

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

3438--B

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. MONTGOMERY, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, SCHNEIDERMAN, SERRANO, VOLKER -- 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 -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- 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

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

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1 OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED THIRTY-FIVE OF THE PENAL LAW,
2 AN ARSON OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FIFTY OF THE PENAL
3 LAW, A BURGLARY OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FORTY OF THE
4 PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AS
5 DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION 265.03 OF THE PENAL
6 LAW, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE AS DEFINED BY SECTION
7 265.09 OF THE PENAL LAW, CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE
8 AS DEFINED BY SECTION 265.08 OF THE PENAL LAW, A CONSPIRACY TO COMMIT
9 SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED FIVE OF THE PENAL LAW, AN
10 ATTEMPT TO COMMIT SUCH CRIMES AS DEFINED IN ARTICLE ONE HUNDRED TEN OF
11 THE PENAL LAW AND SERVING A DETERMINATE OR INDETERMINATE SENTENCE OR
12 SENTENCES AND WHO CAN DEMONSTRATE TO THE COMMISSIONER THAT: (1) THE
13 PERSON IS A VICTIM OF DOMESTIC VIOLENCE WHO WAS SUBJECTED TO SUBSTANTIAL
14 PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE INFLICTED BY A MEMBER OF THE
15 PERSON'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION
16 ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW OR A MEMBER OF THE
17 PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN SUBDIVISION FOUR OF
18 SECTION 120.40 OF THE PENAL LAW; AND (2) SUCH OFFENSE WAS COMMITTED AS A
19 DIRECT RESULT OF SUCH ABUSE, MAY RECEIVE MERIT TIME ALLOWANCE CREDIT IN
20 THE AMOUNT PROVIDED FOR IN SUBPARAGRAPH (III) OF THIS PARAGRAPH. THE
21 MERIT TIME ALLOWANCE ESTABLISHED PURSUANT TO THIS SUBPARAGRAPH SHALL BE
22 GRANTED IN THE SAME MANNER AS REQUIRED BY SUBPARAGRAPH (IV) OF THIS
23 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 2. Subparagraph (ii) of paragraph (d) of subdivision 1 of section
44 803 of the correction law, as added by section 10-a of chapter 738 of
45 the laws of 2004, is amended and a new subparagraph (vi) is added to
46 read as follows:

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

1 or an offense defined in article two hundred sixty-three of the penal
2 law, or aggravated harassment of an employee by an inmate.

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

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

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

51 3. The commissioner of correctional services shall promulgate rules
52 and regulations for the granting, withholding, forfeiture, cancellation
53 and restoration of allowances authorized by this section in accordance
54 with the criteria herein specified. Such rules and regulations shall
55 include provisions designating the person or committee in each correc-
56 tional institution delegated to make discretionary determinations with

1 respect to the allowances, the books and records to be kept, and a
2 procedure for review of the institutional determinations by the commis-
3 sioner. FURTHER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY
4 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE REGARD-
5 ING THE PROMULGATION OF RULES AND REGULATIONS FOR GRANTING, WITHHOLDING,
6 FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME ALLOWANCES PURSU-
7 ANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
8 SECTION. TO ASSIST IN THE IMPLEMENTATION OF SUBPARAGRAPH (VI) OF PARA-
9 GRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE OFFICE FOR THE
10 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
11 STAFF DELEGATED TO MAKE DETERMINATIONS REGARDING SUCH ALLOWANCES. THE
12 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY ALSO REQUEST ASSISTANCE
13 FROM THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE IN MAKING A
14 DETERMINATION ABOUT WHETHER AN INDIVIDUAL INMATE IS AN APPROPRIATE
15 CANDIDATE FOR MERIT TIME ELIGIBILITY PURSUANT TO SUBPARAGRAPH (VI) OF
16 PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, PROVIDED, HOWEVER,
17 THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION ON THE GRANT-
18 ING, WITHHOLDING, FORFEITURE, CANCELLATION AND RESTORATION OF MERIT TIME
19 ALLOWANCES PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF SUBDIVISION
20 ONE OF THIS SECTION.

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

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

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

51 S 805. Earned eligibility program. Persons committed to the custody of
52 the department under an indeterminate or determinate sentence of impri-
53 sonment shall be assigned a work and treatment program as soon as prac-
54 ticable. No earlier than two months prior to the inmate's eligibility to
55 be paroled pursuant to subdivision one of section 70.40 of the penal
56 law, the commissioner shall review the inmate's institutional record to

1 determine whether he OR SHE has complied with the assigned program. If
2 the commissioner determines that the inmate has successfully partic-
3 ipated in the program he OR SHE may issue the inmate a certificate of
4 earned eligibility. Notwithstanding any other provision of law, an
5 inmate who is serving a sentence with a minimum term of not more than
6 eight years and who has been issued a certificate of earned eligibility,
7 shall be granted parole release at the expiration of his OR HER minimum
8 term or as authorized by subdivision four of section eight hundred
9 sixty-seven of this chapter unless the board of parole determines that
10 there is a reasonable probability that, if such inmate is released, he
11 OR SHE will not live and remain at liberty without violating the law and
12 that his OR HER release is not compatible with the welfare of society.
13 Any action by the commissioner pursuant to this section shall be deemed
14 a judicial function and shall not be reviewable if done in accordance
15 with law.

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

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

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

50 NOTWITHSTANDING THE OPENING PARAGRAPH OF THIS SECTION, A PERSON WHO IS
51 ELIGIBLE FOR MERIT TIME UNDER SUBPARAGRAPH (VI) OF PARAGRAPH (D) OF
52 SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THIS ARTICLE WHO HAS
53 BEEN ISSUED A CERTIFICATE OF EARNED ELIGIBILITY AND IS SERVING A
54 SENTENCE WITH A MINIMUM TERM OF MORE THAN SIX YEARS SHALL BE GRANTED
55 PAROLE RELEASE AT THE EXPIRATION OF HIS OR HER MINIMUM TERM UNLESS THE
56 BOARD OF PAROLE DETERMINES THAT THERE IS A REASONABLE PROBABILITY THAT,

1 IF SUCH PERSON IS RELEASED, HE OR SHE WOULD NOT LIVE AND REMAIN AT
2 LIBERTY WITHOUT VIOLATING THE LAW AND THAT HIS OR HER RELEASE IS NOT
3 COMPATIBLE WITH THE WELFARE OF SOCIETY. ANY ACTION BY THE COMMISSIONER
4 PURSUANT TO THIS SECTION SHALL BE DEEMED A JUDICIAL FUNCTION AND SHALL
5 NOT BE REVIEWABLE IF DONE IN ACCORDANCE WITH THE LAW.

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

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

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

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

1 CONSULT WITH THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE TO
2 PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THIS SUBDIVISION. TO
3 ASSIST IN THE IMPLEMENTATION OF THIS SUBDIVISION, THE OFFICE FOR THE
4 PREVENTION OF DOMESTIC VIOLENCE SHALL PROVIDE TRAINING TO DEPARTMENT
5 STAFF DELEGATED TO MAKE DETERMINATIONS PURSUANT TO THIS SUBDIVISION. 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 WORK RELEASE PURSUANT TO THIS SUBDIVISION, PROVIDED,
10 HOWEVER, THAT THE COMMISSIONER SHALL MAKE THE FINAL DETERMINATION OF
11 WHETHER TO GRANT WORK RELEASE PURSUANT TO THIS SUBDIVISION. Any action
12 by the commissioner pursuant to this subdivision shall be deemed a judi-
13 cial function and shall not be reviewable in any court.

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

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

1 section 805 of the correction law made by section five of this act shall
2 be subject to the expiration and reversion of such section pursuant to
3 chapter 261 of the laws of 1987 and chapter 3 of the laws of 1995, as
4 amended, when upon such date the provisions of section six of this act
5 shall take effect.