



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE,
CRIMINAL COURTS COMMITTEE,
CRIMINAL JUSTICE OPERATIONS COMMITTEE,
AND MASS INCARCERATION TASK FORCE**

**A.5576
S.1144**

**M. of A. Forrest
Sen. Benjamin**

AN ACT to amend the executive law and the penal law, in relation to revocation of community supervision

The Less Is More Act

THIS BILL IS APPROVED

The New York City Bar Association (“City Bar”) supports passage of the Less Is More Act, which would provide much-needed reforms to the administration of parole supervision by eliminating incarceration for most minor non-criminal violations, requiring prompt judicial review of parole warrants, placing caps on revocation sanctions, and incentivizing parole compliance by shortening supervision terms based on good behavior.

I. BACKGROUND

Starting in 2020, historic criminal justice reforms took effect in New York State, eliminating the use of pretrial detention for nearly all misdemeanors and non-violent felonies, greatly expanding the scope and timeliness of pretrial discovery, and enhancing speedy trial protections.

Bail reform led to an immediate 40 percent reduction in the State’s jail population.¹ The City of New York estimates that by 2026 the average daily jail population will drop to

¹ Michael Rempel and Krystal Rodriguez, *Bail Reform Revisited: The Impact of New York’s Amended Bail Law on Pretrial Detention*, New York: Center for Court Innovation (May 2020), at 12, https://www.courtinnovation.org/sites/default/files/media/document/2020/bail_reform_revisited_05272020.pdf; Insha Rahman, *New York, New York: Highlights of the 2019 Bail Reform Law*, New York: Vera Institute of Justice (July 2019), at 4, <https://www.vera.org/downloads/publications/new-york-new-york-2019-bail-reform-law-highlights.pdf>. (All websites in this report were last visited on Jan. 31, 2021).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

approximately 3,330 people, half its 2020 level, as a result of bail reform, increased pretrial diversion, alternatives to City sentences, and anticipated continued reductions in crime rates, clearing the way for the closure of Rikers Island.²

II. THE NEED FOR PAROLE REFORM

Despite these historic gains, a persistent obstacle stands in the way of the State’s laudable efforts to further reduce its reliance on mass incarceration and increase the fairness of its justice system: the State’s parole apparatus.³

While the primary condition imposed on people on parole in New York is that they not commit any new crimes, people on parole are also required to abide by other conditions, including curfews, travel restrictions, drug and alcohol testing, and checking in regularly with their parole officer. Violations of these restrictions that do not constitute a new crime are referred to as “technical” violations.⁴ In 2018, 40 percent of the people sent to State prison were incarcerated not because they had committed a new crime, but because they committed technical parole violations, often a combination of missing curfew, failing a drug or alcohol test, staying at an unauthorized residence, or not appearing for an appointment with a parole officer. Among the most prevalent of these technical violations is what parole authorities refer to as “absconding”: failing to maintain contact with a parole officer as required and to stay at a pre-approved residence.⁵ Based on the experience of the practitioners among us and conversations with parole authorities, people accused of absconding rarely flee the jurisdiction or pose a risk to public safety. Often, concerned they will be jailed for another technical violation, people stop reporting to their parole officer.⁶

The New York State Department of Corrections and Community Supervision (DOCCS) can issue a warrant for a person’s arrest if a parole officer and supervisors agree that there is “reasonable cause” that the person violated a parole condition “in an important respect.” A person must be held in a local jail, for up to 105 days, until the violation is adjudicated. Release on recognizance or bail are not options.⁷ In 2018, New York sent 7,492 people to prison for technical parole violations, second most in the nation. This is six times higher than the number of people on

² City of New York, Mayor’s Office of Criminal Justice, *The Jail Population in NYC: 3,300 by 2026* (Oct. 2019), <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/10/The-Jail-Population-in-NYC-3300-by-2026.pdf>.

³ New York State prison sentences are generally followed by a period of community supervision, including parole and post-release supervision. As relevant here, there is no substantive difference in how these forms of community supervision are administered and the procedures under which supervision is revoked and people are reincarcerated. See N.Y. Exec. Law § 259(3). For the sake of simplicity, we use the umbrella term “parole” here to refer to all forms of community supervision.

⁴ Independent Commission on New York City Criminal Justice and Incarceration Reform, *Stopping Parole’s Revolving Door: Opportunities for Reforming Community Supervision in New York* (June 2019), at 6, <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5d091deb8e2d2c0001558b09/1560878571898/Stopping+Parole%27s+Revolving+Door+%28June+2019%29.pdf>.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ *Id.* at 6.

parole incarcerated for committing a new crime, making parole violations a major driver of incarceration in the State.⁸

Incarceration of New Yorkers accused of technical parole violations has huge financial and human costs and is a serious obstacle to the City's plan to close Rikers Island. It is estimated that the State spends almost \$300 million per year incarcerating people found to have committed technical parole violations.⁹ In New York City, the costs of incarceration are extraordinary, with a recent estimate by the City Comptroller calculating the average annual cost to be \$337,524 per person.¹⁰ As of March 2020, there were 700 people incarcerated in New York City awaiting adjudication of alleged technical parole violations at a projected yearly cost of more than \$200 million.¹¹ Combined with the approximately 900 people on parole held each day in City jails because they are accused of committing a new crime, the City spends over half a billion dollars incarcerating people accused of parole violations.¹² Although in response to the outbreak of COVID-19, 379 people accused of technical parole violation were released from New York City jails, within two months those gains were undermined when 172 people were admitted to City jails for technical parole violations.¹³ From July 2020 through January 2021, the number of people detained for technical parole violations has risen by 25 percent.¹⁴

⁸ New York State Bar Association, *Report of the Task Force on the Parole System* (Nov. 2019), at 3-4, <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=97413>. In November 2019, the New York State Bar Association's House of Delegates voted to approve the Task Force Report, which sets forth numerous recommendations to address the issue of parole revocation following a technical violation of parole conditions. The City Bar supported the House of Delegates' endorsement of the report.

⁹ *Id.* at 4.

¹⁰ New York City Comptroller, *Cost of Incarceration per Person in New York City Skyrockets to All-Time High* (Dec. 6, 2019), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-cost-of-incarceration-per-person-in-new-york-city-skyrockets-to-all-time-high/>. The average annual cost of incarceration includes all costs related to the City's administration of jail facilities, including those outside the Department of Correction budget, such as employee pension contributions and correctional health care services. *Id.* Many of those costs, such as for administration, maintenance of facilities, and employee salaries are fixed and will not change as the result of a slight reduction in jail population. Therefore, the "marginal cost" savings resulting from one fewer person being incarcerated is often much less than the average cost of incarceration per person. It is only when the jail population is reduced to a degree that major fixed-cost savings can be realized, such as closing an entire facility and reducing staffing levels, that significant overall cost savings result. Christian Henrichson & Sarah Galgano, *A Guide to Calculating Justice-System Marginal Costs* (May 2013), Vera Institute of Justice, at 5, https://www.vera.org/downloads/Publications/a-guide-to-calculating-justice-system-marginal-costs-1/legacy_downloads/marginal-costs-guide.pdf.

¹¹ Michael Rempel, *COVID-19 and the New York City Jail Population* (Nov. 2020), at 7, Center for Court Innovation, https://www.courtinnovation.org/sites/default/files/media/documents/2020-11/COVID_jail_NYC.pdf.

¹² *The Jail Population in NYC: 3,300 by 2026*; Independent Commission, *Stopping Parole's Revolving Door* at 10.

¹³ Vincent Schiraldi, *Two months later: Outcomes of the March 27th order to release people jailed for technical violations during the pandemic*, Columbia Univ. Justice Lab (May 2020), at 4, <https://justicelab.columbia.edu/sites/default/files/content/NY%20Two%20Months%20Later%205.27.20%20final.pdf>.

¹⁴ *Daily Snapshot*, Vera Institute of Justice (Comparison of July 1, 2020 & Jan. 30, 2021), <https://greaterjusticenyc.vera.org/nycjail/>.

The human cost is equally unaffordable. The first two people to die of COVID-19 at Rikers Island were detained for technical parole violations: missing parole appointments and failing a drug treatment program.¹⁵ Even when not lethal, the consequences of even a brief period of incarceration can be dire. People who are suddenly jailed can lose housing and jobs and face disruption of community-based treatments, education, and childcare arrangements.¹⁶ All of this is extremely counterproductive towards the goal of helping a person successfully reenter society after prison and deterring them from committing future crimes. And there is scant evidence that incarcerating people for technical parole violations enhances public safety or decreases recidivism. In fact, given the turmoil caused by even a relatively short period of incarceration, studies have shown that jailing people for technical parole violations can actually increase the likelihood that they will commit future crimes. By contrast, it has been shown that increasing community-based resources is at least as effective in changing behavior as jail and can result in overall reduced crime rates.¹⁷ Furthermore, parole in New York exacerbates structural racism in the criminal justice system with a recent study by the Justice Lab at Columbia University finding that 12 times more Black City residents are jailed for parole violations than whites.¹⁸

Incarceration for technical parole violations is also inconsistent with other efforts that the City and State of New York are making to reform the criminal justice system. The City has pledged to close Rikers Island by 2026 and replace it with four borough-based facilities, located closer to courthouses and communities. This ambitious plan depends on the City's jail population dropping by half, which will be the capacity of the new, smaller facilities.¹⁹ While the jail population has declined 39 percent since 2013, the number of people incarcerated for technical parole violations increased 15 percent between 2014 and 2018.²⁰ Pre-pandemic, people alleged to have violated parole accounted for 24 percent of all those jailed in New York City and represented the only segment of the jail population whose numbers had increased since 2016.²¹ While government COVID mitigation efforts led to an immediate 30 percent reduction in the City's overall jail population and 44 percent reduction in parole violators, those gains have since been largely reversed.²² The population at Rikers Island is now approximately the same as it was pre-pandemic in March 2020 and the number of people held for parole violations is on pace to return to pre-

¹⁵ Ginia Bellafante, *Should N.Y. Be Jailing Parolees for Minor Lapses During a Pandemic?*, N.Y. Times (Aug. 2, 2020), <https://www.nytimes.com/2020/07/31/nyregion/ny-parole-violations.html>.

¹⁶ NYSBA, *Task Force on the Parole System*, at 4-5.

¹⁷ *Id.* at 5.

¹⁸ Kendra Bradner and Vincent Schiraldi, *Racial Inequities in New York Parole Supervision*, Columbia Univ. Justice Lab (March 2020), at 8
<https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>.A

¹⁹ Rich Calder, *Proposed new jails slash height in bid to win City Council support*, New York Post (Oct. 15, 2019), <https://nypost.com/2019/10/15/proposed-new-jails-slash-height-in-bid-to-win-city-council-support/>.

²⁰ *The Jail Population in NYC: 3,300 by 2026*; City of New York, Mayor's Office of Criminal Justice, *Jail: State Parolees* (Feb. 2018), https://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/Parole_Violators_Fact_sheet_2_18.pdf.

²¹ NYC Open Data, *Daily Inmates in Custody*, <https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb>; Independent Commission, *Stopping Parole's Revolving Door*, at 10.

²² *COVID-19 and the New York City Jail Population*, at 6; NYC Open Data, *Daily Inmates in Custody*.

pandemic numbers by early 2021.²³ Reducing the inmate population is key to controlling the uncontrolled spread of COVID at Rikers Island. Given that infections within jails quickly spread to the outside community via staff and released detainees, reducing the population at Rikers is critical to the safety of not only those who live and work there but also the general public.²⁴ Additionally, the feasibility of the City's plan to shutter Rikers Island depends on significantly reducing this number.

III. THE LESS IS MORE ACT

The Less is More Act provides much-needed reforms by eliminating incarceration for most technical parole violations, requiring prompt judicial review of parole warrants, placing caps on revocation sanctions for both technical and non-technical violations, and allowing people to earn time off their parole terms with good behavior. These steps would incentivize compliance, reduce absconding, and allow parole officers to help people receive necessary support.²⁵ Violation and incarceration rates would fall, as would today's unreasonably high caseloads for parole officers.²⁶ While most of the reforms would focus on those accused of technical parole violations, the Less is More Act would also ensure that people on parole receive the protections of the State's recent bail reforms and allow for release where the parole violation is the alleged commission of a crime that otherwise requires pretrial release. These changes could save the City and State hundreds of millions of dollars a year that could be reinvested in programs to address the root causes of crime, support successful reentry, and further decrease the unnecessary use of incarceration.

The Less is More Act is also critical to ensuring that the City is able to close Rikers Island as planned. In its calculations, the City predicted that the number of people incarcerated for technical parole violations will be reduced by two thirds.²⁷ However, the City offers no details about how it will accomplish this goal if the Less is More Act is not passed; indeed the City has no ability to control the number of people incarcerated for alleged parole violations, as State law currently mandates that it house all those detained by DOCCS for any parole violation. If the Less is More Act is not passed, the City may simply be stuck with Rikers Island for generations to come, an unacceptable outcome.²⁸

The current system of mandatory detention of people alleged to have violated parole also undermines the effectiveness of the State's new bail reform law. More than 300 people on parole are held each day in City jails because they are accused of committing a misdemeanor or

²³ *COVID-19 and the New York City Jail Population*, at 8.

²⁴ See New York City Bar Association, *New York Must Lead to Protect People in Our Prisons and Jails* (May 15, 2020), at 1, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protect-people-in-prisons-and-jails-during-covid-19-pandemic>.

²⁵ Independent Commission, *Stopping Parole's Revolving Door*, at 7.

²⁶ NYSBA, *Task Force on the Parole System*, at 11.

²⁷ *The Jail Population in NYC: 3,300 by 2026*.

²⁸ See New York City Bar Association, *Rikers Island Must Close* (April 5, 2018), <https://www.nycbar.org/media-listing/media/detail/rikers-island-must-be-closed>; New York City Bar Association, *Closing Rikers Island: Support for Borough-Based Jail Plan* (Oct. 15, 2019), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/closing-rikers-island-support-for-borough-based-jail-plan>.

nonviolent felony.²⁹ They would be subject to mandatory release under the new bail law but for the fact that they are also accused of a parole violation based on the same conduct.³⁰ The Less is More Act would further drive down the City's jail population by allowing, but not requiring, a judge to release people accused of violating parole based on a new arrest. This common-sense reform would ensure that people are not detained for allegedly committing crimes that the legislature has already determined do not warrant pre-trial detention. The Lippman Commission estimates that by eliminating pre-adjudication detention for most technical violations and allowing for release of people on parole alleged to have committed misdemeanors and non-violent felonies, the Less is More Act would reduce the City's jail population by over ten percent.³¹

New York City has already shown that limiting the reach of post-conviction supervision can reduce incarceration without jeopardizing public safety.³² Since the mid-90s, the City cut the number of people on probation by two-thirds. At the same time, it scaled back the conditions to which low-risk probationers were subjected and increased six fold the number of people discharged from probation early as a reward for compliance. The shrinking probation rolls freed up officers to focus on their remaining clients who needed more attention and allowed the money saved to be invested in education, job training, and community-based non-profit service providers. All of this occurred during a period where the City's rates of violent crime and incarceration dropped by more than half.³³ Several other states such as Louisiana, Missouri, and South Carolina have adopted graduated sanctions, provided for earned discharges as a reward for good behavior, and imposed caps on reincarceration terms for technical parole violations.³⁴ Their experiences also demonstrate that these changes can free up vital resources for higher-risk clients and decrease violation and incarceration rates for others without compromising public safety.³⁵

Given its demonstrated ability to reduce incarceration and improve fairness in criminal justice without sacrificing public safety, it is no surprise that the Less is More Act has received support from prosecutors, lawmakers, and criminal justice reform advocates across the State.³⁶ It is now past time for New York to enact this law.

²⁹ *COVID-19 and the New York City Jail Population*, at 7.

³⁰ Independent Commission, *Stopping Parole's Revolving Door* at 4.

³¹ *Id.* at 5.

³² Unlike parole, which follows a period of incarceration and is administered by the State government, probation is a sentence of community supervision generally imposed in lieu of incarceration and administered by county or city governments. See New York State Division of Criminal Justice Services, *General Frequently Asked Questions*, https://www.criminaljustice.ny.gov/opca/general_faq.htm#1.

³³ Vincent Schiraldi, *How New York City has shown that "less is more" when it comes to probation supervision*, HuffPost (Oct. 10, 2017), https://www.huffpost.com/entry/how-new-york-city-has-shown-that-less-is-more-when_b_59dd268be4b0df59e2613cb2.

³⁴ Pew Charitable Trusts, *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations* (July 2019), https://www.pewtrusts.org/-/media/assets/2019/07/pspp_states_target_technical_violations_v1.pdf.

³⁵ *Id.* at 6-11.

³⁶ See Darcel Clark, Eric Gonzalez, & Cyrus Vance Jr., On parole violations, less is more: Three DAs urge reform to stop sending people back to prison, N.Y. Daily News (Mar. 12, 2020), <https://www.nydailynews.com/opinion/ny-oped-parole-less-is-more-20200312-bsujoxccpjdh5poevdgh2d3wny-story.html>; Less is More NY, *New York Officials and Community Organizations Call for Passage of the Less is More Act* (Jan. 2021), <https://bit.ly/3jbaGtR>.

IV. CONCLUSION

For the aforementioned reasons, we respectfully urge our elected officials to support the Less is More Act.

Corrections and Community Reentry Committee
Gregory D. Morril, Chair

Criminal Courts Committee
Terri S. Rosenblatt, Chair

Criminal Justice Operations Committee
Tess M. Cohen, Chair

Mass Incarceration Task Force
Sean Hecker, Chair

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Contact

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org
Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org

* This report was first issued in February 2020 during the terms of the following committee chairs: Gregory D. Morril, Corrections and Community Reentry Committee; Terri S. Rosenblatt, Criminal Courts Committee; Sarah Berger, Criminal Justice Operations Committee; Sean Hecker, Mass Incarceration Task Force.