

STATE OF NEW YORK

608

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. SOLAGES, 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 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~~] three
7 years. Provided, however, that a person under sentence for an offense
8 defined in paragraphs (a) and (b) of subdivision one of section 70.02 of
9 the penal law, where such offense involved the use or threatened use of
10 a deadly weapon or dangerous instrument shall not be eligible to partic-
11 ipate in a work release program until [~~he or she~~] such person is eligi-
12 ble for release on parole or who will be eligible for release on parole
13 or conditional release within [~~eighteen~~] thirty months. Provided,
14 further, however, that a person under a determinate sentence as a second
15 felony drug offender for a class B felony offense defined in article two
16 hundred twenty of the penal law, who was sentenced pursuant to section
17 70.70 of such law, shall not be eligible to participate in a temporary
18 release program until the time served under imprisonment for [~~his or~~
19 ~~her~~] such person's determinate sentence, including any jail time credit-
20 ed pursuant to the provisions of article seventy of the penal law, shall
21 be at least eighteen months. In the case of a person serving an indeter-
22 minate sentence of imprisonment imposed pursuant to the penal law in
23 effect after September one, nineteen hundred sixty-seven, for the
24 purposes of this article parole eligibility shall be upon the expiration

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

LBD02167-01-5

1 of the minimum period of imprisonment fixed by the court or where the
2 court has not fixed any period, after service of the minimum period
3 fixed by the state board of parole. ~~[If an incarcerated individual is~~
4 ~~denied release on parole, such incarcerated individual shall not be~~
5 ~~deemed an eligible incarcerated individual until he or she is within two~~
6 ~~years of his or her next scheduled appearance before the state parole~~
7 ~~board.]~~ In any case where an incarcerated individual is denied release
8 on parole while participating in a temporary release program, the
9 department shall review the status of the incarcerated individual to
10 determine if continued placement in the program is appropriate. No
11 person convicted of any escape or absconding offense defined in article
12 two hundred five of the penal law shall be eligible for temporary
13 release. Further, no person under sentence for aggravated harassment of
14 an employee by an incarcerated individual as defined in section 240.32
15 of the penal law for, any homicide offense defined in article one
16 hundred twenty-five of the penal law, for any sex offense defined in
17 article one hundred thirty of the penal law, for an act of terrorism as
18 defined in article four hundred ninety of the penal law, for an offense
19 involving the sexual performance of a child as defined in article two
20 hundred sixty-three of the penal law, or for an offense defined in
21 section 255.25, 255.26 or 255.27 of the penal law shall be eligible to
22 participate in a work release program as defined in subdivision three of
23 this section. Nor shall any person under sentence for any sex offense
24 defined in article one hundred thirty of the penal law be eligible to
25 participate in a community services program as defined in subdivision
26 five of this section. ~~[Notwithstanding the foregoing, no person who is~~
27 ~~an otherwise eligible incarcerated individual who is under sentence for~~
28 ~~a crime involving: (a) infliction of serious physical injury upon another~~
29 ~~as defined in the penal law or (b) any other offense involving the~~
30 ~~use or threatened use of a deadly weapon may participate in a temporary~~
31 ~~release program without the written approval of the commissioner.]~~ The
32 commissioner shall promulgate regulations giving direction to the tempo-
33 rary release committee at each institution in order to aid such commit-
34 tees in ~~[carrying out this mandate]~~ determining which incarcerated indi-
35 viduals are eligible and appropriate to participate in the temporary
36 release programs.

37 The governor~~[, by executive order,]~~ may not issue or enforce any exec-
38 utive order to exclude or limit the participation of any class of
39 ~~[otherwise]~~ eligible incarcerated individuals from participation in a
40 temporary release program. Nothing in this paragraph shall be construed
41 to affect ~~[either the validity of any executive order previously issued~~
42 ~~limiting the participation of otherwise eligible incarcerated individ-~~
43 ~~uals in such program or]~~ the authority of the commissioner to impose
44 appropriate regulations ~~[limiting such participation]~~ for determining
45 which incarcerated individuals are eligible and appropriate to partic-
46 ipate in the temporary release programs. The commissioner shall promul-
47 gate regulations giving direction to department and transitional
48 services staff with regard to developing and providing programmatic
49 support to temporary release participants with emphasis on the first
50 three months of work release.

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

53 2-a. Notwithstanding subdivision two of this section, the term "eligi-
54 ble incarcerated individual" shall also include a person confined in an
55 institution who is eligible for release on parole or who will become
56 eligible for release on parole or conditional release within ~~[two]~~ three

1 years, and who was convicted of a homicide offense as defined in article
2 one hundred twenty-five of the penal law [~~or an assault offense defined~~
3 ~~in article one hundred twenty of the penal law~~], and who can demonstrate
4 to the commissioner that: (a) the victim of such homicide or assault was
5 a member of the incarcerated individual's immediate family as that term
6 is defined in section 120.40 of the penal law or had a child in common
7 with the incarcerated individual; (b) the incarcerated individual was
8 subjected to substantial physical, sexual or psychological abuse commit-
9 ted by the victim of such homicide or assault; and (c) such abuse was a
10 substantial factor in causing the incarcerated individual to commit such
11 homicide or assault. With respect to an incarcerated individual's claim
12 that [~~he or she~~] such individual was subjected to substantial physical,
13 sexual or psychological abuse committed by the victim, such demon-
14 stration shall include corroborative material that may include, but is
15 not limited to, witness statements, social services records, hospital
16 records, law enforcement records and a showing based in part on documen-
17 tation prepared at or near the time of the commission of the offense or
18 the prosecution thereof tending to support the incarcerated individual's
19 claim. Prior to making a determination under this subdivision, the
20 commissioner is required to request and take into consideration the
21 opinion of the district attorney who prosecuted the underlying homicide
22 or assault offense and the opinion of the sentencing court. If such
23 opinions are received within forty-five days of the request, the commis-
24 sioner shall take them into consideration. If such opinions are not so
25 received, the commissioner may proceed with the determination. Any
26 action by the commissioner pursuant to this subdivision shall be deemed
27 a judicial function and shall not be reviewable in any court.

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

30 2-b. When calculating in advance the date on which a person is or will
31 be eligible for release on parole or conditional release, for purposes
32 of determining eligibility for temporary release or for placement at an
33 alcohol and substance abuse treatment correctional annex, the commis-
34 sioner shall consider and include credit for all potential credits and
35 reductions including but not limited to merit time, additional merit
36 time and good behavior allowances. Nothing in this subdivision shall be
37 interpreted as precluding the consideration and inclusion of credit for
38 all potential credits and reductions including, but not limited to,
39 merit time, additional merit time and good behavior allowances when
40 calculating in advance for any other purpose the date on which a person
41 is or will be eligible for release on parole or conditional release.

42 § 4. This act shall take effect immediately; provided, however, that
43 the amendments to subdivision 2 of section 851 of the correction law
44 made by section one of this act shall expire on the same date as subdivi-
45 sion (c) of section 46 of chapter 60 of the laws of 1994, as amended,
46 expires; provided, further, that the amendments to subdivisions 2-a and
47 2-b of section 851 of the correction law, made by sections two and three
48 of this act shall not affect the expiration of such section and shall
49 expire therewith.