



NEW YORK STATE
BAR ASSOCIATION

Report of the New York State Bar Association **Task Force on the Parole System**

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INITIAL REPORT OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON THE PAROLE SYSTEM¹

INTRODUCTION

New York has for many years been viewed as a national leader in criminal justice reform. Among other achievements, the State has dramatically reduced its prison population, closing more than a dozen prisons over the last decade alone;² dismantled its notorious and seemingly invulnerable Rockefeller Drug Laws; raised the age of criminal responsibility and, in recent months, enacted historic reforms to its criminal procedure statutes governing cash bail, pre-trial discovery and speedy trial.³ In tandem with these reforms, crime in the State has declined to historic lows. According to the FBI, reported “Index” crime⁴ in New York declined for the sixth consecutive year in 2018, with 348,267 Index crimes reported. This is the fewest number of crimes reported since statewide reporting began in 1975. The historic low in reported Index crime has resulted in New York’s Index crime rate declining by 23 percent between 2009 and 2018. During that 10-year period, moreover, the violent crime rate in the State decreased 10 percent and the property crime rate declined 26 percent.⁵

A closer look at New York’s criminal justice system, however, reveals that serious deficiencies persist, particularly at the “back end” of the system -- the parole process. The Task Force on the Parole System is conducting a detailed review of parole rules, regulations, practices and procedures in New York and other states, and is in the process of developing recommendations for areas in which the process can be improved.

This initial report of the Task Force focusses on a handful of specific reforms that will result in better decision-making as to whom should be granted parole and when parole should be revoked, reduce the costs associated with the parole process by reducing the number of individuals on parole who are needlessly reincarcerated, and increase public safety by improving the quality of decision-making and enabling parole officers to devote more resources and focus to the individuals under their supervision who are most in need of supervision. The report reflects the initial work of a number of subcommittees of the Task Force, whose recommendations have been approved by the full Task Force membership. The first recommendation deals with the issue of revocation of parole status following a technical violation of the conditions of parole. The second recommendation addresses the issue of “good time” credits in which individuals on parole are able to reduce the amount of time they spend on parole if they comply with those conditions. The third recommendation deals with the number of parole commissioners and consideration of the need for full and fair consideration of the complicated matters that they are called upon to resolve.

The work of the Task Force is ongoing and the Task Force intends to submit further reports with additional recommendations for reform as we continue our review and analysis.

I. NEW YORK SHOULD SUBSTANTIALLY REDUCE THE USE OF INCARCERATION IN DEALING WITH TECHNICAL PAROLE VIOLATORS

A. BACKGROUND

A person released from a New York State prison to parole supervision is required to comply with a number of conditions during the period of that supervision. These conditions typically include things such as making all required office reports, paying all required fees and surcharges, refraining from using or possessing illegal drugs, complying with the instructions of the parole officer, and, of course, refraining from any new criminal conduct. Under the State's Executive Law, the failure to comply with *any* condition of parole can lead to the issuance of a warrant for the alleged violator's arrest and, upon execution of the warrant, the immediate reincarceration of the alleged violator pending a parole violation hearing.⁶

As explained below in greater detail, a large number of persons on parole each year are reincarcerated for minor, "technical," violations of the conditions of their supervision. A "technical" parole violation is one that does not involve the alleged commission of a new crime, but does involve prohibited conduct such as missing a curfew, changing one's residence without approval or failing to attend a mandated program. This longstanding policy of reincarceration is counterproductive and costly, both in human and financial terms, and should be promptly addressed through remedial legislation.

Regardless of the seriousness (or lack thereof) of the alleged violative conduct, as long as "reasonable cause" for the violation exists and the parole officer and his or her senior officer believe the violation is "in an important respect," the person accused of a violation can immediately be jailed and held for 15 days pending a preliminary hearing to determine probable cause (if not waived by the accused), and up to 90 additional days while the alleged violation is adjudicated in the final hearing stage.⁷ No release on recognizance is permitted nor can any amount of bail free an individual accused of a parole violation during this adjudication period. In this regard, the Executive Law makes no distinction between those accused of a technical parole violation and those charged with a new felony or misdemeanor. Like any other individual accused of a parole violation, a person accused of an alleged technical parole violation must remain in "remand" status on the violation warrant until the violation charge has been fully resolved. This mandatory remand system means that, even if a hearing officer ultimately decides to return an individual to the community after an adjudicated technical parole violation, that person may have spent up to 105 days, and sometimes longer, in jail before being freed.

The Executive Law currently requires that parole violation proceedings be administratively adjudicated by a member of, or a hearing officer designated by, the Board of Parole.⁸ Notably, the law is silent as to the penalties the Board or hearing officer may impose for a purely technical parole violation. Pursuant to regulations adopted by the Board, however, a hearing officer has the

discretion to either return an individual to the community after an adjudicated parole violation (upon consideration of five enumerated factors⁹) or return him or her to prison by imposing a fixed period of incarceration (a “time assessment”), the minimum and maximum of which are based on the violator’s crime of conviction, type of sentence, and criminal history.¹⁰ This regulatory scheme means that people who commit technical parole violations can be sent to prison for the same amount of time -- be it months or even years -- as someone who has committed a parole violation by engaging in misconduct constituting a misdemeanor or felony offense. Indeed, under the “mandatory minimum” provisions of the existing regulations, a person who commits a technical parole violation charged, for example, only with a minor curfew or marijuana violation could face a mandatory minimum time assessment of 15 months in prison and a maximum time assessment equal to the remaining number of months or years owed on parole.¹¹

There is no question that parole officers, their supervisors and parole hearing officers are often tasked with making very difficult decisions when persons under supervision recidivate and commit new crimes or otherwise fail to meet their parole mandates, as some invariably will. Many parole officers consider the ability to secure a warrant and return to prison those on parole who fail to comply with parole rules to be an important community supervision tool to incentivize compliance. They point out that many technical violation charges are brought only after repeated warnings and threatened violations have failed. People on parole with frequent drug relapses, they say, are often violated in order to secure drug treatment for them at Department of Corrections and Community Supervision (“DOCCS”) treatment facilities because the person has refused to seek voluntary treatment in the community.

As discussed below, however, 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 or reduces recidivism as intended. A more forceful argument exists that incarcerating 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.

B. INCARCERATING TECHNICAL PAROLE VIOLATORS: THE SCOPE OF THE PROBLEM

In spite of New York’s hard earned reputation for reform in other areas of criminal justice, it is a distinct outlier when it comes to the numbers of people it sends to prison for technical parole violations. It has been reported that New York ranks second highest (after Illinois) in sending individuals who commit technical parole violations back to prison.¹² It is estimated that nearly 40 percent of persons sent to state prison in New York each year are incarcerated not for a new criminal conviction, but for a technical parole violation.¹³ In 2018, the State returned approximately six times as many people on parole to state prison for a technical parole violation – nearly 7,500 people, including 1,648 who were re-incarcerated to receive drug treatment -- than for a new criminal conviction.¹⁴ As of March 31, 2019, approximately 4,300 people were incarcerated in New York State prisons for technical parole violations.¹⁵

Because the Executive Law codifies the right of a person accused of a parole violation to have an administrative violation hearing in the county or city where the arrest warrant is executed, most individuals accused of parole violations are detained in local jails during the pendency of the violation proceedings.¹⁶ The practice of arresting and holding large numbers of people accused of alleged technical parole violations often, therefore, negatively impacts county jails across the State on both a fiscal and resource level. It is estimated that, in 2018, an average of 1,740 people were incarcerated each day in local jails in New York State on technical parole violations, a five percent increase from 2017.¹⁷ This includes an average of 718 people per day in New York City jails and 1,022 people in county jails across the rest of the State.¹⁸ Although the average daily population in New York City jails fell from approximately 10,900 in 2014 to about 8,400 in 2018, a decline of 23%, the average daily population of persons held for suspected technical parole violations grew from 550 to 650 over that same period, an increase of 20%.¹⁹ It has been noted that the large number of people accused of alleged technical parole violations being held at New York City's largest jail, Rikers Island, has impeded the City's ongoing efforts to reduce the Rikers population and, ultimately, close the jail.²⁰

The financial cost to the State and its localities of incarcerating all these individuals accused of technical parole violations is substantial. It has been estimated that, each year, New York State spends approximately \$359 million incarcerating people returned to state prison for technical parole violations,²¹ and that localities across the State, including New York City, spend a total of nearly \$300 million incarcerating these individuals accused of alleged parole violations while they await disposition of the charges.²²

The human cost of incarcerating thousands of people accused of technical parole violations each year in the State's prisons and local jails is enormous. The statutory requirement in New York that persons arrested on a warrant for a technical parole violation be held without bail, sometimes for as long as 105 days or more before being eligible for release, can have devastating consequences for the person charged while having no appreciable positive impact on public safety. In 2015, the average time statewide from the lodging of a parole violation warrant to the completion of the final violation hearing was 61 days – 67 days in New York City and 58 days in the rest of the State.²³ A more recent, one-day, snapshot of 701 persons held in New York City jails in late November of 2017 for technical parole violations revealed that one-third of those individuals had their parole violation warrants lifted after spending an average of 53 days in jail, while two-thirds were transferred to state prison after an average 60-day stay.²⁴

Even a brief period of incarceration on a technical parole violation -- let alone a period of nearly two months -- can result in the person losing his or her job and housing and can render both them and their families homeless and with no viable source of income. It can also interrupt ongoing community-based treatment services and educational opportunities the person may have been pursuing in order to improve his or her chances of a successful reentry into the community. Further, where a person on parole is fortunate enough to have a partner, parents and/or children, very frequently those family members will count on the paroled person for child care, care of elderly family members and the like. Sending the person back to jail or prison for a technical parole violation disrupts these vital stabilizers for the person and their family, often with detrimental consequences to the children or other family members of the paroled person who must deal with the trauma of suddenly losing their parent or other family member yet again.

While studies have *not* shown that incarcerating people for violating the conditions of community supervision actually reduces recidivism, they have demonstrated the converse: that long periods of incarceration can be counterproductive by making the reentry process much more difficult.²⁵

[M]any violations [of community supervision] reflect long-standing and chronic behaviors, which can be most effectively addressed with a combination of accountability though fair, quickly imposed responses and incentives and programming that offers motivation to change negative behavior . . . Research indicates that community-based responses are at least as effective in changing behavior and promoting supervision success as jail terms and cost less . . . In fact, one study indicated that jail sanctions can *increase* the likelihood of future revocation, rearrest and reconviction.²⁶

Recent data on the incarceration rate for persons detained on parole violation warrants in New York City jails suggest that the practice of incarcerating, without bail, persons charged with technical parole violations in the City has a profoundly disproportionate impact on African-Americans. A 2018 NYC Open Data²⁷ analysis conducted by Columbia University revealed that, while the incarceration rate for white persons on parole who were 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 16.09 per 100,000 African-American residents of the City.²⁸ Based on this analysis, African-Americans on parole in New York City are 12.4 times more likely to be detained for a parole violation than a white person on parole.²⁹ Given that in 2018, an average of 718 people were incarcerated in New York City jails each day on technical parole violations,³⁰ it can be assumed that the racial disparities among the City’s overall parole violation jail population similarly impacted the subset of alleged violators charged with technical parole violations.

C. HOW NEW YORK AND OTHER STATES ADDRESS TECHNICAL PAROLE VIOLATORS

New York has taken steps in recent years to try to reduce the population of people with parole violations in its local jails and prisons. In 2015, for example, DOCCS introduced a pilot program in Manhattan and Rochester, called “Recidivism Elimination Supervision Teams,” focused on reducing recidivism and parole violations through more intensive supervision of higher-risk persons following their release from prison, along with “swift and certain” responses to parole violations.³¹ In 2014, the State created the Council on Community Re-entry and Re-integration to address barriers that formerly incarcerated persons face upon re-entering the community.³² And, in January of this year, the Parole Board proposed amendments to its regulations to, among other things, eliminate consideration of a parole violator’s underlying crime of conviction and criminal history in determining the length of any time assessment imposed for the violation, and create a list of “mitigating” and “aggravating” factors that must be considered by the hearing officer in determining the disposition following a parole revocation.³³ In addition, New York City and State officials have been working together to explore ways to reduce unnecessary delays in the parole violation hearing process.³⁴ While these efforts are worthwhile, and some may even have had a marginal impact on the number of people accused of alleged

technical parole violations being incarcerated in the State,³⁵ they all fail to directly address the statutory scheme that authorizes the immediate and extended incarceration of people who commit technical parole violations, both pre- and post-adjudication.

As New York continues to incarcerate large numbers of people who commit technical parole violations, other states have adopted common sense reforms, such as graduated sanctions and incarceration caps for technical and other violations of community supervision conditions, that can serve as a roadmap for addressing this problem in New York. As part of the Justice Reinvestment Initiative,³⁶ for example, 17 states have instituted caps on the amount of time imposed for violations of parole and/or probation; 18 states have established or expanded their laws governing “earned discharge” from community supervision and 22 states have authorized “graduated responses” to violations of community supervision.³⁷

According to a recent Report from Pew Charitable Trusts, three states, in particular, have adopted successful “research-based” reforms to their procedures governing technical violations of probation and parole:

Across the country, policymakers are adopting [community corrections] reforms that prioritize scarce resources for higher-risk individuals while removing lower-risk people from supervision caseloads. Changes include shorter terms, earned compliance credits, and reduced or inactive supervision . . . Some states also reduced revocations for technical violations and provided a range of options for addressing noncompliance. After South Carolina adopted graduated sanctions, compliance revocations decreased 46 percent, and people under supervision were 33 percent less likely to be incarcerated or reincarcerated than before the reforms. Similarly, after Louisiana implemented a 90-day cap on jail or prison terms for first-time technical violations, length of incarceration declined by 281 days and new-crime revocations fell 22 percent. And after Missouri adopted earned discharge—in which probationers and parolees accrue time off their sentences for compliance—supervision terms dropped by 14 months, the supervised population fell 18 percent, average caseloads decreased 16 percent, and recidivism rates did not change.³⁸

New York has itself codified the use of “graduated sanctions” for people who commit parole violations, at least to the extent of directing the Chair of the State Board of Parole to “consider the implementation of a program of graduated sanctions” and requiring that any program so implemented “include various components including the use of alternatives to incarceration for technical parole violations.”³⁹ In view of the large number of people who commit technical parole violations currently serving time assessments in New York State’s prisons, however, it would appear any existing program of “alternatives to incarceration” for technical parole violations in the State is woefully underutilized, ineffectual, or both.

D. RECOMMENDATIONS FOR REFORM

1. ELIMINATE MANDATORY PRE-ADJUDICATION DETENTION FOR ALLEGED TECHNICAL PAROLE VIOLATION.

Governor Andrew Cuomo, in his 2018 State of the State address, noted that, “[t]hirty-three percent of individuals released [from prison] 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.”⁴⁰ The Task Force wholeheartedly agrees with this sentiment, and believes that the laws of the State governing technical parole violations should be changed in the following ways to reflect it:

First, the Task Force recommends that the Legislature amend the Executive Law to eliminate the authority to issue a warrant for any person believed to have committed only a technical parole violation (*i.e.*, a violation that does not include the alleged commission of a new crime). For all technical parole violations, the Task Force recommends that a written “notice of violation” be issued and served on the person accused of a violation in lieu of a warrant. The sole exception to this requirement would be where the technical violation charges the person with willfully failing to appear in response to a written notice of violation.

Second, the Task Force recommends that, where a warrant is issued and executed for the alleged willful failure to appear in response to a written notice of appearance, the individuals, within 24 hours of execution of the warrant, be brought before a local criminal court for a recognizance hearing where the accused would be entitled to representation by counsel, and to the assignment of counsel if the individual is unable to afford representation.⁴¹ At the recognizance hearing, the burden would be on the State to prove that the warrant was properly issued. At a minimum, this would include proof that the individual’s failure to appear in response to the written notice of appearance was, in fact, willful.

Together, these two proposed reforms would replace New York’s current “hair-trigger” approach to people accused of technical parole violations – an approach that calls for the immediate arrest and detention for up to 105 days, without bail, of the accused – with a model that is less punitive and far more likely to yield a positive outcome, both for the person under supervision, his or her family and the community at large. While the proposed model would permit the pre-adjudication incarceration of those who willfully fail to appear in response to a notice of violation, it would provide appropriate Due Process protections, in the form of prompt judicial review and the assistance of counsel, to ensure that any such pre-adjudication incarceration is in accordance with law.

2. SUBSTANTIALLY REDUCE INCARCERATION FOR ADJUDICATED TECHNICAL PAROLE VIOLATIONS.

By dramatically reducing the number of people accused of alleged technical parole violations held in local jails pending adjudication of the violation, the above-described reforms would almost certainly have the effect of reducing the number of such individuals returned, post-

adjudication, to state prison. The Task Force believes that allowing persons charged with technical parole violations to remain in the community while their alleged violation is adjudicated will significantly increase the chances that an appropriate, non-incarceratory sanction will be imposed should the violation be sustained. The Task Force further believes that allowing lengthy periods of incarceration post-adjudication for persons whose violation involves no new criminal conduct is counterproductive in that it can severely disrupt or reverse progress made in reentry up to that point, while doing little or nothing to advance public safety.

With these concepts in mind, the Task Force makes the following additional recommendations:

a. **PERMIT THE REINCARCERATION OF ADJUDICATED TECHNICAL PAROLE VIOLATORS ONLY WHEN ALTERNATIVES TO INCARCERATION HAVE BEEN FULLY EXHAUSTED.**

First, the Task Force recommends that the Executive Law be amended to provide that a penalty of reincarceration (*i.e.*, a “time assessment”) may not be imposed on any person who commits a technical parole violation until all reasonable alternatives to a prison sanction have been exhausted. The amendment should specify that graduated sanctions be utilized, and the least restrictive sanctions imposed, to bring the individual into compliance. Such graduated sanctions could include, for example, participation in a community-based drug, mental health, or cognitive behavioral treatment program, as well as a prohibition on the individual’s garnering additional “earned time credits” for a fixed period following an adjudicated violation of parole.⁴²

b. **LIMIT TIME ASSESSMENTS FOR TECHNICAL PAROLE VIOLATIONS TO NO MORE THAN 30 DAYS WITH THE POSSIBILITY OF INTERMITTENT SERVICE.**

Second, the Task Force recommends that the Executive Law be amended to provide that, where all reasonable alternatives to reincarceration have first been exhausted for an adjudicated technical parole violation, a time assessment of up to 30 days may be imposed, with the possibility of intermittent service (*e.g.*, weekends or overnight only) for those individuals with employment, childcare or educational responsibilities. As noted, a number of other states use so-called “revocation caps” and short periods of incarceration for technical parole violations and ensure that responses to these violations are proportionate to the seriousness of the conduct giving rise to the violation.⁴³ The Task Force recommends that New York follow that trend.

c. **CREDIT TIME SERVED IN JAIL OR PRISON PRE-ADJUDICATION TO ANY POST-ADJUDICATION TIME ASSESSMENT IMPOSED.**

Third, the Task Force recommends that the Executive Law be amended to provide that, where a “time assessment” is imposed on a technical, or any other, parole violation, the time assessment will commence running on the date that the parole violation warrant was lodged and will be calculated in the same way for all persons who commit parole violations and for whom a time assessment has been imposed, irrespective of whether the violator is in a local or State

correctional facility, and irrespective of whether there are criminal charges pending against the individual.

Although this is the current practice for parole violations, the Parole Board has, in its recently proposed amendments to the regulation governing the calculation of time assessments (*i.e.*, 9 NYCRR 8002.6(b)), eliminated this practice by moving the date on which a time assessment "commence[s] running" from the date the parole violation warrant was lodged to the date on which the final parole revocation hearing is completed. The adoption of the proposed regulation, the Task Force believes, would increase the terms of incarceration served for all adjudicated parole violations. This would be a significant step-backward in our goal of reducing incarceration for parole violations overall, including technical parole violations, in New York.⁴⁴

d. REINVEST COST SAVINGS IN ALTERNATIVES TO INCARCERATION, COMMUNITY-BASED BEHAVIORAL HEALTH ASSESSMENTS AND TREATMENT AND SUPPORTIVE HOUSING.

Finally, the Task Force recognizes that many technical parole violations are the result of relapses by persons with substance use disorders. These relapses often lead to failed drug tests, missed appointments, lost employment, failures to appear and absconding from parole supervision. Similarly, a significant number of persons charged with technical parole violations suffer from serious mental illness. The Task Force therefore recommends that the significant cost savings to the State that will result from reducing incarceration for technical parole violations be reinvested in alternatives to incarceration, community-based opportunities for behavioral health assessments and treatment and supportive housing for persons released from prison. This recommendation is consistent with New York's approach to treating substance use disorders and mental illness as public health conditions which should be addressed with medication, treatment and/or other appropriate services.

II. NEW YORK SHOULD INSTITUTE A SYSTEM OF "EARNED GOOD TIME CREDITS" TO INCENTIVIZE GOOD BEHAVIOR WHILE ON PAROLE

Over the past quarter-century, criminal justice researchers have identified a core group of "evidence-based" strategies for community supervision that can significantly reduce recidivism, and thereby increase public safety, while at the same time reducing costs:

An emerging consensus among criminal justice professionals supports a series of strategic shifts away from the current . . . time-based, isolated, and enforcement-minded model to one that . . . [f]undamentally change[s] the purpose of supervision from punishing failure to promoting success. The goal should be to help people repair the harm they have caused and become self-sufficient, law-abiding citizens, rather than simply enforcing rules set by courts and parole boards, catching violations and imposing penalties, including incarceration. . . Striking the right balance between accountability for violations and new crimes, and incentives for compliance and progress can improve outcomes.⁴⁵

A recent report from the Harvard Kennedy School Executive Session on Community Corrections similarly recommends that community corrections systems move “from time-based to goal based.”⁴⁶ The report notes that,

[s]ince 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.⁴⁷

Consistent with the research showing that most people who reoffend after leaving prison do so within a year of release,⁴⁸ New York State’s own offender data indicate that the risk of re-arrest is highest during the first few months after release on parole, significantly declines between the six and twelfth months, and continues to decrease through to the thirtieth month following release.⁴⁹

It has been noted that, in addition to reducing the overall length of supervision terms, the granting of so-called “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.”⁵⁰ As discussed above, a 2017 analysis by the Pew Charitable Trusts of 35 states participating in the federal Justice Reinvestment Initiative revealed that in 18 of those states persons on community supervision can shorten their periods of supervision up to 30 days for 30 days of compliance.⁵¹ The Task Force believes that New York should join these other states by creating a statutory system of “earned time credits” to incentivize good behavior while on parole, consistent with the following recommendation. This is similar, in effect, to the current practice of “good time” reductions in prison terms for incarcerated individuals who can have their maximum sentence reduced by one third for good behavior.

RECOMMENDATION FOR REFORM:

ESTABLISH A SYSTEM OF “EARNED TIME CREDITS” FOR PERSONS ON PAROLE SUPERVISION

The Task Force recommends that the Executive Law be amended to create a system whereby persons on parole supervision would automatically reduce the period of supervision required to be served as a reward for periods of time spent under supervision with no parole violations. Under this proposal, persons would be prohibited from accruing additional earned time credits: (1) during any period of incarceration resulting from a parole violation or a new crime; and (2) for a specified period following any final adjudication of a parole violation.

The Task Force further recommends that, upon enactment of such legislation, the new system of “earned time credits” be applied retroactively to the date the person’s community supervision began. This would ensure that those who, despite having no statutory “earned time credit” incentive for their good behavior, nonetheless complied with their parole conditions, would be able to reap the benefits of a reduction in their period of supervision.

The Task Force believes that the above-described system of “earned time credits” would, among other things, strongly encourage compliance with conditions of parole, discourage absconding from supervision and significantly reduce parole officers’ caseloads, thereby allowing them to focus their time and programmatic resources on those most in need of support and services.

III. NEW YORK SHOULD INCREASE THE NUMBER OF PAROLE COMMISSIONERS

The New York State Board of Parole is required by law to consist of “not more than nineteen members appointed by the governor with the advice and consent of the senate.”⁵² The board is responsible for hearing and adjudicating decisions about parole release in 10,000-12,000 cases annually.⁵³

The schedule for parole interviews follows a set routine—commissioners may not have any cases for weeks, but then sit as a panel of two or three members and hold an average of forty parole interviews in one week.⁵⁴ The commissioners either travel to the prison where people are due for their parole interviews, or, more commonly, to a remote office near the prison where they conduct the interviews by video conference.⁵⁵ Ideally, the commissioners have meaningful time before each interview to review the parole applicant’s file, which typically consists, *inter alia*, of the applicant’s statement to the parole board; information about the offense that resulted in his or her incarceration; a report of his or her positive achievements during their time in prison; a list of any infractions or disciplinary issues; statements from the district attorney who prosecuted the case, the defense attorney who represented the applicant, and the judge who presided over the case; and an assessment score of his or her risk to society if released; among other materials. These case files are transported by staff from the prison where the individual is incarcerated to the remote office where the commissioners will conduct the video conference interview. Usually, the files arrive the day before the interviews commence and there are so many of them as to make a thorough review of each one near impossible. As a result, commissioners are shortchanged of the opportunity to conduct a full review of the file before the interview. To manage the workload, one parole commissioner is designated as the lead for reviewing the file and conducting the parole interview among the panel of two to three commissioners.⁵⁶

Despite the Parole Board’s best efforts to allocate resources and manage the commissioners’ workload of 10,000-12,000 interviews in one year, each and every one of these interviews are not receiving the kind of time, attention, and review that such a critical decision deserves. The importance of the interview—to ascertain who can and should be safely released back to the community—should be reflected in the process. A parole board interview where one or two of the commissioners may not have had time to fully review a file, or that lasts only five or ten minutes, or that is impeded by bad technology, does not fulfill basic expectations of due process and fairness.

The Task Force strongly believes that the Parole Board’s mandate for careful and thorough consideration of each and every case before them can be better achieved by increasing the number of sitting commissioners which will permit more time for preparation and review, more face-to-face interviews, and more time for each interview conducted.

RECOMMENDATION FOR REFORM:

INCREASE THE NUMBER OF SITTING COMMISSIONERS TO 30 AT ANY GIVEN TIME

When fully staffed with nineteen commissioners, the case-to-commissioner ratio for 10,000 cases a year would be 526 cases per commissioner, a shockingly high caseload considering the importance and gravity of the release decision. Other states, including Florida, Washington, New Mexico, and New Jersey, all have commissioner to case ratios well under 500. In New Mexico and Washington, the ratio is closer to 250-300 cases per commissioner. The Vera Institute of Justice recently researched commissioner to case ratios in 24 states where information about the number of hearings annually and appointed commissioners or parole board members was readily available. The ratio was a simple analysis of the number of hearings divided by the number of known commissioners/board members. To determine ratios, an assumption was made that parole hearings would consist of only one commissioner, a practice common in some -- but not all -- states. In states that have multiple commissioners participate in a hearing or interview—such as in New York—the number of total hearings attended by each commissioner is far greater than the calculated ratio. In short, these ratios are a conservative estimate of the true number of hearings that each commissioner or board member is required to prepare and attend.

In practice, even the 526 cases per commissioner ratio has been greatly exceeded in New York. In recent years, the parole board was staffed with only twelve commissioners at any given time and was responsible for 12,000 interviews annually, at a ratio of 1,000 cases per commissioner.⁵⁷ The reality is that individual commissioners participate in well over a thousand cases a year, as the parole board requires at least two, preferably three, commissioners at each interview.⁵⁸ To be clear, it is consistent and better from a due process standpoint to have multiple commissioners attend and adjudicate decisions for parole release and New York should continue this practice. However, because of staffing shortages, until recently many parole interviews were only attended by two members of the board, with no third member to break a tie if one commissioner voted for and the other against release. In August 2017, Parole Board Chair Tina Stanford committed to ending the use of two-person boards, yet anecdotal evidence suggests that this practice remained widespread until very recently and even now still occurs occasionally.⁵⁹ Two-person panels are especially time-consuming and inefficient, as a deadlocked decision voids the parole interview and another new interview must be scheduled again for the same individual.⁶⁰ Increasing the Parole Board to 30 should eliminate the need for two person interviews and enable the Commissioners to conduct in person interviews more frequently.

New York appointed five new commissioners in the summer of 2019, which, with the resignation of one sitting commissioner, brought the current total to sixteen commissioners to hear and adjudicate approximately 10,000 cases this coming year.⁶¹ This brings the ratio of commissioners to cases in New York to 625, and still leaves three seats unfilled.⁶² To get New York's case to parole commissioner ratio to a standard that would allow for effective and fair adjudication, New York should add at least eleven more positions beyond the nineteen provided for under Executive Law § 259-b. The cost of adding these commissioner positions would not be significant in comparison to the overall State budget and would be more than offset by the cost savings that would be realized through the implementation of the additional reforms discussed above.

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The Task Force believes that these initial reforms, if implemented, will result in a more efficient and fair parole process that will lead to better parole-related decision-making, facilitate the devotion of resources where they are most needed, reduce overall costs, and increase public safety.

APPENDIX A

The following individuals serve on the Task Force on the Parole System:

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¹ The members of the Parole System Task Force are listed in Appendix A.

² *The Problem With Parole*, New York Times (editorial), 2/11/18. Available at: <https://www.nytimes.com/2018/02/11/opinion/problem-parole.html>. See also, *Less is More in New York: an Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, at 2. Available at: https://justicelab.columbia.edu/sites/default/files/content/Less_is_More_in_New_York_Report_FINAL.pdf

³ New York Law Journal, 4/1/19. Available at: <https://www.law.com/newyorklawjournal/2019/04/01/lawmakers-reshape-ny-criminal-justice-system-with-varied-reactions-from-das-defenders/>

⁴ “Index crimes” are the eight major categories of serious crime reported annually by the FBI. The crimes are divided into two categories: “violent crimes” and “property crimes.” The eight Index crimes are: aggravated assault, forcible rape, murder, robbery, arson, burglary, larceny-theft, and motor vehicle theft.

⁵ New York State Crime Report, DCJS, May 2019, at 1. <https://www.criminaljustice.ny.gov/crimnet/ojsa/Crime-in-NYS-2018.pdf>

⁶ See, Executive Law section 259-i(3). The Parole Board’s regulations require the field parole officer to have “reasonable cause to believe” that the person has violated one of more conditions in an “important respect,” and also require the parole officer to conference and seek approval from their senior parole officer before issuing the warrant for retaking and detention. See, 9 NYCRR section 8004.2.

⁷ See, Executive Law section 259-i(3); see also, 9 NYCRR sections 8005.6 and 8005.17.

⁸ See, Executive Law section 259-i(3)(c)(i) and 259-i(3)(f)(ii).

⁹ See, 9 NYCRR 8005.20(c)(4), which provides as follows: “(4) For the following violators, after making a finding that the releasee’s program needs could be appropriately addressed in the community with parole supervision and that restoration to supervision would not have an adverse effect on public safety or public confidence in the integrity of the criminal justice system, the hearing officer may order, or in the case of a violator serving a sentence for a felony offense under articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, may recommend to the board of parole that the violator should be restored to supervision with appropriate special conditions. These violators are defined as: (i) a violator who is the custodial parent of a minor child, has actually been the primary care-giver for at least 12 months, or in the case of an infant under 12 months old since the birth or adoption of the child, prior to having been incarcerated on the parole violation warrant, and who if restored to supervision has a stable residence and means of support so that he or she would continue to care for the child; or (ii) a violator whose parole supervision prior to the behavior which resulted in issuance of the warrant is deemed acceptable by the division, who has a stable residence and prior employment; or (iii) a violator who has absconded from supervision and who voluntarily returns to supervision; or (iv) a violator with a new pending criminal charge whose new charge is being disposed of by referral to any alternatives to incarceration (“ATI”) program, provided that a condition of being restored to parole supervision will be that the violator must successfully complete the ATI program; or (v) a violator who would otherwise be a Category 2 violator but whose medical or psychiatric needs cannot be met in the Willard drug treatment campus program.”

¹⁰ See, 9 NYCRR section 8005.20(c)(1)-(5). As noted at page five of this Report, the Parole Board has proposed amendments to section 8005.20 to, among other things, eliminate consideration of a parole violator’s underlying crime of conviction and criminal history in determining the length of any time assessment imposed on the violation.

¹¹ See, 9 NYCRR 8005.20(c)(1).

¹² *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, at 4. [citing, United States Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2016 (April 2018), Appendix Table 7, BJS, 2016]. Available at: <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>

¹³ *Id.*, at 1.

¹⁴ *Id.*, at 4. See also: <http://www.doccs.ny.gov/Research/Reports/2019/Admission%20Releases%20Report%20Calendar%20Year%202018.pdf>

¹⁵ *Id.*, at 9 [citing DOCCS' *Inmates Under Custody: Beginning 2008* online Report: Available at: <https://data.ny.gov/Public-Safety/Inmates-Under-Custody-Beginning-2008/55zc-sp6m>].

¹⁶ See, Executive Law section 259-i(3).

¹⁷ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9.

¹⁸ *Id.*, at 9, 19 (fn. 45).

¹⁹ *Who Pays for the Rising Number of State Technical Parole Violators in NYC Jails?*, New York City Independent Budget Office, 8/27/19. Available at: <https://ibo.nyc.ny.us/cgi-park2/2019/08/who-pays-for-the-rising-number-of-state-technical-parole-violators-in-nyc-jails/>

²⁰ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 15.

²¹ *Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets*, Council of State Governments Justice Center. Available at: <https://csgjusticecenter.org/confinedandcostly/?state=NY>

²² *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9.

²³ New York State Board of Parole, 2015 Legislative Report, at 16. Available at: <http://www.doccs.ny.gov/Research/Reports/2015/2015%20Parole%20Board%20Leg%20Report%20-%20Final.pdf>.

²⁴ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 5, 8. Available at: [https://justicelab.columbia.edu/sites/default/files/content/Less is More in New York Report FINAL.pdf](https://justicelab.columbia.edu/sites/default/files/content/Less%20is%20More%20in%20New%20York%20Report%20FINAL.pdf).

²⁵ *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, Pew Charitable Trusts, July 2019, at 2. Available at: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations> .

²⁶ *Id.*, at 8; emphasis added.

²⁷ <https://opendata.cityofnewyork.us/>

²⁸ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 5-6.

²⁹ *Id.*, at 6.

³⁰ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9, 19 (fn.45).

³¹ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 6.

³² *Id.*

³³ At the time of this Report, the proposed amendments are still under consideration. They are available at: http://www.doccs.ny.gov/RulesRegs/20190130_CCS-05-19-00006.pdf.

³⁴ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 6.

³⁵ According to the NYS Division of Criminal Justice Services, the average number of technical parole violators held in local jails across the State in August of 2019 (1,630) was 8.7 percent lower than in August of 2018 (1,786). Still, the average number of technical parole violators held in local jails statewide during that 13-month period was 1,737 per month. The average number of technical parole violators held in New York City jails in August of 2019 (675) was 2.9 percent lower than in August of 2018 (695), and the average number of technical parole violators held in New York City jails during that 13-month period was 721 per month. *See*, Division of Criminal Justice Services, *Jail Population in New York State, Average Daily Census by Month* (as of 9/6/19), at 1. Available at: https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf

³⁶ Launched in 2006 by the Bureau of Justice Assistance of the U.S. Department of Justice (BJA), the Justice Reinvestment Initiative is a public-private partnership, involving BJA, the Council of State Governments Justice Center, the Pew Charitable Trusts, the Crime and Justice Institute and other organizations, aimed at “provid[ing] policymakers with resources and tools to increase public safety, hold offenders accountable, and control corrections costs, resulting in a more effective justice system.” https://www.bja.gov/Programs/jri_background.html. *See also*, *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 1. Available at: <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/11/33-states-reform-criminal-justice-policies-through-justice-reinvestment>.

³⁷ *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 2. Available at: <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/11/33-states-reform-criminal-justice-policies-through-justice-reinvestment>.

³⁸ *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, Pew Charitable Trusts, September 2018, at 15.

³⁹ Executive Law section 259-c (12); emphasis added.

⁴⁰ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, supra., at 6.

⁴¹ The Task Force recognizes that, especially in the more rural, upstate counties, it may in some cases be difficult to commence a recognizance hearing, with counsel present for the accused, within 24 hours of execution of the parole violation warrant. But the Task Force strongly believes that, for an alleged violation of a condition of supervision that involves no allegation of new criminal conduct, an expeditious recognizance hearing before a judge with the assistance of counsel for the accused is indispensable.

⁴² A more in-depth discussion of “earned time credits” for persons on parole appears in Section II of this Initial Report.

⁴³ See, *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, supra., at 2; and *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, Pew Charitable Trusts, supra., at 15. See also, *Levers of Change in Parole Release and Revocation*, Robina Institute of Criminal Law and Justice, 2019, at 23-24.

⁴⁴ The Board’s proposed amendment to 9 NYCRR 8002.6(b) is available at: http://www.doccs.ny.gov/RulesRegs/20190130_CCS-05-19-00006.pdf.

⁴⁵ *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, Pew Charitable Trusts, September 2018, supra., at 15.

⁴⁶ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, supra., at 7.

⁴⁷ Id.

⁴⁸ *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, Pew Charitable Trusts, July 2019, supra., at 4.

⁴⁹ *The Future of Sentencing in New York State: Recommendations for Reform*, New York State Commission on Sentencing Reform, 1/30/09, at 142.

⁵⁰ *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, supra., at 7.

⁵¹ Id., citing *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 2.

⁵² New York State Executive Law § 259-b. State board of parole; organization.

⁵³ WNYC, *Prisoner Advocates Say Parole Board is Understaffed and Overwhelmed*, Aug. 14, 2018, <https://www.wnyc.org/story/prisoner-advocates-say-parole-board-understaffed-and-bias/>.

⁵⁴ The NYS Department of Corrections and Community Supervision publishes the monthly calendar for parole board interviews on its website, <http://www.doccs.ny.gov/calendar.html>.

⁵⁵ Testimony of Parole Board Chair Tina Stanford to the New York State Bar Association Parole Reform Task Force, August 14, 2019.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ NYS Department of Corrections and Community Supervision, Board of Parole, “Making Release Determinations,” <http://www.doccs.ny.gov/ParoleBoard.html>.

⁵⁹ Parole Preparation Project and Release Aging People in Prison Campaign, *New York State Parole Board: Failures in Staffing and Performance*, 9 (Aug. 2018), <http://rappcampaign.com/wp-content/uploads/NYS-Parole-Board-August-2018.pdf>.

⁶⁰ Id.

⁶¹ See NYS Department of Corrections and Community Supervision, Board of Parole, “Current Parole Board Members,” <http://www.doccs.ny.gov/PB-Commissioners.pdf>.

⁶² Statement from the Release Aging People in Prison Campaign, *Parole Justice Advances as Legislature Closes—But Not Enough*, June 19, 2019, <http://rappcampaign.com/nys-parole-board-staffing-a-nominee-to-reject/>.



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