

# STATE OF NEW YORK

206--A

2025-2026 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. CRUZ, BURDICK, KELLES, FORREST, TORRES -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

14 § 3. Subparagraph (iv) of paragraph (d) of subdivision 1 of section  
15 803 of the correction law, as amended by section 1 of part EE of chapter  
16 56 of the laws of 2025, is amended to read as follows:

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

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

39 § 4. Subparagraph (iv) of paragraph (d) of subdivision 1 of section  
40 803 of the correction law, as separately amended by section 2 of chapter  
41 242 and section 224-a of chapter 322 of the laws of 2021, is amended to  
42 read as follows:

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

53 Such allowance shall be withheld for any serious disciplinary infrac-  
54 tion or upon a judicial determination that the person, while an incar-  
55 cerated individual, commenced or continued a civil action, proceeding or  
56 claim that was found to be frivolous as defined in subdivision (c) of

1 section eight thousand three hundred three-a of the civil practice law  
2 and rules, or an order of a federal court pursuant to rule 11 of the  
3 federal rules of civil procedure imposing sanctions in an action  
4 commenced by a person, while an incarcerated individual, against a state  
5 agency, officer or employee. Such allowance shall not be withheld if a  
6 person fails to complete a program because of circumstances beyond the  
7 control of such person.

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

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

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

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

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

52 § 805. Earned eligibility program. Persons committed to the custody of  
53 the department under an indeterminate sentence of imprisonment shall be  
54 assigned a work and treatment program as soon as practicable. No earlier  
55 than two months prior to the expiration of an incarcerated individual's  
56 minimum period of imprisonment, the commissioner shall review the incar-

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

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

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

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