

STATE OF NEW YORK

3366

2021-2022 Regular Sessions

IN ASSEMBLY

January 26, 2021

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

AN ACT to amend the correction law and the penal law, in relation to
temporary release eligibility for judicially ordered comprehensive
alcohol and substance abuse treatment

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

1 Section 1. Subdivision 2 of section 851 of the correction law, as
2 amended by chapter 60 of the laws of 1994, the opening paragraph as
3 amended by chapter 320 of the laws of 2006, the closing paragraph as
4 amended by section 42 of subpart B of part C of chapter 62 of the laws
5 of 2011, is amended to read as follows:

6 2. "Eligible inmate" means: a person confined in an institution who is
7 eligible for release on parole or who will become eligible for release
8 on parole or conditional release within two years or who has completed a
9 judicially-ordered substance abuse treatment program in a state correc-
10 tional facility pursuant to subdivision six of section 60.04 of the
11 penal law. Provided, however, that a person under sentence for an
12 offense defined in paragraphs (a) and (b) of subdivision one of section
13 70.02 of the penal law, where such offense involved the use or threat-
14 ened use of a deadly weapon or dangerous instrument shall not be eligi-
15 ble to participate in a work release program until he or she is eligible
16 for release on parole or who will be eligible for release on parole or
17 conditional release within eighteen months. Provided, further, however,
18 that a person under a determinate sentence as a second felony drug
19 offender for a class B felony offense defined in article two hundred
20 twenty of the penal law, who was sentenced pursuant to section 70.70 of
21 such law, shall not be eligible to participate in a temporary release
22 program until the time served under imprisonment for his or her determi-
23 nate sentence, including any jail time credited pursuant to the
24 provisions of article seventy of the penal law, shall be at least eigh-

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

LBD04440-01-1

1 teen months. In the case of a person serving an indeterminate sentence
2 of imprisonment imposed pursuant to the penal law in effect after
3 September one, nineteen hundred sixty-seven, for the purposes of this
4 article parole eligibility shall be upon the expiration of the minimum
5 period of imprisonment fixed by the court or where the court has not
6 fixed any period, after service of the minimum period fixed by the state
7 board of parole. If an inmate is denied release on parole, such inmate
8 shall not be deemed an eligible inmate until he or she is within two
9 years of his or her next scheduled appearance before the state parole
10 board. In any case where an inmate is denied release on parole while
11 participating in a temporary release program, the department shall
12 review the status of the inmate to determine if continued placement in
13 the program is appropriate. No person convicted of any escape or
14 absconding offense defined in article two hundred five of the penal law
15 shall be eligible for temporary release. Further, no person under
16 sentence for aggravated harassment of an employee by an inmate as
17 defined in section 240.32 of the penal law for, any homicide offense
18 defined in article one hundred twenty-five of the penal law, for any sex
19 offense defined in article one hundred thirty of the penal law, or for
20 an offense defined in section 255.25, 255.26 or 255.27 of the penal law
21 shall be eligible to participate in a work release program as defined in
22 subdivision three of this section. Nor shall any person under sentence
23 for any sex offense defined in article one hundred thirty of the penal
24 law be eligible to participate in a community services program as
25 defined in subdivision five of this section. Notwithstanding the forego-
26 ing, no person who is an otherwise eligible inmate who is under sentence
27 for a crime involving: (a) infliction of serious physical injury upon
28 another as defined in the penal law or (b) any other offense involving
29 the use or threatened use of a deadly weapon may participate in a tempo-
30 rary release program without the written approval of the commissioner.
31 The commissioner shall promulgate regulations giving direction to the
32 temporary release committee at each institution in order to aid such
33 committees in carrying out this mandate.

34 The governor, by executive order, may exclude or limit the partic-
35 ipation of any class of otherwise eligible inmates from participation in
36 a temporary release program. Nothing in this paragraph shall be
37 construed to affect either the validity of any executive order previous-
38 ly issued limiting the participation of otherwise eligible inmates in
39 such program or the authority of the commissioner to impose appropriate
40 regulations limiting such participation.

41 § 2. Subdivision 2 of section 851 of the correction law, as amended by
42 chapter 447 of the laws of 1991, the opening paragraph as amended by
43 chapter 252 of the laws of 2005, and the closing paragraph as amended by
44 section 43 of subpart B of part C of chapter 62 of the laws of 2011, is
45 amended to read as follows:

46 2. "Eligible inmate" means: a person confined in an institution who is
47 eligible for release on parole or who will become eligible for release
48 on parole or conditional release within two years or who has completed a
49 judicially-ordered substance abuse treatment program in a state correc-
50 tional facility pursuant to subdivision six of section 60.04 of the
51 penal law. Provided, that a person under a determinate sentence as a
52 second felony drug offender for a class B felony offense defined in
53 article two hundred twenty of the penal law, who was sentenced pursuant
54 to section 70.70 of such law, shall not be eligible to participate in a
55 temporary release program until the time served under imprisonment for
56 his or her determinate sentence, including any jail time credited pursu-

1 ant to the provisions of article seventy of the penal law, shall be at
2 least eighteen months. In the case of a person serving an indeterminate
3 sentence of imprisonment imposed pursuant to the penal law in effect
4 after September one, nineteen hundred sixty-seven, for the purposes of
5 this article parole eligibility shall be upon the expiration of the
6 minimum period of imprisonment fixed by the court or where the court has
7 not fixed any period, after service of the minimum period fixed by the
8 state board of parole. If an inmate is denied release on parole, such
9 inmate shall not be deemed an eligible inmate until he or she is within
10 two years of his or her next scheduled appearance before the state
11 parole board. In any case where an inmate is denied release on parole
12 while participating in a temporary release program, the department shall
13 review the status of the inmate to determine if continued placement in
14 the program is appropriate. No person convicted of any escape or
15 absconding offense defined in article two hundred five of the penal law
16 shall be eligible for temporary release. Nor shall any person under
17 sentence for any sex offense defined in article one hundred thirty of
18 the penal law be eligible to participate in a community services program
19 as defined in subdivision five of this section. Notwithstanding the
20 foregoing, no person who is an otherwise eligible inmate who is under
21 sentence for a crime involving: (a) infliction of serious physical inju-
22 ry upon another as defined in the penal law, (b) a sex offense involving
23 forcible compulsion, or (c) any other offense involving the use or
24 threatened use of a deadly weapon may participate in a temporary release
25 program without the written approval of the commissioner. The commis-
26 sioner shall promulgate regulations giving direction to the temporary
27 release committee at each institution in order to aid such committees in
28 carrying out this mandate.

29 The governor, by executive order, may exclude or limit the partic-
30 ipation of any class of otherwise eligible inmates from participation in
31 a temporary release program. Nothing in this paragraph shall be
32 construed to affect either the validity of any executive order previous-
33 ly issued limiting the participation of otherwise eligible inmates in
34 such program or the authority of the commissioner to impose appropriate
35 regulations limiting such participation.

36 § 3. Subdivision 2 of section 851 of the correction law, as added by
37 chapter 472 of the laws of 1969, is amended to read as follows:

38 2. "Eligible inmate" means a person confined in an institution where a
39 work release program has been established who is eligible for release on
40 parole or who will become eligible for release on parole within one year
41 or who has completed a judicially-ordered substance abuse treatment
42 program in a state correctional facility pursuant to subdivision six of
43 section 60.04 of the penal law.

44 § 4. Subdivision 6 of section 60.04 of the penal law, as amended by
45 section 120 of subpart B of part C of chapter 62 of the laws of 2011, is
46 amended to read as follows:

47 6. Substance abuse treatment. When the court imposes a sentence of
48 imprisonment which requires a commitment to the state department of
49 corrections and community supervision upon a person who stands convicted
50 of a controlled substance or marihuana offense, the court may, upon
51 motion of the defendant in its discretion, issue an order directing that
52 the department of corrections and community supervision enroll the
53 defendant in the comprehensive alcohol and substance abuse treatment
54 program in an alcohol and substance abuse correctional annex as defined
55 in subdivision eighteen of section two of the correction law, provided
56 that the defendant will satisfy the statutory eligibility criteria for

1 participation in such program. Notwithstanding the foregoing provisions
2 of this subdivision, any defendant to be enrolled in such program pursu-
3 ant to this subdivision shall be governed by the same rules and regu-
4 lations promulgated by the department of corrections and community
5 supervision, including without limitation those rules and regulations
6 establishing requirements for completion and those rules and regulations
7 governing discipline and removal from the program. Such defendant shall
8 be deemed eligible for temporary release pursuant to subdivision two of
9 section eight hundred fifty-one of the correction law upon completion of
10 such program. No such period of court ordered corrections based drug
11 abuse treatment pursuant to this subdivision shall be required to extend
12 beyond the defendant's conditional release date.

13 § 5. This act shall take effect on the sixtieth day after it shall
14 have become a law; provided however, that the amendments to subdivision
15 2 of section 851 of the correction law made by section one of this act
16 shall be subject to the expiration and reversion of such subdivision and
17 section pursuant to subdivision (c) of section 46 of chapter 60 of the
18 laws of 1994 and section 10 of chapter 339 of the laws of 1972, as
19 amended, when upon such date the provisions of section two of this act
20 shall take effect; provided further, that the amendments to subdivision
21 2 of section 851 of the correction law made by section two of this act
22 shall expire on the same date as subdivision (c) of section 46 of chap-
23 ter 60 of the laws of 1994, section 10 of chapter 339 of the laws of
24 1972, and section 5 of chapter 554 of the laws of 1986, as amended, when
25 upon such date the provisions of section three of this act shall take
26 effect.