HOW NEW YORK LAGS BEHIND PAROLE REFORMS IN OTHER STATES

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New Yorkers United for Justice (NYUJ) is a bipartisan coalition of national and local non-profit organizations committed to advancing commonsense criminal justice reforms in New York State that promote public safety and fairness. NYUJ aims for legislative urgency to fix a broken criminal justice system that punishes the poor and communities of color, tears families apart, and makes New Yorkers less safe.
INTRODUCTION

New York’s parole system is broken, costly, and unjust. The state leads the nation in reincarcerating individuals on parole for noncriminal, technical violations of their conditions of parole. And due to lack of transparency and chronic understaffing of its parole board, too few incarcerated people are released on parole. Despite these issues, New York has lagged behind much of the country in enacting comprehensive, evidence-based reforms of its parole and community supervision systems.

In recent years, a growing number of states across the country—both red and blue—have enacted various parole reforms that have led to positive results, including reduced costs and prison populations.

New Yorkers United for Justice (NYUJ) developed this resource to illustrate how components of recent parole reforms proposed in the New York Legislature compare with other states. We believe enacting these reforms in New York can help create an improved parole system that is more in line with the rest of the nation.
EARNED TIME CREDITS

New York currently does not allow individuals to earn any credits toward an earlier discharge from community supervision. S. 1144 (“The Less is More Act”) would allow individuals to earn 30 days toward an earlier discharge for every 30 days they remain in compliance with their conditions of community supervision.

Eighteen states have enacted policies establishing a system of earned time credits to reduce an individual’s period of supervision through compliance. These states include: Alaska, Arkansas, Arizona, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maryland, Missouri, Mississippi, Montana, New Hampshire, Oregon, South Carolina, South Dakota, and Utah. Here are some key examples:

The Reform
In 2012, Missouri enacted a law that allowed individuals on supervision to earn 30 days off of their period of supervision for every full calendar month they remained in compliance with the terms of their supervision. This policy did include restrictions based on offense type and time spent on supervision.

The Result
By 2015, 36,000 people were able to reduce their terms of supervision by an average of 14 months. This reduction in terms cut the supervised population by 18 percent and reduced supervision officers’ caseloads by nearly 16 percent. Reductions in supervision terms and supervised population did not harm public safety, and there was no statistically significant increase in two-year reconviction rates.
The Result
Three years after the law’s implementation, supervision caseloads remained stable despite the new law requiring more action on the part of supervision officers. Additionally, the state’s violent crime rate leveled out following these reforms, and the property crime rate decreased between 2015 and 2018.  

The Reform
In 2015, Utah passed legislation aimed at shortening periods of supervision. The new law established the earned compliance credits program, in which individuals on supervision with terms of three years can receive 30 days off of their sentence for each successful month of compliance with their conditions.
ELIMINATING AND REDUCING USE OF INCARCERATION FOR TECHNICAL VIOLATIONS

In New York, incarceration remains an option for any violation, technical or non-technical, of an individual's conditions of parole. These terms of incarceration—referred to as time assessments—can be as long as 15 months. S. 1144 (“The Less is More Act”) would remove incarceration as an available response to most low-level, noncriminal “tier 2” technical violations of community supervision. Furthermore, the bill would cap incarceration time assessments at 30 days for noncriminal “tier 1” technical violations of parole.

24 states have enacted legislation to curtail the use of incarceration in response to technical violations through alternative sanctions and/or caps on revocation length. These states include: Alaska, Alabama, Arkansas, Delaware, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Montana, North Carolina, North Dakota, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, and West Virginia. Key examples include:

The Reform

In 2010, South Carolina passed sweeping legislation that, among other things, authorized supervision officers to use administrative responses to revocations rather than incarceration. The legislation allows officers to rely on verbal or written remands, home visits, and fee restructures or exemptions (to avoid missed payment revocations).
In 2017, Louisiana passed legislation that established a series of “graduated sanctions” that the court can impose for technical violations of probation and parole.\(^8\)

<table>
<thead>
<tr>
<th>Violation</th>
<th>Incarceration Period</th>
</tr>
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<tbody>
<tr>
<td>First violation</td>
<td>No more than 15 days</td>
</tr>
<tr>
<td>Second violation</td>
<td>No more than 30 days</td>
</tr>
<tr>
<td>Third or subsequent violation</td>
<td>No more than 45 days</td>
</tr>
<tr>
<td>Fourth or subsequent violation</td>
<td>No more than 90 days</td>
</tr>
</tbody>
</table>

The court also has the option to revoke probation and order the defendant to serve the sentence suspended, with or without credit for the time served on probation at the discretion of the court.\(^9\)

**The Result**

After the implementation of these changes and added focus on non-carceral responses to revocations, the total number of compliance revocations decreased by 46 percent between FY 2010 and 2015.\(^{11}\) Research has shown recidivism rates have been lower for those who began supervision after the implementation of this law.\(^{12}\)

Further, because of the prison population decline due to these and other sentencing reform policy changes in the bill, the state cancelled plans to build new prison space and closed six prison facilities, saving a total of $491 million between 2010 and 2016.\(^{13}\)
RIGHT TO COUNSEL IN THE PAROLE PROCESS

A defendant’s right to legal counsel varies by state and parole process. However, several states provide better access to counsel throughout the parole system than New York, where individuals are not entitled to counsel during their parole board interview or during the preliminary hearing of the revocation process.

S. 1144 (“The Less is More Act”) would grant individuals the right and access to counsel throughout the revocation process. Assembly Bill A. 3900 (2019-2020 Session Number) would grant individuals the right and access to counsel during the parole interview process. Two individual state examples of stronger right to counsel processes than New York include:

People eligible for parole in Hawaii’s state prisons have the right and access to counsel during parole hearings. The individual is entitled to consult with “any person the [individual] reasonably desires in preparation for the hearing,” as well as “representation and assistance by counsel (including appointed counsel if indigent.”

Hawaii also grants individuals facing parole revocation hearings the right to counsel during the final revocation hearing. However, it is unclear if representation is provided for indigent people.

Individuals in Michigan facing a revocation of their parole are granted the right to counsel during both preliminary and final revocation hearings. An individual facing a preliminary parole revocation hearing has the right to be represented by an appointed counsel if they have a plausible claim of innocence that may be difficult to prove; have factors that may mitigate or justify the
violation which are complex or difficult to present; or are mentally unable to prevent a defense. Individuals found to be indigent at the final revocation hearing shall be appointed an attorney.

INCREASING THE BURDEN OF PROOF FOR TECHNICAL VIOLATIONS

In New York, a hearing officer need only find that an individual has committed a noncriminal, technical violation of parole by a preponderance of evidence to re-incarcerate the individual for an extended period of time.

S. 1144 (“The Less is More Act”) would increase the burden of proof throughout the revocation process, including requiring clear and convincing evidence to sustain a violation. One state that has a “clear and convincing” evidentiary standard for revoking an individual’s parole is New Jersey. New Jersey law requires that a hearing officer determine, by clear and convincing evidence, that an individual has “seriously or persistently violated the conditions of parole” in order to revoke an individual’s parole.
New York currently allows presumptive release to certain incarcerated individuals, however, this process is plagued by a lack of clarity and transparency. In 2016, for example, only 21 individuals were released through this process in the state.  

S. 1415/A. 4231 ("Fair and Timely Parole Act") would create a presumption of release for an eligible person appearing before the parole board, unless the parole board can demonstrate that there is a “current and unreasonable risk the person will violate the law if released and such risk cannot be mitigated by parole supervision.”

Currently, 15 states allow for presumptive release to parole for some or most offense types and sentences. These states have adopted more robust systems than New York that create a presumption of release for individuals convicted of some or more offenses and have met the requirements of their case plan and shown a commitment to rehabilitation. Key examples include:

In 2014, Mississippi implemented a system of presumptive parole after earlier reforms relaxed the state’s “truth-in-sentencing” scheme which required people to serve 85% of their sentence. Under the new system, parole-eligible individuals have a presumption of parole once they meet their minimum sentence, which varies based on offense type, and meet all other criteria.

The criteria ensure that the individual has met the requirements of the parole case plan, any victims have not requested a hearing, the individual has not received a major violation report within the last six months, the individual has agreed to the conditions of supervision, and that the individual has a discharge plan approved by a parole board.
In 2020, Vermont Gov. Phil Scott signed a bipartisan package of criminal justice reforms under the Justice Reinvestment initiative into law, which included the establishment of a system of presumptive parole. This new system will allow individuals to be released once they meet their minimum sentence requirement and have demonstrated key criteria indicating rehabilitation and good behavior.

Under presumptive parole, the Parole Board will be required to conduct a review of presumptive parole candidates within 30 days of an individual’s eligibility date. Presumptive release can be denied if the board determines that a victim should be notified and given the chance to participate in a parole hearing.

In 2020, New Jersey Gov. Phil Murphy signed the “Earn Your Way Out Act” into law, which established a system of administrative parole within the New Jersey Department of Corrections.

Under this new system, eligible individuals who have remained violation-free and have participated in rehabilitation programs have a presumption of administrative release. The release is granted upon review by a hearing officer and certification by a member of the parole board. Individuals granted administrative release do not require a full parole board hearing.
ELIMINATION OF SUPERVISION FEES

New Yorkers on parole, conditional release, presumptive release, and post-release supervision are required to pay a monthly fee of $30. The fee is often a considerable burden on those entering community supervision, given the barriers they face in finding steady employment once they return from prison.

While current New York law does not consider the supervision fee a condition of the individual’s supervision (and therefore does not allow a person’s parole to be revoked over failure to pay), the Department of Corrections and Community Supervision is entitled to “seek enforcement of nonpayment in any manner permitted by law” for recovery of debts owed to the state. Senate Bill S. 2201 would repeal the $30 monthly fee for those who are on community supervision.

In 2020, California Gov. Gavin Newsom signed into law a bill that would effectively repeal 23 fees associated with the criminal justice system, including supervision fees for probation and parole. Other fees that will be repealed include public defense fee, criminal justice administration fee, city and county booking fees, and more. California is the first state in the nation to repeal its administrative fees in the criminal justice system.
CONCLUSION

As other states—both red and blue—around the country have shown, it is possible to comprehensively reform a state’s parole and community supervision policies and see significant reductions in crime, public costs, and recidivism.

Currently, there are various proposals focused on reforming New York’s parole practices that have been put forward in the Legislature. As outlined, these evidence-based legislative proposals mirror those that have been successfully implemented in other states. To make New York’s parole and community supervision systems stronger and its communities safer, NYUJ encourages lawmakers to take action by advancing these commonsense reforms.


3 Ibid.

4 Ibid.


6 Ibid.

7 Schiraldi and Arzu, 2018.

8 Louisiana Code of Criminal Procedure Art. 900(AX)(b)

9 Louisiana Revised Statues 15:574.9H(X(A)


11 Ibid.

12 Ibid.

13 Ibid.


15 Ibid.

16 Ibid.


18 Mich. Comp. Laws § 791.240a

19 New Jersey Administrative Code Section 10A:71-712


23 Ibid.


25 Ibid.

26 Ibid.


28 Ibid.

29 NY Corrections Law Section 210(9). https://www.nysenate.gov/legislation/laws/COR/201#:~:text=%209.,release%20or%20post%20re%2D

30 Ibid.


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