



Research Brief

Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations¹

January 29, 2018

Introduction

As state and city leaders agree that the jail complex on Rikers Island should be closed, efforts have increased at the state and city level to reduce the New York City jail population (New York City Mayor's Office of Criminal Justice 2017a; Cuomo 2018). The population of New York City's jails dipped below 9,000 recently for the first time in 35 years, even as crime in the city has continued to decline, allowing the City to announce the closure of one of Rikers Island's nine jails (New York City Office of the Mayor 2017; Schiraldi 2018).

But as the number of persons incarcerated pretrial for misdemeanors, non-violent and violent felonies, as well as the city sentenced population, have declined by double-digits over the past four years, only one population in the jail has increased, also by double digits: persons held in city jails for state parole² violations (New York City Mayor's Office of Criminal Justice 2017b; New York State Division of Criminal Justice Services 2018).

This brief will examine this issue in greater detail, focusing primarily on the impact it is having on the New York City jail population at this critical time. We will conclude with recommendations to reduce unnecessary incarceration of persons on parole and to shrink the overall parole population by incentivizing good behavior on parole, referring whenever possible to other jurisdictions that have successfully enacted parole reforms.

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² Throughout this paper, 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. Persons 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.

Shrinking prisons while increasing the incarcerated parole population

Over the past two decades, New York State has been a leader in reducing incarceration and closing prisons, driven by a reduction in state prison commitments from New York City (Greene and Schiraldi 2016). There was a 31% reduction in the number of people in state prisons, from 72,649 in 1999 to 50,391 in 2017 (New York State Department of Corrections and Community Supervision 2017b). Moreover, since 2011, the state has closed 13 prisons and eliminated over 6,000 prison beds, saving over \$160 million annually (New York State Office of the Governor 2018; New York State Department of Corrections and Community Supervision 2017b).

But while the prison population has been shrinking, the number of people incarcerated on parole violations in Department of Corrections and Community Supervision (DOCCS) facilities has been growing. From 2015 to 2016, prison admissions for parole violations increased by 21.4% (New York State Department of Corrections and Community Supervision 2016). For every ten successful parole completions in New York in 2015, nine people exited parole to incarceration, ranking New York State 9th nationally in exits from parole to incarceration (Bonczar and Kaeble 2016). That year, nearly half (47%) of all parole exits in New York State were to incarceration, substantially higher than the national average failure rate of 28% (Kaeble and Bonczar 2016).

Most of those incarcerated for state parole violations in New York are, surprisingly, held in the state's jails rather than in its prisons. By the end of 2016, nearly 10% of New York's total parole population of 45,655 was confined in local jails, while only 1.6% were incarcerated in DOCCS facilities and 0.7% were in confined in federal or other facilities (New York State Department of Corrections and Community Supervision 2017a).

In New York, like in other states, individuals released on parole must adhere to supervisory requirements outlining the conditions of their release, such as reporting to their parole officer, allowing their parole officer to inspect their home and visit their employment site, and refraining from contact with persons with criminal records (New York State Department of Corrections and Community Supervision 2010). People on parole may also be required to comply with an additional set of "special conditions," which could include abiding by a curfew and enrolling in a substance abuse program. Those on parole are also usually required to pay supervision fees (New York State Department of Corrections and Community Supervision 2010), a practice that Governor Andrew Cuomo recently proposed to eliminate (New York State Office of the Governor 2018).

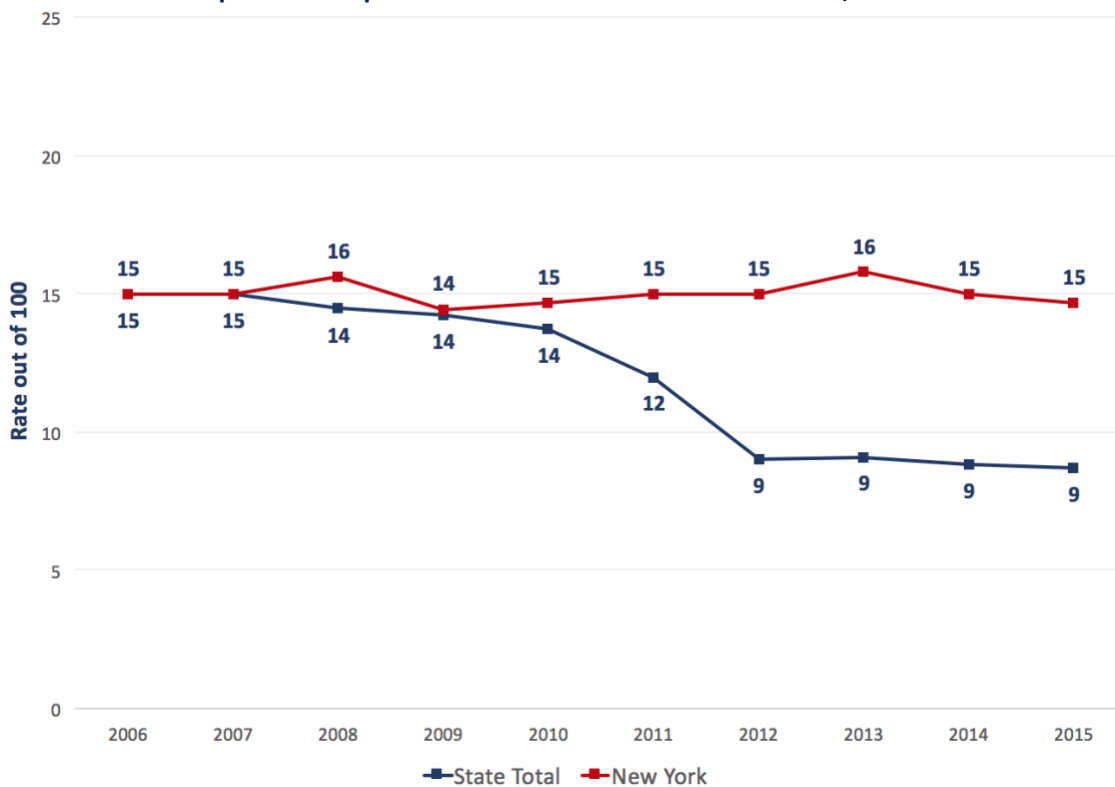
Failure to comply with any of these conditions, such as missing curfew or testing positive for alcohol or drug use, can result in reincarceration (New York State Department of Corrections and Community Supervision n.d.). Reincarceration is not the exclusive outcome for individuals who violate the conditions of their parole, as other sanctions can also be imposed, including placing them in an alternative program. But being revoked and returned to prison has been the leading disposition for violated persons on parole in New York State since 2012 (New York State Department of Corrections and Community Supervision 2017a). In fact, in 2016, being revoked and returned to prison accounted for 58% of the final outcomes for people who violated their state parole conditions (New York State Department of Corrections and Community Supervision 2017a).

And while the population of persons returned to DOCCS prisons for technical violations experienced a slight decrease of 0.9%, from 6,396 to 6,339 between 2015 and 2016, they still comprised 29.2% of DOCCS admissions in 2016 (New York State Department of Corrections and Community Supervision 2016).

A 3-month survey conducted by The Marshall Project in early 2017 revealed that seven of the 42 states surveyed – New York, Arkansas, Georgia, Illinois, Kentucky, Missouri, and Pennsylvania – had more people in their prisons for technical parole violations than the other 35 states in the survey combined (Hager 2017).

According to an analysis by the University of Minnesota’s Robina Institute, from 2004 to 2010, the percentage of prison admissions for parole violations in New York was similar to that of other U.S. states (Alper 2016). However, while the parole violation rate for all states remained steady for several years before decreasing beginning in 2011, the percentage in New York shows steady, but incremental growth, peaking in 2013 at forty percent. In 2014, thirty-eight percent of prison admissions in New York were due to violations of parole compared to a U.S. average of just over one-quarter (28%) of admissions (Alper 2016). Also, in 2015, 15 out of every 100 people on parole who were at risk of reincarceration in New York State were in fact reincarcerated, compared to only 9 out of every 100 at-risk people on parole nationally (Figure 1) (Kaeble and Bonczar 2016).

Figure 1: Rate of Incarceration per 100 People on Parole at Risk of Reincarceration, 2006-2015



Sources: Bonczar and Glaze 2007; Bonczar and Glaze 2008; Bonczar and Glaze 2009; Bonczar and Glaze 2010; Bonczar and Glaze 2011; Maruschak and Parks 2012; Bonczar and Maruschak 2013; Bonczar and Herberman 2014; Bonczar, Kaeble, and Maruschak 2015; Bonczar and Kaeble 2016.

In fact, in New York, people released on parole are more likely to return to incarceration not for new convictions, but for violating the conditions of their parole. In 2012, 9,372 people were released from DOCCS facilities onto parole (New York State Department of Corrections and Community Supervision 2017b). Within three years of their release, more than half of these individuals had been reincarcerated. Of those, an overwhelming 83.7% were reincarcerated for violating the conditions of their parole, while only 16.3% had

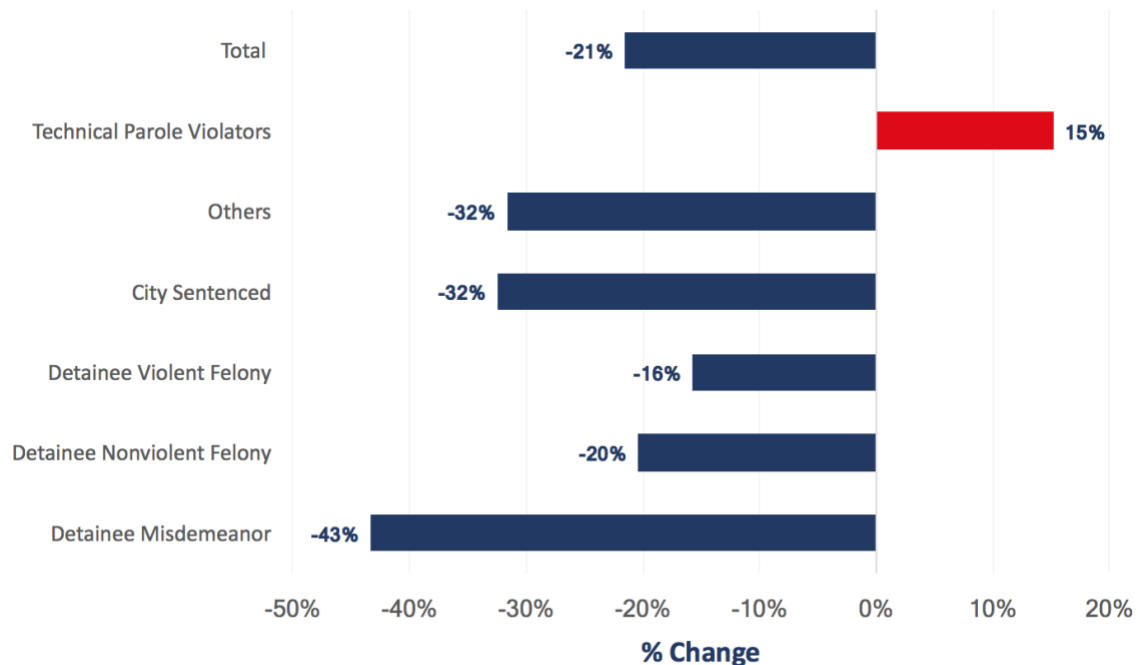
returned because they had committed a new crime (New York State Department of Corrections and Community Supervision 2017b).

Shrinking jails while increasing the incarcerated parole population

Just as the prison population in New York has been decreasing, the population of locally-operated jails throughout New York State has also been declining. From November 2016 to November 2017, the number of people in New York’s jails was reduced by 2.8%, from 25,105 to 24,414 (New York State Division of Criminal Justice Services 2018). This decrease in the overall jail population is likewise largely attributable to the shrinking New York City jail population. During this period, while the jail population in New York City declined by 4.8%, from 9,584 to 9,120, non-New York City jails only experienced a 1.5% reduction in their jail population (New York State Division of Criminal Justice Services 2018).

Although New York City reduced its jail population by 21%, from 11,089 on January 1, 2014 to 8,705 on January 1, 2018, a subgroup of the jail population has been rising (see Figure 2) (New York City Mayor’s Office of Criminal Justice 2018). Over these past four years, there have been decreases in the number of individuals in jail pretrial for misdemeanors, violent and nonviolent felonies, as well as the number of individuals serving local city sentences. These declines have roughly paralleled the overall decline in the New York City jail population. Yet, at the same time, the population of people held on technical parole violations in New York City jails grew by 15%, from 521 to 600 (Figure 2) (New York City Mayor’s Office of Criminal Justice 2018).

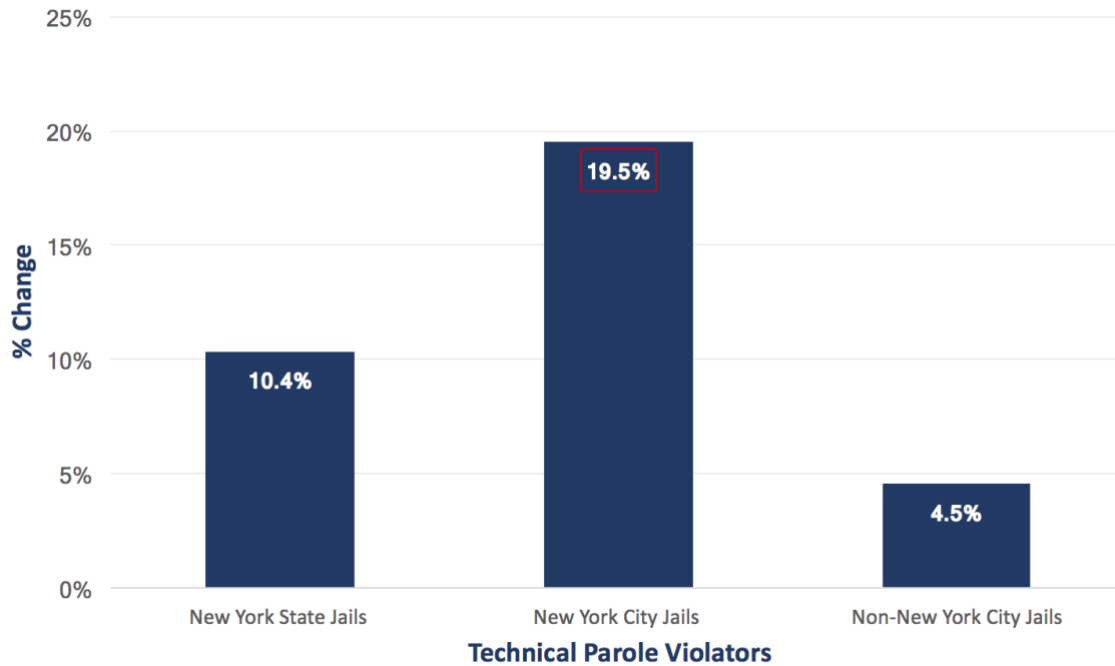
Figure 2: Percent Change in New York City Snapshot Jail Population, by subgroups: January 1, 2014 vs. January 1, 2018



Source: New York City Mayor’s Office of Criminal Justice. 2018. *Average Daily Jail Population in New York City, 1980- 2017*. New York, NY: New York City Mayor’s Office of the Criminal Justice. Available: http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/population_reduction_sheet.pdf.

Just between 2016 and 2017, the average daily population of persons incarcerated in jails throughout New York State for technical parole violations increased by 10.4%, with New York City jails experiencing a 19.5% increase while non-NYC jails only increased by 4.5% (Figure 3) (New York State Division of Criminal Justice Services 2018).

Figure 3: Percent Change in Persons Held in New York Jails for Technical Violations, November 2016- November 2017



Source: New York State Division of Criminal Justice Services. 2018. *Jail Population In New York State: Average Daily Census by Month*. Albany, NY: New York State Division of Criminal Justice Services. Available: http://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf.

A snapshot of the population of persons held in New York City’s jails on state parole violations (for either technical violations or new arrests) in late 2017 reveals a cohort of individuals that is potentially amenable to alternative policy and/or programmatic approaches.

On November 16, 2017, there were 1,460 people in New York City’s jails for state parole violations, out of a total jail population of 9,165, making up 16% of the city’s jail population on that day (New York City Open Data 2017). This is no trivial number; if this were a stand-alone jail population, it would be larger than any jail in the state except Rikers Island (New York State Division of Criminal Justice Services 2018).

Of that 1,460 people in New York City jails on state parole violations, 701 (48%) were incarcerated for technical violations; 205 (14%) for misdemeanors; 282 (19%) for non-violent felony arrests; and only 272 (19%) for violent felony charges. This means that, in total, of the 1,460 people locked up in New York City jails on that day, 81% were in for technical violations, misdemeanors, or non-violent felonies (New York City Open Data 2017).

These sanctions fall even more heavily on African-Americans than on whites. While the incarceration rate for white people on parole who are detained in New York City jails was 1.30 per 100,000 white New York City residents on January 18, 2018, the rate for African-Americans was a staggering 16.09 per 100,000 African-

American New York City residents. Thus, African-Americans on parole are 12.4 times more likely to be detained for a parole violation than a white person on parole (New York City Open Data 2018).

Fortunately, in the midst of these rising parole numbers, and in the face of otherwise declining city crime and jail populations, both the Governor and Mayor have identified the parole population in jail as in need of focused attention. Calling for a review of parole violation guidelines, Governor Andrew Cuomo stated in his 2018 State of the State address, “Thirty-three percent of individuals released in 2012 were returned to prison within three years due to technical parole violations. 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” (New York State Office of the Governor 2018).

In an opinion piece in the New York Daily News, outlining the steps that various stakeholders, including the city, will need to take to close Rikers Island, Mayor Bill de Blasio sounded a similar note to Governor Cuomo’s, writing: “the state needs to improve the parole system. After people leave state prison, their parole is supervised by the state. Under current state law, the vast majority of people who violate parole must be detained. The result: On an average day, there are more than 600 state prisoners sitting in city jails. Let’s do the fair thing and allow community supervision when appropriate, while detaining only the high-risk people who have violated parole in one of three state facilities right here in the five boroughs. That fix alone would allow us to close another jail on Rikers Island right now” (de Blasio 2018).

Recommendations

The state and city are currently engaged in numerous efforts to reduce the population of people with parole violations in the city’s jails and state prisons. In 2015, DOCCS launched a pilot program in Manhattan and Rochester, called RESET (Recidivism Elimination Supervision Teams), aimed at reducing recidivism and violations of people on parole through more intensive supervision of higher-risk persons following their release from prison, accompanied by swift and certain responses to misbehavior (New York State Department of Corrections and Community Supervision 2014). The state has also adopted a risk assessment tool, COMPAS Reentry, to focus supervision and rehabilitation resources on persons on parole with higher risk and greater needs (New York State Department of Corrections and Community Supervision 2015b). In 2014, the State established the Council on Community Re-entry and Re-integration to address obstacles formerly incarcerated people face upon re-entering society (New York State Office of the Governor 2014). Finally, in his 2018 budget, Governor Cuomo introduced legislation to eliminate supervision fees for people on parole, review child support orders for people who are incarcerated for over six months with the potential to adjust it based on financial circumstances, and review parole revocation guidelines (New York State Office of the Governor 2018).

While the authority over this population rests with the state, city and state officials have been collaborating to explore ways to reduce unnecessary delays in the parole violation hearing process while preserving fairness and due process.

These are all worthwhile efforts aimed at addressing the only rising population in a jail that city and state officials agree should close, but they have been inadequate to the task, as the population of people incarcerated on parole violations has stubbornly continued to grow nonetheless. Nationally, states around the country are innovating legislatively by limiting parole terms, capping revocation time, incentivizing good behavior with

grants of earned discharge for good behavior on parole, and requiring parole officers to use graduated responses prior to revoking people on parole and returning them to prison (The Pew Charitable Trusts 2016).

In an effort to reverse the uptick of people with parole violations in city jails, parallel with the decline in other jail populations in the city, we recommend the following:

Shorten parole terms and incentivize good behavior by granting earned discharge from parole for crime free periods under supervision.

Most re-offenses under community supervision occur within the first year or two of supervision, after which the impact and utility of supervision wanes. Lengthy supervision terms not only stretch already strained parole resources, but they serve as unnecessary trip wires to technical revocations (Austin 2010; Klingele 2013). Two approaches that are being successfully experimented with in other states can help address this in New York. Limiting the amount of post-release supervision to one or two years except in the most serious cases can create an environment in which there is intense, front-loaded supervision with adequate resources to help people on parole make it in the community and to allow parole officers low enough caseloads to do a proper job of supervising people and helping them get on the right track. A 2017 report from the Harvard Kennedy School Executive Session on Community Corrections recommends that community corrections move “from time-based to goal-based,” noting:

Since most reoffending occurs within the first year or two of supervision, resources should be “frontloaded” to that period to maximize public safety impact. Beyond then, when rearrest rates drop, continued supervision has less potential to depress criminality, and it partially deprives people of their full liberty unnecessarily while stretching community corrections resources. Supervision periods should have a relatively short maximum term limit — generally not exceeding two years — but should be able to terminate short of that cap when people under supervision have achieved the specific goals mapped out in their individualized case plans, a milestone often marked by a special ceremony to highlight the significance of the event.

In addition to reducing and focusing supervision terms, statutorily granting earned, early discharge from supervision can serve to further focus resources on those most in need of supervision while incentivizing meritorious behavior by those under supervision. According to an analysis of 33 states participating in the federal Justice Reinvestment Initiative (JRI) by the Pew Charitable Trusts, in 18 of those states (AK, AR, AZ, DE, GA, ID, KS, KY, LA, MD, MO, MS, MT, NH, OR, SC, SD, UT) people can shorten their supervision periods up to 30 days for 30 days of compliance (Gelb and Utada 2017).

Require a hearing before a judicial officer to jail people on parole accused of a technical violation.

Right now, throughout New York State, if county probation officers would like to revoke someone on a technical violation³, they must petition a judge to confine that person in jail (New York City Department of Probation n.d.). Yet parole officers can place people on parole directly into jail pending their revocation hearings without a hearing before a judicial officer (New York State Department of Corrections and Community Supervision 2010). Since these individuals are not accused of a new crime, this level of discretion seems unwarranted.

Furthermore, the ease with which parole officers can confine their charges may be contributing to the high rates of technical violations in New York that both the Governor and Mayor have decried. Legislation requiring a hearing would ensure that jail is reserved for those technical violators who truly need to be confined.

Create a high legal threshold for confining those who pose a lower risk to public safety and require tight time frames for detention hearings and ultimate dispositions.

The November snapshot data cited above indicate that 81% of those on parole held in New York City jails were in for technical violations, misdemeanors or non-violent felony arrests. They were generally held for months awaiting disposition of their cases; the average length of stay for persons with open felony cases and parole violations was 186 days, while the average stay for persons with open misdemeanor cases and parole violations was 65.4 days. One-third of those held for technical violations had their warrants ultimately lifted after spending an average of 53 days in jail while two-thirds were transferred to state prison after an average 60-day stay. For those who are returned to the community when their cases are resolved, it especially raises the question of whether their pre-hearing confinement time was warranted (New York City Open Data 2017).

Governor Cuomo has rightly called for the abolition of money bail for persons accused of misdemeanors and non-violent felonies in his criminal justice proposals this year, and for reforming speedy trial laws so that persons accused of crimes do not languish in jail waiting for justice to be served. Decrying the fact that the state's jails are filled with people who "have yet to be proved guilty of any crime," Governor Cuomo proposed legislation that would "reform our bail system so that anyone facing misdemeanor or nonviolent felony charges should be released without bail" (Cuomo 2018).

This clarion call should be extended to people on state parole as well. There should be a presumption of release for people accused of less serious offenses and/or those who pose lower risk, and hearings to determine whether they need to be confined. These hearings should occur within a few days – rather than weeks or months – so that people do not languish and lose whatever stabilizing assets they may have in their lives, like housing and employment, if it is determined that they do not need to be detained. This will likely mean adding additional administrative law judges to speed up the resolution of cases for these individuals.

³ Persons who experience technical violations for failing to report to their parole officers (absconding) should be excluded from this reform, as absconding is the nature of their violation. They should have their detention hearings within one or two days to determine if they need to be held prior to the resolution of their case or can be safely released to the community while their revocation hearing is pending.

Those hearings should be problem-solving in nature, like drug courts, and judges should have access to non-profit organizations who can augment parole officials' supervision and supports for people who need additional help to be safely released, just as additional pretrial supervision slots have been added by the city to facilitate the release of people who are accused of crimes who are not on parole. In 2001, the state contracted with the Center for Alternative Sentencing and Employment Services (CASES) and the Osborne Association to provide a Parole Restoration Project (PRP) whose aim was to reduce the length of stay for persons detained on Rikers Island by parole and provide alternatives to revocation and reincarceration. CASES' focus was on people with substance abuse problems and/or mental illness. CASES reports that from 2001 to 2008 "more than 2,000 technical parole violators have been restored to parole through CASES PRP" and that, in 2008, CASES PRP reduced their clients' length of stay on Rikers by 20% saving \$450,000 (Center for Alternative Sentencing and Employment Services n.d.).

Increasing the number of administrative law judges and contracting for programs to augment supervision and services for those at risk of violating their parole could easily be paid for by the savings the state will experience from reduced numbers of people on parole who are revoked to prison.

Cap violation terms.

Research into the impact of punishment and incarceration consistently shows that it is the certainty, not the severity or length, of sentences that carries the greatest impact on public safety (Solomon, Jannetta, et al. 2008). Further, sentences that are longer than are needed to achieve the ends of justice offend American principles of proportionality and parsimony (Travis, Western, and Redburn 2014). The Harvard Kennedy School Executive Session addresses this issue squarely: "When responding to violations, sanctions should be swift and certain, but mild — no greater than are needed to modify the behavior. Returns to prison for lengthy periods, for example, should be eliminated for technical violations." (Executive Session on Community Corrections 2017). According to Pew, 16 Justice Reinvestment states have put caps or guidelines on how long individuals can serve for a technical violation of supervision conditions (AK, AL, AR, GA, HI, ID, KS, LA, MD, MO, MS, MT, NC, OK, PA, UT). Some of those states include in their capped terms those who have violated parole by getting rearrested for whom there was no new conviction (Gelb and Utada 2017).

Louisiana provides exemplary legislation on capping violation terms. In 2017, Louisiana Governor Bel Edwards signed a comprehensive Justice Reinvestment package reforming their criminal justice system. Included as part of these 10 bills is Senate Bill 139, which prohibits the use of jail for 1st and 2nd low-level violations⁴ and reduces the currently established cap terms for intermediate jail sanctions for individuals on parole (Louisiana Department of Public Safety and Corrections 2017). The length of jail terms for the sanctions were reduced as follows: from 90 days to 15 days for the first jail sanction, from 120 days to 30 days for the second jail sanction, and 180 days to 45 days for any subsequent sanctions. New York should consider similar legislation capping the length of terms for those who have violated parole. If new arrests are serious enough to warrant longer prison terms, this should be proven in a court of law, not handled through the technical violation process.

⁴ Low level violations include technical violations like changing residence without permission, failing to report as instructed, traveling without permission, unemployment and not seeking employment within three months, alcohol use, first positive drug test, or violation of a protective order (Louisiana Department of Public Safety and Corrections 2017).

Require the use of graduated sanctions and rewards prior to revoking people under supervision to incarceration.

Graduated responses allow supervising agencies to hold people accountable for technical violations like failed drug tests or missed appointments short of incarcerating them, through the use of proportionate sanctions like community service, curfews, or enhanced supervision (Gelb and Utada 2017). For best results, any graduated sanctioning system should be coupled with a system of rewards or incentives for positive behavior so probation and parole are not just punishment vehicles. According to Pew, 22 states have such provisions in law (AK, AL, AR, DE, GA, ID, KS, KY, LA, MD, MS, MT, NC, ND, NE, NV, PA, SC, SD, TX, UT, and WV) (Gelb and Utada 2017).

Capture a portion of the savings from these reforms and use them to provide supports to the remaining parole population.

Enacting these reforms will save state and city coffers considerable funds that are now expended incarcerating people for low level parole violations in city and state correctional facilities. Reforms like those recommended in this brief would result in a group of high-need individuals remaining on parole who require enhanced housing, employment, education, substance abuse and mental health services and supports if they are going to thrive in the community. Seventeen of 33 JRI states (AK, AL, DE, ID, KS, MI, NC, NE, NV, OH, PA, SD, TX, UT, VT, WI, WV) expanded community programs as part of their community corrections reform efforts (The Pew Charitable Trusts 2016). Savings from these reforms should be carefully estimated by city and state budget officials with a portion of those savings going to community programs that assist people on parole to reacclimate successfully to their home communities.

Conclusion

Support at the state and city level for criminal justice reform and the closure of the Rikers Island jail complex presents a once-in-a-lifetime opportunity to make real and lasting reform to the thorny problem of mass incarceration in New York. New York is not alone in struggling with this problem. A recently-released [*Statement on the Future of Community Corrections*](#), signed by 35 probation and parole administrators and every national probation and parole association, has concluded that “community corrections has become a significant contributor to mass incarceration” and that “as America’s leading probation and parole officials and other concerned individuals and organizations, we believe it is possible to *both* significantly reduce the footprint of probation and parole *and* improve outcomes and public safety” (Program in Criminal Justice Policy and Management 2017). As policy makers look to reform justice in New York, people on parole should be included in the watershed reforms that are being enacted to create a safer and fairer system of justice.

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