

# STATE OF NEW YORK

4920

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 and the penal law, in relation to temporary release eligibility for judicially-ordered comprehensive alcohol and substance abuse treatment

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 or who has completed a judicially-ordered substance abuse treatment  
8 program in a state correctional facility pursuant to subdivision six of  
9 section 60.04 of the penal law. Provided, however, that a person under  
10 sentence for an offense defined in paragraphs (a) and (b) of subdivision  
11 one of section 70.02 of the penal law, where such offense involved the  
12 use or threatened use of a deadly weapon or dangerous instrument shall  
13 not be eligible to participate in a work release program until he or she  
14 is eligible for release on parole or who will be eligible for release on  
15 parole or conditional release within eighteen months. Provided, further,  
16 however, that a person under a determinate sentence as a second felony  
17 drug offender for a class B felony offense defined in article two  
18 hundred twenty of the penal law, who was sentenced pursuant to section  
19 70.70 of such law, shall not be eligible to participate in a temporary  
20 release program until the time served under imprisonment for his or her  
21 determinate sentence, including any jail time credited pursuant to the  
22 provisions of article seventy of the penal law, shall be at least eigh-  
23 teen months. In the case of a person serving an indeterminate sentence

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

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1 of imprisonment imposed pursuant to the penal law in effect after  
2 September one, nineteen hundred sixty-seven, for the purposes of this  
3 article parole eligibility shall be upon the expiration of the minimum  
4 period of imprisonment fixed by the court or where the court has not  
5 fixed any period, after service of the minimum period fixed by the state  
6 board of parole. If an incarcerated individual is denied release on  
7 parole, such incarcerated individual shall not be deemed an eligible  
8 incarcerated individual until he or she is within two years of his or  
9 her next scheduled appearance before the state parole board. In any case  
10 where an incarcerated individual is denied release on parole while  
11 participating in a temporary release program, the department shall  
12 review the status of the incarcerated individual to determine if contin-  
13 ued placement in the program is appropriate. No person convicted of any  
14 escape or absconding offense defined in article two hundred five of the  
15 penal law shall be eligible for temporary release. Further, no person  
16 under sentence for aggravated harassment of an employee by an incarcer-  
17 ated individual as defined in section 240.32 of the penal law for, any  
18 homicide offense defined in article one hundred twenty-five of the penal  
19 law, for any sex offense defined in article one hundred thirty of the  
20 penal law, or for an offense defined in section 255.25, 255.26 or 255.27  
21 of the penal law shall be eligible to participate in a work release  
22 program as defined in subdivision three of this section. Nor shall any  
23 person under sentence for any sex offense defined in article one hundred  
24 thirty of the penal law be eligible to participate in a community  
25 services program as defined in subdivision five of this section.  
26 Notwithstanding the foregoing, no person who is an otherwise eligible  
27 incarcerated individual who is under sentence for a crime involving: (a)  
28 infliction of serious physical injury upon another as defined in the  
29 penal law or (b) any other offense involving the use or threatened use  
30 of a deadly weapon may participate in a temporary release program with-  
31 out the written approval of the commissioner. The commissioner shall  
32 promulgate regulations giving direction to the temporary release commit-  
33 tee at each institution in order to aid such committees in carrying out  
34 this mandate.

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

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

45 2. "Eligible incarcerated individual" means: a person confined in an  
46 institution who is eligible for release on parole or who will become  
47 eligible for release on parole or conditional release within two years  
48 or who has completed a judicially-ordered substance abuse treatment  
49 program in a state correctional facility pursuant to subdivision six of  
50 section 60.04 of the penal law. Provided, that a person under a deter-  
51 minate sentence as a second felony drug offender for a class B felony  
52 offense defined in article two hundred twenty of the penal law, who was  
53 sentenced pursuant to section 70.70 of such law, shall not be eligible  
54 to participate in a temporary release program until the time served  
55 under imprisonment for his or her determinate sentence, including any  
56 jail time credited pursuant to the provisions of article seventy of the

1 penal law, shall be at least eighteen months. In the case of a person  
2 serving an indeterminate sentence of imprisonment imposed pursuant to  
3 the penal law in effect after September one, nineteen hundred sixty-sev-  
4 en, for the purposes of this article parole eligibility shall be upon  
5 the expiration of the minimum period of imprisonment fixed by the court  
6 or where the court has not fixed any period, after service of the mini-  
7 mum period fixed by the state board of parole. If an incarcerated indi-  
8 vidual is denied release on parole, such incarcerated individual shall  
9 not be deemed an eligible incarcerated individual until he or she is  
10 within two years of his or her next scheduled appearance before the  
11 state parole board. In any case where an incarcerated individual is  
12 denied release on parole while participating in a temporary release  
13 program, the department shall review the status of the incarcerated  
14 individual to determine if continued placement in the program is appro-  
15 priate. No person convicted of any escape or absconding offense defined  
16 in article two hundred five of the penal law shall be eligible for  
17 temporary release. Nor shall any person under sentence for any sex  
18 offense defined in article one hundred thirty of the penal law be eligi-  
19 ble to participate in a community services program as defined in subdivi-  
20 sion five of this section. Notwithstanding the foregoing, no person  
21 who is an otherwise eligible incarcerated individual who is under  
22 sentence for a crime involving: (a) infliction of serious physical inju-  
23 ry upon another as defined in the penal law, (b) a sex offense involving  
24 forcible compulsion, or (c) any other offense involving the use or  
25 threatened use of a deadly weapon may participate in a temporary release  
26 program without the written approval of the commissioner. The commis-  
27 sioner shall promulgate regulations giving direction to the temporary  
28 release committee at each institution in order to aid such committees in  
29 carrying out this mandate.

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

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

40 2. "Eligible incarcerated individual" means a person confined in an  
41 institution where a work release program has been established who is  
42 eligible for release on parole or who will become eligible for release  
43 on parole within one year or who has completed a judicially-ordered  
44 substance abuse treatment program in a state correctional facility  
45 pursuant to subdivision six of section 60.04 of the penal law.

46 § 4. Subdivision 6 of section 60.04 of the penal law, as amended by  
47 section 120 of subpart B of part C of chapter 62 of the laws of 2011, is  
48 amended to read as follows:

49 6. Substance abuse treatment. When the court imposes a sentence of  
50 imprisonment which requires a commitment to the state department of  
51 corrections and community supervision upon a person who stands convicted  
52 of a controlled substance or marihuana offense, the court may, upon  
53 motion of the defendant in its discretion, issue an order directing that  
54 the department of corrections and community supervision enroll the  
55 defendant in the comprehensive alcohol and substance abuse treatment  
56 program in an alcohol and substance abuse correctional annex as defined

1 in subdivision eighteen of section two of the correction law, provided  
2 that the defendant will satisfy the statutory eligibility criteria for  
3 participation in such program. Notwithstanding the foregoing provisions  
4 of this subdivision, any defendant to be enrolled in such program pursu-  
5 ant to this subdivision shall be governed by the same rules and regu-  
6 lations promulgated by the department of corrections and community  
7 supervision, including without limitation those rules and regulations  
8 establishing requirements for completion and those rules and regulations  
9 governing discipline and removal from the program. Such defendant shall  
10 be deemed eligible for temporary release pursuant to subdivision two of  
11 section eight hundred fifty-one of the correction law upon completion of  
12 such program. No such period of court ordered corrections based drug  
13 abuse treatment pursuant to this subdivision shall be required to extend  
14 beyond the defendant's conditional release date.

15 § 5. This act shall take effect on the sixtieth day after it shall  
16 have become a law; provided, however, that the amendments to subdivision  
17 2 of section 851 of the correction law made by section one of this act  
18 shall be subject to the expiration and reversion of such subdivision and  
19 section pursuant to subdivision (c) of section 46 of chapter 60 of the  
20 laws of 1994 and section 10 of chapter 339 of the laws of 1972, as  
21 amended, when upon such date the provisions of section two of this act  
22 shall take effect; provided, further, that the amendments to subdivision  
23 2 of section 851 of the correction law made by section two of this act  
24 shall expire on the same date as subdivision (c) of section 46 of chap-  
25 ter 60 of the laws of 1994, section 10 of chapter 339 of the laws of  
26 1972, and section 5 of chapter 554 of the laws of 1986, as amended, when  
27 upon such date the provisions of section three of this act shall take  
28 effect.