




STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION  
97 CENTRAL AVENUE  
ALBANY, NEW YORK 12206

ANDREW M. CUOMO  
GOVERNOR

ANDREA W. EVANS  
CHAIRWOMAN

MEMORANDUM

TO: Members of the Board of Parole  
Terrence X. Tracy, Counsel  
Terrence Saunders, Chief Administrative Law Judge  
Lester Edwards, Secretary to the Board

FROM: Andrea W. Evans, Chairwoman 

DATE: October 5, 2011

RE: Recent Amendment of Executive Law §259-c(4)

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Through the enactment of Chapter 62 of the Laws of 2011, Part C, subpart A, §38-b, Executive Law §259-c(4) was amended to provide that the Board of Parole shall:

"establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release and assist members of the state board of parole in determining which inmates may be released to parole supervision."

As you know, members of the Board have been working with staff of the Department of Corrections and Community Supervision in the development of a transition accountability plan ("TAP"). This instrument which incorporates risk and needs principles, will provide a meaningful measurement of an inmate's rehabilitation. With respect to the practices of the Board, the TAP instrument will replace the inmate status report that you have utilized in the past when assessing the appropriateness of an inmate's release to parole supervision. To this end, members of the Board were afforded training in July 2011 in the use of the TAP instrument where it exists. Accordingly, as we proceed, when staff have prepared a TAP instrument for a parole eligible inmate, you are to use that document when making your parole release decisions. In instances where a TAP instrument has not been prepared, you are to continue to utilize the inmate status report. It is also important to note that the Board was afforded training in September 2011 in the usage of the Compas Risk and Needs Assessment tool to understand the interplay between that instrument and the TAP instrument, as well as understanding what each of the risk levels mean.

Please know that the standard for assessing the appropriateness for release, as well as the statutory criteria you must consider has not changed through the aforementioned legislation. Consequently, in all cases you must consider:

- (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates;
- (ii) performance, if any, as a participant in a temporary release program;
- (iii) release plans including community resources, employment, education and training and support services available to the inmate;
- (iv) any deportation order issued by the federal government against the inmate 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) any statement 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;
- (vi) the length of the determinate sentence to which the inmate 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 inmate, 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.

See Executive Law §259-i(2)(c)(A). As noted by the New York State Court of Appeals in Silmon v. Travis, 95 N.Y.2d 470 (2000), the above-stated criteria reflect the strong rehabilitative component of section 259-i of the Executive Law.

Therefore, in your consideration of the statutory criteria set forth in Executive Law §259-i(2)(c)(A)(i) through (viii), you must ascertain what steps an inmate has taken toward their rehabilitation and the likelihood of their success once released to parole supervision. In this regard, any steps taken by an inmate toward effecting their rehabilitation, in addition to all aspects of their proposed release plan, are to be discussed with the inmate during the course of their interview and considered in your deliberations.

Thank you.

AWE

cc: Elizabeth Glazer, Deputy Secretary  
Mary Kavaney, Assistant Deputy Secretary  
Brian Fischer, Commissioner  
Anthony J. Annucci, Executive Deputy Commissioner  
Angela Jimenez, Deputy Commissioner

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