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

329--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. MONTGOMERY, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, in relation to merit time allowances

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

Section 1. Subparagraph (ii) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 7 of chapter 738 of the laws of 2004, is amended and a new subparagraph (vi) is added to read as follows:

(ii) [Such] EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH, SUCH merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an inmate.

(VI) A PERSON CONVICTED OF A HOMICIDE OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AN ASSAULT OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW, A ROBBERY OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED SIXTY OF THE PENAL LAW, A KIDNAPPING OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW,

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

LBD01519-03-2

AN ARSON OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FIFTY OF THE PENAL LAW, A BURGLARY OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FORTY OF THE PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AS DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION 265.03 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE AS DEFINED BY SECTION 265.09 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE AS DEFINED BY SECTION 265.08 OF THE PENAL LAW, A CONSPIRACY TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED FIVE OF THE PENAL LAW, AN ATTEMPT TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED TEN OF THE PENAL LAW AND SERVING A DETERMINATE OR INDETERMINATE SENTENCE OR SENTENCES AND WHO CAN DEMONSTRATE TO THE COMMISSIONER THAT: (1) THE PERSON IS A VICTIM OF DOMESTIC VIOLENCE WHO WAS SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE INFLICTED BY A MEMBER OF THE PERSON'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW OR A MEMBER OF THE PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 120.40 OF THE PENAL LAW; AND (2) SUCH OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, MAY RECEIVE MERIT TIME ALLOWANCE CREDIT IN THE AMOUNT PROVIDED FOR IN SUBPARAGRAPH (III) OF THIS PARAGRAPH. THE MERIT TIME ALLOWANCE ESTABLISHED PURSUANT TO THIS SUBPARAGRAPH SHALL BE GRANTED IN THE SAME MANNER AS REQUIRED BY SUBPARAGRAPH (IV) OF THIS PARAGRAPH.

TO APPLY FOR MERIT TIME ELIGIBILITY UNDER THIS SUBDIVISION AND TO DEMONSTRATE SUCH PERSON'S CLAIM THAT SHE OR HE WAS SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE AND THAT SUCH OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, SUCH PERSON MUST SUBMIT AN APPLICATION TO THE COMMISSIONER OR COMMISSIONER'S DESIGNEE ALONG WITH CORROBORATIVE MATERIAL THAT SHALL INCLUDE ONE OR MORE OF THE FOLLOWING DOCUMENTS: WITNESS STATEMENTS, COURT RECORDS, PRE-SENTENCE REPORTS, SOCIAL SERVICES RECORDS, CITY AND STATE DEPARTMENT OF CORRECTIONS RECORDS, HOSPITAL RECORDS, LAW ENFORCEMENT RECORDS, DOMESTIC INCIDENT REPORTS, ORDERS OF PROTECTION, A SHOWING BASED IN PART ON DOCUMENTATION PREPARED AT OR NEAR THE TIME OF THE COMMISSION OF THE OFFENSE OR THE PROSECUTION THEREOF TENDING TO SUPPORT THE PERSON'S CLAIM, OR WHEN THERE IS VERIFICATION OF CONSULTATION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE PROVIDER, EMPLOYEE OF A COURT ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, MEMBER OF THE CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE CRISIS COUNSELOR AS DEFINED IN SECTION FORTY-FIVE HUNDRED TEN OF THE CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF AN AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE, OR OTHER SIMILAR DOCUMENTATION THAT CORROBORATES SUCH PERSON'S CLAIM.

S 2. Subparagraph (ii) of paragraph (d) of subdivision 1 of section 803 of the correction law, as added by section 10-a of chapter 738 of the laws of 2004, is amended and a new subparagraph (vi) is added to read as follows:

(ii) [Such] EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH, SUCH merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an inmate.

(VI) A PERSON CONVICTED OF A HOMICIDE OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AN ASSAULT OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW, A ROBBERY OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED SIXTY OF THE PENAL LAW, A KIDNAPPING OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW, AN ARSON OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FIFTY OF THE PENAL LAW, A BURGLARY OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FORTY OF THE PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AS DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION 265.03 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE AS DEFINED BY SECTION 265.09 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE AS DEFINED BY SECTION 265.08 OF THE PENAL LAW, A CONSPIRACY TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED FIVE OF THE PENAL LAW, AN ATTEMPT TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED TEN OF THE PENAL LAW AND SERVING A DETERMINATE OR INDETERMINATE SENTENCE OR SENTENCES AND WHO CAN DEMONSTRATE TO THE COMMISSIONER THAT: (1) THE PERSON IS A VICTIM OF DOMESTIC VIOLENCE WHO WAS SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE INFLICTED BY A MEMBER OF THE PERSON'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW OR A MEMBER OF THE PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 120.40 OF THE PENAL LAW; AND (2) SUCH OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, MAY RECEIVE MERIT TIME ALLOWANCE CREDIT IN THE AMOUNT PROVIDED FOR IN SUBPARAGRAPH (III) OF THIS PARAGRAPH. THE MERIT TIME ALLOWANCE ESTABLISHED PURSUANT TO THIS SUBPARAGRAPH SHALL BE GRANTED IN THE SAME MANNER AS REQUIRED BY SUBPARAGRAPH (IV) OF THIS PARAGRAPH.

TO APPLY FOR MERIT TIME ELIGIBILITY UNDER THIS SUBDIVISION AND TO DEMONSTRATE SUCH PERSON'S CLAIM THAT SHE OR HE WAS SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE AND THAT SUCH OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, SUCH PERSON MUST SUBMIT AN APPLICATION TO THE COMMISSIONER OR COMMISSIONER'S DESIGNEE ALONG WITH CORROBORATIVE MATERIAL THAT SHALL INCLUDE ONE OR MORE OF THE FOLLOWING DOCUMENTS: WITNESS STATEMENTS, COURT RECORDS, PRE-SENTENCE REPORTS, SOCIAL SERVICES RECORDS, CITY AND STATE DEPARTMENT OF CORRECTIONS RECORDS, HOSPITAL RECORDS, LAW ENFORCEMENT RECORDS, DOMESTIC INCIDENT REPORTS, ORDERS OF PROTECTION, A SHOWING BASED IN PART ON DOCUMENTATION PREPARED AT OR NEAR THE TIME OF THE COMMISSION OF THE OFFENSE OR THE PROSECUTION THEREOF TENDING TO SUPPORT THE PERSON'S CLAIM, OR WHEN THERE IS VERIFICATION OF CONSULTATION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE PROVIDER, EMPLOYEE OF A COURT ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, MEMBER OF THE CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE CRISIS COUNSELOR AS DEFINED IN SECTION FORTY-FIVE HUNDRED TEN OF THE CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF AN AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE, OR OTHER SIMILAR DOCUMENTATION THAT CORROBORATES SUCH PERSON'S CLAIM.

S 3. Subdivision 3 of section 803 of the correction law, as amended by section 37 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

3. The commissioner of corrections and community supervision shall promulgate rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating the person or committee in each correctional institution delegated to make discretionary determinations with respect to the allowances, the books and records to be

kept, and a procedure for review of the institutional determinations by the commissioner. FURTHER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE REGARDING THE PROMULGATION OF RULES AND REGULATIONS FOR GRANTING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. TO ASSIST IN THE IMPLEMENTATION OF SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT STAFF DELEGATED TO MAKE DETERMINATIONS REGARDING SUCH ALLOWANCES. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE CANDIDATE FOR MERIT TIME ELIGIBILITY PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION ON THE GRANTING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION.

S 4. Subdivision 3 of section 803 of the correction law, as amended by section 38 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

3. The commissioner of corrections and community supervision shall promulgate rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating the person or committee in each correctional institution delegated to make discretionary determinations with respect to the allowances, the books and records to be kept, and a procedure for review of the institutional determinations by the commissioner. FURTHER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE REGARDING THE PROMULGATION OF RULES AND REGULATIONS FOR GRANTING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. TO ASSIST IN THE IMPLEMENTATION OF SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT STAFF DELEGATED TO MAKE DETERMINATIONS REGARDING SUCH ALLOWANCES. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE CANDIDATE FOR MERIT TIME ELIGIBILITY PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION ON THE GRANTING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION.

S 5. Section 805 of the correction law, as amended by section 4 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

S 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the inmate's eligibility to be paroled pursuant to subdivision one of section 70.40 of the penal law, the commissioner shall review the inmate's institutional record to

determine whether he OR SHE has complied with the assigned program. If the commissioner determines that the inmate has successfully participated in the program he OR SHE may issue the inmate a certificate of earned eligibility. Notwithstanding any other provision of law, an inmate who is serving a sentence with a minimum term of not more than eight years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his OR HER minimum term or as authorized by subdivision four of section eight hundred sixty-seven of this chapter unless the board of parole determines that there is a reasonable probability that, if such inmate is released, he OR SHE will not live and remain at liberty without violating the law and that his OR HER release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

NOTWITHSTANDING THE OPENING PARAGRAPH OF THIS SECTION, A PERSON WHO IS ELIGIBLE FOR MERIT TIME UNDER SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THIS ARTICLE WHO HAS BEEN ISSUED A CERTIFICATE OF EARNED ELIGIBILITY AND IS SERVING A SENTENCE WITH A MINIMUM TERM OF MORE THAN EIGHT YEARS SHALL BE GRANTED PAROLE RELEASE AT THE EXPIRATION OF HIS OR HER MINIMUM TERM UNLESS THE BOARD OF PAROLE DETERMINES THAT THERE IS A REASONABLE PROBABILITY THAT, IF SUCH PERSON IS RELEASED, HE OR SHE WOULD NOT LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW AND THAT HIS OR HER RELEASE IS NOT COMPATIBLE WITH THE WELFARE OF SOCIETY. ANY ACTION BY THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE DEEMED A JUDICIAL FUNCTION AND SHALL NOT BE REVIEWABLE IF DONE IN ACCORDANCE WITH THE LAW.

S 6. Section 805 of the correction law, as amended by chapter 262 of the laws of 1987, is amended to read as follows:

S 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the expiration of an inmate's minimum period of imprisonment, the commissioner shall review the inmate's institutional record to determine whether he OR SHE has complied with the assigned program. If the commissioner determines that the inmate has successfully participated in the program he OR SHE may issue the inmate a certificate of earned eligibility. Notwithstanding any other provision of law, an inmate who is serving a sentence with a minimum term of not more than six years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his OR HER minimum term or as authorized by subdivision four of section eight hundred sixty-seven OF THIS CHAPTER unless the board of parole determines that there is a reasonable probability that, if such inmate is released, he OR SHE will not live and remain at liberty without violating the law and that his OR HER release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

NOTWITHSTANDING THE OPENING PARAGRAPH OF THIS SECTION, A PERSON WHO IS ELIGIBLE FOR MERIT TIME UNDER SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THIS ARTICLE WHO HAS BEEN ISSUED A CERTIFICATE OF EARNED ELIGIBILITY AND IS SERVING A SENTENCE WITH A MINIMUM TERM OF MORE THAN SIX YEARS SHALL BE GRANTED PAROLE RELEASE AT THE EXPIRATION OF HIS OR HER MINIMUM TERM UNLESS THE BOARD OF PAROLE DETERMINES THAT THERE IS A REASONABLE PROBABILITY THAT,

IF SUCH PERSON IS RELEASED, HE OR SHE WOULD NOT LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW AND THAT HIS OR HER RELEASE IS NOT COMPATIBLE WITH THE WELFARE OF SOCIETY. ANY ACTION BY THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE DEEMED A JUDICIAL FUNCTION AND SHALL NOT BE REVIEWABLE IF DONE IN ACCORDANCE WITH THE LAW.

S 7. Section 806 of the correction law is amended by adding a new subdivision 8 to read as follows:

8. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, A PERSON THAT IS ELIGIBLE FOR A MERIT TIME ALLOWANCE PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THIS ARTICLE MAY BE ENTITLED TO PRESUMPTIVE RELEASE AT THE EXPIRATION OF FIVE-SIXTHS OF THE MINIMUM OR AGGREGATE MINIMUM PERIOD OF THE INDETERMINATE TERM IMPOSED BY THE COURT.

S 8. Subdivision 2-a of section 851 of the correction law, as added by chapter 251 of the laws of 2002, is amended to read as follows:

2-a. Notwithstanding subdivision two of this section, the term "eligible inmate" shall also include a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years, and who [was convicted of a homicide offense as defined in article one hundred twenty-five of the penal law or an assault offense defined in article one hundred twenty of the penal law, and who can demonstrate to the commissioner that: (a) the victim of such homicide or assault was a member of the inmate's immediate family as that term is defined in section 120.40 of the penal law or had a child in common with the inmate; (b) the inmate was subjected to substantial physical, sexual or psychological abuse committed by the victim of such homicide or assault; and (c) such abuse was a substantial factor in causing the inmate to commit such homicide or assault] IS ELIGIBLE FOR A MERIT TIME ALLOWANCE PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THIS CHAPTER. With respect to an inmate's claim that he or she was subjected to substantial physical, sexual or psychological abuse [committed by the victim] AND THAT THE OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, such demonstration shall include corroborative material that may include, but is not limited to, witness statements, COURT RECORDS, PRE-SENTENCE REPORTS, social services records, CITY AND STATE DEPARTMENT OF CORRECTION RECORDS, hospital records, law enforcement records, DOMESTIC INCIDENT REPORTS, ORDERS OF PROTECTION and a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof tending to support the inmate's claim, OR WHEN THERE IS VERIFICATION OF CONSULTATION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE PROVIDER, EMPLOYEE OF A COURT ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, MEMBER OF THE CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE CRISIS COUNSELOR AS DEFINED IN PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION FORTY-FIVE HUNDRED TEN OF THE CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF AN AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE. Prior to making a determination under this subdivision, the commissioner is required to request and take into consideration the opinion of the district attorney who prosecuted the underlying [homicide or assault] offense and the opinion of the sentencing court. If such opinions are received within forty-five days of the request, the commissioner shall take them into consideration. DURING THE FORTY-FIVE DAY WAITING PERIOD, THE INMATE MAY BE PERMITTED TO CONTINUE TO GATHER ADDITIONAL CORROBORATIVE MATERIALS. If such opinions are not so received, the commissioner may proceed with the determination. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY

CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THIS SUBDIVISION. TO ASSIST IN THE IMPLEMENTATION OF THIS SUBDIVISION, THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT STAFF DELEGATED TO MAKE DETERMINATIONS PURSUANT TO THIS SUBDIVISION. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE CANDIDATE FOR WORK RELEASE PURSUANT TO THIS SUBDIVISION, PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION OF WHETHER TO GRANT WORK RELEASE PURSUANT TO THIS SUBDIVISION. Any action by the commissioner pursuant to this subdivision shall be deemed a judicial function and shall not be reviewable in any court.

S 9. The commissioner of the department of corrections and community supervision shall present to the governor, the temporary president of the senate and the speaker of the assembly an annual report about the granting and withholding of merit time allowance pursuant to subparagraph (vi) of paragraph (d) of subdivision 1 of section 803 of the correction law and the operation of the work release program as applied to inmates deemed eligible pursuant to subdivision 2-a of section 851 of the correction law. Such report shall include, but not be limited to, the number of inmates who apply for such merit time allowance, the number of inmates approved for such merit time allowance, the number of denials of applications for such merit time allowance, the reasons for denials of applications for such merit time allowance, the crime of conviction and the sentence for each inmate granted such merit time allowance, the number of inmates eligible for work release, the number of inmates granted work release pursuant to subdivision 2-a of section 851 of the correction law, the number of denials of applications for such work release, the reasons for denials of applications for such work release, and the role of the office for the prevention of domestic violence in assisting the department of correctional services to make determinations regarding the granting or withholding of such merit time allowance and the eligibility for work release pursuant to subdivision 2-a of section 851 of the correction law. The initial report required by this section shall be presented by December 31, 2013. Thereafter, an annual report shall be presented no later than December 31 of each year.

S 10. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to persons in custody serving an indeterminate or determinate sentence on the effective date of this act as well as to persons sentenced to an indeterminate or determinate sentence on or after the effective date of this act; provided that the amendments to paragraph (d) of subdivision 1 of section 803 of the correction law made by section one of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; provided further that the amendments to subdivision 3 of section 803 of the correction law made by section three of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section four of this act shall take effect; and provided, further, that the amendments to sections 806 and 851 of the correction law made by sections seven and eight of this act shall not affect the expiration or repeal of such sections and shall expire or be deemed repealed therewith; and provided, further, that the amendments to

section 805 of the correction law made by section five of this act shall be subject to the expiration and reversion of such section pursuant to chapter 261 of the laws of 1987 and chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section six of this act shall take effect.