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

4153

2013-2014 Regular Sessions

I N S E N A T E

March 12, 2013

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 440.50 of the criminal procedure law, as added by chapter 496 of the laws of 1978, subdivision 1 as amended by section 80 of subpart B of part C of chapter 62 of the laws of 2011, and subdivision 2 as amended by chapter 14 of the laws of 1985, is amended to read as follows:

S 440.50 Notice to crime victims, FAMILY MEMBERS OF A CRIME VICTIM OR AN INTERESTED PARTY of case disposition.

1. Upon the request of a victim of a crime, A FAMILY MEMBER OF A CRIME VICTIM OR AN INTERESTED PARTY, 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 OR A FAMILY MEMBER OF A CRIME VICTIM OR AN INTERESTED PARTY WHO REQUESTS TO BE INFORMED by letter of such final disposition. If such final disposition results in the commitment of the defendant to the custody of the department of corrections and community supervision for an indeterminate sentence, the notice provided to the crime victim, A FAMILY MEMBER OF A CRIME VICTIM OR AN INTERESTED PARTY shall also inform [the victim] HIM OR HER of his or her right to submit a written, audiotaped, or videotaped victim impact statement to the department of corrections and community supervision or to meet personally with [a member] MEMBERS of 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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RELEASED 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 pursuant to subdivision two of section two hundred fifty-nine-i of the executive law. The right of the victim, A FAMILY MEMBER OF THE CRIME VICTIM OR AN INTERESTED PARTY under this subdivision to submit a written victim impact statement or to meet personally with [a member] MEMBERS of the state board of parole applies to each personal interview between a member or members of the board and the inmate.

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

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

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

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

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

(c) (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 procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law; (v) 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 OR A FAMILY MEMBER OF A CRIME VICTIM OR INTERESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW;

(vi) 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; (vii) 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 prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement. The board shall provide toll free telephone access for crime victims, FAMILY MEMBERS OF CRIME VICTIMS AND INTERESTED PARTIES AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW. 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] SUCH ORAL STATEMENT SHALL BE MADE TO THE MEMBERS OF THE STATE BOARD OF PAROLE WHO WILL DETERMINE WHETHER THE DEFENDANT IS RELEASED. 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, OR A FAMILY MEMBER OF A CRIME VICTIM OR INTERESTED PARTY AS DEFINED IN SECTION 440.50 OF THE CRIMINAL PROCEDURE LAW 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.

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

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.