence to run
12 consecutively with respect to such undischarged sentence.
13 § 2. Subdivision 2-a of section 70.25 of the penal law, as amended by
14 section 41 of chapter 7 of the laws of 2007, is amended to read as
15 follows:
16 2-a. When an indeterminate or determinate sentence of imprisonment is
17 imposed pursuant to section 70.04, 70.06, **70.07**, 70.08, 70.10, subdivi-
18 sion three or four of section 70.70, subdivision three or four of

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD12147-04-9

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- 1 section 70.71 or subdivision five of section 70.80 of this article, **or**
2 **is imposed for a class A-I felony pursuant to section 70.00 of this**
3 **article**, and such person is subject to an undischarged indeterminate
4 sentence of imprisonment imposed prior to the date on which the present
5 crime was committed, the court must impose a sentence to run consec-
6 utively with respect to such undischarged sentence.

7 § 3. Paragraph (a) of subdivision 1 of section 259-r of the executive
8 law, as amended by section 1 of part J of chapter 56 of the laws of
9 2009, is amended to read as follows:

10 (a) The board shall have the power to release on medical parole any
11 inmate serving an indeterminate or determinate sentence of imprisonment
12 who, pursuant to subdivision two of this section, has been certified to
13 be suffering from a terminal condition, disease or syndrome and to be so
14 debilitated or incapacitated as to create a reasonable probability that
15 he or she is physically or cognitively incapable of presenting any
16 danger to society, provided, however, that no inmate serving a sentence
17 imposed upon a conviction for murder in the first degree or an attempt
18 or conspiracy to commit murder in the first degree shall be eligible for
19 such release, and provided further that no inmate serving a sentence
20 imposed upon a conviction for any of the following offenses shall be
21 eligible for such release unless in the case of an indeterminate
22 sentence he or she has served at least one-half of the minimum period of
23 the sentence and in the case of a determinate sentence he or she has
24 served at least one-half of the term of his or her determinate sentence:
25 murder in the second degree, manslaughter in the first degree, any
26 offense defined in article one hundred thirty of the penal law or an
27 attempt to commit any of these offenses. Solely for the purpose of
28 determining medical parole eligibility pursuant to this section, such
29 one-half of the minimum period of the indeterminate sentence and one-
30 half of the term of the determinate sentence shall not be credited with
31 any time served under the jurisdiction of the state department of
32 correctional services prior to the commencement of such sentence pursu-
33 ant to the opening paragraph of subdivision one of section 70.30 of the
34 penal law or subdivision two-a of section 70.30 of the penal law, except
35 to the extent authorized by subdivision three of section 70.30 of the
36 penal law.

37 § 4. Paragraph (a) of subdivision 1 of section 259-r of the executive
38 law, as amended by section 2 of part J of chapter 56 of the laws of
39 2009, is amended to read as follows:

40 (a) The board shall have the power to release on medical parole any
41 inmate serving an indeterminate or determinate sentence of imprisonment
42 who, pursuant to subdivision two of this section, has been certified to
43 be suffering from a terminal condition, disease or syndrome and to be so
44 debilitated or incapacitated as to create a reasonable probability that
45 he or she is physically or cognitively incapable of presenting any
46 danger to society, provided, however, that no inmate serving a sentence
47 imposed upon a conviction for murder in the first degree or an attempt
48 or conspiracy to commit murder in the first degree shall be eligible for
49 such release, and provided further that no inmate serving a sentence
50 imposed upon a conviction for any of the following offenses shall be
51 eligible for such release unless in the case of an indeterminate
52 sentence he or she has served at least one-half of the minimum period of
53 the sentence and in the case of a determinate sentence he or she has
54 served at least one-half of the term of his or her determinate sentence:
55 murder in the second degree, manslaughter in the first degree, any
56 offense defined in article one hundred thirty of the penal law or an

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1 attempt to commit any of these offenses. Solely for the purpose of
2 determining medical parole eligibility pursuant to this section, such
3 one-half of the minimum period of the indeterminate sentence and one-
4 half of the term of the determinate sentence shall not be credited with
5 any time served under the jurisdiction of the state department of
6 correctional services prior to the commencement of such sentence pursu-

7 ant to the opening paragraph of subdivision one of section 70.30 of the
8 penal law or subdivision two-a of section 70.30 of the penal law, except
9 to the extent authorized by subdivision three of section 70.30 of the
10 penal law.

11 § 5. Paragraph (a) of subdivision 1 of section 259-s of the executive
12 law, as added by section 6 of part J of chapter 56 of the laws of 2009,
13 is amended to read as follows:

14 (a) The board shall have the power to release on medical parole any
15 inmate serving an indeterminate or determinate sentence of imprisonment
16 who, pursuant to subdivision two of this section, has been certified to
17 be suffering from a significant and permanent non-terminal condition,
18 disease or syndrome that has rendered the inmate so physically or cogni-
19 tively debilitated or incapacitated as to create a reasonable probabili-
20 ty that he or she does not present any danger to society, provided,
21 however, that no inmate serving a sentence imposed upon a conviction for
22 murder in the first degree or an attempt or conspiracy to commit murder
23 in the first degree shall be eligible for such release, and provided
24 further that no inmate serving a sentence imposed upon a conviction for
25 any of the following offenses shall be eligible for such release unless
26 in the case of an indeterminate sentence he or she has served at least
27 one-half of the minimum period of the sentence and in the case of a
28 determinate sentence he or she has served at least one-half of the term
29 of his or her determinate sentence: murder in the second degree,
30 manslaughter in the first degree, any offense defined in article one
31 hundred thirty of the penal law or an attempt to commit any of these
32 offenses. Solely for the purpose of determining medical parole eligibil-
33 ity pursuant to this section, such one-half of the minimum period of the
34 indeterminate sentence and one-half of the term of the determinate
35 sentence shall not be credited with any time served under the jurisdic-
36 tion of the state department of correctional services prior to the
37 commencement of such sentence pursuant to the opening paragraph of
38 subdivision one of section 70.30 of the penal law or subdivision two-a
39 of section 70.30 of the penal law, except to the extent authorized by
40 subdivision three of section 70.30 of the penal law.

41 § 6. This act shall take effect immediately; provided that:

42 (a) the amendments to subdivision 2-a of section 70.25 of the penal
43 law made by section one of this act shall apply to offenses committed on
44 or after the effective date of this act; and

45 (b) the amendments to subdivision 2-a of section 70.25 of the penal
46 law made by section one of this act shall be subject to the expiration
47 and reversion of such subdivision pursuant to subdivision d of section
48 74 of chapter 3 of the laws of 1995, as amended, when upon such date the
49 provisions of section two of this act shall take effect; and

50 (c) the amendments to paragraph (a) of subdivision 1 of section 259-r
51 of the executive law made by section three of this act shall be subject
52 to the expiration and reversion of such paragraph pursuant to subdivi-
53 sion d of section 74 of chapter 3 of the laws of 1995, as amended, when
54 upon such date the provisions of section four of this act shall take
55 effect.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S66005

SPONSOR: VALESKY

TITLE OF BILL:

An act to amend the penal law and the executive law, in relation to consecutive sentences for certain felony offenders and their eligibility for parole and medical parole

PURPOSE:

This bill mandates that a state sentence of imprisonment imposed on a person convicted of an A-1 felony shall run consecutively to a previously imposed, undischarged state sentence of imprisonment, thereby preventing such person from receiving credit for time served on the previously imposed sentence. The bill also applies this rule to second child sexual assault felony offenders. In addition, the bill provides that an inmate who becomes eligible for medical parole upon serving one-half of his or her sentence shall not receive credit on that sentence for time previously served on a prior sentence.

SUMMARY OF PROVISIONS:

Sections 1 and 2 of the bill amend Penal Law (PL) § 70.25(2-a) to provide that a sentence imposed for a class A-1 felony pursuant to PL § 70.00 or a sentence imposed for second child sexual assault felony offense under PL § 70.07, shall be imposed to run consecutively to any undischarged term of state imprisonment imposed prior to the commission of those offenses.

Sections 3 through 5 of the bill amend Executive Law (EL) §259-r(1) (a) and EL §259s(1)(a) to ensure that solely for the purpose of determining medical parole eligibility under those sections, time served on a previously imposed, undischarged sentence shall not be credited to the present sentence.

Section 6 of the bill provides for an immediate effective date, provided that the amendments to § 70.25(2-a) made in sections 1 and 2 of the bill shall apply to offenses committed on or after the effective date of the bill.

EXISTING LAW:

Penal Law §70.25(2-a) currently provides that when a person is subject to a previously imposed, undischarged indeterminate or determinate term of imprisonment, and is being sentenced to an additional indeterminate or determinate term as a repeat offender, the additional sentence must be imposed to run consecutively to the prior sentence. This section applies to almost all repeat felony offenders: second or persistent felony offenders; second or persistent violent felony offenders; predicate felony sex offenders; and second felony drug offenders. By mandating consecutive sentencing, this section ensures that when a new sentence is imposed for a listed offense, the new sentence is not credited with any time served on the previously imposed, undischarged sentence pursuant to PL §70.30(1)(a).

EL § 259-r(1)(a) and §259-s(1)(a) authorize medical parole for inmates who have been certified to be suffering from a terminal condition or a

significant and permanent non-terminal illness that creates a reasonable probability that they do not present a danger to society. Inmates serving sentences for Murder 2nd, Manslaughter 1st, any sex offense defined in PL Article 130 or an attempt to commit any of these crimes are eligible to be considered for medical parole only upon serving one-half of the imposed sentence. (Inmates serving sentences for Murder 1st are never eligible for medical parole.)

STATEMENT IN SUPPORT:

Due to an apparent drafting oversight, the most serious crimes of all are not covered by PL §70.25(2-a), and may therefore receive credit on their sentences that is denied to other repeat offenders. A person convicted of a non-drug A-1 felony (e.g., Murder 2nd, Arson 1st, Kidnaping 1st and Conspiracy 1st) cannot be sentenced as a second or persistent offender. Second child sexual assault felony offenders also fall outside the ambit of PL §70.25(2-a). Instead, both classes of offenders fall within the scope of PL §70.25(1), which provides that the second sentence may be imposed to run either concurrently or consecutively to the undischarged sentence, and is deemed to run concurrently if the court fails to specify. If the new sentence is imposed or deemed to run concurrently with the prior sentence, the new sentence is credited with time served on the previously imposed, undischarged sentence, and the length of the new sentence, if determinate, or its minimum period, if indeterminate, is reduced by that length of time pursuant to PL §70.30(1)(a). A person who receives PL §70.30(1)(a) credit becomes eligible for parole earlier than someone who does not receive credit for the previously served time.

This has important consequences when determining a person's eligibility for medical parole after having been sentenced for certain crimes. In such cases, a person serving indeterminate sentences or a combination of indeterminate and determinate sentences may be eligible for medical parole upon serving one-half of the minimum period; a person serving determinate sentences may become eligible upon serving one-half of the sentence. However, if such person's sentence is reduced under to PL §70.30(1)(a), he or she becomes eligible for medical parole sooner - a windfall that is denied to virtually every other felony offender by PL §70.25(2-a).

The windfall effect is especially clear when the first sentence is a long one. For example, if an inmate is paroled after serving 10 years on a prior sentence, and commits a murder while on parole leading to a new 20-year to life sentence, he or she will receive 10 years of credit toward the minimum period of the new murder sentence if the court imposes the sentence concurrently or is silent. Instead of becoming eligible for medical parole after serving 10 years, one-half the minimum sentence, he or she will actually become eligible for medical parole immediately.

The bill prevents A-1 felony offenders and second child sexual assault felony offenders from receiving this unintended benefit by adding them to the list of offenders covered by PL §70.25(2-a). It is unfair to allow the possibility of concurrent sentencing for A-1 felony offenders when virtually every other felony offender who is subject to predicate sentencing must receive a consecutive sentence. This bill ensures that if an A-1 felony offender commits such offense after the imposition of a prior sentence of state imprisonment, the new sentence will be imposed to run consecutively to the prior sentence and will not be reduced by the time previously served. Finally, the bill ensures that, regardless of how a sentence is imposed, inmates who are required to serve one-half of their determinate sentence or one-half of the minimum period of their

indeterminate sentence in order to become eligible for medical parole do in fact serve one-half of the imposed sentence before they can be considered for such release.

BUDGET IMPLICATIONS:

There is no appreciable impact on the operations and budgets of State and local enforcement agencies as a result of this bill.

LEGISLATIVE HISTORY:

None.

EFFECTIVE DATE:

This bill would take effect immediately, provided that the amendments to § 70.25(2-a) made in sections 1 and 2 of the bill apply to offenses committed on or after the effective date of the bill.
