

733--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. ROBACH, NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the executive law, in relation to appearance of a victim at parole hearings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 440.50 of the criminal procedure
2 law, as amended by section 80 of subpart B of part C of chapter 62 of
3 the laws of 2011, is amended to read as follows:
4 1. Upon the request of a victim of a crime, or in any event in all
5 cases in which the final disposition includes a conviction of a violent
6 felony offense as defined in section 70.02 of the penal law or a felony
7 defined in article one hundred twenty-five of such law, the district
8 attorney shall, within sixty days of the final disposition of the case,
9 inform the victim by letter of such final disposition. If such final
10 disposition results in the commitment of the defendant to the custody of
11 the department of corrections and community supervision for an indeter-
12 minate sentence, the notice provided to the crime victim shall also
13 inform the victim of his or her right to (I) submit a written, audio-
14 taped, or videotaped victim impact statement to the department of
15 corrections and community supervision or to meet personally with a
16 member of the state board of parole at a time and place separate from
17 the personal interview between a member or members of the board and the
18 inmate and make such a statement, subject to procedures and limitations
19 contained in rules of the board, [both] AND (II) APPEAR AND BE HEARD AT
20 THE PAROLE HEARING pursuant to subdivision two of section two hundred
21 fifty-nine-i of the executive law. The right of the victim under this

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

LBD01932-02-2

1 subdivision to submit a written victim impact statement or to meet
2 personally with a member of the state board of parole applies to each
3 personal interview between a member or members of the board and the
4 inmate.

5 S 2. Paragraph (a) of subdivision 2 of section 259-i of the executive
6 law, as amended by section 38-f-1 of subpart A of part C of chapter 62
7 of the laws of 2011, is amended to read as follows:

8 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at
9 least one month prior to the date on which an inmate may be paroled
10 pursuant to subdivision one of section 70.40 of the penal law, a member
11 or members as determined by the rules of the board shall personally
12 interview such inmate and determine whether he OR SHE should be paroled
13 in accordance with the guidelines adopted pursuant to subdivision four
14 of section two hundred fifty-nine-c of this article. AT THE SAME TIME,
15 THE BOARD SHALL GRANT TO THE CRIME VICTIM OR THE VICTIM'S REPRESENTATIVE,
16 WHERE THE CRIME VICTIM IS DECEASED OR IS MENTALLY OR PHYSICALLY
17 INCAPACITATED, AN OPPORTUNITY TO APPEAR AND BE HEARD. A CRIME VICTIM OR
18 THE VICTIM'S REPRESENTATIVE MAY ELECT TO APPEAR VIA VIDEO CONFERENCE
19 WHERE SUCH VICTIM OR VICTIM'S REPRESENTATIVE PREFERS OR WHERE THE
20 DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION DEEM IT NECESSARY
21 FOR SECURITY PURPOSES. A CRIME VICTIM'S REPRESENTATIVE SHALL MEAN THE
22 CRIME VICTIM'S CLOSEST SURVIVING RELATIVE, THE COMMITTEE OR GUARDIAN OF
23 SUCH PERSON, OR THE LEGAL REPRESENTATIVE OF ANY SUCH PERSON. If parole
24 is not granted upon such review, the inmate shall be informed in writing
25 within two weeks of such appearance of the factors and reasons for such
26 denial of parole. Such reasons shall be given in detail and not in
27 conclusory terms. The board shall specify a date not more than twenty-
28 four months from such determination for reconsideration, and the proce-
29 dures to be followed upon reconsideration shall be the same. If the
30 inmate is released, he OR SHE shall be given a copy of the conditions of
31 parole. Such conditions shall where appropriate, include a requirement
32 that the parolee comply with any restitution order, mandatory surcharge,
33 sex offender registration fee and DNA databank fee previously imposed by
34 a court of competent jurisdiction that applies to the parolee. The
35 conditions shall indicate which restitution collection agency estab-
36 lished under subdivision eight of section 420.10 of the criminal proce-
37 dure law, shall be responsible for collection of restitution, mandatory
38 surcharge, sex offender registration fees and DNA databank fees as
39 provided for in section 60.35 of the penal law and section eighteen
40 hundred nine of the vehicle and traffic law.

41 (ii) Any inmate who is scheduled for presumptive release pursuant to
42 section eight hundred six of the correction law shall not appear before
43 the board as provided in subparagraph (i) of this paragraph unless such
44 inmate's scheduled presumptive release is forfeited, canceled, or
45 rescinded subsequently as provided in such law. In such event, the
46 inmate shall appear before the board for release consideration as
47 provided in subparagraph (i) of this paragraph as soon thereafter as is
48 practicable.

49 S 3. Paragraph (a) of subdivision 2 of section 259-i of the executive
50 law, as amended by section 38-f-2 of subpart A of part C of chapter 62
51 of the laws of 2011, is amended to read as follows:

52 (a) At least one month prior to the expiration of the minimum period
53 or periods of imprisonment fixed by the court or board, a member or
54 members as determined by the rules of the board shall personally inter-
55 view an inmate serving an indeterminate sentence and determine whether
56 he OR SHE should be paroled at the expiration of the minimum period or

1 periods in accordance with the procedures adopted pursuant to subdivi-
2 sion four of section two hundred fifty-nine-c. AT THE SAME TIME, THE
3 BOARD SHALL GRANT TO THE CRIME VICTIM OR THE VICTIM'S REPRESENTATIVE,
4 WHERE THE CRIME VICTIM IS DECEASED OR IS MENTALLY OR PHYSICALLY INCAPAC-
5 ITATED, AN OPPORTUNITY TO APPEAR AND BE HEARD. A CRIME VICTIM OR THE
6 VICTIM'S REPRESENTATIVE MAY ELECT TO APPEAR VIA VIDEO CONFERENCE WHERE
7 SUCH VICTIM OR VICTIM'S REPRESENTATIVE PREFERS OR WHERE THE DEPARTMENT
8 OF CORRECTIONS AND COMMUNITY SUPERVISION DEEM IT NECESSARY FOR SECURITY
9 PURPOSES. A CRIME VICTIM'S REPRESENTATIVE SHALL MEAN THE CRIME VICTIM'S
10 CLOSEST SURVIVING RELATIVE, THE COMMITTEE OR GUARDIAN OF SUCH PERSON, OR
11 THE LEGAL REPRESENTATIVE OF ANY SUCH PERSON. If parole is not granted
12 upon such review, the inmate shall be informed in writing within two
13 weeks of such appearance of the factors and reasons for such denial of
14 parole. Such reasons shall be given in detail and not in conclusory
15 terms. The board shall specify a date not more than twenty-four months
16 from such determination for reconsideration, and the procedures to be
17 followed upon reconsideration shall be the same. If the inmate is
18 released, he OR SHE shall be given a copy of the conditions of parole.
19 Such conditions shall where appropriate, include a requirement that the
20 parolee comply with any restitution order and mandatory surcharge previ-
21 ously imposed by a court of competent jurisdiction that applies to the
22 parolee. The conditions shall indicate which restitution collection
23 agency established under subdivision eight of section 420.10 of the
24 criminal procedure law, shall be responsible for collection of restitu-
25 tion and mandatory surcharge as provided for in section 60.35 of the
26 penal law and section eighteen hundred nine of the vehicle and traffic
27 law.

28 S 4. This act shall take effect on the first of November next succeed-
29 ing the date on which it shall have become a law, provided that the
30 amendments to paragraph (a) of subdivision 2 of section 259-i of the
31 executive law made by section two of this act shall be subject to the
32 expiration and reversion of such paragraph pursuant to subdivision d of
33 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
34 date the provisions of section three of this act shall take effect.