

STATE OF NEW YORK

5817

2025-2026 Regular Sessions

IN SENATE

March 3, 2025

Introduced by Sens. SEPULVEDA, COMRIE -- read twice and ordered printed,
and when printed to be committed to the Committee on Crime Victims,
Crime and 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 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 or who has completed a judicially-ordered substance abuse treatment
8 program in a state correctional facility pursuant to subdivision six of
9 section 60.04 of the penal law. Provided, however, that a person under
10 sentence for an offense defined in paragraphs (a) and (b) of subdivision
11 one of section 70.02 of the penal law, where such offense involved the
12 use or threatened use of a deadly weapon or dangerous instrument shall
13 not be eligible to participate in a work release program until [~~he or~~
14 ~~she~~] such person is eligible for release on parole or who will be eligi-
15 ble for release on parole or conditional release within eighteen months.
16 Provided, further, however, that a person under a determinate sentence
17 as a second felony drug offender for a class B felony offense defined in
18 article two hundred twenty of the penal law, who was sentenced pursuant
19 to section 70.70 of such law, shall not be eligible to participate in a
20 temporary release program until the time served under imprisonment for
21 [~~his or her~~] such person's determinate sentence, including any jail time
22 credited pursuant to the provisions of article seventy of the penal law,
23 shall be at least eighteen months. In the case of a person serving an

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

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

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

43 § 2. Subdivision 2 of section 851 of the correction law, as amended by
44 section 228-b of chapter 322 of the laws of 2021, is amended to read as
45 follows:

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

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

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

38 § 3. Subdivision 2 of section 851 of the correction law, as added by
39 section 228-d of chapter 322 of the laws of 2021, is amended to read as
40 follows:

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

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

50 6. Substance abuse treatment. When the court imposes a sentence of
51 imprisonment which requires a commitment to the state department of
52 corrections and community supervision upon a person who stands convicted
53 of a controlled substance or marihuana offense, the court may, upon
54 motion of the defendant in its discretion, issue an order directing that
55 the department of corrections and community supervision enroll the
56 defendant in the comprehensive alcohol and substance abuse treatment

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

16 § 5. This act shall take effect on the sixtieth day after it shall
17 have become a law; provided, however, that the amendments to subdivision
18 2 of section 851 of the correction law made by section one of this act
19 shall be subject to the expiration and reversion of such subdivision and
20 section pursuant to subdivision (c) of section 46 of chapter 60 of the
21 laws of 1994 and section 10 of chapter 339 of the laws of 1972, as
22 amended, when upon such date the provisions of section two of this act
23 shall take effect; provided, further, that the amendments to subdivision
24 2 of section 851 of the correction law made by section two of this act
25 shall expire on the same date as subdivision (c) of section 46 of chap-
26 ter 60 of the laws of 1994, section 10 of chapter 339 of the laws of
27 1972, and section 5 of chapter 554 of the laws of 1986, as amended, when
28 upon such date the provisions of section three of this act shall take
29 effect.