

# STATE OF NEW YORK

9500

## IN ASSEMBLY

March 10, 2022

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

AN ACT to amend the executive law, in relation to revoking community supervision for certain conduct

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

1 Section 1. Subdivisions 6 and 7 of section 259 of the executive law,  
2 as added by chapter 427 of the laws of 2021, are amended to read as  
3 follows:

4 6. "Technical violation" means any conduct that violates a condition  
5 of community supervision in an important respect, other than the commis-  
6 sion of a new felony or misdemeanor offense under the penal law or  
7 conduct that violates a specific condition of community supervision in  
8 an important respect and such conduct may result in serious harm to the  
9 releasee or others.

10 7. "Non-technical violation" means: (a) the commission of a new felony  
11 or misdemeanor offense; or (b) conduct that violates a specific condi-  
12 tion of community supervision and such conduct may result in serious  
13 harm to the releasee or others; or (c) conduct by a releasee who is  
14 serving a sentence for an offense defined in article [130] one hundred  
15 thirty of the penal law (sex offenses), article one hundred thirty-five  
16 of the penal law (kidnapping, coercion and related offenses), article  
17 two hundred sixty-five of the penal law (firearms and other dangerous  
18 weapons) or section 255.26 or 255.27 of such law, and such conduct  
19 violated a specific condition reasonably related to such offense and  
20 efforts to protect the public from the commission of a repeat of such  
21 offense including any violation of article six-C of the correction law.

22 § 2. Subparagraph (xii) of paragraph (f) of subdivision 3 of section  
23 259-i of the executive law, as amended by chapter 427 of the laws of  
24 2021, is amended to read as follows:

25 (xii) For each violation found, the presiding officer may (A) direct  
26 that the releasee be restored to supervision; (B) as an alternative to  
27 reincarceration, direct the releasee receive re-entry services in the  
28 community from qualified nonprofit agencies; or (C) direct the viola-  
29 tor's reincarceration and for non-technical violations fix a date for  
30 consideration by the board for re-release on presumptive release, or  
31 parole or conditional release, as the case may be; or (D) for non-tech-

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

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1 nical violations in the case of persons released to a period of post-re-  
2 lease supervision, direct the violator's reincarceration up to the  
3 balance of the remaining period of post-release supervision, not to  
4 exceed five years; provided, however, that a defendant serving a term of  
5 post-release supervision for a conviction of a felony sex offense  
6 defined in section 70.80 of the penal law may be subject to a further  
7 period of imprisonment up to the balance of the remaining period of  
8 post-release supervision, shall apply for technical violations; and the  
9 following limitations:

10 (1) Absconding. For absconding up to [~~seven~~] thirty days reincarcera-  
11 tion may be imposed for the first violation, up to [~~fifteen~~] sixty days  
12 reincarceration may be imposed for the second violation, and up to  
13 [~~thirty~~] ninety days reincarceration may be imposed for the third or any  
14 subsequent violation, provided, however, that no releasee shall be rein-  
15 carcerated for more than seven days for absconding if such releasee  
16 voluntarily presents himself or herself to his or her community super-  
17 vision officer or area bureau office;

18 (2) Sanctions for certain technical violations. Reincarceration shall  
19 not be imposed for a sustained technical violation that involves: (a)  
20 violating curfew; (b) alcohol use, provided however that incarceration  
21 is permissible for alcohol use if the person is subject to community  
22 supervision due to a conviction for driving under the influence of alco-  
23 hol; (c) drug use, provided, however incarceration is permissible for  
24 drug use if the person is subject to community supervision due to a  
25 conviction for driving under the influence of drugs; (d) failing to  
26 notify parole officer of a change in employment or program status; (e)  
27 failing to pay surcharges and fees; (f) obtaining a driver's license or  
28 driving a car with a valid driver's license, provided however carcera-  
29 tion is permissible if either action is explicitly prohibited by the  
30 person's conviction; (g) failing to notify community supervision officer  
31 of contact with any law enforcement agency, provided however, carcera-  
32 tion is permissible if the person intended to hide illegal behavior or  
33 in instances where the conduct violates a specific condition of communi-  
34 ty supervision in an important respect and such conduct may result in  
35 serious harm to the releasee or others; (h) failing to obey other  
36 special conditions, provided however that incarceration is permissible  
37 if the failure cannot be addressed in the community and all reasonable  
38 community-based means to address the failure have been exhausted; and

39 (3) Sanctions for all other technical violations. For all other tech-  
40 nical violations, no period of reincarceration may be imposed for the  
41 first and second substantiated technical violations for which carcera-  
42 tion may be imposed; up to seven days reincarceration may be imposed for  
43 the third substantiated technical violation for which incarceration may  
44 be imposed; up to fifteen days reincarceration may be imposed for the  
45 fourth substantiated technical violation for which incarceration may be  
46 imposed; up to thirty days reincarceration may be imposed for the fifth  
47 and subsequent substantiated technical violations for which carcera-  
48 tion may be imposed. Provided, however, that a period of reincarcera-  
49 tion may be imposed for conduct that violates a specific condition of  
50 community supervision in an important respect and that such conduct may  
51 result in serious harm to the releasee or others.

52 § 3. This act shall take effect immediately; provided, however, that  
53 if chapter 427 of the laws of 2021 shall not have taken effect on or  
54 before such date then this act shall take effect on the same date and in  
55 the same manner as such chapter of the laws of 2021 takes effect.