

STATE OF NEW YORK

3974--A

Cal. No. 290

2025-2026 Regular Sessions

IN SENATE

January 31, 2025

Introduced by Sens. SEPULVEDA, BASKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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

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

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

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

Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an incarcerated individual, commenced or continued a civil action, proceeding or 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-

cerated individual's institutional record to determine whether [~~he or she~~] such incarcerated individual has complied with the assigned program. Credit for such assigned program shall not be withheld if a person fails to complete a program because of circumstances beyond such person's control.

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

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

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

§ 9. This act shall take effect immediately; provided that the amendments to paragraph (a) and subparagraph (iv) of paragraph (d) of subdivision 1 of section 803 of the correction law made by sections one and three of this act shall be subject to the expiration and reversion of such section pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of sections two and four of this act shall take effect; provided, further, that the amendments to section 805 of the correction law made by section six of this act shall be subject to the expiration and reversion of such section pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section seven of this act shall take effect; and provided, further, that the amendments to subdivision 5 of section 806 of the correction law made by section eight of this act shall not affect the repeal of such section and shall be deemed repealed therewith.