

STATE OF NEW YORK

743

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

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 Assembly, 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-

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

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1 ing from the risk and needs assessment findings which shall be subject
2 to judicial review. Such override decision shall not be based solely on
3 information relating to the instant offense and/or the pre-sentencing
4 report for such offense. Pursuant to subdivision eleven of this section,
5 the board shall amend the rules and regulations for the conduct of its
6 work to reflect the procedures established by this subdivision;

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

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

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

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

54 § 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section
55 259-i of the executive law, as amended by chapter 130 of the laws of
56 2016, is amended to read as follows:

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

55 § 4. This act shall take effect immediately.