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I N   A S S E M B L Y

May 2, 2016

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Introduced by M. of A. O'DONNELL, AUBRY -- read once and referred to the  
Committee on Correction

AN ACT to amend the executive law, in relation to the use of risk and  
needs principles in parole decisions

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

1     Section 1. Subdivision 4 of section 259-c of the executive law, as  
2     amended by section 38-b of subpart A of part C of chapter 62 of the laws  
3     of 2011, is amended to read as follows:  
4     4. establish written procedures for its use in making parole decisions  
5     as required by law. Such written procedures shall incorporate risk and  
6     needs principles to measure the rehabilitation of persons appearing  
7     before the board, the likelihood of success of such persons upon  
8     release, and [assist] SHALL BE USED BY members of the state board of  
9     parole in determining which inmates may be released to parole supervision.  
10    SUCH PRINCIPLES SHALL PROVIDE THE BASIS UPON WHICH THE BOARD  
11    SHALL DETERMINE IF THERE IS A REASONABLE PROBABILITY THAT, IF SUCH  
12    INMATE IS RELEASED, HE OR SHE WILL LIVE AND REMAIN AT LIBERTY WITHOUT  
13    VIOLATING THE LAW. PROCEDURES WHICH INCORPORATE RISK AND NEEDS PRINCIPLES  
14    SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, A RISK AND NEEDS  
15    ASSESSMENT PREPARED PURSUANT TO SECTION ONE HUNDRED TWELVE OF THE  
16    CORRECTION LAW OR OTHER VALIDATED RISK AND NEEDS ASSESSMENT INSTRUMENT  
17    ADOPTED BY THE BOARD TO DETERMINE WHETHER OR NOT AN INMATE IS LIKELY TO  
18    RE-OFFEND UPON RELEASE FROM INCARCERATION. SUCH RISK AND NEEDS ASSESSMENT  
19    SHALL COMPRISE PRESUMPTIVE EVIDENCE OF THE INMATE'S RISK OF RE-OFFENSE.  
20    SHOULD THE BOARD CHOOSE TO OVERRIDE SUCH RISK AND NEEDS ASSESSMENT  
21    IN DECIDING WHETHER OR NOT AN INMATE WILL LIVE AND REMAIN AT  
22    LIBERTY WITHOUT VIOLATING THE LAW, ITS DECISION MUST PROVIDE A DETAILED,  
23    INDIVIDUALIZED AND NONCONCLUSORY STATEMENT AS TO ITS REASONS FOR DEPARTING  
24    FROM THE RISK AND NEEDS ASSESSMENT FINDINGS WHICH SHALL BE SUBJECT  
25    TO JUDICIAL REVIEW. SUCH OVERRIDE DECISION SHALL NOT BE BASED SOLELY ON  
26    INFORMATION RELATING TO THE INSTANT OFFENSE AND/OR THE PRE-SENTENCING  
27    REPORT FOR SUCH OFFENSE. PURSUANT TO SUBDIVISION ELEVEN OF THIS SECTION,

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

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1 THE BOARD SHALL AMEND THE RULES AND REGULATIONS FOR THE CONDUCT OF ITS  
2 WORK TO REFLECT THE PROCEDURES ESTABLISHED BY THIS SUBDIVISION;

3 S 2. Section 259-e of the executive law, as amended by section 38-c of  
4 subpart A of part C of chapter 62 of the laws of 2011, is amended to  
5 read as follows:

6 S 259-e. Institutional parole services. 1. The department shall  
7 provide institutional parole services. Such services shall include prep-  
8 aration of RISK AND NEEDS ASSESSMENTS, reports and other data required  
9 by the state board of parole in the exercise of its functions with  
10 respect to release on presumptive release, parole, conditional release  
11 or post-release supervision of inmates. Employees of the department who  
12 collect data, interview inmates and prepare reports for the state board  
13 of parole in institutions under the jurisdiction of the department shall  
14 work under the direct supervision of the deputy commissioner of the  
15 department in charge of program services. Data and reports submitted to  
16 the board shall address the statutory factors to be considered by the  
17 board pursuant to the relevant provisions of section two hundred fifty-  
18 nine-i of this article.

19 2. TWO MONTHS PRIOR TO A PAROLE BOARD APPEARANCE, AN INMATE SHALL BE  
20 PERMITTED TO REVIEW HIS OR HER RISK AND NEEDS ASSESSMENT, REPORTS AND  
21 ANY OTHER NON-CONFIDENTIAL DOCUMENTS TO BE GIVEN TO THE BOARD WITH THE  
22 DEPARTMENT EMPLOYEE CHARGED WITH PREPARING SUCH ASSESSMENT, REPORTS AND  
23 DOCUMENTS, AND MAY ASK FOR ANY SUCH ASSESSMENT, REPORT OR DOCUMENT  
24 PREPARED BY THE DEPARTMENT TO BE CORRECTED IF IT CONTAINS FACTUAL  
25 MISTAKES OR OTHER ERRORS. THE DEPARTMENT SHALL IMMEDIATELY REVIEW THE  
26 INMATE'S RECORDS AND ANY EVIDENCE OFFERED IN SUPPORT OF THE INMATE'S  
27 CONTENTION THAT THERE IS A FACTUAL MISTAKE OR OTHER ERROR IN HIS OR HER  
28 RECORDS. UPON CONFIRMATION THAT SUCH MISTAKE OR ERROR HAS BEEN MADE,  
29 THE DEPARTMENT SHALL IMMEDIATELY CORRECT SUCH MISTAKE OR ERROR PRIOR TO  
30 SUBMITTING SUCH ASSESSMENT, RECORD OR DOCUMENT TO THE BOARD. IF THE  
31 DEPARTMENT DECIDES NOT TO CORRECT AN ALLEGED MISTAKE OR ERROR, THE  
32 INMATE SHALL BE NOTIFIED OF HIS OR HER RIGHT TO SUBMIT EVIDENCE ABOUT  
33 ANY UNCORRECTED MISTAKE OR UNCORRECTED ERROR TO THE BOARD AND MAY APPEAL  
34 THE DECISION WITHIN FIFTEEN DAYS OF THE DEPARTMENT'S DECISION NOT TO  
35 CORRECT THE MISTAKE OR ERROR. THE COMMISSIONER SHALL DECIDE ANY SUCH  
36 APPEAL WITHIN THIRTY DAYS OF RECEIPT OF THE APPEAL, BUT NO LATER THAN  
37 TWO WEEKS BEFORE AN INMATE'S SCHEDULED APPEARANCE BEFORE THE PAROLE  
38 BOARD.

39 3. IF A SUBSTANTIAL MISTAKE OR ERROR EXISTS IN THE RISK AND NEEDS  
40 ASSESSMENT OR IN OTHER REPORTS OR DOCUMENTS PROVIDED TO THE BOARD FOR  
41 USE AT A PAROLE INTERVIEW AND THE INMATE IS SUBSEQUENTLY DENIED PAROLE,  
42 THE INMATE SHALL BE GIVEN A DE NOVO PAROLE INTERVIEW WITHIN TWO MONTHS  
43 OF THE DISCOVERY OF SUCH MISTAKE OR ERROR. A SUBSTANTIAL MISTAKE OR  
44 ERROR FOR THE PURPOSES OF THIS SUBDIVISION IS ANY MISTAKE OR ERROR THAT  
45 WORSENS THE INMATE'S OVERALL SCORE ON HIS OR HER RISK AND NEEDS ASSESS-  
46 MENT.

47 S 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section  
48 259-i of the executive law, as amended by section 38-f-1 of subpart A of  
49 part C of chapter 62 of the laws of 2011, is amended to read as follows:

50 (A) Discretionary release on parole shall not be granted merely as a  
51 reward for good conduct or efficient performance of duties while  
52 confined but after considering if there is a reasonable probability  
53 that, if such inmate is released, he OR SHE will live and remain at  
54 liberty without violating the law, and that his OR HER release is not  
55 incompatible with the welfare of society and will not so deprecate the  
56 seriousness of his OR HER crime as to undermine respect for law. In

1 making the parole release decision, the procedures, RULES AND REGU-  
2 LATIONS INCORPORATING RISK AND NEEDS PRINCIPLES adopted pursuant to  
3 subdivision four of section two hundred fifty-nine-c of this article  
4 shall require that the following be considered IF NOT ALREADY TAKEN INTO  
5 ACCOUNT BY THE RISK AND NEEDS ASSESSMENT: (i) the institutional record  
6 including program goals and accomplishments, academic achievements,  
7 vocational education, training or work assignments, therapy and inter-  
8 actions with staff and inmates; (ii) performance, if any, as a partic-  
9 ipant in a temporary release program; (iii) release plans including  
10 community resources, employment, education and training and support  
11 services available to the inmate; (iv) any deportation order issued by  
12 the federal government against the inmate while in the custody of the  
13 department and any recommendation regarding deportation made by the  
14 commissioner of the department pursuant to section one hundred forty-  
15 seven of the correction law; (v) any statement made to the board by the  
16 crime victim or the victim's representative, where the crime victim is  
17 deceased or is mentally or physically incapacitated; (vi) the length of  
18 the determinate sentence to which the inmate would be subject had he or  
19 she received a sentence pursuant to section 70.70 or section 70.71 of  
20 the penal law for a felony defined in article two hundred twenty or  
21 article two hundred twenty-one of the penal law; (vii) the seriousness  
22 of the offense with due consideration to the type of sentence, length of  
23 sentence and recommendations of the sentencing court, the district  
24 attorney, the attorney for the inmate, the pre-sentence probation report  
25 as well as consideration of any mitigating and aggravating factors, and  
26 activities following arrest prior to confinement; and (viii) prior crim-  
27 inal record, including the nature and pattern of offenses, adjustment to  
28 any previous probation or parole supervision and institutional confine-  
29 ment. The board shall provide toll free telephone access for crime  
30 victims. In the case of an oral statement made in accordance with subdi-  
31 vision one of section 440.50 of the criminal procedure law, the parole  
32 board member shall present a written report of the statement to the  
33 parole board. A crime victim's representative shall mean the crime  
34 victim's closest surviving relative, the committee or guardian of such  
35 person, or the legal representative of any such person. Such statement  
36 submitted by the victim or victim's representative may include informa-  
37 tion concerning threatening or intimidating conduct toward the victim,  
38 the victim's representative, or the victim's family, made by the person  
39 sentenced and occurring after the sentencing. Such information may  
40 include, but need not be limited to, the threatening or intimidating  
41 conduct of any other person who or which is directed by the person  
42 sentenced.

43 S 4. This act shall take effect immediately.