Subdivisions (a) and (b) of Section 8002.6 of Title 9 N.Y.C.R.R. are amended to read as follows:

(a) [Definition.] A time assessment is a period of [time]reincarceration which is fixed as a result of a sustained violation at a final parole revocation hearing [and which determines a date by which time the parole violator will be eligible for re-release]. A time assessment may be imposed for each sustained violation charge for which a period of reincarceration is authorized in a revocation case. The date upon which a parole violator who receives any time assessment will be eligible for re-release is determined by the expiration of the longest time assessment imposed within the revocation case.

(b) How time assessments are calculated.

(1) [The][t]Time assessments will be set in months or days, depending on the circumstances, except, where applicable, [it]they 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.]

(2) Time assessments will commence and be credited as follows:

(i) Where a parole warrant was executed and the violator remained in custody continuously from that date until the conclusion of the final revocation hearing, the time assessments shall commence on the date of the execution of the warrant provided, however, that time assessments will not be credited with any time in which the releasee is not within the convenience and practical control of the Department.

(ii) Where a parole warrant was executed and the violator was ordered released by a court following a recognizance hearing, the time assessments shall commence upon the date of the issuance, by service on the violator, of a determination after a final hearing that the person has violated one or more conditions of release.

The time assessments shall be credited with any time the violator spent in custody between the date the warrant was executed and the date of the recognizance hearing.

(iii) Where the revocation case was commenced and no parole warrant was executed, the time assessments shall commence upon the date of the issuance of a determination after a final hearing that the person has violated one or more conditions of release.

(iv) Where the releasee had been committed to the custody of the sheriff within New York State pursuant to Article 530 of the Criminal Procedure Law, any such time the person spent confined in a correctional facility or local correctional facility following execution of the parole warrant or service of the notice of violation, as the case may be, to the date of the final hearing, shall be credited toward the time assessment.

(3) The date of the issuance of a determination after the final hearing within the meaning of this section shall not be until such date as both the completed parole revocation decision has been issued and the releasee is within the physical custody and control of the Department to commence the period of reincarceration as of such date. The Department shall have a reasonable amount of time under the totality of circumstances in which to enforce the time assessments imposed in the cases referenced in subparagraphs (ii) and (iii) of paragraph (2) of this section and shall have no such obligation during any period in which the releasee is outside of the convenience and practical control of the Department or is alleged to have absconded from supervision.

(4) Any time assessments imposed within the same revocation case shall run concurrently with one another.

[3](5) For any time assessments imposed, [including the any assessments 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 assessments specified by the presiding officer, such assessments shall be deemed a hold to the maximum expiration of the sentence.

[4](6) Within this section and section 8005.20, sentence shall include sentence and post release supervision time, if any.

Subdivision (3) of Section 8003.2 of Title 9 N.Y.C.R.R is amended to read as follows:

(3) I will not abscond [, which means intentionally avoiding] from supervision, which includes intentionally avoiding supervision by failing to maintain contact or communication with my Parole Officer and failing to [reside at my approved residence] notify my assigned Parole Officer of a change in residence. Should I ever fail to maintain contact as required herein, I will cooperate with any efforts by my Parole Officer or other representative of the Department of Corrections and Community Supervision to have me re-engage in my supervision as directed.

A new subdivision (14) of Section 8003.2 is added to read as follows:

(14) I will personally appear at all recognizance hearings and parole revocation process hearings and appearances for which I may be the subject, including the appearances directed to be in response to a notice of violation, any preliminary and final parole revocation hearings, and any related adjourned or continuation appearances. I will also personally appear if so directed in regard to the service of any other notices related to revocation proceedings, including, but not limited to, the service of any preliminary and final hearing determinations. I understand that while I have a right to be present at any recognizance, preliminary or final hearing, my voluntary decision not to be present constitutes a forfeiture of such right and the matters may proceed in my absence including, but not limited to, a final revocation hearing which may result in the issuance of a decision therefrom revoking my release and directing my reincarceration.

Section 8004.1 of Title 9 N.Y.C.R.R. is amended to read as follows:

(a) A person who fails to comply with the terms of [his] their release may be declared delinquent, and may [thereafter] be returned to a [an appropriate] correctional facility. A person on presumptive, parole or [on] conditional release, or serving a period of post-release supervision, [under an indeterminate or reformatory sentence of imprisonment] may be returned [for a period equal to the unexpired portion of the maximum term of imprisonment as of the date of delinquency] to a correctional facility for a period equal to the remaining portion of their sentence(s), and for any remaining period of post-release supervision. A person on conditional release under a definite sentence of imprisonment may be returned for a period equal to the unexpired portion of the term of imprisonment as of the date of [his] their conditional release.

New subdivisions (b) – (k) of section 8004.1 are added to read as follows:

(b) "Non-technical violation" is defined as either:

(1) the commission of a new felony or misdemeanor offense; or

(2) conduct by a releasee who is serving a sentence for an offense defined in article 130 of the penal law or section 255.26 or 255.27 of such law, and such conduct violated a specific condition reasonably related to such offense and efforts to protect the public from the commission of a repeat of such offense.

(c) "Technical violation" is defined as any conduct that violates a condition of community supervision in an important respect, other than the commission of a new felony or misdemeanor offense under the penal law.

(d) The term parole warrant shall mean a warrant for the retaking and temporary detention of a releasee in accordance with the Executive Law and section 8004.5 of this Part.

(e) The term violation as used in this Part and Part 8005 of this Title, and in section 8002.6 of this Title, may refer to an individual act of violating a condition of release. Multiple violations may be charged and sustained within a single parole revocation case.

(f) "Absconding" means intentionally avoiding supervision by failing to maintain contact or communication with the releasee's parole officer or area office / bureau and to notify his or her assigned parole officer or area office / bureau of a change in residence, and reasonable efforts by the parole officer to re-engage the releasee have been unsuccessful. Absconding may be charged and sustained as a violation of a condition of release specifically prohibiting such act, or as multiple charges that in aggregate form such conduct as a single course of absconding. Evidence that reasonable efforts by the parole officer to re-engage the releasee have been unsuccessful may be provided by the Department during revocation proceedings and need not be alleged in writing within a charge or charges. Evidence that the releasee has voluntarily surrendered to custody or that they have at some point re-engaged with the parole officer shall not in itself preclude a finding of absconding.

(g) A releasee may, as a condition of release and/or instruction of the parole officer, be directed to appear at any parole revocation process appearance, including the appearance directed in response to a notice of violation, and any preliminary and/or final revocation hearing and any adjourned or continuation appearances therefrom. A violation of such direction may provide basis for the releasee's retaking and temporary detention consistent with further provisions of this Part or as ordered by a court. A releasee may also be directed to appear at any recognizance hearing to occur following execution of a parole warrant.

(h) Being in the company of, or fraternizing with, a person the releasee knows to have a criminal record or to have been adjudicated a youthful offender shall not in itself be prohibited by a condition of release or form the basis for a parole revocation. However, conditions of release that prohibit a releasee from having contact with specified individuals, or other specified groups including criminal organizations or gangs, are not precluded.

(i) Conduct related to cannabis that is lawful pursuant to the laws of this State shall not in itself form the basis for a parole revocation except where violative of a special condition, which condition may only be imposed upon clear and convincing evidence that the prohibition is reasonably related to the releasee's underlying

crime(s). In a revocation proceeding any such condition is presumed to have met the applicable standard for imposition and the propriety of such imposition shall not be reviewable in such context.

(j) Reincarceration as used in this Part and Part 8005 of this Title, and as may be used in section 8002.6 of this Title, includes a time assessment which may be imposed with the disposition of a parole revocation case where one or more violation charges are sustained. A time assessment may be imposed for each sustained violation for which a period of reincarceration is authorized provided, however, that in a single revocation case all such periods imposed shall run concurrently.

(k) Mental capacity/fitness of a releasee who is an alleged violator of the conditions of release.

(1) If, prior to the issuance of a notice of violation or parole warrant where no notice has been issued, a releasee has been determined to be currently mentally 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 at that time.

(2) If, from a recognizance hearing appearance pursuant to the Executive Law, the releasee has been referred for a determination of their mental fitness to proceed in a manner consistent with the provisions of article seven hundred thirty of the Criminal Procedure Law and been determined by a court of law to currently be an incapacitated person as that term is defined in subdivision one of section 730.10 of the Criminal Procedure Law, no preliminary or final revocation proceedings shall be scheduled to occur at that time or during the period in which the alleged violator is subject to the order of observation.

(3) Where a hearing officer at a preliminary or final parole revocation hearing appearance has stayed the revocation proceedings for a superior court determination, pursuant to the Executive Law, regarding the alleged violator's mental fitness to proceed in a manner consistent with the provisions of article seven hundred thirty of the criminal procedure law:

(i) If the superior court in such circumstances determines that the alleged violator is not an incapacitated person, then following the court's notice of such determination to the Board, the revocation case shall proceed with reasonable allowance for appropriate scheduling and notice thereof; or

(ii) If the superior court in such circumstances determines that the alleged violator is an incapacitated person and issues 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, following the Board's timely receipt of notice of such determination from the court and notification of the facility/institution designation by the appropriate commissioner, the hearing officer shall dismiss the violation charges and such dismissal shall act as a bar to any further revocation proceeding against the alleged violator for such violations.

Section 8004.2 of Title 9 N.Y.C.R.R is amended to read as follows:

[8004.2 Warrant for retaking and temporary detention] 8004.2 Review of Condition Violation, Initial Actions and Case Designation

(a) If a parole officer having charge of a releasee shall have [reasonable cause] probable cause to believe that such person has [lapsed into criminal ways or] violated one or more of the conditions of their release in an important respect, [such parole] the officer shall report such fact to a member of the board or a designated officer. Designated officer shall mean a senior parole officer, supervising parole officer, deputy regional director, regional director, deputy director of operations, the director of operations, chief of the parole violation unit, assistant 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 is the one who furnishes the report upon which it is based.]

[(b) The member or designated officer may issue a warrant for the retaking and temporary detention of a releasee, provided that the designated officer issuing the warrant shall not also be the officer recommending issuance of the warrant.]

[(c) A warrant for retaking and temporary detention may issue when there is reasonable cause to believe that the releasee has lapsed into criminal ways or has violated the conditions of his release in an important respect. Reasonable cause exists when evidence or information which appears reliable discloses facts or circumstances that would convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that a releasee has committed the acts in question or has lapsed into criminal ways. Such apparently reliable evidence may include hearsay.]

[(d) Issuance of warrant, following arrest for crime.]

[(1) If a releasee has been arrested for a crime, the parole officer having charge of such releasee shall cause an investigation to be made into the facts and circumstances surrounding that arrest and shall submit a report in

writing to a board member. Upon review of such report, a board member may direct that a warrant for retaking and temporary detention be issued if a warrant has not already been issued by a designated officer.]

[(2) If a releasee is arrested for a felony and held for court action, a warrant for retaking and temporary detention shall be filed against him, except as otherwise directed by the area supervisor, where there is good cause shown for not filing the warrant or where it otherwise appears that there is insufficient evidence available to the board to institute revocation proceedings.]

[(3) If a releasee, previously convicted of murder, manslaughter, rape in the first degree, sodomy in the first degree, aggravated sexual abuse in the first or second degree, or an attempt to commit any of the enumerated offenses, is arrested for a crime defined in article 120, 125 or 130 of the Penal Law, the parole officer having charge of such releasee shall report the facts and circumstances of such arrest to a board member or a designated officer as soon as the parole officer becomes aware of the arrest, but in no event longer than five hours from the point that the parole officer becomes aware of the arrest. Upon review of such information, a warrant for retaking and temporary detention shall be issued by the reviewing board member or designated officer, except as otherwise directed by the area supervisor, upon a finding by the area supervisor that there is insufficient evidence available to the board to institute revocation proceedings, and except that no such warrant need be issued for a case on inactive supervision. The issuing officer shall cause such warrant to be enforced as soon as practicable in accordance with division policy. The provisions of this paragraph are directory, and shall not create or confer any new or additional right in favor of the alleged violator; specifically, noncompliance with the time period set forth in this paragraph shall not be a basis for vacature of a parole violation warrant.]

[(e) The warrant for retaking and temporary detention may be executed by any parole officer, any officer authorized to serve criminal process or any peace officer.]

[(f) Such officer shall be authorized to take such person and have him detained in any jail, penitentiary, lockup or detention pen which shall be located, insofar as practicable, in the county or city in which the arrest occurred.]

[(g) At any time after the issuance of a warrant for retaking and temporary detention, and before the preliminary hearing or waiver thereof, an officer of the division assigned to field service and holding a title above senior parole officer, after consultation with the designated officer issuing the warrant, may report in writing such circumstances concerning the warrant as are relevant to a board member who may then vacate the warrant.]

[(h) The vacating of a warrant pursuant to subdivision (g) of this section may be without prejudice to the reissuance of a new warrant based upon the same charges, as the board member directs.]

(b) Probable cause exists when evidence or information which appears reliable discloses facts or circumstances that would convince a person of ordinary intelligence, judgment and experience that it is more probable than not that the subject releasee has committed the acts in question. Such apparently reliable evidence may include hearsay.

(c) Where there is probable cause to believe that a releasee has violated one or more of the conditions of their release in an important respect, a notice of violation may be issued. A notice of violation may be approved for prosecution and issuance by any member of the Board or a designated officer.

(d) Subject to the further requirements set forth in this Part and Part 8005 of this Title, a warrant for retaking and temporary detention may issue when there is probable cause to believe that the releasee has violated one or more of the conditions of their release in an important respect. A warrant for retaking and temporary detention may be issued by any member of the Board or a designated officer, except that no officer shall issue a warrant in a case where they are the one who furnishes the report upon which it is based, including those cases wherein the notice of violation had been approved at a time wherein warrant issuance was not expected.

(e) The written violation of release report or an attendant form shall identify and designate the case as either a non-technical or technical violation matter, and when a technical violation matter, include explanation as to whether reincarceration is possible at the conclusion of the parole revocation case. Such designation may be appropriately modified at any time. The designation will be as follows:

(1) Technical violation case, no reincarceration. This is the designation for a case involving only technical violations by the releasee, for which no periods of reincarceration / time assessments may be imposed should all charges be sustained at a final parole revocation hearing.

(2) Technical violation case, reincarceration possible. This is the designation for a case involving only technical violations by the releasee, but wherein reincarceration is possible if at least one of the current charges is sustained at a final revocation hearing. The Department should provide explanation to include identification of both the current charge(s) and prior sustained violation(s), if any, that forms the specific factual basis for this designation, as well as the permissible periods of reincarceration possible in the current case.

(3) Non-technical violation case. This is the designation for a case that meets the definition of non-technical violation provided in section 8004.1 of this Title, and in such circumstance, it shall be made notwithstanding the inclusion of technical violation charges.

(f) The case designation required by subdivision (e) of this section shall not control any aspect of the disposition of a parole revocation case, and any non-compliance with the requirements of that subdivision or any other errors with respect to the case designation or modifications thereof, shall not provide basis for the vacating of a notice of violation or warrant or for any other form of dismissal of the case.

Section 8004.3 of Title 9 N.Y.C.R.R Declaration and Cancellation of Delinquency is repealed and a new section 8004.3 is added to read as follows:

8004.3 Report to the Board Required

(a) Where a releasee who is serving a sentence for an offense defined in article 130 of the Penal Law or section 255.26 or 255.27 of such law, or has in the Board or Department's discretion been supervised as a sex offender, is arrested for a new felony or misdemeanor offense, the parole officer having charge of such releasee shall cause an investigation to be made into the facts and circumstances surrounding that arrest and into the status of the criminal case, and shall submit a report in writing to a Board member. The report shall include or be accompanied by a recommendation from a designated officer holding the title of supervising parole officer or higher. Upon review of such report and recommendation, a Board member may approve of prosecution of the charges and direct that a notice of violation or warrant for retaking and temporary detention be issued if a notice or warrant has not already been issued by a designated officer.

(b) Where any releasee who is serving a sentence for an offense under articles 120, 125, 130, 135, 230, 235, 255, 263, 485 or 490 of the Penal Law, or who was granted early conditional parole for deportation only or conditional parole for deportation only, is arrested for a new felony offense defined under any of the aforementioned articles in this subdivision, the parole officer having charge of such releasee shall cause an investigation to be made into the facts and circumstances surrounding that arrest and into the status of the criminal case, and shall submit a report in writing to a Board member. The report shall include or be accompanied by a recommendation from a designated officer holding the title of supervising parole officer or higher. Upon review of such report and recommendation, a Board member may approve of prosecution of the charges and direct that a notice of violation or warrant for retaking and temporary detention be issued if a notice or warrant has not already been issued by a designated officer.

(c) The report pursuant to subdivisions (a) or (b) of this section shall also include charges relating to the releasee's non-criminal conduct violative of the conditions of release in an important respect, if there is any such conduct ascertainable at that time and where such inclusion would not cause undue delay. The decision to issue a notice of violation or warrant for retaking and temporary detention pursuant to this section remains discretionary and any issuance of a notice of violation or warrant may, subject to the further requirements of this Part and Part 8005 of this Title, proceed notwithstanding there being insufficient evidence to prosecute alleged criminal conduct in revocation proceedings.

(d) The provisions of this section shall not create or confer any new or additional right in favor of the releasee, and non-compliance with any such provisions shall not be a basis for the vacating of a notice of violation or warrant, or for any other form of dismissal of a parole revocation case.

A new section 8004.4 of Title 9 N.Y.C.R.R is added to read as follows:

8004.4 Notice of Violation, Violation of Release Report

(a) A notice of violation shall be in writing and may consist of one or more documents and their attachments. Except as otherwise specified, the notice of violation includes a report of the violations of the conditions of release.

(b) The notice shall inform a releasee who is an alleged violator of the conditions of their release, of the purpose of the preliminary revocation hearing or if a preliminary hearing is not required, the purpose of the final revocation hearing, and shall state what conditions of release are alleged to have been violated and in what manner. The notice may inform the releasee of the purpose of a final hearing in any event. The releasee shall also be provided written notice of the time and place of the preliminary hearing or of the final hearing if no preliminary hearing is required, which information may be included in the notice of violation or another document provided not less than twenty-four hours in advance of such hearing.

(c) The notice shall state that at a preliminary and a final hearing the releasee:

(1) has the right to appear and speak in their own behalf;

(2) has the right to introduce letters and documents;

(3) may present witnesses who can give relevant information to the presiding officer;

(4) has the right to confront and cross-examine the witnesses against them, unless the releasee has been convicted of a new crime while on supervision or unless the presiding officer finds good cause for their nonattendance;

(5) has the right to representation by counsel; and

(6) has, at a final revocation hearing only, the right to present mitigating evidence relevant to the restoration to supervision.

(d) A releasee who is the subject of a notice of violation shall also be provided, in writing, the name and contact details for institutional defenders or assigned private counsel, as applicable. This information may be included in the notice of violation or another document. Where such information was not previously provided and a recognizance hearing is held, it shall be given at such time. Nothing shall require duplicate or revised notification of this information.

(e) Following approval of prosecution of violation charges and except where a parole warrant is issued, the notice of violation, or the Board or Department by other means, shall direct the releasee to appear in response to the notice at a specified date and time, and location or manner, which may be the preliminary hearing, or final hearing if a preliminary hearing is not required, or earlier.

(1) The direction that the releasee appear in initial response to the notice may be a condition of release and/or instruction from the parole officer. Notwithstanding section 8004.7 of this Part, the discretionary inclusion of any charge alleging a violation of the direction shall not provide basis for the issuance of a parole warrant for retaking and temporary detention in any case that, without such charge, would not have been eligible for the issuance of a warrant or eligible for the issuance of a warrant if the releasee failed to appear within forty-eight hours of the time designated for response, nor shall such inclusion otherwise result in the releasee being subject to reincarceration as set forth in the Executive Law should that violation be sustained at a final hearing within such case. No charge alleging a violation of this direction may be sustained where service of the notice of violation was pursuant to subdivision (g) of this section unless the relevant charge(s) alleging the releasee to have absconded from supervision are not sustained.

(2) The notice of violation, or the Board or Department by other means, may also direct, as a condition of release, that the releasee appear at all or any preliminary and final revocation proceedings and any adjourned or continuation appearances therefrom. Where such proceedings follow or are scheduled for after the date for initial response to the notice of violation and the releasee has appeared in response to such notice, any violation

of such direction may be included as a charge in the matter and may provide basis, in whole or in part and in accordance with section 8004.7 of this Part, for the issuance of a parole warrant for retaking and temporary detention of the releasee, or for the retaking of the releasee into custody under a warrant already issued.

(3) Direction to appear in response to a notice of violation shall not occur until such notice or the charges of violation are produced, provided, however, that such direction may occur prior to the production of the notice where the Department reasonably believes that its formal completion will be imminent absent mitigating circumstances.

(f) The notice of violation shall be properly and promptly served upon the releasee following its completion and approval for prosecution. A notice may be approved for prosecution within the meaning of this subdivision upon approval for prosecution of the violation charges, and with or without the date, time and place of the preliminary and final hearings being specified at such time. Proper and prompt service of the notice of violation occurs when the releasee is served with the notice within a reasonable amount of time under the totality of the circumstances at the discretion of the Board or Department, or at the time of a recognizance hearing pursuant to the Executive Law. The notice shall be served in reasonable advance of the date of a preliminary hearing, and not less than twenty-four hours prior to such hearing.

(g) Where the Department believes the releasee has absconded from supervision and that the releasee remains in such status, service of the notice of violation may be properly and promptly effectuated by delivering such notice to the releasee's approved address, or last known address if different than the approved address, and this delivery shall be reflected in Department records. If the releasee is thereafter understood to have returned to or be retained in custody within and under the jurisdiction of New York State and is accessible to the Department, service in accordance with subdivision (f) of this section will then be attempted but such efforts shall not be construed as meaning that appropriate service had not already occurred.

(h) A releasee in federal custody, or who is out of state whether or not in custody and whether or not such custody, if any, may be pursuant to the uniform act for out-of-state parolee supervision, shall not be considered within the convenience and practical control of the Department so as to require prompt service of a notice of violation. The Department may effectuate service in accordance with subdivision (f) of this section following the releasee's known return to the convenience and practical control of the Department. Nothing within this subdivision shall preclude the Department from sending a notice of violation or its attachments, to authorities in another jurisdiction or to a releasee who is not within its convenience and practical control, nor shall sending any such material imply that further proceedings are required prior to the individual's known return to the Department's convenience and practical control. Furthermore, for any such releasee, nothing within this subdivision precludes the Department, in its discretion, from commencing the revocation process or otherwise directing a releasee's return to New York State for further action relative to alleged violations of the conditions of release.

(i) On or after service of a notice of violation, as far as practicable or feasible, any additional documents having been collected or prepared that are relevant to the violation charges shall be delivered to the releasee.

(j) The Department may amend, add or otherwise supplement violation charges at any time within a case, and must provide notice of the added or amended charges to the releasee in reasonable advance of any preliminary or final hearing where such charges will be prosecuted, unless such notice is waived or the lack of such notice is not prejudicial.

A new section 8004.5 of Title 9 N.Y.C.R.R is added to read as follows:

8004.5 Parole Warrant for Retaking and Temporary Detention

(a) If a parole officer having charge of a releasee shall have probable cause to believe that such person has violated one or more of the conditions of his release in an important respect, the officer shall report such fact to a member of the Board, or a designated officer identified in section 8004.2 of this Part.

(b) Subject to further provisions and restrictions of this Part, the member or designated officer may issue a parole warrant, which is a warrant for the retaking and temporary detention of the releasee. No officer shall issue a warrant in a case where they are the one who furnishes the report upon which it is based, including those cases wherein a notice of violation had first been issued. Nothing in this section shall be construed as prohibiting the issuance of a warrant upon a non-written report to a member or a designated officer in exigent circumstances.

(c) A warrant issued in accordance with subdivisions (a) and (b) of this section may be issued at any time, including during the pendency of a parole revocation case and prior to any scheduled final revocation hearing.

(d) The warrant may be executed by any parole officer, any officer authorized to serve criminal process or any peace officer.

(e) Such officer shall be authorized to take the releasee and have them detained in any jail, penitentiary, lockup or detention pen which shall be located, insofar as practicable, in the county or city in which the arrest occurred or within the county in which the violations are alleged to have occurred. Detention pursuant to the warrant shall be at least until the conclusion of a recognizance hearing, which conclusion shall mean upon the Department's reasonable receipt and notice of a court determination following the hearing, and:

(1) Where there are one or more violations charges involving conduct that would constitute a new felony or misdemeanor offense, detention is also authorized until conclusion of a proceeding pursuant to Article 530 of the Criminal Procedure Law wherein recognizance with respect to the parole revocation case may be

determined. The recognizance hearing on the warrant shall not be joined with a Criminal Procedure Law Article 530 proceeding where the warrant had been issued for a violation that was already the subject of a court order pursuant to such a proceeding.

(2) Where a court conducting a recognizance hearing ordered release, and one or more violations are alleged to have occurred subsequent to that hearing or which occurred prior to such hearing but that the Department was unaware of at the time of such hearing, the parole warrant pursuant to this section will authorize detention until the conclusion of the parole revocation case, or until a recognizance court hears the matter again if it had so directed, provided:

(i) where the violation(s) occurred subsequent to the recognizance hearing, the conduct is alleged to have violated a condition of the recognizance court's order or its instructions that there be no further violations of the conditions of the Board or Department; or

(ii) where the violation(s) occurred subsequent to the recognizance hearing, the conduct would independently provide basis for the issuance of a parole warrant, including, but not limited to conduct such as absconding or the commission of a misdemeanor or felony; or

(iii) where the violation(s) occurred subsequent to the recognizance hearing, the conduct constituted a failure to appear for a parole revocation proceeding hearing or appearance; or

(iv) where the violation(s) occurred prior to the recognizance hearing but the Department was unaware of the conduct at the time of such hearing, the conduct is of such a character or quantity as to be substantially likely, if the recognizance court had been aware of it at the time of the recognizance hearing, to have led it to conclude that the releasee presents a substantial risk of willfully failing to appear at any revocation proceeding and no non-monetary conditions in the community could reasonably assure the releasee's appearance at such revocation proceedings. In such instance, the recognizance court shall be promptly informed of the relevant conduct and any retaking pursuant to the warrant.

(3) In the event there exist violations of the type specified in paragraph (2) of this subdivision the Department is not required to again take the releasee into custody under the same warrant and/or as may be related to the same revocation case, and the Department is not precluded by this subdivision from instead charging such violations in a parole revocation case subsequent to the conclusion of the current case, except that the Department may not request cancellation of the current case solely for purposes of pursuing such specified charges in a new revocation case.

(4) Where reincarceration has been imposed at the conclusion of a final parole revocation hearing, further detention pursuant to such warrant and consistent with the revocation decision is authorized.

(f) There shall be a presumption that the execution of a parole warrant occurs when the releasee is known to be detained exclusively under the authority of such warrant prior to a recognizance hearing, and that the revocation process will continue in accordance with further provisions in this Part and Part 8005 of this Title following such hearing.

(g) The issuance of a parole warrant and detention under its authority shall be a severable issue from the legality of a parole revocation case, its continuation, or any final determinations therefrom.

(h) Every parole warrant should include, among other information, the following or a similar notification: "Attention: The Department of Corrections and Community Supervision is a required party to, and intends to appear at, any recognizance hearing to determine continued custody of the subject releasee for purposes of parole revocation proceedings. Following the conclusion of the recognizance hearing, the Department must be promptly provided the court's order therefrom."

A new section 8004.6 of Title 9 N.Y.C.R.R is added to read as follows:

8004.6 Certain Technical Violations – No Reincarceration

(a) Technical violations for which no period of reincarceration may be imposed include the following specified violations:

(1) violating curfew;

(2) 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;

(3) 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;

(4) failing to notify the parole officer of a change in employment or program status;

(5) failing to pay surcharges and fees;

(6) 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;

(7) failing to notify the parole officer of contact with any law enforcement agency, provided however, incarceration is permissible if the person intended to hide illegal behavior or if the failure to notify concerns an arrest of the releasee;

(b) Technical violations for which no period of reincarceration may be imposed in the parole revocation process also include violations of a special condition, other than that which may be specifically identified in subdivision (a) of this section, where the failure could be safely addressed in the community or that there exists other reasonable community-based means to address the failure which have not been exhausted.

(c) A technical violation case in which no period of reincarceration may be imposed may consist of:

(1) charges alleging the violative conduct specified in subdivisions (a) and/or (b),

(2) charges that allege technical violations but wherein, despite the presence of charges alleging conduct identified subdivision (a) of section 8004.7 of this Part, the charges are not of sufficient number to permit reincarceration as explained in subdivision (b) of that section.

(d) If the case has been identified as a technical violation case in which no period of reincarceration may be imposed, a notice of violation may be approved for prosecution and:

(1) If the releasee appears as directed in response to the notice of violation, the parole revocation process shall continue and the releasee afforded the right to a preliminary revocation hearing if such right is not waived; or

(2) If the releasee has intentionally failed to appear as directed in response to the notice of violation and has intentionally failed to appear within forty-eight hours after such time, no parole warrant may be issued and the violation charges shall be deemed sustained.

(i) In such case, notice of the decision shall be promptly served upon the releasee. Acceptable service in this regard occurs when the releasee is served with notice of the decision within a reasonable amount of time under the totality of the circumstances, and such service may include, but not be limited to, delivering the notice of decision to the releasee's approved address, or last known address if different than the approved address.

(ii) Within one month of the date the notice of decision was served upon the releasee, the releasee may move to vacate such sustained violation(s) 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.

(*a*) The releasee may make this motion by paper submission only, filed with the Board of Parole Appeals Unit, at the Board of Parole, New York State Department of Corrections and Community Supervision, 1220 Washington Avenue, Albany, New York 12226. The motion must include a copy of the notice of decision. The motion shall also be on notice to the Department, including the Area Supervisor / Bureau Chief

of the supervision office responsible for the releasee's supervision in the community, which notice must include a full copy of the filing with the Appeals Unit.

(*b*) The Department may respond to the motion by submission to the Board of Parole Appeals Unit. Nothing shall preclude the Appeals Unit or other Board staff from obtaining additional information as may be relevant to the case and decision, including information from Department staff and records.

(*c*) Following a review of the motion, any response submitted the Department, and any additional information that may be deemed relevant by the Appeals Unit, the Unit will make a recommendation to the Board of Parole for determination. The matter will thereafter be considered by at least one member of the Board for their determination.

(*d*) If it is determined that the releasee has shown by a preponderance of the evidence that the notice of violation was not properly served or the failure to appear was otherwise excusable, the revocation case will be reopened as may be directed.

(*e*) Where it is determined that the releasee failed to make the required showing, the automatic sustaining of the violation charges and revocation shall stand.

(*f*) Motions provided for in this subparagraph shall not be considered administrative appeals pursuant to Part 8006 of this Title, and the process for their review and determination may be further regulated pursuant to policy and procedures of the Board of Parole. The determination upon any such review shall be an exhaustion of administrative remedies on the motion and not subject to further administrative review or consideration by the Board.

A new section 8004.7 of Title 9 N.Y.C.R.R is added to read as follows:

8004.7 Technical Violations – Reincarceration

(a) Technical violations for which reincarceration may be imposed include:

(1) a violation of any standard condition of release set forth in section 8003.2 of this Title to the extent such constitutes a technical violation, except for the following:

(i) use of a controlled substance, provided however, that such violation is a technical violation for which reincarceration may be imposed where the releasee is subject to community supervision due to a conviction for driving under the influence of drugs;

(ii) failure to notify the parole officer of a change in employment or program status;

(iii) failure to notify the parole officer of contact with law enforcement, provided however, that such violation is a technical violation for which reincarceration may be imposed where the releasee intended to hide illegal behavior or where the failure to notify concerned an arrest;

(2) a violation of any special condition other than that which may be specifically identified in subdivision (a) of section 8004.6 of this Title, where the failure cannot be safely addressed in the community and all reasonable community-based means to address the failure have been exhausted. The Department shall not charge such a violation, as a violation for which reincarceration may be imposed, unless it has concluded that the failure cannot be safely addressed in the community and that all reasonable community-based means to address the failure have been exhausted.

(3) absconding from supervision;

(4) a violation of any direction that the releasee appear at any recognizance hearing or parole revocation process appearance, including the appearance directed in response to a notice of violation, and any preliminary and/or final revocation hearing and any adjourned or continuation appearances therefrom.

(b) With respect to those violations as set forth in subdivision (a) of this section, the case shall not be considered a technical violation case where reincarceration may be imposed unless there are at least three such violations charged within the current case, or at least one such charge in the current case which may be combined with such qualifying sustained prior violations on the instant term(s) as to reach a threshold of three sustained such violations should the current qualifying charge also be sustained. A qualifying prior violation means a violation set forth in subdivision (a) of this section.

(c) Notwithstanding subdivision (b) of this section, any technical violation case wherein the releasee is charged with absconding from supervision shall be considered one where reincarceration may be imposed, without regard to the number of current charges and irrespective of whether violations have been sustained in a prior revocation case involving the releasee.

(d) If the technical violation case has been identified by the Department as one in which reincarceration may be imposed, a notice of violation may be approved for prosecution and:

(1) If the releasee appears as directed in response to the notice of violation, the parole revocation process shall continue and the releasee afforded the right to a preliminary revocation hearing if such right is not waived; or

(2) If the releasee has failed to appear as directed in response to the notice of violation and has failed to appear voluntarily within forty-eight hours after such time, a parole warrant may be issued for the retaking of the person and for their detention pending a recognizance hearing in accordance with section 8004.5 of this Part.

A new section 8004.8 of Title 9 N.Y.C.R.R is added to read as follows:

8004.8 Non-technical Violations

(a) "Non-technical violation" means: (1) the commission of a new felony or misdemeanor offense; or (2) for a releasee who is serving a sentence for an offense defined in article 130 of the penal law or section 255.26 or 255.27 of such law, conduct violating a specific condition reasonably related to such offense and efforts to protect the public from the commission of a repeat of such offense, provided that for purposes of this part all conditions imposed upon such a releasee are presumed to be reasonably related to such offense and efforts to protect the public from the commission of a repeat of such offense.

(b) A case shall be considered a non-technical violation case where either:

(1) at least one violation charge alleges the commission of a felony or misdemeanor offense in and pursuant to the laws of any jurisdiction; or

(2) the subject releasee who is alleged to have violated one or more conditions of release is currently serving a sentence for an offense defined in article 130 of the penal law or section 255.26 or 255.27 of such law.

(c) If the case has been identified by the Department as a non-technical violation case, either:

(1) a notice of violation may be approved for prosecution and:

(i) If the releasee appears as directed in response to the notice of violation, the parole revocation process shall continue and the releasee afforded the right to a preliminary revocation hearing if such right is not waived; or

(ii) If the releasee has failed to appear as directed in response to the notice of violation and has failed to appear voluntarily within forty-eight hours after such time, a parole warrant may be issued for the retaking of the person and for their detention pending a recognizance hearing; or

(2) a warrant for the retaking and temporary detention of the releasee may be issued in accordance with section 8004.5 of this Part.

A new section 8004.9 of Title 9 N.Y.C.R.R is added to read as follows:

8004.9 Recognizance Hearing

(a) Following execution of a parole warrant, for any releasee remaining in custody pursuant to such warrant, a recognizance hearing will be held. The recognizance hearing shall be presided over by a court of law as set forth in subdivision (b) of this section and the conduct of such hearing is the responsibility of that court. Except as provided in paragraph (3) of subdivision (b) of this section, the recognizance hearing may not be combined with any other proceeding nor shall the court decide any subject other than the issue of release on recognizance in regard to the parole warrant.

(b) The releasee for whom a recognizance hearing must be held will be presented for such hearing as follows:

(1) 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.

(2) 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.

(3) If the violation charge or charges involve 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 530 of the Criminal Procedure Law for any warrant issued by the Department prior to such proceeding. If at the proceeding pursuant to Article 530 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 such article 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 530 of the Criminal Procedure Law, then within twenty-four hours of execution of the warrant the releasee shall be provided a recognizance hearing, provided, however, that if no court as provided in this section 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.

(4) Authorized officer shall mean the superintendent or other person in charge of the jail, penitentiary, lockup or detention pen in which the releasee was detained under the authority of the parole warrant, or their authorized staff. In its discretion, however, the Department may permit other peace officers to function as authorized officers for this purpose.

(5) The time within which the authorized officer is to present the releasee for purposes of a recognizance hearing and in which to commence such hearing shall be extended where reasonable to ensure that such releasee is presented to the appropriate court as identified in paragraphs (1) and (2) of this subdivision.

(6) Where the releasee's custody is pursuant to the parole warrant and they are not detained in the county within which the violations are alleged to have occurred, execution of the warrant shall not be deemed completed within the meaning of this section until their known reception in the appropriate county, provided

however, that for releasees detained pursuant to a parole warrant within the city of New York, the warrant may be deemed executed upon their exclusive and known custody pursuant to such warrant within any county therein.

(7) The failure of the authorized officer to present the releasee within the periods set forth in this paragraph shall have no effect on the validity of the parole warrant or the parole violation charges and shall not in itself require release, but may provide basis for an application to a court of law, on notice to the Department and Board of Parole, for an order compelling the appropriate production.

(c) The purpose of the recognizance hearing is to determine whether the releasee is to be detained pending a preliminary or final revocation hearing, and if not, what non-monetary conditions in the community shall be imposed which will reasonably assure the releasee's appearance at the preliminary or final revocation hearing.

(d) At the hearing there is a presumption of release on recognizance, which release is to be ordered by the court unless it finds that:

(1) the releasee currently presents a substantial risk of willfully failing to appear at preliminary or final revocation hearings; and

(2) 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 hearings.

(e) If the court makes the findings in subdivision (d) of this section the releasee is to be ordered detained until the conclusion of all parole revocation proceedings and the issuance of the final decision therefrom, and as may be consistent with any decision revoking release and directing the releasee’s reincarceration.

(f) If the court finds that the standards identified in subdivision (d) of this section for an order directing the releasee’s continued detention are not met, the releasee is to be ordered released and such order must include the least restrictive non-monetary conditions that will reasonably assure the releasee's appearance at subsequent preliminary and final revocation hearings, provided, however:

(1) The releasee shall not be required to pay for any part of the cost of such conditions imposed by the court.

(2) The Board and Department retain independent authority to impose conditions of release, including, but not limited to, conditions intended to support a likelihood that the releasee will appear at the preliminary and final revocation hearings and appearances, and any other conditions related to community supervision, whether applicable to the period following the recognizance hearing or thereafter. Violation of these conditions for any such releasee may be considered and charged as violations of the conditions of release.

(g) The releasee has the right to representation by counsel at the recognizance hearing.

(h) The Department shall be a party to any recognizance hearing relevant, in whole or in part, to a parole warrant.

(1) The Department should demonstrate to the recognizance court that the executed warrant had been properly issued, and should inform the court of the following:

(i) that there is probable cause to believe the releasee violated one or more of the conditions of their release in an important respect;

(ii) that such fact was reported to a member of the Board or a designated officer identified in section 8004.2;

(iii) that upon such report, a Board member or designated officer issued the parole warrant; and

(iv) the violative behavior the releasee is believed to have engaged in.

(2) The Department shall present information to the court regarding the alleged violations, and the releasee's community supervision record to the extent practicable and where such information is relevant to the purpose of the recognizance hearing.

(3) Inasmuch as the court may consider such factors as 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 their

parole officer, and any other evidence relevant to their stability, the Department should be prepared to offer such available information to the court.

(4) Where practicable and if an alleged violation is the subject of a pending criminal prosecution, the Department shall coordinate with the office of the district attorney to ensure that relevant information regarding such alleged violation is presented to the court.

(i) At the time of the hearing the Department shall serve the releasee with the notice of violation if they were not previously served with such notice, and:

(1) The Department may also provide a copy of the notice to releasee's counsel at such hearing.

(2) The notice, amendment thereto or some other document must be served on the releasee at such time apprising them of the time and place of the preliminary revocation hearing, or if a preliminary hearing is not required, the time and place of the final revocation hearing, to any extent such information had not previously been provided to the releasee. Such information shall be in accord with relevant provisions in Part 8005 of this Title and must account for the court's order stemming from the recognizance hearing.

(3) The notice, amendment thereto or some other document should be served on the releasee at such time stating what conditions of release are alleged to have been violated and in what manner, to any extent such information had not previously been provided to the releasee.

(j) In all cases the Department should request that a written order regarding recognizance be issued and promptly served on the Department following such issuance. The court is required to explain its decision on recognizance on the record or in writing.

(k) In the event a recognizance hearing is held without the participation of responsible Department staff, such fact should be reported as soon as practicable to Counsels for the Department and for the Board of Parole, but the failure to so report shall neither affect the court's recognizance order nor prevent further legal proceedings regarding such.

(l) Nothing within this section shall be construed as expanding the purpose of, and appropriate scope of inquiry at, a recognizance hearing as set forth in in subdivisions (c) and (d) of this section, and the recognizance court remains without authority to rule on the validity of a notice of violation, parole warrant, or any other aspect of the parole revocation case and its continuation. The evidence presented at the recognizance hearing shall not constrain the Department to any position or representation in the parole revocation process, nor may the court's order or findings on recognizance affect the preliminary or final parole revocation decisions, including the determinations by the presiding officer regarding time assessments that may be imposed upon any sustained violations.

A new section 8004.10 of Title 9 N.Y.C.R.R is added to read as follows:

8004.10 Declaration of Delinquency

(a) A declaration of delinquency may be issued by a Board member or by a designated officer holding the title of supervising parole officer or higher after receiving the report of violation charges, and after either:

(1) a waiver by the releasee of the preliminary hearing;

(2) a finding of a preponderance of the evidence at a preliminary hearing;

(3) a conclusion by a Board member or a designated officer holding the title of supervising parole officer or higher that there is probable cause to believe the releasee has absconded from supervision; or

(4) a finding that the releasee has been convicted of a new crime while under their present parole, conditional release or period of post-release supervision.

(b) The date of delinquency is the earliest date that a violation of parole is alleged to have occurred.

(c) Where the releasee is alleged to have absconded from supervision, the declaration of delinquency, when issued, shall interrupt the releasee's sentence(s) as of the date of the delinquency.

(d) If at the conclusion of a final parole revocation hearing a presiding officer dismisses all violation charges, any delinquency corresponding to such revocation case shall be deemed thereby cancelled. If at the conclusion of such hearing the presiding officer sustains any violation charge or charges, the official delinquency date for such matter shall be the earliest date that a violation of parole is found to have occurred.

(e) A declaration of delinquency shall not be a necessary part of or prerequisite to the formal parole revocation process or any proceeding or decision therein, and the lack of any such declaration shall not be a basis for the vacating of a notice of violation or warrant, or for any other form of cancellation or dismissal of the case.

(f) Final declaration of delinquency and revocation by new felony conviction and sentence. Whenever a releasee has been:

(1) convicted of a new felony committed while under their present parole, conditional release or period of post release supervision, and

(2) sentenced to an indeterminate or determinate term upon such conviction, the Board may issue a final declaration of delinquency, in lieu of directing that a final revocation hearing be held, which will have the effect of revoking such person's parole, conditional release or period of post release supervision. Any final declaration of delinquency that may be issued shall be so issued upon such person's reception at an institution under the jurisdiction of the Department of Corrections and Community Supervision pursuant to said new indeterminate or determinate sentence. The date of delinquency for the final declaration of delinquency by the Board may be either the date of the commission of the new felony offense or the date of sentencing for such offense. Subsequent to the issuance of the final declaration of delinquency, the inmate's next appearance before the Board, if any, will be governed by the calculation of the minimum sentence, or the calculation of the aggregate minimum sentences, in accordance with applicable law.

A new section 8004.11 of Title 9 N.Y.C.R.R is added to read as follows:

8004.11 Discretionary Cancellation of Revocation Process

(a) At any time after the completion and approval for prosecution of a notice of violation, or after the issuance of a notice of violation or a warrant for retaking and temporary detention, and before the preliminary hearing or waiver thereof, an officer of the Department assigned to field service and holding a title above senior parole officer, after consultation with the designated officer issuing the notice of violation or warrant, may report in writing such circumstances concerning the notice of violation or warrant as are relevant to a Board member who may then vacate the notice of violation or warrant, and cancel the revocation case.

(b) Actions pursuant to subdivision (a) of this section may be without prejudice to the recommencement of the revocation case or issuance of a new notice of violation and/or warrant based upon the same charges, as the Board member directs.

(c) Following a waiver by the releasee of a preliminary parole revocation hearing or a finding of a preponderance of the evidence at a preliminary hearing, upon application of the Department submitted to the Board and prior to any appearance at a final hearing, upon agreement of three Board members, the notice of violation or warrant may be vacated with the releasee restored to supervision under such circumstances as are deemed appropriate.

(d) Where a final revocation hearing has not yet commenced by the swearing of witnesses and the taking of testimony or evidence, the revocation case, notice of violation, and delinquency, if any, may be cancelled by three members of the Board of Parole or the administrative law judge, who shall state their reasons in writing for the cancellation at or before the time of the final hearing but prior to the swearing of witnesses and the taking of testimony or evidence. In cases where the alleged violator is serving a sentence for a felony offense under articles 120, 125, 130, 135, 230, 235, 255, 263, 485 or 490 of the Penal Law, or where the releasee has been granted early conditional parole for deportation only or conditional parole for deportation only pursuant

to section 259-i (2) (d) of the Executive Law, such cancellation can only be effectuated by the three members of the Board. Cancellation under this subdivision shall not preclude a subsequent notice of violation or warrant based on the same charges.

(e) Where a final revocation hearing has commenced by the swearing of witnesses and the taking of testimony or evidence, a revocation case may no longer be cancelled except following dismissal of all violation charges at the conclusion of a final revocation hearing. A cancellation under this subdivision shall preclude a subsequent notice of violation or warrant based upon the same violation charges.

(f) A warrant may be withdrawn or cancelled without a cancellation of the revocation case.

(g) Cancellation of the revocation case pursuant to this section shall also cancel the delinquency that may have been declared pursuant to subdivision (a) of section 8004.10 of this Part.

Section 8005.2 of Title 9 N.Y.C.R.R is amended to read as follows:

(a) The formal rules of evidence observed by courts need not be followed, except that the rules of privilege recognized by law shall be observed.

(b) Objections to evidentiary offers must be made and noted on the record.

(c) [At a preliminary hearing, proof of conviction of a crime committed subsequent to the releasee's release on parole or conditional release shall constitute probable cause to believe that a releasee has violated the terms of his release in an important respect.] At a preliminary revocation hearing, proof of conviction of a crime committed while under supervision shall constitute prima facie evidence of a violation of a condition of release in an important respect.

(d) At a final revocation hearing, a [A] certificate of conviction or commitment is prima facie evidence of an alleged violation. [At a revocation hearing w]Where the only alleged violations are acts which have resulted in criminal convictions, the parole officer and witnesses need not be present.

(e) Official notice may be taken of all facts of which judicial notice could be taken, and of other facts within the specialized knowledge of the division. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

Section 8005.3 of Title 9 N.Y.C.R.R Notice of Violation is repealed and a new section 8005.3 is added to read as follows:

8005.3 Hearings Generally

(a) The Department shall coordinate with the Board in matters pertaining to the timely processing of parole revocation cases and revocation hearing schedules. As required and appropriate the Department shall also coordinate with the chief administrator of the courts or their designees, the State Office of Court Administration, or courts of law in regard to certain revocation hearings that are to be held in such court facilities.

(b) The Department will monitor the status of each revocation case and make efforts to ensure it remains appropriately designated per section 8004.2 of this Title.

(c) Inasmuch as the scheduling of the revocation hearings for each case may vary with their circumstances, the Department will endeavor to track relevant events such as releasee appearance or nonappearance in response to a notice of violation, the date and outcome of any relevant recognizance hearing, and the date and outcome of the preliminary hearing, if held. The Department should be prepared to provide such information upon request to the Board or a presiding officer.

Section 8005.4 of Title 9 N.Y.C.R.R is amended to read as follows:

[Preliminary hearing officers] Presiding Officers at Preliminary Revocation Hearings

(a) [Preliminary hearing officers] Presiding officers at preliminary revocation hearings shall be hearing officers [of the division, designated by the Board of Parole] appointed by the Chairperson of the Board of Parole and designated by the Board to conduct revocation hearings. Such hearing officers may be officers authorized to conduct preliminary hearings, or officers authorized to conduct both preliminary and final hearings.

Subdivision (b) of section 8005.4 is renumbered subdivision (c) and a new subdivision (b) is added to read as follows:

(b) A preliminary hearing officer shall have had no prior supervisory involvement with the alleged violator.

(c) Presiding officers at preliminary hearings are authorized to:

(1) administer oaths and affirmations;

(2) sign and issue subpoenas and subpoenas duces tecum, as regulated by the Civil Practice Law and Rules; and

(3) conduct preliminary hearings and provide for adjournments thereof.

Section 8005.5 of Title 9 N.Y.C.R.R is amended to read as follows:

(a) An alleged violator is entitled to representation by an attorney at a preliminary hearing.

(b)

(1) An attorney who represents an alleged violator shall promptly file a notice of appearance with the hearing coordinator at the local area office having responsibility for the supervision of said alleged violator, except that:

(i) for those alleged violators incarcerated at a jail located within New York City, the notice of appearance shall be filed with the Parole Violation Unit of the New York State [Division of Parole]Department of Corrections and Community Supervision[, 314 West 40th Street, New York, NY 10018]; and

(ii) for those alleged violators incarcerated at a jail located within the counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, the notice of appearance shall be filed with the New York State [Division of Parole]Department of Corrections and Community Supervision, Hudson Valley Region [III] Parole Violation Unit[, 82 Washington Street, New Rochelle, NY 10801].

(2) A notice of appearance shall have printed on it the name, business address, and telephone number of the attorney, and the name, New York State identification number and the violation control (warrant) number of the alleged violator represented. Only one alleged violator shall be named on a notice of appearance. A notice of appearance may not be accepted, and may be returned to the sender, when:

(i) the information contained thereon is insufficient to clearly identify the attorney or the alleged violator;

(ii) the notice is submitted to an office of the [division]Department not in accordance with the filing instructions contained within the preceding paragraph; or

(iii) more than one alleged violator is named on the notice.

(c) The [Division of Parole]Department may be represented at a preliminary hearing by a parole officer and/or an adversary officer.

Section 8005.6 of Title 9 N.Y.C.R.R Hearing Schedules is repealed and a new section 8005.6 is added to read as follows:

8005.6 Scheduling of the Preliminary Revocation Hearing

(a) The preliminary revocation hearing shall be scheduled to take place according to the rules provided in this section, and other sections of this Part and Part 8004 of this Title as may be relevant to reasonably ensure substantial compliance with the Executive Law. Generally:

(1) Where the case may be designated as a technical violation case in which no reincarceration is possible:

(i) If the releasee appears as directed in response to a notice of violation, the preliminary hearing is to be scheduled to occur within 10 days of issuance of the notice.

(ii) If the releasee does not appear as described in paragraph (2) of subdivision (d) of section 8004.6 of this Title, no preliminary hearing is to be held as the violations shall be deemed sustained.

(2) Where the case may be designated as a technical violation case in which reincarceration is possible:

(i) If the releasee appears as directed in response to a notice of violation, the preliminary hearing is to be scheduled to occur within 10 days of issuance of the notice.

(ii) If the releasee does not appear as described in paragraph (2) of subdivision (d) of section 8004.7 of this Title and a parole warrant was issued, then upon completion of a recognizance hearing and an order from the court therefrom,

(*a*) If the releasee was ordered released by the court, the preliminary hearing is to be scheduled to occur within 10 days of the issuance of such order, or

(*b*) If the releasee was ordered by the court to be detained pending completion of their revocation case, the preliminary hearing is to be scheduled to occur within 5 days of the issuance of such order.

(iii) Nothing within this paragraph shall be construed as prohibiting the conduct of a preliminary hearing in absentia.

(3) Where the case may be designated as a non-technical violation case:

(i) If the Department proceeded by notice of violation and there is no parole warrant, the provisions of paragraph (2) of this subdivision shall apply.

(ii) If a parole warrant was issued and executed, then upon completion of a recognizance hearing and an order from the court therefrom,

(*a)*If the releasee was ordered released by the court, the preliminary hearing is to be scheduled to occur within 10 days of the issuance of such order, or

(*b)*If the releasee was ordered by the court to be detained pending completion of their revocation case, the preliminary hearing is to be scheduled to occur within 5 days of the issuance of such order.

(4) Should release on recognizance be ordered pursuant to the Executive Law but a court thereafter again consider the releasee's detention prior to the preliminary hearing taking place, the preliminary hearing may be scheduled or rescheduled to occur within 5 days of the court's conclusion upon such new consideration if the releasee is ordered detained, or within 10 days of the court's conclusion if the releasee is again ordered released. Nothing within this subdivision shall be interpreted to require a rescheduling of the preliminary hearing, or to require the scheduling of a new preliminary hearing where a preliminary hearing had commenced or been completed.

(5) The scheduling or conduct of a preliminary hearing for a releasee who has absconded from supervision and remains in such status or who is otherwise not within the convenience and practical control of the Department is not required during such period.

(6) Issuance of the notice of violation within the meaning of this subdivision occurs when the releasee has been served with such notice and: (i) has appeared as directed in response to a notice of violation; or (ii) has appeared in response to a notice of violation within no later than forty-eight hours of the directed time, but

otherwise as directed. Issuance of the notice of violation may, however, be deemed by the Department or Board to have occurred prior to the date and time for which the releasee had been directed to appear in response to the notice of violation, in the event the preliminary hearing has been scheduled to occur upon such date.

(b) Location of the hearing.

(1) For any case in which no parole warrant has been issued or in which the releasee was ordered released on recognizance pursuant to the Executive Law, the preliminary 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.

(2) Notwithstanding paragraph (1) of this subdivision, the preliminary hearing may, in the Department's discretion and as appropriate, be scheduled and held in a residential treatment facility, or a nursing, medical or mental health facility, as the case may be, where it is reasonably likely that the releasee will remain in custody or residence therein irrespective of the issuance of a parole warrant or the decision on recognizance pursuant to the Executive Law. Subsequent changes in a releasee's custodial or residential status shall permit the Department reasonable extension of time for scheduling or rescheduling at another appropriate location.

(c) The right to a preliminary hearing may be waived. The waiver of a preliminary hearing may be made either in writing on forms provided, or orally on the record at any appearance in response to a notice of violation, the recognizance hearing or the preliminary hearing.

(d) An adjournment may be granted at the preliminary hearing for the releasee to obtain counsel or for good cause shown. An attorney who represents the releasee may only obtain an adjournment for good cause prior to the scheduled date of a preliminary hearing by contacting the hearing coordinator.

(e) There shall be good cause to extend the time in which the preliminary hearing is scheduled to occur where reasonably necessary to allow for its conduct at the appropriate location and facility.

Section 8005.7 of Title 9 N.Y.C.R.R is amended to read as follows:

[8005.7 Conduct of hearing] 8005.7 Conduct of the Preliminary Revocation Hearing

(a) At the preliminary revocation hearing, the preliminary hearing officer shall read each violation charge and the alleged violator shall plead not guilty, guilty, guilty with an explanation, or stand mute with respect to each charge. The Department may, for purposes of the preliminary hearing, elect to proceed on only one of the, or certain additional, existing charges.

[1](b) If the alleged violator at a preliminary hearing pleads guilty to the substance of any charge or an acceptable variation thereof, or admits charged conduct which is a violation of the conditions of release in an important respect, the preliminary hearing officer shall conclude the hearing.

[2](c) If the alleged violator pleads not guilty to the charges, or elects to stand mute, the preliminary hearing officer shall proceed to direct the presentation of evidence concerning a violation charge, receive statements of witnesses and documentary evidence on behalf of the alleged violator and allow cross-examination of those witnesses in attendance with respect to that charge.

[3](d) The standard of proof at the preliminary hearing shall be [probable cause] a preponderance of evidence to believe that the releasee has violated one or more of the conditions of [his] their release in an important respect. Proof of conviction of a crime committed subsequent to release on parole or conditional release shall constitute [probable cause] a preponderance of evidence.

[4](e) The hearing shall conclude at such time as the preliminary hearing officer finds that there is [probable cause] a preponderance of evidence to believe that the alleged violator has violated [the]a condition or conditions of [his] their release in an important respect, or when all charges have been heard and no [probable cause] preponderance of evidence has been found.

[5](f) If the preliminary hearing officer finds that there is [probable cause] a preponderance of evidence to believe that the alleged violator has violated one or more of the conditions of parole in an important respect, [he

shall direct that the alleged violator be held for further action pursuant to section 8004.3 of this Title] the matter shall proceed to a final revocation hearing except as may be otherwise directed pursuant to section 8004.11 of this Title. When the matter proceeds to a final hearing the Department may prosecute all charges and any additional charges upon sufficient notice, whether or not a preponderance of evidence had been found on such charges at the preliminary hearing.

[6](g) If the preliminary hearing officer finds that there is no [probable cause] preponderance of evidence to believe that the alleged violator has violated one or more of the conditions of [his] their release in an important respect, [he]they shall dismiss the notice of violation and direct such person be restored to supervision.

Section 8005.15 of Title 9 N.Y.C.R.R is amended to read as follows:

[8005.15 Presiding officers] 8005.15 Presiding Officers at Final Revocation Hearings

(a) Presiding officers at final revocation hearings shall be [hearing officers] appointed by the [Chairman] Chairperson of the Board of Parole, [are] and designated and authorized by the Board to conduct [final] revocation [hearings as presiding officers] proceedings including both preliminary and final hearings.

(b) Such presiding officer shall have had no prior supervisory involvement with the alleged violator.

[(b)](c) A Board member may act as a presiding officer at a final [revocation] hearing.

[(c)](d) The presiding officer at a final hearing is authorized to:

(1) administer oaths and affirmations;

(2) sign and issue subpoenas and subpoenas duces tecum, as regulated by the Civil Practice Law and Rules; and

(3) conduct final revocation hearings and provide for adjournments thereof.

Section 8005.16 of Title 9 N.Y.C.R.R is amended to read as follows:

[8005.16 Party representation] 8005.16 Party Representation

(a) An alleged violator is entitled to representation by an attorney at a final revocation hearing.

(b)

(1) An attorney who represents an alleged violator shall promptly file a notice of appearance with the hearing coordinator at the local area office having responsibility for the supervision of said alleged violator, except that:

(i) for those alleged violators incarcerated at a jail located within New York City, the notice of appearance shall be filed with the Parole Violation Unit of the New York State [Division of Parole]Department of Corrections and Community Supervision[, 314 West 40th Street, New York, NY 10018]; and

(ii) for those alleged violators incarcerated at a jail located within the counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, the notice of appearance shall be filed with the New York State [Division of Parole]Department of Corrections and Community Supervision, Hudson Valley Region [III] Parole Violation Unit [82 Washington Street New Rochelle, NY 10801].

(2) A notice of appearance shall have printed on it the name, business address, and telephone number of the attorney, and the name, New York State identification number and the violation control (warrant) number of the alleged violator represented. Only one alleged violator shall be named on a notice of appearance. A notice of appearance may not be accepted, and may be returned to the sender, when:

(i) the information contained thereon is insufficient to clearly identify the attorney or the alleged violator;

(ii) the notice is submitted to an office of the [division]Department not in accordance with the filing instructions contained within the preceding paragraph; or

(iii) more than one alleged violator is named on the notice.

(c) The [Division of Parole]Department may be represented at a final revocation hearing by a parole officer and/or an adversary officer.

Section 8005.17 of Title 9 N.Y.C.R.R is repealed and a new section 8005.17 added to read as follows:

8005.17 Scheduling of the Final Revocation Hearing

(a) The final revocation hearing shall be scheduled to take place according to the rules provided in this section, and other sections of this Part and Part 8004 of this Title as may be relevant to reasonably ensure substantial compliance with the Executive Law. Generally:

(1) Where a notice of violation has been issued but no parole warrant was issued, the final hearing shall be scheduled to occur within 45 days of issuance of the notice. Issuance of the notice of violation within the meaning of this paragraph occurs when the releasee has been served with such notice and: (i) has appeared as directed in response to a notice of violation; or (ii) has appeared in response to a notice of violation within no later than forty-eight hours of the directed time, but otherwise as directed. In a case that has been properly identified as a technical violation case in which no period of reincarceration may be imposed, if the releasee did not appear as described in paragraph (2) of subdivision (d) of section 8004.6 of this Title, no final hearing is to be scheduled.

(2) Where a parole warrant was issued and the releasee ordered released by a court at the conclusion of a recognizance hearing pursuant to the Executive Law, the final hearing shall be scheduled to occur within 45 days of issuance of the court's release order. Should release on recognizance be ordered but a court thereafter again consider the releasee's detention, the final hearing may be scheduled or rescheduled to occur within 45 days of the court's conclusion upon such new consideration if the court again orders release, or if the court now orders detention, within the later of 30 days of either the issuance of the court's order directing that the releasee be detained, or issuance of the determination following a preliminary hearing that there exists a preponderance of evidence that the releasee violated one or more conditions of release in an important respect or the waiver of the preliminary hearing. Nothing within this paragraph shall be interpreted to require a rescheduling of the final hearing, or to require the scheduling of a new final hearing where a final hearing had commenced.

(3) Where a parole warrant was issued and the releasee was ordered detained by a court at the conclusion of a recognizance hearing pursuant to the Executive Law and where no such hearing relative to same revocation case had previously occurred, the final hearing shall be scheduled to occur within 30 days of either issuance of the determination following a preliminary hearing that there exists a preponderance of evidence that the releasee violated one or more conditions of release in an important respect, or the waiver of the preliminary hearing.

(4) There shall be good cause to extend the time in which the final hearing is scheduled to occur where reasonably necessary to allow for its conduct at the appropriate location and facility as set forth in subdivision (b) of this section.

(5) The scheduling or conduct of a final hearing for a releasee who has absconded from supervision and remains in such status or who is otherwise not within the convenience and practical control of the Department is not required during such period.

(b) Location of the hearing.

(1) For any case in which no parole warrant has been issued or in which the releasee was ordered released on recognizance pursuant to the Executive Law, the final 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.

(2) For any case in which the releasee was ordered detained following a recognizance hearing pursuant to the Executive Law, or in which the releasee is in custody in a correctional facility, detention center or local correctional facility pursuant to some other authority or basis, whether or not a parole warrant had been issued, the final hearing shall be scheduled and held in such location.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, the final hearing may, in the Department's discretion and as appropriate, be scheduled and held in a jail, detention center, state or local correctional facility, residential treatment facility, or a nursing, medical or mental health facility, as the case may be, where it is reasonably likely that the releasee will remain in custody or residence therein irrespective of the issuance of a parole warrant or the decision on recognizance pursuant to the Executive Law. Subsequent changes in a releasee's custodial or residential status shall permit the Department reasonable extension of time for scheduling or rescheduling at another appropriate location.

(c) The alleged violator and an attorney who has filed a notice of appearance in accordance with rules of the Board shall be given written notice of the date, place and time of the hearing. Such notice shall occur at the conclusion of the preliminary revocation hearing, or earlier, provided however, that notice or revised notice thereafter is timely where it is in reasonable advance of the final hearing under the totality of the circumstances.

(d) Adjournments.

(1) An application to adjourn a previously scheduled final revocation hearing must be filed with the hearing coordinator at the local area office which scheduled the hearing at least seven days in advance of the schedule hearing date, except that:

(i) for those hearings scheduled to be conducted within New York City, the application must be filed with the New York City Parole Violation Unit of the Department of Corrections and Community Supervision; and

(ii) for those hearings scheduled in the counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester, the application must be filed with the Hudson Valley Region Parole Violation Unit of the Department of Corrections and Community Supervision. An application may be made either by an alleged violator if said person is not represented by an attorney, or by an attorney for the alleged violator, or by a representative of the Department. The application shall be in writing and shall state the reason for the requested adjournment. Such request may be granted for good cause shown.

(2) Where an application for an adjournment is not timely filed pursuant to paragraph (1) of this subdivision, a request for an adjournment may be granted only as follows:

(i) For all hearings except those to be conducted at the Rikers Island, Bronx, Manhattan and Long Island City hearing sites within New York City, the request may be granted only when exceptional circumstances are alleged to exist, and the application is made at least one business day prior to the scheduled hearing. The application may be made orally to the hearing coordinator in the local area office, to the Hudson Valley Region Violation Unit, or to the Parole Violation Unit ("PVU"), as appropriate. When the application is granted by the hearing coordinator, the Hudson Valley Region Violation Unit, or PVU, the applicant shall file with the hearing coordinator, or the Hudson Valley Region Violation Unit, or PVU, as appropriate, a written statement setting forth, in detail, the reasons for the adjournment within 10 days following the granting of the request.

(ii) For all hearings to be conducted at the Rikers Island, Bronx, Manhattan and Long Island City hearing sites within New York City, the request may only be made before the presiding officer at the scheduled hearing site on the day of the hearing. In order to facilitate such applications, the Board and Department shall utilize a calendar call that will commence one half hour prior to the scheduled starting time for the conduct of hearings. The alleged violator will not be present at the calendar call. The presiding officer conducting the calendar call will call the calendar and, for those cases where both party representatives are ready to proceed on the merits, and the alleged violator has been produced, establish the order of presentation of such cases. The presiding officer conducting the calendar call will permit a recess for a reasonable period of time for case conferences between the party representatives. Conferenced cases will then be placed on the ready calendar or may be adjourned on application of either party. A case is ready when:

(*a*) the party representative is present;

(*b*) the necessary witnesses are present or prepared to attend the hearing within a limited period of time;

(c) the statutory notice requirements have been met or waived; and

(*d*) no more than 10 minutes of consultation time with the client or any witness is needed. Cases with interpreters will be scheduled as early as practicable on the calendar. In those cases where both party representatives are ready to proceed but the alleged violator has not been produced by the detaining authority, the matter will be recessed for a later calendar call during that day at a time to be announced by the presiding officer. In all other cases wherein one of the party representatives has stated that the party is not ready to proceed, at the conclusion of the calendar call the presiding officer will consider an application for an adjournment. Before deciding the application for an adjournment, the presiding officer will conduct an inquiry on the record to determine the dates on which all relevant papers were served, notices of appearance were filed, and written notices were given, and will make any other appropriate inquiry. All decisions made by the presiding officer as to chargeability of time will be made for administrative purposes only and will be subject to judicial review. Applications for adjournments will be decided as follows:

(*1*) Where the Department's representative states that the Department is not ready to proceed, the matter will be adjourned with time chargeable to the Department, subject to the provisions of subclause (*4*) of this clause.

(*2*) Where the Department is ready to proceed and the alleged violator is not represented, or if an attorney who has filed a notice of appearance as counsel for the alleged violator is not present, the presiding officer will incorporate the matter into the ready calendar for that day. When such case is called for hearing, the presiding officer at the hearing will:

(*i*) In a case where an alleged violator is not represented, determine whether the alleged violator desires counsel or is ready to proceed pro se. If the alleged violator elects to waive the right to counsel, the hearing will go forward. Alternatively, if the alleged violator indicates that representation is desired, the matter will be adjourned chargeable to the alleged violator.

(*ii*) In a case where counsel has filed a notice of appearance but is not present, determine whether proper notice of the hearing was provided to counsel. If proper notice was given, the matter would thereupon be adjourned with time chargeable to the alleged violator, except, that in a case where the alleged violator wishes to proceed without counsel, the hearing shall go forward if the presiding officer determines that such waiver of counsel has been made knowingly and intelligently.

(*3*) Where the alleged violator's representative states that the defense is not ready to proceed, the presiding officer will determine whether to grant the requested adjournment and if it is granted decide to whom the adjournment is to be charged.

(*4*) In a case where either the Department's adversary officer or counsel for the alleged violator is at another hearing location for a scheduled final revocation hearing, and a representative of that attorney or adversary officer is present at the calendar call and requests a recess until later that day, where the presiding officer determines that:

(*i*) the case is otherwise ready to proceed but for the presence of the adversary officer or counsel for the alleged violator; and

(*ii*) it is represented that the necessary party will be available at some point during the day, the presiding officer shall recess the matter for a calendar call to be conducted later that day at a time to be determined by the presiding officer.

(*5*) All cases recessed to the second calendar call will be disposed of at the time that calendar is called by placing the case on the ready calendar or adjourning the matter as indicated in this subdivision.

(*6*) Nothing contained herein shall preclude a presiding officer from adjourning a case with chargeable time allocated between parties.

(3) Where an adjournment is granted at the request of or agreed to by an alleged violator or their-counsel, or where an alleged violator or his attorney, by their actions, preclude the prompt conduct of a final revocation hearing, the time in which to hold the hearing shall be extended to the next available date.

(4) A request for a continuance of a hearing already in progress may be granted in the discretion of the presiding officer, having due regard for the interests of all parties. Such requests shall be for good cause and must be noted on the hearing record.

(5) The presiding officer, on their own motion, may adjourn the hearing, having due regard for the interests of all parties.

Section 8005.18 of Title 9 N.Y.C.R.R Notice of final revocation hearings is repealed and a new section 8005.18 added to read as follows:

8005.18 Notice of Final Revocation Hearings

(a) The alleged violator and an attorney who has filed a notice of appearance in accordance with rules of the Board shall be given written notice of the date, place and time of the final revocation hearing. Such notice shall occur at the conclusion of the preliminary revocation hearing where a preponderance of the evidence has been found, or earlier, except that notice or revised notice thereafter is timely where it is in reasonable advance of the final hearing under the totality of the circumstances.

(b) Notice to the alleged violator shall also include notice of the purpose of the final hearing, a statement of the conditions of release that are alleged to have been violated and in what manner, and identification of the alleged violator's rights at a final revocation hearing, which are those listed in subdivision (c) of section 8004.4 of this Title and include a right to present mitigating evidence relevant to the possible restoration to supervision

(c) Notice to the alleged violator shall include the name and contact details for institutional defenders or assigned private counsel, as the case may be, except that such notice is not required where an attorney has filed a notice of appearance in the matter or representation by counsel has otherwise been established.

(d) The notice to the alleged violator required by this section may be provided through the notice of violation, violation of release report or other documents, and nothing herein shall be construed as requiring duplicate notice, or written notice of adjourned or continuation dates where such information has been adequately conveyed to the releasee or counsel on the record.

(e) As far as practicable or feasible, any additional documents having been collected or prepared that support the violation charges shall be delivered to the releasee but need not be included with the notice in regard to the final hearing.

Section 8005.19 of Title 9 N.Y.C.R.R is amended to read as follows:

[Conduct of Hearing] Conduct of the Final Revocation Hearing

(a) At the final revocation hearing, the presiding officer shall read the charges unless such reading is waived. The alleged violator shall be sworn as provided by law. The alleged violator shall plead not guilty, guilty, guilty with an explanation, or stand mute with respect to each of the charges.

(b) If the alleged violator pleads guilty or guilty with an explanation, the presiding officer shall direct the presentation of evidence, if any, with respect to mitigation of the violations and restoration to parole.

(c) All persons giving evidence at the hearing shall be sworn by the presiding officer in accordance with law.

(d) If the alleged violator pleads not guilty or elects to stand mute, the presiding officer shall direct the presentation of evidence with respect to each charge. At the conclusion of each witness' testimony, the presiding officer shall allow for the cross-examination of the witness. Evidence of mitigating circumstances, or in defense to the charges, shall be admitted after presentation of all evidence in support of a violation of parole, and in the same manner as evidence with respect to each charge.

(e) The standard of proof at a final revocation hearing is [a preponderance of evidence] clear and convincing evidence adduced at the hearing in support of a charge that the alleged violator has violated one or more of the conditions of [his] their release in an important respect.

(f) Conduct that formed the basis of a criminal arrest shall not form a basis of a sustained parole violation if a court has, prior to the final hearing, adjudicated that criminal matter with an acquittal, adjournment in contemplation of dismissal, or violation.

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

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

(b) If the presiding officer is satisfied that there clear and convincing 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) 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 relevant mitigating and aggravating factors as set forth in subdivision (g) of this section, the presiding officer may: (1) restore such violator to supervision, and in their discretion impose conditions directly related to such restoration, including but not limited to direction that the releasee cooperate with re-entry services provided in the community by a qualified non-profit agency; or (2) where reincarceration is permitted, impose one or more time assessments. The presiding officer shall impose the least restrictive reasonable sanction.

(d) Notwithstanding any other provisions of this Part, if in a case alleging non-technical violations the alleged violator, the Department and the presiding officer agree, the alleged violator’s release may be revoked upon a guilty plea to a charge other than one alleging conduct that would constitute a felony or misdemeanor offense but with the understanding that they will be deemed, and treated as, a non-technical violator. In such case if a period of reincarceration is directed, it shall be for no less than 6 months.

(e) Time assessments.

(1) A time assessment may be imposed for each such sustained violation wherein reincarceration is permitted by the sustaining of such charge. When there is more than one time assessment imposed in the case, such time assessments will run concurrently.

(2) Technical violation cases.

(i) Where one or more violation charges are sustained in a technical violation case for which reincarceration may have been possible, those current sustained charges and sustained charges in all prior revocation cases on the instant term(s) must be reviewed to determine whether reincarceration is a permitted disposition in the current case, with the following understanding: 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.

(ii) Upon the review in subparagraph (i) of this paragraph, the presiding officer may impose a time assessment only where there are at least three qualifying "for which incarceration may be imposed" violations sustained within the current case, or at least one such charge sustained in the current case which may be combined with such qualifying sustained prior violations on the instant term(s) as to reach the threshold of three sustained such violations.

(iii) Notwithstanding the above, in any case wherein a charge of absconding from supervision is sustained, a time assessment may be imposed, with the following understanding: up to seven days reincarceration may be imposed for the first absconding violation, up to fifteen days reincarceration may be imposed for the second absconding violation, and up to thirty days reincarceration may be imposed for the third or any subsequent absconding violation. Where a charge or charges of absconding are sustained in the current

case, prior sustained absconding violations shall be considered in accordance with this subparagraph but any absconding violation shall be considered in accord with subparagraph (i) of this paragraph where a greater time assessment may result and provided moreover, nothing herein shall be construed as prohibiting any other time assessments in such matter in accord with subparagraph (i) of this paragraph.

(iv) Where one or more time assessments are imposed in these cases, they are to be imposed in accordance with the understandings in this paragraph, with a presumption, in such instance, that the maximum available period(s) of reincarceration will be imposed.

(3) Non-technical violation cases.

(i) Where one or more non-technical violation charges alleging the commission of a new felony or misdemeanor offense are sustained in the current case, a time assessment for each such violation may be imposed, which shall be: no less than 6 months for a misdemeanor except one under Penal Law Article 130; no less than 12 months for any felony, or for any misdemeanor under Article 130.

(ii) Where the violator is serving a sentence for an offense defined in article 130 of the penal law or section 255.26 or 255.27 of such law, and the sustained charge(s) are considered non-technical in accordance with subdivision (a) of section 8004.8 and are not for a felony or misdemeanor offense, a time assessment for each such violation may be imposed, which shall be no less than 6 months.

(iii) Nothing herein shall be construed as prohibiting other time assessments in the case as may appropriately correspond to any sustained technical violation charges.

(f) 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 the appropriate sanction. 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

(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) 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 final revocation hearing, the releasee and their attorney shall be advised in writing of the revocation hearing decision, including the reason for the determination and the evidence relied upon.

(j) 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.

Section 8005.21 of Title 9 N.Y.C.R.R is renumbered section 8005.22 and a new section 8005.21 is added to read as follows:

8005.21 Relevant Nonprofit Service Providers

(a) Where a nonprofit service provider has demonstrated to the satisfaction of the Board and Department that it is currently capable of offering relevant community-based services to releasees, it may be permitted to attend preliminary and final parole revocation hearings where there is no disruption to the proceedings and the health and safety of any participant or of the provider's representatives is not otherwise threatened. The nonprofit service provider shall not be considered a party to the revocation proceedings and shall have no independent right to participate therein.

(b) The presiding officer at a final parole revocation hearing may, in their discretion, permit the releasee or their counsel to communicate with the nonprofit service provider during a reasonable recess of the proceeding where the communications are expected to aid in ascertaining an appropriate revocation disposition, including, but not limited to, any relevant conditions of release that might be a part thereof. It is assumed, however, that communications between the releasee or their counsel and the nonprofit service provider may freely occur outside of the time of such proceedings without direction and involvement of the presiding officer or any other employee of the Board or Department.

(c) The presiding officer at a final parole revocation hearing may, in their discretion, permit a representative of the provider to directly offer, on or as a part of the record, case-specific information regarding relevant community-based services that such provider is willing to provide and is currently capable of providing to the releasee who is the subject of the proceeding. Nothing within this subdivision shall prohibit such information from being offered by a party at a final hearing.

(d) In determining whether a nonprofit service provider is currently capable of offering relevant community-based services to releasees within the meaning of this section, the Board and Department may consider any

relevant information including, but not necessarily limited to, the provider's verifiable services and resources, record with respect to delivering such services successfully, history of cooperating with and providing timely information to the Board and Department, history of compliance with subpoenas, and responses to any inquiries made of them by the presiding officer or any party in any revocation proceedings.

(e) The provisions of this section shall not create or confer any new or additional right in favor of the releasee, and noncompliance with any such provisions shall not be a basis for the vacating of a notice of violation or warrant, or for any other form of challenge to or dismissal of the revocation case.

Section 8005.22, as renumbered, is amended to read as follows:

Delinquent Time Case Review

(a) It is the policy of the Board of Parole to review, sua sponte, any revocation determination wherein [the]a time assessment imposed is in excess of 24 months. The purpose of said review is to provide the members of the board, acting in executive session, an opportunity to freely discuss such determinations, to decide, in view of the totality of the case record, whether such determination is considered to be appropriate by the majority of the members of the board, given the fact that the underlying revocation decision is rendered by a single board member. The delinquent time case review is not a substitute for an administrative appeal[, which is] taken and decided pursuant to Part 8006 of this Title or any appeal pursuant to subdivision 4-a of section 259-i of the Executive Law. Rather, given that [an administrative]such an appeal of a revocation determination is limited to a review of the revocation record, the delinquent time case review is intended to permit the board to consider any information in its records that it considers to be pertinent to the case, so as to facilitate equitable and consistent decision making. Insofar as the delinquent time case review represents an internal opportunity for the members of the board to discuss cases that are within the aforementioned category, the time for the conduct of said review may vary in the sole discretion of the board and, in keeping with the purpose of the case review, the board will not solicit or accept input from outside of the board, or advise the subject of the case review that the matter is under consideration.

(b) Review under this section shall not occur until the administrative appeal permitted pursuant to Part 8006 of this Title has been decided, or the time to take such an appeal has expired, and, as the delinquent time case review is not an administrative remedy, its pendency or conduct shall not preclude a violator from seeking judicial review of an underlying revocation determination once the administrative appeal permitted pursuant to part 8006 of this Title is concluded. Furthermore, review under this section shall not occur until an appeal pursuant to subdivision 4-a of section 259-i of the Executive Law, if any, has been decided and all further

appeal or litigation therefrom has concluded, and either administrative appeal permitted pursuant to Part 8006 of this Title has been decided thereafter, or the time to take an administrative appeal in such circumstance has expired.

(c) [The]A time [assessed]assessment in the underlying revocation determination may not be increased by a review conducted pursuant to this section. In a case where [the]a time assessment is reduced, the violator will be provided with written notice of the amended time assessment. A written statement of reasons will not be issued for any case reviewed pursuant to this section, nor will notice be provided to a violator that such person's case has been reviewed, except to the extent that such review results in a reduction of [the]a time assessment imposed.

(d) A delinquent time case review shall be conducted by a quorum of the members of the board, and decided by a majority vote of the members present.

Section 8006.1 of Title 9 N.Y.C.R.R is amended to read as follows:

(a) An administrative appeal may be taken from a final determination of the Board of Parole regarding a minimum period of imprisonment, parole release, parole rescission or final revocation proceeding.

(b) The administrative appeal process is initiated by the filing of a notice of appeal within 30 days of the date that the [inmate]incarcerated person/violator or [his]their attorney receives written notice of the final decision from which the appeal is taken. The failure to file a notice of appeal within the aforementioned time limit shall constitute a waiver of the right of appeal by the [inmate]incarcerated person/violator.

(c) A notice of appeal and subsequent related correspondence, including the document submitted to perfect the appeal, shall be filed with the New York State [Division]Board of Parole, Appeals Unit, The Harriman State Campus, [97 Central], Albany, NY [12206]12226.

(d) The notice of appeal shall state the name and State identification number of the [inmate]incarcerated person/violator; the date of the hearing and, in the case of a final revocation proceeding, the date of the determination; the [inmate]incarcerated person/violator's present place of incarceration; and the place where the hearing occurred. While a [division]Department form entitled Notice of Appeal is available for use by an [inmate]incarcerated person/violator, it is not required that said form be utilized to initiate the appeal process.

(e) At the time of the filing of the notice of appeal, the [inmate]incarcerated person/violator or the attorney therefor may request a copy of the transcript of the proceeding from which the appeal was taken. The appeals unit will obtain the transcript as soon as practicable and forward it to the [inmate]incarcerated person/violator or [his]their attorney. There shall be a copying charge of 25 cents per page. All other nonconfidential, discoverable documents relating to the appeal may be obtained upon written request to the appropriate [division]Department officer, pursuant to 9 NYCRR 8000.5(c)(3). The time required to obtain, copy and transmit the transcript to the appellant or [his]their counsel shall not extend the time limit within which the appeal shall be perfected, except that such time may be a basis for a request for an extension, in accordance with 9 NYCRR 8006.2(a).

(f) Each notice of appeal received by the appeals unit will be acknowledged in writing, and the final date to perfect the appeal will be stated thereon.

(g) In any case where an appeal was filed with a court of law pursuant to subdivision (4-a) of Section 259-i of the Executive Law from the sustaining of, in a final revocation proceeding, a non-technical violation charge concerning felony or misdemeanor conduct, then:

(1) No notice of administrative appeal from the final revocation proceeding shall be accepted and no such administrative appeal shall be considered while the subdivision (4-a) matter remains pending, or while any appeal or other litigation from the court of law's decisions therefrom remain open.

(2) Any non-technical violation findings shall not be considered as a subject of administrative appeal to the Board pursuant to this Part. Commencement of an appeal pursuant to subdivision (4-a) of any non-technical violation finding constitutes a permanent forfeiture of the right to appeal all non-technical violation findings in the revocation proceeding pursuant to this Part.

(3) Should the subdivision (4-a) matter be commenced subsequent to the filing of a notice of appeal pursuant to this Part, said administrative appeal shall be deemed cancelled upon commencement of the subdivision (4-a) appeal, except, in the Board's discretion, where findings of the Appeals Unit and/or the decision of the Board on the administrative appeal have been issued.

(4) A notice of appeal from a final revocation proceeding may be filed and such appeal thereafter considered, with respect to the sustaining of any technical violation charges, following conclusion of the subdivision (4-a) matter and where there is no appeal or litigation from the court of law's decisions therefrom.

(i) The incarcerated person/violator and their attorney shall assume that no prior notice of administrative appeal or appeal submissions will be considered absent express authorization to the contrary from the Appeals Unit.

(ii) The appeal process shall proceed in all other manner in accordance with the provisions of this Part as though the date of the final conclusion of the subdivision (4-a) matter and any appeal or litigation therefrom constitutes the "written notice" referenced in subdivision (b) of this section, and the notice of appeal must be filed within 30 days of that conclusion.

Section 8006.2 of Title 9 N.Y.C.R.R is amended to read as follows:

Taking of the [appeal]Appeal

(a) The appeal shall be perfected within four months of the date of filing of the notice of appeal, unless an extension is granted by the appeals unit for good cause shown. A request for an extension must be in writing, to the appeals unit, and must be received prior to the final date assigned for the perfection of the appeal.

(b) An appeal is perfected by the filing with the appeals unit of an original and two copies of a brief, letter or other written document that shall state the rulings challenged and shall explain the basis for the appeal.

(c) Each appeal will be reviewed and decided on the basis of the written record. A personal appearance and/or oral argument is expressly prohibited.

(d) Upon the taking of an appeal, an [inmate]incarcerated person/violator may be represented by counsel. Counsel for an appellant shall file a notice of appearance with the appeals unit, and such notice shall identify the appellant by name and State identification number. Only one appellant shall be named on any notice of appearance.

(e) Once counsel has entered an appearance on behalf of an [inmate]incarcerated person/violator, the appeals unit will not entertain correspondence from the [inmate]incarcerated person/violator concerning any aspect of the appeal, unless and until notice is received that counsel has been relieved of the assignment.

(f) If, after the expiration of four months or any period of extension that may have been granted, the appeal is not perfected, it will automatically be dismissed with prejudice.

Section 8006.3 of Title 9 N.Y.C.R.R is amended to read as follows:

Questions on [appeal]Appeal

(a) The following questions may be raised on appeal from a minimum period of imprisonment or release proceeding:

(1) whether the proceeding and/or determination was in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or was otherwise unlawful;

(2) whether the board member or members making the determination relied on erroneous information as shown in the record of the proceeding, or relevant information was not available for consideration;

(3) whether the determination made was excessive.

(b) The following questions may be raised from a parole rescission [or a final revocation] determination, subject to the limitation that evidentiary or procedural challenges will be considered only if a timely objection was made at the hearing:

(1) whether the determination was supported by a preponderance of the evidence; and

(2) questions in subdivision (a) of this section.

(c) Subject to the limitations of subdivision (g) of section 8006.1 of this Title, the following questions may be raised from a final revocation determination, except that properly raised evidentiary or procedural challenges will be considered only if a timely objection was made at the hearing:

(1) whether the determination was supported by clear and convincing evidence; and

(2) questions in subdivision (a) of this section.

(d) Allegations of newly discovered evidence will not be considered on appeal from a revocation hearing, but must be the subject of an application to the board for a rehearing.

Section 8006.4 of Title 9 N.Y.C.R.R is amended to read as follows:

Determination of the [appeal]Appeal

(a) A properly perfected appeal will be reviewed by the appeals unit, which will thereafter take one of the following actions:

(1) where, in an appeal of a release denial, or in an appeal of a revocation determination wherein the only issue presented relates to the length or propriety of [the]a time assessment imposed, the appeals unit determines that the appeal is moot based upon the release or imminent release from custody of the appellant, the appeals unit will so notify the appellant or counsel therefor of such determination, and said notification will terminate the appeal; or

(2) in all other cases the appeals unit will issue written findings of fact and/or law, and recommend disposition of the appeal. The written findings and recommendation of the appeals unit shall thereupon be mailed to the [inmate]incarcerated person/violator or, where the appellant was represented by counsel, to the counsel for appellant.

(b) Upon the issuance by the appeals unit of its findings and recommendation the appeal will be presented as soon as practicable to three members of the Board of Parole for determination.

(c) Should the appeals unit fail to issue its findings and recommendation within four months of the date that the perfected appeal was received, the appellant may deem this administrative remedy to have been exhausted, and thereupon seek judicial review of the underlying determination from which the appeal was taken. In that circumstance, the [division]Board and Department will not raise the doctrine of exhaustion of administrative remedy as a defense to such litigation.

(d) An appeal shall be considered by three members of the Board of Parole, except that any board member who participated in the decision from which the appeal was taken may not participate in the resolution of the appeal. The appeal shall be decided by a majority of the three board members who review the appeal.

(e) The three board members who review the appeal, or a majority thereof, may affirm, modify or reverse the decision.

(f) Factual determinations made by a presiding officer at a rescission [or final revocation] hearing shall not be subject to modification or reversal on appeal, unless the majority of the board members who review the appeal concludes that the factual determination was not supported by a preponderance of the evidence. Factual determinations made by a presiding officer at a final revocation hearing shall not be subject to modification or reversal on appeal, unless the majority of the board members who review the appeal concludes that the factual determination was not supported by clear and convincing evidence.

(g) When three reviewing members of the board, or a majority thereof, render a determination, reasons for such decision shall be provided when such decision is at variance with the recommendation of the appeals unit.

(h) When three reviewing members of the board, or a majority thereof, reverse or modify a determination, they shall direct the action to be taken, except that, should they determine that the time assessment imposed at a release proceeding was excessive, they shall direct a rehearing.

(i) Upon disposition of an appeal by three reviewing members of the board, a copy of such decision shall be mailed to the [inmate]incarcerated person/violator and counsel therefor.