

# STATE OF NEW YORK

7895

## IN SENATE

March 7, 2018

Introduced by Sen. MONTGOMERY -- 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 the use of risk and  
needs principles in parole decisions

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

1 Section 1. Subdivision 4 of section 259-c of the executive law, as  
2 amended by section 38-b of subpart A of part C of chapter 62 of the laws  
3 of 2011, is amended to read as follows:

4 4. establish written procedures for its use in making parole decisions  
5 as required by law. Such written procedures shall incorporate risk and  
6 needs principles to measure the rehabilitation of persons appearing  
7 before the board, the likelihood of success of such persons upon  
8 release, and ~~[assist]~~ shall be used by members of the state board of  
9 parole in determining which inmates may be released to parole super-  
10 vision. Such principles shall provide the basis upon which the board  
11 shall determine if there is a reasonable probability that, if such  
12 inmate is released, he or she will live and remain at liberty without  
13 violating the law. Procedures which incorporate risk and needs princi-  
14 ples shall include, but shall not be limited to, a risk and needs  
15 assessment prepared pursuant to section one hundred twelve of the  
16 correction law or other validated risk and needs assessment instrument  
17 adopted by the board to determine whether or not an inmate is likely to  
18 re-offend upon release from incarceration. Such risk and needs assess-  
19 ment shall comprise presumptive evidence of the inmate's risk of re-of-  
20 fense. Should the board choose to override such risk and needs assess-  
21 ment in deciding whether or not an inmate will live and remain at  
22 liberty without violating the law, its decision must provide a detailed,  
23 individualized and nonconclusory statement as to its reasons for depart-  
24 ing from the risk and needs assessment findings which shall be subject  
25 to judicial review. Such override decision shall not be based solely on  
26 information relating to the instant offense and/or the pre-sentencing  
27 report for such offense. Pursuant to subdivision eleven of this section,

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

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1 the board shall amend the rules and regulations for the conduct of its  
2 work to reflect the procedures established by this subdivision;

3 § 2. Section 259-e of the executive law, as amended by chapter 473 of  
4 the laws of 2016, is amended to read as follows:

5 § 259-e. Institutional parole services. 1. The department shall  
6 provide institutional parole services. Such services shall include prep-  
7 aration of risk and needs assessments, reports and other data required  
8 by the state board of parole in the exercise of its functions with  
9 respect to release on presumptive release, parole, conditional release  
10 or post-release supervision of inmates. Additionally, the department  
11 shall determine which inmates are in need of a deaf language interpreter  
12 or an English language interpreter, and shall inform the board of such  
13 need within a reasonable period of time prior to an inmate's scheduled  
14 appearance before the board. Employees of the department who collect  
15 data, interview inmates and prepare reports for the state board of  
16 parole in institutions under the jurisdiction of the department shall  
17 work under the direct supervision of the deputy commissioner of the  
18 department in charge of program services. Data and reports submitted to  
19 the board shall address the statutory factors to be considered by the  
20 board pursuant to the relevant provisions of section two hundred fifty-  
21 nine-i of this article.

22 2. Two months prior to a parole board appearance, an inmate shall be  
23 permitted to review his or her risk and needs assessment, reports and  
24 any other non-confidential documents to be given to the board with the  
25 department employee charged with preparing such assessment, reports and  
26 documents, and may ask for any such assessment, report or document  
27 prepared by the department to be corrected if it contains factual  
28 mistakes or other errors. The department shall immediately review the  
29 inmate's records and any evidence offered in support of the inmate's  
30 contention that there is a factual mistake or other error in his or her  
31 records. Upon confirmation that such mistake or error has been made,  
32 the department shall immediately correct such mistake or error prior to  
33 submitting such assessment, record or document to the board. If the  
34 department decides not to correct an alleged mistake or error, the  
35 inmate shall be notified of his or her right to submit evidence about  
36 any uncorrected mistake or uncorrected error to the board and may appeal  
37 the decision within fifteen days of the department's decision not to  
38 correct the mistake or error. The commissioner shall decide any such  
39 appeal within thirty days of receipt of the appeal, but no later than  
40 two weeks before an inmate's scheduled appearance before the parole  
41 board.

42 3. If a substantial mistake or error exists in the risk and needs  
43 assessment or in other reports or documents provided to the board for  
44 use at a parole interview and the inmate is subsequently denied parole,  
45 the inmate shall be given a de novo parole interview within two months  
46 of the discovery of such mistake or error. A substantial mistake or  
47 error for the purposes of this subdivision is any mistake or error that  
48 worsens the inmate's overall score on his or her risk and needs assess-  
49 ment.

50 § 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section  
51 259-i of the executive law, as amended by chapter 130 of the laws of  
52 2016, is amended to read as follows:

53 (A) Discretionary release on parole shall not be granted merely as a  
54 reward for good conduct or efficient performance of duties while  
55 confined but after considering if there is a reasonable probability  
56 that, if such inmate is released, he or she will live and remain at

1 liberty without violating the law, and that his or her release is not  
2 incompatible with the welfare of society and will not so deprecate the  
3 seriousness of his or her crime as to undermine respect for law. In  
4 making the parole release decision, the procedures, rules and regu-  
5 lations incorporating risk and needs principles adopted pursuant to  
6 subdivision four of section two hundred fifty-nine-c of this article  
7 shall require that the following be considered if not already taken into  
8 account by the risk and needs assessment: (i) the institutional record  
9 including program goals and accomplishments, academic achievements,  
10 vocational education, training or work assignments, therapy and inter-  
11 actions with staff and inmates; (ii) performance, if any, as a partic-  
12 ipant in a temporary release program; (iii) release plans including  
13 community resources, employment, education and training and support  
14 services available to the inmate; (iv) any deportation order issued by  
15 the federal government against the inmate while in the custody of the  
16 department and any recommendation regarding deportation made by the  
17 commissioner of the department pursuant to section one hundred forty-  
18 seven of the correction law; (v) any current or prior statement made to  
19 the board by the crime victim or the victim's representative, where the  
20 crime victim is deceased or is mentally or physically incapacitated;  
21 (vi) the length of the determinate sentence to which the inmate would be  
22 subject had he or she received a sentence pursuant to section 70.70 or  
23 section 70.71 of the penal law for a felony defined in article two  
24 hundred twenty or article two hundred twenty-one of the penal law; (vii)  
25 the seriousness of the offense with due consideration to the type of  
26 sentence, length of sentence and recommendations of the sentencing  
27 court, the district attorney, the attorney for the inmate, the pre-sen-  
28 tence probation report as well as consideration of any mitigating and  
29 aggravating factors, and activities following arrest prior to confine-  
30 ment; and (viii) prior criminal record, including the nature and pattern  
31 of offenses, adjustment to any previous probation or parole supervision  
32 and institutional confinement. The board shall provide toll free tele-  
33 phone access for crime victims. In the case of an oral statement made in  
34 accordance with subdivision one of section 440.50 of the criminal proce-  
35 dure law, the parole board member shall present a written report of the  
36 statement to the parole board. A crime victim's representative shall  
37 mean the crime victim's closest surviving relative, the committee or  
38 guardian of such person, or the legal representative of any such person.  
39 Such statement submitted by the victim or victim's representative may  
40 include information concerning threatening or intimidating conduct  
41 toward the victim, the victim's representative, or the victim's family,  
42 made by the person sentenced and occurring after the sentencing. Such  
43 information may include, but need not be limited to, the threatening or  
44 intimidating conduct of any other person who or which is directed by the  
45 person sentenced. Any statement by a victim or the victim's represen-  
46 tative made to the board shall be maintained by the department in the  
47 file provided to the board when interviewing the inmate in consideration  
48 of release. A victim or victim's representative who has submitted a  
49 written request to the department for the transcript of such interview  
50 shall be provided such transcript as soon as it becomes available.

51 § 4. This act shall take effect immediately.