S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 8, 2010

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

AN ACT to amend the executive law, in relation to allowing the governor to review decisions by the parole board

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

Section 1. Subdivision 1 of section 259-c of the executive law, as amended by section 8 of part J of chapter 56 of the laws of 2009, is amended to read as follows:

1. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining which inmates serving an indeterminate or determinate sentence of imprisonment may be released on parole, or on medical parole pursuant to section two hundred fifty-nine-r or section two hundred fifty-nine-s of this article, and when and under what conditions;

S 2. Subdivision 1 of section 259-c of the executive law, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

1. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining which inmates serving an indeterminate sentence of imprisonment may be released on parole, or on medical parole pursuant to section two hundred fifty-nine-r of this article, and when and under what conditions;

S 3. Subdivision 2 of section 259-c of the executive law, as amended by section 7 of part E of chapter 62 of the laws of 2003, is amended to read as follows:

2. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining the conditions of release of the person who may be presumptively released, conditionally released or subject to a period of post-release supervision under an indeterminate or determinate sentence of imprisonment;

S 4. Subdivision 2 of section 259-c of the executive law, as separately amended by chapter 904 of the laws of 1977 and chapter 1 of the laws of 1998, is amended to read as follows:

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

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2. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining the conditions of release of the person who may be conditionally released or subject to a period of post-release supervision under an indeterminate or reformatory sentence of imprisonment and of determining which inmates serving a definite sentence of imprisonment may be conditionally released and when and under what conditions;

S 5. The executive law is amended by adding a new section 259-t to read as follows:

S 259-T. REVIEW OF PAROLE DETERMINATIONS BY THE GOVERNOR. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY:

1. THE GOVERNOR SHALL HAVE THE POWER TO REVIEW DECISIONS BY THE PAROLE BOARD OR MEMBERS THEREOF TO GRANT OR DENY RELEASE ON PAROLE TO INMATES SERVING A SENTENCE OF IMPRISONMENT, OR THE IMPOSITION OF CONDITIONS OF SUCH RELEASE, AND MAY DELAY THE SCHEDULED RELEASE OF AN INMATE TO PAROLE BY NOT MORE THAN FIFTEEN DAYS FOR THE PURPOSES OF CONDUCTING SUCH A REVIEW, PROVIDED THAT THE BOARD AND THE SUPERINTENDENT OF THE FACILITY IN WHICH SUCH INMATE IS CONFINED, OR HIS OR HER DESIGNEE, SHALL BE NOTIFIED OF SUCH DELAY NOT LESS THAN FORTY-EIGHT HOURS PRIOR TO THE TIME AT WHICH SUCH INMATE IS TO BE RELEASED, AND THE BOARD SHALL CAUSE NOTIFICATION OF SUCH DELAY TO BE MADE TO SUCH INMATE AS SOON AS PRACTICABLE, BUT NOT UNTIL AFTER CONSULTING WITH THE SUPERINTENDENT OF THE FACILITY IN WHICH SUCH INMATE IS CONFINED, OR HIS OR HER DESIGNEE.

2. WHEN AN INMATE SERVING A SENTENCE OF IMPRISONMENT IS DENIED OR GRANTED RELEASE ON PAROLE, THE GOVERNOR MAY DIRECT THAT THE FULL BOARD REVIEW SUCH DECISION, PROVIDED THAT, UNLESS SUCH DECISION WAS THE RESULT OF AN APPEAL PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE, ANY BOARD MEMBER WHO PARTICIPATED IN THE DECISION FROM WHICH THE APPEAL IS TAKEN MAY NOT PARTICIPATE IN THE RESOLUTION OF THAT APPEAL. THE BOARD SHALL PROMULGATE REGULATIONS FOR THE CONSIDERATION OF SUCH REVIEWS. UPON SUCH REVIEW, THE INMATE MAY BE REPRESENTED BY AN ATTORNEY. WHERE THE INMATE IS FINANCIALLY UNABLE TO PROVIDE FOR HIS OR HER OWN ATTORNEY, UPON REQUEST AN ATTORNEY SHALL BE ASSIGNED PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH (V) OF PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE, PROVIDED THAT THE COST OF SUCH REPRESENTATION SHALL BE A CHARGE TO THE STATE. IN DECIDING ON A REVIEW PURSUANT TO THIS SUBDIVISION, A MAJORITY VOTE OF THE BOARD MEMBERS TAKING PART IN SUCH REVIEW SHALL BE REQUIRED TO RELEASE AN INMATE TO PAROLE.

3. WHEN AN INMATE SERVING A SENTENCE OF IMPRISONMENT IS DENIED RELEASE TO PAROLE, THE GOVERNOR MAY, IN HIS OR HER SOLE DISCRETION, REVERSE SUCH DENIAL, DIRECT THE RELEASE OF SUCH INMATE, AND DIRECT THE BOARD OF PAROLE TO IMPOSE CONDITIONS UPON THE RELEASE OF SUCH INMATE, CONSISTENT WITH THE STANDARDS AND REGULATIONS OF THE BOARD, PROVIDED THAT THE GOVERNOR MAY MODIFY SUCH CONDITIONS OR IMPOSE ANY CONDITIONS UPON SUCH INMATE'S RELEASE AS THE GOVERNOR MAY, IN HIS OR HER DISCRETION, BELIEVE APPROPRIATE. RELEASE PURSUANT TO THIS SUBDIVISION SHALL NOT BE CONSIDERED A PARDON OR COMMUTATION BY THE GOVERNOR.

4. WHEN AN INMATE SERVING A SENTENCE OF IMPRISONMENT FOR A CONVICTION OF A CLASS A OR CLASS B FELONY AS DEFINED IN THE PENAL LAW, EXCEPT FOR A CLASS A OR CLASS B FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OR WHEN THE INMATE HAS BEEN SENTENCED A PERSISTENT VIOLENT FELONY OFFENDER PURSUANT TO SECTION 70.08 OF THE PENAL LAW OR A PERSISTENT FELONY OFFENDER PURSUANT TO SECTION 70.10 OF THE PENAL LAW, IS GRANTED RELEASE TO PAROLE, THE GOVERNOR MAY, IN HIS OR HER SOLE DISCRETION, REVERSE SUCH GRANTING OF RELEASE,

PROVIDED THAT THE PAROLE BOARD SHALL SCHEDULE A HEARING TO RECONSIDER THE RELEASE OF AN INMATE NOT MORE THAN TWENTY-FOUR MONTHS FROM THE DATE OF THE DECISION BY THE BOARD TO GRANT RELEASE. SUCH RECONSIDERATION SHALL BE CONDUCTED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE, PROVIDED THAT THE PAROLE BOARD SHALL NOT CONSIDER THE REVERSAL OF THE BOARD'S PREVIOUS GRANTING OF RELEASE OF SUCH INMATE BY THE GOVERNOR WHEN RECONSIDERING SUCH RELEASE, PROVIDED FURTHER HOWEVER, THAT THE BOARD MAY CONSIDER ANY SPECIFIC FINDINGS BY THE GOVERNOR GIVEN AS THE BASIS FOR THE PREVIOUS REVERSAL OF THE DECISION OF THE BOARD OR ITS MEMBERS.

5. WHEN AN INMATE IS RELEASED ON PAROLE, THE GOVERNOR MAY REMOVE, MODIFY OR IMPOSE ADDITIONAL CONDITIONS UPON SUCH RELEASE, PROVIDED THAT SUCH CONDITIONS SHALL BE REASONABLE AND THE GOVERNOR SHALL IMPOSE NO CONDITIONS WHICH THE PAROLE BOARD WOULD NOT BE AUTHORIZED TO IMPOSE. IN THE EVENT THAT THE GOVERNOR REMOVES, MODIFIES, OR IMPOSES SUCH CONDITIONS, THE PAROLE BOARD SHALL NOTIFY THE INMATE BEING RELEASED TO PAROLE WITH SUCH CONDITIONS IN WRITING OF SUCH REMOVED, MODIFIED, OR ADDITIONAL CONDITIONS, AND SHALL CONSIDER SUCH CONDITIONS TO HAVE BEEN IMPOSED BY THE BOARD FOR THE PURPOSES OF SUPERVISING SUCH PAROLEE.

6. IN REVERSING A DECISION OF THE BOARD PURSUANT TO SUBDIVISIONS THREE OR FOUR OF THIS SECTION, THE GOVERNOR SHALL APPLY THE GUIDELINES ESTABLISHED BY THE BOARD PURSUANT TO SUBDIVISION FOUR OF SECTION TWO HUNDRED FIFTY-NINE-C OF THIS ARTICLE AND SHALL CONSIDER ONLY THOSE FACTORS SPECIFIED IN SUBPARAGRAPH (A) OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE, PROVIDED THAT FOR INMATES WHOSE MINIMUM PERIOD OF IMPRISONMENT WAS NOT FIXED PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE, SUCH FACTORS TO BE CONSIDERED BY THE GOVERNOR SHALL ALSO INCLUDE THOSE FACTORS LISTED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SUCH SECTION. WHEN REVERSING SUCH A DECISION, THE GOVERNOR SHALL SPECIFY, IN WRITING, THE BASIS FOR SUCH REVERSAL IN DETAIL AND NOT IN CONCLUSORY TERMS.

7. UPON MAKING A DETERMINATION TO REVERSE A DECISION OF THE BOARD OR TO REMOVE, MODIFY, OR IMPOSE ADDITIONAL CONDITIONS OF RELEASE UPON AN INMATE OR PAROLEE PURSUANT TO THIS SECTION, THE GOVERNOR SHALL NOTIFY, IN WRITING, THE BOARD AND THE SUPERINTENDENT OF THE FACILITY IN WHICH SUCH INMATE IS CONFINED, OR HIS OR HER DESIGNEE, OF SUCH DETERMINATION AND THE BASIS THEREFOR, NOT LESS THAN FORTY-EIGHT HOURS BEFORE THE TIME SUCH INMATE IS SCHEDULED TO BE RELEASED, PROVIDED THAT IF SUCH REVERSAL IS OF A DECISION TO DENY RELEASE TO AN INMATE, SUCH NOTICE SHALL BE PROVIDED TO THE BOARD NOT LESS THAN FOURTEEN DAYS AFTER THE DENIAL BY THE BOARD OF RELEASE FOR SUCH INMATE. THE BOARD SHALL CAUSE TO BE PROVIDED TO SUCH INMATE A COPY OF SUCH NOTICE AS SOON AS PRACTICABLE, BUT NOT BEFORE CONSULTING WITH THE SUPERINTENDENT OF THE FACILITY IN WHICH SUCH INMATE IS CONFINED, OR HIS OR HER DESIGNEE.

S 6. This act shall take effect immediately; provided that the amendments to subdivision 1 of section 259-c of the executive law, made by section one of this act, shall not affect the expiration and reversion of such subdivision, pursuant to chapter 3 of the laws of 1995, and shall be deemed to expire therewith, whereupon such date the provisions of section two of this act shall take effect; provided, further, that the amendments to subdivision 2 of section 259-c of the executive law, made by section three of this act, shall not affect the expiration and reversion of such subdivision, pursuant to chapter 3 of the laws of 1995, and shall be deemed to expire therewith, whereupon such date the provisions of section four of this act shall take effect.