

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.