

# STATE OF NEW YORK

8265

2021-2022 Regular Sessions

## IN ASSEMBLY

August 25, 2021

Introduced by M. of A. WEPRIN, WALKER, O'DONNELL, STECK -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the penal law, in relation to eligibility for shock incarceration

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

Section 1. The section heading of section 806 of the correction law, as amended by chapter 322 of the laws of 2021, is amended and a new subdivision 8 is added to read as follows:

Presumptive release program [~~for nonviolent incarcerated individuals~~].

8. Notwithstanding any other subdivision of this section an inmate who successfully completes a shock incarceration program shall be eligible for presumptive release pursuant to section eight hundred sixty-seven of this chapter or section 70.40 of the penal law.

§ 2. Section 865 of the correction law, as added by chapter 261 of the laws of 1987, subdivisions 1 and 2 as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 865. Definitions. As used in this article, the following terms mean:

1. "Eligible incarcerated individual" means a person sentenced to an indeterminate term of imprisonment who will become eligible for release on parole within [~~three~~] five years or sentenced to a determinate term of imprisonment who will become eligible for conditional release within [~~three~~] five years, who has not reached the age of [~~fifty~~] fifty-six years, who has not previously been convicted of a violent felony as defined in article seventy of the penal law, or a felony in any other jurisdiction which includes all of the essential elements of any such violent felony, upon which an indeterminate or determinate term of imprisonment was imposed and who was between the ages of sixteen and [~~fifty~~] fifty-five years at the time of commission of the crime upon which his or her present sentence was based. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be

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

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1 deemed eligible to participate in this program: (a) a violent felony  
2 offense as defined in [~~article seventy~~] paragraph (a) of subdivision one  
3 of section 70.02 of the penal law; provided, however, that a person who  
4 is convicted of burglary in the second degree as defined in subdivision  
5 two of section 140.25 of the penal law, or robbery in the second degree  
6 as defined in subdivision one of section 160.10 of the penal law, or an  
7 attempt thereof, is eligible to participate, (b) an A-I felony offense,  
8 (c) any homicide offense as defined in article one hundred twenty-five  
9 of the penal law, (d) any felony sex offense as defined in article one  
10 hundred thirty of the penal law and (e) any escape or absconding offense  
11 as defined in article two hundred five of the penal law.

12 2. "Shock incarceration program" means a program pursuant to which  
13 eligible incarcerated individuals are selected to participate in the  
14 program and serve a period of six months in a shock incarceration facil-  
15 ity, which shall provide rigorous physical activity, intensive regimen-  
16 tation and discipline and rehabilitation therapy and programming. Such  
17 incarcerated individuals may be selected either: (i) at a reception  
18 center; or (ii) at a general confinement facility when the otherwise  
19 eligible incarcerated individual then becomes eligible for release on  
20 parole within [~~three~~] five years in the case of an indeterminate term of  
21 imprisonment, or then becomes eligible for conditional release within  
22 [~~three~~] five years in the case of a determinate term of imprisonment.

23 § 3. Subdivision 4 of section 867 of the correction law, as amended by  
24 chapter 322 of the laws of 2021, is amended to read as follows:

25 4. An incarcerated individual who has successfully completed a shock  
26 incarceration program shall be eligible to receive such a certificate of  
27 earned eligibility pursuant to section eight hundred five of this chap-  
28 ter. Notwithstanding any other provision of law, an incarcerated indi-  
29 vidual [~~sentenced to a determinate~~] serving a sentence of imprisonment  
30 who has successfully completed a shock incarceration program shall be  
31 eligible to receive such a certificate of earned eligibility and shall  
32 be immediately eligible to be conditionally released, paroled or  
33 presumptively released pursuant to section 70.40 of the penal law.

34 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section  
35 70.40 of the penal law, as amended by section 127-c of subpart B of part  
36 C of chapter 62 of the laws of 2011, is amended to read as follows:

37 (v) Notwithstanding any other subparagraph of this paragraph, a person  
38 may be paroled from the institution in which he or she is confined at  
39 any time on medical parole pursuant to section two hundred fifty-nine-r  
40 or section two hundred fifty-nine-s of the executive law or for deporta-  
41 tion pursuant to paragraph (d) of subdivision two of section two hundred  
42 fifty-nine-i of the executive law or paroled or presumptively released  
43 after the successful completion of a shock incarceration program pursu-  
44 ant to article twenty-six-A of the correction law.

45 § 5. This act shall take effect on the ninetieth day after it shall  
46 have become a law; provided, however, that the amendments to section 806  
47 of the correction law made by section one of this act shall not affect  
48 the repeal of such section and shall be deemed repealed therewith; and  
49 further provided, that the amendments to subparagraph (v) of paragraph  
50 (a) of subdivision 1 of section 70.40 of the penal law made by section  
51 four of this act shall not affect the expiration of such paragraph and  
52 shall be deemed to expire therewith.