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

3492--A

Cal. No. 114

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED -- read once and referred to the Committee on Correction -- reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading

AN ACT to amend the criminal procedure law, in relation to providing inmates and parolees access to pre-sentence reports that had been prepared for sentencing

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

Section 1. Paragraph (a) of subdivision 2 of section 390.50 of the criminal procedure law, as amended by chapter 14 of the laws of 1985, is amended to read as follows:

(a) Not less than one court day prior to sentencing, unless such time requirement is waived by the parties, the pre-sentence report or memorandum shall be made available by the court for examination and for copying by the defendant's attorney, the defendant himself, if he has no attorney, and the prosecutor. In its discretion, the court may except from disclosure a part or parts of the report or memoranda which are not relevant to a proper sentence, or a diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the report or memoranda are not disclosed, the court shall state for the record that a part or parts of the report or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to appellate review. The pre-sentence report shall be made available by the court for examination and copying in connection with any appeal in the case, including an appeal under this subdivision. UPON WRITTEN REQUEST, THE COURT SHALL MAKE A COPY OF THE PRESENTENCE REPORT AVAILABLE TO THE DEFENDANT FOR USE BEFORE THE PAROLE BOARD FOR

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

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RELEASE CONSIDERATION OR AN APPEAL OF A PAROLE BOARD DETERMINATION. IN HIS OR HER WRITTEN REQUEST TO THE COURT THE DEFENDANT SHALL AFFIRM THAT HE OR SHE ANTICIPATES AN APPEARANCE BEFORE THE PAROLE BOARD OR INTENDS TO FILE AN ADMINISTRATIVE APPEAL OF A PAROLE BOARD DETERMINATION. THE COURT SHALL RESPOND TO THE DEFENDANT'S WRITTEN REQUEST WITHIN TWENTY DAYS FROM RECEIPT OF THE DEFENDANT'S WRITTEN REQUEST.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.