Revisiting the New York State Parole Revocation System

By Rebecca L. Fox

Introduction

Much has been written about the passage in April 2019 by New York State lawmakers of sweeping criminal justice legislation overhauling the rules governing discovery, cash-bail, pre-trial detention and speedy trial.[1] These new laws became effective in January.[2] But it is important not to overlook that on the heels of this reform, lawmakers introduced a bill that proposed reform to the New York State Parole System.[3] Proposed changes to the parole revocation system include awarding merit time credit, providing for bail hearings, requiring expeditious hearings with heightened standards of proof and limiting incarceration for technical violations.[4] While no action was taken by the state legislature at the close of last year's session, the New York State Bar Association launched a task force to study the parole system.[5] The NYSBA's Task Force will examine the current parole system, seek to identify problems with it and propose policy solutions to ensure due process and fairness for parolees.[6]

Primary goals of parole revocation reform include lifting barriers to a parolee's successful community integration and rehabilitation, as well as reducing prison population, thus providing a cost savings to taxpayers. These savings could be reinvested in communities impacted by the criminal justice and parole systems.[7] Parole reform is not without opposition. Those who oppose reform raise public safety for the parole officers and an increase in violent crime as primary concerns.[8] Both sides agree, though, that reform of the parole revocation system is necessary.[9]

The New York State Parole System was implemented in 1817 to reward people in prison for good behavior and program participation by releasing them early and assisting with reentry into society.[10] The U.S. Supreme Court has said that parole is a statutory privilege granted by the governmental authority, but that the parole revocation process must still be accompanied by the due process hearing and notice requirements.[11] The parole revocation hearing is not part of a criminal prosecution, so the rights under such a proceeding do not apply.[12] But "the liberty of a parolee… includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee" and entitles parolee to minimal due process of certain rights at the arrest and the formal revocation.[13] These rights are codified in N.Y. Executive Law § 259-i, N.Y. Codes Rules and Regulations Title 9 and judicial decisions. Reform would bolster due process rights.

Current Parole Revocation System

There are three ways in which inmates are released before reaching their maximum sentence.[14] Sometimes, courts sentence nonviolent felony defendants directly to parole with a directive that they complete the Willard Drug Treatment Program ("Willard").[15] Other times, defendants must serve a portion of their sentence and then qualify for conditional release to parole supervision; the inmate becomes eligible after completing two-thirds of the court-imposed maximum sentence.[16] Inmates can also be released to a period of post-release supervision.[17] Upon release to parole[18] inmates are given conditions of their release that must be followed.[19] Failure to do so subjects them to incarceration or re-incarceration.

Violation Report and Warrant

When a parole officer has reasonable cause to believe that a parolee has failed to comply with the terms of release, the officer submits a report of the alleged violations with a recommendation to the supervisor that the parole is violated.[20] Reasonable cause exists if the information validating the violations appears reliable and would convince a person of ordinary intelligence that its likely parolee committed the acts.[21] Commonly claimed violations include committing a new crime, absconding, violating curfew, missing an appointment with parole officer, using drugs, using alcohol when use is prohibited, associating with prohibited individuals, failing to complete a treatment program and failing to notify parole officer of an address or employment change. An officer who is not the recommending officer issues the warrant for parolee's arrest.[22]

Notice Requirement

The Division of Parole (the "Division") must give the parolee notice of the alleged violations and entitlement to a preliminary hearing within three days (five days if parolee is detained out-of-state) from the execution of the warrant and detention but not less than 48 hours before the preliminary hearing.[23] If the three-day period falls on a weekend, service on the next business day is deemed timely.[24] Proper notice allows the parolee to prepare an adequate defense.[25] The notice must also include the date, time and place of the hearing, along with information detailing parolee's right to speak, to introduce evidence and to cross-examine adverse witnesses at the hearing.[26] The parolee may be released if timely notice is not provided.[27] Conversely, the parolee will be barred from claiming a lack of notice if parolee refuses the notice or causes the delay in service.[28]

Competency

Courts have held that the issue of a parolee's mental competency at a parole hearing proceeding is subject to due process.[29] Recognizing the importance of such right and the void in the statutory scheme allowing for a court to order a mental health competency evaluation when no judicial determination has been made, in 2017 the state Legislature amended N.Y. Exec. Law § 259-i(3)(f).[30]

Pursuant to N.Y. Exec. Law § 259-i(3)(f)(xii), if at any time during the revocation proceeding it appears that the parolee is an incapacitated person as defined in N.Y. Criminal Procedure Law § 730.10, the revocation proceeding shall be stayed until the court determines the parolee's fitness to proceed.[31] If the court determines that the parolee is not incapacitated it shall order the matter returned to the Division for the continuation of the proceeding.[32] If the court determines that the parolee is incapacitated, a final order of observation committing the parolee to the custody of the commissioner of mental health will be issued, and the hearing officer shall dismiss the violation charges.[33]

Preliminary Hearing

The preliminary hearing must be held within 15 days from the date that the warrant was executed and the parolee detained.[34] If the hearing is not held within that time, the parolee's right to due process is violated and is entitled to release unless the Division can show that the hearing cannot be conducted because parolee is beyond its "convenience and practical control."[35] A parolee is beyond the Division's "convenience and practical control" when parolee is incarcerated in another state or in federal custody.[36] A parolee must be detained exclusively on the basis of the warrant and available for extradition to trigger the 15-day period.[37] A parolee who is serving a sentence in a state or local facility in New York is within the "convenience and practical control" of the Division and is entitled to a timely preliminary hearing.[38]

The parolee may waive his or her right to the hearing, either in writing or on the record at the hearing.[39] The Division must establish that the parolee's waiver was unambiguously made.[40] A parolee's refusal to attend the hearing constitutes a waiver of the right to be present, allowing the hearing to proceed in his absence.[41] A parolee who knowingly waives his or her right to a preliminary hearing and is later served with a notice of supplemental violations is not deprived his or her due process rights because he or she was not afforded a new preliminary hearing on the supplemental charges.[42] Instead, a parolee is only entitled to 14 days' notice of the supplementary charges before the final revocation hearing.[43]

Parolees do not have a right to counsel at the preliminary hearing but may seek an adjournment of the hearing to obtain counsel.[44] Seeking an adjournment, however, extends the 15-day time period and delays the proceedings.[45]

The purpose of the preliminary hearing is to determine if probable cause exists that the parolee has violated at least one of the conditions of release in "an important respect."[46] Only a "minimal inquiry" is necessary for such a determination.[47] An admitted or unexplained violation of a condition of release is adequate to support a determination.[48] If the hearing examiner concludes that probable cause exists, the parolee will remain detained until the final revocation hearing. Proof that the parolee has a new conviction for a crime committed while on parole constitutes probable cause barring entitlement to a preliminary hearing.[49]

Declaration of Delinquency

The parole officer's report includes a date of delinquency.[50] This date is the earliest date that a violation of parole is alleged to have occurred.[51] The declaration of delinquency, when issued, interrupts the sentence as of the date of the delinquency, which can result in extending parolee's maximum expiration date.[52] The Board of Parole or supervising officer issues the declaration of delinquency after a probable cause determination.[53]

Final Revocation Hearing

The final revocation hearing must be scheduled within 90 days from the probable cause determination and should accommodate necessary adjournments.[54] If an adjournment request is granted, the 90-day time frame is extended if the parolee requests or consents to it, otherwise the time is charged to the Division.[55] An Administrative Law Judge's (ALJ) denial of a parolee's request for an adjournment of the hearing until after the completion of pending criminal charges does not violate due process.[56] But the failure to conduct the hearing within 90 days does violate due process and results in dismissal of the petition and the parolee's restoration to parole.[57]

Notice

A parolee must be given notice of the date, time and place of the hearing at least 14 days before the scheduled hearing.[58] The notice must specify the parolee's rights to counsel, appear at the hearing and speak, introduce evidence, confront and cross-examine adverse witnesses and present mitigating evidence.[59] The Supreme Court has never held that a parolee has a right to counsel at a parole revocation hearing.[60] The right is based upon the due process clause of the New York State Constitution.[61] Once the parolee is represented by counsel he cannot waive the right to counsel in the absence of counsel at the final revocation hearing, especially when the alleged violations are predicated on pending criminal charges.[62] Allowing a parolee to proceed in the absence of counsel is a violation of the parolee's due process resulting in nullification of the parole violation proceeding.[63]

Procedure

At the hearing, the parolee may plead guilty, not guilty, guilty with an explanation or remain moot against the alleged violations.[64] When a parolee accepts responsibility and acknowledges guilt, the ALJ must conduct an appropriate allocution surrounding the violation and make a finding that the violation was "in an important respect."[65] The ALJ must also allow the parolee to present evidence of mitigation and restoration of parole.[66] The parolee will be entitled to a new hearing if these procedures are not followed.[67]

A final revocation hearing will proceed when the parolee pleads not guilty or stands mute.[68] At the hearing the parole specialist, representing the Division, must prove by a preponderance of the evidence that parolee violated at least one condition of his release in an important respect; otherwise, the charges are dismissed and the parolee is restored to parole.[69] Committing a new crime, absconding, violating curfew, missing an appointment with parole officer, using drugs, using alcohol when use is prohibited, associating with prohibited individuals, failing to complete a treatment program, as well as failing to notify parole officer of an address or employment change have all been considered violations in an important respect despite the technical nature of most violations.

Evidence

The formal rules of evidence that courts observe do not need to be followed during the hearing except rules related to privilege.[70] Hearsay is admissible and can be used to establish a violation.[71] "The process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."[72] The Division's report of violations is admissible as a business record if proper foundation is laid.[73] A certificate of conviction is evidence of a violation and no further testimony is required.[74] Uncertified reports of drug tests conducted by private laboratories are not sufficiently reliable and therefore, inadmissible.[75]

Generally, in a parole revocation hearing, a parolee has a due process right to confront adverse witnesses.[76] Nevertheless, the ALJ may permit the introduction of adverse hearsay statements at the hearing upon a specific finding of good cause without giving the parolee an opportunity to confront the declarant.[77] Before allowing the testimony, the ALJ must carefully weigh the preference for confrontation, nature of the evidence, along with, whether confrontation would aid the fact-finding process and what burden is placed on the Division to produce the witness.[78] Any finding of good cause to dispense with the need for confrontation must be stated on the record; otherwise, a due process violation has occurred.[79]

The exclusionary rule is applicable to parole revocation proceedings.[80] Once a court determines that evidence is the fruit of an unreasonable search and seizure, it cannot be admitted at a subsequent parole revocation hearing.[81] Where a parolee seeks to have evidence at the revocation hearing suppressed, the proper procedure is to seek an adjournment of the hearing pending the parolee's application to a court for an order to suppress.[82]

An acquittal in a criminal case does not bar the Division from pursuing a violation based on the same alleged criminal conducted.[83] The primary reasons for this rule are the differences in objectives and levels of proof involved in the two proceedings.[84] However, when a parolee had the burden of proof in the criminal case to establish an affirmative defense by the preponderance of the evidence and is acquitted based on such defense, the Division will be collaterally estopped from revoking parole on the basis of the alleged charge.[85]

If after a final revocation hearing, the ALJ finds by a preponderance of the evidence that the parolee has violated his conditions of parole in an important respect, the ALJ has the authority to restore the parolee to parole, place the parolee in a parole transition facility up to 180 days or incarcerate the parolee.[86] If the ALJ orders incarceration, a fixed time assessment is imposed.[87] The time assessment is the period for incarceration that determines the date that the parolee will be eligible for re-release and is calculated from the date that the warrant was issued.[88] Time assessments are set forth in designated categories, which are determined by reviewing the parolee's instant offense, violative behavior, any prior violations, and criminal history.[89]

Categories

A parolee deemed a violator under category one faces a time assessment of a minimum of 15 months or a hold to the parolee's maximum expiration date, whichever is less.[90] An assessment can be reduced to 12 months if the parolee accepts responsibility and shows that mitigating circumstances exist.[91]

Generally, a category one violator is an individual who is on parole for a violent felony offense including any Class A-1 felony, homicide, sex offense, kidnapping, sexual performance by a child or incest.[92] A category one violator is also one who has a sustained violation for violent or threatening behavior or has a criminal history that contains a violent felony conviction.[93]

A parolee deemed a violator under category two is restored to parole with a mandate to complete Willard.[94] If the parolee is medically exempted from participating in Willard, has a new felony charge pending or has less than nine months remaining on his sentence at the time the warrant is issued, the parolee will not be afforded this option.95 In this instance, the parolee would fall into a different category.

If the parolee is restored to parole and mandated to participate in Willard, "a parolee has a due process right to be transferred to that program forthwith absent valid, enunciated reasons for not doing so."[96] Neither N.Y. Exec. Law § 259-i(3) nor 9 N.Y.C.R.R. § 8005.20 provide the time

frame for which a parolee must be transferred to Willard.[97] Courts have found parolees' due process rights were violated when, without justification, they were unreasonably detained for 85 days, 91 days, 139 days and 165 days, respectively, before being transferred to Willard.[98] Other courts have concluded that parolees' detainment for 40 days and 56 days, respectively, before being transferred to Willard were not unreasonable and therefore, not a violation of their due process rights.[99]

A category two violator is an individual who is not deemed a category one violator whose conviction is for a felony drug offense that is not a class A-1 or for a felony non-drug offense, with a sustained violation for drug use or alcohol prohibition condition violation.[100]

A parolee deemed a violator under category three has a time assessment of time served plus 90 days imposed unless time owed is less than the time assessment, then parolee will be held to maximum expiration date.[101] A category three violator is an individual who is not deemed a category one or two violator.[102]

A parolee may be deemed a persistent violator when he or she is deemed a category two or three violator but has violated his or her conditions of release two or more times.[103] In this instance, the time assessment cannot exceed 12 months.[104]

Outside the Categories

A parolee will not always fit into a specific category. If a parolee was sentenced directly to parole or has successfully completed certain programs while incarcerated, he or she has not served their minimum sentence. If such a parolee violates the conditions of release, the parolee faces a more severe penatly than the sentence that had been opposed.

When a court judicially sanctions a parolee to Willard or otherwise to parole pursuant to N.Y. CPL § 410.91 and the parolee fails to complete it or is paroled, the time assessment is in the ALJ's discretion.[105] Likewise, a parolee who violates the conditions of parole and who was released to parole as a result of successfully completing the Shock Incarceration Program ("Shock") faces a time assessment of at least a period of time equal to the minimum period of imprisonment imposed by the court.[106] The Board set forth such a harsh penalty because it believed that serving only six months in prison for completing Shock was an "extraordinary benefit," so a violation of parole should be severe.[107]

Final Decision and Appeal

The ALJ's written decision and recommendation is provided to the parolee and counsel as soon as practicable.[108] The ALJ's decision is final except in cases where the Board's approval is necessary.[109] The Board's review and approval is required if the parolee is serving a sentence for a conviction for homicide, a sex offense, kidnapping, sexual performance by a child, or incest.[110] Upon review the Board has the discretion to modify the ALJ's determination.[111]

A parolee has a right to appeal the decision.[112] Upon receipt of the decision, the parolee has 30 days to file a notice of appeal with the Division's Appeals Unit.[113]Only after exhausting the available administrative remedies can a parolee seek relief from the courts.[114]

Reforming the Parole System

Many sustained violations are technical violations. For example, failing to be in a required residence between designated times, missing an appointment with a parole officer, or failing a drug test are considered technical violations. According to the U.S. Department of Justice's Bureau of Justice Statistics, New York reincarcerates more people for technical parole violations than any other state besides Illinois.[115]

Reform proposals include defining a technical violation and articulating the penalties for such a violation so that the punishment commensurate with the actual sustained violation, not the parolee's conviction.[116] Parolees with a sustained technical violation would not necessarily be subject to incarceration, but rather face gradual sanctions.[117] Currently a parolee on parole for a violent felony conviction and charged with violating curfew faces a minimum 15-month time assessment.[118]

Other proposed changes include providing bail-type hearings with the right of counsel for those accused of violating parole.[119] Under the new bail reform laws, individuals accused of most misdemeanors and nonviolent felonies will not be subject to pre-trial detention.[120] Under the current parole system, a parolee with a new criminal conviction is detained as a result of his or her parole status.[121]

Shorter time frames for receiving a hearing and imposing a stricter burden of proof for the Division to establish probable cause at a preliminary hearing and a sustained violation at a revocation hearing are other proposals to reform.[122] Now parolees spend up to 105 days in jail before having a final revocation hearing.[123]

In January 2019, New York State Department of Corrections and Community Supervision proposed new parole regulations that would establish penalties for parole violations based on the nature of the violation, not on the parolee's original conviction.[124] While this is a positive step, other proposed regulations, including denying credit for time served in jails, awaiting adjudication of the parole proceeding and making it more difficult for ALJs to restore a parolee to community supervision, are detrimental to the parolee.[125] In some instances, according to the proposed regulations, increased prison terms for some violators could occur.[126] It is unclear if these proposed regulations will take effect.[127] What is clear is that there is a consensus that parole reform is the next logical step in reshaping the criminal justice system in New York.

Conclusion

Under the current system, the stakes are too high for parolees who face months or years of incarceration for violating a condition of parole. Skillful and dedicated legal advocacy is needed to test and rebut the Division's case. Counsel representing a parolee should be attentive to the circumstances of the parolee's situation. These circumstances include parolee's underlying conviction, the alleged violations, date of delinquency, designated category, whether the parolee falls outside of the designated categories, and any new arrest. A parolee's potential time assessment is affected by any one or combination of these factors. Incarceration is only one of the available options. It is important for counsel to show appropriateness of continued parole. Finally, counsel must ensure that due process rights afforded to parolees are observed and continue to argue for improvements to due process articulated by the U.S. Supreme Court and codified in New York law.

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Endnotes

1. Krystal Rodriguez, Center for Court Innovation, *Discovery Reform in New York: Major Legislation Provisions,* 3 (May 2019).
2. *Id*.
3. 2019 N.Y. Senate Bill S1343A, *available at* https://www.nysenate.gov/legislation/bills/2019/s1343/amendment/a.
4. *Id*. at 2, 5, 9-11.
5. *State Bar Association Launches Task Force to Study Parole System*, (July 9, 2019), *available at* https://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=94860.
6. *Id*.
7. Indep. Comm'n on N.Y.C. Criminal Justice and Incarceration Reform, *Stopping Parole's Revolving Door; Opportunities for Reforming Community Supervision in New York*, 8-9, 14 (June 2019), *available at* https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5d091deb8e2d2c0001558b09/1560878571898/Stopping+Parole%27s+Revolving+Door+%28June+2019%29.pdf.
8. Dan M. Clark, *NY Legislature Democrats Push Parole Reform Bills in Bid to Reduce Incarceration*, New York Law Journal, (May 17, 2019 at 2:50 pm), *available at* https://www.law.com/newyorklawjournal/2019/05/17/ny-legislature-democrats-move-on-parole-reform-bill-in-bid-to-reduce-incarceration/.
9. *Id*.
10. http://www.doccs.ny.gov/NewsRoom/ParoleHistory.html .
11. *Morrissey v. Brewer*, 408 U.S. 471, 473 (1972); *Ughbanks v. Armstrong*, 208 U.S. 481, 488 (1908).
12. *Morrissey,* 408 U.S. at 482.
13. *Id*. at 482, 484.
14. http://www.doccs.ny.gov/CommSup_Handbook.html#intro1.
15. *Id*.
16. *Id*.
17. *Id*.
18. For purposes of this article references, to all forms of community supervision will be referred to as parole.
19. N.Y. Comp. Codes R. & Regs. tit. 9, § 8003.2 (N.Y.C.R.R.).
20. N.Y. Exec. Law § 259-i(3)(a)(i); 9 N.Y.C.R.R. § 8004.2(a).
21. 9 N.Y.C.R.R. § 8004.2(c).
22. 9 N.Y.C.R.R. § 8004.2(a), (b).
23. N.Y. Exec. Law § 259-i(3)(c)(iii); 9 N.Y.C.R.R. §§ 8005.3(a); 8005.6(a).
24. *People ex rel. Frost v. Meloni*, 124 A.D.2d 1032, 1032, 1033, 508 N.Y.S.2d 764, 765 (4th Dep't 1986) (relying on N.Y. Gen. Constr. Law § 25-a(1) the Court held that since the three-day period ended on a Sunday, service on the next business day was timely).
25. *People ex rel. Davis v. Warden, Anna M. Kross Ctr.*, 51 Misc.3d 849, 853, 26 N.Y.S.3d 452, 456 (Sup. Ct., Bronx Co. 2016), *quoting*, People ex rel. *Lawson v. Warden*, 47 Misc.3d 816, 5 N.Y.S.3d 852, 856 (Sup. Ct., Bronx Co. 2015).
26. N.Y. Exec. Law § 259-i(3)(c)(iii); 9 N.Y.C.R.R. §§ 8005.3(b); 8005.3(c)(1)(2)(3); 8005.6(a).
27. *See People ex rel. Howser v. N.Y. State Div. of Parole*, 57 N.Y.2d 769, 454 N.Y.S.2d 985 (1982) (finding that it was unclear whether parolee had proper notice and remanded the matter for a new hearing since the 90-day period in which the Division had to conduct the revocation hearing had not yet expired thereby allowing the Division to rectify the notice issue).
28. *People ex rel. Atkinson v. Warden of Rikers Is. Corr. Facility,* 201 A.D.2d 271, 607 N.Y.S.2d 256 (1st Dep't 1994).
29. *See Lopez v. Evans*, 25 N.Y.3d 199, 206, 9 N.Y.S.3d 601, 604 (2015) (holding that conducting a hearing after court deemed parolee mentally incompetent violated due process), *see also Newcomb v. N.Y. State Bd. of Parole*, 88 A.D.2d 1098, 452 N.Y.S.2d 912 (3d Dep't 1982) (holding that due process requires the board to consider a parolee's mental competency in making its determination).
30. N.Y. Exec. Law § 259-i(3)(f)(xii).
31. *Id*.
32. *Id*.
33. *Id*.
34. N.Y. Exec. Law § 259-i(3)(c)(i); 9 N.Y.C.R.R. § 8005.6(a).
35. N.Y. Exec. Law § 259-i(3)(a)(iii).
36. *People ex rel. Matthews v. N.Y. State Div. of Parole,* 95 N.Y.2d 642, 643, 722 N.Y.S.2d 213, 214 (2001) (concluding that even though parolee was temporarily in N.Y. State he was serving a sentence in another jurisdiction and was not a N.Y. inmate considered to be within the "convenience and practical control" of the Division).
37. *Id*. at 645.
38. *People ex rel. Brown v. N.Y. State Div. of Parole,* 70 N.Y.2d 391, 399, 521 N.Y.S.2d 657, 661 (1987).
39. 9 N.Y.C.R.R. § 8005.6(b).
40. *People ex rel. Melendez v. Warden of Rikers Is. Corr. Facility*, 214 A.D.2d 301, 624 N.Y.S.2d 580 (4th Dep't 1995).
41. *People ex rel. McKay v. Sheriff of the Co. of Rensselaer*, 152 A.D.2d 786, 787, 543 N.Y.S.2d 567, 568 (3d Dep't 1989) (concluding examiner's decision to proceed in absentia must be based on reliable, non-hearsay evidence).
42. *People ex rel. Brown v. Warden, Bantum Corr. Ctr.*, 45 Misc.3d 1212(A), 5 N.Y.S.3d 329 (Sup. Ct., Bronx Co. 2014) (reasoning that a parolee's waiver is the same as a probable cause finding after a hearing).
43. N.Y. Exec. Law § 259-i(3)(f)(iii).
44. 9 N.Y.C.R.R. §§ 8005.5(a); 8005.6(c).
45. *Id*.
46. 9 N.Y.C.R.R. § 8000.2(f).

47. *People ex rel. Korn v. New York State Div. of Parole*, 274 A.D.2d 439, 440, 710 N.Y.S.2d 124, 125 (2d Dep't 2000) (finding probable cause when parolee failed to be at his residence during proscribed times without adequate explanation).
48. *Id*.
49. N.Y. Exec. Law § 295-i(3)(c)(iv); 9 N.Y.C.R.R. § 8005.2(c).
50. 9 N.Y.C.R.R. § 8004.3(4)(c).
51. 9 N.Y.C.R.R. § 8004.3(4)(b).
52. *Id*.
53. 9 N.Y.C.R.R. § 8004.3(4)(c).
54. N.Y. Exec. Law. § 259-i(3)(f)(i); 9 N.Y.C.R.R. § 8005.17(a); *Brown*, 70 N.Y.2d 391 at 399 (dictum).
55. N.Y. Exec. Law § 259-i(3)(f)(i); 9 N.Y.C.R.R. § 8005.17(d)(7).
56. *People ex rel. Matthews v. N.Y. State Div. of Parole*, 58 N.Y.2d 196, 201, 460 N.Y.S.2d 746, 748-49 (1983) (holding no abuse of discretion or violation of due process in denying adjournment request after weighing the need for a speedy hearing against need to defer to criminal courts when no issues involve constitutional rights).
57. *People ex rel. Levy v. Dalsheim*, 66 A.D.2d 827, 827-28, 411 N.Y.2d 343, 344 (2nd Dep't 1978) (reasoning that the language in N.Y. Exec. Law § 259-i(3)(f)(i) indicates legislative intent that the time period beyond 90 days is unreasonable *per se*).
58. N.Y. Exec. Law § 259-i(3)(f)(iv); 9 N.Y.C.R.R. § 8005.18(a).
59. N.Y. Exec. Law § 259-i(3)(f)(iv); 9 N.Y.C.R.R. § 8005.18(b)(1)(2)(3)(4)(5).
60. *People ex rel. Memechino v. Warden, Green Haven State Prison*, 27 NY2d 376, 381, 318 N.Y.S.2d 449, 452 (1971).
61. *Id.* at 382.
62. *People ex rel. Fowler v. Smith*, 110 Misc.2d 767, 770-71, 442 N.Y.S.2d 941, 944 (Sup. Ct., Wyoming Co., 1981) (holding that the nonwaiver of counsel rule applies in parole revocation proceedings).
63. *Id*.
64. N.Y. Exec. Law § 259-i(3)(f)(vi); 9 N.Y.C.R.R. § 8005.15(a).
65. *DeFina v. N.Y. State Div. Parole*, 27 Misc.3d 170, 179, 897 N.Y.S.2d 587, 594 (Sup Ct., Bronx Co. 2009) (concluding that ALJ's failure to conduct an allocution eliciting acknowledgement that the violation was in an important respect or done so intelligently and voluntarily constitutes a constitutional violation).
66. *Id*. at 27 Misc. 179, *citing*, 9 N.Y.C.R.R. § 8005.19(b).
67. *Id.* at 179.
68. 9 N.Y.C.R.R. § 8005.19(a).
69. N.Y. Exec. Law § 259-i(3)(f)(ix)(x); 9 N.Y.C.R.R. §§ 8000.2(e); 8005.20(a).
70. 9 N.Y.C.R.R. § 8005.2(a); *see Davis, supra,* 51 Misc.3d 849 at 855 (holding that parolee's rights were violated when hearing officer allowed parolee's psychiatrist to testify to confidential communications without parolee's waiver).
71. 9 N.Y.C.R.R. § 8005.2(a).
72. *Morrissey,* 408 US at 489.
73. N.Y. Civil Practice Law & Rules 4518(a), (c).

74. 9 N.Y.C.R.R. § 8005.2(d).

75. *People ex rel. Saafir v. Mantello*, 163 A.D.2d 824, 558 N.Y.S.2d 356 (4th Dep't 1990).

76. 9 N.Y.C.R.R. § 8005.19(d).

77. *People ex rel. McGee v. Walters*, 62 N.Y.2d 317, 323, 476 N.Y.S.2d 803, 806 (1984) (finding a violation of due process when ALJ admitted the Division's report of violations without requiring the Division to produce the parole officer who authored the report without conducting the appropriate balancing procedure and making a finding of good cause).

78. *Id*. at 806.

79. *Id*.

80. *People ex rel. Piccarillo v. Bd. of Parole*, 48 N.Y.2d 76, 421 N.Y.S.2d 842 (1979).

81. *Id*. at 81.

82. *Id*. at 79 n.2.

83. *People ex rel. Dowdy v. Smith*, 48 N.Y.2d 477, 483, 423 N.Y.S.2d 862, 865 (1979).

84. *Id*.

85. *Id*. at 865 (concluding that since parolee succeeded under the greater burden of proof at trial proving a defense he may now properly claim the benefit under the doctrine as a result of the jury finding in his favor).

86. N.Y. Exec. Law § 259-i(3)(f)(x).

87. 9 N.Y.C.R.R. § 8005.20(c).

88. 9 N.Y.C.R.R. § 8002.6(a)(b)(1); (2).

89. 9 N.Y.C.R.R. § 8005.20(c).

90. 9 N.Y.C.R.R. § 8005.20(c)(1).

91. *Id*.

92. *See* N.Y. State Penal Law Articles 125, 135, 263; N.Y. PL § 255.25.

93. 9 N.Y.C.R.R. § 8005.20(c)(1)(i)(ii)(iii)(iv)(v)(vi)(vii).

94. 9 N.Y.C.R.R. § 8005.20(c)(2).

95. 9 NYCRR § 8005.20(c)(2); (4)(v).

96. *People ex rel. Davis v. Superintendent of Willard Drug Treatment Campus*, 11 Misc.3d 1072(A), 2006 N.Y. Slip Op 50529(U) *2 (Sup. Ct., Seneca Co. 2006), *quoting*, *Ayala v. Williams*, 7 Misc.3d 1025 A, 2005 WL 1183200 (Sup. Ct., Seneca Co., 2006).

97. *See* N.Y. Exec. Law § 259-i(3); *see also* 9 N.Y.C.R.R. § 8005.20.

98. *People ex rel. Woelfle v. Poole,* 15 Misc.3d 1101(A), 2007 N.Y. Slip Op 30050(U) (Sup. Ct. Seneca Co. 2007); *People ex rel. Ryniec v. Willard Drug Treatment Campus*, 11 Misc.3d 1088(A), 2006 N.Y. Slip Op. 50765(U) (Sup. Ct., Seneca Co. 2006); *Davis*, 11 Misc.3d 1072; *People ex rel. Ortiz v. Poole*, 11 Misc.3d 1064(A), 2006 N.Y. Slip Op 50385(U) (Sup. Ct., Seneca Co. 2006).

99. *People ex rel. Welch v. Warden of Rikers Is. Corr. Facility*, 38 Misc.3d 1208, 967 N.Y.S.2d 868 (Sup. Ct., Bronx Co. 2013); *Velazquez v. LaClair*, *Superintendent, Franklin Corr. Facility*, 2015 N.Y. Slip Op 31996(U) (Sup. Ct., Franklin Co. 2015).

100. 9 N.Y.C.R.R. § 8005.20(c)(2)(i)(ii).

101. 9 N.Y.C.R.R. § 8005.20(2)(c); (3)(ii).

102. *Id.*

103. 9 N.Y.C.R.R. § 8005.20(c)(5).

104. *Id*.

105. 9 N.Y.C.R.R. § 8005.20(d).

106. 9 NY.C.R.R. § 8010.3(a).

107. 9 N.Y.C.R.R. § 8010.3(a).

108. 9 N.Y.C.R.R. § 8005.20(f).

109. 9 N.Y.C.R.R. § 8005.20(c)(6).

110. *Id*.

111. 9 N.Y.C.R.R. § 8005.20(c)(6)(i).

112. 9 N.Y.C.R.R. § 8006.1(a).

113. 9 N.Y.C.R.R. § 8006.1(b),(c).

114. *People ex rel. DeMarta v. Sears,* 31 A.D.3d 918, 819 N.Y.S.2d 584 (3d Dep't 2006).

115. Indep. Comm'n on N.Y.C. Criminal Justice and Incarceration Reform, *supra* note 7 at 4.

116. 2019 N.Y. Senate Bill S1343A, *supra* note 3, at 1, lines 7-10; at 11, lines 2-44.

117. *Id*. at 11, lines 2-44.

118. 9 N.Y.C.R.R. § 8005.20(c)(1).

119. 2019 N.Y. Senate Bill S1343A, *supra* note 3, at 6, lines 1-30.

120. N.Y. CPL § 510.10.

121. 9 N.Y.C.R.R. § 8004.2(c).

122. 2019 N.Y. Senate Bill S1343A, *supra* note 3, at 7, lines 30-44; at 8, line 24; at 10, line 51.

123. Indep. Comm'n on N.Y.C. Criminal Justice and Incarceration Reform, *supra* note 7, at 4.

124. NYS DOCCS, *Proposed Board of Parole Regulations-Standard Conditions and Revocation Guidelines 9 NYCRR Sections 8002.6, 8003.2 and 8005.20* (January 30, 2019), *available at* http://www.doccs.ny.gov/RulesRegs/20190130_CCS-05-19-00006.html. (last visited Oct. 21, 2019).

125. *Id*.

126. *Id.*

127. *Id*.