

2946

2011-2012 Regular Sessions

I N   S E N A T E

February 3, 2011

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Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to requiring that all family members of a crime victim and all interested parties who want to give a victim impact statement to parole board members be allowed to do so

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

1     Section 1. Section 440.50 of the criminal procedure law, as added by  
2     chapter 496 of the laws of 1978, subdivision 1 as amended by chapter 186  
3     of the laws of 2005, and subdivision 2 as amended by chapter 14 of the  
4     laws of 1985, is amended to read as follows:  
5     S 440.50 Notice to crime victims, FAMILY MEMBERS OF A CRIME VICTIM OR AN  
6     INTERESTED PARTY of case disposition.  
7     1. Upon the request of a victim of a crime, A FAMILY MEMBER OF A CRIME  
8     VICTIM OR AN INTERESTED PARTY or in any event in all cases in which the  
9     final disposition includes a conviction of a violent felony offense as  
10    defined in section 70.02 of the penal law or a felony defined in article  
11    one hundred twenty-five of such law, the district attorney shall, within  
12    sixty days of the final disposition of the case, inform the victim OR A  
13    FAMILY MEMBER OF A CRIME VICTIM OR AN INTERESTED PARTY WHO REQUESTS TO  
14    BE INFORMED by letter of such final disposition. If such final disposi-  
15    tion results in the commitment of the defendant to the custody of the  
16    department of correctional services for an indeterminate sentence, the  
17    notice provided to the crime victim, FAMILY MEMBER OF A CRIME VICTIM OR  
18    INTERESTED PARTY shall also inform [the victim] HIM OR HER of his or her  
19    right to submit a written, audiotaped, or videotaped victim impact  
20    statement to the state division of parole or to meet personally with [a  
21    member] MEMBERS of the state board of parole WHO WILL DETERMINE WHETHER  
22    THE DEFENDANT IS RELEASED at a time and place separate from the personal  
23    interview between a member or members of the board and the inmate and

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

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1 make such a statement, subject to procedures and limitations contained  
2 in rules of the board, both pursuant to subdivision two of section two  
3 hundred fifty-nine-i of the executive law. The right of the victim, A  
4 FAMILY MEMBER OF THE CRIME VICTIM, OR AN INTERESTED PARTY under this  
5 subdivision to submit a written victim impact statement or to meet  
6 personally with [a member] MEMBERS of the state board of parole applies  
7 to each personal interview between a member or members of the board and  
8 the inmate.

9 2. As used in this section, "victim" means any person alleged or  
10 found, upon the record, to have sustained physical or financial injury  
11 to person or property as a direct result of the crime charged or a  
12 person alleged or found to have sustained, upon the record, an offense  
13 under article one hundred thirty of the penal law, or in the case of a  
14 homicide or minor child, the victim's family.

15 3. As used in this section, "final disposition" means an ultimate  
16 termination of the case at the trial level including, but not limited  
17 to, dismissal, acquittal, or imposition of sentence by the court, or a  
18 decision by the district attorney, for whatever reason, to not file the  
19 case.

20 4. AS USED IN THIS SECTION, "FAMILY MEMBER OF A CRIME VICTIM" MEANS A  
21 MEMBER OF THE VICTIM'S IMMEDIATE FAMILY WHO IS AT LEAST SIXTEEN YEARS  
22 OLD.

23 5. AS USED IN THIS SECTION, "INTERESTED PARTY" SHALL MEAN A PERSON,  
24 WHO IS NOT A FAMILY MEMBER OF A CRIME VICTIM, DESIGNATED BY THE JUDGE  
25 WHO IMPOSES THE SENTENCE ON THE DEFENDANT, AS A PERSON WHO HAS AN  
26 INVOLVEMENT WITH THE CASE SUFFICIENT TO MAKE HIM OR HER AN INTERESTED  
27 PARTY. THE JUDGE WHO IMPOSES THE SENTENCE ON A DEFENDANT SHALL DESIGNATE  
28 INTERESTED PARTIES, IF ANY, AT THE TIME OF SENTENCING.

29 S 2. Paragraph (c) of subdivision 2 of section 259-i of the executive  
30 law, as separately amended by chapters 40 and 126 of the laws of 1999,  
31 subparagraph (A) as amended by section 12 of part AAA of chapter 56 of  
32 the laws of 2009, is amended to read as follows:

33 (c) (A) Discretionary release on parole shall not be granted merely as  
34 a reward for good conduct or efficient performance of duties while  
35 confined but after considering if there is a reasonable probability  
36 that, if such inmate is released, he will live and remain at liberty  
37 without violating the law, and that his release is not incompatible with  
38 the welfare of society and will not so deprecate the seriousness of his  
39 crime as to undermine respect for law. In making the parole release  
40 decision, the guidelines adopted pursuant to subdivision four of section  
41 two hundred fifty-nine-c of this article shall require that the follow-  
42 ing be considered: (i) the institutional record including program goals  
43 and accomplishments, academic achievements, vocational education, train-  
44 ing or work assignments, therapy and interpersonal relationships with  
45 staff and inmates; (ii) performance, if any, as a participant in a  
46 temporary release program; (iii) release plans including community  
47 resources, employment, education and training and support services  
48 available to the inmate; (iv) any deportation order issued by the feder-  
49 al government against the inmate while in the custody of the department  
50 of correctional services and any recommendation regarding deportation  
51 made by the commissioner of the department of correctional services  
52 pursuant to section one hundred forty-seven of the correction law; (v)  
53 any statement made to the board by the crime victim or the victim's  
54 representative, where the crime victim is deceased or is mentally or  
55 physically incapacitated OR A FAMILY MEMBER OF A CRIME VICTIM OR INTER-  
56 ESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW;

1 and (vi) the length of the determinate sentence to which the inmate  
2 would be subject had he or she received a sentence pursuant to section  
3 70.70 or section 70.71 of the penal law for a felony defined in article  
4 two hundred twenty or article two hundred twenty-one of the penal law.  
5 The board shall provide toll free telephone access for crime victims,  
6 FAMILY MEMBERS OF CRIME VICTIMS AND INTERESTED PARTIES AS DEFINED IN  
7 SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW. In the case of an oral  
8 statement made in accordance with subdivision one of section 440.50 of  
9 the criminal procedure law, [the parole board member shall present a  
10 written report of the statement to the parole board] SUCH ORAL STATEMENT  
11 SHALL BE MADE TO THE MEMBERS OF THE STATE BOARD OF PAROLE WHO WILL  
12 DETERMINE WHETHER THE DEFENDANT IS RELEASED. A crime victim's represen-  
13 tative shall mean the crime victim's closest surviving relative, the  
14 committee or guardian of such person, or the legal representative of any  
15 such person. Such statement submitted by the victim or victim's repre-  
16 sentative, OR A FAMILY MEMBER OF A CRIME VICTIM OR INTERESTED PARTY AS  
17 DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW may include  
18 information concerning threatening or intimidating conduct toward the  
19 victim, the victim's representative, or the victim's family, made by the  
20 person sentenced and occurring after the sentencing. Such information  
21 may include, but need not be limited to, the threatening or intimidating  
22 conduct of any other person who or which is directed by the person  
23 sentenced. Notwithstanding the provisions of this section, in making the  
24 parole release decision for persons whose minimum period of imprisonment  
25 was not fixed pursuant to the provisions of subdivision one of this  
26 section, in addition to the factors listed in this paragraph the board  
27 shall consider the factors listed in paragraph (a) of subdivision one of  
28 this section.

29 (B) Where a crime victim or victim's representative as defined in  
30 subparagraph (A) of this paragraph OR A FAMILY MEMBER OF A CRIME VICTIM  
31 OR INTERESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCE-  
32 DURE LAW, or other person submits to the parole board a written state-  
33 ment concerning the release of an inmate, the parole board shall keep  
34 that individual's name and address confidential.

35 S 3. This act shall take effect on the first of November next succeed-  
36 ing the date on which it shall have become a law.