

4875--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 12, 2013

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.