

# STATE OF NEW YORK

1144

2021-2022 Regular Sessions

## IN SENATE

January 7, 2021

Introduced by Sens. BENJAMIN, BAILEY, BIAGGI, BRESLIN, COMRIE, GIANARIS, HOYLMAN, JACKSON, KENNEDY, KRUEGER, MAY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

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

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

21 9. "Tier 2 violation" means any of the following technical violations:  
22 violating curfew; failure to pay surcharges and fees, including fees

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

LBD04981-01-1

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

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

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

44 (b) When a person is alleged to have violated the terms of his or her  
45 conditional release or post-release supervision by absconding and has  
46 been declared delinquent by the parole board or the local conditional  
47 release commission having supervision over such person, the declaration  
48 of delinquency shall interrupt the period of supervision or post-release  
49 supervision as of the date of the delinquency. For a conditional  
50 release, such interruption shall continue until the [~~return of the~~  
51 ~~person to the institution from which he or she was released or, if he or~~  
52 ~~she was released from an institution under the jurisdiction of the state~~  
53 ~~department of corrections and community supervision, to an institution~~  
54 ~~under the jurisdiction of that department. Upon such return, the person~~  
55 ~~shall resume service of his or her sentence~~] releasee's appearance in  
56 response to a notice of violation or the date of the execution of a

1 warrant, whichever is earlier. For a person released to post-release  
2 supervision, the provisions of section 70.45 of this article shall  
3 apply.

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

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

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

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

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

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

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

47 (d) Earned time credits shall be awarded to any person subject to  
48 community supervision at the time this legislation becomes effective  
49 retroactive to the initial date such person began his or her earliest  
50 current period of community supervision. Provided however, if a  
51 releasee's current period of community supervision has been interrupted  
52 by a period of incarceration prior to the effective date of the chapter  
53 of the laws of two thousand twenty-one which added this subdivision, no  
54 earned time credits shall be awarded for such period of incarceration.  
55 The department shall have six months from the effective date of this  
56 subdivision to calculate all retroactive earned time credits; however,

1 the department of corrections and community supervision shall prioritize  
2 earned time credit calculations for releasees whose terms of community  
3 supervision are due to terminate before the conclusion of such six  
4 months. Retroactive earned time credits shall not be awarded to any  
5 releasee serving a term of incarceration for a sustained parole  
6 violation at the time of the effective date of the chapter of the laws  
7 of two thousand twenty-one which added this subdivision until the  
8 releasee is returned to community supervision.

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

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

31 ~~release supervision is six months or less, such time assessment may be~~  
32 ~~up to six months unless a longer period is authorized pursuant to subdivi-~~  
33 ~~vision one of this section. The] If the person is detained pursuant to  
34 paragraph (a) of subdivision three of section two hundred fifty-nine-i  
35 of the executive law pending preliminary or revocation hearings, the  
36 time assessment shall commence upon the execution of the warrant. If a  
37 warrant was executed pursuant to paragraph (a) of subdivision three of  
38 section two hundred fifty-nine-i of the executive law but a trial court  
39 released the person pending preliminary or revocation hearings, the time  
40 assessment shall commence upon the issuance of a determination after a  
41 final hearing that the person has violated one or more conditions of  
42 community supervision, and shall include the time period between  
43 execution of the warrant and release of the person pending preliminary  
44 or revocation hearings. If a releasee is committed to the custody of the  
45 sheriff pursuant to article five hundred thirty of the criminal proce-  
46 dure law, the time assessment shall include any time the releasee spent  
47 in such detention. If a notice of violation was issued pursuant to  
48 subdivision three of section two hundred fifty-nine-i of the executive  
49 law, the time assessment shall commence upon the issuance of a determi-  
50 nation after a final hearing that the person has violated one or more  
51 conditions of supervision. While serving such assessment, the person  
52 shall not receive any good behavior allowance pursuant to section eight  
53 hundred three of the correction law. Any time spent in custody from the  
54 date of delinquency until return to the department of corrections and  
55 community supervision shall first be credited to the maximum or aggre-  
56 gate maximum term of the sentence or sentences of imprisonment, but only~~

1 to the extent authorized by subdivision three of section 70.40 of this  
2 article. The maximum or aggregate maximum term of the sentence or  
3 sentences of imprisonment shall run while the person is serving such  
4 time assessment in the custody of the department of corrections and  
5 community supervision. Any time spent in custody solely pursuant to such  
6 delinquency after completion of the maximum or aggregate maximum term of  
7 the sentence or sentences of imprisonment shall be credited to the peri-  
8 od of post-release supervision, if any.

9 § 4. Subparagraph (i) of paragraph (a) of subdivision 3 of section  
10 259-i of the executive law, as amended by chapter 545 of the laws of  
11 2015, is amended and five new subparagraphs (iv), (v), (vi), (vii) and  
12 (viii) are added to read as follows:

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

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

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

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

40 (vi) At a recognizance hearing, the court shall consider all available  
41 evidence of the releasee's employment, family and community ties includ-  
42 ing length of residency in the community, history of reporting in a  
43 timely fashion to a parole or supervisory officer, and other indicators  
44 of stability. At the conclusion of the recognizance hearing, the court  
45 may order that the releasee be detained pending preliminary or final  
46 revocation hearings only upon a finding that the releasee currently  
47 presents a substantial risk of willfully failing to appear at the  
48 preliminary or final revocation hearings and that no non-monetary condi-  
49 tion or combination of conditions in the community will reasonably  
50 assure the releasee's appearance at the preliminary or final revocation  
51 hearings. Otherwise, the court shall release the releasee on the least  
52 restrictive non-monetary conditions that will reasonably assure the  
53 releasee's appearance at subsequent preliminary or revocation hearings,  
54 with a presumption of release on recognizance. The court shall explain  
55 its decision on the record or in writing. If non-monetary conditions of

1 release are imposed, the releasee shall not be required to pay for any  
2 part of the cost of such conditions.

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

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

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

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

50 (B) For any alleged technical violation for which a court issued an  
51 order detaining a person pursuant to subparagraph (iv) of paragraph (a)  
52 of this subdivision and the person would be subject to reincarceration  
53 of up to thirty days pursuant to subparagraph (x) of paragraph (f) of  
54 this subdivision should the violation be sustained at a final revocation  
55 hearing, then within five days of the issuance of the order of detention  
56 the department shall afford such person a preliminary revocation hearing

1 before a hearing officer designated by the department. Such hearing  
2 officer shall not have had any prior supervisory involvement over the  
3 alleged violator.

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

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

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

46 (ix) If the hearing officer finds by a preponderance of the evidence  
47 that such person has violated one or more conditions of community super-  
48 vision in an important respect, the releasee shall, at the conclusion of  
49 the preliminary hearing be given written notice of the time, place and  
50 purpose of the final revocation hearing. The notice shall state what  
51 conditions of community supervision are alleged to have been violated,  
52 when, where and in what manner; that such person shall have the right to  
53 representation by counsel at any final revocation hearing; that such  
54 person shall have the right to appear and speak in his or her own  
55 behalf; that he or she shall have the right to introduce letters and  
56 documents; that he or she may present witnesses who can give relevant



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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (vi) At the revocation hearing, the charges shall be read and the  
53 alleged violator shall be permitted to plead not guilty, guilty, guilty  
54 with explanation or to stand mute. As to each charge, evidence shall be  
55 introduced through witnesses and documents, if any, in support of that  
56 charge. At the conclusion of each witness's direct testimony, he shall

1 be made available for cross-examination. If the alleged violator intends  
2 to present a defense to the charges or to present evidence of mitigating  
3 circumstances, the alleged violator shall do so after presentation of  
4 all the evidence in support of a violation of presumptive release,  
5 parole, conditional release or post-release supervision.

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

8 (viii) At the conclusion of the hearing the presiding officer may  
9 sustain any or all of the violation charges or may dismiss any or all  
10 violation charges. He may sustain a violation charge only if the charge  
11 is supported by [~~a preponderance of the evidence adduced~~] clear and  
12 convincing evidence. Conduct that formed the basis of an arrest shall  
13 not form a basis of a sustained parole violation if a court has adjudi-  
14 cated the matter with an acquittal, adjournment in contemplation of  
15 dismissal, or violation.

16 (ix) If the presiding officer is not satisfied that there is [~~a~~  
17 ~~preponderance of~~] clear and convincing evidence in support of the  
18 violation, he shall dismiss the violation, cancel the delinquency and  
19 restore the person to presumptive release, parole, conditional release  
20 or post-release supervision.

21 (x) If the presiding officer is satisfied that there is [~~a preponder-~~  
22 ~~ance of~~] clear and convincing evidence that the alleged violator  
23 violated one or more conditions of release in an important respect, he  
24 or she shall so find. For each violation found, other than absconding,  
25 the presiding officer shall direct that no earned time credits shall be  
26 awarded for the thirty day period commencing from the date of the  
27 sustained violation. For any absconding violation found, the presiding  
28 officer shall direct that no earned time credits shall be awarded for  
29 the entire time period during which a releasee was found to have  
30 absconded from supervision.

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

32 (xii) For each violation [~~so~~] found, the presiding officer may (A)  
33 direct that the [~~presumptive releasee, parolee, conditional releasee or~~  
34 ~~person serving a period of post-release supervision~~] releasee be  
35 restored to supervision; (B) as an alternative to reincarceration,  
36 direct the [~~presumptive releasee, parolee, conditional releasee or~~  
37 ~~person serving a period of post-release supervision be placed in a~~  
38 ~~parole transition facility for a period not to exceed one hundred eighty~~  
39 ~~days and subsequent restoration to supervision~~] releasee receive re-en-  
40 try services in the community from qualified nonprofit agencies; or (C)  
41 [~~in the case of presumptive releasees, parolees or conditional releas-~~  
42 ~~ees,~~] direct the violator's reincarceration [~~and fix a date for consid-~~  
43 ~~eration by the board for re-release on presumptive release, or parole or~~  
44 ~~conditional release, as the case may be; or (D) in the case of persons~~  
45 ~~released to a period of post-release supervision, direct the violator's~~  
46 ~~reincarceration up to the balance of the remaining period of post-re-~~  
47 ~~lease supervision, not to exceed five years; provided, however, that a~~  
48 ~~defendant serving a term of post-release supervision for a conviction of~~  
49 ~~a felony sex offense defined in section 70.80 of the penal law may be~~  
50 ~~subject to a further period of imprisonment up to the balance of the~~  
51 ~~remaining period of post-release supervision], subject to the following  
52 limitations: (1) for absconding, which is defined as failing to notify  
53 his or her community supervision officer of a change in residence will-  
54 fully for the purpose of permanently avoiding supervision; failure to  
55 make office or written reports as directed willfully for the purpose of  
56 permanently avoiding supervision; and leaving the state of New York or~~

1 any other state to which the releasee is released or transferred, or any  
2 area defined in writing by his parole officer, without permission, will-  
3 fully for the purpose of permanently avoiding supervision, up to seven  
4 days reincarceration may be imposed for the first violation, up to  
5 fifteen days reincarceration may be imposed for the second violation,  
6 and up to thirty days reincarceration may be imposed for the third or  
7 any subsequent violation; (2) for all other tier 1 violations no period  
8 of reincarceration may be imposed for the first and second substantiated  
9 technical violations for which incarceration may be imposed; up to seven  
10 days reincarceration may be imposed for the third substantiated techni-  
11 cal violation for which incarceration may be imposed; up to fifteen days  
12 reincarceration may be imposed for the fourth substantiated technical  
13 violation for which incarceration may be imposed; up to thirty days  
14 reincarceration may be imposed for the fifth and subsequent substanti-  
15 ated technical violations for which incarceration may be imposed; and  
16 (3) for non-technical violations, up to ninety days reincarceration may  
17 be imposed. If a warrant was executed pursuant to subparagraph (iv) of  
18 paragraph (a) of this subdivision and the person was detained pursuant  
19 to such subparagraph pending preliminary or revocation hearings, any  
20 period of reincarceration imposed pursuant to this paragraph shall be  
21 counted from the date of the execution of the warrant. If a warrant was  
22 executed pursuant to subparagraph (iv) of paragraph (a) of this subdivi-  
23 sion but a criminal court released the person pending preliminary or  
24 revocation hearings, any period of reincarceration imposed pursuant to  
25 this paragraph shall be counted from the date of issuance of a determi-  
26 nation after a final hearing that the person has violated one or more  
27 conditions of community supervision, and the time between execution of  
28 the warrant and release of the person pending preliminary or revocation  
29 hearings shall count toward the period of reincarceration imposed pursu-  
30 ant to this paragraph. If a releasee is committed to the custody of the  
31 sheriff pursuant to article five hundred thirty of the criminal proced-  
32 ure law, any time the person spent confined in jail shall count towards  
33 any period of reincarceration imposed pursuant to this paragraph. In all  
34 cases, the presiding officer shall impose the least restrictive reason-  
35 able sanction. Any periods of reincarceration shall run concurrently if  
36 more than one violation is adjudicated. If a period of reincarceration  
37 is imposed pursuant to this paragraph, the releasee shall be released  
38 from custody upon expiration of the period or the end of the releasee's  
39 period of community supervision, whichever shall be sooner. For the  
40 violator serving an indeterminate sentence who while re-incarcerated has  
41 not been found by the department to have committed a serious discipli-  
42 nary infraction, such violator shall be re-released on the date fixed at  
43 the revocation hearing. For the violator serving an indeterminate  
44 sentence who has been found by the department to have committed a seri-  
45 ous disciplinary infraction while re-incarcerated, the department shall  
46 refer the violator to the board for consideration for re-release to  
47 community supervision. Upon such referral the board may waive the  
48 personal interview between a member or members of the board and the  
49 violator to determine the suitability for re-release when the board  
50 directs that the violator be re-released upon expiration of the time  
51 assessment. The board shall retain the authority to suspend the date  
52 fixed for re-release based on the violator's commission of a serious  
53 disciplinary infraction and shall in such case require a personal inter-  
54 view be conducted within a reasonable time between a panel of members of  
55 the board and the violator to determine suitability for re-release. If  
56 an interview is required, the board shall notify the violator in advance

1 of the date and time of such interview in accordance with the rules and  
2 regulations of the board.

3 [~~(xi)~~] (xiii) If the presiding officer sustains any violations, he  
4 must prepare a written statement, to be made available to the alleged  
5 violator and his counsel, indicating the evidence relied upon and the  
6 reasons for revoking presumptive release, parole, conditional release or  
7 post-release supervision, and for the disposition made.

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

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

52 9. The board shall promulgate rules and regulations to facilitate the  
53 presence of nonprofit service providers able to offer relevant communi-  
54 ty-based services to releasees at all preliminary and final revocation  
55 hearings for the purpose of helping people subject to community super-  
56 vision successfully complete such supervision and avoid future such

1 supervision, and to help ensure presiding officers impose the least  
2 restrictive reasonable sanction for any violation of community super-  
3 vision.

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