
 Department of Corrections and Community Supervision DIRECTIVE	TITLE		NO. 9235
	Community Supervision – Three-Year Discharge from Sentence or Period of Post- Release Supervision		DATE 03/12/2024
SUPERSEDES DIR #9235 Dtd. 07/15/22	DISTRIBUTION A B	PAGES PAGE 1 OF 14	DATE LAST REVISED
REFERENCES (Include but are not limited to) NYS Executive Law § 259-j; NYS Penal Law Article § 70.02, 130, 220 and 221; ACA Expected Practices 4-APPFS-2A-13 and 4- APPFS-2A-14; Directives #8500 and #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.

This directive is not applicable to the Board of Parole’s discretionary authority under NYS Executive Law § 259-j(3), which concerns Five Year Discharge (5YD) for sex offenders who are serving a determinate sentence with post release supervision. 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.
- B. Those who are 3YD eligible are as follows:
 - 1. Individuals serving indeterminate sentences who have been convicted of a violent felony offense as per NY Penal Law § 70.02.
 - 2. Individuals serving an indeterminate sentence who have been convicted of a non-drug A-I felony offense.

3. Individuals serving a determinate sentence with post-release supervision who are convicted of a controlled substance or marijuana felony as defined in Article 220 or 221 of the New York Penal Law.
- C. Those who are 3YD ineligible are individuals serving any determinate sentence with the exception of subsection III-B-3 of this directive, this includes 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.
- D. 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.
- E. Time served in a Temporary Release Program shall not be counted toward the three years of unrevoked community supervision.
- F. 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.
- G. 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 or post-release supervision, or pending violation charges that may be the subject of an investigation by community supervision personnel and may form the basis for the preparation of a violation of release report. All outstanding matters must be resolved prior to submission of the discharge summary and supporting documentation to the Board of Parole.
- H. 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.
- I. 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, merit, parole, limited credit time, conditional release, or release to a period of post-release supervision) from a DOCCS facility, the supervision credit date shall be the date of discretionary release, conditional release, or release to the period of post-release supervision.
 2. Upon release from a DOCCS facility or release from a local (county) 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 community 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 the DOCCS Drug Treatment Program, the supervision credit date shall be the date the releasee was sentenced.
- J. 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 or community supervision 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 by community supervision staff shall commence in the 34th month of unrevoked supervision for initial eligibility and two months prior to the expiration of a 3YD deferral period authorized and imposed by the Board of Parole, and the review process 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 relevant information that was submitted after 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 community supervision case file and 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) Area Office.
 - (2) Releasee identification information.
 - (3) Date of release or supervision credit date.
 - (4) Maximum expiration date or Post-Release Supervision Maximum Expiration Date.
 - (5) Discharge eligibility date or deferral (reconsideration) date by Board of Parole.
 - (6) Time served on unrevoked community supervision.
 - (7) Correctional Offender Management Profiling for Alternate Sanctions (COMPAS) supervision level at time of report submission.
 - (8) Release type (e.g., parole, conditional release, presumptive release).
 - (9) Eligibility review and certification by assigned Community Supervision personnel:
 - (a) PO
 - (b) SPO
 - (c) Bureau Chief (BC)
 - (d) RD/Assistant Regional Director (ARD)
 - 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) Active orders of protection at time of eligibility consideration. If yes, please explain including the date the order of protection was issued, the protected person, the expiration date and reason for the order of protection if known.
 - (12) 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) Compliance with the special conditions of release imposed by assigned field staff.
 - (f) Victim information provided by the Department's Office of Victim Assistance.
8. Required attachments to Form #9235A are as follows:
 - 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, or the deferral period established by the Board of Parole.
 - c. Mental Status Examination: See subsection IV-B-7-b-(2).

- d. Case Management System (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. The RD or ARD is responsible for ensuring that bureau personnel follow the internal protocols and procedures established for movement for the Community Supervision case folders to the designated office locations of the reviewing members of the Board of Parole.
 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 Deputy Commissioner (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, and Community Supervision case file have been prepared and submitted in accordance with the procedures delineated in subsection IV-B-5.
2. The BC is responsible for submitting Form #9235A and all related documents to the attention of the RD or designated ARD 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 by at least 14 days prior to the initial eligibility date or the Board deferral date, the BC shall determine the status of the case by contacting the Board of Parole. The status check after 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 14 days of the initial notification to the Board of Parole. The report will be referred to the attention of the DC or Assistant Commissioner (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 and Community Supervision case file to the Board of Parole in accordance with the procedures delineated in subsection IV-B-6. The RD shall ensure that the documentation and file are submitted to the Board following the completion of the 3YD case conference and during the 34th month of unrevoked supervision of initial eligibility or, where applicable, two months prior to the expiration of a 3YD deferral period previously authorized and imposed by the Board of Parole.

E. Parole Board Disposition — Discharges and Deferrals

1. Upon receipt of the file, Board Commissioners will review Form #9235A and the Community Supervision case file and complete Form #9235B, “Discharge Decision Worksheet.”
2. 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 and recorded on Form #9235B.
3. If the Board of Parole does not grant a discharge from sentence:
 - a. The reviewing members shall establish a date for reconsideration not to exceed 24 months from the initial discharge eligibility date and not to exceed 24 months from a deferral decision. This deferral date shall be recorded on Form #9235B.
 - b. The reviewing members shall provide the decision for deferral including whether discharge is in the best interest of society with detailed reasons as to why they are deferring discharge on Form #9235B.
 - Additionally, as per NY Executive Law § 259-j(1), no such discharge shall be granted unless the board is satisfied that the parolee or 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.
4. If the reviewing Board member requires additional information to complete their review, they shall postpone the case for one month pending receipt of the requested information.
 - a. Under no circumstances should a postponement or deferral be made based on questions of Community staff judgment and discretion.
 - b. The reviewing member shall provide a detailed reason(s) for postponement on Form #9235B.

- c. If postponed, upon resubmission, the case will be referred to the Board member who issued the postponement.
5. Form #9235C, “Deferral of Discharge (Three Year — 3YD) Notice,” will be completed by Board of Parole staff and included with the return of the Community Supervision case file and materials provided by field bureau personnel. Form #9235C shall include the following information:
 - a. Name, NYSID, and Bureau name
 - b. Length of the deferral period (in months)
 - c. Reasons for the deferral

NOTE: Form #9235C will not be provided in cases where the Board member has postponed for additional information.
6. Board of Parole staff is responsible for transmitting the decision of the Board of Parole to the following:
 - a. RD
 - b. BC
 - c. Community Supervision Quality Control (QC) Unit
7. Decisions by the Board (Form #9235B) are entered into the Department’s mainframe program by QC Unit staff.
8. The Certificate of Final Discharge is produced following the case-specific entry of the Board’s decision by QC staff. The discharge certificates are transmitted to the assigned field bureau via the Department’s Online Print System (OPS).
9. Under the direction of the BC, either the SPO or PO shall inform the releasee of the decision of the Board of Parole.
 - a. The releasee shall be provided with their Form #9235C.
 - b. The issuance and service of Form #9235C or a Certificate of Final Discharge shall be entered into the releasee’s CMS record.

CLEAR FORM

**NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS)
DISCHARGE (THREE YEAR – 3YD) FROM SENTENCE SUMMARY REPORT**

TO: **BOARD OF PAROLE**

FROM: **AREA OFFICE** _____
REGIONAL DIRECTOR _____
BUREAU CHIEF _____
SENIOR PAROLE OFFICER _____
PAROLE OFFICER _____

DATE:

RE: **THREE-YEAR DISCHARGE SUMMARY**

NAME:		INSTANT OFFENSE(S):		
NYSID#:		SENTENCE:		
DIN#:		DATE OF SENTENCE:		
DOB:		COURT:		
<u>DATE OF RELEASE/SUPERVISION CREDIT DATE</u>	<u>ME/PRSME DATE</u>	<u>TIME ON UNREVOKED SUPERVISION</u>	<u>SUPERVISION LEVEL</u>	<u>RELEASE TYPE</u>

DISCHARGE RECORDS CERTIFICATION BY REGIONAL DIRECTOR :

_____ (date)

ELIGIBILITY REVIEW COMPLETED BY:

_____ (signature) _____ (date)
BUREAU CHIEF

_____ (signature) _____ (date)
SENIOR PAROLE OFFICER

_____ (signature) _____ (date)
PAROLE OFFICER

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS) DISCHARGE (THREE-YEAR – 3YD) FROM SENTENCE SUMMARY REPORT

ELIGIBILITY

As of the established discharge eligibility date, this releasee will have been under unrevoked supervision in the community for a period of at least three consecutive years. These are required minimum standards for an individual to be discharged from further service of sentence under §259-j of the New York State Executive Law.

This **Discharge (Three Year – 3YD) from Sentence Summary Report** and case-specific records provide the Board of Parole with the necessary information to make an informed decision regarding a discharge from sentence. The Board of Parole will consider all pertinent factors before making a discretionary decision.

1. For the latest period of unrevoked community supervision, how much time was spent on active supervision by supervision level?

Level 1: _____ years _____ months

Level 2: _____ years _____ months

Level 3: _____ years _____ months

Level 4: _____ years _____ months

2. Is a mental health status evaluation required? Yes No
3. Any NYSID "Arrest Notices" received during time on supervision? Yes No
(If yes, describe in Section 12)
4. Releasee's current residence (If a program, provide name and location):

5. A positive residence visit was conducted during the past 30 days: Yes No
• Enter date of positive visit: _____
6. Is the releasee employed? Yes No
• Employer: _____ Position: _____ Wage: \$ _____
• If Yes, was positive verification made within the past (30) days? Yes No
i. Date of Verification: _____
ii. Method of Verification: _____
• If No, are there other means of income? Yes No
i. Type of Income: _____
ii. Other Income \$: _____
7. Is the releasee attending or has completed an educational/vocational program? Yes No
If yes, enter the name and location of the program: _____

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS) DISCHARGE (THREE-YEAR – 3YD) FROM SENTENCE SUMMARY REPORT

Is the releasee financially able to make a good faith effort to pay the following (if applicable)? If yes, please provide records showing payments made by releasee. If no, please provide explanation.

- | | | | |
|---------------------------------------|------------------------------|-----------------------------|------------------------------|
| • Any Order of Restitution | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| • Any Mandatory Surcharge? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| • Any Sex Offender Registration Fees? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| • Any DNA Databank Fees? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

Explanation of financial inability:

8. Have all Special Conditions imposed by the Board of Parole been enforced and satisfied, or has the releasee generally complied with the conditions? Yes No If No, explain below:

9. Has the releasee complied with the DNA specimen requirement?
Yes No Not Required

10. Active Orders of Protection at time of eligibility? Yes No

If yes, explained:

11. Summary of Supervision (overall adjustment, reporting, compliance, other comments):

SAMPLE

(Prepare additional pages, if necessary)

12. Summary of Supervision (overall adjustment, reporting, compliance, other comments): (Continued)

SAMPLE

Attachments:

- a) Parole Board Report(s)
- b) Case Plan
- c) Mental Status Exam (If applicable)
- d) CMS Chronological Report
- e) COMPAS CSR

**NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
DEFERRAL OF DISCHARGE (THREE-YEAR – 3YD) NOTICE**

NAME:	
NYSID#:	
AREA OFFICE:	
LENGTH OF DEFERRAL:	Month(s)

REASON FOR DEFERRAL:

SAMPLE

Executive Law § 259-j defines eligibility for a 3YD.

Pursuant to Executive Law § 259-j which governs Discharge of Sentence, a deferment cannot be appealed.