

2946--A

2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

Introduced by Sens. LANZA, AVELLA, 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 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 section 80
3 of subpart B of part C of chapter 62 of the laws of 2011, and subdivi-
4 sion 2 as amended by chapter 14 of the laws of 1985, is amended to read
5 as follows:
6 S 440.50 Notice to crime victims, FAMILY MEMBERS OF A CRIME VICTIM OR AN
7 INTERESTED PARTY of case disposition.
8 1. Upon the request of a victim of a crime, A FAMILY MEMBER OF A CRIME
9 VICTIM OR AN INTERESTED PARTY, or in any event in all cases in which the
10 final disposition includes a conviction of a violent felony offense as
11 defined in section 70.02 of the penal law or a felony defined in article
12 one hundred twenty-five of such law, the district attorney shall, within
13 sixty days of the final disposition of the case, inform the victim OR A
14 FAMILY MEMBER OF A CRIME VICTIM OR AN INTERESTED PARTY WHO REQUESTS TO
15 BE INFORMED by letter of such final disposition. If such final disposi-
16 tion results in the commitment of the defendant to the custody of the
17 department of corrections and community supervision for an indeterminate
18 sentence, the notice provided to the crime victim, A FAMILY MEMBER OF A
19 CRIME VICTIM OR AN INTERESTED PARTY shall also inform [the victim] HIM
20 OR HER of his or her right to submit a written, audiotaped, or vide-

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

LBD03683-05-2

1 otaped victim impact statement to the department of corrections and
2 community supervision or to meet personally with [a member] MEMBERS of
3 the state board of parole WHO WILL DETERMINE WHETHER THE DEFENDANT IS
4 RELEASED at a time and place separate from the personal interview
5 between a member or members of the board and the inmate and make such a
6 statement, subject to procedures and limitations contained in rules of
7 the board, both pursuant to subdivision two of section two hundred
8 fifty-nine-i of the executive law. The right of the victim, A FAMILY
9 MEMBER OF THE CRIME VICTIM OR AN INTERESTED PARTY under this subdivision
10 to submit a written victim impact statement or to meet personally with
11 [a member] MEMBERS of the state board of parole applies to each personal
12 interview between a member or members of the board and the inmate.

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

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

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

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

33 S 2. Paragraph (c) of subdivision 2 of section 259-i of the executive
34 law, as separately amended by chapters 40 and 126 of the laws of 1999,
35 subparagraph (A) as amended by section 38-f-1 of subpart A of part C of
36 chapter 62 of the laws of 2011, is amended to read as follows:

37 (c) (A) Discretionary release on parole shall not be granted merely as
38 a reward for good conduct or efficient performance of duties while
39 confined but after considering if there is a reasonable probability
40 that, if such inmate is released, he will live and remain at liberty
41 without violating the law, and that his release is not incompatible with
42 the welfare of society and will not so deprecate the seriousness of his
43 crime as to undermine respect for law. In making the parole release
44 decision, the procedures adopted pursuant to subdivision four of section
45 two hundred fifty-nine-c of this article shall require that the follow-
46 ing be considered: (i) the institutional record including program goals
47 and accomplishments, academic achievements, vocational education, train-
48 ing or work assignments, therapy and interactions with staff and
49 inmates; (ii) performance, if any, as a participant in a temporary
50 release program; (iii) release plans including community resources,
51 employment, education and training and support services available to the
52 inmate; (iv) any deportation order issued by the federal government
53 against the inmate while in the custody of the department and any recom-
54 mendation regarding deportation made by the commissioner of the depart-
55 ment pursuant to section one hundred forty-seven of the correction law;
56 (v) any statement made to the board by the crime victim or the victim's

1 representative, where the crime victim is deceased or is mentally or
2 physically incapacitated OR A FAMILY MEMBER OF A CRIME VICTIM OR INTER-
3 ESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW;
4 (vi) the length of the determinate sentence to which the inmate would be
5 subject had he or she received a sentence pursuant to section 70.70 or
6 section 70.71 of the penal law for a felony defined in article two
7 hundred twenty or article two hundred twenty-one of the penal law; (vii)
8 the seriousness of the offense with due consideration to the type of
9 sentence, length of sentence and recommendations of the sentencing
10 court, the district attorney, the attorney for the inmate, the pre-sen-
11 tence probation report as well as consideration of any mitigating and
12 aggravating factors, and activities following arrest prior to confine-
13 ment; and (viii) prior criminal record, including the nature and pattern
14 of offenses, adjustment to any previous probation or parole supervision
15 and institutional confinement. The board shall provide toll free tele-
16 phone access for crime victims, FAMILY MEMBERS OF CRIME VICTIMS AND
17 INTERESTED PARTIES AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCE-
18 DURE LAW. In the case of an oral statement made in accordance with
19 subdivision one of section 440.50 of the criminal procedure law, [the
20 parole board member shall present a written report of the statement to
21 the parole board] SUCH ORAL STATEMENT SHALL BE MADE TO THE MEMBERS OF
22 THE STATE BOARD OF PAROLE WHO WILL DETERMINE WHETHER THE DEFENDANT IS
23 RELEASED. A crime victim's representative shall mean the crime victim's
24 closest surviving relative, the committee or guardian of such person, or
25 the legal representative of any such person. Such statement submitted by
26 the victim or victim's representative, OR A FAMILY MEMBER OF A CRIME
27 VICTIM OR INTERESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL
28 PROCEDURE LAW may include information concerning threatening or intim-
29 idating conduct toward the victim, the victim's representative, or the
30 victim's family, made by the person sentenced and occurring after the
31 sentencing. Such information may include, but need not be limited to,
32 the threatening or intimidating conduct of any other person who or which
33 is directed by the person sentenced.

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

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