

# 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:

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

5 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at  
6 least ~~[one month]~~ three months prior to the date on which an ~~[incaer-~~  
7 ~~ated individual]~~ a parole applicant may be paroled pursuant to subdivi-  
8 sion one of section 70.40 of the penal law, a member or members as  
9 determined by the rules of the board shall personally interview such  
10 ~~[incaerated individual]~~ parole applicant and determine whether he or  
11 she should be paroled in accordance with the ~~[guidelines]~~ procedures  
12 adopted pursuant to subdivision four of section two hundred fifty-nine-c  
13 of this article. The interview shall take place with all parties pres-  
14 ent in the same room. The interview shall be recorded audio-visually and  
15 this recording shall be made available to the board and the parole  
16 applicant or the parole applicant's representative only. At least one  
17 month prior to the parole hearing parole applicants shall be provided  
18 the opportunity to review all documents contained in their parole file  
19 or that otherwise will be made available for the board's discretionary  
20 release consideration. No documents shall be considered confidential  
21 except as provided in subparagraph (i) of paragraph (c) of this subdivi-  
22 sion. Records concerning or relating to the mental health examination  
23 or treatment of the parole applicant shall be disclosed unless, in  
24 accordance with the standards and procedures set forth in section 33.16  
25 of the mental hygiene law, it is determined by a mental health practi-  
26 tioner that such disclosure can reasonably be expected to cause substan-  
27 tial 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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1 this harm would outweigh the parole applicant's right of access to the  
2 record. At least thirty days before the parole hearing, if requested by  
3 the victim, as the term victim is defined in subdivision two of section  
4 380.50 of the criminal procedure law, the following information shall be  
5 provided to the victim, or the victim's representative: incarcerated  
6 individual status reports; incarcerated individual's psychiatric evalu-  
7 ation, if there is one available and only upon consent of the parole  
8 applicant; and a copy of the parole applicant's "parole release plan" in  
9 the event that the applicant submits one. If parole is not granted upon  
10 such review, the [incarcerated-individual] board will be required to  
11 state in detail and not in conclusory terms the factors and reasons for  
12 the denial and the specific requirements for actions to be taken,  
13 programs or accomplishments to be completed, or changes in performance  
14 or conduct to be made, or corrective action or actions to be taken, in  
15 order to qualify for parole release. The board shall specify a date not  
16 more than twenty-four months from such determination for reconsider-  
17 ation. The parole applicant shall be informed in writing within two  
18 weeks of such appearance of the factors and reasons for such denial of  
19 parole[. Such reasons shall be given in detail and not in conclusory  
20 terms. The board shall specify a date not more than twenty-four months  
21 from such determination for reconsideration, and the procedures to be  
22 followed upon reconsideration shall be the same] and the specific  
23 requirements and shall be provided with a copy of the scored risk and  
24 needs assessment instrument considered by the board. Within ninety days  
25 of the hearing decision, the department shall provide to the parole  
26 applicant access to the program or programs, activities and/or facili-  
27 ties needed in order to provide the opportunity to fulfill the require-  
28 ments set forth by the board. The parole applicant shall be scheduled  
29 for a reappearance before the board upon completion of the specific  
30 requirements as previously set forth by the board if such completion  
31 occurs sooner than the date specified by the board. If the requirements  
32 previously set forth by the board have been successfully completed and  
33 the parole applicant's institutional record has been satisfactory during  
34 the time between the previous and current parole hearing, release shall  
35 be granted. If the [incarcerated-individual] parole applicant is  
36 released, he or she shall be given a copy of the conditions of parole.  
37 Such conditions shall where appropriate, include a requirement that the  
38 parolee comply with any restitution order, mandatory surcharge, sex  
39 offender registration fee and DNA databank fee previously imposed by a  
40 court of competent jurisdiction that applies to the parolee. The condi-  
41 tions shall indicate which restitution collection agency established  
42 under subdivision eight of section 420.10 of the criminal procedure law,  
43 shall be responsible for collection of restitution, mandatory surcharge,  
44 sex offender registration fees and DNA databank fees as provided for in  
45 section 60.35 of the penal law and section eighteen hundred nine of the  
46 vehicle and traffic law. If the incarcerated individual is released, he  
47 or she shall also be notified in writing that his or her voting rights  
48 will be restored upon release.

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

1 for release consideration as provided in subparagraph (i) of this para-  
2 graph as soon thereafter as is practicable.

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

6 (a) At least [~~one month~~] three months prior to the expiration of the  
7 minimum period or periods of imprisonment fixed by the court or board, a  
8 member or members as determined by the rules of the board shall  
9 personally interview [~~an incarcerated individual~~] a parole applicant  
10 serving an indeterminate sentence and determine whether he or she should  
11 be paroled at the expiration of the minimum period or periods in accord-  
12 ance with the procedures adopted pursuant to subdivision four of section  
13 two hundred fifty-nine-c of this article. The interview shall take  
14 place with all parties present in the same room. The interview shall be  
15 recorded audio-visually and this recording shall be made available to  
16 the board and the parole applicant or the parole applicant's represen-  
17 tative only. At least one month prior to the parole hearing parole  
18 applicants shall be provided the opportunity to review all documents  
19 contained in their parole file or that otherwise will be made available  
20 for the board's discretionary release consideration. No documents shall  
21 be considered confidential except as provided in subparagraph (i) of  
22 paragraph (c) of this subdivision. Records concerning or relating to the  
23 mental health examination or treatment of the parole applicant shall be  
24 disclosed unless, in accordance with the standards and procedures set  
25 forth in section 33.16 of the mental hygiene law, it is determined by a  
26 mental health practitioner that such disclosure can reasonably be  
27 expected to cause substantial and identifiable harm to the parole appli-  
28 cant or others and that this harm would outweigh the parole applicant's  
29 right of access to the record. At least thirty days before the parole  
30 hearing, if requested by the victim, as the term victim is defined in  
31 subdivision two of section 380.50 of the criminal procedure law, the  
32 following information shall be provided to the victim, or the victim's  
33 representative: incarcerated individual status reports; incarcerated  
34 individual's psychiatric evaluation, if there is one available and only  
35 upon consent of the parole applicant; and a copy of the parole appli-  
36 cant's "parole release plan" in the event that the applicant submits  
37 one. If parole is not granted upon such review, the [~~incarcerated indi-~~  
38 ~~vidual~~] board will be required to state in detail and not in conclusory  
39 terms the factors and reasons for the denial and the specific require-  
40 ments for actions to be taken, programs or accomplishments to be  
41 completed, or changes in performance or conduct to be made, or correc-  
42 tive action or actions to be taken, in order to qualify for parole  
43 release. The board shall specify a date not more than twenty-four months  
44 from such determination for reconsideration. The parole applicant shall  
45 be informed in writing within two weeks of such appearance of the  
46 factors and reasons for such denial of parole [~~Such reasons shall be~~  
47 ~~given in detail and not in conclusory terms. The board shall specify a~~  
48 ~~date not more than twenty-four months from such determination for recon-~~  
49 ~~sideration, and the procedures to be followed upon reconsideration shall~~  
50 ~~be the same~~] and the specific requirements and shall be provided with a  
51 copy of the scored risk and needs assessment instrument considered by  
52 the board. Within ninety days of the hearing decision, the department  
53 shall provide to the parole applicant access to the program or programs,  
54 activities and/or facilities needed in order to provide the opportunity  
55 to fulfill the requirements set forth by the board. The parole applicant  
56 shall be scheduled for a reappearance before the board upon completion

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

19 § 3. Paragraph (c) of subdivision 2 of section 259-i of the executive  
20 law, as amended by chapter 322 of the laws of 2021, is amended to read  
21 as follows:

22 (c) ~~[(A)]~~ (i) Discretionary release on parole shall ~~[not]~~ be granted  
23 ~~[merely as a reward]~~ for good conduct ~~[or]~~ and efficient performance of  
24 duties while confined ~~[but after considering if there is a reasonable~~  
25 ~~probability]~~, and for preparedness for reentry and reintegration into  
26 society thereby providing a reasonable basis to conclude that, if such  
27 incarcerated individual is released, he or she will live and remain at  
28 liberty without violating the law, and therefore that his or her release  
29 is not incompatible with the welfare of society ~~[and will not so depre-~~  
30 ~~cate the seriousness of his or her crime as to undermine respect for~~  
31 ~~law]~~. In making the parole release decision, the procedures adopted  
32 pursuant to subdivision four of section two hundred fifty-nine-c of this  
33 article shall require that the ~~[following be considered]~~ decision be  
34 based upon the following considerations: ~~[(i) the institutional record~~  
35 ~~including program goals and accomplishments, academic achievements,~~  
36 ~~vocational education, training or work assignments, therapy and inter-~~  
37 ~~actions with staff and incarcerated individuals]~~ (A) preparedness for  
38 reentry and reintegration as evidenced by the applicant's institutional  
39 record pertaining to program goals and accomplishments as stated in the  
40 facility performance reports, academic achievements, vocational educa-  
41 tion, training or work assignments, therapy and interactions with staff  
42 and other sentenced persons, and other indications of pro-social activ-  
43 ity, change and transformation; ~~[(ii)]~~ (B) performance, if any, as a  
44 participant in a temporary release program; ~~[(iii)]~~ (C) release plans  
45 including community resources, employment, education and training and  
46 support services available to the ~~[incarcerated individual]~~ parole  
47 applicant; ~~[(iv)]~~ (D) any deportation order issued by the federal  
48 government against the ~~[incarcerated individual]~~ parole applicant while  
49 in the custody of the department and any recommendation regarding depor-  
50 tation made by the commissioner of the department pursuant to section  
51 one hundred forty-seven of the correction law; ~~[(v)]~~ (E) any current or  
52 prior statement, whether supportive or critical, made to the board by  
53 the crime victim or the victim's representative, where the crime victim  
54 is deceased or is mentally or physically incapacitated, to assist the  
55 board in determining whether at this time there is reasonable cause to  
56 believe that the release of the parole applicant would create a present

1 danger to the victim or the victim's representative, or the extent of  
2 the parole applicant's preparedness for reentry and reintegration as set  
3 forth in clause (A) of this subparagraph; [~~(vi)~~] (F) the length of the  
4 determinate sentence to which the incarcerated individual would be  
5 subject had he or she received a sentence pursuant to section 70.70 or  
6 section 70.71 of the penal law for a felony defined in article two  
7 hundred twenty or article two hundred twenty-one of the penal law;  
8 [~~(vii) the seriousness of the offense with due consideration to the type~~  
9 ~~of sentence, length of sentence and recommendations of the sentencing~~  
10 ~~court, the district attorney, the attorney for the incarcerated individ-~~  
11 ~~ual, the pre-sentence probation report as well as consideration of any~~  
12 ~~mitigating and aggravating factors, and activities following arrest~~  
13 ~~prior to confinement; and (viii) prior criminal record, including the~~  
14 ~~nature and pattern of offenses, adjustment to any previous probation or~~  
15 ~~parole supervision and institutional confinement] (G) participation and  
16 performance, if any, in a reconciliation/restorative justice-type  
17 conference with the victim or victim's representatives; (H) the progress  
18 made towards the completion of the specific requirements previously set  
19 forth by the board for the parole applicant, in the case of a reappear-  
20 ance; and (I) the progress made towards achieving the programming and  
21 treatment needs developed in the transitional accountability plan. The  
22 board shall provide toll free telephone access for crime victims. In the  
23 case of an oral statement made in accordance with subdivision one of  
24 section 440.50 of the criminal procedure law, the parole board member  
25 shall present a written report of the statement to the parole board. A  
26 crime victim's representative shall mean [~~the crime victim's closest~~  
27 ~~surviving relative] a member of the family or domestic partner of such  
28 crime victim, the committee or guardian of such person, or the legal  
29 representative of any such person. Such statement submitted by the  
30 victim or victim's representative may include information concerning  
31 threatening or intimidating conduct toward the victim, the victim's  
32 representative, or the victim's family, made by the person sentenced and  
33 occurring after the sentencing. Such information may include, but need  
34 not be limited to, the threatening or intimidating conduct of any other  
35 person who or which is directed by the person sentenced. Any statement  
36 by a victim or the victim's representative made to the board shall be  
37 maintained by the department in the file provided to the board when  
38 interviewing the incarcerated individual in consideration of release. A  
39 victim or victim's representative who has submitted a written request to  
40 the department for the transcript of such interview shall be provided  
41 such transcript as soon as it becomes available.~~~~

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

49 § 4. This act shall take effect on the one hundred eightieth day after  
50 it shall have become a law; provided that the amendments to paragraph  
51 (a) of subdivision 2 of section 259-i of the executive law made by  
52 section one of this act shall be subject to the expiration and reversion  
53 of such paragraph as provided by section 74 of chapter 3 of the laws of  
54 1995, as amended, when upon such date the provisions of section two of  
55 this act shall take effect.