

STATE OF NEW YORK

2192

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sens. SEPULVEDA, SAVINO -- 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
eligibility for shock incarceration

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

1 Section 1. The section heading of section 806 of the correction law,
2 as added by section 5 of part E of chapter 62 of the laws of 2003, is
3 amended and a new subdivision 8 is added to read as follows:

4 Presumptive release program [~~for nonviolent inmates~~].

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

9 § 2. Section 865 of the correction law, as added by chapter 261 of the
10 laws of 1987, subdivision 1 as amended by section 2 of part KK of chap-
11 ter 55 of the laws of 2019 and subdivision 2 as amended by section 2 of
12 part L of chapter 56 of the laws of 2009, is amended to read as follows:

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

14 1. "Eligible inmate" means a person sentenced to an indeterminate term
15 of imprisonment who will become eligible for release on parole within
16 [~~three~~] five years or sentenced to a determinate term of imprisonment
17 who will become eligible for conditional release within [~~three~~] five
18 years, who has not reached the age of [~~fifty~~] fifty-six years, who has
19 not previously been convicted of a violent felony as defined in article
20 seventy of the penal law, or a felony in any other jurisdiction which
21 includes all of the essential elements of any such violent felony, upon
22 which an indeterminate or determinate term of imprisonment was imposed
23 and who was between the ages of sixteen and [~~fifty~~] fifty-six years at
24 the time of commission of the crime upon which his or her present

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

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1 sentence was based. Notwithstanding the foregoing, no person who is
2 convicted of any of the following crimes shall be deemed eligible to
3 participate in this program: (a) a ~~[violent felony offense as defined in~~
4 ~~article seventy of the penal law; provided, however, that a person who~~
5 ~~is convicted of burglary in the second degree as defined in subdivision~~
6 ~~two of section 140.25 of the penal law, or robbery in the second degree~~
7 ~~as defined in subdivision one of section 160.10 of the penal law, or an~~
8 ~~attempt thereof, is eligible to participate,]~~ violent felony offense as
9 defined in paragraph (a) of subdivision one of section 70.02 of the
10 penal law, (b) an A-I felony offense, (c) any homicide offense as
11 defined in article one hundred twenty-five of the penal law, (d) any
12 felony sex offense as defined in article one hundred thirty of the penal
13 law and (e) any escape or absconding offense as defined in article two
14 hundred five of the penal law.

15 2. "Shock incarceration program" means a program pursuant to which
16 eligible inmates are selected to participate in the program and serve a
17 period of six months in a shock incarceration facility, which shall
18 provide rigorous physical activity, intensive regimentation and disci-
19 pline and rehabilitation therapy and programming. Such inmates may be
20 selected either: (i) at a reception center; or (ii) at a general
21 confinement facility when the otherwise eligible inmate then becomes
22 eligible for release on parole within [~~three~~] five years in the case of
23 an indeterminate term of imprisonment, or then becomes eligible for
24 conditional release within [~~three~~] five years in the case of a determi-
25 nate term of imprisonment.

26 § 3. Subdivision 4 of section 867 of the correction law, as amended by
27 chapter 738 of the laws of 2004, is amended to read as follows:

28 4. An inmate who has successfully completed a shock incarceration
29 program shall be eligible to receive such a certificate of earned eligi-
30 bility pursuant to section eight hundred five of this chapter. Notwith-
31 standing any other provision of law, an inmate [~~sentenced to a determi-~~
32 ~~nate~~] serving a sentence of imprisonment who has successfully completed
33 a shock incarceration program shall be eligible to receive such a
34 certificate of earned eligibility and shall be immediately eligible to
35 be conditionally released, paroled or presumptively released pursuant to
36 section 70.40 of the penal law.

37 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section
38 70.40 of the penal law, as amended by section 127-c of subpart B of part
39 C of chapter 62 of the laws of 2011, is amended to read as follows:

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

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