

5920

2011-2012 Regular Sessions

I N S E N A T E

November 7, 2011

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and  
when printed to be committed to the Committee on Rules

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-

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

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

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

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

54 2. "Eligible inmate" means: a person confined in an institution who is  
55 eligible for release on parole or who will become eligible for release  
56 on parole or conditional release within [two] THREE years. Provided,

1 that a person under a determinate sentence as a second felony drug  
2 offender for a class B felony offense defined in article two hundred  
3 twenty of the penal law, who was sentenced pursuant to section 70.70 of  
4 such law, shall not be eligible to participate in a temporary release  
5 program until the time served under imprisonment for his or her determi-  
6 nate sentence, including any jail time credited pursuant to the  
7 provisions of article seventy of the penal law, shall be at least eigh-  
8 teen months. In the case of a person serving an indeterminate sentence  
9 of imprisonment imposed pursuant to the penal law in effect after  
10 September one, nineteen hundred sixty-seven, for the purposes of this  
11 article parole eligibility shall be upon the expiration of the minimum  
12 period of imprisonment fixed by the court or where the court has not  
13 fixed any period, after service of the minimum period fixed by the state  
14 board of parole. [If an inmate is denied release on parole, such inmate  
15 shall not be deemed an eligible inmate until he or she is within two  
16 years of his or her next scheduled appearance before the state parole  
17 board.] In any case where an inmate is denied release on parole while  
18 participating in a temporary release program, the department shall  
19 review the status of the inmate to determine if continued placement in  
20 the program is appropriate. No person convicted of any escape or  
21 absconding offense defined in article two hundred five of the penal law  
22 shall be eligible for temporary release. FURTHER, NO PERSON UNDER  
23 SENTENCE FOR AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE AS  
24 DEFINED IN SECTION 240.32 OF THE PENAL LAW FOR, ANY HOMICIDE OFFENSE  
25 DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, FOR ANY SEX  
26 OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, FOR AN  
27 ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL  
28 LAW, FOR AN OFFENSE INVOLVING THE SEXUAL PERFORMANCE OF A CHILD AS  
29 DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, OR FOR AN  
30 OFFENSE DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW  
31 SHALL BE ELIGIBLE TO PARTICIPATE IN A WORK RELEASE PROGRAM AS DEFINED IN  
32 SUBDIVISION THREE OF THIS SECTION. Nor shall any person under sentence  
33 for any sex offense defined in article one hundred thirty of the penal  
34 law be eligible to participate in a community services program as  
35 defined in subdivision five of this section. [Notwithstanding the fore-  
36 going, no person who is an otherwise eligible inmate who is under  
37 sentence for a crime involving: (a) infliction of serious physical inju-  
38 ry upon another as defined in the penal law, (b) a sex offense involving  
39 forcible compulsion, or (c) any other offense involving the use or  
40 threatened use of a deadly weapon may participate in a temporary release  
41 program without the written approval of the commissioner.] The commis-  
42 sioner shall promulgate regulations giving direction to the temporary  
43 release committee at each institution in order to aid such committees in  
44 [carrying out this mandate] DETERMINING WHICH INMATES ARE ELIGIBLE AND  
45 APPROPRIATE TO PARTICIPATE IN THE TEMPORARY RELEASE PROGRAMS.

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

1 PROGRAMMATIC SUPPORT TO TEMPORARY RELEASE PARTICIPANTS WITH EMPHASIS ON  
2 THE FIRST THREE MONTHS OF WORK RELEASE.

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

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

9 S 4. 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] THREE years, and  
15 who was convicted of a homicide offense as defined in article one  
16 hundred twenty-five of the penal law [or an assault offense defined in  
17 article one hundred twenty of the penal law,] and who can demonstrate to  
18 the commissioner that: (a) the victim of such homicide or assault was a  
19 member of the inmate's immediate family as that term is defined in  
20 section 120.40 of the penal law or had a child in common with the  
21 inmate; (b) the inmate was subjected to substantial physical, sexual or  
22 psychological abuse committed by the victim of such homicide or assault;  
23 and (c) such abuse was a substantial factor in causing the inmate to  
24 commit such homicide or assault. With respect to an inmate's claim that  
25 he or she was subjected to substantial physical, sexual or psychological  
26 abuse committed by the victim, such demonstration shall include corrobo-  
27 rative material that may include, but is not limited to, witness state-  
28 ments, social services records, hospital records, law enforcement  
29 records and a showing based in part on documentation prepared at or near  
30 the time of the commission of the offense or the prosecution thereof  
31 tending to support the inmate's claim. Prior to making a determination  
32 under this subdivision, the commissioner is required to request and take  
33 into consideration the opinion of the district attorney who prosecuted  
34 the underlying homicide or assault offense and the opinion of the  
35 sentencing court. If such opinions are received within forty-five days  
36 of the request, the commissioner shall take them into consideration. If  
37 such opinions are not so received, the commissioner may proceed with the  
38 determination. Any action by the commissioner pursuant to this subdivi-  
39 sion shall be deemed a judicial function and shall not be reviewable in  
40 any court.

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

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

55 S 6. This act shall take effect immediately, provided however, that  
56 the amendments to subdivision 2 of section 851 of the correction law

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