

 <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p> <p style="text-align: center;">DIRECTIVE</p>	TITLE		NO. 4791
	Presumptive Release		DATE 10/12/2011
SUPERSEDES DIR# 4791 Dtd. 12/20/05	DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) Corr. Law. §§803, 806 L. 2004, c. §738, 30	APPROVING AUTHORITY 		

- I. PURPOSE:** This Directive sets forth the policies and procedures governing the presumptive release program for nonviolent inmates whereby eligible inmates who satisfy all statutory, program and disciplinary criteria may be released to community supervision without the necessity of a personal appearance before, and a grant of parole by the Board of Parole.
- II. BACKGROUND:** An inmate eligible for presumptive release may be released to community supervision at the expiration of the minimum sentence, or earlier if the inmate also qualifies for merit time as set forth in Directive #4790, "Merit Time," and as outlined in section IV, below. Pursuant to Executive Law section 259-g, the conditions of release for any inmate granted presumptive release shall be fixed by the Board of Parole. Any otherwise eligible inmate who is not granted presumptive release to community supervision for any reason shall appear before the Board of Parole for consideration of discretionary release to community supervision at the regularly scheduled time, or as soon thereafter as is practicable.
- III. ELIGIBILITY**
- A. An inmate must satisfy all criteria set forth in sections B through G, below, to be eligible for presumptive release.
- B. Crime, sentence, commitment, and prior history criteria: An inmate cannot presently be serving a sentence for, nor previously have been convicted of, any of the following crimes, or an attempt or conspiracy to commit any of the following crimes:
1. An A-I felony;
 2. A violent felony offense;
 3. Manslaughter in the second degree;
 4. Vehicular manslaughter in the first or second degree;
 5. Criminally negligent homicide;
 6. Incest;
 7. An offense defined in article 130 of the penal law (sex offense);
 8. An offense defined in article 263 of the penal law (use of a child in a sex performance);
 9. A hate crime as defined in article 485 of the penal law;
 10. An act of terrorism as defined in article 490 of the penal law;
 11. Aggravated harassment of an employee by an inmate; or
 12. Any out-of-state conviction which has all of the essential elements of any of the offenses listed in 1 through 10 above.
- C. Disciplinary record criteria: An inmate must not commit any serious disciplinary infraction. A serious disciplinary infraction shall be identified as behavior which results in criminal or disciplinary sanctions as follows:
1. Any conviction for a State or Federal crime that was committed after the inmate was committed to the Department of Corrections and Community Supervision;

2. A finding made under Directive #4932, "Chapter V, Standards, Behavior & Allowances," section 253 (a Tier II hearing), except as noted, or section 254 (a Tier III hearing) of violation of any of the following rules as described in section 270.2 of 7 NYCRR (or the "Standards of Inmate Behavior, All Institutions" - the Inmate Rulebook):
 - a. 1.00--Penal Law Offenses;
 - b. 100.10--assault on inmate;
 - c. 100.11--assault on staff;
 - d. 100.12--assault on other;
 - e. 101.10--sex offense;
 - f. 101.20--lewd conduct;
 - g. 104.10--rioting;
 - h. 105.12--unauthorized organization (if the violation occurred before May 28, 2008);
 - i. 105.13--gangs (Tier III only);
 - j. 105.14--unauthorized organizations (Tier III only);
 - k. 108.10--escape;
 - l. 108.15--abscondance;
 - m. 113.10--weapon;
 - n. 113.13--alcohol;
 - o. 113.24--drug use;
 - p. 113.25--drug possession;
 - q. 117.10--explosives;
 - r. 118.10--arson;
 - s. 118.22--unhygienic act (Tier III only); or
 - t. 180.14--urinalysis violation;
 3. Receipt of a disciplinary sanction at a Tier III hearing which includes 60 or more days of SHU and/or keeplock if the time actually served was 60 days or more on the particular penalty; or
 4. Receipt of any recommended loss of good time as a disciplinary sanction as a result of a Tier III hearing.
- D. Frivolous lawsuit: An inmate must not have filed an action, proceeding or claim against a State Agency, Officer or employee that was found to be frivolous pursuant to section 8303 of the Civil Practice Law and Rules, or rule 11 of the Federal Rules of Civil Procedure.
- E. Alien status: A foreign-born inmate who is subject to deportation or exclusion and potentially eligible for a conditional parole pursuant to section 259-i(2)(d) of the executive law, is not eligible for presumptive release consideration.
- F. Program criteria:
1. An inmate must successfully participate in all assigned program(s) and/or work assignment(s) and be awarded a certificate of earned eligibility pursuant to 7 NYCRR Part 2100.
 2. An inmate shall not be eligible for presumptive release if the inmate:
 - a. Entered the shock incarceration program but failed to successfully complete the program for any reason other than an intervening circumstance beyond the control of the inmate. Inmates who refuse the shock incarceration program at reception will be ineligible for presumptive release for six months from the refusal date or after the graduation date of the platoon in which the inmate would have participated;

- b. Was a participant in the temporary release program but was removed for any reason other than an intervening circumstance beyond the control of the inmate; or
 - c. Was temporarily placed in a relapse program.
- G. Outstanding warrants, detainers, commitments and open charges:
- 1. An inmate is not eligible for presumptive release if the inmate's file reveals any of the following:
 - a. An out-of-state or Federal felony warrant;
 - b. A felony arrest warrant for a crime which is not barred by the statute of limitations as provided by Criminal Procedure Law section 30.10;
 - c. A violation of probation warrant where the sentence of probation was imposed for a felony;
 - d. A concurrent and/or consecutive commitment to a local NYS jurisdiction for a definite sentence that will have to be served in local custody;
 - e. A concurrent and/or consecutive out-of-state or federal commitment; or
 - f. An open felony charge in New York State.
 - 2. If there is a warrant or an indication of a warrant as described in III-G-1 a, b, or c above, the Correction Counselor must initiate correspondence to the warrant issuing authority or agency to determine the status of the warrant and whether any charge is still outstanding. If no response is received to official Departmental communication within thirty days of the request, it will be construed that the warrant in question is no longer active and is not a bar to the inmate's presumptive release.
 - 3. If there is an indication of an open felony charge in New York State which is not barred by the statute of limitations as provided by Criminal Procedure Law section 30.10, the Correction Counselor must initiate correspondence to the charging authority to determine the status of the charge. If no response is received to official Departmental communication within thirty days of the request, it will be construed that the charge in question is no longer active and is not a bar to the inmate's presumptive release.

IV. EFFECT ON MINIMUM PERIOD OF SENTENCE

- A. An inmate otherwise eligible for presumptive release may be released after five-sixths of the minimum term if the inmate also satisfies the program criteria set forth in Directive #4790, "Merit Time" section II-D.
- B. An inmate identified in paragraph IV-A, above, who is serving a sentence for any Class A-II through Class E drug offense may earn supplemental merit time in the amount of an additional one-sixth of the minimum period of the sentence imposed for the drug felony if he or she has either:
 - 1. Completed two or more of the four possible merit program objectives listed in Directive #4790:
 - a. Earned a general equivalency diploma (G.E.D.);
 - b. Received an alcohol and substance abuse treatment certificate;
 - c. Received a vocational trade certificate following at least six months of programming in that program; or
 - d. Performed 400 hours or more of service as part of a community work crew/outside assignment; or
 - 2. Completed one of the four and also successfully maintained employment in a work release program or other continuous temporary release program for a period of not less than three months.

V. PROCEDURE**A. Presumptive release reviews**

1. The records of an inmate eligible for presumptive release under the criteria set forth in section III shall be reviewed by facility guidance staff prior to his or her presumptive release merit eligibility date or presumptive release initial parole eligibility date.
2. The inmate's program history and record will be reviewed by a Supervising Correction Counselor, Deputy Superintendent for Programs, and Superintendent, or their respective designees to identify any inmate whose behavior, subsequent to commitment to the Department, may be regarded as inconsistent with the intent of Correction Law section 803(1)(d), Correction Law section 805 and public safety. Factors which will be viewed negatively include failure to participate in an assigned program or removal from any assigned program for reasons other than intervening circumstances beyond the control of the inmate. Negative factors include:
 - a. Poor program participation/efforts;
 - b. Disciplinary removals; or
 - c. Refusal to participate in any recommended program.
3. The following additional factors, if present, must be noted and taken into consideration by the Commissioner's designee in the review of the inmate for presumptive release:
 - a. Any recommendation from the sentencing court and/or the district attorney to the letter from the division of parole, pursuant to Executive Law Section 259-i, requesting a position on the possible release of the inmate to parole;
 - b. Any statement made to the Board of Parole by the crime victim or victim's representative, pursuant to Executive Law Section 259-i;
 - c. Any letter received from a sentencing court or District Attorney expressing a position on the inmate's potential eligibility for, or participation in, any other Department program;
 - d. Whether the inmate has been designated as a central monitoring case (CMC) pursuant to Directive #0701, "Central Monitoring Cases;"
 - e. Any order of protection. If there is or was during the current term of incarceration an order of protection, the Correction Counselor must attempt to obtain all available information, including, but not limited to:
 - (1) The identification of the court which issued the order, the date the order was originally issued and whether there have been any extensions or modifications;
 - (2) The relationship to the inmate of the person or persons covered by the order;
 - (3) Whether the inmate has ever violated or attempted to violate the order; and
 - (4) Whether the order was in any manner related to an incident of domestic violence; or
 - f. Evidence of escape or attempted escape.

B. Presumptive release determination:

1. Presumptive release determinations shall be made by the Commissioner or designee after central office review.
2. The decision of the Commissioner or designee to grant or withhold a presumptive release allowance is final, except as provided in subsection V-B-4 below.
3. The presumptive release determination notice shall be delivered to the inmate approximately one week following the Commissioner or designee review.

4. A presumptive release allowance may be revoked at any time prior to an inmate's release on parole if the inmate commits a serious disciplinary infraction, as defined in section III-C above, or fails to continue to perform and pursue his or her assigned program plan or earned eligibility plan or if information that would have affected the central office review subsequently comes to light and indicates that the parole release decision can best be made after an appearance by the inmate before the board of parole.

VI. EFFECT OF THE PRESUMPTIVE RELEASE DETERMINATION

- A. Any inmate who is granted a presumptive merit allowance may be released to community supervision at a date computed by subtracting the merit time allowance from his or her parole eligibility date.
- B. Any inmate who is granted a presumptive initial earned eligibility certificate may be released to community supervision at the expiration of the minimum sentence.
- C. If a presumptive merit release is denied by the Commissioner or designee, either due to the nature and circumstances of the crime, or due to the inmate's prior history, character or background, or due to one or more questions raised in the inmate's file, such denial represents a determination that the parole release decision can best be made following the individual's appearance before the Board of Parole. Therefore, the inmate will not be eligible for presumptive release consideration at any subsequent time. The presumptive release denial is not an indication one way or the other as to the inmate's suitability for possible release on parole.