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Parole Reform: Conservative States Leave New York Behind

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Introduction

New York State locks up more people for parole rules violations than any other state in the country.

Despite the growing nationwide consensus that incarcerating people for parole rules violations is counterproductive and does not improve public safety, New York state and local taxpayers spend over \$680 million per year sending people to jail and prison for “technical” violations like missing meetings with their parole officers or drug use.

New Yorkers typically view our state as a progressive leader when it comes to criminal justice reform.

Dozens of more conservative states around the country have already recognized the need to reform parole and revamped their parole revocation systems.

This includes Alaska, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, South Carolina, South Dakota, and Utah.

The result: incarceration and costs fell. New crimes committed by people on parole decreased or remained flat, debunking the notion that locking people up for technical violations was necessary for public safety. Parole officer caseloads dropped, allowing them to focus on the people with the greatest needs.

States have used the savings from reforming parole violation processes to invest in the housing, mental health care, and jobs critical to stability, well-being, and safety of people coming home from prison.

It is time for New York State to catch up.

The Less Is More Act (A.5576-Forrest/S.1144-Benjamin), described below, would build on reforms proven successful in other states. The bill is supported by a unique coalition of district attorneys, sheriffs, the New York State Association of Counties, the NYS and NYC Bar Associations, over 270 community groups around the state, and people on parole. It would incentivize rules compliance by creating a system of good time credits, limit re-incarceration for technical violations, and speed up the parole revocation process so people do not languish in jails like Rikers Island for months waiting for a hearing.

Parole Supervision in New York State

On any given day, approximately 35,000 New Yorkers are under state parole supervision.

People on parole are required to check-in regularly with parole officers, live at parole-approved residences, and comply with other restrictions such as curfews, travel limitations, and drug and alcohol abstinence and testing. Non-compliance with a parole condition is commonly known as a “technical violation” and frequently triggers a series of events that have far-reaching consequences and costs for individuals, families, and communities across New York State.

Under current law, **people accused of technical parole violations by New York State parole officers are automatically held in local county jails until the allegations are resolved** through an administrative hearing process. **There is no opportunity for release or to post bail** before the end of the administrative proceedings, which can take months. Counties have no say in whether people accused of technical parole violations remain locked up in their jails, but have to cover the entire cost of these jail stays with local taxpayer dollars.

If an administrative judge, who is employed by parole authorities, ultimately finds the person committed a technical violation, they can send the person back to prison for additional months or years, including to receive drug treatment behind bars. They can also release the person back to the community, often with additional parole conditions or programming or treatment requirements.

New York Is Worst in the Nation for Technical Parole Revocations

For six consecutive years, New York has re-imprisoned more people on parole for technical violations than any other state in the nation.¹

In 2019, 40% of the people admitted to New York prisons were locked up for technical parole violations, not new felony convictions.² This is nearly three times the national average of 14%.³

The NYS Department of Corrections and Community Supervision (DOCCS) recently reported that of people released from prison in 2016, 70% were re-incarcerated for a technical parole violation within 3 years.⁴

In New York City, Black people are jailed for alleged technical violations at 12 times the rate of white people. Black people are sent to prison statewide at 5 times the rate of white people.⁵ Incarceration for technical violations costs New York taxpayers at least \$683 million per year.⁶

There is no evidence that this expensive, racially inequitable, deeply disruptive practice is effective at preventing crime and recidivism, or improving public safety.

Less Progressive States Have Revamped Their Parole Systems

Over the past decade, states not typically seen as reform-minded, including Alaska, Arkansas, Arizona, Georgia, Idaho, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Montana, South Carolina, South Dakota, and Utah, have successfully enacted parole revocation reform measures.

At least eighteen states now incentivize compliance with parole rules by permitting people to earn time off their supervision terms through rules adherence.⁷

Twenty-four states have shifted to graduated sanctions for technical violations, limiting jail terms to more serious and repeated violations.⁸

Sixteen states have capped the length of time that people can be incarcerated for technical violations, promoting both accountability and proportionality.⁹

Positive results have followed: less incarceration, declining parole officer caseloads, lowered or flat recidivism rates, and reduced costs.

Some examples follow.

Alaska

In 2016, Alaska passed significant community supervision reforms. People on parole and probation were allowed to earn 30 days off their supervision terms for every 30 days they adhered to the rules. Revocation sentences for technical violations were limited to 3 days for the first revocation; 5 days for the second revocation; 10 days for the third revocation; and up to the remainder of the suspended sentence for the fourth or subsequent revocation. Absconding was punishable by up to 30 days in prison.¹⁰ After two years:

80%

of eligible people had earned time off their supervision terms.

↓ 26%

Population of people under supervision

↑ 34%

Successful discharges from supervision

↓ 19%

Officer caseloads

↓ 44%

People in prison for violating probation condition¹¹

\$40 million

in savings had been reinvested in treatment, reentry services, violence prevention services, and criminal justice reform implementation¹²

Louisiana

In 2016, Louisiana incentivized positive behavior for people on parole and probation by allowing them to earn 30 days off their supervision terms for every month they remained violation free; replaced jail terms for many rules violations with graduated sanctions; and limited incarceration terms for people who committed more serious infractions.¹³ Where jail is an option, a first technical violation is punishable by up to 15 days behind bars, up to 30 days for a second violation, and up to 45 days for a third or subsequent violations.¹⁴ 70% of the money saved was mandated to be invested in community-based prison alternatives, victim services, and recidivism-reduction programs.¹⁵

↓ 9%

Parole supervision population¹⁶

↓ 17%

Average parole and probation caseload size¹⁷

↓ 56%

Use of jail for technical parole and probation violations¹⁸

↓ 3%

Revocations for new criminal activity (non-technical)¹⁹

\$12 million

Saved²⁰

Missouri

In 2012, Missouri passed reforms to permit people on parole, probation and conditional release to earn 30 days off their community supervision term for every month they did not violate their conditions of release.²¹

In the first three years, over 36,000 people under community supervision earned an average of 14 months off their terms. As the reform took root, adherence to supervision conditions steadily improved: in the first year of the reform, people earned 6 months off their terms on average; by the third year, people earned an average of 22 months off their terms.²²

↓ **16%**

Supervision caseloads²³

↓ **9%**

Admissions to prison for technical violations²⁴

Recidivism rates did not change, providing evidence that lengthier supervision terms were not necessary to protect public safety.²⁵

South Carolina

In 2010, South Carolina legislated a shift from penalizing technical parole violations primarily with incarceration to an approach that favors graduated sanctions, including reprimands, community service at non-profits or government agencies, and increased home visits.

↓ **46%**

Revocations for supervision violations over the first five years of implementation²⁶

↓ **33%**

Recidivism in the first year after people were released from prison onto parole²⁷

\$500 million

Saved in first six years²⁸

South Dakota

In 2013, South Dakota passed legislation allowing people to earn up to 30 days of credit for each month of full compliance with conditions of supervision, and instituting graduated sanctions for violations such as written reprimands, community-based programming, substance use testing or monitoring, community service, required participation in a drug or alcohol program, house arrest, and incarceration.²⁹ Within two years, South Dakota saw:

↓ 18%

Average parole caseloads

↓ 41%

Parole revocations

\$34 million

Saved³⁰

New York State Should Follow the Lead of Less Progressive States

Instead of New York leading the nation in unnecessary, counter-productive, expensive incarceration for technical parole violations, policymakers should follow other states' examples and install a parole system that is geared towards helping people on parole remain—and thrive—in the community.

The Less Is More Act (A.5576-Forrest/S.1144-Benjamin) brings together and builds upon the reforms that have been proven to work in other states.

Specifically, the Less Is More Act would:

- Incentivize positive behavior through earned time credits: 30 days of compliance with parole rules would earn 30 days off a parole term.
- Reduce the types of rules violations and minor offenses that could send people on parole back to jail or prison; instead of incarceration, people would lose their 30-day credits and could see additional conditions imposed, including mandatory drug and mental health treatment.
- End automatic, pre-adjudication reincarceration without a hearing for alleged parole violations and ensure people receive speedy hearings to determine whether they violated parole.

- Reduce parole officer caseloads so they can focus on helping people reintegrate, increasing public safety.
- Combat severe racial inequities in incarceration for technical violations.

Enacting Less Is More would also save hundreds of millions of dollars currently devoted to parole incarceration. In conjunction with communities most impacted by incarceration, the State should invest these savings to address the obstacles that prevent people on parole from succeeding, including lack of housing, healthcare, education, and economic opportunity.³¹

New York should follow the lead of much less progressive states and enact the reforms needed for a smarter, more effective, fiscally responsible, and less racially disparate parole system.

Endnotes

1. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Probation and Parole in the United States Series 2013-2018* (Jan. 2015-Aug. 2020), available at <https://www.bjs.gov/index.cfm?ty=pbse&sid=42>.
2. NY State Assembly, Standing Committee on Correction, *2019 Annual Report* (Dec. 2019), at 1, available at https://nyassembly.gov/write/upload/postings/2020/pdfs/20201110_0094293.pdf. For New York's conditions of parole, see 9 NYCRR § 8003.
3. According to a recent report from the Council of State Governments, 14% of those entering prisons nationally were incarcerated for technical parole violations. Council of State Governments Justice Center, *Confined and Costly* (Jan. 2020), at 1, available at <https://csgjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf>.
4. Declaration of Timothy O'Brien in Support of Defendants' Motion for Summary Judgment, *Bergamaschi v. Cuomo*, Case No. 20-cv-2817 (SDNY Oct. 2020), on file with authors.
5. Columbia University Justice Lab, *Racial Inequities in New York Parole Supervision* (Mar. 2020), available at <https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>.
6. Columbia Justice Lab and Independent Commission on NYC Criminal Justice and Incarceration Reform, *The Enormous Cost of Parole Violations in New York* (Apr. 2021), available at <https://justicelab.columbia.edu/cost-of-ny-parole-violations>.
7. New Yorkers United for Justice, *How New York Lags Behind* (Apr. 2021), available at <https://nyuj.org/wp-content/uploads/2021/03/nyuj-parole-otherstates.pdf>.
8. *Id.*
9. Pew Charitable Trusts, *Policy Reforms Can Strengthen Community Supervision* (Apr. 2020), available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision>.
10. Laws of Alaska, *SB 91* § 33.16.215 (2016), available at <http://www.akleg.gov/PDF/29/Bills/SB0091Z.PDF>.
11. Alaska Criminal Justice Commission, *2018 Annual Report* (Nov. 2018), available at <https://s3.amazonaws.com/arc-wordpress-client-uploads/adn/wp-content/uploads/2018/11/02093414/ACJC-Annual-Report-2018.pdf>.
12. *Id.* 67% of Alaska's supervision population was convicted of a violent crime, defined in Alaska as a crime against another person, plus driving under the influence. *Id.* at 33. By comparison, in New York State, 53% of people on parole have been convicted of crimes defined as violent felony offenses, which includes most crimes that harm individuals and burglary. New York State Assembly Committee on Correction, *2019 Annual Report* (Dec. 2019), available at <https://nyassembly.gov/annualreports/?sec=story&story=94293>.
13. Louisiana Department of Public Safety and Corrections, *Louisiana's Justice Reinvestment Reforms 2019 Annual Performance Report* (June 2019), available at <https://gov.louisiana.gov/assets/docs/CJR/2019-JRI-Performance-Annual-Report-Final.pdf>. No jail is permitted for lower-level violations, such as missing an appointment with a parole officer, a first positive test for alcohol or drugs, or traveling without permission. 1-10 days in jail is permitted for a second positive alcohol or drug test, non-violent misdemeanor activity, or three or more lower-level violations. Violent misdemeanors, manipulating drug tests or other higher level technical violations are punishable by up to 15 days for the 1st violation, 30 days for the 2nd, and 45 days for the 3rd & subsequent. *Id.* at 16-17. Earned Compliance Credits are available only to people convicted of non-violent offenses.
14. Louisiana Rev. Stat. § 15:574.9 (2018), available at <https://law.justia.com/codes/louisiana/2018/code-revisedstatutes/title-15/rs-15-574.9/>.
15. Louisiana Department of Corrections, *Louisiana's Justice Reinvestment Reforms Practitioners' Guide* (Aug. 2017) at 6, available at https://www.lasc.org/documents/LA_Practitioners_Guide_Justice_Reinvestment_Reforms_FINAL_2017-8-1.pdf.
16. Louisiana Department of Public Safety and Corrections, *Louisiana's Justice Reinvestment Reforms 2019 Annual Performance Report* at 15.
17. *Id.* at 3.
18. Louisiana defines technical violations as any violation of parole or probation other than a felony, an intentional misdemeanor against another person, a domestic violence offense, possession of a gun or other prohibited weapon, or absconding. *Id.* at 17 n. 20.
19. *Id.* at 18.
20. *Id.* at 19.

Endnotes

21. Missouri Rev. Stat. § 217.703.1 (2012), <https://www.revisor.mo.gov/main/OneSection.aspx?bid=11855&hl=§ion=217.703>. The law excludes people convicted of violent crimes, sex crimes, and crimes involving children.
22. Missouri Rev. Stat. § 217.718 (2013), available at <https://revisor.mo.gov/main/OneSection.aspx?section=217.718&bid=11859>.
23. Pew Charitable Trusts, *Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety* (Aug. 2016), available at https://www.pewtrusts.org/-/media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf.
24. Missouri Department of Corrections, *Profile of the Institutional and Supervised Offender Population* (Mar. 2020), available at https://doc.mo.gov/sites/doc/files/media/pdf/2020/03/Offender_Profile_2019_0.pdf at 36. Missouri kept the same number of parole officers as the number of people on parole declined.
25. Pew Charitable Trusts, *Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety*.
26. Urban Institute, *Assessing the Impact of South Carolina's Parole and Probation Reforms* (Apr. 2017), available at https://www.urban.org/sites/default/files/publication/89871/south_carolina_jri_policy_assessment_final_0.pdf.
27. *Id.* at 7. These numbers controlled for demographics and case-specific variables.
28. *Id.* at 3. Some of this savings is attributable to sentencing reforms separate from parole revocation changes.
29. Laws of South Dakota, SB 70 (2013), available at <https://doc.sd.gov/documents/about/SB70CriminalJusticeInitiativeEnrolledVersion2013.pdf>; Pew Charitable Trusts, *South Dakota's 2013 Criminal Justice Initiative* (Jun. 2013), available at <https://doc.sd.gov/documents/about/PewBriefingSummarySouthDakota.pdf>. Savings due in part to sentencing reforms.
30. Urban Institute, *Assessing the Impact of South Dakota's Sentencing Reforms: Justice Reinvestment Initiative* (May 2016), available at <https://www.urban.org/research/publication/assessing-impact-south-dakotas-sentencing-reforms-justice-reinvestment-initiative>.
31. For an example of services, supports, and opportunities for people returning home from prison, see Columbia Justice Lab and Independent Commission on NYC Criminal Justice and Incarceration Reform, *The Enormous Cost of Parole Violations in New York*.