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

3672

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. KOON -- Multi-Sponsored by -- M. of A. ALFANO, BARRA -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the penal law, in relation to barring sex offenders from community service and temporary release programs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph of subdivision 2 of section 851 of the correction law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

"Eligible inmate" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, however, that a person under sentence for an offense defined in paragraphs (a) and (b) of subdivision one of section 70.02 of the penal law, where such offense involved the use or threatened use of a deadly weapon or dangerous instrument shall not be eligible to participate in a work release program until he or she is eligible for release on parole or who will be eligible for release on parole or conditional release within eighteen months. Provided, further, however, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court

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

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or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. If an inmate is denied release on parole, such inmate shall not be deemed an eligible inmate until he or she is within two years of his or her next scheduled appearance before the state parole board. In any case where an inmate is denied release on parole while participating in a temporary release program, the department shall review the status of the inmate to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Further, no person under sentence for aggravated harassment of an employee by an inmate as defined in section 240.32 of the penal law for, any homicide offense defined in article one hundred twenty-five of the penal law, for any sex offense defined in article one hundred thirty of the penal law, or for an offense defined in section 255.25, 255.26 or 255.27 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law OR SEXUAL PERFORMANCE BY A CHILD OFFENSES DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the foregoing, no person who is an otherwise eligible inmate who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law or (b) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

S 2. The opening paragraph of subdivision 2 of section 851 of the correction law, as amended by chapter 252 of the laws of 2005, is amended to read as follows:

"Eligible inmate" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. If an inmate is denied release on parole, such inmate shall not be deemed an eligible inmate until he or she is within two years of his or her next scheduled appearance before the state parole board. In any case where an inmate is denied release on parole while participating in a temporary release program, the department shall review the status of the inmate to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in

article two hundred five of the penal law shall be eligible for temporary release. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law OR SEXUAL PERFORMANCE BY A CHILD OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the foregoing, no person who is an otherwise eligible inmate who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law, (b) a sex offense involving forcible compulsion, or (c) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

S 3. Paragraph (h) of subdivision 2 of section 65.10 of the penal law, as amended by chapter 508 of the laws of 2001, is amended to read as follows:

(h) Perform services for a public or not-for-profit corporation, association, institution or agency, including but not limited to services for the division of substance abuse services, services in an appropriate community program for removal of graffiti from public or private property, including any property damaged in the underlying offense, or services for the maintenance and repair of real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains. Provided however, that the performance of any such services shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout. The court may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after such services have been completed. Such sentence may only be imposed upon conviction of a misdemeanor, violation, or class D or class E felony, or a youthful offender finding replacing any such conviction, where the defendant has consented to the amount and conditions of such service. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUCH SENTENCE MAY NOT BE IMPOSED UPON ANY PERSON CONVICTED OF ANY SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER, ANY SEXUAL PERFORMANCE BY A CHILD OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THIS CHAPTER OR AN OFFENSE DEFINED IN SECTION 255.25 OF THIS CHAPTER;

S 4. Section 870 of the correction law, as amended by chapter 71 of the laws of 1976, is amended to read as follows:

S 870. Establishment of program. The sheriff, upon approval of the legislative body of the county, may establish a work release program pursuant to which prisoners, sentenced to and confined in any county jail under his jurisdiction, may be granted the privilege of leaving confinement for the purpose of working at gainful employment, participating in a privately or publicly sponsored program of vocational training, with or without compensation, or attending an educational institution. The work release program may also include the release from confinement during necessary and reasonable hours for the purpose of caring for the prisoner's family. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PERSON WHO HAS BEEN CONVICTED OF ANY SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, ANY SEXUAL PERFORMANCE BY A

CHILD OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW OR AN OFFENSE DEFINED IN SECTION 255.25 OF THE PENAL LAW SHALL BE ELIGIBLE TO PARTICIPATE IN A WORK RELEASE PROGRAM AS DEFINED IN THIS SECTION.

S 5. This act shall take effect immediately, provided, however, that the amendments to the opening paragraph of subdivision 2 of section 851 of the correction law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 46 of chapter 60 of the laws of 1994, as amended when upon such date, the provisions of section two of this act shall take effect.