

STATE OF NEW YORK

3688

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. WEPRIN, STECK -- read once and referred to the
Committee on Correction

AN ACT to amend the correction law, in relation to expanding prison work
release program eligibility and participation

The People of the State of New York, represented in Senate and Assem-
bly, 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 [~~Provided, however, that a person under sentence for an offense defined
8 in paragraphs (a) and (b) of subdivision one of section 70.02 of the
9 penal law, where such offense involved the use or threatened use of a
10 deadly weapon or dangerous instrument shall not be eligible to partici-
11 pate in a work release program until he or she is eligible for release
12 on parole or who will be eligible for release on parole or conditional
13 release within eighteen months. Provided, further, however, that a
14 person under a determinate sentence as a second felony drug offender for
15 a class B felony offense defined in article two hundred twenty of the
16 penal law, who was sentenced pursuant to section 70.70 of such law,
17 shall not be eligible to participate in a temporary release program
18 until the time served under imprisonment for his or her determinate
19 sentence, including any jail time credited pursuant to the provisions of
20 article seventy of the penal law, shall be at least eighteen months.~~] In

21 the case of a person serving an indeterminate sentence of imprisonment
22 imposed pursuant to the penal law in effect after September one, nine-
23 teen hundred sixty-seven, for the purposes of this article parole eligi-
24 bility shall be upon the expiration of the minimum period of imprison-
25 ment fixed by the court or where the court has not fixed any period,

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

LBD07368-01-5

1 after service of the minimum period fixed by the state board of parole.
2 If an incarcerated individual is denied release on parole, such incar-
3 cerated individual shall not be deemed an eligible incarcerated individ-
4 ual until ~~[he or she]~~ such incarcerated individual is within two years
5 of ~~[his or her]~~ such incarcerated individual's next scheduled appearance
6 before the state parole board. In any case where an incarcerated indi-
7 vidual is denied release on parole while participating in a temporary
8 release program, the department shall review the status of the incarcer-
9 ated individual to determine if continued placement in the program is
10 appropriate. No person convicted of any escape or absconding offense
11 defined in article two hundred five of the penal law shall be eligible
12 for temporary release. ~~[Further, no person under sentence for aggravated~~
13 ~~harassment of an employee by an incarcerated individual as defined in~~
14 ~~section 240.32 of the penal law for, any homicide offense defined in~~
15 ~~article one hundred twenty-five of the penal law, for any sex offense~~
16 ~~defined in article one hundred thirty of the penal law, or for an~~
17 ~~offense defined in section 255.25, 255.26 or 255.27 of the penal law~~
18 ~~shall be eligible to participate in a work release program as defined in~~
19 ~~subdivision three of this section. Nor shall any person under sentence~~
20 ~~for any sex offense defined in article one hundred thirty of the penal~~
21 ~~law be eligible to participate in a community services program as~~
22 ~~defined in subdivision five of this section. Notwithstanding the forego-~~
23 ~~ing, no person who is an otherwise eligible incarcerated individual who~~
24 ~~is under sentence for a crime involving: (a) infliction of serious phys-~~
25 ~~ical injury upon another as defined in the penal law or (b) any other~~
26 ~~offense involving the use or threatened use of a deadly weapon may~~
27 ~~participate in a temporary release program without the written approval~~
28 ~~of the commissioner.]~~ The commissioner shall promulgate regulations
29 giving direction to the temporary release committee at each institution
30 in order to aid such committees in carrying out this mandate.

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

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

41 2. "Eligible incarcerated individual" means: a person confined in an
42 institution who is eligible for release on parole or who will become
43 eligible for release on parole or conditional release within two years.
44 ~~[Provided, that a person under a determinate sentence as a second felony~~
45 ~~drug offender for a class B felony offense defined in article two~~
46 ~~hundred twenty of the penal law, who was sentenced pursuant to section~~
47 ~~70.70 of such law, shall not be eligible to participate in a temporary~~
48 ~~release program until the time served under imprisonment for his or her~~
49 ~~determinate sentence, including any jail time credited pursuant to the~~
50 ~~provisions of article seventy of the penal law, shall be at least eigh-~~
51 ~~teen months.]~~ In the case of a person serving an indeterminate sentence
52 of imprisonment imposed pursuant to the penal law in effect after
53 September one, nineteen hundred sixty-seven, for the purposes of this
54 article parole eligibility shall be upon the expiration of the minimum
55 period of imprisonment fixed by the court or where the court has not
56 fixed any period, after service of the minimum period fixed by the state

1 board of parole. [~~If an incarcerated individual is denied release on~~
2 ~~parole, such incarcerated individual shall not be deemed an eligible~~
3 ~~incarcerated individual until he or she is within two years of his or~~
4 ~~her next scheduled appearance before the state parole board.] In any
5 case where an incarcerated individual is denied release on parole while
6 participating in a temporary release program, the department shall
7 review the status of the incarcerated individual to determine if contin-
8 ued placement in the program is appropriate. No person convicted of an
9 escape or absconding offense defined in article two hundred five of the
10 penal law shall be eligible for temporary release. [~~Nor shall any person~~
11 ~~under sentence for any sex offense defined in article one hundred thirty~~
12 ~~of the penal law be eligible to participate in a community services~~
13 ~~program as defined in subdivision five of this section. Notwithstanding~~
14 ~~the foregoing, no person who is an otherwise eligible incarcerated indi-~~
15 ~~vidual who is under sentence for a crime involving: (a) infliction of~~
16 ~~serious physical injury upon another as defined in the penal law, (b) a~~
17 ~~sex offense involving forcible compulsion, or (c) any other offense~~
18 ~~involving the use or threatened use of a deadly weapon may participate~~
19 ~~in a temporary release program without the written approval of the~~
20 ~~commissioner.] An incarcerated individual shall not be eligible for work
21 release if such incarcerated individual is subject to a sentence imposed
22 for aggravated murder as defined in section 125.26 of the penal law,
23 murder in the first degree as defined in section 125.27 of the penal
24 law, rape in the third degree as defined in section 130.25 of the penal
25 law, rape in the second degree as defined in section 130.30 of the penal
26 law, rape in the first degree as defined in section 130.35 of the penal
27 law, criminal sexual act in the second degree as defined in section
28 130.45 of the penal law, criminal sexual act in the first degree as
29 defined in section 130.50 of the penal law, persistent sexual abuse as
30 defined in section 130.53 of the penal law, sexual abuse in the first
31 degree as defined in section 130.65 of the penal law, aggravated sexual
32 abuse in the third degree as defined in section 130.66 of the penal law,
33 aggravated sexual abuse in the second degree as defined in section
34 130.67 of the penal law, aggravated sexual abuse in the first degree as
35 defined in section 130.70 of the penal law, course of sexual conduct
36 against a child in the first degree as defined in section 130.75 of the
37 penal law, course of sexual conduct against a child in the second degree
38 as defined in section 130.80 of the penal law, predatory sexual assault
39 as defined in section 130.95 of the penal law, predatory sexual assault
40 against a child as defined in section 130.96 of the penal law, promoting
41 prostitution in the second degree as defined in section 230.30 of the
42 penal law, promoting prostitution in the first degree as defined in
43 section 230.32 of the penal law, compelling prostitution as defined in
44 section 230.33 of the penal law, sex trafficking as defined in section
45 230.34 of the penal law, incest in the first or second degree as defined
46 in article two hundred fifty-five of the penal law, an offense of
47 terrorism defined in article four hundred ninety of the penal law, or an
48 attempt or a conspiracy to commit any such offense. The commissioner
49 shall promulgate regulations giving direction to the temporary release
50 committee at each institution in order to aid such committees in carry-
51 ing out this mandate.~~~~

52 [~~The governor, by executive order, may exclude or limit the partic-~~
53 ~~ipation of any class of otherwise eligible incarcerated individuals from~~
54 ~~participation in a temporary release program. Nothing in this paragraph~~
55 ~~shall be construed to affect either the validity of any executive order~~
56 ~~previously issued limiting the participation of otherwise eligible~~

~~1 incarcerated individuals in such program or the authority of the commis-~~
~~2 sioner to impose appropriate regulations limiting such participation.]~~

3 § 3. Subdivision 2-a of section 851 of the correction law, as amended
4 by chapter 322 of the laws of 2021, is amended to read as follows:

5 2-a. Notwithstanding subdivision two of this section, the term "eligi-
6 ble incarcerated individual" shall also include a person confined in an
7 institution who is eligible for release on parole or who will become
8 eligible for release on parole or conditional release within [~~two~~] four
9 years, and who was convicted of a homicide offense as defined in article
10 one hundred twenty-five of the penal law or an assault offense defined
11 in article one hundred twenty of the penal law, and who can demonstrate
12 to the commissioner that: (a) the victim of such homicide or assault was
13 a member of the incarcerated individual's immediate family as that term
14 is defined in section 120.40 of the penal law or had a child in common
15 with the incarcerated individual; (b) the incarcerated individual was
16 subjected to substantial physical, sexual or psychological abuse commit-
17 ted by the victim of such homicide or assault; and (c) such abuse was a
18 substantial factor in causing the incarcerated individual to commit such
19 homicide or assault. With respect to an incarcerated individual's claim
20 that [~~he or she~~] such incarcerated individual was subjected to substan-
21 tial physical, sexual or psychological abuse committed by the victim,
22 such demonstration shall include corroborative material that may
23 include, but is not limited to, witness statements, social services
24 records, hospital records, law enforcement records and a showing based
25 in part on documentation prepared at or near the time of the commission
26 of the offense or the prosecution thereof tending to support the incar-
27 cerated individual's claim. Prior to making a determination under this
28 subdivision, the commissioner is required to request and take into
29 consideration the opinion of the district attorney who prosecuted the
30 underlying homicide or assault offense and the opinion of the sentencing
31 court. If such opinions are received within forty-five days of the
32 request, the commissioner shall take them into consideration. If such
33 opinions are not so received, the commissioner may proceed with the
34 determination. Any action by the commissioner pursuant to this subdivi-
35 sion shall be deemed a judicial function and shall not be reviewable in
36 any court.

37 § 4. Subdivision 2-b of section 851 of the correction law, as added by
38 chapter 738 of the laws of 2004, is amended to read as follows:

39 2-b. When calculating in advance the date on which a person is or will
40 be eligible for release on parole or conditional release, for purposes
41 of determining eligibility for temporary release or for placement at an
42 alcohol and substance abuse treatment correctional annex, the commis-
43 sioner shall consider and include credit for all potential credits and
44 reductions including but not limited to merit time, additional merit
45 time and good behavior allowances. Nothing in this subdivision shall be
46 interpreted as precluding the consideration and inclusion of credit for
47 all potential credits and reductions including, but not limited to,
48 merit time, additional merit time and good behavior allowances when
49 calculating in advance for any other purpose the date on which a person
50 is or will be eligible for release on parole or conditional release.

51 § 5. This act shall take effect immediately, provided however, that
52 the amendments to subdivision 2 of section 851 of the correction law
53 made by section one of this act shall be subject to the expiration and
54 reversion of such subdivision and section pursuant to subdivision (c) of
55 section 46 of chapter 60 of the laws of 1994 and section 10 of chapter
56 339 of the laws of 1972, as amended, when upon such date the provisions

1 of section two of this act shall take effect; provided further, that the
2 amendments to subdivision 2 of section 851 of the correction law made by
3 section two of this act shall expire on the same date as subdivision (c)
4 of section 46 of chapter 60 of the laws of 1994, section 10 of chapter
5 339 of the laws of 1972, and section 5 of chapter 554 of the laws of
6 1986, as amended, expire; provided further that the amendments to subdi-
7 visions 2-a and 2-b of section 851 of the correction law, made by
8 sections three and four of this act shall not affect the expiration of
9 such section and shall expire therewith.