

8961

I N A S S E M B L Y

January 10, 2012

Introduced by M. of A. AUBRY -- read once and referred to the Committee
on Correction

AN ACT to amend the correction law, in relation to expanding prison work
release program eligibility and participation

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 chapter 60 of the laws of 1994, the opening paragraph as
3 amended by chapter 320 of the laws of 2006, the closing paragraph as
4 amended by section 42 of subpart B of part C of chapter 62 of the laws
5 of 2011, is amended to read as follows:
6 2. "Eligible inmate" means: a person confined in an institution who is
7 eligible for release on parole or who will become eligible for release
8 on parole or conditional release within [two] THREE years. Provided,
9 however, that a person under sentence for an offense defined in para-
10 graphs (a) and (b) of subdivision one of section 70.02 of the penal law,
11 where such offense involved the use or threatened use of a deadly weapon
12 or dangerous instrument shall not be eligible to participate in a work
13 release program until he or she is eligible for release on parole or who
14 will be eligible for release on parole or conditional release within
15 [eighteen] THIRTY months. Provided, further, however, that a person
16 under a determinate sentence as a second felony drug offender for a
17 class B felony offense defined in article two hundred twenty of the
18 penal law, who was sentenced pursuant to section 70.70 of such law,
19 shall not be eligible to participate in a temporary release program
20 until the time served under imprisonment for his or her determinate
21 sentence, including any jail time credited pursuant to the provisions of
22 article seventy of the penal law, shall be at least eighteen months. In
23 the case of a person serving an indeterminate sentence of imprisonment
24 imposed pursuant to the penal law in effect after September one, nine-
25 teen hundred sixty-seven, for the purposes of this article parole eligi-
26 bility shall be upon the expiration of the minimum period of imprison-
27 ment fixed by the court or where the court has not fixed any period,
28 after service of the minimum period fixed by the state board of parole.

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

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1 [If an inmate is denied release on parole, such inmate shall not be
2 deemed an eligible inmate until he or she is within two years of his or
3 her next scheduled appearance before the state parole board.] In any
4 case where an inmate is denied release on parole while participating in
5 a temporary release program, the department shall review the status of
6 the inmate to determine if continued placement in the program is appro-
7 priate. No person convicted of any escape or absconding offense defined
8 in article two hundred five of the penal law shall be eligible for
9 temporary release. Further, no person under sentence for aggravated
10 harassment of an employee by an inmate as defined in section 240.32 of
11 the penal law for, any homicide offense defined in article one hundred
12 twenty-five of the penal law, for any sex offense defined in article one
13 hundred thirty of the penal law, FOR AN ACT OF TERRORISM AS DEFINED IN
14 ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, FOR AN OFFENSE INVOLVING
15 THE SEXUAL PERFORMANCE OF A CHILD AS DEFINED IN ARTICLE TWO HUNDRED
16 SIXTY-THREE OF THE PENAL LAW, or for an offense defined in section
17 255.25, 255.26 or 255.27 of the penal law shall be eligible to partic-
18 ipate in a work release program as defined in subdivision three of this
19 section. Nor shall any person under sentence for any sex offense defined
20 in article one hundred thirty of the penal law be eligible to partic-
21 ipate in a community services program as defined in subdivision five of
22 this section. [Notwithstanding the foregoing, no person who is an other-
23 wise eligible inmate who is under sentence for a crime involving: (a)
24 infliction of serious physical injury upon another as defined in the
25 penal law or (b) any other offense involving the use or threatened use
26 of a deadly weapon may participate in a temporary release program with-
27 out the written approval of the commissioner.] The commissioner shall
28 promulgate regulations giving direction to the temporary release commit-
29 tee at each institution in order to aid such committees in [carrying out
30 this mandate] DETERMINING WHICH INMATES ARE ELIGIBLE AND APPROPRIATE TO
31 PARTICIPATE IN THE TEMPORARY RELEASE PROGRAMS.

32 The governor[, by executive order,] may NOT ISSUE OR ENFORCE ANY EXEC-
33 UTIVE ORDER TO exclude or limit the participation of any class of
34 [otherwise] eligible inmates from participation in a temporary release
35 program. Nothing in this paragraph shall be construed to affect [either
36 the validity of any executive order previously issued limiting the
37 participation of otherwise eligible inmates in such program or] the
38 authority of the commissioner OF THE DEPARTMENT OF CORRECTIONS AND
39 COMMUNITY SUPERVISION to impose appropriate regulations [limiting such
40 participation] FOR DETERMINING WHICH INMATES ARE ELIGIBLE AND APPROPRI-
41 ATE TO PARTICIPATE IN THE TEMPORARY RELEASE PROGRAMS. THE COMMISSIONER
42 SHALL PROMULGATE REGULATIONS GIVING DIRECTION TO DEPARTMENT AND TRANSI-
43 TIONAL SERVICES STAFF WITH REGARD TO DEVELOPING AND PROVIDING PROGRAM-
44 MATIC SUPPORT TO TEMPORARY RELEASE PARTICIPANTS WITH EMPHASIS ON THE
45 FIRST THREE MONTHS OF WORK RELEASE.

46 S 2. Subdivision 2 of section 851 of the correction law, as amended by
47 chapter 447 of the laws of 1991, the opening paragraph as amended by
48 chapter 252 of the laws of 2005, and the closing paragraph as amended by
49 section 43 of subpart B of part C of chapter 62 of the laws of 2011, is
50 amended to read as follows:

51 2. "Eligible inmate" means: a person confined in an institution who is
52 eligible for release on parole or who will become eligible for release
53 on parole or conditional release within [two] THREE years. Provided,
54 that a person under a determinate sentence as a second felony drug
55 offender for a class B felony offense defined in article two hundred
56 twenty of the penal law, who was sentenced pursuant to section 70.70 of

1 such law, shall not be eligible to participate in a temporary release
2 program until the time served under imprisonment for his or her determi-
3 nate sentence, including any jail time credited pursuant to the
4 provisions of article seventy of the penal law, shall be at least eigh-
5 teen months. In the case of a person serving an indeterminate sentence
6 of imprisonment imposed pursuant to the penal law in effect after
7 September one, nineteen hundred sixty-seven, for the purposes of this
8 article parole eligibility shall be upon the expiration of the minimum
9 period of imprisonment fixed by the court or where the court has not
10 fixed any period, after service of the minimum period fixed by the state
11 board of parole. [If an inmate is denied release on parole, such inmate
12 shall not be deemed an eligible inmate until he or she is within two
13 years of his or her next scheduled appearance before the state parole
14 board.] In any case where an inmate is denied release on parole while
15 participating in a temporary release program, the department shall
16 review the status of the inmate to determine if continued placement in
17 the program is appropriate. No person convicted of any escape or
18 absconding offense defined in article two hundred five of the penal law
19 shall be eligible for temporary release. FURTHER, NO PERSON UNDER
20 SENTENCE FOR AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE AS
21 DEFINED IN SECTION 240.32 OF THE PENAL LAW FOR, ANY HOMICIDE OFFENSE
22 DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, FOR ANY SEX
23 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, FOR AN
24 ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL
25 LAW, FOR AN OFFENSE INVOLVING THE SEXUAL PERFORMANCE OF A CHILD AS
26 DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, OR FOR AN
27 OFFENSE DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW
28 SHALL BE ELIGIBLE TO PARTICIPATE IN A WORK RELEASE PROGRAM AS DEFINED IN
29 SUBDIVISION THREE OF THIS SECTION. Nor shall any person under sentence
30 for any sex offense defined in article one hundred thirty of the penal
31 law be eligible to participate in a community services program as
32 defined in subdivision five of this section. [Notwithstanding the fore-
33 going, no person who is an otherwise eligible inmate who is under
34 sentence for a crime involving: (a) infliction of serious physical inju-
35 ry upon another as defined in the penal law, (b) a sex offense involving
36 forcible compulsion, or (c) any other offense involving the use or
37 threatened use of a deadly weapon may participate in a temporary release
38 program without the written approval of the commissioner.] The commis-
39 sioner shall promulgate regulations giving direction to the temporary
40 release committee at each institution in order to aid such committees in
41 [carrying out this mandate] DETERMINING WHICH INMATES ARE ELIGIBLE AND
42 APPROPRIATE TO PARTICIPATE IN THE TEMPORARY RELEASE PROGRAMS.

43 The governor[, by executive order,] may NOT ISSUE OR ENFORCE ANY EXEC-
44 UTIVE ORDER TO exclude or limit the participation of any class of
45 [otherwise] eligible inmates from participation in a temporary release
46 program. Nothing in this paragraph shall be construed to affect [either
47 the validity of any executive order previously issued limiting the
48 participation of otherwise eligible inmates in such program or] the
49 authority of the commissioner to impose appropriate regulations [limit-
50 ing such participation] FOR DETERMINING WHICH INMATES ARE ELIGIBLE AND
51 APPROPRIATE TO PARTICIPATE IN TEMPORARY RELEASE PROGRAMS. THE COMMIS-
52 SIONER SHALL PROMULGATE REGULATIONS GIVING DIRECTION TO DEPARTMENT AND
53 TRANSITIONAL SERVICES STAFF WITH REGARD TO DEVELOPING AND PROVIDING
54 PROGRAMMATIC SUPPORT TO TEMPORARY RELEASE PARTICIPANTS WITH EMPHASIS ON
55 THE FIRST THREE MONTHS OF WORK RELEASE.

1 S 3. Subdivision 2 of section 851 of the correction law, as added by
2 chapter 472 of the laws of 1969, is amended to read as follows:

3 2. "Eligible inmate" means a person confined in an institution where a
4 work release program has been established who is eligible for release on
5 parole or who will become eligible for release on parole within [one
6 year] THREE YEARS.

7 S 4. Subdivision 2-a of section 851 of the correction law, as added by
8 chapter 251 of the laws of 2002, is amended to read as follows:

9 2-a. Notwithstanding subdivision two of this section, the term "eligi-
10 ble inmate" shall also include a person confined in an institution who
11 is eligible for release on parole or who will become eligible for
12 release on parole or conditional release within [two] THREE years, and
13 who was convicted of a homicide offense as defined in article one
14 hundred twenty-five of the penal law [or an assault offense defined in
15 article one hundred twenty of the penal law,] and who can demonstrate to
16 the commissioner that: (a) the victim of such homicide or assault was a
17 member of the inmate's immediate family as that term is defined in
18 section 120.40 of the penal law or had a child in common with the
19 inmate; (b) the inmate was subjected to substantial physical, sexual or
20 psychological abuse committed by the victim of such homicide or assault;
21 and (c) such abuse was a substantial factor in causing the inmate to
22 commit such homicide or assault. With respect to an inmate's claim that
23 he or she was subjected to substantial physical, sexual or psychological
24 abuse committed by the victim, such demonstration shall include corrobo-
25 rative material that may include, but is not limited to, witness state-
26 ments, social services records, hospital records, law enforcement
27 records and a showing based in part on documentation prepared at or near
28 the time of the commission of the offense or the prosecution thereof
29 tending to support the inmate's claim. Prior to making a determination
30 under this subdivision, the commissioner is required to request and take
31 into consideration the opinion of the district attorney who prosecuted
32 the underlying homicide or assault offense and the opinion of the
33 sentencing court. If such opinions are received within forty-five days
34 of the request, the commissioner shall take them into consideration. If
35 such opinions are not so received, the commissioner may proceed with the
36 determination. Any action by the commissioner pursuant to this subdivi-
37 sion shall be deemed a judicial function and shall not be reviewable in
38 any court.

39 S 5. Subdivision 2-b of section 851 of the correction law, as added by
40 chapter 738 of the laws of 2004, is amended to read as follows:

41 2-b. When calculating in advance the date on which a person is or will
42 be eligible for release on parole or conditional release, for purposes
43 of determining eligibility for temporary release or for placement at an
44 alcohol and substance abuse treatment correctional annex, the commis-
45 sioner shall consider and include credit for all potential credits and
46 reductions including but not limited to merit time, ADDITIONAL MERIT
47 TIME and good behavior allowances. Nothing in this subdivision shall be
48 interpreted as precluding the consideration and inclusion of credit for
49 all potential credits and reductions including, but not limited to,
50 merit time, ADDITIONAL MERIT TIME and good behavior allowances when
51 calculating in advance for any other purpose the date on which a person
52 is or will be eligible for release on parole or conditional release.

53 S 6. This act shall take effect immediately, provided however, that
54 the amendments to subdivision 2 of section 851 of the correction law
55 made by section one of this act shall be subject to the expiration and
56 reversion of such subdivision and section pursuant to subdivision (c) of

1 section 46 of chapter 60 of the laws of 1994 and section 10 of chapter
2 339 of the laws of 1972, as amended, when upon such date the provisions
3 of section two of this act shall take effect; provided further, that the
4 amendments to subdivision 2 of section 851 of the correction law made by
5 section two of this act shall expire on the same date as subdivision (c)
6 of section 46 of chapter 60 of the laws of 1994, section 10 of chapter
7 339 of the laws of 1972, and section 5 of chapter 554 of the laws of
8 1986, as amended, expire, when upon such date the provisions of section
9 three of this act shall take effect; provided further that the amend-
10 ments to subdivisions 2-a and 2-b of section 851 of the correction law,
11 made by sections four and five of this act shall not affect the expira-
12 tion of such section and shall expire therewith.