

6167

2013-2014 Regular Sessions

I N   A S S E M B L Y

March 15, 2013

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Introduced by M. of A. CUSICK -- read once and referred to the Committee  
on Codes

AN ACT to amend the criminal procedure law and the executive law, in  
relation to requiring that all family members of a crime victim and  
all interested parties who want to give a victim impact statement to  
parole board members be allowed to do so

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

1     Section 1. Section 440.50 of the criminal procedure law, as added by  
2 chapter 496 of the laws of 1978, subdivision 1 as amended by section 80  
3 of subpart B of part C of chapter 62 of the laws of 2011, and subdivi-  
4 sion 2 as amended by chapter 14 of the laws of 1985, is amended to read  
5 as follows:  
6 S 440.50 Notice to crime victims, FAMILY MEMBERS OF A CRIME VICTIM OR AN  
7 INTERESTED PARTY of case disposition.  
8     1. Upon the request of a victim of a crime, A FAMILY MEMBER OF A CRIME  
9 VICTIM OR AN INTERESTED PARTY, or in any event in all cases in which the  
10 final disposition includes a conviction of a violent felony offense as  
11 defined in section 70.02 of the penal law or a felony defined in article  
12 one hundred twenty-five of such law, the district attorney shall, within  
13 sixty days of the final disposition of the case, inform the victim OR A  
14 FAMILY MEMBER OF A CRIME VICTIM OR AN INTERESTED PARTY WHO REQUESTS TO  
15 BE INFORMED by letter of such final disposition. If such final disposi-  
16 tion results in the commitment of the defendant to the custody of the  
17 department of corrections and community supervision for an indeterminate  
18 sentence, the notice provided to the crime victim, A FAMILY MEMBER OF A  
19 CRIME VICTIM OR AN INTERESTED PARTY shall also inform [the victim] HIM  
20 OR HER of his or her right to submit a written, audiotaped, or vide-  
21 otaped victim impact statement to the department of corrections and  
22 community supervision or to meet personally with [a member] MEMBERS of  
23 the state board of parole WHO WILL DETERMINE WHETHER THE DEFENDANT IS

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

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1 RELEASED at a time and place separate from the personal interview  
2 between a member or members of the board and the inmate and make such a  
3 statement, subject to procedures and limitations contained in rules of  
4 the board, both pursuant to subdivision two of section two hundred  
5 fifty-nine-i of the executive law. The right of the victim, A FAMILY  
6 MEMBER OF THE CRIME VICTIM OR AN INTERESTED PARTY under this subdivision  
7 to submit a written victim impact statement or to meet personally with  
8 [a member] MEMBERS of the state board of parole applies to each personal  
9 interview between a member or members of the board and the inmate.

10 2. As used in this section, "victim" means any person alleged or  
11 found, upon the record, to have sustained physical or financial injury  
12 to person or property as a direct result of the crime charged or a  
13 person alleged or found to have sustained, upon the record, an offense  
14 under article one hundred thirty of the penal law, or in the case of a  
15 homicide or minor child, the victim's family.

16 3. As used in this section, "final disposition" means an ultimate  
17 termination of the case at the trial level including, but not limited  
18 to, dismissal, acquittal, or imposition of sentence by the court, or a  
19 decision by the district attorney, for whatever reason, to not file the  
20 case.

21 4. AS USED IN THIS SECTION, "FAMILY MEMBER OF A CRIME VICTIM" MEANS A  
22 MEMBER OF THE VICTIM'S IMMEDIATE FAMILY WHO IS AT LEAST SIXTEEN YEARS  
23 OLD.

24 5. AS USED IN THIS SECTION, "INTERESTED PARTY" SHALL MEAN A PERSON,  
25 WHO IS NOT A FAMILY MEMBER OF A CRIME VICTIM, DESIGNATED BY THE JUDGE  
26 WHO IMPOSES THE SENTENCE ON THE DEFENDANT, AS A PERSON WHO HAS AN  
27 INVOLVEMENT WITH THE CASE SUFFICIENT TO MAKE HIM OR HER AN INTERESTED  
28 PARTY. THE JUDGE WHO IMPOSES THE SENTENCE ON A DEFENDANT SHALL DESIGNATE  
29 INTERESTED PARTIES, IF ANY, AT THE TIME OF SENTENCING.

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

34 (c) (A) Discretionary release on parole shall not be granted merely as  
35 a reward for good conduct or efficient performance of duties while  
36 confined but after considering if there is a reasonable probability  
37 that, if such inmate is released, he will live and remain at liberty  
38 without violating the law, and that his release is not incompatible with  
39 the welfare of society and will not so deprecate the seriousness of his  
40 crime as to undermine respect for law. In making the parole release  
41 decision, the procedures adopted pursuant to subdivision four of section  
42 two hundred fifty-nine-c of this article shall require that the follow-  
43 ing be considered: (i) the institutional record including program goals  
44 and accomplishments, academic achievements, vocational education, train-  
45 ing or work assignments, therapy and interactions with staff and  
46 inmates; (ii) performance, if any, as a participant in a temporary  
47 release program; (iii) release plans including community resources,  
48 employment, education and training and support services available to the  
49 inmate; (iv) any deportation order issued by the federal government  
50 against the inmate while in the custody of the department and any recom-  
51 mendation regarding deportation made by the commissioner of the depart-  
52 ment pursuant to section one hundred forty-seven of the correction law;  
53 (v) any statement made to the board by the crime victim or the victim's  
54 representative, where the crime victim is deceased or is mentally or  
55 physically incapacitated OR A FAMILY MEMBER OF A CRIME VICTIM OR INTER-  
56 ESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW;

1 (vi) the length of the determinate sentence to which the inmate would be  
2 subject had he or she received a sentence pursuant to section 70.70 or  
3 section 70.71 of the penal law for a felony defined in article two  
4 hundred twenty or article two hundred twenty-one of the penal law; (vii)  
5 the seriousness of the offense with due consideration to the type of  
6 sentence, length of sentence and recommendations of the sentencing  
7 court, the district attorney, the attorney for the inmate, the pre-sen-  
8 tence probation report as well as consideration of any mitigating and  
9 aggravating factors, and activities following arrest prior to confine-  
10 ment; and (viii) prior criminal record, including the nature and pattern  
11 of offenses, adjustment to any previous probation or parole supervision  
12 and institutional confinement. The board shall provide toll free tele-  
13 phone access for crime victims, FAMILY MEMBERS OF CRIME VICTIMS AND  
14 INTERESTED PARTIES AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCE-  
15 DURE LAW. In the case of an oral statement made in accordance with  
16 subdivision one of section 440.50 of the criminal procedure law, [the  
17 parole board member shall present a written report of the statement to  
18 the parole board] SUCH ORAL STATEMENT SHALL BE MADE TO THE MEMBERS OF  
19 THE STATE BOARD OF PAROLE WHO WILL DETERMINE WHETHER THE DEFENDANT IS  
20 RELEASED. A crime victim's representative shall mean the crime victim's  
21 closest surviving relative, the committee or guardian of such person, or  
22 the legal representative of any such person. Such statement submitted by  
23 the victim or victim's representative, OR A FAMILY MEMBER OF A CRIME  
24 VICTIM OR INTERESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL  
25 PROCEDURE LAW may include information concerning threatening or intim-  
26 idating conduct toward the victim, the victim's representative, or the  
27 victim's family, made by the person sentenced and occurring after the  
28 sentencing. Such information may include, but need not be limited to,  
29 the threatening or intimidating conduct of any other person who or which  
30 is directed by the person sentenced.

31 (B) Where a crime victim or victim's representative as defined in  
32 subparagraph (A) of this paragraph OR A FAMILY MEMBER OF A CRIME VICTIM  
33 OR INTERESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCE-  
34 DURE LAW, or other person submits to the parole board a written state-  
35 ment concerning the release of an inmate, the parole board shall keep  
36 that individual's name and address confidential.

37 S 3. This act shall take effect on the first of November next succeed-  
38 ing the date on which it shall have become a law.