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I N A S S E M B L Y

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Introduced by M. of A. WEINSTEIN, AUBRY, WRIGHT, MILLMAN, PAULIN, CLARK, SCHROEDER, FIELDS, JAFFEE, PERRY, CAMARA, PEOPLES-STOKES -- Multi-Sponsored by -- M. of A. BOYLAND, FARRELL, GLICK, GOTTFRIED, JEFFRIES, JOHN, LATIMER, LAVINE, LENTOL, MCENENY, NOLAN, O'DONNELL, PHEFFER, N. RIVERA, ROSENTHAL, SCARBOROUGH, WEISENBERG -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

1 Section 1. Subparagraph (ii) of paragraph (d) of subdivision 1 of
2 section 803 of the correction law, as added by section 7 of chapter 738
3 of the laws of 2004, is amended and a new subparagraph (vi) is added to
4 read as follows:
5 (ii) [Such] EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH,
6 SUCH merit time allowance shall not be available to any person serving
7 an indeterminate sentence authorized for an A-I felony offense, other
8 than an A-I felony offense defined in article two hundred twenty of the
9 penal law, or any sentence imposed for a violent felony offense as
10 defined in section 70.02 of the penal law, manslaughter in the second
11 degree, vehicular manslaughter in the second degree, vehicular
12 manslaughter in the first degree, criminally negligent homicide, an
13 offense defined in article one hundred thirty of the penal law, incest,
14 or an offense defined in article two hundred sixty-three of the penal
15 law, or aggravated harassment of an employee by an inmate.

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

A

LBD06407-11-9

1 (VI) A PERSON CONVICTED OF A HOMICIDE OFFENSE AS DEFINED IN ARTICLE
2 ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AN ASSAULT OFFENSE DEFINED IN
3 ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW, A ROBBERY OFFENSE AS
4 DEFINED BY ARTICLE ONE HUNDRED SIXTY OF THE PENAL LAW, A KIDNAPPING
5 OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW,
6 AN ARSON OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FIFTY OF THE PENAL
7 LAW, A CRIMINAL MISCHIEF OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED
8 FORTY-FIVE OF THE PENAL LAW, A BURGLARY OFFENSE AS DEFINED BY ARTICLE
9 ONE HUNDRED FORTY OF THE PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN
10 THE SECOND DEGREE AS DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION
11 265.03 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE
12 AS DEFINED BY SECTION 265.09 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM
13 IN THE SECOND DEGREE AS DEFINED BY SECTION 265.08 OF THE PENAL LAW, A
14 CONSPIRACY TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED FIVE
15 OF THE PENAL LAW, AN ATTEMPT TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE
16 ONE HUNDRED TEN OF THE PENAL LAW AND SERVING A DETERMINATE OR INDETERMI-
17 NATE SENTENCE OR SENTENCES AND WHO CAN DEMONSTRATE TO THE COMMISSIONER
18 THAT: (1) THE PERSON IS A VICTIM OF DOMESTIC VIOLENCE WHO WAS SUBJECTED
19 TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE INFLICTED BY A
20 MEMBER OF THE PERSON'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED
21 IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW OR A
22 MEMBER OF THE PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN
23 SUBDIVISION FOUR OF SECTION 120.40 OF THE PENAL LAW; AND (2) SUCH
24 OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, MAY RECEIVE
25 MERIT TIME ALLOWANCE CREDIT IN THE AMOUNT PROVIDED FOR IN SUBPARAGRAPH
26 (III) OF THIS PARAGRAPH. THE MERIT TIME ALLOWANCE ESTABLISHED PURSUANT
27 TO THIS SUBPARAGRAPH SHALL BE GRANTED IN THE SAME MANNER AS REQUIRED BY
28 SUBPARAGRAPH (IV) OF THIS PARAGRAPH.

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

48 S 2. Subparagraph (ii) of paragraph (d) of subdivision 1 of section
49 803 of the correction law, as added by section 10-a of chapter 738 of
50 the laws of 2004, is amended and a new subparagraph (vi) is added to
51 read as follows:

52 (ii) [Such] EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH,
53 SUCH merit time allowance shall not be available to any person serving
54 an indeterminate sentence authorized for an A-I felony offense, other
55 than an A-I felony offense defined in article two hundred twenty of the
56 penal law, or any sentence imposed for a violent felony offense as

1 defined in section 70.02 of the penal law, manslaughter in the second
2 degree, vehicular manslaughter in the second degree, vehicular
3 manslaughter in the first degree, criminally negligent homicide, an
4 offense defined in article one hundred thirty of the penal law, incest,
5 or an offense defined in article two hundred sixty-three of the penal
6 law, or aggravated harassment of an employee by an inmate.

7 (VI) A PERSON CONVICTED OF A HOMICIDE OFFENSE AS DEFINED IN ARTICLE
8 ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AN ASSAULT OFFENSE DEFINED IN
9 ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW, A ROBBERY OFFENSE AS
10 DEFINED BY ARTICLE ONE HUNDRED SIXTY OF THE PENAL LAW, A KIDNAPPING
11 OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW,
12 AN ARSON OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FIFTY OF THE PENAL
13 LAW, A CRIMINAL MISCHIEF OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED
14 FORTY-FIVE OF THE PENAL LAW, A BURGLARY OFFENSE AS DEFINED BY ARTICLE
15 ONE HUNDRED FORTY OF THE PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN
16 THE SECOND DEGREE AS DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION
17 265.03 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE
18 AS DEFINED BY SECTION 265.09 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM
19 IN THE SECOND DEGREE AS DEFINED BY SECTION 265.08 OF THE PENAL LAW, A
20 CONSPIRACY TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED FIVE
21 OF THE PENAL LAW, AN ATTEMPT TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE
22 ONE HUNDRED TEN OF THE PENAL LAW AND SERVING A DETERMINATE OR INDETERMI-
23 NATE SENTENCE OR SENTENCES AND WHO CAN DEMONSTRATE TO THE COMMISSIONER
24 THAT: (1) THE PERSON IS A VICTIM OF DOMESTIC VIOLENCE WHO WAS SUBJECTED
25 TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE INFLICTED BY A
26 MEMBER OF THE PERSON'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED
27 IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW OR A
28 MEMBER OF THE PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN
29 SUBDIVISION FOUR OF SECTION 120.40 OF THE PENAL LAW; AND (2) SUCH
30 OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, MAY RECEIVE
31 MERIT TIME ALLOWANCE CREDIT IN THE AMOUNT PROVIDED FOR IN SUBPARAGRAPH
32 (III) OF THIS PARAGRAPH. THE MERIT TIME ALLOWANCE ESTABLISHED PURSUANT
33 TO THIS SUBPARAGRAPH SHALL BE GRANTED IN THE SAME MANNER AS REQUIRED BY
34 SUBPARAGRAPH (IV) OF THIS PARAGRAPH.

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

54 S 3. Subdivision 3 of section 803 of the correction law, as amended by
55 chapter 3 of the laws of 1995, is amended to read as follows:

1 3. The commissioner of correctional services shall promulgate rules
2 and regulations for the granting, withholding, forfeiture, cancellation
3 and restoration of allowances authorized by this section in accordance
4 with the criteria herein specified. Such rules and regulations shall
5 include provisions designating the person or committee in each correc-
6 tional institution delegated to make discretionary determinations with
7 respect to the allowances, the books and records to be kept, and a
8 procedure for review of the institutional determinations by the commis-
9 sioner. FURTHER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY
10 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE REGARD-
11 ING THE PROMULGATION OF RULES AND REGULATIONS FOR GRANTING, WITHHOLDING,
12 FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSU-
13 ANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
14 SECTION. TO ASSIST IN THE IMPLEMENTATION OF SUBPARAGRAPH (VI) OF PARA-
15 GRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE OFFICE FOR THE
16 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
17 STAFF DELEGATED TO MAKE DETERMINATIONS REGARDING SUCH ALLOWANCES. THE
18 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE
19 FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A
20 DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE
21 CANDIDATE FOR MERIT TIME ELIGIBILITY PURSUANT TO SUBPARAGRAPH (VI) OF
22 PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, PROVIDED, HOWEVER,
23 THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION ON THE GRANT-
24 ING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME
25 ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION
26 ONE OF THIS SECTION.

27 S 4. Subdivision 3 of section 803 of the correction law, as amended by
28 chapter 126 of the laws of 1987, is amended to read as follows:

29 3. The commissioner of correctional services shall promulgate rules
30 and regulations for the granting, withholding, forfeiture, cancellation
31 and restoration of allowances authorized by this section in accordance
32 with the criteria herein specified. Such rules and regulations shall
33 include provisions designating the person or committee in each correc-
34 tional institution delegated to make discretionary determinations with
35 respect to the allowances, the books and records to be kept, and a
36 procedure for review of the institutional determinations by the commis-
37 sioner. FURTHER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY
38 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE REGARD-
39 ING THE PROMULGATION OF RULES AND REGULATIONS FOR GRANTING, WITHHOLDING,
40 FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSU-
41 ANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
42 SECTION. TO ASSIST IN THE IMPLEMENTATION OF SUBPARAGRAPH (VI) OF PARA-
43 GRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE OFFICE FOR THE
44 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
45 STAFF DELEGATED TO MAKE DETERMINATIONS REGARDING SUCH ALLOWANCES. THE
46 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE
47 FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A
48 DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE
49 CANDIDATE FOR MERIT TIME ELIGIBILITY PURSUANT TO SUBPARAGRAPH (VI) OF
50 PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, PROVIDED, HOWEVER,
51 THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION ON THE GRANT-
52 ING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME
53 ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION
54 ONE OF THIS SECTION.

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

1 S 805. Earned eligibility program. Persons committed to the custody of
2 the department under an indeterminate or determinate sentence of impris-
3 onment shall be assigned a work and treatment program as soon as prac-
4 ticable. No earlier than two months prior to the inmate's eligibility to
5 be paroled pursuant to subdivision one of section 70.40 of the penal
6 law, the commissioner shall review the inmate's institutional record to
7 determine whether he OR SHE has complied with the assigned program. If
8 the commissioner determines that the inmate has successfully partic-
9 ipated in the program he OR SHE may issue the inmate a certificate of
10 earned eligibility. Notwithstanding any other provision of law, an
11 inmate who is serving a sentence with a minimum term of not more than
12 eight years and who has been issued a certificate of earned eligibility,
13 shall be granted parole release at the expiration of his OR HER minimum
14 term or as authorized by subdivision four of section eight hundred
15 sixty-seven of this chapter unless the board of parole determines that
16 there is a reasonable probability that, if such inmate is released, he
17 OR SHE will not live and remain at liberty without violating the law and
18 that his OR HER release is not compatible with the welfare of society.
19 Any action by the commissioner pursuant to this section shall be deemed
20 a judicial function and shall not be reviewable if done in accordance
21 with law.

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

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

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

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

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

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

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

23 2-a. Notwithstanding subdivision two of this section, the term "eligi-
24 ble inmate" shall also include a person confined in an institution who
25 is eligible for release on parole or who will become eligible for
26 release on parole or conditional release within two years, and who [was
27 convicted of a homicide offense as defined in article one hundred twenty-
28 five of the penal law or an assault offense defined in article one
29 hundred twenty of the penal law, and who can demonstrate to the commis-
30 sioner that: (a) the victim of such homicide or assault was a member of
31 the inmate's immediate family as that term is defined in section 120.40
32 of the penal law or had a child in common with the inmate; (b) the
33 inmate was subjected to substantial physical, sexual or psychological
34 abuse committed by the victim of such homicide or assault; and (c) such
35 abuse was a substantial factor in causing the inmate to commit such
36 homicide or assault] IS ELIGIBLE FOR A MERIT TIME ALLOWANCE PURSUANT TO
37 SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT
38 HUNDRED THREE OF THIS CHAPTER. With respect to an inmate's claim that
39 he or she was subjected to substantial physical, sexual or psychological
40 abuse [committed by the victim] AND THAT THE OFFENSE WAS COMMITTED AS A
41 DIRECT RESULT OF SUCH ABUSE, such demonstration shall include corroborative
42 material that may include, but is not limited to, witness state-
43 ments, COURT RECORDS, PRE-SENTENCE REPORTS, social services records,
44 CITY AND STATE DEPARTMENT OF CORRECTION RECORDS, hospital records, law
45 enforcement records, DOMESTIC INCIDENT REPORTS, ORDERS OF PROTECTION and
46 a showing based in part on documentation prepared at or near the time of
47 the commission of the offense or the prosecution thereof tending to
48 support the inmate's claim, OR WHEN THERE IS VERIFICATION OF CONSULTA-
49 TION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE PROVIDER, EMPLOYEE OF
50 A COURT ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, MEMBER OF THE
51 CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE CRISIS COUNSELOR AS DEFINED IN
52 PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION FORTY-FIVE HUNDRED TEN OF
53 THE CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF
54 AN AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE. Prior to making a
55 determination under this subdivision, the commissioner is required to
56 request and take into consideration the opinion of the district attorney

1 who prosecuted the underlying [homicide or assault] offense and the
2 opinion of the sentencing court. If such opinions are received within
3 forty-five days of the request, the commissioner shall take them into
4 consideration. DURING THE FORTY-FIVE DAY WAITING PERIOD, THE INMATE MAY
5 BE PERMITTED TO CONTINUE TO GATHER ADDITIONAL CORROBORATIVE MATERIALS.
6 If such opinions are not so received, the commissioner may proceed with
7 the determination. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY
8 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE TO
9 PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THIS SUBDIVISION. TO
10 ASSIST IN THE IMPLEMENTATION OF THIS SUBDIVISION, THE OFFICE FOR THE
11 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
12 STAFF DELEGATED TO MAKE DETERMINATIONS PURSUANT TO THIS SUBDIVISION. THE
13 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE
14 FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A
15 DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE
16 CANDIDATE FOR WORK RELEASE PURSUANT TO THIS SUBDIVISION, PROVIDED,
17 HOWEVER, THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION OF
18 WHETHER TO GRANT WORK RELEASE PURSUANT TO THIS SUBDIVISION. Any action
19 by the commissioner pursuant to this subdivision shall be deemed a judi-
20 cial function and shall not be reviewable in any court.

21 S 9. The commissioner of the department of correctional services shall
22 present to the governor, the temporary president of the senate and the
23 speaker of the assembly an annual report about the granting and with-
24 holding of merit time allowance pursuant to subparagraph (vi) of para-
25 graph (d) of subdivision 1 of section 803 of the correction law and the
26 operation of the work release program as applied to inmates deemed
27 eligible pursuant to subdivision 2-a of section 851 of the correction
28 law. Such report shall include, but not be limited to, the number of
29 inmates who apply for such merit time allowance, the number of inmates
30 approved for such merit time allowance, the number of denials of appli-
31 cations for such merit time allowance, the reasons for denials of appli-
32 cations for such merit time allowance, the crime of conviction and the
33 sentence for each inmate granted such merit time allowance, the number
34 of inmates eligible for work release, the number of inmates granted work
35 release pursuant to subdivision 2-a of section 851 of the correction
36 law, the number of denials of applications for such work release, the
37 reasons for denials of applications for such work release, and the role
38 of the office for the prevention of domestic violence in assisting the
39 department of correctional services to make determinations regarding the
40 granting or withholding of such merit time allowance and the eligibility
41 for work release pursuant to subdivision 2-a of section 851 of the
42 correction law. The initial report required by this section shall be
43 presented by December 31, 2011. Thereafter, an annual report shall be
44 presented no later than December 31 of each year.

45 S 10. This act shall take effect on the one hundred eightieth day
46 after it shall have become a law and shall apply to persons in custody
47 serving an indeterminate or determinate sentence on the effective date
48 of this act as well as to persons sentenced to an indeterminate or
49 determinate sentence on or after the effective date of this act;
50 provided that the amendments to paragraph (d) of subdivision 1 of
51 section 803 of the correction law made by section one of this act shall
52 be subject to the expiration and reversion of such section pursuant to
53 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
54 date the provisions of section two of this act shall take effect;
55 provided further that the amendments to subdivision 3 of section 803 of
56 the correction law made by section three of this act shall be subject to

1 the expiration and reversion of such section pursuant to section 74 of
2 chapter 3 of the laws of 1995, as amended, when upon such date the
3 provisions of section four of this act shall take effect; and provided,
4 further, that the amendments to sections 806 and 851 of the correction
5 law made by sections seven and eight of this act shall not affect the
6 expiration or repeal of such sections and shall expire or be deemed
7 repealed therewith; and provided, further, that the amendments to
8 section 805 of the correction law made by section five of this act shall
9 be subject to the expiration and reversion of such section pursuant to
10 chapter 261 of the laws of 1987 and chapter 3 of the laws of 1995, as
11 amended, when upon such date the provisions of section six of this act
12 shall take effect.