

LOCAL CONDITIONAL RELEASE LAW HIGHLIGHTS

(Part SS of Chapter 56 of the Laws of 2009; Effective April 7, 2009)

- Reestablishes at local option local conditional release for interested jurisdictions (any county and New York City) whereby release decision-making of eligible inmates in a local correctional facility is carried out by a local conditional release commission. If granted release, the releasee is under 1 year of local conditional release supervision performed by the supervising probation department.
- In order to implement, any interested jurisdiction must adopt a local law establishing a local conditional release commission. Specific qualifications and powers and duties of any such commission are statutorily enumerated as are appointments, terms of office and filling of any vacancy (see Correction Law §§271 and 272). Each commission must have 5 members, the local probation director or director's designee must serve as an ex-officio non-voting member, and the local probation department must assign staff to support the commission.
- An eligible inmate is:
 1. a person who is serving a definite sentence imposed by a Criminal Court with a term in excess of 120 days and who has served a minimum period of 60 days in a local correctional facility;
 2. a person who has not been previously convicted and does not stand convicted of any crime which would make him/her ineligible for receipt of merit time, any Penal Law Article 235 (Obscenity and related offenses) when the victim of the offense was under 18 at the time of the offense, or any crime which the commission determines constitutes a crime of domestic violence;
 3. a person who has jail records making him/her eligible for a reduction of sentence under Correction Law §804 (good behavior allowance); and
 4. a person who has verified community ties in one of the following areas: employment, permanent residence and family.

Note: Inmates committed to definite terms by a Family Court or serving an intermittent sentence of imprisonment are ineligible.

- A commission *may* require the probation department situated in its jurisdiction to conduct a supplemental investigation and prepare a report as to any application (see below reference to DPCA rule in this area).
- The sentencing court, district attorney, and defense counsel must receive notice of any application received within 5 business days of receipt of an application filed and afforded 15 days to comment. Comments received must be provided to the commission and all parties.

- The minutes of all commission meetings must be recorded and such records must be retained according to applicable standards. Note: Record retention and disposition of local government records are governed by Article 57-A of the Arts and Cultural Affairs Law. There exists a Records Retention and Disposition *Schedule CO-2* with respect to Counties issued by the State Archives, State Education Department pursuant to Arts and Cultural Affairs Law §57.25 and 8 NYCRR Part 185. It is accessible on the State Archives website: <http://www.archives.nysed.gov>. In New York City, retention periods are established by the New York City Department of Records and Information Services.
- Every commission must make a determination within 30 days of receipt of an application. A decision in this area requires a majority vote of at least 3 members present. No release is to be granted *unless* the individual is an eligible inmate and there is a reasonable probability that if released: the inmate shall live and remain at liberty without violating the law, that the release is not incompatible with the welfare of society, and shall not so deprecate the seriousness of the crime as to undermine respect for law.
- If conditional release is not granted, the commission must inform the inmate in writing of the factors and reasons for denial within 15 days of the denial. Such reasons must be given in detail and not in conclusory terms. Individuals denied *may* reapply within 60 days after the date of denial.
- Conditions of conditional release must be in accordance with DPCA rules and regulations, 9 NYCRR Part 364. Where appropriate there must be a condition requiring the individual to comply with any restitution order previously imposed by a court of competent jurisdiction which applies to such individual. This rule contains mandatory and permissive conditions of release. DPCA strongly recommends that a local conditional release commission carefully consider and incorporate recommended conditions of conditional release sought by the supervising probation department, especially with certain offender populations (i.e., sex offense, DWI, domestic violence). Specialized conditions of this nature are nationally recognized to immeasurably assist supervising agencies to better manage certain types of offenders with a current or past criminal history. Such conditions typically include other appropriate legal requirements which in turn safeguard the public (i.e., compliance with Sex Offender Registration Act, submission of DNA, adherence to ignition interlock restriction, obeying Order of Protection).
- No person granted conditional release shall be released *until* he/she has served a minimum period of 90 days and agrees to such conditions imposed. In computing 90 days, credit allowed for jail time shall be granted as time served.
- The period of local conditional release supervision is 1 year. The commission must impose a minimum of 4 supervision contacts per month while the individual is under conditional release unless the commission determines that fewer contacts are appropriate in any individual case. It is further recognized that a supervising probation officer shall contact a conditional releasee pursuant to DPCA rules and regulations. The process of risk and needs assessment is still required to inform the probation department of the

proper level of supervision and develop an individual plan of supervision. Remaining DPCA regulatory requirements in the area of supervision still control and are effective, including but not limited to provisions relating to authorized search, record-keeping, and reporting requirements. I-PRS will be the vehicle for probation departments to report client specific conditional release information. DPCA has recently issued I-PRS Guidance with respect to reporting such case information.

- Procedures as to violation, delinquency, warrants and revocation are virtually identical to the prior law in this area. If at any time during the period of conditional release the commission has reasonable cause to believe that a conditional releasee has lapsed into criminal ways or company or has violated one or more conditions of conditional release, the commission or such member may declare the individual delinquent and issue a written declaration of delinquency. Upon such declaration, the commission or a member may issue a warrant for retaking and temporary detention of the individual. A warrant issued constitutes sufficient authority to the chief administrative officer of any local correctional facility to whom it is delivered to hold in temporary detention the person named therein. A warrant issued may be executed by a probation officer or any officer authorized to serve criminal process or any peace officer, acting pursuant to his/her special duties, or any police officer. Any officer to whom it is delivered is authorized to execute the warrant by taking the person into custody and having him/her temporarily detained. A notice of violation must be given to the releasee within 5 days of execution of the warrant. The notice must relay the time, place and purpose of the hearing and state what conditions of conditional release are alleged to have been violated and in what manner and must inform the individual of his/her right to counsel at all stages of the proceeding. A hearing must occur within 20 days of execution of a warrant. At the time of the alleged violator's appearance, the commission must ask the individual whether he/she wishes to make any statement with respect to the violation. If the alleged violator makes a statement, the commission may accept it and base a decision thereon. If the commission does not accept it or the individual does not make a statement, the commission must proceed with a hearing. The commission may receive any relevant evidence. The alleged violator may cross examine witnesses and may present evidence on his/her own behalf. At the conclusion of the hearing, the commission must issue a finding. If not satisfied that there is a preponderance of evidence in support of the violation, the commission must dismiss the violation, cancel the delinquency, and restore the individual to supervision. If satisfied that there is a preponderance of evidence that the individual violated one or more conditions in an important respect, the commission must so find and may revoke the conditional release, continue, or modify the conditions of release. If revocation occurs, the individual must be committed to the custody of the local correctional facility to serve the remaining sentence of imprisonment. Where the commission modifies conditions of conditional release, the commission must provide the modified conditions in writing to the conditional releasee.
- Any actions by the commission pursuant to Correction Law Article 12 are deemed a judicial function and are not reviewable if done in accordance with law.

- As for transfer of custody and supervision of conditional release, the commission *may* designate any other commission to assume custody and transfer custody upon the consent of the other commission or the Board of Parole. Where transferred to another commission, the probation department in the receiving jurisdiction assumes the duty to supervise the individual.
- The Division of Probation and Correctional Alternatives has authority to promulgate regulations in conformance with this new Correction Law Article 12 with respect to commission operations. See 9 NYCRR Part 361 Supervision of Conditional Releasees, Part 362 Violations of Conditional Release, Part 363 Conditional Release Supplemental Investigations, and Part 364 Conditional Release Conditions available on DPCA's website: www.dpca.state.ny.us.
- A new Executive Law §257-b as to probation departments duties of supervising local conditional releasees is virtually identical to prior law in this area.