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|  <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p> <p style="text-align: center;">DIRECTIVE</p> | <p>TITLE</p> <p style="text-align: center;">Drug Law Reform (DLR) Release Preparation Procedures for Resentenced Offenders</p> | | <p>NO. 8250</p> |
| | | | <p>DATE 9/13/2013</p> |
| <p>SUPERSEDES DOP Directive - 2009 Drug Law Reform Class B Drug Felony Resentencing Procedure</p> | <p>DISTRIBUTION A B</p> | <p>PAGES PAGE 1 OF 5</p> | <p>DATE LAST REVISED</p> |
| <p>REFERENCES (Include but are not limited to) Chapter 56 of the Laws of 2009; Chapter 643 of the Laws of 2005; Chapter 738 of the Laws of 2004; New York Criminal Procedure Law §440.46; Penal Law 70.02, 70.04, 70.08, 70.71; Correction Law §803(1)(d)(ii); DOCCS Directive #8341</p> | <p>APPROVING AUTHORITY</p> <p style="text-align: center;"><i>Angela B. Gomez</i> <i>Jeff McKeay</i></p> | | |

I. PURPOSE

- A. Chapter 738 of the Laws of 2004 (2004 Drug Law Reform Act) authorizes the discretionary resentencing of offenders who were convicted of Class A-I drug felony offenses. Offenders may apply to the sentencing court to be resentenced to a determinate term of imprisonment and a period of post-release supervision. An offender serving an indeterminate term of imprisonment of at least fifteen (15) years and a maximum of life that was imposed for Criminal Sale of a Controlled Substance 1st or Criminal Possession of a Controlled Substance 1st, or an attempt to commit either of these offenses, is eligible for resentencing to a determinate term. An offender who is serving an indeterminate sentence for an A-I drug felony and is also serving a sentence(s) for an offense(s) other than the A-I drug felony, is only eligible to be resentenced on the A-I drug felony conviction. This provision does not allow for resentencing on any other felony offense(s). If resentenced to a determinate term of imprisonment, the earliest release date is the merit eligibility date. The resentenced offender will be eligible for release on the merit eligibility date, provided the merit release eligibility requirements are satisfied as set forth in subdivision 1 (d) of section §803 of Correction Law. If a resentenced offender does not meet the merit eligibility requirements, the offender may still earn conditional release on the new determinate term. If the offender fails to earn merit time or good time, release will occur upon completion of the full determinate term. Offenders have the right to appointed counsel to assist in the preparation and filing of an application for resentencing, and also have the right to appeal. The following categories have been established for offenders convicted of A-I drug felonies:
- *First Felony Offenders:* A first felony offender convicted of an A-I drug felony will receive a determinate term of at least eight (8) years but no more than twenty (20) years, and five (5) years of post-release supervision.
 - *Second Felony Offenders Previously Convicted of Non-violent Felonies:* A second felony offender who was previously convicted of a non-violent felony will receive a determinate term of at least twelve (12) years but no more than twenty-four (24) years, and five (5) years of post-release supervision.
 - *Second Felony Offenders Previously Convicted of Violent Felonies:* A second felony offender who was previously convicted of a violent felony will receive a determinate term of at least fifteen (15) years but no more than thirty (30) years, and five (5) years of post-release supervision.
- B. Chapter 643 of the Laws of 2005 authorizes discretionary resentencing of offenders convicted of Class A-II drug offenses defined in Article 220 of the Penal Law and who were sentenced to indeterminate sentences of incarceration with a minimum term of not less than three (3) years. Offenders must be more than twelve (12) months from release eligibility and they must meet the merit eligibility requirements as set forth in subdivision 1 (d) of section §803 of Correction Law. The resentencing procedure is identical to the procedure specified in 2004 Drug Law Reform Act for A-I drug offenders. Offenders have the right to appointed counsel to assist in the preparation and filing of an application for resentencing, and also have the right to appeal. The following categories have been established for offenders convicted of A-II drug felonies:

- *First Felony Offenders:* A first felony offender convicted of an A-II drug felony will receive a determinate term of at least three (3) years but no more than ten (10) years, and five (5) years of post-release supervision.
 - *Second Felony Offenders Previously Convicted of Non-violent Felonies:* A second felony offender who was previously convicted of a non-violent felony will receive a determinate term of at least six (6) years but no more than fourteen (14) years, and five (5) years post-release supervision.
 - *Second Felony Offenders Previously Convicted of Violent Felonies:* A second felony offender who was previously convicted of a violent felony will receive a determinate term of at least eight (8) years but no more than seventeen (17) years, and five (5) years post-release supervision.
- C. Chapter 56 of the Laws of 2009 authorizes discretionary resentencing of offenders who were convicted of Class B drug felony offenses committed prior to January 13, 2005 and who were sentenced to indeterminate terms of incarceration. Offenders serving indeterminate terms with maximum terms of more than three (3) years may petition the sentencing court for resentencing consideration under the new determinate sentencing guidelines for drug offenses. As part of the application process, the offender may also apply to be resentenced on any felony class C, D, or E drug or marijuana convictions which were imposed by the sentencing court at the same time or were included in the same order of commitment as the class B felony offense. The resentencing procedure is governed by the same rules as delineated in the 2004 Drug Law Reform Act. Offenders have the right to appointed counsel to assist in the preparation and filing of an application for resentencing, and offenders have the right to appeal from adverse determinations. Exclusions: Offenders who are serving time for or have been convicted within the preceding ten (10) years, as measured from the date of the resentencing application, of a violent felony offense or a merit time ineligible offense [Correction Law §803 (1)(d)(ii)], or who were ever adjudicated a second violent offender or a persistent violent offender, are ineligible for resentencing. The resentencing opportunity is only available to offenders in the custody of the Department of Corrections and Community Supervision (DOCCS).
- D. Criminal Procedure Law §440.46 “Motion for resentence; certain controlled substance offenders” applies to any offender serving an indeterminate sentence of more than one (1) to three (3) years for a drug felony committed before January 13, 2005. Eligible offenders are allowed to apply to the sentencing court to be resentenced to a determinate term in accordance with the applicable ranges for class B drug felony convictions. If, in addition to serving an indeterminate sentence for a class B drug felony, the offender is also serving one or more indeterminate sentences for class C, D, or E drug felonies that were also imposed at the same time or part of the same commitment order, the offender may also request to be resentenced on these offenses. If resentenced to a determinate term, the sentencing court will also impose a period of post-release supervision.
- *First Felony Offenders:* For a first felony offender convicted of a class B drug felony, the range for the determinate sentence is between one (1) and nine (9) years.
 - *Second Felony Offenders Previously Convicted of Non-violent Felonies:* For a second felony offender who was previously convicted of a non-violent felony, the range for the determinate term is between two (2) and twelve (12) years.
 - *Second Felony Offenders Previously Convicted of Violent Felonies:* For a second felony offender who was previously convicted of a violent felony, the range for the determinate term is between six (6) and fifteen (15) years.

An offender will NOT be eligible for resentencing if:

1. He or she was previously sentenced as a second violent felony offender or a persistent violent felony offender; or
2. He or she is presently serving a sentence imposed for a violent felony or an offense that is not eligible to earn merit time pursuant to subdivision 1 (d) of section 803 of Correction Law; or
3. He or she was convicted of a violent felony or an offense that is not eligible to earn merit time within the past ten (10) years; such ten (10) year period is extended, however, by any time during which he or she was incarcerated for any reason between the dates on which the prior and present offenses were committed. For example, if an offender was convicted of committing a violent felony twelve (12) years ago but was incarcerated for three (3) years after that, such person is not eligible to be resentenced.

Note: The courts may consider the offender's disciplinary history, as well as participation in treatment and programs.

II. POLICY: DOCCS is committed to ensuring the timely release of offenders resentenced under the provisions of Chapter 738 of the Laws of 2004, Chapter 643 of the Laws of 2005, or Chapter 56 of the Laws of 2009. Following the imposition of the new determinate sentence(s) by the sentencing court, facility and field staff shall expedite the release of those offenders who are immediately eligible for release to a period of post-release supervision.

III. "ROCKEFELLER" DRUG LAW REFORM (DLR) - RELEASE PREPARATION PROCEDURES

A. Notification of Resentence Eligibility or Confirmation of a Resentenced Offender

1. The Supervising Offender Rehabilitation Coordinator (SORC) or Offender Rehabilitation Coordinator (ORC) will receive notification from the Inmate Records Coordinator (IRC) that the offender has applied to the sentencing court for resentencing to a determinate term; or
2. The SORC or ORC will receive notification from the IRC that the offender has been resentenced to a determinate term with post-release supervision under the provisions of Criminal Procedure Law (CPL) §440.46.

B. Community Preparation Assignment, Investigation, and Release Procedure

1. The ORC will conduct the community preparation interview with the offender and obtain the proposed residence and program information. Owing facility staff will make every effort to interview the offender prior to the out to court transfer. If the ORC is unable to conduct the community preparation interview prior to the transfer or out to court status, the offender will be interviewed immediately upon return to State custody.
2. Upon receipt of notification that the offender is eligible for release, the ORC or other designated staff will immediately notify the facility's Medical Services Unit and, where appropriate, request a current Comprehensive Medical Summary and a medical discharge plan.
3. Notification of release will also be made to Office of Mental Health (OMH) staff and, where appropriate, owning facility staff shall request a mental health discharge plan. Staff shall request a discharge plan if the offender is currently receiving services or has received services during the current period of incarceration. Staff shall also consider the OMH level designation when requesting action by OMH staff. A copy of the OMH discharge plan shall be provided to field staff and the discharge plan information shall be recorded in the Case Management System (CMS) record of the offender.
4. Where appropriate and based on case-specific factors, staff will notify the DOCCS Victim Services Unit and the Bureau of Special Services.
5. The SORC or ORC will recommend imposition of case-specific conditions of release via e-mail referral to the attention of the Secretary to the Parole Board (Parole Board Operations).
6. The SORC or ORC will create the case record in the CMS and immediately contact the Bureau Chief (BC) via telephone call to confirm the Senior Parole Officer (SPO) and Parole Officer (PO) assignment information. Field staff shall be notified that the community preparation investigation is in response to the offender's resentencing to a determinate term with post-release supervision as a Drug Law Reform (DLR) case and that the offender is eligible for immediate release, or will be eligible for release in the near future. The telephone contact and confirmation of assignment will be recorded via case contact entry in CMS. The BC will create the SPO and PO assignment via entry in the CMS.
7. Owing facility staff will prepare a case-specific confirmation e-mail for distribution to the field chain of command (required distribution - Regional Director, Regional Re-entry Services Manager, BC, SPO, and PO) noting that the community preparation investigation request is to receive priority attention. Facility staff will note that the case is a "Drug Law Reform (DLR) Resentence Case" in the subject line of the e-mail.

8. Facility staff shall compile all required documentation for the community preparation investigation package for distribution to the assigned field supervision team. Staff will direct the community preparation investigation request package to the appropriate field bureau and identify the assignment as a “Drug Law Reform Resentence Case.” The reference to “Drug Law Reform Resentence Case” must also be noted via entry in the CMS. The documents are to be faxed to assigned field staff and confirmation of receipt (telephone call) is to be recorded in the CMS record. The community preparation investigation package will include the following:
 - a. Inmate status report;
 - b. Pre-sentence report;
 - c. Parole Board imposed conditions of release;
 - d. Reasonable assurance letters;
 - e. Comprehensive medical summary (if applicable);
 - f. Mental health status evaluation (if applicable);
 - g. OMH discharge plan (if applicable);
 - h. DOCCS medical discharge summary (if applicable);
 - i. Confidential information (if applicable);
 - j. Threat documentation (if applicable); and
 - k. Case intelligence information/reports (if applicable).

Note: Upon confirmation of the case assignment to a field bureau, owning facility staff shall also provide a copy of the community preparation investigation package to the Re-entry Services Regional Manager via fax transmission.

9. The Regional Directors and BCs must emphasize to all staff that the community preparation investigation requests for DLR resentence cases are to receive priority attention, and supervisors shall also emphasize to staff the importance of expediting the release of the DLR resentence cases.
10. The PO shall visit the proposed residence or residential program as soon as possible for the purposes of evaluating the residence or program and to establish contact with family members, program professionals, and treatment providers.
11. As soon as practicable, the assigned PO, with assistance from Re-entry Services staff, will secure the initial treatment and employment service appointments. Staff will obtain required consent for Office of Alcoholism and Substance Abuse Services (OASAS) treatment services (OASAS Form TRS-49).
12. Facility staff will be provided with information regarding treatment and employment referral appointments scheduled and confirmed. If the appointments are confirmed prior to release, facility staff will be provided with specific instructions by either Re-entry Services staff or assigned field staff. The offender will be provided with the instructions and scheduling information during the pre-release interview.
13. The BC is responsible for maintaining appropriate controls to ensure the timely release of the DLR resentence cases and the BC is also responsible for notifying facility staff of the results of the community preparation investigation. The BC will notify facility staff regarding the release program and supervision via network e-mail communication. The e-mail will include the Name, NYSID, DIN, confirmed release date, residential address or program address, reporting instructions, referral instructions, special conditions of release, any additional special instructions, and the names of the SPO and PO of record. The required e-mail notification will be directed to the attention of the SORC (Work Release SPO, where applicable) and the following staff will receive a copy of the e-mail communication:
 - a. Regional Director
 - b. Deputy Superintendent for Programs

- c. Parole Officer
 - d. Re-entry Services Regional Manager
14. Facility staff will prepare the conditional release and post-release supervision release agreements and complete the pre-release interview with the offender.
 15. Facility staff will confirm release via e-mail (required e-mail distribution referenced in Section III, B-7 of this directive). The e-mail notification shall note the date of release, Bureau/Area Office, and Officer assignment information.