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 Assembly, do enact as follows:

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

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

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, subdivision 1 as amended by section 2 of part KK of chapter 55 of the laws of 2019 and subdivision 2 as amended by section 2 of part L of chapter 56 of the laws of 2009, is amended to read as follows:

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

1. "Eligible inmate" 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-six** years at 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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sentence was based. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be deemed eligible to participate in this program: (a) a [~~violent felony offense as defined in article seventy of the penal law; provided, however, that a person who is convicted of burglary in the second degree as defined in subdivision two of section 140.25 of the penal law, or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, or an attempt thereof, is eligible to participate,~~] **violent felony offense as defined in paragraph (a) of subdivision one of section 70.02 of the penal law,** (b) an A-I felony offense, (c) any homicide offense as defined in article one hundred twenty-five of the penal law, (d) any felony sex offense as defined in article one hundred thirty of the penal law and (e) any escape or absconding offense as defined in article two hundred five of the penal law.

2. "Shock incarceration program" means a program pursuant to which eligible inmates are selected to participate in the program and serve a period of six months in a shock incarceration facility, which shall provide rigorous physical activity, intensive regimentation and discipline and rehabilitation therapy and programming. Such inmates may be selected either: (i) at a reception center; or (ii) at a general confinement facility when the otherwise eligible inmate then becomes eligible for release on parole within [~~three~~] **five** years in the case of an indeterminate term of imprisonment, or then becomes eligible for conditional release within [~~three~~] **five** years in the case of a determinate term of imprisonment.

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

4. An inmate who has successfully completed a shock incarceration program shall be eligible to receive such a certificate of earned eligibility pursuant to section eight hundred five of this chapter. Notwithstanding any other provision of law, an inmate [~~sentenced to a determinate~~] **serving a** sentence of imprisonment who has successfully completed a shock incarceration program shall be eligible to receive such a certificate of earned eligibility and shall be immediately eligible to be conditionally released**, paroled or presumptively released pursuant to section 70.40 of the penal law**.

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

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

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