

STATE OF NEW YORK

8202

IN SENATE

April 17, 2018

Introduced by Sen. GALLIVAN -- (at request of the Board of Parole) --
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 clarifying eligibility
for release conditioned upon deportation

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

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

5 (i) Notwithstanding the provisions of paragraphs (a), (b) and (c) of
6 this subdivision, ~~[after the inmate has served his minimum period of~~
7 ~~imprisonment imposed by the court, or at any time after the inmate's~~
8 ~~period of imprisonment has commenced for an inmate serving a determinate~~
9 ~~or indeterminate term of imprisonment, provided that the]~~ if an inmate
10 ~~[has had a final order of deportation issued against him and provided~~
11 ~~further that the inmate is not convicted of either an A-I felony offense~~
12 ~~other than an A-I felony offense as defined in article two hundred twen-~~
13 ~~ty of the penal law or a violent felony offense as defined in section~~
14 ~~70.02 of the penal law, if the inmate]~~ is subject to deportation by the
15 United States Bureau of Immigration and Customs Enforcement, ~~[in addi-~~
16 ~~tion to the criteria set forth in paragraph (c) of this subdivision, the~~
17 ~~board may consider, as a factor warranting earlier release, the fact~~
18 ~~that such inmate will be deported, and]~~ the board may grant ~~[parole from~~
19 ~~an indeterminate sentence or]~~ release ~~[for deportation]~~ from a determi-
20 nate or indeterminate sentence to such inmate conditioned specifically
21 on his or her prompt deportation. The board may make such conditional
22 grant of ~~[early parole from an indeterminate sentence or]~~ release for
23 deportation ~~[from a determinate sentence]~~ only where it has received
24 from the United States Bureau of Immigration and Customs Enforcement
25 assurance ~~[(A)]~~ that an order of deportation will be executed ~~[or that~~
26 ~~proceedings will]~~ promptly ~~[be commenced for the purpose of deportation]~~
27 upon release of the inmate from the custody of the department ~~[of~~

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

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1 ~~correctional services~~], and [~~(B)~~] that the inmate, if [~~granted parole or~~
2 ~~release for deportation pursuant to this paragraph,~~] not deported will
3 not be released from the custody of the United States Bureau of Immi-
4 gration and Customs Enforcement[~~, unless such release be as a result of~~
5 ~~deportation~~] without providing the board a reasonable opportunity to
6 arrange for execution of its warrant for the retaking of such person.
7 After considering the criteria set forth in paragraph (c) of this subdi-
8 vision, the board may grant such conditional release for deportation as
9 follows:

10 (A) For an inmate who has served the minimum period of imprisonment
11 imposed by the courts and is therefore eligible for release on parole
12 pursuant to subdivision one of section 70.40 of the penal law, the board
13 may grant release conditioned upon deportation regardless of the crime
14 of conviction.

15 (B) For an inmate who has not yet served the minimum period of impri-
16 sonment for an indeterminate sentence or who is serving a determinate
17 sentence and is therefore not eligible for release on parole pursuant to
18 subdivision one of subdivision 70.40 of the penal law, the board may
19 grant early release conditioned upon deportation if the inmate is not
20 convicted of a violent felony offense as defined in section 70.02 of the
21 penal law or an A-I felony offense, other than an A-I felony offense as
22 defined in article two hundred twenty of the penal law.

23 § 2. This act shall take effect immediately.