

LESS IS MORE

LESS INCARCERATION

MORE SAFETY & JUSTICE

A Status Report on Implementation

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About the #Less Is More Coalition

#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 community supervision populations responsibly; promote safety and justice for families and communities; and save taxpayers money. The coalition is working to implement the new law fully and effectively. The #LessIsMoreNY campaign is led by the Katal Center, Unchained, and A Little Piece of Light.

For more information visit www.lessismoreny.org



Background

More than 31,000 people are on paroleⁱ in New York State.¹ 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 “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.² 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.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 such violations. 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 a technical parole violation.⁴ In New York City jails, Black people were incarcerated for these types of violations at 12 times the rate of white New Yorkers.⁵ This not only harms people and their families 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 jail people for these noncriminal infractions.⁶

Community groups—including people directly affected by parole and mass incarceration—came together to address these problems and fix how New York State handles violations of parole. The coalition 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 introduced in 2018, and more than 300 organizations joined with district attorneys, sheriffs, and former correctional 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.



ⁱ 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 have any of these types of parole.

Under Less Is More, people doing well on parole will be rewarded with time reduced from their terms of supervision— called earned-time credits—giving them incentives to comply with the rules. Only in the most serious and repeated cases will re-incarceration for technical violations be an option, and people will get a lawyer and a speedy hearing before that can happen. (For more details, see Tables 1 and 2 in the Appendix.) Any sanction of incarceration will be capped at 30 days. Parole officers will have smaller, reasonable caseloads. The hundreds of millions of dollars saved can be invested in housing, small business grants, family programs, mental health care, and other important services. These steps will ease inequities and improve public safety.

A major provision of the #LessIsMoreNY Act—the component limiting re-incarceration for technical violations— went into effect immediately when Governor Hochul signed the bill and announced that hundreds of people imprisoned at the Rikers Island jail complex for such noncriminal parole violations would be released immediately. Hundreds more were released from other jails across the state in subsequent weeks. The rest of the new law takes effect on March 1, with the exception of two provisions. The New York State Department of Corrections and Community Supervision (DOCCS) has until July 17 to recalculate time assessments (sanctions of incarceration) and release people who were re-incarcerated for violations that were sustained before the law was enacted last September.ⁱⁱ And DOCCS has until September 1 to implement the provision for earned-time credits, including calculating and awarding up to two years of retroactive credits for every eligible person who is on parole when the provision is implemented. (Part 1 of this report explains these provisions in detail.

This report addresses the following:

- A summary of the main provisions of the Less Is More Act
- Progress and challenges with respect to implementation so far
- Next steps and recommendations



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

The Main Provisions of the Less Is More Act

The Less Is More Act was developed by a statewide coalition of people directly impacted by parole, along with community, faith, and advocacy groups, service providers, and public safety experts. The legislation draws from the best of successful parole reforms in dozens of other states, including red states like Louisiana, Missouri, and South Carolina. The law seeks to reduce jail and prison populations; support people who are on community supervision in the reentry process; promote safety and justice for families and communities; and save taxpayers money. For these reasons the Less Is More Act is supported by an unprecedented coalition of district attorneys, sheriffs, current and former corrections and law enforcement officials, and nearly 300 community, faith, labor, and advocacy groups around the state.

The Less is More Act includes four core components.

1. Creating Incentives: Earned-Time Credits

Although other states have created avenues for people on parole to be discharged early for good behavior, prior to the Less Is More Act, New York afforded few mechanisms for people on parole to shorten their time on community supervision, even after extended periods of compliance and success. Unfortunately, those mechanisms have been discretionary and applied arbitrarily.

Under the Less Is More Act, most people on parole can earn 30 days of credit for every 30 days in the community that they adhere to parole rules. ⁱⁱⁱ 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. 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.

Effective Date: This provision must be fully implemented by September 1, 2022.

ⁱⁱⁱ 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 Section 205. www.nysenate.gov/legislation/laws/COR/205

2. Ending Automatic Detention Based on a Mere Accusation of a Violation and Bolstering Due Process

Prior to the new law's implementation, once parole authorities issued a warrant for an alleged violation—whether technical or a new crime—the person on parole was taken directly to the local jail without seeing a judge or parole hearing officer. In New York City, the person was taken to Rikers, where they spent an average of two months waiting for an administrative hearing to determine whether they in fact violated their parole and whether they would be penalized with additional jail or prison time. It is extremely difficult for people on parole to secure housing, employment, and other community support and services, so under the former practices, any stability they had achieved was quickly jeopardized without strong reason or robust due process.

The Less Is More Act bolsters due process for everyone on parole, and people will no longer be automatically detained when accused of a parole violation. Everyone will be 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 will be conducted in courthouses (or in rare instances, other community settings) rather than in jails, increasing transparency and access for witnesses, family members, and the public.



For people on parole accused of technical violations (noncriminal rule violations):

Parole authorities will give the person on parole a written notice of the violation and order them to appear at an administrative hearing about the alleged violation. If the person intentionally skips the hearing and is 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.



For all people on parole accused of nontechnical violations (that is, for alleged new crimes): Under Less Is More, people on parole who are charged with a new crime will continue to have the new charges processed in criminal court and the corresponding parole violation processed through administrative revocation hearings.^{iv} But all people accused of a nontechnical violation of their parole will 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.

^{iv} 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.

Unlike the old system under which the person was automatically detained for the parole violation—regardless of the outcome of the bail hearing on the new criminal charges—if a person is released on their own recognizance (ROR) or pays the bail set on the criminal charges, they cannot be detained for the parole violation alone.

Effective date: All of these enhanced due process protections—including the elimination of automatic detention—take effect on March 1, 2022.

3. Eliminating Incarceration for Certain Technical Violations

Before enactment of the Less Is More Act, a person who was found to have committed *any technical violation* could be sent back to prison for years. This approach is why New York re-incarcerated more people for technical violations than any other state. Sending someone back to prison wipes away the progress they have made since being released on parole, makes it harder for them to ultimately return to society after their imprisonment ends, and does not benefit public safety. In other states, community-based efforts to address reentry-related challenges have proved far more effective than re-incarceration.

Under the Less Is More Act, a technical violation is defined 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.” Notably, the “important respect” language has been the law in New York State for decades. The Less Is More Act will no longer permit paroled people to be re-incarcerated as a punishment for many technical violations. 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. People cannot be imprisoned for violations that include but are not limited to being late for curfew, changing jobs or programs without permission, and using alcohol or other drugs (unless serving a sentence for DWI).^v (For more details, see Table 1 in the Appendix.)

More serious technical violations such as absconding (intentionally failing to stay in contact with parole officials and failing to tell them about a change of address) and repeatedly refusing treatment will continue to be punishable by short periods of incarceration—never more than 30 days—proportionate to the seriousness or repetition of the violation. (For more details, see Table 2 in the Appendix.)

Effective date: This provision took effect immediately when Governor Hochul signed the Less Is More Act into law. But for people who were already re-incarcerated on a sustained violation on that date, DOCCS has until July 17, 2022, to recalculate their period of incarceration (also known as the time assessment) and release them.

^v 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 if DOCCS can demonstrate that the violation is related to not only their original conviction but preventing another sex offense.

4. Capping Periods of Incarceration

Prior to the Less Is More Act, people on parole in New York were routinely re-incarcerated for any noncriminal technical violation for months or even years at a time.

Under the Less Is More Act, only a limited number of technical violations are subject to incarceration, and for those violations the length of incarceration is limited. For absconding, the first violation can 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.^{vi} (See Tables 3 and 4 in the Appendix.)

For nontechnical violations—that is, for alleged new crimes—Less Is More leaves intact current law establishing potential parole penalties for new criminal conduct. People on parole will now have the right to *de novo* (“at another time”) judicial review—an appeal of the sustained nontechnical violation and the punishment imposed.

Effective date: The provision capping periods of re-incarceration for technical violations took effect when Governor Hochul signed the Less Is More Act into law in September 2021. For people who had already been re-incarcerated for a sustained violation as of that date, DOCCS has until July 17 of this year to recalculate their time assessment and release them. The right to *de novo* judicial review of sustained violations and the punishment imposed takes effect on March 1, 2022.



^{vi} 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 the violation is related not only to their original conviction but preventing another sex offense.

What's happened and what's next:

The Path to Full Implementation

Although the provision restricting the use of incarceration as a sanction for technical violations went into effect when Governor Hochul signed the Less Is More Act, most other provisions go into effect on March 1, 2022, with full implementation by the fall of 2022. In this section we summarize progress made prior to March 1, as well as challenges that have arisen.

Eliminating and Restricting the Use of Incarceration for Technical Violations

Progress

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 Less Is More Act prohibits incarceration as a sanction for many of these violations and for others 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 local jails across the state. In November, Governor Hochul announced that the state would close six prisons due to the declining prison population; many media reports and other observers referenced Less Is More as one reason for that drop.⁸

Challenges

These releases are cause for celebration, but implementation of the provision that limits incarceration as a sanction has had its problems. First, DOCCS officials have refused to acknowledge that this provision was in effect, and instead have argued repeatedly in response to writ petitions (which eligible people or their attorneys filed in attempts to secure their release) that the only piece of the law that took effect last September is a minor wording change from “he or she” to “such officer.” It is simply a bad faith argument to assert that the state legislature singled out such an insignificant change in wording to take effect immediately while leaving the rest of the implementation until at least March of this year. Yet DOCCS has made this argument as recently as mid-January, despite it being rejected in a judicial decision on December 15.⁹

To explain the 843 releases DOCCS made since the bill signing, one official has written that “Under the direction of Governor Hochul, we have been proactive in applying the spirit of the law.”¹⁰ Maintaining this position that it is acting “proactively” rather than simply upholding a provision of the law that is already in effect has allowed DOCCS to undermine both the spirit and the letter of the law by cherry-picking the people the department is releasing and leaving others to languish behind bars. This has led to widespread frustration among people directly impacted, as well as defense attorneys and the organizations leading the #LessIsMoreNY campaign. We have fielded hundreds of phone calls from incarcerated people and their family members trying to understand why they have watched others in similar situations walk out of jail while they or their loved ones have been left behind.

Because DOCCS officials have refused to acknowledge that the provision is in effect, they have also taken the position that the department can still detain people pretrial while they await their parole revocation hearings. Under Less Is More, the longest sanction someone can receive for a technical violation is 30 days of incarceration. We have seen many people across the state detained because of violations for which the law prohibits imprisonment—or violations for which they could receive a sanction capped at 7 days but were held for 30 days instead. DOCCS has intentionally detained people for longer than the law specifies because of the department’s distinction between pretrial detention and incarceration as a sanction. This blatantly undermines the spirit and intent of the law.

One area of particular concern about implementing this provision is the treatment of people serving a sentence for certain sex offenses. Before voting on the bill, the state legislature added language stating that for people under community supervision for certain sex offenses, a noncriminal violation that would be treated as a technical violation for anyone else can be treated as a *nontechnical violation* if the person’s conduct “violated a specific condition reasonably related to such offense and efforts to protect the public from the commission of a repeat of such offense.” This has significant ramifications, given that

Less Is More did not change the sanctions DOCCS can impose for nontechnical violations. It means that people serving sentences for certain sex offenses must first get their violation classified as a technical violation to benefit from the provision of the law restricting the use of incarceration as a sanction. We are opposed to carve-outs like this based on the nature of a person's conviction, and we are paying close attention to how this unfortunate exception plays out in practice.

To date, DOCCS has not implemented a mechanism to determine whether a violation is technical or nontechnical, and instead has taken the position that “the Less Is More Act won’t apply to sex offenders [sic]” as it asserted in response to a writ filed in court about the matter.¹¹ This is a gross misinterpretation of the language in the statute, one that has trickled down to frontline parole officers who have spread inaccurate information to people on their caseloads. We have heard from people throughout the state whose parole officers told them that Less Is More does not apply to them because they have a sex offense conviction.



New Hearing Locations and Procedures and Eliminating Automatic Detention

Progress

As of March 1, Less Is More requires that all parole revocation hearings be conducted in courthouses (or, in rare instances where space is not available, in other offices). Prior to the implementation of the new law, these hearings were conducted in jails, shielding DOCCS from any public accountability and making it nearly impossible for witnesses or loved ones to support someone accused of a parole violation. The Office of Court Administration (OCA) has identified space in at least one courthouse in each of the state's judicial districts and has notified DOCCS of those locations.

In addition to changing locations, many hearing procedures also change on March 1, improving due process protections for people accused of parole violations. For example, increased standards of proof will be required at each stage of the violation process, and hearings will be held more quickly. Because administrative law judges employed by DOCCS preside over parole revocation hearings, OCA will not be involved in adherence to the new procedures aside from making space available in its courthouses for the hearings.

The new procedures also eliminate the automatic detention of people accused of parole violations. Prior to Less Is More, a warrant could be issued for any type of parole violation, and once a person was arrested on the warrant, they were taken directly to jail with no opportunity for release or bail. Under the new law, people accused of a technical parole violation will be issued a written notice of violation (similar to an appearance ticket) that explains when and where they should appear for a hearing. They will remain at liberty in the community so long as they appear for their hearings. DOCCS will conduct these parole revocation hearings. People accused of nontechnical violations (new crimes) will receive a recognizance hearing in front of a criminal court judge. In preparation, OCA has been training its judges and identifying for DOCCS when its courthouses are open to conduct such hearings.

Challenges

This is arguably the most complex component of the law to implement because of many technical details and moving parts. Identifying the locations for hearings has been a top priority. Although OCA has been working with each jurisdiction to do this, DOCCS has continued to thwart this part of the law. On February 7, 2022, DOCCS adopted new administrative regulations on an emergency basis that clearly state that department officials plan to continue holding parole revocation hearings inside jails after March 1 for people who are detained, even though the intent of Less Is More is to make hearings more transparent and accessible by moving them into courthouses.¹²

The regulations are subject to a 60-day public comment period (which began on February 23) before being adopted beyond the emergency order. The proposed regulations have many problems in addition to the issue of hearing locations, and 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.

Nowhere in the proposed regulations or in any information from DOCCS has a plan been delineated to ensure that people who have been detained for parole violations and remain in custody on March 1 will be afforded the hearings or be released from custody as they are entitled. Anyone who has been detained on a nontechnical violation and remains in custody on March 1 must be afforded a recognizance hearing. Anyone who has been detained on a technical violation and remains in custody on March 1 is entitled to release and to continue the

parole revocation process out of custody and in the community. Yet DOCCS officials have not publicly established procedures explaining how this will be accomplished.

Recalculation of Time Assessments

Progress

The Less Is More Act allows DOCCS until July 17, 2022, to recalculate time assessments for people incarcerated on violations sustained prior to the bill being signed into law in September, although the #LessIsMoreNY campaign has consistently advocated for this timeline to be accelerated. As of the end of January and under the direction of Governor Hochul, DOCCS had recalculated time assessments for and released 573 people imprisoned in its facilities. DOCCS characterized the recalculation of time assessments as complete.¹³

Challenges

Although DOCCS officials claim that they have completed the recalculation of time assessments, we have learned from defense attorneys around the state—as well as through phone calls and emails from New Yorkers on parole and their loved ones—that some people who appear to be eligible for recalculation of their time assessments remain incarcerated, particularly in jails. DOCCS apparently has no mechanism by which a person or their attorney can confirm whether they are eligible for recalculation or to secure their release. Defense attorneys' reported attempts to contact DOCCS about this matter have been unsuccessful. And because this provision is not required to be implemented until July 2022, those who may have fallen through the cracks have no legal recourse. This affects countless people who should be in the community and not behind bars.



Earned-Time Credits

Progress

Under the Less Is More Act, everyone on parole—except people serving life parole—will earn 30 days off their supervision period for every 30 days without a sustained violation. People who are already under community supervision when the provision is implemented will also be eligible to receive up to two years of retroactive earned-time credits. DOCCS has until September 1, 2022, to calculate and award the retroactive credits. And from that date onward, DOCCS must begin awarding earned-time credits to those people on parole who qualify.

For the retroactive earned-time credits, the legislation requires DOCCS to prioritize people whose supervision terms are due to end before June 2022. From the moment the legislation was signed, the #LessIsMoreNY campaign has pushed for immediate and full implementation. So we were pleased to learn that DOCCS has been working on this and anticipates completing all earned-time credit calculations by April 2022, five months ahead of schedule.¹⁴

Challenges

But finishing the earned-time credit calculations by April will be meaningless unless DOCCS will award the credits immediately, as the #LessIsMoreNY campaign is pushing for. This is among the most urgent questions that people on parole and their families are asking. For instance, if retroactive calculations are completed on some date in April, will someone who has been on parole for two years with no violations immediately be awarded two years of retroactive credits on that day, as outlined in Less Is More? And at that point will they begin earning 30 days of credits for every 30 days they go without a violation?

Because DOCCS has not provided clear guidance, some parole officers continue to spread misinformation about this provision to people they are supervising. As William, a Katal member in Queens told us, “I have been on parole for four years and not once have I gotten a violation. I recently got in contact with my parole officer to ask him if I was eligible for the earned-time credits provided under Less Is More. His response was that I wasn’t eligible... due to my original conviction. I had to go out of my way to obtain the correct information on the legislation.” Hundreds of people across the state are in a similar situation: they have complied with their parole conditions for years and are anxiously awaiting clarity from DOCCS about when their earned-time credits will be applied. Once these retroactive credits are awarded, many people on parole should immediately be discharged from supervision, thereby completing a major step in their reentry process.



“

I have been on parole for six years, and in those years, I have come to learn just how punitive this system truly is.

The Less Is More legislation will finally allow me to live my life freely and be able to reconnect with my family. Last week, I went to see my parole officer to ask him questions about my earned-time credits. He informed me that he did not know much about the legislation—but the little he did know was completely incorrect. Ultimately, this conversation ended with me teaching him what Less Is More does because of the work I've done on the campaign. This worries me because I know there are other parole officers who are not fully aware of the depth of this legislation. It is critical that the governor holds DOCCS accountable for implementing Less Is More as the law intends, and it starts with making sure that parole officers know what the legislation does.

”

Carlos, member of the Katal Center from Harlem

Next Steps and Recommendations

Since the Less Is More Act was signed into law in September 2021, the campaign has focused on protecting the new law from attacks and rollbacks, and ensuring its swift, full implementation. The union that represents parole officers (the Public Employees Federation), along with select law enforcement officials and some conservative lawmakers, have engaged in racist fearmongering tactics and spread misinformation in attempts to stir up opposition to the new law and roll it back.

Their arguments are based on lies. For example, parole officers have claimed that Less Is More prevents them from “violating” people on parole and holding them accountable. This is not true. As explained above, noncompliance with parole conditions can still be treated as a violation. The law simply requires parole officers to use community-based alternatives rather than relying on incarceration to address noncriminal violations.

Opponents say that restricting the use of incarceration to respond to these violations makes our communities less safe. This is also a lie. There is no evidence that locking people up for noncriminal violations enhances public safety—in fact, the opposite is true. This practice erases the fragile gains people make after their release from prison and destabilizes our families and communities.

Many other states, including some led by Republicans, have already implemented parole reform measures similar to those codified in the Less Is More Act—with great success.¹⁵ The law is supported by law enforcement officials across the state and country, including corrections officials, sheriffs, and district attorneys representing more than half of New York State’s population.¹⁶ The New York State Legislature, Governor Hochul, and more than 300 organizations and dozens of public officials have sent a clear message: people on parole in New York will get a fairer chance in their reentry process, and the state will no longer rely on incarceration as its primary approach to addressing technical parole violations.

To protect the **Less Is More Act** from rollbacks and ensure its swift, full implementation, we make the following recommendations:

Governor Hochul should direct DOCCS to hold all parole revocation hearings in locations other than detention centers and correctional facilities, as required under Less Is More, and DOCCS should work collaboratively with the Office of Court Administration and local jails to ensure that appropriate and accessible hearing locations are identified and that detained people are transported to them.

By the conclusion of the required public comment period, Governor Hochul should direct DOCCS to amend its proposed regulations to align with the letter and spirit of Less Is More.

Governor Hochul should also direct DOCCS to identify a person or department that will respond to inquiries about people who may have been overlooked in the recalculation of time assessments and remedy those situations by the end of March.

Governor Hochul should direct DOCCS to outline a plan to address the following issues for people accused of parole violations prior to March 1 who are still detained on that date:

- DOCCS should establish a process to hear arguments and make a retroactive determination of technical vs. nontechnical violations for people serving a sentence for a qualifying sex offense and recalculate their time assessment as required under the law.
- DOCCS should ensure that a recognizance hearing is provided to anyone detained for a nontechnical violation.
- DOCCS should release anyone detained for a technical violation so that they can continue their parole revocation hearings out of custody.

Governor Hochul and the state legislature should identify and capture the savings that will result from implementation of the Less is More Act—and invest those savings in housing, health care, jobs, and education within the communities most harmed by crime and mass incarceration.

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Governor Hochul and the state legislature should remain steadfast in their support of criminal justice reform. Together we can make New York fairer, more equitable, and safer for all.

Governor Hochul should direct DOCCS to award all retroactive earned-time credits upon completion of its calculations in April, and from that date forward, begin awarding the 30 for 30 earned time credits.

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 directly impacted by parole, 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
- 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; and
- Hold DOCCS and others accountable for adhering to the law.



“ I have been fighting for the Less Is More legislation since I was incarcerated for a noncriminal technical parole violation.

It will have a large impact on my life, and the life of so many I know. I've been told by parole officers that Less Is More is going to get a lot of people hurt, because they won't be able to give individuals more prison time to get them off the streets. This type of rhetoric is incredibly harmful and inaccurate! I have also heard from a few of my friends who are also serving time on community supervision that their officers keep telling them that not all parts of the Less Is More Act—in particular the earned-time credits—will apply to them because they are on parole for a sex offense. That is also inaccurate. More has to be done to ensure that the POs are implementing the law correctly.

”

Anthony, member of the Katal Center from Buffalo, NY

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 (not 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 releasee 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 violation	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 violation	No incarceration
Third Violation	Up to 7 days
Fourth violation	Up to 15 days
Fifth and subsequent violation	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

- 1 New York State Department of Corrections and Community Supervision. "DOCCS Fact Sheet." February 1, 2022. https://doccs.ny.gov/system/files/documents/2022/02/doccs-fact-sheet-february-2022_1.pdf
- 2 United States Department of Justice, Bureau of Justice Statistics. 2020. Probation and Parole in the United States, 2017-2018, Appendix Table 7. <https://www.bjs.gov/content/pub/pdf/>
- 3 See New York State Assembly Committee on Correction. 2019 Annual Report. 2019. 1-2. <https://assembly.state.ny.us/write/upload/postings>; and United States Department of Justice, Bureau of Justice Statistics. 2021. Probation and Parole in the United States, 2019, Appendix Table 12. <https://bjs.ojp.gov/content/pub/pdf/ppus19.pdf>
- 4 Kendra Bradner and Vincent Schiraldi. Racial Inequities in New York Parole Supervision (New York: Columbia Justice Lab, 2020), 6, 10, <https://justicelab.columbia.edu/content/racial-inequities-new-york-parole-supervision>.
- 5 Bradner and Schiraldi. 2020. Racial Inequities. 2020. 6, 8.
- 6 Tyler Nims, Kendra Bradner, Johnna Margalotti, Zachary Katznelson, and Vincent Schiraldi. The Enormous Cost of Parole Violations in New York. (New York: A More Just NYC and Columbia Justice Lab, 2021). 17, https://justicelab.columbia.edu/sites/default/files/content/Cost_Parole_Violations_in_New_York.pdf
- 7 Less Is More NY sign-on letter. 2022. <https://lessismoreny.org/sign-on>
- 8 Luis Ferré-Sadurní. "Why New York Is Closing 6 Prisons," The New York Times. November 9, 2021. www.nytimes.com/2021/11/09/nyregion/prisons-closing-new-york-hochul.html
- 9 For one example, see People of the State of New York ex rel. Lowell J. Britt vs. David Harder et al. New York State Supreme Court, Sixth Judicial District. January 18, 2022. Index No. CA 2022-0035.
- 10 Cal Whiting, New York State Department of Corrections and Community Supervision assistant commissioner for government affairs, in email correspondence to Mark Mishler, counsel and legislative director for Senator Julia Salazar. February 8, 2022.
- 11 DOCCS uses the term sex offenders. The organizations leading the #LessIsMoreNY campaign reject such language and use person-first language such as people convicted of sex offenses. To read the writ, see People of the State of New York ex rel. Leroy Peoples v. David Harder et al. Index No. 2021-2520
- 12 Draft of New York State Parole Board Less Is More Act regulations. February 7, 2022. 51-52. <https://doccs.ny.gov/system/files/documents>
- 13 Whiting. February 8, 2022.
- 14 Whiting. February 8, 2022.
- 15 A More Just NYC. 2021. Parole Reform: Conservative States Leave New York Behind. <https://static1.squarespace.com/static>
- 16 Less Is More NY sign-on letter. 2022. <https://lessismoreny.org/sign-on>