

9 N.Y.C.R.R. 8002.6, 8003.2, and 8005.20

*Bracketed language is to be removed, underlined language is to be added

Subdivision (b) of section 8002.6 of Title 9 N.Y.C.R.R. is amended to read as follows:

Section 8002.6(b) How calculated.

(1) The time assessment will be set in months [and days.] except, where applicable, it may be set as a hold to the maximum expiration of the sentence. It will commence running on the date that the parole violation warrant was lodged.

(2) Time assessments will be calculated in the same way for all parole violators for whom a time assessment has been imposed, irrespective of whether the violator is in a local or State correctional facility, and irrespective of whether there are criminal charges pending against the parole violator.

(3) For any time assessment imposed, including the assessment to be served in the event the violator fails to successfully complete an alternative program to be provided upon their return to a State correctional facility, if the time remaining on the sentence is less than the time assessment specified by the presiding officer, such assessment shall be deemed a hold to the maximum expiration of the sentence.

(4) Within this section and section 8005.20, “sentence” shall include sentence and post release supervision time, if any.

Section 8003.2 of Title 9 N.Y.C.R.R is repealed and a new section 8003.2 is added to read as follows:

A copy of the conditions of release, with the addition of any special conditions, shall be given to each incarcerated person upon his or her release to supervision. The conditions of release are as follows:

(1) I will proceed directly to the area to which I have been released and, within twenty-four hours or by the next available business day after my release, make my arrival report to the Community Supervision Office indicated below. I will make office and/or other reports thereafter as directed by my Parole Officer.

(2) I will not leave the State of New York or any other state to which I am released or transferred, or any area defined in writing by my Parole Officer without permission.

(3) I will not abscond, which means intentionally avoiding supervision by failing to maintain contact with my Parole Officer and failing to reside at my approved residence.

(4) I will permit my Parole Officer to visit me at my residence, will permit the search and inspection of my person, residence and property, and will discuss any proposed changes in my residence, employment or program status with my Parole Officer.

(5) I will reply promptly, fully and truthfully to any inquiry of, or communication by, my Parole Officer or other representative of the Department of Corrections and Community Supervision.

(6) I will notify my Parole Officer any time I am in contact with, or arrested by, law enforcement. I understand, like every member of the public, I have a right to seek the assistance of law enforcement at any time.

(7) I will not act in concert with a person I know to be engaged in illegal activity.

(8) I will not behave in such a manner as to violate the provisions of any law to which I am subject which provides for a penalty of imprisonment, nor will my behavior threaten the health and safety of myself or others.

(9) I will not own, possess, or purchase a shotgun, rifle, or firearm of any type including any imitation firearm. I will not own, possess or purchase any deadly weapon or use any dangerous instrument, as those terms are defined under Article 10 of the Penal Law. Further, I will not possess a dangerous knife or razor without the permission of my Parole Officer.

(10) In the event that I leave the jurisdiction of the State of New York, I hereby waive my right to contest extradition to the State of New York from any state in the Union and from any territory or country outside the United States. This waiver shall be in full force and effect until I am discharged from community supervision. I fully understand that I have the right under the Constitution of the United States and under law to contest an effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my community supervision.

(11) I will not use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.

(12) I will fully comply with the instructions of my Parole Officer.

(13) I will fully comply with those special conditions set by my Parole Officer, a Member of the Board of Parole or an authorized representative of the Board or the Department of Corrections and Community Supervision. I understand that special conditions are additional conditions, set on an individualized basis, meant to be reasonably tailored to my circumstances and aimed toward my rehabilitation. I will fully comply with the following special conditions:

The copy of the standard conditions shall also include the following clause:

I fully understand that a violation of any condition of release in an important respect may result in the revocation of my period of Community Supervision. I hereby certify that I understand and have received my Certificate of Release to Community Supervision.

Section 8005.20 of Title 9 N.Y.C.R.R is repealed and new section 8005.20 is added to read as follows:

§ 8005.20 Final revocation hearing determination

(a) If the presiding officer is not satisfied that there is a preponderance of evidence in support of any of the violation charges, they must dismiss the charges, cancel the delinquency and restore the releasee to supervision.

(b) If the presiding officer is satisfied that there is a preponderance of evidence in support of a violation charge or charges, and that the alleged violator violated one or more of the conditions of release in an important respect, they shall so find.

(c) *Decisions to be made within parole revocation guidelines.* Where one or more charges of violation are sustained pursuant to subdivision (b) of this section, the presiding officer shall revoke the violator's release. Upon a decision to revoke the violator's release and following consideration of mitigating and aggravating factors as set forth in subdivision (g) of this section, the presiding officer may: (i) restore such violator to supervision; (ii) direct that the violator be provided an alternative program pursuant to subdivision (e) of this section upon their return to a State correctional facility; or (iii), except with respect to those violators defined as Behavior Category 4, impose a time assessment without provision for an alternative program. For all cases, except as otherwise provided in subdivision (d) of this section, the presiding officer shall make a decision in accordance with the foregoing and pursuant to the following guidelines:

(1) For the following violators, defined as Behavior Category 1, if a time assessment is imposed without provision for an alternative program, it shall be for no less than 12 months and may be up to a hold to the maximum expiration of the sentence, provided, however, that a time assessment of no less than 10 months may be imposed in the event that the presiding officer concludes, upon consideration of all relevant circumstances and the factors set forth in subdivision (g) of this section, that such time assessment is more appropriate. Behavior Category 1 violators are those violators who engaged in current violative behavior, as established by a sustained violation charge, involving:

(i) The use or threatened use of a deadly weapon or dangerous instrument; or

(ii) The possession of a firearm; or

(iii) The infliction or attempted infliction of physical injury upon another; or

(iv) A threat toward any Department of Corrections and Community Supervision staff or any police or peace officer; or

(v) A violation of an active order of protection or special condition of supervision prohibiting contact with an individual; or

(vi) Behavior that would be unlawful under provisions identified in Penal Law section 70.02 (violent felony offenses); or

(vii) Behavior that would be unlawful under articles 125, 130, 135, 230, 235, 255, 263, 485 or 490 of the Penal Law.

Notwithstanding the violation charges that might qualify the violator for this category, if the violator, the Department and the presiding officer agree, a disposition within this category may be imposed with a finding of guilt solely on a charge or charges other than that alleging a violation per (i) through (vii) above.

(2) For the following violators, defined as Behavior Category 2, if a time assessment is imposed without provision for an alternative program, it shall be for no less than 3 months and no more than 15 months except that a mitigating reduction of 3 months may be provided for an absconder who voluntarily surrendered and receives a time assessment of 6 months or more. Behavior Category 2 violators are those violators who

absconded from community supervision as established by a sustained violation charge alleging a violation of condition number 3 of the standard conditions of release.

(3) For the following violators, defined as Behavior Category 3, if a time assessment is imposed without provision for an alternative program, it shall be for no less than 3 months and no more than 12 months. Behavior Category 3 violators are those violators who have engaged in criminal behavior other than that addressed in the Penal Law articles and sections referenced in paragraph (1) of this subdivision, or who have engaged in the following behavior: operating a vessel or motor vehicle while under the influence of or while ability was impaired by alcohol or drugs; unlawful possession of a weapon upon school grounds; criminal solicitation as a violation; harassment as a violation; hazing as a violation; or failing to respond to an appearance ticket. Notwithstanding the violation charges that might qualify the violator for this category, if the violator, the Department and the presiding officer agree, a disposition within this category may be imposed with a finding of guilt solely on a charge or charges other than that alleging an offense under state law.

(4) For the following violators, defined as Behavior Category 4, the presiding officer may restore such violator to supervision or direct that the violator be provided an alternative program pursuant to subdivision (e) of this section upon their return to a State correctional facility. Behavior Category 4 includes those violators who do not fall under Behavior Categories 1, 2 or 3 and are not deemed outside the guidelines pursuant to subdivision (d) of this section.

(d) *Decisions made outside the guidelines.* For the following violators, deemed outside the guidelines, where one or more charges of violation are sustained pursuant to subdivision (b) of this section, the presiding officer shall revoke the violator's release. Upon a decision to revoke the violator's release and following consideration of mitigating and aggravating factors, the presiding officer may: (i) restore such violator to supervision; (ii) direct that the violator be provided an alternative program upon their return to a State correctional facility pursuant to subdivision (e) of this section; or (iii) impose a time assessment without provision for an alternative program, which time assessment may be up to the maximum expiration of the sentence. For those violators deemed outside the guidelines and found guilty of engaging in Behavior Category 1, 2 or 3 violative conduct, as the case may be,

the minimum permissible time assessment, with or without provision for an alternative program, shall be the equivalent of the minimum permitted for such respective category and disposition. Violators deemed outside the guidelines include those who were:

(1) Released to community supervision where their underlying sentence was imposed upon conviction or adjudication for a Penal Law Article 130, 135, 230, 235, 255, 263, 485 or 490 offense;

(2) Sentenced to parole supervision pursuant to Criminal Procedure Law section 410.91, except that any such violator who has previously received and served a time assessment on their instant offense shall not be deemed outside the guidelines unless they fall under paragraph (5) of this subdivision;

(3) Granted early conditional parole for deportation only or conditional parole for deportation only by the Board of Parole; or

(4) Granted medical parole or compassionate release and have not, as of the date of delinquency, reached their parole eligibility date or conditional release date, whichever comes first. Revocation of release will not preclude such violator from reapplying for medical or compassionate release; or

(5) Found to have incurred two or more prior revocations since release to Community Supervision on their underlying sentence.

(e) Alternative program upon return to a Department correctional facility. For any parole violator, the presiding officer may, in the discretion of such officer, impose a time assessment and in their decision imposing such time assessment direct that the Department offer an alternative program to the violator upon their return to a State correctional facility, which will result in their immediate re-release to community supervision upon their successful completion of such program. This alternative program will be for a length of approximately 45 or 90 days, as determined by the presiding officer, except that the approximate 45-day program shall not be available to any violator who participated in or completed an alternative program, or had delinquency cancelled following completion of a diversion/treatment program, within the six months prior to the earliest date of the current alleged violation. The time assessment that shall be imposed with any provision for this alternative Department program will be in accordance with the foregoing and the following:

(1) For those violators within Behavior Category 1, the time assessment shall be for no less than 12 months and may be up to a hold to the maximum expiration of the sentence.

(2) For those violators within Behavior Category 2, the time assessment shall be for no less than 6 months and may be up to 15 months. A mitigating reduction of 3 months for a violator who voluntarily surrendered shall not be applied.

(3) For those violators within Behavior Category 3, the time assessment shall be 4 months in the event the alternative program is for an approximate length of 45 days, and in the event the alternative program is for an approximate length of 90 days the time assessment shall be for no less than 6 months and may be up to 12 months.

(4) For those violators within Behavior Category 4, the time assessment shall be 4 months in the event the alternative program is for an approximate length of 45 days, and 6 months in the event the alternative program is for an approximate length of 90 days.

(5) For those violators defined in subdivision (d) of this section as being outside the guidelines, the time assessment may be up to the maximum expiration of the sentence, and shall be for no less than 4 months in the event the alternative program is for an approximate length of 45 days, and no less than 6 months in the event the alternative program is for an approximate length of 90 days.

(f) Restoration to supervision in the community. No violator shall be restored to supervision in the community upon a decision revoking such violator's release unless the presiding officer concludes that such violator's needs, as related to the violative behavior, could be appropriately addressed in the community with community supervision and that a restoration to supervision would not have an adverse effect on public safety and public confidence in the integrity of the criminal justice system. The presiding officer may, when directing that the violator be restored to supervision, impose appropriate special conditions of release. Such conditions may be modified or removed, solely upon the initiation of the Department, by a member or members of the Board of Parole.

(g) Mitigating and aggravating factors. Where one or more charges of violation are sustained pursuant to subdivision (b) of this section and the violator's release is revoked, the resulting disposition shall be in the interests

of public safety and justice. In all cases the presiding officer will consider mitigating and aggravating factors in determining whether to restore the violator to supervision, direct that the violator be provided an alternative program upon their return to a State correctional facility pursuant to subdivision (e) of this section, or impose a time assessment without provision for an alternative program, and in determining the length of any time assessment, as the case may be. These factors include, but are not limited to:

(1) Mitigating Factors:

- (i) Length of time the violator has spent in custody due to the parole warrant
- (ii) Violator has been deemed to have the lowest supervision risk level as determined by the assessment tool utilized by the Department
- (iii) Violator was the primary caregiver of a dependent person immediately prior to having been incarcerated on the parole violation warrant, and if restored to supervision has a residence and means of support so that they would continue to care for the dependent person
- (iv) Absconder who voluntarily surrendered on the current warrant
- (v) A violator whose medical or psychiatric needs would be most appropriately and safely addressed through continued community supervision
- (vi) No prior sustained violations on the instant offense term
- (vii) Employed/attending school
- (viii) Diligent program participation prior to current warrant issuance
- (ix) Stable residence
- (x) Lack of criminal history other than the instant offense
- (xi) Length of time on supervision between last date of release and earliest date of current alleged violation
- (xii) General adjustment to supervision
- (xiii) Violator acknowledged responsibility for conduct

(xiv) Cooperation with law enforcement or a prosecutorial agency which the Department requests that the presiding officer consider as a mitigating factor

(2) Aggravating Factors:

- (i) Violator has been deemed to have the highest supervision risk level as determined by the assessment tool utilized by the Department
- (ii) Prior sustained violation(s)
- (iii) Absconder who did not voluntarily surrender
- (iv) Physical evasion of or physical resistance to a parole, police or peace officer
- (v) Length of time on supervision between last date of release and earliest date of current alleged violation
- (vi) Tampering with or removal of GPS/electronic monitoring device
- (vii) Criminal history
- (viii) Prior history of absconding
- (ix) History of domestic violence
- (x) General adjustment to supervision

(h) Decision. The decision made pursuant to subdivision (c) or (d) of this section shall be in writing, or stated on the record of the hearing, and shall state the evidence relied upon and the reasons for the revocation of community supervision, and the reasons for the disposition made.

(i) Notification. As soon as practicable after a violation hearing, the alleged violator and his attorney shall be advised in writing of the violation hearing decision, including the reason for the determination and the evidence relied upon.

(j) Placement in programs that are alternatives to reincarceration. A member or members of the board or presiding officer may direct that an alleged violator be placed in an alternative to reincarceration program for a specified period of time. Only a member or members of the board can direct that alleged violators serving sentences for felony offenses under articles 125, 130, 135, 230, 235, 255, 263, 485 or 490 of the Penal Law, or

those alleged violators granted early conditional parole for deportation only or conditional parole for deportation only, be placed into an alternative to reincarceration program. Successful completion of the program prior to the commencement of a final revocation hearing will result in a cancellation of delinquency, as authorized by section 8004.3(e) of this Title. Following completion of a final hearing and revoking of the violator's release, and in accordance with applicable subdivisions of this section, restoration to a parole transition facility or other appropriate alternative to reincarceration program may be ordered by the presiding officer.

(k) A final decision made by a presiding officer pursuant to this section shall be binding in all instances and deemed a decision of the board for purposes of this Part.