

# STATE OF NEW YORK

4231--A

2021-2022 Regular Sessions

## IN ASSEMBLY

February 1, 2021

Introduced by M. of A. WEPRIN, GOTTFRIED, EPSTEIN, LAVINE, TAYLOR, DE LA ROSA, D. ROSENTHAL, SIMON, HEVESI, FERNANDEZ, CARROLL, KIM, AUBRY, COOK, PERRY, O'DONNELL, BARRON, REYES, L. ROSENTHAL, PRETLOW, WALKER, SEAWRIGHT, QUART, FAHY, HUNTER, CRUZ, PICHARDO, ABINANTI, DICKENS, FRONTUS, MAMDANI, GONZALEZ-ROJAS, MITAYNES, KELLES, BURDICK, ANDERSON, RODRIGUEZ, MEEKS, SEPTIMO, FORREST, NIOU, CAHILL, BURGOS, DAVILA, ZINERMAN, RAMOS, GALLAGHER, McDONALD, CLARK, PEOPLES-STOKES, BICHOTTE HERMELYN, SAYEGH, LUPARDO, JACOBSON, GLICK, SOLAGES, JACKSON, HYNDMAN, DARLING -- read once and referred to the Committee on Correction -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to findings of the state board of parole necessary for discretionary release of incarcerated persons on parole

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~~] Release on parole shall [~~not~~] be granted  
5 [~~merely as a reward for good conduct or efficient performance of duties~~  
6 ~~while confined but after considering if there is a reasonable probabili-~~  
7 ~~ty 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]~~ to any incarcerated person  
11 appearing before the board who is eligible for release on parole, unless  
12 the parole case record demonstrates there is a current and unreasonable  
13 risk the person will violate the law if released and such risk cannot be  
14 mitigated by parole supervision. In making the [~~parole release decision~~]

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

LBD07240-03-1

1 determination as to whether a person poses a current and unreasonable  
2 risk of violating the law if released, the procedures adopted pursuant  
3 to subdivision four of section two hundred fifty-nine-c of this article  
4 shall require that the following be considered: (i) [~~the institutional~~  
5 ~~record including program goals and accomplishments, academic achieve-~~  
6 ~~ments,~~] any and all evidence of rehabilitation and reform, including but  
7 not limited to selection for participation in a temporary release  
8 program, participation in other programming, therapeutic support, commu-  
9 nity service, or vocational education, and any training or work assign-  
10 ments that the department made available to the incarcerated person,  
11 [~~therapy and interactions with~~] and statements of support from staff,  
12 volunteers and [inmates] other incarcerated persons; (ii) [~~performance,~~  
13 ~~if any, as a participant in a temporary release program;~~ (iii)] release  
14 plans, including support from family members and community [resources]  
15 networks, employment, [education] educational and training opportu-  
16 nities, clinical, therapeutic and other reentry services, and any other  
17 available support services [available to the inmate]; [(iv)] (iii) any  
18 deportation order issued by the federal government against the [inmate]  
19 incarcerated person while in the custody of the department and any  
20 recommendation regarding deportation made by the commissioner of the  
21 department pursuant to section one hundred forty-seven of the correction  
22 law; (iv) the length of the determinate sentence to which the incarcer-  
23 ated person would be subject had he or she received a sentence pursuant  
24 to section 70.70 or section 70.71 of the penal law for a felony  
25 defined in article two hundred twenty or article two hundred twenty-two  
26 of the penal law; (v) any current or prior statement made to the board  
27 by the crime victim or the victim's representative, where the crime  
28 victim is deceased or is mentally or physically incapacitated; (vi) [~~the~~  
29 ~~length of the determinate sentence to which the inmate would be subject~~  
30 ~~had he or she received a sentence pursuant to section 70.70 or section~~  
31 ~~70.71 of the penal law for a felony defined in article two hundred twen-~~  
32 ~~ty or article two hundred twenty one of the penal law;~~ (vii)] the seri-  
33 ousness of the offense with due consideration to the type of sentence,  
34 length of sentence and recommendations of the sentencing court, the  
35 district attorney, the attorney for the [inmate] incarcerated person,  
36 the pre-sentence probation report as well as consideration of any miti-  
37 gating and aggravating factors, and activities following arrest prior to  
38 confinement; and [~~(viii)] (vii) prior criminal record, including the~~  
39 nature and pattern of offenses, adjustment to any previous probation or  
40 parole supervision and institutional confinement. In considering whether  
41 there is a current and unreasonable risk the person will violate the law  
42 if released and such risk cannot be mitigated by parole supervision, the  
43 board shall not base their determination solely or primarily on any or  
44 all of the factors contained in clauses (v) through (vii) of this  
45 subparagraph. The board shall explain in writing in detailed, individ-  
46 ualized, and non-conclusory terms the basis for a denial of parole,  
47 including how the parole case record and the enumerated factors were  
48 considered and weighed. The board shall provide toll free telephone  
49 access for crime victims. In the case of an oral statement made in  
50 accordance with subdivision one of section 440.50 of the criminal proce-  
51 dure law, the parole board member shall present a written report of the  
52 statement to the parole board. A crime victim's representative shall  
53 mean the crime victim's closest surviving relative, the committee or  
54 guardian of such person, or the legal representative of any such person.  
55 Such statement submitted by the victim or victim's representative may  
56 include information concerning threatening or intimidating conduct

1 toward the victim, the victim's representative, or the victim's family,  
2 made by the person sentenced and occurring after the sentencing. Such  
3 information may include, but need not be limited to, the threatening or  
4 intimidating conduct of any other person who or which is directed by the  
5 person sentenced. Any statement by a victim or the victim's represen-  
6 tative made to the board shall be maintained by the department in the  
7 file provided to the board when interviewing the [~~inmate~~] incarcerated  
8 person in consideration of release. A victim or victim's representative  
9 who has submitted a written request to the department for the transcript  
10 of such interview shall be provided such transcript as soon as it  
11 becomes available.

12 § 2. The board shall report quarterly in writing to the governor, the  
13 temporary president of the senate, the minority leader of the senate,  
14 the speaker of the assembly, the minority leader of the assembly, and to  
15 the chairpersons of the assembly committee on correction and the senate  
16 committee on crime victims, crime and correction on denials of parole.  
17 Written reports shall include the number of individuals denied parole  
18 release each month, the articulated reasons for each denial, the  
19 assigned commissioners in each case and a record of their votes, and  
20 demographic information on each applicant denied including race, sex,  
21 facility, and crime of conviction. Reports shall exclude information  
22 that would identify the individual. Reports required by this section  
23 shall be made available to the public and posted quarterly on the  
24 websites maintained by the board of parole.

25 § 3. This act shall take effect immediately.