

Good morning. My name is Barb Wilhelm.

I am here today to share how the disease of addiction has impacted our family. There's a saying in the addiction recovery community that addiction left unchecked leads to institutions, jails or death. Our family can attest to that.

I will never forget the horrific night 12 years ago, when we discovered our oldest son Denny was addicted to opioids.

How could this be? My husband and I were a two-parent family, working full time and raising our two boys. Our kids were involved in sports, we took family vacations, attend church, etc. The thing we quickly learned is that addiction doesn't discriminate. The notion that a drug addict is an unloved, uneducated, person living on the streets needs to be exposed for the lie that it is.

Since then, these last 12 years have been an indescribable journey. We've seen our son go from a student that did well in school, excelled in sports, and earned the respect of his friends, teachers and coaches to losing his D1 college football scholarship, being academically dismissed from college, and getting arrested, Denny then went on to celebrate 4 years of sobriety, during which time he earned back the respect of the community helping others, as he ran a successful business. He was literally on top of the world when he relapsed which brought him to the verge of death. He was arrested as an addict in possession of a large quantity of the drug he was using. If he hadn't been arrested he would be dead and for that reason alone, I'm thankful he was arrested. He has currently served over 2 years (as a non-violent drug offender) in a maximum-security prison with no light at the end of this tunnel.

At his sentencing hearing the judge commented that Denny had done so much for our community and that he fully expected him to come back and be a force for good. Denny has been incarcerated for over 2 years. As I speak, he is still on the waiting list for the one weekly AA meeting that is offered. Unfortunately, there are drugs in prison. So, we've put a person who's struggle with addiction is well-documented in a dark, hopeless place without any help or support. It adds new meaning to white knuckling it.

I recognize that many people have the lock them up and throw away the key mentality, however I ask that we all take a moment to recognize that removing an individual from their family is as punitive as it gets. Whether an addict is doing his or her time in a rehabilitative facility or a prison they are doing their time removed from their family and every semblance of their lives. Being able to provide comprehensive rehabilitation programs in more prisons would allow more addicts the opportunities for treatment. Non-violent drug offenders need these opportunities so that they can return to their families and communities healthier and better able to contribute to society.

The Shock program is a boot camp like program that incorporates military like discipline with intense rehabilitation programs. Presently an inmate has to be within three years of their conditional release date to be considered for the program. There is a bill right now S2663 sponsored by Senator Sepulveda that would change that three year requirement to five years. This would be life changing for many inmates and their families. Sitting in general population and going out to the yard is not rehabilitative.

I have a very dear friend who has become like a daughter to me. She's 34 years old. She went to prison at 19 years old for 2 years for cocaine possession. She always says that the behaviors that you need to

learn in order to survive in prison are the exact opposite of what you learn in recovery. Example, in prison kindness means weakness, in recovery kindness means strength. She came out of prison bitter, lost and confused, and totally shut down. She had learned how to isolate in prison, she would later learn in recovery that isolation is dangerous, and community and connection are keys to living a healthy life. However, she would only learn that after a very long and painful road which finally brought her to recovery. I'm beyond thrilled to say that she just celebrated 7 years of sobriety and is here with me today.

Please Senators support the bill that expands Shock eligibility. This makes sense on so many levels. This program is rehabilitative so the recidivism rates for those that go through it are significantly lower than those who don't. The cost savings alone make this change worthwhile, but beyond that the impact this could make on so many families is monumental.

I've tried to find the words to express my gratitude to all of you that have taken up this cause. I know your time is valuable, and there are many issues facing our country. I believe we are on the verge of change, and that change will impact people and their families for generations to come. I look around this room and see all these faces. We are standing up to the stigma of this disease, pushing back on the idea that full recovery is not possible, and stating that we are united in this fight. The precious lives lost by some, and time lost by others cannot be lost in vain. Thank you for having me.

End of verbal testimony.

I'm learning that our prisons are full of people who suffer with the disease of addiction. The National Institute on Drug Abuse states that "Drug addiction is a brain disease that affects behavior." I agree with the thought that the war on drugs has become the war on patients. Addicts are looked at with extreme apathy. We need to see them with the same empathy that we view those suffering with diseases such as cancer or diabetes.

I know that many will push back on the idea that addiction is a disease. Based on my life experiences I absolutely believe it is a disease. My husband's brother died at 36 from a drug overdose, and both of our fathers were alcoholics.

My son Denny's life certainly supports this. As I mentioned in my testimony, Denny's relapse happened when he was on top of the world. What he learned from this, is that there is no cure for addiction. It is a lifetime disease such as diabetes, that needs to be managed. Denny had three different things he did to support his recovery. He attended a Tuesday morning men's bible study, a Thursday evening Celebrate Recovery, and church on Sunday. Between those three meetings, he had formed a circle of support that was critical to him. However, as his business grew he started missing meetings. He started to feel that he was ok and didn't need to do this anymore. It took about six months for him to go from the top of his world to totally avoiding going into his gym that he owned, losing forty pounds, and ultimately being arrested. It is clear to see that an addict's mind is wired differently.

I am not, in any way, saying that he shouldn't have consequences. I am saying though, that his sentence and being placed in a maximum-security prison just doesn't make sense. Sending a person with a well-documented history of struggling with drug addiction to an environment where drugs are available, but help is not just doesn't make sense for anyone. Not for him, and not for society when he comes home.

He already has lost everything. He is as low as you can go, and every day being in there, he's made to feel even worse. This is not a criticism of Corrections Officers. It's a real look at the prison environment. It is truly a jungle, and it is no wonder that recidivism rates are so high.

I don't know if I'm being delusional, but I feel like now, when support for both criminal justice reform, and prison reform are topics that both sides of the aisle are talking about, is the time to implement REAL change. How about a task force made up of people who have previously served time, family members of incarcerated people, wardens, corrections officers, district attorneys and judges to sit down together to come up with tangible changes.

I certainly will raise my hand to do anything I can to support this effort. We are getting ready to celebrate our third Christmas without our son, and yes I know that we are one of the lucky ones, he will be coming home. But our hearts are heavy as we pray every night for his safety, and for him to continue to persevere. He has so much to offer, as do so many that find themselves in the same spot. You people have the power and the platform to institute change. Please do that!

Again thank you for this opportunity to speak what has been on my heart.

A 3961 Weprin Same as S 2663 SEPULVEDA
Correction Law
TITLE.....Relates to expanding eligibility for shock
incarceration
01/31/19 referred to correction

S2663 SEPULVEDA Same as A 3961 Weprin
ON FILE: 01/29/19 Correction Law
TITLE.....Relates to expanding eligibility for shock
incarceration
01/28/19 REFERRED TO CRIME VICTIMS, CRIME AND
CORRECTION

STATE OF NEW YORK

3961

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

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

AN ACT to amend the correction law and the penal law, in relation to
eligibility for shock incarceration

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

- 1 Section 1. The section heading of section 806 of the correction law,
- 2 as added by section 5 of part E of chapter 62 of the laws of 2003, is
- 3 amended and a new subdivision 8 is added to read as follows:
- 4 Presumptive release program [~~for nonviolent inmates~~].

5 8. Notwithstanding any other subdivision of this section an inmate who
6 successfully completes a shock incarceration program shall be eligible
7 for presumptive release pursuant to section eight hundred sixty-seven of
8 this chapter or section 70.40 of the penal law.

9 § 2. Section 865 of the correction law, as added by chapter 261 of the
10 laws of 1987, subdivision 1 as amended by chapter 377 of the laws of
11 2010 and subdivision 2 as amended by section 2 of part L of chapter 56
12 of the laws of 2009, is amended to read as follows:

13 § 865. Definitions. As used in this article, the following terms mean:

14 1. "Eligible inmate" means a person sentenced to an indeterminate term
15 of imprisonment who will become eligible for release on parole within
16 [~~three~~] five years or sentenced to a determinate term of imprisonment
17 who will become eligible for conditional release within [~~three~~] five
18 years, who has not reached the age of [~~fifty~~] fifty-six years, who has
19 not previously been convicted of a violent felony as defined in article
20 seventy of the penal law, or a felony in any other jurisdiction which
21 includes all of the essential elements of any such violent felony, upon
22 which an indeterminate or determinate term of imprisonment was imposed
23 and who was between the ages of sixteen and [~~fifty~~] fifty-five years at
24 the time of commission of the crime upon which his or her present
25 sentence was based. Notwithstanding the foregoing, no person who is

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

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1 convicted of any of the following crimes shall be deemed eligible to
2 participate in this program: (a) a [~~violent felony offense as defined in~~
3 ~~article seventy of the penal law,~~] violent felony offense as defined in
4 paragraph (a) of subdivision one of section 70.02 of the penal law, (b)
5 an A-I felony offense, (c) any homicide offense as defined in article
6 one hundred twenty-five of the penal law, (d) any felony sex offense as
7 defined in article one hundred thirty of the penal law and (e) any
8 escape or absconding offense as defined in article two hundred five of
9 the penal law.

10 2. "Shock incarceration program" means a program pursuant to which
11 eligible inmates are selected to participate in the program and serve a
12 period of six months in a shock incarceration facility, which shall
13 provide rigorous physical activity, intensive regimentation and disci-
14 pline and rehabilitation therapy and programming. Such inmates may be
15 selected either: (i) at a reception center; or (ii) at a general
16 confinement facility when the otherwise eligible inmate then becomes
17 eligible for release on parole within [~~three~~] five years in the case of
18 an indeterminate term of imprisonment, or then becomes eligible for
19 conditional release within [~~three~~] five years in the case of a determi-
20 nate term of imprisonment.

21 § 3. Subdivision 4 of section 867 of the correction law, as amended by
22 chapter 738 of the laws of 2004, is amended to read as follows:

23 4. An inmate who has successfully completed a shock incarceration
24 program shall be eligible to receive such a certificate of earned eligi-
25 bility pursuant to section eight hundred five of this chapter. Notwith-
26 standing any other provision of law, an inmate [~~sentenced to a determi-~~
27 ~~nate~~] serving a sentence of imprisonment who has successfully completed
28 a shock incarceration program shall be eligible to receive such a
29 certificate of earned eligibility and shall be immediately eligible to
30 be conditionally released, paroled or presumptively released pursuant to
31 section 70.40 of the penal law.

32 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section
33 70.40 of the penal law, as amended by section 127-c of subpart B of part
34 C of chapter 62 of the laws of 2011, is amended to read as follows:

35 (v) Notwithstanding any other subparagraph of this paragraph, a person

36 may be paroled from the institution in which he or she is confined at
37 any time on medical parole pursuant to section two hundred fifty-nine-r
38 or section two hundred fifty-nine-s of the executive law or for deporta-
39 tion pursuant to paragraph (d) of subdivision two of section two hundred
40 fifty-nine-i of the executive law or paroled or presumptively released
41 after the successful completion of a shock incarceration program pursu-
42 ant to article twenty-six-A of the correction law.

43 § 5. This act shall take effect on the ninetieth day after it shall
44 have become a law; provided, however, that the amendments to section 806
45 of the correction law made by section one of this act shall not affect
46 the repeal of such section and shall be deemed repealed therewith; and
47 further provided, that the amendments to subparagraph (v) of paragraph
48 (a) of subdivision 1 of section 70.40 of the penal law made by section
49 four of this act shall not affect the expiration of such paragraph and
50 shall be deemed to expire therewith.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A3961

SPONSOR: Weprin

TITLE OF BILL: An act to amend the correction law and the penal law,
in relation to eligibility for shock incarceration

PURPOSE:

This bill expands shock incarceration eligibility.

SUMMARY OF PROVISIONS:

Section 1. Amends correction law 806 to grant presumptive release eligi-
bility to all shock graduates.

Section 2. Amends section 865 of the correction law to expand shock
eligibility to people convicted of E, D, C and non-violent B crimes, who
are under fifty-six years of age and within five years of parole eligi-
bility or conditional release.

Section 3 modifies section 867 of the correction law to create consist-
ency so that inmates serving either indeterminate or determinate
sentences may each be eligible for presumptive. release after success-
fully completing shock incarceration.

Section 4 amends section 70.40 of the penal law to clarify that inmates
with indeterminate sentences are eligible for parole or presumptive
release after successful completion of a shock incarceration program.

JUSTIFICATION:

Shock incarceration has been a successful program in New York for over twenty-five years. Shock incarceration is a six-month program involving hard labor, physical training, and academic and other programming in a boot-camp like environment. Monterey Shock was the first shock incarceration facility in New York and has boasted a lower than average recidivism rate, saving the State money and providing an effective alternative to prolonged prison incarceration.

In spite of its success, the Monterey Shock incarceration facility is being closed. One of the reasons cited by the Governor for closing Monterey is that there are not enough shock-eligible inmates to fill the facility since the prison census is down nearly 24% since 1999. With the reform of the Rockefeller Drug Laws, there are fewer shock-eligible inmates in the system because most low-level drug offenders are now being diverted from prison and sent to alternative programs. Rather than closing a shock facility, it is time to expand eligibility to permit a greater number of inmates to benefit from shock incarceration. Shock inmates recidivate at a lower rate, have better educational advancement, and are more successful at finding jobs and remaining drug free than other inmates who go through long periods of incarceration. This bill would allow more inmates, carefully screened by DOCCS, to have the opportunity to turn their lives around while increasing public safety and ensuring that the remaining shock incarceration facilities stay open or even that the Governor reconsider closing Monterey.

LEGISLATIVE HISTORY:

01/31/17 referred to correction
01/03/18 referred to correction

FISCAL IMPLICATIONS:

Will save the State money by diverting more inmates from long periods of incarceration.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Ninety days after the bill becomes law.

Budget Language

Part KK – Shock Incarceration

Purpose:

This bill would amend the penal law and correction law in relation to shock incarceration.

Summary of Provisions and Statement in Support:

The proposed reform allows sentencing judges to issue a shock incarceration enrollment order at their discretion for individuals convicted of burglary in the second degree or robbery in the second degree.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget and will send the strong signal that New York is rededicating itself to a progressive and responsive justice system that leads the nation.

Effective Date:

This bill would take effect on September 1, 2019.

PART KK

17 Section 1. Section 60.05 of the penal law is amended by adding a new
18 subdivision 8 to read as follows:

19 8. Shock incarceration participation. (a) When the court imposes a
20 determinate sentence of imprisonment pursuant to subdivision three of
21 section 70.02 of this chapter or subdivision six of section 70.06 of
22 this chapter upon a person who stands convicted either of burglary in
23 the second degree as defined in subdivision two of section 140.25 of
24 this chapter or robbery in the second degree as defined in subdivision
25 one of section 160.10 of this chapter, or an attempt thereof, upon
26 motion of the defendant, the court may issue an order directing that the
27 department of corrections and community supervision enroll the defendant
28 in the shock incarceration program as defined in article twenty-six-A of
29 the correction law, provided that the defendant is an eligible inmate,
30 as described in subdivision one of section eight hundred sixty-five of
31 the correction law. Notwithstanding the foregoing provisions of this
32 subdivision, any defendant to be enrolled in such program pursuant to
33 this subdivision shall be governed by the same rules and regulations
34 promulgated by the department of corrections and community supervision,
35 including without limitation those rules and regulations establishing
36 requirements for completion and such rules and regulations governing
37 discipline and removal from the program.

38 (b) Paragraph (b) of subdivision seven of section 60.04 of this arti-
39 cle shall apply in the event an inmate designated by court order for
40 enrollment in the shock incarceration program requires a degree of
41 medical care or mental health care that cannot be provided at a shock
42 incarceration facility.

43 § 2. Subdivision 1 of section 865 of the correction law, as amended by
44 chapter 377 of the laws of 2010, is amended to read as follows:

45 1. "Eligible inmate" means a person sentenced to an indeterminate term
46 of imprisonment who will become eligible for release on parole within
47 three years or sentenced to a determinate term of imprisonment who will
48 become eligible for conditional release within three years, who has not
49 reached the age of fifty years, who has not previously been convicted of
50 a violent felony as defined in article seventy of the penal law, or a
51 felony in any other jurisdiction which includes all of the essential
52 elements of any such violent felony, upon which an indeterminate or
53 determinate term of imprisonment was imposed and who was between the
54 ages of sixteen and fifty years at the time of commission of the crime
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1 upon which his or her present sentence was based. Notwithstanding the
2 foregoing, no person who is convicted of any of the following crimes
3 shall be deemed eligible to participate in this program: (a) a violent
4 felony offense as defined in article seventy of the penal law[7] ;

5 provided, however, that a person who is convicted of burglary in the
6 second degree as defined in subdivision two of section 140.25 of the
7 penal law, or robbery in the second degree as defined in subdivision one
8 of section 160.10 of the penal law, or an attempt thereof, and for whom
9 the sentencing court has issued an order pursuant to subdivision eight
10 of section 60.05 of the penal law enrolling such person in the shock
11 incarceration program, is eligible to participate, (b) an A-I felony
12 offense, (c) any homicide offense as defined in article one hundred
13 twenty-five of the penal law, (d) any felony sex offense as defined in
14 article one hundred thirty of the penal law and (e) any escape or
15 absconding offense as defined in article two hundred five of the penal
16 law.

17 § 3. This act shall take effect on September 1, 2019.

STATE OF NEW YORK

3961

2019-2020 Regular Sessions

IN

ASSEMBLY

January 31, 2019

Introduced by M.

of A. WEPRIN, O'DONNELL, STECK – read once and referred to the Committee on Correction

AN ACT to amend the correction law and the penal law, in relation to eligibility for shock

incarceration The People of the State of New York, represented in Senate and Assembly, doenact as follows: 1 Section 1. The section heading of section 806 of the correction law, 2 as added by section 5 of part E of chapter 62 of the laws of 2003, is 3 amended and a new subdivision 8 is added to read as follows: 4 Presumptive release program [for nonviolent inmates]. 5 8.Notwithstanding any other subdivision of this section an inmate who 6 successfully completes a shock incarceration program shall be eligible 7 for presumptive release pursuant to section eight hundred sixty-seven of 8 this chapter or section 70.40 of the penal law. 9 § 2. Section 865 of the correction

law, as added by chapter 261 of the 10 laws of 1987, subdivision 1 as amended by chapter 377 of the laws of 11 2010 and subdivision 2 as amended by section 2 of part L of chapter 56 12 of the laws of 2009, is amended to read as follows: 13 § 865. Definitions. As used in this article, the following terms

mean: 14 1. "Eligible inmate" means a person sentenced to an indeterminate term 15 of imprisonment who will become eligible for release on parole within 16 [three] five years or sentenced to a determinate term of imprisonment 17 who will become eligible for conditional release within [three] five 18 years, who has not reached the age of [fifty] fifty-six years, who has 19 not previously been convicted of a violent felony as defined in article 20 seventy of the penal law, or a felony in any other jurisdiction which 21 includes all of the essential elements of any such violent felony, upon 22 which an indeterminate or determinate term of imprisonment was imposed 23 and who was between the ages of sixteen and [fifty] fifty-five years at 24 the time of commission of the crime upon which his or her present 25 sentence was based. Notwithstanding the foregoing, no person who isEXPLANATION—Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted. LBD07234-01-9 A. 3961 2 1convicted of any of the following crimes shall be deemed eligible to 2 participate in this program: (a) a [violent felony offense as defined in 3 article seventy of the penal law,] violent felony offense as defined in 4 paragraph (a) of subdivision one of section 70.02 of the penal law, (b) 5 an A-I felony offense, (c) any homicide offense as defined in article 6 one hundred twenty-five of the penal law, (d) any felony sex offense as 7 defined in article one hundred thirty of the penal law and (e) any 8escape or absconding offense as defined in article two hundred five of 9 the penal law. 10 2. "Shock incarceration program" means a program pursuant to which 11 eligible inmates are selected to participate in the program and serve a 12 period of six months in a shock incarceration facility, which shall 13 provide rigorous physical activity, intensive regimentation and discipli- 14 pline and rehabilitation therapy and programming. Such inmates may be 15 selected either: (i) at a reception center; or (ii) at a general 16 confinement facility when the otherwise eligible inmate then becomes 17 eligible for release on parole within [three] five years in the case of 18 an indeterminate term of imprisonment, or then becomes eligible for 19 conditional release within [three] five years in the case of a determi- 20 nate term of imprisonment. 21 § 3. Subdivision 4 of section 867 of the correction

law, as amended by 22 chapter 738 of the laws of 2004, is amended to read as follows: 23 4. An inmate who has successfully completed a shock incarceration 24 program shall be eligible to receive such a certificate of earned eligi- 25 bility pursuant to section eight hundred five of this chapter. Notwith-

26 standing any other provision of law, an inmate [sentenced to a determi- 27 nate] servin a sentence of imprisonment who has successfully completed 28 a shock incarceration program shall be eligible to receive such a 29 certificate of earned eligibility and shall be immediately eligible to 30 be conditionally released, paroled or presumptively released pursuant to 31 section 70.40 of the penal law. 32 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section 33 70.40 of the penal

law, as amended by section 127-c of subpart B of part 34 C of chapter 62 of the laws of 2011, is amended to read as follows: 35 (v) Notwithstanding any other subparagraph of this paragraph, a person

36 may be paroled from the institution in which he or she is confined at 37 any time on medical parole pursuant to section two hundred fifty-nine-r 38 or section two hundred fifty-nine-s of the executive law or for deporta- 39 tion pursuant to paragraph (d) of subdivision two of section two hundred 40 fifty-nine-i of the executive law or paroled or presumptively released 41 after the successful

completion of a shock incarceration program pursuant to article twenty-six-A of the correction law. § 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to section 806 of the correction law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith; and further provided, that the amendments to subparagraph (v) of paragraph (a) of subdivision 1 of section 70.40 of the penal law made by section four of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION**

submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A3961 **SPONSOR:** Weprin **TITLE OF BILL:** An act to amend the correction law and the penal law, in relation to eligibility for shock incarceration **PURPOSE:** This bill expands shock incarceration eligibility. **SUMMARY OF PROVISIONS:** Section 1. Amends correction law 806 to grant presumptive release eligibility to all shock graduates. Section 2. Amends section 865 of the correction law to expand shock eligibility to people convicted of E, D, C and non-violent B crimes, who are under fifty-six years of age and within five years of parole eligibility or conditional release. Section 3 modifies section 867 of the correction law to create consistency so that inmates serving either indeterminate or determinate sentences may each be eligible for presumptive release after successfully completing shock incarceration. Section 4 amends section 70.40 of the penal law to clarify that inmates with indeterminate sentences are eligible for parole or presumptive release after successful completion of a shock incarceration program. **JUSTIFICATION:** Shock incarceration has been a successful program in New York for over twenty-five years. Shock incarceration is a six-month program involving hard labor, physical training, and academic and other programming in a boot-camp like environment. Monterey Shock was the first shock incarceration facility in New York and has boasted a lower than average recidivism rate, saving the State money and providing an effective alternative to prolonged prison incarceration. In spite of its success, the Monterey Shock incarceration facility is being closed. One of the reasons cited by the Governor for closing Monterey is that there are not enough shock-eligible inmates to fill the facility since the prison census is down nearly 24% since 1999. With the reform of the Rockefeller Drug Laws, there are fewer shock-eligible inmates in the system because most low-level drug offenders are now being diverted from prison and sent to alternative programs. Losing a shock facility, it is time to expand eligibility to permit greater number of inmates to benefit from shock incarceration. Shock inmates recidivate at a lower rate, have better educational advancement, and are more successful at finding jobs and remaining drug free than other inmates who go through long periods of incarceration. This bill would allow more inmates, carefully screened by DOCCS, to have the opportunity to turn their lives around while increasing public safety and ensuring that the remaining shock incarceration facilities stay open or even that the Governor reconsider closing Monterey. **LEGISLATIVE HISTORY:** 01/31/17 referred to correction 01/03/18 referred to correction **FISCAL IMPLICATIONS:** Will save the State money by diverting more inmates from long periods of incarceration. **LOCAL FISCAL IMPLICATIONS:** None. **EFFECTIVE DATE:** Ninety days after the bill becomes law.

Budget Language

Part KK – Shock Incarceration

Purpose:

This bill would amend the penal law and correction law in relation to shock incarceration.

Summary of Provisions and Statement in Support:

The proposed reform allows sentencing judges to issue a shock incarceration enrollment order at their discretion for individuals convicted of burglary in the second degree or robbery in the second degree.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget and will send the strong signal that New York is rededicating itself to a progressive and responsive justice system that leads the nation.

Effective Date:

This bill would take effect on September 1, 2019.

PART KK 17 Section 1. Section 60.05 of the penal law is amended by adding a new 18 subdivision 8 to read as follows: 19 **8. Shock incarceration participation. (a) When the court imposes a 20 determinate sentence of imprisonment pursuant to subdivision three of 21 section 70.02 of this chapter or subdivision six of section 70.06 of 22 this chapter upon a person who stands convicted either of burglary in 23 the second degree as defined in subdivision two of section 140.25 of 24 this chapter or robbery in the second degree as defined in subdivision 25 one of section 160.10 of this chapter, or an attempt thereof, upon 26 motion of the defendant, the court may issue an order directing that the 27 department of corrections and community supervision enroll the defendant 28 in the shock incarceration program as defined in article twenty-six-A of 29 the correction law, provided that the defendant is an eligible inmate, 30 as described in subdivision one of section eight hundred sixty-five of 31 the correction law. Notwithstanding the foregoing provisions of this 32 subdivision, any defendant to be enrolled in such program pursuant to 33 this subdivision shall be governed by the same rules and regulations 34 promulgated by the department of corrections and community supervision, 35 including without limitation those rules and regulations establishing 36 requirements for completion and such rules and regulations governing 37 discipline and removal from the program. 38 (b) Paragraph (b) of subdivision seven of section 60.04 of this article shall apply in the event an inmate designated by court order for 40 enrollment in the shock incarceration program requires a degree of 41 medical care or mental health care that cannot be provided at a shock 42 incarceration facility. 43** § 2. Subdivision 1 of section 865 of the correction law, as amended by 44 chapter 377 of the laws of 2010, is amended to read as follows: 45 1. "Eligible inmate" means a person sentenced to an indeterminate term 46 of imprisonment who will become eligible for release on parole within 47 three years or sentenced to a determinate term of imprisonment who will 48 become eligible for conditional release within three years, who has not 49 reached the age of fifty years, who has not previously been convicted of 50 a violent felony as defined in article seventy of the penal law, or a 51 felony in any other jurisdiction which includes all of the essential 52 elements of any such violent felony, upon which an indeterminate or 53 determinate term of imprisonment was imposed and who was between the 54 ages of sixteen and fifty years at the time of commission of the crime S. 1505 188 A. 2005 1 upon which his or her present sentence was based. Notwithstanding the 2 foregoing, no person who is convicted of any of the following crimes 3 shall be deemed eligible to participate in this program: (a) a violent 4 felony offense as defined in article seventy of the penal law[,] ; 5 **provided, however, that a person who is convicted of burglary in the 6 second degree as defined in subdivision two of section 140.25 of the 7 penal law, or robbery in the second degree as defined in subdivision one 8 of section 160.10 of the penal law, or an attempt thereof, and for whom 9 the sentencing court has issued an order pursuant to subdivision eight 10 of section 60.05 of the penal law enrolling such person in the shock 11 incarceration program, is eligible to participate,** (b) an A-I felony 12 offense, (c) any homicide offense as defined in article one hundred 13 twenty-five of the penal law, (d) any felony sex offense as defined in 14 article one hundred thirty of the penal law and (e) any escape or 15 absconding offense as defined in article two hundred five of the penal 16 law. 17 § 3. This act shall take effect on September 1, 2019.