

# STATE OF NEW YORK

6263

2023-2024 Regular Sessions

## IN SENATE

April 10, 2023

Introduced by Sen. WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law and the penal law, in relation to providing for the return of persons to custody for violations of conditions of presumptive release, parole, conditional release or post-release supervision; and to repeal certain provisions of such laws relating thereto

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

1 Section 1. Subdivisions 5, 6, 7, and 8 of section 259 of the executive  
2 law are REPEALED.  
3 § 2. Subdivision 4 of section 70.40 of the penal law is REPEALED.  
4 § 3. Subdivision 3 of section 70.40 of the penal law, as amended by  
5 chapter 427 of the laws of 2021, is amended to read as follows:  
6 3. Delinquency. (a) When a person is alleged to have violated the  
7 terms of presumptive release or parole [~~by absconding,~~] and the state  
8 board of parole has declared such person to be delinquent, the declara-  
9 tion of delinquency shall interrupt the person's sentence as of the date  
10 of the delinquency and such interruption shall continue until the  
11 [~~releasee's appearance in response to a notice of violation or the date~~  
12 ~~of the execution of a warrant, whichever is earlier]~~ return of the  
13 person to an institution under the jurisdiction of the state department  
14 of corrections and community supervision.  
15 (b) When a person is alleged to have violated the terms of his or her  
16 conditional release or post-release supervision [~~by absconding~~] and has  
17 been declared delinquent by the parole board or the local conditional  
18 release commission having supervision over such person, the declaration  
19 of delinquency shall interrupt the period of supervision or post-release  
20 supervision as of the date of the delinquency. For a conditional  
21 release, such interruption shall continue until the [~~releasee's appear-~~

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

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1 ~~ance in response to a notice of violation or the date of the execution~~  
2 ~~of a warrant, whichever is earlier]~~ return of the person to the institu-  
3 tion from which he or she was released or, if he or she was released  
4 from an institution under the jurisdiction of the state department of  
5 corrections and community supervision, to an institution under the  
6 jurisdiction of the department. Upon such return, the person shall  
7 resume service of his or her sentence. For a person released to post-  
8 release supervision, the provisions of section 70.45 of this article  
9 shall apply.

10 (c) Any time spent by a person in custody from the time of [~~execution~~  
11 ~~of a warrant pursuant to paragraph (a) of subdivision three of section~~  
12 ~~two hundred fifty nine i of the executive law]~~ delinquency to the time  
13 service of the sentence resumes shall be credited against the term or  
14 maximum term of the interrupted sentence, provided:

15 (i) that such custody was due to an arrest or surrender based upon the  
16 delinquency; or

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

19 (iii) that such custody arose from an arrest on another charge which  
20 culminated in a conviction, but in such case, if a sentence of imprison-  
21 ment was imposed, the credit allowed shall be limited to the portion of  
22 the time spent in custody that exceeds the period, term or maximum term  
23 of imprisonment imposed for such conviction.

24 § 4. Paragraph (d) of subdivision 5 of section 70.45 of the penal law,  
25 as amended by chapter 427 of the laws of 2021, is amended to read as  
26 follows:

27 (d) When a person is alleged to have violated a condition of post-re-  
28 lease supervision [~~by absconding~~] and the department of corrections and  
29 community supervision has declared such person to be delinquent: (i) the  
30 declaration of delinquency shall interrupt the period of post-release  
31 supervision; (ii) such interruption shall continue until the person is  
32 restored to post-release supervision; (iii) if the person is restored to  
33 post-release supervision without being returned to the department of  
34 corrections and community supervision, any time spent in custody from  
35 the date of delinquency until restoration to post-release supervision  
36 shall first be credited to the maximum or aggregate maximum term of the  
37 sentence or sentences of imprisonment, but only to the extent authorized  
38 by subdivision three of section 70.40 of this article. Any time spent  
39 in custody solely pursuant to such delinquency after completion of the  
40 maximum or aggregate maximum term of the sentence or sentences of impri-  
41 sonment shall be credited to the period of post-release supervision, if  
42 any; and (iv) if the person is ordered returned to the department of  
43 corrections and community supervision, the person shall be required to  
44 serve the time assessment before being re-released to post-release  
45 supervision. [~~If the person is detained pursuant to paragraph (a) of~~  
46 ~~subdivision three of section two hundred fifty nine i of the executive~~  
47 ~~law pending a preliminary or final revocation hearing, the time assess-~~  
48 ~~ment imposed following such hearing shall commence upon the execution of~~  
49 ~~the warrant. If a warrant was executed pursuant to paragraph (a) of~~  
50 ~~subdivision three of section two hundred fifty-nine i of the executive~~  
51 ~~law but a court released the person pending a preliminary or final revo-~~  
52 ~~cation hearing, the time assessment shall commence upon the issuance of~~  
53 ~~a determination after a final hearing that the person has violated one~~  
54 ~~or more conditions of community supervision in an important respect, and~~  
55 ~~shall include the time period between execution of the warrant and~~  
56 ~~release of the person pending a preliminary or final revocation hearing.~~

1 ~~If a releasee is committed to the custody of the sheriff pursuant to~~  
2 ~~article five hundred thirty of the criminal procedure law, the time~~  
3 ~~assessment, if any, shall include any time the releasee spent in such~~  
4 ~~custody. If a notice of violation was issued pursuant to subdivision~~  
5 ~~three of section two hundred fifty-nine-i of the executive law, the~~ ] In  
6 the event the balance of the remaining period of post-release super-  
7 vision is six months or less, such time assessment may be up to six  
8 months unless a longer period is authorized pursuant to subdivision one  
9 of this section. The time assessment shall commence upon the issuance of  
10 a determination after a final hearing that the person has violated one  
11 or more conditions of supervision. While serving such assessment, the  
12 person shall not receive any good behavior allowance pursuant to section  
13 eight hundred three of the correction law. Any time spent in custody  
14 from the date of delinquency until return to the department of  
15 corrections and community supervision shall first be credited to the  
16 maximum or aggregate maximum term of the sentence or sentences of impri-  
17 sonment, but only to the extent authorized by subdivision three of  
18 section 70.40 of this article. The maximum or aggregate maximum term of  
19 the sentence or sentences of imprisonment shall run while the person is  
20 serving such time assessment in the custody of the department of  
21 corrections and community supervision. Any time spent in custody solely  
22 pursuant to such delinquency after completion of the maximum or aggre-  
23 gate maximum term of the sentence or sentences of imprisonment shall be  
24 credited to the period of post-release supervision, if any.

25 § 5. Subparagraphs (iv), (v), (vi), (vii) and (viii) of paragraph (a)  
26 of subdivision 3 of section 259-i of the executive law are REPEALED.

27 § 6. Subparagraph (i) of paragraph (a) of subdivision 3 of section  
28 259-i of the executive law, as amended by chapter 427 of the laws of  
29 2021, is amended to read as follows:

30 (i) If the parole officer having charge of a presumptively released,  
31 paroled or conditionally released person or a person released to post-  
32 release supervision or a person received under the uniform act for out-  
33 of-state parolee supervision shall have [~~probable~~] reasonable cause to  
34 believe that such person has [~~committed a technical violation~~] lapsed  
35 into criminal ways or company, or has violated one or more conditions of  
36 his or her presumptive release, parole, conditional release or post-re-  
37 lease supervision, such parole officer shall report such fact to a  
38 member of the board, or to any officer of the department designated by  
39 the board, and thereupon [~~a written notice of violation may be issued~~  
40 ~~according to the terms of subparagraph (iii) of paragraph (c) of this~~  
41 ~~subdivision, and shall be promptly served upon such person. If the~~  
42 ~~releasee has failed to appear as directed in response to a notice of~~  
43 ~~violation and has failed to appear voluntarily within forty eight hours~~  
44 ~~after such time and the person would be subject to incarceration pursu-~~  
45 ~~ant to subparagraph (xii) of paragraph (f) of this subdivision should~~  
46 ~~the violation be sustained at a final revocation hearing, a warrant may~~  
47 ~~be issued for the retaking of such person and for his temporary~~  
48 ~~detention pending a recognizance hearing in accordance with the rules of~~  
49 ~~the board. If the person has intentionally failed to appear as directed~~  
50 ~~in response to a notice of violation and has intentionally failed to~~  
51 ~~appear voluntarily within forty eight hours after such time and the~~  
52 ~~person would not be subject to incarceration pursuant to paragraph (f)~~  
53 ~~of this subdivision should the violation be sustained at a final revoca-~~  
54 ~~tion hearing, no warrant shall issue and the violation shall be deemed~~  
55 ~~sustained. Notice of that decision shall be promptly served upon the~~  
56 ~~releasee. In such case, within one month of the date the notice of deci-~~

~~1 sion was served upon the releasee, the releasee may move to vacate such~~  
~~2 a sustained violation if the releasee can show by a preponderance of the~~  
~~3 evidence that the notice of violation was not properly served or the~~  
~~4 failure to appear was otherwise excusable. If the parole officer having~~  
~~5 charge of a person under community supervision shall have probable cause~~  
~~6 to believe that such person has committed a non-technical violation,~~  
~~7 such parole officer shall report such fact to a member of the board, or~~  
~~8 to any officer of the department designated by the board, and thereupon~~  
~~9 a notice of violation may be issued or] a warrant may be issued for the~~  
10 retaking of such person and for his or her temporary detention in  
11 accordance with the rules of the board[~~. However, if a releasee~~ unless  
12 such person has been determined to be currently unfit to proceed to  
13 trial or is currently subject to a temporary or final order of observa-  
14 tion pursuant to article seven hundred thirty of the criminal procedure  
15 law, in which case no [~~notice of violation or~~] warrant shall be issued.  
16 The [~~issuance of a notice of violation, service of a notice of~~  
17 ~~violation, service of a notice of decision, and the~~] retaking and  
18 detention of any such person [~~for whom a warrant has been issued pursu-~~  
19 ~~ant to this subparagraph~~] may be further regulated by rules and regu-  
20 lations of the department not inconsistent with this article. A warrant  
21 issued pursuant to this section shall constitute sufficient authority to  
22 the superintendent or other person in charge of any jail, penitentiary,  
23 lockup or detention pen to whom it is delivered to hold in temporary  
24 detention the person named therein [~~pending a recognizance hearing~~  
25 ~~pursuant to subparagraph (iv) of this paragraph. It shall not be a~~  
26 ~~condition of parole nor may a notice of violation or a warrant be issued~~  
27 ~~due to a releasee being in the company of or fraternizing with any~~  
28 ~~person the releasee knows has a criminal record or knows has been adju-~~  
29 ~~dicated a youthful offender or due to conduct related to cannabis that~~  
30 ~~is lawful pursuant to the laws of New York]; except that a warrant  
31 issued with respect to a person who has been released on medical parole  
32 pursuant to section two hundred fifty-nine-r of this article and whose  
33 parole is being revoked pursuant to paragraph (h) of subdivision four of  
34 such section shall constitute authority for the immediate placement of  
35 the parolee only into imprisonment in the custody of the department to  
36 hold in temporary detention. A warrant issued pursuant to this section  
37 shall also constitute sufficient authority to the person in charge of a  
38 drug treatment campus, as defined in subdivision twenty of section two  
39 of the correction law, to hold the person named therein, in accordance  
40 with the procedural requirements of this section, for a period of at  
41 least ninety days to complete an intensive drug treatment program  
42 mandated by the board as an alternative to presumptive release or parole  
43 or conditional release revocation, or the revocation of post-release  
44 supervision, and shall also constitute sufficient authority for return  
45 of the person named therein to local custody to hold in temporary  
46 detention for further revocation proceedings in the event said person  
47 does not successfully complete the intensive drug treatment program. The  
48 board's rules shall provide for cancellation of delinquency and restora-  
49 tion to supervision upon the successful completion of the program.~~

50 § 7. Subparagraphs (ix) and (x) of paragraph (c) of subdivision 3 of  
51 section 259-i of the executive law are REPEALED.

52 § 8. Subparagraphs (i), (ii), (iii), and (iv) of paragraph (c) of  
53 subdivision 3 of section 259-i of the executive law, as amended by chap-  
54 ter 427 of the laws of 2021, are amended to read as follows:

55 (i) [~~(A) For any alleged technical violation for which a notice of~~  
56 ~~violation was issued or a person was released on recognizance pursuant~~

1 ~~to subparagraph (iv) of paragraph (a) of this subdivision, the depart-~~  
2 ~~ment shall within ten days of the issuance of the notice of violation or~~  
3 ~~the order of release on recognizance afford the person a preliminary~~  
4 ~~revocation hearing before a hearing officer designated by the depart-~~  
5 ~~ment. Such hearing officer shall not have had any prior supervisory~~  
6 ~~involvement over the alleged violator. Such hearing shall not be held at~~  
7 ~~a correctional facility, detention center or local correctional facilit-~~  
8 ~~ty. The hearing shall be scheduled and held in a courthouse, in cooper-~~  
9 ~~ation with the chief administrator of the courts and the chief adminis-~~  
10 ~~trator's designees, provided, however, that if such a courthouse is not~~  
11 ~~reasonably available for such hearing, the department may designate a~~  
12 ~~suitable office or other similar facility that is not a correctional~~  
13 ~~facility, detention center or local correctional facility for such hear-~~  
14 ~~ing.~~

15 ~~(B) For any alleged violation for which a court issued an order~~  
16 ~~detaining a person, within five days of the issuance of such order to~~  
17 ~~detain or execution of a warrant for the violation, the department shall~~  
18 ~~afford such person a preliminary hearing before a hearing officer desig-~~  
19 ~~nated by the department. Such hearing officer shall not have had any~~  
20 ~~prior supervisory involvement over the alleged violator. For any alleged~~  
21 ~~violation for which a person was released on recognizance, within ten~~  
22 ~~days of the issuance of the order of release on recognizance, the~~  
23 ~~department shall afford such person a preliminary revocation hearing]~~  
24 Within fifteen days after the warrant for retaking and temporary  
25 detention has been executed, unless the releasee has been convicted of a  
26 new crime committed while under presumptive release, parole, conditional  
27 release or post-release supervision, the board of parole shall afford  
28 the alleged presumptive release, parole, conditional release or post-re-  
29 lease supervision violator a preliminary revocation hearing before a  
30 hearing officer designated by the board of parole. Such hearing officer  
31 shall not have had any prior supervisory involvement over the alleged  
32 violator.

33 (ii) The preliminary presumptive release, parole, conditional release  
34 or post-release supervision revocation hearing shall be [~~scheduled and~~  
35 ~~held in a courthouse, in cooperation with the chief administrator of the~~  
36 ~~courts and the chief administrator's designees, provided, however, that~~  
37 ~~if such a courthouse is not reasonably available for such hearing, the~~  
38 ~~department may designate a suitable office or other similar facility~~  
39 ~~that is not a correctional facility, detention center or local correc-~~  
40 ~~tional facility for such hearing]~~ conducted at an appropriate correc-  
41 tional facility, or such other place reasonably close to the area in  
42 which the alleged violation occurred as the board may designate.

43 (iii) The alleged violator shall, [~~at the time a notice of violation~~  
44 ~~is issued or at the time of a recognizance hearing]~~ within three days of  
45 the execution of the warrant, be given written notice of the time, place  
46 and purpose of the [~~preliminary~~] hearing[, ~~or if no preliminary hearing~~  
47 ~~is required pursuant to this section, of the final revocation hearing]~~  
48 unless he or she is detained pursuant to the provisions of paragraph (a)  
49 of this subdivision. In those instances, the alleged violator will be  
50 given written notice of the time, place and purpose of the hearing with-  
51 in five days of the execution of the warrant. The notice shall state  
52 what conditions of [~~community~~] presumptive release, parole, conditional  
53 release or post-release supervision are alleged to have been violated,  
54 and in what manner; that such person shall have the right to appear and  
55 speak in his or her own behalf; that he or she shall have the right to  
56 introduce letters and documents; that he or she may present witnesses

1 who can give relevant information to the hearing officer[~~, that he or~~  
2 ~~she has the right to confront the witnesses against him or her, that~~  
3 ~~such person shall have the right to representation by counsel at any~~  
4 ~~preliminary and final revocation hearings, and the name and contact~~  
5 ~~details for institutional defenders or assigned private counsel, as~~  
6 ~~applicable]. Adverse witnesses may be compelled to attend the prelimi-~~  
7 nary hearing unless the prisoner has been convicted of a new crime while  
8 on supervision or unless the hearing officer finds good cause for their  
9 non-attendance. As far as practicable or feasible, any additional docu-  
10 ments having been collected or prepared that [~~are relevant to~~] support  
11 the charge shall be delivered to the alleged violator.

12 (iv) The preliminary hearing shall be scheduled to take place no later  
13 than fifteen days from the date of execution of the warrant. The stand-  
14 ard of proof at the preliminary hearing shall be [~~a preponderance of the~~  
15 ~~evidence~~] probable cause to believe that the [~~releasee~~] presumptive  
16 releasee, parolee, conditional releasee or person under post-release  
17 supervision has violated one or more conditions of his or her [~~communi-~~  
18 ~~ty~~] presumptive release, parole, conditional release or post-release  
19 supervision in an important respect. Proof of conviction of a crime  
20 committed while under supervision shall constitute [~~prima facie evidence~~  
21 ~~of a violation of a condition of community supervision~~] probable cause  
22 for the purposes of this [~~subparagraph~~] section.

23 § 9. Paragraph (f) of subdivision 3 of section 259-i of the executive  
24 law, as amended by chapter 427 of the laws of 2021, is amended to read  
25 as follows:

26 (f) (i) [~~For any releasee charged with a violation at a preliminary~~  
27 ~~hearing.~~

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

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

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

49 (3) [~~The department shall have six months from the date of the effec-~~  
50 ~~tive date of the chapter of the laws of two thousand twenty-one that~~  
51 ~~amended this paragraph to begin to hold such hearings at allowable~~  
52 ~~locations.~~

53 (C) [~~Revocation hearings shall be scheduled to be held within ninety~~  
54 ~~days of the probable cause determination.~~ However, if an alleged viola-  
55 tor requests and receives any postponement of his or her revocation  
56 hearing, or consents to a postponed revocation proceeding initiated by

1 the board, or if an alleged violator, by his or her actions otherwise  
2 precludes the prompt conduct of such proceedings, the time limit may be  
3 extended.

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

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

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

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

33 (vi) At the revocation hearing, the charges shall be read and the  
34 alleged violator shall be permitted to plead not guilty, guilty, guilty  
35 with explanation or to stand mute. As to each charge, evidence shall be  
36 introduced through witnesses and documents, if any, in support of that  
37 charge. At the conclusion of each witness's direct testimony, he or she  
38 shall be made available for cross-examination. If the alleged violator  
39 intends to present a defense to the charges or to present evidence of  
40 mitigating circumstances, the alleged violator shall do so after presen-  
41 tation of all the evidence in support of a violation of presumptive  
42 release, parole, conditional release or post-release supervision.

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

45 (viii) At the conclusion of the hearing the presiding officer may  
46 sustain any or all of the violation charges or may dismiss any or all  
47 violation charges. He or she may sustain a violation charge only if the  
48 charge is supported by [~~clear and convincing evidence. Conduct that~~  
49 ~~formed the basis of an arrest shall not form a basis of a sustained~~  
50 ~~parole violation if a court has adjudicated the matter with an acquit-~~  
51 ~~tal, adjournment in contemplation of dismissal, or violation~~] a prepon-  
52 derance of the evidence adduced.

53 (ix) If the presiding officer is not satisfied that there is [~~clear~~  
54 ~~and convincing~~] a preponderance of evidence in support of the violation,  
55 he or she shall dismiss the violation, cancel the delinquency and

1 restore the person to presumptive release, parole, conditional release  
2 or post-release supervision.

3 (x) If the presiding officer is satisfied that there is [~~clear and~~  
4 ~~convincing~~] a preponderance of evidence that the alleged violator  
5 violated one or more conditions of release in an important respect, he  
6 or she shall so find. [~~For each sustained technical violation the~~  
7 ~~presiding officer shall direct that no earned time credits shall be~~  
8 ~~awarded for the thirty day period commencing from the date of the~~  
9 ~~sustained violation. For any absconding violation found, the presiding~~  
10 ~~officer shall direct that no earned time credits shall be awarded for~~  
11 ~~the entire time period during which a releasee was found to have~~  
12 ~~absconded from supervision.~~

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

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

37 ~~(1) Absconding. For absconding up to seven days reincarceration may be~~  
38 ~~imposed for the first violation, up to fifteen days reincarceration may~~  
39 ~~be imposed for the second violation, and up to thirty days reincarcera-~~  
40 ~~tion may be imposed for the third or any subsequent violation;~~

41 ~~(2) Sanctions for certain technical violations. Reincarceration shall~~  
42 ~~not be imposed for a sustained technical violation that involves: (a)~~  
43 ~~violating curfew; (b) alcohol use, provided however that incarceration~~  
44 ~~is permissible for alcohol use if the person is subject to community~~  
45 ~~supervision due to a conviction for driving under the influence of alco-~~  
46 ~~hol; (c) drug use, provided, however incarceration is permissible for~~  
47 ~~drug use if the person is subject to community supervision due to a~~  
48 ~~conviction for driving under the influence of drugs; (d) failing to~~  
49 ~~notify parole officer of a change in employment or program status; (e)~~  
50 ~~failing to pay surcharges and fees; (f) obtaining a driver's license or~~  
51 ~~driving a car with a valid driver's license, provided however incarce-~~  
52 ~~ration is permissible if either action is explicitly prohibited by the~~  
53 ~~person's conviction; (g) failing to notify community supervision officer~~  
54 ~~of contact with any law enforcement agency, provided however, incarce-~~  
55 ~~ration is permissible if the person intended to hide illegal behavior; (h)~~  
56 ~~failing to obey other special conditions, provided however that incar-~~

1 ~~ceration is permissible if the failure cannot be addressed in the commu-~~  
2 ~~nity and all reasonable community based means to address the failure~~  
3 ~~have been exhausted, and~~

4 ~~(3) Sanctions for all other technical violations. For all other tech-~~  
5 ~~nical violations, no period of reincarceration may be imposed for the~~  
6 ~~first and second substantiated technical violations for which incarceration~~  
7 ~~may be imposed, up to seven days reincarceration may be imposed for~~  
8 ~~the third substantiated technical violation for which incarceration may~~  
9 ~~be imposed, up to fifteen days reincarceration may be imposed for the~~  
10 ~~fourth substantiated technical violation for which incarceration may be~~  
11 ~~imposed, up to thirty days reincarceration may be imposed for the fifth~~  
12 ~~and subsequent substantiated technical violations for which incarceration~~  
13 ~~may be imposed.~~

14 ~~(xiii) If a warrant was executed pursuant to subparagraph (iv) of~~  
15 ~~paragraph (a) of this subdivision by a criminal court and the court~~  
16 ~~released the person pending a preliminary or final revocation hearing,~~  
17 ~~any period of reincarceration imposed pursuant to this paragraph shall~~  
18 ~~be counted from the date of issuance of a determination after a final~~  
19 ~~revocation hearing that the person has violated one or more conditions~~  
20 ~~of community supervision, and the time between execution of the warrant~~  
21 ~~and release of the person pending a preliminary or final revocation~~  
22 ~~hearing shall count toward any period of reincarceration imposed pursu-~~  
23 ~~ant to this paragraph. If a releasee is committed to the custody of the~~  
24 ~~sheriff pursuant to article five hundred thirty of the criminal proced-~~  
25 ~~ure law, any time the person spent confined in a correctional facility~~  
26 ~~or local correctional facility shall be credited toward any period of~~  
27 ~~reincarceration imposed pursuant to this paragraph. In all cases, the~~  
28 ~~presiding officer shall impose the least restrictive reasonable sanc-~~  
29 ~~tion. Any periods of reincarceration imposed pursuant to this section~~  
30 ~~shall run concurrently if more than one violation is sustained. If a~~  
31 ~~period of reincarceration is imposed pursuant to this paragraph, the~~  
32 ~~releasee shall be released from custody upon expiration of the period or~~  
33 ~~the end of the releasee's period of community supervision, whichever~~  
34 ~~shall be sooner].~~

35 For the violator serving an indeterminate sentence who  
36 while re-incarcerated has not been found by the department to have  
37 committed a serious disciplinary infraction, such violator shall be  
38 re-released on the date fixed at the revocation hearing. For the viola-  
39 tor serving an indeterminate sentence who has been found by the depart-  
40 ment to have committed a serious disciplinary infraction while re-incar-  
41 cerated, the department shall refer the violator to the board for  
42 consideration for re-release to community supervision. Upon such refer-  
43 ral the board may waive the personal interview between a member or  
44 members of the board and the violator to determine the suitability for  
45 re-release when the board directs that the violator be re-released upon  
46 expiration of the time assessment. The board shall retain the authority  
47 to suspend the date fixed for re-release based on the violator's commis-  
48 sion of a serious disciplinary infraction and shall in such case require  
49 a personal interview be conducted within a reasonable time between a  
50 panel of members of the board and the violator to determine suitability  
51 for re-release. If an interview is required, the board shall notify the  
52 violator in advance of the date and time of such interview in accordance  
53 with the rules and regulations of the board.

54 ~~[(xiv)]~~ (xi) If the presiding officer sustains any violations, such  
55 officer must prepare a written statement, to be made available to the  
56 alleged violator and his or her counsel, indicating the evidence relied  
upon and the reasons for revoking presumptive release, parole, condi-

1 tional release or post-release supervision, and for the disposition  
2 made. The presiding officer shall also advise the alleged violator in a  
3 written statement that revocation will result in loss of the right to  
4 vote while he or she is serving the remainder of his or her felony  
5 sentence in a correctional facility and that the right to vote will be  
6 restored upon his or her release.

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

47 § 10. Subdivision 4-a of section 259-i of the executive law is  
48 REPEALED.

49 § 11. Subdivision 9 of section 259-i of the executive law is REPEALED.

50 § 12. This act shall take effect immediately.