

STATE OF NEW YORK

206

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. CRUZ, BURDICK, KELLES, EPSTEIN -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to failure to complete a program for time allowances due to circumstances beyond an individual's control

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

1 Section 1. Paragraph (a) of subdivision 1 of section 803 of the
2 correction law, as amended by section 37 of subpart B of part C of chap-
3 ter 62 of the laws of 2011, is amended to read as follows:

4 (a) Every person confined in an institution of the department or a
5 facility in the department of mental hygiene serving an indeterminate or
6 determinate sentence of imprisonment, except a person serving a sentence
7 with a maximum term of life imprisonment, may receive time allowance
8 against the term or maximum term of [~~his or her~~] such person's sentence
9 imposed by the court. Such allowances may be granted for good behavior
10 and efficient and willing performance of duties assigned or progress and
11 achievement in an assigned treatment program, and may be withheld,
12 forfeited or canceled in whole or in part for bad behavior, violation of
13 institutional rules or failure to perform properly in the duties or
14 program assigned. Such allowances shall not be withheld if a person
15 fails to complete a program because of circumstances beyond such
16 person's control.

17 § 2. Paragraph (a) of subdivision 1 of section 803 of the correction
18 law, as amended by chapter 126 of the laws of 1987 and as designated by
19 chapter 738 of the laws of 2004, is amended to read as follows:

20 (a) Every person confined in an institution of the department or a
21 facility in the department of mental hygiene serving an indeterminate
22 sentence of imprisonment, except a person serving a sentence with a
23 maximum term of life imprisonment, may receive time allowance against

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

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1 the maximum term or period of [~~his~~] such person's sentence not to exceed
2 in the aggregate one-third of the term or period imposed by the court.
3 Such allowances may be granted for good behavior and efficient and will-
4 ing performance of duties assigned or progress and achievement in an
5 assigned treatment program, and may be withheld, forfeited or canceled
6 in whole or in part for bad behavior, violation of institutional rules
7 or failure to perform properly in the duties or program assigned. Such
8 allowances shall not be withheld if a person fails to complete a program
9 because of circumstances beyond such person's control.

10 § 3. Subparagraph (iv) of paragraph (d) of subdivision 1 of section
11 803 of the correction law, as separately amended by section 1 of chapter
12 242 and section 224 of chapter 322 of the laws of 2021, is amended to
13 read as follows:

14 (iv) Such merit time allowance may be granted when an incarcerated
15 individual successfully participates in the work and treatment program
16 assigned pursuant to section eight hundred five of this article and when
17 such incarcerated individual obtains a general equivalency diploma, an
18 alcohol and substance abuse treatment certificate, a vocational trade
19 certificate following at least six months of vocational programming, at
20 least eighteen credits in a program registered by the state education
21 department from a degree-granting higher education institution or
22 performs at least four hundred hours of service as part of a community
23 work crew.

24 Such allowance shall be withheld for any serious disciplinary infrac-
25 tion or upon a judicial determination that the person, while an incar-
26 cerated individual, commenced or continued a civil action, proceeding or
27 claim that was found to be frivolous as defined in subdivision (c) of
28 section eight thousand three hundred three-a of the civil practice law
29 and rules, or an order of a federal court pursuant to rule 11 of the
30 federal rules of civil procedure imposing sanctions in an action
31 commenced by a person, while an incarcerated individual, against a state
32 agency, officer or employee. Such allowance shall not be withheld if a
33 person fails to complete a program because of circumstances beyond the
34 control of such person.

35 § 4. Subparagraph (iv) of paragraph (d) of subdivision 1 of section
36 803 of the correction law, as separately amended by section 2 of chapter
37 242 and section 224-a of chapter 322 of the laws of 2021, is amended to
38 read as follows:

39 (iv) Such merit time allowance may be granted when an incarcerated
40 individual successfully participates in the work and treatment program
41 assigned pursuant to section eight hundred five of this article and when
42 such incarcerated individual obtains a general equivalency diploma, an
43 alcohol and substance abuse treatment certificate, a vocational trade
44 certificate following at least six months of vocational programming, at
45 least eighteen credits in a program registered by the state education
46 department from a degree-granting higher education institution or
47 performs at least four hundred hours of service as part of a community
48 work crew.

49 Such allowance shall be withheld for any serious disciplinary infrac-
50 tion or upon a judicial determination that the person, while an incar-
51 cerated individual, commenced or continued a civil action, proceeding or
52 claim that was found to be frivolous as defined in subdivision (c) of
53 section eight thousand three hundred three-a of the civil practice law
54 and rules, or an order of a federal court pursuant to rule 11 of the
55 federal rules of civil procedure imposing sanctions in an action
56 commenced by a person, while an incarcerated individual, against a state

1 agency, officer or employee. Such allowance shall not be withheld if a
2 person fails to complete a program because of circumstances beyond the
3 control of such person.

4 § 5. Subdivision 1 of section 804 of the correction law, as amended by
5 chapter 145 of the laws of 1976, is amended to read as follows:

6 1. Every person confined in an institution serving a definite sentence
7 of imprisonment may receive time allowances as discretionary reductions
8 of the term of [~~his~~] such person's sentence not to exceed in the aggre-
9 gate one-third of the term imposed by the court. Such allowances may be
10 granted for good behavior and efficient and willing performance of
11 duties assigned or progress and achievement in an assigned treatment
12 program, and may be withheld, forfeited or cancelled in whole or in part
13 for bad behavior, violation of institutional rules or failure to perform
14 properly in the duties or program assigned. Such allowances shall not be
15 withheld, forfeited or cancelled in whole or in part for a person's
16 failure to complete an assigned program due to circumstances beyond the
17 control of such person.

18 § 6. Section 805 of the correction law, as amended by section 226 of
19 chapter 322 of the laws of 2021, is amended to read as follows:

20 § 805. Earned eligibility program. Persons committed to the custody of
21 the department under an indeterminate or determinate sentence of impris-
22 onment shall be assigned a work and treatment program as soon as prac-
23 ticable. No earlier than two months prior to the incarcerated individ-
24 ual's eligibility to be paroled pursuant to subdivision one of section
25 70.40 of the penal law, the commissioner shall review the incarcerated
26 individual's institutional record to determine whether [~~he or she~~] such
27 incarcerated individual has complied with the assigned program. Credit
28 for such assigned program shall not be withheld if a person fails to
29 complete a program because of circumstances beyond such person's
30 control. If the commissioner determines that the incarcerated individual
31 has successfully participated in the program [~~he or she~~] such commis-
32 sioner may issue the incarcerated individual a certificate of earned
33 eligibility. Notwithstanding any other provision of law, an incarcerated
34 individual who is serving a sentence with a minimum term of not more
35 than eight years and who has been issued a certificate of earned eligi-
36 bility, shall be granted parole release at the expiration of [~~his or~~
37 ~~her~~] such incarcerated individual's minimum term or as authorized by
38 subdivision four of section eight hundred sixty-seven of this chapter
39 unless the board of parole determines that there is a reasonable proba-
40 bility that, if such incarcerated individual is released, [~~he or she~~]
41 such incarcerated individual will not live and remain at liberty without
42 violating the law and that [~~his or her~~] the release of such incarcerated
43 individual is not compatible with the welfare of society. Any action by
44 the commissioner pursuant to this section shall be deemed a judicial
45 function and shall not be reviewable if done in accordance with law.

46 § 7. Section 805 of the correction law, as amended by section 226-a of
47 chapter 322 of the laws of 2021, is amended to read as follows:

48 § 805. Earned eligibility program. Persons committed to the custody of
49 the department under an indeterminate sentence of imprisonment shall be
50 assigned a work and treatment program as soon as practicable. No earlier
51 than two months prior to the expiration of an incarcerated individual's
52 minimum period of imprisonment, the commissioner shall review the incar-
53 cerated individual's institutional record to determine whether [~~he or~~
54 ~~she~~] such incarcerated individual has complied with the assigned
55 program. Credit for such assigned program shall not be withheld if a
56 person fails to complete a program because of circumstances beyond such

1 person's control. If the commissioner determines that the incarcerated
2 individual has successfully participated in the program [~~he or she~~] such
3 commissioner may issue the incarcerated individual a certificate of
4 earned eligibility. Notwithstanding any other provision of law, an
5 incarcerated individual who is serving a sentence with a minimum term of
6 not more than six years and who has been issued a certificate of earned
7 eligibility, shall be granted parole release at the expiration of [~~his~~
8 ~~or her~~] such incarcerated individual's minimum term or as authorized by
9 subdivision four of section eight hundred sixty-seven of this chapter
10 unless the board of parole determines that there is a reasonable proba-
11 bility that, if such incarcerated individual is released, [~~he or she~~]
12 such incarcerated individual will not live and remain at liberty without
13 violating the law and that [~~his or her~~] the release of such incarcerated
14 individual is not compatible with the welfare of society. Any action by
15 the commissioner pursuant to this section shall be deemed a judicial
16 function and shall not be reviewable if done in accordance with law.

17 § 8. Subdivision 5 of section 806 of the correction law, as amended by
18 chapter 322 of the laws of 2021, is amended to read as follows:

19 5. No person shall have the right to demand or require presumptive
20 release authorized by this section. The commissioner may revoke at any
21 time an incarcerated individual's scheduled presumptive release pursuant
22 to this section for any disciplinary infraction committed by the incar-
23 cerated individual or for any failure to continue to participate
24 successfully in any assigned work and treatment program after the
25 certificate of earned eligibility has been awarded except that any such
26 failure to continue to participate in an assigned work or treatment
27 program shall not be grounds for revocation of presumptive release if
28 such failure is due to circumstances beyond the incarcerated person's
29 control. The commissioner may deny presumptive release to any incar-
30 ated individual whenever the commissioner determines that such release
31 may not be consistent with the safety of the community or the welfare of
32 the incarcerated individual. Any action by the commissioner pursuant to
33 this section shall be deemed a judicial function and shall not be
34 reviewable if done in accordance with law.

35 § 9. This act shall take effect immediately; provided that the amend-
36 ments to paragraph (a) and subparagraph (iv) of paragraph (d) of subdivi-
37 sion 1 of section 803 of the correction law made by sections one and
38 three of this act shall be subject to the expiration and reversion of
39 such section pursuant to subdivision d of section 74 of chapter 3 of the
40 laws of 1995, as amended, when upon such date the provisions of sections
41 two and four of this act shall take effect; provided, further, that the
42 amendments to section 805 of the correction law made by section six of
43 this act shall be subject to the expiration and reversion of such
44 section pursuant to subdivision d of section 74 of chapter 3 of the laws
45 of 1995, as amended, when upon such date the provisions of section seven
46 of this act shall take effect; and provided, further, that the amend-
47 ments to subdivision 5 of section 806 of the correction law made by
48 section eight of this act shall not affect the repeal of such section
49 and shall be deemed repealed therewith.