

# STATE OF NEW YORK

4324

2019-2020 Regular Sessions

## IN SENATE

March 7, 2019

Introduced by Sen. SEPULVEDA -- 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 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 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 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

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

LBD04522-01-9

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

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

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

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

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

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

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

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

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

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

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

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