
 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE		NO. 9235
	<b>Community Supervision - Three Year Discharge from Sentence or Period of Post- Release Supervision</b>		DATE 07/15/2022
SUPERSEDES NYS DOP Manual Item 9208.02 (3YD and 5YD)	DISTRIBUTION A B	PAGES PAGE 1 OF 7	DATE LAST REVISED
REFERENCES (Include but are not limited to) NYS Executive Law §259-j; NYS Penal Law Article 220 & 221 and §70.02; ACA Expected Practices 4-APPFS-2A-13; 4- APPFS-2A-14; Directives #8500, #9205	APPROVING AUTHORITY 		

- I. **PURPOSE:** The purpose of this directive is to establish requirements and procedures for Community Supervision personnel with respect to the submission of Three Year Discharge (3YD) case summaries to the Board of Parole for review, consideration, and determination.
- II. **POLICY:** Eligible individuals released from Department of Corrections and Community Supervision (DOCCS) facilities may be discharged by the Board of Parole prior to the expiration of the full maximum term provided that the Board determines that such discharge is in the best interest of society and provided further that the releasee has been on unrevoked community supervision for at least three consecutive years. The Board of Parole has the authority to discharge eligible releasees from sentence under §259-j of the New York State Executive Law.

NOTE: References to “releasee” in this directive are intended to refer to individuals who have been paroled, conditionally released, presumptively released, or released to a period of post-release supervision. Executive Law §259-j authorizes the Board of Parole to grant a 3YD prior to the expiration of the period of post-release supervision provided the releasee is serving a period of post-release supervision for a controlled substance or marijuana felony offense defined in Article 220 or 221 of the New York State Penal Law. A releasee serving a period of post-release supervision for a felony offense defined in §70.02 of the Penal Law, the violent felony offender statute, is not eligible for a 3YD; however, a releasee on parole for a non-drug A-I felony offense is eligible for 3YD consideration.

NOTE: This directive is not applicable to the Board of Parole’s discretionary authority under NYS Executive Law §259-j (3). Community Supervision personnel shall comply with the separate and established protocols and procedures for the discharge of individuals serving post-release supervision and convicted of crimes defined in Article 130 of the NYS Penal Law as well as crimes defined as sexually motivated felonies.

### III. ELIGIBILITY

- A. Executive Law §259-j defines eligibility for a 3YD as follows: Except where a determinate sentence was imposed for a felony other than a felony defined in Article 220 or Article 221 of the New York State Penal Law, if the Board of Parole is satisfied that an absolute discharge from presumptive release, parole, conditional release, or release to a period of post-release supervision is in the best interest of society, the Board may grant such discharge prior to the expiration of the full term or maximum term to any person who has been on unrevoked presumptive release, parole, conditional release, or release to post-release supervision for at least three consecutive years.

A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted. No such discharge shall be granted unless the Board of Parole is satisfied that the releasee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee or DNA databank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith.

- B. Time served in a Temporary Release Program shall not be counted toward the three years of unrevoked community supervision.
- C. Releasees who have been released from a DOCCS facility to a warrant or commitment detainer and who have spent a portion of the three-year period of unrevoked community supervision in confinement shall not be discharged until they have been under supervision in the community for the required three years.
- D. No case is to be submitted to the Board of Parole for a 3YD while there is any active warrant, a warrant for violation of parole, an active order of protection, or any pending criminal charge at the time of eligibility. All outstanding matters must be resolved prior to submission of the discharge summary and supporting documentation to the Board of Parole.
- E. Any alleged violation of a condition or conditions of release that did not result in a revocation of release or any sustained violation overturned on appeal or dismissed via writ does not disqualify an individual (releasee) for 3YD consideration.
- F. Supervision Credit Date: For the purpose of determining eligibility for a 3YD from sentence or from the qualifying period of post-release supervision, the supervision credit date shall be defined as follows:
  - 1. A release (presumptive release, parole, conditional release, or release to post-release supervision) from a DOCCS facility, the supervision credit date shall be the date of release to parole or to the period of post-release supervision.
  - 2. Upon release from a DOCCS facility or release from a local correctional facility following a revocation of parole or post-release supervision, the supervision credit date shall be the date of re-release (time assessment expiration date) to parole or post-release supervision.
  - 3. When a release follows a revoke and restore decision, the supervision credit date shall be the date of the Administrative Law Judge's decision (in most instances the date of decision is also the date of the final revocation hearing).
  - 4. When release follows a judicial sanction to DOCCS' Drug Treatment Program, the supervision credit date shall be the date the releasee was sentenced.
- G. Interstate Compact Cases: Releasees serving sentences for New York State convictions and supervised in other states via the Interstate Commission for Adult Offender Supervision (ICAOS) are eligible for 3YD consideration under Executive Law §259-j. Interstate Compact cases are processed in essentially the same manner as cases supervised in New York State. The New York Interstate Bureau PO is required to obtain input and documentation from the parole officials responsible for supervision of the case in the receiving state.

#### IV. PROCEDURE

- A. Supervising Offender Rehabilitation Coordinator (SORC) and Offender Rehabilitation Coordinator (ORC)
1. The SORC or ORC will advise the incarcerated individual regarding their eligibility for a 3YD by the Board of Parole.
  2. The incarcerated individual is to be provided with information during the pre-Parole Board interview and during the pre-release interview.
- B. Senior Parole Officer (SPO) and Parole Officer (PO)
1. The SPO or PO will advise the releasee regarding eligibility for a 3YD at the time of the initial interview.
  2. The SPO and PO should encourage pro-social behavior and compliance with the case plan and conditions of release throughout the period of community supervision. The possibility of the discretionary discharge may serve as a strong incentive toward successful adjustment and positive reintegration.
  3. The SPO and PO will identify eligible releasees via utilization of the DOCCS' Parole Realtime Executive Statistical System (PRESS) mainframe program. The PRESS program identifies eligible releasees by name, 3YD eligibility date, Bureau, and assigned Parole Officer (PO).
  4. It is the responsibility of the SPO and PO to conference and review each eligible releasee who has been under unrevoked community supervision for a period of 34 months. The SPO and PO shall verify the 3YD eligibility date.
  5. Case Conference: The 3YD review process shall commence in the 34<sup>th</sup> month of unrevoked supervision and shall focus on the releasee's overall adjustment, the completion of goals and objectives as detailed in the case plan, a current evaluation of risk and needs, and additional factors which may include the following:
    - a. Instant offense and criminal history.
    - b. Outstanding warrants and detainers.
    - c. Prior violations and revocations of release during current term.
    - d. Overall length of time under community supervision.
    - e. Residence stability.
    - f. Employment and financial stability.
    - g. Contact with law enforcement.
    - h. Use of controlled substances and alcohol.
    - i. Psychological and psychiatric needs.
    - j. Compliance with court-ordered restitution, fines, and surcharges.
    - k. Any new information from any crime victim that was submitted subsequent to the individual's release to community supervision.

6. If a releasee meets the eligibility requirements assigned, Community Supervision staff will prepare Form #9235A, "Discharge (Three Year - 3YD) from Sentence Summary Report," and submit the completed report to the Regional Director (RD) approximately two months prior to the discharge eligibility date.
7. Form #9235A: The SPO and the PO are responsible for ensuring that the following information is included in the report to the Board of Parole:
  - a. "Discharge (Three Year- 3YD) from Sentence Summary Report" Cover Page (page 1):
    - (1) Releasee identification information.
    - (2) Date of release or supervision credit date.
    - (3) Maximum expiration date or Post-Release Supervision Maximum Expiration Date.
    - (4) Time served on unrevoked community supervision.
    - (5) Correctional Offender Management Profiling for Alternate Sanctions (COMPAS) supervision level at time of report submission.
    - (6) Release type (e.g., parole, conditional release, presumptive release).
    - (7) Eligibility review and certification by assigned Community Supervision personnel:
      - (a) PO
      - (b) SPO
  - b. Form #9235A: Justification section by item number (pages 2 and 3):
    - (1) Number of months under supervision by the applicable COMPAS level(s). For more information on COMPAS see Directive #8500, "COMPAS Assessments/Case Plan."
    - (2) A current mental health status evaluation is required if any of the following factors apply:
      - (a) Current diagnosis of serious mental illness (e.g., psychotic disorder, schizophrenia, schizoaffective disorder, bipolar disorder, and major depressive disorder).
      - (b) Clinical intervention by a psychiatrist or psychologist during the current period of community supervision.
      - (c) Confinement to a psychiatric hospital, facility, unit, or ward during the current period of community supervision.
    - (3) Arrest notices received during the current period of community supervision (requires description in Section 11 of Form #9235A).
    - (4) Releasee's current residence or residential program location.
    - (5) Date of last positive residence verification (a positive residence visit must be conducted within the 30-day period prior to submission of the discharge summary).

- (6) Verification of releasee employment or other means of financial assistance.
  - (7) Participation in educational and vocational programs.
  - (8) Compliance with applicable restitution orders, mandatory surcharges, sex offender registration fees, and DNA databank fees.
  - (9) Compliance with special conditions imposed by the Board of Parole.
  - (10) DNA specimen requirement and status of sample.
  - (11) Summary of Supervision (Narrative Description):
    - (a) Overall adjustment.
    - (b) Referrals and participation in community-based programs.
    - (c) Factors and considerations reviewed during case conferences.
    - (d) Description of arrests and alert records.
    - (e) Summary of compliance with the conditions of release.
    - (f) Victim information provided by the Department's Office of Victim Assistance.
8. Required attachments to Form #9235A:
- a. Parole Board Report(s): Reports prepared for the Parole Board interviews and case reviews.
  - b. Case Plan: Any case plans completed during the three-year period of community supervision.
  - c. Mental Status Examination: see subsection IV-B-7-b-(2).
  - d. CMS Chronological Entries: Chronological entries shall be brought up to date and submitted with Form #9235A.
  - e. COMPAS Case Supervision Review (CSR): The most recent assessment is to be submitted with Form #9235A.
9. If the case specific record includes a confidential file, this file will be submitted to the RD, Deputy Commissioner (DC) or Assistant Commissioner (AC) for Community Supervision, where required, and the Board of Parole along with the Form #9235A. The reviewing RD, DC or AC, and Parole Board members must sign and date the confidential file cover page to confirm that the confidential materials have been received and reviewed.
10. Intelligence information and related documentation will be provided to the Board of Parole on an as needed basis. Current checks with law enforcement agencies will be made in response to the existence of any ongoing investigations that may involve the releasee. The SPO and PO shall identify the source(s) of case intelligence information and label all documents and materials as confidential and sensitive in nature.

11. If the releasee has received DOCCS' approval to participate as a confidential informant with a law enforcement agency, the Board of Parole shall be notified of the releasee's approved participation; however, all information and documentation related to the nature and circumstances of the releasee's involvement is to remain confidential and under no circumstances shall any information related to a law enforcement agency's investigation be divulged or shared without the prior written approval of the DC for Community Supervision.

C. Bureau Chief (BC)

1. The BC shall review and certify eligibility and is also responsible for ensuring that the releasee's eligibility has been reviewed and certified by the PO and SPO and recorded on Form #9235A. The BC shall ensure that the discharge documents have been prepared and submitted for review two months prior to the 3YD eligibility date.
2. The BC is responsible for submitting Form #9235A and all related documents to the attention of the RD for review.
3. The BC shall maintain a record of those cases submitted to the Board of Parole for discharge consideration. If no response is received from the Board of Parole within seven weeks of report submission, the BC shall determine the status of the case by contacting Parole Board Operations staff. The status check after seven weeks is intended to ensure that a decision is received by the 3YD eligibility date.
4. If subsequent to submission of the case to the Board of Parole there are new developments which may serve to alter the appropriateness of the discharge (e.g., new arrest, violation of parole, investigation of current delinquent behavior, etc.), such information is to be reported immediately in writing to the Board of Parole by the BC. The BC shall also notify the RD of the new developments. A complete investigation of the new case-specific developments and behavior will then be conducted, and a report is to be submitted to the Board of Parole and the RD within 30 days of the initial notification to the Board of Parole. The report will be referred to the attention of the DC or AC, where required.

D. Regional Director (RD)

1. The RD shall review Form #9235A and all case-specific documents prepared by assigned Bureau personnel. The RD shall ensure that all information and required documentation has been provided.
2. The RD shall notify the AC on all high profile and noteworthy cases and on all cases that have garnered media attention, both at the time of release or while under supervision in the community.
3. The RD and Regional staff are responsible for submitting the completed discharge package to the Board of Parole in the 34<sup>th</sup> month of supervision to allow sufficient time for the Board to review the case.

E. Parole Board Disposition

1. If the Board of Parole grants a discharge from sentence under Executive Law §259-j, the date of discharge shall be established by those members of the Board of Parole responsible for authorizing the 3YD.

2. If the Board of Parole does not grant a discharge from sentence, the reviewing members shall establish a date for reconsideration not to exceed 24 months from the discharge eligibility date.
  3. The Office of Parole Board Operations is responsible for transmitting the decision of the Board of Parole to the following:
    - a. RD
    - b. BC
    - c. Community Supervision Quality Control Unit
  4. The Office of Parole Board Operations is responsible for notifying DOCCS' Office of Victim Assistance following the action of the Board to discharge a releasee when it involves a victim that is registered with the Office of Victim Assistance.
  5. Under the direction of the BC, either the SPO or PO shall inform the releasee of the decision of the Board of Parole.
- F. Victim Assistance: The Office of Victim Assistance is responsible for providing registered victims with written notification of the releasee's discharge from community supervision.