

5374

2011-2012 Regular Sessions

I N S E N A T E

May 13, 2011

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law, in relation to modifying the procedure for interviews of parole applicants and to the disclosure of parole applicant records

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

1 Section 1. Paragraph (a) of subdivision 2 of section 259-i of the  
2 executive law, as amended by section 38-f-1 of subpart A of part C of  
3 chapter 62 of the laws of 2011, is amended to read as follows:  
4 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at  
5 least [one month] THREE MONTHS prior to the date on which [an inmate] A  
6 PAROLE APPLICANT may be paroled pursuant to subdivision one of section  
7 70.40 of the penal law, a member or members as determined by the rules  
8 of the board shall personally interview such [inmate] PAROLE APPLICANT  
9 and determine whether he OR SHE should be paroled in accordance with the  
10 [guidelines] PROCEDURES adopted pursuant to subdivision four of section  
11 two hundred fifty-nine-c of this article. THE INTERVIEW SHALL TAKE  
12 PLACE WITH ALL PARTIES PRESENT IN THE SAME ROOM. THE INTERVIEW SHALL BE  
13 RECORDED AUDIO-VISUALLY AND THIS RECORDING SHALL BE MADE AVAILABLE TO  
14 THE BOARD AND THE PAROLE APPLICANT OR THE PAROLE APPLICANT'S REPRESENTATIVE ONLY. AT LEAST ONE MONTH PRIOR TO THE PAROLE HEARING PAROLE APPLICANTS SHALL BE PROVIDED THE OPPORTUNITY TO REVIEW ALL DOCUMENTS CONTAINED IN THEIR PAROLE FILE OR THAT OTHERWISE WILL BE MADE AVAILABLE FOR THE BOARD'S DISCRETIONARY RELEASE CONSIDERATION. NO DOCUMENTS SHALL BE CONSIDERED CONFIDENTIAL EXCEPT AS PROVIDED IN SUBPARAGRAPH (I) OF PARAGRAPH (C) OF THIS SUBDIVISION. RECORDS CONCERNING OR RELATING TO THE MENTAL HEALTH EXAMINATION OR TREATMENT OF THE PAROLE APPLICANT SHALL BE DISCLOSED UNLESS, IN ACCORDANCE WITH THE STANDARDS AND PROCEDURES SET FORTH IN SECTION 33.16 OF THE MENTAL HYGIENE LAW, IT IS DETERMINED BY A

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

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1 MENTAL HEALTH PRACTITIONER THAT SUCH DISCLOSURE CAN REASONABLY BE  
2 EXPECTED TO CAUSE SUBSTANTIAL AND IDENTIFIABLE HARM TO THE PAROLE APPLI-  
3 CANT OR OTHERS AND THAT THIS HARM WOULD OUTWEIGH THE PAROLE APPLICANT'S  
4 RIGHT OF ACCESS TO THE RECORD. AT LEAST THIRTY DAYS BEFORE THE PAROLE  
5 HEARING, IF REQUESTED BY THE VICTIM, AS THE TERM VICTIM IS DEFINED IN  
6 SUBDIVISION TWO OF SECTION 380.50 OF THE CRIMINAL PROCEDURE LAW, THE  
7 FOLLOWING INFORMATION SHALL BE PROVIDED TO THE VICTIM, OR THE VICTIM'S  
8 REPRESENTATIVE: INMATE STATUS REPORTS; INMATE'S PSYCHIATRIC EVALUATION,  
9 IF THERE IS ONE AVAILABLE AND ONLY UPON CONSENT OF THE PAROLE APPLI-  
10 CANT; AND A COPY OF THE PAROLE APPLICANT'S "PAROLE RELEASE PLAN" IN THE  
11 EVENT THAT THE APPLICANT SUBMITS ONE. If parole is not granted upon such  
12 review, the [inmate] BOARD WILL BE REQUIRED TO STATE IN DETAIL AND NOT  
13 IN CONCLUSORY TERMS THE FACTORS AND REASONS FOR THE DENIAL AND THE  
14 SPECIFIC REQUIREMENTS FOR ACTIONS TO BE TAKEN, PROGRAMS OR ACCOMPLISH-  
15 MENTS TO BE COMPLETED, OR CHANGES IN PERFORMANCE OR CONDUCT TO BE MADE,  
16 OR CORRECTIVE ACTION OR ACTIONS TO BE TAKEN, IN ORDER TO QUALIFY FOR  
17 PAROLE RELEASE. THE BOARD SHALL SPECIFY A DATE NOT MORE THAN TWENTY-FOUR  
18 MONTHS FROM SUCH DETERMINATION FOR RECONSIDERATION. THE PAROLE APPLICANT  
19 shall be informed in writing within two weeks of such appearance of the  
20 factors and reasons for such denial of parole[. Such reasons shall be  
21 given in detail and not in conclusory terms. The board shall specify a  
22 date not more than twenty-four months from such determination for recon-  
23 sideration, and the procedures to be followed upon reconsideration shall  
24 be the same] AND THE SPECIFIC REQUIREMENTS AND SHALL BE PROVIDED WITH A  
25 COPY OF THE SCORED RISK AND NEEDS ASSESSMENT INSTRUMENT CONSIDERED BY  
26 THE BOARD. WITHIN NINETY DAYS OF THE HEARING DECISION, THE DEPARTMENT  
27 SHALL PROVIDE TO THE PAROLE APPLICANT ACCESS TO THE PROGRAM OR PROGRAMS,  
28 ACTIVITIES AND/OR FACILITIES NEEDED IN ORDER TO PROVIDE THE OPPORTUNITY  
29 TO FULFILL THE REQUIREMENTS SET FORTH BY THE BOARD. THE PAROLE APPLICANT  
30 SHALL BE SCHEDULED FOR A REAPPEARANCE BEFORE THE BOARD UPON COMPLETION  
31 OF THE SPECIFIC REQUIREMENTS AS PREVIOUSLY SET FORTH BY THE BOARD IF  
32 SUCH COMPLETION OCCURS SOONER THAN THE DATE SPECIFIED BY THE BOARD. IF  
33 THE REQUIREMENTS PREVIOUSLY SET FORTH BY THE BOARD HAVE BEEN SUCCESSFUL-  
34 LY COMPLETED AND THE PAROLE APPLICANT'S INSTITUTIONAL RECORD HAS BEEN  
35 SATISFACTORY DURING THE TIME BETWEEN THE PREVIOUS AND CURRENT PAROLE  
36 HEARING, RELEASE SHALL BE GRANTED. If the [inmate] PAROLE APPLICANT is  
37 released, he OR SHE shall be given a copy of the conditions of parole.  
38 Such conditions shall where appropriate, include a requirement that the  
39 parolee comply with any restitution order, mandatory surcharge, sex  
40 offender registration fee and DNA databank fee previously imposed by a  
41 court of competent jurisdiction that applies to the parolee. The condi-  
42 tions shall indicate which restitution collection agency established  
43 under subdivision eight of section 420.10 of the criminal procedure law,  
44 shall be responsible for collection of restitution, mandatory surcharge,  
45 sex offender registration fees and DNA databank fees as provided for in  
46 section 60.35 of the penal law and section eighteen hundred nine of the  
47 vehicle and traffic law.

48 (ii) Any [inmate] PAROLE APPLICANT who is scheduled for presumptive  
49 release pursuant to section eight hundred six of the correction law  
50 shall not appear before the board as provided in subparagraph (i) of  
51 this paragraph unless such [inmate's] PAROLE APPLICANT'S scheduled  
52 presumptive release is forfeited, canceled, or rescinded subsequently as  
53 provided in such law. In such event, the [inmate] PAROLE APPLICANT shall  
54 appear before the board for release consideration as provided in subpar-  
55 agraph (i) of this paragraph as soon thereafter as is practicable.

1 S 2. Paragraph (a) of subdivision 2 of section 259-i of the executive  
2 law, as amended by section 38-f-2 of subpart A of part C of chapter 62  
3 of the laws of 2011, is amended to read as follows:

4 (a) At least [one month] THREE MONTHS prior to the expiration of the  
5 minimum period or periods of imprisonment fixed by the court or board, a  
6 member or members as determined by the rules of the board shall  
7 personally interview [an inmate] A PAROLE APPLICANT serving an indeter-  
8 minate sentence and determine whether he OR SHE should be paroled at the  
9 expiration of the minimum period or periods in accordance with the  
10 procedures adopted pursuant to subdivision four of section two hundred  
11 fifty-nine-c. THE INTERVIEW SHALL TAKE PLACE WITH ALL PARTIES PRESENT  
12 IN THE SAME ROOM. THE INTERVIEW SHALL BE RECORDED AUDIO-VISUALLY AND  
13 THIS RECORDING SHALL BE MADE AVAILABLE TO THE BOARD AND THE PAROLE  
14 APPLICANT OR THE PAROLE APPLICANT'S REPRESENTATIVE ONLY. AT LEAST ONE  
15 MONTH PRIOR TO THE PAROLE HEARING PAROLE APPLICANTS SHALL BE PROVIDED  
16 THE OPPORTUNITY TO REVIEW ALL DOCUMENTS CONTAINED IN THEIR PAROLE FILE  
17 OR THAT OTHERWISE WILL BE MADE AVAILABLE FOR THE BOARD'S DISCRETIONARY  
18 RELEASE CONSIDERATION. NO DOCUMENTS SHALL BE CONSIDERED CONFIDENTIAL  
19 EXCEPT AS PROVIDED IN SUBPARAGRAPH (I) OF PARAGRAPH (C) OF THIS SUBDIVI-  
20 SION. RECORDS CONCERNING OR RELATING TO THE MENTAL HEALTH EXAMINATION  
21 OR TREATMENT OF THE PAROLE APPLICANT SHALL BE DISCLOSED UNLESS, IN  
22 ACCORDANCE WITH THE STANDARDS AND PROCEDURES SET FORTH IN SECTION 33.16  
23 OF THE MENTAL HYGIENE LAW, IT IS DETERMINED BY A MENTAL HEALTH PRACTI-  
24 TIONER THAT SUCH DISCLOSURE CAN REASONABLY BE EXPECTED TO CAUSE SUBSTAN-  
25 TIAL AND IDENTIFIABLE HARM TO THE PAROLE APPLICANT OR OTHERS AND THAT  
26 THIS HARM WOULD OUTWEIGH THE PAROLE APPLICANT'S RIGHT OF ACCESS TO THE  
27 RECORD. AT LEAST THIRTY DAYS BEFORE THE PAROLE HEARING, IF REQUESTED BY  
28 THE VICTIM, AS THE TERM VICTIM IS DEFINED IN SUBDIVISION TWO OF SECTION  
29 380.50 OF THE CRIMINAL PROCEDURE LAW, THE FOLLOWING INFORMATION SHALL BE  
30 PROVIDED TO THE VICTIM, OR THE VICTIM'S REPRESENTATIVE: INMATE STATUS  
31 REPORTS; INMATE'S PSYCHIATRIC EVALUATION, IF THERE IS ONE AVAILABLE AND  
32 ONLY UPON CONSENT OF THE PAROLE APPLICANT; AND A COPY OF THE PAROLE  
33 APPLICANT'S "PAROLE RELEASE PLAN" IN THE EVENT THAT THE APPLICANT  
34 SUBMITS ONE. If parole is not granted upon such review, the [inmate]  
35 BOARD WILL BE REQUIRED TO STATE IN DETAIL AND NOT IN CONCLUSORY TERMS  
36 THE FACTORS AND REASONS FOR THE DENIAL AND THE SPECIFIC REQUIREMENTS FOR  
37 ACTIONS TO BE TAKEN, PROGRAMS OR ACCOMPLISHMENTS TO BE COMPLETED, OR  
38 CHANGES IN PERFORMANCE OR CONDUCT TO BE MADE, OR CORRECTIVE ACTION OR  
39 ACTIONS TO BE TAKEN, IN ORDER TO QUALIFY FOR PAROLE RELEASE. THE BOARD  
40 SHALL SPECIFY A DATE NOT MORE THAN TWENTY-FOUR MONTHS FROM SUCH DETERMI-  
41 NATION FOR RECONSIDERATION. THE PAROLE APPLICANT shall be informed in  
42 writing within two weeks of such appearance of the factors and reasons  
43 for such denial of parole[. Such reasons shall be given in detail and  
44 not in conclusory terms. The board shall specify a date not more than  
45 twenty-four months from such determination for reconsideration, and the  
46 procedures to be followed upon reconsideration shall be the same] AND  
47 THE SPECIFIC REQUIREMENTS AND SHALL BE PROVIDED WITH A COPY OF THE  
48 SCORED RISK AND NEEDS ASSESSMENT INSTRUMENT CONSIDERED BY THE BOARD.  
49 WITHIN NINETY DAYS OF THE HEARING DECISION, THE DEPARTMENT SHALL PROVIDE  
50 TO THE PAROLE APPLICANT ACCESS TO THE PROGRAM OR PROGRAMS, ACTIVITIES  
51 AND/OR FACILITIES NEEDED IN ORDER TO PROVIDE THE OPPORTUNITY TO FULFILL  
52 THE REQUIREMENTS SET FORTH BY THE BOARD. THE PAROLE APPLICANT SHALL BE  
53 SCHEDULED FOR A REAPPEARANCE BEFORE THE BOARD UPON COMPLETION OF THE  
54 SPECIFIC REQUIREMENTS AS PREVIOUSLY SET FORTH BY THE BOARD IF SUCH  
55 COMPLETION OCCURS SOONER THAN THE DATE SPECIFIED BY THE BOARD. IF THE  
56 REQUIREMENTS PREVIOUSLY SET FORTH BY THE BOARD HAVE BEEN SUCCESSFULLY

1 COMPLETED AND THE PAROLE APPLICANT'S INSTITUTIONAL RECORD HAS BEEN  
2 SATISFACTORY DURING THE TIME BETWEEN THE PREVIOUS AND CURRENT PAROLE  
3 HEARING, RELEASE SHALL BE GRANTED. If the [inmate] PAROLE APPLICANT is  
4 released, he OR SHE shall be given a copy of the conditions of parole.  
5 Such conditions shall where appropriate, include a requirement that the  
6 parolee comply with any restitution order and mandatory surcharge previ-  
7 ously imposed by a court of competent jurisdiction that applies to the  
8 parolee. The conditions shall indicate which restitution collection  
9 agency established under subdivision eight of section 420.10 of the  
10 criminal procedure law, shall be responsible for collection of restitu-  
11 tion and mandatory surcharge as provided for in section 60.35 of the  
12 penal law and section eighteen hundred nine of the vehicle and traffic  
13 law.

14 S 3. Paragraph (c) of subdivision 2 of section 259-i of the executive  
15 law, as separately amended by chapters 40 and 126 of the laws of 1999  
16 and subparagraph (A) as amended by section 38-f-1 of subpart A of part C  
17 of chapter 62 of the laws of 2011, is amended to read as follows:

18 (c) [(A)] (I) Discretionary release on parole shall [not] be granted  
19 [merely as a reward] for good conduct [or] AND efficient performance of  
20 duties while confined [but after considering if there is a reasonable  
21 probability], AND FOR PREPAREDNESS FOR REENTRY AND REINTEGRATION INTO  
22 SOCIETY, THEREBY PROVIDING A REASONABLE BASIS TO CONCLUDE that, if such  
23 [inmate] PERSON is released, he OR SHE will live and remain at liberty  
24 without violating the law, and THEREFORE that his OR HER release is not  
25 incompatible with the welfare of society [and will not so deprecate the  
26 seriousness of his crime as to undermine respect for law]. In making the  
27 parole release decision, the procedures adopted pursuant to subdivision  
28 four of section two hundred fifty-nine-c of this article shall require  
29 that the [following be considered] DECISION BE BASED UPON THE FOLLOWING  
30 CONSIDERATIONS: [(i) the institutional record including program goals  
31 and accomplishments, academic achievements, vocational education, train-  
32 ing or work assignments, therapy and interactions with staff and  
33 inmates] (A) PREPAREDNESS FOR REENTRY AND REINTEGRATION AS EVIDENCED BY  
34 THE APPLICANT'S INSTITUTIONAL RECORD PERTAINING TO PROGRAM GOALS AND  
35 ACCOMPLISHMENTS AS STATED IN THE FACILITY PERFORMANCE REPORTS, ACADEMIC  
36 ACHIEVEMENTS, VOCATIONAL EDUCATION, TRAINING OR WORK ASSIGNMENTS, THERA-  
37 PY AND INTERACTIONS WITH STAFF AND OTHER SENTENCED PERSONS, AND OTHER  
38 INDICATIONS OF PRO-SOCIAL ACTIVITY, CHANGE AND TRANSFORMATION; [(ii)]  
39 (B) performance, if any, as a participant in a temporary release  
40 program; [(iii)] (C) release plans including community resources,  
41 employment, education and training and support services available to the  
42 [inmate] PAROLE APPLICANT; [(iv)] (D) any deportation order issued by  
43 the federal government against the [inmate] PAROLE APPLICANT while in  
44 the custody of the department and any recommendation regarding deporta-  
45 tion made by the commissioner of the department pursuant to section one  
46 hundred forty-seven of the correction law; [(v)] (E) any statement,  
47 WHETHER SUPPORTIVE OR CRITICAL, made to the board by the crime victim or  
48 the victim's representative, where the crime victim is deceased or is  
49 mentally or physically incapacitated, TO ASSIST THE BOARD IN DETERMINING  
50 WHETHER AT THIS TIME THERE IS REASONABLE CAUSE TO BELIEVE THAT THE  
51 RELEASE OF THE PAROLE APPLICANT WOULD CREATE A PRESENT DANGER TO THE  
52 VICTIM OR THE VICTIM'S REPRESENTATIVE, OR THE EXTENT OF THE PAROLE  
53 APPLICANT'S PREPAREDNESS FOR REENTRY AND REINTEGRATION AS SET FORTH IN  
54 CLAUSE (A) OF THIS SUBPARAGRAPH; [(vi)] (F) the length of the determi-  
55 nate sentence to which the inmate would be subject had he or she  
56 received a sentence pursuant to section 70.70 or section 70.71 of the

1 penal law for a felony defined in article two hundred twenty or article  
2 two hundred twenty-one of the penal law; [(vii) the seriousness of the  
3 offense with due consideration to the type of sentence, length of  
4 sentence and recommendations of the sentencing court, the district  
5 attorney, the attorney for the inmate, the pre-sentence probation report  
6 as well as consideration of any mitigating and aggravating factors, and  
7 activities following arrest prior to confinement; and (viii) prior crim-  
8 inal record, including the nature and pattern of offenses, adjustment to  
9 any previous probation or parole supervision and institutional confine-  
10 ment] (G) PARTICIPATION AND PERFORMANCE, IF ANY, IN A  
11 RECONCILIATION/RESTORATIVE JUSTICE-TYPE CONFERENCE WITH THE VICTIM OR  
12 VICTIM'S REPRESENTATIVES; (H) THE PROGRESS MADE TOWARDS THE COMPLETION  
13 OF THE SPECIFIC REQUIREMENTS PREVIOUSLY SET FORTH BY THE BOARD FOR THE  
14 PAROLE APPLICANT, IN THE CASE OF A REAPPEARANCE; AND (I) THE PROGRESS  
15 MADE TOWARDS ACHIEVING THE PROGRAMMING AND TREATMENT NEEDS DEVELOPED IN  
16 THE TRANSITIONAL ACCOUNTABILITY PLAN. The board shall provide toll free  
17 telephone access for crime victims. In the case of an oral statement  
18 made in accordance with subdivision one of section 440.50 of the crimi-  
19 nal procedure law, the parole board member shall present a written  
20 report of the statement to the parole board. A crime victim's represen-  
21 tative shall mean [the crime victim's closest surviving relative] A  
22 MEMBER OF THE FAMILY OR DOMESTIC PARTNER OF SUCH CRIME VICTIM, the  
23 committee or guardian of such person, or the legal representative of any  
24 such person. Such statement submitted by the victim or victim's repre-  
25 sentative may include information concerning threatening or intimidating  
26 conduct toward the victim, the victim's representative, or the victim's  
27 family, made by the person sentenced and occurring after the sentencing.  
28 Such information may include, but need not be limited to, the threaten-  
29 ing or intimidating conduct of any other person who or which is directed  
30 by the person sentenced.

31 [(B)] (II) Where a crime victim or victim's representative as defined  
32 in subparagraph [(A)] (I) of this paragraph, or other person submits to  
33 the parole board a written statement concerning the release of [an  
34 inmate] A PAROLE APPLICANT, the parole board shall keep that individ-  
35 ual's name and address confidential. WITH REGARD TO ANY STATEMENT FROM A  
36 JUDGE OR DISTRICT ATTORNEY, THE ADDRESS, IF RESIDENTIAL, SHALL BE KEPT  
37 CONFIDENTIAL BY THE BOARD.

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