

STATE OF NEW YORK

4273

2019-2020 Regular Sessions

IN ASSEMBLY

February 1, 2019

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. ARROYO, BARRETT, BARRON, CRESPO, FAHY, GOTTFRIED, HEVESI, MONTESANO, MOSLEY, O'DONNELL, ORTIZ, PERRY, RODRIGUEZ, SIMON, 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
22 disclosed unless, in accordance with the standards and procedures set

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

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

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

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

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

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

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

18 (c) [~~(A)~~] (i) Discretionary release on parole shall [~~not~~] be granted
19 [~~merely as a reward~~] for good conduct [~~or~~] and efficient performance of
20 duties while confined [~~but after considering if there is a reasonable~~
21 ~~probability~~], and for preparedness for reentry and reintegration into
22 society thereby providing a reasonable basis to conclude that, if such
23 [~~inmate~~] person is released, he or she will live and remain at liberty
24 without violating the law, and therefore that his or her release is not
25 incompatible with the welfare of society [~~and will not so deprecate the~~
26 ~~seriousness of his crime as to undermine respect for law~~]. In making the
27 parole release decision, the procedures adopted pursuant to subdivision
28 four of section two hundred fifty-nine-c of this article shall require
29 that the [~~following be considered~~] decision be based upon the following
30 considerations: [~~(i) the institutional record including program goals~~
31 ~~and accomplishments, academic achievements, vocational education, train-~~
32 ~~ing or work assignments, therapy and interactions with staff and~~
33 ~~inmates~~] (A) preparedness for reentry and reintegration as evidences by
34 the applicant's institutional record pertaining to program goals and
35 accomplishments as stated in the facility performance reports, academic
36 achievements, vocational education, training or work assignments, thera-
37 py and interactions with staff and other sentenced persons, and other
38 indications of pro-social activity, change and transformation; [~~(ii)~~]
39 (B) performance, if any, as a participant in a temporary release
40 program; [~~(iii)~~] (C) release plans including community resources,
41 employment, education and training and support services available to the
42 [~~inmate~~] parole applicant; [~~(iv)~~] (D) any deportation order issued by
43 the federal government against the [~~inmate~~] parole applicant while in
44 the custody of the department and any recommendation regarding deporta-
45 tion made by the commissioner of the department pursuant to section one
46 hundred forty-seven of the correction law; [~~(v)~~] (E) any current or
47 prior statement, whether supportive or critical, made to the board by
48 the crime victim or the victim's representative, where the crime victim
49 is deceased or is mentally or physically incapacitated, to assist the
50 board in determining whether at this time there is reasonable cause to
51 believe that the release of the parole applicant would create a present
52 danger to the victim or the victim's representative, or the extent of
53 the parole applicant's preparedness for reentry and reintegration as set
54 forth in clause (A) of this subparagraph; [~~(vi)~~] (F) the length of the
55 determinate sentence to which the inmate would be subject had he or she
56 received a sentence pursuant to section 70.70 or section 70.71 of the

1 penal law for a felony defined in article two hundred twenty or article
2 two hundred twenty-one of the penal law; [~~(vii) the seriousness of the~~
3 ~~offense with due consideration to the type of sentence, length of~~
4 ~~sentence and recommendations of the sentencing court, the district~~
5 ~~attorney, the attorney for the inmate, the pre-sentence probation report~~
6 ~~as well as consideration of any mitigating and aggravating factors, and~~
7 ~~activities following arrest prior to confinement, and (viii) prior crim-~~
8 ~~inal record, including the nature and pattern of offenses, adjustment to~~
9 ~~any previous probation or parole supervision and institutional confine-~~
10 ~~ment]~~

11 (G) participation and performance, if any, in a
12 reconciliation/restorative justice-type conference with the victim or
13 victim's representatives; (H) the progress made towards the completion
14 of the specific requirements previously set forth by the board for the
15 parole applicant, in the case of a reappearance; and (I) the progress
16 made towards achieving the programming and treatment needs developed in
17 the transitional accountability plan. The board shall provide toll free
18 telephone access for crime victims. In the case of an oral statement
19 made in accordance with subdivision one of section 440.50 of the criminal
20 procedure law, the parole board member shall present a written
21 report of the statement to the parole board. A crime victim's representative
22 shall mean [~~the crime victim's closest surviving relative~~] a
23 member of the family or domestic partner of such crime victim, the
24 committee or guardian of such person, or the legal representative of any
25 such person. Such statement submitted by the victim or victim's representative
26 may include information concerning threatening or intimidating
27 conduct toward the victim, the victim's representative, or the victim's
28 family, made by the person sentenced and occurring after the sentencing.
29 Such information may include, but need not be limited to, the threatening
30 or intimidating conduct of any other person who or which is directed
31 by the person sentenced. Any statement by a victim or the victim's
32 representative made to the board shall be maintained by the department
33 in the file provided to the board when interviewing the inmate in
34 consideration of release. A victim or victim's representative who has
35 submitted a written request to the department for the transcript of such
36 interview shall be provided such transcript as soon as it becomes available.

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

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