

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:

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~~] 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~~]

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

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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.