

# STATE OF NEW YORK

4042

2017-2018 Regular Sessions

## IN ASSEMBLY

January 31, 2017

Introduced by M. of A. WEPRIN, O'DONNELL, AUBRY, 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 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  
24 the penal law in effect after September one, nineteen hundred sixty-sev-  
25 en, for the purposes of this article parole eligibility shall be upon

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

LBD05031-01-7

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

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

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

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

1 ment fixed by the court or where the court has not fixed any period,  
2 after service of the minimum period fixed by the state board of parole.

3 ~~[If an inmate is denied release on parole, such inmate shall not be  
4 deemed an eligible inmate until he or she is within two years of his or  
5 her next scheduled appearance before the state parole board.]~~ In any

6 case where an inmate is denied release on parole while participating in  
7 a temporary release program, the department shall review the status of  
8 the inmate to determine if continued placement in the program is appro-  
9 priate. No person convicted of any escape or absconding offense defined

10 in article two hundred five of the penal law shall be eligible for  
11 temporary release. ~~[Nor shall any person under sentence for any sex  
12 offense defined in article one hundred thirty of the penal law be eligi-  
13 ble to participate in a community services program as defined in subdi-  
14 vision five of this section. Notwithstanding the foregoing, no person  
15 who is an otherwise eligible inmate who is under sentence for a crime  
16 involving: (a) infliction of serious physical injury upon another as  
17 defined in the penal law, (b) a sex offense involving forcible compul-  
18 sion, or (c) any other offense involving the use or threatened use of a  
19 deadly weapon may participate in a temporary release program without the  
20 written approval of the commissioner.]~~ An inmate shall not be eligible

21 for work release if he or she is subject to a sentence imposed for  
22 aggravated murder as defined in section 125.26 of the penal law, murder  
23 in the first degree as defined in section 125.27 of the penal law, rape  
24 in the third degree as defined in section 130.25 of the penal law, rape  
25 in the second degree as defined in section 130.30 of the penal law, rape  
26 in the first degree as defined in section 130.35 of the penal law, crim-  
27 inal sexual act in the second degree as defined in section 130.45 of the  
28 penal law, criminal sexual act in the first degree as defined in section  
29 130.50 of the penal law, persistent sexual abuse as defined in section  
30 130.53 of the penal law, sexual abuse in the first degree as defined in  
31 section 130.65 of the penal law, aggravated sexual abuse in the third  
32 degree as defined in section 130.66 of the penal law, aggravated sexual  
33 abuse in the second degree as defined in section 130.67 of the penal  
34 law, aggravated sexual abuse in the first degree as defined in section  
35 130.70 of the penal law, course of sexual conduct against a child in the  
36 first degree as defined in section 130.75 of the penal law, course of  
37 sexual conduct against a child in the second degree as defined in  
38 section 130.80 of the penal law, predatory sexual assault as defined in  
39 section 130.95 of the penal law, predatory sexual assault against a  
40 child as defined in section 130.96 of the penal law, promoting prostitu-  
41 tion in the second degree as defined in section 230.30 of the penal law,  
42 promoting prostitution in the first degree as defined in section 230.32  
43 of the penal law, compelling prostitution as defined in section 230.33  
44 of the penal law, sex trafficking as defined in section 230.34 of the  
45 penal law, incest in the first or second degree as defined in article  
46 two hundred fifty-five of the penal law, an offense of terrorism defined  
47 in article four hundred ninety of the penal law, or an attempt or a  
48 conspiracy to commit any such offense. The commissioner shall promulgate  
49 regulations giving direction to the temporary release committee at each  
50 institution in order to aid such committees in carrying out this  
51 mandate.

52 ~~[The governor, by executive order, may exclude or limit the partici-  
53 pation of any class of otherwise eligible inmates from participation in  
54 a temporary release program. Nothing in this paragraph shall be  
55 construed to affect either the validity of any executive order previous-  
56 ly issued limiting the participation of otherwise eligible inmates in~~

~~1 such program or the authority of the commissioner to impose appropriate  
2 regulations limiting such participation.]~~

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

5 2-a. Notwithstanding subdivision two of this section, the term "eligi-  
6 ble inmate" shall also include a person confined in an institution who  
7 is eligible for release on parole or who will become eligible for  
8 release on parole or conditional release within [~~two~~] four years, and  
9 who was convicted of a homicide offense as defined in article one  
10 hundred twenty-five of the penal law or an assault offense defined in  
11 article one hundred twenty of the penal law, and who can demonstrate to  
12 the commissioner that: (a) the victim of such homicide or assault was a  
13 member of the inmate's immediate family as that term is defined in  
14 section 120.40 of the penal law or had a child in common with the  
15 inmate; (b) the inmate was subjected to substantial physical, sexual or  
16 psychological abuse committed by the victim of such homicide or assault;  
17 and (c) such abuse was a substantial factor in causing the inmate to  
18 commit such homicide or assault. With respect to an inmate's claim that  
19 he or she was subjected to substantial physical, sexual or psychological  
20 abuse committed by the victim, such demonstration shall include corrobo-  
21 rative material that may include, but is not limited to, witness state-  
22 ments, social services records, hospital records, law enforcement  
23 records and a showing based in part on documentation prepared at or near  
24 the time of the commission of the offense or the prosecution thereof  
25 tending to support the inmate's claim. Prior to making a determination  
26 under this subdivision, the commissioner is required to request and take  
27 into consideration the opinion of the district attorney who prosecuted  
28 the underlying homicide or assault offense and the opinion of the  
29 sentencing court. If such opinions are received within forty-five days  
30 of the request, the commissioner shall take them into consideration. If  
31 such opinions are not so received, the commissioner may proceed with the  
32 determination. Any action by the commissioner pursuant to this subdivi-  
33 sion shall be deemed a judicial function and shall not be reviewable in  
34 any court.

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

37 2-b. When calculating in advance the date on which a person is or will  
38 be eligible for release on parole or conditional release, for purposes  
39 of determining eligibility for temporary release or for placement at an  
40 alcohol and substance abuse treatment correctional annex, the commis-  
41 sioner shall consider and include credit for all potential credits and  
42 reductions including but not limited to merit time, additional merit  
43 time and good behavior allowances. Nothing in this subdivision shall be  
44 interpreted as precluding the consideration and inclusion of credit for  
45 all potential credits and reductions including, but not limited to,  
46 merit time, additional merit time and good behavior allowances when  
47 calculating in advance for any other purpose the date on which a person  
48 is or will be eligible for release on parole or conditional release.

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

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