§ 70.40 Release on parole; conditional release; presumptive release.

1. Indeterminate sentence.

* (a) Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of his or her sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law and the correction law.

(i) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he or she is confined at any time after the expiration of the minimum or the aggregate minimum period of the sentence or sentences or, where applicable, the minimum or aggregate minimum period reduced by the merit time allowance granted pursuant to paragraph (d) of subdivision one of section eight hundred three of the correction law.

(ii) A person who is serving one or more than one determinate sentence of imprisonment shall be ineligible for discretionary release on parole.

(iii) A person who is serving one or more than one indeterminate sentence of imprisonment and one or more than one determinate sentence of imprisonment, which run concurrently may be paroled at any time after the expiration of the minimum period of imprisonment of the indeterminate sentence or sentences, or upon the expiration of six-sevenths of the term of imprisonment of the determinate sentence or sentences, whichever is later.

(iv) A person who is serving one or more than one indeterminate sentence of imprisonment and one or more than one determinate sentence of imprisonment which run consecutively may be paroled at any time after the expiration of the sum of the minimum or aggregate minimum period of the indeterminate sentence or sentences and six-sevenths of the term or aggregate term of imprisonment of the determinate sentence or sentences.

(v) Notwithstanding any other subparagraph of this paragraph, a person may be paroled from the institution in which he or she is confined at any time on medical parole pursuant to section two hundred fifty-nine-r or section two hundred fifty-nine-s of the executive law or for deportation pursuant to paragraph (d) of subdivision two of section two hundred fifty-nine-i of the executive law or after the successful completion of a shock incarceration program pursuant to article twenty-six-A of the correction law.

* NB Effective until September 1, 2027

* (a) (i) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he or she is confined at any time after the expiration of the minimum or the aggregate minimum period of imprisonment of the sentence or sentences or after the successful completion of a shock incarceration program, as defined in article twenty-six-A of the correction law, whichever is sooner. Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of his or her sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law and the correction law.

(ii) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he or she is confined at any time after the expiration of the minimum or the aggregate minimum period of the sentence or sentences.

* NB Effective September 1, 2027

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

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

* NB Effective until September 1, 2027

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

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

* NB Effective September 1, 2027

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

* NB Repealed September 1, 2027

2. Definite sentence. A person who is serving one or more than one definite sentence of imprisonment with a term or aggregate term in excess of ninety days, and is eligible for release according to the criteria set forth in paragraphs (a), (b) and (c) of subdivision one of section two hundred seventy-three of the correction law, may, if he or she so requests, be conditionally released from the institution in which he or she is confined at any time after service of sixty days of that term, exclusive of credits allowed under subdivisions four and six of section 70.30. In computing service of sixty days, the credit allowed

for jail time under subdivision three of section 70.30 shall be calculated as time served. Conditional release from such institution shall be in the discretion of the parole board, or a local conditional release commission established pursuant to article twelve of the correction law, provided, however that where such release is by a local conditional release commission, the person must be serving a definite sentence with a term in excess of one hundred twenty days and may only be released after service of ninety days of such term. In computing service of ninety days, the credit allowed for jail time under subdivision three of section 70.30 of this article shall be calculated as time served. A conditional release granted under this subdivision shall be upon such conditions as may be imposed by the parole board, in accordance with the provisions of the executive law, or a local conditional release commission in accordance with the provisions of the correction law.

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

3. Delinquency. (a) When a person is alleged to have violated the terms of presumptive release or parole by absconding, and the state board of parole has declared such person to be delinquent, the declaration of delinquency shall interrupt the person's sentence as of

the date of the delinquency and such interruption shall continue until the releasee's appearance in response to a notice of violation or the date of the execution of a warrant, whichever is earlier.

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

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

4. Earned time credits. (a) Any person subject to community supervision shall be awarded earned time credits. The calculation of earned time credit periods shall begin on the releasee's first day of community supervision and shall be awarded after each completed thirty day period in compliance with the terms of their community supervision. Any such awarded earned time credits shall be applied against such person's unserved portion of the maximum term, aggregate maximum term or period of post-release supervision for any current sentence. Persons subject to a sentence with a maximum term of life imprisonment or lifetime supervision shall not be eligible to receive earned time credits under this section.

(b) After a person has begun a period of community supervision pursuant to this section and section 70.45 of this article, such period of community supervision shall be reduced by thirty days for every thirty days that such person does not violate a condition of and remains in compliance with all conditions of his or her community supervision, provided, however, that the person is not subject to any sentence with a

maximum term of life imprisonment or lifetime supervision. When a person is subject to more than one period of community supervision, the reduction authorized in this subdivision shall be applied to every such period of parole or conditional release to which the person is subject.

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

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

(e) Earned time credits may be withheld or revoked for the thirty-day period commencing from the date of violative behavior as sustained at a final revocation hearing, or for the period during which a releasee absconded from supervision, as sustained at a final revocation hearing. Earned time credits may not be earned and shall be suspended: (i) during a period of reincarceration imposed for any sustained violation; (ii) during the period in which the individual has absconded; or (iii) pending the outcome of a preliminary or final revocation hearing. If, at the preliminary hearing, there is no finding by a preponderance of the evidence of a violation of a condition of release in an important respect or a violation is not sustained at the final revocation hearing, then the individual shall be deemed to have been in compliance with the

terms of release and shall be awarded earned time credits from the period in which the accrual was suspended. If a violation is sustained, the calculation of an earned time credit period shall recommence on the thirty-first day after the date of the violative behavior or, if the sustained violation or conviction resulted in a term of reincarceration, on the day the releasee is restored to community supervision, whichever is later.

(f) At least every one hundred eighty days from the first date of a person's release to community supervision, and every one hundred eighty days thereafter, the department of corrections and community supervision shall provide each person on community supervision a report indicating the total earned time credits received, the total earned time credits received in the prior one hundred eighty days, the total earned time credits withheld, the total earned time credits withheld in the prior one hundred eighty days, the total amount of time reduced from the person's sentence, and the person's earliest release date based on the amount of earned time credits received. The department shall provide the report in written or electronic form.