

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. MONTGOMERY, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, SERRANO -- 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 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 BURGLARY OFFENSE AS DEFINED BY ARTICLE ONE HUNDRED FORTY OF THE  
23    PENAL LAW, CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AS  
24    DEFINED BY SUBDIVISIONS TWO AND THREE OF SECTION 265.03 OF THE PENAL

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

LBD01519-01-1

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

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

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

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

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

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 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 impri-  
47 sonment 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 corrobora-  
30 tive 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, 2012. 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.