

# STATE OF NEW YORK

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3721

2023-2024 Regular Sessions

## IN ASSEMBLY

February 7, 2023

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Introduced by M. of A. CUNNINGHAM -- read once and referred to the  
Committee on Correction

AN ACT to amend the executive law and the penal law, in relation to  
authorizing early parole release for inmates where substance abuse was  
a significant contributing factor in the commission of the offense

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

1 Section 1. Section 259-i of the executive law is amended by adding a  
2 new subdivision 10 to read as follows:

3 10. Early release for certain inmates. (a) Notwithstanding any other  
4 provision of law, where an inmate's record reveals that substance abuse  
5 was a significant contributing factor in the commission of his or her  
6 offense and where such inmate has successfully completed a program of  
7 treatment within a correctional facility for alcohol or substance abuse  
8 and has not been disciplined by the department for drug, marihuana or  
9 alcohol use for a minimum period of two years prior to the application  
10 for early release pursuant to this subdivision, such inmate shall be  
11 eligible for early release to community supervision once he or she has  
12 completed one-half of his or her minimum period of incarceration,  
13 provided that he or she is not serving a sentence for an A-I felony,  
14 other than an A-I felony pursuant to article two hundred twenty of the  
15 penal law, or a violent felony offense pursuant to section 70.04 or  
16 70.08 of the penal law. The department shall certify to the board that  
17 an inmate is eligible for early release to community supervision when  
18 such eligibility criteria are met.

19 (b) To determine whether substance abuse was a significant contribut-  
20 ing factor in the commission of the offense, the board shall:

21 (i) rely on a finding that substance abuse was a significant contrib-  
22 uting factor in the commission of the offense by the sentencing court;

23 (ii) rely on a determination by the department based on a record  
24 review once an inmate is otherwise eligible for early release pursuant

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

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1 to paragraph (a) of this subdivision that the inmate was abusing one or  
2 more substances at the time of the commission of the crime and that such  
3 substance abuse appears to have been a significant contributing factor  
4 in the commission of such offense; or

5 (iii) make a finding that substance use was a significant contributing  
6 factor in the commission of the crime when the inmate is incarcerated  
7 with a conviction for any crime in which drug or alcohol use or  
8 possession was an element.

9 Evidence in support of the determination that substance abuse was a  
10 significant contributing factor in the commission of the offense may  
11 include, but shall not be limited to, a court record, pre-sentence  
12 report, social services record, hospital record, sworn statement of a  
13 witness other than the inmate, local and state correctional facility  
14 records, law enforcement records, any documentation prepared at or near  
15 the time of the commission of the offense, or verification of consulta-  
16 tion with a licensed medical or mental health professional, social work-  
17 er or employee of an agency that provided substance abuse treatment or  
18 counseling to the inmate.

19 (c) In determining whether to release an inmate to early parole pursu-  
20 ant to this subdivision, the board shall apply the factors listed in  
21 paragraph (c) of subdivision two of this section and shall further  
22 consider any facts or circumstances submitted by the applicant and may  
23 take witness testimony.

24 § 2. Subdivision 6 of section 60.04 of the penal law, as amended by  
25 section 120 of subpart B of part C of chapter 62 of the laws of 2011, is  
26 amended to read as follows:

27 6. Substance abuse treatment. When the court imposes a sentence of  
28 imprisonment which requires a commitment to the state department of  
29 corrections and community supervision upon a person who stands convicted  
30 of a controlled substance or marihuana offense, the court may, upon  
31 motion of the defendant in its discretion, make a finding that the  
32 substance abuse was a significant contributing factor in the commission  
33 of the offense and/or may issue an order directing that the department  
34 of corrections and community supervision enroll the defendant in the  
35 comprehensive alcohol and substance abuse treatment program in an alco-  
36 hol and substance abuse correctional annex as defined in subdivision  
37 eighteen of section two of the correction law, provided that the defend-  
38 ant will satisfy the statutory eligibility criteria for participation in  
39 such program. Notwithstanding the foregoing provisions of this subdivi-  
40 sion, any defendant to be enrolled in such program pursuant to this  
41 subdivision shall be governed by the same rules and regulations promul-  
42 gated by the department of corrections and community supervision,  
43 including without limitation those rules and regulations establishing  
44 requirements for completion and those rules and regulations governing  
45 discipline and removal from the program. No such period of court ordered  
46 corrections based drug abuse treatment pursuant to this subdivision  
47 shall be required to extend beyond the defendant's conditional release  
48 date.

49 § 3. This act shall take effect on the one hundred twentieth day after  
50 it shall have become a law.