

# STATE OF NEW YORK

7741

2023-2024 Regular Sessions

## IN ASSEMBLY

June 6, 2023

Introduced by M. of A. SOLAGES, WEPRIN, AUBRY, STECK -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to expanding prison work release program eligibility and participation

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

1 Section 1. Subdivision 2 of section 851 of the correction law, as  
2 amended by section 228 of chapter 322 of the laws of 2021, is amended to  
3 read as follows:

4 2. "Eligible incarcerated individual" means: a person confined in an  
5 institution who is eligible for release on parole or who will become  
6 eligible for release on parole or conditional release within [~~two~~] three  
7 years. Provided, however, that a person under sentence for an offense  
8 defined in paragraphs (a) and (b) of subdivision one of section 70.02 of  
9 the penal law, where such offense involved the use or threatened use of  
10 a deadly weapon or dangerous instrument shall not be eligible to partic-  
11 ipate in a work release program until he or she is eligible for release  
12 on parole or who will be eligible for release on parole or conditional  
13 release within [~~eighteen~~] thirty months. Provided, further, however,  
14 that a person under a determinate sentence as a second felony drug  
15 offender for a class B felony offense defined in article two hundred  
16 twenty of the penal law, who was sentenced pursuant to section 70.70 of  
17 such law, shall not be eligible to participate in a temporary release  
18 program until the time served under imprisonment for his or her determi-  
19 nate sentence, including any jail time credited pursuant to the  
20 provisions of article seventy of the penal law, shall be at least eigh-  
21 teen months. In the case of a person serving an indeterminate sentence  
22 of imprisonment imposed pursuant to the penal law in effect after  
23 September one, nineteen hundred sixty-seven, for the purposes of this  
24 article parole eligibility shall be upon the expiration of the minimum  
25 period of imprisonment fixed by the court or where the court has not

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

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1 fixed any period, after service of the minimum period fixed by the state  
2 board of parole. [~~If an incarcerated individual is denied release on~~  
3 ~~parole, such incarcerated individual shall not be deemed an eligible~~  
4 ~~incarcerated individual until he or she is within two years of his or~~  
5 ~~her next scheduled appearance before the state parole board.~~] In any  
6 case where an incarcerated individual is denied release on parole while  
7 participating in a temporary release program, the department shall  
8 review the status of the incarcerated individual to determine if contin-  
9 ued placement in the program is appropriate. No person convicted of any  
10 escape or absconding offense defined in article two hundred five of the  
11 penal law shall be eligible for temporary release. Further, no person  
12 under sentence for aggravated harassment of an employee by an incarcer-  
13 ated individual as defined in section 240.32 of the penal law for, any  
14 homicide offense defined in article one hundred twenty-five of the penal  
15 law, for any sex offense defined in article one hundred thirty of the  
16 penal law, for an act of terrorism as defined in article four hundred  
17 ninety of the penal law, for an offense involving the sexual performance  
18 of a child as defined in article two hundred sixty-three of the penal  
19 law, or for an offense defined in section 255.25, 255.26 or 255.27 of  
20 the penal law shall be eligible to participate in a work release program  
21 as defined in subdivision three of this section. Nor shall any person  
22 under sentence for any sex offense defined in article one hundred thirty  
23 of the penal law be eligible to participate in a community services  
24 program as defined in subdivision five of this section. [~~Notwithstanding~~  
25 ~~the foregoing, no person who is an otherwise eligible incarcerated indi-~~  
26 ~~vidual who is under sentence for a crime involving: (a) infliction of~~  
27 ~~serious physical injury upon another as defined in the penal law or (b)~~  
28 ~~any other offense involving the use or threatened use of a deadly weapon~~  
29 ~~may participate in a temporary release program without the written~~  
30 ~~approval of the commissioner.~~] The commissioner shall promulgate regu-  
31 lations giving direction to the temporary release committee at each  
32 institution in order to aid such committees in [~~carrying out this~~  
33 ~~mandate~~] determining which incarcerated individuals are eligible and  
34 appropriate to participate in the temporary release programs.

35 The governor[~~, by executive order,~~] may not issue or enforce any exec-  
36 utive order to exclude or limit the participation of any class of  
37 [~~otherwise~~] eligible incarcerated individuals from participation in a  
38 temporary release program. Nothing in this paragraph shall be construed  
39 to affect [~~either the validity of any executive order previously issued~~  
40 ~~limiting the participation of otherwise eligible incarcerated individ-~~  
41 ~~uals in such program or~~] the authority of the commissioner to impose  
42 appropriate regulations [~~limiting such participation~~] for determining  
43 which incarcerated individuals are eligible and appropriate to partic-  
44 ipate in the temporary release programs. The commissioner shall promul-  
45 gate regulations giving direction to department and transitional  
46 services staff with regard to developing and providing programmatic  
47 support to temporary release participants with emphasis on the first  
48 three months of work release.

49 § 2. Subdivision 2 of section 851 of the correction law, as amended by  
50 section 228-b of chapter 322 of the laws of 2021, is amended to read as  
51 follows:

52 2. "Eligible incarcerated individual" means: a person confined in an  
53 institution who is eligible for release on parole or who will become  
54 eligible for release on parole or conditional release within [~~two~~] three  
55 years. Provided, that a person under a determinate sentence as a second  
56 felony drug offender for a class B felony offense defined in article two

1 hundred twenty of the penal law, who was sentenced pursuant to section  
2 70.70 of such law, shall not be eligible to participate in a temporary  
3 release program until the time served under imprisonment for his or her  
4 determinate sentence, including any jail time credited pursuant to the  
5 provisions of article seventy of the penal law, shall be at least eigh-  
6 teen months. In the case of a person serving an indeterminate sentence  
7 of imprisonment imposed pursuant to the penal law in effect after  
8 September one, nineteen hundred sixty-seven, for the purposes of this  
9 article parole eligibility shall be upon the expiration of the minimum  
10 period of imprisonment fixed by the court or where the court has not  
11 fixed any period, after service of the minimum period fixed by the state  
12 board of parole. [~~If an incarcerated individual is denied release on~~  
13 ~~parole, such incarcerated individual shall not be deemed an eligible~~  
14 ~~incarcerated individual until he or she is within two years of his or~~  
15 ~~her next scheduled appearance before the state parole board.~~] In any  
16 case where an incarcerated individual is denied release on parole while  
17 participating in a temporary release program, the department shall  
18 review the status of the incarcerated individual to determine if contin-  
19 ued placement in the program is appropriate. No person convicted of any  
20 escape or absconding offense defined in article two hundred five of the  
21 penal law shall be eligible for temporary release. Further, no person  
22 under sentence for aggravated harassment of an employee by an incarcer-  
23 ated individual as defined in section 240.32 of the penal law for, any  
24 homicide offense defined in article one hundred twenty-five of the penal  
25 law, for any sex offense defined in article one hundred thirty of the  
26 penal law, for an act of terrorism as defined in article four hundred  
27 ninety of the penal law, for an offense involving the sexual performance  
28 of a child as defined in article two hundred sixty-three of the penal  
29 law, or for an offense defined in section 255.25, 255.26 or 255.27 of  
30 the penal law shall be eligible to participate in a work release program  
31 as defined in subdivision three of this section. Nor shall any person  
32 under sentence for any sex offense defined in article one hundred thirty  
33 of the penal law be eligible to participate in a community services  
34 program as defined in subdivision five of this section. [~~Notwithstand-~~  
35 ~~ing the foregoing, no person who is an otherwise eligible incarcerated~~  
36 ~~individual who is under sentence for a crime involving: (a) infliction~~  
37 ~~of serious physical injury upon another as defined in the penal law, (b)~~  
38 ~~a sex offense involving forcible compulsion, or (c) any other offense~~  
39 ~~involving the use or threatened use of a deadly weapon may participate~~  
40 ~~in a temporary release program without the written approval of the~~  
41 ~~commissioner.~~] The commissioner shall promulgate regulations giving  
42 direction to the temporary release committee at each institution in  
43 order to aid such committees in [~~carrying out this mandate~~] determining  
44 which incarcerated individuals are eligible and appropriate to partic-  
45 ipate in the temporary release programs.

46 The governor[, ~~by executive order,~~] may not issue or enforce any exec-  
47 utive order to exclude or limit the participation of any class of  
48 [~~otherwise~~] eligible incarcerated individuals from participation in a  
49 temporary release program. Nothing in this paragraph shall be construed  
50 to affect [~~either the validity of any executive order previously issued~~  
51 ~~limiting the participation of otherwise eligible incarcerated individ-~~  
52 ~~uals in such program or~~] the authority of the commissioner to impose  
53 appropriate regulations [~~limiting such participation~~] for determining  
54 which incarcerated individuals are eligible and appropriate to partic-  
55 ipate in temporary release programs. The commissioner shall promulgate  
56 regulations giving direction to department and transitional services

1 staff with regard to developing and providing programmatic support to  
2 temporary release participants with emphasis on the first three months  
3 of work release.

4 § 3. Subdivision 2 of section 851 of the correction law, as amended by  
5 section 228-d of chapter 322 of the laws of 2021, is amended to read as  
6 follows:

7 2. "Eligible incarcerated individual" means a person confined in an  
8 institution where a work release program has been established who is  
9 eligible for release on parole or who will become eligible for release  
10 on parole within [~~one year~~] three years.

11 § 4. Subdivision 2-a of section 851 of the correction law, as amended  
12 by chapter 322 of the laws of 2021, is amended to read as follows:

13 2-a. Notwithstanding subdivision two of this section, the term "eligi-  
14 ble incarcerated individual" shall also include a person confined in an  
15 institution who is eligible for release on parole or who will become  
16 eligible for release on parole or conditional release within [~~two~~] three  
17 years, and who was convicted of a homicide offense as defined in article  
18 one hundred twenty-five of the penal law [~~or an assault offense defined~~  
19 ~~in article one hundred twenty of the penal law~~], and who can demonstrate  
20 to the commissioner that: (a) the victim of such homicide or assault was  
21 a member of the incarcerated individual's immediate family as that term  
22 is defined in section 120.40 of the penal law or had a child in common  
23 with the incarcerated individual; (b) the incarcerated individual was  
24 subjected to substantial physical, sexual or psychological abuse commit-  
25 ted by the victim of such homicide or assault; and (c) such abuse was a  
26 substantial factor in causing the incarcerated individual to commit such  
27 homicide or assault. With respect to an incarcerated individual's claim  
28 that he or she was subjected to substantial physical, sexual or psycho-  
29 logical abuse committed by the victim, such demonstration shall include  
30 corroborative material that may include, but is not limited to, witness  
31 statements, social services records, hospital records, law enforcement  
32 records and a showing based in part on documentation prepared at or near  
33 the time of the commission of the offense or the prosecution thereof  
34 tending to support the incarcerated individual's claim. Prior to making  
35 a determination under this subdivision, the commissioner is required to  
36 request and take into consideration the opinion of the district attorney  
37 who prosecuted the underlying homicide or assault offense and the opin-  
38 ion of the sentencing court. If such opinions are received within  
39 forty-five days of the request, the commissioner shall take them into  
40 consideration. If such opinions are not so received, the commissioner  
41 may proceed with the determination. Any action by the commissioner  
42 pursuant to this subdivision shall be deemed a judicial function and  
43 shall not be reviewable in any court.

44 § 5. Subdivision 2-b of section 851 of the correction law, as added by  
45 chapter 738 of the laws of 2004, is amended to read as follows:

46 2-b. When calculating in advance the date on which a person is or will  
47 be eligible for release on parole or conditional release, for purposes  
48 of determining eligibility for temporary release or for placement at an  
49 alcohol and substance abuse treatment correctional annex, the commis-  
50 sioner shall consider and include credit for all potential credits and  
51 reductions including but not limited to merit time, additional merit  
52 time and good behavior allowances. Nothing in this subdivision shall be  
53 interpreted as precluding the consideration and inclusion of credit for  
54 all potential credits and reductions including, but not limited to,  
55 merit time, additional merit time and good behavior allowances when

1 calculating in advance for any other purpose the date on which a person  
2 is or will be eligible for release on parole or conditional release.  
3 § 6. This act shall take effect immediately; provided, however, that  
4 the amendments to subdivision 2 of section 851 of the correction law  
5 made by section one of this act shall be subject to the expiration and  
6 reversion of such subdivision and of such section pursuant to subdivi-  
7 sion (c) of section 46 of chapter 60 of the laws of 1994 and section 10  
8 of chapter 339 of the laws of 1972, as amended, when upon such date the  
9 provisions of section two of this act shall take effect; provided,  
10 further, that the amendments to subdivision 2 of section 851 of the  
11 correction law made by section two of this act shall expire on the same  
12 date as subdivision (c) of section 46 of chapter 60 of the laws of 1994,  
13 section 10 of chapter 339 of the laws of 1972, and section 5 of chapter  
14 554 of the laws of 1986, as amended, expire, when upon such date the  
15 provisions of section three of this act shall take effect; provided,  
16 further, that the amendments to subdivisions 2-a and 2-b of section 851  
17 of the correction law, made by sections four and five of this act shall  
18 not affect the expiration of such section and shall expire therewith.