
 <p>Corrections and Community Supervision</p> <p>DIRECTIVE</p>	<p>TITLE</p> <p>Community Supervision – Violation of Release Report Bureau Analysis Notice of Violation</p>		<p>NO. 9051</p>
			<p>DATE 10/05/2021</p>
<p>SUPERSEDES</p> <p>DIR #9051 Dtd. 08/06/18</p>	<p>DISTRIBUTION A B</p>	<p>PAGES PAGE 1 OF 8</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>NYS Executive Law §259; Penal Law 70.40(3); 9 NYCRR; ACA Expected Practices 4-APPFS-2B-02, 4-APPFS-2B-03, 4- APPFS-2B-07, 4-APPFS-2B-11; Directive #9050</p>	<p>APPROVING AUTHORITY</p> 		

- I. PURPOSE:** When a parolee is believed to have violated one or more of the conditions of Community Supervision, and an alternative sanction or Community Supervision diversion are not deemed appropriate, the Parole Officer shall prepare Form #CS4003, “Violation of Release Report,” in accordance with Department of Corrections and Community Supervision (DOCCS) Directive #9050, “Revocation Process.” Community Supervision staff shall also prepare Form #CS4003.2, “Area/Bureau Analysis,” and submit a formal recommendation regarding the alleged violative behavior specifying the case action sought, in response to the violation charges. The purpose of this Directive is to also reinforce the requirement to notify the alleged parole violator regarding his or her right to a Preliminary and Final Revocation Hearing via completion and service of Form #CS9011, “Notice of Violation.”

NOTE: With respect to a recommendation to refer an alleged violator to a DOCCS operated Parole Diversion Program (PDP), Community Supervision staff shall follow the established protocols and procedures for referral and admission to a PDP facility.

- II. POLICY:** It is the policy of the Department that violations of the conditions of release shall be documented by completion of Form #CS4003, “Violation of Release Report,” and, where required, completion of Form #CS4003, “Supplementary Violation of Release Report,” any time a warrant is being requested and a revocation of release is being pursued. The “Violation of Release Report,” Form #CS4003, serves as the primary charge document and official report of violation(s) considered at the Preliminary and Final Revocation Hearings. It is also the policy of the Department to ensure that all persons alleged to have violated the terms and conditions of presumptive release, parole, conditional release, or post-release supervision receive copies of Form #CS4003, “Violation of Release Report(s),” Form #CS4003.2, “Area/Bureau Analysis,” Form #CS9011, “Notice of Violation,” and all other documents that will be presented at the Preliminary and Final Revocation Hearings.

NOTE: References to parolee and releasee in this Directive are intended to refer to individuals released to Community Supervision and presently under the jurisdiction of DOCCS. References to parolee and releasee, for purposes of this Directive, shall also include any individuals subject to Article 10 of the New York State Mental Hygiene Law who are presently under the jurisdiction of DOCCS and serving a determinate sentence, indeterminate sentence, or period of post-release supervision. References to parolee or releasee shall also include persons transferred to New York State from other states for supervision under the Interstate Compact.

III. DEFINITIONS

- A. Declaration of Delinquency: Once probable cause is established either by a waiver of a Preliminary Hearing or a finding of probable cause at a Preliminary Hearing, a member of the Board of Parole or one of the Department's Bureau Chiefs declares the alleged violator delinquent and directs that a Final Parole Revocation Hearing be held.
- B. Interstate Compact for Adult Offender Supervision (ICAOS): ICAOS promotes the orderly movement of releasees (parolees) between states through the establishment and monitoring of rules and guidelines for interstate transfers.
- C. Interstate Compact Offender Tracking System (ICOTS): An internet-based program used to document processes related to releasees (parolees) who are supervised through ICAOS.
- D. Interstate Compact and Violations of Community Supervision: The NYS Board of Parole has the authority to revoke the Community Supervision status of any offender being supervised by the Department of Corrections and Community Supervision (DOCCS) or another jurisdiction pursuant to the Interstate Compact for Adult Offender Supervision. [Executive Law §259-c(6), 259-i(3); 9 NYCRR §8000.1(6), 9 NYCRR Parts 8004 & 8005]
- E. Notice of Violation: Within three days of executing the parole violation warrant, or five days if executed out of state, the alleged violator must be served with written notice of the time, place and purpose of the hearing to be held on the alleged violations. [Executive Law §259-i(3)(c)(iii)]
- F. Parole Board Authority to Revoke Release: Regardless of the manner by which an incarcerated individual has gained release from a State (DOCCS) correctional facility to the community prior to the maximum expiration date of his or her sentence, the Board of Parole has been vested with "the power to revoke the presumptive release, parole, conditional release or post-release supervision status of any person." [Executive Law §259-c(6); Executive Law §259-i(3); and, Penal Law §70.40(3)]

NOTE: Given the number of individuals under supervision in New York State who are subject to the revocation process, coupled with the many due process considerations attending this process, the Legislature has authorized the Parole Board to make use of Hearing Officers (i.e., Administrative Law Judges) to preside over Final Parole Revocation Hearings. [Executive Law §259-d]

- G. Violation Warrant (Warrant for Retaking and Detaining): When a Parole Officer believes that a person who is under their supervision has lapsed into criminal activity or has violated one or more of the conditions governing their release "in an important respect," a parole violation warrant may be issued so that the parolee can be taken into custody. [Executive Law §259-i(3)(a)(i)]

Once issued by a Parole Board member or "designated Officer" within the Department, a parole violation warrant can be executed by any Parole Officer, Peace Officer, Police Officer or Officer authorized to serve criminal process [Executive Law §259-i(3)(a)(iii)]. A designated Officer shall mean a Senior Parole Officer, Bureau Chief, Assistant Regional Director, Regional Director, Deputy Director of Operations, the Director of Operations, Chief of the Parole Violation Unit, Deputy Chief of the Parole Violation Unit, and any Officer who has been provided with specific authorization by the Board of Parole. No Officer shall issue a warrant in a case where he or she is the one who furnished the report upon which it is based.

IV. PROCEDURE

A. Commencement of the Investigation and Documenting Violations

1. When a Parole Officer receives information that an arrest or a violation(s) of the conditions of release (Community Supervision) may have occurred, the Parole Officer shall conduct an investigation and proceed in accordance with DOCCS Directive #9050, "Revocation Process."
2. All investigative actions shall be documented in the Case Management System (CMS) record of the alleged violator.
3. If the behavior, violation, or arrest requires the issuance of a violation warrant and pursuit of a revocation of release, the Parole Officer shall prepare the Violation of Release Report and request the necessary case action.
4. Violations reported through the ICAOS and defined as "significant violations" require the completion of a violation report and coordination with the Department's Interstate Bureau.

B. "Violation of Release Report," Form #CS4003

1. Community Supervision staff shall use Form #CS4003, "Violation of Release Report," for reporting all violations to include new arrests, convictions, absconding from supervision, and technical (rule) violations of release. Form #CS4003 is the DOCCS-authorized version of the violation report.

Community Supervision staff shall utilize Form #CS4003, "Charge Library," when drafting Form #CS4003, "Violation of Release Report."

2. The "Violation of Release Report," Form #CS4003, shall contain the following information:

- a. Warrant Issued or No Warrant Issued
- b. Name, NYSID, DIN, DOB
- c. COMPAS Level
- d. Releasing Facility
- e. Date Released
- f. Date of Warrant
- g. Warrant Number
- h. Date Warrant Enforced
- i. Location Warrant Enforced
- j. Sexually Motivated Felony
- k. Delinquency Date
- l. Instant Offense(s)
- m. Sentence(s)
- n. Time on Community Supervision (years, months, days)
- o. Violation Charges (and narrative detail)
 - (1) Charge number
 - (2) Rule violation number
 - (3) Last name and first name of parolee
 - (4) Brief description of violative behavior

(5) Date of violative behavior

- p. Possible Witnesses (only the names of witnesses)
- q. Documents Provided at Time of Service (See Section III, "Procedure")

C. Documents Provided

1. The violation charges portion of Form #CS4003, "Violation of Release Report," shall list all documents that are expected to be used at the revocation hearings to support the charges in the Violation of Release Report. All documents are to be listed under the heading, "Documents Provided," on the Violation of Release Report.
2. The documents to be provided at the time of service of Form #CS9011, "Notice of Violation," and Form #CS4003, "Violation of Release Report," shall include, and not necessarily be limited to, the following:
 - a. The On-Site Drug Test Admission Form.
 - b. Police reports (victim name and contact information must be redacted).
 - c. Arrest reports and indictment documents (victim contact and personal information must be redacted).
 - d. Certificates of Conviction and Certificates of Disposition.
 - e. Arrest or "hit" notices from the arresting law enforcement agency which may include teletype, fax, or NYS Department of Criminal Justice System (DCJS) notification form.
 - f. Drug test confirmation reports.
 - g. Affidavits, statements, and letters received from treatment and service providers, program staff, crime victims, and law enforcement personnel.
NOTE: Parole Officers, Senior Parole Officers, and Bureau Chiefs are required to inform witnesses that these documents will be provided to the alleged violator and defense attorney.
 - h. Photographs or copies of photographs.
 - i. ICAOS documents and forms.
 - j. Certificate of Release to Community Supervision.
 - k. Special conditions of release forms.
 - l. Restoration to supervision forms.
 - m. Waivers of Extradition.
 - n. Sex offender registration forms.
3. Any document(s) not available at the time of initial service of the Notice of Violation and Violation of Release Report, that will be used to support a violation charge or charges, must be provided to the alleged violator and his or her attorney as soon as practicable.
4. The service of violation documents must be documented in the CMS record of the alleged violator. The case-specific CMS entry must include the following:
 - a. Date and time of service.
 - b. Name of the staff person performing service.
 - c. Description of the documents provided at time of service.

- d. Statement of confirmation that the documents were provided to the alleged violator and defense attorney of record.
5. A CMS entry must be made confirming notification to a crime victim or witness regarding the release of a statement or affidavit to the alleged violator and the defense attorney.
- D. "Violation of Release Report - Case Summary," Form #CS4003: The Case Summary portion of the Violation of Release Report must contain the following information:
 1. Crime of conviction and current sentence.
 2. Description of the instant offense.
 3. Criminal history (a concise summary).
 4. Prior terms of probation and parole.
 5. Prior violations on current term.
 6. General adjustment to supervision.
 7. Current violative behavior (a concise summary).
 8. Circumstances of custody.
 9. Parolee statement.
 10. Present status (present location, status, court or hearing dates).
 11. Other information (brief description of other relevant facts).
 12. Certificate of Relief from Disabilities and Certificate of Good Conduct (if applicable, date issued).
 13. The "Violation of Release Report - Case Summary," Form #CS4003, must include the names, titles, and signatures of the Officer and supervisor responsible for completing and approving the report. Staff must ensure that the report includes the dates signed by the Officer and supervisor.
- E. "Supplementary Violation of Release Report," Form #CS4003: Community Supervision staff shall use Form #CS4003, "Supplementary Violation of Release Report," for reporting any additional violation charges, updated information, significant developments and present status of the alleged violator.
 1. If the alleged violator is presently in violation status or the revocation phase has been initiated and a subsequent violation or violations are discovered, such violations shall be documented via completion of Form #CS4003, "Supplementary Violation of Release Report," which is the DOCCS-authorized version of the supplementary report.
 2. The "Supplementary Violation of Release Report," Form #CS4003, shall also be utilized when reporting the status of pending criminal charges, case or indictment numbers, conviction information, final dispositions, and sentence(s) imposed.
 3. The "Supplementary Violation of Release Report," Form #CS4003, shall contain, where applicable, the following information:
 - a. Introduction (summary of the reasons for supplementary report)
 - b. Additional Information
 - c. Additional Violation Charges (and narrative details)
 - (1) Charge number
 - (2) Rule violation number

- (3) Last name and first name of parolee
 - (4) Brief description of violative behavior
 - (5) Date of violative behavior
 - d. Present Status (present location, status, court or hearing dates)
 - e. Additional Possible Witnesses (only the names of the witnesses)
 - f. Documents Provided (see Section IV-C)
 - g. The “Supplementary Violation of Release Report,” Form #CS4003, must include the names, titles, and signatures of the Officer and supervisor responsible for completing and approving the report. Staff must ensure that the report includes the dates signed by the Officer and supervisor.
 4. When additional Supplementary Violation of Release Reports are prepared, reference is to be made to the preceding reports. Each supplementary report should continue from the point where the previous report concluded. Each report is to be numbered in sequence.
- F. Area/Bureau Analysis and Recommendation: Community Supervision staff shall use Form #CS4003.2, “Area/Bureau Analysis,” when submitting case action requests for consideration by the Bureau Chief. The “Area/Bureau Analysis,” Form #CS4003.2, shall be used in response to new arrests, convictions, absconding from supervision, and technical (rule) violations of release.
1. The header portion of Form #CS4003.2, “Area/Bureau Analysis,” shall include the following identification information:
 - a. Name
 - b. NYSID
 - c. Date of Warrant
 - d. Warrant Number
 - e. Date Enforced
 - f. Location
 - g. Book and Case Number (if applicable)
 2. Section I of Form #CS4003.2, “Area/Bureau Analysis,” shall include the following information:
 - a. Parole Officer’s Name and Bureau of Assignment.
 - b. Date of Preliminary Hearing Waiver or Date Preliminary Held.
 - c. If probable cause was found at the Preliminary Hearing, the charges are to be noted.
 3. Section I of Form #CS4003.2, “Area/Bureau Analysis”; A – H, shall include the appropriate case-specific recommendation as follows:
 - a. **“Declare Delinquent as of (xx/xx/xxxx) and Arrange for Final Revocation Hearing. Absconder Yes or No”**: This recommendation must be made before the Final Revocation Hearing can be held.

- b. **“No Delinquency Pending Court Action”**: This recommendation can be made when the alleged violator is arrested on new criminal charges and the Department (DOCCS) is unable to prove such charges at a revocation hearing and this recommendation can also be made when the Department intends to await a final court disposition before deciding on a course of action.
 - c. **“No Delinquency – No Warrant Issued”**: This recommendation is to be made when the circumstances of the alleged violation are such that no delinquency action is either possible or appropriate.
 - d. **“Close Case – Delinquent Time Served – Lift Warrant on (xx/xx/xxxx)”**: This recommendation is made when a violator’s revocation time assessment is near completion while the violator remains incarcerated in a local correctional facility (county jail).
 - e. **“Void Previous Board Decision of (xx/xx/xxxx)”**: This recommendation is to be made when the previously decided case action was submitted in error.
 - f. **“Declare Delinquent as of (xx/xx/xxxx) and Arrange for a Final Revocation Hearing. Refer to Incarcerative Diversion Program: (Specify: _____), and, if successfully completed, cancel delinquency pursuant to 9 NYCRR section 8004.3(e). If not successfully completed, return to Correctional Facility unless the violation is dismissed at hearing”**: This recommendation is made when a diversion program is deemed appropriate, and the Department does not intend to pursue a final declaration of delinquency pending program completion.
 - g. **“No Delinquency, Warrant Issued, Lift Warrant, Return to Supervision. Recommended Restorative Actions: No New Special Condition; Special Condition: Enter and Successfully Complete Diversion Program; Special Condition: Successfully Complete Electronic Monitoring for XX Months; Other Special Conditions: _____”**: This recommendation is made when an alleged violator is incarcerated on a violation warrant and the circumstances of the violation are such that no further delinquency action is either possible or appropriate.
 - h. **“Cancel Delinquency. Recommended Restorative Actions: Restore to Supervision; Close by Maximum Expiration; Untimely Hearing or Non-Curable Service Defect; Insufficient Basis to Proceed to Hearing; Alternatives or Information Not Available at Time of DD”**: These recommendations are made when there is a previous delinquency, but no further revocation action is either possible or appropriate.
4. Section II of Form #CS4003.2, “Area/Bureau Analysis” – Reasons for Recommended Action: The Senior Parole Officer shall provide the basis for the recommendation via a concise narrative summary.
5. Section III of Form #CS4003.2, “Area/Bureau Analysis” – Alternatives Considered:
 - a. The Senior Parole Officer shall detail the alternatives to a revocation of release that were considered and the reasons why the alternatives were deemed appropriate or not appropriate in response to the behavior.
 - b. The Senior Parole Officer will summarize the efforts made by DOCCS to assist the alleged violator and the responses to those efforts.

6. The Senior Parole Officer shall sign and date Form #CS4003.2, "Area/Bureau Analysis," and submit the form along with the violation of release reports to the Bureau Chief.
7. In response to the analysis, recommendation and case-specific factors, the Bureau Chief shall proceed as follows:
 - a. Submit for Board Review (Parole Board Action Required); or
 - b. Determine that No Board Action is Required, Declare Delinquent as of (xx/xx/xxxx) and arrange for Final Revocation Hearing. (If an absconder, arrange for a Final Revocation Hearing when apprehended).
8. The Bureau Chief shall sign and date the Area/Bureau Analysis.
9. The "Area/Bureau Analysis," Form #CS4003.2, shall be distributed as follows:
 - a. Board of Parole
 - b. Community Supervision Quality Control Unit
 - c. Community Supervision case file
- G. "Notice of Violation," Form #CS9011
 1. Community Supervision staff shall complete and provide the alleged violator with Form #CS9011, "Notice of Violation," in accordance with DOCCS Directive #9050, "Revocation Process."
 2. The "Notice of Violation," Form #CS9011, informs the alleged violator of his or her right to a Preliminary and Final Revocation Hearing as well as the date, time, and location of the revocation hearings. In addition, the notice delineates the alleged violator's due process rights as follows:
 - a. To compel witnesses to appear at the hearing and provide testimony
 - b. To subpoena and submit documentary evidence
 - c. Of confrontation and cross examination
 - d. To submit mitigating evidence for the purpose of being restored to supervision
 - e. To representation of counsel
 3. Service of the Notice of Violation, Violation of Release Reports, and evidentiary documents (See Section III) shall be in accordance with Directive #9050, "Revocation Process."

V. PROCEDURAL DOCUMENTS

- A. Violation of Release Report Charge Library (Form #CS4003)
- B. Violation of Release Report Charge Sheet (Form #CS4003)
- C. Violation of Release Report Case Summary (Form #CS4003)
- D. Supplementary Violation of Release Report (Form #CS4003)
- E. Area/Bureau of Analysis and Recommendation (Form #CS4003.2)
- F. Notice of Violation (Form #CS9011)