STATE OF NEW YORK

3440

2019-2020 Regular Sessions

IN SENATE

February 7, 2019

Introduced by Sen. MYRIE -- 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 executive law and the penal law, in relation to authorizing early parole release for inmates where substance abuse was a significant contributing factor in the commission of the offense

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

Section 1. Section 259-i of the executive law is amended by adding a new subdivision 9 to read as follows:

9. Early release for certain inmates. (a) Notwithstanding any other provision of law, where an inmate's record reveals that substance abuse was a significant contributing factor in the commission of his or her offense and where such inmate has successfully completed a program of treatment within a correctional facility for alcohol or substance abuse and has not been disciplined by the department for drug, marihuana or alcohol use for a minimum period of two years prior to the application for early release pursuant to this subdivision, such inmate shall be eligible for early release to community supervision once he or she has completed one-half of his or her minimum period of incarceration, provided that he or she is not serving a sentence for an A-I felony, other than an A-I felony pursuant to article two hundred twenty of the penal law, or a violent felony offense pursuant to section 70.04 or 70.08 of the penal law. The department shall certify to the board that an inmate is eligible for early release to community supervision when such eligibility criteria are met.

(b) To determine whether substance abuse was a significant contributing factor in the commission of the offense, the board shall:

(i) rely on a finding that substance abuse was a significant contributing factor in the commission of the offense by the sentencing court;

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

LBD04515-01-9

(ii) rely on a determination by the department based on a record review once an inmate is otherwise eligible for early release pursuant to paragraph (a) of this subdivision that the inmate was abusing one or more substances at the time of the commission of the crime and that such substance abuse appears to have been a significant contributing factor in the commission of such offense; or

(iii) make a finding that substance use was a significant contributing factor in the commission of the crime when the inmate is incarcerated with a conviction for any crime in which drug or alcohol use or possession was an element.

Evidence in support of the determination that substance abuse was a significant contributing factor in the commission of the offense may include, but shall not be limited to, a court record, pre-sentence report, social services record, hospital record, sworn statement of a witness other than the inmate, local and state correctional facility records, law enforcement records, any documentation prepared at or near the time of the commission of the offense, or verification of consultation with a licensed medical or mental health professional, social worker or employee of an agency that provided substance abuse treatment or counseling to the inmate.

(c) In determining whether to release an inmate to early parole pursuant to this subdivision, the board shall apply the factors listed in paragraph (c) of subdivision two of this section and shall further consider any facts or circumstances submitted by the applicant and may take witness testimony.

§ 2. 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, make a finding that the substance abuse was a significant contributing factor in the commission of the offense and/or may 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 participation in such program. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.