

# 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 subdi-  
37 vision 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.