

# STATE OF NEW YORK

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4480

2023-2024 Regular Sessions

## IN SENATE

February 9, 2023

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Introduced by Sens. GALLIVAN, HELMING, MATTERA, OBERACKER, PALUMBO, STEC, TEDISCO, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law and the criminal procedure law, in relation to statements to the state board of 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 on parole shall not be granted merely as a  
5 reward for good conduct or efficient performance of duties while  
6 confined but after considering if there is a reasonable probability  
7 that, if such incarcerated individual is released, he or she will live  
8 and remain at liberty without violating the law, and that his or her  
9 release is not incompatible with the welfare of society and will not so  
10 deprecate the seriousness of his or her crime as to undermine respect  
11 for law. In making the parole release decision, the procedures adopted  
12 pursuant to subdivision four of section two hundred fifty-nine-c of this  
13 article shall require that the following be considered: (i) the institu-  
14 tional record including program goals and accomplishments, academic  
15 achievements, vocational education, training or work assignments, thera-  
16 py and interactions with staff and incarcerated individuals; (ii)  
17 performance, if any, as a participant in a temporary release program;  
18 (iii) release plans including community resources, employment, education  
19 and training and support services available to the incarcerated individ-  
20 ual; (iv) any deportation order issued by the federal government against  
21 the incarcerated individual while in the custody of the department and  
22 any recommendation regarding deportation made by the commissioner of the  
23 department pursuant to section one hundred forty-seven of the correction

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

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1 law; (v) any current or prior statement made to the board by the crime  
2 victim or the victim's representative, where the crime victim is  
3 deceased or is mentally or physically incapacitated; (vi) any statement  
4 in support or opposition made to the board by a third party; (vii) the  
5 length of the determinate sentence to which the incarcerated individual  
6 would be subject had he or she received a sentence pursuant to section  
7 70.70 or section 70.71 of the penal law for a felony defined in article  
8 two hundred twenty or article two hundred twenty-one of the penal law;  
9 [~~(vii)~~] (viii) the seriousness of the offense with due consideration to  
10 the type of sentence, length of sentence and recommendations of the  
11 sentencing court, the district attorney, the attorney for the incarcer-  
12 ated individual, the pre-sentence probation report as well as consider-  
13 ation of any mitigating and aggravating factors, and activities follow-  
14 ing arrest prior to confinement; and [~~(viii)~~] (ix) prior criminal  
15 record, including the nature and pattern of offenses, adjustment to any  
16 previous probation or parole supervision and institutional confinement.  
17 The board shall provide toll free telephone access for crime victims. In  
18 the case of an oral statement made in accordance with subdivision one of  
19 section 440.50 of the criminal procedure law, the parole board member  
20 shall present a written report of the statement to the parole board. A  
21 crime victim's representative shall mean the crime victim's closest  
22 surviving relative, the committee or guardian of such person, or the  
23 legal representative of any such person. Such statement submitted by the  
24 victim or victim's representative may include information concerning  
25 threatening or intimidating conduct toward the victim, the victim's  
26 representative, or the victim's family, made by the person sentenced and  
27 occurring after the sentencing. Such information may include, but need  
28 not be limited to, the threatening or intimidating conduct of any other  
29 person who or which is directed by the person sentenced. Any statement  
30 by a victim or the victim's representative made to the board shall be  
31 maintained by the department in the file provided to the board when  
32 interviewing the incarcerated individual in consideration of release. A  
33 victim or victim's representative who has submitted a written request to  
34 the department for the transcript of such interview shall be provided  
35 such transcript as soon as it becomes available.

36 § 2. Subparagraph (B) of paragraph (c) of subdivision 2 of section  
37 259-i of the executive law, as amended by chapter 322 of the laws of  
38 2021, is amended to read as follows:

39 (B) Where a crime victim or victim's representative as defined in  
40 subparagraph (A) of this paragraph, [~~or other person~~] submits to the  
41 parole board a written statement concerning the release of an incarcer-  
42 ated individual, such statement shall be deemed confidential and shall  
43 only be made available to the parole board [~~shall keep that individual's~~  
44 ~~name and address confidential~~] for use in rendering parole decisions.

45 § 3. Subdivision 1 of section 440.50 of the criminal procedure law, as  
46 amended by chapter 322 of the laws of 2021, is amended to read as  
47 follows:

48 1. Upon the request of a victim of a crime, or in any event in all  
49 cases in which the final disposition includes a conviction of a violent  
50 felony offense as defined in section 70.02 of the penal law, a felony  
51 defined in article one hundred twenty-five of such law, or a felony  
52 defined in article one hundred thirty of such law, the district attorney  
53 shall, within sixty days of the final disposition of the case, inform  
54 the victim by letter of such final disposition. If such final disposi-  
55 tion results in the commitment of the defendant to the custody of the  
56 department of corrections and community supervision for an indeterminate

1 sentence, the notice provided to the crime victim shall also inform the  
2 victim of his or her right to submit a written, audiotaped, or vide-  
3 otaped victim impact statement to the department of corrections and  
4 community supervision or to meet personally with a member of the state  
5 board of parole at a time and place separate from the personal interview  
6 between a member or members of the board and the incarcerated individual  
7 and make such a statement, subject to procedures and limitations  
8 contained in rules of the board, both pursuant to subdivision two of  
9 section two hundred fifty-nine-i of the executive law. Such notice shall  
10 inform the victim that a written, audiotaped, or videotaped victim  
11 impact statement shall be deemed confidential and shall only be made  
12 available to the state board of parole for use in rendering parole deci-  
13 sions. A copy of such letter shall be provided to the board of parole.  
14 The right of the victim under this subdivision to submit a [~~written~~]  
15 victim impact statement or to meet personally with a member of the state  
16 board of parole applies to each personal interview between a member or  
17 members of the board and the incarcerated individual.

18 § 4. This act shall take effect on the ninetieth day after it shall  
19 have become a law. Effective immediately, the addition, amendment and/or  
20 repeal of any rule or regulation necessary for the implementation of  
21 this act on its effective date are authorized to be made and completed  
22 on or before such effective date.