



New York's

Less Is More Act

One-Year Anniversary Report

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Acknowledgments

Lead Author Emily NaPier Singletary
Unchained

Author gabriel sayegh
Katal Center for Equity, Health, and Justice

*On behalf of the Leadership Team of the
#LessIsMoreNY Campaign*

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Editors Jules Verdone and Yonah Zeitz

Designer Erica Asinas

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Background:

Why the Less Is More Act Was Needed and What It Does

Until September 2021, New York held the distinction of imprisoning more people than any other state—at more than six times the national average—for noncriminal “technical violations” of parole rules, like missing an appointment with a parole officer, being late for curfew, or testing positive for alcohol, marijuana, or other drugs.¹ Of the people on parole sent back to prison statewide in 2019, more than 7,000 of them—85 percent—were re-incarcerated for technical parole violations.² In February of this year, more than 30,000 people were on parole in New York State.³

The state’s parole system, like so many others, is marked by stark racial and ethnic disparities; Black and Latinx people are locked up disproportionately for technical violations.¹ In 2019, Black people were five times more likely and Latinx people were 30 percent more likely than white people to be re-imprisoned for such violations.⁴ In New York City jails, Black people were incarcerated for these types of violations at *12 times* the rate of their white counterparts.⁵ Incarcerating people for technical violations not only harms them and their loved ones without any public safety gains but also drives up the population in local jails and state prisons, wasting money. New York taxpayers have spent more than \$680 million annually to put people behind bars for these noncriminal infractions.⁶



¹ Throughout this report we use the word “parole” to refer to various categories of community supervision by the New York State Department of Corrections and Community Supervision (DOCCS), including temporary release, presumptive release, parole, conditional release, post-release supervision, and medical parole. The Less Is More Act applies equally to people who are subject to any of these types of supervision.

Community groups—including people directly affected by parole and mass incarceration—came together to address these problems and fix the way New York State handles violations of parole. This campaign focused on public safety and effective reentry through the **Less Is More: Community Supervision Revocation Reform Act (S.1144A – Benjamin / A.5576A – Forrest)**. The #LessIsMoreNY Act was first introduced in 2018, and more than 300 organizations joined with district attorneys, sheriffs, and former corrections officials to push for its passage.⁷ After years of persistent advocacy throughout New York, the state assembly and state senate passed the bill in June 2021. On September 17, 2021, Governor Kathy Hochul signed it into law.

Under Less Is More, people doing well on parole are rewarded with time reduced—called earned-time credits—from their terms of supervision, incentivizing compliance with the rules. Only in the most serious and repeated cases is re-incarceration an option for technical violations, and people are guaranteed the right to counsel and a speedy hearing before that can happen. Any sanction of incarceration for a technical violation is capped at 30 days. (For more details, see Tables 1 through 4 in the Appendix.) Parole officers' caseloads are already decreasing and thereby becoming more reasonable. The hundreds of millions of dollars saved can be invested in housing, small business grants, family programs, mental health care, and other important services and infrastructure. These steps will ease inequities and improve public safety.

The hundreds of millions of dollars saved can be invested in housing, small business grants, family programs, mental health care, and other important services and infrastructure.



This report marks the one-year anniversary of the #LessIsMoreNY Act being enacted in September 2021. The act required that all of the law's provisions would be fully implemented by September 1, 2022. The four components of the #LessIsMore Act are:

For many noncriminal technical violations, re-incarceration is no longer a permitted punishment.

Creating Incentives: Earned-Time Credits

Most people on parole can earn 30 days of credit for every 30 days they adhere to parole rules in the community.² For example, under the "30 for 30" provision, someone who has a four-year term of parole will now complete supervision after two years if they have no sustained violations during that period.³ If the person is found to have violated a condition of parole, they will not earn the 30-day reduction in parole time and may face additional sanctions, depending on the violation. The opportunity for early termination of parole further incentivizes people to meet their supervision conditions; research has shown that such incentives improve parole outcomes. And early termination of parole is already safely reducing caseloads for parole officers. People who were on parole when this provision took effect on March 1, 2022, were eligible for up to two years of retroactive earned-time credits for time they had already successfully completed under supervision.

Ending Automatic Detention and Bolstering Due Process

People are no longer automatically detained when accused of a parole violation. Everyone is appointed a lawyer to represent them at parole revocation hearings—and the timing of hearings has been reduced from 105 days to 35 days for people detained during their hearings, and to 55 days for people not detained. All revocation hearings are conducted in courthouses (or in other community settings in rare instances) rather than in jails, increasing transparency and access for witnesses, family members, and the broader public.

People cannot be imprisoned for violations that include being late for curfew, changing jobs or programs without permission, and most use of alcohol and other drugs.

For people on parole accused of technical violations (noncriminal rule violations): Parole authorities give the person on parole a written notice of the violation and order them to appear at an administrative hearing about the alleged violation.⁴ If they intentionally skip the hearing and are facing a more serious technical violation, they can be arrested. At that point they will be taken to a local criminal court for a recognizance hearing before a judge—similar to a bail hearing in a criminal case—to determine whether they will be held in jail while they wait for an administrative hearing. The judge will assess whether the person is likely to return for that hearing if they remain at liberty in the community.

² This provision applies to everyone on parole, except for those on life parole. We are opposed to carve-outs like this based on the nature of a person's conviction or sentence. Existing discretionary mechanisms for early termination of parole remain unchanged and are available to all eligible people on parole, including those on life parole. See New York State Correction Law, Article 8, Section 205, www.nysenate.gov/legislation/laws/COR/205.

³ Having a violation sustained essentially means that a person has been found guilty of the violation.

⁴ This provision does not apply to everyone on parole evenly because of a caveat the legislature added for people on parole for certain sex offenses. Allegations of some noncriminal technical violations against people on parole for certain sex offenses will be treated as *nontechnical* violations, which means that they will have a recognizance hearing rather than receiving a written notice of violation.

People on parole now have the right to an appeal of the sustained nontechnical violation and the punishment imposed.

For all people on parole accused of nontechnical violations

(alleged new crimes): Under Less Is More, people on parole who are charged with a new crime continue to have the new charges processed in criminal court and the corresponding parole violation processed through administrative revocation hearings. But all people on parole accused of a nontechnical violation now receive a recognizance hearing before a criminal court judge within 24 hours (or as soon as court is open for any business) to determine whether they will be detained while their criminal charges and parole violation are processed.

Eliminating Incarceration for Certain Technical Violations

For many noncriminal technical violations, re-incarceration is no longer a permitted punishment. If a person is found to have committed one of those violations, they will be ineligible for earned-time credits for 30 days, and their parole officer can impose additional “special conditions” to help address the issue, including mandatory treatment or other community-based programs. People cannot be imprisoned for violations that include being late for curfew, changing jobs or programs without permission, and using alcohol or other drugs, unless serving a sentence for DWI.⁵ (For more details, see Table 1 in the Appendix.)

Capping Periods of Incarceration

Only a limited number of technical violations are subject to incarceration (see Table 2 in the Appendix), and for those violations the length of incarceration is capped. For [absconding](#), the first violation may result in a short period of incarceration. For all other technical violations, people will not be incarcerated for the first two violations. After repeated instances of a limited number of technical violations, a person on parole can be subject to short periods of incarceration, never more than 30 days.⁶ (See Tables 3 and 4 in the Appendix.) For nontechnical violations—that is, alleged new crimes—Less Is More leaves intact current law establishing potential parole penalties. People on parole now have the right to de novo (“at another time”) judicial review: an appeal of the sustained nontechnical violation and the punishment imposed.

The remainder of this report covers the following:

- highlights and successes from the first year of the implementation of Less Is More;
- ongoing implementation challenges; and
- next steps and recommendations.

⁵ This provision does not apply to everyone on parole evenly because of a caveat the legislature added for people on parole for certain sex offenses. Allegations of some noncriminal technical violations against people on parole for certain sex offenses will be treated as “nontechnical” violations, which means that someone could still face incarceration if DOCCS can demonstrate that the condition violated is related to not only their original conviction but preventing another sex offense.

⁶ This provision does not apply to everyone on parole evenly because of a caveat the legislature added for people on parole for certain sex offenses. Allegations of some noncriminal technical violations against people on parole for certain sex offenses will be treated as “nontechnical” violations, which means that they could still face incarceration of more than 30 days if DOCCS can demonstrate that the condition violated is related not only to their original conviction but preventing another sex offense.

Highlights + Successes

from the First Year of
Implementation



One year after its enactment, the Less Is More Act has had a transformative impact on community supervision in New York State.

Most provisions of the #LessIsMoreNY Act took effect on March 1, 2022, with these exceptions:

- The provisions eliminating incarceration as a sanction for many technical violations and capping the period of incarceration allowed for other technical violations took effect immediately when Governor Hochul signed the bill into law on
 - September 17, 2021.
- Any recalculations of incarceration periods for people already serving time for a technical parole violation (to bring them into alignment with the law) were required to be completed by July 17, 2022.
- All retroactive earned-time credits were required to be awarded by September 1, 2022.

More than 800 people accused of technical parole violations have been released from local jails.

The day Governor Hochul signed the Less Is More Act, she ordered the release of 191 people who were detained at Rikers Island for technical parole violations. Similar releases from jails in other parts of the state began later that week; the law prohibits incarceration as a sanction for many of these violations; for others it capped the period of imprisonment at 30 days. By the end of January 2022, 1,460 warrants for technical violations had been lifted statewide, resulting in 843 people released—420 people from Rikers Island and 423 from other jails across the state.⁸

Nearly 600 people serving time for technical violations have been released from state prisons.

Less Is More gave the state's Department of Corrections and Community Supervision until July 17, 2022, to recalculate incarceration periods for people who were serving time for technical violations when the law took effect. But under the direction of Governor Hochul, DOCCS completed this process by the end of January 2022 and released 573 people from its facilities.⁹ The #LessIsMoreNY campaign identified a handful of people who fell through the cracks, and we successfully worked with the governor's office and DOCCS to get them released.

Six state prisons closed.

In November 2021, Governor Hochul announced that the state would close six facilities due to the declining prison population; many media reports and other observers cited Less Is More as one reason for that drop.¹⁰ Those prisons officially closed on March 10, 2022. One of those facilities was the Willard Drug Treatment Campus, which had been used almost exclusively to re-incarcerate people for technical parole violations related to substance use.



When I found out that I could get off parole early because of Less Is More, it changed so much for me.

I didn't feel like I was crushed under this huge rock of being on parole for the next five years. Getting off parole opens up job opportunities for me that line up with my getting into programs at school. Now I can gain professional experience as I finish college and apply for jobs. I can go and live with my husband and have a good career. Less Is More made many of my dreams more accessible. There's not going to be a long pause in my life because I have to finish a parole sentence that, before Less Is More, I had no chance to get off of.

Magen

Syracuse, NY

Member of Unchained

The number of people detained in local jails for technical violations decreased by more than 87 percent.

On any given day in 2019, 1,711 people accused of technical parole violations were detained in jails statewide.¹¹ In 2020, due to pandemic-related changes to community supervision, that number declined to 1,110. After the Less Is More Act was signed last September, that number began to decline sharply. By July 2022, it had dropped to just 214, a reduction of more than 87 percent compared to pre-pandemic numbers.¹² In New York City jails, this number has decreased by 99 percent, from 688 people on February 1, 2020—before the city's first COVID-19 case—to just 7 people on September 28, 2022, nearly eliminating incarceration for technical parole violations in those dreadful facilities.¹³

Nearly 13,000 people were discharged early from parole, reducing the state's total parole population by almost 40 percent.

In February 2022, more than 30,000 people were on parole across New York State.¹⁴ In March, DOCCS began awarding retroactive earned-time credits, and by early August had completed this process ahead of the September 1 deadline. All told, 12,930 people were discharged early from parole, reducing the state's community supervision population by nearly 40 percent. On September 1, fewer than 20,000 people were on parole across the state.¹⁵ (Note that in the months since the Less Is More Act took effect, people have continued to be released from prison to community supervision.) As with the recalculation of incarceration periods, the #LessIsMoreNY campaign has identified some people who should have received retroactive credits but did not, and we are working with the governor's office and DOCCS to get those credits awarded.

For the longest time, I have been witness to how destructive the parole system was in New York prior to Less Is More.

I have had loved ones on parole who struggle with addiction and mental health issues thrown back into jail for these minor infractions. All the parole system did was strip them away from their jobs and families, simply because they were late for curfew or tested positive for alcohol and other substances. Now that Less Is More has been implemented, I no longer have to worry about incarceration coming in between their recovery journey.

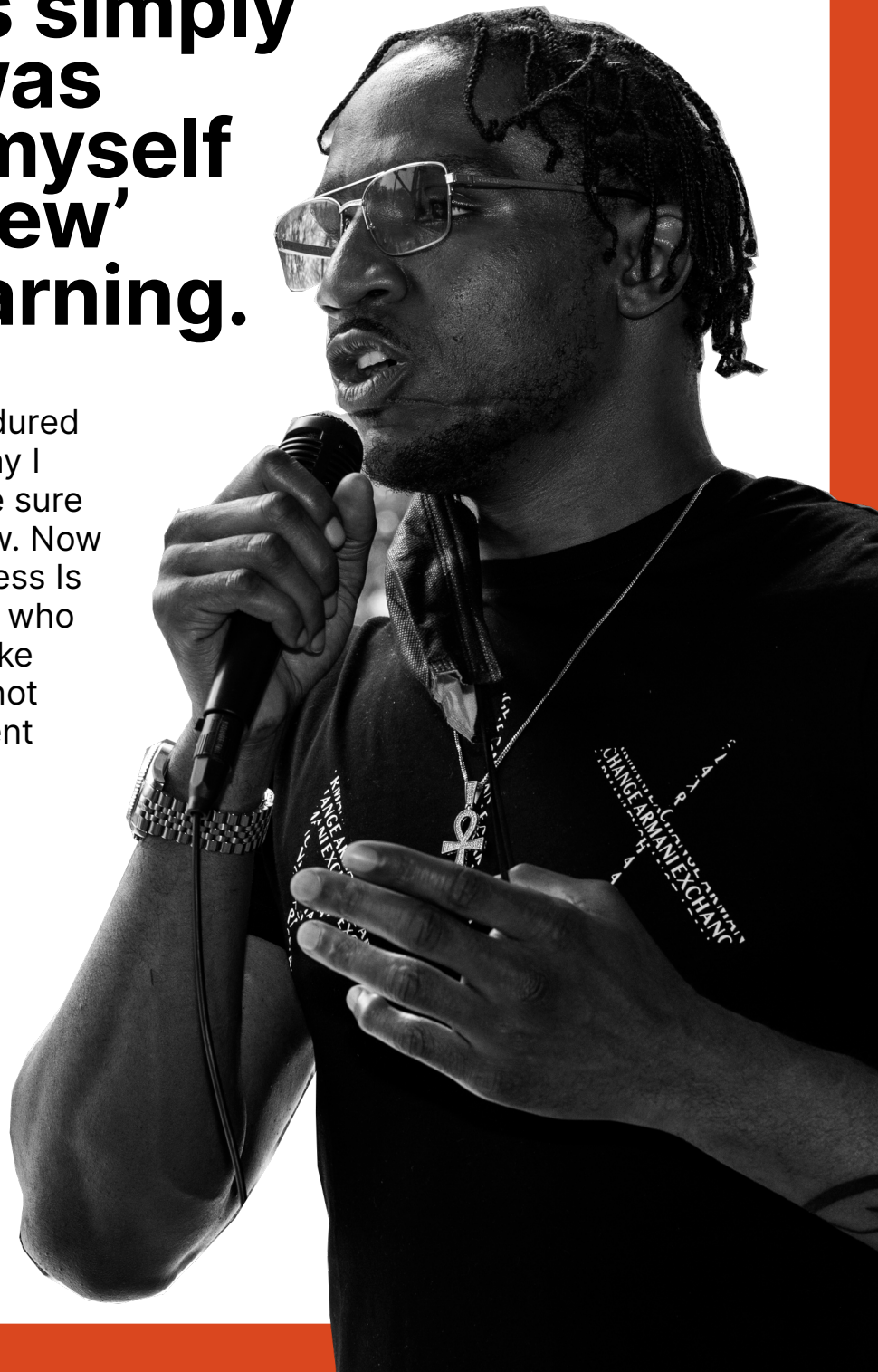
Bobbi L.
Jamestown, NY
Member of Katal



In 2017, I was incarcerated on Rikers Island for almost three months for a technical parole violation. I was put behind bars simply because I was defending myself from a 'curfew' violation warning.

This is one example of the injustices that individuals endured under this system. That is why I fought tooth and nail to make sure that Less Is More became law. Now with the implementation of Less Is More, it has given my friends who are on parole the ability to take ownership of their lives and not have to go through what I went through.

Henry R.
New York, NY
Member of Katal



Ongoing Implementation Challenges

Overall, the implementation of the #LessIsMoreNY Act has gone according to plan, and thousands of people on parole and their families have already benefited. But as with any new piece of legislation, there have been challenges. The #LessIsMoreNY campaign continues to work with the governor's office, DOCCS, and the Office of Court Administration (OCA) to resolve these issues, most of which concern precise details about how alleged violations are treated and how hearings are conducted under the new law.



Problematic Administrative Regulations Governing the Parole Violation Process

On February 7, 2022, on an emergency basis, DOCCS adopted new administrative regulations that clearly undermine the intent of Less Is More.¹⁶ The regulations were subject to a 60-day public comment period which began on February 23. The #LessIsMoreNY campaign submitted comments in partnership with many defender organizations, delineating the problems and urging DOCCS to revise the regulations to comport with the law. Examples of major problems with the regulations include the following:

They create a new parole violation that would be eligible for incarceration: failing to appear at revocation hearings.

This flies in the face of the intent of Less Is More—to limit the circumstances in which people can be incarcerated for noncriminal technical violations. The law already has a consequence built in for failing to appear: the violation is automatically sustained and the earned-time credits (“30 for 30”) will be withheld for a 30-day period.

The new regulations allow people to be detained pretrial for longer than the maximum time assessment (“sentence”) they are facing.

The regulations also allow DOCCS to extend the final revocation hearing indefinitely with “good cause.” Both provisions undermine the intent of Less Is More to enhance due process protections for people accused of parole violations and cap the period of incarceration to which they are subjected for noncriminal technical violations.

For people who are detained for their revocation hearings, the regulations allow those hearings to continue being held inside jails, rather than in courthouses or other community locations.

Less Is More deliberately moved hearings out of jails to increase transparency and accessibility for witnesses, loved ones, and the broader public

The regulations ignore the law’s definition of a nontechnical violation.

That definition allows some violations committed by people on parole for certain sex offenses—violations that would otherwise be considered technical and thus noncriminal—to be treated as nontechnical. This means some people won’t benefit from the restrictions on incarceration that Less Is More established. But the regulations ignore the definition in the law and direct DOCCS personnel to treat all violations by people on parole for certain sex offenses as nontechnical, thus widening the population excluded from the law’s benefits. If the intent of the law was for all violations committed by this population to be treated as nontechnical, the law would not feature a clear, specific definition creating a threshold for treating violations as nontechnical.

The #LessIsMoreNY campaign submitted comments in partnership with many defender organizations, delineating the problems and urging DOCCS to revise the regulations to comport with the law.

At the business meeting of the New York State Board of Parole on June 27, 2022, the emergency regulations were extended for an additional 60 days, until August 28, 2022, because they had not yet been revised when the period for public comment closed on April 25, 2022.¹⁷ In publishing notice of the extension, the board stated that the comments *“are still under review and the agency is considering revisions, which would ultimately necessitate revised rule making. ...The concerns expressed by these comments included both statements that provisions of the rulemaking were unlawful in that they were either unauthorized by statute or prohibited by statute or other legal principle and statements that the rules, if lawful, represented inadvisable policy. At this time the Board has not identified any provisions of the rulemaking which are unlawful. However, with regard to the advisability of the rulemaking’s provisions the comments require further consideration to determine the extent to which a revised rulemaking is necessary prior to adoption.”*¹⁸ The emergency regulations have since been extended for two additional 60-day periods, most recently at the business meeting of the Board of Parole on October 21, 2022, and now expire on December 19, 2022.¹⁹

It is troubling that DOCCS did not prepare adequately to release proposed regulations in a timely manner or allow for public comment before their adoption, instead forcing through problematic regulations on an emergency basis and then extending their emergency status for an additional 180 days. Despite the delays in getting the regulations revised, the #LessIsMoreNY campaign advocated with the governor’s office and was able to resolve the third and fourth issues above. Hearings are no longer taking place in jails. And we have received a commitment that when the regulations are revised, the section regarding the treatment of people on parole for certain sex offenses will align with the law and specify the threshold that must be met for a violation to be treated as nontechnical.

Getting off parole was the first time in my adult life that I felt free.

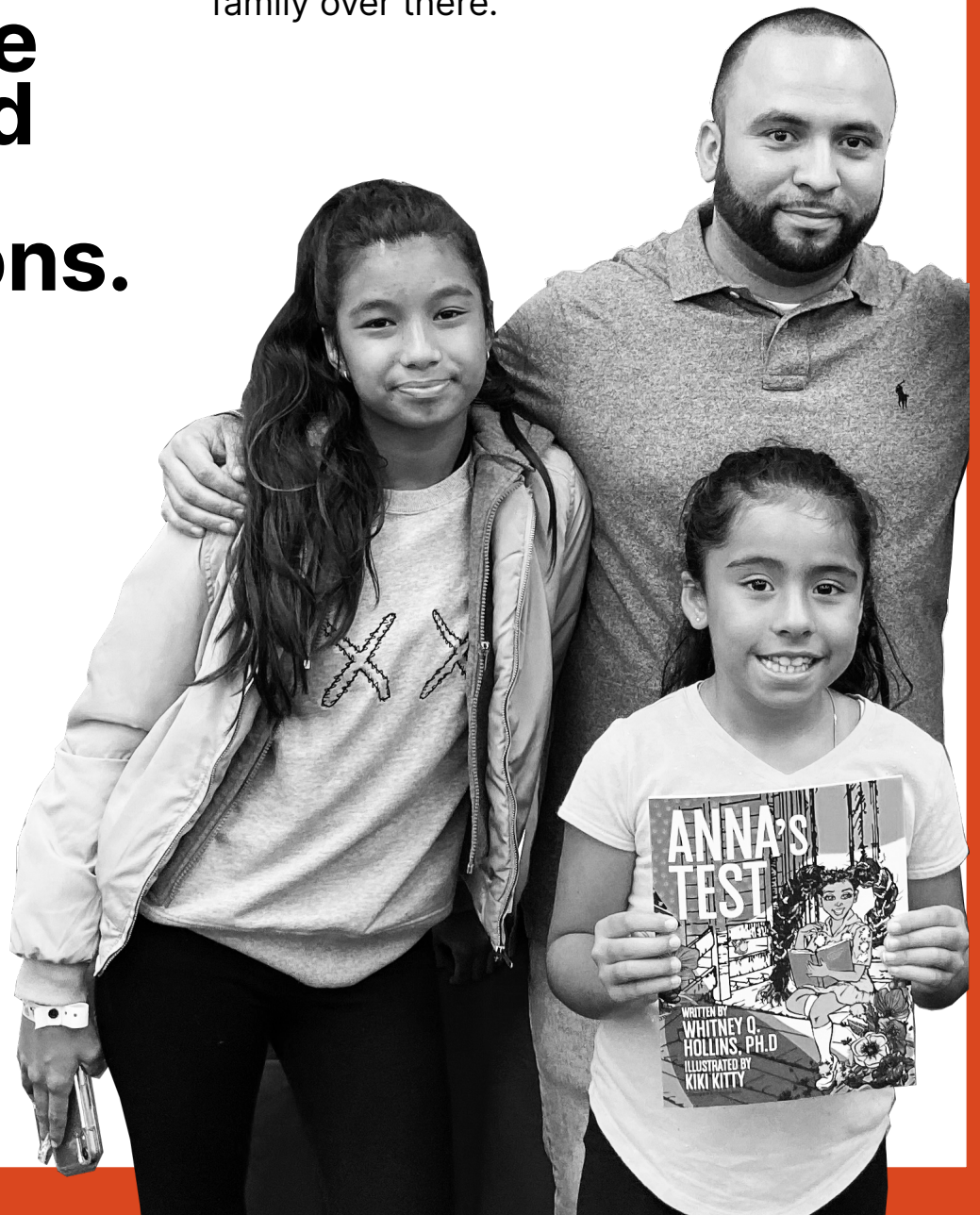
I cried when I first got my release papers; it was like a huge weight was lifted off my shoulders. I saw my parole officer after I was released, and I had so much joy in my heart that I found myself being nice to him. I haven’t felt so happy in such a long time, I feel like I’m a completely different person because I’m off parole, thanks to Less Is More. My family is really excited because they’ve wanted me off parole for a long time. Now that I’m off, I’m going to try to get my passport. My wife really wants to go to the Bahamas, and I’m getting things in order for that to happen.

Ernest
Buffalo, NY
Member of Unchained



Being under post-release supervision before Less Is More was emotionally tolling for my family because they were restricted by my restrictions.

I was born in the U.S., but my family is from Colombia. My father was deported back there in 2013. I have elderly family members there. Parole told me 'Don't even think about asking for permission to visit' my family members in Colombia while under post-release supervision, and it really broke my heart, especially because my grandfather passed away there while I was in prison, and I wasn't able to see him in the years before he died. Now, because of Less Is More, I've begun the process of applying for my passport. I can go to Colombia and surprise my father soon. My two daughters have never seen Colombia. I want to take my daughters there and introduce them to the culture and their family over there.



Martin
Queens, NY
Member of Unchained

Unsuitable Locations for Revocation Hearings

Although parole revocation hearings are no longer being held inside jails—a big victory for the campaign and people throughout the state—some hearing locations are still problematic. In at least a handful of counties, local court administrators claimed there was not enough space to hold the hearings in courtrooms, so instead they are taking place in the state office buildings where local parole offices are located. This has created problems illustrated in the following examples from Onondaga County and Dutchess County.



Onondaga County

Most hearings in Onondaga County are being held in a hearing room off the lobby of the state office building in Syracuse, where the parole office is located. The hearing room is not in the parole office, but loved ones, witnesses, and observers attending hearings are required to enter the building through a back entrance designated only for DOCCS and must go through DOCCS security, even though the building has security in the lobby. They are then required to wait in the parole waiting room and be escorted to the hearing room by a parole officer rather than waiting in the lobby outside the room or inside the room as is customary in a courthouse. This sends a message that the hearing is not being conducted in a neutral location and is weighted in favor of DOCCS. But more disturbing is the fact that hearings are occasionally held not in one of the hearing rooms, but in a “conference room” inside the DOCCS office. This room is actually the break room for parole officers, complete with a refrigerator and microwave, as well as stacks of tires piled up against the wall. It is a small room with no way for people to adhere to social distancing and extremely limited space for loved ones, witnesses, and observers. On July 21, two members of the #LessIsMoreNY campaign working on a court-watching project to monitor the law’s implementation were denied access to the nine hearings conducted in that room because of concerns about space and security.



Dutchess County

Hearings in Dutchess County are being conducted inside the Poughkeepsie parole office, and that is problematic for the reasons described above. In addition to a location that is not neutral, the room where hearings are held is too small to accommodate any members of the public. On June 23, the father and wife of someone facing a violation attended a hearing to support their loved one. The defense attorney notified parole in advance that the family members would attend, but no accommodations were made. Instead, because there was not space in the room for everyone, the hearing was conducted standing up in the lobby. Other people continued to move through the lobby as the hearing occurred, disrupting the proceedings. On June 27, the Poughkeepsie parole office moved to a larger space next door, yet the new room for hearings is even smaller than the old one.

The intent in moving hearings out of jails was to increase transparency and make them accessible to witnesses, loved ones, and other members of the public. That is not being achieved in the examples of Onondaga County and Dutchess County or in other counties that are holding hearings in buildings where parole offices are located. While the Less Is More Act allows DOCCS to identify a suitable alternative location if courthouse space is not available, the #LessIsMoreNY campaign's position is that the alternative locations being used are not suitable, given that they do not share the same key characteristics as a courthouse: neutrality and accessibility to the public. We have been working with OCA and the governor's office to try to identify additional courthouse space.



Improper Issuance of Written Notices of Violations and Warrants

Prior to the Less Is More Act, when a person on parole was accused of any violation, they were immediately arrested and detained in a local jail for the duration of their hearings, which were conducted inside the jail. Less Is More eliminated automatic detention for people accused of technical violations by requiring that DOCCS issue a written notice of violation, directing the person to appear at a hearing at a courthouse or other community-based location.

As long as a person appears at their hearings, they remain at liberty in the community while their hearings take place. If the person does not appear at a hearing and then intentionally fails to appear voluntarily within 48 hours, two outcomes are possible: 1) if the violation is ineligible for incarceration, the violation is sustained and earned-time credits are withheld for the 30-day period after the violation; or 2) if the violation is eligible for incarceration, DOCCS may issue a warrant for the person's arrest and, after being arrested, the person receives a recognizance hearing where a criminal court judge determines

As long as a person appears at their hearings, they remain at liberty in the community while their hearings take place.

First, absconding is being treated as a third category of violation rather than a technical violation.

DOCCS is attempting to argue that absconding is neither a technical nor a nontechnical violation and is instead a third category of violation. This argument has no basis in the law. Under Less Is More, Section 259 of the executive law was amended to define a technical violation as "any conduct that violates a condition of community supervision in an important respect, other than the commission of a new felony or misdemeanor offense under the penal law" [emphasis added]. Absconding is defined in the same section as "intentionally avoiding supervision by failing to maintain contact or communication with the releasee's assigned community supervision officer or area bureau office and to notify his or her assigned community supervision officer or area bureau office of a change in residence, and reasonable efforts by the assigned community supervision officer to re-engage the releasee have been unsuccessful." This definition codifies which behaviors constitute absconding and does nothing to establish it as a separate category of violation.

What's more, the definition of a technical violation expressly defines the violation as any violation other than the commission of a new crime; this inherently created two categories of violations, one that involves new crimes and one that involves everything else. The only caveat to the categorizing of technical and nontechnical violations is the language allowing some technical violations to be treated as nontechnical when they are alleged to have been committed by a person serving a sentence for certain sex offenses.

A person accused of absconding must be served with a written notice of violation, and a warrant can be issued only after they fail to appear in response to that notice.

Because absconding is clearly defined as a technical violation under the law, a person accused of it must be served with a written notice of violation, and a warrant can be issued only after they fail to appear in response to that notice. The section of the law setting forth the process for issuing written notices of violation and warrants discusses only technical and nontechnical violations and creates no special process to treat absconding as an exception or third category of violation. Further, DOCCS's own administrative regulations set forth the process for serving a notice of violation on a person who is on parole and is accused of absconding.²⁰

But the #LessIsMoreNY campaign has learned from defense attorneys that a warrant is often executed without a written notice of violation first being served. This results in people being arrested and detained, when under the law they are entitled to have the chance to appear voluntarily in response to the notice of violation and remain at home while their hearings are conducted.

Second, notices of violation are being issued for improper purposes.

We have also learned from defense attorneys that at least in Monroe County, DOCCS is frequently issuing written notices of violation that direct the person on parole not to appear at a hearing on a date at least 24 hours in the future, as the law prescribes, but to report to the parole office within two hours. If the person does not report within two hours, DOCCS then tacks on an absconding violation to the other technical violations alleged in the notice and issues a warrant. The Less Is More Act only authorizes notices of violation directing people to report to hearings, not to the parole office. It does not authorize DOCCS to require someone to answer a violation in this manner. We view this as an attempt by certain DOCCS personnel to undermine the intent and letter of Less Is More and jail people improperly.



I am a grandmother raising a 10-year-old granddaughter of a son soon to be on parole.

I am beyond happy to know that the day my son is released on parole, we will not have to worry about him being unjustly re-incarcerated for something as minor as being late for curfew. Thanks to the Less Is More legislation, so many individuals in New York State finally have the opportunity to fully move forward with their lives.

As a member of Katal, I worked endlessly to ensure the success of this legislation, and I will not stop until we can guarantee that the \$680 million saved by the implementation of the bill is used to support services and opportunities that can help address the barriers which many individuals on parole are confronted with when they return home to their families and communities.



Della S.
Brooklyn, NY

Member of Katal

Unlawful Detention Beyond the Maximum Period of Incarceration for Technical Violations

Under Less Is More, a handful of technical violations can still result in incarceration but under a graduated sanction scheme and never for more than 30 days at a time. For absconding, the first violation can result in up to 7 days of incarceration, the second violation in up to 15 days of incarceration, and any subsequent violation in up to 30 days of incarceration. (See Table 3 in the Appendix.) For all other technical violations for which incarceration is still an option, a person cannot be jailed for the first two violations, and any subsequent violations are subject to the same time limits as absconding violations. (See Table 4 in the Appendix.)

The law requires that people who are detained on a parole violation have their preliminary hearing held within 5 days of being detained, and their final revocation hearing must be scheduled no more than 30 days after the preliminary hearing. Unfortunately, this has resulted in DOCCS detaining people beyond the maximum period of incarceration they are facing for a violation while the hearings are completed. For example, someone accused of absconding as their first incarceration-eligible violation is facing a maximum sanction of 7 days in jail, but their final hearing may not be scheduled until day 28, leaving them detained for three weeks beyond their maximum sanction. Interpreting hearing deadlines without regard for the maximum sanction is inconsistent with and undermines the clear intent of Less Is More to restrict the use of incarceration as a response to technical violations and cap the time people spend in jail for such violations.²¹

We have raised this issue with the governor's office, DOCCS administrators, and OCA. Although they have all been sympathetic to the issue, we have yet to reach a resolution. The #LessIsMoreNY campaign has urged that all revocation hearings be completed within the maximum incarceration period to which the person is subject for the alleged violation—or if that is not feasible, to lift the securing order detaining them, release them from custody once they have served the maximum time assessment, and allow them to complete the hearing process at liberty.



Unlawful Detention on Nontechnical Violations After Release Is Secured on Criminal Charges

While most of the Less Is More Act pertains to technical parole violations, the law includes a few important due process protections for people accused of nontechnical violations (new crimes). Prior to Less Is More, people on parole facing new criminal charges were automatically detained on the parole violation for the duration of the hearing process, regardless of the nature of the charges or whether the criminal court judge presiding over the arraignment determined that the person could be released on those charges while the criminal case proceeded. Less Is More eliminated automatic detention for all violations, whether technical or nontechnical.

Under Less Is More, people on parole who are charged with a new crime continue to have the new charges processed in criminal court and the corresponding parole violation processed through administrative revocation hearings. But all people on parole accused of a nontechnical violation now receive a recognizance hearing before a criminal court judge within 24 hours (or as soon as court is open for any business), to determine whether they will be detained while their criminal charges and parole violation are processed. At the recognizance hearing, there is a presumption of release unless the person “presents a substantial risk of willfully failing to appear at the preliminary or final revocation hearings.” One critical provision prevents a person from being detained solely on a parole violation if they secure release on criminal charges: If a person is released on their own recognizance at the criminal court arraignment, posts bail on the criminal charges, or secures release through some other operation of law, the person “shall not be detained further based solely on the warrant issued by the department.” The person should be released so that they can complete the remainder of the hearing process at liberty in the community. This is not happening in practice.

The debate about this provision centers around the word “warrant” in the law. At the recognizance hearing, if the person is detained, the warrant is converted to a securing order, which is what authorizes detention. DOCCS has made—and as of the writing of this report continues to make—a bad faith argument that because the law uses the term “warrant,” it does not apply to people detained on a securing order after the recognizance hearing, even though the securing order stems directly from the warrant. Many people throughout the state have paid the bail on their criminal charges on the assumption that they would be released to continue the hearing process from home but languish in jail for months because of one misinterpreted word.



Delayed Award of Earned-Time Credits

Finally, although the #LessIsMore campaign is proud to have successfully advocated for retroactive earned-time credits to be awarded well in advance of the recent September 1 deadline—resulting in the early discharge of nearly 13,000 people from parole statewide—we remain concerned about two aspects of the earned-time credit process.

Although the law allowed six months for the retroactive credits to be awarded, it included no such extension for the post-March 1 credits.

Post-March 1 credits have been delayed for many people.

When Less Is More took effect on March 1, people immediately began accruing earned-time credits to be awarded in real time at the conclusion of each 30-day period completed without a sustained violation. A sustained violation is one a person has been found guilty of at a final revocation hearing. Although the law allowed six months from that date for the retroactive credits to be awarded, it included no such extension for the post-March 1 credits. But DOCCS is behind in awarding the post-March 1 credits, creating confusion among many people on parole and, in some cases, keeping them on parole beyond the maximum expiration date of their sentence after the proper calculation of credits. DOCCS did not have a software program for calculating and awarding the credits built in time for the March 1 effective date and instead has been using a spreadsheet to manually calculate and award the credits for the more than 30,000 people who were on parole across the state when the law took effect.

Retroactive credits have not been awarded for people jailed on unsustained parole violations.

The provision allowing people on parole to receive up to two years of retroactive credits has one caveat: people incarcerated on a sustained violation must wait until they are released back to parole to be awarded the retroactive credits. Many people detained in local jails around the state have been accused of violations that have not been sustained at a hearing, yet DOCCS has not awarded their credits. For some of these people, if their credits were awarded, their parole discharge date would be earlier than the date of their alleged violation, thus resulting in the violation being canceled and the person being immediately discharged from parole. Now that the September 1 deadline for awarding retroactive credits has passed, the governor's office is looking into this issue with DOCCS.

Next Steps + Recommendations



Since the Less Is More Act was signed into law in September 2021, the #LessIsMoreNY campaign leadership has focused on protecting the new law from attacks and rollbacks and ensuring its full and proper implementation. To achieve these goals, we make the following recommendations:

- Governor Hochul should direct DOCCS to amend its proposed regulations by December 19 to align with the letter and spirit of Less Is More, in response to public comments submitted by the #LessIsMoreNY campaign and the Legal Aid Society.
- Governor Hochul should work with OCA and DOCCS to identify courtroom space for revocation hearings in counties where such hearings are being conducted in office buildings where parole bureaus are located or in other unsuitable locations.
- Governor Hochul should direct DOCCS to issue a warrant for absconding only after a written notice of violation has been served and the person has failed to appear in response to it and voluntarily failed to appear within 48 hours, as required by law.
- Governor Hochul should direct DOCCS to cease issuing notices of violation directing people to answer violations in any manner other than the hearings authorized by the statute.
- Governor Hochul should direct DOCCS and OCA to identify and implement a process to complete all revocation hearings within the maximum incarceration period to which the person is subject for the alleged violation, or if that is not feasible, to lift the warrant/securing order, release the person from custody once they have served the maximum time assessment, and allow them to complete the hearing process at liberty in the community.
- Governor Hochul should direct DOCCS and OCA to identify and implement a process to automatically lift the securing order detaining a person for a nontechnical violation associated with new criminal charges after the person secures release on the criminal charges and would remain detained on the parole violation alone.
- Governor Hochul should direct DOCCS to catch up on awarding all post-March 1 earned-time credits by the end of 2022 and award all subsequent earned-time credits in real time.
- Governor Hochul should direct DOCCS to release a public report by March 1, 2023 documenting by county the number of people released from jails, the number of people released from DOCCS facilities, and the number of people discharged from community supervision under Less Is More during the first year after its enactment (September 17, 2021, through September 16, 2022). The report should also document, by county, the number of people with technical violations sustained and the number who have had nontechnical violations sustained during the first year of Less Is More in comparison to 2019 data.
- Governor Hochul and the state legislature should remain steadfast in their support of Less Is More and not allow a disingenuous vocal minority to roll back and undermine the new law, especially before its impact has been effectively measured and demonstrated.

The #LessIsMoreNY campaign will continue to respond to attacks against the new law and monitor implementation and advocate for adjustments when necessary. We continue to work closely with people who are directly impacted by parole, as well as defense attorneys, researchers, faith leaders, and other supporters, as we have always done. Together we will take steps to do the following:

- Counter the lies from the law's opponents with facts and positive examples of people benefiting from Less Is More. Dozens of such examples can be found at www.lessismoreny.org/stories
- Analyze data from various local and state agencies to demonstrate the law's impact
- Conduct courtroom observations and interviews with key stakeholders to monitor the new hearing processes;
- Track the money Less Is More saves New Yorkers and amplify recommendations from communities most impacted by mass incarceration and mass supervision about how to reinvest it;
- Hold DOCCS and others accountable for adhering to the law.



Appendix

Table 1. Minor Technical Violations Still Prohibited and Subject to Penalty—but No Longer Eligible for Incarceration

Violating curfew
Using alcohol, unless person is on parole due to conviction for driving under the influence of alcohol
Using other drugs, unless person is on parole due to conviction for driving under the influence of drugs
Failing to notify a parole officer of a change in employment or program status
Failing to report to a parole officer within 24 hours of release from prison (other than absconding)
Failing to pay surcharges and fees
Obtaining a driver’s license or driving a car with a valid driver’s license, unless either action is explicitly prohibited because of the person’s conviction
Failing to notify a parole officer of contact with any other law enforcement agency, unless the person intended to hide illegal behavior
Failing to obey other special conditions, unless failure cannot be addressed in the community and all reasonable community-based means to address the failure have been exhausted

- It will no longer be a violation to fraternize with or be in the company of someone a person on parole knows has a criminal record or has been adjudicated a youthful offender.
- Legal activities involving marijuana will no longer be a violation.

Table 2. Technical Violations Still Eligible for Incarceration as a Penalty

Absconding: intentionally failing to maintain contact or communication with the assigned community supervision officer or area bureau office and to notify the assigned community supervision officer or area bureau office of a change in residence, and reasonable efforts by the assigned community supervision officer to reengage the release have been unsuccessful.
Refusing a home visit or employment visit by a parole officer
Refusing a search of person or residence by a parole officer
Failing to reply fully and truthfully to inquiries from a parole officer
Owning, possessing, or purchasing a firearm without permission of a parole officer
Special conditions when failure cannot be addressed in the community—including with counseling, treatment, or programming—and all reasonable community-based means to address the failure have been exhausted.

Table 3. Incarceration Penalties for Absconding

First violation	Up to 7 days
Second violation	Up to 15 days
Third and subsequent violations	Up to 30 days

A person will have time credits withheld for the entire period during which they absconded. No time credits may be earned during incarceration. An administrative law judge may impose additional conditions of parole, including mandatory treatment.

Table 4. Incarceration Penalties for Technical Violations (Other than Absconding) Eligible for Incarceration

First and second violations	No incarceration
Third violation	Up to 7 days
Fourth violation	Up to 15 days
Fifth and subsequent violations	Up to 30 days

A person will have 30 days of time credits withheld. No time credits may be earned during incarceration. An administrative law judge may impose additional conditions of parole, including mandatory treatment.

Endnotes

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#LessIsMoreNY is a statewide coalition of community groups, service providers, and public safety experts who worked together to develop and pass the #LessIsMoreNY Act. Restricting the use of incarceration for technical parole violations and giving people incentives to comply with parole conditions will support them as they reenter their communities; reduce jail, prison, and supervised populations responsibly; promote safety and justice for families and communities; and save taxpayers money. The coalition, led by the Katal Center for Equity, Health, and Justice and Unchained, is working to ensure the new law is implemented fully and properly.

For more information, visit www.lessismoreny.org.