Division of Parole Rules and Regulations On the Web

Title 9 of the
Official Compilation of Codes, Rules and Regulations of the State of New York (9 NYCRR, Subtitle CC, Parts 8000-8011).

A. Introduction:

The rules and regulations found in 9 *NYCRR, Subtitle CC,* are the official statements of policy that implement or apply Article 12-B of the NYS Executive Law.

This web page contains an electronic version of portions of 9 *NYCRR* in hypertext format, and is intended as a quick reference tool. We believe that the text posted is accurate, but it is not a certified copy of the regulations. For this reason, **you should not rely upon material obtained from this web site for legal interpretation**. [*see*, **Disclaimer**]. The text filed with the Secretary of State, as printed by Lawyers Cooperative Publishing, is the only official source for the definitive text of regulations. The printed version is usually available in law libraries or in larger public libraries.

B. **Disclaimer**: (link) (see below for text)

Regulations Disclaimer

These regulations are presented as a quick reference tool. While they are believed to be accurate, they are **not** certified copies of the regulations and therefore should **not** be relied upon for legal interpretation.

The regulations filed with the Secretary of State, as printed by Lawyers Cooperative Publishing, will continue to be the official source for NYSDEC regulations.

Questions concerning a particular posting should be directed to the Contact indicated in the posting.

In writing about a regulation, cite as "9 NYCRR Part __" or "9 NYCRR §__".

C. Table of Contents:

INFORMATION

D**. Rules and Regulations** [Text is current through August 16, 2004]

PART 8000. GENERAL PROVISIONS

Section 8000.1 Applicability.

The rules and regulations set forth in this Subtitle implement and govern the functions, powers and duties of the Division of Parole in the Executive Department and of the Board of Parole.

(a) Regulations of the Division of Parole shall be promulgated by the chairman of the Board of Parole and shall govern the responsibility of the division to:

(1) collect information and maintain records with regard to each inmate and with regard to each person released on parole or conditional release;

(2) supervise all persons released on parole or conditional release, and any other persons as required by statute;

(3) investigate alleged violations of parole or conditional release and, when necessary, accomplish the revocation of such release;

(4) prepare reports and other data required by the board in the exercise of its functions; and

(5) assist inmates eligible for parole or conditional release and inmates on parole or conditional release to secure employment, educational or vocational training, and encourage apprenticeship training of such persons through the assistance and cooperation of industrial, commercial and labor organizations.

(b) Regulations of the Board of Parole shall be enacted by the Board of Parole and shall govern the conduct of the Board of Parole and its responsibility to:

(1) determine what inmates serving indeterminate or reformatory sentences of imprisonment may be released on parole, and when and under what conditions;

(2) determine what inmates serving a definite sentence of imprisonment may be released on parole, and when and under what conditions;

(3) determine the conditions of release of a person who may be conditionally released under an indeterminate or reformatory sentence of imprisonment;

(4) establish minimum periods of imprisonment in cases where the court has not done so;

(5) study or cause to be studied the inmates confined in institutions over which the board has jurisdiction, so as to determine their ultimate fitness to be paroled;

(6) revoke parole or conditional release of any person and authorize the issuance of a warrant for the retaking of such persons;

(7) determine the need for further investigation of the background of each inmate as he is received by the Department of Correctional Services, and cause such investigation to be made;

(8) establish and maintain written guidelines for its use in making parole decisions as required by law;

(9) grant and revoke certificates of relief from disabilities, and certificates of good con duct, as required by law;

(10) report to the Governor, upon request, the information required by statute for his consideration of pardons and commutations and applications for the restoration of rights of citizenship;

(11) issue subpoenas and subpoenas duces tecum in order to compel attendance of wit nesses and the production of books, papers and other documents pertinent to inquiries and investigations in the performance of its duties;

(12) authorize members and hearing officers to administer oaths and take the testimony of witnesses under oath, and to issue subpoenas and

subpoenas duces tecum in order to compel attendance of witnesses and the production of books, papers and other documents pertinent to inquiries and investigations in the performance of its duties;

(13) certify the amount of jail-time credit to which a person may be entitled, pursuant to section 70.40 of the Penal Law, to the person in charge of the institution in which such sentence is being served;

(14) transmit a report of the work of the State Board of Parole for the preceding calendar year to the Governor and Legislature, annually; and

(15) provide for the confidentiality of information and records which are collected and maintained with regard to each inmate and each person released on parole or conditional release, and access thereto.

Section 8000.2 Definitions.

When used in this Subtitle:

(a) Board means the State Board of Parole in the Executive Department.

(b) Division means the Division of Parole in the Executive Department.

(c) Board member means a member of the State Board of Parole.

(d) Chairman means a member of the State Board of Parole who is designated by the Governor to serve in that capacity.

(e) Final revocation hearing means a hearing to determine whether a person released on parole or conditional release has violated one or more of the conditions of release in an important respect.

(f) Preliminary hearing means a hearing to determine whether there is probable cause to believe that a person on parole or conditional release has violated one or more of the conditions of release in an important respect.

(g) Hearing officer means an employee of the division appointed by the chairman, pursuant to section 259-d of the Executive Law, who is authorized to conduct final revocation hearings, and may be designated by the board to conduct preliminary hearings.

(h) Presiding officer means a board member or a hearing officer who conducts a final revocation hearing.

(i) Adversary officer means an employee of the division who may represent the Division of Parole at preliminary or a final revocation hearing. A parole officer, senior parole officer, area supervisor, or parole revocation specialist or other employee designated by the chairman may act as an adversary officer.

(j) Parole officer means an employee of the division whose duties may include but are not limited to the supervision of persons on parole or conditional release, performance of nonclerical duties in institutions, and the representation of the Division of Parole at preliminary and final revocation hearings.

(k) Designated officer means any officer of the division whom the board has designated to issue and sign a warrant for the retaking and detention of any releasee.

(l) Preliminary hearing officer means an employee of the division who is designated by the board to conduct preliminary hearings.

(m) Releasee means a paroled or conditionally released person or a prisoner received under the Uniform Act for out-of-state parolee supervision.

(n) Final declaration of delinquency means a declaration of delinquency issued by the board where a releasee has been convicted of a new felony committed while under his present parole or conditional release supervision and a new indeterminate or determinate sentence has been imposed. The issuance of a final declaration of delinquency eliminates the necessity for a final revocation hearing.

(o) Filed means received at the appropriate office of the Division of Parole.

Section 8000.3 Stay and amendment of rules and regulations.

The chairman in his discretion, or the board in its discretion, may direct orally or in writing that any rule or regulation may be stayed, suspended, rescinded, modified or amended. If the direction is oral, it shall be reduced to writing as soon as practicable, and if the direction constitutes an amendment, it shall be filed with the Secretary of State.

Section 8000.4 Modification of decision.

In its discretion, the board may revoke or modify any of its decisions or determinations.

Section 8000.5 Parole records.

(a) The division shall cause to be obtained and filed, as soon as practicable, information as complete as may be obtainable with regard to each inmate who is received in an institution under the jurisdiction of the State Department of Correctional Services, including a complete statement of the crime for which the inmate has been sentenced, the circumstances of such crime, all presentence memoranda, the nature of the sentence, the court in which he was sentenced, the name of the judge and district attorney, and copies of such probation reports as may have been made, as well as reports as to the inmate's social, physical, mental and psychiatric condition and history.

(b) The division shall cause complete records to be kept of every person on parole or conditional release. Such records shall contain the aliases and photographs of each person and the information referred to in subdivision (a) of this section, as well as all reports of parole officers in relation to such persons.

(c) Access to case records maintained by the Division of Parole.

(1) An inmate, a releasee or counsel for either may have access to information contained in the parole case record:

(i) prior to a scheduled appearance before the board;

(ii) prior to a scheduled appearance before an authorized hearing officer of the division; or

(iii) prior to the timely perfecting of an administrative appeal of a final decision of the board.

(2) In that it is essential to protect the internal process by which division personnel assist the board in formulating individual decisions with respect to inmates and releasees; to prevent disclosures of information to inmates and releasees that would jeopardize legitimate correctional interests of security, custody, supervision or rehabilitation; to permit receipt of relevant information regarding such persons from other Federal, State and local law enforcement agencies, and Federal and State probation and judicial offices; to permit private citizens to express freely their opinions for or against an individual's parole; to allow relevant criminal history type information of codefendants to be kept; to allow medical, psychiatric and sociological material to be available to professional staff; and to permit a candid process of factual analysis, opinion formulation, evaluation and recommendation to be continued by professional staff: the following

conditions and limitations are imposed regarding access to information in the parole case record pursuant to paragraph (1) of this subdivision.

(i) Access shall be granted only to those portions of the case record which will be considered by the board or authorized hearing officer at a hearing or pursuant to an administrative appeal of a final decision of the board, except:

(a) access shall not be granted to those portions of the case record to the extent that they contain:

(1) diagnostic opinions which, if known to the inmate/releasee, could lead to a serious disruption of his institutional program or supervision;

(2) materials which would reveal sources of information obtained upon a promise of confidentiality;

(3) any information which if disclosed might result in harm, physical or otherwise, to any person;

(b) access by the Division of Parole shall not be granted to reports, documents and materials of other agencies, including but not limited to probation reports, drug abuse and alcoholism rehabilitation records, and the DCJS report.

(ii) Any record of the Division of Parole not made available pursuant to this section shall not be released, except by the chairman upon good cause shown.

(3) Requests for access to case records prior to an appearance before the board or an authorized hearing officer, or prior to the timely perfecting of an administrative appeal, shall be made in writing to the:

(i) senior parole officer, or parole officer in charge, of the State correctional facility where the inmate/releasee is confined; or

(ii) director of the area parole office serving the locale where the releasee is confined in a city or county jail or correctional facility; at least 10 days prior to the scheduled date of a final revocation hearing or the final date to perfect an administrative appeal, and at most one day subsequent to receipt of notice of the scheduled date of any other hearing.

(4) All requests by counsel on behalf of an inmate/releasee for access to case records must be accompanied by a signed authorization from such inmate/releasee, in which a waiver of his/her privacy interest is clearly stated.

(5) For the purpose of access to case records, the senior parole officer or parole officer in charge at an institution, or the director of an area parole office or such other professional staff person(s) designated by one of the above persons, shall be the records access officer.

(6) Review of those portions of the case record to which access is granted may take place on the day of the hearing or earlier at the:

(i) State institution where the inmate/releasee is confined; or

(ii) area parole office serving the locale of the city or county institution where the inmate/releasee is confined;

pursuant to arrangements made for review on any workday with records access officer or his designee.

(7) Pursuant to a review of a case record as noted in paragraph (6) of this subdivision, the inmate/releasee or counsel for either may request and receive copies of such records upon payment to the records access officer of 25 cents per page.

(8) Requests for access to case records shall state the name and identification number of the inmate/releasee, the nature of the pending hearing and the present institution of confinement.

(d) Any record of the Division of Parole not made available pursuant to this section shall not be released, except by the chairman upon good cause shown.

(e) Requests for access to records in the parole file prior to an appearance before the Board of Parole, or an authorized hearing officer, shall be made in writing to the chairman of the board at Central Office (Albany) at least 10 days prior to the scheduled date of the hearing.

(f) The request should identify, to the extent possible, the information to which access is sought and should state the reasons requiring such access.

(g) In addition to the forwarding of the request to Central Office, a copy of the request should be forwarded to the senior parole officer at the inmate's institution of confinement or to the director of the area parole office serving the locale of the releasee's local confinement.

(h) Review of the reports, documents and materials to which access is granted may take place at the institution where the inmate or releasee is confined on the day of the hearing or sooner, pursuant to arrangements

made for such review with parole staff at the institution or in the area office where appropriate.

(i) Requests for access to records shall state the name of the inmate or releasee, the nature of the pending hearing and the present institution of confinement.

Section 8000.6 Subpoenas.

(a) The following members of the division shall have the delegated authority to issue subpoenas and subpoenas duces tecum in order to compel attendance of witnesses under oath and the production of books, papers and other documents pertinent to inquiries and investigations in the performance of their duties:

(1) preliminary hearing officers;

(2) final hearing officers;

(3) regional directors and assistant regional directors;

(4) area supervisors;

(5) for the community based sub-offices including but not limited to those currently located in Binghamton, Peekskill and Utica, the senior parole officer in charge of each such office;

(6) parole revocation specialists; and

(7) chief and assistant chiefs of the parole violation unit.

Section 8000.7 Supervision categories.

There shall be three general categories of supervision of releasees under the division's supervision: intensive supervision, regular supervision, and inactive supervision.

PART 8001. MINIMUM PERIOD OF IMPRISONMENT

Section 8001.1 Indeterminate sentences.

Inmates serving indeterminate sentences in which the court has not fixed the minimum period of imprisonment shall appear before the board within 120 days from the date of reception in an institution under the jurisdiction of the Department of Correctional Services pursuant to such sentence or as soon thereafter as practicable, at which time the board

shall determine the minimum period of imprisonment to be served by such inmates prior to their appearance before the board for consideration for release on parole.

Section 8001.2 MPI hearing.

(a) A minimum period of imprisonment (MPI) hearing shall be conducted by a member or members of the Board of Parole.

(b) The information to be considered at the MPI hearing shall include a complete statement of the crime for which the inmate has been sentenced, the circumstances of such crime, all available presentence memoranda, the nature of the sentence, the court in which he was sentenced, the names of the judge and district attorney, and copies of such probation reports as may have been made, as well as reports as to the inmate's social, physical, mental and psychiatric condition and history, the results of any background investigations conducted by the division, and the complete Family Court and Criminal Court record of such inmate.

(c) Upon conclusion of the hearing, the board member(s) shall set the minimum period of imprisonment to be served prior to parole consideration, and shall provide to the inmate reasons in writing for the minimum period of imprisonment set.

Section 8001.3 Guidelines.

(a) Purpose. The New York State Board of Parole has adopted a set of guidelines, the purpose of which is to structure its discretion with regard to MPI and release decisions. While the guidelines will be considered in each MPI and release decision, they are based on only two major factors--crime severity and past criminal history. They are intended only as a guide, and are not a substitute for the careful consideration of the many circumstances of each individual case.

(b) Content.

(1) The guidelines adopted by the New York State Board of Parole represent the policy of the board concerning the customary total time served before release for each category of offense, based on the crime of conviction and actual criminal conduct, and each category of offender, based on prior criminal history.

(2) The guidelines are subject to important limitations imposed by law:
(i) any court-imposed minimum must be served before parole release may be granted; and
(ii) all inmates, except those serving life sentences, are eligible to

have their maximum sentence reduced by one-third for good time.

(3) To derive the guideline time range, the appropriate cell is located on the parole decisionmaking grid where the offense severity and prior criminal history scores intersect. The offense severity score is located on the vertical axis, the prior criminal history score on the horizontal axis. The cell on the guideline grid where the two scores intersect indicates the suggested time to be served, based on these two major factors. The chart below presents the current New York State parole guidelines. For example, application of the guidelines in the case of an offense score of 5 and a prior criminal history score of 4 yields a range of 20-38 months.

GUIDELINES FOR PAROLE BOARD DECISIONMAKING

	Prior criminal history score		
Offense severity score	*0-1 (Low)*	*2-5 (Moderate)*	*6-11 (Serious)*
8-9 most severe	*Specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.*		
7	*30-60 months*	*40-72 months*	*60-96 months*
6	*22-40 months*	*30-50 months*	*46-72 months*
4-5	*16-30 months*	*20-38 months*	*30-54 months*
2-3	*14-24 months*	*18-30 months*	*20-36 months*
1 least severe	*12-18 months*	*14-24 months*	*16-28 months*

Prior to granting release on parole, the Board of Parole considers in all cases:

(i) institutional adjustment, including but not limited to program goals and accomplishments, academic achievements, vocational education, training or work assignments, and therapy and interpersonal relationships with
staff and inmates;

(ii) performance, if any, as a participant in a temporary release program;

(iii) availability of adequate release plans, including community resources, employment, education and training and support services.

(c) *Decisions outside the guidelines.* The time ranges indicated above are merely guidelines. Mitigating or aggravating factors may result in decisions above or below the guidelines. In any case where the decision rendered is outside the guidelines, the detailed reason for such decision, including the fact or factors relied on, shall be provided to the inmate in writing.

(d) *Revision of guidelines.* The Board of Parole shall review the guidelines (including factors relating to prior criminal history and offense severity categories) periodically. In its discretion, the board may revise or modify the guidelines in whole or in part. Periodic revisions shall be made available by the office of the chairman and shall be filed with the Secretary of State.

PART 8002. PAROLE RELEASE

Section 8002.1 General.

(a) 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 the law.

(b) Earned eligibility. Inmates statutorily eligible to receive a certificate of earned eligibility pursuant to section 805 of the Correction Law, and who have been issued such certificates by the Commissioner of Correctional Services, shall be granted parole release at the expiration of their minimum terms or as authorized by subdivision 4 of section 867 of the Correction Law, unless the Board of Parole determines that there is a reasonable probability that, if such inmate is released, he will not live and remain at liberty without violating the law and that release is not compatible with the welfare of society.

Section 8002.2 Parole release interview.

(a) Each inmate shall be scheduled for a parole release interview at least one month prior to the expiration of the minimum period of imprisonment, whether fixed by the court or the Board of Parole, or upon such reconsideration date as has been fixed by the Board of Parole.

(b) The parole release interview shall be conducted by a panel of at least two members of the Board of Parole.

Section 8002.3 Parole release decision.

(a) *Cases wherein the guidelines have not previously been applied*. In making the parole release decision for those cases where the guidelines have not previously been applied (i.e., MPI's set by the board prior to January 1, 1978 and cases wherein the court imposed the minimum), the board shall apply the guidelines and in addition the following factors shall be considered:

(1) the institutional record, including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interpersonal relationships with staff and inmates;
(2) performance, if any, as a participant in a temporary release program; and
(3) release plans, including community resources, employment, education and training and support services available to the inmate.

(b) *Cases where the guidelines have previously been applied*. In those cases where the guidelines have previously been applied, the board shall consider the following in making the parole release decision. Release shall be granted unless one or more of the following is unsatisfactory:

(1) the institutional record, including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interpersonal relationships with staff and inmates;
(2) performance, if any, as a participant in a temporary release program; or
(3) release plans, including community resources, employment, education and training and support services available to the inmate.

(c) *Cases where an earned eligibility certificate has been issued*. At least one month prior to the expiration of the minimum period or periods of imprisonment fixed by the court or board, a member or members as determined by the rules of the board shall interview an inmate serving an indeterminate sentence for release consideration. When the minimum term of imprisonment is in accord with or greater than the time ranges for imprisonment contained within the guidelines adopted pursuant to this Part, parole release shall be granted at the expiration of such minimum term of imprisonment as long as such release is in accordance with the remaining guideline criteria. Where the minimum term of imprisonment, as fixed by the court or board, is less

than the time range for imprisonment contained in the guidelines adopted pursuant to this Part, then the issuance of a certificate of earned eligibility shall militate in favor of granting parole release unless the member or members determine, in accordance with the remaining guideline criteria, that there is reasonable probability that the inmate will not live and remain at liberty without violating the law and that the release is not compatible with the welfare of society. In those cases where a certificate of earned eligibility has been issued, the board shall consider the following in making the parole release decision:

(1) the guideline time-range matrix;
(2) the institutional disciplinary record;
(3) performance, if any, as a participant in a temporary release program;
(4) release plans, including community resources, employment, education and training, and support services available to the inmate; and
(5) any available information which would indicate an inability to live and remain at liberty without violating the law, and that the release is incompatible with the welfare of society.

(d) *Reasons for denial*. If parole is not granted, the inmate shall be informed in writing, within two weeks of his interview, of the factors and reasons in detail for such denial. A date for reconsideration shall also be specified. Such date shall be within 24 months.

(e) *Parole program*. Prior to his release, every inmate shall attempt to obtain suitable employment if he is able to work, a suitable educational program or other program specified by the board. The board may, however, release an inmate on parole without a definite offer of employment if it is satisfied that such inmate will probably be suitably employed, enrolled in a suitable educational or training program or other program specified by the board if so released on parole. Offers of employment, educational or training program must be filed with the parole representative of the office in the area from which the offer originates.

(f) *ODOP (open date own program)*. Where a decision to release an inmate to parole supervision has been rendered, but a satisfactory program has not been developed, an inmate may receive an ODOP (open date own program). Release shall occur as soon after such date as a satisfactory program is available. If a program is not developed within six months of the parole release hearing, the inmate will again appear before the board for a reconsideration of his status.

Section 8002.4 Victim impact statement.

(a) Parole Board policy and intent. It is the policy of the Board of Parole that crime victims are an integral part of the criminal justice process, that they should be treated with fairness, sensitivity and dignity at all times, and that victims of the most serious crimes should be permitted an opportunity to make an oral statement to a member of the Board of Parole in a setting that permits confidentiality and a nonthreatening atmosphere. The board's intention is to create a meaningful opportunity for individuals whose lives have been severely affected by serious crimes to explain the impact of the crime in a face-to-face setting. The board recognizes that some crimes may affect the lives of more than one person and that in some cases a victim may need the support of another person to enable him or her to make an oral statement to a board member. However, the board has finite resources and must place limits on who may make an oral statement, and under what circumstances and procedures, in order to permit it to manage all of its statutory responsibilities. The board's policy of permitting victim oral statements in some cases has been codified by the Legislature in chapter 559 of the Laws of 1994, amending the Criminal Procedure Law and the Executive Law. These regulations set forth the procedures and limitations specified in Criminal Procedure Law, section 440.50.

(b) The Board of Parole will consider the written or oral statement submitted or made by the crime victim, or the victim's representative where the victim is deceased or is mentally or physically incapacitated, prior to rendering a decision to grant or deny parole release, provided that the victim's written statement is received by the division at least 10 business days prior to the date of the inmate's scheduled appearance before the board and that the request to make an oral statement complies with the provisions of subdivisions (c) and (d) of this section. The victim may obtain information concerning the inmate's scheduled appearance upon written request to the Victim Impact Unit.

(c) (1) A written victim impact statement, or a request to make an oral statement, should be addressed to the Victim Impact Unit, New York State Division of Parole, 97 Central Avenue, Albany, NY 12206.

(2) A request to make an oral victim impact statement must be in writing, and such a request or a written victim impact statement must clearly identify the inmate's name and New York State identification number (NYSID or "NYSIIS" number, which consists of seven digits followed by a letter). The NYSID number may be obtained from the office of the district attorney in the county in which the inmate was convicted.

(3) A letter may serve as a written victim impact statement. If a letter is received from a crime victim which does not have a NYSID number,

the Victim Impact Unit will attempt to identify the inmate based upon whatever other identifying information may be contained in the statement. If the Victim Impact Unit is unable to identify the inmate based on the information provided, the victim will be so advised. If the appropriate inmate can be identified, the written statement will be sent to the inmate's facility of incarceration so that the statement may be available for consideration by the board.

(d) Personal meetings between a crime victim and a member of the board will be conducted for the purpose of permitting a crime victim to make an oral victim impact statement only in accordance with the procedures and limitations set forth in this section in order to permit the board to allocate finite resources for this purpose. However, in its sole discretion, the board may waive one or more requirements of this section in order to further its policy of ensuring that crime victims are treated with fairness, sensitivity and dignity.

(1) A request to make an oral statement should be made not later than six months before the inmate's appearance before the board for the board's decision whether to grant or deny release.

(2) The time, place and date of the personal meeting between the victim and a board member will be designated by the Victim Impact Unit on behalf of the board.

(3) The personal meeting/victim oral statement should be scheduled and take place at least 30 days prior to the inmate's next appearance before the board for release consideration.

(4) The board reserves the right to limit the victim oral statement to a reasonable time period.

(5) Limitation on who may make a statement. In furtherance of its policy to create a meaningful opportunity for individuals whose lives have been severely affected by serious crimes to explain the impact of the crime in a face-to-face setting and its recognition that some crimes may affect the lives of more than one person, the board may permit multiple oral statements to be made. However, in order to conserve finite resources, the board reserves the authority to permit only one oral statement by one victim, or victim's representative, for one crime. A victim's representative may make an oral statement in place of the victim only when the victim is deceased or incapacitated, and the board reserves the authority to determine who, in a specific case, is the appropriate victim's representative. In order to conserve its finite resources, the board also limits the opportunity to make an oral statement to victims of the following offenses, or a victim who the

Chairman of the Board of Parole has determined has been affected within the intent of this policy by an offense other than one listed below:

(i) a violent felony offense, as defined in Penal Law, section 70.02;
(ii) one of the following A-I felonies: murder in the first degree, murder in the second degree, kidnapping in the first degree and arson in the first degree when there is serious physical injury to a nonparticipant or a nonparticipant is present in the building or motor vehicle; or
(iii) one of the following offenses, which are not included in Penal Law, section 70.02: manslaughter in the second degree, vehicular manslaughter in the first degree, vehicular manslaughter in the second degree, criminally negligent homicide, rape in the second degree, rape in the third degree, sodomy in the second degree, sodomy in the third degree, attempted sexual abuse in the first degree, attempted rape in the second degree, attempted sodomy in the second degree.

(6) Limitation on content. The oral statement may not simply repeat the circumstances of the crime. The oral statement should describe the impact of the crime on the victim or the survivor.

(7) Method of recording the statement. The board member conducting the personal meeting with the victim will prepare a written report of the oral statement. A copy of the report will be sent to the facility to be included in the inmate's parole folder so that it is available for the board at the time of the inmate's board appearance. The written report of the oral statement will be considered by the board panel that interviews the inmate as one factor in making a decision whether to grant or deny release pursuant to Executive Law, section 259-i(2).

(e) A written victim impact statement or written report of an oral statement shall be maintained in confidence by the division, unless disclosure to the inmate is expressly authorized by the victim or by court order.

Section 8002.5 Rescission.

(a) After an inmate has received a parole release date, situations may arise which would cause the board to reconsider its decision to grant parole release. The process for reconsideration of a parole release date shall be governed by the procedure outlined in this section.

(b) *Rescission procedure.*

(1) Whenever it shall come to the attention of the senior parole officer or the parole officer in charge of an institutional parole office that there may be a basis for board reconsideration of a parole release date,

said officer may temporarily suspend the inmate's release date.

(2) Events which may cause the temporary suspension and rescission of a parole release date shall include, but not be limited to:

(i) significant information which existed, or significant misbehavior which occurred prior to the rendition of the parole release decision, where such information was not known by the board; or

(ii) case developments which occur subsequent to the board's rendition of its decision to grant release:

(a) significant misbehavior or a major violation of facility rules;

(b) escape or absconding or removal from temporary release;

(c) substantial change in the inmate's mental and/or emotional condition which results in commitment to a psychiatric center;

(d) imposition of an additional definite sentence;

(e) imposition of an additional indeterminate sentence or the resentence of the inmate on the underlying indictment or superior court information to an indeterminate term where the minimum period of imprisonment of such term exceeds that of the pre-existing minimum term; and

(f) substantial change in the inmate's status in relation to any of the factors for consideration denoted in Executive Law, section 259-i(2)(c).

(3) Subsequent to the temporary suspension of the inmate's release date, the parole officer shall, as soon as practicable, notify the inmate in writing of the suspension. The parole officer having charge of the inmate shall thereafter commence an investigation into the circumstances surrounding the basis for the temporary suspension, and shall prepare a rescission report delineating the results of said investigation. Said report shall be submitted to a member of the board as soon as practicable.

(4) Upon review of the rescission report, a member of the board shall order:

(i) that the inmate be held for a rescission hearing; or

(ii) that the inmate's release date be reinstated, except that where the board's reinstatement occurs subsequent to the date originally established for release, the board shall order that release occur as soon

after reinstatement as practicable; or

(iii) for any case involving the imposition of an additional indeterminate sentence or a resentence pursuant to clause (2)(ii)(e) of this subdivision, that the release date be rescinded and the inmate scheduled to appear before a panel of the Board of Parole at least one month prior to the expiration of the new or aggregated minimum period of imprisonment as calculated by the inmate records coordinator. Written notice of a rescission decision rendered pursuant to this paragraph shall be sent to the inmate, and shall state the reason for rescission.

(5) When a rescission hearing is ordered by the board, the inmate shall be presented with a copy of the rescission report and a notice of rescission hearing. The notice of rescission hearing shall be presented to the inmate not less than seven days prior to the scheduled date of the rescission hearing and shall inform the inmate of the following:

(i) the date and place of hearing;

(ii) the specific allegations which will be considered at the hearing;

(iii) the inmate's rights at the final hearing, which include:

(a) the right to be represented by counsel;

(b) the right to appear and speak on his own behalf; to present witnesses and introduce documentary evidence; and

(c) the right to confront and cross-examine adverse witnesses, unless he has been convicted of a crime for which an additional sentence has been imposed or unless a majority of the members of the Board of Parole conducting the hearing find good cause in the record for the nonattendance of a witness.

(6) An attorney who represents an inmate at a rescission hearing shall file a notice of appearance with the parole officer in charge of the institutional parole office where the inmate is incarcerated.

(c) *Rescission hearing schedules.*

(1) A rescission hearing shall be scheduled to take place within a reasonable time after the board orders a hearing. The hearing shall be convened at the inmate's state facility of incarceration, and shall be conducted by members of the Board of Parole.

(2) An attorney who has filed a notice of appearance with the parole

officer in charge of the institutional parole office shall be given reasonable notice of the date, time and place of the hearing.

(3) Adjournments will not normally be granted. Applications for an adjournment by either party shall be made to the board member conducting the hearing. However, an adjournment may be granted by the parole officer in charge of the institutional parole office in which the hearing is scheduled to be conducted in the following instances:

(i) the inmate cannot appear due to unavoidable circumstances, including incarceration outside the facility in which the hearing is scheduled or physical incapacitation;

(ii) not less than five days before the scheduled hearing, the inmate and/or attorney makes a written request for a postponement due to unavailability of witnesses;

(iii) not less than five days before the hearing, the attorney makes a written request based on his recent assignment to the case; or

(iv) witnesses to support the allegation are unavailable. No more than one adjournment shall be permitted for this reason.

A written notice of the time and date of an adjourned hearing shall be provided to the inmate and his attorney.

(d) *Disposition*.

(1) If a majority of the members of the Board of Parole conducting the rescission hearing are satisfied that substantial evidence was presented at the hearing to form a basis for rescinding the grant of release, they shall so find. In such cases, the majority of the members may:

(i) rescind the inmate's release date and set a new date for further release consideration not more than 24 months from the date of the original release interview; or

(ii) rescind the inmate's original release date and set a new release date.

(2) If a majority of the members of the board conducting the hearing are not satisfied that substantial evidence exists to form a basis for rescinding the grant of release, the board shall cancel the suspension and reinstate the inmate's original release date or, if that date has past, release shall occur as soon thereafter as is practicable.

(3) Within 14 days after the rescission hearing, a written statement shall be prepared and sent to the inmate and his attorney, indicating the disposition of the proceeding and the reasons therefor.

(e) *Appeals.* A determination rescinding parole may be administratively appealed in accordance with the provisions of Part 8006 of this Title.

Section 8002.6 Parole violator re-release.

(a) Definition. A *time assessment* is a period of time which is fixed as a result of a final revocation hearing and which determines a date by which time the parole violator will be eligible for re-release.

(b) How calculated.
(1) The time assessment will be set in months and days. It will commence running on the date that the parole violation warrant was lodged.

(2) Time assessments will be calculated in the same way for all parole violators for whom a time assessment has been imposed, irrespective of whether the violator is in a local or State correctional facility, and irrespective of whether there are criminal charges pending against the parole violator.

(c)(1) *Eligibility for re-release.* All parole violators identified as eligible for re-release as defined by subdivision (a) of section 8002.6, will be re-released to parole supervision as soon as practicable after completion of the delinquent time assessment imposed irrespective of whether they are in State or local custody. If, at the completion of the delinquent time assessment imposed, the parole violator is serving the balance of a definite sentence of incarceration, the parole warrant will be lifted upon completion of the delinquent time assessment. However, when presented with one or more of the following circumstances, the board of parole will consider the violator's re-release pursuant to subdivision (d) this section:

(i) the parole violator has engaged in behavior, which constitutes a violation of facility rules or has been found guilty of having violated such rules;

(ii) the parole violator has experienced a significant change in his/her emotional/mental state (which may be evidenced by the parole violator's transfer to a psychiatric ward or facility, his/her commitment to a mental hygiene facility, or his/her placement on a suicide watch or functional equivalent);

(iii) the parole violator was arrested/convicted of a new felony subsequent to the final parole revocation hearing; or

(iv) the Board receives any information that supports a reasonable conclusion that the parole violator may not be suitable for re-release. Such information shall include, but not be limited to, information pertaining to self-destructive or threatening behavior by the parole violator.

(d) *Consideration by the parole board*. (1) *Parole violator in local custody*. If at any time preceding the expiration of the time assessment imposed, the parole violator is identified as an exception for re-release eligibility under subdivision (c) of section 8002.6 and the parole violator remains in local custody, the violator will be considered for re-release by the board upon the violator's return to a state correctional facility. Such consideration shall be through an interview by a panel of two or more members of the board of parole as soon as practicable from the time of the violator's return to state custody. When the board of parole considers the parole violator for re-release, there shall be no presumption, express or implied, favoring the violator's re-release.

(2) *Parole violator in state custody*. If at any time preceding the expiration of the time assessment imposed, the parole violator is identified as an exception for re-release eligibility under subdivision (c) of section 8002.6 and the parole violator is incarcerated in a state correctional facility, then the following rules shall apply.

(i) Consideration by the board of parole of a violator in state custody may be conducted by one or more members of the board during the two-month period immediately preceding the expiration of the time assessment without a personal interview.

(ii) After considering a parole violator who is in state custody for re-release, the board member or members will make one of two possible determinations as follows:

(a) the board may direct that the violator be re-released to supervision upon expiration of the time assessment after a satisfactory release program is developed and approved, or

(b) the board may require that a personal interview be conducted between a panel of two or more members of the board and the parole violator. When the board requires a personal interview, such interview

shall be conducted within a reasonable time. When, after such interview, the board again considers the parole violator for re-release, there shall be no presumption, express or implied, favoring the violator's re-release.

(iii) *Grounds for requiring a personal interview.* Any one of the following circumstances may serve as a ground for the board to require an interview between the panel of the board and the parole violator:

(a) the parole violator has engaged in behavior which constitutes a violation of facility rules or has been found guilty of having violated such rules;

(b) the parole violator has experienced a significant change in his/her emotional/mental state (which may be evidenced by the parole violator's transfer to a psychiatric ward or facility, his/her commitment to a mental hygiene facility, or his/her placement on a suicide watch or functional equivalent*)*;

(c) the parole violator was arrested/convicted of a new felony subsequent to the final parole revocation hearing;

(d) escape, absconding or removal from temporary release; or

(e) the Board receives any information that supports a reasonable conclusion that the parole violator may not be suitable for re-release. Such information shall include, but not be limited to, information pertaining to self-destructive or threatening behavior by the parole violator.

(e) *Inapplicability to certain cases.* The provisions of this section shall be inapplicable to any parole violator whose eligibility for parole release is governed by the statutory requirements of a new sentence.

(f) *Interim procedures for certain cases.* For those parole violators whose time assessments expired prior to the effective date of this section, or will expire within 90 days after the effective date of this section, the provisions of subdivisions (c) and (d) of this section shall be deemed to be modified as follows: consideration by the board will be conducted as soon as practicable following adoption of this section, but may occur after expiration of the time assessment. This section shall not be construed to afford any parole violator a right to release from custody upon expiration of the time assessment, but only a right to consideration by the board as soon as practicable.

Section 8002.7 Guidelines and Procedures for the Placement of Certain Sex Offenders in the Community

(a) Chapter 568 of the laws of 2008 requires the Division of Parole (DOP), the Division of Probation and Correctional Alternatives (DPCA), and the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to provide guidance concerning the placement and/or approval of housing for certain sex offenders.

(b) The State has previously enacted laws concerning sex offenders, including the Sex Offender Registration Act, the Sex Offender Management and Treatment Act, the Electronic Security and Targeting of On-Line Predators Act (e-STOP) and laws restricting certain sex offenders who are under probation or parole supervision from entering school grounds. Chapter 568 of the laws of 2008 continues the State's efforts in the area of sex offender management and specifically in the area of the placement and housing of sex offenders. Sex offender management, and the placement and housing of sex offenders, are areas that have been, and will continue to be, matters addressed by the State. These regulations further the State's coordinated and comprehensive policies in these areas, and are intended to provide further guidance to relevant state and local agencies in applying the State's approach.

(c) Public safety is a primary concern and these regulations are intended to better protect children, vulnerable populations and the general public from sex offenders. The State's coordinated and comprehensive approach also recognizes the necessity to provide emergency shelter to individuals in need, including those who are sex offenders, and the importance of stable housing and support in allowing offenders to live in and re-enter the community and become law-abiding and productive citizens. These regulations are based upon, and are intended to further best practices and effective strategies to achieve these goals.

(d) In implementing this statute and the State's comprehensive approach, DOP, DPCA, OTDA and the Division of Criminal Justice Services' Office of Sex Offender Management (DCJS/OSOM) recognize that:

(i) Not all sex offenders are equally dangerous. Some sex offenders may pose a high risk of committing a new sexual crime; others may pose only a low risk.

(ii) All reasonable efforts should be made in to avoid an ill-advised concentration of sex offenders in certain neighborhoods and localities. What constitutes such a concentration will depend on many factors, and may vary depending on housing availability and the locality and community. In addition, it is sometimes safer to house sex offenders together. Law enforcement, probation, and parole officers may more effectively monitor offenders, and service providers may more easily offer transitional services to offenders in these congregate settings. Further, some social service officials and departments rely on congregate housing for sex offenders who seek emergency shelter because of the limited, or lack of other housing options available for this population. All public officials who are

responsible for finding or approving housing for sex offenders should recognize hat an over-concentration of sex offenders may create risks and burdens on the surrounding community, and that their responsibility is to make judgments that are reasonable under the circumstances.

(iii) All social service districts are required by statute, regulation and directive to arrange temporary housing assistance for eligible homeless individuals, including those who are sex offenders.

(iv) To reduce recidivism it is important that offenders be able to re-enter society and become productive and law-abiding citizens whenever possible. A stable living situation and access to employment and support services are important factors that can help offenders to successfully re-enter society.

(v) Maintaining and/or finding suitable housing for sex offenders is an enormous challenge that impacts all areas of the State. Offenders reside in all regions of the state and may have long-established residences in their respective communities. Even offenders who do not have such long-established relationships are often discharged from prison to the community where they previously lived. As a result, it is not appropriate for any one community or county to bear an inappropriate burden in housing sex offenders because another community has attempted to shift its responsibility for those offenders onto other areas of the State. The proliferation of local ordinances imposing residency restrictions upon sex offenders, while well-intentioned, have made it more challenging for the State and local authorities to address the difficulties in finding secure and appropriate housing for sex offenders.

(vi) Decisions as to the housing and supervision of sex offenders should take into account all relevant factors and no one factor will necessarily be dispositive. These factors should include, but not be limited to, the factors enumerated in the statute, the risk posed by the offender, the nature of the underlying offense, whether housing offenders together or apart is safer and more feasible, the most effective method to supervise and provide services to offenders, and the availability of appropriate housing, employment, treatment and support.

(e) Division of Parole staff shall apply the following guidelines to the placement of a sex offender in the community upon their release from a New York State correctional facility when such offender has been designated as a Level 2 or Level 3 offender pursuant to the New York State Sex Offender Registration Act, i.e., Correction Law article 6-C. These guidelines recognize that the placement of a sex offender within a community is a considerable undertaking given the shortage of affordable housing in many communities, State law restricting the location of certain sex offenders in the community and the movement of individuals subject to registration as a sex offender. Under these guidelines, the Division of Parole, through a community preparation process of investigation, seeks to enhance public safety and facilitate the successful re-entry of

offenders into their communities and effect the successful placement of eligible offenders into residential services that can address identified needs.

(f) Persons to be released on presumptive release, parole, conditional release or post-release supervision.

(1) Division of Parole staff will investigate the proposed release program of all Level 2 and Level 3 sex offenders being released to the Division's jurisdiction from any New York State correctional facility with the objective of attaining the optimum residential placement that is available within the community proposed by the offender. As appropriate, such investigation shall include but not be limited to, consideration being given to the following factors:

(i) the sex offender's level of risk;

(ii) the applicability of Executive Law section 259-c(14);

(iii) the proximity of entities with vulnerable populations;

(iv) the location of other sex offenders required to register under the sex offender registration act, specifically whether there is a concentration of registered sex offenders in a certain residential area or municipality;

(v) the number, if any, of registered sex offenders at a particular property;

(vi) accessibility to family members, friends or other supportive services, including, but not limited to, locally available sex offender treatment programs with preference for placement of such individuals into programs that have demonstrated effectiveness in reducing sex offender recidivism and increasing public safety; and,

(vii) the availability of permanent, stable housing in order to reduce the likelihood that such offenders will be transient.

(2) The approval of a residential placement by Division of Parole staff will take into consideration:

(i) all relevant case information, including but not limited to the offender's criminal history and present crime of conviction;

(ii) the investigation factors set forth in subparagraphs (i) through (vi) of paragraph (1) of subdivision (f) of this section, and

(iii) if applicable, the structure of the supervision plan and the services to be afforded through either the Division of Parole or some other entity within the offender's community.

(iv) no one factor shall be considered dispositive.

(g) Persons released on presumptive release, parole, conditional release, post-release supervision or by maximum expiration of sentence where notice was provided to a local social services district pursuant to Executive Law section 259-c(17).

(1) When the Division of Parole is notified by a local social services district of its determination that a Level 2 or Level 3 sex offender for whom a notice pursuant to Executive Law section 259-c(17) was received by such district is in immediate need of shelter, and an investigation and approval of the potential residential placement by the Division of Parole is required, the Division shall investigate the district's proposed placement in accord with the factors set forth in subdivision (f) of this section. Following such investigation, the Division of Parole shall provide the local social services district with the results of its investigation and its approval or disapproval of the proposed placement.

(2) When an investigation by the Division of Parole is impracticable within the timeframe necessary for the local social services district to meet the immediate housing need of the offender, such investigation shall be completed within 48 hours of the Division's receipt of the local social services district's notice that such residential placement was necessary.

(i) The Division of Parole's investigation of a local social services district's immediate residential placement determination will take into consideration the factors set forth in subdivision (f) of this section. Following such investigation, the Division of Parole shall provide the local social services district with the results of its investigation and its approval or disapproval of the proposed placement.

PART 8003. RELEASE CONDITIONS

Section 8003.1 General.

(a) A paroled or conditionally released person shall, while on parole or conditional release, be in the local custody of the Division of Parole until expiration of the maximum term or period of sentence, or expiration of the period of supervision, or return to an institution under the jurisdiction of the Department of Correctional Services, as the case may be.

(b) Parole or conditional release revocation proceedings may be undertaken upon any violation of law or upon any violation of the release conditions or the rules and regulations of the board. The releasee is expected to comply faithfully with all conditions specified in writing at the time of his release and with all other conditions and instructions, whether oral or in writing, given him by the board, a member, an authorized representative of the board or a parole officer.

(c) Parole or conditional release will not be granted to any individual unless he states in writing, in the presence of a witness, that he has read and understood the conditions of release.

Section 8003.2 Release conditions.

A copy of the conditions of release, with the addition of any special conditions, shall be given to each inmate upon his release to supervision. The conditions of release are as follows:

(a) A releasee will proceed directly to the area to which he has been released and, within 24 hours of his release, make his arrival report to that office of the Division of Parole unless other instructions are designated on his release agreement.

(b) A releasee will make office and/or written reports as directed.
(c) A releasee will not leave the State of New York or any other state to which he is released or transferred, or any area defined in writing by his parole officer without permission.

(d) A releasee will permit his parole officer to visit him at his residence and/or place of employment and will permit the search and inspection of his person, residence and property. A releasee will discuss any proposed changes in his residence, employment or program status with his parole officer. A releasee has an immediate and continuing duty to notify his parole officer of any changes in his residence, employment or program status when circumstances beyond his control make prior discussion

impossible.

(e) A releasee will reply promptly, fully and truthfully to any inquiry of or communication by his parole officer or other representative of the Division of Parole.

(f) A releasee will notify his parole officer immediately any time he is in contact with or arrested by any law enforcement agency. A releasee shall have a continuing duty to notify his parole officer of such contact or arrest.

(g) A releasee will not be in the company of or fraternize with any person he knows to have a criminal record or whom he knows to have been adjudicated a youthful offender except for accidental encounters in public places, work, school or in any other instance with the permission of his parole officer.

(h) A releasee will not behave in such manner as to violate the provisions of any law to which he is subject which provides for penalty of imprisonment, nor will his behavior threaten the safety or well-being of himself or others.

(i) A releasee will not own, possess or purchase any shotgun, rifle or firearm of any type without the written permission of his parole officer. A releasee will not own, possess or purchase any deadly weapon as defined in the Penal Law or any dangerous knife, dirk, razor, stiletto, or imitation pistol. In addition, a releasee will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.

(j) In the event that a releasee leaves the jurisdiction of the State of New York, the releasee waives his right to resist extradition to the State of New York from any state in the Union and from any territory or country outside the United States. This waiver shall be in full force and effect until the releasee is discharged from parole or conditional release. While a releasee has the right under the Constitution of the United States and under law to contest an effort to extradite him from another state and return him to New York, a releasee freely and knowingly waives this right as a condition of his parole or conditional release.

(k) A releasee will not use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.

(l) Special conditions. A releasee will fully comply with the instructions of his parole officer and obey such special additional written conditions

as he, a member of the Board of Parole or an authorized representative of the Division of Parole, may impose.

Section 8003.3 Special conditions.

A special condition may be imposed upon a releasee either prior or subsequent to release. The releasee shall be provided with a written copy of each special condition imposed. Each special condition may be imposed by a member or members of the Board of Parole, an authorized representative of the Division of Parole, or a parole officer.

Section 8003.4 Restitution and mandatory surcharge.

(a) Where an inmate under the jurisdiction of the Department of Correctional Services is subject to an undischarged restitution order or an order of mandatory surcharge imposed by a court of competent jurisdiction, the board may, prior to the inmate's parole or conditional release, impose as a special written condition of release a requirement that the releasee comply with such order. A special condition involving the payment of restitution or mandatory surcharge shall, unlike other special conditions, only be imposed upon a releasee by a member of the Board of Parole.

(b) At the time this condition is imposed by the board, the releasee shall be given written notice of the agency that shall have responsibility for restitution collection. The chief-elected official in each county, and the mayor in the City of New York, shall designate the restitution collection agency; except that in those counties where the State Division of Probation and Correctional Alternatives provides for and delivers probation services, said agency shall have the first option of designating the restitution collection agency for such counties.

(c) When a releasee, supervised pursuant to a special condition regarding restitution, or mandatory surcharge is granted permission by the Division of Parole to change his place of residence from one county to another, or between New York City and another county, the parole officer shall notify the restitution collection agency of that fact. If the division is notified by the designated restitution collection agency that the responsibility for such restitution collection is thereafter to be transferred to a different restitution agency, pursuant to a releasee's change of county of residence or for any other reason, the division shall then provide the releasee with written notification of said change.

(d) When a releasee is discharged from the jurisdiction of the division upon expiration of sentence or by board action pursuant to Executive Law, section 259-j, or when a releasee is ordered returned to an institution under the jurisdiction of the Department of Correctional Services upon the

revocation of parole or conditional release, the division shall so notify the restitution collection agency. Should the returned parole violator thereafter be reparoled or conditionally released, the procedures to be followed relative to restitution and mandatory surcharge shall be as previously stated in this subdivision.

PART 8004. REVOCATION PROCESS

Section 8004.1 General.

A person who fails to comply with the terms of his release may be declared delinquent and may thereafter be returned to an appropriate correctional facility. A person on parole or on conditional release under an indeterminate or reformatory sentence of imprisonment may be returned for a period equal to the unexpired portion of the maximum term of imprisonment as of the date of delinquency. A person on conditional release under a definite sentence of imprisonment may be returned for a period equal to the unexpired portion of the term of imprisonment as of the date of his conditional release.

Section 8004.2 Warrant for retaking and temporary detention.

(a) If a parole officer having charge of a releasee shall have reasonable cause to believe that such person has lapsed into criminal ways or company, or has violated one or more of the conditions of his release in an important respect, such parole officer shall report such fact to a member of the board or a designated officer. Designated officer as used herein shall mean a senior parole officer, supervising parole officer, deputy regional director, regional director, deputy director of operations, the director of operations, chief of the parole violation unit, assistant chief of the parole violation unit, and any officer who has been provided with specific authorization by the Board of Parole. No officer shall issue a warrant in a case where he is the one who furnishes the report upon which it is based.

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

(c) A warrant for retaking and temporary detention may issue when there is reasonable cause to believe that the releasee has lapsed into criminal ways or company, or has violated the conditions of his release in an important respect. Reasonable cause exists when evidence or information

which appears reliable discloses facts or circumstances that would convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that a releasee has committed the acts in question or has lapsed into criminal ways or company. Such apparently reliable evidence may include hearsay.

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

(1) If a releasee has been arrested for a crime, the parole officer having charge of such releasee shall cause an investigation to be made into the facts and circumstances surrounding that arrest and shall submit a report in writing to a board member. Upon review of such report, a board member may direct that a warrant for retaking and temporary detention be issued if a warrant has not already been issued by a designated officer.

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

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

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

any peace officer.

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

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

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

Section 8004.3 Declaration and cancellation of delinquency.

(a) A declaration of delinquency may be issued by a board member or by a supervising parole officer (*bureau chief*) after receiving the violation of parole report, and after either:

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

(2) a finding of probable cause at a preliminary hearing;

(3) a finding by a member or supervising parole officer (*bureau chief*) that there is reasonable cause to believe the releasee has absconded from supervision; or

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

(b) The date of delinquency is the earliest date that a violation of parole is alleged to have occurred. The declaration of delinquency, when issued, interrupts the sentence as of the date of the delinquency.

(c) The parole officer having charge of a releasee shall submit a violation of parole report to the Board of Parole or supervising parole officer (*bureau chief*) following a finding of probable cause at a preliminary hearing or following a waiver thereof; or where the parole officer has reasonable cause to believe that such person has absconded from supervision; or where the parole officer has reasonable cause to believe that the releasee has been convicted of a new crime committed while under his/her present parole, conditional release or period of post release supervision.

(d) Upon review of such report, one member of the board or supervising parole officer (*bureau chief*) may issue:

(1) a declaration of delinquency and where the releasee is in custody, or where there is reasonable cause to believe the releasee has absconded, order:

(i) a final revocation hearing; or

(ii) where the releasee has waived a final revocation hearing so as to facilitate accelerated placement in a parole transitional facility, order that the final hearing be held in abeyance pending said releasee's completion of the transitional facility program or his removal therefrom or

(2) with the concurrence of two other members, order such releasee restored to supervision under such circumstances as are deemed appropriate.

(e)(1) Where a final revocation hearing has not yet commenced by the swearing of witnesses and the taking of testimony or evidence, delinquency may be cancelled and the warrant vacated by three members of the board or the administrative law judge, who shall state their reasons in writing for the cancellation at or before the time of the final hearing but prior to the swearing of witnesses and the taking of testimony or evidence. In cases where the alleged violator is serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, such cancellation of delinquency can only be effectuated by the three members of the board of parole. Cancellation of delinquency under this subsection shall not preclude a subsequent declaration of delinquency based on the same charges.

(2) A cancellation of delinquency may also be granted in accordance with subsection (1) hereof where such cancellation is contingent upon the successful completion of a treatment program of a specified duration.

If so, such cancellation of delinquency shall not become effective until the occurrence of the contingent event. A cancellation of delinquency under this subdivision shall preclude a subsequent declaration of delinquency based on the same violation charges. However, the underlying charges and the cancellation of delinquency may be considered as facts relevant to disposition in any subsequent revocation proceeding.

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

(g) *Final declaration of delinquency*. Whenever a paroled or conditionally released person, or person serving a period of post release supervision, has been:

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

(2) sentenced to an indeterminate or determinate term upon such conviction, the board may issue a final declaration of delinquency, in lieu of directing that a final hearing be held, which will have the effect of revoking such person's parole, conditional release or period of post release supervision.

Any final declaration of delinquency that may be issued shall be so issued upon such person's reception at an institution under the jurisdiction of the department of correctional services pursuant to said new indeterminate or determinate sentence. Subsequent to the issuance of the final declaration of delinquency, the inmate's next appearance before the board will be governed by the calculation of the minimum sentence, or the calculation of the aggregate minimum sentences, in accordance with applicable law.

PART 8005. REVOCATION HEARINGS

Section 8005.1 Applicability.

The rules and regulations set forth in this Part shall govern the scheduling and conduct of revocation proceedings.

Section 8005.2 Evidence.

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

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

(c) At a preliminary hearing, proof of conviction of a crime committed subsequent to the releasee's release on parole or conditional release shall constitute probable cause to believe that a releasee has violated the terms of his release in an important respect.

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

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

PRELIMINARY HEARINGS

Section 8005.3 Notice of violation.

(a) A notice of violation shall be presented to the alleged violator within three days after the execution of a warrant for retaking and temporary detention, and not less than 48 hours prior to the preliminary hearing, except that, where the alleged violator is detained in another state pursuant to such warrant and is not under parole supervision pursuant to the uniform act for out-of-state parolee supervision or where the alleged violator under parole supervision pursuant to the uniform act for out-of-state parolee supervision is detained in a state other than the receiving state, the alleged violator will be given written notice of the time, place and purpose of the hearing within five days of the execution of the warrant.

(b) The notice of violation shall inform the alleged violator of the time, place and purpose of the hearing, and shall state what conditions of parole or conditional release are alleged to have been violated and in what manner.

(c) The notice of violation shall state that at the preliminary hearing the alleged violator:

(1) has the right to appear and speak on his own behalf and that he will be allowed to appear with counsel, which it is his duty to obtain;

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

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

(4) has the right to confront and cross-examine the witnesses against him, unless he has been convicted of a new crime while on supervision or the hearing officer finds good cause on the record for their nonattendance. Adverse witnesses may be compelled to attend the preliminary hearing.

Section 8005.4 Preliminary hearing officers.

(a) Preliminary hearing officers shall be officers of the division, designated by the Board of Parole to conduct preliminary hearings. A preliminary hearing officer shall have had no prior supervisory involvement with the alleged violator.

(b) Preliminary hearing officers are authorized to:

(1) administer oaths and affirmations;

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

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

Section 8005.5 Party representation.

(a) An alleged violator may be represented by an attorney at a preliminary hearing.

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

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

(ii) for those alleged violators incarcerated at a jail located within the

counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, the notice of appearance shall be filed with the New York State Division of Parole, Region III Parole Violation Unit, 82 Washington Street, Poughkeepsie, NY 12601.

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

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

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

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

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

Section 8005.6 Hearing schedules.

(a) The preliminary hearing shall be scheduled to take place within 15 days of the date that a warrant for retaking and temporary detention is executed. An alleged violator shall be notified in writing within three days after the execution of a warrant of the time, place and purpose of the hearing.

(b) The waiver of a preliminary hearing may be made either in writing on forms provided, or orally on the record at the preliminary hearing.

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

Section 8005.7 Conduct of hearing.

(a) At the preliminary hearing, the preliminary hearing officer shall read each violation charge and the alleged violator shall plead not guilty, guilty, guilty with an explanation, or stand mute with respect to each

charge.

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

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

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

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

(5) If the preliminary hearing officer finds that there is probable cause to believe that the alleged violator has violated one or more of the conditions of parole in an important respect, he shall direct that the alleged violator be held for further action pursuant to section 8004.3 of this Title.

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

FINAL REVOCATION HEARINGS

Section 8005.15 Presiding officers.

(a) Hearing officers appointed by the chairman of the State Board of Parole are authorized to conduct final revocation hearings as presiding officers.

(b) A board member may act as a presiding officer at a final revocation hearing.

(c) A hearing officer is authorized to:

(1) administer oaths and affirmations;

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

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

Section 8005.16 Party representation.

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

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

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

(ii) for those alleged violators incarcerated at a jail located within the counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, the notice of appearance shall be filed with the New York State Division of Parole, Region III Parole Violation Unit, 82 Washington Street, Poughkeepsie, NY 12601.

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

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

(ii) the notice is submitted to an office of the division not in

accordance with the filing instructions contained within the preceding paragraph; or

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

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

Section 8005.17 Hearing schedules.

(a) The final revocation hearing shall be scheduled to take place within 90 days of a determination that there is probable cause to believe that the alleged violator has violated the conditions of his release in an important respect, or within 90 days of the waiver of the preliminary hearing; except where such hearing is ordered held in abeyance pursuant to the releasee's waiver thereof pending his successful completion of, and discharge from, a parole transition facility.

(b) The alleged violator and an attorney who has filed a notice of appearance shall be given written notice of the date, place and time of the hearing as soon as possible, but at least 14 days prior to the scheduled date of the hearing.

(c) *Adjournments*.

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

(i) for those hearings scheduled to be conducted within New York City, the application must be filed with the Parole Violation Unit of the Division of Parole, 314 W. 40th Street, New York, NY 10018; and

(ii) for those hearings scheduled in the counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester, the application must be filed with the Region 3 Violation Unit of the Division of Parole, 82 Washington Street, Poughkeepsie, NY 12601. An application may be made either by an alleged violator if said person is not represented by an attorney, or by an attorney for the alleged violator, or by a representative of the division. The application shall be in writing and shall state the reason for the requested adjournment. Such request may be granted for good cause shown.

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

(i) For all hearings except those to be conducted at the Rikers Island, Bronx, Manhattan and Long Island City hearing sites within New York City, the request may be granted only when exceptional circumstances are alleged to exist, and the application is made at least one business day prior to the scheduled hearing. The application may be made orally to the hearing coordinator in the local area office, to the Region 3 Violation Unit, or to the Parole Violation Unit ("PVU"), as appropriate. When the application is granted by the hearing coordinator, the Region 3 Violation Unit, or PVU, the applicant shall file with the hearing coordinator, or the Region 3 Violation Unit, or PVU, as appropriate, a written statement setting forth, in detail, the reasons for the adjournment within 10 days following the granting of the request.

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

(a) the party representative is present;

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

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

(d) no more than 10 minutes of consultation time with the client or any witness is needed. Cases with interpreters will be scheduled as early as practicable on the calendar. In those cases where both party representatives are ready to proceed but the alleged violator has not been produced by the detaining authority, the matter will be recessed for a later calendar call during that day at a time to be announced by the presiding officer. In all other cases wherein one of the party representatives has stated that the party is not ready to proceed, at the conclusion of the calendar call the presiding officer will consider an application for an adjournment. Before deciding the application for an

adjournment, the presiding officer will conduct an inquiry on the record to determine the dates on which all relevant papers were served, notices of appearance were filed, and written notices were given, and will make any other appropriate inquiry. All decisions made by the presiding officer as to chargeability of time will be made for administrative purposes only and will be subject to judicial review. Applications for adjournments will be decided as follows:

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

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

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

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

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

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

(i) the case is otherwise ready to proceed but for the presence of the

adversary officer or counsel for the alleged violator; and

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

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

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

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

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

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

Section 8005.18 Notice of final revocation hearings.

(a) The alleged violator and an attorney who has filed a notice of appearance shall be given written notice of the date, place and time of the hearing as soon as possible, but at least 14 days prior to the scheduled date of the hearing.

(b) The notice to be served upon the alleged violator shall also set forth the alleged violator's rights at a final revocation hearing, which are:

(1) the right to be represented by counsel;

(2) the right to appear and speak on his own behalf;

(3) the right to introduce letters and documents;

(4) the right to present witnesses who can give relevant information to

the presiding officer, and to compel the attendance of and confront and cross-examine the witnesses against him, unless the presiding officer finds good cause for their nonattendance and states such cause on the record; and

(5) the right to present mitigating evidence relevant to the restoration of parole.

(c) The notice to be served upon the alleged violator shall include a copy of the report of violation of parole.

(d) An attorney who has filed a notice of appearance is entitled to, and shall be given, written notice of the date, place and time of the hearing at least 14 days prior to the scheduled date of the hearing.

Section 8005.19 Conduct of hearing.

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

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

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

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

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

Section 8005.20 Final revocation hearing determination.

(a) If the presiding officer is not satisfied that there is a preponderance of evidence in support of any of the violation charges, he must dismiss the charges, cancel the delinquency and restore the releasee

to supervision.

(b) If the presiding officer is satisfied that there is a preponderance of evidence in support of a violation charge or charges, and that the alleged violator violated one or more of the conditions of release in an important respect, he shall so find.

(c) *Decisions to be made within parole revocation guidelines*. Where one or more charges of violation are sustained pursuant to subdivision (b) of this section, the presiding officer shall revoke the violator's release. For all cases except those defined in subdivision (d) of this section as being outside the guidelines, and except as provided by section 8010.3 of this Title, the hearing officer shall make a decision in accordance with the following guidelines:

(1) For the following violators defined as "Category 1", the time assessment, as defined by section 8002.6(a) of this Title, shall be a minimum of 15 months or hold to maximum expiration of the sentence, whichever is less, unless a mitigating reduction of up to three months is applied for a violator who accepts responsibility for his or her conduct, or unless paragraph (4) of this subdivision regarding exceptional mitigating circumstances applies; provided however, that if the violator and the division both consent, the hearing officer, consistent with paragraph (6) of this subdivision, may order or recommend to the board that the violator be restored to the Willard drug treatment campus program. Category 1 violators are defined as follows:

(i) the violator was conditionally released from a sentence imposed on a conviction of a violent felony offense as defined by section 70.02 of the Penal Law; or

(ii) the violator was paroled or conditionally released from a sentence imposed on a conviction for any class A-I felony offense; or

(iii) the violator was paroled or conditionally released from a sentence imposed on any felony offense defined by article 125 of the Penal Law; or

(iv) the violator was paroled or conditionally released from a sentence imposed on any felony offense defined by article 130, 135 or 263 of the Penal Law, or section 255.25 of the Penal Law; or

(v) the violator was paroled from a sentence imposed on any violent felony offense involving the use or threatened use of a deadly weapon or dangerous instrument or the infliction of physical injury upon another or in any manner released upon a youthful offender adjudication for any offense identified in subparagraphs (i)-(iv) of this paragraph involving

the use or threatened use of a deadly weapon or dangerous instrument or the infliction of physical injury upon another; or

(vi) the violator's current violative behavior, as established by a sustained violation charge, involves the use or threatened use of a deadly weapon or dangerous instrument, the infliction or attempted infliction of physical injury upon another; the possession of a firearm, or threats toward Division of Parole staff or peace officers; or

(vii) the violator's criminal record includes violent felony offense convictions or youthful offender adjudications, involving the use or threatened use of a deadly weapon or dangerous instrument, the infliction of physical injury upon another or felony offense convictions under article 130 or 263 of the Penal Law, or section 255.25 of the Penal Law which occurred not more than 10 years before the commission of the felony on which the current sentence is based except that in calculating the 10-year period any period of time during which the person was incarcerated shall be excluded.

(2) For the following violators, defined as "Category 2," the hearing officer shall order the violator to be restored to the Willard drug treatment campus program unless paragraph (4) of this subdivision permitting a restoration to supervision based on exceptional mitigating circumstances or medical ineligibility, applies. Category 2 violators are defined as those violators not in Category 1 where:

(i) the violator's current sentence is based on a conviction of a felony offense, other than a class A-I felony, defined by article 220 or 221 of the Penal Law and a current sustained violation charge is other than a felony committed while on parole supervision; or

(ii) the violator's current sentence is based on a conviction that is not a Penal Law article 220 or 221 offense and is not a violent felony offense as defined by section 70.02 of the Penal Law or a class A felony, and a current violation charge, which may not be withdrawn by the division to avoid application of this paragraph, is sustained on a rule 11 charge, a rule 8 drug or marihuana charge, or a charge that a special condition prohibiting use of alcohol has been violated. Notwithstanding the foregoing, no violator shall be deemed a Category 2 violator if the time remaining on his or her sentence as of the date that the warrant is lodged is less than nine months or if there are felony criminal charges pending against the violator on the date that the final hearing is completed.

(3) For the following violators, defined as "Category 3," the hearing officer shall impose a time assessment that:

(i) is the equivalent of the time spent in custody on the parole violation plus six months for a violator who is being supervised on a sentence imposed on a conviction of a violent felony offense as defined by Penal Law section 70.02; and

(ii) is the equivalent of the time spent in custody on the parole violation warrant plus three months for a violator who is being supervised on a sentence imposed on a conviction which is not a violent felony offense as described in subparagraph (i), unless paragraph (4) of this subdivision applies; provided, however, that if the time remaining on the sentence is less than the time assessment specified in this paragraph, any time assessment shall be a hold to maximum expiration of the sentence. Category 3 violators are defined as any violator within these guidelines and not included in Category 1 or Category 2. Notwithstanding the foregoing, if the violator and the division both consent, the hearing officer may order that the violator be restored to the Willard drug treatment campus program.

(4) For the following violators, after making a finding that the releasee's program needs could be appropriately addressed in the community with parole supervision and that restoration to supervision would not have an adverse effect on public safety or public confidence in the integrity of the criminal justice system, the hearing officer may order, or in the case of a violator serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, may recommend to the board of parole that the violator should be restored to supervision with appropriate special conditions. These violators are defined as:

(i) a violator who is the custodial parent of a minor child, has actually been the primary care-giver for at least 12 months, or in the case of an infant under 12 months old since the birth or adoption of the child, prior to having been incarcerated on the parole violation warrant, and who if restored to supervision has a stable residence and means of support so that he or she would continue to care for the child; or

(ii) a violator whose parole supervision prior to the behavior which resulted in issuance of the warrant is deemed acceptable by the division, who has a stable residence and prior employment; or

(iii) a violator who has absconded from supervision and who voluntarily returns to supervision; or

(iv) a violator with a new pending criminal charge whose new charge is being disposed of by referral to any alternatives to incarceration ("ATI") program, provided that a condition of being restored to parole supervision will be that the violator must successfully complete the ATI program; or

(v) a violator who would otherwise be a Category 2 violator but whose medical or psychiatric needs cannot be met in the Willard drug treatment campus program.

(5) *Persistent violators*. For those violators who have incurred two prior sustained violations of their release upon the controlling conviction and would otherwise be subject to those penalties authorized under paragraphs (2) and (3) of this subdivision, a time assessment not to exceed 12 months shall be imposed.

(6) A decision within these guidelines may be made by the presiding officer as a final and binding decision for all categories of violators other than those serving sentences for felony offenses under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof. All decisions within these guidelines regarding alleged or adjudicated violators serving sentences for felony offenses under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof must be reviewed by a member or members of the board of parole and shall be decided as follows:

(i) a single member of the board shall make the decision that imposes a time assessment; or

(ii) a decision to restore a violator to supervision serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof to supervision under paragraph (4) of this subdivision or to the Willard drug treatment campus program under paragraph (1) of this subdivision shall not become final and binding until and unless two members of the board concur with the presiding officer's recommendation to restore the violator to supervision. A single member of the board may review a recommendation to restore such a violator to supervision and may modify the recommendation and impose a time assessment that is within the board member's discretion.

(d) *Decisions made outside the guidelines*. The following cases are outside the guidelines: a violator who was sentenced pursuant to Criminal Procedure Law, section 410.91 to a sentence of parole supervision, or a violator who was restored to the Willard drug treatment campus program and is charged with failing to complete the Willard drug treatment campus program. In such cases, where one or more charges of violation are sustained pursuant to subdivision (b) of this section, the presiding officer shall revoke the violator's release and impose a time assessment, or where appropriate, order the violator be restored to supervision.

(e) *Decision*. The decision made pursuant to subdivision (c) of this section shall be in writing, or stated on the record of the hearing, and shall state the evidence relied upon and the reasons for revoking of

parole or conditional release, as the case may be, and the reasons for the disposition made.

(f) *Notification.* As soon as practicable after a violation hearing, the alleged violator and his attorney shall be advised in writing of the violation hearing decision, or decision and recommendation, including the reason for the determination and the evidence relied upon.

(g) *Placement in programs that are alternatives to reincarceration*. A member or members of the board or presiding officer may direct that an alleged violator be placed in an alternatives to reincarceration program for a specified period of time. Only a member or members of the board can direct that alleged violators serving sentences for felony offenses under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, be placed into an alternative to incarceration program. Successful completion of the program prior to the commencement of a final revocation hearing will result in a cancellation of delinquency, as authorized by section 8004.3(e) of this Title. Following completion of a final hearing in cases where the violator is serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, restoration to a parole transition facility, or other appropriate alternatives to reincarceration program, may be recommended by the presiding officer and ordered by the board in accordance with the number of board members' concurrence required by section 8004.3(d)(2) of this Title, except that if the presiding officer is a hearing officer he or she may take the place of the first board member referred to in section 8004.3(d) of this Title. Following completion of a final hearing in cases where the violator is not serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, restoration to a parole transition facility, or other appropriate alternatives to reincarceration program, may be ordered by the presiding officer.

(h) A final decision made by a presiding officer pursuant to this section and shall be binding in all instances and deemed a decision of the board for purposes of this Part.

Section 8005.21 Delinquent time case review.

(a) It is the policy of the Board of Parole to review, sua sponte, any revocation determination wherein the time assessment imposed is in excess of 24 months, except for shock incarceration parole violators who are reincarcerated to their statutory minimum in accordance with section 8010.3 of this Title. The purpose of said review is to provide the members of the board, acting in executive session, an opportunity to freely discuss such determinations, to decide, in view of the totality of the case record, whether such determination is considered to be appropriate by the majority of the members of the board, given the fact that the underlying revocation decision is rendered by a single board member. The

delinquent time case review is not a substitute for an administrative appeal, which is taken and decided pursuant to Part 8006 of this Title. Rather, given that an administrative appeal of a revocation determination is limited to a review of the revocation record, the delinquent time case review is intended to permit the board to consider any information in its records that it considers to be pertinent to the case, so as to facilitate equitable and consistent decision making. Insofar as the delinquent time case review represents an internal opportunity for the members of the board to discuss cases that are within the aforementioned category, the time for the conduct of said review may vary in the sole discretion of the board and, in keeping with the purpose of the case review, the board will not solicit or accept input from outside of the board, or advise the subject of the case review that the matter is under consideration.

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

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

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

PART 8006. APPEALS

Section 8006.1 *General*.

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

(b) The 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.

(c) A notice of appeal and subsequent related correspondence, including the document submitted to perfect the appeal, shall be filed with the New York State Division of Parole, Appeals Unit, 97 Central Avenue, Albany, NY 12206.
(d) The notice of appeal shall state the name and State identification number of the inmate/violator; the date of the hearing and, in the case of a final revocation proceeding, the date of the determination; the inmate's/violator's present place of incarceration; and the place where the hearing occurred. While a division form entitled Notice of Appeal is available for use by an inmate/violator, it is not required that said form be utilized to initiate the appeal process.

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

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

Section 8006.2 Taking of the appeal.

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

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

(c) Each appeal will be reviewed and decided on the basis of the written

record. A personal appearance and/or oral argument is expressly prohibited.

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

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

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

Section 8006.3 Questions on appeal.

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

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

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

(3) whether the determination made was excessive.

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

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

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

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

Section 8006.4 Determination of the appeal.

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

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

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

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

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

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

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

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

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

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

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

PART 8007. DISCHARGE FROM PAROLE OR CONDITIONAL RELEASE

Section 8007.1 General.

Discharge of a releasee shall be as provided by law. Since administrative procedures have been established for submission of appropriate cases to the board as eligibility for discharge is reached, the board and members of its staff shall not, under any circumstances, entertain requests for such discharge from a releasee or from others on his behalf.

PART 8008. PUBLIC ACCESS TO RECORDS

Section 8008.1 Purpose.

This Part, in conjunction with section 8000.5 of this Subtitle, shall govern the privacy of case records in addition to delineating the procedures governing the availability, location and nature of those records of the division releasable to the public pursuant to Article 6 of the Public Officers Law.

Section 8008.2 Definitions.

The following definitions, in addition to those contained in Part 8000 of this Subtitle, shall be applicable to both this Part and Part 8000.

(a) The term case record means any memorandum, document or other writing pertaining to a present or former inmate, parolee, conditional releasee or other releasee, and maintained pursuant to sections 259-a (1)-(3) and 259-c (3) of the Executive Law.

(b) The term record or records means any memorandum, document, tabulation or other writing, other than a case or employee record, maintained by the

division.

(c) The term employee record means any document, report or other writing pertaining to a board member or division officer or employee and constituting part of such person's employment history folder.
(d) The term statistical tabulation means a collection or orderly presentation of numerical data logically arranged in columns and rows, or graphically.
(e) The term factual tabulation means a collection of statements of objective information, logically arranged, which is empirically derived and reflects objective reality, actual existence or an actual occurrence.

(f) The term workday means any day except Saturday, Sunday, a public holiday or, with respect to a particular office of the division, a day on which that office is otherwise closed for general business.

(g) The term records access officer means the public information officer of the division, or such other officer or employee designated by the chairman to receive and respond to inquiries for access to division records.

(h) The term subject matter list means a current list of all records maintained by the division on or after January 1, 1978, except case and employee records, regardless of whether the documents denoted on such list are available to the public.

(i) The term counsel means the counsel to the division and any designated member of the counsel's staff.

Section 8008.3 Records access officer.

(a) The records access officer of the division is the Public Information Officer, Division of Parole, 1450 Western Avenue, Albany, N.Y. 12203. The records access officer shall receive requests at the above location during any workday between the hours of 9 a.m. and 4 p.m. All requests for records shall be made in writing and shall describe, in reasonable detail, the records sought. The records access officer:

(1) shall maintain a current master subject list, sufficiently detailed to permit identification of the category of the record sought;

(2) shall, if necessary, assist the person requesting records in identifying the records requested. If the request is for payroll information, the records access officer shall refer the request to the person charged with certifying the division's payroll;

(3) shall search for the records requested, and if he is unable to locate them, he shall:

(i) certify that the division is not the custodian of the record requested; or

(ii) certify that, although the division is the custodian of the record requested, the record cannot be found after a diligent search;

(4) shall determine, after locating the records, that:

(i) the record is available for public inspection and make it available for inspection and/or copying;

(ii) the record is not available for public inspection, for reasons to be provided in writing, and deny access accordingly;

(5) may waive, at his discretion, any formality prescribed by this Part.

(b) The designation of records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

Section 8008.4 Subject matter list.

(a) Every central office director and unit supervisor; every senior parole officer, or parole officer in charge, of an institution; and every director and area supervisor of a parole area office shall be a custodian of records pursuant to this Part. Every custodian of records shall maintain an up-to-date subject matter list, reasonably detailed, of all records emanating from the custodian or the office represented by the custodian.

(b) The records access officer shall maintain a master list of all records maintained by the division. The master list shall be comprised of the subject matter lists kept by all custodians of records.

(c) Each subject matter list and the master list shall be sufficiently detailed to permit identification of the record.

(d) Every subject matter list maintained by each custodian, and the master list maintained by the records access officer, shall be updated not less than twice each year. The most recent update shall appear on the first page of the subject matter list.

(e) The records access officer shall make the master subject matter list

available for inspection and copying. Any person desiring a copy of any subject matter list may request such in writing. Upon payment of the appropriate fee, a copy of the appropriate subject matter list shall be mailed or delivered.

Section 8008.5 Procedures for requesting and obtaining records.

(a) Manner of making requests.

(1) A request for access for division records, except case records which are governed by section 8000.5 of this Subtitle, shall be made in writing to the records access officer.

(2) A request for access to records should reasonably describe the record sought.

(b) Manner of responding to request.

(1) Within five workdays after receipt of a written request for a division record, the records access officer shall determine the status of such record and shall respond in writing by either:

(i) approving the request;

(ii) denying the request;

(iii) acknowledging receipt of the request and stating therein the reasons for the delay and the estimated date by which the request will be approved or denied.

(2) Where the records access officer determines that the record is both within the division's custody and releasable, he shall:

(i) produce the record for inspection at his office and, if so requested and upon payment of the appropriate fee, shall make and certify a copy of the record; and

(ii) advise the applicant that the record is in the division's custody and make arrangements for inspection or copying at a later time.

(3) Records shall be inspected in the presence of the records access officer or his designee, and may not be removed from the place of inspection without his permission.

Section 8008.6 Fees.

(a) For records which can be photocopied, there shall be a charge of 25 cents per page for photocopies, not exceeding 8 1/2 by 14 inches in size.

(b) There shall be no fee charged for:

(1) inspection of records;

(2) search for records;

(3) any certification pursuant to this Part.

Section 8008.7 Denial of access to records.

(a) Denial of access to records shall be in writing and shall:

(1) state the reasons for denial;

(2) advise the requestor of his right to appeal the denial to the counsel of the division; and

(3) advise the requestor that he must apply for an appeal within 30 days of the receipt of the denial of access.

(b) If the records access officer fails to respond to a request for information within five workdays of the receipt of the request, the failure to respond shall be deemed a denial of access.

(c) If a request is not acted upon within 10 workdays after the date of acknowledgement of the receipt of a request, the failure to act may be construed as a denial of access.

Section 8008.8 Appeals.

(a) Any person whose request for records has been denied may appeal the denial to the Counsel, New York State Division of Parole, 1450 Western Avenue, Albany, NY 12203.

(b) All requests for appeals shall be in writing and must be mailed or submitted within 30 days of the receipt of the denial.

(c) A request for an appeal shall include:
(1) the date and location of a request for records;

(2) identification of the records, access to which was denied; and

(3) the name and return address of appellant.

(d) The appeal shall be decided within seven workdays of the receipt of a request complying with subdivision (c) of this section.

PART 8009. ACCESS TO PERSONAL INFORMATION

Section 8009.1 Purpose and scope.

(a) It is the responsibility and the intent of the Division of Parole (the division) to fully comply with the provisions of article 6-A of the Public Officers Law, the Personal Privacy Protection Law.

(b) The agency shall maintain in its records only such personal

information that is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.

(c) Personal information will be collected, whenever practical, directly from the person to whom the information pertains.

(d) The division seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely and complete.

(e) This Part provides information regarding the procedures by which members of the public may assert rights granted by the Personal Privacy Protection Law.

Section 8009.2 Designation of privacy compliance officer.

(a) The executive director for the division is hereby designated privacy compliance officer, and is responsible for ensuring that the agency complies with the provisions of the Personal Privacy Protection Law and the regulations herein and for coordinating the agency's response to requests for records or amendment of records.

(b) The address and telephone number of the privacy compliance officer is: New York State Division of Parole, 97 Central Avenue, Albany, NY 12206, telephone (518) 473-9653.

(c) The privacy compliance officer and/or his designees are responsible for:

(1) assisting a data subject in identifying and requesting personal information, if necessary;

(2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;
(3) taking one of the following actions upon locating the record sought:

(i) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) permit the data subject to copy the record; or

(iii) deny access to the record in whole or in part and explain in writing the reasons therefor;

(4) making a copy available, upon request, upon payment of or offer to pay established fees, if any, or permitting the data subject to copy the record; and

(5) upon request, certifying that a copy of a record is a true copy; or

(6) certifying, upon request, that:

(i) the division does not have possession of the record sought;

(ii) the division cannot locate the record sought after having made a diligent search; or

(iii) the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the division.

Section 8009.3 Proof of identity.

(a) When a request is made in person, or when records are made available in person following a request made by mail, the agency may require appropriate identification, such as a driver's license or an identifier assigned to the data subject by the division, or similar appropriate identification.

(b) When a request is made by mail, the division may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

(c) Proof of identity shall not be required regarding a request for a record assessable to the public pursuant to article 6 of the Public Officers Law.

Section 8009.4 Location.

(a) Records shall be made available at the main office of the agency, which is located at 97 Central Avenue, Albany, NY 12206.

(b) Whenever practicable, records shall be available at a regional office most convenient to a data subject.

Section 8009.5 Hours for public inspection and copying.

The division shall accept requests for records and produce records during regular business hours, which are 9 a.m. to 4 p.m., Monday through Friday.

Section 8009.6 Requests for records.

(a) All requests shall be made in writing.

(b) A request shall reasonably describe the record sought. Whenever possible, the data subject should supply identifying information that assists the division in locating the record sought.

(c) Request based upon categories of information described in a notice of a system of records or a privacy impact statement shall be deemed to reasonably describe the record sought.

(d) Within five business days of receipt of a request for a record reasonably described, the division shall:

(1) provide access to the record;

(2) deny access in writing, explaining the reasons therefor; or
(3) acknowledge the receipt of the request in writing, stating the approximate date when the request shall be granted or denied, such date not to exceed 30 days from the date of acknowledgment.

Section 8009.7 Amendment of records.

Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described

and that pertains to the data subject, the division shall:

(a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law; or

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

Section 8009.8 Denial of request for a record or amendment or correction of a record or personal information.

(a) Denial of a request for records or amendment or correction of a record or personal information:

(1) shall be in writing, explaining the reasons therefor; and

(2) identifying the person to whom an appeal may be directed.

(b) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

(c) Any such denial may be appealed to the Counsel, Division of Parole, 97 Central Avenue, Albany, NY 12206.

Section 8009.9 Appeal.

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 8009.8 of this Part may, within 30 days of such denial, appeal to the counsel of the Division of Parole.

(b) The time for deciding an appeal shall commence upon receipt of a request that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeals shall:

(1) provide access to or correct or amend the record or personal information; or
(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law.

(e) The agency shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to this Part upon receipt, the determination thereof and the reasons therefor at the time of such determination.

Section 8009.10 Statement of disagreement by the data subject.

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the division a statement of reasonable length setting forth the data subject's reasons for disagreement with the determinations; and

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the agency shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person

or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law, the division may also include a concise statement of its reasons for not making a requested amendment or correction.

Section 8009.11 Fees.

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this Part.

(b) Unless otherwise prescribed by statute, copies of records shall be provided:

(1) at a rate of 25 cents per photocopy up to 9 x 14 inches; or

(2) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.

(c) The actual cost of reproduction shall be based upon the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries and overhead.

Section 8009.12 Severability.

If any provision of this Part or the application thereof to any person or circumstances is judged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

PART 8010. SHOCK INCARCERATION

Section 8010.1 Purpose.

(a) It is the responsibility and intent of the division to fully implement the provisions of article 26-A of the Correction Law relating to shock incarceration to the extent that those provisions relate to the operation of the board and Division of Parole. The provisions of this Part will

structure the board's and division's policies in relation to this program, designed to afford certain relatively young, nonviolent offenders an opportunity to learn self discipline and control.

(b) Due to the nature of the shock incarceration program, wherein an eligible inmate may be paroled prior to the expiration of the minimum period of imprisonment imposed by the court upon successful completion of the program, special rules shall apply to such persons, and they shall be treated as a separate category of offender while within the jurisdiction of the division.

Section 8010.2 Parole release.

(a) The Legislature mandated that the shock incarceration program be available only to specially selected, nonviolent eligible inmates, and the program incorporates a highly structured routine of discipline, intensive regimentation, exercise and work therapy, together with substance abuse therapy, education, and pre-release and self-improvement counseling. The board, after consideration of the eligibility criteria established by the Legislature, and the extensive, stringent criteria established by the Department of Correctional Services for program selection and retention, believes that an inmate who is selected and who thereafter successfully completes the entire shock incarceration program will normally represent an excellent candidate for release onto parole. Therefore, an inmate's successful completion of the program, and receipt of a certificate of earned eligibility, shall create a presumption in favor of parole release.

(b) An eligible inmate participant in the shock incarceration program shall be considered for release onto parole prior to such inmate's completion of the program, except as otherwise specified in paragraph (g)(1) of this section. A decision to grant or deny release onto parole will be made by at least two members of the board, and will be premised on reports prepared and/or compiled by the division concerning the inmate participant. At the time of such review by members of the board, the board will assume that the inmate will successfully complete the program and be awarded a certificate of earned eligibility by the Department of Correctional Services. Upon the completion of its review, the board will either: (1) issue a conditional grant of parole, conditioned on the inmate's successful completion of the shock incarceration program and the issuance of a certificate of earned eligibility to the inmate; or (2) deny release. If release is denied, the inmate shall be informed in writing, within two weeks of the board's rendition of its decision, of the factors and reasons for such denial. An inmate denied parole release shall thereafter appear at least one month prior to the expiration of the minimum period of imprisonment fixed by the court, in accordance with the provisions of Part 8002 of this Title.

(c) A conditional grant of parole shall become final upon an inmate's successful completion of the shock incarceration program and the issuance to that inmate of a certificate of earned eligibility. Such an inmate shall thereafter be released onto parole in accordance with the provisions of subdivision (e) of this section.

(d) A conditional grant of parole shall be rendered null and void upon the removal of the inmate from the shock incarceration program for any reason prior to the completion of the program, or upon the failure of the inmate to obtain a certificate of earned eligibility upon the completion of the program. Notice to the inmate of the nullification of the conditional grant of parole shall not be required, as the inmate's failure to successfully complete the program or receive a certificate of earned eligibility upon program completion would render such inmate statutorily ineligible for release onto parole. An inmate whose conditional grant of parole has been rendered null and void shall thereafter appear at least one month prior to the expiration of the minimum period of imprisonment fixed by the court, in accordance with the provisions of Part 8002 of this Title.

(e) An inmate granted parole upon completion of the shock incarceration program shall be released upon a date specified by the board that shall correspond with the date upon which the inmate has completed the entire six- month shock incarceration program, or on a date specified by the board as soon thereafter as practicable.

(f) An inmate denied parole release despite his successful completion of the shock incarceration program shall not, if later paroled or conditionally released, be subject to the special revocation provisions of section 8010.3 of this Part.

(g) An eligible inmate who is removed from the shock incarceration program by the Department of Correctional Services for any reason, and who is subsequently afforded another opportunity to participate in this program, shall be considered for release onto parole de novo in accordance with the preceding subdivisions of this section, except that: (1) such consideration may occur subsequent to the inmate's completion of this program, where reinstatement has occurred less than 60 days prior to the inmate's completion of the program; and (2) release onto parole, if granted, shall thereafter occur upon a date specified by the board that shall correspond with the inmate's completion of the program, or as soon as practicable thereafter. An inmate who has successfully completed the shock incarceration program and who has been issued a certificate of earned eligibility prior to being considered for release onto parole by the board, or subsequent to the board's decision but prior to actual

release onto parole, may be subject to rescission in accordance with the provisions of section 8002.5 of this Title.

Section 8010.3 Revocation.

(a) The shock incarceration program provides an eligible inmate with an unprecedented opportunity to obtain parole release after service of only six months of imprisonment at a shock incarceration facility, regardless of the length of the minimum period of imprisonment imposed by the court. In recognizing the extraordinary benefit conferred upon an eligible inmate by early parole release upon completion of this program, the board believes that the commensurate penalty for violation of one or more of the conditions of parole should be severe. Therefore, when a releasee, under the jurisdiction of the division after having been paroled based upon his or her successful completion of the shock incarceration program, is found to have violated one or more of the conditions of parole in an important respect, the presiding officer shall make a decision in accordance with section 8005.20 of these rules, except that notwithstanding any provision of section 8005.20 to the contrary, if a releasee is not restored to supervision or the Willard drug treatment campus program, and the presiding officer directs that the violator be reincarcerated, said period of reincarceration shall be for at least a period of time equal to the minimum period of imprisonment imposed by the court.

(b) In calculating the minimum period of reincarceration of a violator paroled from a shock incarceration facility pursuant to this Part, the six-month period of shock incarceration shall not be deemed to be a part of the minimum period of imprisonment, and the violator shall therefore not receive credit for that time in calculating the minimum period of reincarceration. However, the minimum period of reincarceration shall be reduced by the violator's pre-commitment jail time and any time spent incarcerated at a State correctional facility other than a shock incarceration facility.

Section 8010.4 Interim procedures for inmates previously subject to Correction Law, section 865(1)(ii).

(a) Purpose. The purpose of these interim procedures is to expedite release of shock inmates who had previously been required to complete 12 months of incarceration prior to release. These inmates are now eligible for immediate review, or immediate release if they have already received release decisions from the Parole Board, by virtue of amendments to the Correction Law contained in sections 292 and 293 of chapter 55 of the Laws of 1992.

(b) Those inmates who have successfully completed the six-month shock

incarceration program, who have received a certificate of earned eligibility, who have received a Parole Board decision as of the effective date of these interim procedures which grants release, and whose release date has been established based on the 12-month period previously required by Correction Law, section 867(4), may be released on or after the effective date of these interim procedures. Release shall occur as soon as practicable once the proposed parole program has been investigated and approved.

(c) For those inmates who have successfully completed the six-month shock incarceration program, and who have not yet received a Parole Board decision granting or denying release due to the 12-month incarceration period previously required by Correction Law, section 867(4), the following procedures shall apply upon issuance of a certificate of earned eligibility by the Department of Correctional Services. At least two members of the board shall review the information specified in sections 259-a(1)-(3) and 259- c(3) of the Executive Law with respect to such inmates, and shall make a determination whether to grant parole release to each such inmate or to order the appearance of the inmate for a personal interview. If the board determines than an interview is necessary, the interview shall be conducted as soon as practicable after the effective date of these regulations. At the conclusion of each such interview, where one is ordered by the board, if release is denied, the inmate shall be provided with a written statement of the reasons for such denial.

PART 8011. CONFIDENTIALITY OF HIV- AND AIDS-RELATED INFORMATION

Section 8011.1 Purpose.

It is the responsibility and the intent of the division to adopt regulations pursuant to the HIV- and AIDS-Related Information Act (Public Health Law, article 27-F). All officers, employees, and agents of the division shall at all times maintain the confidentiality of any HIV-related information in their possession, in accordance with the requirements of the statute and this Part.

Section 8011.2 Definitions.

When used in this Part:

(a) AIDS means acquired immune deficiency syndrome, as may be defined from time to time by the centers for disease control (CDC) of the United States Public Health Service.

(b) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

(c) HIV-related illness means any illness that may result from or may be associated with HIV infection.

(d) HIV-related test means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

(e) Protected individual means a person who is the subject of an HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness.

(f) Confidential HIV-related information means any information concerning whether an individual has been the subject of an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts, when such information is in the possession of a provider of one or more health or social services or has been obtained pursuant to a release of confidential HIV-related information. Parole services provided by the division are health or social services pursuant to Public Health Law, section 2780(8). When such information is in the possession of an authorized officer, employee or agent of the division, the provisions of these regulations apply regardless of whether the information has been obtained by consent, by authorized disclosure pursuant to the provisions of the HIV- and AIDS-Related Information Act (Public Health Law, article 27-F), or in any other manner, including from unofficial sources or through unofficial communications.

(g) Authorized officer or employee means an officer or employee of the division who is permitted to have access to confidential HIV information; such individuals, described more specifically in section 8011.4 of this Part, are those officers and employees who, in the performance of their duties for the division, need to have access to records or information relating to the care of, treatment of, or administration or provision of parole services to, protected individuals.

(h) Authorized agent means:

(1) an entity that has contracted with the division to provide treatment or parole services to parolees, or an employee of such entity, provided that the entity, or the employee, needs to know confidential HIV-related information in order to provide the contracted for service; and

(2) attorneys providing legal services to the division, its officers, or employees provided that access occurs in the ordinary course of providing legal services and is reasonably necessary for the provision of legal

services.

(i) Need to know means that knowledge of confidential HIV-related information is reasonably necessary in order to provide appropriate treatment or parole services to recipients of such services, or to audit, monitor or supervise the provision of such services, or to administer or plan the provision of such services on an individual, regional or statewide planning basis.

(j) Treatment or parole services means services provided to inmates or releasees by officers, employees or agents of the division pursuant to article 12-B of the Executive Law, officers or employees of the United States Parole Commission, or parole officers of another state pursuant to article 12-B of the Executive Law.

(k) Release of confidential HIV-related information means a written authorization for disclosure of confidential HIV-related information which complies with the requirements of PHL, section 2780(9). Any such release obtained from a protected individual by any officer or employee of the division shall be obtained only by using Department of Health approved form (see subdivision [r] of this section)--Division of Parole form 4136.

(l) Contact means an identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.

(m) Health care provider means any physician, nurse, provider of services for the mentally disabled as defined in article one of the Mental Hygiene Law, or other person involved in providing medical, nursing, counseling or other health care or mental health service, including those associated with, or under contract to, a health maintenance organization or medical services plan. As used in this Part, the term includes the medical director of a State correctional facility, and also includes any physician providing any officer, employee or agent of the division with a confirmed diagnosis of AIDS, HIV infection or HIV-related illness.

(n) Capacity to consent means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment, or procedure.

(o) Significant risk of transmitting or contracting HIV infection or significant risk means the circumstances set forth in regulations promulgated by the Department of Health at 10 NYCRR section 63.9. Those provisions are summarized as follows. The following body fluids and

substances are currently considered to be significant risk body substances: blood, semen, vaginal secretions, breast milk, tissue, cerebrospinal fluid, amniotic fluid, peritoneal fluid, synovial fluid, pericardial fluid, and plueral fluid. The following circumstances constitute significant risk of transmitting or contracting HIV infection:

(1) sexual contact which exposes a mucous membrane or broken skin to blood, semen or vaginal secretions of an infected individual;

(2) sharing of needles or other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals;

(3) the gestation, birthing or breast feeding of an infant when the mother is infected with HIV;

(4) transfusion or transplantation of blood, organs, or other tissues obtained from an infected individual to an uninfected individual, provided that such products have not tested negatively for antibody or antigen and have not been rendered noninfective by heat or chemical treatment; and

(5) other circumstances, not identified in paragraphs (1) through (4) of this subdivision, during which a significant risk body substance (other than breast milk) of an infected person contacts mucous membranes (e.g.,eyes, nose, mouth) or nonintact skin (e.g., open wound, dermatitis, abraded areas) or the vascular system of a non-infected person. [FN1]

(p) Confirmed diagnosis means confirmation provided by an authorized laboratory that an individual has AIDS, HIV-related illness, or HIV infection.

(q) Universal precautions means the use of scientifically accepted protective barriers and preventive practices in circumstances which involve, or may involve, exposure to significant risk body substances or potentially contaminated implements which may cause puncture wounds.

(r) *Form 4136--authorization for release of confidential HIV-related information.*

Authorization for Release of Confidential HIV [FNa1] Related Information

Confidential HIV-Related Information is any information indicating that a person had an HIV-related test, or has HIV infection, HIV-related illness, or AIDS, or any information which could indicate that a person has been potentially exposed to HIV.

Under New York State Law, except for certain people, confidential

HIV-related information can only be given to persons you allow to have it by signing a release. You can ask for a list of people who can be given confidential HIV-related information without a release form.

If you sign this form, HIV-related information can be given to the people listed on the form, and for the reason(s) listed on the form. You do not have to sign the form, and you can change your mind at any time.

If you experience discrimination because of release of HIV related information, you may contact the New York State Division of Human Rights at (212) 870-8624 or the New York City Commission of Human Rights at (212) 566- 5493. These agencies are responsible for protecting your rights.

Name of person whose HIV-related information will be released:

_____

Name and address of person signing this form (of other than above):

_____

Relationship to person whose HIV information will be released:

_____

Reason for release of HIV-related information:

_____

Time during which release is authorized:

From: To:

_____

My questions about this form have been answered. I know that I do not have to allow release of HIV- related information, and that I can change my mind at any time.

____ _____

Date Signature

_____

Division of Parole

Form 4136

[FN1] The following do not constitute significant risk: exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain visible blood; human bites where there is no direct blood to blood or blood to mucous membrane contact; exposure of intact skin to

blood or any other body substance.
[FNa1] Human Immunodeficiency Virus that causes AIDS

Section 8011.3 Antidiscrimination.

(a) It is the policy of the division that the division and its officers, employees and agents shall not discriminate against any individual by virtue of his or her being identified as, or suspected of, having AIDS, HIV infection, or HIV-related illness.

(b) The policy set forth in subdivision (a) of this section shall not be construed to prevent differential treatment of inmates or releasees on account of HIV status or current medical condition, provided that such differential treatment is necessary in order to provide adequate and

appropriate treatment or parole services for individuals identified as having AIDS, HIV infection or HIV-related illness.

(c) The division will take appropriate steps to make its authorized officers, employees and agents aware of the division's policy as set forth in this section. All officers, employees and agents of the division shall act in a manner consistent with this policy when performing their official duties for the division.

Section 8011.4 Access to confidential HIV-related information.

The following employees of the division are considered authorized employees who may have access to confidential HIV-related information on a need to know basis, as set forth in this section.

(a) Any parole officer assigned to, or any other employee providing treatment or parole services for, a particular case, and any parole officer who is covering a case for the regularly assigned parole officer and who needs access to the parole file in order to perform whatever duties are necessary to cover the case, may have access to any confidential HIV-related information contained in the parole file for that case;

(b) Other staff who make entries in case folders or electronic records may have access to confidential HIV-related information, but only to the extent that they actually make entries relating to the provision of treatment or parole services;

(c) The direct line casework supervisor (this will ordinarily be the senior parole officer, but may be any other individual performing that function, regardless of actual title) may have access, on a need to know

basis, to confidential HIV-related information contained in the parole file for any case for which that direct line supervisor performs any supervisory duties.

(d) All supervisors in the direct line of supervision, and any officer or employee performing a planning, monitoring, administrative oversight, litigation or casework assistance function, may have access to any confidential HIV-related information contained in a particular parole file, provided that access to the parole file is reasonably necessary in order to carry out an appropriate supervisory, planning, monitoring, administrative oversight, litigation or casework assistance function. The direct line of supervision will ordinarily include the area supervisor, deputy regional director, regional director and the director of operations, or any other officer or employee designated to perform an equivalent supervisory function, regardless of actual title. Access to the parole file, and to any confidential HIV-related information contained in the file, will be on a need to know basis.

(e) Members of the Board of Parole.

Section 8011.5 Confidentiality.

(a) No authorized officer or employee or agent of the division who obtains confidential HIV- related information in the course of performing his or her duties as an officer, employee or agent of the division may disclose such information except in accordance with the provisions of the HIV- and AIDS-Related Information Act (Public Health Law, article 27-F) and the provisions of these regulations.

(b) It is the policy of the division that disclosure of confidential HIV-related information should, whenever possible, be made pursuant to the consent of the protected individual, and all reasonable steps, including appropriate counseling, should be taken to obtain consent. Once consent has been obtained, a release form that complies with the requirements of PHL, article 27-F is to be executed, and disclosure may then be made in accordance with that release. Only Department of Health approved form 4138 is to be used as a release form for disclosure of confidential HIV-related information. The provisions of this subdivision shall not apply to disclosures made for the purpose of defending litigation against the division, its officers or employees.

(c) In the absence of consent, disclosure may be made only to the following, and, except for disclosure pursuant to paragraph (1) of this subdivision, disclosure by parole officers and senior parole officers may be made only with the written approval of the area supervisor or designee or a parole services program specialist, such written approval to be

placed in the parolee's file:

(1) an authorized officer or employee of the division, as defined in section 8011.2(g) of this Part;

(2) an authorized agent of the division, as defined in section 8011.2(h) of this Part, if disclosure is necessary to permit the agent to carry out his, her or its functions for the division;

(3) officers or employees of parole authorities of another state, or the United States Parole Commission, when such officers or employees are providing treatment or parole services pursuant to article 12-B of the Executive Law;

(4) a health care provider, but only when knowledge of the HIV-related information is necessary to provide care or treatment to the protected individual; for purposes of these regulations, disclosure to the medical director of the appropriate state correctional facility, or appropriate medical staff at a Division for Youth facility, is deemed to be necessary for any parole violator returned to the custody of the State Department of Correctional Services or the State Division for Youth;

(5) the medical director of a local correctional facility whenever a parole violator is being lodged at that correctional facility;

(6) any person to whom disclosure is ordered by a court of competent jurisdiction; and

(7) any person not listed in this subdivision, to whom disclosure is authorized pursuant to PHL, section 2782.1(a) through (o).

(d) Any disclosure, except disclosures pursuant to paragraph (c)(1) of this section, must be accompanied or followed by a written statement prohibiting further disclosure. Form 4137, a copy of which appears in subdivision (i) of this section, is to be used for this purpose.

(e) All disclosures, except disclosures pursuant to paragraph (c)(1) of this section, are to be appropriately documented in the case folder of the protected individual, who shall be informed of such disclosures upon request.

(f) No flags on case folders, lists on walls, or other similar public displays shall be used to indicate clients with HIV infection. This shall not be construed to prevent the existence of specialized caseloads.

(g) Confidential HIV-related information shall not be disclosed in

response to a request under the Freedom of Information Law (Public Officers Law, article 6) or in response to a subpoena. A court order issued pursuant to Public Health Law, section 2785 is required.

(h) The division will take appropriate steps to make all authorized officers, employees and agents aware of the provisions of the HIV- and AIDS-Related Information Act (PHL, article 27-F) concerning confidentiality of HIV-related information and the division's rules regarding confidentiality of records. All authorized officers, employees and agents of the division shall at all times maintain the confidentiality of any confidential HIV-related information in their possession.

(i) Form 4137--HIV information disclosure form.

NEW YORK STATE
DIVISION OF PAROLE

This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosures of this information without specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure.

Section 8011.6 Records control.

(a) The division will ensure the security of files which may contain confidential HIV-related information. All officers, employees and agents of the division in possession of, or having access to, confidential HIV-related information shall at all times maintain the security of all records that contain confidential HIV- related information.

(b) The division will ensure that any secondary reports, presentations or statistical compilations that include or refer to confidential HIV-related information will, to the extent possible, minimize the use of names of, or other information tending to identify, protected individuals. With respect to documents that must identify a releasee by name, the division will ensure that confidential HIV-related information is included in such a document only if, and to the extent, necessary.

Section 8011.7 Provision of confidential HIV-related information to authorized officers and employees of the division.

(a) The Department of Correctional Services, and the medical directors of its correctional facilities, in accordance with the provisions of Executive Law, section 259-1 and Public Health Law, section 2782(1)(l), may provide confidential HIV-related information to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitations on disclosure imposed by PHL, article 27-F and this Part.

(b) The medical director of a local correctional facility, in accordance with the provisions of Public Health Law, section 2782(1)(l), may provide confidential HIV-related information to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitations on disclosure imposed by PHL, article 27-F and these regulations.

(c) The Division for Youth, in accordance with the provisions of Public Health Law, section 2782.1(1), may provide confidential HIV-related information with respect to juvenile offenders to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitations on disclosure imposed by PHL, article 27-F and these regulations.

(d) A provider of a health or social service (including but not limited to those entities that provide treatment or parole services to releasees, whether by contract with the division or otherwise) which provides health or social services to releasees, may provide confidential HIV- related information to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV- related information will be subject to the limitations on disclosure imposed by PHL, article 27-F and this Part.

Section 8011.8 Protecting contacts when there is a significant risk of contracting or transmitting HIV infection.

(a) The division will seek to protect individuals in contact with protected individuals, when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of significant risk body substances, as defined by the Department of Health and in section 8011.2(o) of this Part.

(b) The following procedures will be adopted with respect to employees:

(1) Employees will be instructed to use universal precautions in situations where there is the potential for exchange of significant risk body substances as defined by the Department of Heath and in section 8011.2(o) of this Part.

(2) Appropriate protective clothing and equipment will be kept at an identified location at each work site.
(3) Each work site is to develop its own protocol, which is to be posted in areas accessible to all employees, for obtaining medical assistance for emergency situations.

(4) In the event of a work related potential exposure reported to the division (e.g., a needle stick), an employee involved in the potential exposure is to be referred to the employee health service for counseling and appropriate medical treatment.

(5) The division will promulgate risk reduction guidelines specific to the parole context and will ensure that all employees receive a copy of the guidelines and training with respect to the guidelines.

(c) The following procedures will be adopted with respect to members of the public who are potential contacts of releasees.

(1) The families and/or individuals with whom a post-release residence is proposed, of all releasees, will be provided with information which will enable such individuals to make informed decisions regarding behavior that may limit the risk of contracting or transmitting AIDS. Such information will be made available to the families, or persons with whom a residence is proposed, of all releasees, regardless of the division's knowledge of the releasee's HIV status, and recipients of information will be advised that information packets are being provided to all families, regardless of a particular releasee's HIV status. Such information will consist of literature available to the division for distribution, whether of a general informational nature, or specifically tailored to the parole context.

(2) All releasees will be counseled to behave in ways that minimize the risk of contracting or transmitting HIV infection. Those releasees known to have a confirmed diagnosis of AIDS, HIV-related illness or HIV infection will be counseled with a view to encourage them to inform their families, or persons with whom a residence is proposed, and any contacts as defined in section 8011.2(l) of this Part, of their HIV status for the purposes of limiting infection. A releasee who has told parole staff that he or she plans to notify a contact will also be encouraged to execute a release of confidential HIV-related information permitting disclosure to contact(s) so that authorized employees of the division may participate in

any discussions with the protected individual and his or her contacts that may occur in the course of parole supervision and that may involve confidential HIV-related information.

(3) In the event that a releasee known to have a confirmed diagnosis of AIDS, HIV-related illness or HIV infection has been counseled in accordance with paragraph (2) of this subdivision, and the releasee refuses to execute a consent for release of confidential HIV-related information to contacts, and the parole officer or other employee providing treatment or parole services has an articulable factual basis for believing that there is a known contact at significant risk of contracting HIV infection from the releasee and that the releasee will not inform the said contact of the releasee's HIV status, then the parole officer may, in accordance with policies and procedures of the division, request that an application be made for a court order permitting disclosure of confidential HIV-related information pursuant to Public Health Law, section 2785.

Section 8011.9 Severability.

If any provision of this Part or the application thereof to any person or circumstance is judged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.