

STATE OF NEW YORK

4423

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. O'DONNELL -- read once and referred to the
Committee on Correction

AN ACT to amend the executive law, in relation to the use of risk and
needs principles in parole decisions

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 4 of section 259-c of the executive law, as
2 amended by chapter 322 of the laws of 2021, is amended to read as
3 follows:

4 4. establish written procedures for its use in making parole decisions
5 as required by law. Such written procedures shall incorporate risk and
6 needs principles to measure the rehabilitation of persons appearing
7 before the board, the likelihood of success of such persons upon
8 release, and ~~[assist]~~ shall be used by members of the state board of
9 parole in determining which incarcerated individuals may be released to
10 parole supervision. Such principles shall provide the basis upon which
11 the board shall determine if there is a reasonable probability that, if
12 such incarcerated individual is released, he or she will live and remain
13 at liberty without violating the law. Procedures which incorporate risk
14 and needs principles shall include, but shall not be limited to, a risk
15 and needs assessment prepared pursuant to section one hundred twelve of
16 the correction law or other validated risk and needs assessment instru-
17 ment adopted by the board to determine whether or not an incarcerated
18 individual is likely to re-offend upon release from incarceration. Such
19 risk and needs assessment shall comprise presumptive evidence of the
20 incarcerated individual's risk of re-offense. Should the board choose to
21 override such risk and needs assessment in deciding whether or not an
22 incarcerated individual will live and remain at liberty without violat-
23 ing the law, its decision must provide a detailed, individualized and
24 nonconclusory statement as to its reasons for departing from the risk
25 and needs assessment findings which shall be subject to judicial review.
26 Such override decision shall not be based solely on information relating
27 to the instant offense and/or the pre-sentencing report for such
28 offense. Pursuant to subdivision eleven of this section, the board shall

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

LBD04129-01-3

amend the rules and regulations for the conduct of its work to reflect the procedures established by this subdivision;

§ 2. Section 259-e of the executive law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 259-e. Institutional parole services. 1. The department shall provide institutional parole services. Such services shall include preparation of risk and needs assessments, reports and other data required by the state board of parole in the exercise of its functions with respect to release on presumptive release, parole, conditional release or post-release supervision of incarcerated individuals. Additionally, the department shall determine which incarcerated individuals are in need of a deaf language interpreter or an English language interpreter, and shall inform the board of such need within a reasonable period of time prior to an incarcerated individual's scheduled appearance before the board. Employees of the department who collect data, interview incarcerated individuals and prepare reports for the state board of parole in institutions under the jurisdiction of the department shall work under the direct supervision of the deputy commissioner of the department in charge of program services. Data and reports submitted to the board shall address the statutory factors to be considered by the board pursuant to the relevant provisions of section two hundred fifty-nine-i of this article.

2. Two months prior to a parole board appearance, an incarcerated individual shall be permitted to review his or her risk and needs assessment, reports and any other non-confidential documents to be given to the board with the department employee charged with preparing such assessment, reports and documents, and may ask for any such assessment, report or document prepared by the department to be corrected if it contains factual mistakes or other errors. The department shall immediately review the incarcerated individual's records and any evidence offered in support of the incarcerated individual's contention that there is a factual mistake or other error in his or her records. Upon confirmation that such mistake or error has been made, the department shall immediately correct such mistake or error prior to submitting such assessment, record or document to the board. If the department decides not to correct an alleged mistake or error, the incarcerated individual shall be notified of his or her right to submit evidence about any uncorrected mistake or uncorrected error to the board and may appeal the decision within fifteen days of the department's decision not to correct the mistake or error. The commissioner shall decide any such appeal within thirty days of receipt of the appeal, but no later than two weeks before an incarcerated individual's scheduled appearance before the parole board.

3. If a substantial mistake or error exists in the risk and needs assessment or in other reports or documents provided to the board for use at a parole interview and the incarcerated individual is subsequently denied parole, the incarcerated individual shall be given a de novo parole interview within two months of the discovery of such mistake or error. A substantial mistake or error for the purposes of this subdivision is any mistake or error that worsens the incarcerated individual's overall score on his or her risk and needs assessment.

§ 3. Subparagraph (A) of paragraph (c) of subdivision 2 of section 259-i of the executive law, as amended by chapter 322 of the laws of 2021, 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

1 confined but after considering if there is a reasonable probability
2 that, if such incarcerated individual is released, he or she will live
3 and remain at liberty without violating the law, and that his or her
4 release is not incompatible with the welfare of society and will not so
5 deprecate the seriousness of his or her crime as to undermine respect
6 for law. In making the parole release decision, the procedures, rules
7 and regulations incorporating risk and needs principles adopted pursuant
8 to subdivision four of section two hundred fifty-nine-c of this article
9 shall require that the following be considered if not already taken into
10 account by the risk and needs assessment: (i) the institutional record
11 including program goals and accomplishments, academic achievements,
12 vocational education, training or work assignments, therapy and inter-
13 actions with staff and incarcerated individuals; (ii) performance, if
14 any, as a participant in a temporary release program; (iii) release
15 plans including community resources, employment, education and training
16 and support services available to the incarcerated individual; (iv) any
17 deportation order issued by the federal government against the incarcer-
18 ated individual while in the custody of the department and any recommen-
19 dation regarding deportation made by the commissioner of the department
20 pursuant to section one hundred forty-seven of the correction law; (v)
21 any current or prior statement made to the board by the crime victim or
22 the victim's representative, where the crime victim is deceased or is
23 mentally or physically incapacitated; (vi) the length of the determinate
24 sentence to which the incarcerated individual would be subject had he or
25 she received a sentence pursuant to section 70.70 or section 70.71 of
26 the penal law for a felony defined in article two hundred twenty or
27 article two hundred twenty-one of the penal law; (vii) the seriousness
28 of the offense with due consideration to the type of sentence, length of
29 sentence and recommendations of the sentencing court, the district
30 attorney, the attorney for the incarcerated individual, the pre-sentence
31 probation report as well as consideration of any mitigating and aggra-
32 vating factors, and activities following arrest prior to confinement;
33 and (viii) prior criminal record, including the nature and pattern of
34 offenses, adjustment to any previous probation or parole supervision and
35 institutional confinement. The board shall provide toll free telephone
36 access for crime victims. In the case of an oral statement made in
37 accordance with subdivision one of section 440.50 of the criminal proce-
38 dure law, the parole board member shall present a written report of the
39 statement to the parole board. A crime victim's representative shall
40 mean the crime victim's closest surviving relative, the committee or
41 guardian of such person, or the legal representative of any such person.
42 Such statement submitted by the victim or victim's representative may
43 include information concerning threatening or intimidating conduct
44 toward the victim, the victim's representative, or the victim's family,
45 made by the person sentenced and occurring after the sentencing. Such
46 information may include, but need not be limited to, the threatening or
47 intimidating conduct of any other person who or which is directed by the
48 person sentenced. Any statement by a victim or the victim's represen-
49 tative made to the board shall be maintained by the department in the
50 file provided to the board when interviewing the incarcerated individual
51 in consideration of release. A victim or victim's representative who has
52 submitted a written request to the department for the transcript of such
53 interview shall be provided such transcript as soon as it becomes avail-
54 able.

55 § 4. This act shall take effect immediately.