STATE OF NEW YORK

4034

2017-2018 Regular Sessions

IN ASSEMBLY

January 31, 2017

Introduced by M. of A. WEPRIN, O'DONNELL -- read once and referred to the Committee on Correction

AN ACT to amend the executive law and the correction law, in relation to consideration of discretionary release

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

Section 1. Subparagraph (A) of paragraph (c) of subdivision 2 of section 259-i of the executive law, as amended by chapter 130 of the laws of 2016, is amended to read as follows:

(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 current or prior 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; (vi) the length of the determinate

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

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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. 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. 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 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. Any statement by a victim or the victim's representative made to the board shall be maintained by the department in the file provided to the board when interviewing the inmate in consideration of release. A victim or victim's representative who has submitted a written request to the department for the transcript of such interview shall be provided such transcript as soon as it becomes available.

§ 2. Paragraph (b) of subdivision 1 of section 259-r of the executive law, as amended by section 38-l of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(b) Such release shall be granted only after the board considers whether, in light of the inmate's medical condition, there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society [~~and will not so deprecate the seriousness of the crime as to undermine respect for the law~~], and shall be subject to the limits and conditions specified in subdivision four of this section. Except as set forth in paragraph (a) of this subdivision, such release may be granted at any time during the term of an inmate's sentence, notwithstanding any other provision of law.

§ 3. Paragraph (b) of subdivision 1 of section 259-s of the executive law, as amended by section 38-m of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(b) Such release shall be granted only after the board considers whether, in light of the inmate's medical condition, there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society [~~and will not so deprecate the seriousness of the crime as to undermine respect for the law~~], and shall be subject to the limits and conditions specified in subdivision four of this section. In making this determination, the board shall consider: (i) the nature and seriousness of the inmate's crime; (ii) the inmate's prior criminal record; (iii) the inmate's disciplinary, behavioral and

rehabilitative record during the term of his or her incarceration; (iv) the amount of time the inmate must serve before becoming eligible for release pursuant to section two hundred fifty-nine-i of this article; (v) the current age of the inmate and his or her age at the time of the crime; (vi) the recommendations of the sentencing court, the district attorney and the victim or the victim's representative; (vii) the nature of the inmate's medical condition, disease or syndrome and the extent of medical treatment or care that the inmate will require as a result of that condition, disease or syndrome; and (viii) any other relevant factor. Except as set forth in paragraph (a) of this subdivision, such release may be granted at any time during the term of an inmate's sentence, notwithstanding any other provision of law.

§ 4. Subdivision 2 of section 273 of the correction law, as amended by section 1 of part SS of chapter 56 of the laws of 2009, is amended to read as follows:

2. The commission shall review and make a determination on each application within thirty days of receipt of such application. No determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present. No release shall be granted unless there is a reasonable probability that, if such inmate is released, he or she shall live and remain at liberty without violating the law, and that his or her release is not incompatible with the welfare of society [~~and shall not so deprecate the seriousness of his or her crime as to undermine respect for law~~].

§ 5. This act shall take effect immediately.