

4875

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

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 ASSEMBLY, 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 paragraphs (a) and (b) of subdivision one of section 70.02 of the penal law,  
10    where such offense involved the use or threatened use of a deadly weapon  
11    or dangerous instrument shall not be eligible to participate in a work  
12    release program until he or she is eligible for release on parole or who  
13    will be eligible for release on parole or conditional release within  
14    [eighteen] THIRTY months. Provided, further, however, that a person  
15    under a determinate sentence as a second felony drug offender for a  
16    class B felony offense defined in article two hundred twenty of the  
17    penal law, who was sentenced pursuant to section 70.70 of such law,  
18    shall not be eligible to participate in a temporary release program  
19    until the time served under imprisonment for his or her determinate  
20    sentence, including any jail time credited pursuant to the provisions of  
21    article seventy of the penal law, shall be at least eighteen months. In  
22    the case of a person serving an indeterminate sentence of imprisonment  
23    imposed pursuant to the penal law in effect after September one, nine-  
24    teen hundred sixty-seven, for the purposes of this article parole eligi-  
25

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

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bility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. [If an inmate is denied release on parole, such inmate shall not be deemed an eligible inmate until he or she is within two years of his or her next scheduled appearance before the state parole board.] In any case where an inmate is denied release on parole while participating in a temporary release program, the department shall review the status of the inmate to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Further, no person under sentence for aggravated harassment of an employee by an inmate as defined in section 240.32 of the penal law for, any homicide offense defined in article one hundred twenty-five of the penal law, for any sex offense defined in article one hundred thirty of the penal law, FOR AN ACT OF TERRORISM AS DEFINED IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, FOR AN OFFENSE INVOLVING THE SEXUAL PERFORMANCE OF A CHILD AS DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, or for an offense defined in section 255.25, 255.26 or 255.27 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law be eligible to participate in a community services program as defined in subdivision five of this section. [Notwithstanding the foregoing, no person who is an otherwise eligible inmate who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law or (b) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner.] The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in [carrying out this mandate] DETERMINING WHICH INMATES ARE ELIGIBLE AND APPROPRIATE TO PARTICIPATE IN THE TEMPORARY RELEASE PROGRAMS.

The governor[, by executive order,] may NOT ISSUE OR ENFORCE ANY EXECUTIVE ORDER TO exclude or limit the participation of any class of [otherwise] eligible inmates from participation in a temporary release program. Nothing in this paragraph shall be construed to affect [either the validity of any executive order previously issued limiting the participation of otherwise eligible inmates in such program or] the authority of the commissioner OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION to impose appropriate regulations [limiting such participation] FOR DETERMINING WHICH INMATES ARE ELIGIBLE AND APPROPRIATE TO PARTICIPATE IN THE TEMPORARY RELEASE PROGRAMS. THE COMMISSIONER SHALL PROMULGATE REGULATIONS GIVING DIRECTION TO DEPARTMENT AND TRANSITIONAL SERVICES STAFF WITH REGARD TO DEVELOPING AND PROVIDING PROGRAMMATIC SUPPORT TO TEMPORARY RELEASE PARTICIPANTS WITH EMPHASIS ON THE FIRST THREE MONTHS OF WORK RELEASE.

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

2. "Eligible inmate" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release 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

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

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

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

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

2-a. Notwithstanding subdivision two of this section, the term "eligible inmate" shall also include a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within [two] THREE years, and who was convicted of a homicide offense as defined in article one hundred twenty-five of the penal law [or an assault offense defined in article one hundred twenty of the penal law,] and who can demonstrate to the commissioner that: (a) the victim of such homicide or assault was a member of the inmate's immediate family as that term is defined in section 120.40 of the penal law or had a child in common with the inmate; (b) the inmate was subjected to substantial physical, sexual or psychological abuse committed by the victim of such homicide or assault; and (c) such abuse was a substantial factor in causing the inmate to commit such homicide or assault. With respect to an inmate's claim that he or she was subjected to substantial physical, sexual or psychological abuse committed by the victim, such demonstration shall include corroborative material that may include, but is not limited to, witness statements, social services records, hospital records, law enforcement records and a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof tending to support the inmate's claim. Prior to making a determination under this subdivision, the commissioner is required to request and take into consideration the opinion of the district attorney who prosecuted the underlying homicide or assault offense and the opinion of the sentencing court. If such opinions are received within forty-five days of the request, the commissioner shall take them into consideration. If such opinions are not so received, the commissioner may proceed with the determination. Any action by the commissioner pursuant to this subdivision shall be deemed a judicial function and shall not be reviewable in any court.

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

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

S 6. This act shall take effect immediately, provided however, that 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.