

2042

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. TEDISCO, AMEDORE, BURLING, FINCH, McDONOUGH,
McKEVITT -- Multi-Sponsored by -- M. of A. BUTLER, CONTE, CROUCH,
DUPREY, GIGLIO, J. MILLER, MOLINARO, OAKS, RAIA, THIELE -- 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 259-c of the executive law, as
2 amended by section 8 of part J of chapter 56 of the laws of 2009, is
3 amended to read as follows:
4 1. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED
5 FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining
6 which inmates serving an indeterminate or determinate sentence of impri-
7 sonment may be released on parole, or on medical parole pursuant to
8 section two hundred fifty-nine-r or section two hundred fifty-nine-s of
9 this article, and when and under what conditions;
10 S 2. Subdivision 1 of section 259-c of the executive law, as amended
11 by chapter 55 of the laws of 1992, is amended to read as follows:
12 1. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED
13 FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining
14 which inmates serving an indeterminate sentence of imprisonment may be
15 released on parole, or on medical parole pursuant to section two hundred
16 fifty-nine-r of this article, and when and under what conditions;
17 S 3. Subdivision 2 of section 259-c of the executive law, as amended
18 by section 7 of part E of chapter 62 of the laws of 2003, is amended to
19 read as follows:
20 2. SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION TWO HUNDRED
21 FIFTY-NINE-T OF THIS ARTICLE, have the power and duty of determining the
22 conditions of release of the person who may be presumptively released,

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

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1 conditionally released or subject to a period of post-release super-
2 vision under an indeterminate or determinate sentence of imprisonment;

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

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

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

15 S 259-T. REVIEW OF PAROLE DETERMINATIONS BY THE GOVERNOR. NOTWITH-
16 STANDING ANY PROVISION OF LAW TO THE CONTRARY:

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

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

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

54 4. WHEN AN INMATE SERVING A SENTENCE OF IMPRISONMENT FOR A CONVICTION
55 OF A CLASS A OR CLASS B FELONY AS DEFINED IN THE PENAL LAW, EXCEPT FOR A
56 CLASS A OR CLASS B FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO

1 HUNDRED TWENTY-ONE OF THE PENAL LAW, OR WHEN THE INMATE HAS BEEN
2 SENTENCED A PERSISTENT VIOLENT FELONY OFFENDER PURSUANT TO SECTION 70.08
3 OF THE PENAL LAW OR A PERSISTENT FELONY OFFENDER PURSUANT TO SECTION
4 70.10 OF THE PENAL LAW, IS GRANTED RELEASE TO PAROLE, THE GOVERNOR MAY,
5 IN HIS OR HER SOLE DISCRETION, REVERSE SUCH GRANTING OF RELEASE,
6 PROVIDED THAT THE PAROLE BOARD SHALL SCHEDULE A HEARING TO RECONSIDER
7 THE RELEASE OF AN INMATE NOT MORE THAN TWENTY-FOUR MONTHS FROM THE DATE
8 OF THE DECISION BY THE BOARD TO GRANT RELEASE. SUCH RECONSIDERATION
9 SHALL BE CONDUCTED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION TWO
10 HUNDRED FIFTY-NINE-I OF THIS ARTICLE, PROVIDED THAT THE PAROLE BOARD
11 SHALL NOT CONSIDER THE REVERSAL OF THE BOARD'S PREVIOUS GRANTING OF
12 RELEASE OF SUCH INMATE BY THE GOVERNOR WHEN RECONSIDERING SUCH RELEASE,
13 PROVIDED FURTHER HOWEVER, THAT THE BOARD MAY CONSIDER ANY SPECIFIC FIND-
14 INGS BY THE GOVERNOR GIVEN AS THE BASIS FOR THE PREVIOUS REVERSAL OF THE
15 DECISION OF THE BOARD OR ITS MEMBERS.

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

25 6. IN REVERSING A DECISION OF THE BOARD PURSUANT TO SUBDIVISIONS THREE
26 OR FOUR OF THIS SECTION, THE GOVERNOR SHALL APPLY THE GUIDELINES ESTAB-
27 LISHED BY THE BOARD PURSUANT TO SUBDIVISION FOUR OF SECTION TWO HUNDRED
28 FIFTY-NINE-C OF THIS ARTICLE AND SHALL CONSIDER ONLY THOSE FACTORS SPEC-
29 IFIED IN SUBPARAGRAPH (A) OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION
30 TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE, PROVIDED THAT FOR INMATES
31 WHOSE MINIMUM PERIOD OF IMPRISONMENT WAS NOT FIXED PURSUANT TO THE
32 PROVISIONS OF SUBDIVISION ONE OF SECTION TWO HUNDRED FIFTY-NINE-I OF
33 THIS ARTICLE, SUCH FACTORS TO BE CONSIDERED BY THE GOVERNOR SHALL ALSO
34 INCLUDE THOSE FACTORS LISTED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SUCH
35 SECTION. WHEN REVERSING SUCH A DECISION, THE GOVERNOR SHALL SPECIFY, IN
36 WRITING, THE BASIS FOR SUCH REVERSAL IN DETAIL AND NOT IN CONCLUSORY
37 TERMS.

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

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

1 the amendments to subdivision 2 of section 259-c of the executive law,
2 made by section three of this act, shall not affect the expiration and
3 reversion of such subdivision, pursuant to chapter 3 of the laws of
4 1995, and shall be deemed to expire therewith, whereupon such date the
5 provisions of section four of this act shall take effect.