

STATE OF NEW YORK

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2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sens. BENJAMIN, BAILEY, BIAGGI, BRESLIN, COMRIE, GIANARIS, HOYLMAN, JACKSON, KRUEGER, MAY, MONTGOMERY, MYRIE, PARKER, RIVERA, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- 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 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

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

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1 in residence, and reasonable efforts by the assigned community super-
2 vision officer to re-engage the releasee have been unsuccessful.

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

5 9. "Tier 2 violation" means any of the following technical violations:
6 violating curfew; failure to pay surcharges and fees, including fees
7 imposed pursuant to section 60.35 of the penal law, sections eighteen
8 hundred nine and eighteen hundred nine-c of the vehicle and traffic law,
9 or section 27.12 of the parks, recreation and historic preservation law;
10 obtaining a driver's license or driving a car with a valid driver's
11 license, provided however it shall not be a tier 2 violation if such
12 action is explicitly prohibited as a condition of such person's
13 sentence; positive test for or use or possession of alcohol, drugs, a
14 controlled substance without proper medical authorization, or drug
15 paraphernalia, provided however it shall not be a tier 2 violation if
16 the releasee is subject to community supervision due to a conviction
17 related to alcohol or drugs pursuant to section eleven hundred ninety-
18 two of the vehicle and traffic law; failing to notify a community super-
19 vision officer of a change in employment or program status; failing to
20 notify a community supervision officer of a change in residence,
21 provided however it shall not be a tier 2 violation if the releasee was
22 absconding; failure to make office or written reports as directed,
23 provided however it shall not be a tier 2 violation if the releasee was
24 absconding; 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 parole officer, without permission, provided however it shall not
27 be a tier 2 violation if the releasee was absconding; failure to notify
28 community supervision officer of contact with any law enforcement agen-
29 cy, provided however it shall not be a tier 2 violation if the releasee
30 intended to hide evidence of his or others' behavior that constitutes a
31 violation of the penal law; and failure to obey any other special condi-
32 tion of community supervision, provided however it shall not be a tier 2
33 violation if the failure cannot be addressed in the community with coun-
34 seling, treatment, or programming and all reasonable community-based
35 means to address the failure have been exhausted.

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

41 3. Delinquency. (a) When a person is alleged to have violated the
42 terms of presumptive release or parole by absconding, and the state
43 board of parole has declared such person to be delinquent, the declara-
44 tion of delinquency shall interrupt the person's sentence as of the date
45 of the delinquency and such interruption shall continue until the
46 ~~[return of the person to an institution under the jurisdiction of the~~
47 ~~state department of corrections and community supervision]~~ releasee's
48 appearance in response to a notice of violation or the date of the
49 execution of a warrant, whichever is earlier.

50 (b) When a person is alleged to have violated the terms of his or her
51 conditional release or post-release supervision by absconding and has
52 been declared delinquent by the parole board or the local conditional
53 release commission having supervision over such person, the declaration
54 of delinquency shall interrupt the period of supervision or post-release
55 supervision as of the date of the delinquency. For a conditional
56 release, such interruption shall continue until the ~~[return of the~~

~~person to the institution from which he or she was released or, if he or she was released from an institution under the jurisdiction of the state department of corrections and community supervision, to an institution under the jurisdiction of that department. Upon such return, the person shall resume service of his or her sentence]~~ releasee's appearance in response to a notice of violation or the date of the execution of a warrant, whichever is earlier. For a person released to post-release supervision, the provisions of section 70.45 of this article shall apply.

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

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

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

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

4. Earned time credits. (a) After a person has begun a period of community supervision pursuant to this section and section 70.45 of this article, such period shall be reduced by thirty days for every thirty days that such person does not violate a condition of his or her community supervision, provided the person is not subject to any sentence with a maximum term of life imprisonment. The calculation of earned time credit periods shall begin on the releasee's first day of community supervision and shall be awarded after each completed thirty day period. Any such awarded earned time credits shall be applied against such person's unserved portion of the maximum term, aggregate maximum term or period of post-release supervision for any current sentence.

(b) Earned time credits may be withheld or revoked only for the thirty-day period commencing from the date of violative behavior sustained at a final revocation hearing, except that earned time credits may be withheld or revoked for the entire time period during which a releasee absconded from supervision, as sustained at a final revocation hearing, and as defined in subparagraph (xii) of paragraph (f) of subdivision three of section two hundred fifty-nine-i of the executive law. Earned time credits may not be earned during a period of incarceration imposed based on a sustained violation or new criminal conviction. After a sustained violation, the calculation of an earned time credit period shall recommence on the thirty-first day after the date of the violative behavior or, if the sustained violation resulted in a term of incarceration, on the day the releasee is restored to community supervision, whichever is later.

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

(d) Earned time credits shall be awarded to any person subject to community supervision at the time this legislation becomes effective retroactive to the initial date such person began his or her earliest current period of community supervision. Provided however, if a

1 releasee's current period of community supervision has been interrupted
2 by a period of incarceration prior to the effective date of the chapter
3 of the laws of two thousand twenty which added this subdivision, no
4 earned time credits shall be awarded for such period of incarceration.
5 The department shall have six months from the effective date of this
6 subdivision to calculate all retroactive earned time credits; however,
7 the department of corrections and community supervision shall prioritize
8 earned time credit calculations for releasees whose terms of community
9 supervision are due to terminate before the conclusion of such six
10 months. Retroactive earned time credits shall not be awarded to any
11 releasee serving a term of incarceration for a sustained parole
12 violation at the time of the effective date of the chapter of the laws
13 of two thousand twenty which added this subdivision until the releasee
14 is returned to community supervision.

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

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

37 ~~release supervision is six months or less, such time assessment may be~~
38 ~~up to six months unless a longer period is authorized pursuant to subdi-~~
39 ~~vision one of this section. The] 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 preliminary or revocation hearings, the
42 time assessment shall commence upon the execution of the warrant. If a
43 warrant was executed pursuant to paragraph (a) of subdivision three of
44 section two hundred fifty-nine-i of the executive law but a trial court
45 released the person pending preliminary or revocation hearings, the time
46 assessment shall commence upon the issuance of a determination after a
47 final hearing that the person has violated one or more conditions of
48 community supervision, and shall include the time period between
49 execution of the warrant and release of the person pending preliminary
50 or revocation hearings. If a releasee is committed to the custody of the
51 sheriff pursuant to article five hundred thirty of the criminal proce-
52 dure law, the time assessment shall include any time the releasee spent
53 in such detention. If a notice of violation was issued pursuant to
54 subdivision three of section two hundred fifty-nine-i of the executive
55 law, the time assessment shall commence upon the issuance of a determi-
56 nation after a final hearing that the person has violated one or more

1 conditions of supervision. While serving such assessment, the person
2 shall not receive any good behavior allowance pursuant to section eight
3 hundred three of the correction law. Any time spent in custody from the
4 date of delinquency until return to the department of corrections and
5 community supervision shall first be credited to the maximum or aggregate
6 maximum term of the sentence or sentences of imprisonment, but only
7 to the extent authorized by subdivision three of section 70.40 of this
8 article. The maximum or aggregate maximum term of the sentence or
9 sentences of imprisonment shall run while the person is serving such
10 time assessment in the custody of the department of corrections and
11 community supervision. Any time spent in custody solely pursuant to such
12 delinquency after completion of the maximum or aggregate maximum term of
13 the sentence or sentences of imprisonment shall be credited to the period
14 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 in accordance with the
37 rules of the board. If the person has failed to appear as directed in
38 response to a notice of violation and has failed to appear voluntarily
39 within forty-eight hours after such time and the person would not be
40 subject to incarceration pursuant to subparagraph (xii) of paragraph (f)
41 of this subdivision should the violation be sustained at a final revoca-
42 tion hearing, no warrant shall issue and the violation shall be deemed
43 sustained. Notice of that decision shall be promptly served upon the
44 releasee. In such case, within one month of the date the notice of deci-
45 sion was served upon the releasee, the releasee may move to vacate such
46 a sustained violation if the releasee can show that the notice of
47 violation was not properly served or the failure to appear was otherwise
48 excusable. If the parole officer having charge of a presumptively
49 released, paroled or conditionally released person or a person released
50 to post-release supervision or a person received under the uniform act
51 for out of state parolee supervision shall have probable cause to
52 believe that such person has committed a non-technical violation, such
53 parole officer shall report such fact to a member of the board, or to
54 any officer of the department designated by the board, and thereupon a
55 notice of violation may be issued or a warrant may be issued for the

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

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

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

47 (vi) At a recognizance hearing, the court shall consider all available
48 evidence of the releasee's employment, family and community ties includ-
49 ing length of residency in the community, history of reporting in a
50 timely fashion to a parole or supervisory officer, and other indicators
51 of stability. At the conclusion of the recognizance hearing, the court
52 may order that the releasee be detained pending preliminary or final
53 revocation hearings only upon a finding that the releasee currently
54 presents a substantial risk of willfully failing to appear at the
55 preliminary or final revocation hearings and that no non-monetary condi-
56 tion or combination of conditions in the community will reasonably

1 assure the releasee's appearance at the preliminary or final revocation
2 hearings. Otherwise, the court shall release the releasee on the least
3 restrictive non-monetary conditions that will reasonably assure the
4 releasee's appearance at subsequent preliminary or revocation hearings,
5 with a presumption of release on recognizance. The court shall explain
6 its decision on the record or in writing. If non-monetary conditions of
7 release are imposed, the releasee shall not be required to pay for any
8 part of the cost of such conditions.

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

18 (viii) Such recognizance hearing may be held at the same time as a
19 proceeding pursuant to article five hundred thirty of the criminal
20 procedure law based on the same alleged conduct. If at the proceeding
21 pursuant to article five hundred thirty of the criminal procedure law
22 the court imposes bail or commits the releasee to the custody of the
23 sheriff pursuant to article five hundred thirty of the criminal proce-
24 dure law and the releasee secures release by paying bail or by operation
25 of law, then the releasee shall not be detained further based solely on
26 the warrant issued by the department. If the department issues a warrant
27 for a non-technical violation for alleged criminal conduct that has
28 already been the subject of a court's order pursuant to article five
29 hundred thirty of the criminal procedure law, then within twenty-four
30 hours of execution of the warrant the releasee shall be provided a
31 recognizance hearing pursuant to this subparagraph.

32 § 5. Subparagraphs (i), (iii) and (iv) of paragraph (c) of subdivision
33 3 of section 259-i of the executive law, subparagraph (i) as amended by
34 section 11 of part E of chapter 62 of the laws of 2003, and subpara-
35 graphs (iii) and (iv) as amended by section 1 of part E of chapter 56 of
36 the laws of 2007, are amended and two new subparagraphs (ix) and (x) are
37 added to read as follows:

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

1 (B) For any alleged technical violation for which a court issued an
2 order detaining a person pursuant to subparagraph (iv) of paragraph (a)
3 of this subdivision and the person would be subject to reincarceration
4 of up to thirty days pursuant to subparagraph (x) of paragraph (f) of
5 this subdivision should the violation be sustained at a final revocation
6 hearing, then within five days of the issuance of the order of detention
7 the department shall afford such person a preliminary revocation hearing
8 before a hearing officer designated by the department. Such hearing
9 officer shall not have had any prior supervisory involvement over the
10 alleged violator.

11 (C) For any alleged non-technical violation, within ten days of the
12 issuance of a notice or execution of a warrant for the violation the
13 department shall afford such person a preliminary hearing before a hear-
14 ing officer designated by the department. Such hearing officer shall not
15 have had any prior supervisory involvement over the alleged violator.

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

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

53 (ix) If the hearing officer finds by a preponderance of the evidence
54 that such person has violated one or more conditions of community super-
55 vision in an important respect, the releasee shall, at the conclusion of
56 the preliminary hearing be given written notice of the time, place and

1 purpose of the final revocation hearing. The notice shall state what
2 conditions of community supervision are alleged to have been violated,
3 when, where and in what manner; that such person shall have the right to
4 representation by counsel at any final revocation hearing; that such
5 person shall have the right to appear and speak in his or her own
6 behalf; that he or she shall have the right to introduce letters and
7 documents; that he or she may present witnesses who can give relevant
8 information to the hearing officer; that he or she has the right to
9 confront the witnesses against him or her; and the name and contact
10 details for institutional defenders or assigned private counsel, as
11 applicable. Any additional documents having been collected or prepared
12 that support the charge shall be delivered to the releasee. Adverse
13 witnesses may be compelled to attend the final revocation hearing unless
14 the prisoner has been convicted of a new crime while on supervision or
15 unless the hearing officer finds good cause for their non-attendance.

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

25 § 6. Paragraph (f) of subdivision 3 of section 259-i of the executive
26 law, as amended by section 11 of part E of chapter 62 of the laws of
27 2003, subparagraph (v) as amended and subparagraph (xii) as added by
28 chapter 545 of the laws of 2015 and subparagraph (x) as amended by
29 section 38-f-1 of subpart A of part C of chapter 62 of the laws of 2011,
30 is amended to read as follows:

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

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

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

54 (C) If a court issued an order detaining such person pursuant to
55 subparagraph (iv) of paragraph (a) of this subdivision and the person
56 would be subject to reincarceration of up to thirty days or more pursu-

1 ant to subparagraph (x) of this paragraph should the violation be
2 sustained at a final revocation hearing, then within ten days after the
3 issuance of the order of detention, the department shall afford such
4 person a final revocation hearing in person before a hearing officer
5 designated by the department. Such hearing officer shall not have had
6 any prior supervisory involvement over the alleged violator.

7 (D) If a notice of violation was issued or such person was released on
8 recognizance pursuant to subparagraph (iv) of paragraph (a) of this
9 subdivision the department shall within thirty days of the issuance of
10 the notice of violation or the order of release on recognizance afford
11 the person a final revocation hearing in person before a hearing officer
12 designated by the department. Such hearing officer shall not have had
13 any prior supervisory involvement over the alleged violator. Such hear-
14 ing shall not be held at a correctional facility, detention center or
15 local correctional facility. The department shall have six months from
16 the date of the effective date of the chapter of the laws of two thou-
17 sand twenty that amended this paragraph to begin to hold such hearings
18 at allowable locations.

19 (E) If such person is accused of a non-technical violation, the
20 department shall within thirty days of the execution of the warrant
21 afford such person a final revocation hearing in person before a hearing
22 officer designated by the department. Such hearing officer shall not
23 have had any supervisory involvement over the alleged violator.

24 (F) However, if an alleged violator requests and receives any post-
25 ponement of his revocation hearing, or consents to a postponed revoca-
26 tion proceeding initiated by the board, or if an alleged violator, by
27 his actions otherwise precludes the prompt conduct of such proceedings,
28 the time limit may be extended.

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

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

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

43 (v) The alleged violator shall ~~[be permitted]~~ have a right to repre-
44 sentation by counsel at the revocation hearing. In any case, including
45 when a superior court is called upon to evaluate the capacity of an
46 alleged violator in a ~~[parole]~~ revocation proceeding, where such person
47 is financially unable to retain counsel, the criminal court of the city
48 of New York, the county court or district court in the county where the
49 violation is alleged to have occurred or where the hearing is held,
50 shall assign counsel in accordance with the county or city plan for
51 representation placed in operation pursuant to article eighteen-B of the
52 county law. He or she shall have the right to confront and cross-examine
53 adverse witnesses, unless there is good cause for their non-attendance
54 as determined by the presiding officer; present witnesses and documenta-
55 ry evidence in defense of the charges; and present witnesses and docu-

mentary 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]~~ clear and convincing evidence. Conduct that formed the basis of an arrest shall not form a basis of a sustained parole violation if a court has adjudicated the matter with an acquittal, adjournment in 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, other than absconding, 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. For any absconding violation found, the presiding officer shall direct that no earned time credits shall be awarded for the entire time period during which a releasee was found to have absconded from supervision.

(xi) Incarceration shall not be imposed for any tier 2 violation.

(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] 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,] 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 willfully for the purpose of permanently avoiding supervision; failure to make office or written reports as directed willfully for the purpose of permanently 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, willfully for the purpose of permanently avoiding supervision, 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; (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; 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 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 (iv) of paragraph (a) of this subdivision but a criminal 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, 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

1 directs that the violator be re-released upon expiration of the time
2 assessment. The board shall retain the authority to suspend the date
3 fixed for re-release based on the violator's commission of a serious
4 disciplinary infraction and shall in such case require a personal inter-
5 view be conducted within a reasonable time between a panel of members of
6 the board and the violator to determine suitability for re-release. If
7 an interview is required, the board shall notify the violator in advance
8 of the date and time of such interview in accordance with the rules and
9 regulations of the board.

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

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

29 ~~[(f) of subdivision three of section two hundred fifty-nine-i of this~~
30 ~~chapter]~~. The court shall decide whether or not the alleged violator is
31 incapacitated within thirty days of the referral from the hearing offi-
32 cer. If the court determines that the alleged violator is not an inca-
33 pacitated person, the court shall order that the matter be returned to
34 the board of parole for continuation and disposition of the revocation
35 proceeding. If the court determines that the alleged violator is an
36 incapacitated person and if no felony charges are pending against the
37 alleged violator, the court shall issue a final order of observation
38 committing such person to the custody of the commissioner of mental
39 health or the commissioner of developmental disabilities for care and
40 treatment in an appropriate institution in a manner consistent with
41 subdivision one of section 730.40 of the criminal procedure law. If a
42 final order of observation has been issued pursuant to this section, the
43 hearing officer shall dismiss the violation charges and such dismissal
44 shall act as a bar to any further proceeding under this section against
45 the alleged violator for such violations. If felony criminal charges are
46 pending at any time against an alleged violator who has been referred to
47 superior court for a fitness evaluation but before a determination of
48 fitness has been made pursuant to this section, the court shall decide
49 whether or not the alleged violator is incapacitated pursuant to article
50 seven hundred thirty of the criminal procedure law and the revocation
51 proceeding shall be held in abeyance until such decision has been
52 reached. The hearing officer shall adopt the capacity finding of the
53 court and either terminate the revocation process if an order of obser-
54 vation has been made by the court or proceed with the revocation hearing
55 if the alleged violator has been found not to be an incapacitated
56 person.

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

3 9. The board shall promulgate rules and regulations to facilitate the
4 presence of nonprofit service providers able to offer relevant communi-
5 ty-based services to releasees at all preliminary and final revocation
6 hearings for the purpose of helping people subject to community super-
7 vision successfully complete such supervision and avoid future such
8 supervision, and to help ensure presiding officers impose the least
9 restrictive reasonable sanction for any violation of community super-
10 vision.

11 § 8. This act shall take effect on the first of April next succeeding
12 the date on which it shall have become a law; provided however the
13 department of corrections and community supervision shall have six
14 months from the effective date of this act to begin holding preliminary
15 revocation hearings required by the amendments to paragraph (c) of
16 subdivision 3 of section 259-i of the executive law made by section five
17 of this act, including establishing preliminary revocation hearing
18 facilities that are not at correctional facilities for people who are
19 not detained pending their hearings. Provided further, however, that the
20 board of parole shall have two months from the effective date of this
21 act to identify each releasee incarcerated for a sustained parole
22 violation and recalculate such releasee's sentence in accordance with
23 this act. If no incarceration may be imposed pursuant to subparagraph
24 (xi) of paragraph (f) of subdivision 3 of section 259-i of the executive
25 law, as added by section six of this act, the board shall immediately
26 restore the releasee to community supervision. If the releasee may be
27 incarcerated for the sustained violation the board shall fix a new date
28 for release pursuant to subparagraph (xii) of paragraph (f) of subdivi-
29 sion 3 of section 259-i of the executive law, as amended by section six
30 of this act. If such release date has passed, the board shall immediate-
31 ly restore the releasee to community supervision. Provided further,
32 however, the department of corrections and community supervision shall
33 have six months from the effective date of this act to set up the final
34 revocation hearing courtrooms that are not at correctional facilities
35 for people who are not detained pending their hearing pursuant to the
36 amendments to paragraph (f) of subdivision 3 of section 259-i of the
37 executive law as made by section six of this act. Effective immediate-
38 ly, the addition, amendment and/or repeal of any rule or regulation
39 necessary for the implementation of this act on its effective date are
40 authorized and directed to be made and completed on or before such
41 effective date.