STATE OF NEW YORK

1415--A

Cal. No. 392

2021-2022 Regular Sessions

IN SENATE

January 12, 2021

Introduced by Sens. RIVERA, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BRISPORT, BROUK, COMRIE, COONEY, GIANARIS, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MAYER, MYRIE, PARKER, RAMOS, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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~~] **determination as to whether a person poses a current and unreasonable risk of violating the law if released**, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article

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

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shall require that the following be considered: (i) [~~the institutional record including program goals and accomplishments, academic achievements,~~] any and all evidence of rehabilitation and reform, including but not limited to selection for participation in a temporary release program, participation in other programming, therapeutic support, community service, or vocational education, and any training or work assignments that the department made available to the incarcerated person, [~~therapy and interactions with~~] and statements of support from staff, volunteers and [~~inmates~~] other incarcerated persons; (ii) [~~performance, if any, as a participant in a temporary release program; (iii)~~] release plans, including support from family members and community [~~resources~~] networks, employment, [~~education~~] educational and training opportunities, clinical, therapeutic and other reentry services, and any other available support services [~~available to the inmate~~]; [~~(iv)~~] (iii) 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; (iv) the length of the determinate sentence to which the 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-two of the penal 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~~] incarcerated person, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and [~~(viii)~~] (vii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement. In considering whether there is a current and unreasonable risk the person will violate the law if released and such risk cannot be mitigated by parole supervision, the board shall not base their determination solely or primarily on any or all of the factors contained in clauses (v) through (vii) of this subparagraph. The board shall explain in writing in detailed, individualized, and non-conclusory terms the basis for a denial of parole, including how the parole case record and the enumerated factors were considered and weighed. 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. The board shall report quarterly in writing to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, and to the chairpersons of the assembly committee on correction and the senate committee on crime victims, crime and correction on denials of parole. Written reports shall include the number of individuals denied parole release each month, the articulated reasons for each denial, the assigned commissioners in each case and a record of their votes, and demographic information on each applicant denied including race, sex, facility, and crime of conviction. Reports shall exclude information that would identify the individual. Reports required by this section shall be made available to the public and posted quarterly on the websites maintained by the board of parole.

§ 3. This act shall take effect immediately.