

STATE OF NEW YORK

1909

2017-2018 Regular Sessions

IN ASSEMBLY

January 13, 2017

Introduced by M. of A. O'DONNELL -- 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 Assem-
bly, 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 super-
10 vision. 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 princi-
14 ples 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 assess-
19 ment shall comprise presumptive evidence of the inmate's risk of re-of-
20 fense. Should the board choose to override such risk and needs assess-
21 ment 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 depart-
24 ing from the risk and needs assessment findings which shall be subject
25 to judicial review. Such override decision shall not be based solely on

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

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1 information relating to the instant offense and/or the pre-sentencing
2 report for such offense. Pursuant to subdivision eleven of this section,
3 the board shall amend the rules and regulations for the conduct of its
4 work to reflect the procedures established by this subdivision;

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

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

21 2. Two months prior to a parole board appearance, an inmate shall be
22 permitted to review his or her risk and needs assessment, reports and
23 any other non-confidential documents to be given to the board with the
24 department employee charged with preparing such assessment, reports and
25 documents, and may ask for any such assessment, report or document
26 prepared by the department to be corrected if it contains factual
27 mistakes or other errors. The department shall immediately review the
28 inmate's records and any evidence offered in support of the inmate's
29 contention that there is a factual mistake or other error in his or her
30 records. Upon confirmation that such mistake or error has been made,
31 the department shall immediately correct such mistake or error prior to
32 submitting such assessment, record or document to the board. If the
33 department decides not to correct an alleged mistake or error, the
34 inmate shall be notified of his or her right to submit evidence about
35 any uncorrected mistake or uncorrected error to the board and may appeal
36 the decision within fifteen days of the department's decision not to
37 correct the mistake or error. The commissioner shall decide any such
38 appeal within thirty days of receipt of the appeal, but no later than
39 two weeks before an inmate's scheduled appearance before the parole
40 board.

41 3. If a substantial mistake or error exists in the risk and needs
42 assessment or in other reports or documents provided to the board for
43 use at a parole interview and the inmate is subsequently denied parole,
44 the inmate shall be given a de novo parole interview within two months
45 of the discovery of such mistake or error. A substantial mistake or
46 error for the purposes of this subdivision is any mistake or error that
47 worsens the inmate's overall score on his or her risk and needs assess-
48 ment.

49 § 2-a. Section 259-e of the executive law, as amended by chapter 473
50 of the laws of 2016, is amended to read as follows:

51 § 259-e. Institutional parole services. 1. The department shall
52 provide institutional parole services. Such services shall include prep-
53 aration of risk and needs assessments, reports and other data required
54 by the state board of parole in the exercise of its functions with
55 respect to release on presumptive release, parole, conditional release
56 or post-release supervision of inmates. Additionally, the department

1 shall determine which inmates are in need of a deaf language interpreter
2 or an English language interpreter, and shall inform the board of such
3 need within a reasonable period of time prior to an inmate's scheduled
4 appearance before the board. Employees of the department who collect
5 data, interview inmates and prepare reports for the state board of
6 parole in institutions under the jurisdiction of the department shall
7 work under the direct supervision of the deputy commissioner of the
8 department in charge of program services. Data and reports submitted to
9 the board shall address the statutory factors to be considered by the
10 board pursuant to the relevant provisions of section two hundred fifty-
11 nine-i of this article.

12 2. Two months prior to a parole board appearance, an inmate shall be
13 permitted to review his or her risk and needs assessment, reports and
14 any other non-confidential documents to be given to the board with the
15 department employee charged with preparing such assessment, reports and
16 documents, and may ask for any such assessment, report or document
17 prepared by the department to be corrected if it contains factual
18 mistakes or other errors. The department shall immediately review the
19 inmate's records and any evidence offered in support of the inmate's
20 contention that there is a factual mistake or other error in his or her
21 records. Upon confirmation that such mistake or error has been made,
22 the department shall immediately correct such mistake or error prior to
23 submitting such assessment, record or document to the board. If the
24 department decides not to correct an alleged mistake or error, the
25 inmate shall be notified of his or her right to submit evidence about
26 any uncorrected mistake or uncorrected error to the board and may appeal
27 the decision within fifteen days of the department's decision not to
28 correct the mistake or error. The commissioner shall decide any such
29 appeal within thirty days of receipt of the appeal, but no later than
30 two weeks before an inmate's scheduled appearance before the parole
31 board.

32 3. If a substantial mistake or error exists in the risk and needs
33 assessment or in other reports or documents provided to the board for
34 use at a parole interview and the inmate is subsequently denied parole,
35 the inmate shall be given a de novo parole interview within two months
36 of the discovery of such mistake or error. A substantial mistake or
37 error for the purposes of this subdivision is any mistake or error that
38 worsens the inmate's overall score on his or her risk and needs assess-
39 ment.

40 § 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section
41 259-i of the executive law, as amended by chapter 130 of the laws of
42 2016, is amended to read as follows:

43 (A) Discretionary release on parole shall not be granted merely as a
44 reward for good conduct or efficient performance of duties while
45 confined but after considering if there is a reasonable probability
46 that, if such inmate is released, he or she will live and remain at
47 liberty without violating the law, and that his or her release is not
48 incompatible with the welfare of society and will not so deprecate the
49 seriousness of his or her crime as to undermine respect for law. In
50 making the parole release decision, the procedures, rules and regu-
51 lations incorporating risk and needs principles adopted pursuant to
52 subdivision four of section two hundred fifty-nine-c of this article
53 shall require that the following be considered if not already taken into
54 account by the risk and needs assessment: (i) the institutional record
55 including program goals and accomplishments, academic achievements,
56 vocational education, training or work assignments, therapy and inter-

1 actions with staff and inmates; (ii) performance, if any, as a partic-
2 ipant in a temporary release program; (iii) release plans including
3 community resources, employment, education and training and support
4 services available to the inmate; (iv) any deportation order issued by
5 the federal government against the inmate while in the custody of the
6 department and any recommendation regarding deportation made by the
7 commissioner of the department pursuant to section one hundred forty-
8 seven of the correction law; (v) any current or prior statement made to
9 the board by the crime victim or the victim's representative, where the
10 crime victim is deceased or is mentally or physically incapacitated;
11 (vi) the length of the determinate sentence to which the inmate would be
12 subject had he or she received a sentence pursuant to section 70.70 or
13 section 70.71 of the penal law for a felony defined in article two
14 hundred twenty or article two hundred twenty-one of the penal law; (vii)
15 the seriousness of the offense with due consideration to the type of
16 sentence, length of sentence and recommendations of the sentencing
17 court, the district attorney, the attorney for the inmate, the pre-sen-
18 tence probation report as well as consideration of any mitigating and
19 aggravating factors, and activities following arrest prior to confine-
20 ment; and (viii) prior criminal record, including the nature and pattern
21 of offenses, adjustment to any previous probation or parole supervision
22 and institutional confinement. The board shall provide toll free tele-
23 phone access for crime victims. In the case of an oral statement made in
24 accordance with subdivision one of section 440.50 of the criminal proce-
25 dure law, the parole board member shall present a written report of the
26 statement to the parole board. A crime victim's representative shall
27 mean the crime victim's closest surviving relative, the committee or
28 guardian of such person, or the legal representative of any such person.
29 Such statement submitted by the victim or victim's representative may
30 include information concerning threatening or intimidating conduct
31 toward the victim, the victim's representative, or the victim's family,
32 made by the person sentenced and occurring after the sentencing. Such
33 information may include, but need not be limited to, the threatening or
34 intimidating conduct of any other person who or which is directed by the
35 person sentenced. Any statement by a victim or the victim's represen-
36 tative made to the board shall be maintained by the department in the
37 file provided to the board when interviewing the inmate in consideration
38 of release. A victim or victim's representative who has submitted a
39 written request to the department for the transcript of such interview
40 shall be provided such transcript as soon as it becomes available.

41 § 4. This act shall take effect immediately; provided however section
42 two-a of this act shall take effect on the same date as chapter 473 of
43 the laws of 2016, takes effect.