STATE OF NEW YORK

4231

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 -- read once and referred to the Committee on Correction

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:

Section 1. 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 will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law~~] **to any incarcerated person appearing before the board who is eligible for release on parole, unless the parole case record demonstrates there is a current and unreasonable risk the person will violate the law if released and such risk cannot be mitigated by parole supervision**. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and [~~inmates~~] **incarcerated persons**; (ii) performance, if any, as a participant in a

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

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temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the [~~inmate~~] **incarcerated person**; (iv) any deportation order issued by the federal government against the [~~inmate~~] **incarcerated person** 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~~] **incarcerated person** 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~~] **incarcerated person**, the presentence 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**; and (ix) all evidence of rehabilitation and reform**. 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~~] **incarcerated person** 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.

§ 2. This act shall take effect immediately.