UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL BERGAMASCHI; and FREDERICK ROBERSON; on behalf of themselves and all others similarly situated, Plaintiffs, v. ANDREW M. CUOMO, Governor of New York State, in his official capacity; and TINA M. STANFORD, Chairperson of the New York State Board of Parole, in her official capacity; Defendants.	Case No. 1:20-CV-02817

PLEASE TAKE NOTICE that the plaintiffs will move this Court on a return date to be determined by the Court for an order certifying the following class pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure: **all people on parole in New York City who are or will be detained pending their final hearing on a parole warrant pursuant to 9 N.Y.C.R.R. § 8005.7(5) and § 8004.3.** The plaintiffs also request that that plaintiffs' counsel be appointed to represent the certified class pursuant to Rule 23(g).

In support of this motion for class certification, the plaintiffs file the attached Memorandum of Law in Support of the Motion for Class Certification, Declaration of Philip Desgranges with supporting exhibits, and the Declaration of Michelle Shames with supporting exhibits.

Dated: April 4, 2020
New York, N.Y.

Respectfully submitted,

/s/ Philip Desgranges

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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PRELIMINARY STATEMENT

The plaintiffs move for class certification in this action challenging New York State's jailing of thousands of people accused of violating their parole conditions without giving them any opportunity to be considered for release during the months it takes to adjudicate their parole violation charges. The New York State Board of Parole mandates jail for everyone accused of a parole violation until a final revocation hearing where the Board determines if parole was violated. Because the Board does not evaluate anyone for release, it needlessly detains people, primarily people of color, who pose no risk if released pending their final hearing. As a result, as COVID-19 spreads uncontrollably in New York City's jails, which has brought the normal parole revocation process to a near standstill, all people accused of violating parole who are waiting for their final revocation hearing are forced to languish in jail for months at great risk to their health.

The proposed class consists of a large group of parolees who by virtue of their being held in jail—typically for months a time—while awaiting their final parole revocation hearing are hampered from bringing individual suits against the Board. The proposed class consists of all people on parole in New York City who are or will be detained pending their final hearing on a parole warrant pursuant to 9 N.Y.C.R.R. § 8005.7(5) and § 8004.3. Class certification under Rule 23(b)(2) is the proper and well-established means of efficiently addressing civil rights violations for jail detainees. Every member of the proposed class suffers the same injury—mandatory detention pending the final revocation hearing—and every member is entitled to the same relief. The plaintiffs seek declaratory and injunctive relief on behalf of the proposed class to end the defendants' mandatory jailing of people accused of violating parole and to guarantee each person an individualized hearing on their suitability for release pending the final hearing. Plaintiffs

respectfully request that this Court grant their motion for class certification and certify a class pursuant to Rule 23(b)(2).

BACKGROUND

New York's Board of Parole requires that people on parole follow a set of universal parole conditions, like reporting to their parole officer, and a set of special parole conditions that are specific to each individual, like abiding by a curfew and participating in treatment programs.[1] 9 N.Y.C.R.R. § 8003.2. Parole officers monitor people's compliance with their parole conditions. Desgranges Decl. ¶ 10, Exhibit A. For those found to have violated parole, even for non-criminal violations such as failing to report changing jobs, the Board often sends them back to prison. Desgranges Decl. ¶ 11, Exhibit B. New York sends more people back to prison for non-criminal rule violations, called technical violations, than any other state in the country except one. Shames Decl. ¶ 16.

New York's Parole Revocation System

In New York, people accused of violating parole are re-incarcerated long before their case is heard because the Board of Parole mandates jail for everyone until the final revocation hearing where the Board determines if parole was violated. *See* 9 N.Y.C.R.R. § 8005.7(5) and § 8004.3. Under the Board's mandatory detention scheme, every person scheduled for a final parole revocation hearing must be detained pending their hearing without any evaluation of whether detention is necessary. *See id.* Regardless of the alleged parole violation, the individual's

[1] There are two primary ways that people are released to the community and subject to parole supervision. Conditional release is release from prison from an indeterminate sentence for earned good time credit or from a determinate sentence for a required period of post-release supervision. Parole is release from prison from an indeterminate sentence based on the Board's discretionary decision to release a person early. Conditional release and parole are both commonly referred to as "parole," including throughout this memorandum, given that under both, people are released under conditions of release set by the Board, supervised by parole officers, and face the Board's parole revocation process.

likelihood of returning for the final hearing, or whether the individual poses no public safety risk, the Board treats all individuals awaiting a final revocation hearing the same: locking them up in jail until their final hearing. *See id.* Approximately 38% of people accused of technical violations are released at their final revocation hearing because the Board determines that returning them to prison is not appropriate. Shames Decl. ¶ 17. For those detained due to a new arrest, 40% were later released from jail because they were found not to have committed a parole violation. Shames Decl. ¶ 17.

In *Morrissey v. Brewer*, the U.S. Supreme Court required that individuals accused of a parole violation have a preliminary and a final revocation hearing "to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior." 408 U.S. 471, 484 (1972). The Executive Law provides for these hearings in New York. N.Y. Executive Law § 259-i. The Executive Law also requires that the Board issue regulations that specify the "reasonable and appropriate action" necessary for the Board to make a final determination on an alleged parole violation. N.Y. Executive Law § 259-i(3)(d). The Board has delineated this action in two Board regulations. Under 9 N.Y.C.R.R. § 8005.7(5), if a preliminary hearing is held and probable cause is found, the preliminary hearing officer "shall direct that the alleged violator be held for further action pursuant to section 8004.3." Under section 8004.3, when probable cause is established at the preliminary hearing, the person waives the hearing, or the person is convicted of a misdemeanor crime, a supervising officer may issue "a declaration of delinquency and, where the releasee is in custody, or . . . has absconded, order . . . a final revocation hearing." Combined, these mandatory detention regulations permit a final revocation hearing only if the person accused of violating parole is in custody or has absconded.

Under the Board's regulations, people accused of violating parole can languish in jail for fifteen days before anyone is required to establish probable cause at the preliminary hearing, then for an additional ninety days before the final revocation hearing. N.Y. Executive Law § 259-i. Yet as of April 3, 2020, 17% of people being held on a technical parole violation in New York City jails had been in custody for over 90 days, 23 of whom had been in custody for six months or more. Shames Decl. ¶ 9. Even prior to the delays caused by the COVID-19 pandemic, for people on parole charged with misdemeanors in New York City, the average time in jail pending the final hearing has been 100 days (compared with 12 days for pretrial detainees with no parole warrant); and for those charged with felonies, the average time has been 169 days (compared with 36 days for those with no warrant). Mayor's Office of Criminal Justice's (MOCJ's) 2018 Report, (attached as Exhibit B to the Shames Decl.).

Black and Latinx people on parole suffer the most from mandatory detention. Compared to the representation in the total New York City population, defendants detain 12 times as many Black people as white people on technical parole violations, and four times as many Latinx people. Columbia University Justice Lab, Racial Inequities in New York Parole Supervision, (attached as Exhibit C to Shames Decl.) Of those detained for technical violations in New York City's jails as of February 2020, 91% are Black and Latinx. Shames Decl. ¶ 18, Exhibit C. Of those on parole who were detained as a result of a new misdemeanor charges as of February 2020, 97% were Black and Latinx. Shames Decl. ¶ 18, Exhibit C. Because of the Board's mandatory detention regulations, people detained on parole warrants in New York City, who are primarily people of color, are torn from their families and friends, lose their freedom, and are confined in Rikers Island, a jail that is so unsafe city officials decided it must be shut down. Locked in jail for months at a

time, they can lose their jobs, their apartments or temporary shelter, and even the custody of their children.

COVID-19 Has Paralyzed the Parole Revocation System

On March 7, 2020, Governor Cuomo issued an executive order declaring a state disaster emergency in response to documented cases of the spread of COVID-19 in New York. Desgranges Decl. ¶ 12, Exhibit C. Subject to the state and federal Constitutions, Governor Cuomo has the authority in a disaster emergency to suspend laws if necessary to cope with the disaster. N.Y. Executive Law § 29-a. Using his emergency authority, on March 20, 2020 Governor Cuomo issued an executive order suspending "any specific time limit for" any process or proceeding prescribed by any law until April 19, 2020. Desgranges Decl. ¶ 13, Exhibit D.

Now, due to the COVID-19 pandemic, people mandatorily jailed on parole warrants face the added risk of contracting a disease that can lead to acute illness and even death. Incarcerated individuals are confined in congregate spaces and interact often with correction staff or others to get food and needed services, making it impossible to engage in the social distancing recommended by health officials. As a result, COVID-19 is spreading like wildfire in Rikers Island. According to data released by the New York City Board of Correction as of April 3, 2020 – the date of this motion – 239 people incarcerated on Rikers Island have COVID-19. Nearly 2,000 people are housed in quarantine units for people potentially exposed but do not show symptoms, amounting to more than 40% of the total jail population. In addition, more than 273 Department of Correction and Correctional Health Service staff members have tested positive. These numbers are growing rapidly every day. At current rates of infection, the virus's "attack rate" in New York City jails – that is, the rate at which the population is being infected – is 64

times higher than the average in the United States of America and seven times higher than in New York City. Shames Decl. ¶ 13.

Putative Class Representatives

Putative class representatives Michael Bergamaschi and Frederick Roberson are currently in custody at Rikers Island, accused of violating the terms of their parole. Desgranges Decl. ¶ 9. Mr. Bergamaschi was taken into custody on March 11, 2020, after his parole officer charged him with five technical parole violations: failing to make an office report with his parole officer: failing to notify his parole officer that he changed his address from the shelter he was assigned to; failure to be at the shelter during his curfew hours; failure to go to an intake appointment for a drug treatment program; and failure to comply with the Board's requirement that he stay away from his wife and his son unless his parole officer gives him permission to see them. Mr. Roberson was taken into custody on March 12, 2020 when his parole officer charged him with technical violations of parole: missing a curfew; failing to report to his parole officer; not completing his drug treatment program; failing to notify his parole officer of a change in his treatment program status; and alleged drug use. Like all members of the putative class, they have not had a meaningful opportunity to be considered for release before their final parole revocation hearing.

Mr. Bergamaschi is a 40-year-old man with a wife and one child. At Rikers, Mr. Bergamaschi is in a housing unit that is under quarantine. No one in the housing unit is allowed to leave. Correction officers wearing surgical masks removed some people living in the unit with him, and he is not sure why. A few days ago, everyone in his unit was woken up at around 3:30 in the morning and told to wear surgical masks.

Because he is subject to the Board's mandatory detention, Mr. Bergamaschi does not have the opportunity for a hearing to explain why he should be released while he waits for his final parole revocation hearing. Mr. Bergamaschi has not had his preliminary probable cause hearing. It was scheduled to take place on March 24 then it was postponed to April 1, but it never happened. No one has explained him why the hearing didn't happen or if it will be rescheduled. He has no idea if he will ever have a hearing on his alleged parole violations. Mr. Bergamaschi desperately wants to get out of jail and return back to his family. His son has been shaken up ever since Mr. Bergamaschi's arrest. His wife is heartbroken. All the hope that she had of her family reuniting and moving past their problems went away when her husband was taken from her and sent to jail. She can't sleep at night because of recurring nightmares that he has died in jail from COVID-19.

Mr. Roberson is 58-years-old and had lived with his wife, three of his five children, and his granddaughter. He was involved in a car accident a few years ago that severely injured his spine. He now suffers from spinal stenosis, a narrowing of the disks in his spine that causes pressure on his spinal nerves. Although he cannot work because he is disabled, he helps around the house and his ten-year-old granddaughter and fifteen-year-old son rely on him for help with their homework.

Based on his age and his underlying medical issues, Mr. Roberson is in the "highest risk group" for suffering serious complications from COVID-19, according to Dr. Rachel Bedard. Dr. Bedard is a Rikers Island geriatrician who has written a letter on Mr. Roberson's behalf requesting that courts reconsider the necessity of his detention during the COVID-19 emergency. Despite Dr. Bedard's letter, Mr. Roberson has remained in jail for over three weeks now.

Because he is subject to the Board's mandatory detention, Mr. Roberson does not have the opportunity for a hearing to explain why he should be released while he waits for his final parole

revocation hearing. He waived his preliminary hearing, and he has no idea when he will have the final hearing.

At Rikers, Mr. Roberson walks around with a towel covering his face to protect him from COVID-19. He uses socks that his wife sent him to cover the phone receivers he holds when he talks to his family. This week, the unit he is staying in was placed under quarantine, meaning he is not allowed to leave the unit except for one hour of recreation. He cannot go to the law library or to religious services. All programming has stopped, so he cannot continue with substances abuse counseling, or even to the medical unit.

Mr. Roberson is suffering distress from being unable to be with his family during this time. Due to the COVID-19 pandemic, family visits are prohibited at all New York City jails. He is just as worried about his family's health as he is about his own. His wife is 61-years-old and has high blood pressure. His daughter has a history of bronchitis, his son and his granddaughter both have chronic asthma, and they all use a machine two to three times a day to help them breath. He is scared he may never see them again.

ARGUMENT

Plaintiffs move for certification of the following class: all people on parole in New York City who are or will be detained pending their final hearing on a parole warrant pursuant to 9 N.Y.C.R.R. § 8005.7(5) and § 8004.3. The Court should certify this class because it meets the requirements of Rule 23(a) and Rule 23(b)(2). Specifically, Rule 23(a) is satisfied here because: (1) the class is so numerous that joinder of all members is impracticable, (2) questions of law and fact are common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately

protect the interests of the class. Rule 23(b)(2) is satisfied by a showing that defendants have "acted or refused to act on grounds that apply generally to the class so that injunctive or declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As the Second Circuit explained, district courts must give these requirements "liberal rather than restrictive construction." *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) (internal quotation marks and citations omitted). District courts are afforded broad discretion in certifying a class because a district court "is often in the best position to assess the propriety of the class and has the ability . . . to alter or modify the class, create subclasses, and decertify the class whenever warranted." *See Sumitomo Copper Litig. v. Credit Lyonnais Rouse Ltd.*, 262 F.3d 134, 139 (2d Cir. 2001).

Courts in this circuit recognize that class actions are particularly appropriate in litigation involving jail detainees because of their "revolving population." *V.W. by & through Williams v. Conway*, 236 F. Supp. 3d 554, 574 (N.D.N.Y. 2017). Courts also recognize that class actions are appropriate in analogous litigation involving prisoners because "[p]risoners . . . come and go from institutions for a variety of reasons . . . [n]evertheless, the underlying claims tend to remain." *Clarkson v. Coughlin*, 145 F.R.D. 339, 346 (S.D.N.Y. 1993) (internal quotations and citations omitted).

I. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(a).

A. The Proposed Class Is Numerous.

Plaintiffs' proposed class satisfies the requirement that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). In the Second Circuit, a class of 40 or more members is presumptively numerous, *see Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995), and there is no requirement that plaintiffs establish a precise number of class members, *see Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993) (holding that

plaintiffs need not define the exact size or identity of class members to obtain class certification, and instead may "show some evidence of or reasonably estimate the number of class members"). In addition to the numerical analysis, the Second Circuit considers other contextual factors: "(i) judicial economy, (ii) geographic dispersion, (iii) the financial resources of class members, (iv) their ability to sue separately, and (v) requests for injunctive relief that would involve future class members." *Pennsylvania Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014) (citing *Robidoux*, 987 F.2d at 936).

Based on the numbers alone, the proposed class is presumptively numerous. As of April 3, 2020, the date of this filing, the proposed class consists of over 1,000 individuals detained on a parole warrant in New York City jails because they are accused of violating conditions of their parole. *See* Shames Decl. ¶¶ 7-8. A proposed class of this size plainly satisfies the numerosity requirement.

The proposed class not only satisfies the numerosity requirement because of its size, but also because joinder of all potential class members is impracticable based on the contextual factors. The proposed class consists of individuals detained in jail on parole warrants because they are accused of violating parole. Most of these individuals have limited financial resources and limited ability to sue independently. *See V.W.*, 236 F. Supp. 3d at 574 ("[T]he ability of any one individual member of the class or the subclass to maintain an individual suit will necessarily be limited by the simple reality that they are being detained."); *Dean v. Coughlin*, 107 F.R.D. 331, 332–33 (S.D.N.Y. 1985) (noting that "[t]he fluid composition of a prison population is particularly well-suited for class status, because, although the identity of the individuals involved may change, the nature of the wrong and the basic parameters of the group affected remain constant") (citations omitted).

Even if some people in jail could bring their own cases, class certification would promote judicial economy by avoiding multiple suits that would raise the same issues and seek the same injunctive relief—ending the Board's mandatory jailing of people accused of violating parole and guaranteeing each person an individualized hearing on their suitability for release pending the final hearing. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (noting how "the class-action device saves the resources of both the courts and the parties"). Finally, numerosity is established because the case involves future class members and the class of predominantly jail detainees is constantly revolving through New York City jails, making the joinder of class members impracticable. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (noting that the transient nature of pretrial detention makes it difficult for "any given individual [to] have his constitutional claim decided"); *see also V.W.*, 236 F. Supp. 3d at 574 (noting that plaintiffs' class includes future pre-trial detainees, which is "the sort of revolving population that makes joinder of individual members a difficult proposition.").

B. Questions of Law and Fact Are Common to the Proposed Class.

The questions of law and fact raised here are "common to the class," Fed. R. Civ. P. 23(a)(2), because their "resolution will affect all or a significant number of the putative class members." *Johnson v. Nextel Commc'ns Inc*., 780 F.3d 128, 137 (2d Cir. 2015). The common question of law and fact to be resolved here is: whether the defendants' mandatory detention of people accused of parole violations pending their final hearing violates the plaintiffs' and the proposed class' rights under the Fourteenth Amendment of the U.S. Constitution and the due process clause of New York State Constitution.

The key to commonality—that the truth or falsity of a question "will resolve an issue that is central to the validity of each one of the claims in one stroke," *Wal-Mart Stores, Inc. v. Dukes*,

564 U.S. 338, 350 (2011)—is present in this case. Resolution of the legality of the defendants' mandatory detention of people accused of violating parole until their final hearing will resolve the issue for the proposed class "in one stroke." *See, e.g., Escalera v. N.Y.C. Hous. Auth.*, 425 F.2d 853, 867 (2d Cir. 1970) (finding that "[a]lthough the facts leading to the [housing authority] action in the case of each named plaintiff were different, the procedures used in each type of action were identical. This provides the common question of law and fact for the members of the respective classes.").

The commonality requirement is perfectly met in cases, like this one, seeking declaratory and injunctive relief to remedy constitutional violations. *See Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001) ("[t]here is an assumption of commonality where plaintiffs seek certification of an injunctive class under Rule 23(b)(2) to right alleged constitutional wrongs.") And in the context of prisons and jails, courts routinely find common questions of law and fact when those incarcerated "have a common interest in preventing the recurrence of the objectionable conduct." *Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24 (2d Cir. 1971); s*ee also V.W.*, 236 F. Supp. 3d at 575 (finding commonality because plaintiffs, who were pre-trial detainees, alleged a "common course of unlawful conduct" and because common answers to whether that conduct is unlawful and whether it should be enjoined will resolve this litigation).

C. The Claims of the Named Plaintiffs are Typical of the Proposed Class.

Rule 23's requirement that the claims of the "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class," Fed. R. Civ. P. 23(a)(3), is satisfied where, as here, "it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented[.]" *Robidoux*, 987 F. 2d at 936-37. Factual differences between the parole revocation cases of the named plaintiffs and members of the

proposed class "will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 923 (3d Cir. 1992) (internal quotation marks and citation omitted). Mr. Bergamaschi and Mr. Roberson challenge the defendants' mandatory detention of people accused of parole until their final hearing, which is directed at and affects both the named plaintiffs and the proposed class.

D. The Named Plaintiffs Will Fairly and Adequately Represent the Class.

The adequacy requirement under Rule 23(a)(4) "is twofold: the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006). "Courts that have denied class certification based on the inadequate qualifications of plaintiffs have done so only in flagrant cases, where the putative class representatives display an alarming unfamiliarity with the suit." *In re Frontier Ins. Group, Inc., Sec. Litig.,* 172 F.R.D. 31, 47 (E.D.N.Y. 1997) (internal quotations marks omitted). Here, all the representatives of the class have been subjected to the same challenged mandatory detention by the Board. Mr. Bergamaschi and Mr. Roberson brought this suit to end the Defendant's mandatory detention of all people accused of violating parole until their final revocation hearing, and the named plaintiffs have no foreseeable conflicts of interest with other class members. Desgranges Decl. ¶ 9.

II. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(B)(2).

The proposed class meet the Rule 23(b)(2) requirement that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R.

Civ. P. 23(b)(2). According to the Supreme Court, civil rights cases, like this one, are "prime examples" of Rule 23(b)(2) class actions. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Likewise, the Second Circuit has recognized that "'[c]ivil rights cases seeking broad declaratory or injunctive relief for a large and amorphous class . . . fall squarely into the category of [Rule] 23(b)(2) actions.'" *Marisol A.*, 126 F.3d at 378 (quoting *Jeanine B. by Blondis v. Thompson*, 877 F. Supp. 1268, 1288 (E.D. Wis. 1995)). This civil rights case is no different than others seeking broad declaratory and injunctive relief. In fact, courts have routinely certified (b)(2) classes in civil rights cases involving similar claims. *See, e.g.*, *Faheem-El v. Klincar*, 600 F. Supp. 1029, 1037 (N.D. Ill. 1984) (finding Rule 23(b)(2) satisfied for a class of parolees challenging on the due process grounds the prohibition of bail during the parole revocation process); *Burka v. New York City Transit Authority*, 111 F.R.D 595 (S.D.N.Y. 1986) (finding Rule 23(b)(2) satisfied when "[a] party that has established a regulatory scheme common to all class members . . . is deemed to have acted on grounds generally applicable to the class"); *Laurido v. Simon*, 489 F.Supp. 1169, 1175 (S.D.N.Y. 1980) (finding Rule 23(b)(2) satisfied because all class members, by virtue of their status as Civil Service employees, were subject to the removal under the statute without a hearing that the 14th Amendment required a hearing before their removal).

Rule 23(b)(2) also applies here because "a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360. Here defendants are acting on grounds generally applicable to the proposed class because the defendants are subjecting class members to mandatory detention pending their final revocation hearing. As a result, a single injunction ending this mandatory detention and guaranteeing each person an individualized hearing on their suitability for release pending the final revocation hearing would provide all the relief sought by plaintiffs. *See Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 2007)

(noting the Rule 23(b)(2) "requirement is almost automatically satisfied in actions primarily seeking injunctive relief").

III. PROPOSED CLASS COUNSEL ARE ADEQUATE UNDER RULE 23(g).

Proposed class counsel, the New York Civil Liberties Union Foundation ("NYCLU") and the Legal Aid Society, are "qualified, experienced and able to conduct the litigation," *Baffa v. Donaldson*, *Lufkin & Jenrette Secs. Corp*, 222 F.3d 52, 60 (2d Cir. 2000), and they satisfy the requirements for class counsel in Rule 23(g). First, plaintiffs' attorneys have done significant work researching the claims in this action, and drafting and filing the complaint. Desgranges Decl. ¶ 8. Second, plaintiffs' attorneys have extensive experience in class action litigation, and have previously represented classes of plaintiffs seeking systemic reform in federal court class action lawsuits. *See* Desgranges Decl. ¶¶ 4-5, 7 (listing cases). Plaintiffs' attorneys also have a deep knowledge of constitutional law and the criminal legal system. Desgranges Decl. ¶¶ 4-7. Finally, plaintiffs' attorneys have already devoted significant resources to developing and maintaining this litigation, as evidenced by the staffing of this case, and will continue to do so as the case proceeds. Desgranges Decl. ¶¶ 5, 7-8.

CONCLUSION

For the foregoing reasons, the plaintiffs respectfully request that this Court grant this motion for class certification, certify the plaintiff class, appoint Michael Bergamaschi and Frederick Roberson representatives of the class, and appoint the undersigned counsel as class counsel.

Dated: April 4, 2020
New York, N.Y.

Respectfully submitted,

s/ Philip Desgranges

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL BERGAMASCHI; and FREDERICK ROBERSON; on behalf of themselves and all others similarly situated, Plaintiffs, v. ANDREW M. CUOMO, Governor of New York State, in his official capacity; and TINA M. STANFORD, Chairperson of the New York State Board of Parole, in her official capacity; Defendants.	Case No. 1:20-CV-02817

DECLARATION OF PHILIP DESGRANGES IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

PHILIP DESGRANGES, a member of the Bar of New York and a member of the bar of this Court, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am an attorney at the New York Civil Liberties Union ("NYCLU") and serve as counsel for the plaintiffs in this putative class action. As such, I am fully familiar with the facts and circumstances of this proceeding.

2. I submit this declaration in support of the plaintiffs' motion for class certification. Attached to this declaration are documents referenced in plaintiffs' memorandum of law in support of the motion for class certification.

3. Proposed class counsel, the New York Civil Liberties Union and The Legal Aid Society, have significant experience litigating class actions and cases involving the rights of incarcerated people.

4. The NYCLU was founded in 1951 as the New York affiliate of the American Civil Liberties Union ("ACLU") and has successfully litigated civil-rights class-action cases against New York State, New York City, the federal government, and other government defendants in the Southern District and elsewhere in New York since its founding. The NYCLU also has years of experience litigating cases defending the constitutional rights of incarcerated people. *See, e.g.*, *V.W. v. Conway*, 236 F.Supp.3d 554 (N.D.N.Y. 2017) (granting preliminary injunction and certifying class in action challenging use of solitary confinement on juveniles in Syracuse jail); *Peoples v. Annucci*, 180 F.Supp. 3d 294 (S.D.N.Y. 2016) (approving class settlement of action challenging solitary confinement in New York State Prisons); *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601 (S.D.N.Y. 2018) (certifying class of detained immigrant children challenging unnecessarily prolonged detention).

5. The NYCLU litigation team on this matter includes Christopher Dunn, Molly Biklen, Philip Desgranges, and Grace Li. Mr. Dunn is the Legal Director of the NYCLU, and he has over thirty years of experience litigating civil rights class actions in federal and state courts, including all of the cases cited in the previous paragraph and numerous other civil rights actions asserting federal and state constitutional claims. He supervises Molly Biklen, Deputy Legal Director at the NYCLU, Philip Desgranges, Senior Staff Attorney at the NYCLU, and Grace Li, legal fellow at the NYCLU. Molly Biklen is counsel for the putative class in *Lewis-McCoy v. Wolf*, 20-cv-1142 (S.D.N.Y.). Philip Desgranges serves or has served as class counsel on *Peoples v. Annucci*, 180 F. Supp. 3d 294 (S.D.N.Y. 2016), *Hurrell-Haring v. State of New York*, 914 N.Y.S.2d 367, 81 A.D.3d 69 (3rd Dept. 2011), and *V.W. v. Conway*, 236 F. Supp. 3d 554 (N.D.N.Y. 2017).

6. The Legal Aid Society of the City of New York (LAS) is a private, non-profit organization that has provided free legal assistance to indigent persons in New York City for over

125 years. It is the largest provider of criminal defense services in New York City and is the primary provider of parole representation in New York City. Through its Special Litigation Unit, the Legal Aid Society also regularly litigates complex constitutional and statutory cases seeking reform of the criminal justice system.

7. The LAS team on this matter includes Corey Stoughton. Corey Stoughton is the Attorney in Charge of the Special Litigation Unit. She has been admitted to bar of New York since 2003 and has litigated numerous civil rights, class action cases in state and federal court.

8. Proposed class counsel the NYCLU and the LAS are committed to serving the interests of the class and have the resources and expertise to do so. Before filing this class-action lawsuit, counsel spent significant time identifying and interviewing people on parole and direct service providers, researching the government's practices and relevant law, and gathering data and analyzing data concerning the parole revocation proceedings. Counsel has engaged in significant work researching and investigating the claims in this matter and is prepared to provide adequate staffing and funding to see this case through to its conclusion.

9. Named plaintiffs Michael Bergamaschi and Frederick Roberson are currently incarcerated in jail at Rikers Island, accused of violating the terms of their parole. I have spoken with the named plaintiffs, and I affirm that they have declared that they are willing to serve as class representatives in this case and have no foreseeable conflicts of interest with other class members.

10. Attached as Exhibit A to this declaration is a true and correct copy of N.Y. Department of Corrections and Community Supervision, Community Supervision Handbook. According to the Community Supervision Handbook, the parole officer is responsible for monitoring parolee compliance with the conditions of parole.

11. Attached as Exhibit B to this declaration is a true and correct copy of Justice Center, The Council of State Governments: New York Supervision Violation Data Snapshot, Confined and Costly.

12. Attached as Exhibit C to this declaration is a true and correct copy of Executive Order No. 202, Declaring a Disaster Emergency in the State of New York.

13. Attached as Exhibit D to this declaration is a true and correct copy of Executive Order No. 202.8, Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency.

14. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Philip Desgranges
PHILIP DESGRANGES

Dated: April 4, 2020
New York, N.Y.

Exhibit A

NEW YORK STATE | Corrections and Community Supervision

COMMUNITY SUPERVISION HANDBOOK

Questions and Answers

Concerning

Release and Community Supervision

INTRODUCTION

1. WHAT IS THE HISTORY OF PAROLE?

The former Division of Parole was established in the Executive Department on July 1, 1930. At that time, a full-time Board of Parole comprised of three members was created and paroling functions for all the State prisons were transferred from the Department of Corrections to the Division of Parole. The training schools, correctional institutions for mentally disabled prisoners, and the women's reformatory maintained separate parole systems until 1945 when parole was consolidated throughout the state.

In 1967, the New York State legislature passed legislation, which established authority for the Board of Parole to grant conditional release on parole to persons under definite sentences and to persons incarcerated in local reformatories. This Legislation also provided for the transfer of duties and functions of the New York City Parole Commission to the New York State Division of Parole.

On January 1, 1971, the Division of Parole was consolidated with the Department of Corrections to form the Department of Correctional Services (DOCS). This merger was based on the premise that a coordinated effort of institutional and community supervision of convicted offenders would be more effective in reducing recidivism. Parole remained part of DOCS until January 1, 1978, when the Division was once again placed in the Executive Department as a separate agency through the Parole Reform Act of 1977. In addition to reestablishing the Division as a separate agency, the 1977 legislation mandated the formal adoption of Parole Guidelines designed to structure the Parole Board's decisions concerning the minimum period of imprisonment and the granting or denying of parole release. In 1978, as a result of the Juvenile Offender Law, the Division of Parole also became responsible for the release decision for juveniles convicted of certain serious felonies and for their post-release community supervision. On April 1, 2011, the Department of Correctional Services and the New York State Division of Parole were again merged to form the Department of Corrections and Community Supervision (DOCCS).

2. WHAT IS COMMUNITY SUPERVISION WITHIN DOCCS?

The Department's Community Supervision staff members are responsible for the reintegration of inmates released from prison by action of the Parole Board, conditional release, release to a period of post-release supervision as well as those individuals sentenced directly to community supervision.

Facility assigned Offender Rehabilitation Coordinators are responsible for parole and post-release supervision orientation, identification of needs and targeted services, the pre-release application process under the Interstate Compact, completion of the pre-Board interview, development of the supervision plan, and community preparation and case assignment. Offender Rehabilitation Coordinators complete pre-Parole Board interviews and community preparation interviews for all inmates appearing before the Board of Parole (indeterminate sentences) and for all inmates released by operation of law (determinate sentences). Offender Rehabilitation Coordinators assigned to the DOCCS facilities complete a core report known as the *"Parole Board Report"*, in preparation for all discretionary release appearances and case reviews. The *Parole Board Report* is a comprehensive case management report and evaluation of case-specific data that is utilized by the Board of Parole in the discretionary release decision-making process and by Field and Re-Entry Services staff during the community preparation investigation phase. Offender

Rehabilitation Coordinators provide assistance to inmates with regard to completion of the COMPAS Risk and Needs Assessment instrument.

The Offender Rehabilitation Coordinators guide and counsel inmates during their period of incarceration in an effort to prepare them for eventual release to the community. The duties of an Offender Rehabilitation Coordinator (ORC) include: (1) helping inmates develop positive attitudes and behavior; (2) motivating their participation in appropriate programs; and (3) preparing inmates for their Parole Board interviews and eventual release to the community. The Parole Officer assigned to a bureau field office is responsible for the supervision of the parolee in the community setting. Parole Officers employed by DOCCS are peace officers who are trained and certified by the Municipal Police Training Council under the auspices of the NYS Division of Criminal Justice Services.

Community Supervision day to day operations are supported by DOCCS Administrative Services, Support Operations, and Research units. Counsel's Office provides legal assistance on Department (DOCCS) policy and authors and interprets legislation. Administrative Law Judges administer due process hearings for alleged parole violators. The Executive Clemency Bureau processes and investigates applications for pardons and commutations of sentence as well as applications for Certificates of Relief from Disabilities and Certificates of Good Conduct. The Office of Victim Assistance works with the New York State Crime Victims Board, local district attorneys and crime victims to help ensure that victims are aware of their rights with regard to the parole process and are afforded an opportunity to be heard in connection with the possible release of an inmate. The Department maintains contact with crime victims and, at their request, keeps them apprised of Parole Board interview dates, decisions, and release dates. The Office of Victim Assistance also coordinates Victim Impact statement meetings between victims and/or their survivors and the Board of Parole.

3. WHAT IS THE BOARD OF PAROLE?

The Board of Parole is a quasi-judicial body possessing the powers and duties specified in Section 259-c of the New York State Executive Law. The Board consists of up to nineteen (19) members appointed by the Governor with the advice and consent of the Senate. The term of office for each member of the Board is normally six years. However, any member chosen to fill a vacancy other than by expiration of term is appointed for the remainder of the unexpired term of the member whom he or she is to succeed.

4. WHAT ARE THE DUTIES OF THE BOARD OF PAROLE?

The duties of the Board of Parole include the following: (1) determining which inmates serving indeterminate sentences of imprisonment may be released to supervision, the date of release, and establishing conditions of post-release supervision; (2) mandating the conditions of release of any person who may be presumptively released or conditionally released under an indeterminate or determinate sentence of imprisonment; (3) establishing written procedures for use in making parole decisions; (4) revoking the parole, presumptive release, post-release supervision or conditional release of any parolee and authorizing the issuance of a warrant for the retaking of such person; and (5) reporting to the Governor, when requested, the facts, circumstances, histories, social, physical, psychiatric, and criminal records of offenders under consideration by the Governor for executive clemency. In addition, the Board of Parole can grant

medical parole to eligible inmates according to Chapter 56 of the Laws of 2009, Part J, amended Section 259-r and enacted Section 259-s of the Executive Law.

5. WHAT IS THE JOB OF A PAROLE OFFICER (PO)?

Parole Officers have dual responsibilities. As peace officers, they protect the community and are responsible for monitoring parolee compliance with the conditions of community supervision. As caseworkers, they must also respond to each parolee's need for services, treatment, and assistance to increase the likelihood that the parolee will succeed in the community. The Parole Officer's role is key to facilitating a successful completion of the sentence or period of community supervision. Parole Officers work in the community and coordinate the delivery of services, help to motivate and guide parolees under supervision through evidence based practices, accepted casework techniques, and also report on parolee progress. If a parolee demonstrates behavior, which indicates an unwillingness to comply with the conditions of community supervision, the Parole Officer (PO) will intervene to promote the parolee's success and may initiate actions which may ultimately result in a revocation of release and return to prison.

No person shall be eligible for the position of Parole Officer (PO) who is under twenty-one years of age or who does not possess a baccalaureate degree conferred by a post-secondary institution accredited by an accrediting agency recognized by the United States office of education, or who is not fit physically, mentally and morally. The Parole Officer (PO) selection shall be based on definite qualifications as to character, ability and training with an emphasis on capacity and ability to provide a balanced approach to influencing human behavior and to use judgment in the enforcement of the rules and regulations of community supervision. Parole Officers shall be persons likely to exercise a strong and helpful influence upon persons placed under their supervision while retaining the goal of protecting society. – Correction [§10(1)(2)].

6. WHAT IS THE JOB OF AN OFFENDER REHABILITATION COORDINATOR (ORC)?

The Offender Rehabilitation Coordinators help inmates develop positive attitudes and behavior, arrange for their participation in programs for self-improvement, and prepare inmates for release to the community. The Offender Rehabilitation Coordinator (ORC) is responsible for compiling all relevant case specific information, completing risk and needs assessments, and guiding the development of supervision plans for inmates who are granted parole or released to a period of post-release supervision by operation of law. The ORC assists inmates throughout the period of incarceration and the ORC provides support and guidance during the Parole Board appearance and community preparation processes. The ORC is primarily responsible for the preparation of the Parole Board Report.

SECTION ONE - ISSUES REGARDING THE SERVING OF AN INMATE'S SENTENCE

1. WHO IS RESPONSIBLE FOR SENTENCE TIME CALCULATIONS?

The Inmate Records Coordinator (IRC) at each DOCCS correctional facility is responsible for sentence time calculations. When an inmate is received by DOCCS, the IRC at the facility will determine the amount of pre-commitment jail time credit to be applied to their sentence and determine their earliest possible release date, merit and conditional release dates, if applicable, and the maximum expiration date of their sentence.

2. TIME COMPUTATION QUESTIONS

Inmates – Inmates who have questions about their time computation must first address their questions and concerns with the Inmate Records Coordinator (IRC) at the correctional facility where they are incarcerated. If the issue is specific to the amount of sentence jail time being applied to their sentence, the inmate must write to the sentencing court or local jail where they were incarcerated and attempt to correct the matter by securing documentation that authenticates the amount of jail time credit that is to be applied to their sentence. Any information or documentation received by the inmate must be provided to the IRC for purposes of review and verification. If a change in the amount of sentence jail credit is warranted, the IRC will make the necessary changes and update the inmate's official time computation.

Parolees – Parolees who have questions or concerns about their pre-commitment jail time credit must also contact the sentencing court or local jail where they were incarcerated prior to their admission to DOCCS and attempt to correct the matter by securing documentation that authenticates the amount of sentence jail time credit that is to be applied to their sentence. Any information or documentation received by the parolee must be provided to the assigned Parole Officer (PO) for purposes of review and verification. If a change in the amount of sentence jail credit is warranted, the Parole Officer (PO) will provide the information to the appropriate Inmate Records Coordinator (IRC) for purposes of seeking a modification in the amount of pre-commitment jail time credit. Questions and concerns regarding general time computation issues should be referred to the DOCCS Office of Sentencing Review.

Inmates or parolees who have specific questions or concerns about the amount of parole jail time credit received, the established delinquency date, or the time assessment imposed following a revocation of community supervision, should contact the Supervising Offender Rehabilitation Coordinator (SORC) at the DOCCS facility where the inmate is presently confined or the Senior Parole Officer (SPO) assigned to the case when the inmate was last supervised in the community. The SORC or SPO will look into the matter and, if necessary, take appropriate action with regard to parole jail time credit, the date of delinquency, or the revocation time assessment.

3. WHAT IS AN INDETERMINATE SENTENCE AND A DETERMINATE SENTENCE?

An indeterminate sentence is one in which the sentencing court has established the minimum period of imprisonment and maximum term of imprisonment. After an inmate completes the minimum period of incarceration, they become eligible to appear before the Board of Parole for discretionary release consideration. If the Parole Board grants parole, the inmate will be subject to a period of community supervision until the completion of their sentence.

A determinate sentence, or "flat" sentence, is one in which the sentencing court is authorized to set a maximum term of incarceration in whole or half years. Under Chapter 1 of the Laws of 1998 *(Jenna's Law)*, determinate sentences must also include a separate period of post-release supervision (see Section Two). The Board of Parole has no discretionary authority with regard to release on a determinate sentence. An inmate is released by operation of law and is required to serve a period of post-release supervision. The applicable period of post-release supervision is imposed by the sentencing court.

4. WHAT IS GOOD TIME?

Section 70.40 of the New York State Penal Law states that an inmate may earn time allowances (good time) off his or her maximum term of imprisonment for good institutional behavior. A good time allowance is granted by the Department (DOCCS) under Section 803 of the Correction Law.

5. WHAT IS TEMPORARY RELEASE? WHAT IS COMMUNITY SUPERVISION'S ROLE IN TEMPORARY RELEASE?

Temporary Release is a program under which eligible and approved inmates (participants) are granted the privilege of leaving correctional facilities to participate in work release, day reporting, furloughs, furloughs involving alcohol and substance abuse treatment, educational release, industrial training leave, community service leave, and leave of absence. Information regarding the Temporary Release Program may be obtained from the Offender Rehabilitation Coordinator (ORC) or the Supervising Offender Rehabilitation Coordinator (SORC) at the facility of confinement. The ORC and the SORC are in the best position to provide information regarding eligibility, the application process, and the requirements of the program.

The Temporary Release Committee (TRC) comprised of DOCCS personnel is responsible for determining which inmates will be recommended for participation in the program. If approved for participation, the participant will be supervised by a Parole Officer in the community setting.

6. WHAT ARE THE TYPES OF RELEASE FOR INMATES?

The following are ways inmates may be released from prison:

A. Discretionary release by the Board of Parole (Initial or Reappearance Interviews)
B. Merit Time Release
C. Completion of the Shock Incarceration Program
D. Presumptive Release
E. Limited Credit Time Allowance
F. Early Conditional Parole for Deportation Only/Conditional Parole for Deportation Only
G. Medical Parole
H. Conditional Release (CR)
I. Maximum expiration (reaching the maximum expiration date of sentence)

A. **Discretionary Release or "Parole"** – is a type of release granted by the Board of Parole as a matter of discretion after an inmate has served the statutory minimum of their indeterminate or mixed sentence. An inmate's first appearance before the Board, where the earliest release date is the court-imposed minimum (parole eligibility date) is called an Initial appearance. Any subsequent appearance is referred to as a Reappearance as it is past the parole eligibility date (PED).

B. **Merit Time** – Inmates serving sentences for certain non-violent crimes may receive merit time allowances against their sentences provided they have achieved defined programmatic objectives, have not committed any serious disciplinary infractions, and have not filed any frivolous lawsuits. Merit time allowances enable indeterminately sentenced inmates to appear before the Board of Parole for possible early release on parole on their merit eligibility dates and certain determinately sentenced inmates may also receive merit

time allowances against their sentences allowing for early release to community supervision.

Merit Time Eligibility:

1. Crime and Sentence Criteria:
    a. An inmate cannot be presently serving a sentence for an A-I felony other than an A-I felony defined in Article 220 of the Penal Law or a violent felony offense (includes any sentence imposed for a violent felony offense in another state).
    b. An inmate cannot be presently serving a sentence for any of the following or any attempt thereof:
        i. Manslaughter 2nd;
        ii. Vehicular Manslaughter 1st or 2nd;
        iii. Criminally Negligent Homicide;
        iv. Incest;
        v. Any offense defined in Article 130 of the Penal Law (sex offenses);
        vi. Any offense defined in Article 263 of the Penal Law (use of a child in a sex performance); or
        vii. Aggravated Harassment of a DOCCS employee by an inmate.
    c. An inmate cannot be presently serving an indeterminate sentence of imprisonment authorized for an A-I felony other than an A-I felony defined in Article 220 of the Penal Law.
    d. An inmate must be serving a sentence of one year or more.

2. Disciplinary criteria:
   An inmate must not commit any serious infraction. A serious disciplinary infraction is defined as behavior which results in criminal or disciplinary sanctions as follows:
    a. Any conviction for a State or Federal crime that was committed after the inmate was committed to DOCCS;
    b. A final disposition at a Tier II or Tier III hearing of violation of any of the rules as described in 7 NYCRR Section 270.2 or any violations for serious misconduct as described in the “Standards of Inmate Behavior” (inmate rule book);
    c. Receipt of a disciplinary sanction at a Tier III hearing which includes 60 or more days of SHU and/or Keeplock time, if the time served was 60 days or more on the particular penalty; or
    d. Receipt of any recommended loss of good time as a disciplinary sanction at a Tier III hearing.

3. 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:
    a. Section 8303-a of the Civil Practice Law and Rules, or
    b. Rule 11 of the Federal Rules of Civil Procedure.

4. Program criteria:
    a. An inmate must successfully perform and pursue his or her most recently assigned Earned Eligibility Plan or Program Plan; and
    b. Subsequent to the date of the most recently assigned Earned Eligibility Plan or Program Plan, the inmate must undertake and complete one of the following:

i. Earn a General Equivalency Diploma (GED);
ii. Receive an alcohol and substance abuse treatment certificate;
iii. Receive a vocational trade certificate following at least six (6) months of programming in that program; or
iv. Perform 400 hours or more of service as part of a community work crew or outside assignment.

An Earned Eligibility Plan is a work and treatment program applicable to an inmate serving a minimum term of not more than eight years. A Program Plan is a work and treatment program applicable to an inmate serving a minimum term that exceeds eight years.

An inmate is not eligible for merit time if he or she failed to successfully complete the Shock Incarceration program for any reason other than an intervening circumstance beyond their control. Inmates who refuse the Shock Incarceration program at reception are deemed ineligible for merit time consideration for six (6) months from the refusal date or after the graduation date of the platoon in which the inmate would have joined while in the program.

An inmate is not eligible for merit time if he or she was removed from a temporary release program for any reason other than an intervening circumstance beyond their control.

An inmate is also not eligible for merit time if placed in a relapse program.

5. Effect on the Sentence:

a. Indeterminate sentences: the merit time allowance is one-third of the minimum term or period imposed by the court for an inmate convicted of an A-I felony under Article 220 of the Penal Law and one-sixth of the minimum term or period imposed by the court for an inmate convicted of any other eligible offense. An inmate serving a sentence for any A-II through E felony drug offense may earn supplemental merit time in the amount of an additional one-sixth of the minimum portion of the sentence imposed for the drug felony if he or she has either:
   i. Completed two or more of the four possible merit program objectives listed in 4, b, i – iv above; or
   ii. Completed one of the four program objectives 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.

b. Determinate sentences: the merit time allowance is an additional one-seventh of the determinate term imposed by the court for an eligible offense.

C. **Shock Incarceration** – Shock incarceration is a program under the jurisdiction of the Department (DOCCS) in which selected, eligible inmates participate in a structured six-month program at a Shock Incarceration facility. Generally, participants who successfully complete the program are issued a Certificate of Earned Eligibility and are immediately eligible for release consideration prior to completing the minimum period of the court-imposed sentence.

D. **Presumptive Release** – In 2003, Section 806 of the Correction Law was amended to enable the Department to grant Presumptive Release to an eligible inmate upon serving a prescribed term of their indeterminate sentence. If eligible, inmates may be entitled to Presumptive Release at the expiration of five-sixths of the minimum term or aggregate minimum term.

To be eligible for Presumptive Release inmates must meet the criteria for Merit Time as noted above, and may not be currently serving or previously convicted of any of the following:

- An A-I felony offense
- A Penal Law Sec. 70.02 violent felony offense
- Manslaughter 2nd degree
- Vehicular Manslaughter 1st and 2nd degree
- Criminal Negligent Homicide
- Penal Law Article 130 or 263 offenses
- Incest

Presumptive Release may be withheld if, while incarcerated, an inmate commits a serious disciplinary infraction, files a frivolous lawsuit or had sanctions imposed against them under Rule 11 of the Federal Rules of Civil Procedure for litigation they have commenced against the State or its employees.

The Department of Corrections and Community Supervision (DOCCS), under the authority of the Commissioner, is responsible for granting approval for Presumptive Release. Although the Board of Parole is not the releasing authority, the Board is required to impose conditions of release. Inmates granted Presumptive Release will be under the supervision and jurisdiction of the Department until they are discharged from their sentence.

E. **Limited Credit Time Allowance (LCTA)** – Certain inmates serving either a determinate or indeterminate sentence for a crime that is not a Merit eligible offense as defined in Correction Law Section 803, may be eligible to earn a six-month Limited Credit Time Allowance (LCTA) against their sentences pursuant to Correction Law Section 803-B, provided that they have achieved certain significant programmatic accomplishments, have not committed a serious disciplinary infraction or maintained an overall poor institutional record, and have not filed any frivolous lawsuits. In the case of an inmate serving a sentence with a maximum term of LIFE for an eligible A-1 felony, the six-month LCTA benefit is subtracted from the minimum period to establish the inmate's LCTA date. In the case of all other LCTA eligible offenses, the LCTA benefit is subtracted from the conditional release date to establish the inmate's LCTA date.

To be eligible for LCTA, an inmate must NOT be serving a sentence for any of the following offenses:

- Murder 1st degree
- An offense defined in Article 130 of the Penal Law
- An Attempt or Conspiracy to commit such offense

Qualifying Offenses are as follows:

- Indeterminate for a non-drug A-1 felony
- Determinate or indeterminate sentence for a violent felony offense as defined in subdivision 1 of Penal Law 70.02
- Determinate or indeterminate sentence for an offense defined in Article 125 of the Penal Law

Program criteria: an inmate must successfully pursue the recommended Earned Eligibility Plan (EEP) and Program Plan and must successfully complete at least one of twelve significant program accomplishments.

One or more of the following must be completed during the current period of incarceration:

1. A minimum of two (2) years successful participation in college programming to include of an Associates or Bachelor's Degree or earning a minimum of twenty-four (24) credits and a minimum of four (4) semesters participation.

2. Successful completion of a Masters of Professional Studies Degree (Sing Sing CF).

3. Two (2) years successful participation as an Inmate Program Associate (IPA).

4. Receipt of certification from the NYS Department of Labor for successful participation in an apprenticeship program.

5. Two (2) years successful work as an Inmate Hospice Aide.

6. Two (2) years successful participation in the Puppies Behind Bars Program.

7. Receipt of certification as an Optician from the American Board of Opticianry with two (2) years successful work in the Division of Correctional Industries Optical Program.

8. Receipt of an Asbestos Handling Certificate from the Department of Labor with a minimum of eighteen (18) months of work in the Division of Correctional Industries Asbestos Abatement Program as a Hazardous Materials Removal Worker or a Hazardous Materials Removal Group Leader.

9. Successful completion of the course curriculum and passing the minimum competency screening process performance exam for Sign Language Interpreter and a minimum of one (1) year of work as a Sign Language Interpreter for deaf inmates.

10. Two (2) consecutive years of participation in the Vocational Culinary Arts Program/Food Service, earning of a Culinary Arts Program/Food Service job title, a passing grade on the National Restaurant Association's ServSafe examination, and the receipt of a ServSafe Certificate.

11. Successful completion of the 490 hour training program in the Department of Motor Vehicles Call Center, work for an additional period of at least twenty one (21) months in an Industries Worker assignment, and earning of the job title, Customer Service Representative.

12. Successful completion of a minimum of 800 hours training in the Food Production Center in one of the seven established job titles, earning of a Food Production Center program certificate, and work for an additional period of at least eighteen (18) months at the Food Production Center.

Inmates granted release under LCTA will be under the supervision and jurisdiction of the Department until they are discharged from their sentence.

F. **Early Conditional Parole for Deportation Only (ECPDO) and Conditional Parole for Deportation Only (CPDO)** – Section 259-I (2)(d)(i) of the New York State Executive Law permits "Conditional Parole for Deportation Only" (CPDO), which is a type of release decision granted by the Board of Parole to an inmate who has been issued a Final Order of Deportation by an Immigration and Customs Enforcement (ICE) Judge, and who has waived or exhausted their right to appeal the ICE Judge's order.

Inmates sentenced to both determinate and indeterminate terms of incarceration are eligible for ECPDO/CPDO, provided that they also meet the following criteria:

1. ECPDO Eligibility:
   - May not be convicted of an A-1 felony (except for Penal Law Article 220 drug felony)
   - May not be convicted of a Violent Felony Offense as defined in Penal Law 70.02
   - Must have served at least one-half (1/2) of the minimum indeterminate sentence or one-half (1/2) of the determinate CR

2. CPDO Eligibility:
   - Inmates are eligible on or after they have reached their parole eligibility or conditional release date
   - There are no disqualifying crimes

3. The Board may:
   - Deny release and grant CPDO
   - Grant release
   - Deny release and deny CPDO

An inmate or their attorney who believes they meet the criteria for ECPDO eligibility should contact the facility SORC/ORC who will verify their eligibility and calendar them for a Board appearance.

G. **Medical Parole** – Chapter 56 of the Laws of 2009, Part J, amended Section 259-r and enacted Section 259-s of the Executive Law to allow for medical parole for those inmates suffering both terminal and significant and permanent non-terminal condition, disease or syndrome, as well as inmates who are cognitively incapable of presenting a danger to society. Under these sections of the law, the Board of Parole may grant an eligible inmate

release to medical parole for a period of six (6) months provided the inmate is not serving a sentence for Murder 1st or attempt or conspiracy to commit Murder 1st.

An inmate must have served one-half (1/2) of the minimum period of an indeterminate sentence or one-half (1/2) of their conditional release date for a determinate sentence if they are serving a sentence for:

- Murder 2nd
- Manslaughter 1st
- Any offense as defined in Article 130 of the Penal Law
- An attempt to commit any of these offenses

Such release shall be granted only after the Board considers whether, in light of the inmate's medical condition, there is a reasonable probability that the inmate if released, will live and remain at liberty without violating the law, and that such release is incompatible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law.

At any time during an inmate's sentence, the inmate or someone acting on their behalf, or a Department employee may make a request to be considered for medical parole.

H. **Conditional Release (CR)** – All inmates, except those serving Life sentences, have a conditional release date which is equal to either one-third (1/3) off their maximum sentence for indeterminate sentences and one-seventh (1/7) off their maximum sentence for determinate sentences. A Time Allowance Committee (TAC) will review an inmate's good time approximately four (4) months prior to the CR date at which time the CR date will either be certified or changed based upon whether there is a loss of good time.

Conditional Release is a statutory type of release that the Board of Parole does not have discretion to grant or deny. The following conditions must be met in order to be eligible for Conditional Release:

- An inmate must apply for conditional release; and
- An inmate must agree in writing to abide by the conditions of community supervision until the expiration of their maximum term, or post-release supervision maximum expiration date.

I. **Maximum Expiration** – Inmates who reach the court imposed maximum expiration date of their sentence while incarcerated will be released from prison and discharged. Discharge upon reaching the maximum expiration of sentence may occur in response to an inmate's loss of all available good time or in response to an inmate's refusal to agree to the terms and conditions of conditional release.

Parole violators who receive a time assessment of "Hold to Maximum Expiration" will be discharged at the expiration of their sentence unless they are eligible for good time and can be released upon reaching their conditional release (CR) date.

Parolees under supervision who reach the maximum expiration of their sentence to parole supervision will be discharged from their sentence.

SECTION TWO - PAROLE AND PAROLE BOARD ACTIVITIES IN STATE CORRECTIONAL FACILITIES

1. DOES AN INMATE HAVE TO SUBMIT AN APPLICATION FOR PAROLE BOARD RELEASE CONSIDERATION?

An inmate does not have to file an application for parole consideration. An Offender Rehabilitation Coordinator (ORC) or Supervising Rehabilitation Coordinator (SORC) will schedule an interview with the inmate approximately four (4) months prior to the inmate's earliest release eligibility date. There is no application requirement for parole consideration. Interviews before a panel of the Board of Parole are scheduled based on the inmate's earliest release date.

2. HOW CAN AN INMATE PREPARE FOR THE PAROLE BOARD INTERVIEW?

Approximately four (4) months prior to the scheduled Parole Board appearance/review, an ORC/SORC will interview an inmate in order to prepare the *"Parole Board Report"* for the appearance or case review before a panel of the Board of Parole. This report will include a description of the inmate's involvement in the instant offense, legal history, and a description of the inmate's overall institutional adjustment and program participation. Inmates may wish to bring copies of any program certificates of completion to the interview.

The report will also contain information about an inmate's plans including where they want to live and work. It is helpful if an inmate has a letter of reasonable assurance to include in the case folder indicating a prospective job offer upon being released. Inmates may also request that any letters of support be made available in the case folder for review by the panel of the Parole Board. It is also encouraged that the inmate prepare a parole release packet for the Parole Board members to review at the time of the interview. The packet of documents should be given to the ORC/SORC well in advance of the interview to ensure that the information is available for review by the panel. These packets typically contain information concerning an inmate's program participation and accomplishments while incarcerated and reasonable assurance of housing and employment.

Inmates may seek the guidance of the ORC/SORC in preparing for their Board appearance and may also seek assistance with regard to the interview and release processes.

Inmates should be prepared to discuss their involvement in the instant offense and also be prepared to answer questions about their prior criminal activity, custodial record, program participation, future goals and release plans.

3. WHAT IS THE PURPOSE OF THE INITIAL PAROLE BOARD APPEARANCE?

Inmates are scheduled for an Initial Parole Board appearance approximately four (4) months prior to the expiration of their court imposed minimum, also known as the parole eligibility date (PED). For mixed cases (indeterminate and determinate sentences), the parole eligibility date is also the conditional release (CR) date, however, in such cases the Board of Parole has discretionary authority to grant release. If the Board grants release, this is known as an "open date." This date is contingent upon the inmate receiving an approved residence in accordance with established

residency restrictions and local laws. The open date may not be established in advance of the parole eligibility date (PED), unless the inmate has received a Merit certificate and has also been approved for Merit release by the Parole Board.

4. WHO WILL BE PRESENT AT THE PAROLE BOARD INTERVIEW?

Discretionary parole interviews are conducted by a panel of two or three members of the Parole Board. Facility staff including an ORC/SORC and a stenographer are also present for the interview by the panel. The stenographer will record what is said during the interview and an inmate may later request a copy of the transcript.

5. MAY AN INMATE APPEAR BEFORE THE PAROLE BOARD FOR A RELEASE INTERVIEW WITH AN ATTORNEY?

No. Counsel may not be present during discretionary release interviews.

6. WHAT IF FAMILY, FRIENDS, EMPLOYERS OR OTHER INDIVIDUALS WISH TO SEND LETTERS IN SUPPORT OF AN INMATE'S RELEASE FOR REVIEW BY THE PAROLE BOARD?

All letters of support should be sent to the ORC at the correctional facility in which the inmate is confined. Additionally, any written statement the inmate wishes to make should be submitted to the ORC in advance of their Parole Board interview. Letters and documents received by ORC will be placed in the case folder and provided to the Parole Board at the time of appearance. In addition, letters in support or opposition can be submitted online.

Letters should not be sent directly to the Board of Parole. The folders are maintained at the facility and it is important that any documents submitted on an inmate's behalf be directed to the attention of the SORC. Sending materials to the SORC is the best way to ensure that all letters, documents, and statements will be placed in the case folder for the Board's review.

Letters should be addressed as:
Correctional Facility Name
Supervising Offender Rehabilitation Coordinator (SORC)
Correctional Facility Mailing Address

7. WHAT ASSISTANCE IS AVAILABLE IN PLANNING FOR RELEASE IF AN INMATE HAS SPECIAL NEEDS?

ORC's are responsible for making case-specific program and treatment recommendations, identifying special needs, referring inmates to community-based services, and initiating the community preparation investigation process. ORC's, PO's, and Re-entry Services staff work together to develop an appropriate supervision plan that targets special needs and confirms the availability of community-based resources. ORC's also provide assistance and support with applications for public benefits and emergency assistance. Applications for public benefits must be supported by medical evidence and/or appropriate documentation of a disability, impairment, or qualifying condition or illness. It is important that the inmate fully participate in the development of the release plan so that their transition from prison to the community is seamless and consistent with the requirements of release.

8. WHAT IS CONTAINED IN THE PAROLE BOARD REPORT?

The ***Parole Board Report*** reflects the following information:

- Crimes of conviction and sentence (criminal history)
- Description of the present offense and prior legal history
- Personal characteristics: identification information
- Inmate statement: comments and attitude regarding the offense which resulted in the conviction or adjudication, as well as statements regarding the legal history
- Institutional adjustment information: a summary of program and treatment participation, as well as disciplinary history
- Release plan: place of residence, employment, educational and treatment plans upon release

9. IS A RISK AND NEEDS ASSESSMENT COMPLETED FOR THE PAROLE BOARD APPEARANCE?

Yes. Indeterminately sentenced inmates undergo a risk and needs assessment prior to the interview before a panel of the Board of Parole and determinately sentenced inmates also undergo a risk and needs assessment prior to the case review by a panel of the Board of Parole. The "Re-Entry" risk and needs assessment is completed at approximately the same time the inmate participates in the pre-Parole Board interview with the ORC or SORC. The risk and needs assessment instrument utilized by the Department (DOCCS) is used to support the re-entry process and decision making regarding the supervision level, treatment and program participation, and case-specific interventions. The risk and needs assessment is particularly important to the development of the supervision plan.

Following release, parolees are subject to reassessments performed by the Parole Officer (PO) and the risk and needs information is used to guide and modify, as necessary, the case supervision plan throughout the period of community supervision.

10. DO VICTIMS HAVE ANY INPUT INTO THE PAROLE BOARD'S DECISION?

Yes. It has always been the policy of the Board of Parole to consider any statement made by a victim or representative of the victim as part of the parole release decision-making process. In fact, legislation adopted in 1985 mandated that victim impact statements be considered by the Board of Parole.

Victims and/or survivors of certain violent crimes may make requests in accordance with the Board of Parole procedures for the purpose of personally submitting their victim impact statements to a member of the Parole Board. The personal meeting provides a setting that permits confidentiality in a suitable environment. A transcript of this meeting is then provided to the panel making the release determination.

In lieu of meeting with a Parole Board member, victims or representative are also allowed to submit their sentiments regarding the release of an inmate by written statement, audiotape or videotape. Any and all information submitted or provided by a victim is always afforded the utmost confidentiality.

New York State Criminal Procedure Law §440.50 provides that upon the request of the victim of a crime that is defined in section 70.02 of the Penal Law as a violent felony offense or a felony defined in Article in 125 of the Penal Law, the victim may submit a written, audiotaped, or videotaped victim impact statement to the Board of Parole. The victim also has the right to meet personally with a member of the Board of Parole to provide a victim impact statement prior to each parole release interview between the members of the Board of Parole and the inmate. Criminal Procedure Law §380.50(4)(5) provides that a crime victim may submit a written application to be informed of an inmate's parole, conditional release, release to post-release supervision, or transfer of custody to the Office of Mental Health pursuant to Article 10 of the Mental Hygiene Law. The victim will also be informed of any discharge, parole, conditional release, release to a period of post-release supervision, or release from an Office of Mental Health facility under Article 10 of the Mental Hygiene Law.

11. WHEN AND HOW DOES THE PAROLE BOARD INFORM AN INMATE OF ITS INTERVIEW DECISION?

A written notification of the release decision will be given to the inmate within two weeks of completion of the interview before a panel of the Board of Parole. If approved for release, the Parole Board Release Decision Notice will identify the release date and the conditions of supervision. If denied release, this form will detail the reasons for the denial and the form will also note the next available date of eligibility for discretionary release consideration.

12. IF THE BOARD OF PAROLE GRANTS RELEASE, WHAT HAPPENS NEXT?

If granted discretionary release, the Board of Parole will establish an "open date" and the proposed residence, employment program, and any other community-based programs will be subject to investigation by the assigned PO working in collaboration with the ORC/SORC.

13. WHAT IS AN OPEN DATE?

An "open date" is a parole status granted by the Board of Parole. To receive an open date, an inmate must be serving an indeterminate sentence. In order to be released to community supervision, the Department (DOCCS) must verify that the inmate has a suitable place to live and employment or other appropriate means of financial support. Inmates are encouraged to participate in the development of the supervision plan and it is important that they fully understand the requirements of supervision and that they are fully aware of the need to comply with the conditions of release as established by the Board of Parole and their Parole Officer.

14. IF AN OPEN DATE IS GRANTED, WHEN WILL THE INMATE BE RELEASED?

An open date is the earliest possible release date. The approval occurs after the PO has completed an investigation of the release program and submitted the results of the community preparation investigation to the SPO and the Bureau Chief (BC). The assigned field team must approve the release program (supervision plan) before an inmate can be released. The ORC will process the release upon being notified of the approved supervision plan. The supervision plan typically consists of the residence verification, employment confirmation or reasonable assurance of employment, educational or vocational training program, chemical dependence treatment, or other case-specific treatment need.

15. WHAT HAPPENS IF AN INMATE IS DENIED RELEASE?

If denied release following the Parole Board interview, an inmate will receive a copy of the Parole Board Decision Notice that will contain the reasons for the denial. The Board of Parole will set a date for the reappearance. The reappearance date cannot exceed twenty-four (24) months from the date of the current appearance. The inmate may submit an administrative appeal from the Parole Board's decision. The ORC can assist with information regarding the appeal process and requirements related to the submission of the appropriate documentation.

16. WHAT IS COMMUNITY PREPARATION AND AN INMATE'S ROLE IN IT?

Where an inmate will live, work or go to school is extremely important. It is essential that they take an active role in the development of their release plan (supervision plan). Prior to their scheduled release date, they will be asked to provide Department (DOCCS) staff with information about where they plan to live and work in the community. This is an important matter that an inmate should be planning for long before the anticipated release date. The information provided by the inmate will be given to a PO who will investigate the proposed residence or housing program, employment, vocational or educational programs, and treatment programs. If the release plans change or require modification, the inmate must immediately contact the ORC. If an inmate is having difficulty with identifying a potential residence or is in need of emergency housing assistance upon release, the ORC and PO can assist the inmate by developing a housing plan that may include temporary placement in a shelter, halfway house, or a transitional residential facility.

17. HOW CAN AN INMATE LOOK FOR EMPLOYMENT WHILE STILL IN THE FACILITY?

An important part of the supervision plan is employment. Independently, inmates should do the following:

- Contact former and prospective employers
- Ask for help from relatives and friends
- Contact ex-offender resource groups
- Write letters to businesses and other organizations where they plan to live
- Utilize all pre-release resources and information available at the correctional facility

18. CAN COMMUNITY SUPERVISION HELP A PAROLEE FIND A PROGRAM?

The Department wants all parolees to complete their period of supervision or post-release supervision successfully, that is, with no new arrests, rule violations, or behavior that would compromise their safety or the safety of others. The Department expects that parolees will gradually become more and more self-sufficient, responsible, and independent. Parolees may require assistance to break the cycle of addiction or to address their history of chemical dependence, control their anger, manage personal finances, pursue education, obtain employment, and pay debts such as child support, restitution and other mandated fees. Parolees may be required to attend a treatment program or participate in other targeted services as a condition of community supervision or period of post-release supervision. The Department's Re-entry Services Unit provides assistance with securing such services, and the PO can also help the parolee access these types of services in the community.

19. IF AN INMATE HAS AN OUTSTANDING WARRANT, CAN THEY STILL BE CONSIDERED FOR PAROLE RELEASE?

Yes. If the Board believes that discretionary release is appropriate, an inmate will receive an "open date" decision. The jurisdiction responsible for issuing the warrant will be notified that the inmate is scheduled for release, and arrangements will be made so that the warrant may be enforced once released. If the warrant is recalled or if the charges are dismissed, the inmate would be released to the community as soon as their release program (supervision plan) is approved. If the warrant or commitment detainer is eventually vacated, removed or lifted for any reason, the parolee is expected to report to their assigned PO and remain under the supervision of DOCCS until the expiration of their sentence or period of post-release supervision.

20. WHAT IS EARNED ELIGIBILITY?

The Commissioner of the Department of Corrections and Community Supervision or his or her designee, may issue a Certificate of Earned Eligibility to an inmate who has shown progress in an assigned institutional program. The Parole Board will review this as part of the institutional record. The possession of an Earned Eligibility Certificate is viewed as a positive factor in release consideration.

21. WHAT IS A RESCISSION HEARING?

Once an inmate is granted a release date and is in community preparation status (having been granted a release date but prior to actual release), the ORC and other DOCCS staff, if necessary, must review any serious violation of facility rules including escape or absconding from a temporary release program or change in their mental condition that would indicate that their release at the present time would not be in their best interest or that of society. The ORC and other DOCCS staff, if necessary, must also review any new information not available to the Board at the time of the interview. After completing an investigation, the SORC may issue a temporary suspension of an inmate's parole release date. If a temporary suspension is issued, the SORC and ORC will forward a report to the Board of Parole. A Board member will then review the report and decide whether or not a rescission hearing should be conducted by the Parole Board to reconsider the earlier Board decision.

If a rescission hearing is ordered, the inmate will be provided with a written notice of the alleged violations of behavior or changes in status in advance of the hearing. At the hearing, evidence will be presented by the SORC or ORC and the inmate will have an opportunity to present witnesses and the documentary evidence, as well as confront and cross-examine adverse witnesses. Although there is no provision for court-appointed counsel at this time, inmates have a right to retain counsel to represent them at the hearing at their own cost. The burden of proof at such a hearing is upon the Department. The Board of Parole will prepare a written decision that either rescinds the release decision or restores the release date previously granted. If the release date is rescinded, the Parole Board decision will indicate the evidence relied upon, the reasons for rescission and a reappearance date will be established.

SECTION THREE – COMMUNITY SUPERVISION

1. WHAT HAPPENS IF AN INMATE IS RELEASED AND CANNOT FIND A PERMANENT RESIDENCE?

The Department may assist in locating programs that may be available to provide a temporary place to live if a parolee becomes homeless, resides in an unstable living situation, or needs a more structured environment. Programs of this nature may also provide other services, such as substance abuse treatment, job development, and employment training.

The PO must approve any residence where the inmate or the parolee proposes to reside and will conduct an investigation of that residence to make sure it is a suitable place, does not violate any of the conditions of release, and will not impede the parolee's ability to successfully complete parole or the period of post-release supervision. Placement in emergency housing or a shelter is not a preferred residence program, and so, the PO will help identify possible residences with family or friends if the inmate has nowhere to live. An inmate or parolee may also be referred to programs that may be able to assist in finding housing or emergency residential services.

2. AFTER AN INMATE IS RELEASED, TO WHOM AND WHEN DO THEY REPORT?

Upon release, unless otherwise instructed, a parolee must report in person with their Certificate of Release agreement within twenty-four (24) hours to the bureau or reporting station listed on their release agreement. The parolee's compliance with the arrival report is extremely important. If the PO who will supervise the parolee is not available at this time, a PO on duty will conduct the arrival report and make arrangements with the parolee to return to the office for the first full interview with their assigned PO. During the arrival report, the rules of community supervision and the parolee's responsibilities under supervision will be carefully explained. Special conditions will also be thoroughly discussed. The parolee should ask any questions they might have about these rules and conditions. It is very important that they completely understand their reporting requirements and overall responsibilities. The PO will examine the release agreement, discuss the residence and programs with the parolee, establish a reporting schedule, and confirm the date and time of the next report.

3. WHAT ARE THE RESPONSIBILITIES OF A PO?

The Parole Officer's job is to assist the parolee with the transition to community supervision, to monitor compliance with the conditions of release, and to ensure the safety of crime victims and the general public. When released from a correctional facility, the parolee may experience difficulties with the transition from prison to residing in the community. Parolees may have trouble finding a job or a place to live. Parolees may also have difficulty re-establishing relationships with family and friends, or abstaining from the use of drugs or alcohol. The PO's job is to counsel, refer a parolee to appropriate services, and to assist in developing positive ways of solving problems to promote the likelihood of the parolee's success under supervision. The type of assistance to be provided will depend on the needs of the parolee and the parolee's willingness to comply with the efforts of the PO. The PO is also responsible for ensuring that individuals under community supervision are obeying the laws of society and the rules of supervision. A PO is statutorily authorized to conduct investigations, search parolees, apprehend parole absconders, and to make arrests.

4. WHAT ARE THE GENERAL CONDITIONS OF COMMUNITY SUPERVISION?

The conditions of supervision are rules that must be followed while under community supervision. Conditions are furnished in writing to the parolee and are explained by the ORC and the PO. Parolees should ask their ORC or PO if they have any questions about the conditions of release. Parolees are required to sign the conditions to acknowledge that they have received a copy, that they understand the conditions of release and understand that they are required to comply with each condition imposed. If interpreter or translation services are required in order to communicate with the PO, including understanding the conditions of supervision, such services and assistance will be provided.

The general conditions of release as per Title 9 NYCRR §8003.2 are:

1. I will proceed directly to the area to which I have been released and, within twenty-four (24) hours of my release, make my arrival report to the Community Supervision Office indicated on my release agreement, unless other instructions are designated on the agreement.
2. I will make office and/or written reports as directed.
3. I will not leave the State of New York or any other state to which I am released or transferred, or any area defined in writing by my Parole Officer without permission.
4. I will permit my Parole Officer to visit me at my residence and/or place of employment and I will permit the search and inspection of my person, residence, property. I will discuss any proposed changes in my residence, employment, or program status with my Parole Officer. I understand that I have an immediate and continuing duty to notify my Parole Officer of any changes in my residence, employment, or program status when circumstances beyond my control make prior discussion impossible.
5. I will reply promptly, fully, and truthfully to any inquiry of or communication by my Parole Officer or other representative of the Department of Corrections and Community Supervision.
6. I will notify my Parole Officer immediately any time I am in contact with or arrested by any law enforcement agency. I understand that I have a continuing duty to notify my Parole Officer of such contact or arrest.
7. I will not be in the company of or fraternize with any person I know to have a criminal record or whom I know to have been adjudicated a Youthful Offender except for accidental encounters in public places, work, school, or in any other instance without the permission of my Parole Officer.
8. I will not behave in such a manner as to violate the provisions of any law to which I am subject which provide for a penalty of imprisonment, nor will my behavior threaten the safety or well-being of myself or others.
9. I will not own, possess, or purchase any shotgun, rifle, or firearm of any type without the written permission of my Parole Officer. I 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, I will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.
10. In the event that I leave the jurisdiction of the State of New York, I hereby waive my 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 I am discharged from Parole or Conditional Release. I fully understand that

I have the right under the Constitution of the United States and under law to contest any effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my Parole or Conditional Release.

11. I will not use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.
12. Special Conditions: (as specified by the Board of Parole, Parole Officer or other authorized representative of DOCCS).
13. I will fully comply with the instructions of my Parole Officer and obey such special additional written conditions as he or she, a member of the Board of Parole, or an authorized representative of the Department of Corrections and Community Supervision, may impose.

5. WHAT ARE SPECIAL CONDITIONS OF SUPERVISION?

Although the general conditions of supervision apply to all parolees under community supervision, the Board of Parole or the PO may impose additional conditions that apply specifically to a parolee and their situation. The ORC will make recommendations regarding case-specific special conditions of release for consideration by the Board of Parole and the PO prior to release. Special conditions of release may include a curfew, a prohibition against drinking or associating with specific individuals, or a prohibition against being in a specific area. A special condition may also be imposed regarding residence requirements intended to provide for the safety of a crime victim or a vulnerable person or population. If the Board of Parole imposes a special condition, only the Board can remove it. If the PO imposes a special condition, then he or she can remove it with the approval of the SPO. Special conditions, whether imposed by the Board of Parole or a PO, must be obeyed in the same manner as the general conditions of supervision.

6. WHAT DOES THE DEPARTMENT (DOCCS) DO ABOUT DOMESTIC VIOLENCE?

Parolees under community supervision, should be aware that any act of domestic violence will not be tolerated. Parole Officers are trained to identify, investigate and respond to incidences of domestic violence and allegations of domestic violence involving parolees. If a parolee becomes involved in domestic violence, the PO will hold them accountable, as this behavior is both a crime and a violation of the conditions of release. If, while under supervision, a parolee is a victim of domestic violence, the parolee should seek immediate assistance from their PO.

The Department (DOCCS) provides support, assistance and service referrals to victims and survivors of domestic violence.

7. WHAT IS THE SEX OFFENDER REGISTRATION ACT AND DOES IT APPLY TO PAROLEES?

New York State's Sex Offender Registration Act applies to individuals who committed certain sex offenses on or after 1-21-96. It also applies to individuals who committed an offense before 1-21-96 if that individual was still serving a sentence of probation, parole or incarceration for a specified offense when the law went into effect.

If a parolee was convicted of a registerable crime, the parolee will be instructed to sign a Sex Offender Registration Form. This form explains the parolee's responsibility to register their address with the Division of Criminal Justice Services (DCJS) on an annual basis, to provide

written notice of any change of address within ten (10) days of the change, and to comply with any other obligations under the law that pertain to the parolee.

A Court will determine the risk level under section 168-d of the Correction Law, which controls the amount of information that can be made available about a parolee. The Court's designation also determines the length of time and how often they must register as a sex offender.

If a parolee moves to another state, they may be required to register as a sex offender in the other state. Their duties to New York State under the Sex Offender Registration Act (SORA) continue.

8. WHAT ARE SEX OFFENDER RISK LEVELS AND DESIGNATIONS, AND WHAT DO THEY MEAN?

If a parolee has been convicted of a registerable crime, one of the following risk levels will be assigned:

- Level 1 – low risk of repeat offense
- Level 2 – moderate risk of repeat offense
- Level 3 – high risk of repeat offense and a threat to public safety exists

If the assigned risk Level is 1, confirmation of the registration is available to the public. If assigned a risk level of 2 or 3, all registration information including the address of the registrant is available to the public.

Additionally, the Court is responsible for making the determination regarding the designation of a sexual predator, a sexually violent offender, or a predicate sex offender. The Court will advise the registrant regarding how long they are required to register.

If assigned a risk Level 3 or designated a sexual predator, the registrant must personally verify their address every ninety (90) days with the local law enforcement agency with jurisdiction over their place of residence.

9. WHAT HAPPENS IF A PAROLEE FAILS TO REGISTER OR VERIFY THEIR ADDRESS OR OTHER REQUIRED INFORMATION WITH THE SEX OFFENDER REGISTRY?

Failure to register or verify a new address with the Registry can result in new criminal charges and a conviction for a Class E felony. A second or subsequent offense will result in a conviction for a Class D felony. Failure to register or verify may also be the basis for revoking a parolee's release status.

10. ARE THERE ANY OTHER REQUIREMENTS SPECIFICALLY FOR SEX OFFENDERS?

The Sexual Assault Reform Act (SARA) applies to certain sex offender cases. A mandatory condition of release applies if the parolee is a Level 3 sex offender or was released to the community on or after February 1, 2001 and is serving one or more sentences for a specified sex offense, and the victim was under the age of 18 at the time of the offense. The parolee will not be allowed to live near or enter upon any school grounds or any other facilities or institutions primarily used for the care and treatment of persons under the age of 18, unless they meet certain criteria and have the written permission of their PO.

11. IF SERVING A SENTENCE FOR A SEX OFFENDER REGISTRY CRIME, HOW DOES A PAROLEE KNOW IF THEIR ELECTRONIC SECURITY AND TARGETING OF ONLINE PREDATORS (E-STOP) ACT MANDATORY CONDITION WILL APPLY AND IF IT DOES, WHAT WILL THE IMPACT BE?

Parolees are eligible for the E-STOP condition if currently serving a sentence for a Sex Offender Registry crime and meet ONE of the following criteria:

- The victim of the offense was under the age of eighteen (18) at the time of the offense
- They have been designated a Sex Offender Registry Level 3 sex offender
- The internet was used to facilitate the commission of the crime

If imposed, the E-STOP condition will require the parolee not to use the internet for certain purposes, such as communicating with minors or accessing pornographic material or social networking sites unless certain conditions are met. These conditions should be discussed with the PO.

12. WHAT ARE A PAROLEE'S RESPONSIBILITIES WHILE UNDER SUPERVISION?

Parolees are required to adhere to all requirements of their sentence (including compliance with any restitution orders, orders of protection, and the payment of fees, fines, etc.). Parolees must comply with the standard conditions of release, Parole Board imposed conditions, and conditions imposed by their PO. Generally, parolees must obey all laws, refrain from the use of any controlled substances, and communicate with their PO in a truthful, cooperative and open manner. The PO will assist the parolee with resolving problems, assist with treatment and service referrals, and provide support throughout the period of community supervision. Ongoing communication between the parolee and the PO is extremely important to the parolee's successful transition to the community and completion of the sentence or period of post-release supervision.

13. WHAT IS "REPORTING"?

Reporting is when a parolee meets with their PO either at the assigned bureau (office) or at another established report location where the PO meets with parolees on his or her caseload. Upon release to community supervision, the parolee will be required to report to their PO on a weekly basis. The frequency of the office reports will be modified over time in response to the parolee's supervision level and adjustment to supervision.

Parolees are required to make office reports throughout the period of community supervision. Failure to report as directed may result in a revocation of release and re-incarceration. It is the responsibility of the parolee to contact their PO in the event there is an emergency or there are unforeseen circumstances that may potentially impact the parolee's ability to report to the bureau (office) or other report location. The parolee must make sure that he or she communicates with their PO by phone to discuss any emergency circumstances and follow the instructions of their PO. It is important that the parolee have available the certificate of release to supervision in order to ascertain the address of the bureau and contact information for the PO and Bureau Chief. If the assigned PO is not available, the parolee must speak with the PO's supervisor or the duty officer, and follow their instructions.

14. WHAT ARE HOME VISITS?

The PO is required to routinely visit a parolee's home in an effort to monitor compliance with the conditions of release. The PO will speak with the parolee, parolee's family members, homeowner, and head of household to see how the parolee is adjusting to the residence and the community. If a parolee is residing at a residential treatment center, half-way house, or emergency housing location, the PO must visit the parolee and with the individuals responsible for operating and managing the facility. Home visits to residential treatment facilities will also involve contact with treatment professionals, counselors, and program intake personnel. Home visits are unscheduled and may involve visits in the evening, at night, and on the weekends to monitor compliance with established curfews. The parolee is expected to comply with the instructions of the PO during all home visits and visits to residential facilities.

15. WILL THE PO VISIT A PAROLEE AT THEIR JOB?

Yes. The PO will verify employment by visiting the place of employment or business establishment, by telephone contact with the employer or supervisor, and by inspecting paystubs and earnings statements.

16. WHAT HAPPENS IF A PAROLEE CANNOT FIND A JOB OR NEEDS JOB TRAINING?

The Department (DOCCS) hopes that the parolee has taken full advantage of educational and vocational training programs and opportunities during the period of incarceration. All parolees, if able to work, are expected to obtain employment as soon as possible after release and to maintain employment. Supervision of the parolee in the community is intended to support and encourage law abiding behavior and self-sufficiency. Obtaining and maintaining employment is one of the most important ways to successfully transition to life in the community. The Department can assist parolees by referring them to potential employers, employment services, and by assisting with enrollment in employment and vocational training programs.

17. DOES THE DEPARTMENT (DOCCS) PERFORM DRUG AND ALCOHOLTESTING?

Yes. The Department considers drug and alcohol testing to be an important component of the community supervision process. Testing methods are used to identify parolees with drug and alcohol problems, to refer parolees to treatment providers, and to respond to violations of the conditions of release. Parolees may be required to comply with substance abuse testing at the time of their office reports or when the PO visits them at their residence. Drug testing allows the PO to determine whether or not the individual is using illegal or unauthorized controlled substances. A positive test may result in a referral to substance abuse treatment or, in some cases, may constitute a violation of community supervision.

The PO has the authority and an obligation to respond to the use and possession of illicit substances as required under New York State law and in accordance with Department policy and procedures.

18. WHAT ASSISTANCE IS AVAILABLE IF THE PAROLEE HAS PROBLEMS WITH DRUG OR ALCOHOL USE?

If there is a substance or alcohol abuse problem, the parolee may be referred by the PO to either a residential or outpatient treatment program. If referred to a treatment provider, the parolee will be assessed and if treatment is recommended he or she will be admitted to either an outpatient program or a residential program. There are a number of community-based treatment resources available for the treatment of the chemically dependent and the PO will initiate the referral and monitor the parolee's admission and participation. The parolee will likely receive a special condition to enter and complete the treatment program.

19. IF A PAROLEE VIOLATES SUPERVISION BY USING DRUGS OR ALCOHOL, WILL THEY BE SENT BACK TO PRISON?

The Department (DOCCS) has a number of programs and resources dedicated to addressing relapse and drug dependence. Where appropriate and consistent with the interests of public safety, the Department offers alternatives to incarceration and provides parolees with the opportunity to participate in Parole Diversion Programs (PDP) operated and staffed by DOCCS personnel. Parolees are also provided with the opportunity to participate in community-based treatment programs. Community-based diversions such as outpatient, residential, detox, and day treatment services are available and may be considered by staff where deemed appropriate. If there is a revocation of release, an alternative disposition of admission to the Willard Drug Treatment Campus (WDTC) or to a PDP is possible provided the parolee meets the program admission criteria. However, if a parolee demonstrates that they are unable to remain sober or remain drug free while in the community, the parolee may be charged with a violation of the conditions of release and re-incarcerated if found to have violated the conditions of release in an important respect.

20. HOW LONG WILL A PAROLEE REMAIN UNDER SUPERVISION?

As a general rule, parolees will remain under community supervision until they are discharged from their sentence. If they meet certain crime and sentence criteria, parolees may be considered for merit termination or mandatory termination of sentence after one (1), two (2) or three (3) years of unrevoked supervision. If eligible, the PO will submit the case to the Board Parole, pursuant to Executive Law 259 (j) for three-year or five-year discharge consideration. Otherwise, a parolee will be discharged when he or she has reached the maximum expiration date of their sentence or has completed the court imposed period of post-release supervision.

21. WHAT IS A MERIT TERMINATION AND MANDATORY TERMINATION OF SENTENCE?

Certain parolees may qualify for a merit termination of sentence granted by the Department (DOCCS) prior to the maximum expiration date of the sentence. This means that the particular sentence is terminated and the parolee will no longer be under the jurisdiction of the Department.

Generally, non-violent felony offenders who meet the requirements under Section 205 of the Correction Law may be eligible for a merit termination of sentence. All violent felony offenders, a majority of sex offenders and those convicted of other offenses are <u>not</u> eligible for a merit termination of sentence.

The merit termination of sentence may be granted only when it has been determined that it is in the best interest of society to do so and that the parolee has made a good faith effort to comply

with any restitution order and/or pay any mandatory court surcharge. The PO can answer questions and discuss the particulars of a merit termination of sentence anytime throughout their period of community supervision.

A mandatory termination of sentence must be granted by the Department when a parolee has served either two or three years of unrevoked community supervision for a felony conviction under Articles 220 or 221 of the Penal Law. For parolees serving indeterminate sentences for Class A felony drug offenses, they must complete three (3) years of unrevoked supervision before this type of discharge can be granted. For all other parolees serving indeterminate sentences for Class B or less than Class B felony drug offenses, two (2) years of unrevoked community supervision must be completed in order to obtain this type of discharge.

22. WHAT IS A THREE-YEAR DISCHARGE?

Except where a determinate sentence was imposed for a felony other than a felony defined in Article 220 or Article 221 of the New York State Penal Law, if the Board of Parole is satisfied that an absolute discharge from presumptive release, parole, conditional release, or release to a period of post-release supervision is in the best interests of society, the Board may grant discharge prior to the expiration of the full term or maximum term to any parolee who has been on unrevoked presumptive release, parole, conditional release, or release to post-release supervision for at least three (3) consecutive years. Discharge will not be granted unless the Board of Parole is satisfied that the parolee has made good faith efforts to comply with any order of restitution, payment of mandatory surcharges, payment of any applicable sex offender registration fee, or DNA databank fee imposed by the court. A three-year discharge is granted by the Board of Parole and is a discretionary decision for which there is no right to an administrative appeal.

23. IF A PAROLEE WANTS TO VISIT OR MOVE TO ANOTHER AREA WITHIN New York STATE, WILL HE OR SHE BE ASSIGNED A NEW PO?

If a parolee wishes to move to another area, the parolee must first seek permission from their current PO. A request must be submitted to the Community Supervision Bureau in the area in which the parolee wants to reside. An investigation of the proposed residence will be conducted by the receiving bureau. If the residence and program are approved, supervision will be transferred to a PO in the receiving bureau. If a parolee desires to travel outside the geographic boundaries of the Region (or any geographic boundaries imposed by the PO) for a temporary visit, the parolee must request and obtain approval for a travel permit.

24. CAN A PAROLEE LEAVE THE STATE TO VISIT?

Yes, if the request to travel is approved prior to the date of departure. Out-of-state travel requires the permission of the PO and Senior Parole Officer (SPO). A parolee must request a travel pass by providing the following information: 1) why and when the parolee plans to leave, 2) how they plan to travel, 3) with whom they plan to travel, 4) where they plan to stay, 5) and when and how they plan to return. Initially, no visit can be approved for a period of over two weeks. Longer stays involve at least some supervision by the parole authorities in the state being visited. It is always helpful to give the PO as much advance notice as possible regarding a planned trip so that he or she can have the necessary paperwork completed in sufficient time. An out-of-state travel permit requires the approval of the SPO.

25. WHAT HAPPENS IF A PAROLEE IS ARRESTED?

Parolees must report any arrests or contacts with law enforcement officers or agencies to their PO. The PO will complete an investigation of the incident. If circumstances warrant, violation charges may occur after the investigation is completed. A violation warrant may be issued and the parolee may be arrested and lodged at a local (county) correctional pending the completion of a preliminary and final revocation hearing.

26. WHY IS THE DEPARTMENT CHARGING A MONTHLY SUPERVISION FEE?

New York State has enacted a law (Correction Law, Section 201 [9]) requiring every parolee to pay a monthly supervision fee. Generally, parolees are expected to pay thirty dollars ($30) per month. Your PO will discuss the supervision fee with you, how the fee is to be paid, and in certain circumstances, where individuals may be able to obtain a temporary or permanent waiver due to disability, financial circumstances, unemployment, or other qualifying financial hardship.

27. DOES THE DEPARTMENT (DOCCS) HAVE A PAROLEE GRIEVANCE PROGRAM?

Yes. A parolee may file a grievance, in writing, with the Senior Parole Officer (SPO). The grievance must be filed using the required form and the parolee must specify the reason(s) for the grievance. The grievance form must be submitted to the attention of the SPO via U.S. Mail to the appropriate Community Supervision Bureau. Forms are available in every Community Supervision Bureau. Parolees are encouraged to resolve issues and complaints with their Parole Officer (PO) before submitting a formal written grievance.

The parolee must file the grievance within thirty (30) days of the alleged occurrence or issue. Upon receipt the grievance form, the complaint will be reviewed and logged in as received. The SPO is responsible for reviewing the matter and rendering a written decision. The written decision will be provided to the parolee. If the parolee believes that the decision of the SPO does not address the complaint or grievance, the matter may be appealed to the Bureau Chief. The parolee may raise the matter to the attention of the Regional Director via the appeal guidelines. All decisions at the level of Regional Director shall be considered final.

A parolee may request information and assistance regarding matters and issues that may be addressed via the grievance program from the Parole Officer, Senior Parole Officer, Bureau Chief, Deputy Regional Director, or Regional Director.

SECTION FOUR - REVOCATION PROCESS

1. WHAT HAPPENS IF A VIOLATION OCCURS?

If the PO has reasonable cause to believe that a parolee under supervision by the Department has lapsed into criminal ways or has violated one or more of the conditions of their release in an important respect, the PO will conference the case with a supervisor at which time a warrant may be issued. The warrant will remain in effect with no right to bail throughout the violation process.

For individuals lodged in New York State, the alleged violator (parolee) will be served with a Notice of Violation within three (3) days of the warrant being lodged. The Notice of Violation describes the hearing process and the parolee's rights with respect to the revocation process. The parolee is also provided a copy of the Violation of Release Report that lists the violation charges. For cases lodged out of state, the parolee must be served within five (5) days of becoming available to the warrant. The parolee may choose to waive or have their Preliminary Hearing. If a parolee chooses to have the Preliminary Hearing, it will be held within fifteen (15) days of the lodging of the parole warrant. If a parolee chooses to waive their Preliminary Hearing, a Final Hearing will be held within ninety (90) days of the waiver of the hearing.

2. WHAT IS A PRELIMINARY HEARING?

A Preliminary Hearing is a hearing conducted for the purpose of determining whether there is probable cause (PC) to believe that the parolee has violated one (1) or more of their conditions of release in a significant respect. In most cases, the preliminary hearing is held in a county jail near the community where the alleged violative behavior occurred or where the parolee was taken into custody.

Although a violator may obtain their own attorney, there is no absolute right to counsel at the Preliminary Hearing. If the parolee does not plead guilty to one of the charges, it is incumbent upon the Department (DOCCS) to present its case through the presentation of evidence and testimony. Upon completion of the hearing, the Preliminary Hearing Officer (PHO) will either find probable cause or not find probable cause. The parole violator will receive a copy of his/her decision following the hearing.

If there is a finding of Probable Cause, the violation will proceed to the Final Hearing stage. If there is a finding of No Probable Cause, the hearing officer will order the warrant be lifted and the parolee will be restored to supervision.

If a parolee is arrested and convicted of a new misdemeanor, there will be no preliminary hearing. Upon conviction for a misdemeanor offense the matter will proceed to the Final Hearing phase. If convicted of a felony in New York State and sentenced to an indeterminate or determinate term, supervision is revoked by operation of law without the need for either a Preliminary or Final Hearing and the parole violator will be returned as a PVNT (parole violator with a new term). If the new Felony conviction results in a sentence other than a new state term of incarceration, the Department (DOCCS) will proceed with the Final Hearing.

3. WHAT DOES BEING DECLARED DELINQUENT MEAN?

A parolee may be declared delinquent in any of the following situations:

- When there is reasonable cause to believe that a parolee has absconded from supervision
- After a finding of probable cause at a Preliminary Hearing
- Upon a waiver of a Preliminary Hearing
- If a parolee is convicted of a new crime while under supervision

The date of delinquency is the earliest date that a violation of release is alleged to have occurred. A declaration of delinquency interrupts the sentence as of the established date of delinquency.

4. WHAT IS A FINAL REVOCATION HEARING?

A Final Revocation Hearing shall be scheduled to take place within ninety (90) days of the determination of probable cause or waiver of the preliminary hearing. A parole violator is entitled to be represented by an attorney who shall file a notice of appearance with the Parole Violation Unit in the bureau located in the jurisdiction where the parolee is incarcerated.

The Administrative Law Judge (ALJ) or a member of the Parole Board will conduct the hearing, will administer oaths, may entertain applications for an adjournment, will direct the presentation of evidence, and will make a determination as to which charges have been sustained by a preponderance of the evidence.

The Department is represented by a Parole Revocation Specialist (PRS) who will present evidence and examine witnesses to testify to the charges in the violation of release report. The alleged parole violator may secure his/her own attorney or request to have the public defender/ legal aid represent him at the Final Hearing. The parole violator may present evidence and witnesses to refute or to mitigate the charges.

If no violation charges are sustained by a preponderance of the evidence, the ALJ will dismiss the charges and order the warrant lifted. If one or more charges are sustained, a delinquency date will be established based on the earliest proven date of the violative behavior.

The attorney for the parolee and the PRS representing the Department will make recommendations with regard to the disposition and such final dispositions may involve a time assessment, admission to a diversion program such as the Willard DTC or other programs, or a decision to revoke release and restore to supervision in the community. The parolee will receive a copy of his/her final decision after the ALJ considers the recommendations and makes a final determination.

An appeal may be filed within thirty (30) days of receipt of the final revocation decision and the appeal submission must be perfected within one-hundred and twenty (120) days.

If a parole violator has pending felony charges, he/she may request to be put on the “K Calendar” for an indefinite period and until such time as the pending felony charges are disposed of or the parole violator wishes to proceed with the Final Hearing.

5. WHAT ARE PAROLE REVOCATION GUIDELINES?

In January 1997, the Board of Parole adopted guidelines governing the revocation process. Under the amended regulations, revocation outcomes reflect a guideline structure that considers criminal history, crime of conviction, number of prior violations, and current violative behavior. The guidelines are structured to ensure that those violators with a history of violent behavior receive the most severe penalties and those with substance abuse problems receive the necessary treatment.

6. HOW DO THE REVOCATION GUIDELINES WORK?

Under the guidelines, most violators fall into one of three categories which result in a certain sanction or range of sanctions. The three major categories are described below:

Category 1 cases include the following violators:

- Conditionally released on a violent felony offense as defined under Penal Law Section 70.02
- Paroled or conditionally released on an A-1 felony offense
- Paroled or conditionally released on any felony offense under Article 125, 130, 135, 263 or Section 255.25 of the Penal Law
- Paroled on any violent felony offense or youthful offender adjudication involving the use, or threatened use, of a deadly weapon or dangerous instrument or the infliction of physical injury
- Current violative behavior involving the use, or threatened use of a deadly weapon or dangerous instrument or the infliction or attempted infliction of physical injury, or possession of a firearm, or threats toward Department (DOCCS) staff
- A criminal record that includes either a violent felony conviction, or youthful offender adjudication that occurred within the 10-year period preceding the commission of the felony on which the current sentence is based and involved the use or threatened use of a deadly weapon or dangerous instrument or the infliction of physical injury. Any period of time during which the person was incarcerated shall be excluded in calculating the 10-year period preceding the act.

The time assessment imposed on sustained Category 1 cases can be no less than 15 months; however, the Department may grant a mitigating reduction of up to three months. Potential Category 1 cases may also be restored to the Willard Drug Treatment Center (WDTC).

Category 2 cases include the following violators:

- The current conviction is for a felony, other than A-1, defined by Article 220 or 221 of the Penal Law and the sustained violation is for other than a felony committed while under supervision
- The current sentence is based on a conviction other than Penal Law Article 220 or 221 offense which is neither a violent felony offense or a Class A felony and the current violation charge is sustained on Rule 8 drug or marijuana charge, Rule 11 charge or special condition prohibiting the use of alcohol.

All Category 2 violators are revoked and restored to Willard DTC. However, a violator may be exempted from mandatory participation in Willard DTC (and moved to Category 3) when one of the following circumstances applies:

- Time remaining on sentence as of warrant lodge date is less than nine months
- Felony charges are pending as of Final Hearing date
- Medical or psychiatric ineligibility

Category 3 cases include violators that do not fall under Categories 1 or 2.

The time assessment imposed on a Category 3 violator whose crime of conviction is a violent felony offense as defined in Penal Law Section 70.02 is the time spent in custody (at the time of the Final Hearing) plus six months. For a violator with a non-violent felony offense as a crime of conviction, the time assessment is time spent in custody plus three months.

Persistent Violators are Category 2 or 3 cases with two prior sustained violations, who upon receiving a third violation (or more), may receive a time assessment not to exceed 12 months.

Certain types of parole violators do not fall into Category 1, 2, 3 and do not receive an established sanction. In these cases, a time assessment or revocation decision is imposed by an Administrative Law Judge or by the Board of Parole. These include:

- Those sentenced to Willard under Section 410.91 of the Criminal Procedure Law (Judicially Sanctioned)
- Those restored to Willard who fail to successfully complete the 90-day program
- Under the guidelines, graduates of the Shock Incarceration Program may be revoked and restored to Willard. However, if shock graduates receive a time assessment, the time assessment shall be at least for a period of time equal to the minimum period of imprisonment imposed by the court.

Mitigating Circumstances Under the new regulations there are five sets of mitigating circumstances which, if demonstrated, allow for a departure from the mandatory penalties imposed on Category 1, 2, and 3 violators. The mitigating circumstances are:

- The violator is the custodial parent of a minor child, and has been the actual primary caregiver for at least 12 months, or since birth or adoption prior to incarceration on the warrant. If restored, the violator has a stable residence and means of support so that he or she would continue to care for the child
- The violator's parole supervision prior to the conduct for which the warrant was issued is deemed acceptable by the Department and has a stable residence and prior employment
- The violator has voluntarily returned to supervision after absconding
- The violator has a new pending criminal charge and the new charge is being disposed of by referral to any alternatives to incarceration program (ATI). Restoration to supervision is conditioned only upon the successful completion of the ATI program
- The violator who would otherwise be a Category 2 violator but whose medical or psychiatric needs cannot be met at Willard

If one or more mitigating circumstances apply, violators can be revoked and restored to supervision if the Department has found that:

- The violator's program needs could be adequately addressed in the community with supervision; and
- That restoration to supervision would not have an adverse effect on public safety

7. IF PAROLE IS REVOKED, CAN THE PAROLEE BE RELEASED AGAIN?

Yes. After serving a mandated period of re-imprisonment following a final hearing (i.e. time assessment), the parolee is eligible for re-release from state prison. Depending on the nature of the sentence they are serving, this release may occur following Parole Board review or by operation of law.

8. WHAT HAPPENS IF A PAROLEE IS REVOKED AND RESTORED TO THE WILLARD DRUG TREATMENT CAMPUS?

The Willard Drug Treatment Campus is a ninety (90) day residential drug and alcohol treatment program operated by the Department. Parolees with a substance abuse history or whose violation involves substance abuse may be revoked and restored to Willard through the revocation process. Once they have completed the Willard program, they will be released back to their assigned bureau to resume their supervision.

9. HOW DOES "GOOD TIME" WORK IF PAROLE HAS BEEN REVOKED?

Violators serving indeterminate sentences who are returned to a State correctional facility owing more than one year may earn good time equaling up to one-third of the remaining sentence. In other words, if they are returned owing fifteen months on supervision on an indeterminate sentence, they may receive five months good time and be eligible for conditional release ten months after being returned. Violators returned to incarceration from a period of post-release supervision are not eligible for good time or a new conditional release date.

SECTION FIVE - SENTENCING REFORM ACTS

1. WHAT ARE THE SENTENCING REFORM ACTS OF 1995 AND 1998?

The Sentencing Reform Act of 1995, and the Sentencing Act of 1998, which is known as Jenna's Law, mandated that any individual convicted of legislatively defined violent felony offenses receive determinate sentences, rather than indeterminate sentences.

Under the Sentencing Reform Act of 1995, determinate sentencing was applied to second felony offenders being sentenced for violent felony offenses committed on or after October 1, 1995. Inmates who receive a determinate sentence are not eligible for release consideration by the Parole Board.

These individuals may be conditionally released to supervision by the Department, after completion of 6/7 (85%) of the sentence imposed, provided that they are granted the requisite good time allowances based upon their adjustment to the rules and regulations of the Department.

Jenna's Law (1998) mandated that determinate sentences be imposed for any violent offenses committed after September 1, 1998, whether they were first or subsequent felony offenses. Jenna's Law also established mandatory periods of post-release supervision that must be served under the jurisdiction of the Department. First time violent felony offenders received up to five years of post-release supervision, with the length determined by the felony class of the conviction. Second violent felony offenders must serve a mandatory five-year period of post-release supervision, regardless of the felony class of the present offense. In addition, they will not be eligible for conditional release, but must serve the time assessment imposed by the Parole Board for the parole violation. There is no good time off the period of post-release supervision.

The Parole Board, prior to conditional release on a determinate sentence, will establish conditions for the post-release supervision period.

2. WHAT IS THE WILLARD DRUG TREATMENT CAMPUS?

The Willard Drug Treatment Campus is an approximately 800-bed residential drug and alcohol treatment program operated and staffed by the Department. This program is designed to assist participants to achieve, develop and/or maintain recovery and mandates a minimum 90 days of intensive substance abuse treatment at Willard.

Willard serves two distinctive types of individuals with substance abuse histories. The first, known as Judicially-Sanctioned, was established as the result of the Sentencing Reform Act of 1995. Second felony offenders with a conviction for specific drug and/or property offenses, with no prior convictions for violent offenses, are eligible. These individuals may be judicially sentenced directly to community supervision with a requirement to complete the Willard program.

The Willard Campus also serves as an alternative to re-incarceration for certain parole violators who have been revoked and restored to this program.

All Willard graduates who successfully complete the program are returned to the community and provided with treatment services. Graduates are provided with an aftercare appointment for placement in a community-based substance abuse treatment program to ensure continuity of care and treatment.

SECTION SIX – INTERSTATE

1. WHAT IS THE INTERSTATE COMPACT FOR PAROLE?

The Interstate Compact for Adult Offender Supervision (ICAOS) is an agreement among the fifty states, Puerto Rico, Virgin Islands and the District of Columbia that allows individuals paroled by one state to be supervised in another state. The authority for the Interstate Compact is contained in section 259-mm of the Executive Law.

2. CAN A PAROLEE BE PAROLED TO ANOTHER STATE?

Yes, the process is governed by the rules under ICAOS.

3. WHAT IF AN INMATE IS PAROLED TO AN IMMIGRATION WARRANT?

If an inmate is paroled or conditionally released to an Immigration and Customs Enforcement (ICE) warrant and subsequently deported, the parolee is prohibited from re-entering the United States without the written permission of the appropriate United States Immigration officials, Board of Parole, and the Department (DOCCS). A parolee who is deported cannot re-enter the United States unless he or she is authorized to re-enter. If a parolee illegally re-enters the United States and is convicted of illegal re-entry, 8 U.S.C. §1326 authorizes the United States District Court to impose a period of imprisonment of up to ten (10) years and a fine. Illegal re-entry may also be the basis for a revocation of parole or conditional release. If a parolee is not subject to deportation and is released from ICE custody, he or she must report, in person, to their parole officer at the bureau (office) location listed on the DOCCS certificate of release to supervision form.

4. WHAT SUPERVISION CONDITIONS WILL I BE UNDER IF MY SUPERVISION IS TRANSFERRED TO ANOTHER STATE OR I AM DEPORTED?

A parolee is expected to comply with each of the conditions of release as listed on the certificate of release agreement. In addition, a parolee is expected to comply with any additional written conditions of release imposed by the parole officer. If the parolee's supervision is transferred under the Interstate Compact for Adult Offender Supervision (ICAOS) agreement, the parolee must comply with both the conditions imposed by New York State and any conditions imposed by the receiving state. If deported, the parolee must comply with all applicable conditions of release and must not re-enter the United States without the written permission of the United States Immigration and Customs Enforcement officials, Board of Parole, and the Department (DOCCS).

SECTION SEVEN - RESTORATION OF RIGHTS

1. ARE THERE PROTECTIONS AGAINST EMPLOYMENT DISCRIMINATION BASED ON CRIMINAL CONVICTION?

Unless a parolee has a mandatory disability imposed on them by law, the law requires employers with whom they have applied, to consider a number of factors including whether they have a Certificate of Relief from Disabilities or a Certificate of Good Conduct. Also, employers are forbidden to ask about or consider arrests that did not lead to conviction. Employers and licensing agencies are prohibited from denying an employment application because of a criminal record unless:

- There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
- The issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

As a result of felony and certain misdemeanor convictions, a parolee may be prohibited by law from engaging in certain types of employment and from applying for certain types of licenses. These disabilities may continue even after completion of the sentence imposed by the Court.

The Department, in its discretion, may issue a Certificate of Relief from Disabilities or Certificate of Good Conduct. A certificate may remove mandatory disabilities in general and/or those specifically indicated by the Department.

2. FROM WHAT LICENSES AND EMPLOYMENT ARE PAROLEES BARRED?

Legal bars to licenses and employment are contained in various laws enacted by the State Legislature. Some examples include employment as a barber, security guard, private investigator, insurance broker, as well as licenses to sell liquor wholesale or retail, and licenses for real estate brokers and notary publics. This is not a complete list.

3. WHO IS ELIGIBLE FOR A CERTIFICATE OF RELIEF?

By law, a parolee is eligible for a Certificate of Relief if they have not been convicted of more than one felony. For this purpose, two or more felony convictions stemming from the same indictment count as one felony. Two or more convictions stemming from two or more separate indictments filed in the same court, prior to conviction under any of them, also count as one felony.

The Department may also issue a Certificate of Relief if an eligible parolee has been convicted in another jurisdiction and who now lives in New York State.

A Certificate of Relief may be issued upon an eligible inmate's release from a correctional facility or at any time thereafter.

4. WHAT EFFECT DOES A CERTIFICATE OF RELIEF HAVE ON MY STATUS?

A Certificate of Relief may remove any mandatory legal bar or disability imposed as a result of conviction of the crime or crimes specified in the certificate. The Certificate of Relief does not, however, enable a parolee to retain or become eligible for public office. Note that removing mandatory legal bars restores their right to apply and be considered for employment or license, but does not guarantee it will be granted. A Certificate of Relief also restores their right to register to vote and to actually vote.

A Certificate of Relief issued upon release, or once they are on supervision, is a temporary certificate. This certificate becomes permanent when they are discharged from supervision. During the time it is temporary, the certificate may be revoked for a violation of the conditions of release.

5. WHO IS ELIGIBLE TO APPLY FOR A CERTIFICATE OF GOOD CONDUCT?

In contrast to the Certificate of Relief, a parolee is eligible for the Certificate of Good Conduct even if they have been convicted of more than one felony. They do not become eligible for a Certificate of Good Conduct, however, until a minimum period of time has elapsed from the date of their unrevoked release from custody onto supervision or from the date their sentence ended.

If the most serious conviction in their criminal history was for a C, D or E felony, they must wait at least three years from the date of their last conviction, payment of fine, or release from prison onto community supervision, whichever is later. The individual will have to wait at least five years from their last conviction, payment of fine, or release from prison onto supervision if their most serious conviction was for an A or B felony.

6. WHAT EFFECT DOES A CERTIFICATE OF GOOD CONDUCT HAVE ON A PAROLEE'S STATUS?

A Certificate of Good Conduct has the same effect as the Certificate of Relief. In addition, the Certificate of Good Conduct may restore their right to seek public office. The certificate may remove mandatory disabilities in general and/or those specifically indicated by the Department. A Certificate of Good Conduct also restores their right to register to vote and to actually vote.

The Certificate of Good Conduct issued while under supervision is a temporary certificate. The certificate will become permanent upon discharge from supervision. During the time it is temporary, it may be revoked by for a violation of the conditions of release.

7. HOW ARE CERTIFICATE APPLICATIONS SUBMITTED?

If a parolee has not completed their sentence, they cannot apply directly for a Certificate of Relief or a Certificate of Good Conduct. The application is submitted to the Department's Certificate

Review Unit by their PO. If they are under supervision, they should discuss their desire to apply for a Certificate with their PO.

If they have completed their sentence, they may apply directly to the Certificate Review Unit of the Department for Certificates of Relief or Good Conduct. If convicted in another state or by a federal court and live in New York State, they may apply directly upon release from custody to the Certificate Review Unit.

8. HOW ARE VOTING RIGHTS RESTORED?

The right to vote is automatically restored when a parolee completes the maximum expiration of sentence or is discharged by DOCCS. While on community supervision, if a parolee has been issued a Certificate of Relief from Disabilities or a Certificate of Good Conduct, the parolee may register to vote. To register to vote they must complete a voter registration form and deliver it to the local Board of Elections. Registration forms are available at many government agencies, on the Internet at http://www.elections.ny.gov/VotingRegister.html or by calling 1-800-FOR-VOTE. There is no need to provide a Certificate of Relief from Disabilities or any other documentation about their criminal history in order to register to vote after completing their maximum sentence or having been discharged from supervision.

9. WHERE MAY AN INDIVIDUAL OBTAIN INFORMATION ABOUT CERTIFICATES OF RELIEF AND GOOD CONDUCT, AND ABOUT LICENSING AND EMPLOYMENT?

Article 23 of the New York Correction Law deals with Certificates of Relief from Disabilities and Certificates of Good Conduct. Article 23A of the Correction Law deals with licenses and employment of persons convicted of criminal offenses. Any individual on parole should consult with their PO about specific questions they may have. Certificate applications and additional information are available on the Department's website: www.doccs.ny.gov.

SECTION EIGHT - EXECUTIVE CLEMENCY

1. WHAT IS EXECUTIVE CLEMENCY?

Clemency, as defined by the State Constitution (Article IV, Section 4), provides the Governor "the power to grant reprieves, commutations and pardons after convictions for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations..." Only the Governor may grant clemency, and it is only granted under the most compelling circumstances.

2. WHEN ARE PARDONS CONSIDERED?

Pardons may be considered if no other adequate administrative or legal remedy is available:

- To permit a conviction to be set aside where there is overwhelming and convincing proof of innocence not available at the time of conviction
- To relieve a disability imposed upon a conviction (this is rarely used since relief may generally be obtained by means of a Certificate of Good Conduct or Certificate of Relief from Disabilities)
- To prevent deportation or to permit reentry into the United States

3. WHEN IS COMMUTATION OF SENTENCE CONSIDERED?

Commutation (reduction) of an inmate's minimum period of imprisonment may be considered to enable them to be considered for release on community supervision at a time earlier than permitted by the court-imposed sentence.

Except in extraordinary circumstances, a case will be reviewed for possible commutation of sentence only if:

- The term or minimum period of imprisonment is more than one year
- An inmate has served at least one-half of the minimum period of imprisonment; for an inmate with a determinate sentence, this means serving at least three-sevenths of his or her period of imprisonment
- An inmate will not become eligible for release on community supervision within one year from the date of application

4. WHAT IS THE FUNCTION OF THE EXECUTIVE CLEMENCY BUREAU?

The Executive Clemency Bureau within the Department serves three primary functions:

- To screen candidates for satisfaction of the Executive Clemency eligibility requirements as set by the Governor's office
- To gather materials concerning clemency applications
- To respond to letters from applicants and others regarding clemency applications

5. WHERE MAY AN INMATE OBTAIN MORE INFORMATION ABOUT EXECUTIVE CLEMENCY?

A two-page document entitled "Guidelines for Review of Executive Clemency Applications" is on file in the law library of each correctional facility.

SECTION NINE - APPEALS AND ACCESS TO PAROLE FILES

1. WHO IS ELIGIBLE TO FILE AN ADMINISTRATIVE APPEAL?

An administrative appeal may be filed by an inmate who has been denied discretionary release (parole) by the Board of Parole and an inmate may also file an appeal of a decision to rescind a prior grant of parole. A parolee who has had their parole, conditional release, presumptive release, or period of post-release supervision revoked may also file an administrative appeal.

2. IS THERE A TIME LIMIT FOR THE FILING OF A NOTICE OF APPEAL?

Yes. A Notice of Appeal must be filed with the Board of Parole's Appeals Unit within thirty (30) days of the date that the inmate or parole violator receives written notice of the Board's decision. If the appeal is from a final revocation decision, the thirty (30) day filing period begins when either the inmate or their attorney (if they were represented by one at the Final Hearing) receive a copy of the revocation decision.

3. WHAT QUESTIONS MAY BE RAISED ON APPEAL?

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

A. Did the proceeding and/or determination violate lawful procedure, or was it affected by an error of law, was it arbitrary and capricious, or was it otherwise unlawful?
B. Did the Board member or members making the determination rely on erroneous information as shown in the record of the proceeding, or was relevant information not available for consideration?
C. Was the determination excessive?

The questions below may be raised on appeal from a parole rescission or final revocation determination, and subject to the limitation that evidentiary rulings will be considered only if a timely objection was made at the hearing:

D. Was the determination supported by a preponderance of the evidence?
E. Questions raised A through C above.

4. HOW DOES ONE OBTAIN LEGAL REPRESENTATION IN ORDER TO COMPLETE THE APPEAL?

An inmate may obtain private counsel to assist them in completing their appeal. If they cannot afford private counsel, they should contact the closest legal services organization that provides free legal services for indigent inmates, or the County Court in the county where they are imprisoned. They may obtain the name and address of such legal services organizations, or the appropriate court, by contacting their ORC or the Inmate Law Clerk of the law library at your correctional facility.

5. HOW DOES AN INMATE PERFECT AN APPEAL?

After the Notice of Appeal is filed, the appeal is perfected by filing an original and two copies of a letter or brief with the Appeals Unit of the Board of Parole in Albany. That document should state the specific questions raised on appeal, and why the appellant believes the decision was incorrect. If the inmate is relying on any documents to support their arguments, those documents should be attached to their letter or brief.

6. IS THERE A TIME LIMIT FOR THE PERFECTING OF AN APPEAL?

Yes. An administrative appeal must be perfected within four months of the date on which the Notice of Appeal has been received by the Appeals Unit. The Appeals Unit will reply in writing and advise them of the final date by which the brief or letter on the appeal must be received. This four-month filing period may be extended where a written request is made prior to the expiration of the time limit. Extensions may be granted at the discretion of the Appeals Unit for good reasons.

7. HOW IS THE APPEAL DECIDED, AND BY WHOM?

The Appeals Unit prepares findings and recommendations to the Parole Board. Three members of the Board of Parole ultimately decide an administrative appeal. Once a final decision is rendered, the Appeals Unit will send the inmate a copy of its findings and recommendations,

together with a copy of the Board's final decision. If the Board either reverses or modifies its original decision, the Appeals Unit also instructs appropriate staff concerning what action is to be taken.

8. IF AN INMATE'S APPEAL IS UNSUCCESSFUL, IS THERE ANY OTHER ADMINISTRATIVE RECOURSE AVAILABLE?

No. All relevant issues should be submitted when the administrative appeal is filed to make review and determination easier and quicker.

SECTION TEN – PRISON RAPE ELIMINATION ACT (PREA)

1. WHAT IS THE PRISON RAPE ELIMINATION ACT (PREA)?

The United States Congress enacted the Prison Rape Elimination Act (PREA) in 2003 in an effort to address the problem of sexual abuse of persons in the custody of Federal, State, and local correctional systems. The PREA statute mandates a zero tolerance policy regarding rape and sexual abuse in prisons, jails, police lock-ups, and other confinement facilities. PREA requires the development of standards for detection, reduction, and punishment for rape and sexual abuse. The PREA Act applies to all correctional institutions that house adult or juvenile offenders and also applies to community-based correctional agencies.

The Department of Corrections and Community Supervision (DOCCS) employs a zero tolerance policy and any sexual abuse of an inmate or parolee committed to the care and custody or supervision of DOCCS by a staff member, contractor or contract employee, intern or volunteer will result in appropriate disciplinary or administrative action and will be prosecuted to the fullest extent allowed by law.

2. WHAT IS SEXUAL ABUSE?

Inmate on inmate sexual abuse is when one or more inmates engage in coercive sexual conduct, including sexual contact, with another inmate against his or her will or by use of threats, intimidation or other coercive actions. A sexual act committed by a parolee under community supervision who is placed in a community residential program against another parolee or resident of that program is sexual abuse when the sexual act is against the victim's will by use of force, threats, intimidation, or other coercive actions.

Staff on inmate or parolee sexual abuse is when an employee, volunteer, intern or outside contractor engages in sexual conduct, including sexual contact, with an inmate or parolee committed to the care and custody or supervision of DOCCS.

3. WHAT YOU SHOULD DO IF YOU HAVE BEEN SEXUALLY ABUSED OR HARASSED?

Every inmate and parolee has the right to be safe from sexual abuse and sexual harassment. If you are under supervision in the community and you believe you have been sexually abused or harassed, report the incident immediately to your Parole Officer (PO) or to local law enforcement. If you are being pressured, threatened or extorted to have sexual contact with anyone, you should immediately report it to your Parole Officer, the Senior Parole Officer or Bureau Chief. DOCCS

staff will take the appropriate steps to protect you and also assist you with seeking proper medical attention. You may also contact the Department's Office of Special Investigations (OSI) for assistance. All reports of sexual abuse, sexual harassment or retaliation will be fully investigated. If you want to report an incident to an outside agency, you may contact the New York State Commission of Correction.

SECTION ELEVEN – REASONABLE ACCOMMODATIONS (PAROLEES WITH DISABILITIES)

1. WHAT IS THE AMERICANS WITH DISABILITIES ACT (ADA)?

Title II (Subtitle A) of the Americans with Disabilities Act (ADA) prohibits State and local entities from discriminating against any qualified individual with a disability in their programs, services, and activities. The Department (DOCCS) is required to make "reasonable accommodations" or modifications to existing policies and procedures to allow parolees with disabilities the same opportunities as non-disabled parolees, unless to do so would be an undue burden to DOCCS, cause a fundamental alteration to a program, or compromise the safety or security of a Community Supervision office or facility.

Parolees with disabilities have a right to request reasonable accommodations to make programs and services more accessible and usable. Under the ADA, an individual with a disability is a person who has:

- A physical or mental impairment that substantially limits one or more life activities, such as walking, talking, hearing, seeing, caring for oneself, learning, or working;
- A record of such impairment; or
- Is regarded as having such impairment.

2. I HAVE A DISABILITY AND I AM HAVING DIFFICULTY ACCESSING THE DOCCS OFFICE, A PROGRAM, SERVICE, OR ACTIVITY, WHAT DO I DO?

The Department of Corrections and Community Supervision (DOCCS) is committed to assuring fair and equitable treatment of parolees with disabilities who are under supervision in the community and seeking access to DOCCS facilities and offices, programs, services, and activities. Under the ADA, discrimination against parolees with disabilities is prohibited. It is the policy of DOCCS that all facilities, programs, services, and activities are to be readily accessible to qualified individuals with disabilities. DOCCS requires its employees to follow policies and procedures to make the Department's facilities, programs, and services accessible to individuals with disabilities unless to do so would fundamentally alter the nature of a program, service, or activity or create an undue administrative burden on the Department (DOCCS).

3. WHAT IS A REASONABLE ACCOMMODATION?

A reasonable accommodation is essentially any allowable change in the environment, policies or procedures, or the manner in which tasks are completed that enables a "qualified individual with a disability" to participate in a particular program or service. Reasonable accommodation is also any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a

qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

4. HOW DO I REQUEST A REASONABLE ACCOMMODATION?

While under supervision in the community, you should request assistance from your Parole Officer (PO), the Senior Parole Officer (SPO) or Bureau Chief (BC). All requests for reasonable accommodation will be reviewed and responded to by the PO, SPO, or BC. The PO will document your request(s) for a reasonable accommodation in your supervision record. Where necessary, the PO, SPO, or BC will seek the assistance of the DOCCS Statewide ADA Coordinator when responding to requests for reasonable accommodations or when assistance is needed in identifying resources or services in the community. DOCCS has a number of resources and the ability to utilize outside resources for purposes of providing reasonable accommodations to parolees under supervision.

5. WHEN CAN A REQUEST FOR A REASONABLE ACCOMMODATION BE DENIED?

A request for a reasonable accommodation can be denied if the person requesting the accommodation is not a "qualified individual with a disability" or if providing the requested accommodation would cause an undue hardship to the Department (DOCCS).

6. WHAT IF MY REQUEST FOR A REASONABLE ACCOMMODATION IS DENIED?

If your request for a reasonable accommodation has been denied you have the right to file a grievance, in writing, in accordance with the DOCCS Directive 9402, "Parolee Grievance Program." If you cannot write or you have difficulty communicating in writing, request assistance from your PO, the SPO or BC.

EMPLOYMENT OF PAROLEES WITH DISABILITIES:

7. WHO IS A "QUALIFIED INDIVIDUAL WITH A DISABILITY?"

A qualified individual with a disability is a person who has a physical or mental impairment that substantially limits a major life activity and who meets the legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

8. WHAT IS AN "ESSENTIAL FUNCTION" OF THE JOB?

Essential functions of the job are those core duties that are the reason the job exists. For example, an essential function of a typist's position is the ability to type; an essential function of a bus driver's position is the ability to drive. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified because of his or her inability to perform marginal or incidental job functions.

Exhibit B

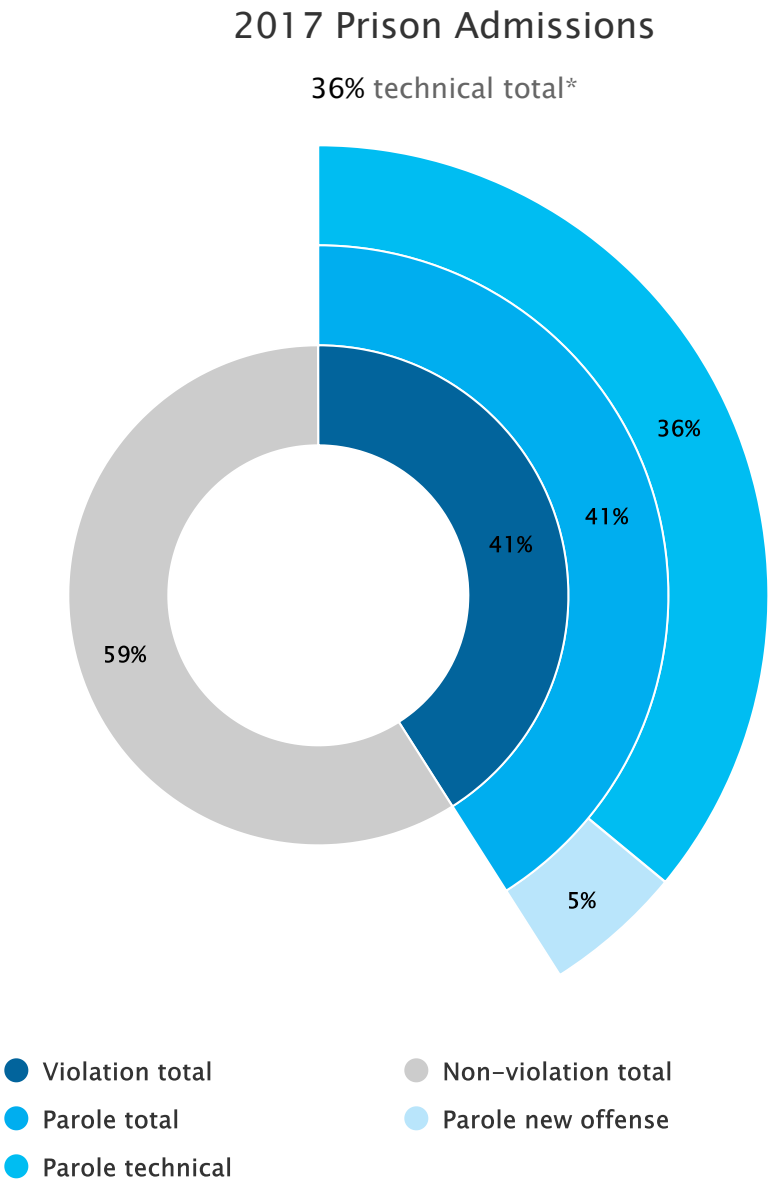
New York

Supervision Violation Data Snapshot

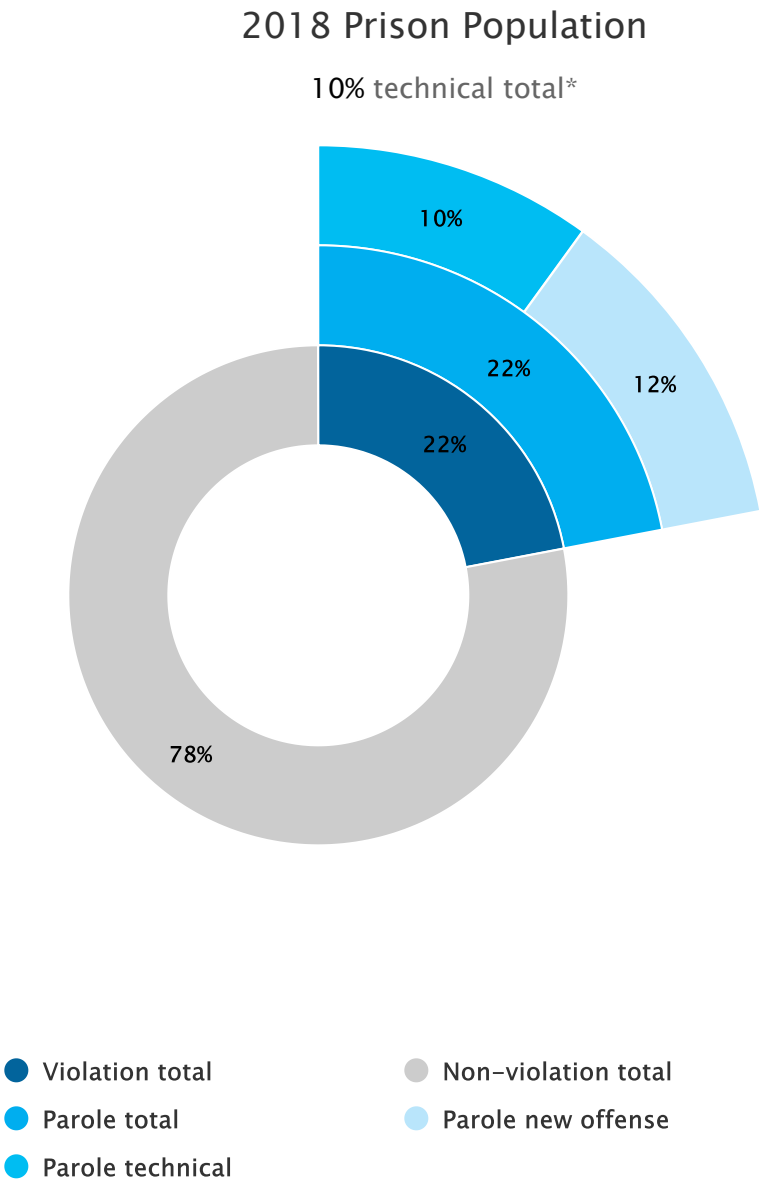
Probation and parole are designed to lower prison populations and help people succeed in the community. New data show they are having the opposite effect. Until now, national data regarding the impact of probation violations on prison populations have been unavailable, resulting in a lopsided focus on parole. The Council of State Governments (CSG) Justice Center recently engaged corrections and community supervision leaders in 50 states to develop the first complete picture of how probation and parole violations make up states' prison populations.

This snapshot shows available supervision violation data for this state.

41% OF PRISON ADMISSIONS
are for supervision violations



22% OF PEOPLE IN PRISON
are incarcerated for supervision violations



* Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests.

On any given day in New York, **10,678 people** are incarcerated as a result of a supervision violation at an annual cost to the state of **$815 million**. Technical supervision violations account for **$359 million** of this total amount, and new offense supervision violations make up **$456 million**. These figures do not account for the substantial local costs of keeping people in jail for supervision violations.

DATA ALERT

This state was not able to provide the following data at the time of data collection.

Missing prison admissions data include: probation total, probation new offense and probation technical.

Missing prison population data include: probation total, probation new offense and probation technical.

Additional State Notes

Probation terms are not identified in prison data, as probation is operated at the county level and regulated by the state Division of Criminal Justice Services (DCJS). DCJS can determine the number of felony probation terms that are resentenced by the courts to prison each year, but cannot specify the impact on prison admissions, primarily because multiple sentences may result in a single prison admission. People violating technical conditions of parole who were referred to drug treatment programs in state facilities are included in the counts. People admitted for short incarceration stays due to pre-violative behavior and referrals to parole diversion programs are not included.

For more information, see our methodology.

[1] Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests. "Prison" includes county jail if the county was reimbursed by the state for a person's incarceration, which occurs in some, but not all, states. Supervision violations may include revocations (i.e., unsuccessful terminations of a supervision and completion of a sentence in prison or jail) or short-term sanctions (i.e., probation or parole jurisdiction is maintained and the person is incarcerated for a short period of time in prison or jail). Not all states impose or include short-term sanctions in their count of supervision violations. See state-specific snapshots for more information on state-specific definitions. In states where technical violations were not provided, all violations and associated costs were counted as new offense violations.

[2] Illinois, Maryland, Michigan, New York, and Pennsylvania include only parole/post-release supervision violations, and Delaware, Oklahoma, and West Virginia include only probation violations.

[3] Data reflects annual admissions for 2017 except in Virginia, where 2016 was the latest year available. Tennessee did not provide the number of new offense supervision violations as these are counted as non-violation admissions. Ohio counts new offense probation violations as non-violation admissions. Technical breakdown was only included if both the total number and technical number of violations were provided for probation and/or parole/post-release supervision.

Exhibit C

State of New York

Executive Chamber

No. 202

EXECUTIVE ORDER

Declaring a Disaster Emergency in the State of New York

WHEREAS, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and more are expected to continue; and

WHEREAS, New York State is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020; and

IN ADDITION, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(l)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews are available as needed.

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 6, 2020 the following:

Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under Section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or design-build or best value contracts under and Part F of Chapter 60 of the Laws of 2015 and Part RRR of Chapter 59 of the Laws of 2017; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;

Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to allow the purchase of necessary commodities, services, technology, and materials without following the standard notice and procurement processes;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 359-a, Section 2879, and 2879-a of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law to the extent that exemption for vehicles validly registered in other jurisdictions from vehicle registration, equipment and dimension requirements is necessary to assist in preparedness and response to the COVID-19 outbreak;

Sections 6521 and 6902 of the Education Law, to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;

Subdivision 6 of section 2510 and section 2511 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;

Section 224-b and subdivision 4 of section 225 of the Public Health Law, to the extent necessary to permit the Commissioner of Health to promulgate emergency regulations and to amend the State Sanitary Code;

Subdivision 2 of section 2803 of the Public Health Law, to the extent necessary to permit the Commissioner to promulgate emergency regulations concerning the facilities licensed pursuant to Article 28 of the Public Health Law, including but not limited to the operation of general hospitals;

Subdivision 3 of section 273 of the Public Health Law and subdivisions 25 and 25-a of section 364-j of the Social Services Law, to the extent necessary to allow patients to receive prescribed drugs without delay;

Section 400.9 and paragraph 7 of subdivision f of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients as a result of the disaster emergency to complete patient review instruments as soon as practicable;

Section 405 of Title 10 of the NYCRR, to the extent necessary to maintain the public health with respect to treatment or containment of individuals with or suspected to have COVID-19;

Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, transportation to destinations other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;

Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency be made as soon as practicable;

Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;

Subdivision 4 of section 6909 of the Public Health Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;

Section 596 of Title 14 of the NYCRR to the extent necessary to allow for rapid approval of the use of the telemental health services, including the requirements for in-person initial assessment prior to the delivery of telemental health services, limitations on who can deliver telemental health services, requirements for who must be present while telemental health services are delivered, and a recipient's right to refuse telemental health services;

Section 409-i of the Education Law, section 163-b of the State Finance Law with associated OGS guidance, and Executive Order No. 2 are suspended to the extent necessary to allow elementary and secondary schools to procure and use cleaning and maintenance products in schools; and sections 103 and 104-b of the General Municipal Law are suspended to the extent necessary to allow schools to do so without the usual advertising for bids and offers and compliance with existing procurement policies and procedures;

Article 7 of the Public Officers Law, section 41 of the General Construction Law, and section 3002 of the Public Health Law, to the extent necessary to permit the Public Health and Health Planning Council and the State Emergency Medical Services Council to meet and take such actions as authorized by law, as may be necessary to respond to the COVID-19 outbreak, without meeting quorum requirements or permitting the public in-person access to meetings, provided that any such meetings must be webcast and means for effective public comment must be made available; and

FURTHER, I hereby temporarily modify, for the period from the date of this Executive Order through April 6, 2020, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Exhibit D

State of New York

Executive Chamber

No. 202.8

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

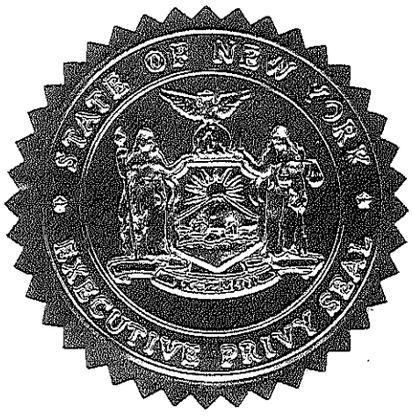
WHEREAS, in order to facilitate the most timely and effective response to the COVID-19 emergency disaster, it is critical for New York State to be able to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 19, 2020 the following:

- In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020;
- Subdivision 1 of Section 503 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a driver's license, in order to extend for the duration of this executive order the validity of driver's licenses that expire on or after March 1, 2020;
- Subdivision 1 of Section 491 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, in order to extend for the duration of this executive order the validity of non-driver identification cards that expire on or after March 1, 2020;
- Sections 401, 410, 2222, 2251, 2261, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, respectively, in order to extend for the duration of this executive order the validity of such registration certificate or number plate that expires on or after March 1, 2020;
- Section 420-a of the vehicle and traffic law to the extent that it provides an expiration for temporary registration documents issued by auto dealers to extend the validity of such during the duration of this executive order.
- Subsection (a) of Section 602 and subsections (a) and (b) of Section 605 of the Business Corporation Law, to the extent they require meetings of shareholders to be noticed and held at a physical location.

NOW, THEREFORE, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 19, 2020:

- The provisions of Executive Order 202.6 are hereby modified to read as follows: Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function. Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.
- There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.
- Effective at 8 p.m. March 20, any appointment that is in-person at any state or county department of motor vehicles is cancelled, and until further notice, only on-line transactions will be permitted.
- The authority of the Commissioner of Taxation and Finance to abate late filing and payment penalties pursuant to section 1145 of the Tax Law is hereby expanded to also authorize abatement of interest, for a period of 60 days for a taxpayers who are required to file returns and remit sales and use taxes by March 20, 2020, for the sales tax quarterly period that ended February 29, 2020.



GIVEN under my hand and the Privy Seal of the State in the City of Albany this twentieth day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL BERGAMASCHI; and FREDERICK ROBERSON; on behalf of themselves and all others similarly situated, Plaintiffs, v. ANDREW M. CUOMO, Governor of New York State, in his official capacity; and TINA M. STANFORD, Chairperson of the New York State Board of Parole, in her official capacity; Defendants.	Case No. 1:20-CV-02817

DECLARATION OF MICHELLE SHAMES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I, Michelle Shames, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I submit this declaration in support of the plaintiffs' Motion for Class Certification.
2. I am the Data and Research Strategist at the New York Civil Liberties Union (NYCLU), and have been managing the organization's quantitative research for the last three and a half years.
3. I hold a Master's Degree in Sociology from McGill University, where I received extensive statistical training at the doctoral level.

Primary Data Sources

4. All statistics in paragraphs 7 through 14 of this declaration were calculated from the "Daily Inmates in Custody" dataset, which is updated daily by the Department of Correction (DOC) and is public accessibly via New York City's Open Data Portal.[1]

5. This dataset lists each person in DOC custody in New York City each day by their "Inmate ID," along with the following information: admission date; custody level; mental health designation, race; gender; age; sealed status; security risk group membership; top charge; infraction flag; and inmate status.

    a. In this dataset, the inmate status value "DPV" indicates individuals being detained for a technical parole violation. All individuals classified as DPV do not have information provided regarding "top charge," as their top charge is the technical parole violation.

    b. In this dataset, the inmate status value "DEP" indicates individuals being detained with an open case and a warrant for violation of parole or probation. All individuals classified as DEP also have their "top charge" listed.

[1] NYC Open Data Portal: Daily Inmates in Custody (April 3, 2020), https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb.

Analysis

6. On March 1, 2020, the Department of Corrections and Community Supervisions supervised 33,981 parolees, excluding those already in the revocation process at the time of the snapshot. Of these, 15,661 (46%) were under supervision in New York City.[2]

7. On April 3, 2020, the daily inmate population for New York City jails included 439 individuals detained for a technical parole violation (10% of the total daily population). Of these 439 individuals, 60% were Black and 30% were Latinx.[3]

8. On April 3, 2020, the Daily Inmate Population included 700 individuals detained with an open case and a warrant for violation of parole or probation (10% of the total daily inmate population). Of these 700 individuals, 65% were Black and 25% were Latinx.

9. Of the 439 individuals detained for a technical parole violation, 73 (17%) had admission dates that were more than 90 days prior to April 3, 2020, 90% of whom were Black or Latinx. Of these 73 people, 23 had admission dates of more than 180 days prior to April 3, 2020.

10. Of the 439 individuals detained for a technical parole violation on April 3, 2020, 92 (21%) were 50 years of age or older.

11. In March 2020, the average daily population of individuals in custody on a technical parole violation charge in New York City jails was 738 people, and had been around the 700s for

[2] New York State Department Of Corrections And Community Supervision (DOCCS) Fact Sheet, (Mar. 1, 2020), https://doccs.ny.gov/system/files/documents/2020/03/doccs-fact-sheet-march-2020.pdf.

[3] The methodology used to calculate "Latinx" was borrowed from the Columbia Justice Lab Report (Exhibit C). The report notes that, "*Latinx/Hispanic ethnicity is not reported in this data set. However, personal communication with analysts at the Mayor's Office of Criminal Justice indicates that the "Other" category in that data is a strong proxy. Thus, jail incarceration statistics reported for Latinx people is based on analysis of individuals categorized in that data as 'Other.'"*

the 12 months prior.[4] The sudden drop to 439 is attributable to the exceptional emergency release of people due to the current COVID-19 epidemic.

12. Between January 1, 2018 and March 23, 2020 (prior to the COVID-19 one-time release), the daily inmate population in New York City facilities decreased from 8,812 to 5,294 (40% decrease), and the number of people in custody on technical parole violations increased from 592 to 643 (9% increase). Furthermore, the New York City jail population had dropped by 23% between 2014 and 2018, with decreases for nearly every subgroup, with the exception of people jailed for technical parole violations, which grew by 20% during this period.[5]

13. As of April 3, 2020, 239 people incarcerated on Rikers Island and 273 Department of Correction and Correctional Health Service staff have tested positive for COVID-19. An additional 50 incarcerated people have been hospitalized due to COVID-19 related symptoms, and over 2,000 incarcerated people are being quarantined due to potential exposure to the virus.[6]

14. As of April 3, 2020, the rate of COVID-19 positive cases was 54 per 1,000 individuals incarcerated on Rikers Island. This is more than 7 times higher than the rate of 7 positive

[4] New York State Div. of Criminal Justice, Jail Population in New York State. Average Daily Census by Month (March 1, 2020), https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf.
[5] N.Y. State Bar Ass'n, Report of The New York State Bar Association Task Force On The Parole System, (Nov. 2019), https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=97413.
[6] Board of Correction Daily COVID-19 Update (April 3, 2020), https://www1.nyc.gov/site/boc/covid-19.page.

cases per 1,000 New York City residents, and 64 times higher than the rate for the United States as a whole.

15. In 2018, a total of 8,768 parolees were returned to prison, 7,438 (85%) of whom were incarcerated for violating conditions of parole.[7]

Secondary Data Sources

16. Exhibit A is a true and accurate copy of the United States Dep't. of Justice, Bureau of Justice Statistics report entitled "Probation and Parole In The United States, 2016" (Apr. 2018). (Because CM/ECF would not accept the PDF of this report, I direct the Court to the report online, where it is freely available at the following address: https://www.bjs.gov/content/pub/pdf/ppus16.pdf.) Table 7 on page 22 of this report lists the number of parolees returned to incarceration in 2016, by reason for return and by state. Returns to incarceration for a parole revocation with no new sentence were highest in Illinois (6,570), and second highest in New York (6,362).

17. Exhibit B is a true and accurate copy of the New York City Mayor's Office of Criminal Justice brief entitled "Jail: State Parolees" (Feb. 2018). The following statistics are reported on page 4 of the brief:

    a. Average jail stay:

        i. All pretrial detainees: 31.8 days.

        ii. Technical parole violators: 57.1 days.

        iii. Pretrial misdemeanor detainees with no warrant: 11.7 days.

        iv. Parole violators with new misdemeanor arrest: 99.6 days.

[7] New York State Dept. Of Corr. And Cmty. Supervision, Community Supervision Legislative Report (2019), Table 17, https://doccs.ny.gov/system/files/documents/2020/02/community-supervision-legislative-report-2019-final.pdf.

v. Pretrial felony detainees with no warrant: 36.2 days.

vi. Parole violators with new felony arrest: 169.3 days.

b. Of people on parole charged with a technical parole violation, 38% are ultimately released back to the community and 62% are sentenced to prison.

c. Of people on parole charged with a new offense, 40% are released with no finding of parole violation, 29% are sentenced to state prison, and the remainder experienced other outcomes including city sentences.

18. Exhibit C is a true and accurate copy of the Columbia University Justice Lab report entitled "Racial Inequities in New York Parole Supervision" (Mar. 2020). The report notes the following statistics on page 8: "Black people are detained for alleged parole violations in New York City jails at a rate 12 times higher than that for white people, and that Latinx people are detained for alleged parole violations at roughly 4 times the rate of white people […] Among people in New York City jails who are on parole and are also being held for a new charge, a stunning 91% were people of color […]. This disparity is even more pronounced for people charged with low-level crimes. Among those held for alleged misdemeanor offenses who were also on parole, 99% were people of color."

19. Exhibit D is a true and accurate copy of the Independent Commission on New York City Criminal Justice and Incarceration Reform's report "Stopping Parole's Revolving Door" (June 2019). The report states that as of April 30, 2019, 1,517 people incarcerated in New York City jails were there for alleged parole violations, 40% of whom were there for technical violations, and around 30% of whom were charged with violations due to new arrests for misdemeanors and non-violent felonies.

20. Exhibit E is a true and accurate copy of Justice Center, The Council of State Governments: New York Supervision Violation Data Snapshot from their Confined and Costly report (June 2019). The report states that in 2017, 22% of new admissions to prisons nationally were for parole violations. In 2017, 41% of new admissions to prisons in New York State were for parole violations.

21. I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 4, 2020
New York, New York

Michelle Shames

Michelle Shames
Data and Research Strategist
New York Civil Liberties Union
125 Broad St., 19th Fl.
New York, NY 10004

Exhibit B

Justice Brief

Jail: State Parolees

The City of New York
Mayor Bill de Blasio

Criminal Justice
Elizabeth Glazer
Director

February 2018

Jail: State Parolees

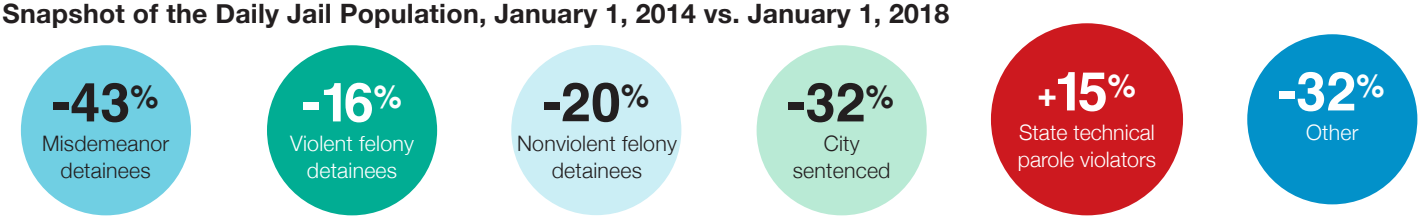
Summary

1) 16% of the city's jail population is charged with a state parole violation.

2) The number of people detained on technical parole violations (allegedly broke a parole condition, but not charged with a new crime) is increasing (up 15% since 2014), while the size of all other jail populations is decreasing.

3) People charged with parole violations stay in custody longer than other people, occupying 1400 to 1600 jail beds every day. They are unable to leave custody until the state parole charge is resolved, which typically takes 50-60 days.

Snapshot of the Daily Jail Population, January 1, 2014 vs. January 1, 2018



How State Parole Works

What is parole?

- New York State prisons incarcerate individuals who were convicted of a crime and originally sentenced to more than one year in a correctional facility. When someone is released from state prison, the State Department of Corrections and Community Supervision (DOCCS) may require that they comply with a general set of conditions established by the Board of Parole (See Appendix A). They may also be required to comply with a number of 'special conditions' ordered by the Board of Parole or by their parole officer.

- This period of supervision is commonly referred to as "parole" and each person on parole has a state parole officer who meets regularly to ensure that the individual is following the rules of their release and has the supports needed to re-enter society.

What is a parole violation?

- A person violates parole when one of the following happens:
  1. Technical violation: They break one or more of the rules in the conditions of release but they do not commit a new crime.

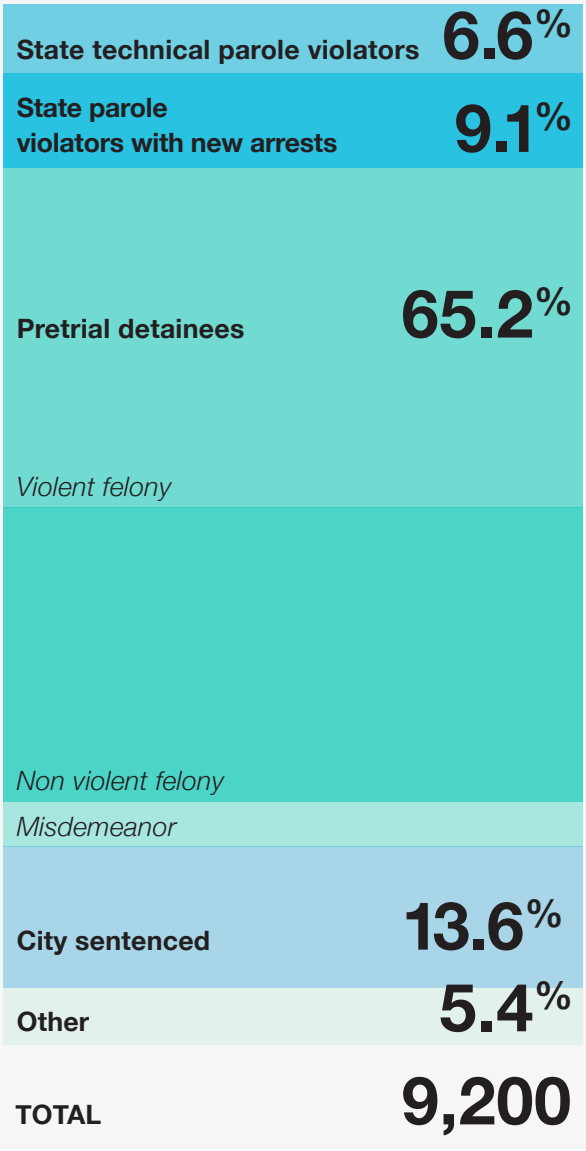
    - One type of technical violation is absconding. An absconder is defined as someone under parole supervision who has stopped reporting to their parole office, moved residences without permission, and whose whereabouts are unknown.

  2. New arrest: They are arrested and charged with committing a new crime.

- If a person breaks the rules of their release and a warrant is issued, state law requires that they be held in a local jail, pending the outcome of a hearing process.

    - Though jails primarily hold individuals awaiting trial or serving a jail sentence of less than one year, those charged with a state parole violation are also housed in local jails.

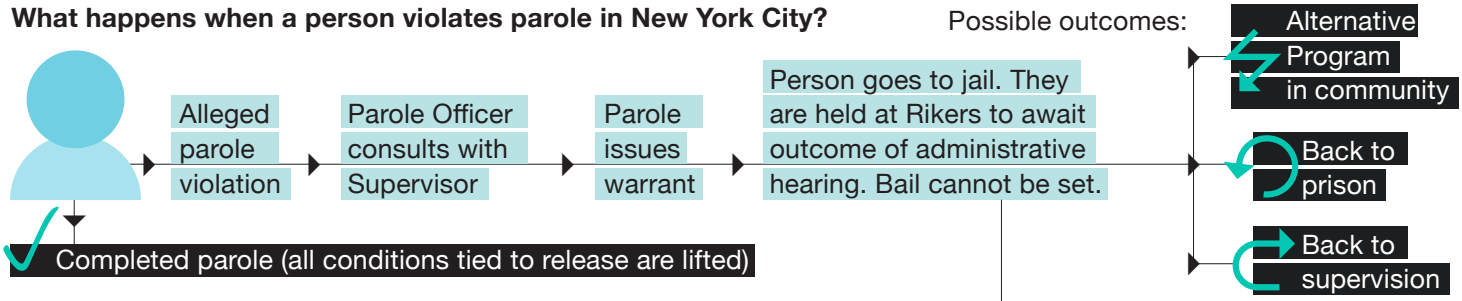
2017 Average Daily Jail Population



MOCJ analysis of DOC census data, 2014-2018

Jail: State Parolees

What happens when a person violates parole in New York City?



Role of a State DOCCS Parole Officer

- Deliver services
- Report on parolee progress
- Motivate parolees
- Identify alternatives to incarceration where appropriate

Hearing process:

If probable cause is found, person is arraigned. At arraignment: Administrative Law Judge and defense lawyer are assigned and the final hearing process begins.

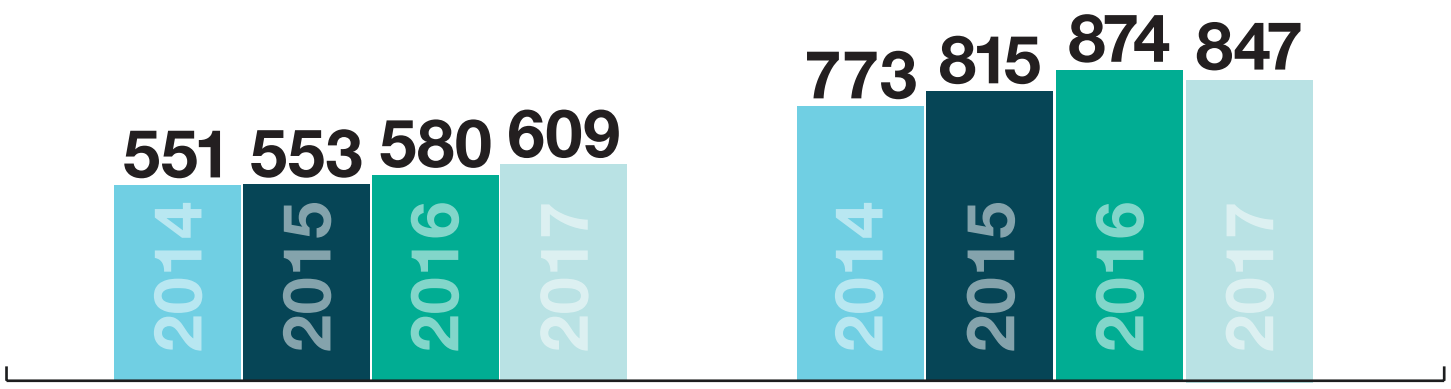
- State law requires incarceration without bail when a parole violation warrant is issued.
- State law requires hearings be held locally. In New York City, these are held on Rikers Island. The City houses these individuals and pays for their detention.
- Unlike criminal proceedings where the standard of proof is beyond a reasonable doubt, the standard of proof for final parole violation hearings is a preponderance of the evidence. The final determination is made by an Administrative Law Judge who works for the state Board of Parole.

State Parolees in NYC Jails: By the Numbers

On any given day, there are 1,400-1,600 people with state parole violations in New York City jails. Approximately 40% are technical violators; the remaining violated their parole by being arrested for a new crime.

- The number of **technical violators** in custody on any given day has been increasing over the past four years and is the only population that is increasing in size, while the rest of the DOC population has been steadily decreasing. They have grown from 5.1% of the average daily population in 2014 to 6.6% in 2017.
- The number of **parole violators with new arrests** in custody on any given day has been fluctuating over the past few years, but their proportion within the overall population has been increasing. They have grown from 7.1% of the average daily population in 2014 to 9.1% in 2017.

The number of people detained on technical parole violations has been increasing since 2014; the number detained on parole violations and new arrests varies by year.



Average number of technical violators in jail

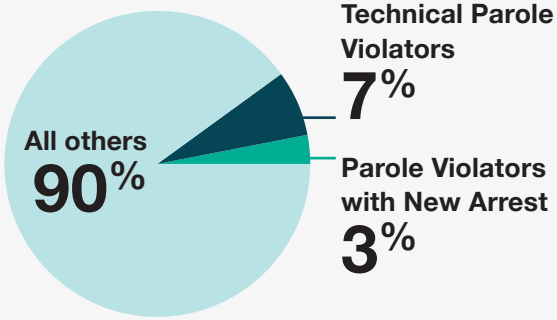
Average number of parole violators with new arrests in jail

MOCJ analysis of DOC census data, 2014-2017

Jail: State Parolees

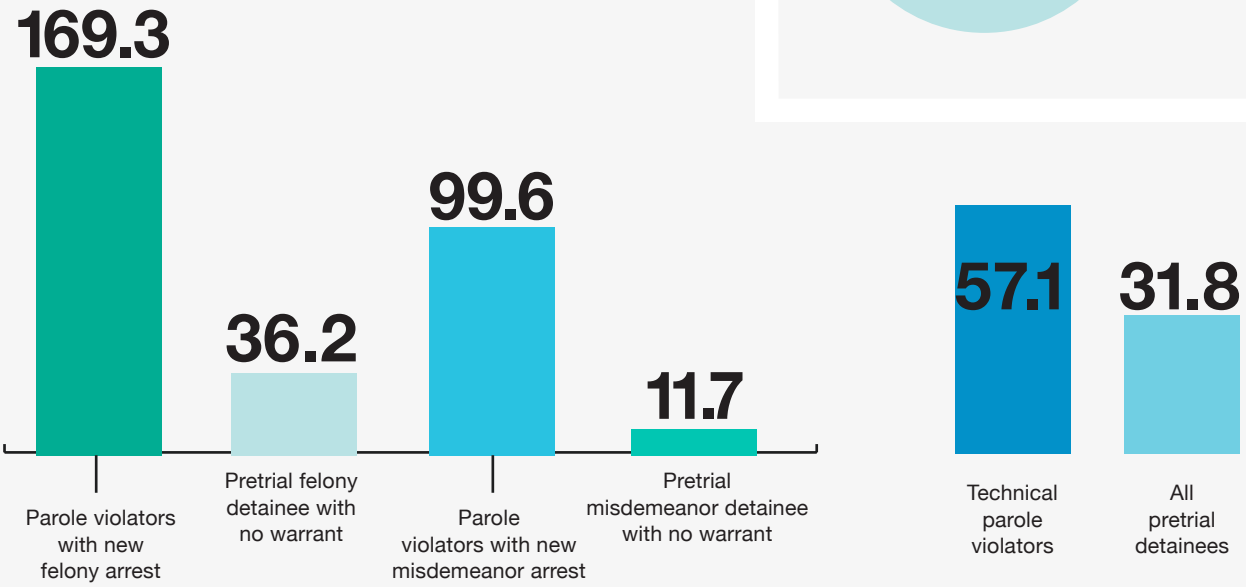
State parolees are 10% of annual admissions

10% of admissions are connected to a parole violation

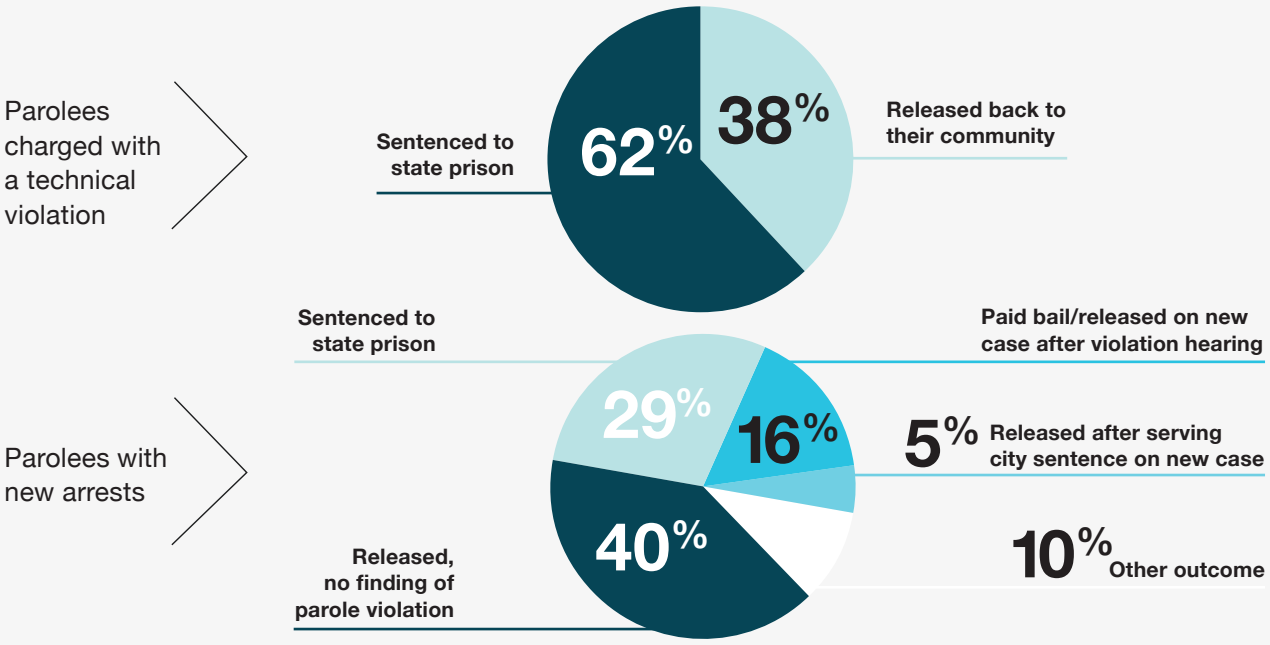


State parolees stay in jail longer than other groups

Average Jail Stay (in days)



Almost half of all state parolees return to state prison, while the other half return to their community



Admissions graph: MOCJ analysis of 2017 DOC admission data. LOS graphs: MOCJ analysis of 2017 DOC discharge data. Outcome graphs: MOCJ analysis of 2017 discharge

Jail: State Parolees

Options for reducing the number of state parolees in the city's jails:

Immediate changes:

1. The State can reduce the number of parole violators it puts in Rikers by:

✦ Issuing fewer warrants for technical violations and use graduated sanctions instead.
- Upon issuance of a warrant, state law requires that upon arrest, the individual be put in Rikers. In 2017, 38% of people with technical violations returned to their communities after their jail stay.

2. The State can speed up the time a parole violator spends on Rikers by:

✦ Assigning more state court judges to handle the hearings.

✦ Scheduling more parole violation hearings per day.

✦ Extending the hearing hours and speeding up the hearing process.
- By reducing the amount of time a parole violation case takes by 10% (5.7 days), the average daily population incarcerated at Rikers would fall by 62.

Legislative changes:

State law can be changed to end mandatory jail for parole violators.

✦ If judges were able to consider a person's risk in making a release decision, lower risk technical parole violators could be placed into Alternatives to Jail and lower risk parole violators charged with a new crime would be eligible for pretrial release.
- If existing alternatives to jail were used to divert an additional 20% of technical state parole violators, the average daily population incarcerated at Rikers would fall by 125.
- The goal should be to reserve detention only for those who pose a real risk to the community.

Public Data Sources and Reports on New York State Parolees

Dataset: **NYC Open Data:** Daily Inmates in Custody
Public can track daily numbers of people jailed on alleged parole violations (updated daily)

Dataset: **New York State Open Data:** Parolees Under Community Supervision: 2008-2017 (updated annually).
Public can examine historical trends in parole supervision by region.

Data in PDF format: Parolee/Probationer Arrests by County, 2007-2016
10-year trend data on total arrests by county and the percent that parolees and probationers comprise. (updated annually).

Report: Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations.
A recent report examining the impact of parole on local and state correctional populations.

Jail: State Parolees

Appendix A: General Conditions of Parole Release:

NYS Department of Corrections and Community Supervision
doccs.ny.gov
New York State Parole Handbook Questions and Answers Concerning Parole Release and Supervision.

The general conditions of release are:

1. I will proceed directly to the area to which I have been released and, within twenty-four hours of my release, make my arrival report to that office of the Division of Parole unless other instructions are designated on my release agreement.

2. I will make office and/or written reports as directed.

3. I will not leave the State of New York or any other state to which I am released or transferred, or any area defined in writing by my Parole Officer without permission.

4. I will permit my Parole Officer to visit me at my residence and/or place of employment and I will permit the search and inspection of my person, residence, d property. I will discuss any proposed changes in my residence, employment, or program status with my Parole Officer. I understand that I have an immediate and continuing duty to notify my Parole Officer of any changes in my residence, employment, or program status when circumstances beyond my control make prior discussion impossible.

5. I will reply promptly, fully, and truthfully to any inquiry of, or communication by,my Parole Officer or other representative of the Division of Parole.

6. I will notify my Parole Officer immediately any time I am in contact with, or arrested by, any law enforcement agency. I understand that I have a continuing duty to notify my Parole Officer of such contact or arrest.

7. I will not be in the company of, or fraternize with any person I know to have a criminal record or whom I know 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 my Parole Officer.

8. I will not behave in such manner as to violate the provisions of any law to which I am subject, which provides for a penalty of imprisonment, nor will my behavior threaten the safety or well-being of myself or others.

9. I will not own, possess, or purchase any shotgun, rifle, or firearm of any type without the written permission of my Parole Officer. I 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, I will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.

10. In the event that I leave the jurisdiction of the State of New York, I hereby waive my 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 I am discharged from Parole or Conditional Release. I fully understand that I have the right under the Constitution of the United States and under law to contest any effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my Parole or Conditional Release.

11. I will not use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.

12. Special Conditions: (as specified by the Board of Parole, Parole Officer or other authorized representative).

13. I will fully comply with the instructions of my Parole Officer and obey such special additional written conditions as he/she, a member of the Board of Parole, or an authorized representative of the Division of Parole, may impose.

Exhibit C

Racial Inequities in New York Parole Supervision

Kendra Bradner and Vincent Schiraldi[1]

March 2020

Introduction

The scope and conditions of parole[2] supervision in New York have profound impacts for people serving supervision sentences. Numerous conditions are a constraint on their liberty, serve as trip wires to incarceration, and can disrupt the process of community reintegration needed for successful reentry after leaving prison. Parole supervision also fuels mass incarceration everywhere, but particularly in New York, as New York sends more people back to prison for non-criminal, technical parole violations than any state except Illinois (Kaeble 2018, Appendix Table 7). Six times as many people are reincarcerated in state prisons for technical violations – such as missing an appointment, being out past curfew, or testing positive for alcohol – as are reincarcerated for a new criminal conviction (Commission 2019). Moreover, people held on parole violations are now the only population increasing in New York City jails, threatening plans to close the notorious Rikers Island jails complex (Schiraldi and Arzu 2018; Commission 2019). Together, incarceration for technical violations cost New York State and localities over $600 million annually (The Council of State Governments 2019; NYC Independent Budget Office 2019; NYS Bar Association 2019).

Importantly, the harmful impacts of parole policies disproportionately fall on Black and brown communities. Black and Latinx people are significantly more likely than white people to be under supervision, to be jailed pending a violation hearing, and to be incarcerated in New York State prisons for a parole violation. This

1 Kendra Bradner is Director of the Probation and Parole Reform Project at the Columbia Justice Lab. Vincent Schiraldi is co-director of the Columbia Justice Lab and Senior Research Scientist at the Columbia School of Social Work. Thank you to Rachel Smith and Jennifer Arzu for their excellent research assistance, and to many colleagues for insightful comments on earlier versions of this report. Any remaining errors are purely our own.

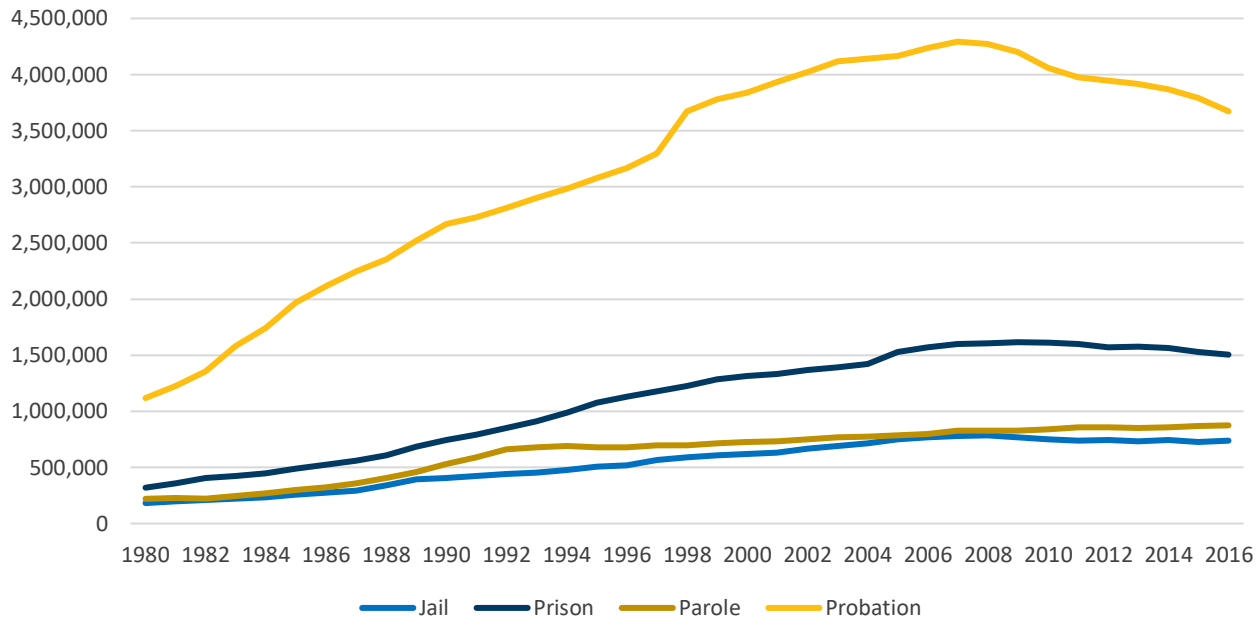
2 Throughout this brief, we will use the term "parole" to describe the condition of being supervised by state parole officials following release from prison. In fact, most people who are supervised after being released from prison in New York State are on "conditional release" – release from prison not by the parole board, but after serving a definite, or determinate, prison sentence minus whatever good time they may have accrued. People released on "parole" in New York State are those released by the state's parole board after serving an indefinite, or indeterminate, period of imprisonment and being found suitable for release by the board. Since parole is the much more common parlance for those under community supervision following release from imprisonment, we will use that term to describe both those under parole supervision and those on conditional release.

report examines these racial and ethnic inequities in New York parole supervision and revocation, and offers further context by summarizing existing research on disparities in supervision practices nationally.

Parole in the United States

The term "parole" often describes two activities – release from prison by a parole board, and supervision by a parole agency after release. Originally, parole was developed by British penologist Alexander Maconochie as an early release mechanism to alleviate overcrowded prisons and incentivize positive behavior, and people who were "paroled" were not necessarily subject to active supervision (Wodahl and Garland 2009). Over time, parole boards began supervising people who were released early. By the 1990s, most states implemented determinate sentencing regimes, drastically reducing the number of people who are actually released from prison by parole boards (Petersilia 2009). However, parole has come to be used as a general term for post-prison supervision, whether the person under supervision was released by a parole board or not.

Figure 1: Number of people under U.S. correctional supervision (1980-2016)



Sources: 1980-2004: Maguire, n.d., Table 6.1.11; 2005-2014: Kaeble and Glaze 2016, Table 1; 2015-2016: Kaeble and Cowhig 2018, Table 1.

Parole is distinct from probation, though the two are often jointly called "community corrections."[3] Together, they are inextricably linked to the more widely-known element of the criminal justice system: incarceration. The

[3] Probation describes a period of community supervision by a probation agency, most commonly given in lieu of incarceration. With the rise of determinate sentencing, courts increasingly sentenced people to terms of "on-and-after" probation, or "probation tails" – periods of supervision by a probation agency following a period of incarceration. Despite the functional similarity to parole, national

number of people under probation and parole supervision has generally increased and declined right alongside jail and prison incarceration (Figure 1). Recent declines in the number of people under community corrections supervision has been driven by reductions in probation populations, which fell 14.4% between 2007 and 2016 (Kaeble 2018, Table 1). However, over this same period, the number of people under parole supervision in the United States has actually increased by 5.9%.

In addition to correlated population trends, and despite being designed as alternatives that would alleviate prison crowding, both probation and parole fuel mass incarceration, most concretely through re-incarceration for violations. People under probation and parole supervision are required to follow a list of rules, or "conditions." Though standard conditions vary across jurisdictions, people under parole supervision are commonly required to attend meetings with their parole officer, observe a curfew, refrain from using alcohol and drugs (even if their conviction was not drug-related), and avoid "associating" with people who have criminal records. Failure to follow any of these rules, even if that failure does not involve criminal conduct, can result in the person being re-incarcerated – a "technical violation." This means that people under parole supervision can be re-incarcerated for actions that are not criminal, and would not carry criminal punishment for someone not under supervision.

Parole officers often have wide discretion on when to incarcerate people for alleged technical violations, and typically those accused of technical violations are jailed while they await the disposition of the technical violation charge – incarceration that can last anywhere from a few days to several weeks. As we have learned through research on bail practices, even short periods of incarceration can be highly disruptive. Even a weekend stay in jail can be enough to lose a job, educational opportunity, home, car, or custody of children – just enough, in other words, to erase substantial progress that a person may have made toward successful re-integration to their community.

After the alleged technical violation has been adjudicated, a person can be sentenced to further time in state prison. Since the 1980s, re-incarceration for parole violations increased sevenfold, and by 2016, 27% of all parole exits were to state or federal prisons (Petersilia 2009; Kaeble 2018, Appendix Table 7). In 2017, 22% of admissions to state prisons nationwide were due to parole violations, over half of which were for technical violations alone (The Council of State Governments 2019).[4] Revocation of people on parole has become so common that recent research has found it to be risk factor contributing to reincarceration, even when controlling for other factors (Harding et al. 2017).

Racial Inequities in Parole, Nationally

and state statistics about probation and parole supervision are divided by agency, and so these cases of probation that occur after a period of incarceration are not included in our discussion of parole. Additionally, in New York, parole is a state function, whereas probation is a city and/or county function.

[4] The Council of State Governments report notes: "Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests."

Research suggests that racial disparities often compound as an individual moves through the criminal justice system from police contact, to arrest, to sentencing, to prison and parole release and collateral consequences, so it is unfortunately unsurprising to find evidence of the impacts of structural racism[5] in parole supervision outcomes, as well (Ghandnoosh 2015).

There are three points at which racial inequities in parole supervision practices can be readily observed – in the likelihood of experiencing parole supervision, in the likelihood of being charged with a violation, and in the likelihood of incarceration for a violation.

Nationally, Black people are 4.15 times more likely to be under parole supervision than white people, and Latinx people are 15% more likely than white people to be under parole supervision.[6] A report by the Brennan Center for Justice also found that Black and Latinx people remain on probation and parole longer than similarly situated white people (Eaglin and Solomon 2015).

There is only a small body of research examining racial disparities in parole violation charges and outcomes, but available studies suggest that disparities exist at these points, as well. Sara Steen and Tara Opsal (2007) analyzed data for a sample of individuals exiting parole in 2000 in four states – New York, Kentucky, Michigan, and Utah. Across the jurisdictions examined, Black people were 19% more likely than white people to have their parole revoked for a new offense, and 50% more likely than white people to have their parole revoked for a technical violation, even when controlling for relevant demographic and legal factors. Steen and Opsal's findings also suggest that remaining under parole supervision longer renders a higher disadvantage to Black people, as the likelihood of being revoked dropped more significantly over time for white people than for Black people.

A Colorado study examining parole officers' decision to file a complaint with the parole board (thereby placing the person under supervision in violation) found that "Black [people] are more than twice as likely as white [people] to have complaints filed against them" (Steen et al. 2012). Similarly, a study of individuals under parole supervision in California between 2003 and 2004 found that Black people "were more likely to experience referral to the parole board, and more likely to be returned by the board for criminal violations" (Grattet at al. 2009). A study of people on parole in Kentucky between 2002 and 2004 similarly indicates that Black people were more likely than white people to be returned to prison for a violation (Vito et al. 2012).

More recently, a study examining data across 24 states over the twenty-year period from 1990 to 2009 found that the likelihood of parole revocation is significantly greater for Black people, controlling for individual and state characteristics. The same study found that parole revocations contribute to racial disproportionality in state prisons – "[s]tates with higher disproportionality in parole revocation admissions display greater racial differences in prison admissions overall" (Curry 2016).

[5] The term *structural racism* "emphasizes the interaction of multiple institutions in an ongoing process of producing racialized outcomes…A systems approach helps illuminate the ways in which individual and institutional behavior interact across domains and over time to produce unintended consequences with clear racialized effects" (Powell 2008, 791). In other words, it does not require racist actions or intent of individual people, and "even if interpersonal discrimination were completely eliminated, racial inequities would likely remain unchanged due to the persistence of structural racism" (Gee and Ford 2001, 3; Bonilla-Silva 1997; Jones 2000).
[6] Justice Lab analysis of Kaeble 2018, Appendix Table 5 and U.S. Census Bureau 2019; see Appendix B for methodology.

There are also many other ways that parole supervision can have disparate impacts for people of color, which are harder to observe directly. Because Black and brown communities often experience concentrated disadvantage in the form of elevated poverty rates, poor public service provision for things like education, health care, and transportation, and concentrated policing activities, supervision requirements that seem race-neutral on their face can have disproportionately negative impacts for Black and brown people.

For example, an order to stay away from other people who have a felony conviction may seem reasonable at face value. However, since 1 in 12 people in the United States, and one in three Black men, have a felony conviction (Shannon et al. 2017), this can be nearly impossible in practice. People on parole, then, particularly in predominantly Black communities, may be forced to choose between obeying the rules on one hand, or, on the other, risking a parole violation by spending time with relatives and friends who could be valuable sources of support, stability, housing, or employment connections.

This analysis can be extended to other domains – Black and brown communities disproportionately lack access to adequate transportation (Bullard et al. 2004), and requirements to report for meetings with a parole officer will be more difficult for someone who lives in a neighborhood with poor public transit coverage. Similarly, Black and brown people face employment discrimination (Pager 2007), and requirements to obtain employment and pay supervision fees will likewise be even more difficult for people living in areas with limited employment options. In conclusion, parole supervision can tend to exacerbate systemic racial inequities.

Parole in New York

New York actually has lower rates of parole supervision than the nation as a whole – 285 people under parole supervision per 100,000 adult residents, versus a national rate of 349 per 100,000 (Kaeble 2018, Appendix Table 5). Yet, New York sends more people back to prison for technical parole violations than any other state except Illinois (Kaeble 2018, Appendix Table 7). Of the 20,597 people who exited parole supervision between October 2016 and September 2017, 9,250 of them returned to prison – a 45% "failure" rate (Commission 2019). Of those who returned to prison, 85% returned for a technical parole violation – nearly six times as many people as were reincarcerated for a new criminal conviction. Together, incarcerating people for technical parole violations costs New York City and State over $500 million annually (The Council of State Governments 2019; NYC Independent Budget Office 2019). This does not include costs for the approximately 1,000 individuals incarcerated in jails in New York State in counties outside the city awaiting resolution of their parole violation cases (NYS Division of Criminal Justice Services 2020).

Structural racism has profound impacts on parole outcomes in New York. As in national analyses, there are three points at which racial and ethnic inequities in parole supervision practices can be readily observed – the likelihood of experiencing parole supervision, the likelihood of being charged with a violation, and the likelihood of prison incarceration for a violation.

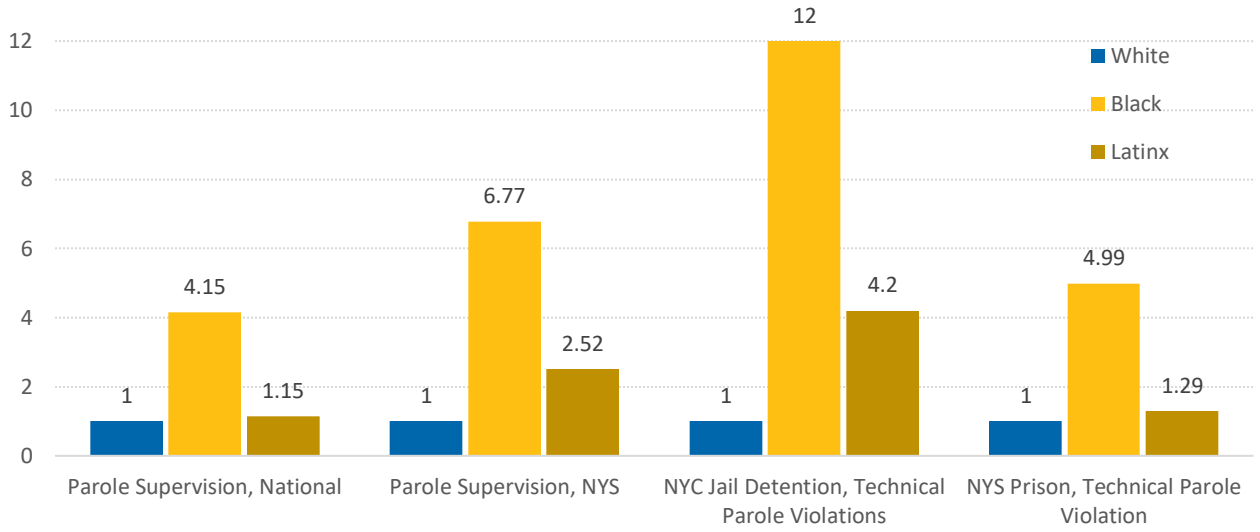
Inequities in Supervision

Our analysis of data from the New York State Department of Corrections and Community Supervision (NYS DOCCS) found that Black and Latinx people are supervised at 6.8 and 2.5 times the rate of white people,

respectively – significantly larger inequities than are observed in national parole supervision rates (Figure 2).[7] These disparities are also worse among men, as Black men are supervised at 7.8 times, and Latino men 2.8 times, the rate of white men.

These figures indicate that the burdens of parole supervision and revocation practices fall much more heavily on Black and brown communities in New York. When considering the impacts of these practices, it is important to remember that the risk of re-incarceration looms large not only for the person under supervision, but also for their family and wider network. Someone struggling with drug addiction may feel unable to seek help because admitting a relapse could lead to a violation. A father may be unable to accept a well-paying night job or take a sick child to the emergency room if it conflicts with curfew. A person may face homelessness because they are not permitted to live with supportive family or friends who have a criminal record or who live in public housing. The whole household or workplace may be disrupted by unannounced visits from parole officers confirming the person's whereabouts. All of these situations can further complicate an already-difficult process of reentering society after prison.

Figure 2: Relative Rate Index[8] of Parole Supervision and Incarceration for Technical Violations



Sources: Kaeble 2018, Appendix Table 8; NYS Department of Corrections and Community Supervision 2019a; 2019b; The City of New York 2020a; U.S. Census Bureau 2019. Note: See Appendix B for methodology.

[7] Justice Lab Analysis of NYS DOCCS 2019a and U.S. Census Bureau 2019; see Appendix B for methodology. Taken together, Black men and women in New York are supervised at 6.8 times the rate of white people, whereas nationally, Black people are supervised at 4.15 times the rate of white people (Kaeble 2018, Appendix Table 8; U.S. Census Bureau 2019). This means New York has a 64% larger disparity in supervision rates between Black people and white people. Nationally, Latinx people are supervised at rate roughly 15% higher than white people; the disparity for Latinx people in New York is more than two times larger.

[8] The Relative Rate Index is a tool used to compare rates of system involvement across groups. An RRI of 2 indicates that a group is twice as likely to be impacted as the baseline group – in this case, white people. An RRI of 0.5 indicates that a group is half as likely to be impacted as the control group. See Appendix B for detailed explanation and methodology.

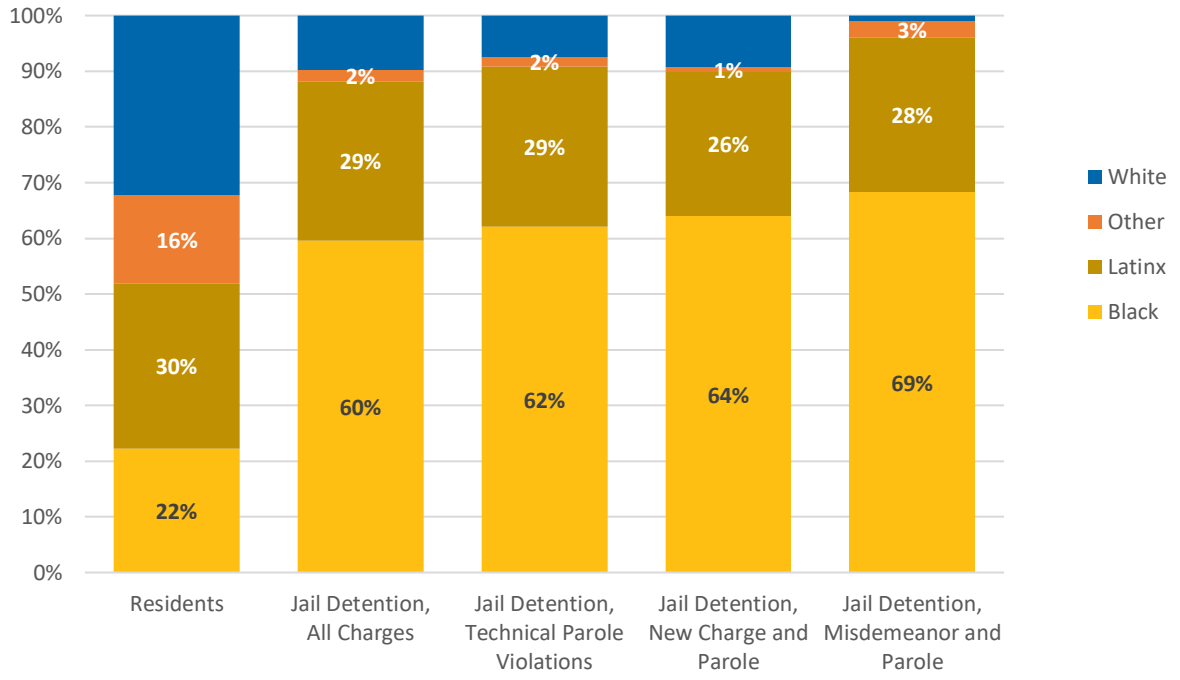
Inequities in Charging and Jail Detention

In New York, when someone on parole is issued a warrant for an alleged parole violation, they are held in city or county jails pending the resolution of that violation, which can take weeks or months. On any given day, around 1,600 people are held in jails across New York State, awaiting the resolution of an alleged technical parole violation, and people held on alleged technical parole violations make up an increasing proportion of all people held in City and county jails (Commission 2019; NYS Division of Criminal Justice Services 2020).[9]

Additionally, if someone on parole is arrested for a new criminal charge, they are not eligible for pretrial release, even if the new charge would not typically result in pretrial detention. Through these two vehicles, state parole policies can have large impacts on local jail populations and costs.

While we do not have access to data through which we could observe charging decisions directly, we are able to observe who is held in jails awaiting the resolution of a technical violation charge. Since pre-adjudication detention is required for anyone against whom a warrant for a parole violation is issued, all people who go through revocation proceedings in a jurisdiction are seen by observing jail detention data for that jurisdiction.

Figure 3: New York City populations, disaggregated by race and ethnicity



Sources: U.S. Census Bureau 2019; The City of New York 2020a; 2020b. Note: Figures for New York City residents represent the estimated number of residents of all ages on July 1, 2018. NYC jails demographics are as of February 27, 2020. "Other" includes people who identify as Asian & Pacific Islanders, multiple races, and others. See Appendix B for notes on methodology.

[9] In January 2019, people held on alleged technical parole violations made up 8% of the state's overall jail population. By January 2020, that proportion had climbed to 12%. This is because overall jail populations across the state have declined 30% in that time, while the number of people held for alleged technical parole violations remains relatively steady. In 25 counties and New York City, the absolute number of people jailed for alleged technical parole violations increased.

The Justice Lab analyzed data on all people detained in New York City jails, and compared those data to census data on the demographic makeup of the city. Over half (51%) of all people under parole supervision by NYS DOCCS reside in New York City, so while it is an imperfect proxy for the state as a whole, analysis of city data does represent a significant portion of NYS DOCCS activity (NYS DOCCS 2020).

Our analysis indicates that Black people are detained for alleged parole violations in New York City jails at a rate 12 times higher than that for white people, and that Latinx people are detained for alleged parole violations at roughly 4 times the rate of white people (Figure 2).[10]

When we examine the impact of being on parole for people charged with new offenses, these inequities become even larger. Among people in New York City jails who are on parole and are also being held for a new charge, a stunning 91% were people of color (The City of New York, 2020b; see Figure 3). This disparity is even more pronounced for people charged with low-level crimes. Among those held for alleged misdemeanor offenses who were also on parole, 99% were people of color. Overall, people on parole comprise two-thirds of all people held in New York City Jails for an alleged misdemeanor charge.

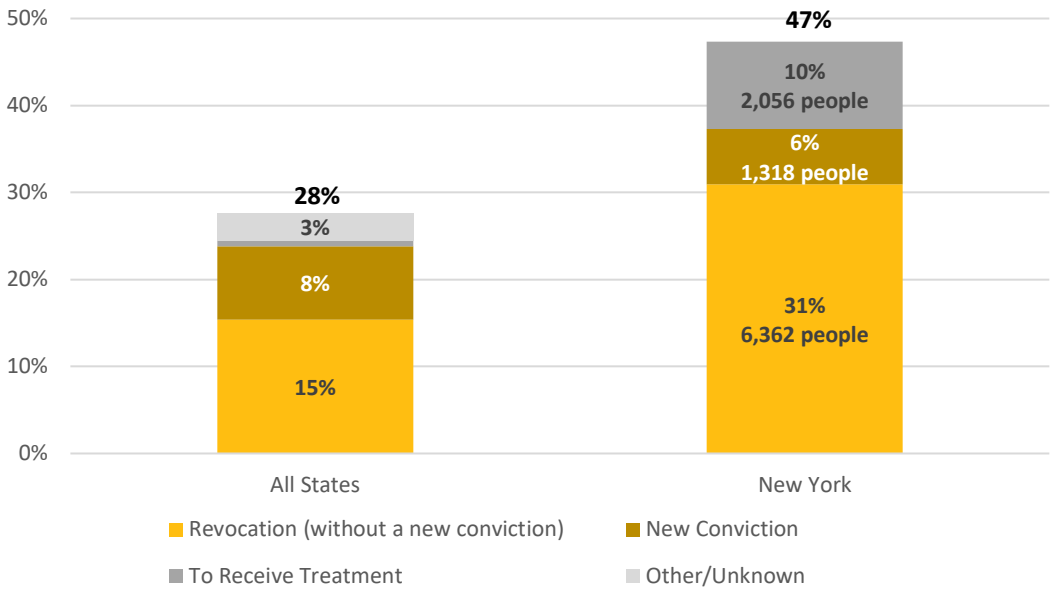
Inequities in Prison Incarceration

There are several frames of reference through which to examine the impact of parole on prison incarceration in New York State. First, we can look at the number of people exiting parole to prison. As of the most recently available national data (2016), New York was an outlier in terms of the number of people exiting parole to incarceration for technical violations – nearly half (47%) of all exits from parole in New York were to incarceration, substantially higher than the national average failure rate of 28% (Kaeble 2018, Appendix Table 7). Moreover, the proportion of people who ended their parole term by being incarcerated for a technical violation – *without* a new conviction – in New York was almost double the national average (See Figure 4).

Secondly, we can examine the number of people who are admitted to prison for parole violations within a certain timeframe. In 2017, people who had previously been under parole supervision comprised 41% of New York State's prison admissions, and 7 times more people (36%) were incarcerated for technical violations than for a new offense (Figure 5) (The Council of State Governments 2019).

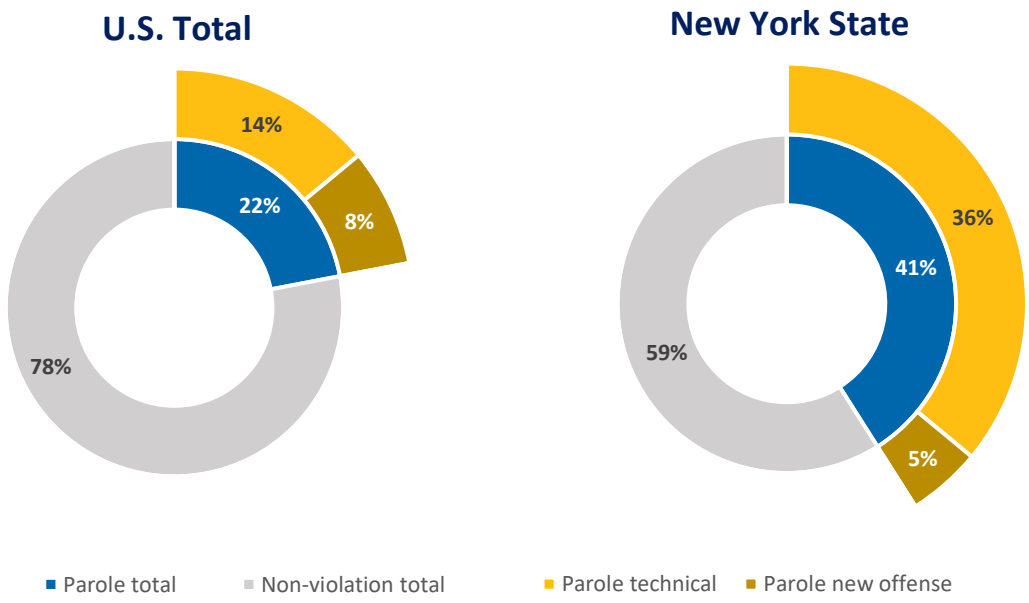
[10] Justice Lab Analysis of The City of New York 2020a; U.S. Census Bureau 2019. See Appendix B for methodology.

Figure 4: Parole exits to incarceration as a percentage of all parole exits, New York vs. all U.S. states, 2016



Source: Justice Lab Analysis of Kaeble 2018, Appendix Table 7.

Figure 5: Prison Admissions, United States and New York State, 2017



Source: The Council of State Governments 2019.

While review of state-issued data indicates that the absolute number of people entering prison for technical violations is declining slightly over time, these two data points – the proportion of people who exit parole into incarceration, and the proportion people entering prison who were on parole – indicate that parole revocations still have an outsized impact on incarceration in New York (NYS DOCCS 2015; 2017; 2019c). Unfortunately, we do not have data disaggregated by race and ethnicity to assess the extent of disparities at either of those points.

However, we do have data through which we can observe people who are in prison at a particular point in time. Since people incarcerated for technical violations serve prison sentences that are shorter than the average across the whole prison population, they tend to be underrepresented in static counts of people in prison at a point in time. Still, people who had previously been under parole supervision comprised 22% of all people in New York State prisons in 2017, and nearly half of those (10%) were people incarcerated for a technical violation alone.

As in supervision and jail detention, we find significant racial and ethnic disparities in these data. Our analysis indicates that Black people are incarcerated for technical violations in New York State prisons at 4.99 times the rate of white people, and that Latinx people are 30% more likely than white people to be incarcerated for a technical parole violation (see Figure 2).[11] As with rates of supervision, we found that these inequities were more severe for men – Black men were 5.66 times as likely as white men to be incarcerated for a technical parole violation, and Latino men were 38% more likely to be in New York State prisons for a technical parole violation than their white counterparts.

Importantly, it seems that incarceration may be becoming a more likely disposition for people accused of technical violations in New York. A review of data provided by New York City's Legal Aid Society indicates that between September 2018 and September 2019, the number of cases that received a disposition of "revoke and restore" – a disposition in which the accused person is found guilty of the parole violation but is allowed to return home following the conclusion of their parole violation hearings – dropped by over 50% (Legal Aid Society 2020). Though missing data makes comparison difficult, available data suggests that this change may more severely impact Black and brown communities (see Table 1).

[11] Justice Lab Analysis of NYS DOCCS 2019b and U.S. Census Bureau 2019. See Appendix B for methodology.

Table 1: People Represented by The Legal Aid Society for Parole Violations

Cases Assigned

	September 2018		September 2019		% Change
Total Cases Assigned	**505**		**491**		**-3%**
Count By Race/Ethnicity	**Count**	**Column %**	**Count**	**Column %**	
Black	364	72%	326	66%	-10%
White	109	22%	114	23%	5%
Latinx	7	1%	15	3%	114%
Other	1	0%		0%	-100%
Unknown or Non-Entered	24	5%	36	7%	50%

Disposition: Revoke and Restore

	September 2018		September 2019		% Change
Total Revoke and Restore	**149**		**70**		**-53%**
Count By Race/Ethnicity	**Count**	**Column %**	**Count**	**Column %**	
Black	116	78%	46	66%	-60%
White	25	17%	15	21%	-40%
Latinx	2	1%	2	3%	0%
Other	1	1%	0	0%	-100%
Unknown or Non-Entered	5	3%	7	10%	40%

Source: The Legal Aid Society 2020.

Conclusion and Recommendations

While the above analyses do not control for other characteristics of people under supervision in New York, our findings are consistent with national studies that did extensively control for relevant personal and legal characteristics, and still found unwarranted racial and ethnic disparities in parole practices. It is undeniable that the impact of current parole practices in New York falls disproportionately on Black and brown communities – from the experience of supervision, to charging and jail detention, to disposition and prison incarceration. The findings of this research brief indicate that Black and brown people in New York experience disparate outcomes at even higher rates than national average. However, solutions do exist.

Revise Policies and Laws with Inequitable Impact

In their review of racially disparate impacts in the criminal justice system, The Sentencing Project's first recommendation is to revise policies and laws that have shown disparate impact on Black and brown communities (Ghandnoosh 2015). Given that previous research indicates that being on parole longer increasingly disadvantages Black and brown people, and that people of color are disproportionately likely to be charged with violations and to experience harsher punishment for violations, policy changes in these areas are likely to carry positive effects for these communities.

Therefore, we recommend that New York State use available policy levers to shorten parole supervision periods, limit the use of jail detention while people are awaiting adjudication of alleged parole violation charges, and limit the possibility of incarceration for technical violations.

Recommendation: Take Legislative Action on Parole Reform

Rather than create our own proposals to accomplish those policy goals, we would like to highlight substantial existing work that has been done in this area specific to New York State policy.

Two separate groups, made up of diverse constituencies, have studied the parole system, and have reached similar conclusions – that New York parole should allow people to earn time off of their supervision sentence, severely limit the use of incarceration as a response to technical violations, and curb the use of jail detention for people accused of technical violations.

In 2019, the New York State Bar Association established an ideologically and geographically diverse *Task Force on the Parole System*, whose mandate included, "conducting a detailed review of parole rules, regulations, practices and procedures in New York and other states, and […] developing recommendations for areas in which the process can be improved" (NYS Bar Association, at 1). The membership of the task force includes a wide range of legal perspectives, including judges, prosecutors, and defense attorneys from throughout the state. Their initial report, which represents a consensus document signed off on by all members, concluded, "there is little or no evidence that the current revocation process for persons accused of technical parole violations in New York actually enhances public safety…[I]ncarcerating people for technical parole violations plays a decidedly negative role in terms of integrating these persons back into the community, and is extremely costly in human and economic terms. These issues raise troubling questions about the fundamental fairness of the process, and strongly support legislative action to substantially reduce incarceration for technical parole violations in New York" (NYS Bar Association, at 3).

The Task Force's specific policy recommendations – which include instituting a mechanism for earned time credit, imposing stiff limits on incarceration for technical violations, and eliminating mandatory pre-adjudication jail detention for people accused of technical parole violations – closely track legislation that is currently pending in the New York State legislature.

The pending legislation – the *Less Is More Act* – has received support from six sitting District Attorneys, the New York State Association of Counties, the New York Mayor and City Council, the New York City Bar Association, and a broad coalition of formerly incarcerated and supervised advocates, among others (Katal Center for Health, Equity, and Justice 2020).[12]

The Less Is More Act proposes instituting "earned time credits" to shorten terms of parole, limiting the number of violations for which incarceration is a possible response, capping the amount of time someone can be reincarcerated for the remaining eligible violations, and instituting a pre-adjudication hearing for all individuals charged with parole violations or new offenses to determine whether their jail detention is justified – thereby addressing many of the pressure points identified in this research brief.

[12] A.5493, available: https://www.nysenate.gov/legislation/bills/2019/a5493/amendment/a ; S.1343, available: https://www.nysenate.gov/legislation/bills/2019/s1343

In short then, New York has a current, actionable opportunity to reform its parole practices in ways that would directly address sources of racial and ethnic disparities that plague the status quo. The two existing, detailed policy proposals – both the pending *Less is More Act* and the New York State Bar Association Task Force report – are similar to one other, and carry support from a broad range of perspectives, demonstrating momentum and a window of opportunity for impactful change. Our main recommendation is therefore that the state not squander this opportunity, and instead take legislative action to reform parole before the window to do that closes.

Parole practices impact too many lives – particularly among Black and brown people and already-vulnerable, underserved communities – for reform to not move forward.

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Appendix A: New York Standard Reporting Conditions

1. I will proceed directly to the area to which I have been released and, within twenty-four (24) hours of my release, make my arrival report to the Community Supervision Office indicated on my release agreement, unless other instructions are designated on the agreement.
2. I will make office and/or written reports as directed.
3. I will not leave the State of New York or any other state to which I am released or transferred, or any area defined in writing by my Parole Officer without permission.
4. I will permit my Parole Officer to visit me at my residence and/or place of employment and I will permit the search and inspection of my person, residence, property. I will discuss any proposed changes in my residence, employment, or program status with my Parole Officer. I understand that I have an immediate and continuing duty to notify my Parole Officer of any changes in my residence, employment, or program status when circumstances beyond my control make prior discussion impossible.
5. I will reply promptly, fully, and truthfully to any inquiry of or communication by my Parole Officer or other representative of the Department of Corrections and Community Supervision.
6. I will notify my Parole Officer immediately any time I am in contact with or arrested by any law enforcement agency. I understand that I have a continuing duty to notify my Parole Officer of such contact or arrest.
7. I will not be in the company of or fraternize with any person I know to have a criminal record or whom I know to have been adjudicated a Youthful Offender except for accidental encounters in public places, work, school, or in any other instance without the permission of my Parole Officer.
8. I will not behave in such a manner as to violate the provisions of any law to which I am subject which provide for a penalty of imprisonment, nor will my behavior threaten the safety or well-being of myself or others.
9. I will not own, possess, or purchase any shotgun, rifle, or firearm of any type without the written permission of my Parole Officer. I 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, I will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.
10. In the event that I leave the jurisdiction of the State of New York, I hereby waive my 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 I am discharged from Parole or Conditional Release. I fully understand that I have the right under the Constitution of the United States and under law to contest any effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my Parole or Conditional Release.
11. I will not use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.

12. Special Conditions: (as specified by the Board of Parole, Parole Officer or other authorized representative of DOCCS).

13. I will fully comply with the instructions of my Parole Officer and obey such special additional written conditions as he or she, a member of the Board of Parole, or an authorized representative of the Department of Corrections and Community Supervision, may impose.

Appendix B: Methodology

Relative Rate Indices

In most of our novel analysis for this brief, we used the Relative Rate Index (RRI) as a tool for assessing inequities at various points in the parole supervision and revocation process. The RRI is a method often used in assessing disparities in the juvenile justice system, and if the method of reporting used by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Following the example and methodology of Hartney and Vuong (2009, at 8), we adopted this method to highlight inequities in representation for Black and brown adults in comparison to white adults.

To calculate the RRI, rates for each racial/ethnic group were first calculated as the number of people at a particular point in the system per 100,000 of the same racial/ethnic group in the general population. Then, the rates for other groups were divided by the rate for the white population. Values over 1 indicate that a group is overrepresented compared to white people, while values less than 1 indicate that a group is underrepresented.

National Data

To develop national rates of parole supervision by race and ethnicity, the Justice Lab used data in the Bureau of Justice Statistics' *Probation and Parole in the United States, 2016* report, the most recent available in that series. We used the percentages reported in Appendix Table 8 of that report, and multiplied by the total count of people under parole supervision, to develop estimated counts by sex and race/ethnicity.

These counts were then divided by the relevant census population and multiplied by 100,000 to obtain a rate of supervision per 100,000 U.S. residents (of all ages) for that group. General population demographics were taken from the U.S. Census Bureau's estimates for July 1, 2016, in their Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States series. Because available used in other sections of this research brief reports only four categories of racial and ethnic identity (Black, White, Hispanic, Other), census data was collapsed to match those categories.

Using the methodology described above, the rates of supervision and incarceration for each racial/ethnic group were then divided by the rate for white people, to obtain a Relative Rate Index. RRIs for supervision are reported in Table 2.

New York State Data

The Justice Lab analyzed two data sets from the New York State Department of Corrections and Community Supervision (NYS DOCCS), made available through the New York Open Data portal. The first, *Parolees Under Community Supervision Beginning 2008*, represents all persons under parole supervision by NYS DOCCS as of March 31 of the snapshot year. We tabulated the *raceethnicity* and *gender* variables for *snapshotyear*=2018 to obtain counts of people under supervision on March 31 of 2018, by sex, race, and ethnicity.

The second statewide dataset we analyzed was *Inmates Under Custody Beginning 2008*, which represents all people incarcerated in NYS DOCCS prisons. Here, we tabulated the variables *raceethnicity*, *gender*, and *latestadmissiontype*="returned parole violator" for *snapshotyear*=2018, to obtain counts of people incarcerated for technical parole violations on March 31 of 2018, by sex, race, and ethnicity.

For each of these datasets, the counts were then divided by the relevant census population and multiplied by 100,000 to obtain a rate of supervision or incarceration per 100,000 state residents (of all ages) for that group. General population demographics were taken from the U.S. Census Bureau's estimates for July 1, 2018, in their Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States series. Because available NYS DOCCS data reports only four categories for the *raceethnicity* variable (Black, White, Hispanic, Other), census data was collapsed to match those categories.

Using the methodology described above, the rates of supervision and incarceration for each racial/ethnic group were then divided by the rate for white people, to obtain a Relative Rate Index. RRIs for supervision are reported in Table 2; RRIs for prison incarceration are reported in Table 4.

New York City Data

The Justice Lab analyzed the *Daily Inmates In Custody* dataset, which is provided by the New York City Department of Correction (NYC DOC) through the New York City Open Data portal, and is automatically updated daily. The data analyzed represents all people in NYC DOC custody on February 27, 2020. By tabulating the *race*, *gender*, and *inmate_status_code* variables, we were able to obtain counts of people incarcerated in New York City jails by race and sex for each type of admission. Latinx/Hispanic ethnicity is not reported in this data set. However, personal communication with analysts at the Mayor's Office of Criminal Justice indicates that the "Other" category in that data is a strong proxy. Thus, jail incarceration statistics reported for Latinx people is based on analysis of individuals categorized in that data as "Other."

These counts were then divided by the relevant census population and multiplied by 100,000 to obtain a rate of supervision per 100,000 residents (of all ages) for that group. General population demographics were taken from the U.S. Census Bureau's estimates for July 1, 2018, in their Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States, States, and Counties series – the most recent Census Bureau-derived estimates at the county level. County population estimates for New York City's five counties – Bronx, New York, Queens, Kings, and Richmond – were aggregated to produce city-wide demographics.

Using the methodology described above, the rates of jail incarceration for each racial/ethnic group were then divided by the rate for white people, to obtain a Relative Rate Index. RRIs for jail incarceration are reported in Table 3.

Table 2: Rates and Relative Rate Indices for Supervision

People Under Supervision, U.S. Total (both sexes)

Race / Ethnicity	Estimated Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	332,415	40,243,218	826	4.15
Latinx	131,217	57,572,774	228	1.15
Other	17,496	27,461,407	64	0.32
Unknown	--	--	--	--
White	393,650	197,793,943	199	1.00
Total	874,777	323,071,342	271	--

People Under Supervision, NYS (both sexes)

Race / Ethnicity	Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	17,153	2,833,908	605	6.77
Latinx	8,451	3,754,130	225	2.52
Other	1,180	2,123,647	56	0.62
Unknown	84	--	--	--
White	9,678	10,830,524	89	1.00
Total	36,546	19,542,209	187	--

Men Under Supervision, NYS

Race / Ethnicity	Count	Male Census Population	Rate per 100K Male Residents	Relative Rate Index
Black	16,289	1,321,080	1,233	7.76
Latinx	8,142	1,849,810	440	2.77
Other	1,130	1,015,381	111	0.70
Unknown	78	--	--	--
White	8,422	5,302,159	159	1.00
Total	34,061	9,488,430	359	--

Women Under Supervision, NYS

Race / Ethnicity	Count	Female Census Population	Rate per 100K Female Residents	Relative Rate Index
Black	864	1,512,828	57.1	2.51
Latinx	309	1,904,320	16.2	0.71
Other	50	1,108,266	4.5	0.20
Unknown	6	--	--	--
White	1,256	5,528,365	22.7	1.00
Total	2,485	10,053,779	24.7	--

Sources: U.S. Census Bureau 2019; Kaeble 2018, Appendix Table 8; NYS Department of Corrections and Community Supervision 2019a.
Note: Supervision counts for U.S. Total are from 2016, and census figures are from July 1, 2016. Supervision counts for NYS are from March 31, 2018, and census figures are from July 1, 2018.

Table 3: Rates and Relative Rate Indices for Jail Detention

People Detained in NYC Jails, technical parole violation only

Race / Ethnicity	Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	405	1,933,632	21	12.0
Latinx	187	2,570,631	7	4.2
Other	11	1,377,497	1	0.5
White	49	2,800,638	2	1.0
Total	652	8,682,398	8	--

People Detained in NYC Jails, new charge and parole violation

Race / Ethnicity	Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	511	1,933,632	26	10.0
Latinx	206	2,570,631	8	3.0
Other	7	1,377,497	1	0.2
White	74	2,800,638	3	1.0
Total	796	8,682,398	9	--

People Detained in NYC Jails, no parole violation

Race / Ethnicity	Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	1,889	1,933,632	98	8.1
Latinx	957	2,570,631	37	3.1
Other	79	1,377,497	6	0.5
White	337	2,800,638	12	1.0
Total	3,262	8,682,398	38	--

People Detained in NYC Jails, all offenses

Race / Ethnicity	Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	2,805	1,933,632	145	8.9
Latinx	1,350	2,570,631	53	3.2
Other	97	1,377,497	7	0.4
White	458	2,800,638	16	1.0
Total	4,710	8,682,398	54	--

Sources: U.S. Census Bureau 2019; The City of New York 2020a. Note: Jail detention counts are from February 27, 2020, and census figures are from July 1, 2018.

Table 4: Rates and Relative Rate Indices for Prison Incarceration

People Incarcerated for Technical Parole Violations, NYS (both sexes)

Race / Ethnicity	Count	Census Population	Rate per 100K Residents	Relative Rate Index
Black	2,030	2,833,908	72	5.0
Latinx	693	3,754,130	18	1.3
Other	133	2,123,647	6	0.4
Unknown	4	--	--	--
White	1,554	10,830,524	14	1.0
Total	4,414	19,542,209	23	--

Men Incarcerated for Technical Parole Violations, NYS

Race / Ethnicity	Count	Male Census Population	Rate per 100K Male Residents	Relative Rate Index
Black	1,960	1,321,080	148	5.7
Latinx	668	1,849,810	36	1.4
Other	127	1,015,381	13	0.5
Unknown	3	--	--	--
White	1,390	5,302,159	26	1.0
Total	4,148	9,488,430	44	--

Women Incarcerated for Technical Parole Violations, NYS

Race / Ethnicity	Count	Female Census Population	Rate per 100K Female Residents	Relative Rate Index
Black	70	1,512,828	4.6	1.56
Latinx	25	1,904,320	1.3	0.44
Other	6	1,108,266	0.5	0.18
Unknown	1	--	--	--
White	164	5,528,365	3.0	1.00
Total	266	10,053,779	2.6	--

Sources: U.S. Census Bureau 2019; NYS Department of Corrections and Community Supervision 2019b. Note: Prison incarceration counts are from March 31, 2018, and census figures are from July 1, 2018.

STOPPING PAROLE'S REVOLVING DOOR

OPPORTUNITIES FOR REFORMING COMMUNITY SUPERVISION IN NEW YORK

June 2019

Independent Commission on New York City
Criminal Justice and Incarceration Reform

www.morejustnyc.org

SUMMARY

Over the past few years, New York City has significantly lowered the number of people held in its jails. Recent legislative reforms to pretrial laws promise further reductions. But one population in City jails has resisted these trends and poses a major barrier to closing the jails on Rikers Island: people accused of violations of community supervision, commonly referred to as parole.

On any given day, 20 percent of the New York City jail population is made up of people accused of parole violations. 89 percent are people of color. Approximately 600 people are accused of non-criminal "technical" parole violations, such as being late for curfew, testing positive for drugs, or missing an appointment with a parole officer. Another 900 people are charged with new criminal offenses but are ineligible for bail or pretrial release, no matter how low-level the offense, because parole authorities have also issued a warrant.

Jailing so many people on parole warrants does little for public safety and is counterproductive to the success of people who are reentering society from prison. It is also incredibly expensive: applying figures from the New York City Comptroller, the City spends more than $400 million per year to incarcerate people accused of parole violations.

These problems are not limited to Rikers. On any given day, more than 1,000 people are held in other jails across the state solely because they are accused of technical parole violations. And almost 40 percent of the people sent to state prison each year in New York are not incarcerated for new criminal convictions, but rather for these technical parole violations.

Last year, Governor Cuomo recognized the need for reform, stating that people on parole who are not a danger to our communities should not be incarcerated. Mayor de Blasio has also called for changes to the parole system as part of the City's efforts to close the Rikers jails.

The following common-sense reforms would help people on parole succeed, allow parole officers to focus on people who have the greatest needs and who are most at risk, and save millions of taxpayer dollars that are currently spent on incarceration:

- Award merit time credits to incentivize compliance with parole conditions;
- End mandatory jailing when someone is accused of a parole violation and give people a bail-type hearing instead;
- Limit how long people can be imprisoned for violations so punishments match the violations;
- Speed up parole violation hearings so people do not spend weeks and months in jail before having an administrative law judge decide their case; and
- Use money saved from these reforms for housing, small business loans, employment and treatment to help people on parole succeed in the community.

While some of these reforms could be implemented via policy changes at the State Department of Corrections and Community Supervision, others require legislative action. Reform legislation like the *Less Is More Act*, S. 1343B/A. 5493A, would cement the key elements into law.

Parole reform would improve outcomes for people on parole and make strong fiscal sense, as the experience of states like Louisiana, South Carolina, and Missouri has shown. Reform is also crucial to New York City's effort to shut the Rikers jails forever. Now is the time for Albany to act.

INTRODUCTION

Nearly 20 percent of the people jailed in New York City on any given day—the majority of whom are held in the massive jail complex on Rikers Island—are incarcerated because of alleged parole violations. **This is the only group in City jails that has increased over the past several years, posing a major obstacle to the efforts to close the Rikers jails.**

Prison sentences in New York are usually followed by a period of community supervision, commonly referred to as parole.[1] People on parole are subject to numerous restrictions, or conditions, on their behavior. If parole authorities accuse someone of a non-criminal or "technical" violation of a condition of parole—such as being late for curfew, testing positive for alcohol or drugs, or missing appointments with a parole officer—they can send the person straight to a local jail. Bail or release on recognizance is not an option. Instead, the person remains behind bars for up to 105 days until their case is heard by an administrative law judge who decides whether or not to send the person back to state prison.

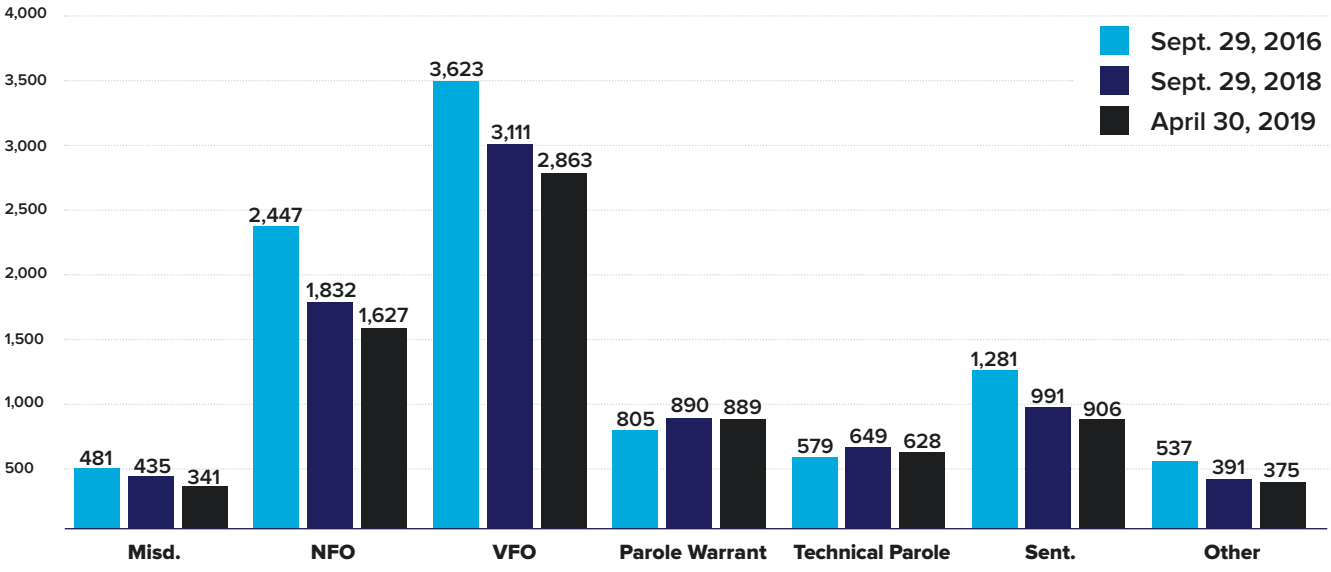
On any given day, roughly 600 people are in jail on Rikers Island because they are accused of a technical parole violation.[2] 89 percent are people of color.[3]

In addition to people accused of technical parole violations, each day approximately 900 people are held in City jails who are charged with new criminal offenses but are ineligible for bail because they are also accused of parole violations.[4] That population has increased ten percent in the past two and a half years.[5] On an average day, more than 500 of these

NYC JAIL SNAPSHOT

7,629
Total people

5,720 (75%)
Pretrial



people are incarcerated for a misdemeanor or nonviolent felony charge.[6] Under New York State bail reform legislation that will take effect on January 1, 2020, most would be ineligible for pretrial detention at all based on the nature of the charged offense. However, because of the parole warrants, they will still be jailed without any option for release while they wait for the resolution of the allegations against them.

Parole revocations do not impact only New York City's jails. They are a major driver of incarceration in county jails across New York and in state prisons. In the first 10 months of 2018, 1,101 people on parole in New York State were returned to prison for a new criminal conviction.[7] By contrast, in 2018, **New York State returned approximately six times as many people on parole to prison for non-criminal, technical parole violations:** 7,492 people, including 1,648 people on parole who were re-incarcerated to receive drug treatment.[8] These people account for 39 percent of the total number of people sent to state prisons in 2018.[9] **New York State re-imprisons more people for technical parole violations than any other state besides Illinois.**[10]

There is scant evidence that incarcerating people for technical parole violations increases public safety, but incarceration for technical parole violations can rupture the connections that are key to people's success. People on parole struggle disproportionately with serious physical and mental health problems, including chronic conditions and untreated addiction, and often have low levels of literacy.[11] In New York City, at any time, there are approximately 1,600 people on parole in homeless shelters, and the number of people sent straight from prison to homeless shelters doubled from 2014 to 2017.[12] To have a realistic chance at success in the community, people on parole need housing, income, and health care, but far too few are able to secure them.[13] If people on parole are able to overcome the many challenges they face, including employer and landlord biases against people with criminal records,[14] and find a stable place to live, a job, and quality health care, re-incarceration for an alleged parole violation can cost them those necessary pillars of stability.[15]

Jailing people on parole warrants also has major financial costs for New York State and county governments. For the past decade, localities have borne the full cost of incarcerating people who are jailed on parole warrants issued by State parole authorities.[16] For example, New York City Comptroller Scott Stringer has calculated the City spends $302,000 per year to incarcerate a person in jail, suggesting the City spends more than $400 million per year incarcerating people accused of parole violations.[17] Similarly, the Vera Institute of Justice has calculated that the State spends $69,000 per year to incarcerate someone in a state prison, suggesting that the State spends more than $300 million each year incarcerating people for parole violations.[18]

The following common-sense reforms to the parole revocation process, a number of which have already been enacted with positive results in other states, would help address these problems:

1. Instituting merit time credits to incentivize good behavior on parole;
2. Ending mandatory detention on parole warrants and ensuring everyone accused of a crime gets a bail-type hearing at the outset of the case;
3. Limit the amount of time someone can be incarcerated for a parole violation so that any punishment is commensurate with the violation;
4. Speeding up parole violation adjudications so people no longer spend up to 105 days in jail before receiving a final revocation hearing; and

5. Using cost savings from parole reforms to provide support and opportunities for people re-entering society from prison.

These reforms would reward positive behavior by people on parole, significantly reduce the number of people under parole supervision and the number of people on parole who are incarcerated in jails and prisons across New York, reduce parole officers' caseloads, allow those parole officers to focus on people who most need assistance, spare people on parole unwarranted disruption to their lives, and ensure that people on parole receive due process before they are jailed for alleged parole violations.

If these reforms were implemented, we predict that almost 750 people on parole would avoid costly and unnecessary jail in New York City alone.[19] Given the significant costs of incarcerating people in New York's jails and prisons, these reforms could also save state and county taxpayers tens, if not hundreds, of millions of dollars per year. While some of these reforms could be implemented administratively, state lawmakers can and should enshrine them into law with passage of legislation like the *Less Is More Act*, S. 1343B (Benjamin)/A. 5493A (Mosley).

COMMUNITY SUPERVISION IN NEW YORK

As of June 1, 2019, the New York State Department of Corrections and Community Supervision (DOCCS) supervised 35,986 people under various types of community supervision, compared to 46,694 people incarcerated in state prisons.[20] On average, people leaving prison are under supervision for two and a half years, though some are subject to supervision for decades or even their lifetime.[21]

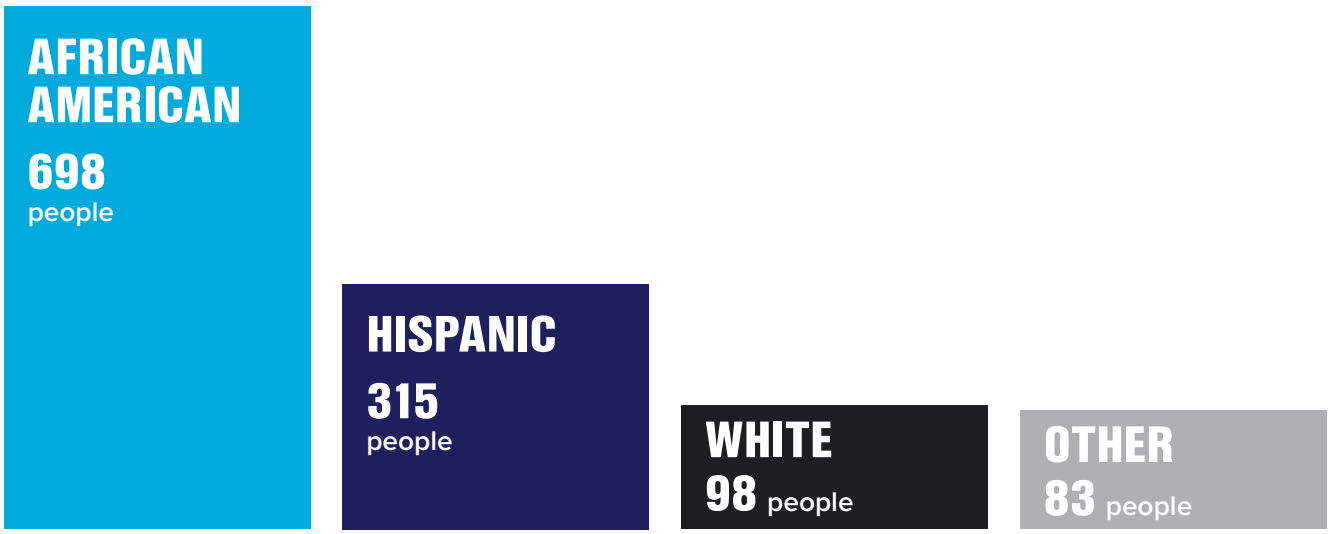
PAROLE CONDITIONS AND VIOLATIONS

People on parole are required to check in periodically with a parole officer and abide by other restrictions, such as curfews, travel limitations, drug testing, and a prohibition against spending time with other people with criminal records. Certain restrictions, known as "general conditions," are applicable to all people on parole. Other restrictions can be set by the parole board or by a person's designated parole officer. Non-criminal behavior that contravenes a parole restriction is commonly referred to as a "technical" violation.

Engaging in new criminal activity is also considered a violation of parole conditions. If a person on parole is arrested and charged with a new criminal offense, parole authorities can issue a parole warrant for the same alleged conduct. If they do, the person cannot be released from jail until the parole matter is resolved. Parole hearings use a different standard of proof than a criminal case. In parole proceedings, the parole prosecutor has to prove guilt by a preponderance of the evidence, i.e. that it is more likely than not that the person committed the violation. In contrast, in criminal court, the standard is guilt beyond a reasonable doubt. Thus, a person can be acquitted of a criminal charge, but found guilty of violating parole for the same alleged activity.

For both alleged technical violations and alleged new criminal activity, if a parole officer and a supervisor agree there is "reasonable cause" to believe that a person on parole has violated a parole condition "in an important respect," DOCCS can issue a warrant for the person's arrest and detention.[25] Under state law, the person is held in a local jail until the parole matter is resolved. County governments have been required to cover the costs of these jail stays since 2009.

PEOPLE UNDER COMMUNITY SUPERVISION IN NEW YORK STATE BY RACE, RATE PER 100,000[22]



Within 15 days of the person's arrest based on a parole warrant, DOCCS must provide a preliminary hearing to determine whether there is probable cause, i.e. a reasonable basis, to believe the person violated parole. If the hearing officer finds probable cause to believe the person committed a parole violation, an administrative law judge (ALJ) employed by DOCCS will hold a final hearing within 90 days afterwards.[26]

If the ALJ substantiates the parole violation at the final hearing, they can send the person on parole back to prison, require the person to attend a drug treatment program behind bars, or release the person back to the community, often with additional programming or treatment requirements.

Under current regulations, the range of available penalties for a parole violation depends primarily on the person's original conviction, rather than the nature of the violation.[27] In January 2019, DOCCS proposed new parole regulations tying penalties for parole violations to the nature of the violation itself, rather than the person on parole's original conviction, which would be a positive step.[28] At the same time, the proposed regulations would deny people credit for time served in jails pending adjudication of parole violation allegations, increase prison terms for some violations though reduce them for others, and make it more difficult for ALJs to restore someone to community supervision after sustaining a violation rather than return them to prison.[29] The proposed regulations do not alter the timing of revocation hearings.[30] It remains unclear whether or when those proposed regulations will take effect.

ABSCONDING

At the end of 2017, 3,203 people under parole supervision (6.2% of the total) were considered by DOCCS to have committed the technical violation of "absconding": they did not report to their parole officer as required, or changed jobs or residences without telling an officer.[31] People who "abscond" often do not flee the area or leave the state. Rather, concerned they will be jailed for a technical violation, such as failing a drug test, or being late for curfew, they evade their parole officer. Limiting incarceration for technical violations likely would encourage people to remain in contact with their parole officers, who can then focus on ensuring people receive the support they need to succeed.

OUTCOMES OF PAROLE VIOLATION PROCEEDINGS

In New York City, 62 percent of people accused of technical violations and held in the Rikers jails are sent back to state prison.[32] 38 percent are returned back to New York City communities after having spent an average of 57 days in jail.[33]

Statewide, New York re-incarcerates far more people on parole for technical violations than for new criminal convictions. From October 2016 through September 2017, 11,347 people successfully completed parole in New York, while 9,250 were returned to prison, a failure rate of 45 percent.[34] Of this group, 1,347 people were returned to prison for committing a new crime, while 7,903 (almost six times as many) were returned to prison for committing a technical parole violation.[35]

New York ranks second worst in the country in sending people on parole back to prison for technical violations, behind only Illinois.[36] Texas returns 80 percent fewer people to prison for technical violations, even though its parole population is 75 percent larger.[37]

THE NEGATIVE CONSEQUENCES OF TECHNICAL VIOLATIONS

Barriers to Successful Community Reintegration

People on parole face serious challenges to successful community reintegration. Many employers, landlords, schools, and training programs are unwilling to accept people with criminal records.[38] Homelessness is a growing problem for people on parole, with the number of people sent straight from prison to a New York City shelter nearly doubling from 2014 to 2017.[39] Lack of family support, low levels of literacy, dependency and mental health issues, physical and mental disabilities also pose barriers to securing the stable housing, income, and health care essential to success in the community.[40]

New York's current parole revocation scheme can add yet another challenge. People incarcerated for technical parole violations can lose their jobs, their housing, and their place in school, training, or treatment programs.[41] Families lose earners. Spouses and partners may be forced to stop working because the family can no longer afford childcare.

HOMELESSNESS

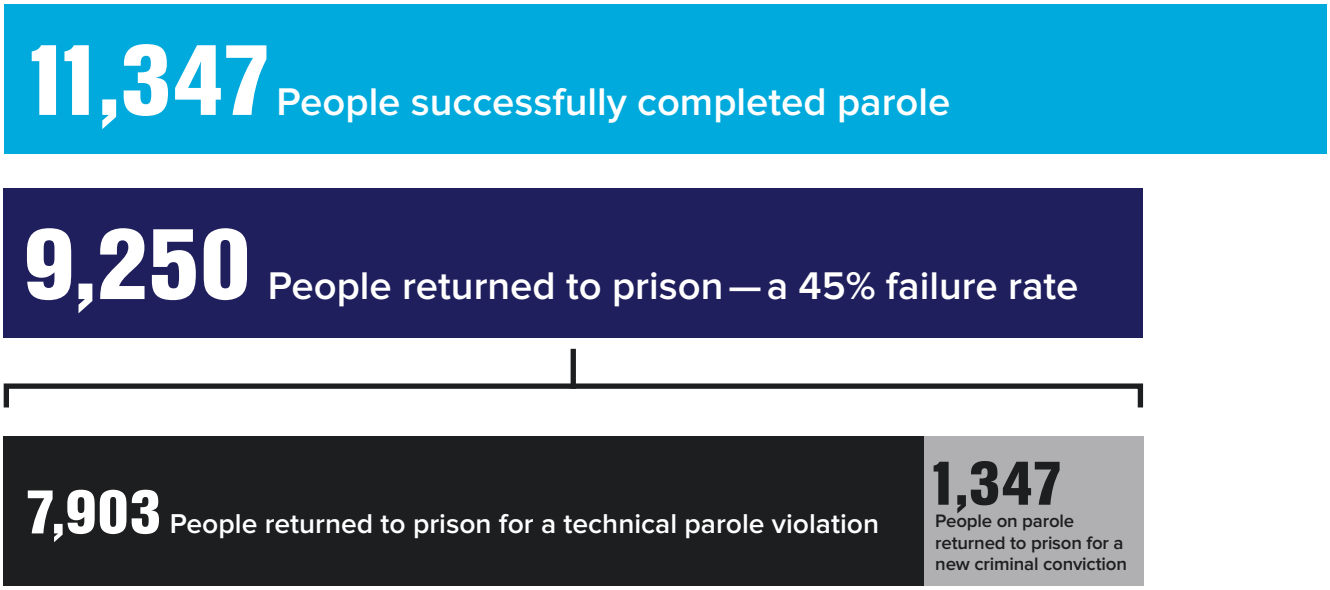
In 2017, more than 4,100 people were released from New York State prison directly to a homeless shelter in New York City, nearly twice as many as were paroled directly from prison to a shelter in 2014.[42] At any one time, there are approximately 1,600 people on parole in New York City homeless shelters.[43] People on parole make up roughly 20 percent of all people entering New York City homeless shelters.[44] People in City shelters are frequently exposed to violence and drugs and suffer serious instability, making compliance with conditions of parole much more difficult.

Fiscal Impact

Based on average costs for incarceration in New York jails and prisons, we estimate that incarcerating people for technical violations costs New York taxpayers well over $600 million annually.

Across the state in 2018, an average of 1,740 people were incarcerated in county jails each day because they were accused of technical parole violations, a five percent increase from 2017.[45] According to analyses by the New York State Association of Counties and the New York City Comptroller, localities spend almost $300 million a year to incarcerate these people.[46] Almost 4,300 additional people are incarcerated in New York State prisons for technical parole violations.[47] Applying a 2017 analysis by the Vera Institute on prison costs in New York, we calculate the State spends almost $300 million a year imprisoning people for technical violations.[48]

PAROLE REINCARCERATION IN NEW YORK STATE, OCT. 2016–SEPT. 2017



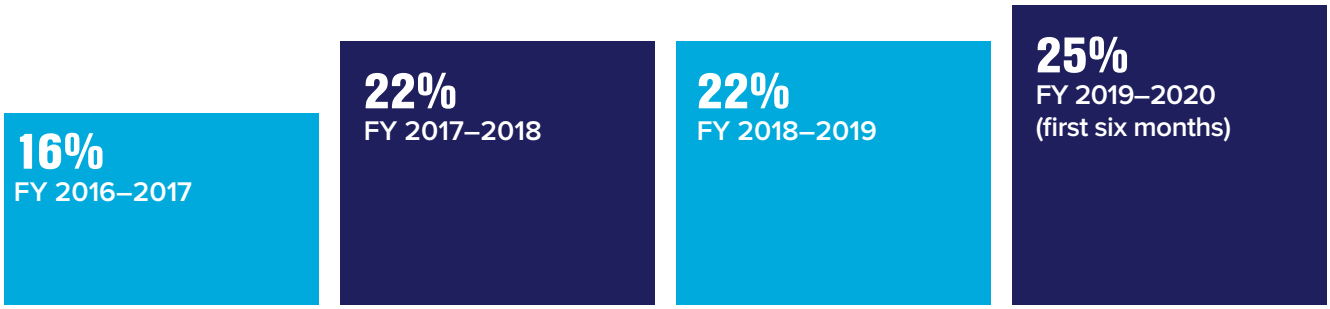
IMPACT ON NEW YORK CITY JAILS

Combined, **20 percent of the people jailed in New York City are incarcerated because of alleged parole violations**, ineligible for release pending resolution of their cases. **This is the only population at Rikers that has grown since 2016.**

As of April 30, 2019, there were 628 people incarcerated on Rikers for alleged technical parole violations.[49] If current trends hold, approximately 3,725 people will be sent to Rikers for alleged technical parole violations in 2019, up 5 percent from 2018.[50] In addition, as of April 30, 2019, 889 people on parole were incarcerated in City jails for new criminal charges and an accompanying parole warrant.[51] Of those, approximately 500 were charged with lower-level offenses such as a violation, misdemeanor, or nonviolent felony.[52]

Almost a quarter of all parole warrants in New York City are dismissed the first time a hearing officer examines them at a preliminary hearing, usually one to two weeks after the person has been incarcerated.[53] In that case, the person is released straight back to the community. This number has risen 77 percent in the past three years, suggesting an increasing number of people who should not have been jailed in the first place.

PERCENT WARRANTS DISMISSED AT PRELIMINARY HEARINGS[54]



People are released after the warrant is dismissed, after spending up to two weeks in the Rikers jails. Even a short stay in jail can cause someone to lose their housing, employment, educational opportunities, or even custody of their children.

Because of the lack of pre-adjudication release and the length of time it takes to receive a final revocation hearing, the average person with a parole warrant stays in jail far longer than someone without a parole warrant, adding an additional significant barrier to the closure of Rikers.

Under the New York State bail reform law enacted in April 2019, people accused of most misdemeanors and nonviolent felonies will not be subject to pre-trial detention, but rather will be released to the community under various conditions pending their trial. However, people on parole facing identical charges will still be incarcerated without any chance for release until the allegations are resolved, solely because of their parole status.

AVERAGE JAIL STAY[55]

169 DAYS
People with new felony arrest and parole warrant

36 DAYS
People with new felony arrest and no parole warrant

100 DAYS
People with new misdemeanor arrest and parole warrant

12 DAYS
People with new misdemeanor arrest and no parole warrant

57 DAYS
People jailed on technical parole violations

32 DAYS
All people jailed pretrial

OPPORTUNITIES FOR REFORM

There is an increasing consensus that reducing the current scope of parole supervision would improve individual outcomes and public safety. In 2017, dozens of leading probation and parole officials and prosecutors from across the United States recommended reducing the number of people on parole and focusing supervision on those with the greatest need.[56] In 2018, New York Governor Andrew Cuomo raised his voice for reform, stating: "New York jails and prisons should not be filled with people who may have violated the conditions of their parole, but present no danger to our communities."[57]

Those exhortations are backed by studies that indicate that limiting technical parole revocations can improve public safety and reduce recidivism.[58] Furthermore, the experience of states that have taken steps to reform their parole systems suggest that reducing incarceration for technical violations can help focus resources and attention on the underlying issues that lead to violations, helping avoid them entirely.

PRINCIPLES FOR REFORM

There are a number of straightforward, common-sense principles for parole reform that would increase fairness, ensure due process, and reduce the number of people accused of parole violations held in City jails.

1. **Institute merit time credits to reward good behavior under supervision**, incentivizing positive reintegration into the community and saving resources by reducing the number of people on parole. Parole officers could then focus on the people who most need assistance.

2. **End mandatory detention for all parole warrants,** whether for a technical violation or a new criminal charge. Instead, people accused of violating the terms of their supervision should receive an arraignment-like hearing before an independent judge to determine if they are likely to return for their parole hearing, just like people accused of probation violations.[59] If so, they should be released pending the hearing with the least restrictive conditions that would ensure their return to their revocation hearings.

   While ending mandatory detention for parole warrants would require legislative change, an administrative reform that could be implemented immediately would be for parole officers to refrain from filing a parole warrant—and thereby trigger automatic detention—in many cases involving alleged misdemeanors or other charges that would be ineligible for detention under the recently passed bail reform law. Such abstention would be particularly appropriate when a judge requires the person on parole to participate in supervised release or other supportive services intended to increase the likelihood of the person appearing at hearings.

3. **Impose graduated, capped revocation sanctions commensurate with the seriousness of the violations.** It is counterproductive to jail people—particularly for months or years—because they committed a non-criminal, technical violation like being late for curfew, spending time with someone else with a criminal record, or missing an appointment with their parole officer. To the extent incarceration is appropriate at all, it should be strictly limited.

4. **Speed up parole violation adjudication hearings** so people no longer spend weeks or months in jail before their parole cases are adjudicated.

5. **Use savings to provide support and opportunities for people re-entering society from prison.** A significant portion of the considerable savings from reforming parole supervision should be dedicated to countering the housing instability, joblessness, inadequate education, mental and physical illness, and drug and alcohol dependency that disproportionately face people on parole.

For those people who are detained on parole warrants, the State should explore holding them in nearby State-run facilities, rather than on Rikers and in other local jails. This policy would not reduce incarceration overall, but could accelerate the closure of the Rikers jails and reduce the burden that parole detention places on counties across the state. In considering such a policy, however, the State should consider the challenges of ensuring that those who are detained have full access to counsel and visitation.

LESSONS FROM OTHER STATES AND NYC PROBATION REFORM

Similar reforms have proven successful in states throughout the country, resulting in fewer violations, fewer revocations, and no rise in recidivism.

In states like Arizona, Arkansas, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, South Carolina, and Utah, people on parole can shorten their supervision periods by up to 30 days for 30 days of good behavior.[60] Sixteen states have put caps on how long individuals can be incarcerated for a technical violation of supervision conditions, and 22 states have instituted graduated sanctions for violations.[61]

These reforms have met with success. After South Carolina adopted graduated sanctions, technical revocations decreased 46 percent and recidivism rates for people under supervision dropped 33 percent.[62] When Louisiana capped incarceration terms for first-time technical violations, incarceration terms fell by 281 days and 22 percent fewer people under community supervision were sent back to prison for new crimes.[63] And after Missouri adopted earned time credits, parole supervision terms decreased by 14 months, the supervised population fell 20 percent, average caseloads dropped 16 percent, and recidivism rates did not change.[64]

New York City successfully implemented similar reforms for people on probation earlier this decade. People accused of probation violations are brought before a court which can put the person in jail, fix bail, or release the person on their own recognizance pending a hearing on the accusation.[65] Under the leadership of then-Commissioner Vincent Schiraldi, from 2010 to 2014 the New York City Department of Probation (DOP) significantly reduced the number of people jailed for probation violations and cut recidivism in the process. The DOP reduced the rate at which it filed violations against adult probation clients by 45 percent.[66] At the same time, the DOP quintupled the percent of people released early from probation and saw felony rearrest rates for this group decline.[67] Given resultant caseload reductions, the DOP was able to triple spending per individual person on probation, increase the number of contracts for community-based nonprofit services from two to 54, and reduce staffing by 19 percent.[68]

THE LESS IS MORE ACT

The *Less Is More Act*, S. 1343B/A. 5493A, sponsored by Senator Brian Benjamin and Assemblyman Walter Mosley, builds on reform efforts from other states and exemplifies the

types of reforms New York needs. It would end mandatory detention on parole warrants, preclude incarceration for most technical violations, place caps on revocation sanctions, speed up revocation hearings, and allow people to earn time off their parole terms for good behavior. The bill has been endorsed by District Attorneys, Sheriffs, current and former police chiefs and officers, the New York State Association of Counties, and former probation and parole commissioners and officials.

SAVINGS AND REINVESTMENT

Parole reforms would not just increase public safety, but likely would save tens, if not hundreds, of millions of dollars per year in state and county budgets through lower parole caseloads and reduced incarceration, including the potential closure of portions of or entire state prisons and county jails. These savings should be reallocated to the people and communities most impacted by the criminal justice and parole systems in the form of economic and housing development, literacy, education, micro-loans, community-based programs for dependency and mental health treatment.[69]

COLORADO REINVESTMENT INITIATIVES

In 2017, Colorado passed legislation capping the length of time people could be sent back to prison for technical parole violations.[70] The law is redirecting $24 million to community-led, community-centric small business loans and a community-development grants program focused on two neighborhoods that have been impacted by the criminal justice system.[71]

CONCLUSION

The incarceration of approximately 1,500 people on parole in New York City jails every day for alleged technical parole violations or new offenses, even low-level offenses that normally would not result in incarceration, is poor public safety policy and unfair to people on parole. It also poses a significant barrier to the closure of Rikers Island.

Elsewhere around the State, over 1,000 more people are jailed each day for alleged technical parole violations, and over 4,000 more people are serving time in State prisons for technical parole violations.[72] The hundreds of millions of dollars spent on this largely unnecessary and often counterproductive incarceration of people on parole would be better spent expanding housing, employment and treatment programs, and investing in impacted communities.

A smaller parole system that incarcerates many fewer people would permit parole authorities to concentrate their resources on the people who are most in need of their services and supervision. It would also move New York City a major step closer to shutting the jail complex on Rikers Island once and for all. We call on the State to adopt necessary reforms to the parole system as soon as possible.

ACKNOWLEDGMENTS

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NOTES

1. For ease of use, we refer to all forms of community supervision as parole.
2. New York City Open Data, *Daily Inmates in Custody* (visited May 1, 2019), available at https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb.
3. *Id*.
4. *Id*.
5. Jonathan Lippman, et al., *A More Just New York City* (805 people incarcerated for new charges combined with a parole warrant as of Sep. 29, 2016); NYC Open Data, *Daily Inmates in Custody* (visited May 1, 2019; 889 people incarcerated for new charges combined with a parole warrant).
6. NYC Open Data, *Daily Inmates in Custody* (visited May 1, 2019).
7. NYS Assembly Committee on Corrections, *2018 Annual Report* (Dec. 2018) at 2, available at https://nyassembly.gov/write/upload/postings/2019/pdfs/20190319_0085751.pdf. In the first 10 months of 2017, the number was nearly identical: 1,106. NYS Assembly Committee on Corrections, *2017 Annual Report* (Dec. 2017) at 2, available at https://nyassembly.gov/write/upload/pdfs/20171215_79309.pdf.
8. NYS DOCCS, *Admissions and Releases Calendar Year 2018*, available at http://www.doccs.ny.gov/Research/Reports/2019/Admission%20Releases%20Report%20Calendar%20Year%202018.pdf. In 2017, New York State returned 7,789 people on parole to prison, including re-incarcerating 1,928 people on parole to receive drug treatment. *Id*.
9. NYS DOCCS, Admissions and Releases Calendar Year 2018. In 2017, people imprisoned for parole violations made up 37% of annual New York State prison admissions. *Id*.
10. United States Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States, 2016* (Apr. 2018), Appendix Table 7, available at https://www.bjs.gov/content/pub/pdf/ppus16.pdf.
11. See, e.g., Ashley Hackett, *A Harvard Sociologist Breaks Down the Moral Failures Plaguing the U.S. Prison System*, PACIFIC STANDARD (May 15, 2018), available at https://psmag.com/social-justice/a-harvard-sociologist-breaks-down-the-moral-failures-plaguing-the-u-s-prison-system; Cindy Hendricks, James E. Hendricks, Susie Kauffman, *Literacy, Criminal Activity, and Recidivism* (July 2016), available at https://www.researchgate.net/publication/239864667; Urban Institute, *Validation of the Employment Retention Inventory, An Assessment Tool of the National Institute of Corrections* (2016), available at https://www.urban.org/sites/default/files/publication/85331/validation-of-the-employment-retention-inventory_0.pdf; Re-Entry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (2013), available at https://csgjusticecenter.org/wp-content/uploads/2013/03/Report-of-the-Reentr-Council.pdf; New York State Bar Association, *Re-Entry and Reintegration: the Road to Public Safety, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings* (2006), available at https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26857; National Center for Education Statistics, Literacy Behind Prison Walls (October 1994), available at https://nces.ed.gov/pubs94/94102.pdf.
12. Courtney Gross, *The New York Prison-to-Shelter Pipeline,* NY1 (Feb. 27, 2018), available at https://www.ny1.com/nyc/all-boroughs/politics/2018/02/27/ny1-investigation-more-inmates-released-upstate-prisons-going-into-nyc-shelter-system.
13. For instance, a study in Boston found just over half of people on parole reported paid employment a year after release from prison, with lower rates for people with addiction and mental illness. See Harvard Kennedy School Rappaport Institute for Greater Boston, *The Boston Reentry Study: Finding Work After Prison* (June 2015), available at https://scholar.harvard.edu/files/brucewestern/files/employmentvfinal.pdf. The same study found over 40 percent of people on parole were living in marginal or temporary housing a year after release. See Harvard Kennedy School Rappaport Institute for Greater Boston, *The Boston Reentry Study: Housing Insecurity After Prison* (June 2015), available at https://scholar.harvard.edu/files/brucewestern/files/housingvfinal.pdf.
14. New York State Bar Association, *Re-Entry and Reintegration: the Road to Public Safety, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings*; Bruce Western and Becky Pettit, *Incarceration & social inequality*, DAEDALUS (Summer 2010), available at https://www.amacad.org/publication/incarceration-social-inequality.
15. See, e.g., Josh Weber, Michael Umpierre, and Shay Bilchik, *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes*, Georgetown University Center for Juvenile Justice Reform (2018); New York State Bar Association, *Re-Entry and Reintegration: the Road to Public Safety, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings*; R.P. Seiter, and A.D. West, *Supervision styles in probation and parole: an analysis of Activities*, JOURNAL OF OFFENDER REHABILITATION 38(2), 57–75 (2003); J. Travis and J. Petersilia, *Reentry Reconsidered: a new look at an old question*, Crime & Delinquency 47(3), 291–313 (2001); J. Petersilia and S. Turner, *Intensive Probation and Parole,* in M. Tonry (Ed.), CRIME AND JUSTICE: A REVIEW OF RESEARCH, vol. 17 (1993).
16. New York State Association of Counties, Joint Legislative Budget Testimony at 17 (Feb. 11, 2019), available at https://www.nysenate.gov/sites/default/files/testimony_of_nys_association_of_counties.pdf.
17. New York City Comptroller, Press Release, *Comptroller Stringer: Despite a Decline in Incarceration, Correction Spending, Violence, and Use of Force Continued to Rise in FY 2018* (Jan. 22, 2019), available at https://comptroller.nyc.gov/newsroom/comptroller-stringer-despite-a-decline-in-incarceration-correction-spending-violence-and-use-of-force-continued-to-rise-in-fy-2018/ (finding NYC DOC spends $828 per incarcerated person per day); NYC Open Data, *Daily Inmates in Custody* (visited May 1, 2019). As described in note 69, however, the marginal savings from detaining fewer people in jail is lower than the average cost of incarceration.
18. Vera Institute of Justice, *The Price of Prisons: Examining State Spending Trends, 2010–2015* (May 2017), available at https://www.justnet.org/pdf/The-Price-of-Prisons-Examining-State-Spending-Trends-2017.pdf. As described in note 69, however, the marginal savings from detaining fewer people in jail is lower than the average cost of incarceration.

19. Our projections are as follows. **Technical Violations:** On any given day, approximately 600 people are held on Rikers for alleged technical violations. We should reduce this number: (1) by removing incarceration as a sanction for many technical violations; (2) for violations for which incarceration remains an available sanction, requiring a "recognizance hearing" in a local court—akin to an arraignment hearing—before someone can be jailed pending administrative hearings on the alleged violation; and (3) speeding up significantly those administrative hearings. We estimate that these reforms would reduce the number of people jailed for technical violations by two-thirds, for a projected reduction of 400 people. **New Criminal Offenses:** On any given day, approximately 900 people on Rikers face new criminal offenses but are not eligible for release on bail or on their own recognizance (ROR) because parole has issued a related warrant. We should make these people eligible for bail or ROR like other defendants who are not on parole, and empower criminal court judges to determine, at arraignment, whether to detain the person or not. While the new bail reform law that will take effect January 1, 2020 will no longer permit detention for people charged with most misdemeanors and nonviolent felonies, detention of people with parole warrants for the same crimes would still be allowed. To project the impact of our proposed reforms, we multiplied the number of people on parole jailed for new charges for misdemeanors, nonviolent felonies, and violent felonies by the rate at which people charged with those categories of offenses who were not on parole were released on recognizance in 2016 according to CJA data. We then built in a 25 percent "implementation discount" to account for the likelihood that courts may be less likely to release people on parole. Based on these assumptions, we project a reduction of 340 people.

20. NYS DOCCS, *DOCCS Fact Sheet* (June 1, 2019), available at http://www.doccs.ny.gov/FactSheets/PDF/currentfactsheet.pdf.

21. NYS DOCCS, Community Supervision Staffing Legislative Report 2018 at 29, available at http://www.doccs.ny.gov/Research/Reports/2018/Community-Supervision-Staffing-Report-2018.pdf.

22. Id. at 17; US Census Bureau, *QuickFacts New York* (data as of July 1, 2018), available at https://www.census.gov/quickfacts/fact/table/NY/RHI125217#RHI125217.

23. NYS DOCCS, *Community Supervision Staffing Legislative Report 2018* at 17; US Census Bureau, QuickFacts New York.

24. NYS DOCCS, *Community Supervision Staffing Legislative Report 2018* at 17; US Census Bureau, QuickFacts New York; US Census Bureau, *QuickFacts New York City, New York* (data as of July 1, 2018), available at https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST120218; US Census Bureau, *QuickFacts Nassau County, New York* (data as of July 1, 2018), available at https://www.census.gov/quickfacts/nassaucountynewyork; US Census Bureau, *QuickFacts Suffolk County, New York* (data as of July 1, 2018), available at https://www.census.gov/quickfacts/suffolkcountynewyork.

25. DOCCS defines "in an important respect" as "behavior that rises to a level of that could endanger the community or the parolee and makes the parolee unamenable to supervision." DOCCS Directive 9050, *Community Supervision Revocation Process* at 5 (Aug. 6, 2018), available at http://www.doccs.ny.gov/Directives/9050.pdf.

26. If the person on parole waives their preliminary hearing, something that is often encouraged by parole officers, then a final revocation hearing must be held within 90 days of the date of the waiver. If a person on parole is arrested and convicted of a new misdemeanor or a felony for which the person receives a sentence of a year or less, there is no preliminary hearing and the case goes straight to a final hearing. If the person is convicted of a felony in New York State and sentenced to a year or more, then the person's parole is automatically revoked.

27. NYS DOCCS, *Community Supervision Handbook* (July 2017) at 29–30, available at http://www.doccs.ny.gov/pdf/Community_Supervion_Handbook.pdf.

28. NYS DOCCS, *Proposed Board of Parole Regulations — Standard Conditions and Revocation Guidelines 9 NYCRR Sections 8002.6, 8003.2 and 8005.20* (Jan. 30, 2019), available at http://www.doccs.ny.gov/RulesRegs/20190130_CCS-05-19-00006.pdf.

29. *Id*.

30. *Id*.

31. NYS DOCCS, *Community Supervision Staffing Legislative Report 2018* at 16, available at http://www.doccs.ny.gov/Research/Reports/2018/Community-Supervision-Staffing-Report-2018.pdf.

32. NYC Mayor's Office of Criminal Justice, *Justice Brief, Jail: State Parolees* (Feb. 2018), available at https://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/Parole_Violators_Fact_sheet_2_18.pdf.

33. *Id*.

34. NYS DOCCS, *Community Supervision Staffing Legislative Report 2018* at 32, available at http://www.doccs.ny.gov/Research/Reports/2018/Community-Supervision-Staffing-Report-2018.pdf.

35. *Id*.

36. United States Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States, 2016* (Apr. 2018), Appendix Table 7, available at https://www.bjs.gov/content/pub/pdf/ppus16.pdf#page=22.

37. *Id*.

38. *See*, e.g., New York State Bar Association, *Re-Entry and Reintegration: the Road to Public Safety, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings* (2006), available at https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26857;

39. Courtney Gross, *The New York Prison-to-Shelter Pipeline*, NY1 (Feb. 27, 2018), available at https://www.ny1.com/nyc/all-boroughs/politics/2018/02/27/ny1-investigation-more-inmates-released-upstate-prisons-going-into-nyc-shelter-system.

40. *See*, e.g., Ashley Hackett, *A Harvard Sociologist Breaks Down the Moral Failures Plaguing the U.S. Prison System*, PACIFIC STANDARD (May 15, 2018), available at https://psmag.com/social-justice/a-harvard-sociologist-breaks-down-the-moral-failures-plaguing-the-u-s-prison-system; Cindy Hendricks, James E. Hendricks, Susie Kauffman, Literacy, *Criminal Activity, and Recidivism* (July 2016), available at https://www.researchgate.net/publication/239864667; Urban Institute, *Validation of the Employment Retention Inventory, An Assessment Tool of the National Institute of Corrections* (2016), available at https://www.urban.org/sites/default/files/publication/85331/validation-of-the-employment-retention-inventory_0.pdf; Re-Entry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (2013), available at https://csgjusticecenter.org/wp-content/uploads/2013/03/Report-of-the-Reentry-Council.pdf; New York State Bar Association, *Re-Entry and Reintegration: the Road to Public Safety, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings* (2006), available at https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26857; Literacy_Criminal_Activity_and_Recidivism National Center for Education Statistics, Literacy Behind Prison Walls (October 1994), available at https://nces.ed.gov/pubs94/94102.pdf.

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44. Editorial Board, *Cold welcome home: The tough truth about parolees entering New York City's homeless shelters*, NEW YORK DAILY NEWS (Mar. 3, 2018), available at https://www.nydailynews.com/opinion/cold-home-parolees-article-1.3851989

45. New York State Division of Criminal Justice Services, *Jail Population in New York State* (Jan. 28, 2019), available at https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_y.pdf. This includes an average of 718 people per day in New York City jails and 1,022 people in county jails in the rest of the state. *Id*. Every county in the state except Hamilton and Schoharie had alleged parole violators in its jails.

46. It costs an average of $79,000 per year to jail someone outside New York City and $302,000 per year to jail a person in New York City. NYS Association of Counties, Cashless Bail and Other Criminal Justice Reform Proposals (Feb. 2019) at 3, available at http://www.nysac.org/files/NYSAC%20Cashless%20Bail%20Whitepaper%20Feb%2020%202019(1).pdf; New York City Comptroller, Press Release, *Comptroller Stringer: Despite a Decline in Incarceration, Correction Spending, Violence, and Use of Force Continued to Rise in FY 2018*.

47. NYS DOCCS Open Data, *Inmates Under Custody: Beginning 2008* (visited June 12, 2019), available at https://data.ny.gov/Public-Safety/Inmates-Under-Custody-Beginning-2008/55zc-sp6m. Data as of March 31, 2019.

48. It costs an average of $69,000 per year to incarcerate a person in a New York State prison. Vera Institute of Justice, *The Price of Prisons: Examining State Spending Trends, 2010–2015 (*May 2017), available at https://www.justnet.org/pdf/The-Price-of-Prisons-Examining-State-Spending-Trends-2017.pdf.

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53. Data from Legal Aid Society on file with Commission.

54. Data from Legal Aid Society on file with Commission.

55. New York City Mayor's Office of Criminal Justice, Jail: State Parolees (Feb. 2018), available at https://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/Parole_Violators_Fact_sheet_2_18.pdf.

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57. Governor Andrew Cuomo, *2018 State of the State Book* (Apr. 2018) at 66, available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf.

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61. *Id*.

62. Urban Institute, *Assessing the Impact of South Carolina's Parole and Probation Reforms* (Apr. 2017), available at http://www.urban.org/sites/default/files/publication/89871/south_carolina_jri_policy_assessment_final_1.pdf.

63. The Pew Charitable Trusts, *Reducing Incarceration for Technical Violations in Louisiana: Evaluation of Revocation Cap Shows Cost Savings, Less Crime* (2014), http://www.pewtrusts.org/~/media/assets/2014/11/psppreducingincarcerationfortechnicalviolationsinlouisiana.pdf.

64. The Pew Charitable Trusts, *For Better Results, Cut Correctional Populations*.

65. New York State Code of Criminal Procedure, Section 410.60 (2019). Effective January 1, 2020, the Court may also release a person accused of a probation violation under non-monetary conditions. *Id*.

66. NYC Department of Probation: Do More Good: A Progress Report from the NYC Department of Probation (Dec. 2013), available at http://www.nyc.gov/html/prob/downloads/pdf/dop_progress_report.pdf.

67. Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, *Less Is More: How Reducing Probation Populations Can Improve Outcomes*, Program in Criminal Justice Policy and Management, Harvard Kennedy School (2017), available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf.

68. *Id*.

69. The actual savings would depend on the prison and jail capacity closed due to the reduced population, and any commensurate reduction in staff, the primary cost of corrections. We envision that, at minimum, housing areas, pods, or wings of prisons and jails could be closed. It is likely that entire state prisons and at least one New York

City jail could be closed. The savings would be less than the average cost of incarceration per person, as built into the average are relatively fixed costs like central executive and administrative expenses, heat, light and power, lease and rent costs etc. Closure of an entire facility would save a higher marginal amount per person incarcerated than closing wings of a facility, likely 50% more, since in addition to the line staff savings, there would be further facility-based administrative savings not realized from shutting down one housing area.

70. Colorado General Assembly, Bill Summary Justice Reinvestment Crime Prevention Initiative, HB17-1326 (2017), available at https://leg.colorado.gov/bills/hb17-1326.

71. *Id*.; Transforming Safety Colorado, History, https://transformingsafety.org/history; Communications with staff of Colorado Criminal Justice Reform Coalition.

72. New York State Division of Criminal Justice Statistics, *Jail Population in New York State* (January 28, 2019), available at https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_y.pdf.

Exhibit E

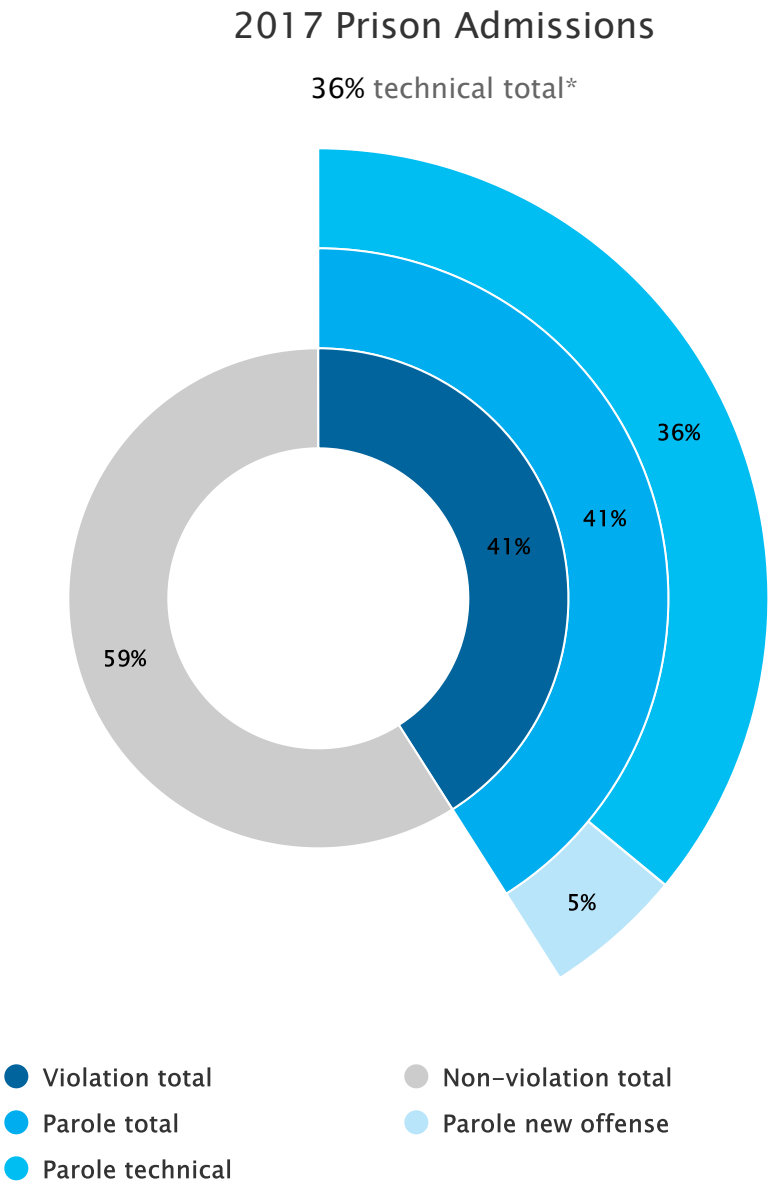
New York

Supervision Violation Data Snapshot

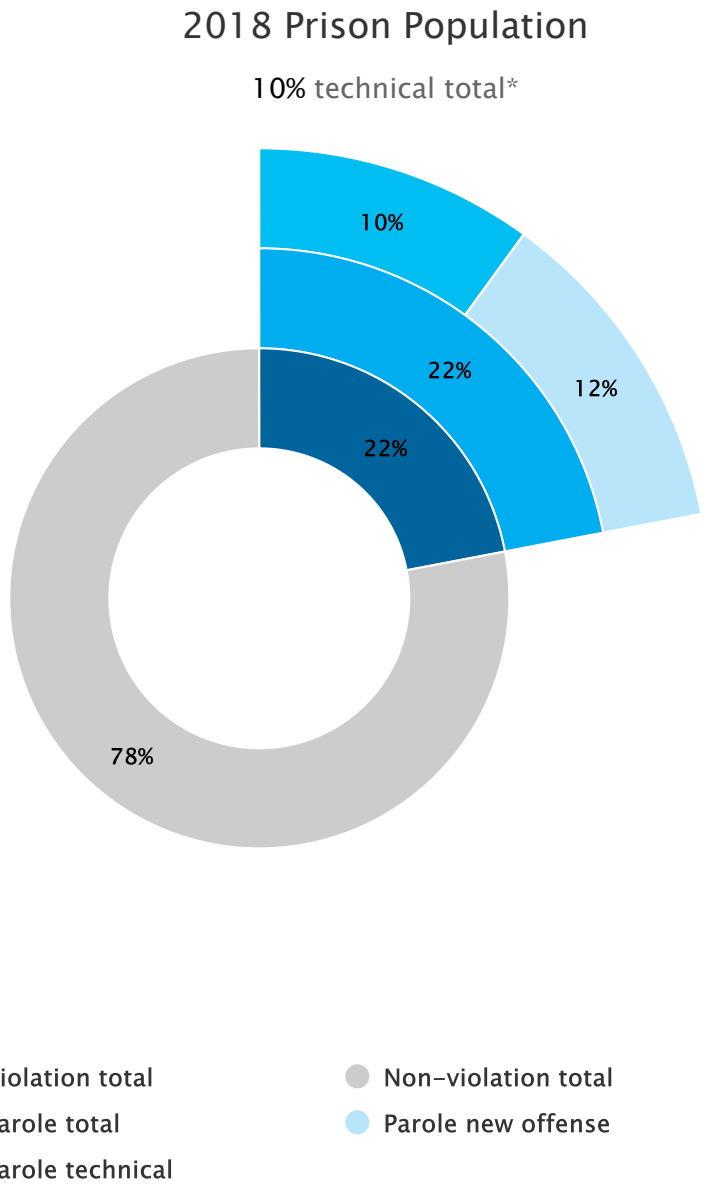
Probation and parole are designed to lower prison populations and help people succeed in the community. New data show they are having the opposite effect. Until now, national data regarding the impact of probation violations on prison populations have been unavailable, resulting in a lopsided focus on parole. The Council of State Governments (CSG) Justice Center recently engaged corrections and community supervision leaders in 50 states to develop the first complete picture of how probation and parole violations make up states' prison populations.

This snapshot shows available supervision violation data for this state.

41% OF PRISON ADMISSIONS
are for supervision violations



22% OF PEOPLE IN PRISON
are incarcerated for supervision violations



* Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests.

On any given day in New York, **10,678 people** are incarcerated as a result of a supervision violation at an annual cost to the state of **$815 million**. Technical supervision violations account for **$359 million** of this total amount, and new offense supervision violations make up **$456 million**. These figures do not account for the substantial local costs of keeping people in jail for supervision violations.

DATA ALERT

This state was not able to provide the following data at the time of data collection.

Missing prison admissions data include: probation total, probation new offense and probation technical.

Missing prison population data include: probation total, probation new offense and probation technical.

Additional State Notes

Probation terms are not identified in prison data, as probation is operated at the county level and regulated by the state Division of Criminal Justice Services (DCJS). DCJS can determine the number of felony probation terms that are resentenced by the courts to prison each year, but cannot specify the impact on prison admissions, primarily because multiple sentences may result in a single prison admission. People violating technical conditions of parole who were referred to drug treatment programs in state facilities are included in the counts. People admitted for short incarceration stays due to pre-violative behavior and referrals to parole diversion programs are not included.

For more information, see our methodology.

[1] Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests. "Prison" includes county jail if the county was reimbursed by the state for a person's incarceration, which occurs in some, but not all, states. Supervision violations may include revocations (i.e., unsuccessful terminations of a supervision and completion of a sentence in prison or jail) or short-term sanctions (i.e., probation or parole jurisdiction is maintained and the person is incarcerated for a short period of time in prison or jail). Not all states impose or include short-term sanctions in their count of supervision violations. See state-specific snapshots for more information on state-specific definitions. In states where technical violations were not provided, all violations and associated costs were counted as new offense violations.

[2] Illinois, Maryland, Michigan, New York, and Pennsylvania include only parole/post-release supervision violations, and Delaware, Oklahoma, and West Virginia include only probation violations.

[3] Data reflects annual admissions for 2017 except in Virginia, where 2016 was the latest year available. Tennessee did not provide the number of new offense supervision violations as these are counted as non-violation admissions. Ohio counts new offense probation violations as non-violation admissions. Technical breakdown was only included if both the total number and technical number of violations were provided for probation and/or parole/post-release supervision.