



Research Brief

Two months later: Outcomes of the March 27th order to release people jailed for technical violations during the pandemic

Vincent Schiraldi¹

May 2020

Introduction

Incarceration for non-criminal, technical state parole violations during the COVID-19 pandemic is seriously endangering people incarcerated in New York. The first two incarcerated people to [die of COVID-19](#) in the Rikers Island jail complex - Michael Tyson and Raymond Rivera - were held there for technical parole violations for missing appointments and failing a drug program. Many more people working or incarcerated in New York's state and local correctional facilities have contracted the coronavirus.

On March 27, 2020, the New York State Department of Corrections and Community Supervision (DOCCS) announced that it would release 1,100 people jailed in county lockups for accusations of technical parole violations. This research brief assesses the impact of the March 27 DOCCS directive and concludes that fewer than 800 people were released. Over these same two months, more than 160 new people accused of technical parole violations were sent to the Rikers jails by DOCCS. We do not have data to assess how many more people were sent to jails in the 57 counties outside of New York City.

¹ Vincent Schiraldi is co-director of the [Columbia Justice Lab](#) and Senior Research Scientist at the [Columbia School of Social Work](#). I would like to thank the Kendra Bradner, director of the Justice Lab's [Probation and Parole Reform Project](#); Tyler Nims of the [Independent Commission on New York City Criminal Justice and Incarceration Reform](#); and Emily NaPier Singletary, co-executive director of [Unchained](#) for their comments on earlier drafts of this report.

New York State's Parole Violation Problem

Prior to the pandemic, New York State was struggling with a parole violation problem.

New York State incarcerates [more people for technical parole violations](#), like missing appointments or alcohol use, than every state except Illinois. New York parole officials return [six times](#) as many people to prison for non-criminal, technical violations as for new convictions. While people accused of technical violations await hearings to adjudicate those accusations, they are held in local jails. And, before the pandemic, persons accused of minor mishaps, like Mr. Tyson and Mr. Rivera, were the [only population group actually increasing](#) in the notorious jails on Rikers Island – an obstacle to New York City's commitment to shutter those jails. Black and Latinx people are incarcerated on Rikers for technical parole violations at [12 and four times the rate of white people](#), respectively.

While there were insufficient resources to house, treat, train and assist the 36,000 people on parole in New York State in the community, state and local taxpayers were spending over \$600 million to re-incarcerate them.

These problems were widely recognized by city and county officials and grass roots groups; formerly incarcerated people and former community corrections officials; defense lawyers and district attorneys, and policymakers at the state and local level. Two years ago, New York Governor Andrew M. Cuomo decried the overuse of incarceration for technical, non-criminal parole violations, [stating](#) “New York jails and prisons should not be filled with people who may have violated the conditions of their parole, but present no danger to our communities.” And last year, the New York State Bar Association empaneled a geographically and philosophically diverse Task Force on State Parole, which [found](#) that the state's longstanding policy of technically violating so many people “is counterproductive and costly, both in human and financial terms, and should be promptly addressed through remedial legislation.”

That was all before the pandemic. But it is especially indefensible to incarcerate people during the pandemic for non-criminal rule violations.

COVID-19 and Parole Violations

Correctional facilities are incredibly dangerous places to be during the coronavirus pandemic. They are generally unhygienic, social distancing is impossible in them, and they are packed full of people who are disproportionately medically vulnerable. Multiple shifts of staff come and go daily, ensuring that what is contracted inside, does *not* stay inside. Over 1500 staff and nearly 400 incarcerated people have [tested positive for COVID-19](#) on Rikers Island where three incarcerated people and [13 staff](#) have died of the coronavirus. Chicago's [Cook County Jail](#) and [Marion Penitentiary](#) are two of the nation's leading COVID-19 hot spots. Nationally, [research](#) has found that increases in a county's jail incarceration rate were associated with significant increases in county rates of infectious disease deaths.

Data like these are why New York State's corrections department no longer allows people sentenced to state prison to be transferred from county jails to DOCCS' prisons. This, even while DOCCS parole officers continue to send people into those same county jails for allegations of technical parole violations.

On March 27, 2020, when the pandemic had begun to infect staff and incarcerated people in New York and throughout the country, Governor Cuomo [announced](#) his intention to release 1,100 people incarcerated in

local jails throughout New York State who were accused of what he called violating “parole for non-serious reasons.” Unlike people accused of criminal offenses, persons accused of technical parole violations do not currently have the right to release pre-adjudication either on their own recognizance, under supervision or on money bail.

The New York State Department of Corrections and Community Supervision has issued a [statement](#) regarding the release of persons held for technical violations. In it, they estimated that up to 1,100 out of approximately 1,800 people held for technical parole violations in local jails throughout the state at the time would be released under the order, 400 from New York City’s jails and another 700 from jails throughout the rest of the state. DOCCS also expanded on the rationale behind the Governor’s release order:

This significant action is being taken in response to a growing number of COVID-19 cases in local jails over the past few days and weeks. Our top priority remains the public health and safety of New Yorkers during this global public health emergency and this measure will further protect a vulnerable population from contracting and transmitting this infectious disease.

Purpose, Methodology, and Findings

The purpose of this brief is to analyze the near-term outcomes of the March 27th release order after its first two months in effect. As policymakers look to reduce incarcerated populations to trim costs, limit exposure of vulnerable incarcerated populations and staff to COVID-19, and decrease community spread, New York State officials selected people held for technical violations as a group particularly viable for release. Two months after these releases were ordered, this brief examines the order’s outcomes on two measures:

- Have the full 1,100 individuals been released during the first two months since the original release order and, if not, what portion have been released?
- Have additional people been incarcerated in county jails for technical violations during this period and, if so, how many?

We will then discuss the policy implications of our findings.

Question #1: Have the full 1,100 individuals been released over the first two months since the original release order?

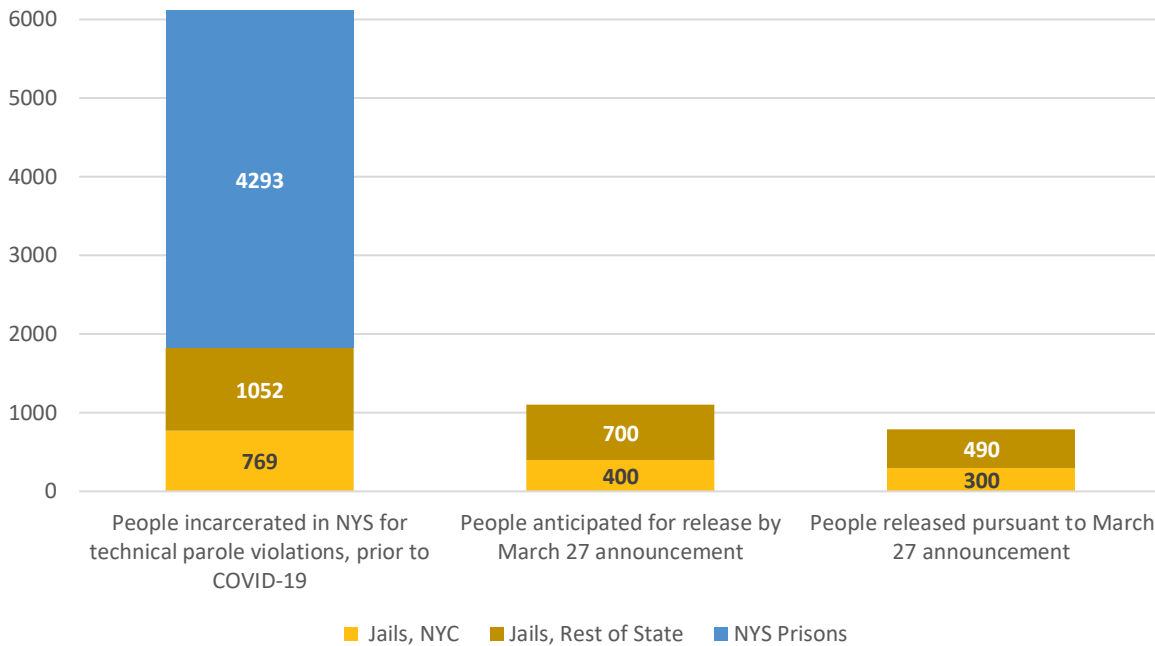
Finding: The best available data indicate that the state released around three-quarters of those originally anticipated by the Department of Corrections and Community Supervision.

In February 2020, an average of [1,820 people](#) were held daily in jails throughout New York State for technical parole violations in addition to approximately [4,300 people](#) incarcerated in state prisons for technical parole violations. This means that one out of eight people incarcerated in jails throughout New York State in February and [one in ten](#) people incarcerated in state prisons were locked up for technical parole violations.

According to the DOCCS May 20th [COVID-19 Report](#), 790 people (72 percent of the state’s estimate) held in local jails throughout New York State have been released pursuant to the Governor’s order. Of the 400 people

DOCCS estimated they would be able to release from New York City jails, 300 (75 percent of the state’s NYC estimate) have been released.

Figure 1: People detained and released for technical parole violations in NYS jails and prisons



Sources: The number of people incarcerated in jails is from NYS Division of Criminal Justice Services [average daily counts for February 2020](#); The number of people incarcerated in NYS prisons is from [NYS Open Data](#) for March 2019; The number of people anticipated for release is from the March 27th announcement; The number of people released is from the DOCCS May 20th [COVID-19 Report](#).

Question #2: Have additional people been incarcerated in county jails for technical violations during this period and, if so, how many?

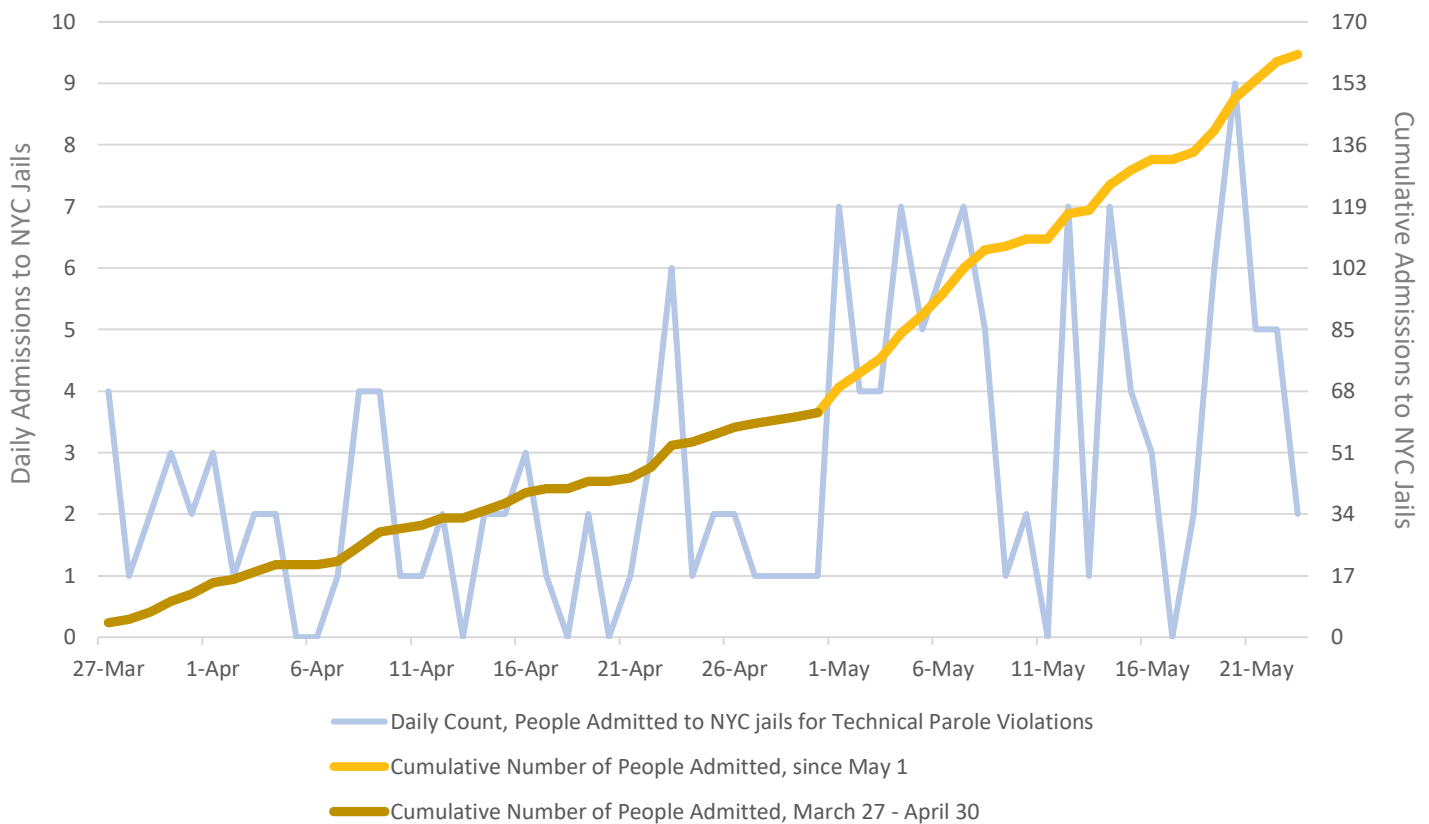
Finding: An estimated 172 additional people will have been added to New York City’s jails in the two months since the release order was issued on March 27, a number that appears to be accelerating and will soon surpass the number released.

The Vera Institute of Justice publishes [daily counts](#) of the number of persons admitted to New York City jails. Analyzing data for the number of persons admitted to city jails from March 27 to May 23 2020², 161 people were admitted to city jails accused of technical violations during those 58 days. That averages to 2.8 new people per day being admitted to city jails for non-criminal, technical parole violations since the Governor issued his order. The daily number of people being incarcerated for technical violations ranged from a low of zero to a high of nine.

² As of this writing, May 23 is the most recent date for which data is available – there is a two-day lag in the posting of new data.

The rate of people being incarcerated for technical violations has increased markedly since the beginning of May. During the 35 days from March 27 to April 30, 62 people were incarcerated in city jails for technical violations, an average of approximately two new people per day. In the 23 days from May 1 to May 23, 99 people were incarcerated for technical violations, an average of over four new people per day, more than double the initial weeks following the release order. This suggests that the impact of the Governor’s order cautioning against incarcerating people for technical violations may be waning. Further, while the number of persons being accused of technical violations has ranged since the Governor’s March 27th order from zero to nine people per day, all of the days that witnessed seven or more people being incarcerated for technical violations have occurred since May 1. If these trends continue, the issue of people incarcerated for technical parole violations during the pandemic may be a growing one.

Figure 2: People Detained for Technical Parole Violations in NYC Jails, March 27 – May 23



Source: Vera Institute of Justice, [NYC JailViz 2.0 Application, Admission Trends](#).

It bears noting that these additional people are being incarcerated in New York City jails for allegations of technical parole violations despite the mushrooming of people testing positive for COVID-19 in city jails since the Governor’s order. According to [data](#) from the city’s Board of Correction, on March 27, 103 currently incarcerated people and 95 staff (cumulatively) had tested positive for COVID-19. By May 20, 2020, the number of currently incarcerated people with confirmed cases of COVID-19 had more than tripled to 363, while the cumulative number of staff testing positive had increased 16-fold to 1557 staff.

We used initial admissions data to forecast future, near-term jail populations of people held for technical parole violations. This a particularly important exercise since people are [not being transferred to state prisons](#) from local jails once their parole violation accusations are adjudicated due to concerns about spreading the virus further into DOCCS' facilities.

Using data through May 23, if the overall average of 2.8 people per day being incarcerated for technical violations in city jails continues, 172 people will have been admitted to New York City jails in the first two months since the Governor's announcement. Further, people newly incarcerated at city jails for technical state parole violations will surpass the 300 released under the order by July 9. If the accelerated rate of technical violations we have found since May continues, 178 such people will have been admitted to city jails by May 27th, and people newly incarcerated for technical parole violations will exceed 300 by June 25.

Policy Implications

To remedy this situation that is both flawed public policy and now, life threatening, we recommend that unless they pose a demonstrable and imminent public safety risk, **persons held in jails and prisons throughout New York State who have been accused/convicted of technical parole violations be released and DOCCS cease issuing new warrants for technical violations** until the pandemic subsides.

If New York, which has been hit harder by the virus than any state, were to cease technical violations and release people who are currently incarcerated for technical parole violations, it would be well within the mainstream of professional practice. For example, in a recent [survey](#) conducted by the American Probation and Parole Association of its members, seventy percent of respondents indicated that their agency is no longer incarcerating people in their jurisdictions for technical violations. In March, over 50 probation and parole commissioners from around the country issued a [statement](#) recommending that community supervision agencies suspend incarceration for technical violations. In April, the Pew Charitable Trusts and Arnold Ventures issued a [framework](#) for reforming community corrections recommending fewer revocations, and smaller, more focused supervision that was endorsed by groups across the political spectrum including conservative groups like the R Street Institute and the American Conservative Union.

Further, to ensconce sound parole practices into law, we recommend that the state enact legislation that would end its dubious position atop the parole incarceration heap.

In 2019, legislation was proposed that would reduce incarceration for technical parole violations. The [Less Is More Act](#), co-sponsored by Senator Brian Benjamin and Assemblymember Walter Mosley, would provide a process for pre-adjudication release of people accused of technical violations, eliminate certain technical violations like violating curfew or alcohol consumption, reduce sentence lengths for those imprisoned for technical violations, and incentivize good behavior on parole by shortening supervision periods by 30 days for every 30 days successfully completed. The #LessIsMoreNY Campaign, organized by the Katal Center for Health, Equity and Justice, A Little Piece of Light and Unchained, report that over 130 groups and individuals

from around the state, including seven sitting District Attorneys,³ the New York State Association of Counties and the New York and Rochester City Councils, have [signed on](#) in support of the Less Is More Act.

Both the State Bar Association report and the Less Is More Act, which have support from geographically and philosophically diverse coalitions, call upon the state to end its excessive use of technical violations of thousands of people annually.

In sum, policymakers should enact common-sense reforms like **ending automatic pre-hearing incarceration for people facing technical violations; eliminating incarceration for less serious technical violations; capping incarceration terms for technical violations; and incentivizing parole compliance through grants of “merit time” for following the rules.** These provisions should be legislated promptly both because they comport with best practices, because they will limit exposure of people to dangerous correctional facilities now and in the event of a COVID-19 rebound, and because they will save considerable resources at the state, city and county levels.

This report was supported in part by generous grants from Arnold Ventures, Galaxy Gives, and Tikkun Olam Foundation, Inc. The views and opinions expressed in this report are those of the author and do not necessarily reflect the views of the funders.

³ District Attorneys from Albany County (David Soares), Bronx County (Darcel Clark), Kings County (Eric Gonzalez), New York County (Cyrus Vance, Jr.), Tompkins County (Matthew Van Houten), Ulster County (Dave Clegg), and Westchester County (Anthony Scarpino) have [signed on](#) in support of the Less Is More Act.

Appendix: New York Standard Reporting Conditions

1. I will proceed directly to the area to which I have been released and, within twenty-four (24) hours of my release, make my arrival report to the Community Supervision Office indicated on my release agreement, unless other instructions are designated on the agreement.
2. I will make office and/or written reports as directed.
3. I will not leave the State of New York or any other state to which I am released or transferred, or any area defined in writing by my Parole Officer without permission.
4. I will permit my Parole Officer to visit me at my residence and/or place of employment and I will permit the search and inspection of my person, residence, property. I will discuss any proposed changes in my residence, employment, or program status with my Parole Officer. I understand that I have an immediate and continuing duty to notify my Parole Officer of any changes in my residence, employment, or program status when circumstances beyond my control make prior discussion impossible.
5. I will reply promptly, fully, and truthfully to any inquiry of or communication by my Parole Officer or other representative of the Department of Corrections and Community Supervision.
6. I will notify my Parole Officer immediately any time I am in contact with or arrested by any law enforcement agency. I understand that I have a continuing duty to notify my Parole Officer of such contact or arrest.
7. I will not be in the company of or fraternize with any person I know to have a criminal record or whom I know to have been adjudicated a Youthful Offender except for accidental encounters in public places, work, school, or in any other instance without the permission of my Parole Officer.
8. I will not behave in such a manner as to violate the provisions of any law to which I am subject which provide for a penalty of imprisonment, nor will my behavior threaten the safety or well-being of myself or others.
9. I will not own, possess, or purchase any shotgun, rifle, or firearm of any type without the written permission of my Parole Officer. I will not own, possess, or purchase any deadly weapon as defined in the Penal Law or any dangerous knife, dirk, razor, stiletto, or imitation pistol. In addition, I will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.
10. In the event that I leave the jurisdiction of the State of New York, I hereby waive my right to resist extradition to the State of New York from any state in the Union and from any territory or country outside the United States. This waiver shall be in full force and effect until I am discharged from Parole or Conditional Release. I fully understand that I have the right under the Constitution of the United States and under law to contest any effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my Parole or Conditional Release.

11. I will not use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.
12. Special Conditions: (as specified by the Board of Parole, Parole Officer or other authorized representative of DOCCS).
13. I will fully comply with the instructions of my Parole Officer and obey such special additional written conditions as he or she, a member of the Board of Parole, or an authorized representative of the Department of Corrections and Community Supervision, may impose.