

STATE OF NEW YORK

2920

2023-2024 Regular Sessions

IN SENATE

January 25, 2023

Introduced by Sen. CLEARE -- 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, 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

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

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

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

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

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

1 felony drug offender for a class B felony offense defined in article two
2 hundred twenty of the penal law, who was sentenced pursuant to section
3 70.70 of such law, shall not be eligible to participate in a temporary
4 release program until the time served under imprisonment for his or her
5 determinate sentence, including any jail time credited pursuant to the
6 provisions of article seventy of the penal law, shall be at least eight-
7 teen months. In the case of a person serving an indeterminate sentence
8 of imprisonment imposed pursuant to the penal law in effect after
9 September one, nineteen hundred sixty-seven, for the purposes of this
10 article parole eligibility shall be upon the expiration of the minimum
11 period of imprisonment fixed by the court or where the court has not
12 fixed any period, after service of the minimum period fixed by the state
13 board of parole. [~~If an incarcerated individual is denied release on~~
14 ~~parole, such incarcerated individual shall not be deemed an eligible~~
15 ~~incarcerated individual until he or she is within two years of his or~~
16 ~~her next scheduled appearance before the state parole board.~~] In any
17 case where an incarcerated individual is denied release on parole while
18 participating in a temporary release program, the department shall
19 review the status of the incarcerated individual to determine if contin-
20 ued placement in the program is appropriate. No person convicted of any
21 escape or absconding offense defined in article two hundred five of the
22 penal law shall be eligible for temporary release. Further, no person
23 under sentence for aggravated harassment of an employee by an incarcer-
24 ated individual as defined in section 240.32 of the penal law for, any
25 homicide offense defined in article one hundred twenty-five of the penal
26 law, for any sex offense defined in article one hundred thirty of the
27 penal law, for an act of terrorism as defined in article four hundred
28 ninety of the penal law, for an offense involving the sexual performance
29 of a child as defined in article two hundred sixty-three of the penal
30 law, or for an offense defined in section 255.25, 255.26 or 255.27 of
31 the penal law shall be eligible to participate in a work release program
32 as defined in subdivision three of this section. Nor shall any person
33 under sentence for any sex offense defined in article one hundred thirty
34 of the penal law be eligible to participate in a community services
35 program as defined in subdivision five of this section. [~~Notwithstand-~~
36 ~~ing the foregoing, no person who is an otherwise eligible incarcerated~~
37 ~~individual who is under sentence for a crime involving: (a) infliction~~
38 ~~of serious physical injury upon another as defined in the penal law, (b)~~
39 ~~a sex offense involving forcible compulsion, or (c) any other offense~~
40 ~~involving the use or threatened use of a deadly weapon may participate~~
41 ~~in a temporary release program without the written approval of the~~
42 ~~commissioner.~~] The commissioner shall promulgate regulations giving
43 direction to the temporary release committee at each institution in
44 order to aid such committees in [~~carrying out this mandate~~] determining
45 which incarcerated individuals are eligible and appropriate to partic-
46 ipate in the temporary release programs.
47 The governor [~~, by executive order,~~] may not issue or enforce any exec-
48 utive order to exclude or limit the participation of any class of
49 [~~otherwise~~] eligible incarcerated individuals from participation in a
50 temporary release program. Nothing in this paragraph shall be construed
51 to affect [~~either the validity of any executive order previously issued~~
52 ~~limiting the participation of otherwise eligible incarcerated individ-~~
53 ~~uals in such program or~~] the authority of the commissioner to impose
54 appropriate regulations [~~limiting such participation~~] for determining
55 which incarcerated individuals are eligible and appropriate to partic-
56 ipate in temporary release programs. The commissioner shall promulgate

1 regulations giving direction to department and transitional services
2 staff with regard to developing and providing programmatic support to
3 temporary release participants with emphasis on the first three months
4 of work release.

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

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

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

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

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

47 2-b. When calculating in advance the date on which a person is or will
48 be eligible for release on parole or conditional release, for purposes
49 of determining eligibility for temporary release or for placement at an
50 alcohol and substance abuse treatment correctional annex, the commis-
51 sioner shall consider and include credit for all potential credits and
52 reductions including but not limited to merit time, additional merit
53 time and good behavior allowances. Nothing in this subdivision shall be
54 interpreted as precluding the consideration and inclusion of credit for
55 all potential credits and reductions including, but not limited to,
56 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 section pursuant to subdivision (c) of
7 section 46 of chapter 60 of the laws of 1994 and section 10 of chapter
8 339 of the laws of 1972, as amended, when upon such date the provisions
9 of section two of this act shall take effect; provided, further, that
10 the amendments to subdivision 2 of section 851 of the correction law
11 made by section two of this act shall expire on the same date as subdi-
12 vision (c) of section 46 of chapter 60 of the laws of 1994, section 10
13 of chapter 339 of the laws of 1972, and section 5 of chapter 554 of the
14 laws of 1986, as amended, expire, when upon such date the provisions of
15 section three of this act shall take effect; provided, further that the
16 amendments to subdivisions 2-a and 2-b of section 851 of the correction
17 law, made by sections four and five of this act shall not affect the
18 expiration of such section and shall expire therewith.