

STATE OF NEW YORK

4916

2023-2024 Regular Sessions

IN SENATE

February 17, 2023

Introduced by Sen. SEPULVEDA -- 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 years.

7 ~~[Provided, however, that a person under sentence for an offense defined~~
8 ~~in paragraphs (a) and (b) of subdivision one of section 70.02 of the~~
9 ~~penal law, where such offense involved the use or threatened use of a~~
10 ~~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 months. Provided, further, however, that a~~
14 ~~person under a determinate sentence as a second felony drug offender for~~
15 ~~a class B felony offense defined in article two hundred twenty of the~~
16 ~~penal law, who was sentenced pursuant to section 70.70 of such law,~~
17 ~~shall not be eligible to participate in a temporary release program~~
18 ~~until the time served under imprisonment for his or her determinate~~
19 ~~sentence, including any jail time credited pursuant to the provisions of~~
20 ~~article seventy of the penal law, shall be at least eighteen months.]~~

21 In the case of a person serving an indeterminate sentence of imprisonment
22 imposed pursuant to the penal law in effect after September one, nine-
23 teen hundred sixty-seven, for the purposes of this article parole eligi-
24 bility shall be upon the expiration of the minimum period of imprison-

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

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

31 [~~The governor, by executive order, may exclude or limit the partic-~~
32 ~~ipation of any class of otherwise eligible incarcerated individuals from~~
33 ~~participation in a temporary release program. Nothing in this paragraph~~
34 ~~shall be construed to affect either the validity of any executive order~~
35 ~~previously issued limiting the participation of otherwise eligible~~
36 ~~incarcerated individuals in such program or the authority of the commis-~~
37 ~~sioner to impose appropriate regulations limiting such participation.]~~

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

41 2. "Eligible incarcerated individual" means: a person confined in an
42 institution who is eligible for release on parole or who will become
43 eligible for release on parole or conditional release within two years.
44 [~~Provided, that a person under a determinate sentence as a second felony~~
45 ~~drug offender for a class B felony offense defined in article two~~
46 ~~hundred twenty of the penal law, who was sentenced pursuant to section~~
47 ~~70.70 of such law, shall not be eligible to participate in a temporary~~
48 ~~release program until the time served under imprisonment for his or her~~
49 ~~determinate sentence, including any jail time credited pursuant to the~~
50 ~~provisions of article seventy of the penal law, shall be at least eigh-~~
51 ~~teen months.] In the case of a person serving an indeterminate sentence
52 of imprisonment imposed pursuant to the penal law in effect after
53 September one, nineteen hundred sixty-seven, for the purposes of this
54 article parole eligibility shall be upon the expiration of the minimum
55 period of imprisonment fixed by the court or where the court has not
56 fixed any period, after service of the minimum period fixed by the state~~

1 board of parole. [~~If an incarcerated individual is denied release on~~
2 ~~parole, such incarcerated individual shall not be deemed an eligible~~
3 ~~incarcerated individual until he or she is within two years of his or~~
4 ~~her next scheduled appearance before the state parole board.~~] In any
5 case where an incarcerated individual is denied release on parole while
6 participating in a temporary release program, the department shall
7 review the status of the incarcerated individual to determine if contin-
8 ued placement in the program is appropriate. No person convicted of any
9 escape or absconding offense defined in article two hundred five of the
10 penal law shall be eligible for temporary release. [~~Nor shall any person~~
11 ~~under sentence for any sex offense defined in article one hundred thirty~~
12 ~~of the penal law be eligible to participate in a community services~~
13 ~~program as defined in subdivision five of this section. Notwithstanding~~
14 ~~the foregoing, no person who is an otherwise eligible incarcerated indi-~~
15 ~~vidual who is under sentence for a crime involving: (a) infliction of~~
16 ~~serious physical injury upon another as defined in the penal law, (b) a~~
17 ~~sex offense involving forcible compulsion, or (c) any other offense~~
18 ~~involving the use or threatened use of a deadly weapon may participate~~
19 ~~in a temporary release program without the written approval of the~~
20 ~~commissioner.~~] An incarcerated individual shall not be eligible for work
21 release if he or she is subject to a sentence imposed for aggravated
22 murder as defined in section 125.26 of the penal law, murder in the
23 first degree as defined in section 125.27 of the penal law, rape in the
24 third degree as defined in section 130.25 of the penal law, rape in the
25 second degree as defined in section 130.30 of the penal law, rape in the
26 first degree as defined in section 130.35 of the penal law, criminal
27 sexual act in the second degree as defined in section 130.45 of the
28 penal law, criminal sexual act in the first degree as defined in section
29 130.50 of the penal law, persistent sexual abuse as defined in section
30 130.53 of the penal law, sexual abuse in the first degree as defined in
31 section 130.65 of the penal law, aggravated sexual abuse in the third
32 degree as defined in section 130.66 of the penal law, aggravated sexual
33 abuse in the second degree as defined in section 130.67 of the penal
34 law, aggravated sexual abuse in the first degree as defined in section
35 130.70 of the penal law, course of sexual conduct against a child in the
36 first degree as defined in section 130.75 of the penal law, course of
37 sexual conduct against a child in the second degree as defined in
38 section 130.80 of the penal law, predatory sexual assault as defined in
39 section 130.95 of the penal law, predatory sexual assault against a
40 child as defined in section 130.96 of the penal law, promoting prostitu-
41 tion in the second degree as defined in section 230.30 of the penal law,
42 promoting prostitution in the first degree as defined in section 230.32
43 of the penal law, compelling prostitution as defined in section 230.33
44 of the penal law, sex trafficking as defined in section 230.34 of the
45 penal law, incest in the first or second degree as defined in article
46 two hundred fifty-five of the penal law, an offense of terrorism defined
47 in article four hundred ninety of the penal law, or an attempt or a
48 conspiracy to commit any such offense. The commissioner shall promulgate
49 regulations giving direction to the temporary release committee at each
50 institution in order to aid such committees in carrying out this
51 mandate.

52 [~~The governor, by executive order, may exclude or limit the partic-~~
53 ~~ipation of any class of otherwise eligible incarcerated individuals from~~
54 ~~participation in a temporary release program. Nothing in this paragraph~~
55 ~~shall be construed to affect either the validity of any executive order~~
56 ~~previously issued limiting the participation of otherwise eligible~~

~~1 incarcerated individuals in such program or the authority of the commis-
2 sioner to impose appropriate regulations limiting such participation.]~~

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

5 2-a. Notwithstanding subdivision two of this section, the term "eligi-
6 ble incarcerated individual" shall also include a person confined in an
7 institution who is eligible for release on parole or who will become
8 eligible for release on parole or conditional release within [~~two~~] four
9 years, and who was convicted of a homicide offense as defined in article
10 one hundred twenty-five of the penal law or an assault offense defined
11 in article one hundred twenty of the penal law, and who can demonstrate
12 to the commissioner that: (a) the victim of such homicide or assault was
13 a member of the incarcerated individual's immediate family as that term
14 is defined in section 120.40 of the penal law or had a child in common
15 with the incarcerated individual; (b) the incarcerated individual was
16 subjected to substantial physical, sexual or psychological abuse commit-
17 ted by the victim of such homicide or assault; and (c) such abuse was a
18 substantial factor in causing the incarcerated individual to commit such
19 homicide or assault. With respect to an incarcerated individual's claim
20 that he or she was subjected to substantial physical, sexual or psycho-
21 logical abuse committed by the victim, such demonstration shall include
22 corroborative material that may include, but is not limited to, witness
23 statements, social services records, hospital records, law enforcement
24 records and a showing based in part on documentation prepared at or near
25 the time of the commission of the offense or the prosecution thereof
26 tending to support the incarcerated individual's claim. Prior to making
27 a determination under this subdivision, the commissioner is required to
28 request and take into consideration the opinion of the district attorney
29 who prosecuted the underlying homicide or assault offense and the opin-
30 ion of the sentencing court. If such opinions are received within
31 forty-five days of the request, the commissioner shall take them into
32 consideration. If such opinions are not so received, the commissioner
33 may proceed with the determination. Any action by the commissioner
34 pursuant to this subdivision shall be deemed a judicial function and
35 shall not be reviewable in any court.

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

38 2-b. When calculating in advance the date on which a person is or will
39 be eligible for release on parole or conditional release, for purposes
40 of determining eligibility for temporary release or for placement at an
41 alcohol and substance abuse treatment correctional annex, the commis-
42 sioner shall consider and include credit for all potential credits and
43 reductions including but not limited to merit time, additional merit
44 time and good behavior allowances. Nothing in this subdivision shall be
45 interpreted as precluding the consideration and inclusion of credit for
46 all potential credits and reductions including, but not limited to,
47 merit time, additional merit time and good behavior allowances when
48 calculating in advance for any other purpose the date on which a person
49 is or will be eligible for release on parole or conditional release.

50 § 5. This act shall take effect immediately, provided however, that
51 the amendments to subdivision 2 of section 851 of the correction law
52 made by section one of this act shall be subject to the expiration and
53 reversion of such subdivision and section pursuant to subdivision (c) of
54 section 46 of chapter 60 of the laws of 1994 and section 10 of chapter
55 339 of the laws of 1972, as amended, when upon such date the provisions
56 of section two of this act shall take effect; provided further, that the

1 amendments to subdivision 2 of section 851 of the correction law made by
2 section two of this act shall expire on the same date as subdivision (c)
3 of section 46 of chapter 60 of the laws of 1994, section 10 of chapter
4 339 of the laws of 1972, and section 5 of chapter 554 of the laws of
5 1986, as amended, expire; provided further that the amendments to subdi-
6 visions 2-a and 2-b of section 851 of the correction law, made by
7 sections three and four of this act shall not affect the expiration of
8 such section and shall expire therewith.