STATE OF NEW YORK

9097

IN ASSEMBLY

February 7, 2024

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

AN ACT to amend the executive law, in relation to renaming the state board of parole; and to amend the correction law, the criminal procedure law, the judiciary law, the mental hygiene law, the public health law and the penal law, in relation to making conforming changes

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

Section 1. The article heading of article 12-B of the executive law, as amended by section 105 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

STATE BOARD OF [~~PAROLE~~] **RE-ENTRY**

§ 2. Paragraphs (c) and (e) of subdivision 1 of section 169 of the executive law, paragraph (c) as amended by section 9 of part A of chapter 60 of the laws of 2012 and paragraph (e) as amended by section 2-a of part AA of chapter 56 of the laws of 2019, are amended to read as follows:

(c) commissioner of agriculture and markets, commissioner of alcoholism and substance abuse services, adjutant general, commissioner and president of state civil service commission, commissioner of economic development, chair of the energy research and development authority, president of higher education services corporation, commissioner of motor vehicles, member-chair of board of [~~parole~~] **re-entry**, chair of public employment relations board, secretary of state, commissioner of alcoholism and substance abuse services, executive director of the housing finance agency, commissioner of housing and community renewal, executive director of state insurance fund, commissioner-chair of state liquor authority, and chair of the workers' compensation board;

(e) chairperson of state athletic commission, director of the office of victim services, chairperson of human rights appeal board, chairperson of the industrial board of appeals, chairperson of the state commission of correction, members of the board of [~~parole~~] **re-entry**, member-chairperson of unemployment insurance appeal board, director of

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

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veterans' services, and vice-chairperson of the workers' compensation board;

§ 3. Section 244 of the executive law, as amended by section 19 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

§ 244. Hostels and foster homes. 1. The office is hereby authorized to provide or to pay for care in a hostel or foster home approved by the office as suitable for such cases for any probationer or parolee under the age of twenty-one years when the [~~parole~~] board **of re-entry** or a judge of a court determines that there is no other suitable home for such probationer or parolee and that such probationer or parolee should be placed in such hostel or foster home. In addition to payment for such care, when ordered by the board or court, the office is authorized to provide or pay for clothing and other necessities, including medical and psychiatric treatment, required for the welfare of such probationer or parolee. The office may also provide or contract for such care in any suitable facility operated by a department of correction or by any other public or voluntary social welfare agency, institution or organization. A court with respect to such a probationer and the [~~parole~~] board **of re-entry** with respect to such a parolee shall, subject to regulation by the division control admissions to and discharges from such hostels and foster homes. When placement is made in any hostel or foster home, or in any facility other than a public institution, such placement whenever practicable shall be in a hostel, or facility operated by or in the home of a person or persons of the same religious faith as the probationer or parolee.

2. The office shall have authority and the duty to stimulate programs for the development of hostels and foster homes for the care of probationers and parolees under the age of twenty-one years.

§ 4. Subdivision 1 of section 259 of the executive law, as added by section 37 of subpart A of part C of chapter 62 of the laws of 2011, is amended and a new subdivision 9 is added to read as follows:

1. "Board" means the state board of [~~parole~~] **re-entry**.

9. "Division" means the division of criminal justice services.

§ 5. Section 259-a of the executive law, as added by section 38 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 259-a. State board of [~~parole~~] **re-entry**; funding. The annual budget submitted by the governor shall separately state the recommended appropriations for the state board of [~~parole~~] **re-entry**. Upon enactment, these separately stated appropriations for the state board of [~~parole~~] **re-entry** shall not be decreased by interchange with any other appropriation, notwithstanding section fifty-one of the state finance law.

§ 6. The section heading and subdivisions 1 and 3 of section 259-b of the executive law, the section heading and subdivision 1 as amended by section 38-a of subpart A of part C of chapter 62 of the laws of 2011 and subdivision 3 as amended by chapter 135 of the laws of 2013, are amended to read as follows:

State board of [~~parole~~] **re-entry**; organization. 1. There shall be in the department a state board of [~~parole~~] **re-entry** which shall possess the powers and duties hereinafter specified. The board shall function independently of the department regarding all of its decision-making functions, as well as any other powers and duties specified in this article, provided, however, that administrative matters of general applicability within the department shall be applicable to the board. Such board shall consist of not more than nineteen members appointed by the governor with the advice and consent of the senate. The term of

office of each member of such board shall be for six years; provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom he **or she** is to succeed. In the event of the inability to act of any member, the governor may appoint some competent informed person to act in his **or her** stead during the continuance of such disability.

3. The governor shall designate one of the members of the board as [~~chairman~~] **chairperson** to serve in such capacity at the pleasure of the governor or until the member's term of office expires and a successor is designated in accordance with law, whichever first occurs. The [~~chairman~~] **chairperson** shall be responsible for the administrative functions and daily operations of the [~~parole~~] board and its staff, except as otherwise provided by law.

§ 7. The section heading, the opening paragraph and subdivisions 4, 12 and 13 of section 259-c of the executive law, the section heading and the opening paragraph as amended by section 38-b of subpart A of part C of chapter 62 of the laws of 2011, subdivisions 4 and 12 as amended by chapter 322 of the laws of 2021 and subdivision 13 as amended by chapter 292 of the laws of 2018, are amended to read as follows:

State board of [~~parole~~] **re-entry**; functions, powers and duties. The state board of [~~parole~~] **re-entry** shall:

4. establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of [~~parole~~] **re-entry** in determining which incarcerated individuals may be released to parole supervision;

12. to facilitate the supervision of all incarcerated individuals released on community supervision the [~~chairman~~] **chairperson** of the state board of [~~parole~~] **re-entry** shall consider the implementation of a program of graduated sanctions, including but not limited to the utilization of a risk and needs assessment instrument that would be administered to all incarcerated individuals eligible for parole supervision. Such a program would include various components including the use of alternatives to incarceration for technical parole violations;

13. transmit a report of the work of the state board of [~~parole~~] **re-entry** for the preceding calendar year to the governor and the legislature annually. Such report shall include statistical information regarding the demographics of persons granted release and considered for release to community supervision or deportation, including but not limited to age, gender, race, ethnicity, region of commitment and other relevant categories of classification and commitment;

§ 8. Subdivision 1 of section 259-d of the executive law, as amended by section 38-b-2 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

1. The state board of [~~parole~~] **re-entry** shall appoint and shall have the power to remove, in accordance with the provisions of the civil service law, hearing officers who shall be authorized to conduct parole revocation proceedings. Hearing officers shall function independently of the department regarding all of their decision-making functions, and shall report directly to the board, provided, however, that administrative matters of general applicability within the department shall be applicable to all hearing officers. A hearing officer conducting such proceedings shall, when delegated such authority by the board in rules

adopted by the board, be required to make a written decision in accordance with standards and rules adopted by the board. Nothing in this article shall be deemed to preclude a member of the state board of [~~parole~~] re-entry from exercising all of the functions, powers and duties of a hearing officer upon request of the [~~chairman~~] chairperson.

§ 9. Section 259-e of the executive law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 259-e. Institutional parole services. The department shall provide institutional parole services. Such services shall include preparation of reports and other data required by the state board of [~~parole~~] re-entry in the exercise of its functions with respect to release on presumptive release, parole, conditional release or post-release supervision of incarcerated individuals. Additionally, the department shall determine which incarcerated individuals are in need of a deaf language interpreter or an English language interpreter, and shall inform the board of such need within a reasonable period of time prior to an incarcerated individual's scheduled appearance before the board. Employees of the department who collect data, interview incarcerated individuals and prepare reports for the state board of [~~parole~~] re-entry in institutions under the jurisdiction of the department shall work under the direct supervision of the deputy commissioner of the department in charge of program services. Data and reports submitted to the board shall address the statutory factors to be considered by the board pursuant to the relevant provisions of section two hundred fifty-nine-i of this article.

§ 10. Subdivision 5 of section 259-h of the executive law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

5. The provisions of this section shall not be construed as diminishing the discretionary authority of the board of [~~parole~~] re-entry to determine whether or not an incarcerated individual is to be paroled.

§ 11. Subparagraph (iii) of paragraph (f) of subdivision 3, paragraph (b) of subdivision 6 and subdivision 8 of section 259-i of the executive law, subparagraph (iii) of paragraph (f) of subdivision 3 as amended by chapter 427 of the laws of 2021, paragraph (b) of subdivision 6 as added by section 1 of part T of chapter 62 of the laws of 2003 and subdivision 8 as amended by chapter 9 of the laws of 2017, are amended to read as follows:

(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~~] re-entry shall be given written notice of the date, place and time of the hearing pursuant to subparagraph (ix) of paragraph (c) of this subdivision.

(b) The [~~chairman~~] chairperson of the board of [~~parole~~] re-entry shall maintain records of all parole interviews and hearings for a period of twenty-five years from the date of the parole release interview or until expiration of the maximum term of sentence.

8. Foreign born or non-English speaking person before the board. Upon notification from the department pursuant to section two hundred fifty-nine-e of this article, or upon the request of any foreign born or non-English speaking person who is scheduled to participate in an interview, parole release hearing, preliminary hearing or revocation hearing, there shall be appointed from the New York state office of general services statewide administrative services contract, a qualified interpreter to interpret the proceedings to and the statements or testimony of such person. The board shall determine a reasonable fee for all such interpreting services, the cost of which shall be a charge upon the board of

[~~parole~~] re-entry. No such request or appointment shall cause a delay of release from incarceration of such person.

§ 12. Subdivisions 1, 2 and 3 of section 259-j of the executive law, as amended by section 38-g of subpart A of part C of chapter 62 of the laws of 2011, are amended to read as follows:

1. Except where a determinate sentence was imposed for a felony other than a felony defined in article two hundred twenty [~~or article two hundred twenty-one~~] of the penal law, if the board of [~~parole~~] re-entry is satisfied that an absolute discharge from presumptive release, parole, conditional release or release to a period of post-release supervision is in the best interests of society, the board may grant such a discharge prior to the expiration of the full term or maximum term to any person who has been on unrevoked community supervision for at least three consecutive years. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted. No such discharge shall be granted unless the board is satisfied that the parolee or releasee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee or DNA databank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith.

2. The [~~chairman~~] chairperson of the board of [~~parole~~] re-entry shall promulgate rules and regulations governing the issuance of discharges from community supervision pursuant to this section to assure that such discharges are consistent with public safety.

3. Notwithstanding any other provision of this section to the contrary, where a term of post-release supervision in excess of five years has been imposed on a person convicted of a crime defined in article one hundred thirty of the penal law, including a sexually motivated felony, the board of [~~parole~~] re-entry may grant a discharge from post-release supervision prior to the expiration of the maximum term of post-release supervision. Such a discharge may be granted only after the person has served at least five years of post-release supervision, and only to a person who has been on unrevoked post-release supervision for at least three consecutive years. No such discharge shall be granted unless the board of [~~parole~~] re-entry or the department acting pursuant to its responsibility under subdivision one of section two hundred one of the correction law consults with any licensed psychologist, qualified psychiatrist, or other mental health professional who is providing care or treatment to the supervisee; and the board: (a) determines that a discharge from post-release supervision is in the best interests of society; and (b) is satisfied that the supervisee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee, or DNA data bank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith. Before making a determination to discharge a person from a period of post-release supervision, the board of [~~parole~~] re-entry may request that the commissioner of the office of mental health arrange a psychiatric evaluation of the supervisee. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted.

§ 13. Subdivisions 1, 2 and 4 of section 259-k of the executive law, as amended by section 38-i of subpart A of part C of chapter 62 of the laws of 2011, are amended to read as follows:

1. All case files shall be maintained by the department for use by the department and board. The department and board and authorized officers

and employees thereof shall have complete access to such files and the board of [~~parole~~] re-entry shall have the right to make such entries as the board of [~~parole~~] re-entry shall deem appropriate in accordance with law.

2. The board shall make rules for the purpose of maintaining the confidentiality of records, information contained therein and information obtained in an official capacity by officers, employees or members of the board of [~~parole~~] re-entry.

4. Upon a determination by the department and board of [~~parole~~] re-entry that records regarding an individual presently under the supervision of the department are relevant to an investigation of child abuse or maltreatment conducted by a child protective service pursuant to title six of article six of the social services law, the department and board shall provide the records determined to be relevant to the child protective service conducting the investigation. The department and board shall promulgate rules for the transmission of records required to be provided under this section.

§ 14. Subdivisions 1 and 2 of section 259-l of the executive law, subdivision 1 as amended by chapter 322 of the laws of 2021 and subdivision 2 as amended by section 38-j of subpart A of part C of chapter 62 of the laws of 2011, are amended to read as follows:

1. It shall be the duty of the commissioner of corrections and community supervision to ensure that all officers and employees of the department shall at all times cooperate with the board of [~~parole~~] re-entry and shall furnish to such members of the board and employees of the board such information as may be appropriate to enable them to perform their independent decision making functions. It is also his or her duty to ensure that the functions of the board of [~~parole~~] re-entry are not hampered in any way, including but not limited to: a restriction of resources including staff assistance; limited access to vital information; and presentation of an incarcerated individual's information in a manner that may inappropriately influence the board in its decision making. Where an incarcerated individual has appeared before the board prior to having completed any program assigned by the department, and such program remains incomplete by no fault of the incarcerated individual, and where the board has denied such incarcerated individual release pursuant to paragraph (a) of subdivision two of section two hundred fifty-nine-i of this article, the department shall prioritize such an incarcerated individual's placement into the assigned program.

2. The official in charge of each institution wherein any person is confined under a definite sentence of imprisonment, all officers and employees thereof and all other public officials shall at all times cooperate with the board of [~~parole~~] re-entry, and shall furnish to such board, its officers and employees such information as may be required by the board to perform its functions hereunder. The members of the board, its officers and employees shall at all times be given free access to all persons confined in any such institution under such sentence and shall be furnished with appropriate working space in such institution for such purpose without charge therefor.

§ 15. Subdivision 2 of section 259-m of the executive law, as added by chapter 904 of the laws of 1977, is amended to read as follows:

2. The [~~chairman~~] chairperson of the board of [~~parole~~] re-entry shall have power and shall be charged with the duty of promulgating such rules and regulations as may be deemed necessary to carry out the terms of a compact entered into by the state pursuant to this section.

§ 16. Subdivision 3 of section 259-o of the executive law, as amended by chapter 211 of the laws of 1985, is amended to read as follows:

3. Whenever there is reasonable cause to believe that a person released on parole in this state but under the parole supervision of another state pursuant to section two hundred fifty-nine-m of this article has violated the conditions thereof, any person duly authorized in such other state to conduct preliminary violation hearings, upon request of the [~~chairman~~] **chairperson** of the board of [~~parole~~] **re-entry**, may conduct such hearing, unless such hearing is waived by the parolee. The preliminary violation hearing and the determinations made thereat shall have the same force and effect as preliminary violation hearing conducted in this state by the board of [~~parole~~] **re-entry** or a member, hearing officer or panel thereof.

§ 17. Subdivisions 1, 2, 3, 4 and 6 of section 259-q of the executive law, subdivisions 1, 2 and 6 and paragraph (b) of subdivision 4 as amended by section 38-k-1 of subpart A of part C of chapter 62 of the laws of 2011, subdivision 3 as amended by chapter 120 of the laws of 2017, and subdivision 4 as added by chapter 466 of the laws of 1978, are amended to read as follows:

1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the board of [~~parole~~] **re-entry** or former division of parole, in his **or her** personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.

2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the board of [~~parole~~] **re-entry** or former division of parole shall be brought and maintained in the court of claims as a claim against the state.

3. The state shall save harmless and indemnify any officer or employee of the board of [~~parole~~] **re-entry** or former division of parole from financial loss resulting from a claim filed in a court of the United States for damages arising out of an act done or the failure to perform any act that was (a) within the scope of the employment and in the discharge of the duties of such officer or employee, and (b) not done or omitted with the intent to violate any rule or regulation of the department, board or former division or of any statute or governing case law of the state or of the United States at the time the damages were sustained; provided that the officer or employee shall comply with the provisions of subdivision four of section seventeen of the public officers law.

4. (a) The provisions of this section shall supplement, and be available in addition to, the provisions of section seventeen of the public officers law and, insofar as this section is inconsistent with section seventeen of the public officers law, the provisions of this section shall be controlling.

(b) The provisions of this section shall not be construed in any way to impair, modify or abrogate any immunity available to any officer or employee of the board of [~~parole~~] **re-entry** or former division of parole under the statutory or decisional law of the state or the United States.

6. The benefits of subdivision three [~~hereof~~] **of this section** shall inure only to officers and employees of the board of [~~parole~~] **re-entry** or former division of parole and shall not enlarge or diminish the rights of any other party.

§ 18. Subdivisions 10 and 11 of section 259-r of the executive law, as amended by chapter 322 of the laws of 2021, are amended to read as follows:

10. Notwithstanding any other provision of law, in the case of an incarcerated individual whose terminal condition, disease or syndrome meets the criteria for medical parole as set forth in paragraph (a) of subdivision one of this section, and who is not serving a sentence for one or more offenses set forth in paragraph (i) of subdivision one of section eight hundred six of the correction law which would render such incarcerated individual ineligible for presumptive release, the granting of medical parole shall be determined by the commissioner provided that a release of such incarcerated individual shall be in accordance with subdivision eleven of this section. In such case, the provisions that would have applied to and the procedures that would have been followed by the board of [~~parole~~] re-entry pursuant to this section shall apply to and be followed by the commissioner.

11. (a) After the commissioner has made a determination to grant medical parole pursuant to subdivision ten of this section, the commissioner shall notify the chairperson of the board of [~~parole~~] re-entry, or their designee who shall be a member of the board of [~~parole~~] re-entry, and provide him or her with all relevant records, files, information and documentation, which includes but is not limited to the criminal history, medical diagnosis and treatment pertaining to the terminally ill incarcerated individual no more than five days from the date of the determination. (b) The chairperson or his or her designee shall either accept the commissioner's grant of medical parole, in which case the incarcerated individual may be released by the commissioner, or conduct further review. This decision or review shall be made within five days of the receipt of the relevant records, files, information and documentation from the commissioner. The chairperson's further review may include, but not be limited to, an appearance by the terminally ill incarcerated individual before the chairperson or his or her designee. (c) After this further review, the chairperson shall either accept the commissioner's grant of medical parole, in which case the incarcerated individual may be released by the commissioner, or the chairperson shall schedule an appearance for the terminally ill incarcerated individual before the board of [~~parole~~] re-entry.

In the event the terminally ill incarcerated individual is scheduled to make an appearance before the board of [~~parole~~] re-entry pursuant to this subdivision, the matter shall be heard by a panel that does not include the chairperson or any member of the board of [~~parole~~] re-entry who was involved in the review of the commissioner's determination.

§ 19. Paragraph (b) of subdivision 2 of section 259-s of the executive law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

(b) The commissioner, or the commissioner's designee, shall review the diagnosis and may certify that the incarcerated individual is suffering from such condition, disease or syndrome and that the incarcerated individual is so debilitated or incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society. If the commissioner does not so certify then the incarcerated individual shall not be referred to the board for consideration for release on medical parole. If the commissioner does so certify, then the commissioner shall, within seven working days of receipt of such diagnosis, refer the incarcerated individual to the board for consideration for release on medical parole. However, no such

referral of an incarcerated individual to the board of [~~parole~~] re-entry shall be made unless the incarcerated individual has been examined by a physician and diagnosed as having a condition, disease or syndrome as previously described herein at some time subsequent to such incarcerated individual's admission to a facility operated by the department.

§ 20. Section 259-t of the executive law, as added by chapter 487 of the laws of 2021, is amended to read as follows:

§ 259-t. Permitted activities. Where any person is granted presumptive release, parole, conditional release, release to post-release supervision or any other type of supervised release, the state board of [~~parole~~] re-entry shall not deem a person to be in violation of and the state board of [~~parole~~] re-entry shall not terminate such granted presumptive release, parole, conditional release, release to post-release supervision or any other type of supervised release solely because such person engaged in bona fide work for an employer, including travel time to or from bona fide work, during curfew times set by conditions of probation, parole, presumptive release, conditional release or release to post-release supervision. For purposes of this section, bona fide work is work performed as an employee for an employer, as defined in section two of the labor law.

§ 21. Section 259-t of the executive law, as added by chapter 492 of the laws of 2021, is amended to read as follows:

§ [~~259-t~~] 259-u. Permitted activities. Where any person is granted presumptive release, parole, conditional release, release to post-release supervision or any other type of supervised release, the state board of [~~parole~~] re-entry shall not deem a person to be in violation of and the state board of [~~parole~~] re-entry shall not terminate such granted presumptive release, parole, conditional release, release to post-release supervision or any other type of supervised release solely because such person participated in work related labor protests, or in a lawful labor dispute, strike or other concerted stoppage of work or slowdown pursuant to article twenty of the labor law or the national labor relations act (29 U.S.C. sections 151 et. seq.).

§ 22. Subparagraph (iii) of paragraph (c) of subdivision 1 of section 632-a of the executive law, as amended by section 100 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(iii) is no longer subject to a sentence of probation or conditional discharge or indeterminate, determinate or definite term of imprisonment or period of post-release supervision or term of supervised release, and where within the previous three years: the full or maximum term or period terminated or expired or such person was granted a discharge by the state board of [~~parole~~] re-entry or the department of corrections and community supervision pursuant to applicable law, or granted a discharge or termination from probation pursuant to applicable law or granted a discharge or termination under applicable federal or state law, rules or regulations prior to the expiration of such full or maximum term or period; and includes only: (A) those funds paid to such person as a result of any interest, right, right of action, asset, share, claim, recovery or benefit of any kind that the person obtained, or that accrued in favor of such person, prior to the expiration of such sentence, term or period; (B) any recovery or award collected in a lawsuit after expiration of such sentence where the right or cause of action accrued prior to the expiration or service of such sentence; and (C) earned income earned during a period in which such person was not in compliance with the conditions of his or her probation, parole, conditional release, period of post-release supervision by the department of

corrections and community supervision or term of supervised release with the United States probation office or United States parole commission. For purposes of this subparagraph, such period of non-compliance shall be measured, as applicable, from the earliest date of delinquency determined by the department of corrections and community supervision, or from the earliest date on which a declaration of delinquency is filed pursuant to section 410.30 of the criminal procedure law and thereafter sustained, or from the earliest date of delinquency determined in accordance with applicable federal law, rules or regulations, and shall continue until a final determination sustaining the violation has been made by the trial court, the department of corrections and community supervision, or appropriate federal authority.

§ 23. Subdivision 9 of section 2 of the correction law, as amended by chapter 476 of the laws of 1970, is amended to read as follows:

9. "Diagnostic and treatment center". A correctional facility operated for the purpose of providing intensive physical, mental and sociological diagnostic and treatment services including pre-parole diagnostic evaluation, where requested by the board of [~~parole~~] re-entry, and scientific study of the social and mental aspects of the causes of crime.

§ 24. Subdivision 1 of section 24 of the correction law, as amended by section 11 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, which for purposes of this section shall include members of the state board of [~~parole~~] re-entry, in his or her personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.

§ 25. Subdivision 2 of section 29 of the correction law, as amended by section 12 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

2. The commissioner shall make rules as to the privacy of records, statistics and other information collected, obtained and maintained by the department, its institutions or the board of [~~parole~~] re-entry and information obtained in an official capacity by officers, employees or members thereof.

§ 26. Section 71-a of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 71-a. Transitional accountability plan. Upon admission of an incarcerated individual committed to the custody of the department under an indeterminate or determinate sentence of imprisonment, the department shall develop a transitional accountability plan. Such plan shall be a comprehensive, dynamic and individualized case management plan based on the programming and treatment needs of the incarcerated individual. The purpose of such plan shall be to promote the rehabilitation of the incarcerated individual and their successful and productive reentry and reintegration into society upon release. To that end, such plan shall be used to prioritize programming and treatment services for the incarcerated individual during incarceration and any period of community supervision. The commissioner may consult with the office of mental health, the office of [~~alcoholism and substance abuse~~] addiction services and supports, the board of [~~parole~~] re-entry, the department of health, and other appropriate agencies in the development of transitional case management plans.

§ 27. Subdivisions 6 and 8 of section 73 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

6. Where a person who is an incarcerated individual of a residential treatment facility absconds, or fails to return thereto as specified in the program approved for him or her, he or she may be arrested and returned by an officer or employee of the department or by any peace officer, acting pursuant to his or her special duties, or police officer without a warrant; or a member of the board of [~~parole~~] re-entry or an officer designated by such board may issue a warrant for the retaking of such person. A warrant issued pursuant to this subdivision shall have the same force and effect, and shall be executed in the same manner, as a warrant issued for violation of community supervision.

8. The state board of [~~parole~~] re-entry may grant parole to any incarcerated individual of a residential treatment facility at any time after he or she becomes eligible therefor. Such parole shall be in accordance with provisions of law that would apply if the person were still confined in the facility from which he or she was transferred, except that any personal appearance before the board may be at any place designated by the board.

§ 28. Subdivision 1 of section 89-e of the correction law, as amended by section 47 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

1. The alternate correctional facility review panel is hereby established and shall consist of the commissioner, the chairman of the state commission of correction, the chairman of the board of [~~parole~~] re-entry, the director of the office of probation and correctional alternatives, the commissioner of correction of the city of New York, the president of the New York State Sheriffs' Association Institute, Inc., and the president of the Correctional Association of New York or their designees. The governor shall appoint a chairman and vice-chairman from among the members.

§ 29. Subdivision 4 of section 112 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

4. The commissioner and the chair of the [~~parole~~] board of re-entry shall work jointly to develop and implement, as soon as practicable, a risk and needs assessment instrument or instruments, which shall be empirically validated, that would be administered to incarcerated individuals upon reception into a correctional facility, and throughout their incarceration and release to community supervision, to facilitate appropriate programming both during an incarcerated individual's incarceration and community supervision, and designed to facilitate the successful integration of incarcerated individuals into the community.

§ 30. Section 168-m of the correction law, as amended by section 20 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 168-m. Review. Notwithstanding any other provision of law to the contrary, any state or local correctional facility, hospital or institution, district attorney, law enforcement agency, probation department, state board of [~~parole~~] re-entry, court or child protective agency shall forward relevant information pertaining to a sex offender to be discharged, paroled, released to post-release supervision or released to the board for review no later than one hundred twenty days prior to the release or discharge and the board shall make recommendations as provided in subdivision six of section one hundred sixty-eight-l of this article within sixty days of receipt of the information. Information may

include, but may not be limited to all or a portion of the arrest file, prosecutor's file, probation or parole file, child protective file, court file, commitment file, medical file and treatment file pertaining to such person. Such person shall be permitted to submit to the board any information relevant to the review. Upon application of the sex offender or the district attorney, the court shall seal any portion of the board's file pertaining to the sex offender that contains material that is confidential under any state or federal law; provided, however, that in any subsequent proceedings in which the sex offender who is the subject of the sealed record is a party and which requires the board to provide a recommendation to the court pursuant to this article, such sealed record shall be available to the sex offender, the district attorney, the court and the attorney general where the attorney general is a party, or represents a party, in the proceeding.

§ 31. Subdivision 1 of section 201 of the correction law, as added by section 32 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

1. The department shall have responsibility for the preparation of reports and other data required by the state board of [~~parole~~] re-entry in the exercise of its independent decision making functions.

§ 32. Subdivision 5 of section 205 of the correction law, as added by section 32 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

5. The commissioner, in consultation with the chairman of the board of [~~parole~~] re-entry, shall promulgate rules and regulations governing the issuance of merit terminations of sentence and discharges from presumptive release, parole, conditional release or post-release supervision to assure that such terminations and discharges are consistent with public safety. The board of [~~parole~~] re-entry shall have access to merit termination application case files and corresponding decisions to assess the effectiveness of the rules and regulations in ensuring public safety. Such review will in no manner effect the decisions made with regard to individual merit termination determinations.

§ 33. Subdivision 1 of section 206 of the correction law, as added by section 32 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

1. All requests for presumptive release or conditional release shall be made in writing on forms prescribed and furnished by the department. Within one month from the date any such application is received, if it appears that the applicant is eligible for presumptive release or conditional release or will be eligible for such release during such month, the conditions of release shall be fixed in accordance with rules prescribed by the board of [~~parole~~] re-entry. Such conditions shall be substantially the same as conditions imposed upon parolees.

§ 34. Section 207 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 207. Cooperation. It shall be the duty of the commissioner of corrections and community supervision to insure that all officers and employees of the department shall at all times cooperate with the board of [~~parole~~] re-entry and shall furnish to such members and employees of the board of [~~parole~~] re-entry such information as may be appropriate to enable them to perform their independent decision making functions. It is also his or her duty to ensure that the functions of the board of [~~parole~~] re-entry are not hampered in any way, including but not limited to: a restriction of resources including staff assistance; limited access to vital information; and presentation of incarcerated individual

information in a manner that may inappropriately influence the board in its decision making.

§ 35. Section 405 of the correction law, as amended by chapter 766 of the laws of 1976, is amended to read as follows:

§ 405. Duty of the department to the director of a hospital. The department shall notify the director of a hospital in advance of hearings to be held at such hospital as may be necessary to carry out the duties of the board of [~~parole~~] re-entry or the department. The department shall assist the department of mental hygiene in establishing or continuing the operation of grievance procedures at such hospital. Where the subject matter of the grievance primarily involves a policy or practice of the department of mental hygiene, the commissioner shall transfer the review of the grievance to the commissioner of mental hygiene for resolution pursuant to subdivision three of section one hundred thirty-nine of [~~the correction law~~] this chapter.

§ 36. Section 705 of the correction law, as amended by section 36 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 705. Forms and filing. 1. All applications, certificates and orders of revocation necessary for the purposes of this article shall be upon forms prescribed pursuant to agreement among the state commissioner of corrections and community supervision, the [~~chairman~~] chairperson of the state board of [~~parole~~] re-entry and the administrator of the state judicial conference. Such forms relating to certificates of relief from disabilities shall be distributed by the office of probation and correctional alternatives and forms relating to certificates of good conduct shall be distributed by the commissioner of the department of corrections and community supervision.

2. Any court or department issuing or revoking any certificate pursuant to this article shall immediately file a copy of the certificate, or of the order of revocation, with the New York state identification and intelligence system.

§ 37. Section 805 of the correction law, as amended by section 226 of chapter 322 of the laws of 2021, is amended to read as follows:

§ 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the incarcerated individual's eligibility to be paroled pursuant to subdivision one of section 70.40 of the penal law, the commissioner shall review the incarcerated individual's institutional record to determine whether he or she has complied with the assigned program. If the commissioner determines that the incarcerated individual has successfully participated in the program he or she may issue the incarcerated individual a certificate of earned eligibility. Notwithstanding any other provision of law, an incarcerated individual who is serving a sentence with a minimum term of not more than eight years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his or her minimum term or as authorized by subdivision four of section eight hundred sixty-seven of this chapter unless the board of [~~parole~~] re-entry determines that there is a reasonable probability that, if such incarcerated individual is released, he or she will not live and remain at liberty without violating the law and that his or her release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

§ 37-a. Section 805 of the correction law, as amended by section 226-a of chapter 322 of the laws of 2021, is amended to read as follows:

§ 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the expiration of an incarcerated individual's minimum period of imprisonment, the commissioner shall review the incarcerated individual's institutional record to determine whether he or she has complied with the assigned program. If the commissioner determines that the incarcerated individual has successfully participated in the program he or she may issue the incarcerated individual a certificate of earned eligibility. Notwithstanding any other provision of law, an incarcerated individual who is serving a sentence with a minimum term of not more than six years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his or her minimum term or as authorized by subdivision four of section eight hundred sixty-seven **of this chapter** unless the board of [~~parole~~] **re-entry** determines that there is a reasonable probability that, if such incarcerated individual is released, he or she will not live and remain at liberty without violating the law and that his or her release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

§ 38. The opening paragraph of subdivision 2 of section 851 of the correction law, as amended by section 228 of chapter 322 of the laws of 2021, is amended to read as follows:

"Eligible incarcerated individual" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, however, that a person under sentence for an offense defined in paragraphs (a) and (b) of subdivision one of section 70.02 of the penal law, where such offense involved the use or threatened use of a deadly weapon or dangerous instrument shall not be eligible to participate in a work release program until he or she is eligible for release on parole or who will be eligible for release on parole or conditional release within eighteen months. Provided, further, however, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of [~~parole~~] **re-entry**. If an incarcerated individual is denied release on parole, such incarcerated individual shall not be deemed an eligible incarcerated individual until he or she is within two years of his or her next scheduled appearance before the state [~~parole~~] **re-entry** board. In any case where an incarcerated individual is denied release on parole while participating in a temporary release program, the department shall review the status of the incarcerated individual to determine if contin-

ued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Further, no person under sentence for aggravated harassment of an employee by an incarcerated individual as defined in section 240.32 of the penal law for, any homicide offense defined in article one hundred twenty-five of the penal law, for any sex offense defined in article one hundred thirty of the penal law, or for an offense defined in section 255.25, 255.26 or 255.27 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the foregoing, no person who is an otherwise eligible incarcerated individual who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law or (b) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

§ 38-a. The opening paragraph of subdivision 2 of section 851 of the correction law, as amended by section 228-b of chapter 322 of the laws of 2021, is amended to read as follows:

"Eligible incarcerated individual" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of [~~parole~~] re-entry. If an incarcerated individual is denied release on parole, such incarcerated individual shall not be deemed an eligible incarcerated individual until he or she is within two years of his or her next scheduled appearance before the state [~~parole~~] re-entry board. In any case where an incarcerated individual is denied release on parole while participating in a temporary release program, the department shall review the status of the incarcerated individual to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the foregoing, no person who is an otherwise eligible incarcerated individual who is under sentence for a crime

involving: (a) infliction of serious physical injury upon another as defined in the penal law, (b) a sex offense involving forcible compulsion, or (c) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

§ 39. Subdivision 1 of section 852 of the correction law, as added by chapter 472 of the laws of 1969, is amended to read as follows:

1. The commissioner of correction shall designate one or more institutions for the conduct of work release programs. Upon such designation the commissioner, with the approval of the [~~chairman~~] **chairperson** of the board of [~~parole~~] **re-entry**, shall promulgate rules and regulations consistent with the provisions of this article for the administration of work release programs at any institution designated, and shall appoint or cause to be appointed a work release committee for such institution.

§ 40. Subdivision 6 of section 855 of the correction law, as amended by section 231-a of chapter 322 of the laws of 2021, is amended to read as follows:

6. Participation in a work release program shall be a privilege. Nothing contained in this article may be construed to confer upon any incarcerated individual the right to participate, or to continue to participate, in a work release program. The warden of the institution may at any time, and upon recommendation of the work release committee or of the [~~chairman~~] **chairperson** of the state board of [~~parole~~] **re-entry** or his or her designee shall, revoke any incarcerated individual's privilege to participate in a program of work release.

§ 41. Subdivision 9 of section 855 of the correction law, as amended by section 231 of chapter 322 of the laws of 2021, is amended to read as follows:

9. Participation in a temporary release program shall be a privilege. Nothing contained in this article may be construed to confer upon any incarcerated individual the right to participate, or to continue to participate, in a temporary release program. The superintendent of the institution may at any time, and upon recommendation of the temporary release committee or of the commissioner or of the [~~chairman~~] **chairperson** of the state board of [~~parole~~] **re-entry** or his or her designee shall, revoke any incarcerated individual's privilege to participate in a program of temporary release in accordance with regulations promulgated by the commissioner.

§ 42. Subdivisions 2 and 5 of section 856 of the correction law, as amended by section 232 of chapter 322 of the laws of 2021, are amended to read as follows:

2. If the incarcerated individual violates any provision of the program, or any rule or regulation promulgated by the commissioner for conduct of incarcerated individuals participating in temporary release programs, such incarcerated individual shall be subject to disciplinary measures to the same extent as if he or she violated a rule or regulation of the commissioner for conduct of incarcerated individuals within the premises of the institution. The failure of an incarcerated individual to voluntarily return to the institution of his or her confinement more than ten hours after his or her prescribed time of return shall create a rebuttable presumption that the failure to return was intentional. Any incarcerated individual who is found to have intentionally failed to return pursuant to this subdivision shall be an

absconder in violation of his or her temporary release program and will not be an eligible incarcerated individual as defined in subdivision two of section eight hundred fifty-one of this [~~chapter~~] **article**. The creation of such rebuttable presumption shall not be admissible in any court of law as evidence of the commission of any crime defined in the penal law. A full report of any such violation, a summary of the facts and findings of the disciplinary hearing and disciplinary measures taken, shall be made available to the board for the incarcerated individual's next scheduled appearance before the state board of [~~parole~~] **re-entry** including any defense or explanation offered by the incarcerated individual in response at such hearing.

5. Upon the conclusion or termination of a temporary release program, a full report of the incarcerated individual's performance in such program shall be prepared in accordance with regulations of the commissioner. Such report shall include but not be limited to: adjustment to release, supervision contacts, statement of any violations of the terms and conditions of release and of any disciplinary actions taken, and an assessment of the incarcerated individual's suitability for parole. Such report shall be made available to the state board of [~~parole~~] **re-entry** for the incarcerated individual's next scheduled appearance before such board.

§ 43. Paragraph (d) of subdivision 1 of section 160.50 of the criminal procedure law, as amended by chapter 449 of the laws of 2015, is amended to read as follows:

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of [~~parole~~] **re-entry**, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; and

§ 44. Paragraph (d) of subdivision 1 of section 160.55 of the criminal procedure law, as amended by chapter 449 of the laws of 2015, is amended to read as follows:

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding

in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of [~~parole~~] re-entry and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (vi) a police agency, probation department, sheriff's office, district attorney's office, department of correction of any municipality and parole department, for law enforcement purposes, upon arrest in instances in which the individual stands convicted of harassment in the second degree, as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, and determined pursuant to subdivision eight-a of section 170.10 of this title; and

§ 45. Paragraph (a) of subdivision 2 of section 390.50 of the criminal procedure law, as amended by chapter 31 of the laws of 2019, is amended to read as follows:

(a) Not less than one court day prior to sentencing, unless such time requirement is waived by the parties, the pre-sentence report or memorandum shall be made available by the court for examination and for copying by the defendant's attorney, the defendant himself or herself, if he or she has no attorney, and the prosecutor. In its discretion, the court may except from disclosure a part or parts of the report or memoranda which are not relevant to a proper sentence, or a diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the report or memoranda are not disclosed, the court shall state for the record that a part or parts of the report or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to appellate review. The pre-sentence report shall be made available by the court for examination and copying in connection with any appeal in the case, including an appeal under this subdivision. Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph, available to the defendant for use before the [~~parole~~] board of re-entry for release consideration or an appeal of a [~~parole~~] board of re-entry determination or an application for resentencing pursuant to section 440.46 or 440.47 of this chapter. In his or her written request to the court the defendant shall affirm that he or she anticipates an appearance before the [~~parole~~] board of re-entry or intends to file an administrative appeal of a [~~parole~~] board of re-entry determination or meets the eligibility criteria for and intends to file a motion for resentencing pursuant to

440.46 of this chapter or has received notification from the court which received his or her request to apply for resentencing pursuant to section 440.47 of this chapter confirming that he or she is eligible to submit an application for resentencing pursuant to section 440.47 of this chapter. The court shall respond to the defendant's written request within twenty days from receipt of the defendant's written request.

§ 46. Subdivision 6 of section 410.91 of the criminal procedure law, as amended by section 76 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

6. Upon delivery of the defendant to the reception center, he or she shall be given a copy of the conditions of parole by a representative of the department of corrections and community supervision and shall acknowledge receipt of a copy of the conditions in writing. The conditions shall be established in accordance with article twelve-B of the executive law and the rules and regulations of the board of [~~parole~~] re-entry. Thereafter and while the parolee is participating in the intensive drug treatment program provided at the drug treatment campus, the department of corrections and community supervision shall assess the parolee's special needs and shall develop an intensive program of parole supervision that will address the parolee's substance abuse history and which shall include periodic urinalysis testing. Unless inappropriate, such program shall include the provision of treatment services by a community-based substance abuse service provider which has a contract with the department of corrections and community supervision.

§ 47. Paragraph (a) of subdivision 5 of section 430.20 of the criminal procedure law, as amended by chapter 788 of the laws of 1971, is amended to read as follows:

(a) If the sentence also includes a term of imprisonment, commitment must be to the same institution as is designated for service of the term of imprisonment, and the period of commitment commences (i) when the term of imprisonment is satisfied, or (ii) with the approval of the state board of [~~parole~~] re-entry, when the defendant becomes eligible for parole, or (iii) when the defendant becomes eligible for conditional release, whichever occurs first; provided, however, that the court may direct that the period of imprisonment for the fine run concurrently with the term of imprisonment; and

§ 48. Subdivision 1 of section 440.50 of the criminal procedure law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

1. Upon the request of a victim of a crime, or in any event in all cases in which the final disposition includes a conviction of a violent felony offense as defined in section 70.02 of the penal law, a felony defined in article one hundred twenty-five of such law, or a felony defined in article one hundred thirty of such law, the district attorney shall, within sixty days of the final disposition of the case, inform the victim by letter of such final disposition. If such final disposition results in the commitment of the defendant to the custody of the department of corrections and community supervision for an indeterminate sentence, the notice provided to the crime victim shall also inform the victim of his or her right to submit a written, audiotaped, or videotaped victim impact statement to the department of corrections and community supervision or to meet personally with a member of the state board of [~~parole~~] re-entry at a time and place separate from the personal interview between a member or members of the board and the incarcerated individual and make such a statement, subject to procedures and limitations contained in rules of the board, both pursuant to subdi-

vision two of section two hundred fifty-nine-i of the executive law. A copy of such letter shall be provided to the board of [~~parole~~] re-entry. The right of the victim under this subdivision to submit a written victim impact statement or to meet personally with a member of the state board of [~~parole~~] re-entry applies to each personal interview between a member or members of the board and the incarcerated individual.

§ 49. Subdivision 5 of section 190 of the judiciary law, as added by chapter 477 of the laws of 1988, is amended to read as follows:

5. Notwithstanding any other provision of law to the contrary, any proceeding which the supreme court has jurisdiction to entertain to review the actions or determinations of the state board of [~~parole~~] re-entry.

§ 50. Paragraph 1 of subdivision (d) of section 10.11 of the mental hygiene law, as amended by section 118-e of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(1) A person's regimen of strict and intensive supervision and treatment may be revoked if such a person violates a condition of strict and intensive supervision. If a parole officer has reasonable cause to believe that the person has violated a condition of the regimen of strict and intensive supervision and treatment or, if there is an oral or written evaluation or report by a treating professional indicating that the person may be a dangerous sex offender requiring confinement, a parole officer authorized in the same manner as provided in subparagraph (i) of paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law may take the person into custody and transport the person for lodging in a secure treatment facility or a local correctional facility for an evaluation by a psychiatric examiner, which evaluation shall be conducted within five days. A parole officer may take the person, under custody, to a psychiatric center for prompt evaluation, and at the end of the examination, return the person to the place of lodging. A parole officer, as authorized by this paragraph, may direct a peace officer, acting pursuant to his or her special duties, or a police officer who is a member of an authorized police department or force or of a sheriff's department, to take the person into custody and transport the person as provided in this paragraph. It shall be the duty of such peace officer or police officer to take into custody and transport any such person upon receiving such direction. The department of corrections and community supervision shall promptly notify the attorney general and the mental hygiene legal service, when a person is taken into custody pursuant to this paragraph. No provision of this section shall preclude the board of [~~parole~~] re-entry from proceeding with a revocation hearing as authorized by subdivision three of section two hundred fifty-nine-i of the executive law.

§ 51. Subdivision 2 of section 579 of the public health law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

2. This title shall not be applicable to and the department shall not have the power to regulate pursuant to this title: (a) any examination performed by a state or local government of materials derived from the human body for use in criminal identification or as evidence in a criminal proceeding or for investigative purposes; (b) any test conducted pursuant to paragraph (c) of subdivision four of section eleven hundred ninety-four of the vehicle and traffic law and paragraph (c) of subdivision eight of section 25.24 of the parks, recreation and historic preservation law; (c) any examination performed by a state or local agency of materials derived from the body of an incarcerated individual,

pretrial releasee, parolee, conditional releasee or probationer to (i) determine, measure or otherwise describe the presence or absence of any substance whose possession, ingestion or use is prohibited by law, the rules of the department of corrections and community supervision, the conditions of release established by the board of [~~parole~~] re-entry, the conditions of release established by a court or a local conditional release commission or the conditions of any program to which such individuals are referred and (ii) to determine whether there has been a violation thereof; or (d) any examination performed by a coroner or medical examiner for the medical-legal investigation of a death. Nothing herein shall prevent the department from consulting with the division of criminal justice services, the department of corrections and community supervision, the state police, or any other state agency or commission, at the request of the division of criminal justice services, the department of corrections and community supervision, the state police, or such other agency or commission, concerning examination of materials for purposes other than public health.

§ 52. The opening paragraph of subdivision 3 of section 70.30 of the penal law, as amended by chapter 1 of the laws of 1998, is amended to read as follows:

The term of a definite sentence, a determinate sentence, or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of [~~parole~~] re-entry, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

§ 52-a. The opening paragraph of subdivision 3 of section 70.30 of the penal law, as separately amended by chapter 648 of the laws of 1979 and chapter 1 of the laws of 1998, is amended to read as follows:

The term of a definite sentence or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court or by the board of [~~parole~~] re-entry, the credit shall also be applied against the minimum period. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence or period of post-release supervision to which the person is subject. Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

§ 53. The opening paragraph of paragraph (a), paragraph (b) and paragraph (c) of subdivision 1, and subdivisions 2 and 3 of section 70.40 of the penal law, the opening paragraph of paragraph (a) as amended by section 127-c, paragraph (b) as amended by section 127-d-1 and paragraph (c) as amended by section 127-f of subpart B of part C of chapter 62 of

the laws of 2011, subdivision 2 as amended by section 127-g of subpart B of part C of chapter 62 of the laws of 2011, and subdivision 3 as amended by chapter 427 of the laws of 2021, are amended to read as follows:

Release on parole shall be in the discretion of the state board of [~~parole~~] re-entry, and such person shall continue service of his or her sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law and the correction law.

(b) A person who is serving one or more than one indeterminate or determinate sentence of imprisonment shall, if he or she so requests, be conditionally released from the institution in which he or she is confined when the total good behavior time allowed to him or her, pursuant to the provisions of the correction law, is equal to the unserved portion of his or her term, maximum term or aggregate maximum term; provided, however, that (i) in no event shall a person serving one or more indeterminate sentence of imprisonment and one or more determinate sentence of imprisonment which run concurrently be conditionally released until serving at least six-sevenths of the determinate term of imprisonment which has the longest unexpired time to run and (ii) in no event shall a person be conditionally released prior to the date on which such person is first eligible for discretionary parole release. The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of [~~parole~~] re-entry in accordance with the provisions of the executive law.

Every person so released shall be under the supervision of the state department of corrections and community supervision for a period equal to the unserved portion of the term, maximum term, aggregate maximum term, or period of post-release supervision.

(c) A person who is serving one or more than one indeterminate sentence of imprisonment shall, if he or she so requests, be released from the institution in which he or she is confined if granted presumptive release pursuant to section eight hundred six of the correction law. The conditions of release shall be such as may be imposed by the state board of [~~parole~~] re-entry in accordance with the provisions of the executive law. Every person so released shall be under the supervision of the department of corrections and community supervision for a period equal to the unserved portion of his or her maximum or aggregate maximum term unless discharged in accordance with law.

2. Definite sentence. A person who is serving one or more than one definite sentence of imprisonment with a term or aggregate term in excess of ninety days, and is eligible for release according to the criteria set forth in paragraphs (a), (b) and (c) of subdivision one of section two hundred seventy-three of the correction law, may, if he or she so requests, be conditionally released from the institution in which he or she is confined at any time after service of sixty days of that term, exclusive of credits allowed under subdivisions four and six of section 70.30 of this article. In computing service of sixty days, the credit allowed for jail time under subdivision three of section 70.30 of this article shall be calculated as time served. Conditional release from such institution shall be in the discretion of the [~~parole~~] board of re-entry, or a local conditional release commission established pursuant to article twelve of the correction law, provided, however that where such release is by a local conditional release commission, the person must be serving a definite sentence with a term in excess of one hundred twenty days and may only be released after service of ninety days of such term. In computing service of ninety days, the credit

allowed for jail time under subdivision three of section 70.30 of this article shall be calculated as time served. A conditional release granted under this subdivision shall be upon such conditions as may be imposed by the [~~parole~~] board **of re-entry**, in accordance with the provisions of the executive law, or a local conditional release commission in accordance with the provisions of the correction law.

Conditional release shall interrupt service of the sentence or sentences and the remaining portion of the term or aggregate term shall be held in abeyance. Every person so released shall be under the supervision of the department of corrections and community supervision or a local probation department and in the custody of the local conditional release commission in accordance with article twelve of the correction law, for a period of one year. The local probation department shall cause complete records to be kept of every person released to its supervision pursuant to this subdivision. The department of corrections and community supervision may supply to a local probation department and the local conditional release commission custody information and records maintained on persons under the supervision of such local probation department to aid in the performance of its supervision responsibilities. Compliance with the conditions of release during the period of supervision shall satisfy the portion of the term or aggregate term that has been held in abeyance.

3. Delinquency. (a) When a person is alleged to have violated the terms of presumptive release or parole by absconding, and the state board of [~~parole~~] **re-entry** has declared such person to be delinquent, the declaration of delinquency shall interrupt the person's sentence as of the date of the delinquency and such interruption shall continue until the releasee's appearance in response to a notice of violation or the date of the execution of a warrant, whichever is earlier.

(b) When a person is alleged to have violated the terms of his or her conditional release or post-release supervision by absconding and has been declared delinquent by the [~~parole~~] board **of re-entry** or the local conditional release commission having supervision over such person, the declaration of delinquency shall interrupt the period of supervision or post-release supervision as of the date of the delinquency. For a conditional release, such interruption shall continue until the releasee's appearance in response to a notice of violation or the date of the execution of a warrant, whichever is earlier. For a person released to post-release supervision, the provisions of section 70.45 of this article shall apply.

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

§ 53-a. Subparagraph (i) of paragraph (a) and paragraph (b) of subdivision 1 of section 70.40 of the penal law, subparagraph (i) of paragraph (a) as amended by section 127-d and paragraph (b) as amended by section 127-e of subpart B of part C of chapter 62 of the laws of 2011, are amended to read as follows:

(i) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he or she is confined at any time after the expiration of the minimum or the aggregate minimum period of imprisonment of the sentence or sentences or after the successful completion of a shock incarceration program, as defined in article twenty-six-A of the correction law,

whichever is sooner. Release on parole shall be in the discretion of the state board of [~~parole~~] re-entry, and such person shall continue service of his or her sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law and the correction law.

(b) A person who is serving one or more than one indeterminate sentence of imprisonment shall, if he or she so requests, be conditionally released from the institution in which he or she is confined when the total good behavior time allowed to him or her, pursuant to the provisions of the correction law, is equal to the unserved portion of his or her maximum or aggregate maximum term. The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of [~~parole~~] re-entry in accordance with the provisions of the executive law.

Every person so released shall be under the supervision of the department of corrections and community supervision for a period equal to the unserved portion of the maximum, aggregate maximum term, or period of post-release supervision.

§ 54. Subdivisions 1-a and 3 of section 70.45 of the penal law, subdivision 1-a as added by chapter 7 of the laws of 2007 and subdivision 3 as added by chapter 1 of the laws of 1998, are amended to read as follows:

1-a. When, following a final hearing, a time assessment has been imposed upon a person convicted of a felony sex offense who owes three years or more on a period of post-release supervision, imposed pursuant to subdivision two-a of this section, such defendant, after serving three years of the time assessment, shall be reviewed by the board of [~~parole~~] re-entry and may be re-released to post-release supervision only upon a determination by the board of [~~parole~~] re-entry made in accordance with subdivision two of section two hundred fifty-nine-i of the executive law. If re-release is not granted, the board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If a time assessment of less than three years is imposed upon such a defendant, the defendant shall be released upon the expiration of such time assessment, unless he or she is subject to further imprisonment or confinement under any provision of law.

3. Conditions of post-release supervision. The board of [~~parole~~] re-entry shall establish and impose conditions of post-release supervision in the same manner and to the same extent as it may establish and impose conditions in accordance with the executive law upon persons who are granted parole or conditional release; provided that, notwithstanding any other provision of law, the board of [~~parole~~] re-entry may impose as a condition of post-release supervision that for a period not exceeding six months immediately following release from the underlying term of imprisonment the person be transferred to and participate in the programs of a residential treatment facility as that term is defined in subdivision six of section two of the correction law. Upon release from the underlying term of imprisonment, the person shall be furnished with a written statement setting forth the conditions of post-release supervision in sufficient detail to provide for the person's conduct and supervision.

§ 55. Section 240.32 of the penal law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 240.32 Aggravated harassment of an employee by an incarcerated individual.

An incarcerated individual or respondent is guilty of aggravated harassment of an employee by an incarcerated individual when, with intent to harass, annoy, threaten or alarm a person in a facility whom he or she knows or reasonably should know to be an employee of such facility or the board of [~~parole~~] re-entry or the office of mental health, or a probation department, bureau or unit or a police officer, he or she causes or attempts to cause such employee to come into contact with blood, seminal fluid, urine, feces, or the contents of a toilet bowl, by throwing, tossing or expelling such fluid or material.

For purposes of this section, "incarcerated individual" means an incarcerated individual or detainee in a correctional facility, local correctional facility or a hospital, as such term is defined in subdivision two of section four hundred of the correction law. For purposes of this section, "respondent" means a juvenile in a secure facility operated and maintained by the office of children and family services who is placed with or committed to the office of children and family services. For purposes of this section, "facility" means a correctional facility or local correctional facility, hospital, as such term is defined in subdivision two of section four hundred of the correction law, or a secure facility operated and maintained by the office of children and family services.

Aggravated harassment of an employee by an incarcerated individual is a class E felony.

§ 56. This act shall take effect immediately; provided, however, that:

(a) the amendments to subdivision 2 of section 259-m of the executive law made by section fifteen of this act shall be subject to the repeal of such section pursuant to section 3 of chapter 688 of the laws of 2003, as amended, and shall be deemed repealed therewith;

(b) the amendments to subdivision 6 of section 710.91 of the criminal procedure law made by section twenty-eight of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

(c) the amendments to section 805 of the correction law made by section thirty-seven of this act shall be subject to the expiration and reversion of such section pursuant to chapter 261 of the laws of 1987 and subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section thirty-seven-a of this act shall take effect;

(d) the amendments to subdivision 2 of section 851 of the correction law made by section thirty-eight of this act shall be subject to the expiration of such subdivision and section pursuant to subdivision (c) of section 46 of chapter 60 of the laws of 1994 and section 10 of chapter 339 of the laws of 1972, as amended, when upon such date the provisions of section thirty-eight-a of this act shall take effect;

(e) section thirty-nine of this act shall take effect on the same date as the reversion of subdivision 1 of section 852 of the correction law as provided by section 10 of chapter 339 of the laws of 1972, as amended;

(f) section forty of this act shall take effect on the same date as the reversion of subdivision 6 of section 855 of the correction law as provided by section 10 of chapter 339 of the laws of 1972, as amended;

(g) the amendments to subdivision 9 of section 855 of the correction law, made by section forty-one of this act, shall not affect the expiration of such section and shall expire therewith;

(h) the amendments to subdivisions 2 and 5 of section 856 of the correction law made by section forty-two of this act shall not affect the expiration of such section and shall expire therewith;

(i) the amendments to the opening paragraph of subdivision 3 of section 70.30 of the penal law made by section fifty-two of this act shall be subject to the reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section fifty-two-a of this act shall take effect;

(j) the amendments to the opening paragraph of paragraph (a) and paragraph (b) of subdivision 1 of section 70.40 of the penal law made by section fifty-three of this act shall be subject to the reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section fifty-three-a of this act shall take effect; and

(k) the amendments to paragraph (c) of subdivision 1 of section 70.40 of the penal law made by section fifty-three of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.

Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.