

STATE OF NEW YORK

3366--A

Cal. No. 124

2021-2022 Regular Sessions

IN ASSEMBLY

January 26, 2021

Introduced by M. of A. RICHARDSON, JACKSON -- read once and referred to the Committee on Correction -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 851 of the correction law, as
2 amended by section 228 of chapter 322 of the laws of 2021, is amended to
3 read as follows:

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

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

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1 of imprisonment imposed pursuant to the penal law in effect after
2 September one, nineteen hundred sixty-seven, for the purposes of this
3 article parole eligibility shall be upon the expiration of the minimum
4 period of imprisonment fixed by the court or where the court has not
5 fixed any period, after service of the minimum period fixed by the state
6 board of parole. If an incarcerated individual is denied release on
7 parole, such incarcerated individual shall not be deemed an eligible
8 incarcerated individual until he or she is within two years of his or
9 her next scheduled appearance before the state parole board. In any case
10 where an incarcerated individual is denied release on parole while
11 participating in a temporary release program, the department shall
12 review the status of the incarcerated individual to determine if contin-
13 ued placement in the program is appropriate. No person convicted of any
14 escape or absconding offense defined in article two hundred five of the
15 penal law shall be eligible for temporary release. Further, no person
16 under sentence for aggravated harassment of an employee by an incarcer-
17 ated individual as defined in section 240.32 of the penal law for, any
18 homicide offense defined in article one hundred twenty-five of the penal
19 law, for any sex offense defined in article one hundred thirty of the
20 penal law, or for an offense defined in section 255.25, 255.26 or 255.27
21 of the penal law shall be eligible to participate in a work release
22 program as defined in subdivision three of this section. Nor shall any
23 person under sentence for any sex offense defined in article one hundred
24 thirty of the penal law be eligible to participate in a community
25 services program as defined in subdivision five of this section.
26 Notwithstanding the foregoing, no person who is an otherwise eligible
27 incarcerated individual who is under sentence for a crime involving: (a)
28 infliction of serious physical injury upon another as defined in the
29 penal law or (b) any other offense involving the use or threatened use
30 of a deadly weapon may participate in a temporary release program with-
31 out the written approval of the commissioner. The commissioner shall
32 promulgate regulations giving direction to the temporary release commit-
33 tee at each institution in order to aid such committees in carrying out
34 this mandate.

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

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

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

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

11 § 3. This act shall take effect on the sixtieth day after it shall
12 have become a law; provided however, that the amendments to subdivision
13 2 of section 851 of the correction law made by section one of this act
14 shall be subject to the expiration of such subdivision and section
15 pursuant to subdivision (c) of section 46 of chapter 60 of the laws of
16 1994 and section 10 of chapter 339 of the laws of 1972, as amended.