

# STATE OF NEW YORK

10545

## IN ASSEMBLY

May 28, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Mosley) --  
read once and referred to the Committee on Correction

AN ACT to amend the executive 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 five  
2 new subdivisions 5, 6, 7, 8 and 9 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 violation of a condition of commu-  
8 nity supervision in an important respect other than conduct that if  
9 proved would be a felony offense, or a misdemeanor offense under article  
10 one hundred twenty, one hundred twenty-one, one hundred thirty, one  
11 hundred thirty-five, two hundred sixty-five or four hundred eighty-five  
12 of the penal law.

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

19 8. "Tier 1 violation" means any technical violation not included in  
20 the definition of a Tier 2 violation.

21 9. "Tier 2 violation" means any of the following technical violations:  
22 violating curfew; failure to pay surcharges and fees, including fees  
23 imposed pursuant to section 60.35 of the penal law, sections eighteen  
24 hundred nine and eighteen hundred nine-c of the vehicle and traffic law,  
25 or section 27.12 of the parks, recreation and historic preservation law;  
26 obtaining a driver's license or driving a car with a valid driver's  
27 license, provided however it shall not be a tier 2 violation if such  
28 action is explicitly prohibited as a condition of such person's

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

LBD16506-01-0

sentence; positive test for or use or possession of alcohol, drugs, a controlled substance without proper medical authorization, or drug paraphernalia, provided however it shall not be a tier 2 violation if the releasee is subject to community supervision due to a conviction related to alcohol or drugs pursuant to section eleven hundred ninety-two of the vehicle and traffic law; failing to notify a community supervision officer of a change in employment or program status; failing to notify a community supervision officer of a change in residence, provided however it shall not be a tier 2 violation if the releasee was absconding; failure to make office or written reports as directed, provided however it shall not be a tier 2 violation if the releasee was absconding; leaving the state of New York or any other state to which the releasee is released or transferred or any area defined in writing by his parole officer, without permission, provided however it shall not be a tier 2 violation if the releasee was absconding; failure to notify community supervision officer of contact with any law enforcement agency, provided however it shall not be a tier 2 violation if the releasee intended to hide evidence of his or others' behavior that constitutes a violation of the penal law; and failure to obey any other special condition of community supervision, provided however it shall not be a tier 2 violation if the failure cannot be addressed in the community with counseling, treatment, or programming and all reasonable community-based means to address the failure have been exhausted.

§ 2. Any releasee who is detained on the effective date of this act pursuant to a warrant issued for an alleged technical violation shall be restored to community supervision. For any such releasee who has been detained for fewer than thirty days, the board may issue and promptly serve a written notice of violation on such releasee according to the terms of subparagraph (iii) of paragraph (c) of subdivision 3 of section 259-i of the executive law.

§ 3. Any releasee who has been incarcerated for thirty days or more on the effective date of this act for a sustained technical parole violation shall be immediately restored to community supervision. All other releasees incarcerated on the effective date of this act for a sustained technical parole violation shall be restored to supervision after serving thirty days, or released at the end of the releasee's period of community supervision, whichever shall be sooner.

§ 4. Any releasee detained on the effective date of this act pursuant to a warrant issued for an alleged non-technical violation shall receive a recognizance hearing pursuant to paragraph (a) of subdivision 3 of section 259-i of the executive law within 72 hours of the effective date of this act.

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

(i) If the parole officer having charge of a presumptively released, paroled or conditionally released person or a person released to post-release supervision or a person received under the uniform act for out-of-state parolee supervision shall have reasonable cause to believe that such person has ~~[lapsed into criminal ways or company, or has violated one or more conditions of his presumptive release, parole, conditional release or post-release supervision]~~ committed a technical violation, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a written notice of violation may be issued according to the terms of

1 subparagraph (iii) of paragraph (c) of this subdivision, and shall be  
2 promptly served upon such person. If the releasee has failed to appear  
3 as directed in response to a notice of violation and has failed to  
4 appear voluntarily within forty-eight hours after such time and the  
5 person would be subject to incarceration pursuant to subparagraph (xii)  
6 of paragraph (f) of this subdivision should the violation be sustained  
7 at a final revocation hearing, a warrant may be issued for the retaking  
8 of such person and for his temporary detention in accordance with the  
9 rules of the board. If the person has failed to appear as directed in  
10 response to a notice of violation and has failed to appear voluntarily  
11 within forty-eight hours after such time and the person would not be  
12 subject to incarceration pursuant to subparagraph (xii) of paragraph (f)  
13 of this subdivision should the violation be sustained at a final revoca-  
14 tion hearing, no warrant shall issue and the violation shall be deemed  
15 sustained. Notice of that decision shall be promptly served upon the  
16 releasee. In such case, within one month of the date the notice of deci-  
17 sion was served upon the releasee, the releasee may move to vacate such  
18 a sustained violation if the releasee can show that the notice of  
19 violation was not properly served or the failure to appear was otherwise  
20 excusable. If the parole officer having charge of a presumptively  
21 released, paroled or conditionally released person or a person released  
22 to post-release supervision or a person received under the uniform act  
23 for out of state parolee supervision shall have reasonable cause to  
24 believe that such person has committed a non-technical violation, such  
25 parole officer shall report such fact to a member of the board, or to  
26 any officer of the department designated by the board, and thereupon a  
27 notice of violation may be issued or a warrant may be issued for the  
28 retaking of such person and for his temporary detention in accordance  
29 with the rules of the board [unless such person]. However, if a releas-  
30 ee has been determined to be currently unfit to proceed to trial or is  
31 currently subject to a temporary or final order of observation pursuant  
32 to article seven hundred thirty of the criminal procedure law, [in which  
33 case] no notice of violation or warrant shall be issued. The issuance of  
34 a notice of violation, service of a notice of violation, service of a  
35 notice of decision, and the retaking and detention of any [such] person  
36 for whom a warrant has been issued pursuant to this subparagraph may be  
37 further regulated by rules and regulations of the department not incon-  
38 sistent with this article. A warrant issued pursuant to this section  
39 shall constitute sufficient authority to the superintendent or other  
40 person in charge of any jail, penitentiary, lockup or detention pen to  
41 whom it is delivered to hold in temporary detention the person named  
42 therein[; except that a warrant issued with respect to a person who has  
43 been released on medical parole pursuant to section two hundred fifty-  
44 nine-r of this article and whose parole is being revoked pursuant to  
45 paragraph (h) of subdivision four of such section shall constitute  
46 authority for the immediate placement of the parolee only into imprison-  
47 ment in the custody of the department to hold in temporary detention. A  
48 warrant issued pursuant to this section shall also constitute sufficient  
49 authority to the person in charge of a drug treatment campus, as defined  
50 in subdivision twenty of section two of the correction law, to hold the  
51 person named therein, in accordance with the procedural requirements of  
52 this section, for a period of at least ninety days to complete an inten-  
53 sive drug treatment program mandated by the board as an alternative to  
54 presumptive release or parole or conditional release revocation, or the  
55 revocation of post-release supervision, and shall also constitute suffi-  
56 cient authority for return of the person named therein to local custody

~~to hold in temporary detention for further revocation proceedings in the event said person does not successfully complete the intensive drug treatment program. The board's rules shall provide for cancellation of delinquency and restoration to supervision upon the successful completion of the program]~~ for up to twenty-four hours pending a recognizance hearing pursuant to subparagraph (iv) of this paragraph. It shall no longer be a condition of parole nor may a notice of violation or a warrant be issued due to a releasee being in the company of or fraternizing with any person the releasee knows has a criminal record or knows has been adjudicated a youthful offender.

(iv) Upon execution of a warrant issued pursuant to this section, the authorized officer shall take the releasee to a local court with criminal jurisdiction for a recognizance hearing. Such recognizance hearing shall commence within twenty-four hours of the execution of the warrant.

(v) At a recognizance hearing, the department shall have the burden to demonstrate to the court that the executed warrant was properly issued and served pursuant to this section.

(vi) At a recognizance hearing, the court shall consider all available evidence of the releasee's employment, family and community ties including length of residency in the community, history of reporting in a timely fashion to a parole or supervisory officer, other indicators of stability and the reasons for the releasee's failure to appear at the prior preliminary or revocation hearing. At the conclusion of the recognizance hearing, the court may order that the releasee be detained pending preliminary or final revocation hearings only upon a finding that the releasee currently presents a substantial risk of willfully failing to appear at the preliminary or final revocation hearings and that no non-monetary condition or combination of conditions in the community will reasonably assure the releasee's appearance at the preliminary or final revocation hearings. Otherwise, the court shall release the releasee on the least restrictive non-monetary conditions that will reasonably assure the releasee's appearance at subsequent preliminary or revocation hearings, with a presumption of release on recognizance. The court shall explain its decision on the record or in writing. If non-monetary conditions of release are imposed, the releasee shall not be required to pay for any part of the cost of such conditions.

(vii) The alleged violator shall have a right to representation by counsel at the recognizance hearing. In any case, including when a court is called upon to evaluate the capacity of an alleged violator in a recognizance proceeding, where such person is financially unable to retain counsel, the criminal court of the city of New York, the county court or district court in the county where the violation is alleged to have occurred or where the hearing is held, shall assign counsel in accordance with the county or city plan for representation placed in operation pursuant to article eighteen-B of the county law.

(viii) Such recognizance hearing may be held at the same time as a proceeding pursuant to article five hundred thirty of the criminal procedure law based on the same alleged conduct. If at the proceeding pursuant to article five hundred thirty of the criminal procedure law the court imposes bail or commits the releasee to the custody of the sheriff pursuant to article five hundred thirty of the criminal procedure law and the releasee secures release by paying bail or by operation of law, then the releasee shall not be detained further based solely on the warrant issued by the department. If the department issues a warrant for a non-technical violation for alleged criminal conduct that has already been the subject of a court's order pursuant to article five

1 hundred thirty of the criminal procedure law, then within twenty-four  
2 hours of execution of the warrant the releasee shall be provided a  
3 recognizance hearing pursuant to this subparagraph.

4 § 6. Subparagraphs (i), (iii) and (iv) of paragraph (c) of subdivision  
5 3 of section 259-i of the executive law, subparagraph (i) as amended by  
6 section 11 of part E of chapter 62 of the laws of 2003, and subpara-  
7 graphs (iii) and (iv) as amended by section 1 of part E of chapter 56 of  
8 the laws of 2007, are amended and two new subparagraphs (ix) and (x) are  
9 added to read as follows:

10 (i) [Within] (A) For any alleged non-technical violation, within  
11 fifteen days after the warrant for retaking and temporary detention has  
12 been executed, unless the releasee has been convicted of a new crime  
13 committed while under presumptive release, parole, conditional release  
14 or post-release supervision, the board of parole shall afford the  
15 alleged presumptive release, parole, conditional release or post-release  
16 supervision violator a preliminary revocation hearing before a hearing  
17 officer designated by the board of parole. Such hearing officer shall  
18 not have had any prior supervisory involvement over the alleged viola-  
19 tor.

20 (B) For any alleged technical violation for which a notice of  
21 violation was issued or a person was released pursuant to subparagraph  
22 (vi) of paragraph (a) of this subdivision, the department shall within  
23 ten days of the issuance of the notice of violation or the order of  
24 release, whichever is later, afford the person a preliminary revocation  
25 hearing before a hearing officer designated by the department. Such  
26 hearing officer shall not have had any prior supervisory involvement  
27 over the alleged violator. Such hearing shall not be held at a correc-  
28 tional facility, detention center or local correctional facility.

29 (C) For any alleged technical violation for which a court issued an  
30 order detaining a person pursuant to subparagraph (vi) of paragraph (a)  
31 of this subdivision and the person would be subject to reincarceration  
32 of up to thirty days pursuant to subparagraph (x) of paragraph (f) of  
33 this subdivision should the violation be sustained at a final revocation  
34 hearing, then within five days of the issuance of the order of detention  
35 the department shall afford such person a preliminary revocation hearing  
36 before a hearing officer designated by the department. Such hearing  
37 officer shall not have had any prior supervisory involvement over the  
38 alleged violator. Such hearing shall not be held at a correctional  
39 facility, detention center or a local correctional facility.

40 (iii) The alleged violator shall, ~~[within three days of the execution~~  
41 ~~of the warrant]~~ at the time a notice of violation is issued or at the  
42 time of a recognizance hearing, be given written notice of the time,  
43 place and purpose of the preliminary hearing ~~[unless he or she is~~  
44 ~~detained pursuant to the provisions of subparagraph (iv) of paragraph~~  
45 ~~(a) of this subdivision. In those instances, the alleged violator will~~  
46 ~~be given written notice of the time, place and purpose of the hearing~~  
47 ~~within five days of the execution of the warrant]~~, or if no preliminary  
48 hearing is required pursuant to this section, of the final revocation  
49 hearing. The notice shall state what conditions of ~~[presumptive~~  
50 ~~release, parole, conditional release or post-release]~~ community super-  
51 vision are alleged to have been violated, when, where, and in what  
52 manner; that such person shall have the right to appear and speak in his  
53 or her own behalf; that he or she shall have the right to introduce  
54 letters and documents; that he or she may present witnesses who can give  
55 relevant information to the hearing officer; that he or she has the  
56 right to confront the witnesses against him or her; that such person



1 shall have the right to representation by counsel at any preliminary and  
2 final revocation hearings; and the name and contact details for institu-  
3 tional defenders or assigned private counsel, as applicable. Adverse  
4 witnesses may be compelled to attend the preliminary hearing unless the  
5 prisoner has been convicted of a new crime while on supervision or  
6 unless the hearing officer finds good cause for their non-attendance. As  
7 far as practicable or feasible, any additional documents having been  
8 collected or prepared that [~~support~~] are relevant to the charge shall be  
9 delivered to the alleged violator.

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

19 (ix) If the hearing officer finds probable cause that such person has  
20 violated one or more conditions of community supervision in an important  
21 respect, the releasee shall, at the conclusion of the preliminary hear-  
22 ing be given written notice of the time, place and purpose of the final  
23 revocation hearing. The notice shall state what conditions of community  
24 supervision are alleged to have been violated, when, where and in what  
25 manner; that such person shall have the right to representation by coun-  
26 sel at any final revocation hearing; that such person shall have the  
27 right to appear and speak in his or her own behalf; that he or she shall  
28 have the right to introduce letters and documents; that he or she may  
29 present witnesses who can give relevant information to the hearing offi-  
30 cer; that he or she has the right to confront the witnesses against him  
31 or her; and the name and contact details for institutional defenders or  
32 assigned private counsel, as applicable. Any additional documents having  
33 been collected or prepared that are relevant to the charge shall be  
34 delivered to the releasee. Adverse witnesses may be compelled to attend  
35 the final revocation hearing unless the prisoner has been convicted of a  
36 new crime while on supervision or unless the hearing officer finds good  
37 cause for their non-attendance.

38 (x) The alleged violator shall have a right to representation by coun-  
39 sel at the preliminary hearing. In any case, including when a court is  
40 called upon to evaluate the capacity of an alleged violator in a prelim-  
41 inary proceeding, where such person is financially unable to retain  
42 counsel, the criminal court of the city of New York, the county court or  
43 district court in the county where the violation is alleged to have  
44 occurred or where the hearing is held, shall assign counsel in accord-  
45 ance with the county or city plan for representation placed in operation  
46 pursuant to article eighteen-B of the county law.

47 § 7. Paragraph (f) of subdivision 3 of section 259-i of the executive  
48 law, as amended by section 11 of part E of chapter 62 of the laws of  
49 2003, subparagraph (v) as amended and subparagraph (xii) as added by  
50 chapter 545 of the laws of 2015 and subparagraph (x) as amended by  
51 section 38-f-1 of subpart A of part C of chapter 62 of the laws of 2011,  
52 is amended to read as follows:

53 (f) (i) [~~Revocation~~] For any alleged non-technical violations, revoca-  
54 tion hearings shall be scheduled to be held within [~~ninety~~] thirty days  
55 of the probable cause determination. For any alleged technical  
56 violations:

1 (A) If the releasee is detained pursuant to subparagraph (vi) of para-  
2 graph (a) of this subdivision and the person would be subject to rein-  
3 carceration of up to seven days pursuant to subparagraph (xii) of this  
4 paragraph should the violation be sustained at a final revocation hear-  
5 ing, then within two days of the issuance of the order of detention, the  
6 department shall afford such person a final revocation hearing in person  
7 before a hearing officer designated by the department. Such hearing  
8 officer shall not have had any prior supervisory involvement over the  
9 alleged violator. No preliminary revocation hearing shall be held in  
10 this instance.

11 (B) If the releasee is detained pursuant to subparagraph (vi) of para-  
12 graph (a) of this subdivision and the person would be subject to rein-  
13 carceration of up to fifteen days pursuant to subparagraph (xii) of this  
14 paragraph should the violation be sustained at a final revocation hear-  
15 ing, then within four days of the issuance of the order of detention,  
16 the department shall afford such person a final revocation hearing in  
17 person before a hearing officer designated by the department. Such hear-  
18 ing officer shall not have had any prior supervisory involvement over  
19 the alleged violator. No preliminary revocation hearing shall be held in  
20 this instance.

21 (C) If the releasee is detained pursuant to subparagraph (vi) of para-  
22 graph (a) of this subdivision and the person would be subject to rein-  
23 carceration of up to thirty days pursuant to subparagraph (x) of this  
24 paragraph should the violation be sustained at a final revocation hear-  
25 ing, then within ten days after the issuance of the order of detention,  
26 the department shall afford such person a final revocation hearing in  
27 person before a hearing officer designated by the department. Such  
28 hearing officer shall not have had any prior supervisory involvement  
29 over the alleged violator.

30 (D) If a notice of violation was issued or the releasee was released  
31 pursuant to subparagraph (vi) of paragraph (a) of this subdivision the  
32 department shall within thirty days of the issuance of the notice of  
33 violation or the order of release afford the person a final revocation  
34 hearing in person before a hearing officer designated by the department.  
35 Such hearing officer shall not have had any prior supervisory involve-  
36 ment over the alleged violator. Such hearing shall not be held at a  
37 correctional facility, detention center or local correctional facility.

38 (E) However, if an alleged violator requests and receives any post-  
39 ponement of his revocation hearing, or consents to a postponed revoca-  
40 tion proceeding initiated by the board, or if an alleged violator, by  
41 his actions otherwise precludes the prompt conduct of such proceedings,  
42 the time limit may be extended.

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

46 (iii) Both the alleged violator and an attorney who has filed a notice  
47 of appearance on his behalf in accordance with the rules of the board of  
48 parole shall be given written notice of the date, place and time of the  
49 hearing [as soon as possible but at least fourteen days prior to the  
50 scheduled date] pursuant to subparagraph (ix) of paragraph (c) of this  
51 subdivision.

52 (iv) The alleged violator shall be given written notice of the rights  
53 enumerated in subparagraph (iii) of paragraph (c) of this subdivision as  
54 well as of his right to present mitigating evidence relevant to restora-  
55 tion to presumptive release, parole, conditional release or post-release  
56 supervision and his right to counsel.

(v) The alleged violator shall be permitted representation by counsel at the revocation hearing. In any case, including when a superior court is called upon to evaluate the capacity of an alleged violator in a parole revocation proceeding, where such person is financially unable to retain counsel, the criminal court of the city of New York, the county court or district court in the county where the violation is alleged to have occurred or where the hearing is held, shall assign counsel in accordance with the county or city plan for representation placed in operation pursuant to article eighteen-B of the county law. He or she shall have the right to confront and cross-examine adverse witnesses, unless there is good cause for their non-attendance as determined by the presiding officer; present witnesses and documentary evidence in defense of the charges; and present witnesses and documentary evidence relevant to the question whether reincarceration of the alleged violator is appropriate.

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

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

(viii) At the conclusion of the hearing the presiding officer may sustain any or all of the violation charges or may dismiss any or all violation charges. He may sustain a violation charge only if the charge is supported by a preponderance of the evidence adduced.

(ix) If the presiding officer is not satisfied that there is a preponderance of evidence in support of the violation, he shall dismiss the violation, cancel the delinquency and restore the person to presumptive release, parole, conditional release or post-release supervision.

(x) If the presiding officer is satisfied that there is a preponderance of evidence that the alleged violator violated one or more conditions of release in an important respect, he or she shall so find.

Incarceration shall not be imposed for any tier 2 violation. For each tier 1 violation so found, the presiding officer may (A) direct that the ~~[presumptive releasee, parolee, conditional releasee or person serving a period of post-release supervision]~~ releasee be restored to supervision; (B) as an alternative to reincarceration, direct the ~~[presumptive releasee, parolee, conditional releasee or person serving a period of post-release supervision be placed in a parole transition facility for a period not to exceed one hundred eighty days and subsequent restoration to supervision]~~ releasee receive re-entry services in the community from qualified nonprofit agencies; or (C) ~~[in the case of presumptive releasees, parolees or conditional releasees,]~~ subject to subparagraph (xi) of this paragraph direct the violator's reincarceration ~~[and fix a date for consideration by the board for re-release on presumptive release, or parole or conditional release, as the case may be, or (D) in the case of persons released to a period of post-release supervision, direct the violator's reincarceration up to the balance of the remaining period of post-release supervision, not to exceed five years, provided, however, that a defendant serving a term of post-release supervision for a~~



~~conviction of a felony sex offense defined in section 70.80 of the penal law may be subject to a further period of imprisonment up to the balance of the remaining period of post-release supervision], subject to the following limitations: (1) for absconding, up to seven days reincarceration may be imposed for the first violation, up to fifteen days reincarceration may be imposed for the second violation, and up to thirty days reincarceration may be imposed for the third or any subsequent violation; and (2) for all other tier 1 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. If a warrant was executed pursuant to subparagraph (vi) of paragraph (a) of this subdivision and the person was detained pursuant to such subparagraph pending preliminary or revocation hearings, any period of reincarceration imposed pursuant to this paragraph shall be counted from the date of the execution of the warrant. If a warrant was executed pursuant to subparagraph (vi) of paragraph (a) of this subdivision but a court released the person pending preliminary or revocation hearings, any period of reincarceration imposed pursuant to this paragraph shall be counted from the date of issuance of a determination after a final 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 preliminary or revocation hearings shall count toward the 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 for conduct that is the subject of a notice of violation, any time the person spent confined in jail shall count towards 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 shall run concurrently if more than one violation is adjudicated. 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) If the presiding officer sustains any violations, he must prepare a written statement, to be made available to the alleged violator and his counsel, indicating the evidence relied upon and the reasons for revoking presumptive release, parole, conditional release or post-release supervision, and for the disposition made.

(xii) If at any time during a revocation proceeding the alleged violator, his or her counsel, or an employee of the department contends, or if it reasonably appears to the hearing officer, that the alleged violator is an incapacitated person as that term is defined in subdivision one of section 730.10 of the criminal procedure law and no judicial determination has been made that the alleged violator is an incapacitated person, the revocation proceeding shall be temporarily stayed until the superior court determines whether or not the person is fit to proceed. The matter shall be promptly referred to the superior court for determination of the alleged violator's fitness to proceed in a manner consistent with the provisions of article seven hundred thirty of the criminal procedure law, provided however that the superior court shall immediately appoint counsel for any unrepresented alleged violator eligible for appointed counsel under subparagraph (v) of this paragraph

~~[(f) of subdivision three of section two hundred fifty nine i of this chapter]~~. The court shall decide whether or not the alleged violator is incapacitated within thirty days of the referral from the hearing officer. If the court determines that the alleged violator is not an incapacitated person, the court shall order that the matter be returned to the board of parole for continuation and disposition of the revocation proceeding. If the court determines that the alleged violator is an incapacitated person and if no felony charges are pending against the alleged violator, the court shall issue a final order of observation committing such person to the custody of the commissioner of mental health or the commissioner of developmental disabilities for care and treatment in an appropriate institution in a manner consistent with subdivision one of section 730.40 of the criminal procedure law. If a final order of observation has been issued pursuant to this section, the hearing officer shall dismiss the violation charges and such dismissal shall act as a bar to any further proceeding under this section against the alleged violator for such violations. If felony criminal charges are pending at any time against an alleged violator who has been referred to superior court for a fitness evaluation but before a determination of fitness has been made pursuant to this section, the court shall decide whether or not the alleged violator is incapacitated pursuant to article seven hundred thirty of the criminal procedure law and the revocation proceeding shall be held in abeyance until such decision has been reached. The hearing officer shall adopt the capacity finding of the court and either terminate the revocation process if an order of observation has been made by the court or proceed with the revocation hearing if the alleged violator has been found not to be an incapacitated person.

§ 8. This act shall take effect immediately.