

STATE OF NEW YORK

5493

2019-2020 Regular Sessions

IN ASSEMBLY

February 12, 2019

Introduced by M. of A. MOSLEY -- read once and referred to the Committee on Correction

AN ACT to amend the executive law and the penal law, in relation to revocation of presumptive release, parole, conditional release and post-release supervision

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

Section 1. Section 259 of the executive law is amended by adding two new subdivisions 5 and 6 to read as follows:

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

6. "Technical violation" means any violation of a condition of community supervision other than an allegation of a criminal act that is subsequently proven to be a conviction for a felony offense or that has been proven to be a misdemeanor offense under section 135.05 or 135.45 or article 120 or 130 of the penal law.

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

3. Delinquency. (a) When a person is alleged to have violated the terms of presumptive release or parole willfully for the purpose of permanently avoiding supervision by failing to notify his or her community supervision officer of a change in residence, failing to make office or written reports as directed, or 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, and the state board of parole has declared such person to be delinquent,

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

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1 the declaration of delinquency shall interrupt the person's sentence as
2 of the date of the delinquency and such interruption shall continue
3 until the [~~return of the person to an institution under the jurisdiction~~
4 ~~of the state department of corrections and community supervision~~]
5 execution of the warrant.

6 (b) When a person is alleged to have violated the terms of his or her
7 conditional release or post-release supervision willfully for the
8 purpose of permanently avoiding supervision by failing to notify his or
9 her community supervision officer of a change in residence, failure to
10 make office or written reports as directed, or leaving the state of New
11 York or any other state to which the releasee is released or trans-
12 ferred, or any area defined in writing by his parole officer, without
13 permission and has been declared delinquent by the parole board or the
14 local conditional release commission having supervision over such
15 person, the declaration of delinquency shall interrupt the period of
16 supervision or post-release supervision as of the date of the delinquen-
17 cy. For a conditional release, such interruption shall continue until
18 the [~~return of the person to the institution from which he or she was~~
19 ~~released or, if he or she was released from an institution under the~~
20 ~~jurisdiction of the state department of corrections and community super-~~
21 ~~vision, to an institution under the jurisdiction of that department.~~
22 ~~Upon such return, the person shall resume service of his or her~~
23 ~~sentence]~~ execution of the warrant. For a person released to post-re-
24 lease supervision, the provisions of section 70.45 of this article shall
25 apply.

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

31 ~~(i) that such custody was due to an arrest or surrender based upon the~~
32 ~~delinquency; or~~

33 ~~(ii) that such custody arose from an arrest on another charge which~~
34 ~~culminated in a dismissal or an acquittal; or~~

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

40 4. Earned time credits. (a) After a person has begun a period of
41 community supervision pursuant to this section and section 70.45 of this
42 article, such period shall be reduced by thirty days for every thirty
43 days that such person does not violate a condition of his or her commu-
44 nity supervision, provided the person is not subject to any sentence
45 with a maximum term of life imprisonment. Any such awarded earned time
46 credits shall be applied against such person's unserved portion of the
47 maximum term, aggregate maximum term or period of post-release super-
48 vision for any current sentence.

49 (b) Earned time credits may be withheld or revoked only for the thir-
50 ty-day period commencing from the date of violative behavior sustained
51 at a final revocation hearing, except that earned time credits may be
52 withheld or revoked for the entire time period during which a releasee
53 absconded from supervision, as sustained at a final revocation hearing,
54 and as defined in subparagraph (xii) of paragraph (f) of subdivision
55 three of section two hundred fifty-nine-i of the executive law. Earned
56 time credits may not be earned during a period of incarceration imposed

1 based on a sustained violation. A new thirty-day period shall commence
2 on the day the period of incarceration ends or an order is issued
3 restoring a person to supervision, whichever is earlier.

4 (c) When a person is subject to more than one period of community
5 supervision, the reduction authorized in this subdivision shall be
6 applied to every period of parole or conditional release to which the
7 person is subject.

8 (d) Earned time credits shall be awarded to all people subject to
9 community supervision at the time this legislation becomes effective
10 retroactive to the initial date the person began his or her earliest
11 current period of community supervision. The department shall have six
12 months from the effective date of this subdivision to calculate all such
13 retroactive earned time credits; however, the department of corrections
14 and community supervision shall prioritize earned time credit calcu-
15 lations for releasees whose terms of community supervision are due to
16 terminate before the conclusion of such six months.

17 § 3. Paragraphs (d), (e) and (f) of subdivision 5 of section 70.45 of
18 the penal law, as amended by section 127-j of subpart B of part C of
19 chapter 62 of the laws of 2011, are amended to read as follows:

20 (d) When a person is alleged to have violated a condition of post-re-
21 lease supervision willfully for the purpose of permanently avoiding
22 supervision by failing to notify community supervision officer of a
23 change in residence, failure to make office or written reports as
24 directed, or leaving the state of New York or any other state to which
25 the releasee is released or transferred, or any area defined in writing
26 by his or her parole officer, without permission and the department of
27 corrections and community supervision has declared such person to be
28 delinquent: (i) the declaration of delinquency shall interrupt the peri-
29 od of post-release supervision; (ii) such interruption shall continue
30 until the person is restored to post-release supervision; (iii) if the
31 person is restored to post-release supervision without being returned to
32 the department of corrections and community supervision, any time spent
33 in custody from the date of delinquency until restoration to post-re-
34 lease supervision shall first be credited to the maximum or aggregate
35 maximum term of the sentence or sentences of imprisonment, but only to
36 the extent authorized by subdivision three of section 70.40 of this
37 article. Any time spent in custody solely pursuant to such delinquency
38 after completion of the maximum or aggregate maximum term of the
39 sentence or sentences of imprisonment shall be credited to the period of
40 post-release supervision, if any; and (iv) if the person is ordered
41 returned to the department of corrections and community supervision, the
42 person shall be required to serve the time assessment before being
43 re-released to post-release supervision. ~~[In the event the balance of~~
44 ~~the remaining period of post-release supervision is six months or less,~~
45 ~~such time assessment may be up to six months unless a longer period is~~
46 ~~authorized pursuant to subdivision one of this section. The]~~ If the
47 person is detained pursuant to paragraph (a) of subdivision three of
48 section two hundred fifty-nine-i of the executive law pending prelimi-
49 nary or revocation hearings, the time assessment shall commence upon the
50 execution of the warrant. If a warrant was executed pursuant to para-
51 graph (a) of subdivision three of section two hundred fifty-nine-i of
52 the executive law but a criminal court released the person pending
53 preliminary or revocation hearings, the time assessment shall commence
54 upon the issuance of a determination after a final hearing that the
55 person has violated one or more conditions of community supervision, and
56 shall include the time period between execution of the warrant and

1 release of the person pending preliminary or revocation hearings. If a
2 releasee is detained on bail pursuant to section 530.10 of the criminal
3 procedure law, the time assessment shall include any time the releasee
4 spent in such detention. If a notice of violation was issued pursuant to
5 subdivision three of section two hundred fifty-nine-i of the executive
6 law, the time assessment shall commence upon the issuance of a determi-
7 nation after a final hearing that the person has violated one or more
8 conditions of supervision. While serving such assessment, the person
9 shall not receive any good behavior allowance pursuant to section eight
10 hundred three of the correction law. Any time spent in custody from the
11 date of delinquency until return to the department of corrections and
12 community supervision shall first be credited to the maximum or aggre-
13 gate maximum term of the sentence or sentences of imprisonment, but only
14 to the extent authorized by subdivision three of section 70.40 of this
15 article. The maximum or aggregate maximum term of the sentence or
16 sentences of imprisonment shall run while the person is serving such
17 time assessment in the custody of the department of corrections and
18 community supervision. Any time spent in custody solely pursuant to such
19 delinquency after completion of the maximum or aggregate maximum term of
20 the sentence or sentences of imprisonment shall be credited to the peri-
21 od of post-release supervision, if any.

22 ~~[(e) Notwithstanding paragraph (d) of this subdivision, in the event a~~
23 ~~person is sentenced to one or more additional indeterminate or determi-~~
24 ~~nate term or terms of imprisonment prior to the completion of the period~~
25 ~~of post release supervision, such period of post release supervision~~
26 ~~shall be held in abeyance and the person shall be committed to the~~
27 ~~custody of the department of corrections and community supervision in~~
28 ~~accordance with the requirements of the prior and additional terms of~~
29 ~~imprisonment.~~

30 ~~(f) When a person serving a period of post release supervision is~~
31 ~~returned to the department of corrections and community supervision~~
32 ~~pursuant to an additional consecutive sentence of imprisonment and with-~~
33 ~~out a declaration of delinquency, such period of post release super-~~
34 ~~vision shall be held in abeyance while the person is in the custody of~~
35 ~~the department of corrections and community supervision. Such period of~~
36 ~~post release supervision shall resume running upon the person's re re-~~
37 ~~lease.]~~

38 § 4. Subparagraph (i) of paragraph (a) of subdivision 3 of section
39 259-i of the executive law, as amended by chapter 545 of the laws of
40 2015, is amended and five new subparagraphs (iv), (v), (vi), (vii) and
41 (viii) are added to read as follows:

42 (i) If the parole officer having charge of a presumptively released,
43 paroled or conditionally released person or a person released to post-
44 release supervision or a person received under the uniform act for out-
45 of-state parolee supervision shall have [~~reasonable~~] probable cause to
46 believe that such person has lapsed into criminal ways [~~or company~~], or
47 has violated one or more conditions of his presumptive release, parole,
48 conditional release or post-release supervision, such parole officer
49 shall report such fact to a member of the board, or to any officer of
50 the department designated by the board, and thereupon a written notice
51 of violation may be issued, or if the person would be subject to rein-
52 carceration pursuant to subparagraph (x) of paragraph (f) of this subdi-
53 vision should the violation be sustained at a final revocation hearing a
54 warrant may be issued for the retaking of such person and for his tempo-
55 rary detention in accordance with the rules of the board unless such
56 person has been determined to be currently unfit to proceed to trial or

1 is currently subject to a temporary or final order of observation pursu-
2 ant to article seven hundred thirty of the criminal procedure law, in
3 which case no notice of violation or warrant shall be issued. The retak-
4 ing and detention of any such person may be further regulated by rules
5 and regulations of the department not inconsistent with this article. A
6 warrant issued pursuant to this section shall constitute sufficient
7 authority to the superintendent or other person in charge of any jail,
8 penitentiary, lockup or detention pen to whom it is delivered to hold in
9 temporary detention the person named therein[; ~~except that a warrant~~
10 ~~issued with respect to a person who has been released on medical parole~~
11 ~~pursuant to section two hundred fifty nine r of this article and whose~~
12 ~~parole is being revoked pursuant to paragraph (h) of subdivision four of~~
13 ~~such section shall constitute authority for the immediate placement of~~
14 ~~the parolee only into imprisonment in the custody of the department to~~
15 ~~hold in temporary detention. A warrant issued pursuant to this section~~
16 ~~shall also constitute sufficient authority to the person in charge of a~~
17 ~~drug treatment campus, as defined in subdivision twenty of section two~~
18 ~~of the correction law, to hold the person named therein, in accordance~~
19 ~~with the procedural requirements of this section, for a period of at~~
20 ~~least ninety days to complete an intensive drug treatment program~~
21 ~~mandated by the board as an alternative to presumptive release or parole~~
22 ~~or conditional release revocation, or the revocation of post-release~~
23 ~~supervision, and shall also constitute sufficient authority for return~~
24 ~~of the person named therein to local custody to hold in temporary~~
25 ~~detention for further revocation proceedings in the event said person~~
26 ~~does not successfully complete the intensive drug treatment program. The~~
27 ~~board's rules shall provide for cancellation of delinquency and restora-~~
28 ~~tion to supervision upon the successful completion of the program]~~ for
29 up to twenty-four hours pending a recognizance hearing pursuant to
30 subparagraph (iv) of this paragraph.

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

35 (v) At a recognizance hearing, the department shall have the burden to
36 demonstrate to the court that the executed warrant was properly issued
37 pursuant to this section, including that there is probable cause to
38 believe that the releasee has lapsed into criminal ways or has violated
39 one or more conditions of his presumptive release, parole, conditional
40 release or post-release supervision in an important respect, and that
41 the releasee is potentially subject to incarceration pursuant to subpar-
42 agraph (x) of paragraph (f) of this subdivision.

43 (vi) At a recognized hearing, the court shall consider all available
44 evidence of the releasee's employment, family and community ties includ-
45 ing length of residency in the community, history of reporting in a
46 timely fashion to a parole or supervisory officer, and other indicators
47 of stability. At the conclusion of the recognizance hearing, the court
48 shall release the releasee on his or her own recognizance unless the
49 court finds on the record that release on recognizance will not reason-
50 ably assure the releasee's appearance at subsequent preliminary or revo-
51 cation hearings. In such instances, the court may order that the releas-
52 ee abide by the least restrictive non-monetary condition or set of
53 conditions in the community necessary to reasonably ensure the
54 releasee's appearance at subsequent preliminary or revocation hearings.
55 The releasee shall not be required to pay for any part of the cost of
56 release under non-monetary conditions. The court may order that the

1 releasee be detained pending preliminary or revocation hearings only
2 upon a finding that the releasee currently presents a substantial risk
3 of willfully failing to appear at the preliminary or revocation hearings
4 and that no non-monetary condition or combination of conditions in the
5 community will reasonably assure the releasee's appearance at the
6 preliminary or revocation hearings.

7 (vii) The alleged violator shall be permitted representation by coun-
8 sel at the recognizance hearing. In any case, including when a court is
9 called upon to evaluate the capacity of an alleged violator in a parole
10 recognizance proceeding, where such person is financially unable to
11 retain counsel, the criminal court of the city of New York, the county
12 court or district court in the county where the violation is alleged to
13 have occurred or where the hearing is held, shall assign counsel in
14 accordance with the county or city plan for representation placed in
15 operation pursuant to article eighteen-b of the county law.

16 (viii) If a releasee is brought to a criminal court due to an arrest
17 for any felony or misdemeanor charge and a parole warrant has been
18 issued, then the criminal court's order pursuant to section 510.30 of
19 the criminal procedure law shall control in determining whether the
20 releasee shall be detained pending a preliminary or revocation hearing.
21 If the criminal court imposes bail pursuant to section 530.10 of the
22 criminal procedure law, and the releasee-defendant secures release by
23 paying bail or by operation of law, then the releasee shall not be
24 detained further based solely on the parole warrant.

25 § 5. Subparagraphs (i), (iii) and (iv) of paragraph (c) of subdivision
26 3 of section 259-i of the executive law, subparagraph (i) as amended by
27 section 11 of part E of chapter 62 of the laws of 2003, and subpara-
28 graphs (iii) and (iv) as amended by section 1 of part E of chapter 56 of
29 the laws of 2007, are amended and two new subparagraphs (ix) and (x) are
30 added to read as follows:

31 ~~(i) [Within fifteen days after the warrant for retaking and temporary~~
32 ~~detention has been executed, unless the releasee has been convicted of a~~
33 ~~new crime committed while under presumptive release, parole, conditional~~
34 ~~release or post-release supervision, the board of parole shall afford~~
35 ~~the alleged presumptive release, parole, conditional release or post-re-~~
36 ~~lease supervision violator a preliminary revocation hearing before a~~
37 ~~hearing officer designated by the board of parole. Such hearing officer~~
38 ~~shall not have had any prior supervisory involvement over the alleged~~
39 ~~violator]~~ (A) For any alleged technical violation, if a notice of
40 violation was issued or a person was released on recognizance pursuant
41 to subparagraph (iv) of paragraph (a) of this subdivision, the depart-
42 ment shall within ten days of the issuance of the notice of violation or
43 the order of release on recognizance afford the person a preliminary
44 revocation hearing before a hearing officer designated by the depart-
45 ment. Such hearing officer shall not have had any prior supervisory
46 involvement over the alleged violator. Such hearing shall not be held at
47 a correctional facility, detention center or local correctional facili-
48 ty.

49 (B) For any alleged technical violation, if a court issued an order
50 detaining a person pursuant to subparagraph (iv) of paragraph (a) of
51 this subdivision and the person would be subject to reincarceration of
52 up to thirty days or more pursuant to subparagraph (x) of paragraph (f)
53 of this subdivision should the violation be sustained at a final revoca-
54 tion hearing, then within five days of the issuance of the order of
55 detention the department shall afford such person a preliminary revoca-
56 tion hearing before a hearing officer designated by the department. Such

1 hearing officer shall not have had any prior supervisory involvement
2 over the alleged violator.

3 (iii) The alleged violator shall, [~~within three days of the execution~~
4 ~~of the warrant~~] at the time a notice of violation is issued or at the
5 time of a recognizance hearing, be given written notice of the time,
6 place and purpose of the preliminary hearing [~~unless he or she is~~
7 ~~detained pursuant to the provisions of subparagraph (iv) of paragraph~~
8 ~~(a) of this subdivision. In those instances, the alleged violator will~~
9 ~~be given written notice of the time, place and purpose of the hearing~~
10 ~~within five days of the execution of the warrant~~], or if no preliminary
11 hearing is required pursuant to this section, of the final revocation

12 hearing. The notice shall state what conditions of presumptive release,
13 parole, conditional release or post-release supervision are alleged to
14 have been violated, and in what manner; that such person shall have the
15 right to appear and speak in his or her own behalf; that he or she shall
16 have the right to introduce letters and documents; that he or she may
17 present witnesses who can give relevant information to the hearing offi-
18 cer; that he or she has the right to confront the witnesses against him
19 or her; and that such person shall have the right to representation by
20 counsel at any preliminary and final revocation hearings. Adverse
21 witnesses may be compelled to attend the preliminary hearing unless the
22 prisoner has been convicted of a new crime while on supervision or
23 unless the hearing officer finds good cause for their non-attendance. As
24 far as practicable or feasible, any additional documents having been
25 collected or prepared that support the charge shall be delivered to the
26 alleged violator.

27 (iv) [~~The preliminary hearing shall be scheduled to take place no~~
28 ~~later than fifteen days from the date of execution of the warrant.~~] The
29 standard of proof at the preliminary hearing shall be probable cause to
30 believe that the presumptive releasee, parolee, conditional releasee or
31 person under post-release supervision has violated one or more condi-
32 tions of his or her presumptive release, parole, conditional release or
33 post-release supervision in an important respect. Proof of conviction of
34 a crime committed while under supervision shall constitute probable
35 cause for the purposes of this section.

36 (ix) If the hearing officer finds probable cause to believe that such
37 person has violated one or more conditions of release in an important
38 respect, the releasee shall, at the conclusion of the preliminary hear-
39 ing be given written notice of the time, place and purpose of the final
40 revocation hearing. The notice shall state what conditions of community
41 supervision are alleged to have been violated, when, where and in what
42 manner; that such person shall have the right to representation by coun-
43 sel at any final revocation hearing; that such person shall have the
44 right to appear and speak in his or her own behalf; that he or she shall
45 have the right to introduce letters and documents; that he or she may
46 present witnesses who can give relevant information to the hearing offi-
47 cer; that he or she has the right to confront the witnesses against him
48 or her. As far as practicable or feasible, any additional documents
49 having been collected or prepared that support the charge shall be
50 delivered to the releasee. Adverse witnesses may be compelled to attend
51 the final revocation hearing unless the prisoner has been convicted of a
52 new crime while on supervision or unless the hearing officer finds good
53 cause for their non-attendance.

54 (x) The alleged violator shall be permitted representation by counsel
55 at the preliminary hearing. In any case, including when a court is
56 called upon to evaluate the capacity of an alleged violator in a parole

preliminary 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.

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

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

(A) If a court issued an order detaining such person pursuant to subparagraph (iv) of paragraph (a) of this subdivision and the person would be subject to reincarceration of up to seven days pursuant to subparagraph (x) of this paragraph should the violation be sustained at a final revocation hearing, then within two days of the issuance of the order of detention, the department shall afford such person a final revocation hearing before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator. No preliminary revocation hearing shall be held in this instance.

(B) If a court issued an order detaining such person pursuant to subparagraph (iv) of paragraph (a) of this subdivision and the person would be subject to reincarceration of up to fifteen days pursuant to subparagraph (x) of this paragraph should the violation be sustained at a final revocation hearing, then within four days of the issuance of the order of detention, the department shall afford such person a final revocation hearing before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator. No preliminary revocation hearing shall be held in this instance.

(C) If a court issued an order detaining such person pursuant to subparagraph (iv) of paragraph (a) of this subdivision and the person would be subject to reincarceration of up to thirty days or more pursuant to subparagraph (x) of this paragraph should the violation be sustained at a final revocation hearing, then within ten days after the issuance of the order of detention, the department shall afford such person a final revocation hearing before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator.

(D) If a notice of violation was issued or such person was released on recognizance pursuant to subparagraph (iv) of paragraph (a) of this subdivision, or the person is accused of a non-technical violation, the department shall within thirty days of the issuance of the notice of violation or the order of release on recognizance afford the person a final revocation hearing before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator. Such hearing shall not be held at a correctional facility, detention center or local correctional facility. Localities shall have six months from the date of the effective date of the chapter of the laws of two thousand nineteen that

1 amended this paragraph to begin hold such hearings at allowable
2 locations.

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

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

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

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

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

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

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

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

(ix) If the presiding officer is not satisfied that there is ~~[a preponderance of]~~ clear and convincing 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]~~ clear and convincing evidence that the alleged violator violated one or more conditions of release in an important respect, he or she shall so find. For each violation found, the presiding officer shall direct that no earned time credits shall be awarded for the thirty day period commencing from the date of the sustained violation.

(xi) Incarceration shall not be imposed for any of the following violations: (A) positive drug test for drugs or a controlled substance without proper medical authorization, or possession of drug paraphernalia, unless the releasee is subject to community supervision due to a conviction for driving while ability impaired at least in part by drugs pursuant to section eleven hundred ninety-two of the vehicle and traffic law; (B) positive alcohol test or use or possession of alcohol, unless the releasee is subject to community supervision due to a conviction for driving while ability impaired at least in part by alcohol or while intoxicated pursuant to section eleven hundred ninety-two of the vehicle and traffic law; (C) failing to notify community supervision officer of a change in employment or program status; (D) failing to notify community supervision officer of a change in residence, absent clear and convincing evidence that the releasee acted willfully for the purpose of permanently avoiding supervision; (E) violating curfew; (F) failure to pay surcharges and fees, including fees imposed pursuant to section 60.35 of the penal law, sections eighteen hundred nine and eighteen hundred nine-c of the vehicle and traffic law, or section 27.12 of the parks, recreation and historic preservation law; (G) being in the company of or fraternizing with any person with a criminal record or who has been adjudicated a youthful offender, juvenile delinquent, juvenile or adolescent offender; (H) failure to make office or written reports as directed, absent clear and convincing evidence that the releasee acted willfully for the purpose of permanently avoiding supervision; (I) 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, absent clear and convincing evidence that the releasee acted willfully for the purpose of permanently avoiding supervision; (J) failure to notify community supervision officer of contact with any law enforcement agency, absent clear and convincing evidence that the releasee intended to hide evidence of his or others' behavior that constitutes a violation of the penal law; (K) failure to obey special conditions of community supervision, absent clear and convincing evidence that the failure poses a substantial risk to public safety and cannot be addressed safely in the community including with counseling or programming; and (L) obtaining a driver's license or driving a car with a valid driver's license, unless either action is explicitly prohibited by the person's conviction.

(xii) For each 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 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 subse-

~~quent restoration to supervision]~~ receive re-entry services in the
community from qualified nonprofit agencies; (C) in the case of presump-
tive releasees, parolees or conditional releasees, 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, which is defined as failing to notify his or her community
supervision officer of a change in residence after a finding of clear
and convincing evidence that the releasee acted willfully for the
purpose of permanently avoiding supervision; failure to make office or
written reports as directed after a finding of clear and convincing
evidence that the releasee acted willfully for the purpose of permanent-
ly avoiding supervision; and 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, after a
finding of clear and convincing evidence that the releasee acted will-
fully for the purpose of permanently avoiding supervision, up to seven
days incarceration may be imposed for the first violation, up to fifteen
days incarceration may be imposed for the second violation, and up to
thirty days incarceration may be imposed for the third or any subsequent
violation; (2) for all other technical violations no period of reincar-
ceration may be imposed for the first and second substantiated technical
violations; up to seven days reincarceration may be imposed for the
third substantiated technical violation; up to fifteen days reincarcera-
tion may be imposed for the fourth substantiated technical violation; up
to thirty days reincarceration may be imposed for the fifth and subse-
quent substantiated technical violations; and (3) for non-technical
violations, up to ninety days reincarceration may be imposed. If a
warrant was executed pursuant to subparagraph (iv) of paragraph (a) of
this subdivision and the person was detained pursuant to such subpara-
graph pending preliminary or revocation hearings, any period of incar-
ceration 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 (iv) of paragraph (a) of this subdivision but a criminal
court released the person pending preliminary or revocation hearings,
any period of incarceration imposed pursuant to this paragraph shall be
counted from the date of issuance of a determination after a final hear-
ing 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 detained on bail pursuant to section 530.10 of the
criminal procedure law, any time the person spent in detention on bail
shall count towards any period of incarceration 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 at a time. If
a period of incarceration is imposed pursuant to this paragraph, the
releasee shall be released from custody upon expiration of the period or

1 the end of the releasee's period of community supervision, whichever
2 shall be sooner. For the violator serving an indeterminate sentence who
3 while re-incarcerated has not been found by the department to have
4 committed a serious disciplinary infraction, such violator shall be
5 re-released on the date fixed at the revocation hearing. For the viola-
6 tor serving an indeterminate sentence who has been found by the depart-
7 ment to have committed a serious disciplinary infraction while re-incar-
8 cerated, the department shall refer the violator to the board for
9 consideration for re-release to community supervision. Upon such refer-
10 ral the board may waive the personal interview between a member or
11 members of the board and the violator to determine the suitability for
12 re-release when the board directs that the violator be re-released upon
13 expiration of the time assessment. The board shall retain the authority
14 to suspend the date fixed for re-release based on the violator's commis-
15 sion of a serious disciplinary infraction and shall in such case require
16 a personal interview be conducted within a reasonable time between a
17 panel of members of the board and the violator to determine suitability
18 for re-release. If an interview is required, the board shall notify the
19 violator in advance of the date and time of such interview in accordance
20 with the rules and regulations of the board.

21 ~~[(xii)]~~ (xiii) If the presiding officer sustains any violations, he
22 must prepare a written statement, to be made available to the alleged
23 violator and his counsel, indicating the evidence relied upon and the
24 reasons for revoking presumptive release, parole, conditional release or
25 post-release supervision, and for the disposition made.

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

40 ~~[(f) of subdivision three of section two hundred fifty-nine i of this~~
41 ~~chapter]~~. The court shall decide whether or not the alleged violator is
42 incapacitated within thirty days of the referral from the hearing offi-
43 cer. If the court determines that the alleged violator is not an inca-
44 pacitated person, the court shall order that the matter be returned to
45 the board of parole for continuation and disposition of the revocation
46 proceeding. If the court determines that the alleged violator is an
47 incapacitated person and if no felony charges are pending against the
48 alleged violator, the court shall issue a final order of observation
49 committing such person to the custody of the commissioner of mental
50 health or the commissioner of developmental disabilities for care and
51 treatment in an appropriate institution in a manner consistent with
52 subdivision one of section 730.40 of the criminal procedure law. If a
53 final order of observation has been issued pursuant to this section, the
54 hearing officer shall dismiss the violation charges and such dismissal
55 shall act as a bar to any further proceeding under this section against
56 the alleged violator for such violations. If felony criminal charges are

1 pending at any time against an alleged violator who has been referred to
2 superior court for a fitness evaluation but before a determination of
3 fitness has been made pursuant to this section, the court shall decide
4 whether or not the alleged violator is incapacitated pursuant to article
5 seven hundred thirty of the criminal procedure law and the revocation
6 proceeding shall be held in abeyance until such decision has been
7 reached. The hearing officer shall adopt the capacity finding of the
8 court and either terminate the revocation process if an order of obser-
9 vation has been made by the court or proceed with the revocation hearing
10 if the alleged violator has been found not to be an incapacitated
11 person.

12 § 7. Section 259-i of the executive law is amended by adding a new
13 subdivision 9 to read as follows:

14 9. The board shall promulgate rules and regulations to facilitate the
15 presence of nonprofit service providers able to offer relevant communi-
16 ty-based services to releasees at all preliminary and final revocation
17 hearings for the purpose of helping people subject to community super-
18 vision successfully complete such supervision and avoid future such
19 supervision, and to help ensure presiding officers impose the least
20 restrictive reasonable sanction for any violation of community super-
21 vision.

22 § 8. This act shall take effect on the ninetieth day after it shall
23 have become a law; provided however the department of corrections and
24 community supervision shall have six months from the effective date of
25 this act to begin holding preliminary revocation hearings required by
26 the amendments to paragraph (c) of subdivision 3 of section 259-i of the
27 executive law made by section five of this act. Provided further, howev-
28 er, that the board of parole shall have two months from the effective
29 date of this act to identify each releasee incarcerated for a sustained
30 parole violation and determine whether incarceration may be imposed for
31 the sustained parole violation pursuant to subparagraph (xi) of para-
32 graph (f) of subdivision 3 of section 259-i of the executive law, as
33 added by section six of this act. If no incarceration may be imposed
34 pursuant to such subparagraph, the board shall immediately restore the
35 releasee to community supervision. If the releasee may be incarcerated
36 for the sustained violation the board shall fix a new date for release
37 pursuant to subparagraph (xii) of paragraph (f) of subdivision 3 of
38 section 259-i of the executive law, as amended by section six of this
39 act. If such release date has passed, the board shall immediately
40 restore the releasee to community supervision. Provided further, howev-
41 er, the department of corrections and community supervision shall have
42 six months from the effective date of this act to set up the final revo-
43 cation hearing courtrooms that are not at correctional facilities for
44 people who are not detained pending their hearing pursuant to the amend-
45 ments to paragraph (f) of subdivision 3 of section 259-p of the execu-
46 tive law as made by section six of this act. Effective immediately, the
47 addition, amendment and/or repeal of any rule or regulation necessary
48 for the implementation of this act on its effective date are authorized
49 and directed to be made and completed on or before such effective date.