STATE OF NEW YORK

869

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

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

AN ACT to amend the executive law, in relation to modifying the procedure for interviews of parole applicants and to the disclosure of parole applicant records

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

Section 1. Paragraph (a) of subdivision 2 of section 259-i of the executive law, as amended by chapter 322 of the laws of 2021, subparagraph (i) as amended by section 14 of chapter 486 of the laws of 2022, is amended to read as follows:

(a) (i) Except as provided in subparagraph (ii) of this paragraph, at least [~~one month~~] three months prior to the date on which an [~~incarcerated individual~~] a parole applicant may be paroled pursuant to subdivision one of section 70.40 of the penal law, a member or members as determined by the rules of the board shall personally interview such [~~incarcerated individual~~] parole applicant and determine whether he or she should be paroled in accordance with the [~~guidelines~~] procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. The interview shall take place with all parties present in the same room. The interview shall be recorded audio-visually and this recording shall be made available to the board and the parole applicant or the parole applicant's representative only. At least one month prior to the parole hearing parole applicants shall be provided the opportunity to review all documents contained in their parole file or that otherwise will be made available for the board's discretionary release consideration. No documents shall be considered confidential except as provided in subparagraph (i) of paragraph (c) of this subdivision. Records concerning or relating to the mental health examination or treatment of the parole applicant shall be disclosed unless, in accordance with the standards and procedures set forth in section 33.16 of the mental hygiene law, it is determined by a mental health practitioner that such disclosure can reasonably be expected to cause substantial and identifiable harm to the parole applicant or others and that

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

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this harm would outweigh the parole applicant's right of access to the record. At least thirty days before the parole hearing, if requested by the victim, as the term victim is defined in subdivision two of section 380.50 of the criminal procedure law, the following information shall be provided to the victim, or the victim's representative: incarcerated individual status reports; incarcerated individual's psychiatric evaluation, if there is one available and only upon consent of the parole applicant; and a copy of the parole applicant's "parole release plan" in the event that the applicant submits one. If parole is not granted upon such review, the [~~incarcerated individual~~] board will be required to state in detail and not in conclusory terms the factors and reasons for the denial and the specific requirements for actions to be taken, programs or accomplishments to be completed, or changes in performance or conduct to be made, or corrective action or actions to be taken, in order to qualify for parole release. The board shall specify a date not more than twenty-four months from such determination for reconsideration. The parole applicant shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole[~~. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same~~] and the specific requirements and shall be provided with a copy of the scored risk and needs assessment instrument considered by the board. Within ninety days of the hearing decision, the department shall provide to the parole applicant access to the program or programs, activities and/or facilities needed in order to provide the opportunity to fulfill the requirements set forth by the board. The parole applicant shall be scheduled for a reappearance before the board upon completion of the specific requirements as previously set forth by the board if such completion occurs sooner than the date specified by the board. If the requirements previously set forth by the board have been successfully completed and the parole applicant's institutional record has been satisfactory during the time between the previous and current parole hearing, release shall be granted. If the [~~incarcerated individual~~] parole applicant is released, he or she shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order, mandatory surcharge, sex offender registration fee and DNA databank fee previously imposed by a court of competent jurisdiction that applies to the parolee. The conditions shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution, mandatory surcharge, sex offender registration fees and DNA databank fees as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law. If the incarcerated individual is released, he or she shall also be notified in writing that his or her voting rights will be restored upon release.

(ii) Any [~~incarcerated individual~~] parole applicant who is scheduled for presumptive release pursuant to section eight hundred six of the correction law shall not appear before the board as provided in subparagraph (i) of this paragraph unless such [~~incarcerated individual's~~] parole applicant's scheduled presumptive release is forfeited, canceled, or rescinded subsequently as provided in such law. In such event, the [~~incarcerated individual~~] parole applicant shall appear before the board

for release consideration as provided in subparagraph (i) of this paragraph as soon thereafter as is practicable.

§ 2. Paragraph (a) of subdivision 2 of section 259-i of the executive law, as amended by section 15 of chapter 486 of the laws of 2022, is amended to read as follows:

(a) At least [~~one month~~] three months prior to the expiration of the minimum period or periods of imprisonment fixed by the court or board, a member or members as determined by the rules of the board shall personally interview [~~an incarcerated individual~~] a parole applicant serving an indeterminate sentence and determine whether he or she should be paroled at the expiration of the minimum period or periods in accordance with the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. The interview shall take place with all parties present in the same room. The interview shall be recorded audio-visually and this recording shall be made available to the board and the parole applicant or the parole applicant's representative only. At least one month prior to the parole hearing parole applicants shall be provided the opportunity to review all documents contained in their parole file or that otherwise will be made available for the board's discretionary release consideration. No documents shall be considered confidential except as provided in subparagraph (i) of paragraph (c) of this subdivision. Records concerning or relating to the mental health examination or treatment of the parole applicant shall be disclosed unless, in accordance with the standards and procedures set forth in section 33.16 of the mental hygiene law, it is determined by a mental health practitioner that such disclosure can reasonably be expected to cause substantial and identifiable harm to the parole applicant or others and that this harm would outweigh the parole applicant's right of access to the record. At least thirty days before the parole hearing, if requested by the victim, as the term victim is defined in subdivision two of section 380.50 of the criminal procedure law, the following information shall be provided to the victim, or the victim's representative: incarcerated individual status reports; incarcerated individual's psychiatric evaluation, if there is one available and only upon consent of the parole applicant; and a copy of the parole applicant's "parole release plan" in the event that the applicant submits one. If parole is not granted upon such review, the [~~incarcerated individual~~] board will be required to state in detail and not in conclusory terms the factors and reasons for the denial and the specific requirements for actions to be taken, programs or accomplishments to be completed, or changes in performance or conduct to be made, or corrective action or actions to be taken, in order to qualify for parole release. The board shall specify a date not more than twenty-four months from such determination for reconsideration. The parole applicant shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole[~~. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same~~] and the specific requirements and shall be provided with a copy of the scored risk and needs assessment instrument considered by the board. Within ninety days of the hearing decision, the department shall provide to the parole applicant access to the program or programs, activities and/or facilities needed in order to provide the opportunity to fulfill the requirements set forth by the board. The parole applicant shall be scheduled for a reappearance before the board upon completion

of the specific requirements as previously set forth by the board if such completion occurs sooner than the date specified by the board. If the requirements previously set forth by the board have been successfully completed and the parole applicant's institutional record has been satisfactory during the time between the previous and current parole hearing, release shall be granted. If the [~~incarcerated individual~~] parole applicant is released, he or she shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order and mandatory surcharge previously imposed by a court of competent jurisdiction that applies to the parolee. The conditions shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution and mandatory surcharge as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law. If the incarcerated individual is released, he or she shall also be notified in writing that his or her voting rights will be restored upon release.

§ 3. 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:

(c) [~~(A)~~] (i) Discretionary release on parole shall [~~not~~] be granted [~~merely as a reward~~] for good conduct [~~or~~] and efficient performance of duties while confined [~~but after considering if there is a reasonable probability~~], and for preparedness for reentry and reintegration into society thereby providing a reasonable basis to conclude that, if such incarcerated individual is released, he or she will live and remain at liberty without violating the law, and therefore that his or her release is not incompatible with the welfare of society [~~and will not so deprecate the seriousness of his or her crime as to undermine respect for law~~]. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the [~~following be considered~~] decision be based upon the following considerations: [~~(i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and incarcerated individuals~~] (A) preparedness for reentry and reintegration as evidenced by the applicant's institutional record pertaining to program goals and accomplishments as stated in the facility performance reports, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and other sentenced persons, and other indications of pro-social activity, change and transformation; [~~(ii)~~] (B) performance, if any, as a participant in a temporary release program; [~~(iii)~~] (C) release plans including community resources, employment, education and training and support services available to the [~~incarcerated individual~~] parole applicant; [~~(iv)~~] (D) any deportation order issued by the federal government against the [~~incarcerated individual~~] parole applicant 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; [~~(v)~~] (E) any current or prior statement, whether supportive or critical, 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, to assist the board in determining whether at this time there is reasonable cause to believe that the release of the parole applicant would create a present

danger to the victim or the victim's representative, or the extent of the parole applicant's preparedness for reentry and reintegration as set forth in clause (A) of this subparagraph; [~~(vi)~~] (F) the length of the determinate sentence to which the incarcerated individual 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 incarcerated individual, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement~~] (G) participation and performance, if any, in a reconciliation/restorative justice-type conference with the victim or victim's representatives; (H) the progress made towards the completion of the specific requirements previously set forth by the board for the parole applicant, in the case of a reappearance; and (I) the progress made towards achieving the programming and treatment needs developed in the transitional accountability plan. 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~~] a member of the family or domestic partner of such crime victim, 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 incarcerated individual 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.

[~~(B)~~] (ii) Where a crime victim or victim's representative as defined in subparagraph [~~(A)~~] (i) of this paragraph, or other person submits to the parole board a written statement concerning the release of [~~an incarcerated individual~~] a parole applicant, the parole board shall keep that individual's name and address confidential. With regard to any statement from a judge or district attorney, the address, if residential, shall be kept confidential by the board.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to paragraph (a) of subdivision 2 of section 259-i of the executive law made by section one of this act shall be subject to the expiration and reversion of such paragraph as provided by section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect.