

STATE OF NEW YORK

1144--A

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

Introduced by Sens. BENJAMIN, BAILEY, BIAGGI, BRESLIN, BRISPORT, BROUK, COMRIE, COONEY, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KENNEDY, KRUEGER, LIU, MAY, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- reported favorably from said committee and committed to the Committee on Finance -- 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:

Section 1. Section 259 of the executive law is amended by adding four new subdivisions 5, 6, 7, and 8 to read as follows:

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

6. "Technical violation" means any conduct that violates a condition of community supervision in an important respect, other than the commission of a new felony or misdemeanor offense under the penal law.

7. "Non-technical violation" means: (a) the commission of a new felony or misdemeanor offense; or (b) conduct by a releasee who is serving a sentence for an offense defined in article 130 of the penal law or section 255.26 or 255.27 of such law, and such conduct violated a specific condition reasonably related to such offense and efforts to protect the public from the commission of a repeat of such offense.

8. "Absconding" means intentionally avoiding supervision by failing to maintain contact or communication with the releasee's assigned community supervision officer or area bureau office and to notify his or her

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

LBD04981-04-1

1 assigned community supervision officer or area bureau office of a change
2 in residence, and reasonable efforts by the assigned community super-
3 vision officer to re-engage the releasee have been unsuccessful.

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

9 3. Delinquency. (a) When a person is alleged to have violated the
10 terms of presumptive release or parole by absconding, and the state
11 board of parole has declared such person to be delinquent, the declara-
12 tion of delinquency shall interrupt the person's sentence as of the date
13 of the delinquency and such interruption shall continue until the
14 ~~[return of the person to an institution under the jurisdiction of the~~
15 ~~state department of corrections and community supervision]~~ releasee's
16 appearance in response to a notice of violation or the date of the
17 execution of a warrant, whichever is earlier.

18 (b) When a person is alleged to have violated the terms of his or her
19 conditional release or post-release supervision by absconding and has
20 been declared delinquent by the parole board or the local conditional
21 release commission having supervision over such person, the declaration
22 of delinquency shall interrupt the period of supervision or post-release
23 supervision as of the date of the delinquency. For a conditional
24 release, such interruption shall continue until the ~~[return of the~~
25 ~~person to the institution from which he or she was released or, if he or~~
26 ~~she was released from an institution under the jurisdiction of the state~~
27 ~~department of corrections and community supervision, to an institution~~
28 ~~under the jurisdiction of that department. Upon such return, the person~~
29 ~~shall resume service of his or her sentence]~~ releasee's appearance in
30 response to a notice of violation or the date of the execution of a
31 warrant, whichever is earlier. For a person released to post-release
32 supervision, the provisions of section 70.45 of this article shall
33 apply.

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

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

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

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

48 4. Earned time credits. (a) Any person subject to community super-
49 vision shall be awarded earned time credits. The calculation of earned
50 time credit periods shall begin on the releasee's first day of community
51 supervision and shall be awarded after each completed thirty day period
52 in compliance with the terms of their community supervision. Any such
53 awarded earned time credits shall be applied against such person's
54 unserved portion of the maximum term, aggregate maximum term or period
55 of post-release supervision for any current sentence. Persons subject to
56 a sentence with a maximum term of life imprisonment or lifetime super-

1 vision shall not be eligible to receive earned time credits under this
2 section.

3 (b) After a person has begun a period of community supervision pursu-
4 ant to this section and section 70.45 of this article, such period of
5 community supervision shall be reduced by thirty days for every thirty
6 days that such person does not violate a condition of and remains in
7 compliance with all conditions of his or her community supervision,
8 provided, however, that the person is not subject to any sentence with a
9 maximum term of life imprisonment or lifetime supervision. When a person
10 is subject to more than one period of community supervision, the
11 reduction authorized in this subdivision shall be applied to every such
12 period of parole or conditional release to which the person is subject.

13 (c) Retroactive earned time credits shall be awarded to eligible
14 persons subject to community supervision at the time this legislation
15 becomes effective, provided, however, that the maximum allowable retro-
16 active earned time credit awarded shall not exceed a period of two
17 years. Retroactive earned time credits shall not be awarded to any
18 releasee serving a term of reincarceration for a sustained parole
19 violation at the time of the effective date of the chapter of the laws
20 of two thousand twenty-one that added this subdivision until the
21 releasee is returned to community supervision. Persons subject to a
22 sentence with a maximum term of life imprisonment or lifetime super-
23 vision shall not be eligible to receive retroactive earned time credits
24 under this section.

25 (d) If a releasee's current period of community supervision has been
26 interrupted by a period of reincarceration prior to the effective date
27 of the chapter of the laws of two thousand twenty-one that added this
28 subdivision, no earned time credits shall be awarded for such period of
29 reincarceration. The department shall calculate retroactive earned time
30 credits within one year after the bill shall have become law and shall
31 prioritize earned time credit calculations for releasees whose terms of
32 community supervision are due to terminate before June first, two thou-
33 sand twenty-two.

34 (e) Earned time credits may be withheld or revoked for the thirty-day
35 period commencing from the date of violative behavior as sustained at a
36 final revocation hearing, or for the period during which a releasee
37 absconded from supervision, as sustained at a final revocation hearing.
38 Earned time credits may not be earned and shall be suspended: (i) during
39 a period of reincarceration imposed for any sustained violation; (ii)
40 during the period in which the individual has absconded; or (iii) pend-
41 ing the outcome of a preliminary or final revocation hearing. If, at the
42 preliminary hearing, there is no finding by a preponderance of the
43 evidence of a violation of a condition of release in an important
44 respect or a violation is not sustained at the final revocation hearing,
45 then the individual shall be deemed to have been in compliance with the
46 terms of release and shall be awarded earned time credits from the peri-
47 od in which the accrual was suspended. If a violation is sustained, the
48 calculation of an earned time credit period shall recommence on the
49 thirty-first day after the date of the violative behavior or, if the
50 sustained violation or conviction resulted in a term of reincarceration,
51 on the day the releasee is restored to community supervision, whichever
52 is later.

53 (f) At least every one hundred eighty days from the first date of a
54 person's release to community supervision, and every one hundred eighty
55 days thereafter, the department of corrections and community supervision
56 shall provide each person on community supervision a report indicating

the total earned time credits received, the total earned time credits received in the prior one hundred eighty days, the total earned time credits withheld, the total earned time credits withheld in the prior one hundred eighty days, the total amount of time reduced from the person's sentence, and the person's earliest release date based on the amount of earned time credits received. The department shall provide the report in written or electronic form.

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

(d) When a person is alleged to have violated a condition of post-release supervision by absconding and the department of corrections and community supervision has declared such person to be delinquent: (i) the declaration of delinquency shall interrupt the period of post-release supervision; (ii) such interruption shall continue until the person is restored to post-release supervision; (iii) if the person is restored to post-release supervision without being returned to the department of corrections and community supervision, any time spent in custody from the date of delinquency until restoration to post-release supervision shall first be credited to the maximum or aggregate maximum term of the sentence or sentences of imprisonment, but only to the extent authorized by subdivision three of section 70.40 of this article. Any time spent in custody solely pursuant to such delinquency after completion of the maximum or aggregate maximum term of the sentence or sentences of imprisonment shall be credited to the period of post-release supervision, if any; and (iv) if the person is ordered returned to the department of corrections and community supervision, the person shall be required to serve the time assessment before being re-released to post-release supervision. ~~[In the event the balance of the remaining period of post-release supervision is six months or less, such time assessment may be up to six months unless a longer period is authorized pursuant to subdivision one of this section. The]~~

If the person is detained pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law pending a preliminary or final revocation hearing, the time assessment imposed following such hearing shall commence upon the execution of the warrant. If a warrant was executed pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law but a court released the person pending a preliminary or final revocation hearing, the time assessment shall commence upon the issuance of a determination after a final hearing that the person has violated one or more conditions of community supervision in an important respect, and shall include the time period between execution of the warrant and release of the person pending a preliminary or final revocation hearing. If a releasee is committed to the custody of the sheriff pursuant to article five hundred thirty of the criminal procedure law, the time assessment, if any, shall include any time the releasee spent in such custody. If a notice of violation was issued pursuant to subdivision three of section two hundred fifty-nine-i of the executive law, the time assessment shall commence upon the issuance of a determination after a final hearing that the person has violated one or more conditions of supervision. While serving such assessment, the person shall not receive any good behavior allowance pursuant to section eight hundred three of the correction law. Any time spent in custody from the date of delinquency until return to the department of corrections and community supervision shall first be credited to the maximum or aggregate maximum term of the sentence or sentences of impri-

sonment, but only to the extent authorized by subdivision three of section 70.40 of this article. The maximum or aggregate maximum term of the sentence or sentences of imprisonment shall run while the person is serving such time assessment in the custody of the department of corrections and community supervision. Any time spent in custody solely pursuant to such delinquency after completion of the maximum or aggregate maximum term of the sentence or sentences of imprisonment shall be credited to the period of post-release supervision, if any.

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

(i) If the parole officer having charge of a presumptively released, paroled or conditionally released person or a person released to post-release supervision or a person received under the uniform act for out-of-state parolee supervision shall have [~~reasonable~~] probable cause to believe that such person has [~~lapsed into criminal ways or company, or has violated one or more conditions of his presumptive release, parole, conditional release or post-release supervision~~] committed a technical violation, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a written notice of violation may be issued according to the terms of subparagraph (iii) of paragraph (c) of this subdivision, and shall be promptly served upon such person. If the releasee has failed to appear as directed in response to a notice of violation and has failed to appear voluntarily within forty-eight hours after such time and the person would be subject to incarceration pursuant to subparagraph (xii) of paragraph (f) of this subdivision should the violation be sustained at a final revocation hearing, a warrant may be issued for the retaking of such person and for his temporary detention pending a recognizance hearing in accordance with the rules of the board. If the person has intentionally failed to appear as directed in response to a notice of violation and has intentionally failed to appear voluntarily within forty-eight hours after such time and the person would not be subject to incarceration pursuant to paragraph (f) of this subdivision should the violation be sustained at a final revocation hearing, no warrant shall issue and the violation shall be deemed sustained. Notice of that decision shall be promptly served upon the releasee. In such case, within one month of the date the notice of decision was served upon the releasee, the releasee may move to vacate such a sustained violation if the releasee can show by a preponderance of the evidence that the notice of violation was not properly served or the failure to appear was otherwise excusable. If the parole officer having charge of a person under community supervision shall have probable cause to believe that such person has committed a non-technical violation, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a notice of violation may be issued or a warrant may be issued for the retaking of such person and for his temporary detention in accordance with the rules of the board [~~unless such person~~]. However, if a releasee has been determined to be currently unfit to proceed to trial or is currently subject to a temporary or final order of observation pursuant to article seven hundred thirty of the criminal procedure law, [in which case] no notice of violation or warrant shall be issued. The issuance of a notice of violation, service of a notice of violation, service of a notice of decision, and the retaking and detention of any [~~such~~] person for whom a

1 warrant has been issued pursuant to this subparagraph may be further
2 regulated by rules and regulations of the department not inconsistent
3 with this article. A warrant issued pursuant to this section shall
4 constitute sufficient authority to the superintendent or other person in
5 charge of any jail, penitentiary, lockup or detention pen to whom it is
6 delivered to hold in temporary detention the person named therein[
7 ~~except that a warrant issued with respect to a person who has been~~
8 ~~released on medical parole pursuant to section two hundred fifty-nine-r~~
9 ~~of this article and whose parole is being revoked pursuant to paragraph~~
10 ~~(h) of subdivision four of such section shall constitute authority for~~
11 ~~the immediate placement of the parolee only into imprisonment in the~~
12 ~~custody of the department to hold in temporary detention. A warrant~~
13 ~~issued pursuant to this section shall also constitute sufficient author-~~
14 ~~ity to the person in charge of a drug treatment campus, as defined in~~
15 ~~subdivision twenty of section two of the correction law, to hold the~~
16 ~~person named therein, in accordance with the procedural requirements of~~
17 ~~this section, for a period of at least ninety days to complete an inten-~~
18 ~~sive drug treatment program mandated by the board as an alternative to~~
19 ~~presumptive release or parole or conditional release revocation, or the~~
20 ~~revocation of post-release supervision, and shall also constitute suffi-~~
21 ~~cient authority for return of the person named therein to local custody~~
22 ~~to hold in temporary detention for further revocation proceedings in the~~
23 ~~event said person does not successfully complete the intensive drug~~
24 ~~treatment program. The board's rules shall provide for cancellation of~~
25 ~~delinquency and restoration to supervision upon the successful~~
26 ~~completion of the program] pending a recognizance hearing pursuant to
27 subparagraph (iv) of this paragraph. It shall not be a condition of
28 parole nor may a notice of violation or a warrant be issued due to a
29 releasee being in the company of or fraternizing with any person the
30 releasee knows has a criminal record or knows has been adjudicated a
31 youthful offender or due to conduct related to cannabis that is lawful
32 pursuant to the laws of New York.~~

33 (iv) Notwithstanding the provisions of any other law, upon execution
34 of a warrant issued pursuant to this section for any releasee alleged to
35 have committed a violation of a condition of release in an important
36 respect in the city of New York, the authorized officer shall present
37 the releasee to the criminal court of the city of New York or the
38 supreme court criminal term in the county where the violation is alleged
39 to have been committed for a recognizance hearing within twenty-four
40 hours of the execution of the warrant. If no such court of record is
41 available to conduct any business of any type within twenty-four hours
42 of the execution of the warrant, the recognizance hearing shall commence
43 on the next day such a court in the jurisdiction is available to conduct
44 any business of any type. For any releasee alleged to have committed a
45 violation of a condition of release in an important respect outside of
46 the city of New York, the authorized officer shall present the releasee
47 to a county court, district court or city court in the county or city
48 where the violation is alleged to have been committed for a recognizance
49 hearing. If no such court of record is available to conduct any busi-
50 ness of any type within twenty-four hours of the execution of the
51 warrant, the recognizance hearing shall commence on the next day such
52 court is available to conduct any business of any type.

53 (v) At a recognizance hearing, the department shall have the burden of
54 demonstrating to the court that the executed warrant was properly issued
55 and served pursuant to this section. The department shall be responsible
56 for presenting information to the court regarding the alleged violation

1 and the releasee's community supervision record. If the alleged
2 violation is the subject of a pending criminal prosecution, the depart-
3 ment shall coordinate with the office of the district attorney to ensure
4 information regarding the alleged violation and the releasee's community
5 supervision record is presented to the court. At a recognizance hearing,
6 the department shall have the burden of demonstrating to the court that
7 the executed warrant was properly issued and served pursuant to this
8 section. The department shall be responsible for presenting information
9 to the court regarding the alleged violation and the releasee's communi-
10 ty supervision record. If the alleged violation is the subject of a
11 pending criminal prosecution, the department shall coordinate with the
12 office of the district attorney to ensure information regarding the
13 alleged violation and the releasee's community supervision record is
14 presented to the court.

15 (vi) At a recognizance hearing, the court shall consider all available
16 evidence of the releasee's employment, family and community ties includ-
17 ing length of residency in the community, history of reporting in a
18 timely fashion to a parole or supervisory officer, and other indicators
19 of stability. At the conclusion of the recognizance hearing, the court
20 may order that the releasee be detained pending a preliminary or final
21 revocation hearing only upon a finding that the releasee currently
22 presents a substantial risk of willfully failing to appear at the
23 preliminary or final revocation hearings and that no non-monetary condi-
24 tion or combination of conditions in the community will reasonably
25 assure the releasee's appearance at the preliminary or final revocation
26 hearing. Otherwise, the court shall release the releasee on the least
27 restrictive non-monetary conditions that will reasonably assure the
28 releasee's appearance at subsequent preliminary or revocation hearings,
29 with a presumption of release on recognizance. The court shall explain
30 its decision on the record or in writing. If non-monetary conditions of
31 release are imposed, the releasee shall not be required to pay for any
32 part of the cost of such conditions.

33 (vii) The alleged violator shall have a right to representation by
34 counsel at the recognizance hearing. In any case, including when a court
35 is called upon to evaluate the capacity of an alleged violator to
36 participate in a recognizance proceeding, where such person is finan-
37 cially unable to retain counsel, the court in which any criminal case
38 against the individual is pending, or if there is no such case pending,
39 the criminal court of the city of New York, the county court or district
40 court in the county where the violation is alleged to have occurred or
41 where the hearing is to be held, shall assign counsel in accordance with
42 the county or city plan for representation placed in operation pursuant
43 to article eighteen-B of the county law.

44 (viii) If the violation charge involves conduct that would consti-
45 tute a new felony or misdemeanor offense, such recognizance hearing may
46 be held at the same time as a proceeding pursuant to article five
47 hundred thirty of the criminal procedure law for any warrants issued by
48 the department prior to such proceeding. If at the proceeding pursuant
49 to article five hundred thirty of the criminal procedure law the court
50 imposes bail on the new alleged criminal offense or commits the releasee
51 to the custody of the sheriff pursuant to article five hundred thirty of
52 the criminal procedure law and the releasee secures release by paying
53 bail or under non-monetary conditions or by operation of law, then the
54 releasee shall not be detained further based solely on the warrant
55 issued by the department. If the department issues a warrant for a non-
56 technical violation for alleged criminal conduct that has already been

1 the subject of a court's order pursuant to article five hundred thirty
2 of the criminal procedure law, then within twenty-four hours of
3 execution of the warrant the releasee shall be provided a recognizance
4 hearing pursuant to this subparagraph, provided, however, that if no
5 court as defined in subparagraph (iv) of this paragraph is available to
6 conduct any business of any type within twenty-four hours of the
7 execution of the warrant, then the recognizance hearing shall commence
8 on the next day such court is available to conduct any business of any
9 type.

10 § 5. Subparagraphs (i), (ii), (iii) and (iv) of paragraph (c) of
11 subdivision 3 of section 259-i of the executive law, subparagraphs (i)
12 and (ii) as amended by section 11 of part E of chapter 62 of the laws of
13 2003, and subparagraphs (iii) and (iv) as amended by section 1 of part E
14 of chapter 56 of the laws of 2007, are amended and two new subparagraphs
15 (ix) and (x) are added to read as follows:

16 (i) [~~Within fifteen days after the warrant for retaking and temporary~~
17 ~~detention has been executed, unless the releasee has been convicted of a~~
18 ~~new crime committed while under presumptive release, parole, conditional~~
19 ~~release or post-release supervision, the board of parole shall afford~~
20 ~~the alleged presumptive release, parole, conditional release or post-re-~~
21 ~~lease supervision violator a preliminary revocation hearing before a~~
22 ~~hearing officer designated by the board of parole. Such hearing officer~~
23 ~~shall not have had any prior supervisory involvement over the alleged~~
24 ~~violator]~~ (A) For any alleged technical violation for which a notice of

25 violation was issued or a person was released on recognizance pursuant
26 to subparagraph (iv) of paragraph (a) of this subdivision, the depart-
27 ment shall within ten days of the issuance of the notice of violation or
28 the order of release on recognizance afford the person a preliminary
29 revocation hearing before a hearing officer designated by the depart-
30 ment. Such hearing officer shall not have had any prior supervisory
31 involvement over the alleged violator. Such hearing shall not be held at
32 a correctional facility, detention center or local correctional facili-
33 ty. The hearing shall be scheduled and held in a courthouse, in cooper-
34 ation with the chief administrator of the courts and the chief adminis-
35 trator's designees, provided, however, that if such a courthouse is not
36 reasonably available for such hearing, the department may designate a
37 suitable office or other similar facility that is not a correctional
38 facility, detention center or local correctional facility for such hear-
39 ing.

40 (B) For any alleged violation for which a court issued an order
41 detaining a person, within five days of the issuance of such order to
42 detain or execution of a warrant for the violation, the department shall
43 afford such person a preliminary hearing before a hearing officer desig-
44 nated by the department. Such hearing officer shall not have had any
45 prior supervisory involvement over the alleged violator. For any
46 alleged violation for which a person was released on recognizance, with-
47 in ten days of the issuance of the order of release on recognizance, the
48 department shall afford such person a preliminary revocation hearing.

49 [~~(ii) The preliminary presumptive release, parole, conditional release~~
50 ~~or post-release supervision revocation hearing shall be conducted at an~~
51 ~~appropriate correctional facility, or such other place reasonably close~~
52 ~~to the area in which the alleged violation occurred as the board may~~
53 ~~designate.]~~ (ii) The preliminary presumptive release, parole, condi-

54 tional release or post-release supervision revocation hearing shall be
55 scheduled and held in a courthouse, in cooperation with the chief admin-
56 istrator of the courts and the chief administrator's designees,

1 provided, however, that if such a courthouse is not reasonably available
2 for such hearing, the department may designate a suitable office or
3 other similar facility that is not a correctional facility, detention
4 center or local correctional facility for such hearing.

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

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

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

1 that support the charges shall be delivered to the releasee. Adverse
2 witnesses may be compelled to attend the final revocation hearing unless
3 the prisoner has been convicted of a new crime while on supervision or
4 unless the hearing officer finds good cause for their non-attendance.

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

14 § 6. Paragraph (f) of subdivision 3 of section 259-i of the executive
15 law, as amended by section 11 of part E of chapter 62 of the laws of
16 2003, subparagraph (v) as amended and subparagraph (xii) as added by
17 chapter 545 of the laws of 2015, subparagraph (x) as amended by section
18 38-f-1 of subpart A of part C of chapter 62 of the laws of 2011 and
19 subparagraph (xi) as amended by chapter 103 of the laws of 2021, is
20 amended to read as follows:

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

24 (A) If a court issued an order detaining a person after a finding by a
25 preponderance of the evidence that such person committed a violation
26 then within thirty days of the finding by a preponderance of the
27 evidence determination at the preliminary hearing, the department shall
28 afford such person a final revocation hearing in person before a hearing
29 officer designated by the department. Such hearing officer shall not
30 have had any prior supervisory involvement over the alleged violator.

31 (B) (1) If a notice of violation was issued or such person was
32 released on recognizance the department shall within forty-five days of
33 the issuance of the notice of violation or the order of release on
34 recognizance afford the person a final revocation hearing before a hear-
35 ing officer designated by the department. Such hearing officer shall not
36 have had any prior supervisory involvement over the alleged violator.

37 (2) The final revocation hearing shall not be held at a correctional
38 facility, detention center or local correctional facility. Such hearing
39 shall be scheduled and held in a courthouse, in cooperation with the
40 chief administrator of the courts and the chief administrator's desig-
41 nees, provided, however, that if such a courthouse is not reasonably
42 available for such hearing, the department may designate a suitable
43 office or other similar facility that is not a correctional facility,
44 detention center or local correctional facility for such hearing.

45 (3) The department shall have six months from the date of the effec-
46 tive date of the chapter of the laws of two thousand twenty-one that
47 amended this paragraph to begin to hold such hearings at allowable
48 locations.

49 (C) However, if an alleged violator requests and receives any post-
50 ponement of his or her revocation hearing, or consents to a postponed
51 revocation proceeding initiated by the board, or if an alleged violator,
52 by his actions otherwise precludes the prompt conduct of such
53 proceedings, the time limit may be extended.

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

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

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

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

(vi) At the revocation hearing, the charges shall be read and the alleged violator shall be permitted to plead not guilty, guilty, guilty with explanation or to stand mute. As to each charge, evidence shall be introduced through witnesses and documents, if any, in support of that charge. At the conclusion of each witness's direct testimony, he or she 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 or she 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 or she 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 sustained technical violation the presiding officer shall direct that no earned time credits shall be

1 awarded for the thirty day period commencing from the date of the
2 sustained violation. For any absconding violation found, the presiding
3 officer shall direct that no earned time credits shall be awarded for
4 the entire time period during which a releasee was found to have
5 absconded from supervision.

6 (xi) Incarceration shall not be imposed for any technical violation,
7 except as provided in subparagraph (xii) of this paragraph.

8 (xii) For each violation [so] found, the presiding officer may (A)
9 direct that the [~~presumptive releasee, parolee, conditional releasee or~~
10 ~~person serving a period of post-release supervision~~] releasee be
11 restored to supervision; (B) as an alternative to reincarceration,
12 direct the [~~presumptive releasee, parolee, conditional releasee or~~
13 ~~person serving a period of post-release supervision be placed in a~~
14 ~~parole transition facility for a period not to exceed one hundred eighty~~
15 ~~days and subsequent restoration to supervision~~] releasee receive re-en-
16 try services in the community from qualified nonprofit agencies; or (C)
17 [~~in the case of presumptive releasees, parolees or conditional releas-~~
18 ~~ees,~~] direct the violator's reincarceration and for non-technical
19 violations fix a date for consideration by the board for re-release on
20 presumptive release, or parole or conditional release, as the case may
21 be; or (D) for non-technical violations in the case of persons released
22 to a period of post-release supervision, direct the violator's reincar-
23 ceration up to the balance of the remaining period of post-release
24 supervision, not to exceed five years; provided, however, that a defend-
25 ant serving a term of post-release supervision for a conviction of a
26 felony sex offense defined in section 70.80 of the penal law may be
27 subject to a further period of imprisonment up to the balance of the
28 remaining period of post-release supervision, shall apply for technical
29 violations; and the following limitations:

30 (1) Absconding. For absconding up to seven days reincarceration may
31 be imposed for the first violation, up to fifteen days reincarceration
32 may be imposed for the second violation, and up to thirty days reincar-
33 ceration may be imposed for the third or any subsequent violation;

34 (2) Sanctions for certain technical violations. Reincarceration shall
35 not be imposed for a sustained technical violation that involves: (a)
36 violating curfew; (b) alcohol use, provided however that incarceration
37 is permissible for alcohol use if the person is subject to community
38 supervision due to a conviction for driving under the influence of alco-
39 hol; (c) drug use, provided, however incarceration is permissible for
40 drug use if the person is subject to community supervision due to a
41 conviction for driving under the influence of drugs; (d) failing to
42 notify parole officer of a change in employment or program status; (e)
43 failing to pay surcharges and fees; (f) obtaining a driver's license or
44 driving a car with a valid driver's license, provided however incarcera-
45 tion is permissible if either action is explicitly prohibited by the
46 person's conviction; (g) failing to notify community supervision officer
47 of contact with any law enforcement agency, provided however, incarcera-
48 tion is permissible if the person intended to hide illegal behavior; (h)
49 failing to obey other special conditions, provided however that incar-
50 ceration is permissible if the failure cannot be addressed in the commu-
51 nity and all reasonable community-based means to address the failure
52 have been exhausted; and

53 (3) Sanctions for all other technical violations. For all other tech-
54 nical violations, no period of reincarceration may be imposed for the
55 first and second substantiated technical violations for which incarcera-
56 tion may be imposed; up to seven days reincarceration may be imposed for

1 the third substantiated technical violation for which incarceration may
2 be imposed; up to fifteen days reincarceration may be imposed for the
3 fourth substantiated technical violation for which incarceration may be
4 imposed; up to thirty days reincarceration may be imposed for the fifth
5 and subsequent substantiated technical violations for which incarceration
6 may be imposed.

7 (xiii) If a warrant was executed pursuant to subparagraph (iv) of
8 paragraph (a) of this subdivision by a criminal court and the court
9 released the person pending a preliminary or final revocation hearing,
10 any period of reincarceration imposed pursuant to this paragraph shall
11 be counted from the date of issuance of a determination after a final
12 revocation hearing that the person has violated one or more conditions
13 of community supervision, and the time between execution of the warrant
14 and release of the person pending a preliminary or final revocation
15 hearing shall count toward any period of reincarceration imposed pursu-
16 ant to this paragraph. If a releasee is committed to the custody of the
17 sheriff pursuant to article five hundred thirty of the criminal proce-
18 dure law, any time the person spent confined in a correctional facility
19 or local correctional facility shall be credited toward any period of
20 reincarceration imposed pursuant to this paragraph. In all cases, the
21 presiding officer shall impose the least restrictive reasonable sanc-
22 tion. Any periods of reincarceration imposed pursuant to this section
23 shall run concurrently if more than one violation is sustained. If a
24 period of reincarceration is imposed pursuant to this paragraph, the
25 releasee shall be released from custody upon expiration of the period or
26 the end of the releasee's period of community supervision, whichever
27 shall be sooner. For the violator serving an indeterminate sentence who
28 while re-incarcerated has not been found by the department to have
29 committed a serious disciplinary infraction, such violator shall be
30 re-released on the date fixed at the revocation hearing. For the viola-
31 tor serving an indeterminate sentence who has been found by the depart-
32 ment to have committed a serious disciplinary infraction while re-incar-
33 cerated, the department shall refer the violator to the board for
34 consideration for re-release to community supervision. Upon such refer-
35 ral the board may waive the personal interview between a member or
36 members of the board and the violator to determine the suitability for
37 re-release when the board directs that the violator be re-released upon
38 expiration of the time assessment. The board shall retain the authority
39 to suspend the date fixed for re-release based on the violator's commis-
40 sion of a serious disciplinary infraction and shall in such case require
41 a personal interview be conducted within a reasonable time between a
42 panel of members of the board and the violator to determine suitability
43 for re-release. If an interview is required, the board shall notify the
44 violator in advance of the date and time of such interview in accordance
45 with the rules and regulations of the board.

46 [~~(xii)~~] (xiv) If the presiding officer sustains any violations, [~~he or~~
47 ~~she~~] such officer must prepare a written statement, to be made available
48 to the alleged violator and his or her counsel, indicating the evidence
49 relied upon and the reasons for revoking presumptive release, parole,
50 conditional release or post-release supervision, and for the disposition
51 made. The presiding officer shall also advise the alleged violator in a
52 written statement that revocation will result in loss of the right to
53 vote while he or she is serving the remainder of his or her felony
54 sentence in a correctional facility and that the right to vote will be
55 restored upon his or her release.

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

43 § 7. Section 259-i of the executive law is amended by adding a new
44 subdivision 4-a to read as follows:

45 4-a. Appeals from non-technical violation findings. (a) Notwithstand-
46 ing the provisions of any other law, when in a violation proceeding
47 brought pursuant to this section, any of the charges sustained by the
48 hearing officer would constitute a misdemeanor or felony if such charge
49 were or had been brought in a criminal court, the releasee may, in lieu
50 of an administrative appeal to the board pursuant to subdivision four of
51 this section, appeal such determination to the lowest level of the
52 following courts serving the jurisdiction in which the hearing was held
53 or in which any such sustained conduct was alleged to have occurred:
54 city court, district court, county court or supreme court; provided,
55 however, that if any such misdemeanor or felony charge was prosecuted in

1 any city, district, county or supreme court, such appeal shall be filed
2 in that court.

3 (b) The appeal shall be commenced by the filing of a notice of appeal
4 in the same manner as an appeal to the appellate division as set forth
5 in paragraphs (a), (b), (d) and (e) of subdivision one and subdivision
6 six of section 460.10 of the criminal procedure law. Counsel shall be
7 assigned to the individual, if unable to afford counsel, by the court
8 before which the appeal is taken or is to be taken. Such court may stay
9 such determination pending the appeal, in a manner consistent with the
10 provisions of section 460.50 of the criminal procedure law or as other-
11 wise authorized. Within thirty days after receiving such a notice of
12 appeal, the board shall serve on the individual or counsel and file with
13 such court a transcript of the proceedings before the hearing officer
14 prepared pursuant to paragraph (a) of subdivision six of this section,
15 and copies of the documents, photographs and records considered by the
16 hearing officer, and provide access to any other evidence considered by
17 the hearing officer who made such determination.

18 (c) The appeal shall be perfected in the manner set forth in section
19 460.70 of the criminal procedure law, other provisions of law generally
20 applicable to criminal appeals, and authorized rules implementing this
21 section promulgated by the chief administrator of the courts. The
22 department shall have responsibility for presenting the department's
23 position through any submissions to the court on the appeal. The depart-
24 ment shall coordinate with relevant district attorneys to ensure appro-
25 priate information may be provided to the court. The district attorney
26 of the jurisdiction may appear on any such appeal without the necessity
27 of a motion or order of the court.

28 (d) On such appeal, the reviewing city, district, county or supreme
29 court shall consider de novo the issues raised by the appellant, includ-
30 ing but not limited to the following: (a) whether any sustained
31 violation charge should have been sustained; (b) whether reduction or
32 dismissal of the alleged violation charge or charges is warranted, in
33 accordance with the principles set forth in section 170.40 or section
34 210.40 of the criminal procedure law or otherwise; and (c) whether any
35 time assessment and other authorized sanction imposed by the hearing
36 officer should be vacated, reduced or, notwithstanding any law, rule or
37 regulation to the contrary, ordered to run concurrently with any other
38 sentence, time assessment, or period of reincarceration imposed.

39 § 8. Section 259-i of the executive law is amended by adding a new
40 subdivision 9 to read as follows:

41 9. The board shall promulgate rules and regulations to facilitate the
42 presence of nonprofit service providers able to offer relevant communi-
43 ty-based services to releasees at all preliminary and final revocation
44 hearings for the purpose of helping people subject to community super-
45 vision successfully complete such supervision and avoid future such
46 supervision, and to help ensure presiding officers impose the least
47 restrictive reasonable sanction for any violation of community super-
48 vision.

49 § 9. Severability. If any clause, sentence, paragraph, section or part
50 of this act shall be adjudged by any court of competent jurisdiction to
51 be invalid and after exhaustion of all further judicial review, the
52 judgment shall not affect, impair or invalidate the remainder thereof,
53 but shall be confined in its operation to the clause, sentence, para-
54 graph, section or part of this act directly involved in the controversy
55 in which the judgment shall have been rendered.

1 § 10. This act shall take effect March 1, 2022; provided, however,
2 that the amendments made to subparagraph (xi) of paragraph (f) of subdi-
3 vision 3 of section 259-i of the executive law made by section six of
4 this act shall take effect on the same date and in the same manner as
5 such chapter of the laws of 2021 takes effect; provided however, within
6 six months of such effective date, the department of corrections and
7 community supervision in consultation with the board of parole shall
8 calculate and award all earned time credits pursuant to subdivision 4 of
9 section 70.40 of the penal law as added by section two of this act to
10 all persons serving a sentence subject to community supervision at the
11 time this legislation becomes law retroactive to the initial date such
12 person began his or her earliest period of community supervision prior
13 to any revocation of community supervision. Provided further, however,
14 within ten months of becoming law the department of corrections and
15 community supervision in consultation with the board of parole shall
16 identify all individuals incarcerated for a sustained violation of
17 community supervision and recalculate such individual's time assessment
18 in accordance with this act. Effective immediately, the addition, amend-
19 ment and/or repeal of any rule or regulation necessary for the implemen-
20 tation of this act on its effective date are authorized to be made and
21 completed on or before such effective date.