

# STATE OF NEW YORK

8499

## IN SENATE

June 6, 2020

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the correction law, in relation to failure to complete a program for time allowances due to circumstances beyond an individual's control

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

1 Section 1. Paragraph (a) of subdivision 1 of section 803 of the  
2 correction law, as amended by section 37 of subpart B of part C of chap-  
3 ter 62 of the laws of 2011, is amended to read as follows:

4 (a) Every person confined in an institution of the department or a  
5 facility in the department of mental hygiene serving an indeterminate or  
6 determinate sentence of imprisonment, except a person serving a sentence  
7 with a maximum term of life imprisonment, may receive time allowance  
8 against the term or maximum term of his or her sentence imposed by the  
9 court. Such allowances may be granted for good behavior and efficient  
10 and willing performance of duties assigned or progress and achievement  
11 in an assigned treatment program, and may be withheld, forfeited or  
12 canceled in whole or in part for bad behavior, violation of institu-  
13 tional rules or failure to perform properly in the duties or program  
14 assigned. Such allowances shall not be withheld if a person fails to  
15 complete a program because of circumstances beyond such person's  
16 control.

17 § 2. Paragraph (a) of subdivision 1 of section 803 of the correction  
18 law, as amended by chapter 126 of the laws of 1987 and as designated by  
19 chapter 738 of the laws of 2004, is amended to read as follows:

20 (a) Every person confined in an institution of the department or a  
21 facility in the department of mental hygiene serving an indeterminate  
22 sentence of imprisonment, except a person serving a sentence with a  
23 maximum term of life imprisonment, may receive time allowance against  
24 the maximum term or period of his or her sentence not to exceed in the  
25 aggregate one-third of the term or period imposed by the court. Such  
26 allowances may be granted for good behavior and efficient and willing  
27 performance of duties assigned or progress and achievement in an

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

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1 assigned treatment program, and may be withheld, forfeited or canceled  
2 in whole or in part for bad behavior, violation of institutional rules  
3 or failure to perform properly in the duties or program assigned. Such  
4 allowances shall not be withheld if a person fails to complete a program  
5 because of circumstances beyond such person's control.

6 § 3. Subparagraph (iv) of paragraph (d) of subdivision 1 of section  
7 803 of the correction law, as added by section 7 of chapter 738 of the  
8 laws of 2004, is amended to read as follows:

9 (iv) Such merit time allowance may be granted when an inmate success-  
10 fully participates in the work and treatment program assigned pursuant  
11 to section eight hundred five of this article and when such inmate  
12 obtains a general equivalency diploma, an alcohol and substance abuse  
13 treatment certificate, a vocational trade certificate following at least  
14 six months of vocational programming or performs at least four hundred  
15 hours of service as part of a community work crew.

16 Such allowance shall be withheld for any serious disciplinary infrac-  
17 tion or upon a judicial determination that the person, while an inmate,  
18 commenced or continued a civil action, proceeding or claim that was  
19 found to be frivolous as defined in subdivision (c) of section eight  
20 thousand three hundred three-a of the civil practice law and rules, or  
21 an order of a federal court pursuant to rule 11 of the federal rules of  
22 civil procedure imposing sanctions in an action commenced by a person,  
23 while an inmate, against a state agency, officer or employee. Such  
24 allowance shall not be withheld if a person fails to complete a program  
25 because of circumstances beyond his or her control.

26 § 4. Subparagraph (iv) of paragraph (d) of subdivision 1 of section  
27 803 of the correction law, as added by section 10-a of chapter 738 of  
28 the laws of 2004, is amended to read as follows:

29 (iv) Such merit time allowance may be granted when an inmate success-  
30 fully participates in the work and treatment program assigned pursuant  
31 to section eight hundred five of this article and when such inmate  
32 obtains a general equivalency diploma, an alcohol and substance abuse  
33 treatment certificate, a vocational trade certificate following at least  
34 six months of vocational programming or performs at least four hundred  
35 hours of service as part of a community work crew.

36 Such allowance shall be withheld for any serious disciplinary infrac-  
37 tion or upon a judicial determination that the person, while an inmate,  
38 commenced or continued a civil action, proceeding or claim that was  
39 found to be frivolous as defined in subdivision (c) of section eight  
40 thousand three hundred three-a of the civil practice law and rules, or  
41 an order of a federal court pursuant to rule 11 of the federal rules of  
42 civil procedure imposing sanctions in an action commenced by a person,  
43 while an inmate, against a state agency, officer or employee. Such  
44 allowance shall not be withheld if a person fails to complete a program  
45 because of circumstances beyond such person's control.

46 § 5. Subdivision 1 of section 804 of the correction law, as amended by  
47 chapter 145 of the laws of 1976, is amended to read as follows:

48 1. Every person confined in an institution serving a definite sentence  
49 of imprisonment may receive time allowances as discretionary reductions  
50 of the term of his or her sentence not to exceed in the aggregate one-  
51 third of the term imposed by the court. Such allowances may be granted  
52 for good behavior and efficient and willing performance of duties  
53 assigned or progress and achievement in an assigned treatment program,  
54 and may be withheld, forfeited or cancelled in whole or in part for bad  
55 behavior, violation of institutional rules or failure to perform proper-  
56 ly in the duties or program assigned. Such allowances shall not be with-

1 held, forfeited or cancelled in whole or in part for a person's failure  
2 to complete an assigned program due to circumstances beyond his or her  
3 control.

4 § 6. Section 805 of the correction law, as amended by section 4 of  
5 part E of chapter 62 of the laws of 2003, is amended to read as follows:

6 § 805. Earned eligibility program. Persons committed to the custody of  
7 the department under an indeterminate or determinate sentence of impri-  
8 sonment shall be assigned a work and treatment program as soon as prac-  
9 ticable. No earlier than two months prior to the inmate's eligibility to  
10 be paroled pursuant to subdivision one of section 70.40 of the penal  
11 law, the commissioner shall review the inmate's institutional record to  
12 determine whether he or she has complied with the assigned program.  
13 Credit for such assigned program shall not be withheld if a person fails  
14 to complete a program because of circumstances beyond such person's  
15 control. If the commissioner determines that the inmate has successfully  
16 participated in the program he or she may issue the inmate a certificate  
17 of earned eligibility. Notwithstanding any other provision of law, an  
18 inmate who is serving a sentence with a minimum term of not more than  
19 eight years and who has been issued a certificate of earned eligibility,  
20 shall be granted parole release at the expiration of his or her minimum  
21 term or as authorized by subdivision four of section eight hundred  
22 sixty-seven of this chapter unless the board of parole determines that  
23 there is a reasonable probability that, if such inmate is released, he  
24 or she will not live and remain at liberty without violating the law and  
25 that his or her release is not compatible with the welfare of society.  
26 Any action by the commissioner pursuant to this section shall be deemed  
27 a judicial function and shall not be reviewable if done in accordance  
28 with law.

29 § 7. Section 805 of the correction law, as amended by chapter 262 of  
30 the laws of 1987, is amended to read as follows:

31 § 805. Earned eligibility program. Persons committed to the custody of  
32 the department under an indeterminate sentence of imprisonment shall be  
33 assigned a work and treatment program as soon as practicable. No earlier  
34 than two months prior to the expiration of an inmate's minimum period of  
35 imprisonment, the commissioner shall review the inmate's institutional  
36 record to determine whether he or she has complied with the assigned  
37 program. Credit for such assigned program shall not be withheld if a  
38 person fails to complete a program because of circumstances beyond such  
39 person's control. If the commissioner determines that the inmate has  
40 successfully participated in the program he or she may issue the inmate  
41 a certificate of earned eligibility. Notwithstanding any other provision  
42 of law, an inmate who is serving a sentence with a minimum term of not  
43 more than six years and who has been issued a certificate of earned  
44 eligibility, shall be granted parole release at the expiration of his or  
45 her minimum term or as authorized by subdivision four of section eight  
46 hundred sixty-seven of this chapter unless the board of parole deter-  
47 mines that there is a reasonable probability that, if such inmate is  
48 released, he or she will not live and remain at liberty without violat-  
49 ing the law and that his or her release is not compatible with the  
50 welfare of society. Any action by the commissioner pursuant to this  
51 section shall be deemed a judicial function and shall not be reviewable  
52 if done in accordance with law.

53 § 8. Subdivision 5 of section 806 of the correction law, as added by  
54 section 5 of part E of chapter 62 of the laws of 2003, is amended to  
55 read as follows:

1 5. No person shall have the right to demand or require presumptive  
2 release authorized by this section. The commissioner may revoke at any  
3 time an inmate's scheduled presumptive release pursuant to this section  
4 for any disciplinary infraction committed by the inmate or for any fail-  
5 ure to continue to participate successfully in any assigned work and  
6 treatment program after the certificate of earned eligibility has been  
7 awarded, except that any such failure to continue to participate in an  
8 assigned work or treatment program shall not be grounds for revocation  
9 of presumptive release if such failure is due to circumstances beyond  
10 the incarcerated person's control. The commissioner may deny presump-  
11 tive release to any inmate whenever the commissioner determines that  
12 such release may not be consistent with the safety of the community or  
13 the welfare of the inmate. Any action by the commissioner pursuant to  
14 this section shall be deemed a judicial function and shall not be  
15 reviewable if done in accordance with law.

16 § 9. This act shall take effect immediately; provided that the amend-  
17 ments to paragraph (a) and subparagraph (iv) of paragraph (d) of subdi-  
18 vision 1 of section 803 of the correction law made by sections one and  
19 three of this act shall be subject to the expiration and reversion of  
20 such subdivision pursuant subdivision d of section 74 of chapter 3 of  
21 the laws of 1995, as amended, when upon such date the provisions of  
22 sections two and four of this act shall take effect; provided, further,  
23 that the amendments to section 805 of the correction law made by section  
24 six of this act shall be subject to the expiration and reversion of such  
25 section pursuant to subdivision d of section 74 of chapter 3 of the laws  
26 of 1995, as amended, when upon such date the provisions of section seven  
27 of this act shall take effect; and provided, further, that the amend-  
28 ments to subdivision 5 of section 806 of the correction law made by  
29 section eight of this act shall not affect the repeal of such section  
30 and shall be deemed repealed therewith.