

STATE OF NEW YORK

10907

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. RICHARDSON -- read once and referred to the
Committee on Correction

AN ACT to amend the correction law and the penal law, in relation to
temporary release eligibility for judicially ordered comprehensive
alcohol and substance abuse treatment

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 or who has completed a
9 judicially-ordered substance abuse treatment program in a state correc-
10 tional facility pursuant to subdivision six of section 60.04 of the
11 penal law. Provided, however, that a person under sentence for an
12 offense defined in paragraphs (a) and (b) of subdivision one of section
13 70.02 of the penal law, where such offense involved the use or threat-
14 ened use of a deadly weapon or dangerous instrument shall not be eligi-
15 ble to participate in a work release program until he or she is eligible
16 for release on parole or who will be eligible for release on parole or
17 conditional release within eighteen months. Provided, further, however,
18 that a person under a determinate sentence as a second felony drug
19 offender for a class B felony offense defined in article two hundred
20 twenty of the penal law, who was sentenced pursuant to section 70.70 of
21 such law, shall not be eligible to participate in a temporary release
22 program until the time served under imprisonment for his or her determi-
23 nate sentence, including any jail time credited pursuant to the
24 provisions of article seventy of the penal law, shall be at least eigh-
25 teen months. In the case of a person serving an indeterminate sentence
26 of imprisonment imposed pursuant to the penal law in effect after
27 September one, nineteen hundred sixty-seven, for the purposes of this

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

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1 article parole eligibility shall be upon the expiration of the minimum
2 period of imprisonment fixed by the court or where the court has not
3 fixed any period, after service of the minimum period fixed by the state
4 board of parole. If an inmate is denied release on parole, such inmate
5 shall not be deemed an eligible inmate until he or she is within two
6 years of his or her next scheduled appearance before the state parole
7 board. In any case where an inmate is denied release on parole while
8 participating in a temporary release program, the department shall
9 review the status of the inmate to determine if continued placement in
10 the program is appropriate. No person convicted of any escape or
11 absconding offense defined in article two hundred five of the penal law
12 shall be eligible for temporary release. Further, no person under
13 sentence for aggravated harassment of an employee by an inmate as
14 defined in section 240.32 of the penal law for, any homicide offense
15 defined in article one hundred twenty-five of the penal law, for any sex
16 offense defined in article one hundred thirty of the penal law, or for
17 an offense defined in section 255.25, 255.26 or 255.27 of the penal law
18 shall be eligible to participate in a work release program as defined in
19 subdivision three of this section. Nor shall any person under sentence
20 for any sex offense defined in article one hundred thirty of the penal
21 law be eligible to participate in a community services program as
22 defined in subdivision five of this section. Notwithstanding the forego-
23 ing, no person who is an otherwise eligible inmate who is under sentence
24 for a crime involving: (a) infliction of serious physical injury upon
25 another as defined in the penal law or (b) any other offense involving
26 the use or threatened use of a deadly weapon may participate in a tempo-
27 rary release program without the written approval of the commissioner.
28 The commissioner shall promulgate regulations giving direction to the
29 temporary release committee at each institution in order to aid such
30 committees in carrying out this mandate.

31 The governor, by executive order, may exclude or limit the partic-
32 ipation of any class of otherwise eligible inmates from participation
33 in 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 or who has completed a
46 judicially-ordered substance abuse treatment program in a state correc-
47 tional facility pursuant to subdivision six of section 60.04 of the
48 penal law. Provided, that a person under a determinate sentence as a
49 second felony drug offender for a class B felony offense defined in
50 article two hundred twenty of the penal law, who was sentenced pursuant
51 to section 70.70 of such law, shall not be eligible to participate in a
52 temporary release program until the time served under imprisonment for
53 his or her determinate sentence, including any jail time credited pursu-
54 ant to the provisions of article seventy of the penal law, shall be at
55 least eighteen months. In the case of a person serving an indeterminate
56 sentence of imprisonment imposed pursuant to the penal law in effect

1 after September one, nineteen hundred sixty-seven, for the purposes of
2 this article parole eligibility shall be upon the expiration of the
3 minimum period of imprisonment fixed by the court or where the court has
4 not fixed any period, after service of the minimum period fixed by the
5 state board of parole. If an inmate is denied release on parole, such
6 inmate shall not be deemed an eligible inmate until he or she is within
7 two years of his or her next scheduled appearance before the state
8 parole board. In any case where an inmate is denied release on parole
9 while participating in a temporary release program, the department shall
10 review the status of the inmate to determine if continued placement in
11 the program is appropriate. No person convicted of any escape or
12 absconding offense defined in article two hundred five of the penal law
13 shall be eligible for temporary release. Nor shall any person under
14 sentence for any sex offense defined in article one hundred thirty of
15 the penal law be eligible to participate in a community services program
16 as defined in subdivision five of this section. Notwithstanding the
17 foregoing, no person who is an otherwise eligible inmate who is under
18 sentence for a crime involving: (a) infliction of serious physical inju-
19 ry upon another as defined in the penal law, (b) a sex offense involving
20 forcible compulsion, or (c) any other offense involving the use or
21 threatened use of a deadly weapon may participate in a temporary release
22 program without the written approval of the commissioner. The commis-
23 sioner shall promulgate regulations giving direction to the temporary
24 release committee at each institution in order to aid such committees in
25 carrying out this mandate.

26 The governor, by executive order, may exclude or limit the partic-
27 ipation of any class of otherwise eligible inmates from participation in
28 a temporary release program. Nothing in this paragraph shall be
29 construed to affect either the validity of any executive order previous-
30 ly issued limiting the participation of otherwise eligible inmates in
31 such program or the authority of the commissioner to impose appropriate
32 regulations limiting such participation.

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

35 2. "Eligible inmate" means a person confined in an institution where a
36 work release program has been established who is eligible for release on
37 parole or who will become eligible for release on parole within one year
38 or who has completed a judicially-ordered substance abuse treatment
39 program in a state correctional facility pursuant to subdivision six of
40 section 60.04 of the penal law.

41 § 4. Subdivision 6 of section 60.04 of the penal law, as amended by
42 section 120 of subpart B of part C of chapter 62 of the laws of 2011, is
43 amended to read as follows:

44 6. Substance abuse treatment. When the court imposes a sentence of
45 imprisonment which requires a commitment to the state department of
46 corrections and community supervision upon a person who stands convicted
47 of a controlled substance or marihuana offense, the court may, upon
48 motion of the defendant in its discretion, issue an order directing that
49 the department of corrections and community supervision enroll the
50 defendant in the comprehensive alcohol and substance abuse treatment
51 program in an alcohol and substance abuse correctional annex as defined
52 in subdivision eighteen of section two of the correction law, provided
53 that the defendant will satisfy the statutory eligibility criteria for
54 participation in such program. Notwithstanding the foregoing provisions
55 of this subdivision, any defendant to be enrolled in such program pursu-
56 ant to this subdivision shall be governed by the same rules and regu-

1 lations promulgated by the department of corrections and community
2 supervision, including without limitation those rules and regulations
3 establishing requirements for completion and those rules and regulations
4 governing discipline and removal from the program. Such defendant shall
5 be deemed eligible for temporary release pursuant to subdivision two of
6 section eight hundred fifty-one of the correction law upon completion of
7 such program. No such period of court ordered corrections based drug
8 abuse treatment pursuant to this subdivision shall be required to extend
9 beyond the defendant's conditional release date.

10 § 5. This act shall take effect on the sixtieth day after it shall
11 have become a law; provided however, that the amendments to subdivision
12 2 of section 851 of the correction law made by section one of this act
13 shall be subject to the expiration and reversion of such subdivision and
14 section pursuant to subdivision (c) of section 46 of chapter 60 of the
15 laws of 1994 and section 10 of chapter 339 of the laws of 1972, as
16 amended, when upon such date the provisions of section two of this act
17 shall take effect; provided further, that the amendments to subdivision
18 2 of section 851 of the correction law made by section two of this act
19 shall expire on the same date as subdivision (c) of section 46 of chap-
20 ter 60 of the laws of 1994, section 10 of chapter 339 of the laws of
21 1972, and section 5 of chapter 554 of the laws of 1986, as amended,
22 expire when upon such date the provisions of section three of this act
23 shall take effect.