

# STATE OF NEW YORK

1957--A

Cal. No. 89

2021-2022 Regular Sessions

## IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CRUZ, KELLEES -- 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:

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

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

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

20 (a) Every person confined in an institution of the department or a  
21 facility in the department of mental hygiene serving an indeterminate  
22 sentence of imprisonment, except a person serving a sentence with a  
23 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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1 the maximum term or period of his or her sentence not to exceed in the  
2 aggregate one-third of the term or period imposed by the court. Such  
3 allowances may be granted for good behavior and efficient and willing  
4 performance of duties assigned or progress and achievement in an  
5 assigned treatment program, and may be withheld, forfeited or canceled  
6 in whole or in part for bad behavior, violation of institutional rules  
7 or failure to perform properly in the duties or program assigned. Such  
8 allowances shall not be withheld if a person fails to complete a program  
9 because of circumstances beyond such person's control.

10 § 3. Subparagraph (iv) of paragraph (d) of subdivision 1 of section  
11 803 of the correction law, as separately amended by section 1 of chapter  
12 242 and section 224 of chapter 322 of the laws of 2021, is amended to  
13 read as follows:

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

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

35 § 4. Subparagraph (iv) of paragraph (d) of subdivision 1 of section  
36 803 of the correction law, as separately amended by section 2 of chapter  
37 242 and section 224-a of chapter 322 of the laws of 2021, is amended to  
38 read as follows:

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

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

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

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

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

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

20 § 805. Earned eligibility program. Persons committed to the custody of  
21 the department under an indeterminate or determinate sentence of impris-  
22 onment shall be assigned a work and treatment program as soon as prac-  
23 ticable. No earlier than two months prior to the incarcerated individ-  
24 ual's eligibility to be paroled pursuant to subdivision one of section  
25 70.40 of the penal law, the commissioner shall review the incarcerated  
26 individual's institutional record to determine whether he or she has  
27 complied with the assigned program. Credit for such assigned program  
28 shall not be withheld if a person fails to complete a program because of  
29 circumstances beyond such person's control. If the commissioner deter-  
30 mines that the incarcerated individual has successfully participated in  
31 the program he or she may issue the incarcerated individual a certifi-  
32 cate of earned eligibility. Notwithstanding any other provision of law,  
33 an incarcerated individual who is serving a sentence with a minimum term  
34 of not more than eight years and who has been issued a certificate of  
35 earned eligibility, shall be granted parole release at the expiration of  
36 his or her minimum term or as authorized by subdivision four of section  
37 eight hundred sixty-seven of this chapter unless the board of parole  
38 determines that there is a reasonable probability that, if such incar-  
39 cerated individual is released, he or she will not live and remain at  
40 liberty without violating the law and that his or her release is not  
41 compatible with the welfare of society. Any action by the commissioner  
42 pursuant to this section shall be deemed a judicial function and shall  
43 not be reviewable if done in accordance with law.

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

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

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

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

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

31 § 9. This act shall take effect immediately; provided that the amend-  
32 ments to paragraph (a) and subparagraph (iv) of paragraph (d) of subdivi-  
33 sion 1 of section 803 of the correction law made by sections one and  
34 three of this act shall be subject to the expiration and reversion of  
35 such subdivision pursuant subdivision d of section 74 of chapter 3 of  
36 the laws of 1995, as amended, when upon such date the provisions of  
37 sections two and four of this act shall take effect; provided, further,  
38 that the amendments to section 805 of the correction law made by section  
39 six of this act shall be subject to the expiration and reversion of such  
40 section pursuant to subdivision d of section 74 of chapter 3 of the laws  
41 of 1995, as amended, when upon such date the provisions of section seven  
42 of this act shall take effect; and provided, further, that the amend-  
43 ments to subdivision 5 of section 806 of the correction law made by  
44 section eight of this act shall not affect the repeal of such section  
45 and shall be deemed repealed therewith.