

# STATE OF NEW YORK

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1527

2019-2020 Regular Sessions

## IN ASSEMBLY

January 15, 2019

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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-

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

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

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

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

46 2. "Eligible inmate" means: a person confined in an institution who is  
47 eligible for release on parole or who will become eligible for release  
48 on parole or conditional release within two years or who has completed a  
49 judicially-ordered substance abuse treatment program in a state correc-  
50 tional facility pursuant to subdivision six of section 60.04 of the  
51 penal law. Provided, that a person under a determinate sentence as a  
52 second felony drug offender for a class B felony offense defined in  
53 article two hundred twenty of the penal law, who was sentenced pursuant  
54 to section 70.70 of such law, shall not be eligible to participate in a  
55 temporary release program until the time served under imprisonment for  
56 his or her determinate sentence, including any jail time credited pursu-

ant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility 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. 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, (b) a sex offense involving forcible compulsion, or (c) 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.

The governor, by executive order, may 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 to impose appropriate regulations limiting such participation.

§ 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 or who has completed a judicially-ordered substance abuse treatment program in a state correctional facility pursuant to subdivision six of section 60.04 of the penal law.

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

6. Substance abuse treatment. When the court imposes a sentence of imprisonment which requires a commitment to the state department of corrections and community supervision upon a person who stands convicted of a controlled substance or marihuana offense, the court may, upon motion of the defendant in its discretion, issue an order directing that the department of corrections and community supervision enroll the defendant in the comprehensive alcohol and substance abuse treatment program in an alcohol and substance abuse correctional annex as defined in subdivision eighteen of section two of the correction law, provided that the defendant will satisfy the statutory eligibility criteria for

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

13 § 5. This act shall take effect on the sixtieth day after it shall  
14 have become a law; provided however, that the amendments to subdivision  
15 2 of section 851 of the correction law made by section one of this act  
16 shall be subject to the expiration and reversion of such subdivision and  
17 section pursuant to subdivision (c) of section 46 of chapter 60 of the  
18 laws of 1994 and section 10 of chapter 339 of the laws of 1972, as  
19 amended, when upon such date the provisions of section two of this act  
20 shall take effect; provided further, that the amendments to subdivision  
21 2 of section 851 of the correction law made by section two of this act  
22 shall expire on the same date as subdivision (c) of section 46 of chap-  
23 ter 60 of the laws of 1994, section 10 of chapter 339 of the laws of  
24 1972, and section 5 of chapter 554 of the laws of 1986, as amended, when  
25 upon such date the provisions of section three of this act shall take  
26 effect.