

# STATE OF NEW YORK

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3366--B

Cal. No. 124

2021-2022 Regular Sessions

## IN ASSEMBLY

January 26, 2021

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Introduced by M. of A. RICHARDSON, JACKSON -- 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 -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

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 322 of the laws of 2021, is amended to read as  
3 follows:

4 2. "Eligible incarcerated individual" means: a person confined in an  
5 institution who is eligible for release on parole or who will become  
6 eligible for release on parole or conditional release within two years  
7 or who has completed a judicially ordered substance abuse treatment  
8 program in a state correctional facility pursuant to subdivision six of  
9 section 60.04 of the penal law. Provided, however, that a person under

10 sentence for an offense defined in paragraphs (a) and (b) of subdivision  
11 one of section 70.02 of the penal law, where such offense involved the  
12 use or threatened use of a deadly weapon or dangerous instrument shall  
13 not be eligible to participate in a work release program until he or she  
14 is eligible for release on parole or who will be eligible for release on  
15 parole or conditional release within eighteen months. Provided,  
16 further, however, that a person under a determinate sentence as a second  
17 felony drug offender for a class B felony offense defined in article two  
18 hundred twenty of the penal law, who was sentenced pursuant to section  
19 70.70 of such law, shall not be eligible to participate in a temporary  
20 release program until the time served under imprisonment for his or her  
21 determinate 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.

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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 incarcerated individual is denied release on parole, such incarcerated individual shall not be deemed an eligible incarcerated individual 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 incarcerated individual is denied release on parole while participating in a temporary release program, the department shall review the status of the incarcerated individual 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 incarcerated individual 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, 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 incarcerated individual who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law or (b) 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.

The governor, by executive order, may exclude or limit the participation of any class of otherwise eligible incarcerated individuals 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 incarcerated individuals in such program or the authority of the commissioner to impose appropriate regulations limiting such participation.

§ 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, 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

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

13 § 3. This act shall take effect on the sixtieth day after it shall  
14 have become a law; provided, however, that the amendments to subdivision  
15 2 of section 851 of the correction law made by section one of this act  
16 shall be subject to the expiration of such subdivision and section  
17 pursuant to subdivision (c) of section 46 of chapter 60 of the laws of  
18 1994 and section 10 of chapter 339 of the laws of 1972, as amended.