

STATE OF NEW YORK

4353

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IN ASSEMBLY

February 2, 2017

Introduced by M. of A. AUBRY, HEVESI, MOSLEY, ORTIZ, SEPULVEDA, PERRY, BARRETT, RODRIGUEZ, BARRON -- Multi-Sponsored by -- M. of A. ARROYO, CRESPO, FAHY, FARRELL, GOTTFRIED, McDONALD, MONTESANO, O'DONNELL, SIMON, SKARTADOS, THIELE -- read once and referred to the Committee on 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 represen-
15 tative only. At least one month prior to the parole hearing parole
16 applicants shall be provided the opportunity to review all documents
17 contained in their parole file or that otherwise will be made available
18 for the board's discretionary release consideration. No documents shall
19 be considered confidential except as provided in subparagraph (i) of
20 paragraph (c) of this subdivision. Records concerning or relating to the
21 mental health examination or treatment of the parole applicant shall be

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

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1 disclosed unless, in accordance with the standards and procedures set
2 forth in section 33.16 of the mental hygiene law, it is determined by a
3 mental health practitioner that such disclosure can reasonably be
4 expected to cause substantial and identifiable harm to the parole appli-
5 cant or others and that this harm would outweigh the parole applicant's
6 right of access to the record. At least thirty days before the parole
7 hearing, if requested by the victim, as the term victim is defined in
8 subdivision two of section 380.50 of the criminal procedure law, the
9 following information shall be provided to the victim, or the victim's
10 representative: inmate status reports; inmate's psychiatric evaluation,
11 if there is one available and only upon consent of the parole appli-
12 cant; and a copy of the parole applicant's "parole release plan" in the
13 event that the applicant submits one. If parole is not granted upon such
14 review, the [inmate] board will be required to state in detail and not
15 in conclusory terms the factors and reasons for the denial and the
16 specific requirements for actions to be taken, programs or accomplish-
17 ments to be completed, or changes in performance or conduct to be made,
18 or corrective action or actions to be taken, in order to qualify for
19 parole release. The board shall specify a date not more than twenty-four
20 months from such determination for reconsideration. The parole applicant
21 shall be informed in writing within two weeks of such appearance of the
22 factors and reasons for such denial of parole[. ~~Such reasons shall be~~
23 ~~given in detail and not in conclusory terms. The board shall specify a~~
24 ~~date not more than twenty-four months from such determination for recon-~~
25 ~~sideration, and the procedures to be followed upon reconsideration shall~~
26 ~~be the same]~~ and the specific requirements and shall be provided with a
27 copy of the scored risk and needs assessment instrument considered by
28 the board. Within ninety days of the hearing decision, the department
29 shall provide to the parole applicant access to the program or programs,
30 activities and/or facilities needed in order to provide the opportunity
31 to fulfill the requirements set forth by the board. The parole applicant
32 shall be scheduled for a reappearance before the board upon completion
33 of the specific requirements as previously set forth by the board if
34 such completion occurs sooner than the date specified by the board. If
35 the requirements previously set forth by the board have been successful-
36 ly completed and the parole applicant's institutional record has been
37 satisfactory during the time between the previous and current parole
38 hearing, release shall be granted. If the [inmate] parole applicant is
39 released, he or she shall be given a copy of the conditions of parole.
40 Such conditions shall where appropriate, include a requirement that the
41 parolee comply with any restitution order, mandatory surcharge, sex
42 offender registration fee and DNA databank fee previously imposed by a
43 court of competent jurisdiction that applies to the parolee. The condi-
44 tions shall indicate which restitution collection agency established
45 under subdivision eight of section 420.10 of the criminal procedure law,
46 shall be responsible for collection of restitution, mandatory surcharge,
47 sex offender registration fees and DNA databank fees as provided for in
48 section 60.35 of the penal law and section eighteen hundred nine of the
49 vehicle and traffic law.

50 (ii) Any [inmate] parole applicant who is scheduled for presumptive
51 release pursuant to section eight hundred six of the correction law
52 shall not appear before the board as provided in subparagraph (i) of
53 this paragraph unless such [inmate's] parole applicant's scheduled
54 presumptive release is forfeited, canceled, or rescinded subsequently as
55 provided in such law. In such event, the [inmate] parole applicant shall

1 appear before the board for release consideration as provided in subpar-
2 agraph (i) of this paragraph as soon thereafter as is practicable.

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

6 (a) At least [~~one month~~] three months prior to the expiration of the
7 minimum period or periods of imprisonment fixed by the court or board, a
8 member or members as determined by the rules of the board shall
9 personally interview [~~an inmate~~] a parole applicant serving an indeter-
10 minate sentence and determine whether he or she should be paroled at the
11 expiration of the minimum period or periods in accordance with the
12 procedures adopted pursuant to subdivision four of section two hundred
13 fifty-nine-c. The interview shall take place with all parties present
14 in the same room. The interview shall be recorded audio-visually and
15 this recording shall be made available to the board and the parole
16 applicant or the parole applicant's representative only. At least one
17 month prior to the parole hearing parole applicants shall be provided
18 the opportunity to review all documents contained in their parole file
19 or that otherwise will be made available for the board's discretionary
20 release consideration. No documents shall be considered confidential
21 except as provided in subparagraph (i) of paragraph (c) of this subdivi-
22 sion. Records concerning or relating to the mental health examination
23 or treatment of the parole applicant shall be disclosed unless, in
24 accordance with the standards and procedures set forth in section 33.16
25 of the mental hygiene law, it is determined by a mental health practi-
26 tioner that such disclosure can reasonably be expected to cause substan-
27 tial and identifiable harm to the parole applicant or others and that
28 this harm would outweigh the parole applicant's right of access to the
29 record. At least thirty days before the parole hearing, if requested by
30 the victim, as the term victim is defined in subdivision two of section
31 380.50 of the criminal procedure law, the following information shall be
32 provided to the victim, or the victim's representative: inmate status
33 reports; inmate's psychiatric evaluation, if there is one available and
34 only upon consent of the parole applicant; and a copy of the parole
35 applicant's "parole release plan" in the event that the applicant
36 submits one. If parole is not granted upon such review, the [~~inmate~~]
37 board will be required to state in detail and not in conclusory terms
38 the factors and reasons for the denial and the specific requirements for
39 actions to be taken, programs or accomplishments to be completed, or
40 changes in performance or conduct to be made, or corrective action or
41 actions to be taken, in order to qualify for parole release. The board
42 shall specify a date not more than twenty-four months from such determi-
43 nation for reconsideration. The parole applicant shall be informed in
44 writing within two weeks of such appearance of the factors and reasons
45 for such denial of parole[~~. Such reasons shall be given in detail and~~
46 ~~not in conclusory terms. The board shall specify a date not more than~~
47 ~~twenty-four months from such determination for reconsideration, and the~~
48 ~~procedures to be followed upon reconsideration shall be the same] and
49 the specific requirements and shall be provided with a copy of the
50 scored risk and needs assessment instrument considered by the board.
51 Within ninety days of the hearing decision, the department shall provide
52 to the parole applicant access to the program or programs, activities
53 and/or facilities needed in order to provide the opportunity to fulfill
54 the requirements set forth by the board. The parole applicant shall be
55 scheduled for a reappearance before the board upon completion of the
56 specific requirements as previously set forth by the board if such~~

1 completion occurs sooner than the date specified by the board. If the
2 requirements previously set forth by the board have been successfully
3 completed and the parole applicant's institutional record has been
4 satisfactory during the time between the previous and current parole
5 hearing, release shall be granted. If the [~~inmate~~] parole applicant is
6 released, he or she shall be given a copy of the conditions of parole.
7 Such conditions shall where appropriate, include a requirement that the
8 parolee comply with any restitution order and mandatory surcharge previ-
9 ously imposed by a court of competent jurisdiction that applies to the
10 parolee. The conditions shall indicate which restitution collection
11 agency established under subdivision eight of section 420.10 of the
12 criminal procedure law, shall be responsible for collection of restitu-
13 tion and mandatory surcharge as provided for in section 60.35 of the
14 penal law and section eighteen hundred nine of the vehicle and traffic
15 law.

16 § 3. Paragraph (c) of subdivision 2 of section 259-i of the executive
17 law, as separately amended by chapters 40 and 126 of the laws of 1999
18 and subparagraph (A) as amended by chapter 130 of the laws of 2016, is
19 amended to read as follows:

20 (c) [~~(A)~~] (i) Discretionary release on parole shall [~~not~~] be granted
21 [~~merely as a reward~~] for good conduct [~~or~~] and efficient performance of
22 duties while confined [~~but after considering if there is a reasonable~~
23 probability], and for preparedness for reentry and reintegration into
24 society thereby providing a reasonable basis to conclude that, if such
25 [~~inmate~~] person is released, he or she will live and remain at liberty
26 without violating the law, and therefore that his or her release is not
27 incompatible with the welfare of society [~~and will not so deprecate the~~
28 seriousness of his crime as to undermine respect for law]. In making the
29 parole release decision, the procedures adopted pursuant to subdivision
30 four of section two hundred fifty-nine-c of this article shall require
31 that the [~~following be considered~~] decision be based upon the following
32 considerations: [~~(i) the institutional record including program goals~~
33 and accomplishments, academic achievements, vocational education, train-
34 ing or work assignments, therapy and interactions with staff and
35 inmates] (A) preparedness for reentry and reintegration as evidences by
36 the applicant's institutional record pertaining to program goals and
37 accomplishments as stated in the facility performance reports, academic
38 achievements, vocational education, training or work assignments, thera-
39 py and interactions with staff and other sentenced persons, and other
40 indications of pro-social activity, change and transformation; [~~(ii)~~]
41 (B) performance, if any, as a participant in a temporary release
42 program; [~~(iii)~~] (C) release plans including community resources,
43 employment, education and training and support services available to the
44 [~~inmate~~] parole applicant; [~~(iv)~~] (D) any deportation order issued by
45 the federal government against the [~~inmate~~] parole applicant while in
46 the custody of the department and any recommendation regarding deporta-
47 tion made by the commissioner of the department pursuant to section one
48 hundred forty-seven of the correction law; [~~(v)~~] (E) any current or
49 prior statement, whether supportive or critical, made to the board by
50 the crime victim or the victim's representative, where the crime victim
51 is deceased or is mentally or physically incapacitated, to assist the
52 board in determining whether at this time there is reasonable cause to
53 believe that the release of the parole applicant would create a present
54 danger to the victim or the victim's representative, or the extent of
55 the parole applicant's preparedness for reentry and reintegration as set
56 forth in clause (A) of this subparagraph; [~~(vi)~~] (F) the length of the

1 determinate sentence to which the inmate would be subject had he or she
2 received a sentence pursuant to section 70.70 or section 70.71 of the
3 penal law for a felony defined in article two hundred twenty or article
4 two hundred twenty-one of the penal law; [~~(vii) the seriousness of the~~
5 ~~offense with due consideration to the type of sentence, length of~~
6 ~~sentence and recommendations of the sentencing court, the district~~
7 ~~attorney, the attorney for the inmate, the pre-sentence probation report~~
8 ~~as well as consideration of any mitigating and aggravating factors, and~~
9 ~~activities following arrest prior to confinement; and (viii) prior crim-~~
10 ~~inal record, including the nature and pattern of offenses, adjustment to~~
11 ~~any previous probation or parole supervision and institutional confine-~~
12 ~~ment]~~ (G) participation and performance, if any, in a
13 reconciliation/restorative justice-type conference with the victim or
14 victim's representatives; (H) the progress made towards the completion
15 of the specific requirements previously set forth by the board for the
16 parole applicant, in the case of a reappearance; and (I) the progress
17 made towards achieving the programming and treatment needs developed in
18 the transitional accountability plan. The board shall provide toll free
19 telephone access for crime victims. In the case of an oral statement
20 made in accordance with subdivision one of section 440.50 of the crimi-
21 nal procedure law, the parole board member shall present a written
22 report of the statement to the parole board. A crime victim's represen-
23 tative shall mean [~~the crime victim's closest surviving relative~~] a
24 member of the family or domestic partner of such crime victim, the
25 committee or guardian of such person, or the legal representative of any
26 such person. Such statement submitted by the victim or victim's repre-
27 sentative may include information concerning threatening or intimidating
28 conduct toward the victim, the victim's representative, or the victim's
29 family, made by the person sentenced and occurring after the sentencing.
30 Such information may include, but need not be limited to, the threaten-
31 ing or intimidating conduct of any other person who or which is directed
32 by the person sentenced. Any statement by a victim or the victim's
33 representative made to the board shall be maintained by the department
34 in the file provided to the board when interviewing the inmate in
35 consideration of release. A victim or victim's representative who has
36 submitted a written request to the department for the transcript of such
37 interview shall be provided such transcript as soon as it becomes avail-
38 able.

39 [~~(B)~~] (ii) Where a crime victim or victim's representative as defined
40 in subparagraph [~~(A)~~] (i) of this paragraph, or other person submits to
41 the parole board a written statement concerning the release of [~~an~~
42 inmate] a parole applicant, the parole board shall keep that individ-
43 ual's name and address confidential. With regard to any statement from a
44 judge or district attorney, the address, if residential, shall be kept
45 confidential by the board.

46 § 4. This act shall take effect on the one hundred eightieth day after
47 it shall have become a law; provided that the amendments to paragraph
48 (a) of subdivision 2 of section 259-i of the executive law made by
49 section one of this act shall be subject to the expiration and reversion
50 of such paragraph as provided by section 74 of chapter 3 of the laws of
51 1995, as amended, when upon such date the provisions of section two of
52 this act shall take effect.