

# STATE OF NEW YORK

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806

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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Introduced by Sens. MONTGOMERY, KRUEGER -- 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 paragraphs (a) and (b) of subdivision one of section 70.02 of the penal law,  
10 where such offense involved the use or threatened use of a deadly weapon  
11 or dangerous instrument shall not be eligible to participate in a work  
12 release program until he or she is eligible for release on parole or who  
13 will be eligible for release on parole or conditional release within  
14 [~~eighteen~~] thirty months. Provided, further, however, that a person  
15 under a determinate sentence as a second felony drug offender for a  
16 class B felony offense defined in article two hundred twenty of the  
17 penal law, who was sentenced pursuant to section 70.70 of such law,  
18 shall not be eligible to participate in a temporary release program  
19 until the time served under imprisonment for his or her determinate  
20 sentence, including any jail time credited pursuant to the provisions of  
21 article seventy of the penal law, shall be at least eighteen months. In  
22 the case of a person serving an indeterminate sentence of imprisonment  
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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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 ~~inflation 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 § 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:

2. "Eligible inmate" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within ~~[two]~~ three years. Provided, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant 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. Further, no person under sentence for aggravated harassment of an employee by an inmate as defined in section 240.32 of the penal law for, any homicide offense defined in article one hundred twenty-five of the penal law, for any sex offense defined in article one hundred thirty of the penal law, for an act of terrorism as defined in article four hundred ninety of the penal law, for an offense involving the sexual performance of a child as defined in article two hundred sixty-three of the penal law, or for an offense defined in section 255.25, 255.26 or 255.27 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. 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]~~ determining which inmates are eligible and appropriate to participate in the temporary release programs.

The governor~~[, by executive order,]~~ may not issue or enforce any executive order to 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]~~ 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 § 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 § 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 corrob-  
30 orative 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 § 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 § 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.