

# EXECUTIVE ORDERS

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## **Executive Order No 9: Ordering the Commissioner of the Department of Correctional Services to Bar Certain Offenders from Participating in Temporary Release Programs.**

WHEREAS, temporary release programs provide an important opportunity for inmates committed to state prison to transition back into their home communities under supervision, and to assume responsibilities that will facilitate their ability to lead law-abiding lives; and

WHEREAS, temporary release programs should be focused on those inmates who are most likely to live and work within the local community in a law-abiding manner; and

WHEREAS, the positive acceptance of temporary release programs within the surrounding community is vital for the overall success of such programs; and

WHEREAS, there are certain classes of inmates who have committed crimes of particular violence, depravity or victimization, and who are less likely to succeed in temporary release programs; and

WHEREAS, the temporary release of such inmates likely would cause alarm and concern in the surrounding community, and thereby would diminish the acceptance of temporary release programs generally; and

WHEREAS, Correction Law § 851(2) grants the Governor the power to exclude or limit the participation of any class of otherwise eligible inmates from participation in a temporary release program;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby order the Commissioner of the Department of Correctional Services to promulgate, modify, adopt, or rescind any rules, regulations, directives, policies or procedures as may be necessary to prevent the future transfer of any inmate to any program of temporary release, when the inmate is convicted of any of the following crimes, or is convicted of an attempt or a conspiracy to commit any of the following crimes:

- (1) an act of terrorism as defined in Article 490 of the Penal Law;
- (2) a homicide offense as defined in Article 125 of the Penal Law;
- (3) a sex offense as defined in Article 130 of the Penal Law;
- (4) an offense involving the sexual performance of a child as defined in Article 263 of the Penal Law;
- (5) incest as defined in Article 255 of the Penal Law; or
- (6) a violent felony offense that includes as an element: (i) being armed with, the use of, the threatened use of, or the possession with the intent to use unlawfully against another of, a deadly weapon or a dangerous instrument; or (ii) the infliction of serious physical injury.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany, this fifth day of March in the year two thousand seven.

*BY THE GOVERNOR*  
/S/ Eliot Spitzer  
/s/ Richard S. Baum  
*Secretary to the Governor*

## **Executive Order No. 10: Establishing the New York State Commission on Sentencing Reform.**

WHEREAS, criminal sentences should appropriately reflect the seriousness of the offender's crime, and should meet the multiple objectives of punishment, deterrence, rehabilitation, retribution, and isolation; and

WHEREAS, an equitable system of criminal justice must ensure that crimes of similar seriousness result in similar sanctions for similarly situated offenders; and

WHEREAS, significant disparities in how similar crimes are treated diminishes the public's trust and faith in our criminal justice system; and

WHEREAS, the system of criminal sanctions in New York State has grown increasingly complex; and

WHEREAS, a comprehensive review of New York's sentencing structure will provide the State with crucial guidance to ensure the imposition of appropriate and just criminal sanctions, and to make the most efficient use of the correctional system and community resources;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby order as follows:

1. There is hereby established the New York State Commission on Sentencing Reform ("Commission").

2. The Commission shall consist of eleven members appointed by the Governor, including: (a) the Commissioner of the Department of Correctional Services, the Chairman of the Board of Parole, the Commissioner of the Division of Criminal Justice Services and the Chair of the Crime Victims Board, who shall serve ex officio; (b) four members appointed on the recommendation of the legislative leaders, one each by the Speaker of the Assembly, the Temporary President of the Senate, the Minority Leader of the Assembly, and the Minority Leader of the Senate; and (c) three additional members appointed by the Governor, including one judge or former judge with substantial experience presiding over courts of criminal jurisdiction, one member of the bar with significant experience in the prosecution of criminal actions, and one member of the bar with significant experience representing defendants in criminal actions.

3. The Governor shall select a Chair of the Commission from among the members. A majority of the members of the Commission shall constitute a quorum, and all recommendations of the Commission shall require approval of a majority of the total members of the Commission.

4. The Commission shall conduct a comprehensive review of New York's current sentencing structure, sentencing practices, community supervision, and the use of alternatives to incarceration, including a review and evaluation of:

(a) the existing statutory provisions by which an offender is sentenced to or can be released from incarceration, including but not limited to indeterminate sentences, determinate sentences, definite sentences, sentences of parole supervision, merit time, supplemental

merit time, shock incarceration, temporary release, presumptive release, conditional release, and maximum expiration;

(b) the existing sentencing provisions as to their uniformity, certainty, consistency and adequacy;

(c) the lengths of incarceration and community supervision that result from the current sentence structure, and the incentives or barriers to the appropriate utilization of alternatives to incarceration;

(d) the extent to which education, job training and re-entry preparation programs can both facilitate the readiness of inmates to transition into the community, and reduce recidivism;

(e) the impact of existing sentences upon the state criminal justice system, including state prison capacity, local jail capacity, community supervision resources, judicial operations and law enforcement responsibilities;

(f) the relation that a sentence or other criminal sanction has to public safety and the likelihood of recidivism; and

(g) the expected future trends in sentencing.

5. In undertaking its review, the Commission may request documents, conduct public hearings, hear the testimony of witnesses, and take any other actions it deems necessary to carry out its functions.

6. The Commission shall make recommendations for amendments to state law that will maximize uniformity, certainty, consistency and adequacy of a sentence structure such that: (a) the punishment is aligned with the seriousness of the offense; (b) public safety is protected through the deterrent effect of the sentences authorized and the rehabilitation of those that are convicted; and (c) appropriate consideration is accorded to the victims of the offense, their families, and the community. Reports of the Commission shall include, but not be limited to, an evaluation of the impact that existing sentences have had on length of incarceration, the impact of early release, the impact of existing sentences on the length of community supervision, recommended options for the use of alternatives to incarceration, and an analysis of the fiscal impact of the Commission's recommendations.

7. The Commission shall issue an initial report of its findings and recommendations on or before September 1, 2007, and a final report on or before March 1, 2008. All reports shall be submitted to the Governor, the Chief Judge of the Court of Appeals, the Temporary President of the Senate, the Speaker of the Assembly, the Minority Leader of the Senate, and the Minority Leader of the Assembly.

8. No member of the Commission shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment by virtue of his or her appointment hereunder. Members of the Commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder. All members of the Commission shall serve at the pleasure of the Governor and vacancies shall be filled in the same manner as original appointments.

9. Every agency, department, office, division or public authority of this state shall cooperate with the Commission and furnish such information and assistance as the Commission determines is reasonably necessary to accomplish its purposes.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany, this fifth day of March in the year two thousand seven.

*BY THE GOVERNOR*

/S/ Eliot Spitzer

/s/ Richard S. Baum

*Secretary to the Governor*