§ 259-i. Procedures for the conduct of the work of the state board of parole.

2. Parole. * (a) (i) Except as provided in subparagraph (ii) of this paragraph, at least one month prior to the date on which an incarcerated individual may be paroled pursuant to subdivision one of section 70.40 of the penal law, a member or members as determined by the rules of the board shall personally interview such incarcerated individual and determine whether he or she should be paroled in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. If parole is not granted upon such review, the incarcerated individual shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. 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 the incarcerated individual is released, he or she shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order, mandatory surcharge, sex offender registration fee and DNA databank fee previously imposed by a court of competent jurisdiction that applies to the parolee. The conditions shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution, mandatory surcharge, sex offender registration fees and DNA databank fees as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law. If the incarcerated individual is released, he or she shall also be notified in writing that his or her voting rights will be restored upon release.

(ii) Any incarcerated individual who is scheduled for presumptive release pursuant to section eight hundred six of the correction law shall not appear before the board as provided in subparagraph (i) of this paragraph unless such incarcerated individual's scheduled presumptive release is forfeited, canceled, or rescinded subsequently as provided in such law. In such event, the incarcerated individual shall appear before the board for release consideration as provided in

subparagraph (i) of this paragraph as soon thereafter as is practicable.

* NB Effective until September 1, 2027

* (a) At least one month prior to the expiration of the minimum period or periods of imprisonment fixed by the court or board, a member or members as determined by the rules of the board shall personally interview an incarcerated individual serving an indeterminate sentence and determine whether he or she should be paroled at the expiration of the minimum period or periods in accordance with the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. If parole is not granted upon such review, the incarcerated individual shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. 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 the incarcerated individual is released, he or she shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order and mandatory surcharge previously imposed by a court of competent jurisdiction that applies to the parolee. The conditions shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution and mandatory surcharge as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law. If the incarcerated individual is released, he or she shall also be notified in writing that his or her voting rights will be restored upon release.

* NB Effective September 1, 2027

(b) Persons presumptively released, paroled, conditionally released or released to post-release supervision from an institution under the jurisdiction of the department, the department of mental hygiene or the office of children and family services shall, while on presumptive release, parole, conditional release or post-release supervision, be in the legal custody of the department until expiration of the maximum term or period of sentence, or expiration of the period of supervision, including any period of post-release supervision, or return to

imprisonment in the custody of the department, as the case may be.

(c) (A) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such incarcerated individual is released, he or she will live and remain at liberty without violating the law, and that his or her release is not incompatible with the welfare of society and will not so deprecate the seriousness of his or her crime as to undermine respect for law. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and incarcerated individuals; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the incarcerated individual; (iv) any deportation order issued by the federal government against the incarcerated individual while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law; (v) any current or prior statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated; (vi) the length of the determinate sentence to which the incarcerated individual would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the penal law for a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law; (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the incarcerated individual, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement. The board shall provide toll

free telephone access for crime victims. In the case of an oral statement made in accordance with subdivision one of section 440.50 of the criminal procedure law, the parole board member shall present a written report of the statement to the parole board. A crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Such statement submitted by the victim or victim's representative may include information concerning threatening or intimidating conduct toward the victim, the victim's representative, or the victim's family, made by the person sentenced and occurring after the sentencing. Such information may include, but need not be limited to, the threatening or intimidating conduct of any other person who or which is directed by the person sentenced. Any statement by a victim or the victim's representative made to the board shall be maintained by the department in the file provided to the board when interviewing the incarcerated individual in consideration of release. A victim or victim's representative who has submitted a written request to the department for the transcript of such interview shall be provided such transcript as soon as it becomes available.

(B) Where a crime victim or victim's representative as defined in subparagraph (A) of this paragraph, or other person submits to the parole board a written statement concerning the release of an incarcerated individual, the parole board shall keep that individual's name and address confidential.

(d) (i) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this subdivision, after the incarcerated individual has served his or her minimum period of imprisonment imposed by the court, or at any time after the incarcerated individual's period of imprisonment has commenced for an incarcerated individual serving a determinate or indeterminate term of imprisonment, provided that the incarcerated individual has had a final order of deportation issued against him or her and provided further that the incarcerated individual is not convicted of either an A-I felony offense other than an A-I felony offense as defined in article two hundred twenty of the penal law or a violent felony offense as defined in section 70.02 of the penal law, if the incarcerated individual is subject to deportation by the United States Bureau of Immigration and Customs Enforcement, in addition to the criteria set

forth in paragraph (c) of this subdivision, the board may consider, as a factor warranting earlier release, the fact that such incarcerated individual will be deported, and may grant parole from an indeterminate sentence or release for deportation from a determinate sentence to such incarcerated individual conditioned specifically on his or her prompt deportation. The board may make such conditional grant of early parole from an indeterminate sentence or release for deportation from a determinate sentence only where it has received from the United States Bureau of Immigration and Customs Enforcement assurance (A) that an order of deportation will be executed or that proceedings will promptly be commenced for the purpose of deportation upon release of the incarcerated individual from the custody of the department of correctional services, and (B) that the incarcerated individual, if granted parole or release for deportation pursuant to this paragraph, will not be released from the custody of the United States Bureau of Immigration and Customs Enforcement, unless such release be as a result of deportation without providing the board a reasonable opportunity to arrange for execution of its warrant for the retaking of such person.

(ii) An incarcerated individual who has been granted parole from an indeterminate sentence or release for deportation from a determinate sentence pursuant to this paragraph shall be delivered to the custody of the United States Bureau of Immigration and Customs Enforcement along with the board's warrant for his or her retaking to be executed in the event of his release from such custody other than by deportation. In the event that such person is not deported, the board shall execute the warrant, effect his return to imprisonment in the custody of the department and within sixty days after such return, provided that the person is serving an indeterminate sentence and the minimum period of imprisonment has been served, personally interview him or her to determine whether he or she should be paroled in accordance with the provisions of paragraphs (a), (b) and (c) of this subdivision. The return of a person granted parole from an indeterminate sentence or release for deportation from a determinate sentence pursuant to this paragraph for the reason set forth herein shall not be deemed to be a parole delinquency and the interruptions specified in subdivision three of section 70.40 of the penal law shall not apply, but the time spent in the custody of the United States Bureau of Immigration and Customs

Enforcement shall be credited against the term of the sentence in accordance with the rules specified in paragraph (c) of that subdivision. Notwithstanding any other provision of law, any incarcerated individual granted parole from an indeterminate sentence or release for deportation from a determinate sentence pursuant to this paragraph who is subsequently committed to imprisonment in the custody of the department for a felony offense committed after release pursuant to this paragraph shall have his parole eligibility date on the indeterminate sentence for the new felony offense, or his or her conditional release date on the determinate sentence for the new felony offense, as the case may be, extended by the amount of time between the date on which such incarcerated individual was released from imprisonment in the custody of the department pursuant to this paragraph and the date on which such incarcerated individual would otherwise have completed service of the minimum period of imprisonment on the prior felony offense.

(e) Notwithstanding the requirements of paragraph (a) of this subdivision, the determination to parole an incarcerated individual who has successfully completed the shock incarceration program pursuant to section eight hundred sixty-seven of the correction law may be made without a personal interview of the incarcerated individual and shall be made in accordance with procedures set forth in the rules of the board. If parole is not granted, the time period for reconsideration shall not exceed the court imposed minimum.

3. Revocation of presumptive release, parole, conditional release and post-release supervision. (a) (i) If the parole officer having charge of a presumptively released, paroled or conditionally released person or a person released to post-release supervision or a person received under the uniform act for out-of-state parolee supervision shall have probable cause to believe that such person has committed a technical violation, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a written notice of violation may be issued according to the terms of subparagraph (iii) of paragraph (c) of this subdivision, and shall be promptly served upon such person. If the releasee has failed to appear as directed in response to a notice of violation and has failed to

appear voluntarily within forty-eight hours after such time and the person would be subject to incarceration pursuant to subparagraph (xii) of paragraph (f) of this subdivision should the violation be sustained at a final revocation hearing, a warrant may be issued for the retaking of such person and for his temporary detention pending a recognizance hearing in accordance with the rules of the board. If the person has intentionally failed to appear as directed in response to a notice of violation and has intentionally failed to appear voluntarily within forty-eight hours after such time and the person would not be subject to incarceration pursuant to paragraph (f) of this subdivision should the violation be sustained at a final revocation hearing, no warrant shall issue and the violation shall be deemed sustained. Notice of that decision shall be promptly served upon the releasee. In such case, within one month of the date the notice of decision was served upon the releasee, the releasee may move to vacate such a sustained violation if the releasee can show by a preponderance of the evidence that the notice of violation was not properly served or the failure to appear was otherwise excusable. If the parole officer having charge of a person under community supervision shall have probable cause to believe that such person has committed a non-technical violation, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a notice of violation may be issued or a warrant may be issued for the retaking of such person and for his temporary detention in accordance with the rules of the board. However, if a releasee has been determined to be currently unfit to proceed to trial or is currently subject to a temporary or final order of observation pursuant to article seven hundred thirty of the criminal procedure law, no notice of violation or warrant shall be issued. The issuance of a notice of violation, service of a notice of violation, service of a notice of decision, and the retaking and detention of any person for whom a warrant has been issued pursuant to this subparagraph may be further regulated by rules and regulations of the department not inconsistent with this article. A warrant issued pursuant to this section shall constitute sufficient authority to the superintendent or other person in charge of any jail, penitentiary, lockup or detention pen to whom it is delivered to hold in temporary detention the person named therein pending a recognizance hearing

pursuant to subparagraph (iv) of this paragraph. It shall not be a condition of parole nor may a notice of violation or a warrant be issued due to a releasee being in the company of or fraternizing with any person the releasee knows has a criminal record or knows has been adjudicated a youthful offender or due to conduct related to cannabis that is lawful pursuant to the laws of New York.

(ii) A warrant issued for a presumptive release, a parole, a conditional release or a post-release supervision violator may be executed by any parole officer or any officer authorized to serve criminal process or any peace officer, who is acting pursuant to his special duties, or police officer. Any such officer to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such person and having him detained as provided in this paragraph.

(iii) Where the alleged violator is detained in another state pursuant to such warrant and is not under parole supervision pursuant to the uniform act for out-of-state parolee supervision or where an alleged violator under parole supervision pursuant to the uniform act for out-of-state parolee supervision is detained in a state other than the receiving state, the warrant will not be deemed to be executed until the alleged violator is detained exclusively on the basis of such warrant and the department has received notification that the alleged violator (A) has formally waived extradition to this state or (B) has been ordered extradited to this state pursuant to a judicial determination. The alleged violator will not be considered to be within the convenience and practical control of the department until the warrant is deemed to be executed.

(iv) Notwithstanding the provisions of any other law, upon execution of a warrant issued pursuant to this section for any releasee alleged to have committed a violation of a condition of release in an important respect in the city of New York, the authorized officer shall present the releasee to the criminal court of the city of New York or the supreme court criminal term in the county where the violation is alleged to have been committed for a recognizance hearing within twenty-four hours of the execution of the warrant. If no such court of record is available to conduct any business of any type within twenty-four hours of the execution of the warrant, the recognizance hearing shall commence

on the next day such a court in the jurisdiction is available to conduct any business of any type. For any releasee alleged to have committed a violation of a condition of release in an important respect outside of the city of New York, the authorized officer shall present the releasee to a county court, district court or city court in the county or city where the violation is alleged to have been committed for a recognizance hearing. If no such court of record is available to conduct any business of any type within twenty-four hours of the execution of the warrant, the recognizance hearing shall commence on the next day such court is available to conduct any business of any type.

(v) At a recognizance hearing, the department shall have the burden of demonstrating to the court that the executed warrant was properly issued and served pursuant to this section. The department shall be responsible for presenting information to the court regarding the alleged violation and the releasee's community supervision record. If the alleged violation is the subject of a pending criminal prosecution, the department shall coordinate with the office of the district attorney to ensure information regarding the alleged violation and the releasee's community supervision record is presented to the court. At a recognizance hearing, the department shall have the burden of demonstrating to the court that the executed warrant was properly issued and served pursuant to this section. The department shall be responsible for presenting information to the court regarding the alleged violation and the releasee's community supervision record. If the alleged violation is the subject of a pending criminal prosecution, the department shall coordinate with the office of the district attorney to ensure information regarding the alleged violation and the releasee's community supervision record is presented to the court.

(vi) At a recognizance hearing, the court shall consider all available evidence of the releasee's employment, family and community ties including length of residency in the community, history of reporting in a timely fashion to a parole or supervisory officer, and other indicators of stability. At the conclusion of the recognizance hearing, the court may order that the releasee be detained pending a preliminary or final revocation hearing only upon a finding that the releasee currently presents a substantial risk of willfully failing to appear at the preliminary or final revocation hearings and that no non-monetary

condition or combination of conditions in the community will reasonably assure the releasee's appearance at the preliminary or final revocation hearing. Otherwise, the court shall release the releasee on the least restrictive non-monetary conditions that will reasonably assure the releasee's appearance at subsequent preliminary or revocation hearings, with a presumption of release on recognizance. The court shall explain its decision on the record or in writing. If non-monetary conditions of release are imposed, the releasee shall not be required to pay for any part of the cost of such conditions.

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

(viii) If the violation charge involves conduct that would constitute a new felony or misdemeanor offense, such recognizance hearing may be held at the same time as a proceeding pursuant to article five hundred thirty of the criminal procedure law for any warrants issued by the department prior to such proceeding. If at the proceeding pursuant to article five hundred thirty of the criminal procedure law the court imposes bail on the new alleged criminal offense or commits the releasee to the custody of the sheriff pursuant to article five hundred thirty of the criminal procedure law and the releasee secures release by paying bail or under non-monetary conditions or by operation of law, then the releasee shall not be detained further based solely on the warrant issued by the department. If the department issues a warrant for a non-technical violation for alleged criminal conduct that has already been the subject of a court's order pursuant to article five hundred thirty of the criminal procedure law, then within twenty-four hours of execution of the warrant the releasee shall be provided a recognizance hearing pursuant to this subparagraph, provided, however, that if no

court as defined in subparagraph (iv) of this paragraph is available to conduct any business of any type within twenty-four hours of the execution of the warrant, then the recognizance hearing shall commence on the next day such court is available to conduct any business of any type.

(b) A person who shall have been taken into custody pursuant to this subdivision for violation of one or more conditions of presumptive release, parole, conditional release or post-release supervision shall, insofar as practicable, be incarcerated in the county or city in which the arrest occurred.

(c) (i) (A) For any alleged technical violation for which a notice of violation was issued or a person was released on recognizance pursuant to subparagraph (iv) of paragraph (a) of this subdivision, the department shall within ten days of the issuance of the notice of violation or the order of release on recognizance afford the person a preliminary revocation hearing before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator. Such hearing shall not be held at a correctional facility, detention center or local correctional facility. The hearing shall be scheduled and held in a courthouse, in cooperation with the chief administrator of the courts and the chief administrator's designees, provided, however, that if such a courthouse is not reasonably available for such hearing, the department may designate a suitable office or other similar facility that is not a correctional facility, detention center or local correctional facility for such hearing.

(B) For any alleged violation for which a court issued an order detaining a person, within five days of the issuance of such order to detain or execution of a warrant for the violation, the department shall afford such person a preliminary hearing before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator. For any alleged violation for which a person was released on recognizance, within ten days of the issuance of the order of release on recognizance, the department shall afford such person a preliminary revocation hearing.

(ii) The preliminary presumptive release, parole, conditional release

or post-release supervision revocation hearing shall be scheduled and held in a courthouse, in cooperation with the chief administrator of the courts and the chief administrator's designees, provided, however, that if such a courthouse is not reasonably available for such hearing, the department may designate a suitable office or other similar facility that is not a correctional facility, detention center or local correctional facility for such hearing.

(iii) The alleged violator shall, at the time a notice of violation is issued or at the time of a recognizance hearing, be given written notice of the time, place and purpose of the preliminary hearing, or if no preliminary hearing is required pursuant to this section, of the final revocation hearing. The notice shall state what conditions of community supervision are alleged to have been violated, and in what manner; that such person shall have the right to appear and speak in his or her own behalf; that he or she shall have the right to introduce letters and documents; that he or she may present witnesses who can give relevant information to the hearing officer; that he or she has the right to confront the witnesses against him or her; that such person shall have the right to representation by counsel at any preliminary and final revocation hearings; and the name and contact details for institutional defenders or assigned private counsel, as applicable. Adverse witnesses may be compelled to attend the preliminary hearing unless the prisoner has been convicted of a new crime while on supervision or unless the hearing officer finds good cause for their non-attendance. As far as practicable or feasible, any additional documents having been collected or prepared that are relevant to the charge shall be delivered to the alleged violator.

(iv) The standard of proof at the preliminary hearing shall be a preponderance of the evidence to believe that the releasee has violated one or more conditions of his or her community supervision in an important respect. Proof of conviction of a crime committed while under supervision shall constitute prima facie evidence of a violation of a condition of community supervision for the purposes of this subparagraph.

(v) At the preliminary hearing, the hearing officer shall review the violation charges with the alleged violator, direct the presentation of evidence concerning the alleged violation, receive the statements of

witnesses and documentary evidence on behalf of the prisoner, and allow cross examination of those witnesses in attendance.

(vi) At the conclusion of the preliminary hearing, the hearing officer shall inform the alleged violator of his or her decision as to whether there is probable cause to believe that the presumptive releasee, parolee, conditional releasee or person on post-release supervision has violated one or more conditions of his or her release in an important respect. Based solely on the evidence adduced at the hearing, the hearing officer shall determine whether there is probable cause to believe that such person has violated his or her presumptive release, parole, conditional release or post-release supervision in an important respect. The hearing officer shall in writing state the reasons for his or her determination and the evidence relied on. A copy of the written findings shall be sent to both the alleged violator and his or her counsel.

(vii) If the hearing officer is satisfied that there is no probable cause to believe that such person has violated one or more conditions of release in an important respect, he or she shall dismiss the notice of violation and direct such person be restored to supervision.

(viii) If the hearing officer is satisfied that there is probable cause to believe that such person has violated one or more conditions of release in an important respect, he or she shall so find.

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

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

(x) The alleged violator shall have a right to representation by counsel at the preliminary hearing. In any case, including when a court is called upon to evaluate the capacity of an alleged violator in a preliminary proceeding, where such person is financially unable to retain counsel, the criminal court of the city of New York, the county court or district court in the county where the violation is alleged to have occurred or where the hearing is held, shall assign counsel in accordance with the county or city plan for representation placed in operation pursuant to article eighteen-B of the county law.

* (d) If a finding of probable cause is made pursuant to this subdivision either by a determination at a preliminary hearing or by the waiver thereof, or if the releasee has been convicted of a new crime while under presumptive release, parole, conditional release or post-release supervision, the board's rules shall provide for (i) declaring such person to be delinquent as soon as practicable and shall require reasonable and appropriate action to make a final determination with respect to the alleged violation or (ii) ordering such person to be restored to presumptive release, parole, conditional release or post-release supervision under such circumstances as it may deem appropriate or (iii) when a presumptive releasee, parolee, conditional releasee or person on post-release supervision has been convicted of a new felony committed while under such supervision and a new indeterminate or determinate sentence has been imposed, the board's rules shall provide for a final declaration of delinquency. The incarcerated individual shall then be notified in writing that his or her release has been revoked on the basis of the new conviction and a copy of the commitment shall accompany said notification. The incarcerated individual's next appearance before the board shall be governed by the legal requirements of said new indeterminate or determinate sentence, or shall occur as soon after a final reversal of the conviction as is practicable.

* NB Effective until September 1, 2027

* (d) If a finding of probable cause is made pursuant to this subdivision either by determination at a preliminary hearing or by the waiver thereof, or if the releasee has been convicted of a new crime while under his present parole or conditional release supervision, the board's rules shall provide for (i) declaring such person to be delinquent as soon as practicable and shall require reasonable and appropriate action to make a final determination with respect to the alleged violation or (ii) ordering such person to be restored to parole supervision under such circumstances as it may deem appropriate or (iii) when a parolee or conditional releasee has been convicted of a new felony committed while under his or her present parole or conditional release supervision and a new indeterminate sentence has been imposed, the board's rules shall provide for a final declaration of delinquency. The incarcerated individual shall then be notified in writing that his or her release has been revoked on the basis of the new conviction and a copy of the commitment shall accompany said notification. The incarcerated individual's next appearance before the board shall be governed by the legal requirements of said new indeterminate sentence, or shall occur as soon after a final reversal of the conviction as is practicable.

* NB Effective September 1, 2027

(e) (i) If the alleged violator requests a local revocation hearing, he or she shall be given a revocation hearing reasonably near the place of the alleged violation or arrest if he or she has not been convicted of a crime committed while under supervision. However, the board may, on its own motion, designate a case for a local revocation hearing.

(ii) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant as determined by the board.

(iii) If a local revocation hearing is not ordered pursuant to subparagraph (i) of this paragraph the alleged violator shall be given a revocation hearing upon his or her return to a state correctional facility.

(f) (i) For any releasee charged with a violation at a preliminary hearing:

(A) If a court issued an order detaining a person after a finding by a preponderance of the evidence that such person committed a violation

then within thirty days of the finding by a preponderance of the evidence determination at the preliminary hearing, the department shall afford such person a final revocation hearing in person before a hearing officer designated by the department. Such hearing officer shall not have had any prior supervisory involvement over the alleged violator.

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

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

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

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

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

(iii) Both the alleged violator and an attorney who has filed a notice of appearance on his or her behalf in accordance with the rules of the board of parole shall be given written notice of the date, place and time of the hearing pursuant to subparagraph (ix) of paragraph (c) of

this subdivision.

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

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

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

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

(viii) At the conclusion of the hearing the presiding officer may sustain any or all of the violation charges or may dismiss any or all violation charges. He or she may sustain a violation charge only if the

charge is supported by clear and convincing evidence. Conduct that formed the basis of an arrest shall not form a basis of a sustained parole violation if a court has adjudicated the matter with an acquittal, adjournment in contemplation of dismissal, or violation.

(ix) If the presiding officer is not satisfied that there is clear and convincing evidence in support of the violation, he or she shall dismiss the violation, cancel the delinquency and restore the person to presumptive release, parole, conditional release or post-release supervision.

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

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

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

(1) Absconding. For absconding up to seven days reincarceration may be

imposed for the first violation, up to fifteen days reincarceration may be imposed for the second violation, and up to thirty days reincarceration may be imposed for the third or any subsequent violation;

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

(3) Sanctions for all other technical violations. For all other technical violations, no period of reincarceration may be imposed for the first and second substantiated technical violations for which incarceration may be imposed; up to seven days reincarceration may be imposed for the third substantiated technical violation for which incarceration may be imposed; up to fifteen days reincarceration may be imposed for the fourth substantiated technical violation for which incarceration may be imposed; up to thirty days reincarceration may be imposed for the fifth and subsequent substantiated technical violations for which incarceration may be imposed.

(xiii) If a warrant was executed pursuant to subparagraph (iv) of paragraph (a) of this subdivision by a criminal court and the court released the person pending a preliminary or final revocation hearing, any period of reincarceration imposed pursuant to this paragraph shall

be counted from the date of issuance of a determination after a final revocation hearing that the person has violated one or more conditions of community supervision, and the time between execution of the warrant and release of the person pending a preliminary or final revocation hearing shall count toward any period of reincarceration imposed pursuant to this paragraph. If a releasee is committed to the custody of the sheriff pursuant to article five hundred thirty of the criminal procedure law, any time the person spent confined in a correctional facility or local correctional facility shall be credited toward any period of reincarceration imposed pursuant to this paragraph. In all cases, the presiding officer shall impose the least restrictive reasonable sanction. Any periods of reincarceration imposed pursuant to this section shall run concurrently if more than one violation is sustained. If a period of reincarceration is imposed pursuant to this paragraph, the releasee shall be released from custody upon expiration of the period or the end of the releasee's period of community supervision, whichever shall be sooner. For the violator serving an indeterminate sentence who while re-incarcerated has not been found by the department to have committed a serious disciplinary infraction, such violator shall be re-released on the date fixed at the revocation hearing. For the violator serving an indeterminate sentence who has been found by the department to have committed a serious disciplinary infraction while re-incarcerated, the department shall refer the violator to the board for consideration for re-release to community supervision. Upon such referral the board may waive the personal interview between a member or members of the board and the violator to determine the suitability for re-release when the board directs that the violator be re-released upon expiration of the time assessment. The board shall retain the authority to suspend the date fixed for re-release based on the violator's commission of a serious disciplinary infraction and shall in such case require a personal interview be conducted within a reasonable time between a panel of members of the board and the violator to determine suitability for re-release. If an interview is required, the board shall notify the violator in advance of the date and time of such interview in accordance with the rules and regulations of the board.

(xiv) If the presiding officer sustains any violations, such officer

must prepare a written statement, to be made available to the alleged violator and his or her counsel, indicating the evidence relied upon and the reasons for revoking presumptive release, parole, conditional release or post-release supervision, and for the disposition made. The presiding officer shall also advise the alleged violator in a written statement that revocation will result in loss of the right to vote while he or she is serving the remainder of his or her felony sentence in a correctional facility and that the right to vote will be restored upon his or her release.

(xv) If at any time during a revocation proceeding the alleged violator, his or her counsel, or an employee of the department contends, or if it reasonably appears to the hearing officer, that the alleged violator is an incapacitated person as that term is defined in subdivision one of section 730.10 of the criminal procedure law and no judicial determination has been made that the alleged violator is an incapacitated person, the revocation proceeding shall be temporarily stayed until the superior court determines whether or not the person is fit to proceed. The matter shall be promptly referred to the superior court for determination of the alleged violator's fitness to proceed in a manner consistent with the provisions of article seven hundred thirty of the criminal procedure law, provided however that the superior court shall immediately appoint counsel for any unrepresented alleged violator eligible for appointed counsel under subparagraph (v) of this paragraph. The court shall decide whether or not the alleged violator is incapacitated within thirty days of the referral from the hearing officer. If the court determines that the alleged violator is not an incapacitated person, the court shall order that the matter be returned to the board of parole for continuation and disposition of the revocation proceeding. If the court determines that the alleged violator is an incapacitated person and if no felony charges are pending against the alleged violator, the court shall issue a final order of observation committing such person to the custody of the commissioner of mental health or the commissioner of developmental disabilities for care and treatment in an appropriate institution in a manner consistent with subdivision one of section 730.40 of the criminal procedure law. If a final order of observation has been issued pursuant to this section, the hearing officer shall dismiss the violation charges and such dismissal

shall act as a bar to any further proceeding under this section against the alleged violator for such violations. If felony criminal charges are pending at any time against an alleged violator who has been referred to superior court for a fitness evaluation but before a determination of fitness has been made pursuant to this section, the court shall decide whether or not the alleged violator is incapacitated pursuant to article seven hundred thirty of the criminal procedure law and the revocation proceeding shall be held in abeyance until such decision has been reached. The hearing officer shall adopt the capacity finding of the court and either terminate the revocation process if an order of observation has been made by the court or proceed with the revocation hearing if the alleged violator has been found not to be an incapacitated person.

(g) Revocation of presumptive release, parole, conditional release or post-release supervision shall not prevent re-parole or re-release provided such re-parole or re-release is not inconsistent with any other provisions of law. When there has been a revocation of the period of post-release supervision imposed on a felony sex offender who owes three years or more on such period imposed pursuant to subdivision two-a of section 70.45 of the penal law, and a time assessment of three years or more has been imposed, the violator shall be reviewed by the board of parole and may be restored to post-release supervision only after serving three years of the time assessment, and only upon a determination by the board of parole made in accordance with the procedures set forth in this section. Even if the hearing officer has imposed a time assessment of a certain number of years of three years or more, the violator shall not be released at or before the expiration of that time assessment unless the board authorizes such release, the period of post-release supervision expires, or release is otherwise authorized by law. If a time assessment of less than three years was 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 other law.

(h) If the alleged violation is not sustained and the alleged violator is restored to supervision, the interruptions specified in subdivision three of section 70.40 of the penal law shall not apply, but the time spent in custody in any state or local correctional institution shall be

credited against the term of the sentence in accordance with the rules specified in paragraph (c) of such subdivision.

(i) Where there is reasonable cause to believe that a presumptive releasee, parolee, conditional releasee or person under post-release supervision has absconded from supervision the board may declare such person to be delinquent. This paragraph shall not be construed to deny such person a preliminary revocation hearing upon his retaking, nor to relieve the department of any obligation it may have to exercise due diligence to retake the alleged absconder, nor to relieve the parolee or releasee of any obligation he may have to comply with the conditions of his release.

4. Appeals. (a) Except for determinations made upon preliminary hearings upon allegations of violation of presumptive release, parole, conditional release or post-release supervision, all determinations made pursuant to this section may be appealed in accordance with rules promulgated by the board. Any board member who participated in the decision from which the appeal is taken may not participate in the resolution of that appeal. The rules of the board may specify a time within which any appeal shall be taken and resolved.

(b) Upon an appeal to the board, the incarcerated individual may be represented by an attorney. Where the incarcerated individual is financially unable to provide for his or her own attorney, upon request an attorney shall be assigned pursuant to the provisions of subparagraph (v) of paragraph (f) of subdivision three of this section.

(c) All board of parole administrative appeal findings and recommendations shall be published within one hundred twenty days of the determination on a publicly accessible website that includes a word-searchable database. The department of corrections and community supervision shall provide electronic or print copies of such findings and recommendations to all correctional facility law libraries on a quarterly basis. Copies of such individual findings and recommendations shall also be made available upon written request to the department of corrections and community supervision. Information which would reveal confidential material that may not be released pursuant to federal or state law shall be redacted from any such website or findings and recommendations.

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

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

(c) The appeal shall be perfected in the manner set forth in section 460.70 of the criminal procedure law, other provisions of law generally applicable to criminal appeals, and authorized rules implementing this section promulgated by the chief administrator of the courts. The department shall have responsibility for presenting the department's position through any submissions to the court on the appeal. The department shall coordinate with relevant district attorneys to ensure appropriate information may be provided to the court. The district

attorney of the jurisdiction may appear on any such appeal without the necessity of a motion or order of the court.

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

5. Actions of the board. Any action by the board or by a hearing officer pursuant to this article shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

6. Record of proceedings. (a) (i) The board shall provide for the making of a verbatim record of each parole release interview, except where a decision is made to release the incarcerated individual to parole supervision, and each preliminary and final revocation hearing, except when the decision of the presiding officer after such hearings result in a dismissal of all charged violations of parole, conditional release or post release supervision.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, the board shall provide for the making of a verbatim record of each parole release interview in all proceedings where the incarcerated individual is a detained sex offender as such term is defined in subdivision (g) of section 10.03 of the mental hygiene law. Such record shall be provided to the office of mental health for use by the multidisciplinary staff and the case review panel pursuant to section 10.05 of the mental hygiene law.

(b) The chairman of the board of parole 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.

7. Deaf person before the board. Whenever any deaf person participates in an interview, parole release hearing, preliminary hearing or revocation hearing, there shall be appointed a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to and the statements or testimony of such deaf person. The department shall determine a reasonable fee for all such interpreting services, the cost of which shall be a charge upon the department.

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. No such request or appointment shall cause a delay of release from incarceration of such person.

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