

SENATE, No. 2204

STATE OF NEW JERSEY

INTRODUCED JUNE 12, 1997

By Senator KOSCO

1 AN ACT concerning the parole decision making process and amending
2 P.L.1979, c. 441.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. Section 10 of P.L.1979, c.441 (C.30:4-123.54) is amended to
8 read as follows:

9 10. a. At least 120 days but not more than 180 days prior to the
10 parole eligibility date of each adult inmate, a report concerning the
11 inmate shall be filed with the appropriate board panel, by the staff
12 members designated by the superintendent or other chief executive
13 officer of the institution in which the inmate is held.

14 b. (1) The report filed pursuant to subsection a. shall contain
15 preincarceration records of the inmate, including any psychological
16 reports prepared in connection with any court proceedings, state the
17 conduct of the inmate during the current period of confinement,
18 include a complete report on the inmate's social, physical and mental
19 condition, including any preparole psychological evaluations, include
20 an investigation by the Bureau of Parole of the inmate's parole plans,
21 and present information bearing upon the likelihood that the inmate
22 will commit a crime under the laws of this State if released on parole.
23 In addition, the report shall include an objective risk assessment. The
24 risk assessment, which shall be in a form prescribed by the board
25 pursuant to rule and regulation, shall consist of both static and
26 dynamic factors which may assist the board panel in determining
27 whether the inmate shall be certified for parole and, if paroled, the
28 level of supervision the parolee may require. In addition to the
29 information otherwise gathered for and incorporated in the pre-parole
30 report, the assessment shall include evaluations of the inmate's ability
31 to function independently, the inmate's educational and employment
32 background, the inmate's family and marital history, and such other
33 information and factors as the board may deem appropriate and
34 necessary.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) At the time of sentencing, the prosecutor shall notify any victim
2 injured as a result of a crime of the first or second degree or the
3 nearest relative of a murder victim of the opportunity to present a
4 statement for the parole report to be considered at the parole hearing
5 or to testify to the parole board concerning his harm at the time of the
6 parole hearing. Each victim or relative shall be responsible for
7 notifying the board of his intention to submit such a statement and to
8 provide an appropriate mailing address.

9 The report may include a statement concerning the continuing
10 nature and extent of any physical harm or psychological or emotional
11 harm or trauma suffered by the victim, the extent of any loss of
12 earnings or ability to work suffered by the victim and the continuing
13 effect of the crime upon the victim's family. At the time public notice
14 is given that an inmate is being considered for parole pursuant to this
15 section, the board shall also notify any victim or nearest relative who
16 has previously contacted the board of the availability to provide a
17 statement for inclusion in the parole report or to present testimony at
18 the parole hearing.

19 The board shall notify such person at his last known mailing
20 address.

21 c. A copy of the report filed pursuant to subsection a. of this
22 section, excepting those documents which have been classified as
23 confidential pursuant to rules and regulations of the board or the
24 Department of Corrections, shall be served on the inmate at the time
25 it is filed with the board panel. The inmate may file with the board
26 panel a written statement regarding the report, but shall do so within
27 105 days prior to the primary parole eligibility date.

28 d. Upon receipt of the public notice pursuant to section 1 of
29 P.L.1979, c.441 (C.30:4-123.45), a county prosecutor may request
30 from the parole board a copy of the report on any adult inmate
31 prepared pursuant to subsection a. of this section, which shall be
32 expeditiously forwarded to the county prosecutor by the parole board
33 by mail, courier, or other means of delivery. Upon receipt of the
34 report, the prosecutor has 10 working days to review the report and
35 notify the parole board of the prosecutor's comments, if any, or notify
36 the parole board of the prosecutor's intent to provide comments. If
37 the county prosecutor does not provide comments or notify the parole
38 board of the prosecutor's intent to provide comments within the 10
39 working days, the parole board may presume that the prosecutor does
40 not wish to provide comments and may proceed with the parole
41 consideration. Any comments provided by a county prosecutor shall
42 be delivered to the parole board by the same method by which the
43 county prosecutor received the report. The confidentiality of the
44 contents in a report which are classified as confidential shall be
45 maintained and shall not be disclosed to any person who is not
46 authorized to receive or review a copy of the report containing the

1 confidential information.

2 e. Any provision of this section to the contrary notwithstanding,
3 the board shall by rule or regulation modify the scope of the required
4 reports and time periods for rendering such reports with reference to
5 county penal institutions.

6 (cf: P.L.1985, c.44, s.2)

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8 2. Section 8 of P.L.1979, c.441 (C.30:4-123.52) is amended to
9 read as follows:

10 8. a. If the appropriate board panel determines that an adult inmate
11 has seriously or persistently violated specifically defined institutional
12 rules or has engaged in conduct indictable in nature while incarcerated,
13 the inmate's parole eligibility date may be increased pursuant to a
14 schedule developed by the board. In developing such schedule,
15 particular emphasis shall be placed on the severity of the inmate's
16 conduct. The board shall deduct from the scheduled penalty any loss
17 of commutation time imposed by the Department of Corrections
18 pursuant to R.S. 30:4-140.

19 b. If the appropriate board panel determines that an adult inmate
20 has made exceptional progress, as evidenced by documented
21 participation and progress in institutional or community educational,
22 training or other programs, the inmate's parole eligibility date may be
23 decreased, except that no parole eligibility date shall be set below the
24 primary parole eligibility date without the consent of the sentencing
25 court, which need not conduct a hearing and in no case shall a parole
26 eligibility date be set below any judicial or statutory mandatory
27 minimum term, including any parole eligibility date set pursuant to
28 section 23 of this act.

29 c. The appropriate board panel shall annually monitor the progress
30 of each adult inmate and provide the inmate with a written statement
31 of any changes in his parole eligibility.

32 d. At any time while an inmate is committed to the custody of the
33 Commissioner of Corrections, the appropriate board panel or the
34 Parole Board may require, as often as it deems necessary, that inmate
35 to undergo an in-depth preparole psychological evaluation conducted
36 by a psychologist employed by the Parole Board or, where appropriate
37 after consultation with the Department of Corrections, by a
38 psychologist at the Adult Diagnostic and Treatment Center,¹ to
39 provide current and accurate information to assess the inmate's
40 suitability for parole.

41 (cf: P.L.1979, c.441, s.8)

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43 3. Section 11 of PL.1979, c.441 (C.30:4-123.55) is amended to
44 read as follows:

45 11. a. Prior to the parole eligibility date of each adult inmate, a
46 designated hearing officer shall review the reports required by section

1 10 of [this act] P.L.1979, c.441 (C.30:4-123.54), and shall determine
2 whether there is a basis for denial of parole in the preparole report ,
3 any risk-assessment prepared in accordance with the provisions of
4 subsection b. of section 10 of P.L.1979, c.441 (C.30:3-123.54), or the
5 inmate's statement, or an indication, reduced to writing, that additional
6 information providing a basis for denial of parole would be developed
7 or produced at a hearing. If the hearing officer determines that there
8 is no basis in the preparole report, the risk-assessment, or the inmate's
9 statement for denial of parole and that there is no additional relevant
10 information to be developed or produced at a hearing, he shall at least
11 60 days prior to the inmate's parole eligibility date recommend in
12 writing to the assigned member of the board panel that parole release
13 be granted.

14 b. If the assigned member of the board panel or in the case of an
15 inmate sentenced to a county penal institution, the assigned member
16 concurs in the hearing officer's recommendation, he shall certify parole
17 release pursuant to section 15 of [this act] P.L.1979, c.441 (C.30:4-
18 123.59) as soon as practicable after the eligibility date and so notify
19 the inmate and the board. In the case of an inmate sentenced to a
20 county penal institution the board shall certify parole release or deny
21 parole as provided by this section, except with regard to time periods
22 for notice and parole processing which are authorized by or otherwise
23 adopted pursuant to subsection g. of section 7 of P.L.1979, c.441
24 (C.30:4-123.51). If the designated hearing officer does not
25 recommend release on parole or if the assigned member does not
26 concur in a recommendation of the designated hearing officer in favor
27 of release, then the parole release of an inmate in a county penal
28 institution shall be treated under the provisions of law otherwise
29 applicable to an adult inmate. In the case of an inmate sentenced to a
30 county penal institution, the performance of public service for the
31 remainder of the term of the sentence shall be a required condition of
32 parole, where appropriate.

33 c. If the hearing officer or the assigned member determines that
34 there is a basis for denial of parole, or that a hearing is otherwise
35 necessary, the hearing officer or assigned member shall notify the
36 appropriate board panel and the inmate in writing of his determination,
37 and of a date for a parole consideration hearing. The board panel shall
38 notify the victim of the crime, if the crime for which the inmate is
39 incarcerated was a crime of the first or second degree, or the victim's
40 nearest relative if the crime was murder, as appropriate, who was
41 previously contacted by the board and who has indicated his intention
42 to the board to testify at the hearing, of the opportunity to testify or
43 submit written statements at the hearing. Said hearing shall be
44 conducted by the appropriate board panel at least 30 days prior to the
45 eligibility date. At the hearing, which shall be informal, the board
46 panel shall receive as evidence any relevant and reliable documents or

1 in person testimony, including that of the victim of the crime or the
2 members of the family of a murder victim if the victim or a family
3 member so desires. If a victim of a crime or the relative of a murder
4 victim chooses not to testify personally at the hearing, the victim or
5 relative may elect to present testimony to a senior hearing officer
6 designated by the board panel. The senior hearing officer shall prepare
7 a report or a transcript of the testimony for presentation to the board
8 panel at the hearing. All such evidence not classified as confidential
9 pursuant to rules and regulations of the board or the Department of
10 Corrections shall be disclosed to the inmate and the inmate shall be
11 permitted to rebut such evidence and to present evidence on his own
12 behalf. The decision of the board panel shall be based solely on the
13 evidence presented at the hearing.

14 d. At the conclusion of the parole consideration hearing, the board
15 panel shall either (1) certify the parole release of the inmate pursuant
16 to section 15 of this act as soon as practicable after the eligibility date
17 and so notify the inmate and the board, or (2) deny parole and file with
18 the board within 30 days of the hearing a statement setting forth the
19 decision, the particular reasons therefor, except information classified
20 as confidential pursuant to rules and regulations of the board or the
21 Department of Corrections, a copy of which statement shall be served
22 upon the inmate together with notice of his right to appeal to the
23 board.

24 e. Upon request by the hearing officer or the inmate, the time
25 limitations contained in [sections]section 10 of P.L.1979, c.441
26 (C.30:4-123.54) and [11] this section may be waived by the
27 appropriate board panel for good cause.

28 f. Notwithstanding the provision of any other law to the contrary,
29 if an inmate incarcerated for murder is recommended for parole by the
30 assigned board member or the appropriate board panel, parole shall
31 not be certified until a majority of the full parole board, after
32 conducting a hearing, concurs in that recommendation. The board shall
33 notify the victim's family of that hearing and family members shall be
34 afforded the opportunity to testify in person or to submit written
35 statements. The provisions of this subsection shall not apply to an
36 inmate who has his parole revoked and is returned to custody pursuant
37 to the provisions of section 19 of P.L.1979, c.441 (C.30:4-123.63).
38 (cf: P.L.1993, c.222, s.1)

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40 4. This act shall take effect immediately; except that
41 notwithstanding the provisions of subsection b. of section 10 of
42 P.L.1979, c.441 (C.30:4-123.54), no objective risk assessment shall
43 be included in any report required under the provisions of subsection
44 a. of section 10 of P.L.1979, c.441 (C.30:4-123.54) until the first day
45 of the sixth month following enactment.

STATEMENT

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3 This bill implements three recommendations of the Governor's
4 Study Commission on Parole by amending three sections of the
5 "Parole Act of 1979" (P.L.1979, c.441; C.30:4-123.45 et seq.).

6 First, the bill amends the law to require the preparation of a risk
7 assessment evaluation for inmates eligible for consideration for parole.
8 This risk assessment is to be included as part of the preparole report
9 which is used by the Parole Board to evaluate whether an inmate
10 should be released on parole. The document, which is to be organized
11 and presented in a form prescribed by the board, is to contain
12 evaluations of both static and dynamic criteria, and is to include
13 information relating to the inmate's criminal history, conduct during
14 confinement, education and family background and any other
15 information the board may deem necessary and appropriate. Using
16 such risk assessments should help the board by providing an objective
17 instrument that can be used to project more reliable appraisals of the
18 likelihood of a particular inmate's risk of failure on parole and for
19 assessing the level of supervision needed for individual parolees.

20 Second, the bill permits parole board panels to require an inmate to
21 undergo in-depth preparole psychological evaluations as often as the
22 panels deems necessary, to provide the panel with current and accurate
23 information to assess an inmate's suitability for parole. Currently,
24 under a federal district court ruling, the board only may request that
25 an inmate undergo a psychological evaluation prior to a parole
26 hearing. The bill also requires that these evaluations be included in the
27 inmate's preparole report.

28 Third, the bill requires all psychological reports prepared in
29 connection with any court proceeding to be included in the preparole
30 report required under current law. This would include reports such as
31 those used to determine a defendant's fitness to stand trial, raise and
32 rebut a defense at trial, support plea negotiations or demonstrate
33 mitigating factors at sentencing. The commission's report states that
34 these reports are to supplement any psychological evaluations
35 otherwise required by the board and assist the Parole Board in
36 determining when parole of an inmate is not appropriate, thus
37 providing "greater protection to the community."
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42 Authorizes preparation of inmate risk-assessment and psychological
evaluations for Parole Board use.