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

748

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. RABBITT, KOLB, FINCH, CALHOUN, RAIA, McDONOUGH, McKEVITT -- Multi-Sponsored by -- M. of A. BURLING, CROUCH -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to the rights of a crime victim at parole proceedings

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

Section 1. Subdivision 1 of section 440.50 of the criminal procedure law, as amended by chapter 186 of the laws of 2005, is amended to read as follows:

1. (A) Upon the request of a victim of a crime, or in any event in all cases in which the final disposition includes a conviction of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law, the district attorney shall, within sixty days of the final disposition of the case, inform the victim by letter of such final disposition. If such final disposition results in the commitment of the defendant to the custody of the department of correctional services for an indeterminate sentence, the notice provided to the crime victim shall also inform the victim of his or her right to [submit a written, audiotaped, or videotaped victim impact statement to the state division of parole or to meet personally with a member of the state board of parole at a time and place separate from the personal interview between a member or members of the board and the inmate and make such a statement, subject to procedures and limitations contained in rules of the board, both] BE PRESENT AT PROCEEDINGS OF THE STATE DIVISION OF PAROLE REGARDING RELEASE OF SUCH DEFENDANT. THE VICTIMS SHALL ALSO BE NOTIFIED OF THEIR RIGHT TO PROVIDE AN ORAL OR WRITTEN STATEMENT OR BOTH AT PROCEEDINGS OF THE BOARD, INCLUDING THE PERSONAL INTERVIEW OF THE INMATE, AND THAT THEY WILL ALSO BE PROVIDED THE OPPORTUNITY TO PRESENT THEIR VIEWS IN PERSON TO THE SAME MEMBER OF

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

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THE BOARD WHO CONDUCTED THE INTERVIEW WITH THE INMATE AT A MUTUALLY CONVENIENT LOCATION PRIOR TO THE DETERMINATION OF THE BOARD pursuant to subdivision two of section two hundred fifty-nine-i of the executive law. The right of the victim under this subdivision to submit a written victim impact statement or to meet personally with a member of the state board of parole applies to each personal interview between a member or members of the board and the inmate.

(B) NOTIFICATION OF VICTIMS BY THE DISTRICT ATTORNEY PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE REQUIRED FOR THE FOLLOWING OFFENSES: ANY VIOLENT FELONY OFFENSE DEFINED IN SECTION 70.02 OF THE PENAL LAW, AN ATTEMPT TO COMMIT ANY SEX OFFENSE AND ANY SEX OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AN ATTEMPT TO COMMIT INCEST AND INCEST AS DEFINED IN SECTION 255.25 OF THE PENAL LAW, MURDER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.25 OF THE PENAL LAW, AN ATTEMPT TO COMMIT MURDER IN THE FIRST DEGREE AND MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF THE PENAL LAW, AN ATTEMPT TO COMMIT MANSLAUGHTER IN THE SECOND DEGREE AND MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15 OF THE PENAL LAW, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE PENAL LAW, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.10 OF THE PENAL LAW, KIDNAPPING IN THE FIRST DEGREE AS DEFINED IN SECTION 135.25 OF THE PENAL LAW, MENACING IN THE FIRST DEGREE AS DEFINED IN SECTION 120.13 OF THE PENAL LAW, AND ARSON IN THE FIRST DEGREE AS DEFINED IN SECTION 150.20 OF THE PENAL LAW.

S 2. Subparagraph (i) of 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:

(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 member or members as determined by the rules 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 GRANTED, A STATEMENT OF THE REASONS FOR GRANTING PAROLE SHALL BE STATED IN WRITING AND TRANSCRIPTS OF ALL INTERVIEWS SHALL BE PROVIDED, WITHIN A REASONABLE TIME AFTER SUCH DECISION, TO A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS FILED A STATEMENT PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION. 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 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 data-

bank fees as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law.

S 3. 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 member or members as determined by the rules 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. IF PAROLE IS GRANTED, A STATEMENT OF THE REASONS FOR GRANTING PAROLE SHALL BE STATED IN WRITING AND TRANSCRIPTS OF ALL INTERVIEWS SHALL BE PROVIDED, WITHIN A REASONABLE TIME AFTER SUCH DECISION, TO A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS FILED A STATEMENT PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION.

S 4. This act shall take effect April 1, 2011; provided that the amendments to paragraph (a) of subdivision 2 of section 259-i of the executive law made by section two 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 three of this act shall take effect.