# STATE OF NEW YORK

4452

2021-2022 Regular Sessions

# IN ASSEMBLY

February 4, 2021

Introduced by M. of A. O'DONNELL, WEPRIN -- read once and referred to the Committee on 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:**

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

4. establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and [~~assist~~] **shall be used by** members of the state board of parole in determining which inmates may be released to parole supervision**. Such principles shall provide the basis upon which the board shall determine if there is a reasonable probability that, if such inmate is released, he or she will live and remain at liberty without violating the law. Procedures which incorporate risk and needs principles shall include, but shall not be limited to, a risk and needs assessment prepared pursuant to section one hundred twelve of the correction law or other validated risk and needs assessment instrument adopted by the board to determine whether or not an inmate is likely to re-offend upon release from incarceration. Such risk and needs assessment shall comprise presumptive evidence of the inmate's risk of re-offense. Should the board choose to override such risk and needs assessment in deciding whether or not an inmate will live and remain at liberty without violating the law, its decision must provide a detailed, individualized and nonconclusory statement as to its reasons for departing from the risk and needs assessment findings which shall be subject to judicial review. Such override decision shall not be based solely on**

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

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information relating to the instant offense and/or the pre-sentencing report for such offense. Pursuant to subdivision eleven of this section, the board shall amend the rules and regulations for the conduct of its work to reflect the procedures established by this subdivision;

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

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

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

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

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

(A) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while

confined but after considering if there is a reasonable probability that, if such inmate is released, he **or she** will live and remain at liberty without violating the law, and that his **or her** release is not incompatible with the welfare of society and will not so deprecate the seriousness of his **or her** crime as to undermine respect for law. In making the parole release decision, the procedures**, rules and regulations incorporating risk and needs principles** adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered **if not already taken into account by the risk and needs assessment**: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law; (v) any current or prior statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated; (vi) the length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the penal law for a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law; (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement. The board shall provide toll free telephone access for crime victims. In the case of an oral statement made in accordance with subdivision one of section 440.50 of the criminal procedure law, the parole board member shall present a written report of the statement to the parole board. A crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Such statement submitted by the victim or victim's representative may include information concerning threatening or intimidating conduct toward the victim, the victim's representative, or the victim's family, made by the person sentenced and occurring after the sentencing. Such information may include, but need not be limited to, the threatening or intimidating conduct of any other person who or which is directed by the person sentenced. Any statement by a victim or the victim's representative made to the board shall be maintained by the department in the file provided to the board when interviewing the inmate in consideration of release. A victim or victim's representative who has submitted a written request to the department for the transcript of such interview shall be provided such transcript as soon as it becomes available.

§ 4. This act shall take effect immediately.