

**PART 362**  
**VIOLATION OF CONDITIONAL RELEASE**  
(Statutory authority: Executive Law, §§243, 257-b; Correction Law, §273)

- Sec. 362.1 Definitions  
362.2 Objective  
362.3 Applicability and rationale  
362.4 Procedures for new offense violations for conditional release supervision cases  
362.5 Procedures for technical violations

Historical Note

Part (§§362.1-362.2; 362.10-262.11) added by renum. Part 17, Title 7, filed Aug. 31, 1971; repealed, filed March 31, 1975; new (§§362.1-362.5) filed: May 9, 1989 as emergency; July 25, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

**§362.1 Definitions.**

(a) The term *violation of conditional release* means a failure to comply with the conditions of conditional release supervision imposed by the local conditional release commission. There are two types of violations:

- (1) The term *new offense violation* means a violation by virtue of the commission of an offense.
- (2) The term *technical violation* means a violation by failure to comply with the conditions of conditional release other than failure by commission of a new offense.

(b) The term *reasonable cause* means the existence of evidence or information which appears reliable disclosing facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such condition was violated and that such person violated it.

(c) The term *absconder* means a conditional releasee who has failed to make his whereabouts known for a period of 30 days by failure to report or who has left the specified geographic area without permission of his probation officer.

Historical Note

Sec. added by renum. 17.1, Title 7, filed Aug. 31, 1971; repealed, filed March 31, 1975; new filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

**§362.2 Objective.**

To ensure that prompt and decisive action is taken in all cases through regulating decision making in all violation of conditionally release supervision cases where reasonable cause exists

to believe that a person who has been conditionally released has lapsed into criminal ways or company or has violated one or more conditions of conditional release.

Historical Note

Sec. added by renum. 17.2, Title 7, filed Aug. 31, 1971; repealed, filed March 31, 1975; new filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

**§362.3 Applicability and rationale.**

(a) This Part is applicable to violations of conditional release supervision.

(b) The rationale for this Part is as follows:

(1) Conditional release as an alternative to incarceration is a means of offering the offender the opportunity for law-abiding adjustment in the community. It is the probation department's responsibility to see that the conditions of conditional release are properly enforced and to inform the local conditional release commission of any significant deviation.

(2) Uniform procedures controlling violation of conditional release matters serve to facilitate uniform decision making and the reduction of any possible disparity in the treatment of like cases.

Historical Note

Sec. filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure; Aug. 29, 1989 eff. Sept. 13, 1989.

**§362.4 Procedures for new offense violations for conditional release supervision cases.**

(a) *Procedures upon arrest for an offense prior to conviction.*

(1) Investigating the alleged offense.

(i) Upon a probation department's knowledge that a conditional releasee under its supervision has been arrested for an offense, the probation officer shall commence an investigation.

(ii) Such investigation shall, to the extent necessary, consist of determining the facts and seriousness of the alleged offense.

(2) Supervisor notification. The results of this investigation shall be presented by the probation officer to his immediate supervisor upon conclusion of the investigation.

(3) Required actions. After supervisory notification, the following action shall be taken with supervisor approval based upon the nature of the alleged offense, and the potential

threat of the conditional releasee to himself or to the community.

(i) Arrest for an offense. Where any alleged offense(s) occurred the probation officer shall notify the local conditional release commission and provide said commission with a brief description of the alleged offense(s) and the status of the case, no later than three business days after receipt of the arrest notification. Such notification may be accompanied by:

(a) a request for declaration of delinquency;

(b) a request for a declaration of delinquency and a warrant;

(c) a request that the commission take no action at the present time and the reasons for such a request.

The commission shall be notified by the department of any changes in the status of the case.

(ii) When the conditional releasee is detained due to the arrest, the probation officer shall maintain liaison with the detaining authorities and, whenever possible, shall visit the conditional releasee periodically during his detention. If the conditional releasee is in the community pending disposition of the arrest, the probation officer shall intensify his supervision of the case.

(b) *Procedures upon conviction of a crime.*

(1) Investigating the conviction. When a probation department receives notification that a conditional releasee has been convicted of a crime which conviction occurred during the period of conditional release supervision, the probation officer shall commence an investigation. Such investigation shall consist of all relevant facts concerning the new conviction unless this information has been obtained in a prior investigation.

(2) Supervisor notification. The facts of this investigation shall be presented by the probation officer to his immediate supervisor upon conclusion of the investigation.

(3) Required action. At the conclusion of the investigation, the probation officer shall notify the commission of the new conviction, along with a description of the crime(s). Where a violation of conditional release has not been previously filed, the probation officer shall file a violation of conditional release and report with the commission. Every report shall contain a summary of the conditional releasee's activities to date and the facts which would be sufficient to establish that any violation(s) of conditional release occurred. A copy of this report shall be retained in the official case record. When a violation of conditional release is filed, any request for a declaration of delinquency shall also be filed with the commission at this time and any request for a warrant.

(4) The probation officer assigned with supervision of the case shall notify the probation

officer who is conducting a pre-sentence investigation ordered by the criminal court as to the status of any violation of conditional release.

(c) *Procedures upon conviction of a violation.*

(1) Investigating the conviction. When a probation department receives notification that a conditional releasee has been convicted of a violation which occurred during the period of conditional release supervision, the probation officer shall commence an investigation. Such investigation shall consist of all relevant facts concerning the new conviction, unless this information has been obtained in a prior investigation.

(2) Supervisor notification. The facts of this investigation shall be presented by the probation officer to his immediate supervisor upon conclusion of the investigation.

(3) Required action. After supervisory notification, one of the following actions shall be taken with supervisor approval based upon the nature of the conviction and the potential threat of the conditional releasee to himself or to the community:

(i) The probation officer shall notify the commission of the conviction, along with a description of the violation, and, where commission notification has occurred, the Probation Department shall file the appropriate report. The report shall contain a summary of the conditional releasee's activities to date, and the facts which would be sufficient to establish that any violation(s) of conditional release occurred. A copy of the report shall be retained in the official case record. When a violation of conditional release is filed, any request for a declaration of delinquency shall also be filed with the commission at this time and any request for a warrant.

(ii) The probation officer shall initiate departmental administrative procedures prior to commission notification or the submission of a recommendation for further commission involvement. The probation officer may meet with the conditional releasee for the purpose of discussing the conviction and issuing a warning. If the issues presented by the conviction can be resolved, the commission shall be notified of the conviction along with a description of any violation(s), any action taken by the department, and a recommendation to the commission that the Probation Department should be allowed to issue a warning to the conditional releasee and to adjust the case administratively. A copy of any reports shall be retained in the official case record.

Historical Note

Sec. filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure;  
Aug. 29, 1989 eff. Sept 13, 1989.

**§362.5 Procedures for technical violations.**

(a) Procedures for violations other than absconders.

(1) Investigating the alleged violation(s).

(i) When a probation officer has reasonable cause to believe that a person who has been conditionally released has lapsed into criminal ways or company, or has violated one or more conditions of conditional release, the probation officer shall commence an investigation.

(ii) Such investigation shall, to the extent necessary, consist of determining the facts and seriousness of the alleged violation(s).

(2) Supervisor notification. The facts of this investigation shall be presented by the probation officer to his immediate supervisor upon conclusion of the investigation.

(3) Required actions. Within three business days of the commencement of an investigation, the probation officer shall notify the commission and provide said commission with a brief description of the technical violation, a summary of the conditional releasee's activities to date and a recommendation that:

(i) the case be informally adjusted by the department; or

(ii) a declaration of delinquency and warrant be issued. A violation of conditional release shall be prepared by the probation officer and forwarded to the commission. The report shall contain a summary of the conditional releasee's supervision activities to date, and the facts which would be sufficient to establish that any violation(s) of conditional release occurred. A copy of such report shall be retained in the official case record or a summary of the informal adjustment shall be retained in the official case record. A summary of the commission action shall be prepared and entered into the official case record.

(b) *Procedures for technical violations in cases of absconders*

(1) Upon determination that a conditional releasee has absconded, the probation officer shall notify the commission and, at such time, shall file a violation of conditional release together with a request for a declaration of delinquency and a request for a warrant

(2) At all times, the probation officer shall exercise due diligence in attempting to locate any absconder. As a minimum the probation officer having responsibility for any absconder shall contact police authorities, the last known residence, employer, and/or friend, relatives and agencies with whom the conditional releasee may have established communication. The result of such contacts shall be entered into the official case record.

(3) The director of probation shall be responsible for maintaining a log of all active absconder cases.

(4) The provisions of Part 355.9 of 9 NYCRR establishing requirements for the execution and administration of probation violation warrants shall be considered

applicable to this section and shall be adhered to for violation of conditional release warrants.

Historical Note

Sec. filed: May 9, 1989 as emergency measure; July 25, 1989 as emergency measure;  
Aug. 29, 1989 eff. Sept 13, 1989.

**§362.10-362.11**

Historical Note

Secs. added by renum. 17.10-17.11, Title 7, filed Aug. 31, 1971;  
repealed, filed March 31, 1975 eff. March 28, 1975.