

PRACTICING PAROLE: FROM RELEASE TO REVOCACTION

June 1, 2018

Parole Release

9 NYCRR § 8002.1, et seq.

A. One month before eligible parole release date, inmate meets the Board [Executive Law § 259-i (2) (a) (i)].

B. Board considers several factors [Executive Law § 259-i (2) (c) (A)]

- Institutional record (disciplinary tickets and program completion)
- Performance in temporary release program
- Release plans
- Final order of deportation
- Victim impact statements (always kept confidential)
- Seriousness of the instant offense
- Criminal record
- Prior performance on parole and/or probation.

“Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.”

C. Documents frequently considered and in the record:

- Hearing transcript
- Parole Board Report (f.k.a. Inmate Status Report)
- COMPAS risk assessment
- Inmate Program Assignment
- Inmate Disciplinary History
- Case Plan
- PSI
- Sentencing Minutes and recommendations (judge, DA, defense attorney)
- Letters of Reasonable Assurance and Letters of Support
- Parole Release Packets
- Victim Impact Statements (always confidential)

D. Inmate either receives an open date or is denied parole and held for the next Board.

1) Open date - date within the next few months that inmate will be released to parole.

2) If denied parole, the Board can hold the inmate up to 24 months [Executive Law § 259-i (2) (a) (i)].

3) “Where an inmate has appeared before the board prior to having completed any program assigned by the department, and such program remains incomplete by no fault of the inmate, and where the board has denied such inmate release pursuant to section 259-i (2) (a) of this article, the department shall prioritize such inmate's placement into the assigned program.” (Exec. Law 259-l).

F. Inmate appeals the decision. Grounds for appeal [Executive Law § 259-i (4); 9 NYCRR § 8006.3 (a)]:

- Proceeding and/or determination was in violation of lawful procedure
- Proceeding and/or determination was affected by an error of law
- Proceeding and/or determination was arbitrary and capricious
- Proceeding and/or determination was otherwise unlawful
- Board member making the determination relied on erroneous information ***
- Relevant information was not available for consideration
- Determination made was excessive.

G. Positive case law:

1. *Matter of Pell v Bd. Of Educ.*, 34 NY2d 222 (1974)
2. *Matter of Russo v New York State Bd. Of Parole*, 50 NY2d 69 (1980)
3. *Matter of Collins v Smith*, 113 Misc2d 869 (Sup Ct Wyoming County 1982)
4. *Matter of King v New York State Div. Of Parole*, 190 AD2d 423 (1st Dept 1993)
5. *Matter of Labbe v Russi*, 158 Misc2d 532 (Sup Ct Westchester County 1993)
6. *Matter of Harris v New York State Div. Of Parole*, 211 AD2d 205 (3d Dept 1995)
7. *Matter of Silmon v Travis*, 266 AD2d 296 (2d Dept 1999), Friedmann, J. dissenting
8. *Matter of Delgado v Travis*, 2002 NY Slip Op 50093(U) (Sup Ct Oneida County 2002)
9. *Matter of Boudin v Travis*, 6 Misc3d 1005(A) (Sup Ct Albany County 2003)
10. *Matter of Capiello v New York State Bd. Of Parole*, 6 Misc3d 1010(A) (Sup Ct New York County 2004)
11. *Matter of Weinstein v Dennison*, 7 Misc3d 1009(A) (Sup Ct New York County 2005)
12. *Matter of Rios v New York State Div. Of Parole*, 15 Misc3d 1107(A) (Sup Ct Kings County 2007)
13. *Matter of Almonor v New York State Bd. Of Parole*, 16 Misc3d 1126(A) (Sup Ct New York County 2007)
14. *Matter of Oberoi v Dennison*, 19 Misc3d 1106(A) (Sup Ct Franklin County 2008)
15. *Matter of Winchell v Evans*, 27 Misc3d 1232(A) (Sup Ct Sullivan County 2010)
16. *Matter of Thwaites v New York State Bd. Of Parole*, 34 Misc3d 694 (Sup Ct Orange County 2011)
17. *Matter of Morris v New York State Dept. Of Corr. and Community Supervision*, 40 Misc3d 226 (Sup Ct Columbia County 2013)
18. *Matter of West v New York State Bd. Of Parole*, 41 Misc3d 1214(A) (Sup Ct Albany County 2013)
19. *Matter of McBride v Evans*, 42 Misc3d 1230(A) (Sup Ct Dutchess County 2014)
20. *Matter of Bruetsch v New York State Dept. Of Corr. and Community Supervision*, 43 Misc3d 1223(A) (Sup Ct Sullivan County 2014)
21. *Matter of Rabenbauer v New York State Dept. Of Corr. and Community Supervision*, 46 Misc3d 603 (Sup Ct Sullivan County 2014)
22. *Matter of Platten v NYS Bd. Of Parole*, 47 Misc3d 1059 (Sup Ct Sullivan County 2015)
23. *Matter of Hawthorne v Stanford*, 135 AD3d 1036 (3d Dept 2016)
24. *Matter of Hawkins v New York State Dept. Of Corr. and Community Supervision*, 140 AD3d

- 34 (3d Dept 2016)
25. *Matter of Ciaprazi v Evans*, 52 Misc3d 1212(A) (Sup Ct Dutchess County 2016)
26. *Matter of Coleman v New York State Dept. of Corr. & Community Supervision*, 2018 NY Slip Op 00138, Second Dept 1-10-18
27. *Matter of Kellogg v New York State Bd. Of Parole*, 2017 NY Slip Op 30537 (u) (Sup Ct New York County 2017)
28. *Matter of Putland v New York State Dept. of Corr. & Community Supervision*, 2018 NY Slip Op 00837 (2d Dept 2018)
29. *Matter of Telford v McCartney*, 155 AD3d 1052 (2d Dept 2017)

H. Helpful Hints

1. Make sure all documents that the Board refers to (and that you receive to prepare the administrative appeal) have *your client's name* and correct DIN. This includes the instant offense as listed on the Parole Board Report, COMPAS Risk Assessment, Case Plan, Disciplinary History, etc. If not, the Board may have considered someone else's record while interviewing your client without realizing it. That means that the Board relied on erroneous information. It happens from time to time.

2. Courts often defer to the Board's discretion. Do not be frustrated when your "arbitrary and capricious argument" is dismissed in favor of the Board's discretion. Sometimes, the Board oversteps its discretion.

3. DOCCS reviews and changes its policies and applications of the law from time to time, so today's losing argument may be tomorrow's victory, especially with "violation of lawful procedure" arguments.

4. It is easier to win by raising "erroneous information" than by raising anything else.

Parole Rescission

9 NYCRR § 8002.5

Rescission - inmate granted an open date, but something happens before that date arrives that causes the Board to suspend that date.

Open Date – date to be released from incarceration and to parole supervision.

B. Causes of rescission:

- 1) New information not previously known to the Board just becomes available:
 - Drug cartel involvement
 - Victim impact statements
- 2) Threatening behavior or disciplinary ticket after being granted an open date
- 3) Inmate is convicted of new crime before open date arrives
- 4) Removal from temporary release program
- 5) Commitment to psychiatric center due to mental health instability.

C. Rescission Hearing Documents [Executive Law § 259-i (2) (a) (ii)]

- 1) Notice of Temporary Suspension of Parole Release
- 2) Notice of Rescission Hearing
- 3) Rescission Hearing Report
- 4) Accompanying Documentation
 - victim impact statement
 - misbehavior report
 - any other documents or statements supporting the reason listed on the notice of temporary suspension of parole release.

D. Negotiating a Rescission Matter

- 1) Meet with your client, if possible.
- 2) Discuss DOCCS's position with SORC.
- 3) Argue for restoration of the open date (a new release date after something happens; i.e., after client serves his disciplinary penalty; after client completes a recommended program, etc.).
- 4) Know your client's max date. Remember: it's always enticing to have a client supervised under parole, even for a short amount of time until he maxes out, rather than to be released on his maximum expiration date without any supervision at all.

*** Because open date has been cancelled, slate is wiped clean, and inmate can be held up to 24 months from his last appearance before the board. Board is not required to hold him only until his SHU penalty time is up. Make sure to get on the record that any offers at first appearance will be offered at next appearance, if adjourned for pending tier hearing appeal results, etc.

E. Hearing

- 1) **Burden of proof:** substantial evidence of significant information not previously known by the Board that justifies temporary suspension of parole

Substantial evidence - the kind of evidence on which responsible persons are accustomed to rely in serious affairs and such relevant proof as a reasonable mind may accept as adequate to support a conclusion of fact. It is less than a preponderance of the evidence, and for burden of proof, demands only that an inference be plausible, but not the most probable. It does not rise from bare surmise, conjecture, speculation, or rumor (People ex rel Vega v Smith, 66 N Y 2d 130, 139 [1985], quoting CPLR 7803; Matter of Eagle v Paterson, 57 N Y 2d 831, 833 [1982]; 300 Gramatan Ave. Assoc. v State Division. of Human Rights, 45 N Y 2d 176, 180 [1978]; (Matter of Miller v. DeBuono, 90 NY2d 783, 793 [1997])).

- 2) Where victim impact statement involved, request before hearing:
 - a. Copy of statement
 - b. Copy of statement with "received date stamp" as it appears in DOCCS's parole file -not the correctional facility parole file
 - c. Copy of sentencing minutes
 - d. Copy of release decision hearing that granted him the open date
 - e. Request PSI from client (he may not have it, but you won't get it any other way)
 - f. Request that commissioners who conducted release decision hearing also conduct rescission hearing
 - g. If letters of support submitted on behalf of client, bring those drafters in as witnesses to read the letters personally. Then, have them testify as to how they fit into client's release plan. Witnesses should be allowed (Matter of Costello).
- 3) Object to all evidentiary and procedural challenges to preserve them for review!

F. Inmate appeals the decision. Grounds for appeal [Executive Law § 259-i (4); 9 NYCRR § 8006.3 (b)]:

- Proceeding and/or determination was in violation of lawful procedure
- Proceeding and/or determination was affected by an error of law
- Proceeding and/or determination was arbitrary and capricious
- Proceeding and/or determination was otherwise unlawful
- Board member making the determination relied on erroneous information
- Relevant information was not available for consideration
- Determination made was excessive
- Determination supported by a preponderance of the evidence

The appeal process is initiated by the filing of a notice of appeal within 30 days of the date that the inmate/violator or his 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/violator. 9 NYCRR §8006(1)(b)

G. Case Law

1. *Tremarco v New York State Bd. Of Parole*, 87 AD2d 114 (2d Dept 1982)
2. *Rizo v New York State Bd. Of Parole*, 251 AD2d 997 (4th Dept 1998)
3. *Ortiz v New York State Bd. Of Parole*, 239 AD2d 52 (4th Dept 1998)
4. *Matter of Bishop v Smith*, 299 AD2d 777 (3d Dept 2002)
5. *Matter of Brooks v Travis*, 19 AD3d 901 (3d Dept 2005)
6. *Matter of Pugh v New York State Bd. Of Parole*, 19 AD3d 991 (3d Dept 2005)
7. *Matter of Raheem v New York State Bd. of Parole*, 66 AD3d 1270 (3d Dept 2009)
8. *Maldonado v New York State Div. Of Parole*, 87 AD3d 1231 (3d Dept 2011)
9. *Matter of Diaz v Evans*, 90 AD3d 1371 (3d Dept 2011)
10. *Matter of Costello v New York State Bd. Of Parole*, 23 NY3d 1002 (2014)

Parole Revocation

9 NYCRR § 8004, et seq.

Revocation - individual is under parole or post release supervision and is alleged to have violated the conditions of his/her release causing his/her supervision to be suspended and a warrant for his/her retaking issue. The person is then taken into custody while awaiting a determination as to whether the violation is a **violation in an important respect** such that parole should be revoked and a period of reincarceration imposed.

A. Causes of revocation:

- New crime committed
- Failure to report
- Change of address or employment without prior approval
- Curfew violation
- Drug use and/or dirty toxicology
- Failure to participate in and/or complete drug program
- Associating with others on parole or on probation

B. Declaration of Delinquency and Issuance of Warrant

1. Delinquency date - the earliest date that parole can declare your client to have violated the conditions of his release.
 - The declaration of delinquency, when issued, interrupts the parole sentence as of the date of delinquency.
 - It's not necessarily the date that the warrant was enforced because sometimes, parole allows multiple violations over a period of time before enforcing a warrant (see below).
 - This date can be cancelled anytime before final revocation proceedings commence [9 NYCRR §8004.3 (e) and (f)].
2. Important Note on issuance of a warrant – “No officer shall issue a warrant in a case where he/she is the one who furnishes the report on which it is based.” 9 NYCRR §8004.2(a) and (b). Generally the assigned PO will write the violation of release report and give to a Senior Parole Officer (‘SPO’); sometimes a Bureau Chief.
3. Also, when the issuance of a warrant is based on a new crime, Parole can make a decision to almost “stay” the issuance of the warrant “where there is good cause shown for not filing the warrant or where it otherwise appears that there is insufficient evidence available.” This is called a “NO DD (declaration of delinquency) pending court action.” A violation report is actually drafted but the request to the Commissioners is for no declaration of delinquency pending court action. Parole can later decide to issue the warrant and include the charges on an active VOP warrant.

C. Revocation Hearing Documents

1. Notice of Violation (“9011” form)

- Informs the alleged violator of the time, place, and purpose of the preliminary and final hearings states what conditions of parole or conditional release are alleged to have been violated and in what manner.
- Must be served within 3 days of warrant execution or within 5 days if the individual is out of state: *People ex rel. Frost v Meloni*, 124 AD2d 1032 (4th Dept 1986); *People ex rel. Atkinson v. Warden, Rikers Island Correctional Facility*, 201 AD2d 271 (4th Dept 1994)

2. Violation of Release Report

- Violation charges
- Dates of warrant
- When warrant was enforced
- Delinquency date
- Offense (whether violent or non-violent)
- Sentence (whether determinate or indeterminate)
- Sentence maximum expiration dates
- Documents provided and witnesses

3. Case Summary

- Current sentence and crime of conviction
- Prior parole violations on this offense
- Criminal history
- Prior parole conduct on prior offenses
- Description of current violative behavior
- General adjustment to parole supervision
- Circumstances and nature of custody
- Any statements made by inmate
- Inmate’s custody status

4. NYSID

5. Certificate of Release (with release conditions)

6. Special Conditions of Release

7. Willard or Shock Release conditions

8. On-site drug and alcohol test record (admission by inmate)

9. Photographs of evidence

10. Police reports (where new arrest involved)

D. Negotiating a Parole Matter

1. Know your Categories [9 NYCRR § 8005.20 (1- 5)]

- Categories determine what sentence your client faces, at the worst.
- Categories are determined by your client’s instant offense, current violative behavior, number of prior violations, and criminal history.
- Beware of clients who are “outside of the guidelines” (those ordered to Willard or Shock rather than to prison. They have not yet served their minimum sentence, and parole may want them held to their minimum).

2. Know the delinquency date

- It can extend your client's maximum expiration date.
- Use it as a bargaining tool (i.e.: client will plead to Charge X rather than pursue a contested hearing if you restore his delinquent time)

3. Pending criminal charges

- a. Previously imposed sentence law - If a client is held on both a parole warrant and pending criminal local charges, he gets jail time credit only for the parole sentence (PL § 70.30 [3]). Have "dollar bail" or ROR set for the local charges to allow for client's release if the parole warrant is lifted.
- b. A detainer for pending criminal charges may prevent DOCCS from taking your client into custody if the parole matter is resolved while local charges remain pending. This will impact a client's ability to begin any DOCCS alternative program and keep the client incarcerated longer.
- c. Pleading guilty to pending felonies automatically revokes parole in an important respect without the need for a final revocation hearing. Place your parole matter on parole's K-calendar while the felony matter is pending. **NOTE:** If, however, the client pleads guilty to a E felony with a local definite 1 year period OR any felony where the sentence is a jail alternative program (i.e, treatment courts or conditional pleas) this will NOT cause an automatic violation. Rather the client would still be entitled to a parole revocation hearing where the attorney can advocate for a revoke and restore to any court mandated program or negotiate a time assessment if a local definite sentence was imposed.
- d. Pleading guilty to pending misdemeanors will also highly impact a client's ability to resolve the parole violation matter if not done with the agreement of the presiding ALJ. The misdemeanor plea can serve as an automatic violation. Client would still be entitled to a contested hearing, but the impact would be that the State need only produced a certified copy of the certificate of disposition to sustain the violation.
- e. If pleading guilty to pending misdemeanors (or to felonies with local time), have sentencing judge write on the commitment, "time to run concurrent with time owed to parole" so that DOCCS doesn't return your client to local custody after he serves his time assessment. Review the sentence and commit sheet prepared by the clerk of the court where the new local sentence was imposed to ensure that language is at the bottom in the remarks section. Failure to be included on the sentence and commit sheet will result in DOCCS not running it concurrent and then a long process between the attorneys in trying to correct it.

4. Calculating Time Left on Sentence

- a. If a relator violates parole, is "held to max", and has more than 12 months left on his sentence upon his reception into DOCCS, then he gets good time credit with a new CR date, calculated at 1/3 of the time off between DOCCS reception

and ME date. If he has less than 12 months left, then he gets no CR date and is held to ME date. If relator is assessed less than the max, as a “plea agreement” or ALJ decision after a final hearing, then he gets no good time credit and must serve the full time assessment (Correction Law §803[5]).

b. Delinquency time added or restored can modify client’s original ME date.

c. Questions? Call DOCCS Sentencing Guru, Diane Holford, at 518-457-4652.

5. Consider Alternatives to Incarceration

a. OPDP

- A 45-day diversion program structured toward behavior modification offered by the parole officer before the preliminary hearing.
- Criteria: first-time violators + technical violations + males only
- Disqualifiers: mental health issues, parolee actively taking psycho-active meds, new criminal arrest, parole absconder, enemies at the OPDP facility, detox issues needed, methodone or suboxone treatment needed, registered sex offender

b. Willard (CPL § 410.91)

- or “DOCCS alternative”
- Only pregnancy disqualifies clients

c. Treatment

- Inpatient treatment
- Outpatient treatment
- Structured residential living environment
- Veterans housing
- Youth Court

*** provide inpatient approval letter info: date bed is available + whether insurance coverage is avail + that your client was evaluated and assessed + how long the program lasts + how to transport your client from jail to inpatient facility (transport via parole officer, family, facility, etc.).

d. Revoke and Restore Alternatives

- GPS monitoring
- Employment secured and start date available
- Medical appointments scheduled
- Treatment program enrollment
- Insurance coverage

E. Preliminary Hearings

- 9 NYCRR § 8005.3, et seq.

1. At the time of service the releasee/alleged violator can elect to have a Preliminary Hearing or elect to waive the hearing. This option exists ONLY when there are no new criminal convictions. That is, if a releasee/alleged violator has a new misdemeanor

conviction they will NOT be entitled to a preliminary hearing. 9 NYCRR §8005.2(c)

- **Timeliness:** must take place within 15 days of that warrant is executed: *People ex rel. Savarese v New York State Bd. Of Parole*, 106 Misc2d 916 (Sup Ct Crim Term Queens County 1980)
- **Burden of proof:** “probable cause” that a violator has violated the conditions of his release in an important respect. If the hearing officer at the preliminary hearing finds probable cause to believe the alleged violator has violated one or more of the conditions of release in an important respect then the hearing shall be concluded and the releasee/ alleged violator is held for a final hearing. If probable cause to believe a violation in an important respect hasn’t been found, then the hearing officer shall dismiss the charges/ notice of violation and direct such person be restored to supervision.
- **Parties:** hearing officer (not the ALJ); parole officer; maybe parole revocation specialist
- *Morrissey v Brewer*, 408 US 471 (1972)
- *People ex rel. Menechino v Warden, Green Haven State Prison*, 27 NY 2d 376 (1971)

F. Final hearings

- 9 NYCRR § 8005.15, et seq.
- Object to all evidentiary and procedural challenges to preserve them for review!
- At a contested final hearing the releasee/alleged violator will have a number of rights – the right to be represented by counsel, the right to appear and speak on their own behalf; the right to introduce evidence, the right to present witnesses, the right to present mitigating evidence relevant to the restoration of parole, and the right to cross examine witnesses against them.
- Prior to the contested hearing, usually at the conference date in which the contested is being scheduled, defense counsel is provided an opportunity to make a request for specific discovery items. The request is made in writing on a discovery order that is then signed by the presiding officer/judge.

1. Due Process

- **Timeliness:** must be scheduled to commence within 90 days of preliminary hearing or of waiver of preliminary hearing: *People ex rel. Levy v Dalsheim*, 66 AD2d 827 (1978). The “final hearing” is often confused as being a single hearing. However, the first “final hearing” is actually referred to as an arraignment. The final hearing stage of the revocation process can actually involve a series of hearings. The requirement to schedule the final hearing within 90 days refers to a contested hearing, which is the equivalent of a trial for parole revocation purposes.

-**Burden of Proof (preponderance of the evidence):** *People ex rel. Warren v Mancusi*, 40 AD2d 279 (4th Dept 1973); *People ex rel. Wallace v State of New*

York, 70 AD2d 781 (4th Dept 1979)

- **Right to counsel:** *People ex rel. Menechino v Warden, Green Haven State Prison*, 27 NY 2d 376 (1971); *People ex rel. Fowler v Smith*, 110 Misc2d 767 (1981)

- **Hearsay:** *People ex rel. Wilt v Meloni*, 170 AD2d 989 (4th Dept 1991); *People ex rel. McGee v. Walters*, 62 N.Y.2d 317(1984); NY Executive Article 14-B- §259-(3)(c)iii, and (3)(f)v

- The hearing examiner MAY allow hearsay evidence without the opportunity for cross examination but only upon a specific finding of GOOD CAUSE, which must be stated on the record, of GOOD CAUSE. However, BEFORE the hearing examiner denies the releasee's right to confront and cross examine an adverse witness they MUST conduct a "careful weighing" (*McGee*) of the following:
 - General policies favoring confrontation;
 - The objective or subjective nature of the contents of the particular testimony, report, etc.;
 - The potential assistance that cross examination of the adverse witness would lend to the fact finding process;
 - Whether the evidence is cumulative; and
 - What burden would be entailed in requiring that the State, and adverse witness, would face if being made available to testify.
- * The balancing test must be done on a case by case basis. Where the examiner fails to enter this analysis on the record, there may be a basis for a writ.

2. Defenses

-**Criminal charges dismissed:** *People ex rel. Dowdy v Smith*, 48 NY2d 477 (1979); *People ex rel. Matthews by Greenberg v New York; State Div. Of Parole*, 58 NY2d 196 (1983)

-**Exclusionary rule:** The exclusionary rule does apply to administrative proceedings such as a parole revocation hearing. If there is a pending criminal case, the request for suppression must be through the criminal case. If, however, there is no criminal case or the criminal case resolved the releasee can seek suppression through the filing of a writ requesting suppression or in the alternative a suppression hearing. *People ex rel. Piccarillo v New York State Bd. Of Parole*, 48 NY2d 76 (1979); *People ex rel. Jones v New York State Bd. Of Parole*, 76 AD2d 782 (1980)

3. Competency

a. *Matter of Lopez v Evans*, 25 NY3d 199 (2015) = holding a parole revocation hearing *after* a court has deemed the parolee to be mentally incompetent violates the due process provision in our State Constitution. The Appellate Division suggested, in dicta, that the Parole Board can assess a parolee's competency in order to determine whether it has jurisdiction to

proceed with the parole revocation proceeding. Amicus Mental Hygiene Legal Service proposes that the Parole Board apply an analog to the procedures set forth under CPL article 730 for an incapacitated defendant charged with a felony to an incapacitated parolee charged with a parole violation amounting to felonious conduct, and that the Parole Board apply something similar to the procedures set forth under CPL article 730 for an incapacitated defendant charged with a misdemeanor to an incapacitated parolee charged with a parole violation equivalent to a misdemeanor. In the present case, this issue was not directly raised because the determination that Lopez was incapacitated had already been made in the recent criminal action arising out of the same conduct. Because the issue is not presented in this case, we express no view on the Parole Board's authority to make competency determinations in cases unlike this one where there has not been a recent judicial determination of incompetency. We note only that it seems clear that there are statutory concerns that the legislature should address.

b. *People ex rel. Fortunato v Warden, George Motchan Detention Center*, 48 Misc3c 649 (Sup Ct Bronx County 2015) = Notwithstanding the due process right to be mentally competent at a parole revocation hearing, there presently exists no applicable statutory scheme within which a court may either order a mental health competency evaluation or hearing in parole revocation proceedings.

G. Interstate Parole Compact (Exec. Law §§ 259-m; 259-mm; and 259-o).

H. Inmate appeals the decision. Grounds for appeal [Executive Law § 259-i (4); 9 NYCRR § 8006.3 (b-c)]:

- Proceeding and/or determination was in violation of lawful procedure
- Proceeding and/or determination was affected by an error of law
- Proceeding and/or determination was arbitrary and capricious
- Proceeding and/or determination was otherwise unlawful
- Board member making the determination relied on erroneous information
- Relevant information was not available for consideration
- Determination made was excessive ***
- Determination not supported by a preponderance of the evidence

The appeal process is initiated by the filing of a notice of appeal within 30 days of the date that the inmate/violator or his 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/violator. 9 NYCRR §8006(1)(b)

ALTERNATIVE RELIEF

A. Release from parole supervision (Exec. Law § 259-j)

- After serving an unrevoked parole/PRS sentence for 3 years for most convictions.
- After serving 5 years (3 of which are unrevoked) parole/PRS for an Article 130 conviction.
- Your client must apply for this relief because it is not granted automatically.

B. Medical Parole (Exec. Law §§ 259-r and 259-s)

1. Inmate suffers from terminal or non-terminal illness.
 2. Illness is so debilitating or incapacitating that inmate is physically or cognitively incapable of presenting any danger to society.
- Unavailable for Murder 1st, Attempted Murder 1st, or Conspiracy for Murder 1st.
 - For other enumerated sentences, the inmate must have served at least ½ of his sentence before becoming eligible for this relief. For non-terminal illness, inmate must have served ½ of his sentence before becoming eligible.
 - The request for a medical diagnosis may be initiated by the Commissioner, inmate, inmate's spouse, inmate's relative, or inmate's attorney.
 - The inmate still must appear before the Board and only will be released under the Board's current standards.
 - Medical parole lasts for six months, but it may be renewed.
 - Denial of medical parole is appealable under 259-i (4).

C. Release Packets

1. They are analogous to a pre-sentence memorandum in sentencing, but they serve to present a post-sentencing, good review of your client to the Board. They also help your client rehabilitate himself and prepare for release by working with you to gather the information for the packet. They also give your client a tool to guide him when presenting his rehabilitation to the Board.
2. Contains the following information:
 - a) Client's background and events leading up to the instant offense;
 - b) Instant offense (as remembered by your client; as reported in the PSI, police reports, inmate status report, sentencing minutes, etc.);
 - c) Sentence and anything helpful said at sentencing;
 - d) Your client's institutional adjustment (copies of program certificates, diplomas, training achievement & employability report, honorable mentions, disciplinary history, program assignment, progress reports, letters of recommendation, etc.);
 - e) Your client's release plans (résumé, letters of reasonable assurance, job offers, letters of support, exact housing location, pictures of family members and/or community support);
 - f) Personal statement of remorse from your client; and
 - g) Anything helpful in arguing for your client's rehabilitation and release (photographs of your client throughout incarceration; COMPAS).

3. Submit it 3-4 months before your client meets the Board for release. Send at least three copies:

- 1) One to your client
- 2) One to your client's correctional facility's parole unit and/or SORC
- 3) One to the Board in Albany

*** Often, your client may give his copy to his SORC. ADVISE HIM NOT TO DO SO. The SORC may not forward the packet to the Board, and then, your client will appear before the Board without any packet available to use when presenting his rehabilitation. Furthermore, the Board may not have the packet, acknowledge its receipt, or review it before the hearing.

D. CPLR Article 78

1. Article 78 – proceeding against a body or officer
2. File this petition in Supreme Court either upon receipt of affirmed decision of release denial or after 4 months of filing the administrative appeal (upon 4 months, you are deemed to have exhausted your administrative remedies) (CPLR § 7804). File as soon as possible, because the issue becomes moot if your client meets the Board before the Article 78 is decided.
3. Questions raised (CPLR § 7803):
 - a) Whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed;
 - b) Whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.
4. The only relief available under an Article 78 is a de novo hearing—not release to parole supervision. If parole is granted, though, the order is reversible.
5. Supreme courts in the Third Department have granted more relief than any other courts.

E. Writs of Habeas Corpus (CPLR Article 70)

Writ of habeas corpus - a summary proceeding regarding illegal detention ; a judicial mandate to a prison official, usually the warden, ordering that an inmate be brought to the court so it can be determined whether or not that person is unlawfully detained and whether or not he or she should be released from custody.

1. The writ must be filed in the county of incarceration [CPLR 7004(c)]
2. A client must be eligible for immediate release from prison if he wins. He cannot be in custody on any other matter.

1. When filing the writ, include all necessary facts to establish the right to relief plus any documentation.
2. Once the writ is filed, the Attorney General's office, representing DOCCS, will write a response. The response may include both procedural and substantive grounds to dismiss the petition. Once the AG's office files the response there will be an opportunity for counsel to file a more detailed reply. The court can then grant, deny or order an evidentiary hearing in regards to the issues raised. Whether the Judge can decide without a hearing or if a hearing is required are governed by the same rules applicable to a motion for summary judgment under the CPLR.

Examples of Writ Issues:

- Service and/or notice issues;
- Due diligence in executing the warrant;
- Issues relating to the waiver of the preliminary hearing and whether it was a knowing and voluntary waiver;
- Issues relating to timeliness of the preliminary hearing;
- Right to be present; did the State proceed in releasee's absence based on information from NYC DOC that the individual allegedly refused (that information is hearsay);
- Right to counsel;
- Right to confront and cross examine adverse witness(es)/hearsay;
- Content of notice; charges are facially insufficient or fail to provide notice as to time, place or manner;
- Hearing officer was not neutral and detached;
- Insufficient evidence to establish the State's burden (probable cause or preponderance of the evidence);
- Request for Competency exam

STATE OF NEW YORK – EXECUTIVE DEPARTMENT – DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION

VIOLATION OF RELEASE REPORT

Warrant Issued	No Warrant Issued
Name:	Date Released: 7/24/17
NYSID #:	Max. Expiration: 7/24/20
Institution: ELMIRA C.F.	Date of Warrant: 4/15/18
DIN #:	Warrant #:
Date of Birth: 11/10/94	Date Enforced:
Offense: C.S.C.S. 4 TH , ATT. ASSAULT 2 ND	Location:
Sentence: 0-0-0/1-6-0, 1-6-0/3-0-0 cc	
PRS: 3 YRS	COMPAS LEVEL: 3

Time on Parole: Years Months Days

Delinquency Date: 4/14/2018

Since his release, the above named individual has violated the Conditions of Release in the following manner:

CHARGE #1: violated rule #8 of the rules governing the conditions of his release in that on 4/14/2018, at about 20:40 hours, at the North East Corner of East 9th street and Avenue D, NYC, during a verbal dispute with Skylar Jacobs, he menace her with a box cutter, placing her in fear for her safety and well-being.

CHARGE #2: violated rule #9 of the rules governing the conditions of his release in that, on 4/14/18, at about 20:40 hours, at the North East corner of East 9th Street and Avenue D, NYC, he was in possession of an instrument readily capable of causing physical injury, to wit: a box cutter, without a satisfactory explanation for possession.

CHARGE #3: olated rule #8 of the rules governing the conditions of his release in that, on 4/14/18, prior to 20:40 hours, he sent multiple text messages to his ex-girlfriend, Cynthia Woodman, threatening to do physical harm, causing her to fear for her life.

CHARGE #4: olated rule #8 of the rules governing the conditions of his release in that, on 4/14/18, at about 20:50 hours, he enter and remain inside of the NYCHA building at 1115 FDR Drive, NYC, without authorization to do so.

CHARGE #5: olated rule #13 of the rules governing the conditions of his release in that, on 4/14/18, at about 9:12pm, in front of 1115 FDR Drive, NYC, he failed to remain inside of his approved residence at 911 FDR Drive, #2C, NYC, during his daily curfew hours of 9:00pm to 7:00am imposed and signed on 7/25/17.

CHARGE #6: Julian Dejesus violated rule #8 of the rules governing the conditions of his release in that, on 4/14/18, at about 20:50 hours, he showed up at ex-girlfriend Cynthia Woodman home at, 1115 FDR Drive, apt #9C, NYC, and continued to threaten her causing her to fear for her life.

DOCUMENTS PROVIDED:

Arrest Notification

Certificate of Release Sheet

POSSIBLE WITNESS(S):

PO D. VOID

Arresting Officer/ Cynthia Woodman- Skylar Jacobs

STATE OF NEW YORK – EXECUTIVE DEPARTMENT – DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION

VIOLATION OF RELEASE REPORT

Name:

NYSID

DIN No:

Case Summary

INTRODUCTION:

is a 28year old male who is currently serving a Determinate 0-0:1-6 year sentence with 3 years of Post Release Supervision concurrent with a 1-6/3-0 year sentence as the result of his convictions for the crimes of CSCS-4th and Att. Assault 2nd. He was sentenced by New York Supreme Court Judge Stolz on 11/9/16.

CRIME OF CONVICTION:

The crime of conviction had two Indictments. On 7/13/15 subject punched complainant about the face and stole \$60.00 from her back pocket. He continues to punched the victim after she fell to the ground. On or about 12/21/15, subject sold a quantity of heroin to an undercover NYPD officer for a sum of US Currency.

CRIMINAL HISTORY:

The subject's criminal history commenced in 2011 consisting of arrest and/or convictions for the crimes of, Robbery, Att. Assault, Assault, Escape, Obstruction of Governmental Admin., Harassment, Att. Tampering with Physical Evidence, and other Drug related offenses.

PRIOR PAROLE HISTORY:

Subject did complete a prior parole term on 9/3/14 under Din # This subject 1st known parole violation on this Crime of Conviction.

CERTIFICATE OF RELIEF FROM DISABILITIES YES NO DATE ISSUED

CERTIFICATE OF RELIEF FOR GOOD CONDUCT YES NO DATE ISSUED

GENERAL ADJUSTMENT & NEW ARREST/VIOLOGIC BEHAVIOR:

Subject was released from Elmira C.F. to this writer on 7/24/17. He was approved to reside with his wife Danielle Dejesus at 911 FDR Drive, #2C, New York City, where he remained up until the 4/14/18 arrest. Parolee was supervised as a level 3 offender and his Community Supervision adjustment marginal at best. Parolee did attend his drug treatment program at Educational Alliance located at, 25 Avenue D, NYC, as scheduled. He was unemployed subsisting on Public Assistance. Parolee provided all negative urine drug test.

CURRENT VIOLOGIC BEHAVIOR:

The nature of the violation is that, on 4/14/18, between the hours of 20:40 hours and 21:12 hours, at the NE corner of East 9th Street and Ave D, and inside of 1115 FDR Drive, NYC, parolee did approached his ex-girlfriend, Cynthia Woodman, friend Skylar Jacobs with intent to menace her with a box cutter in order to retrieve information about Ms. Woodman, placing her in fear. Furthermore, subject showed up at his ex-girlfriend Apartment located at 1115 FDR Drive, #9G, NYC, after sending her threatening text messages throughout the day, and continued to threaten her, causing her to fear for her life. She did call NYPD who arrested subject in front of the aforementioned residence. In addition, parolee failed to remain inside of his approved residence at 911 FDR Drive, #2C, NYC, during his daily curfew hours of 9:00pm to 7:00am. This was evident on the arrest report time and location. This case was conference with SPO M. Bryant and given light to the nature of the violations, alternatives to incarceration are deemed inappropriate.

RELEASEE'S STATEMENT:

Subject statement was not available during the completion of this report.

STATE OF NEW YORK – EXECUTIVE DEPARTMENT – DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION

VIOLATION OF RELEASE REPORT

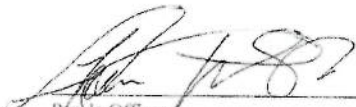
Name:

NYSID:

DIN No:

PRESENT STATUS:

Subject's 4/14/18 arrest is being held in the New York Criminal Court under docket # [REDACTED] and # [REDACTED], part F. His next court appearance is scheduled on 4-18-18. His bail or bond is set at \$7,000.00. Parolee [REDACTED] is currently housed at Manhattan Detention Complex under book and case # [REDACTED].


Parole Officer
DENNIS VOID
Date 4/18/18


Senior Parole Officer
MARCUS BRYANT
Date 4/18/18

NOTICE OF RIGHT TO APPEAL

You have the right to appeal the decision in your parole revocation hearing and you have the right to an attorney for assistance. To appeal the decision, you must file a Notice of Appeal within 30 days of receiving the written decision by sending the Notice of Appeal to the New York State Department of Corrections and Community Supervision, Harriman State Campus, Bldg. 2, 1220 Washington Avenue, Albany, NY 12226-0250.

You have four months from the date of filing the notice to "perfect" (finish) your appeal, unless you write to the Appeals Unit before the four months is over to ask for an extension of time. Your appeal can be perfected by sending an original and two copies of your brief, or a letter which contains the specific grounds for your appeal and the rulings that you are challenging. The brief or letter should include a section which contains all the documents, including sections of the minutes if you ordered them, that you think are necessary for the determination of your appeal. Send only a completed brief or letter; DO NOT send parts of your appeal at different times. Failure to submit the appeal within four months, or by the end of the extension you receive, will result in your appeal being dismissed.

Grounds for appeal include: 1) whether the hearing or the determination was in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or otherwise unlawful; 2) whether the determination was based on erroneous information or relevant information was not available for consideration; 3) whether the determination was excessive; and 4) whether the determination was supported by the preponderance of the evidence (subject to the limitation that evidentiary rulings will be considered only if there was an objection made at the hearing.)

New York State Dept. of Corrections and
Community Supervision
Appeals Unit
Harriman State Campus -- Building 2
1220 Washington Avenue
Albany, NY 12226-2050

NOTICE OF APPEAL

I hereby appeal from the decision in my final parole revocation hearing.

Name: _____

Warrant Number: _____

Department Identification Number: _____

Current Address or Facility: _____

Place of Hearing: _____

Date of Determination: _____

I understand that I may request the minutes of my final revocation hearing if I believe it is necessary for my appeal. If I choose to represent myself and request a copy of the transcript, I understand that I will be charged \$.25 per page. Should I be represented by counsel, my attorney may request the transcript by writing to the Appeals Unit for instructions. If I am not requesting a transcript at this time, I can change this decision by writing to the Appeals Unit and asking for one.

Check the correct box:

☐ I am requesting the minutes of my hearing.

☐ I am not requesting the minutes at this time, but may change this decision at a later time.

Date

Signature

NEW YORK STATE
DIVISION OF PAROLE

-----X
In the Parole Revocation Matter of

Warrant No. _____, NYSID # _____

DISCOVERY ORDER

- against -

New York State Division of Parole.
-----X

It is ordered that the Division of Parole provide to the releasee or to counsel for the releasee the following items within their custody or power to obtain on or before: _____

____ Copies of parole chronological reports and day sheets from _____ to _____

____ Copies of all relevant office report sign-in sheets

____ Copies of urinalysis reports, stick tests, lab reports, and chain of custody form(s)

____ Copies of all relevant special conditions

____ Arrest ("hit") notices for dates _____

____ On-line booking sheets, SPRINT reports and/or 911 tapes, and any other NYPD documents relevant to the charges

____ Unusual Incident Report: Parole _____ NYPD _____

____ Prior statements of witnesses and of parolee, including admissions if any

____ Domestic Incident Report dated _____

____ Copies of medical records or photographs of the complainant that are relevant to the charges

____ Property voucher(s) for property seized by the Division of Parole and/or NYPD

____ Names and NYSID #s and/or dates of birth of the Division of Parole's (civilian) witnesses

____ Other: a) List of Witnesses;

b) A copy of all evidence PVU intends to introduce at the Contested Hearing;

Dated:

Administrative Law Judge