

STATE OF NEW YORK

5576--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 19, 2021

Introduced by M. of A. FORREST, HUNTER, RICHARDSON, NIOU, SEPTIMO, MAMDANI, BURDICK, GONZALEZ-ROJAS, JACKSON, GALLAGHER, KELLES, MITAYNES, MEEKS, CLARK, EPSTEIN, SIMON, HEVESI, BARRON, ANDERSON, WEPRIN, TAYLOR, O'DONNELL, QUART, L. ROSENTHAL, ABINANTI, CARROLL, GOTTFRIED, DICKENS, AUBRY, DINOWITZ, BICHOTTE HERMELYN, CRUZ, SEAWRIGHT, PAULIN, WALKER, COOK, OTIS, REYES, BRONSON, PERRY, BURGOS, VANEL, LUPARDO, CAHILL, LAVINE, FAHY, DE LA ROSA, GALEF, RODRIGUEZ, BARRETT, HYNDMAN, SOLAGES, FRONTUS, McDONALD, J. D. RIVERA, DAVILA, PRETLOW, STECK, KIM, JOYNER, JEAN-PIERRE, PICHARDO, J. RIVERA, DARLING, FERNANDEZ -- Multi-Sponsored by -- M. of A. THIELE, ZINERMAN -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the penal law, in relation to revocation of community supervision

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

1 Section 1. Section 259 of the executive law is amended by adding four
2 new subdivisions 5, 6, 7, and 8 to read as follows:

3 5. "Releasee" means an individual released from an institution under
4 the jurisdiction of the department into the community on temporary
5 release, presumptive release, parole, conditional release, post-release
6 supervision or medical parole.

7 6. "Technical violation" means any conduct that violates a condition
8 of community supervision in an important respect, other than the commis-
9 sion of a new felony or misdemeanor offense under the penal law.

10 7. "Non-technical violation" means: (a) the commission of a new felony
11 or misdemeanor offense; or (b) conduct by a releasee who is serving a
12 sentence for an offense defined in article 130 of the penal law or
13 section 255.26 or 255.27 of such law, and such conduct violated a

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

LBD04981-05-1

1 specific condition reasonably related to such offense and efforts to
2 protect the public from the commission of a repeat of such offense.

3 8. "Absconding" means intentionally avoiding supervision by failing to
4 maintain contact or communication with the releasee's assigned community
5 supervision officer or area bureau office and to notify his or her
6 assigned community supervision officer or area bureau office of a change
7 in residence, and reasonable efforts by the assigned community super-
8 vision officer to re-engage the releasee have been unsuccessful.

9 § 2. Subdivision 3 of section 70.40 of the penal law, paragraphs (a)
10 and (b) as amended by section 127-h of subpart B of part C of chapter 62
11 of the laws of 2011 and paragraph (c) as amended by chapter 478 of the
12 laws of 1973, is amended and a new subdivision 4 is added to read as
13 follows:

14 3. Delinquency. (a) When a person is alleged to have violated the
15 terms of presumptive release or parole by absconding, and the state
16 board of parole has declared such person to be delinquent, the declara-
17 tion of delinquency shall interrupt the person's sentence as of the date
18 of the delinquency and such interruption shall continue until the
19 ~~[return of the person to an institution under the jurisdiction of the~~
20 ~~state department of corrections and community supervision]~~ releasee's
21 appearance in response to a notice of violation or the date of the
22 execution of a warrant, whichever is earlier.

23 (b) When a person is alleged to have violated the terms of his or her
24 conditional release or post-release supervision by absconding and has
25 been declared delinquent by the parole board or the local conditional
26 release commission having supervision over such person, the declaration
27 of delinquency shall interrupt the period of supervision or post-release
28 supervision as of the date of the delinquency. For a conditional
29 release, such interruption shall continue until the ~~[return of the~~
30 ~~person to the institution from which he or she was released or, if he or~~
31 ~~she was released from an institution under the jurisdiction of the state~~
32 ~~department of corrections and community supervision, to an institution~~
33 ~~under the jurisdiction of that department. Upon such return, the person~~
34 ~~shall resume service of his or her sentence]~~ releasee's appearance in
35 response to a notice of violation or the date of the execution of a
36 warrant, whichever is earlier. For a person released to post-release
37 supervision, the provisions of section 70.45 of this article shall
38 apply.

39 (c) Any time spent by a person in custody from the time of ~~[delinquen-~~
40 ~~cy]~~ execution of a warrant pursuant to paragraph (a) of subdivision
41 three of section two hundred fifty-nine-i of the executive law to the
42 time service of the sentence resumes shall be credited against the term
43 or maximum term of the interrupted sentence~~[, provided+~~

44 ~~(i) that such custody was due to an arrest or surrender based upon the~~
45 ~~delinquency, or~~

46 ~~(ii) that such custody arose from an arrest on another charge which~~
47 ~~culminated in a dismissal or an acquittal, or~~

48 ~~(iii) that such custody arose from an arrest on another charge which~~
49 ~~culminated in a conviction, but in such case, if a sentence of imprison-~~
50 ~~ment was imposed, the credit allowed shall be limited to the portion of~~
51 ~~the time spent in custody that exceeds the period, term or maximum term~~
52 ~~of imprisonment imposed for such conviction].~~

53 4. Earned time credits. (a) Any person subject to community super-
54 vision shall be awarded earned time credits. The calculation of earned
55 time credit periods shall begin on the releasee's first day of community
56 supervision and shall be awarded after each completed thirty day period

1 in compliance with the terms of their community supervision. Any such
2 awarded earned time credits shall be applied against such person's
3 unserved portion of the maximum term, aggregate maximum term or period
4 of post-release supervision for any current sentence. Persons subject to
5 a sentence with a maximum term of life imprisonment or lifetime super-
6 vision shall not be eligible to receive earned time credits under this
7 section.

8 (b) After a person has begun a period of community supervision pursu-
9 ant to this section and section 70.45 of this article, such period of
10 community supervision shall be reduced by thirty days for every thirty
11 days that such person does not violate a condition of and remains in
12 compliance with all conditions of his or her community supervision,
13 provided, however, that the person is not subject to any sentence with a
14 maximum term of life imprisonment or lifetime supervision. When a person
15 is subject to more than one period of community supervision, the
16 reduction authorized in this subdivision shall be applied to every such
17 period of parole or conditional release to which the person is subject.

18 (c) Retroactive earned time credits shall be awarded to eligible
19 persons subject to community supervision at the time this legislation
20 becomes effective, provided, however, that the maximum allowable retro-
21 active earned time credit awarded shall not exceed a period of two
22 years. Retroactive earned time credits shall not be awarded to any
23 releasee serving a term of reincarceration for a sustained parole
24 violation at the time of the effective date of the chapter of the laws
25 of two thousand twenty-one that added this subdivision until the
26 releasee is returned to community supervision. Persons subject to a
27 sentence with a maximum term of life imprisonment or lifetime super-
28 vision shall not be eligible to receive retroactive earned time credits
29 under this section.

30 (d) If a releasee's current period of community supervision has been
31 interrupted by a period of reincarceration prior to the effective date
32 of the chapter of the laws of two thousand twenty-one that added this
33 subdivision, no earned time credits shall be awarded for such period of
34 reincarceration. The department shall calculate retroactive earned time
35 credits within one year after the bill shall have become law and shall
36 prioritize earned time credit calculations for releasees whose terms of
37 community supervision are due to terminate before June first, two thou-
38 sand twenty-two.

39 (e) Earned time credits may be withheld or revoked for the thirty-day
40 period commencing from the date of violative behavior as sustained at a
41 final revocation hearing, or for the period during which a releasee
42 absconded from supervision, as sustained at a final revocation hearing.
43 Earned time credits may not be earned and shall be suspended: (i) during
44 a period of reincarceration imposed for any sustained violation; (ii)
45 during the period in which the individual has absconded; or (iii) pend-
46 ing the outcome of a preliminary or final revocation hearing. If, at the
47 preliminary hearing, there is no finding by a preponderance of the
48 evidence of a violation of a condition of release in an important
49 respect or a violation is not sustained at the final revocation hearing,
50 then the individual shall be deemed to have been in compliance with the
51 terms of release and shall be awarded earned time credits from the peri-
52 od in which the accrual was suspended. If a violation is sustained, the
53 calculation of an earned time credit period shall recommence on the
54 thirty-first day after the date of the violative behavior or, if the
55 sustained violation or conviction resulted in a term of reincarceration,

1 on the day the releasee is restored to community supervision, whichever
2 is later.

3 (f) At least every one hundred eighty days from the first date of a
4 person's release to community supervision, and every one hundred eighty
5 days thereafter, the department of corrections and community supervision
6 shall provide each person on community supervision a report indicating
7 the total earned time credits received, the total earned time credits
8 received in the prior one hundred eighty days, the total earned time
9 credits withheld, the total earned time credits withheld in the prior
10 one hundred eighty days, the total amount of time reduced from the
11 person's sentence, and the person's earliest release date based on the
12 amount of earned time credits received. The department shall provide the
13 report in written or electronic form.

14 § 3. Paragraph (d) of subdivision 5 of section 70.45 of the penal law,
15 as amended by section 127-j of subpart B of part C of chapter 62 of the
16 laws of 2011, is amended to read as follows:

17 (d) When a person is alleged to have violated a condition of post-re-
18 lease supervision by absconding and the department of corrections and
19 community supervision has declared such person to be delinquent: (i) the
20 declaration of delinquency shall interrupt the period of post-release
21 supervision; (ii) such interruption shall continue until the person is
22 restored to post-release supervision; (iii) if the person is restored to
23 post-release supervision without being returned to the department of
24 corrections and community supervision, any time spent in custody from
25 the date of delinquency until restoration to post-release supervision
26 shall first be credited to the maximum or aggregate maximum term of the
27 sentence or sentences of imprisonment, but only to the extent authorized
28 by subdivision three of section 70.40 of this article. Any time spent in
29 custody solely pursuant to such delinquency after completion of the
30 maximum or aggregate maximum term of the sentence or sentences of impri-
31 sonment shall be credited to the period of post-release supervision, if
32 any; and (iv) if the person is ordered returned to the department of
33 corrections and community supervision, the person shall be required to
34 serve the time assessment before being re-released to post-release
35 supervision. ~~[In the event the balance of the remaining period of post-~~

36 ~~release supervision is six months or less, such time assessment may be~~
37 ~~up to six months unless a longer period is authorized pursuant to subdivi-~~
38 ~~vision one of this section. The]~~

39 If the person is detained pursuant to
40 paragraph (a) of subdivision three of section two hundred fifty-nine-i
41 of the executive law pending a preliminary or final revocation hearing,
42 the time assessment imposed following such hearing shall commence upon
43 the execution of the warrant. If a warrant was executed pursuant to
44 paragraph (a) of subdivision three of section two hundred fifty-nine-i
45 of the executive law but a court released the person pending a prelimi-
46 nary or final revocation hearing, the time assessment shall commence
47 upon the issuance of a determination after a final hearing that the
48 person has violated one or more conditions of community supervision in
49 an important respect, and shall include the time period between
50 execution of the warrant and release of the person pending a preliminary
51 or final revocation hearing. If a releasee is committed to the custody
52 of the sheriff pursuant to article five hundred thirty of the criminal
53 procedure law, the time assessment, if any, shall include any time the
54 releasee spent in such custody. If a notice of violation was issued
55 pursuant to subdivision three of section two hundred fifty-nine-i of the
56 executive law, the time assessment shall commence upon the issuance of a
determination after a final hearing that the person has violated one or

1 more conditions of supervision. While serving such assessment, the
2 person shall not receive any good behavior allowance pursuant to section
3 eight hundred three of the correction law. Any time spent in custody
4 from the date of delinquency until return to the department of
5 corrections and community supervision shall first be credited to the
6 maximum or aggregate maximum term of the sentence or sentences of impris-
7 sonment, but only to the extent authorized by subdivision three of
8 section 70.40 of this article. The maximum or aggregate maximum term of
9 the sentence or sentences of imprisonment shall run while the person is
10 serving such time assessment in the custody of the department of
11 corrections and community supervision. Any time spent in custody solely
12 pursuant to such delinquency after completion of the maximum or aggre-
13 gate maximum term of the sentence or sentences of imprisonment shall be
14 credited to the period of post-release supervision, if any.

15 § 4. Subparagraph (i) of paragraph (a) of subdivision 3 of section
16 259-i of the executive law, as amended by chapter 545 of the laws of
17 2015, is amended and five new subparagraphs (iv), (v), (vi), (vii) and
18 (viii) are added to read as follows:

19 (i) If the parole officer having charge of a presumptively released,
20 paroled or conditionally released person or a person released to post-
21 release supervision or a person received under the uniform act for out-
22 of-state parolee supervision shall have [~~reasonable~~] probable cause to
23 believe that such person has [~~lapsed into criminal ways or company, or~~
24 ~~has violated one or more conditions of his presumptive release, parole,~~
25 ~~conditional release or post-release supervision~~] committed a technical
26 violation, such parole officer shall report such fact to a member of the
27 board, or to any officer of the department designated by the board, and
28 thereupon a written notice of violation may be issued according to the
29 terms of subparagraph (iii) of paragraph (c) of this subdivision, and
30 shall be promptly served upon such person. If the releasee has failed to
31 appear as directed in response to a notice of violation and has failed
32 to appear voluntarily within forty-eight hours after such time and the
33 person would be subject to incarceration pursuant to subparagraph (xii)
34 of paragraph (f) of this subdivision should the violation be sustained
35 at a final revocation hearing, a warrant may be issued for the retaking
36 of such person and for his temporary detention pending a recognizance
37 hearing in accordance with the rules of the board. If the person has
38 intentionally failed to appear as directed in response to a notice of
39 violation and has intentionally failed to appear voluntarily within
40 forty-eight hours after such time and the person would not be subject to
41 incarceration pursuant to paragraph (f) of this subdivision should the
42 violation be sustained at a final revocation hearing, no warrant shall
43 issue and the violation shall be deemed sustained. Notice of that deci-
44 sion shall be promptly served upon the releasee. In such case, within
45 one month of the date the notice of decision was served upon the releas-
46 ee, the releasee may move to vacate such a sustained violation if the
47 releasee can show by a preponderance of the evidence that the notice of
48 violation was not properly served or the failure to appear was otherwise
49 excusable. If the parole officer having charge of a person under commu-
50 nity supervision shall have probable cause to believe that such person
51 has committed a non-technical violation, such parole officer shall
52 report such fact to a member of the board, or to any officer of the
53 department designated by the board, and thereupon a notice of violation
54 may be issued or a warrant may be issued for the retaking of such person
55 and for his temporary detention in accordance with the rules of the
56 board [~~unless such person~~]. However, if a releasee has been determined

1 to be currently unfit to proceed to trial or is currently subject to a
2 temporary or final order of observation pursuant to article seven
3 hundred thirty of the criminal procedure law, ~~[in which case]~~ no notice
4 of violation or warrant shall be issued. The issuance of a notice of
5 violation, service of a notice of violation, service of a notice of
6 decision, and the retaking and detention of any ~~[such]~~ person for whom a
7 warrant has been issued pursuant to this subparagraph may be further
8 regulated by rules and regulations of the department not inconsistent
9 with this article. A warrant issued pursuant to this section shall
10 constitute sufficient authority to the superintendent or other person in
11 charge of any jail, penitentiary, lockup or detention pen to whom it is
12 delivered to hold in temporary detention the person named therein~~;~~
13 ~~except that a warrant issued with respect to a person who has been~~
14 ~~released on medical parole pursuant to section two hundred fifty-nine-r~~
15 ~~of this article and whose parole is being revoked pursuant to paragraph~~
16 ~~(h) of subdivision four of such section shall constitute authority for~~
17 ~~the immediate placement of the parolee only into imprisonment in the~~
18 ~~custody of the department to hold in temporary detention. A warrant~~
19 ~~issued pursuant to this section shall also constitute sufficient author-~~
20 ~~ity to the person in charge of a drug treatment campus, as defined in~~
21 ~~subdivision twenty of section two of the correction law, to hold the~~
22 ~~person named therein, in accordance with the procedural requirements of~~
23 ~~this section, for a period of at least ninety days to complete an inten-~~
24 ~~sive drug treatment program mandated by the board as an alternative to~~
25 ~~presumptive release or parole or conditional release revocation, or the~~
26 ~~revocation of post-release supervision, and shall also constitute suffi-~~
27 ~~cient authority for return of the person named therein to local custody~~
28 ~~to hold in temporary detention for further revocation proceedings in the~~
29 ~~event said person does not successfully complete the intensive drug~~
30 ~~treatment program. The board's rules shall provide for cancellation of~~
31 ~~delinquency and restoration to supervision upon the successful~~
32 ~~completion of the program]~~ pending a recognizance hearing pursuant to
33 subparagraph (iv) of this paragraph. It shall not be a condition of
34 parole nor may a notice of violation or a warrant be issued due to a
35 releasee being in the company of or fraternizing with any person the
36 releasee knows has a criminal record or knows has been adjudicated a
37 youthful offender or due to conduct related to cannabis that is lawful
38 pursuant to the laws of New York.

39 (iv) Notwithstanding the provisions of any other law, upon execution
40 of a warrant issued pursuant to this section for any releasee alleged to
41 have committed a violation of a condition of release in an important
42 respect in the city of New York, the authorized officer shall present
43 the releasee to the criminal court of the city of New York or the
44 supreme court criminal term in the county where the violation is alleged
45 to have been committed for a recognizance hearing within twenty-four
46 hours of the execution of the warrant. If no such court of record is
47 available to conduct any business of any type within twenty-four hours
48 of the execution of the warrant, the recognizance hearing shall commence
49 on the next day such a court in the jurisdiction is available to conduct
50 any business of any type. For any releasee alleged to have committed a
51 violation of a condition of release in an important respect outside of
52 the city of New York, the authorized officer shall present the releasee
53 to a county court, district court or city court in the county or city
54 where the violation is alleged to have been committed for a recognizance
55 hearing. If no such court of record is available to conduct any busi-
56 ness of any type within twenty-four hours of the execution of the

1 warrant, the recognizance hearing shall commence on the next day such
2 warrant is available to conduct any business of any type.

3 (v) At a recognizance hearing, the department shall have the burden of
4 demonstrating to the court that the executed warrant was properly issued
5 and served pursuant to this section. The department shall be responsible
6 for presenting information to the court regarding the alleged violation
7 and the releasee's community supervision record. If the alleged
8 violation is the subject of a pending criminal prosecution, the depart-
9 ment shall coordinate with the office of the district attorney to ensure
10 information regarding the alleged violation and the releasee's community
11 supervision record is presented to the court. At a recognizance hearing,
12 the department shall have the burden of demonstrating to the court that
13 the executed warrant was properly issued and served pursuant to this
14 section. The department shall be responsible for presenting information
15 to the court regarding the alleged violation and the releasee's communi-
16 ty supervision record. If the alleged violation is the subject of a
17 pending criminal prosecution, the department shall coordinate with the
18 office of the district attorney to ensure information regarding the
19 alleged violation and the releasee's community supervision record is
20 presented to the court.

21 (vi) At a recognizance hearing, the court shall consider all available
22 evidence of the releasee's employment, family and community ties includ-
23 ing length of residency in the community, history of reporting in a
24 timely fashion to a parole or supervisory officer, and other indicators
25 of stability. At the conclusion of the recognizance hearing, the court
26 may order that the releasee be detained pending a preliminary or final
27 revocation hearing only upon a finding that the releasee currently
28 presents a substantial risk of willfully failing to appear at the
29 preliminary or final revocation hearings and that no non-monetary condi-
30 tion or combination of conditions in the community will reasonably
31 assure the releasee's appearance at the preliminary or final revocation
32 hearing. Otherwise, the court shall release the releasee on the least
33 restrictive non-monetary conditions that will reasonably assure the
34 releasee's appearance at subsequent preliminary or revocation hearings,
35 with a presumption of release on recognizance. The court shall explain
36 its decision on the record or in writing. If non-monetary conditions of
37 release are imposed, the releasee shall not be required to pay for any
38 part of the cost of such conditions.

39 (vii) The alleged violator shall have a right to representation by
40 counsel at the recognizance hearing. In any case, including when a court
41 is called upon to evaluate the capacity of an alleged violator to
42 participate in a recognizance proceeding, where such person is finan-
43 cially unable to retain counsel, the court in which any criminal case
44 against the individual is pending, or if there is no such case pending,
45 the criminal court of the city of New York, the county court or district
46 court in the county where the violation is alleged to have occurred or
47 where the hearing is to be held, shall assign counsel in accordance with
48 the county or city plan for representation placed in operation pursuant
49 to article eighteen-B of the county law.

50 (viii) If the violation charge involves conduct that would consti-
51 tute a new felony or misdemeanor offense, such recognizance hearing may
52 be held at the same time as a proceeding pursuant to article five
53 hundred thirty of the criminal procedure law for any warrants issued by
54 the department prior to such proceeding. If at the proceeding pursuant
55 to article five hundred thirty of the criminal procedure law the court
56 imposes bail on the new alleged criminal offense or commits the releasee

1 to the custody of the sheriff pursuant to article five hundred thirty of
2 the criminal procedure law and the releasee secures release by paying
3 bail or under non-monetary conditions or by operation of law, then the
4 releasee shall not be detained further based solely on the warrant
5 issued by the department. If the department issues a warrant for a non-
6 technical violation for alleged criminal conduct that has already been
7 the subject of a court's order pursuant to article five hundred thirty
8 of the criminal procedure law, then within twenty-four hours of
9 execution of the warrant the releasee shall be provided a recognizance
10 hearing pursuant to this subparagraph, provided, however, that if no
11 court as defined in subparagraph (iv) of this paragraph is available to
12 conduct any business of any type within twenty-four hours of the
13 execution of the warrant, then the recognizance hearing shall commence
14 on the next day such court is available to conduct any business of any
15 type.

16 § 5. Subparagraphs (i), (ii), (iii) and (iv) of paragraph (c) of
17 subdivision 3 of section 259-i of the executive law, subparagraphs (i)
18 and (ii) as amended by section 11 of part E of chapter 62 of the laws of
19 2003, and subparagraphs (iii) and (iv) as amended by section 1 of part E
20 of chapter 56 of the laws of 2007, are amended and two new subparagraphs
21 (ix) and (x) are added to read as follows:

22 (i) ~~[Within fifteen days after the warrant for retaking and temporary~~
23 ~~detention has been executed, unless the releasee has been convicted of a~~
24 ~~new crime committed while under presumptive release, parole, conditional~~
25 ~~release or post release supervision, the board of parole shall afford~~
26 ~~the alleged presumptive release, parole, conditional release or post re-~~
27 ~~lease supervision violator a preliminary revocation hearing before a~~
28 ~~hearing officer designated by the board of parole. Such hearing officer~~
29 ~~shall not have had any prior supervisory involvement over the alleged~~
30 ~~violate]~~

31 (A) For any alleged technical violation for which a notice of
32 violation was issued or a person was released on recognizance pursuant
33 to subparagraph (iv) of paragraph (a) of this subdivision, the depart-
34 ment shall within ten days of the issuance of the notice of violation or
35 the order of release on recognizance afford the person a preliminary
36 revocation hearing before a hearing officer designated by the depart-
37 ment. Such hearing officer shall not have had any prior supervisory
38 involvement over the alleged violator. Such hearing shall not be held at
39 a correctional facility, detention center or local correctional facili-
40 ty. The hearing shall be scheduled and held in a courthouse, in cooper-
41 ation with the chief administrator of the courts and the chief adminis-
42 trator's designees, provided, however, that if such a courthouse is not
43 reasonably available for such hearing, the department may designate a
44 suitable office or other similar facility that is not a correctional
45 facility, detention center or local correctional facility for such hear-
46 ing.

47 (B) For any alleged violation for which a court issued an order
48 detaining a person, within five days of the issuance of such order to
49 detain or execution of a warrant for the violation, the department shall
50 afford such person a preliminary hearing before a hearing officer desig-
51 nated by the department. Such hearing officer shall not have had any
52 prior supervisory involvement over the alleged violator. For any
53 alleged violation for which a person was released on recognizance, with-
54 in ten days of the issuance of the order of release on recognizance, the
55 department shall afford such person a preliminary revocation hearing.

56 ~~[(ii) The preliminary presumptive release, parole, conditional release~~
~~or post release supervision revocation hearing shall be conducted at an~~

~~appropriate correctional facility, or such other place reasonably close to the area in which the alleged violation occurred as the board may designate.]~~ (ii) The preliminary presumptive release, parole, conditional release or post-release supervision revocation hearing shall be scheduled and held in a courthouse, in cooperation with the chief administrator of the courts and the chief administrator's designees, provided, however, that if such a courthouse is not reasonably available for such hearing, the department may designate a suitable office or other similar facility that is not a correctional facility, detention center or local correctional facility for such hearing.

(iii) The alleged violator shall, ~~[within three days of the execution of the warrant]~~ at the time a notice of violation is issued or at the time of a recognizance hearing, be given written notice of the time, place and purpose of the preliminary hearing ~~[unless he or she is detained pursuant to the provisions of subparagraph (iv) of paragraph (a) of this subdivision. In those instances, the alleged violator will be given written notice of the time, place and purpose of the hearing within five days of the execution of the warrant],~~ or if no preliminary hearing is required pursuant to this section, of the final revocation hearing. The notice shall state what conditions of ~~[presumptive release, parole, conditional release or post-release]~~ community supervision are alleged to have been violated, and in what manner; that such person shall have the right to appear and speak in his or her own behalf; that he or she shall have the right to introduce letters and documents; that he or she may present witnesses who can give relevant information to the hearing officer; that he or she has the right to confront the witnesses against him or her; that such person shall have the right to representation by counsel at any preliminary and final revocation hearings; and the name and contact details for institutional defenders or assigned private counsel, as applicable. Adverse witnesses may be compelled to attend the preliminary hearing unless the prisoner has been convicted of a new crime while on supervision or unless the hearing officer finds good cause for their non-attendance. As far as practicable or feasible, any additional documents having been collected or prepared that ~~[support]~~ are relevant to the charge shall be delivered to the alleged violator.

(iv) ~~[The preliminary hearing shall be scheduled to take place no later than fifteen days from the date of execution of the warrant.]~~ The standard of proof at the preliminary hearing shall be ~~[probable cause]~~ a preponderance of the evidence to believe that the ~~[presumptive releasee, parolee, conditional releasee or person under post-release supervision]~~ releasee has violated one or more conditions of his or her ~~[presumptive release, parole, conditional release or post-release]~~ community supervision in an important respect. Proof of conviction of a crime committed while under supervision shall constitute ~~[probable cause]~~ prima facie evidence of a violation of a condition of community supervision for the purposes of this ~~[section]~~ subparagraph.

(ix) If the hearing officer finds by a preponderance of the evidence that such person has violated one or more conditions of community supervision in an important respect, the releasee shall, at the conclusion of the preliminary hearing be given written notice of the time, place and purpose of the final revocation hearing. The notice shall state what conditions of community supervision are alleged to have been violated, when, where and in what manner; that such person shall have the right to representation by counsel at any final revocation hearing; that such person shall have the right to appear and speak in his or her own

1 behalf; that he or she shall have the right to introduce letters and
2 documents; that he or she may present witnesses who can give relevant
3 information to the hearing officer; that he or she has the right to
4 confront the witnesses against him or her; and the name and contact
5 details for institutional defenders or assigned private counsel, as
6 applicable. Any additional documents having been collected or prepared
7 that support the charges shall be delivered to the releasee. Adverse
8 witnesses may be compelled to attend the final revocation hearing unless
9 the prisoner has been convicted of a new crime while on supervision or
10 unless the hearing officer finds good cause for their non-attendance.

11 (x) The alleged violator shall have a right to representation by coun-
12 sel at the preliminary hearing. In any case, including when a court is
13 called upon to evaluate the capacity of an alleged violator in a prelim-
14 inary proceeding, where such person is financially unable to retain
15 counsel, the criminal court of the city of New York, the county court or
16 district court in the county where the violation is alleged to have
17 occurred or where the hearing is held, shall assign counsel in accord-
18 ance with the county or city plan for representation placed in operation
19 pursuant to article eighteen-B of the county law.

20 § 6. Paragraph (f) of subdivision 3 of section 259-i of the executive
21 law, as amended by section 11 of part E of chapter 62 of the laws of
22 2003, subparagraph (v) as amended and subparagraph (xii) as added by
23 chapter 545 of the laws of 2015, subparagraph (x) as amended by section
24 38-f-1 of subpart A of part C of chapter 62 of the laws of 2011 and
25 subparagraph (xi) as amended by chapter 103 of the laws of 2021, is
26 amended to read as follows:

27 (f) (i) ~~[Revocation hearings shall be scheduled to be held within~~
28 ~~ninety days of the probable cause determination]~~ For any releasee
29 charged with a violation at a preliminary hearing:

30 (A) If a court issued an order detaining a person after a finding by a
31 preponderance of the evidence that such person committed a violation
32 then within thirty days of the finding by a preponderance of the
33 evidence determination at the preliminary hearing, the department shall
34 afford such person a final revocation hearing in person before a hearing
35 officer designated by the department. Such hearing officer shall not
36 have had any prior supervisory involvement over the alleged violator.

37 (B) (1) If a notice of violation was issued or such person was
38 released on recognizance the department shall within forty-five days of
39 the issuance of the notice of violation or the order of release on
40 recognizance afford the person a final revocation hearing before a hear-
41 ing officer designated by the department. Such hearing officer shall not
42 have had any prior supervisory involvement over the alleged violator.

43 (2) The final revocation hearing shall not be held at a correctional
44 facility, detention center or local correctional facility. Such hearing
45 shall be scheduled and held in a courthouse, in cooperation with the
46 chief administrator of the courts and the chief administrator's desig-
47 nees, provided, however, that if such a courthouse is not reasonably
48 available for such hearing, the department may designate a suitable
49 office or other similar facility that is not a correctional facility,
50 detention center or local correctional facility for such hearing.

51 (3) The department shall have six months from the date of the effec-
52 tive date of the chapter of the laws of two thousand twenty-one that
53 amended this paragraph to begin to hold such hearings at allowable
54 locations.

55 (C) However, if an alleged violator requests and receives any post-
56 ponement of his or her revocation hearing, or consents to a postponed

1 revocation proceeding initiated by the board, or if an alleged violator,
2 by his actions otherwise precludes the prompt conduct of such
3 proceedings, the time limit may be extended.

4 (ii) The revocation hearing shall be conducted by a presiding officer
5 who may be a member or a hearing officer designated by the board in
6 accordance with rules of the board.

7 (iii) Both the alleged violator and an attorney who has filed a notice
8 of appearance on his or her behalf in accordance with the rules of the
9 board of parole shall be given written notice of the date, place and
10 time of the hearing [~~as soon as possible but at least fourteen days~~
11 ~~prior to the scheduled date~~] pursuant to subparagraph (ix) of paragraph
12 (c) of this subdivision.

13 (iv) The alleged violator shall be given written notice of the rights
14 enumerated in subparagraph (iii) of paragraph (c) of this subdivision as
15 well as of his or her right to present mitigating evidence relevant to
16 restoration to presumptive release, parole, conditional release or post-
17 release supervision and his or her right to counsel.

18 (v) The alleged violator shall [~~be permitted~~] have a right to repre-
19 sentation by counsel at the revocation hearing. In any case, including
20 when a superior court is called upon to evaluate the capacity of an
21 alleged violator in a [~~parole~~] revocation proceeding, where such person
22 is financially unable to retain counsel, the criminal court of the city
23 of New York, the county court or district court in the county where the
24 violation is alleged to have occurred or where the hearing is held,
25 shall assign counsel in accordance with the county or city plan for
26 representation placed in operation pursuant to article eighteen-B of the
27 county law. He or she shall have the right to confront and cross-examine
28 adverse witnesses, unless there is good cause for their non-attendance
29 as determined by the presiding officer; present witnesses and documenta-
30 ry evidence in defense of the charges; and present witnesses and docu-
31 mentary evidence relevant to the question whether reincarceration of the
32 alleged violator is appropriate.

33 (vi) At the revocation hearing, the charges shall be read and the
34 alleged violator shall be permitted to plead not guilty, guilty, guilty
35 with explanation or to stand mute. As to each charge, evidence shall be
36 introduced through witnesses and documents, if any, in support of that
37 charge. At the conclusion of each witness's direct testimony, he or she
38 shall be made available for cross-examination. If the alleged violator
39 intends to present a defense to the charges or to present evidence of
40 mitigating circumstances, the alleged violator shall do so after presen-
41 tation of all the evidence in support of a violation of presumptive
42 release, parole, conditional release or post-release supervision.

43 (vii) All persons giving evidence at the revocation hearing shall be
44 sworn before giving any testimony as provided by law.

45 (viii) At the conclusion of the hearing the presiding officer may
46 sustain any or all of the violation charges or may dismiss any or all
47 violation charges. He or she may sustain a violation charge only if the
48 charge is supported by [~~a preponderance of the evidence adduced~~] clear
49 and convincing evidence. Conduct that formed the basis of an arrest
50 shall not form a basis of a sustained parole violation if a court has
51 adjudicated the matter with an acquittal, adjournment in contemplation
52 of dismissal, or violation.

53 (ix) If the presiding officer is not satisfied that there is [~~a~~
54 ~~preponderance of~~] clear and convincing evidence in support of the
55 violation, he or she shall dismiss the violation, cancel the delinquency

1 and restore the person to presumptive release, parole, conditional
2 release or post-release supervision.

3 (x) If the presiding officer is satisfied that there is [~~a preponder-~~
4 ~~ance of~~] clear and convincing evidence that the alleged violator
5 violated one or more conditions of release in an important respect, he
6 or she shall so find. For each sustained technical violation the
7 presiding officer shall direct that no earned time credits shall be
8 awarded for the thirty day period commencing from the date of the
9 sustained violation. For any absconding violation found, the presiding
10 officer shall direct that no earned time credits shall be awarded for
11 the entire time period during which a releasee was found to have
12 absconded from supervision.

13 (xi) Incarceration shall not be imposed for any technical violation,
14 except as provided in subparagraph (xii) of this paragraph.

15 (xii) For each violation [~~so~~] found, the presiding officer may (A)
16 direct that the [~~presumptive releasee, parolee, conditional releasee or~~
17 ~~person serving a period of post-release supervision~~] releasee be
18 restored to supervision; (B) as an alternative to reincarceration,
19 direct the [~~presumptive releasee, parolee, conditional releasee or~~
20 ~~person serving a period of post-release supervision be placed in a~~
21 ~~parole transition facility for a period not to exceed one hundred eighty~~
22 ~~days and subsequent restoration to supervision~~] releasee receive re-en-
23 try services in the community from qualified nonprofit agencies; or (C)
24 [~~in the case of presumptive releasees, parolees or conditional releas-~~
25 ~~ees,~~] direct the violator's reincarceration and for non-technical
26 violations fix a date for consideration by the board for re-release on
27 presumptive release, or parole or conditional release, as the case may
28 be; or (D) for non-technical violations in the case of persons released
29 to a period of post-release supervision, direct the violator's reincar-
30 ceration up to the balance of the remaining period of post-release
31 supervision, not to exceed five years; provided, however, that a defend-
32 ant serving a term of post-release supervision for a conviction of a
33 felony sex offense defined in section 70.80 of the penal law may be
34 subject to a further period of imprisonment up to the balance of the
35 remaining period of post-release supervision, shall apply for technical
36 violations; and the following limitations:

37 (1) Absconding. For absconding up to seven days reincarceration may
38 be imposed for the first violation, up to fifteen days reincarceration
39 may be imposed for the second violation, and up to thirty days reincar-
40 ceration may be imposed for the third or any subsequent violation;

41 (2) Sanctions for certain technical violations. Reincarceration shall
42 not be imposed for a sustained technical violation that involves: (a)
43 violating curfew; (b) alcohol use, provided however that incarceration
44 is permissible for alcohol use if the person is subject to community
45 supervision due to a conviction for driving under the influence of alco-
46 hol; (c) drug use, provided, however incarceration is permissible for
47 drug use if the person is subject to community supervision due to a
48 conviction for driving under the influence of drugs; (d) failing to
49 notify parole officer of a change in employment or program status; (e)
50 failing to pay surcharges and fees; (f) obtaining a driver's license or
51 driving a car with a valid driver's license, provided however incarcera-
52 tion is permissible if either action is explicitly prohibited by the
53 person's conviction; (g) failing to notify community supervision officer
54 of contact with any law enforcement agency, provided however, incarcera-
55 tion is permissible if the person intended to hide illegal behavior; (h)
56 failing to obey other special conditions, provided however that incar-

ceration is permissible if the failure cannot be addressed in the community and all reasonable community-based means to address the failure have been exhausted; and

(3) Sanctions for all other technical violations. For all other technical violations, no period of reincarceration may be imposed for the first and second substantiated technical violations for which incarceration may be imposed; up to seven days reincarceration may be imposed for the third substantiated technical violation for which incarceration may be imposed; up to fifteen days reincarceration may be imposed for the fourth substantiated technical violation for which incarceration may be imposed; up to thirty days reincarceration may be imposed for the fifth and subsequent substantiated technical violations for which incarceration may be imposed.

(xiii) If a warrant was executed pursuant to subparagraph (iv) of paragraph (a) of this subdivision by a criminal court and the court released the person pending a preliminary or final revocation hearing, any period of reincarceration imposed pursuant to this paragraph shall be counted from the date of issuance of a determination after a final revocation hearing that the person has violated one or more conditions of community supervision, and the time between execution of the warrant and release of the person pending a preliminary or final revocation hearing shall count toward any period of reincarceration imposed pursuant to this paragraph. If a releasee is committed to the custody of the sheriff pursuant to article five hundred thirty of the criminal procedure law, any time the person spent confined in a correctional facility or local correctional facility shall be credited toward any period of reincarceration imposed pursuant to this paragraph. In all cases, the presiding officer shall impose the least restrictive reasonable sanction. Any periods of reincarceration imposed pursuant to this section shall run concurrently if more than one violation is sustained. If a period of reincarceration is imposed pursuant to this paragraph, the releasee shall be released from custody upon expiration of the period or the end of the releasee's period of community supervision, whichever shall be sooner. For the violator serving an indeterminate sentence who while re-incarcerated has not been found by the department to have committed a serious disciplinary infraction, such violator shall be re-released on the date fixed at the revocation hearing. For the violator serving an indeterminate sentence who has been found by the department to have committed a serious disciplinary infraction while re-incarcerated, the department shall refer the violator to the board for consideration for re-release to community supervision. Upon such referral the board may waive the personal interview between a member or members of the board and the violator to determine the suitability for re-release when the board directs that the violator be re-released upon expiration of the time assessment. The board shall retain the authority to suspend the date fixed for re-release based on the violator's commission of a serious disciplinary infraction and shall in such case require a personal interview be conducted within a reasonable time between a panel of members of the board and the violator to determine suitability for re-release. If an interview is required, the board shall notify the violator in advance of the date and time of such interview in accordance with the rules and regulations of the board.

~~[(xi)]~~ (xiv) If the presiding officer sustains any violations, ~~[he or she]~~ such officer must prepare a written statement, to be made available to the alleged violator and his or her counsel, indicating the evidence relied upon and the reasons for revoking presumptive release, parole,

1 conditional release or post-release supervision, and for the disposition
2 made. The presiding officer shall also advise the alleged violator in a
3 written statement that revocation will result in loss of the right to
4 vote while he or she is serving the remainder of his or her felony
5 sentence in a correctional facility and that the right to vote will be
6 restored upon his or her release.

7 [~~(xi-i)~~] (xv) If at any time during a revocation proceeding the alleged
8 violator, his or her counsel, or an employee of the department contends,
9 or if it reasonably appears to the hearing officer, that the alleged
10 violator is an incapacitated person as that term is defined in subdivi-
11 sion one of section 730.10 of the criminal procedure law and no judicial
12 determination has been made that the alleged violator is an incapaci-
13 tated person, the revocation proceeding shall be temporarily stayed
14 until the superior court determines whether or not the person is fit to
15 proceed. The matter shall be promptly referred to the superior court for
16 determination of the alleged violator's fitness to proceed in a manner
17 consistent with the provisions of article seven hundred thirty of the
18 criminal procedure law, provided however that the superior court shall
19 immediately appoint counsel for any unrepresented alleged violator
20 eligible for appointed counsel under subparagraph (v) of this paragraph
21 [~~(f) of subdivision three of section two hundred fifty nine i of this~~
22 ~~chapter~~]. The court shall decide whether or not the alleged violator is
23 incapacitated within thirty days of the referral from the hearing offi-
24 cer. If the court determines that the alleged violator is not an inca-
25 pacitated person, the court shall order that the matter be returned to
26 the board of parole for continuation and disposition of the revocation
27 proceeding. If the court determines that the alleged violator is an
28 incapacitated person and if no felony charges are pending against the
29 alleged violator, the court shall issue a final order of observation
30 committing such person to the custody of the commissioner of mental
31 health or the commissioner of developmental disabilities for care and
32 treatment in an appropriate institution in a manner consistent with
33 subdivision one of section 730.40 of the criminal procedure law. If a
34 final order of observation has been issued pursuant to this section, the
35 hearing officer shall dismiss the violation charges and such dismissal
36 shall act as a bar to any further proceeding under this section against
37 the alleged violator for such violations. If felony criminal charges are
38 pending at any time against an alleged violator who has been referred to
39 superior court for a fitness evaluation but before a determination of
40 fitness has been made pursuant to this section, the court shall decide
41 whether or not the alleged violator is incapacitated pursuant to article
42 seven hundred thirty of the criminal procedure law and the revocation
43 proceeding shall be held in abeyance until such decision has been
44 reached. The hearing officer shall adopt the capacity finding of the
45 court and either terminate the revocation process if an order of obser-
46 vation has been made by the court or proceed with the revocation hearing
47 if the alleged violator has been found not to be an incapacitated
48 person.

49 § 7. Section 259-i of the executive law is amended by adding a new
50 subdivision 4-a to read as follows:

51 4-a. Appeals from non-technical violation findings. (a) Notwithstand-
52 ing the provisions of any other law, when in a violation proceeding
53 brought pursuant to this section, any of the charges sustained by the
54 hearing officer would constitute a misdemeanor or felony if such charge
55 were or had been brought in a criminal court, the releasee may, in lieu
56 of an administrative appeal to the board pursuant to subdivision four of

1 this section, appeal such determination to the lowest level of the
2 following courts serving the jurisdiction in which the hearing was held
3 or in which any such sustained conduct was alleged to have occurred:
4 city court, district court, county court or supreme court; provided,
5 however, that if any such misdemeanor or felony charge was prosecuted in
6 any city, district, county or supreme court, such appeal shall be filed
7 in that court.

8 (b) The appeal shall be commenced by the filing of a notice of appeal
9 in the same manner as an appeal to the appellate division as set forth
10 in paragraphs (a), (b), (d) and (e) of subdivision one and subdivision
11 six of section 460.10 of the criminal procedure law. Counsel shall be
12 assigned to the individual, if unable to afford counsel, by the court
13 before which the appeal is taken or is to be taken. Such court may stay
14 such determination pending the appeal, in a manner consistent with the
15 provisions of section 460.50 of the criminal procedure law or as other-
16 wise authorized. Within thirty days after receiving such a notice of
17 appeal, the board shall serve on the individual or counsel and file with
18 such court a transcript of the proceedings before the hearing officer
19 prepared pursuant to paragraph (a) of subdivision six of this section,
20 and copies of the documents, photographs and records considered by the
21 hearing officer, and provide access to any other evidence considered by
22 the hearing officer who made such determination.

23 (c) The appeal shall be perfected in the manner set forth in section
24 460.70 of the criminal procedure law, other provisions of law generally
25 applicable to criminal appeals, and authorized rules implementing this
26 section promulgated by the chief administrator of the courts. The
27 department shall have responsibility for presenting the department's
28 position through any submissions to the court on the appeal. The depart-
29 ment shall coordinate with relevant district attorneys to ensure appro-
30 priate information may be provided to the court. The district attorney
31 of the jurisdiction may appear on any such appeal without the necessity
32 of a motion or order of the court.

33 (d) On such appeal, the reviewing city, district, county or supreme
34 court shall consider de novo the issues raised by the appellant, includ-
35 ing but not limited to the following: (a) whether any sustained
36 violation charge should have been sustained; (b) whether reduction or
37 dismissal of the alleged violation charge or charges is warranted, in
38 accordance with the principles set forth in section 170.40 or section
39 210.40 of the criminal procedure law or otherwise; and (c) whether any
40 time assessment and other authorized sanction imposed by the hearing
41 officer should be vacated, reduced or, notwithstanding any law, rule or
42 regulation to the contrary, ordered to run concurrently with any other
43 sentence, time assessment, or period of reincarceration imposed.

44 § 8. Section 259-i of the executive law is amended by adding a new
45 subdivision 9 to read as follows:

46 9. The board shall promulgate rules and regulations to facilitate the
47 presence of nonprofit service providers able to offer relevant communi-
48 ty-based services to releasees at all preliminary and final revocation
49 hearings for the purpose of helping people subject to community super-
50 vision successfully complete such supervision and avoid future such
51 supervision, and to help ensure presiding officers impose the least
52 restrictive reasonable sanction for any violation of community super-
53 vision.

54 § 9. Severability. If any clause, sentence, paragraph, section or part
55 of this act shall be adjudged by any court of competent jurisdiction to
56 be invalid and after exhaustion of all further judicial review, the

1 judgment shall not affect, impair or invalidate the remainder thereof,
2 but shall be confined in its operation to the clause, sentence, para-
3 graph, section or part of this act directly involved in the controversy
4 in which the judgment shall have been rendered.

5 § 10. This act shall take effect March 1, 2022; provided, however,
6 that the amendments made to subparagraph (xi) of paragraph (f) of subdi-
7 vision 3 of section 259-i of the executive law made by section six of
8 this act shall take effect on the same date and in the same manner as
9 such chapter of the laws of 2021 takes effect; provided however, within
10 six months of such effective date, the department of corrections and
11 community supervision in consultation with the board of parole shall
12 calculate and award all earned time credits pursuant to subdivision 4 of
13 section 70.40 of the penal law as added by section two of this act to
14 all persons serving a sentence subject to community supervision at the
15 time this legislation becomes law retroactive to the initial date such
16 person began his or her earliest period of community supervision prior
17 to any revocation of community supervision. Provided further, however,
18 within ten months of becoming law the department of corrections and
19 community supervision in consultation with the board of parole shall
20 identify all individuals incarcerated for a sustained violation of
21 community supervision and recalculate such individual's time assessment
22 in accordance with this act. Effective immediately, the addition, amend-
23 ment and/or repeal of any rule or regulation necessary for the implemen-
24 tation of this act on its effective date are authorized to be made and
25 completed on or before such effective date.