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

2043

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. TEDISCO -- Multi-Sponsored by -- M. of A. BUTLER, CONTE, CROUCH, DUPREY, McKEVITT, J. MILLER, MOLINARO, OAKS, RAIA, REILICH, SALADINO, THIELE -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

(a) (i) Except as provided in subparagraph (ii) of this paragraph, at least one month prior to the date on which an inmate may be paroled pursuant to subdivision one of section 70.40 of the penal law, a THREE member [or members as determined by the rules] PANEL WHOSE MEMBERS ARE CHOSEN AT RANDOM FROM AMONG THE MEMBERS of the board shall personally interview such inmate and determine whether he should be paroled in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If the inmate is released, he shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order, mandatory surcharge, sex offender registration fee and DNA databank fee previously imposed by a court of competent jurisdiction that applies to the parolee. The board of parole

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

LBD02107-01-1

shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution, mandatory surcharge, sex offender registration fees and DNA databank fees as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law.

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

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

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

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

(A) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) THE SERIOUSNESS OF THE OFFENSE WITH DUE CONSIDERATION TO THE TYPE OF SENTENCE, LENGTH OF SENTENCE AND RECOMMENDATIONS OF THE SENTENCING COURT, THE DISTRICT ATTORNEY, THE ATTORNEY FOR THE

INMATE, THE PRE-SENTENCE PROBATION REPORT AS WELL AS CONSIDERATION OF ANY MITIGATING AND AGGRAVATING FACTORS, AND ACTIVITIES FOLLOWING ARREST AND PRIOR TO CONFINEMENT; (II) PRIOR CRIMINAL RECORD, INCLUDING THE NATURE AND PATTERN OF OFFENSES, ADJUSTMENTS TO ANY PREVIOUS PROBATION OR PAROLE SUPERVISION OR INSTITUTIONAL CONFINEMENT; (III) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates; [(ii)] (IV) performance, if any, as a participant in a temporary release program; [(iii)] (V) release plans including community resources, employment, education and training and support services available to the inmate; [(iv)] (VI) any deportation order issued by the federal government against the inmate while in the custody of the department of correctional services and any recommendation regarding deportation made by the commissioner of the department of correctional services pursuant to section one hundred forty-seven of the correction law; [(v)] (VII) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated; and [(vi)] (VIII) the length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the penal law for a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law. The board shall provide toll free telephone access for crime victims. In the case of an oral statement made in accordance with subdivision one of section 440.50 of the criminal procedure law, the parole board member shall present a written report of the statement to the parole board. A crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Such statement submitted by the victim or victim's representative may include information concerning threatening or intimidating conduct toward the victim, the victim's representative, or the victim's family, made by the person sentenced and occurring after the sentencing. Such information may include, but need not be limited to, the threatening or intimidating conduct of any other person who or which is directed by the person sentenced. Notwithstanding the provisions of this section, in making the parole release decision for persons whose minimum period of imprisonment was not fixed pursuant to the provisions of subdivision one of this section, in addition to the factors listed in this paragraph the board shall consider the factors listed in paragraph (a) of subdivision one of this section.

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