

1415

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. MONTGOMERY, PARKER, PERKINS -- 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 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 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

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

LBD04044-01-3

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

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

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

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

49 The governor[, by executive order,] may NOT ISSUE OR ENFORCE ANY EXEC-
50 UTIVE ORDER TO exclude or limit the participation of any class of
51 [otherwise] eligible inmates from participation in a temporary release
52 program. Nothing in this paragraph shall be construed to affect [either
53 the validity of any executive order previously issued limiting the
54 participation of otherwise eligible inmates in such program or] the
55 authority of the commissioner to impose appropriate regulations [limit-
56 ing such participation] FOR DETERMINING WHICH INMATES ARE ELIGIBLE AND

1 APPROPRIATE TO PARTICIPATE IN TEMPORARY RELEASE PROGRAMS. THE COMMIS-
2 SIONER SHALL PROMULGATE REGULATIONS GIVING DIRECTION TO DEPARTMENT AND
3 TRANSITIONAL SERVICES STAFF WITH REGARD TO DEVELOPING AND PROVIDING
4 PROGRAMMATIC SUPPORT TO TEMPORARY RELEASE PARTICIPANTS WITH EMPHASIS ON
5 THE FIRST THREE MONTHS OF WORK RELEASE.

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

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

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

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

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

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

1 calculating in advance for any other purpose the date on which a person
2 is or will be eligible for release on parole or conditional release.
3 S 6. This act shall take effect immediately, provided however, that
4 the amendments to subdivision 2 of section 851 of the correction law
5 made by section one of this act shall be subject to the expiration and
6 reversion of such subdivision and section pursuant to subdivision (c) of
7 section 46 of chapter 60 of the laws of 1994 and section 10 of chapter
8 339 of the laws of 1972, as amended, when upon such date the provisions
9 of section two of this act shall take effect; provided further, that the
10 amendments to subdivision 2 of section 851 of the correction law made by
11 section two of this act shall expire on the same date as subdivision (c)
12 of section 46 of chapter 60 of the laws of 1994, section 10 of chapter
13 339 of the laws of 1972, and section 5 of chapter 554 of the laws of
14 1986, as amended, expire, when upon such date the provisions of section
15 three of this act shall take effect; provided further that the amend-
16 ments to subdivisions 2-a and 2-b of section 851 of the correction law,
17 made by sections four and five of this act shall not affect the expira-
18 tion of such section and shall expire therewith.