

#LessIsMoreNY

Less Mass Supervision = More Safety and Justice



Explaining the *Less Is More Act*

This fact sheet explains the main provisions of the Less is More Act. On September 17, 2021, Governor Kathy Hochul signed the Less is More: Community Supervision Revocation Reform Act (S.1144A – Benjamin / A.5576A – Forrest) into law. New York State imprisons more people for non-criminal “technical” violations of parole like missing an appointment with a parole officer, being late for curfew, or testing positive for alcohol and other drugs than any state in the country. Most provisions take effect March 1, 2022 and it will be fully implemented by July 2022, but there is a provision that allows for the full and immediate implementation of #LessIsMoreNY before the effective date.

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Background:

Problem: Today, there are almost 34,000 people on parole in New York State. New York imprisons more people for “technical” violations of parole rules -- like missing an appointment with a parole officer, being late for curfew, or testing positive for alcohol and other drugs -- than any state in the country.ⁱ Of people on parole whom New York sent back to prison in 2019, over 85% were reincarcerated for technical parole violations.ⁱⁱ The racial disparity is stark: across the state, Black people are 5 times more likely and Latinx people are 30% more likely to be re-imprisoned for a technical parole violation than whites. In New York City jails, Black people are incarcerated for technical parole violations at 12 times the rate of whites.ⁱⁱⁱ This not only harms individual lives and families without any proven public safety gains, but also drives up the population in state prisons and local jails, wasting money. New York taxpayers spend more than \$680 million annually to reincarcerate people for technical parole violations.^{iv}

Solution: Fully implementing the **Less is More: Community Supervision Revocation Reform Act** addresses these problems. People doing well on parole will be rewarded with time off their parole terms, incentivizing rules compliance. Only in the most serious cases will reincarceration for technical violations be an option, and people will get a lawyer and a speedy hearing before that can happen. Parole officers will have reduced, reasonable caseloads. The hundreds of millions of dollars saved can be invested in housing, small business grants, family programs, mental health care and more. Racial equity and public safety will both be improved.

Background: The bill was developed by people on parole, people currently incarcerated, family members, Katal, Unchained, A Little Piece of Light, A More Just NYC, the Justice Lab at Columbia University, the Legal Aid Society, and more. It pulls from the best of successful parole reforms in dozens of other states, including Red states like Louisiana, Missouri, and South Carolina. The Less Is More Act is supported by a unique coalition of district attorneys, sheriffs, current and former corrections and law enforcement officials, faith communities, and nearly 300 community, faith, labor, and advocacy groups around the state.

Bill passage: The bill was signed into law by Governor Kathy Hochul on September 17, 2021.

The main provisions of the *Less Is More Act*, as signed in September 2021:

1. Creating Incentives -- Earned Time Credits.

Today, while other states have created avenues for people on parole to be discharged early for good behavior, in New York there are too few mechanisms for people on parole to shorten their time on community supervision, even after extended periods of compliance and success. These existing mechanisms are discretionary and applied arbitrarily.

Under the *Less Is More Act*, most people on parole can earn 30 days of time credit for every 30 days in the community that they adhere to parole rules.* For example, someone who has a four-year term of parole will complete supervision after two years if they have no sustained violations during that period. If the person on parole 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 will incentivize good behavior from people on parole and reduce caseloads for parole officers. People on parole will be awarded a maximum of two years of *retroactive* earned time credits.

* This provision applies to everyone on parole, except for those on life parole. Existing discretionary mechanisms for early termination of parole remain unchanged and available to all eligible people on parole, including those on life parole.

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

Today, as soon as parole authorities issue a warrant for an alleged technical violation, the paroled person is taken directly to the local jail -- without first seeing a judge or parole hearing officer. In New York City, the paroled person is taken to Rikers, where they spend an average of two months waiting for an administrative hearing to determine whether they in fact violated their parole and whether they will be sent back to prison. It is extremely difficult for people on parole to secure housing, employment, and other community support and services, and under current practice, any stability they have achieved is too quickly jeopardized without strong reason.

Under the *Less Is More Act*, due process is bolstered for everyone on parole, and people on parole will no longer be automatically jailed. Everyone will receive 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 55 days for people not detained.

For people on parole accused of technical violations (i.e. non-criminal rule violations): Parole authorities will give the person on parole a written notice of the violation and order the person to appear at an administrative hearing on the alleged violation.* If the person intentionally skips the hearing and is facing a more serious technical violation, they can then be arrested. At that point, they would be taken to a local arraignment court for a recognizance hearing—similar to a bail hearing in a criminal case—before a criminal court judge to determine whether or not they will be held in jail while they wait for the administrative hearing. The judge would assess whether the paroled person is likely to return for their administrative hearing if they remained at liberty in the community.

For all people on parole accused of non-technical violations (i.e. alleged new crimes): All people on parole will receive a recognizance hearing before a judge within 24 hours (or as soon

as court is open for any business) to determine whether they will be detained pending revocation proceedings.

Location of revocation hearings will now be in the community: Under the Less Is More Act, all revocation hearings will be conducted in the community rather than in jails, increasing access for witnesses, family members, and the public.

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

3. Eliminating Incarceration for Certain Technical Violations.

Prior to the Less is More Act being enacted, 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 reincarcerated more people for technical violations than any state in the nation. Sending someone back to prison wipes away the progress that the person has made since being released on parole and makes it harder for that paroled person to ultimately return to society after the period of incarceration ends. In other states, community-based efforts to deal with issues, combined with graduated sanctions, have proven far more effective than 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 NYS for decades. The Less Is More Act will no longer permit paroled people to be reincarcerated as a punishment for many technical violations. If a person is found to have committed one of these violations, they will face consequences short of incarceration: they will be ineligible for earned time credits for a 30-day period and their parole officer can impose additional “special conditions” to help address the issue, including mandatory treatment. Violations for which a person cannot be returned to incarceration include but are not limited to: being late for curfew, changing a job or program without permission, or using alcohol or drugs (unless serving a sentence for DWI).*

More serious technical violations such as absconding and repeatedly refusing treatment will continue to be punishable by short incarceration periods proportionate to the seriousness or repetition of the violation.

* This provision does not apply to everyone on parole evenly because of a caveat, added by the legislature, for people on parole for sex offenses. Allegations of certain non-criminal technical violations against people on parole for sex offenses will be treated as *non-technical* violations, which means they could still face incarceration for them if parole can demonstrate the violation is related to preventing another sex offense.

4. Capping Periods of Incarceration.

Under the Less Is More Act, there are only a limited number of technical violations for which a person is subject to incarceration, and for those few violations, there are limits to the length of incarceration. For absconding (intentionally failing to stay in contact with parole officials and failing to tell parole of a change of address), the first violation can result in a short period of incarceration. For all other technical violations, there can be no incarceration 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.

Again, there will be consequences for all technical violations, including failure to earn good time credits and possibly additional conditions of parole such as more frequent reporting and mandatory treatment, as appropriate.*

For non-technical violations – i.e. 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 judicial review of the sustained non-technical violation and the punishment imposed. *This applies to everyone on parole.*

* This provision does not apply to everyone on parole evenly because of a caveat, added by the legislature, for people on parole for sex offenses. Allegations of certain non-criminal technical violations against people on parole for sex offenses will be treated as *non-technical* violations, which means they could still face incarceration of more than 30 days for them if parole can demonstrate the violation is related to preventing another sex offense.

Implementation timeline:

While the provision restricting the use of incarceration as a sanction for technical violations went into effect immediately when Governor Hochul signed the Less is More Act on September 17, 2021, most other provisions go into effect on March 1st, 2022 with full implementation by July 2022.

The bill includes a provision that allows for the Governor to implement components of the bill through executive action *immediately*, without having to wait for the stated effective dates.

About the #LessIsMoreNY Campaign

#LessIsMoreNY is a statewide coalition of people directly impacted by parole; community, faith and advocacy groups; service providers; and public safety experts working to reduce jail and prison populations; promote public safety; support people who are subject to community supervision in the reentry process; promote safety and justice for families and communities; and save taxpayers money. We call on the Governor to sign the bill, capture the savings that will result from reform, and reinvest those savings back into the communities most harmed by mass incarceration and crime.

For more information, and to get involved with #LessIsMoreNY, please contact:

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ⁱ United States Department of Justice, Bureau of Justice Statistics. 2020. *Probation and Parole in the United States, 2017-2018*, Appendix Table 7. Available:

https://www.bjs.gov/content/pub/pdf/ppus1718.pdf?utm_content=ppus1718&utm_medium=email&utm_source=govdelivery

ⁱⁱ NY State Assembly, Standing Committee on Correction. 2019. *2019 Annual Report*, at 1. Available:

https://nyassembly.gov/write/upload/postings/2020/pdfs/20201110_0094293.pdf

ⁱⁱⁱ Kendra Bradner and Vincent Schiraldi. 2020. *Racial Inequities in New York Parole Supervision*. Available:

<https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>

^{iv} Nims, Tyler, Kendra Bradner, Johnna Margalotti, Zachary Katznelson, and Vincent Schiraldi. 2021. *The Enormous Cost of Parole Violations in New York*. A More Just NYC and Columbia Justice Lab. Available:

https://justicelab.columbia.edu/sites/default/files/content/Cost_Parole_Violations_in_New_York.pdf