

# STATE OF NEW YORK

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2776--A

2021-2022 Regular Sessions

## IN SENATE

January 25, 2021

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Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

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

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

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

Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an incarcerated individual, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of

1 section eight thousand three hundred three-a of the civil practice law  
2 and rules, or an order of a federal court pursuant to rule 11 of the  
3 federal rules of civil procedure imposing sanctions in an action  
4 commenced by a person, while an incarcerated individual, against a state  
5 agency, officer or employee. Such allowance shall not be withheld if a  
6 person fails to complete a program because of circumstances beyond his  
7 or her control.

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

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

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

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

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

50 § 805. Earned eligibility program. Persons committed to the custody of  
51 the department under an indeterminate sentence of imprisonment shall be  
52 assigned a work and treatment program as soon as practicable. No earlier  
53 than two months prior to the expiration of an incarcerated individual's  
54 minimum period of imprisonment, the commissioner shall review the incar-  
55 cerated individual's institutional record to determine whether he or she  
56 has complied with the assigned program. Credit for such assigned

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

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

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

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