

1465

2009-2010 Regular Sessions

I N S E N A T E

February 2, 2009

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to appearance of a victim at parole hearings

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

1 Section 1. Subdivision 1 of section 440.50 of the criminal procedure
2 law, as amended by chapter 186 of the laws of 2005, is amended to read
3 as follows:
4 1. Upon the request of a victim of a crime, or in any event in all
5 cases in which the final disposition includes a conviction of a violent
6 felony offense as defined in section 70.02 of the penal law or a felony
7 defined in article one hundred twenty-five of such law, the district
8 attorney shall, within sixty days of the final disposition of the case,
9 inform the victim by letter of such final disposition. If such final
10 disposition results in the commitment of the defendant to the custody of
11 the department of correctional services for an indeterminate sentence,
12 the notice provided to the crime victim shall also inform the victim of
13 his or her right to (I) submit a written, audiotaped, or videotaped
14 victim impact statement to the state division of parole or to meet
15 personally with a member of the state board of parole at a time and
16 place separate from the personal interview between a member or members
17 of the board and the inmate and make such a statement, subject to proce-
18 dures and limitations contained in rules of the board, [both] AND (II)
19 APPEAR AND BE HEARD AT THE PAROLE HEARING pursuant to subdivision two of
20 section two hundred fifty-nine-i of the executive law. The right of the
21 victim under this subdivision to submit a written victim impact state-
22 ment or to meet personally with a member of the state board of parole
23 applies to each personal interview between a member or members of the
24 board and the inmate.

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

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1 S 2. Paragraph (a) of subdivision 2 of section 259-i of the executive
2 law, as separately amended by section 11 of part E and section 9 of part
3 F of chapter 62 of the laws of 2003, is amended to read as follows:

4 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at
5 least one month prior to the date on which an inmate may be paroled
6 pursuant to subdivision one of section 70.40 of the penal law, a member
7 or members as determined by the rules of the board shall personally
8 interview such inmate and determine whether he should be paroled in
9 accordance with the guidelines adopted pursuant to subdivision four of
10 section two hundred fifty-nine-c of this article. AT THE SAME TIME, THE
11 BOARD SHALL GRANT TO THE CRIME VICTIM OR THE VICTIM'S REPRESENTATIVE,
12 WHERE THE CRIME VICTIM IS DECEASED OR IS MENTALLY OR PHYSICALLY INCAPAC-
13 ITATED, AN OPPORTUNITY TO APPEAR AND BE HEARD. A CRIME VICTIM'S REPRE-
14 SENTATIVE SHALL MEAN THE CRIME VICTIM'S CLOSEST SURVIVING RELATIVE, THE
15 COMMITTEE OR GUARDIAN OF SUCH PERSON, OR THE LEGAL REPRESENTATIVE OF ANY
16 SUCH PERSON. If parole is not granted upon such review, the inmate shall
17 be informed in writing within two weeks of such appearance of the
18 factors and reasons for such denial of parole. Such reasons shall be
19 given in detail and not in conclusory terms. The board shall specify a
20 date not more than twenty-four months from such determination for recon-
21 sideration, and the procedures to be followed upon reconsideration shall
22 be the same. If the inmate is released, he OR SHE shall be given a copy
23 of the conditions of parole. Such conditions shall where appropriate,
24 include a requirement that the parolee comply with any restitution
25 order, mandatory surcharge, sex offender registration fee and DNA data-
26 bank fee previously imposed by a court of competent jurisdiction that
27 applies to the parolee. The board of parole shall indicate which resti-
28 tution collection agency established under subdivision eight of section
29 420.10 of the criminal procedure law, shall be responsible for
30 collection of restitution, mandatory surcharge, sex offender registra-
31 tion fees and DNA databank fees as provided for in section 60.35 of the
32 penal law and section eighteen hundred nine of the vehicle and traffic
33 law.

34 (ii) Any inmate who is scheduled for presumptive release pursuant to
35 section eight hundred six of the correction law shall not appear before
36 the parole board as provided in subparagraph (i) of this paragraph
37 unless such inmate's scheduled presumptive release is forfeited,
38 canceled, or rescinded subsequently as provided in such law. In such
39 event, the inmate shall appear before the parole board for release
40 consideration as provided in subparagraph (i) of this paragraph as soon
41 thereafter as is practicable.

42 S 3. Paragraph (a) of subdivision 2 of section 259-i of the executive
43 law, as amended by chapter 396 of the laws of 1987, is amended to read
44 as follows:

45 (a) At least one month prior to the expiration of the minimum period
46 or periods of imprisonment fixed by the court or board, a member or
47 members as determined by the rules of the board shall personally inter-
48 view an inmate serving an indeterminate sentence and determine whether
49 he should be paroled at the expiration of the minimum period or periods
50 in accordance with the guidelines adopted pursuant to subdivision four
51 of section two hundred fifty-nine-c. AT THE SAME TIME, THE BOARD SHALL
52 GRANT TO THE CRIME VICTIM OR THE VICTIM'S REPRESENTATIVE, WHERE THE
53 CRIME VICTIM IS DECEASED OR IS MENTALLY OR PHYSICALLY INCAPACITATED, AN
54 OPPORTUNITY TO APPEAR AND BE HEARD. A CRIME VICTIM'S REPRESENTATIVE
55 SHALL MEAN THE CRIME VICTIM'S CLOSEST SURVIVING RELATIVE, THE COMMITTEE
56 OR GUARDIAN OF SUCH PERSON, OR THE LEGAL REPRESENTATIVE OF ANY SUCH

1 PERSON. If parole is not granted upon such review, the inmate shall be
2 informed in writing within two weeks of such appearance of the factors
3 and reasons for such denial of parole. Such reasons shall be given in
4 detail and not in conclusory terms. The board shall specify a date not
5 more than twenty-four months from such determination for reconsider-
6 ation, and the procedures to be followed upon reconsideration shall be
7 the same. If the inmate is released, he OR SHE shall be given a copy of
8 the conditions of parole. Such conditions shall where appropriate,
9 include a requirement that the parolee comply with any restitution order
10 and mandatory surcharge previously imposed by a court of competent
11 jurisdiction that applies to the parolee. The board of parole shall
12 indicate which restitution collection agency established under subdivi-
13 sion eight of section 420.10 of the criminal procedure law, shall be
14 responsible for collection of restitution and mandatory surcharge as
15 provided for in section 60.35 of the penal law and section eighteen
16 hundred nine of the vehicle and traffic law.

17 S 4. This act shall take effect on the first of November next succeed-
18 ing the date on which it shall have become a law, provided that the
19 amendments to paragraph (a) of subdivision 2 of section 259-i of the
20 executive law made by section two of this act shall be subject to the
21 expiration and reversion of such paragraph pursuant to subdivision d of
22 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
23 date the provisions of section three of this act shall take effect.