STATE OF NEW YORK

4447

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. WALLACE, STIRPE, WOERNER, JONES, SILLITTI, PHEFFER AMATO, McMAHON, LUNSFORD, JACOBSON -- 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:

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

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 **or conduct that violates a specific condition of community supervision in an important respect and such conduct may result in serious harm to the releasee or others**.

7. "Non-technical violation" means: (a) the commission of a new felony or misdemeanor offense; or (b) **conduct that violates a specific condition of community supervision and such conduct may result in serious harm to the releasee or others; or (c)** conduct by a releasee who is serving a sentence for an offense defined in article [~~130~~] **one hundred thirty** of the penal law **(sex offenses), article one hundred thirty-five of the penal law (kidnapping, coercion and related offenses), article two hundred sixty-five of the penal law (firearms and other dangerous weapons)** 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 **including any violation of article six-C of the correction law**.

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

(xii) For each violation found, the presiding officer may (A) direct that the releasee be restored to supervision; (B) as an alternative to reincarceration, direct the releasee receive re-entry services in the

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

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community from qualified nonprofit agencies; or (C) direct the violator's reincarceration and for non-technical violations fix a date for consideration by the board for re-release on presumptive release, or parole or conditional release, as the case may be; or (D) for non-technical violations in the case of persons released to a period of post-release supervision, direct the violator's reincarceration up to the balance of the remaining period of post-release supervision, not to exceed five years; provided, however, that a defendant serving a term of post-release supervision for a conviction of a felony sex offense defined in section 70.80 of the penal law may be subject to a further period of imprisonment up to the balance of the remaining period of post-release supervision, shall apply for technical violations; and the following limitations:

(1) Absconding. For absconding up to [~~seven~~] thirty days reincarceration may be imposed for the first violation, up to [~~fifteen~~] sixty days reincarceration may be imposed for the second violation, and up to [~~thirty~~] ninety days reincarceration may be imposed for the third or any subsequent violation, provided, however, that no releasee shall be reincarcerated for more than seven days for absconding if such releasee voluntarily presents himself or herself to his or her community supervision officer or area bureau office;

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

(3) Sanctions for all other technical violations. For all other technical violations, no period of reincarceration may be imposed for the first and second substantiated technical violations for which incarceration may be imposed; up to seven days reincarceration may be imposed for the third substantiated technical violation for which incarceration may be imposed; up to fifteen days reincarceration may be imposed for the fourth substantiated technical violation for which incarceration may be imposed; up to thirty days reincarceration may be imposed for the fifth and subsequent substantiated technical violations for which incarceration may be imposed. Provided, however, that a period of reincarceration may be imposed for conduct that violates a specific condition of community supervision in an important respect and that such conduct may result in serious harm to the releasee or others.

§ 3. This act shall take effect immediately.