

STATE OF NEW YORK

1957

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CRUZ -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to failure to complete a program for time allowances due to circumstances beyond an individual's control

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

1 Section 1. Paragraph (a) of subdivision 1 of section 803 of the
2 correction law, as amended by section 37 of subpart B of part C of chap-
3 ter 62 of the laws of 2011, is amended to read as follows:

4 (a) Every person confined in an institution of the department or a
5 facility in the department of mental hygiene serving an indeterminate or
6 determinate sentence of imprisonment, except a person serving a sentence
7 with a maximum term of life imprisonment, may receive time allowance
8 against the term or maximum term of his or her sentence imposed by the
9 court. Such allowances may be granted for good behavior and efficient
10 and willing performance of duties assigned or progress and achievement
11 in an assigned treatment program, and may be withheld, forfeited or
12 canceled in whole or in part for bad behavior, violation of institu-
13 tional rules or failure to perform properly in the duties or program
14 assigned. Such allowances shall not be withheld if a person fails to
15 complete a program because of circumstances beyond such person's
16 control.

17 § 2. Paragraph (a) of subdivision 1 of section 803 of the correction
18 law, as amended by chapter 126 of the laws of 1987 and as designated by
19 chapter 738 of the laws of 2004, is amended to read as follows:

20 (a) Every person confined in an institution of the department or a
21 facility in the department of mental hygiene serving an indeterminate
22 sentence of imprisonment, except a person serving a sentence with a
23 maximum term of life imprisonment, may receive time allowance against
24 the maximum term or period of his or her sentence not to exceed in the

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

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1 aggregate one-third of the term or period imposed by the court. Such
2 allowances may be granted for good behavior and efficient and willing
3 performance of duties assigned or progress and achievement in an
4 assigned treatment program, and may be withheld, forfeited or canceled
5 in whole or in part for bad behavior, violation of institutional rules
6 or failure to perform properly in the duties or program assigned. Such
7 allowances shall not be withheld if a person fails to complete a program
8 because of circumstances beyond such person's control.

9 § 3. Subparagraph (iv) of paragraph (d) of subdivision 1 of section
10 803 of the correction law, as added by section 7 of chapter 738 of the
11 laws of 2004, is amended to read as follows:

12 (iv) Such merit time allowance may be granted when an inmate success-
13 fully participates in the work and treatment program assigned pursuant
14 to section eight hundred five of this article and when such inmate
15 obtains a general equivalency diploma, an alcohol and substance abuse
16 treatment certificate, a vocational trade certificate following at least
17 six months of vocational programming or performs at least four hundred
18 hours of service as part of a community work crew.

19 Such allowance shall be withheld for any serious disciplinary infrac-
20 tion or upon a judicial determination that the person, while an inmate,
21 commenced or continued a civil action, proceeding or claim that was
22 found to be frivolous as defined in subdivision (c) of section eight
23 thousand three hundred three-a of the civil practice law and rules, or
24 an order of a federal court pursuant to rule 11 of the federal rules of
25 civil procedure imposing sanctions in an action commenced by a person,
26 while an inmate, against a state agency, officer or employee. Such
27 allowance shall not be withheld if a person fails to complete a program
28 because of circumstances beyond his or her control.

29 § 4. Subparagraph (iv) of paragraph (d) of subdivision 1 of section
30 803 of the correction law, as added by section 10-a of chapter 738 of
31 the laws of 2004, is amended to read as follows:

32 (iv) Such merit time allowance may be granted when an inmate success-
33 fully participates in the work and treatment program assigned pursuant
34 to section eight hundred five of this article and when such inmate
35 obtains a general equivalency diploma, an alcohol and substance abuse
36 treatment certificate, a vocational trade certificate following at least
37 six months of vocational programming or performs at least four hundred
38 hours of service as part of a community work crew.

39 Such allowance shall be withheld for any serious disciplinary infrac-
40 tion or upon a judicial determination that the person, while an inmate,
41 commenced or continued a civil action, proceeding or claim that was
42 found to be frivolous as defined in subdivision (c) of section eight
43 thousand three hundred three-a of the civil practice law and rules, or
44 an order of a federal court pursuant to rule 11 of the federal rules of
45 civil procedure imposing sanctions in an action commenced by a person,
46 while an inmate, against a state agency, officer or employee. Such
47 allowance shall not be withheld if a person fails to complete a program
48 because of circumstances beyond such person's control.

49 § 5. Subdivision 1 of section 804 of the correction law, as amended by
50 chapter 145 of the laws of 1976, is amended to read as follows:

51 1. Every person confined in an institution serving a definite sentence
52 of imprisonment may receive time allowances as discretionary reductions
53 of the term of his or her sentence not to exceed in the aggregate one-
54 third of the term imposed by the court. Such allowances may be granted
55 for good behavior and efficient and willing performance of duties
56 assigned or progress and achievement in an assigned treatment program,

1 and may be withheld, forfeited or cancelled in whole or in part for bad
2 behavior, violation of institutional rules or failure to perform properly
3 in the duties or program assigned. Such allowances shall not be withheld,
4 forfeited or cancelled in whole or in part for a person's failure
5 to complete an assigned program due to circumstances beyond his or her
6 control.

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

9 § 805. Earned eligibility program. Persons committed to the custody of
10 the department under an indeterminate or determinate sentence of imprisonment
11 shall be assigned a work and treatment program as soon as practicable. No earlier
12 than two months prior to the inmate's eligibility to be paroled pursuant to
13 subdivision one of section 70.40 of the penal law, the commissioner shall review
14 the inmate's institutional record to determine whether he or she has complied
15 with the assigned program. Credit for such assigned program shall not be withheld
16 if a person fails to complete a program because of circumstances beyond such person's
17 control. If the commissioner determines that the inmate has successfully
18 participated in the program he or she may issue the inmate a certificate
19 of earned eligibility. Notwithstanding any other provision of law, an
20 inmate who is serving a sentence with a minimum term of not more than
21 eight years and who has been issued a certificate of earned eligibility,
22 shall be granted parole release at the expiration of his or her minimum
23 term or as authorized by subdivision four of section eight hundred
24 sixty-seven of this chapter unless the board of parole determines that
25 there is a reasonable probability that, if such inmate is released, he
26 or she will not live and remain at liberty without violating the law and
27 that his or her release is not compatible with the welfare of society.
28 Any action by the commissioner pursuant to this section shall be deemed
29 a judicial function and shall not be reviewable if done in accordance
30 with law.

31 § 7. Section 805 of the correction law, as amended by chapter 262 of
32 the laws of 1987, is amended to read as follows:

33 § 805. Earned eligibility program. Persons committed to the custody of
34 the department under an indeterminate sentence of imprisonment shall be
35 assigned a work and treatment program as soon as practicable. No earlier
36 than two months prior to the expiration of an inmate's minimum period of
37 imprisonment, the commissioner shall review the inmate's institutional
38 record to determine whether he or she has complied with the assigned
39 program. Credit for such assigned program shall not be withheld if a
40 person fails to complete a program because of circumstances beyond such
41 person's control. If the commissioner determines that the inmate has
42 successfully participated in the program he or she may issue the inmate
43 a certificate of earned eligibility. Notwithstanding any other provision
44 of law, an inmate who is serving a sentence with a minimum term of not
45 more than six years and who has been issued a certificate of earned
46 eligibility, shall be granted parole release at the expiration of his or
47 her minimum term or as authorized by subdivision four of section eight
48 hundred sixty-seven of this chapter unless the board of parole determines
49 that there is a reasonable probability that, if such inmate is released,
50 he or she will not live and remain at liberty without violating the law
51 and that his or her release is not compatible with the welfare of society.
52 Any action by the commissioner pursuant to this section shall be deemed
53 a judicial function and shall not be reviewable if done in accordance
54 with law.

1 § 8. Subdivision 5 of section 806 of the correction law, as added by
2 section 5 of part E of chapter 62 of the laws of 2003, is amended to
3 read as follows:

4 5. No person shall have the right to demand or require presumptive
5 release authorized by this section. The commissioner may revoke at any
6 time an inmate's scheduled presumptive release pursuant to this section
7 for any disciplinary infraction committed by the inmate or for any fail-
8 ure to continue to participate successfully in any assigned work and
9 treatment program after the certificate of earned eligibility has been
10 awarded, except that any such failure to continue to participate in an
11 assigned work or treatment program shall not be grounds for revocation
12 of presumptive release if such failure is due to circumstances beyond
13 the incarcerated person's control. The commissioner may deny presump-
14 tive release to any inmate whenever the commissioner determines that
15 such release may not be consistent with the safety of the community or
16 the welfare of the inmate. Any action by the commissioner pursuant to
17 this section shall be deemed a judicial function and shall not be
18 reviewable if done in accordance with law.

19 § 9. This act shall take effect immediately; provided that the amend-
20 ments to paragraph (a) and subparagraph (iv) of paragraph (d) of subdi-
21 vision 1 of section 803 of the correction law made by sections one and
22 three of this act shall be subject to the expiration and reversion of
23 such subdivision pursuant subdivision d of section 74 of chapter 3 of
24 the laws of 1995, as amended, when upon such date the provisions of
25 sections two and four of this act shall take effect; provided, further,
26 that the amendments to section 805 of the correction law made by section
27 six of this act shall be subject to the expiration and reversion of such
28 section pursuant to subdivision d of section 74 of chapter 3 of the laws
29 of 1995, as amended, when upon such date the provisions of section seven
30 of this act shall take effect; and provided, further, that the amend-
31 ments to subdivision 5 of section 806 of the correction law made by
32 section eight of this act shall not affect the repeal of such section
33 and shall be deemed repealed therewith.