

2048

2011-2012 Regular Sessions

I N   S E N A T E

January 18, 2011

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Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to eligible inmates for temporary release programs

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

1     Section 1. The opening paragraph of subdivision 2 of section 851 of  
2 the correction law, as amended by chapter 320 of the laws of 2006, is  
3 amended to read as follows:  
4     "Eligible inmate" means: a person confined in an institution who is  
5 eligible for release on parole or who will become eligible for release  
6 on parole or conditional release within two years. Provided, however,  
7 that a person under sentence for an offense defined in paragraphs (a)  
8 and (b) of subdivision one of section 70.02 of the penal law, where such  
9 offense involved the use or threatened use of a deadly weapon or danger-  
10 ous instrument shall not be eligible to participate in a work release  
11 program until he or she is eligible for release on parole or who will be  
12 eligible for release on parole or conditional release within eighteen  
13 months. Provided, further, however, that a person under a determinate  
14 sentence as a second felony drug offender for a class B felony offense  
15 defined in article two hundred twenty of the penal law, who was  
16 sentenced pursuant to section 70.70 of such law, shall not be eligible  
17 to participate in a temporary release program until the time served  
18 under imprisonment for his or her determinate sentence, including any  
19 jail time credited pursuant to the provisions of article seventy of the  
20 penal law, shall be at least eighteen months. In the case of a person  
21 serving an indeterminate sentence of imprisonment imposed pursuant to  
22 the penal law in effect after September one, nineteen hundred sixty-sev-  
23 en, for the purposes of this article parole eligibility shall be upon  
24 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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1 or where the court has not fixed any period, after service of the mini-  
2 mum period fixed by the state board of parole. If an inmate is denied  
3 release on parole, such inmate shall not be deemed an eligible inmate  
4 until he or she is within two years of his or her next scheduled appear-  
5 ance before the state parole board. In any case where an inmate is  
6 denied release on parole while participating in a temporary release  
7 program, the department shall review the status of the inmate to deter-  
8 mine if continued placement in the program is appropriate. No person  
9 convicted of any escape or absconding offense defined in article two  
10 hundred five OR BAIL JUMPING AS DEFINED IN SECTION 215.55, 215.56 OR  
11 215.57 of the penal law shall be eligible for temporary release.  
12 Further, no person under sentence for aggravated harassment of an  
13 employee by an inmate as defined in section 240.32 of the penal law for,  
14 any homicide offense defined in article one hundred twenty-five of the  
15 penal law, for any sex offense defined in article one hundred thirty of  
16 the penal law, or for an offense defined in section 255.25, 255.26 or  
17 255.27 of the penal law shall be eligible to participate in a work  
18 release program as defined in subdivision three of this section. Nor  
19 shall any person under sentence for any sex offense defined in article  
20 one hundred thirty of the penal law be eligible to participate in a  
21 community services program as defined in subdivision five of this  
22 section. Notwithstanding the foregoing, no person who is an otherwise  
23 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.

31 S 2. This act shall take effect immediately, provided, however, that  
32 the amendments to subdivision 2 of section 851 of the correction law  
33 made by section one of this act shall not affect the expiration of such  
34 subdivision and shall be deemed to expire therewith.