

# STATE OF NEW YORK

162

2023-2024 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. WEPRIN, WALKER, FAHY, HUNTER, CRUZ, DICKENS, MAMDANI, GONZALEZ-ROJAS, MITAYNES, KELLES, BURDICK, ANDERSON, MEEKS, SEPTIMO, BURGOS, DAVILA, ZINERMAN, RAMOS, GALLAGHER, CLARK, PEOPLES-STOKES, BICHOTTE HERMELYN, SAYEGH, LUPARDO, JACOBSON, GLICK, JACKSON, HYNDMAN, DARLING, STECK, PAULIN, GIBBS, FALL, BRONSON, RIVERA, TAPIA, CUNNINGHAM, LUCAS, DE LOS SANTOS -- Multi-Sponsored by -- M. of A. THIELE -- 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 individuals 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 322 of the  
3 laws of 2021, is amended to read as follows:

4 (A) [~~Discretionary release~~] Release on parole shall [~~not~~]  
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 incarcerated individual is released, he or she will~~  
8 ~~live and remain at liberty without violating the law, and that his or~~  
9 ~~her release is not incompatible with the welfare of society and will not~~  
10 ~~so deprecate the seriousness of his or her crime as to undermine respect~~  
11 ~~for law]~~ to any incarcerated individual appearing before the board who  
12 is eligible for release on parole, unless the parole case record demon-  
13 strates there is a current and unreasonable risk the individual will  
14 violate the law if released and such risk cannot be mitigated by parole  
15 supervision. In making the [~~parole release decision~~] determination as  
16 to whether an individual poses a current and unreasonable risk of  
17 violating the law if released, the procedures adopted pursuant to subdi-

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

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

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

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

23 § 3. This act shall take effect immediately.