

S T A T E O F N E W Y O R K

3438--A

2009-2010 Regular Sessions

I N S E N A T E

March 19, 2009

Introduced by Sens. MONTGOMERY, HASSELL-THOMPSON, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.
16 (VI) A PERSON CONVICTED OF A HOMICIDE OFFENSE AS DEFINED IN ARTICLE
17 ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AN ASSAULT OFFENSE DEFINED IN
18 ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW, A ROBBERY OFFENSE AS
19 DEFINED BY ARTICLE ONE HUNDRED SIXTY OF THE PENAL LAW, A KIDNAPPING
20 OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW,
21 AN ARSON OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FIFTY OF THE PENAL
22 LAW, A CRIMINAL MISCHIEF OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED
23 FORTY-FIVE OF THE PENAL LAW, A BURGLARY OFFENSE AS DEFINED BY ARTICLE
24 ONE HUNDRED FORTY OF THE PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN
25 THE SECOND DEGREE AS DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION
26 265.03 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE

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

LBD06407-12-9

1 AS DEFINED BY SECTION 265.09 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM
2 IN THE SECOND DEGREE AS DEFINED BY SECTION 265.08 OF THE PENAL LAW, A
3 CONSPIRACY TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED FIVE
4 OF THE PENAL LAW, AN ATTEMPT TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE
5 ONE HUNDRED TEN OF THE PENAL LAW AND SERVING A DETERMINATE OR INDETERMI-
6 NATE SENTENCE OR SENTENCES AND WHO CAN DEMONSTRATE TO THE COMMISSIONER
7 THAT: (1) THE PERSON IS A VICTIM OF DOMESTIC VIOLENCE WHO WAS SUBJECTED
8 TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE INFLICTED BY A
9 MEMBER OF THE PERSON'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED
10 IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW OR A
11 MEMBER OF THE PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN
12 SUBDIVISION FOUR OF SECTION 120.40 OF THE PENAL LAW; AND (2) SUCH
13 OFFENSE WAS COMMITTED AS A DIRECT RESULT OF SUCH ABUSE, MAY RECEIVE
14 MERIT TIME ALLOWANCE CREDIT IN THE AMOUNT PROVIDED FOR IN SUBPARAGRAPH
15 (III) OF THIS PARAGRAPH. THE MERIT TIME ALLOWANCE ESTABLISHED PURSUANT
16 TO THIS SUBPARAGRAPH SHALL BE GRANTED IN THE SAME MANNER AS REQUIRED BY
17 SUBPARAGRAPH (IV) OF THIS PARAGRAPH.

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

37 S 2. Subparagraph (ii) of paragraph (d) of subdivision 1 of section
38 803 of the correction law, as added by section 10-a of chapter 738 of
39 the laws of 2004, is amended and a new subparagraph (vi) is added to
40 read as follows:

41 (ii) [Such] EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH,
42 SUCH merit time allowance shall not be available to any person serving
43 an indeterminate sentence authorized for an A-I felony offense, other
44 than an A-I felony offense defined in article two hundred twenty of the
45 penal law, or any sentence imposed for a violent felony offense as
46 defined in section 70.02 of the penal law, manslaughter in the second
47 degree, vehicular manslaughter in the second degree, vehicular
48 manslaughter in the first degree, criminally negligent homicide, an
49 offense defined in article one hundred thirty of the penal law, incest,
50 or an offense defined in article two hundred sixty-three of the penal
51 law, or aggravated harassment of an employee by an inmate.

52 (VI) A PERSON CONVICTED OF A HOMICIDE OFFENSE AS DEFINED IN ARTICLE
53 ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, AN ASSAULT OFFENSE DEFINED IN
54 ARTICLE ONE HUNDRED TWENTY OF THE PENAL LAW, A ROBBERY OFFENSE AS
55 DEFINED BY ARTICLE ONE HUNDRED SIXTY OF THE PENAL LAW, A KIDNAPPING
56 OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW,

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

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

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

45 3. The commissioner of correctional services shall promulgate rules
46 and regulations for the granting, withholding, forfeiture, cancellation
47 and restoration of allowances authorized by this section in accordance
48 with the criteria herein specified. Such rules and regulations shall
49 include provisions designating the person or committee in each correc-
50 tional institution delegated to make discretionary determinations with
51 respect to the allowances, the books and records to be kept, and a
52 procedure for review of the institutional determinations by the commis-
53 sioner. FURTHER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY
54 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE REGARD-
55 ING THE PROMULGATION OF RULES AND REGULATIONS FOR GRANTING, WITHHOLDING,
56 FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSU-

1 ANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
2 SECTION. TO ASSIST IN THE IMPLEMENTATION OF SUBPARAGRAPH (VI) OF PARA-
3 GRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE OFFICE FOR THE
4 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
5 STAFF DELEGATED TO MAKE DETERMINATIONS REGARDING SUCH ALLOWANCES. THE
6 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE
7 FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A
8 DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE
9 CANDIDATE FOR MERIT TIME ELIGIBILITY PURSUANT TO SUBPARAGRAPH (VI) OF
10 PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, PROVIDED, HOWEVER,
11 THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION ON THE GRANT-
12 ING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME
13 ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION
14 ONE OF THIS SECTION.

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

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

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

45 S 805. Earned eligibility program. Persons committed to the custody of
46 the department under an indeterminate or determinate sentence of impris-
47 onment shall be assigned a work and treatment program as soon as prac-
48 ticable. No earlier than two months prior to the inmate's eligibility to
49 be paroled pursuant to subdivision one of section 70.40 of the penal
50 law, the commissioner shall review the inmate's institutional record to
51 determine whether he OR SHE has complied with the assigned program. If
52 the commissioner determines that the inmate has successfully partic-
53 ipated in the program he OR SHE may issue the inmate a certificate of
54 earned eligibility. Notwithstanding any other provision of law, an
55 inmate who is serving a sentence with a minimum term of not more than
56 eight years and who has been issued a certificate of earned eligibility,

1 shall be granted parole release at the expiration of his OR HER minimum
2 term or as authorized by subdivision four of section eight hundred
3 sixty-seven of this chapter unless the board of parole determines that
4 there is a reasonable probability that, if such inmate is released, he
5 OR SHE will not live and remain at liberty without violating the law and
6 that his OR HER release is not compatible with the welfare of society.
7 Any action by the commissioner pursuant to this section shall be deemed
8 a judicial function and shall not be reviewable if done in accordance
9 with law.

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

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

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

44 NOTWITHSTANDING THE OPENING PARAGRAPH OF THIS SECTION, A PERSON WHO IS
45 ELIGIBLE FOR MERIT TIME UNDER SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF
46 SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THIS ARTICLE WHO HAS
47 BEEN ISSUED A CERTIFICATE OF EARNED ELIGIBILITY AND IS SERVING A
48 SENTENCE WITH A MINIMUM TERM OF MORE THAN SIX YEARS SHALL BE GRANTED
49 PAROLE RELEASE AT THE EXPIRATION OF HIS OR HER MINIMUM TERM UNLESS THE
50 BOARD OF PAROLE DETERMINES THAT THERE IS A REASONABLE PROBABILITY THAT,
51 IF SUCH PERSON IS RELEASED, HE OR SHE WOULD NOT LIVE AND REMAIN AT
52 LIBERTY WITHOUT VIOLATING THE LAW AND THAT HIS OR HER RELEASE IS NOT
53 COMPATIBLE WITH THE WELFARE OF SOCIETY. ANY ACTION BY THE COMMISSIONER
54 PURSUANT TO THIS SECTION SHALL BE DEEMED A JUDICIAL FUNCTION AND SHALL
55 NOT BE REVIEWABLE IF DONE IN ACCORDANCE WITH THE LAW.

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

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

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

11 2-a. Notwithstanding subdivision two of this section, the term "eligi-
12 ble inmate" shall also include a person confined in an institution who
13 is eligible for release on parole or who will become eligible for
14 release on parole or conditional release within two years, and who [was
15 convicted of a homicide offense as defined in article one hundred twen-
16 ty-five of the penal law or an assault offense defined in article one
17 hundred twenty of the penal law, and who can demonstrate to the commis-
18 sioner that: (a) the victim of such homicide or assault was a member of
19 the inmate's immediate family as that term is defined in section 120.40
20 of the penal law or had a child in common with the inmate; (b) the
21 inmate was subjected to substantial physical, sexual or psychological
22 abuse committed by the victim of such homicide or assault; and (c) such
23 abuse was a substantial factor in causing the inmate to commit such
24 homicide or assault] IS ELIGIBLE FOR A MERIT TIME ALLOWANCE PURSUANT TO
25 SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT
26 HUNDRED THREE OF THIS CHAPTER. With respect to an inmate's claim that
27 he or she was subjected to substantial physical, sexual or psychological
28 abuse [committed by the victim] AND THAT THE OFFENSE WAS COMMITTED AS A
29 DIRECT RESULT OF SUCH ABUSE, such demonstration shall include corroborative
30 material that may include, but is not limited to, witness state-
31 ments, COURT RECORDS, PRE-SENTENCE REPORTS, social services records,
32 CITY AND STATE DEPARTMENT OF CORRECTION RECORDS, hospital records, law
33 enforcement records, DOMESTIC INCIDENT REPORTS, ORDERS OF PROTECTION and
34 a showing based in part on documentation prepared at or near the time of
35 the commission of the offense or the prosecution thereof tending to
36 support the inmate's claim, OR WHEN THERE IS VERIFICATION OF CONSULTA-
37 TION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE PROVIDER, EMPLOYEE OF
38 A COURT ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, MEMBER OF THE
39 CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE CRISIS COUNSELOR AS DEFINED IN
40 PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION FORTY-FIVE HUNDRED TEN OF
41 THE CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF
42 AN AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE. Prior to making a
43 determination under this subdivision, the commissioner is required to
44 request and take into consideration the opinion of the district attorney
45 who prosecuted the underlying [homicide or assault] offense and the
46 opinion of the sentencing court. If such opinions are received within
47 forty-five days of the request, the commissioner shall take them into
48 consideration. DURING THE FORTY-FIVE DAY WAITING PERIOD, THE INMATE MAY
49 BE PERMITTED TO CONTINUE TO GATHER ADDITIONAL CORROBORATIVE MATERIALS.
50 If such opinions are not so received, the commissioner may proceed with
51 the determination. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY
52 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE TO
53 PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THIS SUBDIVISION. TO
54 ASSIST IN THE IMPLEMENTATION OF THIS SUBDIVISION, THE OFFICE FOR THE
55 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
56 STAFF DELEGATED TO MAKE DETERMINATIONS PURSUANT TO THIS SUBDIVISION. THE

1 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE
2 FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A
3 DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE
4 CANDIDATE FOR WORK RELEASE PURSUANT TO THIS SUBDIVISION, PROVIDED,
5 HOWEVER, THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION OF
6 WHETHER TO GRANT WORK RELEASE PURSUANT TO THIS SUBDIVISION. Any action
7 by the commissioner pursuant to this subdivision shall be deemed a judi-
8 cial function and shall not be reviewable in any court.

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

33 S 10. This act shall take effect on the one hundred eightieth day
34 after it shall have become a law and shall apply to persons in custody
35 serving an indeterminate or determinate sentence on the effective date
36 of this act as well as to persons sentenced to an indeterminate or
37 determinate sentence on or after the effective date of this act;
38 provided that the amendments to paragraph (d) of subdivision 1 of
39 section 803 of the correction law made by section one of this act shall
40 be subject to the expiration and reversion of such section pursuant to
41 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
42 date the provisions of section two of this act shall take effect;
43 provided further that the amendments to subdivision 3 of section 803 of
44 the correction law made by section three of this act shall be subject to
45 the expiration and reversion of such section pursuant to section 74 of
46 chapter 3 of the laws of 1995, as amended, when upon such date the
47 provisions of section four of this act shall take effect; and provided,
48 further, that the amendments to sections 806 and 851 of the correction
49 law made by sections seven and eight of this act shall not affect the
50 expiration or repeal of such sections and shall expire or be deemed
51 repealed therewith; and provided, further, that the amendments to
52 section 805 of the correction law made by section five of this act shall
53 be subject to the expiration and reversion of such section pursuant to
54 chapter 261 of the laws of 1987 and chapter 3 of the laws of 1995, as
55 amended, when upon such date the provisions of section six of this act
56 shall take effect.