

4875--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 12, 2013

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Introduced by M. of A. O'DONNELL, AUBRY, STEVENSON, ROBERTS, KAVANAGH --  
read once and referred to the Committee on Correction -- committee  
discharged, bill amended, ordered reprinted as amended and recommitted  
to said committee

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 years. [Provided, however,  
9     that a person under sentence for an offense defined in paragraphs (a)  
10    and (b) of subdivision one of section 70.02 of the penal law, where such  
11    offense involved the use or threatened use of a deadly weapon or danger-  
12    ous instrument shall not be eligible to participate in a work release  
13    program until he or she is eligible for release on parole or who will be  
14    eligible for release on parole or conditional release within eighteen  
15    months. Provided, further, however, that a person under a determinate  
16    sentence as a second felony drug offender for a class B felony offense  
17    defined in article two hundred twenty of the penal law, who was  
18    sentenced pursuant to section 70.70 of such law, shall not be eligible  
19    to participate in a temporary release program until the time served  
20    under imprisonment for his or her determinate sentence, including any  
21    jail time credited pursuant to the provisions of article seventy of the  
22    penal law, shall be at least eighteen months.] In the case of a person  
23    serving an indeterminate sentence of imprisonment imposed pursuant to

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

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1 the penal law in effect after September one, nineteen hundred sixty-sev-  
2 en, for the purposes of this article parole eligibility shall be upon  
3 the expiration of the minimum period of imprisonment fixed by the court  
4 or where the court has not fixed any period, after service of the mini-  
5 mum period fixed by the state board of parole. If an inmate is denied  
6 release on parole, such inmate shall not be deemed an eligible inmate  
7 until he or she is within two years of his or her next scheduled appear-  
8 ance before the state parole board. In any case where an inmate is  
9 denied release on parole while participating in a temporary release  
10 program, the department shall review the status of the inmate to deter-  
11 mine if continued placement in the program is appropriate. No person  
12 convicted of any escape or absconding offense defined in article two  
13 hundred five of the penal law shall be eligible for temporary release.  
14 [Further, no person under sentence for aggravated harassment of an  
15 employee by an inmate as defined in section 240.32 of the penal law for,  
16 any homicide offense defined in article one hundred twenty-five of the  
17 penal law, for any sex offense defined in article one hundred thirty of  
18 the penal law, or for an offense defined in section 255.25, 255.26 or  
19 255.27 of the penal law shall be eligible to participate in a work  
20 release program as defined in subdivision three of this section. Nor  
21 shall any person under sentence for any sex offense defined in article  
22 one hundred thirty of the penal law be eligible to participate in a  
23 community services program as defined in subdivision five of this  
24 section. [Notwithstanding the foregoing, no person who is an otherwise  
25 eligible inmate who is under sentence for a crime involving: (a)  
26 infliction of serious physical injury upon another as defined in the  
27 penal law or (b) any other offense involving the use or threatened use  
28 of a deadly weapon may participate in a temporary release program with-  
29 out the written approval of the commissioner.] The commissioner shall  
30 promulgate regulations giving direction to the temporary release commit-  
31 tee at each institution in order to aid such committees in carrying out  
32 this mandate.

33 [The governor, by executive order, may exclude or limit the partic-  
34 ipation of any class of otherwise eligible inmates from participation in  
35 a temporary release program. Nothing in this paragraph shall be  
36 construed to affect either the validity of any executive order previous-  
37 ly issued limiting the participation of otherwise eligible inmates in  
38 such program or the authority of the commissioner to impose appropriate  
39 regulations limiting such participation.]

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

45 2. "Eligible inmate" means: a person confined in an institution who is  
46 eligible for release on parole or who will become eligible for release  
47 on parole or conditional release within two years. [Provided, that a  
48 person under a determinate sentence as a second felony drug offender for  
49 a class B felony offense defined in article two hundred twenty of the  
50 penal law, who was sentenced pursuant to section 70.70 of such law,  
51 shall not be eligible to participate in a temporary release program  
52 until the time served under imprisonment for his or her determinate  
53 sentence, including any jail time credited pursuant to the provisions of  
54 article seventy of the penal law, shall be at least eighteen months.] In  
55 the case of a person serving an indeterminate sentence of imprisonment  
56 imposed pursuant to the penal law in effect after September one, nine-

1   teen hundred sixty-seven, for the purposes of this article parole eligi-  
2   bility shall be upon the expiration of the minimum period of imprison-  
3   ment fixed by the court or where the court has not fixed any period,  
4   after service of the minimum period fixed by the state board of parole.  
5   [If an inmate is denied release on parole, such inmate shall not be  
6   deemed an eligible inmate until he or she is within two years of his or  
7   her next scheduled appearance before the state parole board.] In any  
8   case where an inmate is denied release on parole while participating in  
9   a temporary release program, the department shall review the status of  
10  the inmate to determine if continued placement in the program is appro-  
11  priate. No person convicted of any escape or absconding offense defined  
12  in article two hundred five of the penal law shall be eligible for  
13  temporary release. [Nor shall any person under sentence for any sex  
14  offense defined in article one hundred thirty of the penal law be eligi-  
15  ble to participate in a community services program as defined in subdi-  
16  vision five of this section. Notwithstanding the foregoing, no person  
17  who is an otherwise eligible inmate who is under sentence for a crime  
18  involving: (a) infliction of serious physical injury upon another as  
19  defined in the penal law, (b) a sex offense involving forcible compul-  
20  sion, or (c) any other offense involving the use or threatened use of a  
21  deadly weapon may participate in a temporary release program without the  
22  written approval of the commissioner.] AN INMATE SHALL NOT BE ELIGIBLE  
23  FOR WORK RELEASE IF HE OR SHE IS SUBJECT TO A SENTENCE IMPOSED FOR  
24  AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, MURDER  
25  IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF THE PENAL LAW, RAPE  
26  IN THE THIRD DEGREE AS DEFINED IN SECTION 130.25 OF THE PENAL LAW, RAPE  
27  IN THE SECOND DEGREE AS DEFINED IN SECTION 130.30 OF THE PENAL LAW, RAPE  
28  IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35 OF THE PENAL LAW, CRIM-  
29  INAL SEXUAL ACT IN THE SECOND DEGREE AS DEFINED IN SECTION 130.45 OF THE  
30  PENAL LAW, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SECTION  
31  130.50 OF THE PENAL LAW, PERSISTENT SEXUAL ABUSE AS DEFINED IN SECTION  
32  130.53 OF THE PENAL LAW, SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN  
33  SECTION 130.65 OF THE PENAL LAW, AGGRAVATED SEXUAL ABUSE IN THE THIRD  
34  DEGREE AS DEFINED IN SECTION 130.66 OF THE PENAL LAW, AGGRAVATED SEXUAL  
35  ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.67 OF THE PENAL  
36  LAW, AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION  
37  130.70 OF THE PENAL LAW, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE  
38  FIRST DEGREE AS DEFINED IN SECTION 130.75 OF THE PENAL LAW, COURSE OF  
39  SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN  
40  SECTION 130.80 OF THE PENAL LAW, PREDATORY SEXUAL ASSAULT AS DEFINED IN  
41  SECTION 130.95 OF THE PENAL LAW, PREDATORY SEXUAL ASSAULT AGAINST A  
42  CHILD AS DEFINED IN SECTION 130.96 OF THE PENAL LAW, PROMOTING PROSTITU-  
43  TION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.30 OF THE PENAL LAW,  
44  PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.32  
45  OF THE PENAL LAW, COMPELLING PROSTITUTION AS DEFINED IN SECTION 230.33  
46  OF THE PENAL LAW, SEX TRAFFICKING AS DEFINED IN SECTION 230.34 OF THE  
47  PENAL LAW, INCEST IN THE FIRST OR SECOND DEGREE AS DEFINED IN ARTICLE  
48  TWO HUNDRED FIFTY-FIVE OF THE PENAL LAW, AN OFFENSE OF TERRORISM DEFINED  
49  IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, OR AN ATTEMPT OR A  
50  CONSPIRACY TO COMMIT ANY SUCH OFFENSE. The commissioner shall promulgate  
51  regulations giving direction to the temporary release committee at each  
52  institution in order to aid such committees in carrying out this  
53  mandate.

54   [The governor, by executive order, may exclude or limit the partic-  
55  ipation of any class of otherwise eligible inmates from participation in  
56  a temporary release program. Nothing in this paragraph shall be

1 construed to affect either the validity of any executive order previous-  
2 ly issued limiting the participation of otherwise eligible inmates in  
3 such program or the authority of the commissioner to impose appropriate  
4 regulations limiting such participation.]

5 S 3. Subdivision 2-a of section 851 of the correction law, as added by  
6 chapter 251 of the laws of 2002, is amended to read as follows:

7 2-a. Notwithstanding subdivision two of this section, the term "eligi-  
8 ble inmate" shall also include a person confined in an institution who  
9 is eligible for release on parole or who will become eligible for  
10 release on parole or conditional release within [two] FOUR years, and  
11 who was convicted of a homicide offense as defined in article one  
12 hundred twenty-five of the penal law or an assault offense defined in  
13 article one hundred twenty of the penal law, and who can demonstrate to  
14 the commissioner that: (a) the victim of such homicide or assault was a  
15 member of the inmate's immediate family as that term is defined in  
16 section 120.40 of the penal law or had a child in common with the  
17 inmate; (b) the inmate was subjected to substantial physical, sexual or  
18 psychological abuse committed by the victim of such homicide or assault;  
19 and (c) such abuse was a substantial factor in causing the inmate to  
20 commit such homicide or assault. With respect to an inmate's claim that  
21 he or she was subjected to substantial physical, sexual or psychological  
22 abuse committed by the victim, such demonstration shall include corrobo-  
23 rative material that may include, but is not limited to, witness state-  
24 ments, social services records, hospital records, law enforcement  
25 records and a showing based in part on documentation prepared at or near  
26 the time of the commission of the offense or the prosecution thereof  
27 tending to support the inmate's claim. Prior to making a determination  
28 under this subdivision, the commissioner is required to request and take  
29 into consideration the opinion of the district attorney who prosecuted  
30 the underlying homicide or assault offense and the opinion of the  
31 sentencing court. If such opinions are received within forty-five days  
32 of the request, the commissioner shall take them into consideration. If  
33 such opinions are not so received, the commissioner may proceed with the  
34 determination. Any action by the commissioner pursuant to this subdivi-  
35 sion shall be deemed a judicial function and shall not be reviewable in  
36 any court.

37 S 4. Subdivision 2-b of section 851 of the correction law, as added by  
38 chapter 738 of the laws of 2004, is amended to read as follows:

39 2-b. When calculating in advance the date on which a person is or will  
40 be eligible for release on parole or conditional release, for purposes  
41 of determining eligibility for temporary release or for placement at an  
42 alcohol and substance abuse treatment correctional annex, the commis-  
43 sioner shall consider and include credit for all potential credits and  
44 reductions including but not limited to merit time, ADDITIONAL MERIT  
45 TIME and good behavior allowances. Nothing in this subdivision shall be  
46 interpreted as precluding the consideration and inclusion of credit for  
47 all potential credits and reductions including, but not limited to,  
48 merit time, ADDITIONAL MERIT TIME and good behavior allowances when  
49 calculating in advance for any other purpose the date on which a person  
50 is or will be eligible for release on parole or conditional release.

51 S 5. This act shall take effect immediately, provided however, that  
52 the amendments to subdivision 2 of section 851 of the correction law  
53 made by section one of this act shall be subject to the expiration and  
54 reversion of such subdivision and section pursuant to subdivision (c) of  
55 section 46 of chapter 60 of the laws of 1994 and section 10 of chapter  
56 339 of the laws of 1972, as amended, when upon such date the provisions

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