

UPDATE ON ROCKEFELLER DRUG LAW REFORM: CASAT AND WORK RELEASE ENTRY DELAYED BY DOCS

One of the significant changes heralded by the Drug Law Reform Act (DLRA) of 2004 was a new provision that brings about earlier eligibility for the CASAT program and work release for any person serving an indeterminate sentence for a drug offense. However, the interpretation of the DLRA by the New York State Department of Correctional Services (DOCS) will delay that early eligibility.

Pursuant to the very first section of the DLRA, Correction Law §2(18) was amended to provide for expedited entry into the CASAT program. As explained in *A Guide to Rockefeller Drug Law Reform: Understanding the New Legislation* available online at http://www.communityalternatives.org/pdfs/sentencing_guide.pdf the new law expedites eligibility for the program by six months. By moving the eligibility date back by six months, a person is now eligible for CASAT when he or she is within 30 months of possible release on parole or conditional release instead of the 24 months that was previously applicable.

The new legislation also addressed how to determine the earliest possible release date for parole or conditional release by amending Correction Law §851, to add a new subdivision 2-b. In relevant part subdivision 2-b provides:

*When calculating in advance the date on which a person is or will be eligible for release on parole or condition release, for purposes of determining eligibility for temporary release or for placement at an alcohol and substance abuse treatment correctional annex, **the commissioner shall consider and include credit for all potential credits and reductions including but not limited to merit time and good behavior allowance.*** (Emphasis added).

Prior to the passage of the DLRA, Correction Law §803(d) provided for 1/6th merit time allowance credit to reduce the minimum on a sentence. By §30 of the DLRA, the legislature created an additional merit time allowance of another 1/6th merit time credit.¹ Creation of this additional merit time allowance was, in part, the legislature's way of addressing the public call for reform of these Rockefeller drug sentences without going so far as to allow for resentencing for anyone other than A-I drug offenders.

¹ DLRA §30 appears in Chapter 738 of the Laws of 2004 but was not codified by statute.

With the passage of the DLRA it was assumed that a person serving an indeterminate sentence for a drug offense would be eligible for CASAT when he or she was within 30 months of his or her earliest parole release date and eligible for work release when he or she was within 24 months of his or her earliest parole release date. It was expected that the parole release date would be determined by following the provisions of the newly created Correction Law subdivision 2-b of §851 so as to credit against the minimum sentence 1/6th off for merit time allowance and 1/6th off for additional merit time allowance, or a total of 1/3 off the minimum.

However, DOCS is refusing to apply the additional merit time allowance created by §30 of the DLRA to determine the earliest parole release date and thus impacting CASAT and work release eligibility. Contrary to the clear statutory language of Correctional Law §851 (2-b) DOCS will only apply the 1/6th merit time allowance created by Correction Law §803(d) but will not apply the additional 1/6th merit time allowance created by the legislature in §30 of the DLRA. The net effect is to delay entry into the CASAT program and work release by 1/6th of the minimum sentence.

Case Example

John Smith is serving an indeterminate sentence of 6 to 18 years for a drug offense. He is eligible for early parole release at 4 years. This 4 year early parole release date is calculated by applying 1/6th credit off for merit time (1 year) and 1/6th off for additional merit time (1 year). DLRA §30 allows for John's entrance into CASAT or work release 30 months prior to this 4-year eligibility or after John has served 2 1/2 years. However, DOCS's refusal to consider the additional merit time created by DLRA §30 will delay John's entry into CASAT or work release by one full year.

Even though this interpretation by DOCS appears to fly in the face of the plain meaning of Correction Law §851 (2-b), it is how CASAT and work release eligibility are currently being determined.² While this issue is likely to be litigated, in the meantime, literally thousands of people in prison will be wondering why they are not yet eligible for these anticipated early release programs. Attorneys and advocates should be prepared to field this question from former clients.

² Note that this will not affect those persons sentenced under the new determinate sentencing scheme as they are not eligible for additional merit time.