

**THE  
LEGAL AID  
SOCIETY**

**COVID-19  
in New York's  
Jails and Prisons:**

**Failing to  
Heed the  
Call to  
Decarcerate**

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# Executive Summary

This report examines the response of New York's criminal legal system to the COVID-19 pandemic from the perspective of The Legal Aid Society's Criminal Defense Practice, which stood on the front lines of early efforts to protect incarcerated clients from the spread of the disease. The temporal focus is on 2020 and 2021, particularly on the period before vaccines became available. From the earliest days of the pandemic, it was clear that incarceration was an inherently risky—even life-threatening—practice, not only for people living and working in these already unsafe congregate settings, but also for the communities who would inevitably be exposed to the ceaseless cycle of people moving in and out of jails and prisons. This report points out mistakes and missed opportunities to address that risk, including deficiencies in state and local laws that proved insufficient to support the robust response the pandemic demanded. Our hope is that, with the help of the information in this report, city and state leaders can be better prepared for the next public health emergency caused by infectious disease.

No effort to understand how the pandemic affected people ensnared by the criminal legal system can fail to consider the prevailing societal attitude toward them: a mixture of fear and contempt that expresses itself, even in normal times, in dehumanizing rules, customs, and language. Police treat them roughly, sometimes violently, and on occasion, lethally. They are subjected to the humiliation of processing at a police station, where their personal effects, such as the belts that hold up their pants or the walkers that serve as their mobility devices, are taken from them. At the beginning of their ordeal, they have no place to relieve themselves or to wash for long periods; once incarcerated, they have little to no privacy for these basic human needs. They are given barely edible food and barely potable water. They are frequently kept awake or awakened, no matter the time, in order to be moved from one institutional building to another.

If they are injured or sick, their complaints are doubted, and their treatment is delayed and sometimes denied altogether. The law tolerates this unless the denial of treatment meets an increasingly challenging standard of deliberate indifference to serious medical needs. To get treatment, people who are incarcerated must rely on the cooperation of their jailers; sometimes they are treated while handcuffed. Through it all, they are called by demeaning terms: at arrest, police call them “perps,” at court appearances, court officers call them “bodies,” in jail and prison, just about everyone calls them “inmates” or “offenders.” As they are pushed through the system, every act, every deprivation, every label betrays the pervasive attitude that they are less than fully human.

This attitude toward people caught up in the criminal legal system had predictably negative consequences when COVID-19 arrived in New York. Decision-makers at the city and state levels did not get a sufficient number of people out of custody to avoid spikes in infections. Officials also did far too little to provide incarcerated people what was necessary to control outbreaks: the ability to distance themselves from others, sanitizing products, masks, surveillance testing (i.e., random testing of the population), and proper healthcare. The people employed in carceral settings were also in harm's way and suffered excess illness because of these shortcomings. The novel coronavirus, after finding hospitable conditions in jails and prisons, spread quickly from person to person, from lockups to neighborhoods, without regard for walls, uniforms, or legal status, taking lives and harming the health of New Yorkers in every part of the city and state.

This report tracks the course of the COVID-19 pandemic in New York City and State and discusses the connection between incarceration and disease transmission. It also summarizes the public health consensus that limiting police enforcement of low-

level offenses, pre-trial jailing, and imprisonment are important tactics in the overall strategy of isolation to avoid transmission and flatten the curve of new infections. The report concludes that criminal legal system actors at the city and state levels missed multiple opportunities to mitigate harm from COVID-19 by reducing the scope of policing, jailing, and imprisonment. It also concludes that state law was in some respects inadequate—and in other respects nonexistent—to allow system actors to mitigate harm in this way. Specifically, the report finds the following.

- The NYPD continued making custodial arrests for low-level offenses, creating unnecessary opportunities for virus transmission.
- Mid-pandemic rollbacks to bail reform restored greater discretion to prosecutors and judges to send people to jail, which they did, helping to swell the pandemic's second wave.
- New York City's work release program removed too few people from jails.
- Governor Andrew Cuomo's expedited release program reached few people because of bureaucratic delays and a failure to proactively address housing needs.
- Governors Andrew Cuomo and Kathy Hochul used clemency powers far too sparingly during the pandemic.
- Inefficiency and lack of will hindered the Board of Parole's response to the pandemic.
- Although legislative changes to the system for adjudicating parole violations made a critical difference, New York State's Department of Corrections and Community Supervision ("DOCCS") still unnecessarily incarcerated many people during the pandemic merely for violating technical parole rules.
- Shortcomings in New York's laws on medical parole made it an ineffective tool for decarceration during the pandemic.

In the spirit of continuous improvement, this report recommends the following measures, so that New

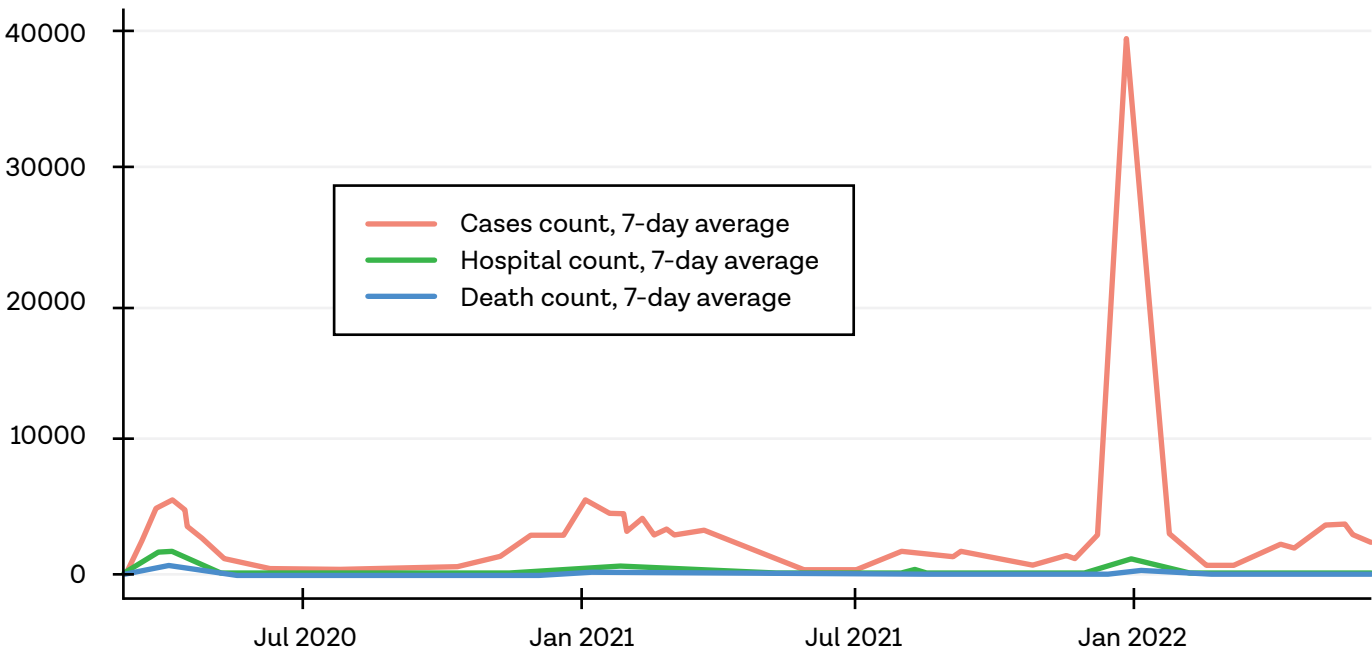
York City and State can be better prepared for the next public health crisis caused by infectious disease.

1. Crisis response plans should include directions to police to refrain from enforcement of low-level, non-jailable offenses, and require that if police do initiate contact and decide to charge low-level offenses, they issue court appearance tickets at the point of contact, rather than putting people through custodial arrest, close-quarters transportation, and detention in precinct lockups.
2. Prosecutors should consent to release on recognizance, unsecured appearance bonds, supervised release, and electronic monitoring in more cases.
3. Judges should make greater use of these alternatives to bail, in order to sharply reduce the flow of people into jails.
4. The mayor and commissioner of the New York City Department of Correction ("DOC") should use Correction Law Article 6-A to quickly reduce the sentenced population in city jails and continue using it consistently throughout any declared state of emergency to reduce unnecessary incarceration and maintain reduced jail populations.
5. The mayor and DOC commissioner should not allow police investigatory "I-cards" to disqualify people from release under Correction Law Article 6-A.
6. The governor and the commissioner of New York State DOCCS should execute an expedited release program that takes account of age and medical vulnerability to infectious disease and actively coordinate with advocates and service providers to arrange housing.
7. The governor should use clemency power swiftly and to the extent necessary to get vulnerable incarcerated people out of state prisons.
8. The Parole Board should eliminate two-person parole panels and ensure that all interviews are conducted by three members.
9. The Parole Board should have all parole

candidates' records digitized, including their prison and parole files, and create a system so that family members, advocates, attorneys and other relevant parties can electronically submit materials.

10. Parole Board members should use a video conferencing application that allows them to conduct hearings from any location when medical or other emergency necessitates it.
11. The state legislature and the governor should enact legislation, such as the Fair and Timely Parole Act and the Elder Parole Act, providing a more meaningful parole review process and an opportunity for parole to those over age 55 who have served at least 15 years.
12. DOCCS should commence all parole revocation proceedings by notice of violation. If DOCCS refuses to do so, Criminal Court judges should impose non-monetary conditions rather than remand in revocation proceedings.
13. Hearing officers should refrain from imposing incarceratory time assessments when parole violation charges are sustained.
14. The state legislature and governor should amend Executive Law sections 259-r and 259-s to remove the bar to medical parole based on crime of conviction and the minimum time served requirement for certain crimes.
15. The state legislature and governor should amend Executive Law sections 259-r and 259-s to allow medically vulnerable people to qualify for medical parole, without requiring that they suffer from a terminal illness or debilitating or incapacitating condition.
16. The DOCCS commissioner and the parole board should use medical parole to move people vulnerable to infectious disease out of prisons and into community supervision.

### NYC COVID cases, hospitalizations, and deaths



Source: \*COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths', NYC Open Data



# The Failure to Rapidly Decarcerate Contributed to the Spread of COVID-19 in New York

**From the beginning, experts made clear that decarceration was the most effective way to stop the spread of the coronavirus behind bars.**

When COVID-19 struck New York, health experts realized that decisive measures were necessary to fight the spread of the highly contagious and potentially deadly coronavirus in jails and prisons. In a March 12, 2020 open letter to the mayor and city officials, a group of doctors working in the city's hospitals, jails, clinics, and shelters called for the release from pretrial detention of anyone over age 60.<sup>1</sup> On March 18, the day the first COVID-19 case in a city jail was identified, the Vera Institute of Justice and Community Oriented Correctional Health Services—a national organization working to bridge the gap between community and correctional healthcare providers—jointly issued guidance for preventive and responsive measures in carceral facilities.<sup>2</sup> The first two measures recommended to policymakers were to use their authority to release as many people from custody as possible and to work with courts to identify for immediate release people at high risk from coronavirus infection, “including people 55 years and older, those who are pregnant, and those with serious, chronic medical conditions.”<sup>3</sup>

The same day, the chief medical officer of New York City Correctional Health Services, Dr. Ross MacDonald, took to social media to implore judges and prosecutors not to leave people in harm's way. He noted that when the pandemic struck, courtrooms were quickly closed, “an act

of social distancing, a sound strategy in public health.”<sup>4</sup> But, he pointed out, “we cannot change the fundamental nature of jail. We cannot socially distance dozens of elderly men, living in a dorm, sharing a bathroom.” He concluded: “Please let out as many as you possibly can.”<sup>5</sup>

On March 21, 2020, the New York City Board of Correction, citing densely populated housing areas and structural barriers to social distancing, hygiene, and sanitation, urged the city's five district attorneys, the commissioners of the city's Department of Correction (DOC) and the state's Department of Corrections and Community Supervision (DOCCS), and the state's chief judge to take action to release people from city jails.<sup>6</sup> The Board, a rule-making and oversight body established by the New York City Charter, identified four groups that should be prioritized for release: people over 50 years of age, people with underlying health conditions, people detained for administrative reasons (such as alleged technical parole violations), and people serving city sentences for low-level offenses.<sup>7</sup>

Four days later, the United Nations High Commissioner for Human Rights issued a statement urging all governments to work quickly to reduce the number of people in detention.<sup>8</sup> The High Commissioner specifically recommended that authorities examine ways to release people

particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as “low-risk offenders.”<sup>9</sup>

On March 30, 2020, the New York Times published an op-ed by former New York City Health Commissioner Mary Bassett, Brooklyn District Attorney Eric Gonzalez, and Ford Foundation President Darren Walker, in which they called on Governor Andrew Cuomo to release as many people as possible from New York’s correctional facilities.<sup>10</sup> Specifically, they recommended that the Governor grant compassionate release to elderly people, as well as those with health conditions that put them at higher risk; release people incarcerated on non-criminal technical parole violations; grant early parole release for people who were within 180 days of completing their sentences; and direct prison and jail administrators to furlough “low-risk” people.<sup>11</sup>

In early April 2020, with infection numbers across New York and the nation rising rapidly, the *New England Journal of Medicine* published an article on flattening the COVID-19 case curve for incarcerated populations.<sup>12</sup> The authors, three physicians specializing in infectious disease, noted that social distancing is “extremely challenging” in correctional settings.<sup>13</sup> They recommended several measures to mitigate transmission of the virus, starting with releasing as many people as possible from correctional facilities and suspending arrest and sentencing for low-level crimes.<sup>14</sup>

Research and advocacy groups, such as the Prison Policy Initiative and the Vera Institute of Justice, made clear their view that, given the design and population density of American jails and prisons, it was impossible to implement meaningful social distancing inside. They also pointed out that standard correctional practices involve many instances of forced proximity and contact, such as handcuffing people to move within a facility and conducting regular pat-downs and other close-proximity searches.<sup>15</sup>

In late April 2020, former New York State Board of Parole member Carol Shapiro called on Governor Cuomo to grant mass clemencies to people in prison who were vulnerable to the virus.<sup>16</sup> “Leading public health officials across the country have made clear that jails and prisons are dangerous incubators for COVID-19,” she wrote, “placing those incarcerated and prison staff at huge risk.”<sup>17</sup> Shapiro also urged her former colleagues on the Board “to create a mechanism to immediately grant parole release to those at imminent risk of harm and death by way of the virus, including all people aged 50 and older and people with HIV, chronic illnesses, and otherwise compromised immune systems.”<sup>18</sup>

In October 2020, a committee of the National Academies of Science, Engineering and Medicine (NASEM) issued a 146-page report on reducing the incarcerated population in response to the pandemic.<sup>19</sup> The committee, drawn from academia, government, and non-governmental organizations, concluded that “decarceration is an appropriate and necessary mitigation strategy to include in the COVID-19 response in correctional facilities and would reduce risks of exposure to and transmission of the disease within correctional facilities, thus improving the safety of incarcerated and detained people and correctional staff.”<sup>20</sup>

Thus, even in the earliest months of the pandemic, a wide range of experts made it clear that quickly reducing incarcerated populations early in the pandemic was a key preventive strategy, not just for the sake of the people living and working in jails and prisons, but also for the sake of surrounding communities. Pathogens such as a coronavirus can pass back and forth through the gates of these facilities on a daily basis with the intake and release of people in custody and staff shift changes. Among carceral facilities, jails, with their high turnover rate, have always been especially dangerous incubators and multipliers for contagious diseases in surrounding communities. In late 2020, two World Bank researchers employed statistical modeling to study this phenomenon in Chicago. They concluded that cycling people through the Cook County Jail

(which holds Chicago's pretrial detainees) in March 2020 accounted for 13 percent of all COVID-19 cases in the entire city of Chicago by early August of that year.<sup>21</sup> They also found that the coronavirus did not spread evenly from the jail across the city: 86 percent of the increased disease burden was borne in majority-Black and Hispanic neighborhoods.<sup>22</sup> Looking at the United States as a whole, researchers from the Prison Policy Initiative and McMaster University found through statistical analysis that mass incarceration added more than half a million COVID-19 cases to the national count in the span of just three months in 2020.<sup>23</sup>

The disproportionate toll of COVID-19 in marginalized communities was not unique to Chicago. During the early months of the pandemic, infection rates among Black, Hispanic, and other majority-minority communities in New York City were between 50 and 110 percent higher than those in the city's majority-White communities.<sup>24</sup> Hispanic and non-Hispanic Black communities exhibited death rates over 40 percent higher than White communities.<sup>25</sup> And when it came to so-called

excess deaths—deaths during a particular period above the usual, expected number of deaths under normal conditions—Black New Yorkers had rates 4.6 times higher than non-Hispanic White New Yorkers during the early phase of the pandemic.<sup>26</sup> Although there were multiple, intersecting causes of this disproportionate impact, it is clear that the longstanding interrelation of minority communities and carceral settings, always harmful, was having new and dramatic effects.

Starting with a March 12, 2020 joint statement from all of the city's public defender organizations, and continuing throughout the first two years of the pandemic, The Legal Aid Society repeatedly joined the chorus of voices calling for the release of vulnerable people in custody, both to safeguard their health and to mitigate the spread of the virus inside and outside the walls.<sup>27</sup> Yet despite this chorus, and despite the strong public health rationale for decarceration, New York City and State missed numerous opportunities to reduce incarcerated populations with the speed or at the scale the crisis demanded, resulting in avoidable illnesses and deaths.

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## **In the absence of rapid decarceration, COVID-19 spread swiftly and dangerously in New York City jails and state prisons.**

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**O**n March 18, 2020, the first case of COVID-19 was detected in a New York City jail.<sup>28</sup> The city's Department of Correction and Board of Correction rushed to put new protocols in place to quarantine people who were diagnosed with COVID-19 or who tested positive in the city jails.<sup>29</sup> Nonetheless, by April 1, the percentage of people in custody who were infected with the coronavirus was eight times the percentage infected in the city as a whole.<sup>30</sup> The number of infections among people in city custody rocketed upward, far outpacing the rate of increase for New York City and New York State.<sup>31</sup> Infections among DOC staff also

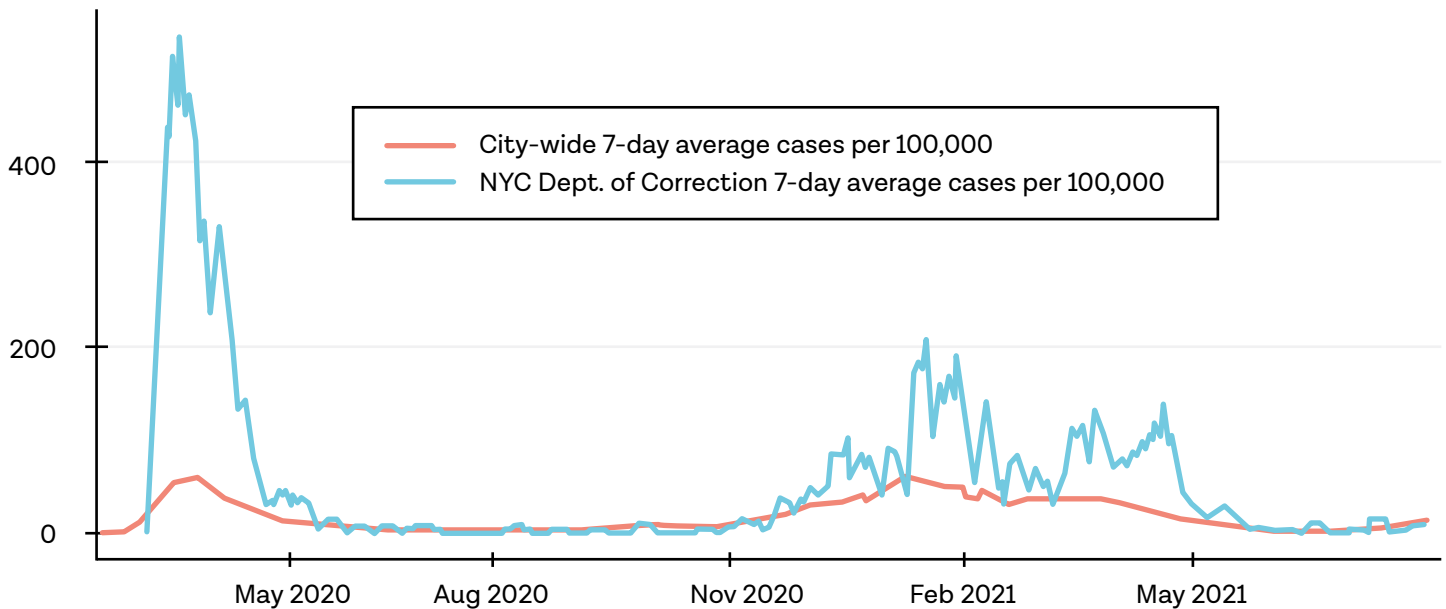
rose quickly; they were triple the rate of the city as a whole on April 1 and nearly five times the city's rate a month later.<sup>32</sup> On April 5, the first COVID-19 death in DOC custody occurred when a 53-year-old man held for an alleged technical parole violation succumbed at Bellevue Hospital.<sup>33</sup>

Inside the city's jails, fear, confusion, and worry for loved ones spread quickly.<sup>34</sup> The Board of Correction and The Legal Aid Society fielded numerous complaints reflecting the anxiety and confusion of the early weeks of the outbreak. People in custody reported that staff did not provide any information



about COVID-19; if not for television news, they would not have known anything.<sup>35</sup> Some people expressed concern that their housing units remained at high populations, making social distancing impossible.<sup>36</sup> Some also complained that they lacked basic sanitation supplies, such as soap and hand sanitizer, and personal protective equipment, such as masks.<sup>37</sup> One 18-year-old described not being able to shower for four days because someone who had tested positive vomited blood in the shower, and correction officers did not allow anyone with cleaning supplies into the unit to clean it up.<sup>38</sup>

## NYC COVID cases per capita, city-wide vs. jail population, Mar 2020 - July 2021



As infections surged in the jails, the harm fell disproportionately on people of color.<sup>39</sup> People identifying as Black or Hispanic accounted for 86 percent of New York City jail admissions in 2020 – 2021, while they were 52 percent of the city’s population.<sup>40</sup> Among New York City Correction Officers, 84 percent identified as Black or Hispanic in 2021.<sup>41</sup> As noted above, a statistical analysis conducted five months into the pandemic showed that areas of New York City that were majority non-white had COVID-19 case rates 50 to 110 percent higher than majority white areas.<sup>42</sup> This analysis also revealed that an area’s proportion of essential workers—a category that includes correction officers working in the city jails—was highly predictive of its case rate and even explained the entirety of disparities in case rates across areas with different racial and ethnic compositions.<sup>43</sup> The inescapable conclusion is that, as the World Bank researchers

found in Chicago, high COVID-19 infection rates in city jails were contributing to high infection rates in majority-Black and Hispanic neighborhoods across New York City.<sup>44</sup>

Meanwhile, the New York State Department of Corrections and Community Supervision did not disclose how many people in its prisons had contracted COVID-19 for the first six weeks of the pandemic.<sup>45</sup> When the agency finally released data on April 20, 2020, it showed that 211 people in custody had tested positive, along with 794 DOCCS employees.<sup>46</sup> Six people had already died of COVID-19, five people in custody and one staff member.<sup>47</sup> Perhaps most strikingly, DOCCS had administered just 350 COVID-19 tests to the approximately 40,000 people in its custody, suggesting that the reported numbers represented only a fraction of the real prevalence of disease in the prisons.<sup>48</sup> Starting

early in the pandemic, public health professionals repeatedly broadcast the message that routine surveillance testing was an important tool to screen for asymptomatic infections, diagnose cases, and isolate people who are infected.<sup>49</sup> DOCCS apparently did not heed this message.

Just as in the city jails, anxiety and confusion ran rampant among people in state prisons when the coronavirus arrived. While Governor Andrew Cuomo was touting the speedy production and distribution of New York State's own brand of hand sanitizer—which was made by people in DOCCS custody, who were forced to work and paid pennies an hour—people in custody were forbidden to have it, because it contained alcohol.<sup>50</sup> They were also forbidden to protect themselves with masks they had fashioned from clothing or sheets.<sup>51</sup>

DOCCS's under-testing (and, therefore, under-counting) persisted through the first wave of the pandemic and into the second. In the fall of 2020, The Legal Aid Society conducted a data analysis that revealed the severity of under-testing of people in custody.<sup>52</sup> On an average day between April and November 2020, in 88 percent of New York prisons, not a single new (previously untested) person was tested.<sup>53</sup> Even more concerning, 83 percent of outbreaks among people in custody were not followed by any increased testing.<sup>54</sup> The report also revealed that 97 percent of deaths in custody had occurred in prisons with higher population densities.<sup>55</sup> Such data vindicated the many experts and advocates who called for thinning out carceral settings to prevent the spread of COVID-19.

DOCCS's reporting of increases in COVID-19 deaths generally followed increases in infections and deaths statewide, first in the spring of 2020, again in late fall into spring of 2021, and again in late fall 2021 through February 2022.<sup>56</sup> On the last day of 2020, DOCCS reported that, to its knowledge, 24 people in its custody had died of COVID-19.<sup>57</sup> At the end of March 2021 the reported total was 35, where it stayed until the Omicron wave of infections of late 2021 to early 2022.<sup>58</sup> By the end of February

2022, DOCCS had identified nine more people in custody who had died of COVID-19, bringing the official total to 44.<sup>59</sup> By the end of 2022, that number would reach 47.<sup>60</sup>

As the pandemic went on, DOCCS's data reporting did not improve, but continued to be murky and unhelpful to advocates and anyone else trying to follow the trajectory of COVID-19 in State prisons. Starting in mid-April 2020 the department posted daily reports on its website showing the number of tests administered in prisons and the number of those tests that were positive, but it did not archive them, so one day's report replaced the previous day's. Also problematic was the fact that these reports showed only cumulative numbers, making it difficult to follow trends. A nationwide "report card" on COVID data transparency among corrections agencies, released in March 2021, gave DOCCS a C-minus.<sup>61</sup> As the report's authors pointed out, data transparency helps establish public trust and enables collaboration with other government bodies.<sup>62</sup>

In an effort to fill gaps in data reporting by state and federal agencies, researchers at UCLA's law school gathered information about COVID-19 in state and federal lockups nationwide from the beginning of the pandemic until January 2023.<sup>63</sup> Seeking to represent the full range of mortality that could be attributable to the pandemic behind bars, the researchers gathered data on all deaths of people in custody, regardless of official cause.<sup>64</sup> Their data set reveals that the rate of death from all causes in New York State prisons jumped 28.7 percent from 2019 to 2020.<sup>65</sup> While it is impossible to say exactly how many of these excess deaths were from COVID-19, the finding is highly suggestive of a situation far worse than official statistics indicate. And while the lack of reliable data makes it impossible to report in detail, it is near certain that the rate of disease and death in prisons disproportionately impacted people of color. As of the beginning of 2021, 74.4 percent of people incarcerated in New York State prisons identified as Black or Hispanic, while they were 34.3 percent of the state's population.<sup>66</sup>

# Missed Opportunities to Decarcerate City Jails

When New York State's first case of COVID-19 was detected on February 29, 2020,<sup>67</sup> the state was just a few months into a new era in arrest and pretrial detention procedures.<sup>68</sup> A statutory amendment enacted in 2019 reduced the range of charges for which custodial arrest was authorized.<sup>69</sup> Instead, for many lower-level charges, police were to issue an "appearance ticket" that commanded the person to appear in criminal court for arraignment on a later date, avoiding short but highly disruptive periods of detention for relatively minor offenses.<sup>70</sup> In addition, a much-publicized reform reduced the range of charges for which a judge could set monetary bail, ruling out about 90 percent of charges classified as misdemeanors and lower-level felonies.<sup>71</sup> These reforms were an important part of the effort to reduce New York City's jail population to a level (about 4,500) that will allow city officials to close the remote, dangerous, and unsanitary Rikers Island jail complex and transition to four new "borough-based" jails in the Bronx, Brooklyn, Manhattan, and Queens.<sup>72</sup> The prospect, then the reality, of

significant constraints on bail-setting contributed to a marked decline in the New York City jail population from 7,017 in October 2019 to 5,356 in February 2020.<sup>73</sup>

These changes laid a strong foundation for New York City to respond nimbly to the pandemic by further reducing unnecessary arrests and minimizing pre-trial incarceration in order to stop the spread of a life-threatening disease. Instead of capitalizing on those opportunities, city and state executives made timid use of them. The NYPD failed to exercise its discretion to sufficiently reduce low-level enforcement actions, ensuring that high rates of infection among police officers spread through unnecessary contact; the state legislature succumbed to political pressure to roll back procedural reforms, enabling prosecutors and judges to use their renewed discretion to drive higher rates of incarceration; and the mayor backed away from opportunities to use work release to further limit unnecessary incarceration in the City's jails.

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**The NYPD continued making custodial arrests for low-level offenses, creating unnecessary opportunities for virus transmission.**

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Every day, police exercise discretion in determining whether or not to arrest people for low-level offenses such as public drinking, turnstile-jumping, or the broad category of criminal "disorderly conduct." These so-called "quality of life" offenses rarely if ever pose immediate threats to public safety; the rationale for their enforcement (if one exists at all) relates more to a sense of public

order. During a pandemic, when the ability to exist safely in public spaces is threatened far more by the risk of disease than the presence of disorderly behavior, it is only logical that police should be asked to balance the risk of disease against the value of enforcing such offenses.

On April 23, 2020, a group of eight public health

organizations and about 200 individual medical professionals sent an open letter to New York City Mayor Bill de Blasio and Police Commissioner Dermot Shea expressing their alarm at “the high rate of infection among NYPD officers” and their “fear that unnecessary interactions between the NYPD and the public will further exacerbate the public health crisis.”<sup>74</sup> The organizations noted the Centers for Disease Control and Prevention (CDC) guidance that social distancing was important to reduce coronavirus transmission.<sup>75</sup> They also noted that the Police Executive Research Forum, a leading national organization, had recommended curtailing non-essential police activities, such as “crime prevention programs, parking enforcement, and enforcement of certain misdemeanor laws” in the midst of pandemic conditions.<sup>76</sup> The letter’s signatories expressed concern that, despite this guidance, there were signs that the NYPD was going on with low-level policing as usual.<sup>77</sup> Indeed, then-Police Commissioner Dermot Shea publicly stated in late March 2020 that he had no intention of cutting enforcement specifically related to the virus.<sup>78</sup>

NYPD’s actions were even more concerning, according to the authors of the open letter, in light of the extraordinarily high infection rate among NYPD personnel.<sup>79</sup> As of mid-April 2020, this rate was about seven times higher than the rate for the city as a whole.<sup>80</sup> The letter suggested three changes NYPD should make to safeguard public health and safety: 1) halt the enforcement of low-level offenses to reduce unnecessary interactions between police and the public; 2) cease unnecessary arrests by issuing summonses or appearance tickets for all qualifying offenses; and 3) encourage social distancing through public service announcements, not enforcement that would lead to unnecessary contacts and risk further transmission of the coronavirus.<sup>81</sup>

Yet to a remarkable degree, the policing of low-level offenses continued throughout the first two waves of the pandemic. Compounding this problem was NYPD’s failure to issue appearance tickets, a method for commanding people to appear in court on a future date to face charges, rather than

keeping them in custody.<sup>82</sup> As discussed above, amendments to the Criminal Procedure Law effective January 1, 2020 required police across the state to issue these tickets for eligible offenses, rather than arrest people, with limited exceptions.<sup>83</sup> Even before those changes took effect, officers had long had discretion to issue what were known as “Desk Appearance Tickets,” or “DATs,” for a narrower range of offenses, but only following custodial arrest and booking at the precinct station.<sup>84</sup> The appearance ticket process set out in the amended statute resembles ticketing for a traffic offense, in which there is no physical custody of the accused, who is not detained beyond the time needed to issue the ticket.<sup>85</sup> Despite this amendment, NYPD continued making custodial arrests—putting people in handcuffs and transporting them to the precinct station for the booking process—when they should have been issuing appearance tickets on site throughout the first two waves of the pandemic in 2020 and 2021.<sup>86</sup> Although many of these people would eventually be released from the precinct lockup with a DAT—a practice the NYPD has argued in litigation is faithful to the 2020 amendment<sup>87</sup>—that outcome followed a period of custody that created multiple opportunities for coronavirus transmission: at a minimum, during transportation in a police vehicle to a precinct station and during the booking process. For people who did not receive a DAT and were instead taken to criminal court for arraignment, there were additional transmission opportunities: during transportation with other people under arrest from the station to Central Booking (in most boroughs located in the Criminal Court building); in pre-arraignment holding pens, which tend to be crowded; at the interview by a Criminal Justice Agency (CJA) staffer who asks about residence, employment, and family ties; at the interview by an assigned lawyer in a tiny interview booth; and during arraignment in the courtroom with the lawyer, prosecutor, judge, clerk, court reporter, and court officers.

According to New York State Office of Court Administration data, over 55 percent of the arrests in which NYPD issued DATs in 2020 and 2021 led to

cases being dismissed or adjourned in contemplation of dismissal (ACD) at arraignment.<sup>88</sup> From March 2020 through May 2021—a period including the city's first and second waves of infections, hospitalizations, and deaths—nearly 29 percent of NYPD's misdemeanor arrests led to District Attorneys declining to prosecute, cases being adjourned in contemplation of dismissal, or cases being dismissed outright at arraignment.<sup>89</sup> It is fair to posit that many of these were situations that, given the public health crisis, should never have led to custodial arrest and multiple points of close contact, giving the coronavirus multiple opportunities to spread.

## RECOMMENDATION

- Crisis response plans should include directions to police to refrain from enforcement of low-level, non-jailable offenses, and require that, if police do initiate contact and decide to charge low-level offenses, they issue appearance tickets for arraignment at the point of contact, rather than putting people through custodial arrest, close-quarters transportation, and detention in precinct lockups.

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## Mid-pandemic rollbacks to bail reform restored greater discretion to prosecutors and judges to send people to jail, which they did, helping to swell the pandemic's second wave.

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**A**s noted in the opening section of this report, experts were clear from the beginning of the pandemic that jails are among the most dangerous congregate settings during an infectious disease outbreak. With the novel coronavirus stalking New Yorkers, system actors at the gateway to pre-trial incarceration—prosecutors and judges—should have done everything possible to minimize the number of people fed into these dangerous settings. Yet after an initial period of reduced bail setting at the onset of the pandemic, New York City prosecutors' requests and judges' orders setting bail, enabled by misguided rollbacks of the historic 2019 bail reforms, continued to send many people to jails with infection rates many times higher than the city's as a whole, exacerbating the spread of disease just as the second, deadly wave arrived.

As discussed above, New York State statutory amendments passed in the spring of 2019 and effective January 1, 2020 took pretrial detention off the table in about 90 percent of criminal cases.<sup>90</sup> The reforms created a presumption of release after

arraignment, requiring judges to release people on their own recognizance unless they pose a demonstrable risk of flight to avoid prosecution.<sup>91</sup> The legislation also made pretrial supervised release an option in every case, regardless of a person's charges or criminal history.<sup>92</sup> A Center for Justice Innovation analysis found that from November 2019 to January 2020, bail setting dropped steeply in New York City Criminal Courts.<sup>93</sup> The authors attributed this drop to judges' desire to avoid mandatory mass releases on the first day of 2020 and the expanded availability of supervised release, which took effect in December 2019.<sup>94</sup>

In the early weeks of the pandemic, the number of incoming criminal cases dropped, and the percentage of people for whom bail was set remained low.<sup>95</sup> In the period from mid-March to the end of April 2020, jail admissions totaled about 900, compared to about 4,400 in the same period of 2019.<sup>96</sup> The combined effect of reduced admissions, Mayor Bill de Blasio's expansion of "work release" for people serving misdemeanor sentences, release

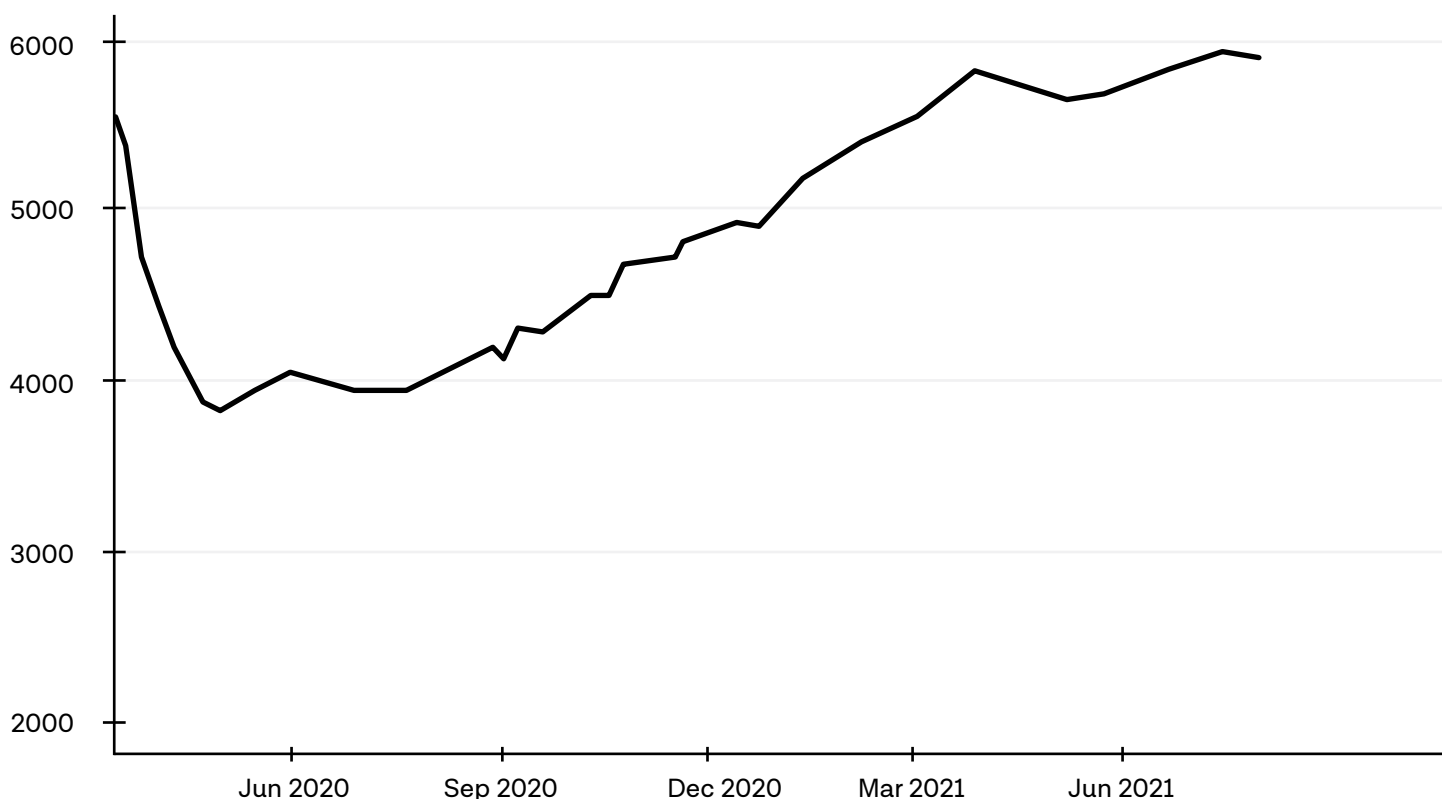


of people accused of technical parole violations, and individual grants of *habeas corpus* release drove the city jail population to a 70-year low of 3,809 on April 29, 2020.<sup>97</sup> COVID-19 cases among people in custody, after more than doubling throughout April, levelled off, and as May began this population’s rate of infection turned downward for the first time since the pandemic struck.<sup>98</sup>

Although the curtailing of bail-setting did not lead to an increase in crime,<sup>99</sup> sensational news coverage of a few extraordinary incidents put political pressure on legislators and Governor Cuomo to roll back some of these steps and take actions that would reverse this positive initial momentum. In April 2020—the deadliest month of the pandemic for New York State—the legislature passed and Governor Cuomo signed into law a budget bill that included an expansion of the list of charges and situations in which judges could set bail.<sup>100</sup> In May 2020, immediately following these rollbacks, judges

began setting bail more frequently, and this upward trajectory continued into September 2020.<sup>101</sup> In the last quarter of 2020, bail setting dropped slightly but remained, through June 2021, above the rates of the last quarter of 2019 and the first two quarters of 2020.<sup>102</sup> It should come as no surprise that bail setting and jail admissions were tightly correlated through 2020 and 2021.<sup>103</sup> Because only about half of defendants or their loved ones could manage to pay bail at some point in the course of a case, for many, having bail set meant staying in jail.<sup>104</sup> Thus, after reaching its low-water mark on April 29, 2020, New York City’s jail population turned upward and continued to increase steadily, as police increased arrests, judges set bail more often, and early emergency release initiatives tapered off.<sup>105</sup> By the first day of June 2020, the jail population once again exceeded 4,000.<sup>106</sup> In October the population crossed the 4,500 mark, and in January 2021 it surpassed 5,000.<sup>107</sup>

### NYC Daily Jail Population, Mar 2020 - July 2021



Source: NYC Board of Correction

The effects of this backsliding on initial steps toward decarcerating the city jails took some time to appear, likely because overall disease trends masked any negative effect. Around the same time that the jail population began to climb back toward pre-pandemic levels, the city's alarming first wave of infections began to recede: the rolling seven-day average of positive COVID-19 tests citywide dropped from early-April highs around 5,000 per day and levelled off in June at around 300 to 400 per day, then stayed fairly steady through October.<sup>108</sup> Likewise the number of new COVID-19 infections among people in custody dropped from the stratospheric height reached in early April, when the case rate was more than five times the citywide rate.<sup>109</sup> From mid-June through October the case rate for people in custody roughly tracked the rate for the city overall.<sup>110</sup>

But in the fall of 2020 the pandemic's trajectory changed again. November saw rapidly rising COVID-19 case numbers across the city and state.<sup>111</sup> By early December, the city's rolling seven-day average of new cases was above 3,000 per day; by early January it was above 5,000.<sup>112</sup> In this second wave, unlike in the first, the jail population

was rising.<sup>113</sup> Infections among people in custody also turned upward in November 2020 and, with jails becoming crowded again due to rising jail populations and policymakers' unwillingness to act, outpaced the city's rate throughout the winter and into early spring.<sup>114</sup> In late January 2021, the case rate for people in custody was triple the citywide rate; in mid-April it was quadruple.<sup>115</sup> Meanwhile, in March 2021, a year after the arrival of the novel coronavirus in New York, the city's jail population surpassed its pre-pandemic level of 5,473.<sup>116</sup> With the first, terrifying wave of infections in the rearview mirror, the state's policymakers, as well as the city's district attorneys and judges, had turned their backs on decarceration as a public health measure.

## RECOMMENDATIONS

- Prosecutors should consent to release on recognizance, unsecured appearance bonds, supervised release, and electronic monitoring in more cases.
- Judges should make greater use of these alternatives to bail, in order to sharply reduce the flow of people into jails.

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## New York City's work release program removed too few people from jails.

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**A** New York City mayor's most direct mechanism for getting people out of city jails is New York Correction Law Article 6-A, which empowers the Commissioner of DOC—who is appointed by and serves at the pleasure of the mayor—to release anyone serving a sentence in a city jail.<sup>117</sup> Under the Penal Law, those sentenced to less than a year for a misdemeanor conviction serve the time in jail, rather than state prison.<sup>118</sup> Article 6-A provides that a person so released is still legally serving a sentence of confinement, albeit beyond the physical limits of the jail.<sup>119</sup> It also makes clear that such release can be withdrawn at any time.<sup>120</sup> Although it is called a

“work release” program, the law provides that release can be for “some other compelling reason consistent with the public interest.”<sup>121</sup>

On March 20, 2020, two days after the first COVID-19 case was detected in a New York City jail, planning for emergency releases under Article 6-A began.<sup>122</sup> Discussion of who would be released was led by the mayor's office and DOC, in consultation with the city's five district attorneys and the NYPD. On March 22 the commissioner began exercising release authority; a week later, 296 people serving misdemeanor sentences had been released from

city jails.<sup>123</sup> Over the next two months, an additional 17 people were released, bringing the total to 313.<sup>124</sup> DOC required people who had been released to maintain daily contact with caseworkers at three nonprofit organizations—CASES (Center for Alternative Sentencing & Employment Services), CJA, and the Center for Justice Innovation—which reported to the department. When COVID-19 arrived in New York City, the jails held approximately 550 people serving sentences, out of a total population of about 5,400.<sup>125</sup> Thus, people released under the emergency Article 6-A initiative represented about 57 percent of the sentenced population and about six percent of the total jail population as it stood at the beginning of March 2020.

At the end of May 2020, the Mayor's Office of Criminal Justice issued a report on the initiative. The report showed that 92 percent of people who had been released were in compliance with program rules, and only six percent (20 people) had been arrested since release—about half of them on misdemeanor charges.<sup>126</sup> DOC revoked the work release status of half of the 20 people who had been arrested, immediately returning them to jail.<sup>127</sup>

In late summer 2021 state officials and advocates, including The Legal Aid Society, publicly urged Mayor de Blasio to restart the program. In response, he authorized six releases (just under six percent of a sentenced population of 103) at the end of September 2021 and another four (less than three percent of a sentenced population of 149) at the end of December 2021.<sup>128</sup>

Although the process for generating Article 6-A release lists was far from transparent, it came to The Legal Aid Society's attention that one factor preventing release for some people was an NYPD "I-card" filed with DOC, indicating that police wanted to question them as part of an investigation. Under standard procedure, the investigating officer is notified of the date the person's jail sentence is to end, at which point the officer picks up the person from DOC custody and takes them to a precinct station for questioning. This procedure, essentially a

courtesy between law enforcement agencies, should not have stood in the way of emergency release. The obvious alternative would have been to interview the person of interest in jail as soon as possible, using personal protective gear, then clear them for release if no new charges are warranted.<sup>129</sup>

## RECOMMENDATIONS

- The mayor and commissioner of the New York City Department of Correction ("DOC") should use Correction Law Article 6-A as a crisis response tool to quickly reduce the sentenced population in city jails, and it should also be deployed consistently throughout any declared state of emergency to reduce unnecessary incarceration and maintain reduced jail populations, not merely as a one-off measure.
- The mayor and DOC commissioner should not allow police I-cards to disqualify people from release under Correction Law Article 6-A.



# Missed Opportunities to Decarcerate State Prisons

**O**n April 3, 2020, a group of New York legal service providers, including The Legal Aid Society, sent a letter to Governor Andrew Cuomo making the case that reducing the state's prison population was a public safety necessity.<sup>130</sup> The letter listed five categories of people that the governor should consider releasing:

1. People with less than one year remaining before their conditional release dates;
2. People whose parole was granted, and release was pending;
3. People over 50 years of age;
4. People with underlying health conditions that exacerbate the risk from COVID-19;
5. People incarcerated for technical parole violations.<sup>131</sup>

Recognizing that proper release planning would involve a great deal of work, the providers offered to coordinate a program of individualized releases and to connect people with reentry organizations.<sup>132</sup>

The providers received no response, and while Governor Cuomo and other state executive agencies did take some positive actions, many opportunities to protect public health at little cost to public safety were missed.

First, on May 10, 2020, the governor's office announced an expedited release initiative for people in state prisons.<sup>133</sup> As detailed below, however, that program suffered from both bureaucratic delays and a failure to focus on housing support that significantly limited its reach. According to the federal Bureau of Justice Statistics, only about 10 percent of all releases from New York prisons between January 1, 2020 and February 28, 2021 (1,206

of 20,400) were "expedited"—defined as any release before a scheduled or expected date.<sup>134</sup>

Second, both Governor Andrew Cuomo and his successor Governor Kathy Hochul failed to use their clemency powers to meaningfully reduce the incarcerated population during the pandemic. Despite the unfettered power of executive clemency, the two governors granted release by virtue of clemency to a total of 21 people during the first 22 months of the pandemic. The net result of these state executive initiatives was that, by mid-2022, New York's COVID-related releases from prison amounted to just eight percent of the prison population as it stood at the end of 2019 (3,488 of 43,500).<sup>135</sup> In contrast, neighboring New Jersey's releases, effectuated by a combination of executive orders and emergency legislation, amounted to 34 percent of its prison population as of the end of 2019 (6,381 of 18,613).<sup>136</sup>

Third, long-standing weaknesses in New York's parole system left the Board of Parole ill-equipped to respond to the pandemic. The Board actually approved fewer people for parole in 2021 than in pre-pandemic years.

Fourth, although a new law on adjudicating parole violations made a critical impact, DOCCS still unnecessarily incarcerated many people during the pandemic merely for violating technical parole rules.

Finally, flaws in New York's medical parole system made it an ineffective tool for decarceration during the pandemic. The total number of people released on medical parole in 2020 and 2021 was just 28.

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## Governor Cuomo's expedited release program reached few people because of bureaucratic delays and a failure to proactively address housing needs.

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**G**overnor Cuomo's expedited release program was intended to reach people whose parole had been granted and release was pending, as well as those approaching their conditional release dates and those near the maximum expiration of their prison time.<sup>137</sup> There was a similar initiative for pregnant and postpartum people that applied when they were within six months of their firm release dates.<sup>138</sup> Since these people were already scheduled to be released back to their communities, keeping them weeks or months longer in dangerous congregate settings during a pandemic made little sense.<sup>139</sup>

As an infection control measure, the expedited release initiative was designed to be limited: only people who already had a firm release date less than 90 days away would be eligible; people serving time for crimes statutorily designated as sex offenses or violent offenses would be excluded; and eligible people had to show that they had non-congregate housing—that is, not a shelter or halfway house—ready for them after release.

The implementation of the program placed further limits on its effectiveness, as it suffered from both insufficient urgency and a lack of transparency. Indeed, that lack of transparency makes a full accounting of how the program actually functioned difficult to produce; neither DOCCS nor the governor's office affirmatively provided information about the process after the announcement. Based on information from various lawyers who attempted to advocate for their clients, it appears that the initiative functioned as follows. DOCCS compiled eligibility lists and sent them to the governor's office for approval. Once the governor's office approved a list, DOCCS Offender Rehabilitation Coordinators

(ORCs) notified the people on that list. It was then up to each person on the list to find and propose housing that was non-congregate and would meet all other criteria for DOCCS approval. Once the ORC approved the housing, DOCCS authorized release.<sup>140</sup>

People who did not have a place to live with relatives or friends faced challenges finding housing that was non-congregate and also met DOCCS criteria. Those returning to New York City could seek a place in one of the hotel rooms the City made available in response to the pandemic to provide hygienic, socially distanced housing for people who would otherwise be in City shelters.<sup>141</sup> Staff of the Mayor's Office of Criminal Justice (MOCJ) and reentry organizations operating the hotel-based programs responded to legal service providers' inquiries on behalf of clients and helped them get placed in rooms.

From the start, the initiative entailed significant delays. For one thing, people were not placed on the list as soon as they entered the 90-day (or, for pregnant people, six-month) period until their firm release date. The lists were generated, apparently at the discretion of DOCCS or the governor's office, on a schedule that was neither regular nor transparent. Many people, therefore, lost valuable time between becoming eligible for the program and clearing the necessary bureaucratic hurdles to qualify for release.

The next cause of delays was the housing approval bottleneck. This is where meaningful collaboration with legal service providers, as offered in their April 3 letter, would have been valuable. But DOCCS had no system to help people without non-congregate housing find available rooms, nor did it coordinate among legal service providers, MOCJ, reentry



organizations, and people in custody. As a result of the housing approval bottleneck, some people who had difficulty finding housing were not released until a few weeks or even a few days before their original release dates.

It was also troubling that the initiative lacked transparency from the outset, with no criteria to refer to (other than the announcement) and no communication about procedures that people in custody, their families, or advocates could follow. As the first and second waves of the pandemic provoked anxiety among incarcerated people and their loved ones about spreading illness and death behind bars,

clear communication about the procedure would have helped everyone involved.

## RECOMMENDATION

- When confronted with an infectious disease outbreak, the governor and the commissioner of the New York State Department of Corrections and Community Supervision should execute an expedited release program that takes account of age and medical vulnerability to infectious disease and actively coordinate with advocates and service providers to arrange housing.

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## Governors Cuomo and Hochul used clemency power far too sparingly during the pandemic

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**E**xecutive clemency could have been an effective tool for quickly reducing the population density of prisons and thereby reducing incidence of infectious disease, both behind bars and in surrounding communities. After all, executive clemency need not involve the courts, district attorneys, the parole board, or any other institutional actors. Governors wield the power of clemency as they see fit, answerable only to the citizenry. Grants of clemency, especially to elderly people and people with chronic health conditions, should have been robust during the COVID-19 pandemic, in order to get vulnerable people out of harm's way and reduce population density in state prisons. But in 2020 and 2021, clemency did not prove to be an effective tool for decarceration in the service of COVID-19 prevention, because Governor Cuomo and Governor Hochul used it far too sparingly, freeing only 21 people from state prisons during the critical period of the pandemic covered by this report.

Governor Cuomo announced the first clemency grants of the pandemic in June 2020; there were just three.<sup>142</sup> One was a sentence reduction, so the

person receiving it was not immediately released, but had to wait for a parole release date in January 2021. The week before Christmas 2020, a traditional time for clemency, the Governor granted it to 21 more people.<sup>143</sup> Of these grants, 14 were pardons of people who were no longer incarcerated, and seven were sentence commutations resulting in release several weeks later, in February 2021.<sup>144</sup> After announcing his resignation in August 2021, Governor Cuomo granted clemency to 16 people.<sup>145</sup> Of those, 10 were commutations that allowed people to be released on parole the following month, and six were pardons of people who were already at liberty.<sup>146</sup>

On Christmas Eve 2021, in the midst of the Omicron wave of COVID-19 infections, Governor Hochul granted clemency to 10 people—nine pardons and one commutation.<sup>147</sup> Only one of these people was in prison, a 55-year-old man who had already been incarcerated for 30 years and who had to wait another month after the commutation to be released on parole.<sup>148</sup>

Governor Hochul's 2021 Christmas Eve press release

also announced steps to reform the executive clemency program. Among these was the selection of an advisory panel, composed of people from law enforcement, public defense, the judiciary, and the clergy, as well as formerly incarcerated people, to help review applications.<sup>149</sup> She also committed to dedicating additional staff resources to reviewing applications, in order to be able to grant clemency on an ongoing basis throughout the year.<sup>150</sup> Further, she pledged that her office would work with the DOCCS Executive Clemency Bureau to provide improved guidance to applicants about what information they should include in their applications and how they should make the governor’s office aware of changes in their circumstances.<sup>151</sup>

While laudable, Governor Hochul’s reforms did not signal any change in the narrow conception of clemency evidenced by her actions and those of her predecessor. Despite her pledge to grant clemency throughout the year, she granted just one person clemency in the first 11 months of 2022, followed by a batch of 13 grants in the week before Christmas 2022.<sup>152</sup>

**RECOMMENDATION**

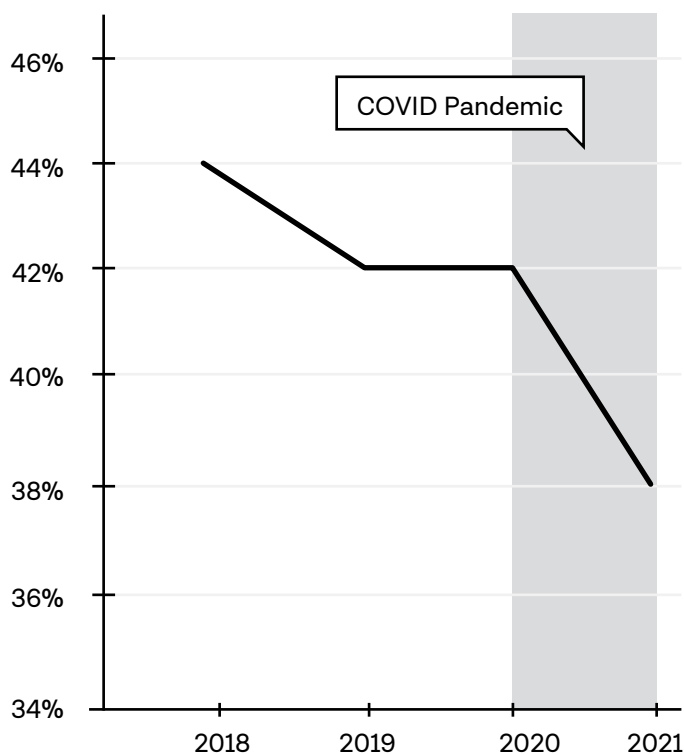
- The governor should use clemency power swiftly and to the extent necessary to get vulnerable incarcerated people out of prison.

**Inefficiency and lack of will hindered the parole board’s response to the pandemic.**

**A**s COVID-19 spread, the parole system could have been an important part of the effort to reduce populations in the dangerous congregate settings of state prisons. The parole system possessed powers to assess whether the many hundreds of people becoming eligible for parole each month in New York could be released.<sup>153</sup> There was no need for emergency legislation, rule-making, or executive orders. All that was needed was for the Board of Parole to work efficiently and exercise its discretion in a manner that accounted for the ongoing threat of the worst global pandemic in generations.

Reported data from the first two years of the pandemic indicates that the New York State Board of Parole failed to rise to the occasion. Looking back to the two years preceding the pandemic, the Board granted release to 44 percent of people who had discretionary parole interviews in 2018 and 42 percent in 2019.<sup>154</sup> In 2020, the deadliest year of the pandemic for New York, the release rate was 42 percent.<sup>155</sup> In 2021, a year that saw the Delta and Omicron waves, the release rate dropped to 38 percent.<sup>156</sup>

**Parole release rates, 2018 - 2021**



Source: New York State Department of Corrections and Community Supervision.

Part of this was presumably lack of will, but the low grant rate also reflected long-standing dysfunction in New York's Parole Board, leaving it poorly positioned to increase parole grants when the need to thin the prison population arose. As one former board member who served in the years leading up to the pandemic recalled, the board would pack 25, 35, even 40 parole interviews into a work day.<sup>157</sup> This former member described having to drive to parole offices in various parts of the state for interviews, even when many were being done not in person, but by videoconference from a DOCCS office.<sup>158</sup> Interviews were generally conducted by panels of three board members, but sometimes by just two. The rushed schedule meant that one member would lead the interview, while another would be preparing to lead the next interview or writing an opinion about the previous one. Of course a panel of two is subject to deadlock; when that happens, the interview is void, and a new one must be scheduled, a process that takes a month or more.<sup>159</sup>

In order to do its job properly, the Board should eliminate two-person panels, allow each panel to conduct fewer interviews per day, and give appropriate attention to each person appearing before them.<sup>160</sup> Although face-to-face interviews are best, use of video meeting applications that every office worker in the nation has become familiar with since 2020 could dramatically increase the Board's interview capacity in times of emergency. Adopting this technology would allow each member to participate from a convenient place, obviating the need for long drives and packed schedules. But there is a barrier to adopting this technology: parole files exist only on paper, not in digital form. Digitizing them—a step long overdue to bring the parole system up to date—is therefore a crucial step to allow members to participate remotely in video interviews.

Process improvements are not all that is needed. Many older people, who are presumably more medically vulnerable because of their age, have yet to reach the minimum term of their indeterminate sentence, so they are not even eligible for parole. Two bills introduced in the New York State legislature in recent years aim to make parole more accessible for people who have already served many years in prison. The Fair and Timely Parole Act would require parole release of eligible persons absent a showing that there is a current, unreasonable risk that the person would re-offend and that this risk could not be mitigated by parole supervision.<sup>161</sup> And the Elder Parole Act would provide for parole consideration for anyone aged 55 or older who has served at least fifteen years of their sentence.<sup>162</sup>

A parole board that grants parole to only about 40 percent of the people who come before it, in the midst of a pandemic that hit jails and prisons especially hard, is a board that has a cramped and defensive view of parole. Other states have seen fit to release more people to parole in recent years: New York's neighbors, Pennsylvania and Connecticut, had grant rates of 56 and 61 percent, respectively, in 2020.<sup>163</sup> A grant of parole ought to be an easy decision whenever an eligible person has shown



evidence of rehabilitation since the offense. When infectious disease is stalking the close quarters of prisons across the state, the balance should shift further in favor of release, especially for those who are elderly or medically vulnerable.

## RECOMMENDATIONS

1. The Parole Board should eliminate two-person parole panels and ensure that all interviews are conducted by three members.
2. The Parole Board should have all parole candidates' records digitized, including their prison and parole files, and create a system so that family members, advocates, attorneys and other relevant parties can electronically submit materials.
3. Parole Board members should use a video conferencing application that allows them to conduct hearings from any location when medical or other emergency necessitates it.
4. The state legislature and the governor should enact legislation, such as the Fair and Timely Parole Act and the Elder Parole Act, providing a more meaningful parole review process and an opportunity for parole to those over age 55 who have served at least 15 years.

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## Although legislative changes to the system for adjudicating parole violations made a critical difference, DOCCS still unnecessarily incarcerated many people during the pandemic merely for violating technical parole rules.

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Post-prison community supervision—whether called parole for someone with an indeterminate sentence or post-release supervision for someone with a determinate sentence—is a time when people attempt to re-establish family connections, housing, and employment, while avoiding further legal entanglement. The pandemic created massive social and economic instability, increasing the chances that a person would run afoul of technical parole rules such as the mandates to report life changes and maintain stable employment and housing. In 2021, New York enacted historic legislation, commonly known as the Less Is More Act, ending the mandatory incarceration that used to flow from an alleged violation of such rules. But in the preceding months, state parole officers continued sending people to jail, although at a reduced rate, for alleged parole violations that were not new crimes. Once jailed, these people found their cases often stalled, as parole officers and hearing officers employed by the state failed to move proceedings forward with the urgency that the crisis demanded.

Before the reforms of Less Is More, which was enacted in September 2021 and took full effect in March 2022, a warrant for an alleged parole violation typically led to months of incarceration, even before the matter was adjudicated.<sup>164</sup> As the law stood in 2020 and most of 2021, a person could be immediately 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 was adjudicated in the final hearing stage.<sup>165</sup> Neither release on recognizance nor bail was permitted.<sup>166</sup>

Enforcement of these provisions lay entirely within the discretion of DOCCS parole officers, who could have exercised that discretion to keep more people out of dangerous congregate settings while coronavirus infections spread. To some extent, state authorities did so. In its Community Supervision Legislative Report covering 2020, DOCCS stated: “In response to the COVID-19 public health emergency, DOCCS adopted several temporary operational

policies which resulted in a significant decrease in warrant issuance, cases processed for parole violations and returns to prison during 2020.”<sup>167</sup> Despite the decrease that DOCCS called “significant,” the report reveals that in 2020, parole officers across the state still issued 4,697 warrants for people not accused of any new crime. Of that number, 3,508 (41 percent of all warrants) were for “absconding”—a category that might encompass fleeing the state, but often involves errors such as moving to a new apartment without notifying a parole officer—and 1,189 (14 percent) were for other technical rule violations, such as missing meetings with parole officers.<sup>168</sup> In 2021, the year *Less Is More* was enacted and took partial effect, and also the year that saw both the Delta and Omicron waves of COVID-19 infections, DOCCS parole officers still issued 2,833 warrants (40 percent of all warrants) for absconding and 256 (4 percent) for technical violations.<sup>169</sup>

At the onset of the pandemic, before *Less is More* was passed, Governor Cuomo began to take steps to reduce the number of people held in jails on technical parole violations. On March 27, 2020, he announced that up to 1,100 people in local jails held on alleged technical parole violations statewide would be released and restored to community supervision.<sup>170</sup> But despite exponential growth in COVID-19 cases in late March and early April 2020, these releases proceeded slowly: as of April 9, only about 200 people accused of technical parole violations had been released from New York City jails, roughly half of the number Cuomo and DOCCS estimated in March.<sup>171</sup> As of late May 2020, only 790 of the estimated 1,100 people had been released from jails statewide.<sup>172</sup>

In New York City jails, the incarceration of people accused of technical parole violations intersected with pandemic quarantine procedures in a particularly perverse manner that resulted in even further prolonged and unnecessary incarceration. Under the pre-*Less Is More* provisions still in effect through the fall of 2021, people accused of such violations were entitled to a preliminary hearing within 15 days, which created an opportunity for

release. In the fall of 2021, however, city jail officials quarantined any person in custody who was exposed to another person who tested positive, even if the exposed person was asymptomatic.<sup>173</sup> Such people were moved to “Asymptomatic Exposed” housing units, which proliferated across the jails during those months.<sup>174</sup> Many people held on alleged parole violations found themselves in these units. DOCCS parole officers took the position that preliminary hearings could not be scheduled for anyone in quarantine in an Asymptomatic Exposed unit, even though by September 2021 videoconference booths were in place in all city jails.<sup>175</sup> The Legal Aid Society’s parole revocation defense attorneys, representing people stuck in jail far beyond 15 days without preliminary hearings, challenged the parole officers’ inaction with a *habeas corpus* petition. After a fact-finding hearing in November, a judge issued a writ of *habeas corpus*, holding that quarantine was no bar to proceeding with the preliminary hearings.<sup>176</sup> That relief, however, came too late for many people who were denied their opportunity for timely release and remained trapped in dangerous jails during a critical phase of the pandemic.

Once enacted, the *Less Is More* reforms took effect in stages.<sup>177</sup> After Governor Hochul signed the law on September 17, 2021, releases began for people who had been jailed for sustained technical violations before the law’s enactment.<sup>178</sup> It was none too soon: New York’s COVID-19 case numbers turned upward again in early November 2021, then skyrocketed in December.<sup>179</sup> By the end of January 2022, 843 people serving time assessments for technical parole violations, including 420 from New York City, had been released across the state under *Less Is More*.<sup>180</sup>

Thanks to enhanced due process protections and changes to penalties that took effect March 1, 2022, the reformed procedures treat technical and non-technical violations differently and take prison time off the table when less serious technical violations are sustained.<sup>181</sup> Now revocation proceedings may be commenced in one of two ways: with a notice of violation (NOV); or with the issuance of a warrant.<sup>182</sup> Allegations that include only technical charges must



be commenced through the NOV process, which requires DOCCS to order a person to report for a preliminary hearing rather than arresting them for the allegations.<sup>183</sup> If the allegations involve non-technical charges, it is in DOCCS's discretion to commence a proceeding by NOV.<sup>184</sup> When a proceeding is commenced by NOV, the person remains at liberty during the revocation process.<sup>185</sup> A warrant may now be issued for technical charges only when a person fails to follow the notice of violation process.<sup>186</sup>

When a revocation proceeding commences by warrant, the person is entitled to a recognizance hearing in criminal court within 24 hours of the execution of the warrant.<sup>187</sup> If, after that hearing, a judge orders the person held pending adjudication, a preliminary hearing must take place within five days, and a final hearing within 30 days after that.<sup>188</sup> When a hearing officer sustains any kind of violation, the law directs them to impose the least restrictive reasonable sanction.<sup>189</sup>

Before Less Is More, DOCCS judicial hearing officers, responsible for deciding whether the conditions of

parole were violated, and if so, what consequences were to follow, also failed to curtail re-incarceration at a scale the public health crisis demanded. In 2020, judicial hearing officers ordered 53 percent of people whose parole violation charges were sustained back to prison.<sup>190</sup> Among those who were ordered back to prison in 2020, 85 percent did not have a new conviction, but had violated one or more conditions of their parole.<sup>191</sup> Less than 32 percent of people whose parole violation charges were sustained were allowed to return to community supervision that year.<sup>192</sup>

## RECOMMENDATIONS

During an infectious disease outbreak:

- DOCCS should commence all parole revocation proceedings by notice of violation. If DOCCS refuses to do so, Criminal Court judges should impose non-monetary conditions rather than remand in revocation proceedings.
- Hearing officers should refrain from imposing incarceratory time assessments when parole violation charges are sustained.

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## Shortcomings in New York's laws on medical parole made it an ineffective tool for decarceration during the pandemic.

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**M**edical parole might appear, at first glance, to be a viable way to release people vulnerable to disease and reduce population density in congregate spaces.<sup>193</sup> But New York law proved too narrow, and DOCCS procedures too cumbersome, to allow for release in significant numbers during the COVID-19 pandemic. From March through December 2020, DOCCS received 1,049 requests for medical parole, a dramatic increase from the prior average of around 130 per year.<sup>194</sup> The parole board granted medical parole to just five people in the first eight months of the pandemic, and eventually granted it to 14 people in 2020.<sup>195</sup> In 2021, 21 people received medical parole.<sup>196</sup>

The tiny number of people released is largely attributable to the structure of New York's medical parole provisions. New York Executive Law § 259-r empowers the Parole Board to release people to medical parole once they have been certified by DOCCS as "suffering from a terminal condition, disease or syndrome and to be so debilitated or incapacitated as to create a reasonable probability that [they are] physically or cognitively incapable of presenting any danger to society."<sup>197</sup> This provision was enacted in 1992 in response to the AIDS epidemic.<sup>198</sup> Another section of the same law, added in 2009, similarly allows parole release of people suffering from a "significant and permanent non-

terminal condition, disease or syndrome,” who must also be so debilitated or incapacitated that they probably do not present any danger to society.<sup>199</sup> In 2015, the law was amended to give the commissioner the lead role in granting medical parole for those with terminal illnesses serving sentences for nonviolent offenses, allowing people to be released with the consent of the parole board chair, while bypassing the board interview and other steps in the board review process.<sup>200</sup>

Medical parole was conceived as a way to allow people with very short life expectancy to leave prison and spend their little remaining time among loved ones. The 2009 expansion broadened the scope to people who were not expected to die shortly. But neither provision functions as a way to protect vulnerable people in the midst of an infectious disease outbreak. The experience of people applying for medical parole during the COVID-19 pandemic underscores this point. And a spokesperson for the parole board left no room for doubt: “As the law is currently written, concern that an individual with pre-existing conditions may contract COVID and be at an increased risk for a severe and possibly fatal outcome, is not a basis for medical parole.”<sup>201</sup>

The statute also includes bars and time requirements that further limit the possibility of release on medical parole. Anyone serving a sentence for a sex offense, manslaughter, or murder in the second degree is ineligible until they have served at least half their minimum term, for those with indeterminate sentences, or half their determinate sentence.<sup>202</sup> People serving sentences for murder in the first degree or attempt or conspiracy to commit murder in the first degree are simply barred from release on medical parole.<sup>203</sup> This bar pre-empts any consideration of a person’s diagnosis, prognosis, debilitation, or incapacitation.

For people who are not excluded, the controlling DOCCS directive dictates a cumbersome five-step process that provides multiple opportunities for attrition. First, the person or someone acting on their behalf sends a request to the commissioner or to

the Division of Health Services to be considered.<sup>204</sup> The commissioner then has the discretion to order a medical evaluation and discharge plan. The third step is a medical evaluation, which must be done by a DOCCS physician, or one DOCCS hires, or one working at a hospital DOCCS uses for treatment of people in custody. Next, a report on the evaluation is sent to the Chief Medical Officer of DOCCS, who determines whether the person’s medical status conforms to the criteria for medical parole (“suffering from a terminal condition, disease or syndrome and . . . so debilitated or incapacitated as to create a reasonable probability that [they are] physically or cognitively incapable of presenting any danger to society”) and advises the commissioner accordingly. Next the Medical Parole Coordinator notifies the Office of Victim Assistance, which in turn tells the Medical Parole Coordinator if there is a registered victim in the person’s case. The penultimate step is the commissioner’s certification that the person is eligible for medical parole. If the commissioner so certifies, the person’s application goes to the parole board for consideration.<sup>205</sup>

During the pandemic, some states took action to allow more medically based releases from prison. For example, the Minnesota Department of Corrections set up a COVID conditional medical release program and invited people who believed themselves to be vulnerable to COVID to apply.<sup>206</sup> Each application had two reviews: medical, based on CDC guidelines for vulnerability to COVID, and public safety and housing.<sup>207</sup> The program’s authorizing statute required that a person granted medical release pose “no threat to the public.”<sup>208</sup> The department released 157 of 2,292 applicants (6.9 percent, as compared to New York’s 1.7 percent) before the program was ended in May 2021.<sup>209</sup>

Even without putting in place special programs, some states far outpaced New York in medical parole releases.<sup>210</sup> For example, Massachusetts, with a prison population about one-quarter the size of New York’s, released more people on medical parole (31) than New York (18) in 2020.<sup>211</sup> Notably, the law governing medical parole in Massachusetts does not exclude

anyone, no matter their crime of conviction, from consideration for medical parole.<sup>212</sup>

## **RECOMMENDATIONS**

- The state legislature and governor should amend Executive Law sections 259-r and 259-s to remove the bars to medical parole based on crime of conviction and the minimum time served requirement for certain crimes.
- The state legislature and governor should amend Executive Law sections 259-r and 259-s to allow medically vulnerable people to qualify for medical parole, without requiring that they suffer from a terminal illness or debilitating or incapacitating condition.
- During an infectious disease outbreak, the DOCCS commissioner and the parole board should use medical parole to move people vulnerable to infectious disease out of prisons and into community supervision.

## References

1. Brad Lander and Ritchie Torres, Doctors in NYC Hospitals, Jails, and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus, Medium, March 12, 2020, <https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-to-take-more-aggressive-action-to-fb75f0b131c2>
2. The Vera Institute of Justice, Community Oriented Correctional Health Services, Guidance for preventive and responsive measures to coronavirus for jails, prisons, immigration detention and youth facilities, <https://www.vera.org/publications/coronavirus-guidance-for-criminal-and-immigration-legal-systems>
3. Id.
4. <https://twitter.com/RossMacDonaldMD/status/1240455796946800641?s=20>
5. Id.
6. New York City Board of Correction, letter to Darcel Clark, et al., March 21, 2020, [https://www.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf?mc\\_cid=e78283efad&mc\\_eid=eee073305c](https://www.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf?mc_cid=e78283efad&mc_eid=eee073305c)
7. Id.
8. United Nations Office of the High Commissioner for Human Rights, Urgent action needed to prevent COVID-19 “rampaging through places of detention,” March 25, 2020, <https://www.ohchr.org/en/statements/2020/03/urgent-action-needed-prevent-covid-19-rampaging-through-places-detention>
9. Id.
10. Mary Bassett, Eric Gonzalez, and Darren Walker, Andrew Cuomo, Stop a Coronavirus Disaster: Release People From Prison, The New York Times, March 30, 2020, <https://www.nytimes.com/2020/03/30/opinion/nyc-prison-release-covid.html?smid=url-share>
11. Id.
12. Matthew J. Akiyama, Anne C. Spaulding, and Josiah D. Rich, Flattening the Curve for Incarcerated Populations—Covid-19 in Jails and Prisons, The New England Journal of Medicine, May 28, 2020, <https://www.nejm.org/doi/pdf/10.1056/NEJMp2005687?articleTools=true>
13. Id.
14. Id.
15. See, e.g., Wendy Sawyer, Our new fact sheet illustrates what’s in store if prisons and jails don’t decarcerate now, Prison Policy Initiative, May 8, 2020, <https://www.prisonpolicy.org/blog/2020/05/08/covid19-resource/>; The Vera Institute of Justice, We must urgently do more to address COVID-19 behind bars and avoid mass infection and death: Guidance for Attorney General Barr, governors, sheriffs, and corrections administrators, May 11, 2020, <https://www.vera.org/downloads/publications/coronavirus-guidance-crisis-behind-bars.pdf>
16. Carol Shapiro, Opinion: Cuomo’s Next Task as a National Leader is to Spare Prisoners from COVID-19, City Limits, April 20, 2020, <https://citylimits.org/2020/04/20/opinion-cuomos-next-task-as-a-national-leader-is-to-spare-prisoners-from-covid-19/>
17. Id.
18. Id.
19. National Academies of Science, Engineering, Medicine (NASEM), Decarcerating Correctional Facilities During COVID-19: Advancing Health, Equity, and Safety, 2020 <https://doi.org/10.17226/25945>.
20. Id.
21. Eric Reinhart and Daniel L. Chen, Carceral-community epidemiology, structural racism, and COVID-19 disparities, Proceedings of the National Academy of Sciences, May 10, 2021, <https://www.pnas.org/doi/10.1073/pnas.2026577118>
22. Id.
23. Gregory Hooks and Wendy Sawyer, Mass Incarceration, COVID-19, and Community Spread, Prison Policy Initiative, December 2020, <https://www.prisonpolicy.org/reports/covidspread.html>
24. D.P. Do and R. Frank, Unequal burdens: assessing the determinants of elevated COVID-19 case and death rates in New York City’s racial/ethnic minority neighbourhoods, Journal of Epidemiology and Community Health 2021; Vol. 75: pp. 321–326, <https://jech.bmj.com/content/75/4/321>
25. Id.
26. Maria Polyakova, et al., Racial Disparities in Excess All-Cause Mortality During the Early COVID-19 Pandemic Varied Substantially Across States, Health Affairs, Feb. 2021, pp. 307–316, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7996479/>

## References

27. Statement of The Legal Aid Society, Brooklyn Defender Services, Bronx Defenders, New York County Defender Services, and The Neighborhood Defender Service of Harlem, March 12, 2020, available at [03-12-20-Joint-Defender-Statement-Calling-for-Immediate-Release-of-Vulnerable-Incarcerated-New-Yorkers-in-Response-to-Coronavirus.pdf](#)
28. Chelsia Rose Marcius, Rikers Island Inmate Tests Positive for COVID-19, New York Daily News, March 18, 2020, <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzmqwrmuevzz3y-story.html>
29. Samantha Plummer, et al., Life During COVID for Court-Involved People, RSF: The Russell Sage Foundation Journal of the Social Sciences, Vol. 9, Issue 3, 1 May 2023 at 240, available at <https://www.rsjournal.org/content/9/3/232>
30. New York City Board of Correction COVID-19 data, <https://www1.nyc.gov/site/boc/covid-19.page>; NYC Open Data, COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths, <https://data.cityofnewyork.us/Health/COVID-19-Daily-Counts-of-Cases-Hospitalizations-an/rc75-m7u3/data>
31. New York City Board of Correction COVID-19 data, <https://www1.nyc.gov/site/boc/covid-19.page>; NYC Open Data, COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths, <https://data.cityofnewyork.us/Health/COVID-19-Daily-Counts-of-Cases-Hospitalizations-an/rc75-m7u3/data>; New York State Statewide COVID-19 Testing, [https://health.data.ny.gov/Health/New-York-State-Statewide-COVID-19-Testing-by-Age-G/m5zn-wsib/data\\_preview](https://health.data.ny.gov/Health/New-York-State-Statewide-COVID-19-Testing-by-Age-G/m5zn-wsib/data_preview)
32. Id.
33. Blau, Reuven, and Rosa Goldensohn, First Rikers COVID Death Was Jailed on Technicality, The City, April 6, 2020, <https://www.thecity.nyc/2020/4/6/21210370/first-rikers-virus-positive-fatality-was-jailed-on-technicality>
34. Andrew Martinez, Joanna Weill, Lina Villegas, Camille Wada, Michael Rempel, and Tia Pooler, The Will to Decarcerate: COVID-19 and New York City's Early Release (6-A) Program, Center for Court Innovation, March 2022, available at <https://www.courtinnovation.org/publications/early-release-2022>, p. 10 ("Participants described a range of emotions that reflected a sense of desperation, reporting that they felt anxious, confused, depressed, angry, fearful, and helpless.")
35. Id., pp. 8-9.
36. Samantha Plummer, et al., Life During COVID for Court-Involved People, RSF: The Russell Sage Foundation Journal of the Social Sciences, Vol. 9, Issue 3, 1 May 2023 at 240, available at <https://www.rsjournal.org/content/9/3/232>
37. Id.
38. Id. pp. 16-17.
39. See, e.g. D.P. Do and R. Frank, Unequal burdens: assessing the determinants of elevated COVID-19 case and death rates in New York City's racial/ethnic minority neighbourhoods, Journal of Epidemiology and Community Health 2021; Vol. 75: pp. 321-326, <https://jech.bmj.com/content/75/4/321>
40. Sarah Monaghan, Michael Rempel, and Tao Lin, Racial Disparities in the Use of Jail Across New York City, 2016-2021 (Data Collaborative for Justice at John Jay College, 2023) p.8, available at <https://datacollaborativeforjustice.org/work/racial-justice/racial-disparities-in-the-use-of-jail-across-new-york-city-2016-2021/>
41. New York City Department of Correction, Uniform Personnel Demographic Data report to the New York City Council, April 2022, available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2022/04/Department-of-Correction-%E2%80%93-Uniform-Members-Demographic-Report-1-of-1.pdf>
42. D.P. Do and R. Frank, Unequal burdens, *supra*, at 323.
43. Id.
44. Because the relationship between jail infections and community spread has not been quantified, attributing a specific death toll to infections in the city jails is impossible. As of the time Correctional Health Services stopped releasing weekly COVID-19 reports, in mid-March 2022, it had counted four deaths from the disease in DOC custody, although it noted that this number did not capture those who were diagnosed and treated in custody but may have died after release. New York City Board of Correction, Weekly COVID-19 Update, March 11, 2022, <https://www.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-03-05-03-11-22.pdf>
45. Robert Harding, DOCCS: Inmates in 22 NY prisons tested positive for COVID-19, The Citizen (Auburn, NY) April 21, 2020, [https://auburnpub.com/news/local/govt-and-politics/doccs-inmates-in-22-ny-prisons-tested-positive-for-covid-19/article\\_075b4051-d317-57fd-a97d-d16ae17694f8.html](https://auburnpub.com/news/local/govt-and-politics/doccs-inmates-in-22-ny-prisons-tested-positive-for-covid-19/article_075b4051-d317-57fd-a97d-d16ae17694f8.html)
46. Id.

## References

47. Id.
48. New York State Department of Correction and Community Supervision, Incarcerated Individuals Covid-19 Report by Housing Facility as of April 19, 2020, on file with the Legal Aid Society.
49. Michael D. Shear, et al., The Lost Month: How a Failure to Test Blinded the U.S. to Covid-19, *The New York Times*, March 28, 2020, <https://www.nytimes.com/2020/03/28/us/testing-coronavirus-pandemic.html?smid=url-share>; Jennifer B. Nuzzo and Emily N. Pond, Covid Vaccines Aren't Enough. We Need More Tests. *The New York Times*, March 12, 2021, <https://www.nytimes.com/2021/03/12/opinion/need-covid-tests.html?smid=url-share>
50. Allen Kim, "New York Is Producing Its Own Hand Sanitizer Due to Shortages Caused by the Coronavirus Outbreak." *CNN*, 9 Mar. 2020, [www.cnn.com/2020/03/09/health/coronavirus-ny-hand-sanitizer-trnd/index.html](http://www.cnn.com/2020/03/09/health/coronavirus-ny-hand-sanitizer-trnd/index.html).
51. Blau, Reuven. "State Prisoners Punished for Masks as City Jails OK Them." *The City*, 7 Apr. 2020, [www.thecity.nyc/coronavirus/2020/4/3/21211891/state-prisoners-punished-for-wearing-masks-as-city-jails-ok-them](http://www.thecity.nyc/coronavirus/2020/4/3/21211891/state-prisoners-punished-for-wearing-masks-as-city-jails-ok-them).
52. The Legal Aid Society, Pandemic in Prison, <https://legaidsoc.shinyapps.io/pandemicinprison/>
53. Id.
54. Id.
55. Id. Higher population density is defined in the report as population above 60 percent of capacity.
56. New York State Department of Correction and Community Supervision reports, downloaded as pdf's from the DOCCS website and stored by The Legal Aid Society.
57. New York State Department of Correction and Community Supervision, Incarcerated Individuals Covid-19 Tests by Reported Facility, Dec. 31, 2020, downloaded from the DOCCS website and stored by The Legal Aid Society.
58. NYS DOCCS, Incarcerated Individuals Covid-19 Tests By Reported Facility as of March 31, 2021, downloaded from DOCCS website and stored by The Legal Aid Society.
59. NYS DOCCS, Incarcerated Individuals Covid-19 Tests By Reported Facility, March 1, 2022, downloaded from DOCCS website and stored by The Legal Aid Society.
60. NYS DOCCS, Incarcerated Individuals Covid-19 Tests By Reported Facility, Dec. 29, 2022, downloaded from DOCCS website and stored by The Legal Aid Society.
61. Michele Deitch and William Bucknall, Hidden Figures: Rating the COVID Data Transparency of Prisons, Jails, and Juvenile Agencies, Lyndon B. Johnson School of Public Affairs, March 2021, page 22. <https://repositories.lib.utexas.edu/handle/2152/85094>
62. Id. at p. 51.
63. UCLA Law COVID Behind Bars Data Project, <https://uclacovidbehindbars.org/>
64. Id.
65. UCLA Law COVID Behind Bars Data Project, Custodial Mortality Project data set, available at: [https://github.com/uclalawcovid19behindbars/custodial\\_mortality\\_project/blob/main/Data/Output/prison\\_agency\\_counts.csv](https://github.com/uclalawcovid19behindbars/custodial_mortality_project/blob/main/Data/Output/prison_agency_counts.csv)
66. New York State Department of Corrections and Community Supervision, Under Custody Report: Profile of Under Custody Population as of January 1, 2021 at 3, [under-custody-report-for-2021.pdf](https://www.ny.gov/system/operations/2021/01/under-custody-report-for-2021.pdf) (ny.gov); United States Census Bureau, Profile of General Population and Housing Characteristics, New York, 2020, <https://doccs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2021.pdf>
67. Joseph Goldstein and Jesse McKinley, Coronavirus in N.Y.: Manhattan Woman Is First Confirmed Case in State, *The New York Times*, March 1, 2020, <https://www.nytimes.com/2020/03/01/nyregion/new-york-coronavirus-confirmed.html?smid=url-share>
68. Fiscal Year 2020 New York State executive budget, public protection and general government, Article VII legislation, Part AA, p. 182 et seq., <https://www.budget.ny.gov/pubs/archive/fy20/exec/artvii/ppgg-artvii.pdf>.
69. Id.
70. Id.; see also New York Criminal Procedure Law section 150.20(1)(a).
71. Fiscal Year 2020 New York State executive budget, public protection and general government, Article VII legislation, Part AA, p. 182 et seq., <https://www.budget.ny.gov/pubs/archive/fy20/exec/artvii/ppgg-artvii.pdf>.
72. "Closing the Chapter on Rikers," *A More Just New York City*, Oct. 2019, [perma.cc/3WJ8-26SZ](https://perma.cc/3WJ8-26SZ). Accessed March 16, 2023. No jail for Staten Island is planned.



## References

73. The Vera Institute of Justice, People in Jail in New York State, [https://greaterjusticenyny.vera.org/nysjail/?plotly\\_hover-A=&plotly\\_afterplot-A=%22pop\\_graph%22&daterangeperiod\[1\]=1.%202019%20\(1/1/2019-12/31/2019\)&daterangeperiod\[2\]=2.%20Post-bail%20reform%20\(1/1/2020-3/16/2020\)&daterangeperiod\[3\]=3.%20Post-COVID%20\(3/17/2020-7/1/2020\)&daterangeperiod\[4\]=4.%20Post-bail%20reform%20amendments%20\(7/2/2020-9/30/2020\)&daterangeperiod\[5\]=5.%20Q4%202020%20\(10/1/2020-12/31/2020\)&labels=Number&displayrace=No&period=Monthly&subset=&severities=All%20Charge%20Severities&aces=All%20Races/Ethnicities&counties=Statewide&metricTopic=Jail%20Population%20-%20Aggregated&daterange2=January%202018&daterange1=January%202018&daterange2\\_overview=February%202020&daterange1\\_overview=October%202019&counties\\_overview=New%20York%20City&panel=Overview](https://greaterjusticenyny.vera.org/nysjail/?plotly_hover-A=&plotly_afterplot-A=%22pop_graph%22&daterangeperiod[1]=1.%202019%20(1/1/2019-12/31/2019)&daterangeperiod[2]=2.%20Post-bail%20reform%20(1/1/2020-3/16/2020)&daterangeperiod[3]=3.%20Post-COVID%20(3/17/2020-7/1/2020)&daterangeperiod[4]=4.%20Post-bail%20reform%20amendments%20(7/2/2020-9/30/2020)&daterangeperiod[5]=5.%20Q4%202020%20(10/1/2020-12/31/2020)&labels=Number&displayrace=No&period=Monthly&subset=&severities=All%20Charge%20Severities&aces=All%20Races/Ethnicities&counties=Statewide&metricTopic=Jail%20Population%20-%20Aggregated&daterange2=January%202018&daterange1=January%202018&daterange2_overview=February%202020&daterange1_overview=October%202019&counties_overview=New%20York%20City&panel=Overview)
74. Letter Re: Public Health Concerns on NYPD Spread of the COVID-19 Virus, April 23, 2020, available at <https://www.changethenypd.org/releases/reduce-policing-slow-spread-covid-19-medical-professionals-healthcare-advocates-and-elected>
75. Id.
76. Id. (citing Andrea M. Luna, et al., Police Planning for an Influenza Pandemic: Case Studies and Recommendations from the Field, Critical Issues in Policing Series, Police Executive Research Forum 10 (Oct. 2007), [https://www.policeforum.org/assets/docs/FreeOnline\\_Documents/Public\\_Health/police%20planning%20for%20an%20influenza%20pandemic%20-%20case%20studies%20and%20recommendations%20from%20the%20field%202007.pdf](https://www.policeforum.org/assets/docs/FreeOnline_Documents/Public_Health/police%20planning%20for%20an%20influenza%20pandemic%20-%20case%20studies%20and%20recommendations%20from%20the%20field%202007.pdf))
77. Id. (citing Thomas Tracy, NYPD commissioner says ‘no intention’ of reducing arrests amid coronavirus crisis, N.Y. Daily News (March 21, 2020), <https://www.nydailynews.com/2020/03/26/policing-in-a-pandemic-why-cant-the-nypd-manage-to-dial-back-broken-windows-enforcement-even-now/>; Josmar Trujillo, Policing in a pandemic: Why can't the NYPD manage to dial back broken windows enforcement even now?, N.Y. Daily News (March 26, 2020).
78. Thomas Tracy, NYPD commissioner says “no intention” of reducing arrests amid coronavirus crisis, N.Y. Daily News, March 21, 2020, available at Perma | <https://www.nydailynews.com/2020/03/21/nypd-commissioner-says-no-intention-of-reducing-arrests-amid-coronavirus-crisis/>
79. Letter Re: Public Health Concerns on NYPD Spread of the COVID-19 Virus, supra.
80. Id., citing @NYPDnews, Twitter (April 19, 2020). <https://twitter.com/NYPDnews/status/1251992638846390275> (Infection rate based on the 4,371 NYPD employees diagnosed with COVID-19 out of a police force of 36,000 employees). By the end of May 2020, 11% of NYPD personnel had confirmed COVID diagnoses. NYPD NEWS (@NYPDnews), Twitter (May. 29, 2020, 6:30 PM), <https://twitter.com/NYPDnews/status/1266497280825274368>
81. Id. Aside from the risk of transmission, another negative consequence of police enforcing social distancing became clear in May 2020, when the Legal Aid Society issued a report on racial disparities in COVID-19 policing, which suggested that complaints about failures of social distancing were much more likely to lead to charges and arrests in majority Black or Hispanic precincts. LAS\_Racial-Disparities-in-NYPDs-COVID-19-Policing\_5.20.20\_5PM\_FINAL.pdf <https://legalaidnyc.org/racial-disparities-in-nypds-covid-19-policing/>
82. See Complaint in Charles Douglas, et. al. v. City of New York, Supreme Court, New York County, Index 153606/2021, available at <https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=xwjepZ09inTXaI5MZy/NLw==&display=all&courtType=New%20York%20County%20Supreme%20Court&resultsPageNum=1>. This lawsuit, which remains pending as of the time of publication of this report, alleges a pattern of NYPD failure to follow the legal requirement to issue appearance tickets in lieu of custodial arrests for low-level offenses.
83. New York Criminal Procedure Law section 150.20(1)(a), amended by Laws of 2019, ch. 59, pt. JJJ, § 1-a to read, in relevant part: “Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant . . . he shall . . . instead issue to and serve upon such person an appearance ticket.” (emphasis added).
84. Before the amendment, CPL 150.20(1) read: “Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant . . . he may . . . instead issue to and serve upon such person an appearance ticket.” (emphasis added).
85. Compare Laws of 2019, ch. 59, pt. JJJ, § 1-a with New York City Police Department Patrol Guide, Procedure 208-27, Desk Appearance Ticket – General Procedure, [https://www.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide2.pdf](https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide2.pdf)
86. As of April 2021, NYPD had not updated its Patrol Guide to reflect section 150.20’s requirement to issue appearance tickets in lieu of arrest. See also, Douglas complaint, supra.
87. The Legal Aid Society is presently challenging NYPD’s interpretation of CPL 150.20 in Douglas.
88. New York State Office of Court Administration data, provided to the Data Collaborative for Justice at John Jay College and

## References

- shared with The Legal Aid Society. An Adjournment in Contemplation of Dismissal is essentially a delayed dismissal, conditioned on the person avoiding a new offense for six months. Other conditions, such as a few days of community service, can be imposed. See New York Criminal Procedure Law section 170.55.
89. New York State Office of Court Administration data, provided to the Data Collaborative for Justice at John Jay College and shared with The Legal Aid Society. <https://app.powerbigov.us/view?r=eyJrjoiMGQwYWFjMmYtNTE0Ni00YmZhLTg4MmYtMzczYjVzMzYxNjM5liwidCl6ljM0NTZmZTkylWNiZDEtNDA2ZC1iNWEzLTUzNjRiZWMwYTgzMyJ9>
  90. Rempel, M. & Rodriguez, K. (2019). Bail Reform in New York: Legislative Provisions and Implications for New York City. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-reform-NYS>.
  91. Fiscal Year 2020 New York State executive budget, public protection and general government, Article VII legislation, Part AA, p. 182 et seq., <https://www.budget.ny.gov/pubs/archive/fy20/exec/artvii/ppgg-artvii.pdf>.
  92. Id.
  93. Michael Rempel and Joanna Weill, One Year Later: Bail Reform and Judicial Decision-Making in New York City, Center for Court Innovation, November 2020, [https://www.courtinnovation.org/sites/default/files/media/document/2021/One\\_Year\\_Bail\\_Reform\\_NYS.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf) (When this report was issued The Center for Justice Innovation was called The Center for Court Innovation.)
  94. Id.
  95. Id.
  96. New York City Mayor's Office of Criminal Justice, Weekly Update: New York City Jail Population Reduction in the Time of COVID-19, April 30, 2020, <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/05/COVID-factsheet-APRIL-30-2020.pdf>
  97. Id.
  98. Data analysis by The Legal Aid Society, based on New York City Board of Correction data, available at <https://www1.nyc.gov/site/boc/covid-19.page>
  99. See New York City Criminal Justice Agency, "Pretrial Release Dashboard" <https://www.nycja.org/pretrial-release-dashboard>; Mayor's Office of Criminal Justice, How many people with open criminal cases are re-arrested? (December 2021), <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/12/Pretrial-Docketed-Rearrest-Contextual-Overview-December-2021-Update.pdf>, p. 29, showing misdemeanor re-arrest rates generally lower in 2020 as compared to 2019 and felony re-arrest rates fluctuating by less than one percent between the same months in 2019 and 2020; Vital City, What to Do About Closing Rikers, September 2021, <https://static1.squarespace.com/static/5fcea962a1b4d771ad256fcc/t/615cbf330a0f035d9626059e/1633468218037/What-to-Do-About-Closing-Rikers.pdf>, p. 25, showing arrest rates for people with pending cases up just seven tenths of one percent from 2019 to 2020; The Data Collaborative for Justice at John Jay College, Does New York's Bail Reform Law Impact Recidivism? A Quasi-Experimental Test in New York City, March 2023, <https://datacollaborativeforjustice.org/work/bail-reform/does-new-yorks-bail-reform-law-impact-recidivism-a-quasi-experimental-test-in-new-york-city/>, finding that eliminating bail for most misdemeanor and nonviolent felony charges reduced recidivism overall; The Data Collaborative for Justice at John Jay College, Examining the System-Wide Effect of Eliminating Bail in New York City: A Controlled-Interrupted Time Series Study, October 2023, [https://datacollaborativeforjustice.org/wp-content/uploads/2023/10/cits\\_final.pdf](https://datacollaborativeforjustice.org/wp-content/uploads/2023/10/cits_final.pdf), finding that eliminating discretion to set bail for select charges, mostly misdemeanors and non-violent felonies, was not associated with a system-wide change in either two-year or pretrial recidivism in either direction.
  100. S. 7506A/9506B, 2020 Leg. Session <https://legislation.nysenate.gov/pdf/bills/2019/a9506b>
  101. Center for Court Innovation: One Year Later.
  102. Id.
  103. Id.
  104. New York City Comptroller Brad Lander, NYC Bail Trends Since 2019, March 2022, <https://comptroller.nyc.gov/reports/nyc-bail-trends-since-2019>. In the second quarter of 2020 median cash bail in New York City was \$5,000 for non-violent felonies and \$10,000 for violent felonies. One Year Later, p. 16, [https://www.innovatingjustice.org/sites/default/files/media/document/2021/One\\_Year\\_Bail\\_Reform\\_NYS.pdf](https://www.innovatingjustice.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf)
  105. Rempel and Weill, One Year Later, pp. 3, 7, 9.
  106. Lander, NYC Bail Trends.
  107. Id.
  108. NYC Open Data, COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths, <https://data.cityofnewyork.us/Health/COVID-19-Daily-Counts-of-Cases-Hospitalizations-an/rc75-m7u3/data>

## References

109. New York City Board of Correction Weekly COVID-19 Updates, <https://www.nyc.gov/site/boc/covid-19.page> and New York City Department of Health and Mental Hygiene data, <https://www.nyc.gov/site/doh/covid/covid-19-data.page>
110. *Id.*
111. NYC Open Data, COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths, <https://data.cityofnewyork.us/Health/COVID-19-Daily-Counts-of-Cases-Hospitalizations-an/rc75-m7u3/data>; New York State Department of Health, COVID-19: Positive Tests Over Time, by Region and County, <https://www.nyc.gov/site/doh/covid/covid-19-data.page>
112. NYC Open Data, COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths, *supra*.
113. New York City Board of Correction, Weekly COVID-19 Updates, <https://www.nyc.gov/site/boc/covid-19.page>.
114. New York City Board of Correction Weekly COVID-19 Updates, including data from New York City Correctional Health Services, <https://www.nyc.gov/site/boc/covid-19.page>; NYC Open Data, COVID-19 Daily Counts of Cases, Hospitalizations, and Deaths, *supra*.
115. *Id.*
116. New York City Board of Correction, Weekly COVID-19 Updates, *supra*.
117. New York Correction Law § 151.
118. New York Penal Law §70.20(2).
119. New York Correction Law § 151.
120. *Id.*
121. New York Correction Law § 150(4).
122. Andrew Martinez, Joanna Weill, Lina Villegas, Camille Wada, Michael Rempel, and Tia Pooler, The Will to Decarcerate: COVID-19 and New York City's Early Release (6-A) Program, Center for Court Innovation, March 2022, available at <https://www.courtinnovation.org/publications/early-release-2022>
123. *Id.*
124. *Id.*
125. New York City Mayor's Office of Criminal Justice, New York City Jail Population Reduction in the Time of COVID-19, May 25, 2020, at 1, <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/05/COVID-factsheet-MAY-25-2020.pdf>
126. *Id.* at 5.
127. *Id.* at 5.
128. Martinez, et al., The Will to Decarcerate at 4, *supra* note 34.
129. In one case known to The Legal Aid Society, a 32-year-old man was rejected for 6-A release because of an I-card, and he was forced to spend the remaining weeks left on his misdemeanor sentence in jail while the coronavirus spread. When his sentence expired, DOC released him early in the morning, and there was no police officer at the jail exit to pick him up. Thus the I-card had frustrated a public health goal without serving its purpose of facilitating the questioning of a witness or suspect.
130. Joint Defenders Letter to Governor Andrew Cuomo (April 3, 2020), available at <https://www.nacdl.org/getattachment/f79e1d0c-e816-46fa-998d-5016b274259b/joint-letter-to-gov-cuomo-on-reducing-ny-prison-populations-during-covid-19-pandemic-april-2020-.pdf>.
131. *Id.*
132. *Id.*
133. Ryan Tarinelli, New York Will Release More Nonviolent Offenders Amid Pandemic, Top Cuomo Aide Says, New York Law Journal, May 11, 2020, available at: <https://www.law.com/newyorklawjournal/2020/05/11/new-york-will-release-more-non-violent-offenders-amid-pandemic-top-cuomo-aide-says/>
134. E. Ann Carson, Melissa Nadel, and Gerry Gates, Impact of COVID-19 on State and Federal Prisons, March 2020–February 2021, Bureau of Justice Statistics, <https://bjs.ojp.gov/content/pub/pdf/icsfp2021.pdf>
135. Mitchell, K., Laskorunsky, J., Bielenberg, N., Chin, L., & Wadsworth, M. (2022). Examining Prison Releases in Response to COVID: Lessons Learned for Reducing the Effects of Mass Incarceration. University of Minnesota Robina Institute of Criminal Law and Criminal Justice, p. 41. <https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2022-08/Corrected%20August%202022%20-%20Examining%20Prison%20Releases%20in%20Response%20to%20COVID%20-%20July%202022.pdf>

## References

136. Id.
137. Id.
138. Nick Reisman, New York Moves to Release Pregnant Inmates, SPECTRUM NEWS (Apr. 30, 2020), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2020/04/30/new-york-pregnant-inmate-release>
139. For people who had not already been granted a date for parole release, the ostensible statutory basis for release was New York Correction Law § 73(1), which provides that the commissioner of DOCCS—who is appointed by and serves at the pleasure of the governor—may transfer any person in prison to a “residential treatment facility” if the person will be eligible for community supervision within six months or has one year or less remaining to be served on their sentence. Transferring people to a “residential treatment facility,” even if their destination was actually a private home or a room provided by a social service organization, was a bureaucratic fiction that allowed release from prison without invoking the Governor’s clemency power.
140. The only people who did not need DOCCS approval for their post-release housing were those approaching the expiration dates of their post-release supervision (PRS), having been re-incarcerated after a violation of the terms of supervision, because after PRS was completed, they were fully discharged from their sentences.
141. Gross, Courtney. “Close to 20 Percent of NYC Hotels Are Housing the Homeless.” Spectrum News NY1, 25 June 2020, [www.ny1.com/nyc/all-boroughs/homelessness/2020/06/25/close-to-20-percent-of-nyc-hotels-are-housing-the-homeless](http://www.ny1.com/nyc/all-boroughs/homelessness/2020/06/25/close-to-20-percent-of-nyc-hotels-are-housing-the-homeless)
142. Governor Cuomo Grants Clemency to Three Individuals (June 17, 2020) <https://www.einpresswire.com/article/519677284/governor-cuomo-grants-clemency-to-three-individuals> (outlook.com)
143. Chelsea Siegal, Gov. Cuomo Grants Clemency to 21 Individuals, ABC News, Jan. 6, 2021, <https://www.news10.com/news/gov-cuomo-grants-clemency-to-21-individuals/>
144. Id.
145. Tim Meehan, Gov. Cuomo grants clemency to 10 people in his final days in office, WKBW, August 18, 2021, <https://www.wkbw.com/news/state-news/new-york-governor/gov-cuomo-grants-clemency-to-10-people-in-his-final-days-in-office>; AP, Cuomo gives clemency to 6, including Brink’s heist driver, August 23, 2021, <https://apnews.com/article/andrew-cuomo-nyc-state-wire-new-york-new-york-city-robbery-4d707d0fac73b5e2e1c6ae944a9357ee>
146. Id.
147. Press release, Governor Hochul Grants Clemency to 10 Individuals and Announces Formation of New Clemency Advisory Panel, December 24, 2021 <https://www.governor.ny.gov/news/governor-hochul-grants-clemency-10-individuals-and-announces-formation-new-clemency-advisory>
148. Id.
149. Id.
150. Id.
151. Id.
152. Jacob Kaye, While some clemency reforms quietly take shape, advocates look to Gov for more, Queens Daily Eagle, Nov. 16, 2022; press release, Governor Hochul grants clemency to Thirteen Individuals, December 21, 2022 <https://www.governor.ny.gov/news/governor-hochul-grants-clemency-thirteen-individuals>
153. New York State Department of Corrections and Community Supervision (DOCCS) Parole Board and Presumptive Release Dispositions (2020), [https://doccs.ny.gov/system/files/documents/2022/02/paroleboard-calendar-year-2020\\_0.pdf](https://doccs.ny.gov/system/files/documents/2022/02/paroleboard-calendar-year-2020_0.pdf).
154. New York State Department of Corrections and Community Supervision (DOCCS), Board of Parole Legislative Report 2022 at 4, <https://doccs.ny.gov/system/files/documents/2024/05/2022-parole-board-leg-report-final.pdf>
155. Id.
156. Id.
157. Carol Shapiro, I Joined the Parole Board to Make a Difference. Now I Call It ‘Conveyor Belt Justice,’ The Marshall Project, June 17, 2022, <https://www.themarshallproject.org/2022/06/17/i-joined-the-parole-board-to-make-a-difference-now-i-call-it-conveyor-belt-justice>
158. Id.
159. Parole Preparation Project, Release Aging People in Prison Campaign, New York State Parole Board: Failures in Staffing and Performance, p. 9 (Aug. 2018), <https://mronline.org/2018/08/22/new-york-state-parole-board-failures-in-staffing-and-performance/>

## References

160. In a 2019 report, the New York State Bar Association recommended that the Parole Board have at least 30 members. The report's authors expressed concern that, with a workload of 10,000 to 12,000 parole interviews per year, the Board was unable to give each person the time and attention that such a critical decision deserves. New York State Bar Association, Initial Report of the Task Force on the Parole System, November 2019, <https://nysba.org/app/uploads/2019/12/NYSBA-Task-Force-on-the-Parole-System-Final-Report.pdf> Advocates for people facing parole, on the other hand, emphasize the need for Parole Board decision-making that leads to more releases, rather than simply increasing the board's capacity.
161. S307 Salazar / A4162 Weprin.
162. S2423 Hoylman-Sigal / A2035 Davila.
163. Prison Policy Initiative, Parole boards approved fewer releases in 2020 than in 2019, despite the raging pandemic, Feb. 3, 2021, <https://www.prisonpolicy.org/blog/2021/02/03/parolegrants/>
164. New York State Bar Association, Report of the New York State Bar Association Task Force on the Parole System, November 2019, <https://nysba.org/app/uploads/2019/12/NYSBA-Task-Force-on-the-Parole-System-Final-Report.pdf>, at 2.
165. Id.
166. New York Executive Law section 259-i (3); see also 9 NYCRR sections 8005.6 and 8005.17.
167. New York State Department of Corrections and Community Supervision (DOCCS), Community Supervision Legislative Report 2021, <https://doccs.ny.gov/system/files/documents/2021/08/community-supervision-legislative-report-2021-final.pdf>
168. Id.
169. New York State Department of Corrections and Community Supervision (DOCCS), Community Supervision Legislative Report 2022, <https://doccs.ny.gov/system/files/documents/2022/08/community-supervision-legislative-report-2022.pdf>
170. Jennifer Gonnerman, The Purgatory of Parole Incarceration During the Coronavirus Crisis, The New Yorker, April 11, 2020 <https://www.newyorker.com/news/news-desk/the-purgatory-of-parole-incarcerations-during-the-coronavirus-crisis>
171. Id.; Vincent Schiraldi, Two months later: Outcomes of the March 27th order to release people jailed for technical violations during the pandemic, Columbia University Justice Lab, May 2020 at 3. <https://justicelab.columbia.edu/sites/default/files/content/NY%20Two%20Months%20Later%2005.27.20%20final.pdf>
172. Schiraldi, Two months later, at 3.
173. Caroline Lewis, As COVID Surges in NYC Jails, Officials Quibble Over Blame, Gothamist (Dec. 23, 2021, <https://gothamist.com/news/covid-surges-nyc-jails-officials-quibble-over-blame>).
174. New York City Board of Correction Weekly COVID-19 Reports, <https://www1.nyc.gov/site/boc/covid-19.page>
175. NYC Department of Correction, Microsoft Teams Video Teleconferencing, 2021, <https://www.nyc.gov/site/doc/inmate-info/schedule-attorney-video-teleconference.page>.
176. People ex rel. Eraso, o.b.o. Haynes v. Schiraldi, Index 813404/2021E (Supreme Court, Bronx County, January 3, 2022), <https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=WbpWSixcTBY4rukWMfqX9Q=&display=all&courtType=Bronx%20County%20Supreme%20Court&resultsPageNum=1>
177. The Community Supervision Reform Act (a.k.a. Less Is More), 2021 Sess. Laws of N.Y. Ch. 427.
178. Id.; New York Executive Law section 259-i(3)(c)(iii)
179. New York State Department of Health, Positive Tests Over Time, by Region and County, <https://coronavirus.health.ny.gov/positive-tests-over-time-region-and-county>
180. Emily NaPier Singletary and gabriel sayegh, New York's Less Is More Act: A Status Report on Implementation, March 1, 2022, <https://lessismoreny.org/new-yorks-less-is-more-act-a-status-report-on-implementation-2/>
181. New York Executive Law section 259(6), (7); 259-i(3)(f)(xii)(2)
182. New York Executive Law section 259-i(3)(a)(i)
183. New York Executive Law section 259-i(3)(a)(i); 259-i(3)(c)(iii)
184. New York Executive Law section 259-i(3)(a)(i)
185. Id.
186. Id.
187. New York Executive Law section 259-i(3)(a)(iv)



## References

188. New York Executive Law section 259-i(3)(c)(i)(B), 259-i(3)(f)(i)(A)
189. New York Executive Law section 259-i(3)(f)(xiii)
190. New York State Department of Corrections and Community Supervision (DOCCS), Community Supervision Legislative Report 2021 at 22. <https://doccs.ny.gov/system/files/documents/2021/08/community-supervision-legislative-report-2021-final.pdf>
191. Id. at 29.
192. The remainder were ordered into 45- or 90-day drug treatment programs. Id. at 22.
193. In New York, medical parole is not the same as compassionate release. The latter is only for people who have served the minimum term of an indeterminate sentence, appeared unsuccessfully before the Parole Board, and subsequently been certified as suffering from a terminal or “significant and permanent non-terminal” condition that creates “a reasonable probability that they are physically incapable of presenting any danger to society.” There is no bar for crime of conviction, and the Parole Board alone decides whether to grant release. NYS DOCCS Directive 4304, Medical Parole, section II.B. [https://doccs.ny.gov/system/files/documents/2024/12/4304\\_2.pdf](https://doccs.ny.gov/system/files/documents/2024/12/4304_2.pdf)
194. Cindy Rodriquez, Sick and Frail As COVID-19 Looms: Medical Parole Still Rare in New York State, Gothamist, December 30, 2020, <https://gothamist.com/news/sick-and-frail-covid-19-looms-medical-parole-still-rare-new-york-state>; Chelsia Rose Marcius, Only five New Yorkers released from prison through medical parole since the start of the pandemic, New York Daily News, November 10, 2020, <https://www.nydailynews.com/coronavirus/ny-coronavirus-new-york-prison-parole-board-medical-parole-20201110-wt5f66w6xretpjhlweizfbka-story.html>. From June 1992 through December 2017, DOCCS received 3,266 applications for medical parole, averaging about 130 per year. A total of 460 cases (14 percent) resulted in release. Over the same period, 1,112 cases (34 percent) ended with the deaths of applicants while they were still in custody. Rebecca Silber, Léon Digard, Tina Maschi, Brie Williams, and Jessi LaChance. A Question of Compassion: Medical Parole in New York State. New York: Vera Institute of Justice, 2018. <https://www.vera.org/publications/medical-parole-new-york-state>
195. New York State DOCCS, Parole Board Legislative Report 2020 at 14, <https://doccs.ny.gov/system/files/documents/2022/08/2020-parole-board-leg-report-final.pdf>; Cindy Rodriquez, Sick and Frail As COVID-19 Looms: Medical Parole Still Rare in New York State, Gothamist, December 30, 2020, <https://gothamist.com/news/sick-and-frail-covid-19-looms-medical-parole-still-rare-new-york-state>
196. New York State DOCCS, Parole Board Legislative Report 2021 at 14.
197. New York Executive Law section 259-r(1)(a)
198. Rebecca Silber, Léon Digard, Tina Maschi, Brie Williams, and Jessi LaChance. A Question of Compassion: Medical Parole in New York State. New York: Vera Institute of Justice, 2018, at 10, <https://www.vera.org/publications/medical-parole-new-york-state>
199. New York Executive Law section 259-s(1)(a)
200. Silber, et al., A Question of Compassion, at 10; New York Executive Law section 259-r(10)
201. Victoria Law, Prison Officials Block Most Requests from Terminally Ill New Yorkers for Medical Release, New York Focus, April 14, 2022, <https://www.nysfocus.com/2022/04/14/medical-parole-prisons-doccs/>
202. New York Executive Law section 259-r(1)(a)
203. Id.
204. NYS DOCCS Directive 4304, Medical Parole, [https://doccs.ny.gov/system/files/documents/2024/12/4304\\_2.pdf](https://doccs.ny.gov/system/files/documents/2024/12/4304_2.pdf)
205. Id.
206. Laskorunsky, J., Mitchell, K., & Mullins, S. (2023). Risk Averse and Disinclined: What COVID Prison Releases Demonstrate About the Ability of the U.S. to Reduce Mass Incarceration, University of Minnesota Robina Institute of Criminal Law and Criminal Justice, at 35, <https://robinainstitute.umn.edu/publications/risk-averse-and-disinclined-what-covid-prison-releases-demonstrate-about-ability-us>
207. Id. at 36.
208. Id. at 35, citing Minn. Stat. § 244.05, subd. 8 (2022).
209. Id. at 37.
210. See generally FAMM, Everywhere and Nowhere: Compassionate Release in the States, <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>
211. Massachusetts Parole Board, 2020 Annual Statistical Report, p.23, <https://www.mass.gov/doc/2020-annual-statistical-report/download>
212. FAMM, Compassionate Release, Massachusetts, [https://famm.org/wp-content/uploads/2018/06/Massachusetts\\_Final.pdf](https://famm.org/wp-content/uploads/2018/06/Massachusetts_Final.pdf)



## **Credits**

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