

10542

I N A S S E M B L Y

April 2, 2010

Introduced by M. of A. TEDISCO, AMEDORE, BURLING, FINCH, GIGLIO, McDO-
NOUGH -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BARRA,
BUTLER, CONTE, CROUCH, DUPREY, McKEVITT, J. MILLER, MOLINARO, OAKS,
RAIA, REILICH, SALADINO, SCOZZAFAVA, THIELE, TOWNSEND -- read once and
referred to the Committee on Correction

AN ACT to amend the executive law, in relation to the procedure for
determining whether a person shall be released on parole

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

1 Section 1. Paragraph (a) of subdivision 2 of section 259-i of the
2 executive law, as separately amended by section 11 of part E and section
3 9 of part F of chapter 62 of the laws of 2003, is amended to read as
4 follows:
5 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at
6 least one month prior to the date on which an inmate may be paroled
7 pursuant to subdivision one of section 70.40 of the penal law, a THREE
8 member [or members as determined by the rules] PANEL WHOSE MEMBERS ARE
9 CHOSEN AT RANDOM FROM AMONG THE MEMBERS of the board shall personally
10 interview such inmate and determine whether he should be paroled in
11 accordance with the guidelines adopted pursuant to subdivision four of
12 section two hundred fifty-nine-c of this article. If parole is not
13 granted upon such review, the inmate shall be informed in writing within
14 two weeks of such appearance of the factors and reasons for such denial
15 of parole. Such reasons shall be given in detail and not in conclusory
16 terms. The board shall specify a date not more than twenty-four months
17 from such determination for reconsideration, and the procedures to be
18 followed upon reconsideration shall be the same. If the inmate is
19 released, he shall be given a copy of the conditions of parole. Such
20 conditions shall where appropriate, include a requirement that the paro-
21 lee comply with any restitution order, mandatory surcharge, sex offender
22 registration fee and DNA databank fee previously imposed by a court of
23 competent jurisdiction that applies to the parolee. The board of parole
24 shall indicate which restitution collection agency established under
25 subdivision eight of section 420.10 of the criminal procedure law, shall

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

LBD16040-01-0

1 be responsible for collection of restitution, mandatory surcharge, sex
2 offender registration fees and DNA databank fees as provided for in
3 section 60.35 of the penal law and section eighteen hundred nine of the
4 vehicle and traffic law.

5 (ii) Any inmate who is scheduled for presumptive release pursuant to
6 section eight hundred six of the correction law shall not appear before
7 the parole board as provided in subparagraph (i) of this paragraph
8 unless such inmate's scheduled presumptive release is forfeited,
9 canceled, or rescinded subsequently as provided in such law. In such
10 event, the inmate shall appear before the parole board for release
11 consideration as provided in subparagraph (i) of this paragraph as soon
12 thereafter as is practicable.

13 S 2. Paragraph (a) of subdivision 2 of section 259-i of the executive
14 law, as amended by chapter 396 of the laws of 1987, is amended to read
15 as follows:

16 (a) At least one month prior to the expiration of the minimum period
17 or periods of imprisonment fixed by the court or board, a THREE member
18 [or members as determined by the rules] PANEL WHOSE MEMBERS ARE CHOSEN
19 AT RANDOM FROM AMONG THE MEMBERS of the board shall personally interview
20 an inmate serving an indeterminate sentence and determine whether he
21 should be paroled at the expiration of the minimum period or periods in
22 accordance with the guidelines adopted pursuant to subdivision four of
23 section two hundred fifty-nine-c. If parole is not granted upon such
24 review, the inmate shall be informed in writing within two weeks of such
25 appearance of the factors and reasons for such denial of parole. Such
26 reasons shall be given in detail and not in conclusory terms. The board
27 shall specify a date not more than twenty-four months from such determi-
28 nation for reconsideration, and the procedures to be followed upon
29 reconsideration shall be the same. If the inmate is released, he shall
30 be given a copy of the conditions of parole. Such conditions shall where
31 appropriate, include a requirement that the parolee comply with any
32 restitution order and mandatory surcharge previously imposed by a court
33 of competent jurisdiction that applies to the parolee. The board of
34 parole shall indicate which restitution collection agency established
35 under subdivision eight of section 420.10 of the criminal procedure law,
36 shall be responsible for collection of restitution and mandatory
37 surcharge as provided for in section 60.35 of the penal law and section
38 eighteen hundred nine of the vehicle and traffic law.

39 S 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section
40 259-i of the executive law, as amended by section 12 of part AAA of
41 chapter 56 of the laws of 2009, is amended to read as follows:

42 (A) Discretionary release on parole shall not be granted merely as a
43 reward for good conduct or efficient performance of duties while
44 confined but after considering if there is a reasonable probability
45 that, if such inmate is released, he will live and remain at liberty
46 without violating the law, and that his release is not incompatible with
47 the welfare of society and will not so deprecate the seriousness of his
48 crime as to undermine respect for law. In making the parole release
49 decision, the guidelines adopted pursuant to subdivision four of section
50 two hundred fifty-nine-c of this article shall require that the follow-
51 ing be considered: (i) THE SERIOUSNESS OF THE OFFENSE WITH DUE CONSIDER-
52 ATION TO THE TYPE OF SENTENCE, LENGTH OF SENTENCE AND RECOMMENDATIONS OF
53 THE SENTENCING COURT, THE DISTRICT ATTORNEY, THE ATTORNEY FOR THE
54 INMATE, THE PRE-SENTENCE PROBATION REPORT AS WELL AS CONSIDERATION OF
55 ANY MITIGATING AND AGGRAVATING FACTORS, AND ACTIVITIES FOLLOWING ARREST
56 AND PRIOR TO CONFINEMENT; (II) PRIOR CRIMINAL RECORD, INCLUDING THE

1 NATURE AND PATTERN OF OFFENSES, ADJUSTMENTS TO ANY PREVIOUS PROBATION OR
2 PAROLE SUPERVISION OR INSTITUTIONAL CONFINEMENT; (III) the institutional
3 record including program goals and accomplishments, academic achieve-
4 ments, vocational education, training or work assignments, therapy and
5 interpersonal relationships with staff and inmates; [(ii)] (IV) perform-
6 ance, if any, as a participant in a temporary release program; [(iii)]
7 (V) release plans including community resources, employment, education
8 and training and support services available to the inmate; [(iv)] (VI)
9 any deportation order issued by the federal government against the
10 inmate while in the custody of the department of correctional services
11 and any recommendation regarding deportation made by the commissioner of
12 the department of correctional services pursuant to section one hundred
13 forty-seven of the correction law; [(v)] (VII) any statement made to the
14 board by the crime victim or the victim's representative, where the
15 crime victim is deceased or is mentally or physically incapacitated; and
16 [(vi)] (VIII) the length of the determinate sentence to which the inmate
17 would be subject had he or she received a sentence pursuant to section
18 70.70 or section 70.71 of the penal law for a felony defined in article
19 two hundred twenty or article two hundred twenty-one of the penal law.
20 The board shall provide toll free telephone access for crime victims. In
21 the case of an oral statement made in accordance with subdivision one of
22 section 440.50 of the criminal procedure law, the parole board member
23 shall present a written report of the statement to the parole board. A
24 crime victim's representative shall mean the crime victim's closest
25 surviving relative, the committee or guardian of such person, or the
26 legal representative of any such person. Such statement submitted by the
27 victim or victim's representative may include information concerning
28 threatening or intimidating conduct toward the victim, the victim's
29 representative, or the victim's family, made by the person sentenced and
30 occurring after the sentencing. Such information may include, but need
31 not be limited to, the threatening or intimidating conduct of any other
32 person who or which is directed by the person sentenced. Notwithstanding
33 the provisions of this section, in making the parole release decision
34 for persons whose minimum period of imprisonment was not fixed pursuant
35 to the provisions of subdivision one of this section, in addition to the
36 factors listed in this paragraph the board shall consider the factors
37 listed in paragraph (a) of subdivision one of this section.

38 S 4. This act shall take effect on the ninetieth day after it shall
39 have become a law; provided that the amendments to paragraph (a) of
40 subdivision 2 of section 259-i of the executive law made by section one
41 of this act shall be subject to the expiration and reversion of such
42 paragraph pursuant to section 74 of chapter 3 of the laws of 1995, as
43 amended, when upon such date the provisions of section two of this act
44 shall take effect.