STATE OF NEW YORK

1957--A

Cal. No. 89

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CRUZ, KELLES -- read once and referred to the Committee on Correction -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

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

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

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

(a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against

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

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the maximum term or period of his **or her** sentence not to exceed in the aggregate one-third of the term or period imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned. **Such allowances shall not be withheld if a person fails to complete a program because of circumstances beyond such person's control.**

§ 3. Subparagraph (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law, as separately amended by section 1 of chapter 242 and section 224 of chapter 322 of the laws of 2021, is amended to read as follows:

(iv) Such merit time allowance may be granted when an incarcerated individual successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such incarcerated individual obtains a general equivalency diploma, an alcohol and substance abuse treatment certificate, a vocational trade certificate following at least six months of vocational programming, at least eighteen credits in a program registered by the state education department from a degree-granting higher education institution or performs at least four hundred hours of service as part of a community work crew.

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

§ 4. Subparagraph (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law, as separately amended by section 2 of chapter 242 and section 224-a of chapter 322 of the laws of 2021, is amended to read as follows:

(iv) Such merit time allowance may be granted when an incarcerated individual successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such incarcerated individual obtains a general equivalency diploma, an alcohol and substance abuse treatment certificate, a vocational trade certificate following at least six months of vocational programming, at least eighteen credits in a program registered by the state education department from a degree-granting higher education institution or performs at least four hundred hours of service as part of a community work crew.

Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an incarcerated individual, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by a person, while an incarcerated individual, against a state

agency, officer or employee. **Such allowance shall not be withheld if a person fails to complete a program because of circumstances beyond his or her control.**

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

1. Every person confined in an institution serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of his **or her** sentence not to exceed in the aggregate one-third of the term imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned. **Such allowances shall not be withheld, forfeited or cancelled in whole or in part for a person's failure to complete an assigned program due to circumstances beyond his or her control.**

§ 6. Section 805 of the correction law, as amended by section 226 of chapter 322 of the laws of 2021, is amended to read as follows:

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

§ 7. Section 805 of the correction law, as amended by section 226-a of chapter 322 of the laws of 2021, is amended to read as follows:

§ 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the expiration of an incarcerated individual's minimum period of imprisonment, the commissioner shall review the incarcerated individual's institutional record to determine whether he or she has complied with the assigned program. **Credit for such assigned program shall not be withheld if a person fails to complete a program because of circumstances beyond such person's control.** If the commissioner determines that the incarcerated individual has successfully participated in the program he or she may issue the incarcerated indi-

vidual a certificate of earned eligibility. Notwithstanding any other provision of law, an incarcerated individual who is serving a sentence with a minimum term of not more than six years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his or her minimum term or as authorized by subdivision four of section eight hundred sixty-seven **of this chapter** unless the board of parole determines that there is a reasonable probability that, if such incarcerated individual is released, he or she will not live and remain at liberty without violating the law and that his or her release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

§ 8. Subdivision 5 of section 806 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

5. No person shall have the right to demand or require presumptive release authorized by this section. The commissioner may revoke at any time an incarcerated individual's scheduled presumptive release pursuant to this section for any disciplinary infraction committed by the incarcerated individual or for any failure to continue to participate successfully in any assigned work and treatment program after the certificate of earned eligibility has been awarded **except that any such failure to continue to participate in an assigned work or treatment program shall not be grounds for revocation of presumptive release if such failure is due to circumstances beyond the incarcerated person's control**. The commissioner may deny presumptive release to any incarcerated individual whenever the commissioner determines that such release may not be consistent with the safety of the community or the welfare of the incarcerated individual. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

§ 9. This act shall take effect immediately; provided that the amendments to paragraph (a) and subparagraph (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law made by sections one and three of this act shall be subject to the expiration and reversion of such subdivision pursuant subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of sections two and four of this act shall take effect; provided, further, that the amendments to section 805 of the correction law made by section six of this act shall be subject to the expiration and reversion of such section pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section seven of this act shall take effect; and provided, further, that the amendments to subdivision 5 of section 806 of the correction law made by section eight of this act shall not affect the repeal of such section and shall be deemed repealed therewith.