

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 2 of section 259-i of the
2 executive law, as separately amended by section 11 of part E and section
3 9 of part F of chapter 62 of the laws of 2003, is amended to read as
4 follows:
5 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at
6 least one month prior to the date on which an inmate may be paroled
7 pursuant to subdivision one of section 70.40 of the penal law, a THREE
8 member [or members as determined by the rules] PANEL WHOSE MEMBERS ARE
9 CHOSEN AT RANDOM FROM AMONG THE MEMBERS of the board shall personally
10 interview such inmate and determine whether he should be paroled in
11 accordance with the guidelines adopted pursuant to subdivision four of
12 section two hundred fifty-nine-c of this article. If parole is not
13 granted upon such review, the inmate shall be informed in writing within
14 two weeks of such appearance of the factors and reasons for such denial
15 of parole. Such reasons shall be given in detail and not in conclusory
16 terms. The board shall specify a date not more than twenty-four months
17 from such determination for reconsideration, and the procedures to be
18 followed upon reconsideration shall be the same. If the inmate is
19 released, he shall be given a copy of the conditions of parole. Such
20 conditions shall where appropriate, include a requirement that the paro-
21 lee comply with any restitution order, mandatory surcharge, sex offender
22 registration fee and DNA databank fee previously imposed by a court of
23 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.

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

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11 canceled, or rescinded subsequently as provided in such law.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

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

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

42 S 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section
43 259-i of the executive law, as amended by section 12 of part AAA of
44 chapter 56 of the laws of 2009, is amended to read as follows:

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

1 INMATE, THE PRE-SENTENCE PROBATION REPORT AS WELL AS CONSIDERATION OF
2 ANY MITIGATING AND AGGRAVATING FACTORS, AND ACTIVITIES FOLLOWING ARREST
3 AND PRIOR TO CONFINEMENT; (II) PRIOR CRIMINAL RECORD, INCLUDING THE
4 NATURE AND PATTERN OF OFFENSES, ADJUSTMENTS TO ANY PREVIOUS PROBATION OR
5 PAROLE SUPERVISION OR INSTITUTIONAL CONFINEMENT; (III) the institutional
6 record including program goals and accomplishments, academic achieve-
7 ments, vocational education, training or work assignments, therapy and
8 interpersonal relationships with staff and inmates; [(ii)] (IV) perform-
9 ance, if any, as a participant in a temporary release program; [(iii)]
10 (V) release plans including community resources, employment, education
11 and training and support services available to the inmate; [(iv)] (VI)
12 any deportation order issued by the federal government against the
13 inmate while in the custody of the department of correctional services
14 and any recommendation regarding deportation made by the commissioner of
15 the department of correctional services pursuant to section one hundred
16 forty-seven of the correction law; [(v)] (VII) any statement made to the
17 board by the crime victim or the victim's representative, where the
18 crime victim is deceased or is mentally or physically incapacitated; and
19 [(vi)] (VIII) the length of the determinate sentence to which the inmate
20 would be subject had he or she received a sentence pursuant to section
21 70.70 or section 70.71 of the penal law for a felony defined in article
22 two hundred twenty or article two hundred twenty-one of the penal law.
23 The board shall provide toll free telephone access for crime victims. In
24 the case of an oral statement made in accordance with subdivision one of
25 section 440.50 of the criminal procedure law, the parole board member
26 shall present a written report of the statement to the parole board. A
27 crime victim's representative shall mean the crime victim's closest
28 surviving relative, the committee or guardian of such person, or the
29 legal representative of any such person. Such statement submitted by the
30 victim or victim's representative may include information concerning
31 threatening or intimidating conduct toward the victim, the victim's
32 representative, or the victim's family, made by the person sentenced and
33 occurring after the sentencing. Such information may include, but need
34 not be limited to, the threatening or intimidating conduct of any other
35 person who or which is directed by the person sentenced. Notwithstanding
36 the provisions of this section, in making the parole release decision
37 for persons whose minimum period of imprisonment was not fixed pursuant
38 to the provisions of subdivision one of this section, in addition to the
39 factors listed in this paragraph the board shall consider the factors
40 listed in paragraph (a) of subdivision one of this section.

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