

STATE OF NEW YORK

3961

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

Introduced by M. of A. WEPRIN, O'DONNELL, STECK -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the penal law, in relation to eligibility for shock incarceration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The section heading of section 806 of the correction law,
2 as added by section 5 of part E of chapter 62 of the laws of 2003, is
3 amended and a new subdivision 8 is added to read as follows:

4 Presumptive release program [~~for nonviolent inmates~~].

5 8. Notwithstanding any other subdivision of this section an inmate who
6 successfully completes a shock incarceration program shall be eligible
7 for presumptive release pursuant to section eight hundred sixty-seven of
8 this chapter or section 70.40 of the penal law.

9 § 2. Section 865 of the correction law, as added by chapter 261 of the
10 laws of 1987, subdivision 1 as amended by chapter 377 of the laws of
11 2010 and subdivision 2 as amended by section 2 of part L of chapter 56
12 of the laws of 2009, is amended to read as follows:

13 § 865. Definitions. As used in this article, the following terms mean:

14 1. "Eligible inmate" means a person sentenced to an indeterminate term
15 of imprisonment who will become eligible for release on parole within
16 [~~three~~] five years or sentenced to a determinate term of imprisonment
17 who will become eligible for conditional release within [~~three~~] five
18 years, who has not reached the age of [~~fifty~~] fifty-six years, who has
19 not previously been convicted of a violent felony as defined in article
20 seventy of the penal law, or a felony in any other jurisdiction which
21 includes all of the essential elements of any such violent felony, upon
22 which an indeterminate or determinate term of imprisonment was imposed
23 and who was between the ages of sixteen and [~~fifty~~] fifty-five years at
24 the time of commission of the crime upon which his or her present
25 sentence was based. Notwithstanding the foregoing, no person who is

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

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1 convicted of any of the following crimes shall be deemed eligible to
2 participate in this program: (a) a [~~violent felony offense as defined in~~
3 ~~article seventy of the penal law,~~] violent felony offense as defined in
4 paragraph (a) of subdivision one of section 70.02 of the penal law, (b)
5 an A-I felony offense, (c) any homicide offense as defined in article
6 one hundred twenty-five of the penal law, (d) any felony sex offense as
7 defined in article one hundred thirty of the penal law and (e) any
8 escape or absconding offense as defined in article two hundred five of
9 the penal law.

10 2. "Shock incarceration program" means a program pursuant to which
11 eligible inmates are selected to participate in the program and serve a
12 period of six months in a shock incarceration facility, which shall
13 provide rigorous physical activity, intensive regimentation and disci-
14 pline and rehabilitation therapy and programming. Such inmates may be
15 selected either: (i) at a reception center; or (ii) at a general
16 confinement facility when the otherwise eligible inmate then becomes
17 eligible for release on parole within [~~three~~] five years in the case of
18 an indeterminate term of imprisonment, or then becomes eligible for
19 conditional release within [~~three~~] five years in the case of a determi-
20 nate term of imprisonment.

21 § 3. Subdivision 4 of section 867 of the correction law, as amended by
22 chapter 738 of the laws of 2004, is amended to read as follows:

23 4. An inmate who has successfully completed a shock incarceration
24 program shall be eligible to receive such a certificate of earned eligi-
25 bility pursuant to section eight hundred five of this chapter. Notwith-
26 standing any other provision of law, an inmate [~~sentenced to a determi-~~
27 ~~nate~~] servng a sentence of imprisonment who has successfully completed
28 a shock incarceration program shall be eligible to receive such a
29 certificate of earned eligibility and shall be immediately eligible to
30 be conditionally released, paroled or presumptively released pursuant to
31 section 70.40 of the penal law.

32 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section
33 70.40 of the penal law, as amended by section 127-c of subpart B of part
34 C of chapter 62 of the laws of 2011, is amended to read as follows:

35 (v) Notwithstanding any other subparagraph of this paragraph, a person
36 may be paroled from the institution in which he or she is confined at
37 any time on medical parole pursuant to section two hundred fifty-nine-r
38 or section two hundred fifty-nine-s of the executive law or for deporta-
39 tion pursuant to paragraph (d) of subdivision two of section two hundred
40 fifty-nine-i of the executive law or paroled or presumptively released
41 after the successful completion of a shock incarceration program pursu-
42 ant to article twenty-six-A of the correction law.

43 § 5. This act shall take effect on the ninetieth day after it shall
44 have become a law; provided, however, that the amendments to section 806
45 of the correction law made by section one of this act shall not affect
46 the repeal of such section and shall be deemed repealed therewith; and
47 further provided, that the amendments to subparagraph (v) of paragraph
48 (a) of subdivision 1 of section 70.40 of the penal law made by section
49 four of this act shall not affect the expiration of such paragraph and
50 shall be deemed to expire therewith.