

# STATE OF NEW YORK

4290

2019-2020 Regular Sessions

## IN ASSEMBLY

February 4, 2019

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:

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

4 (A) Discretionary release on parole shall not be granted merely as a  
5 reward for good conduct or efficient performance of duties while  
6 confined but after considering if there is a reasonable probability  
7 that, if such inmate is released, he will live and remain at liberty  
8 without violating the law, and that his release is not incompatible with  
9 the welfare of society [~~and will not so deprecate the seriousness of his~~  
10 ~~crime as to undermine respect for law~~]. In making the parole release  
11 decision, the procedures adopted pursuant to subdivision four of section  
12 two hundred fifty-nine-c of this article shall require that the follow-  
13 ing be considered: (i) the institutional record including program goals  
14 and accomplishments, academic achievements, vocational education, train-  
15 ing or work assignments, therapy and interactions with staff and  
16 inmates; (ii) performance, if any, as a participant in a temporary  
17 release program; (iii) release plans including community resources,  
18 employment, education and training and support services available to the  
19 inmate; (iv) any deportation order issued by the federal government  
20 against the inmate while in the custody of the department and any recom-  
21 mendation regarding deportation made by the commissioner of the depart-  
22 ment pursuant to section one hundred forty-seven of the correction law;  
23 (v) any current or prior statement made to the board by the crime victim  
24 or the victim's representative, where the crime victim is deceased or is  
25 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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1 sentence to which the inmate would be subject had he or she received a  
2 sentence pursuant to section 70.70 or section 70.71 of the penal law for  
3 a felony defined in article two hundred twenty or article two hundred  
4 twenty-one of the penal law; (vii) the seriousness of the offense with  
5 due consideration to the type of sentence, length of sentence and recom-  
6 mendations of the sentencing court, the district attorney, the attorney  
7 for the inmate, the pre-sentence probation report as well as consider-  
8 ation of any mitigating and aggravating factors, and activities follow-  
9 ing arrest prior to confinement; and (viii) prior criminal record,  
10 including the nature and pattern of offenses, adjustment to any previous  
11 probation or parole supervision and institutional confinement. The board  
12 shall provide toll free telephone access for crime victims. In the case  
13 of an oral statement made in accordance with subdivision one of section  
14 440.50 of the criminal procedure law, the parole board member shall  
15 present a written report of the statement to the parole board. A crime  
16 victim's representative shall mean the crime victim's closest surviving  
17 relative, the committee or guardian of such person, or the legal repre-  
18 sentative of any such person. Such statement submitted by the victim or  
19 victim's representative may include information concerning threatening  
20 or intimidating conduct toward the victim, the victim's representative,  
21 or the victim's family, made by the person sentenced and occurring after  
22 the sentencing. Such information may include, but need not be limited  
23 to, the threatening or intimidating conduct of any other person who or  
24 which is directed by the person sentenced. Any statement by a victim or  
25 the victim's representative made to the board shall be maintained by the  
26 department in the file provided to the board when interviewing the  
27 inmate in consideration of release. A victim or victim's representative  
28 who has submitted a written request to the department for the transcript  
29 of such interview shall be provided such transcript as soon as it  
30 becomes available.

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

34 (b) Such release shall be granted only after the board considers  
35 whether, in light of the inmate's medical condition, there is a reason-  
36 able probability that the inmate, if released, will live and remain at  
37 liberty without violating the law, and that such release is not incom-  
38 patible with the welfare of society [~~and will not so deprecate the seri-~~  
39 ~~ousness of the crime as to undermine respect for the law~~], and shall be  
40 subject to the limits and conditions specified in subdivision four of  
41 this section. Except as set forth in paragraph (a) of this subdivision,  
42 such release may be granted at any time during the term of an inmate's  
43 sentence, notwithstanding any other provision of law.

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

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

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

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

16 2. The commission shall review and make a determination on each appli-  
17 cation within thirty days of receipt of such application. No determi-  
18 nation granting or denying such application shall be valid unless made  
19 by a majority vote of at least three commission members present. No  
20 release shall be granted unless there is a reasonable probability that,  
21 if such inmate is released, he or she shall live and remain at liberty  
22 without violating the law, and that his or her release is not incompat-  
23 ible with the welfare of society [~~and shall not so deprecate the seri-~~  
24 ~~ousness of his or her crime as to undermine respect for law~~].

25 § 5. This act shall take effect immediately.