Poor Implementation Puts Health at Risk:

An Evaluation of the New York Release Program for People Incarcerated on Charges of Technical Parole Violations during the COVID-19 Pandemic

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Executive Summary

People accused of technical parole violations and waiting for a parole revocation hearing account for many of those in county jails in New York state. In March 2020, Governor Cuomo, in response to COVID-19, ordered such people to be released from jail, except for those posing a risk to public safety. The Department of Corrections and Community Services (DOCCS), however, released only 38.2% of them, leaving over 1,000 people incarcerated and in danger. In addition, the evidence suggests that DOCCS has not followed Governor Cuomo's other directive: that new arrests for parole violations be avoided.

There were also tremendous differences between counties, with only 28.5% released in Erie County but 58.4% released in Monroe County, suggesting arbitrary and capricious implementation of the directive. A review of the cases of 37 people being held pending hearings on parole violations in Erie County, none of whom were released, found that 1) all 37 had a home to go to; 2) at most, two of them posed a risk to public safety; and 3) two-thirds had a health condition putting them at high risk from COVID-19.

These results suggest an immediate need for more releases to safeguard public health, as well as broader questions about DOCCS and its role in prison reforms.

The State of New York should:

- Complete and continue the pandemic initiative of releasing low-risk detainees;
- Redress the regional disparities in implementation;
- Give every person not released a written statement of reasons and a simple way to appeal to a neutral arbiter;
- Stop issuing parole revocation warrants, with limited exceptions;
- Pass the *Less Is More* bill (A5493/S1343C), ending pre-hearing detention in most cases;
- Consider moving parole out of DOCCS into a new or existing agency with a rehabilitative approach.

This policy brief was drafted by Stephen Hart, Ph.D. It assesses the implementation of Governor Cuomo's March 2020 order to release people accused of technical parole violations from county jails in New York state, in response to the COVID-19 pandemic. The analysis finds that far fewer people were released than would be expected given the goals of the program, and that Erie County released people at a lower rate than many other counties. Calling for more immediate releases to safeguard public health, the brief ends with recommendations to reform the pandemic-program release process and make larger changes to the parole system.

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PARTNERSHIP FOR THE PUBLIC GOOD

Introduction: A Severe Threat to Public Health

The COVID-19 pandemic is a trial by fire for individuals, institutions, and nations. Acts of both heroism and heedlessness abound. Some government institutions are meeting the challenge, but others are failing.

County jails have become hot spots. As crowded indoor spaces housing many people with compromised physical or mental health, jails have high infection rates. Because of the rapid turnover of prisoners, they are even more likely than state prisons to become vectors that spread the disease into the community. On August 18, 2020 *The New York Times* reported that prison and jail deaths increased 40% in the prior 6 weeks.[1] A recent academic study found that one-sixth of COVID-19 cases in Chicago can be traced to the Cook County Jail.[2]

Many of those in county jails are being held before their trial because of inability to post bail. Others are serving short sentences for minor crimes. Few are threats to public safety. A sizeable proportion have health conditions putting them at high risk if they contract COVID-19. During a pandemic, keeping these people in jail is both inhumane and bad public health policy.

In response, public health experts and advocates have pushed to get incarcerated people released, with major successes in New York State. Cooperative efforts by defense attorneys, district attorneys, and judges have dramatically reduced pre-trial incarceration. In addition, many people nearing the end of jail sentences for minor crimes have been let out early. Combined with the very large impact of New York's bail reform law, which took effect on January 1, 2020, these efforts have reduced the population of county jails (including New York City's Rikers) by 44% from July 2019 to July 2020.

However, a third segment of the jail population – alleged parole violators – has not fared well. These are people on parole who have been accused of a non-criminal violation of parole rules, or of a minor crime, and are awaiting a parole revocation hearing. Their fate is largely controlled by a State agency, the Department of Corrections and Community Supervision (DOCCS).

In late March 2020, Governor Andrew Cuomo, recognizing the moral and health policy issues at stake, directed that members of this target population be released, except for those representing a threat to public safety or with no home to go to, and asked that future arrests for parole violations be avoided as long as the public health emergency continued.

This report evaluates the performance of DOCCS in carrying out the Governor's initiative. The results show that DOCCS has failed to honor the intent of the Governor's directive, releasing only a fraction of those

The *target population* for the program being evaluated is people incarcerated in county jails (including NYC's Rikers) pending hearings on alleged parole violations not involving a major crime. Also called the "technical population."

During a pandemic, keeping these people in jail is both inhumane and bad public health policy.

DOCCS runs New York's parole system, with roughly 35,000 people under supervision, and also its prisons, which house approximately 42,000 people.

who should have been freed – and thus increasing the pandemic's danger for a highly vulnerable population and for the public as a whole. This performance also raises questions about the suitability of DOCCS to run the state's parole system, and its capacity to make reforms in other areas of prison policy.

Background: Parole and the Special Release Program

Parole means that a person is let out of prison early, after serving most of their sentence and meeting a set of demanding criteria. But the returning citizen is only partly free – remaining under the control of DOCCS' parole arm and subject to many rules, including:

- a curfew;
- travel restrictions;
- a ban on using drugs, including marijuana and sometimes alcohol;
- required regular visits to a parole officer;
- the need for permission before changing jobs or residence; and
- customized rules that the parole officer designs, such as not being allowed to drive.

If a parole officer decides that a person has violated any rule, or if they are arrested for even the most minor crime, DOCCS declares them a parole violator and incarcerates them until a final hearing, after which they are released or sent back to prison.

Those accused of parole violations have no right to bail or any other form of release before the hearing. If they were arrested on a criminal charge and it is dismissed, DOCCS may still regard it as a parole violation and keep them in jail. Pre-hearing incarceration is in a county jail, and can last anywhere from a few weeks to many months.

After Governor Cuomo's order concerning release of alleged technical violators, DOCCS posted an announcement on its website, effective March 27, saying that "DOCCS was directed to release low-level technical parole violators from local jails."[3] The posting says that the program had begun. At this time DOCCS anticipated up to 1,100 releases, 400 in NYC and 700 elsewhere.[4]

On April 10, in a declaration filed in a case in federal court, Anthony Annucci, the Acting Commissioner of DOCCS, said that an individualized review had been performed on 1,534 potentially eligible persons, of whom 760 had been released.[5]

In this declaration, DOCCS also stated its criteria, although not how they were operationalized. The criteria were far more restrictive than necessary to protect public safety. The most egregious was the exclusion of anyone struggling with significant mental illness issues – a particularly vulnerable group to be incarcerated during a pandemic. As this criterion became

A rule violation or a minor new crime is a *technical violation*, in contrast to a major crime, which would result in a new criminal proceeding and a new judge-imposed sentence to state prison.

The criteria (for release) were far more restrictive than necessary to protect public safety.

known, there was extensive public outcry, and by late May DOCCS said that people with mental health issues had been released on the same basis as anyone else.

DOCCS also implemented its criteria in a way that resulted in a low release rate. It seems to have considered not just what a person on parole is currently alleged to have done, but prior history, going back to the original conviction, which was often a decade or more in the past. It used scores on its internal risk assessment algorithm, but those scores are significantly subjective and can be changed at any time by DOCCS staff; people on parole allege that they are sometimes changed as a punitive measure. Whatever the criteria and process, the results clearly show that DOCCS excluded from release a much higher proportion of incarcerated people than were plausible threats to public safety.

The results of the program: Releases by county

Table 1 shows the main release outcomes, for NYC and the counties with the highest target populations. The numbers are estimates, based on a triangulation of data from DOCCS and from the NY Division of Criminal Justice Services (DCJS). Appendix A describes the methods behind these figures. In constructing the estimates, decisions had to be made. In close cases, the option that resulted in a higher estimate of the releases achieved by the program was preferred. *Therefore, the results shown here are conservative and give DOCCS the benefit of the doubt. Under different options the release rates for most non-NYC counties could be as much as 6-7 percentage points lower than reported here (e.g. 22% for Erie County).*

KEY FINDING 1: THERE WERE FAR FEWER RELEASES THAN EXPECTED FROM THE GOALS OF THE PROGRAM.

Statewide, there were only an estimated 648 releases, or 38.2% of the target population.[6] Over 1,000 persons accused of parole violations were left behind to face possible infection in the highly dangerous environment of a county jail. *It is not plausible that over 60% of the people held on parole violation charges, without a major new crime, were threats to public safety.* The goals of the program were thus undermined.

In New York City, 299 people were released: a 40.1% rate, a little better than in the rest of the state. Nonetheless, the majority – 447 in all – remained at Rikers, where two parolees have died and the pandemic has sickened many residents and staff.

Upstate advocates have been seeing few releases, and Table 1 shows that their concern is well founded. Outside of NYC, only an estimated 349 persons, or 36.7% of the 951 found in non-NYC jails just before releases began, were let out, leaving over 600 behind. The number released was only half of the 700 DOCCS anticipated for upstate.

Whatever the criteria and process, the results clearly show that DOCCS excluded from release a much higher proportion of incarcerated people than were plausible threats to public safety.

TABLE 1. ESTIMATED PANDEMIC-PROGRAM RELEASES

County	Technical pop. before releases	Estimated releases	Release rate
TOTALS			
New York State	1,697	648	38.2%
NYC (all boroughs)	746	299	40.1%
Non-NYC counties	951	349	36.7%
UPSTATE URBAN COUNTIES			
Erie (Buffalo)	89	25	28.5%
Niagara (Niagara Falls)	19	9	48.5%
Monroe (Rochester)	137	80	58.4%
Onondaga (Syracuse)	62	31	49.4%
Oneida (Utica)	36	12	32.5%
Schenectady	39	23	57.5%
Albany	53	25	46.7%
OTHER COUNTIES WITH A TARGET POPULATION OVER 15 IN MARCH 2020			
Dutchess	24	12	50.8%
Jefferson	19	13	69.2%
Nassau	37	6	16.1%
Orange	46	8	17.3%
Oswego	23	13	54.4%
Rensselaer	20	5	26.6%
Saratoga	18	4	21.4%
Suffolk	57	17	30.0%
Sullivan	22	4	16.2%
Ulster	16	0	0.0%
Westchester	31	3	10.9%

All figures are estimates. See Appendix A for other counties, more detailed data, and estimation methods. Rounding may result in minor discrepancies.

KEY FINDING 2: RELEASES VARIED ENORMOUSLY ACROSS COUNTIES.

Among the upstate urban counties along the Thruway, the release rates range from 28.5% in Erie County (Buffalo) to 58.4% in Monroe County (Rochester). In comparing non-NYC counties, there is no clear pattern. Parole release rates do not track the severity of the pandemic, nor do they neatly correspond to an urban/rural divide, or to region of the state.

In many counties, DOCCS' failure is particularly egregious. Of the target population, 89% of those in Westchester, 84% in Nassau, and 72% in Erie were denied release. Erie County, including Buffalo – the state's second-largest city, is the most populous upstate county with a very low release rate.

The immense variability of outcomes across counties is problematic in itself. As noted above, in Erie County only 28.5% were released, vs. 58.4% in Monroe County. Are people on parole in Buffalo far more dangerous than their peers in Rochester, a similar city 75 miles away? Not likely. A more probable cause is variation in viewpoints among the local DOCCS staff making decisions. It appears that DOCCS delegated most or all of the decision-making to the local parole offices, but didn't provide a well-designed process to make those decisions consistent.[7] This variation in attitudes is arbitrary, unrelated to law or the actions of incarcerated individuals, and should not be the basis for whether a person is free or in jail.

KEY FINDING 3: PAROLE ARRESTS CONTINUED, AND REBOUNDED AFTER THE END OF THE RELEASE PROGRAM, DESPITE THE GOVERNOR'S INSTRUCTIONS.

Governor Cuomo instructed DOCCS to avoid parole arrests while the public health emergency persisted. The meaning of "avoid" was not specified, but it seems reasonable to assume that he meant that only arrests that seemed necessary from a public safety standpoint should be made. After all, parole can issue a parole violation notice, commencing the parole revocation process, without issuing a detention warrant: these are two separate documents. How well did DOCCS implement this part of the Governor's mandate?

For NYC, we have data from the Vera Institute of Justice. It shows that even during the release program (March 27 – April 18) parole arrests continued, with 48 new arrests during this period – an average of 2.1 per day. This was a significant decline from the 5.1 per day in the 30 days just before Governor Cuomo asked that arrests be avoided, although there is room to wonder whether continuing at 41% of the previous rate was really necessary to safeguard the public. In any case, after releases ended, new arrests returned to a level only modestly lower than the previous one: 3.8 per day in the first 30 days after the release program ended, and 3.9 per day in the next 30 days (ending June 17). Thus, not long after the release

It appears that DOCCS delegated most or all of the decision-making to the local parole offices, but didn't provide a well-designed process to make those decisions consistent.

program ended, new arrests had reverted to more than three-quarters of their previous level.

We do not have the same kind of systematic, independent data for the rest of the state, but data from DOCCS shows that in the period from March 28 to May 24, one-third of which was the release period, non-NYC arrests averaged about 4 per day.

In short, the directive to avoid parole arrests appears to have had only a modest impact.

Cases in Erie County

In Erie County, the local group of the #HALTsolitary campaign made contact with 37 incarcerated parolees, all of whom turned out to be male, collecting information about their cases and health situation, shedding additional light on the functioning of the release program in one county, and probably elsewhere. Data collected indicated that:

- About two-thirds (20 out of 31) of those on whom medical information was obtained had conditions such as HIV, COPD, asthma, diabetes, cardiovascular issues, and sickle cell anemia, that elevate their risk of death from COVID-19.[8]
- Of the 37 parolees, only 2 (8%) had cases showing even a possibility of a danger to public safety, and in both cases the danger was questionable.
- All of them had a potential home, with a spouse, girlfriend, mother, or the like.
- Many had been arrested by police, on criminal charges, but the alleged offenses involved no violence, no convictions had resulted, and in almost every case the charges had already been dismissed, adjourned in contemplation of dismissal, or reduced to a non-criminal violation. Not a single one had bail set at more than $100. Thus, every one of the 37 would have been free were it not for the parole hold, mandating detention on minor, not yet proven charges.

Not one of these people was freed during the release program. There is something deeply wrong with this outcome, even in normal times, but it is unconscionable in the midst of a pandemic, when jails are hotspots. These cases cast doubt on any claim that – statewide – 62% of the people incarcerated for alleged technical violations were dangers to public safety.

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Here are two examples from Erie County.[9] The names are pseudonyms.

Hector Destours is HIV-positive and also has asthma and scarred lungs from a bad case of pneumonia. Thus, he is at extremely high risk during the pandemic. He was on parole in Buffalo and doing well after a prison sentence for burglary. In fact, he was doing work for the NY State Department of Health "HIV Stops with Me" campaign. In February 2020 he was stopped by police when they were looking for a burglary suspect whose only physical resemblance to him was racial. He panicked and ran away from the police when an officer drew a gun, resulting in an arrest and appearance ticket for the burglary. At his next parole appearance he failed a drug test and was violated, which resulted in his incarceration. There is nothing to suggest that he is a risk to community safety, and it is hard to imagine a medical history more worrisome in terms of raising the odds of death during the pandemic. Yet he is being held, and was not released under Governor Cuomo's initiative, for unknown reasons.

Luis Brooks has a heart murmur, which is a risk factor for bad outcomes from COVID-19, and has been on parole since 2017. In 2018, he was arrested by Buffalo police and parole officers subsequent to a search that was ruled illegal and that appears, from court documents, to have had no rational basis. He then sued for false arrest and related causes. His relationship with police and parole is therefore frosty. In January 2020 he was stopped by police for running a stop sign. He produced the usual documents. Officers ran his ID and saw who he was. Then, on a second approach to his car, they said that they smelled marijuana, told him that as a parolee he had no rights, and conducted a search, during which they claimed to find crack cocaine. Parole issued a parole warrant based on the arrest. As with the other Buffalo cases, the charges are for non-violent actions and Mr. Brooks would be free – he is still fighting the drug charges – were it not for parole. As with Mr. Destours, DOCCS gave no reason for denying release.

> There is nothing to suggest that he is a risk to community safety, and it is hard to imagine a medical history more worrisome in terms of raising the odds of death during the pandemic.

The Roots of the Problem

The data in this report demonstrate that, faced with the pandemic, DOCCS made only small, erratic, and temporary changes to its practices regarding pre-hearing detention of alleged parole violators. This failure to honor the intent of the Governor's initiative suggests several conclusions.

- A key problem is that the parole system is run by DOCCS, which is first and foremost a prison agency. In practice, parole functions as a major feeder for the state prison system: more than one-third of new admissions to state prison occur as a result of parole revocations, rather than from judges sentencing newly convicted felons to prison terms. Some advocates argue that this is a calculated method for keeping prisons full, prison budgets robust, and prison staff layoffs few – particularly at a time when judges are sending fewer defendants to jail and prison. Regardless of motives, in practice a harsh approach to parole revocation helps keep numbers up for a prison system with a declining population.

  In other words, the State's prisons are being used two-thirds for people recently convicted of felonies and one-third for people who did things like missing a parole appointment, failing a drug test, staying out after curfew, or getting arrested on suspicion of a minor crime. To be sure, prison stays after revocation are shorter than those for the newly sentenced, but they are still substantial. For some, a 90-day stay at a prison called a drug treatment campus is offered, but in general a person whose original crime was serious can expect to be back in prison for at least 12-15 months. This is disproportionate to the misbehavior involved. It destroys the hard-won new lives of people on parole, and costs taxpayers dearly.

- The idea that reincarceration, especially on this scale, is an effective way of incentivizing returning citizens to successfully reintegrate, is not backed by any evidence, makes little sense on its face, and reflects the carceral mindset of what is mostly a prison agency. Just as exercises are the basic tools of physical therapists, prisons are DOCCS' prime tools and its go-to method of solving problems. Furthermore, many at DOCCS appear to feel that people on parole should have only very limited rights, and that officers and bureaus should have high levels of discretion. In a 2019 filing in a habeas corpus suit brought by a person on parole who had been incarcerated, DOCCS still maintained a position that courts have long rejected, and rejected again in this case—that since the person on parole had not completed his maximum sentence he had no real right to freedom.

> Just as exercises are the basic tools of physical therapists, prisons are DOCCS' prime tools and its go-to method of solving problems.

- For DOCCS, a major advantage of pre-hearing detention – and likely a strong motivation for continuing this practice – is that it vastly increases the bargaining power of the parole office against the person on parole, guarantees significant punishment for the person detained, and makes defense, including work with a lawyer, much more difficult.

Parole is not granted easily. It is won by people who can demonstrate through their behavior over many years in prison that they have become very different from who they were when they committed their original crimes. Once they are released, a mission of maximizing the likelihood of successful reintegration makes sense, because reintegration benefits returning citizens and their families, improves public safety, enriches the social fabric, and saves taxpayers the enormous costs of reincarceration.

Pre-hearing detention is a leading example of how DOCCS fails to carry out this mission. It is unlikely to change its broken system without a broad movement for reform, and even then it is unclear whether it has the capacity to make the required paradigm shift. That it was unable to modify its practices very much, or very long, even under the pressure of the pandemic and of explicit instructions from the Governor, is cause for concern. An entirely different model, and probably an entirely different agency, are needed. Helping returning citizens reintegrate is a job for social workers and other helping professions, not for law enforcement and a prison agency.

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Recommendations

THE GOVERNOR SHOULD INSTRUCT DOCCS TO:

- Finish the work left undone by the pandemic release program: Release everyone who is currently incarcerated pending a final hearing except the very few who can be demonstrated on the basis of current actions to pose a serious and concrete threat to community safety. The result should be at least 600 new releases.

- Correct regional disparities by giving special attention to the counties where release rates in the original program were strikingly low, such as Erie, Orange, Nassau, and Westchester. This may require central intervention, if local decision-making processes were responsible for the low release rates in these counties during the pandemic release program.

- Introduce due process: give every person not released a written statement of reasons and a simple way to appeal to a neutral arbiter.

- Cease issuing warrants except for absconders, and for absconders lift the warrants (using other methods of ensuring appearance at hearings, similar to ones used under the bail reform law) once the person has been arrested, identifies a known residence, and agrees to resume regular communication with parole. When parole officers perceive violations of parole rules they can issue violation notices and start the hearing process, without pre-hearing detention. If a major new crime is involved, the standard bail process can govern pre-trial detention. These changes can all be made via administrative rule-making, without legislation. They could be put into provisional effect immediately, under pandemic emergency procedures, even before being formalized through the normal rule-making process.

IN THE LONGER RUN, NEW YORK STATE SHOULD:

- Pass legislation ending pre-hearing detention. The Less Is More bill (A5493/S1343C) would largely accomplish this purpose.

- Consider moving parole out of DOCCS into a new or existing agency willing and able to pursue a supportive and rehabilitative approach to returning citizens.

Finish the work left undone by the pandemic release program.

These changes can be made via administrative rule-making, without legislation.

Appendix A. Methods

This appendix is about how the numbers shown in the report and tables were calculated. The data available for the evaluation presented here were imperfect, and therefore a detailed explanation of what they were and how they were used is in order.

As the report mentions, there were two main sources of data, and a third supplementary source.

1. Reports from the state's Division of Criminal Justice Services (DCJS), showing the average daily technical population in NYC's Rikers and each county jail, for each month.[10] The data appears reasonably consistent and reliable. Issues about this data:

   • The numbers shown in these reports are not the ones required to evaluate the release program. The required numbers can be estimated using the DCJS data as a starting point. But the estimates come with caveats, since they are based on assumed values for parameters, some of which can be only roughly estimated.

   • As with any data compiled for administrative rather than research purposes, there are questions about categorization (e.g. how the county jails providing the data decided who was a technical violator) and inaccuracy due to other work pressures (e.g. if incarcerated people moved from one category to another while in a jail, whether staff would take the time to change their category in the jail's database).

2. A letter from DOCCS, dated June 11, 2020 but with data current as of May 24, sent in response to a legislative query, containing text, a table with county-level information about the release program, and a second table about new arrests during and after the program. The data has a number of problems, which cumulatively make one worry about the accuracy of even the numbers there is no specific reason to doubt:

   • While the numbers look as if they were exactly what is needed, there is a basic ambiguity: whereas the legislators asked for data on "releases," the replies and table speak of "warrants lifted." These are not the same, since lifting the warrant of someone not in custody, such as a not yet captured "absconder,"[11] does not result in a release. This might be a small issue except that the table shows a very high proportion of lifted warrants (83% in NYC) as relating to "absconders." Without this issue being resolved, one cannot be sure that the numbers represent persons released. The same issue applies to the new arrest data: it says it is about new warrants issued, and for absconders such warrants do not necessarily result in a person being arrested (in the short run).

Data from DOCCS on the release program has a number of problems, which cumulatively make one worry about its accuracy.

- The high proportion of reported absconders, not just in NYC but also in some other counties, is hard to accept. A senior NYC Legal Aid attorney experienced in parole cases estimates 60% for the city. The proportion is likely lower upstate; in Erie County, only 2 of the 37 jailed parolees in this study were "absconders."

- Places that are not county jails are included, with 28 cases reported from them. These were excluded from analysis.

- What looks like it must be the Jefferson County Jail is misnamed in the report; data did not match until this error was corrected.

- There is no explanation of why DOCCS reported 760 cases on April 10, but 791 in the table showing the situation as of May 24.

- The reported number of lifted warrants, if considered to be releases (see above), is – for some counties – highly unlikely to be correct, and in most cases appears inflated. For example, Westchester's average population, in DCJS reports, declined by only one, from 31 in March to 30 in April, but DOCCS shows 10 releases. In Onondaga County, the decline was 20, from 62 to 42, but DOCCS shows 48 releases. This was a period when hearings were scarce and the Governor had discouraged parole arrests, so churn was low. While the number of releases is always greater than the decline in average population, the disproportion between claimed releases and population decline in these counties is so great as to be extremely unlikely unless at least one of the datasets – DOCCS or DCJS – is wrong. In both counties, the technical population decreased significantly in the two months before the release program started; perhaps DOCCS made the mistake of counting those reductions as releases under the pandemic program.

3. For limited purposes, one can use data from the Vera Institute showing *daily* technical populations and new technical admissions for NYC.[12] However, the technical category definition is not identical to that in DCJS data, and even the total population figures do not agree, when one takes a monthly average, with DCJS data for NYC. Therefore Vera and DCJS data cannot be combined. However, the new admissions data is generally regarded as reliable, and the technical population figures appear consistent over time, allowing one to pinpoint the timing of the release program and the rate of new technical arrests, for NYC.

Timing of the Releases

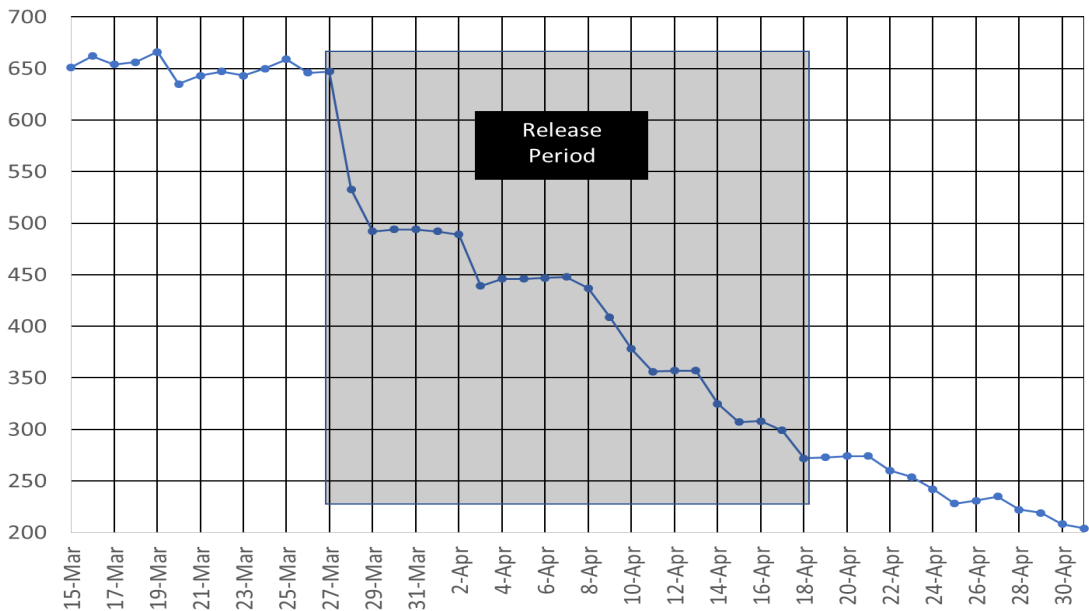FIGURE 1. RIKERS TECHNICAL POPULATION, MARCH-APRIL 2020

Figure 1 shows the Vera population figures for technical violators in NYC. It is clear that releases started March 27, with an enormous one-day decline of 114 – 18% of the entire number previously imprisoned. The last release day is not quite as clear, but appears to be April 18, when the population declined by 27; no subsequent day shows a decline of more than 14. DOCCS statements time the program as having started on or before March 27 and finishing by April 10, but the timing from the Vera data is more plausible, and the difference in dates is probably between when DOCCS authorized releases and when people were physically released.

For the rest of the state, the start and end dates are unknown. One can think of hypothetical reasons for them to have been earlier or later than in NYC, but in the absence of a compelling argument or evidence supporting other start or end dates – which may have varied by county – it seems safest to use the NYC dates statewide.

An important consequence: the program looks better than if one used a shorter time range, hewing more closely to DOCCS statements, such as March 27 through April 11. The longer period makes a substantial difference, raising the estimated release rates by about 4%. The rise, however, is essentially the same in each county, and therefore comparisons are not affected.

Key point: the choice of dates used here shows the outcomes of the pandemic release program in a favorable light, compared with other plausible choices.

Releases under the program appear to have taken place from March 27 through April 18.

The dates assumed here make the outcomes of the program look better than they would look under other plausible choices.

USING DCJS DATA: STEPS IN THE ANALYSIS

There were two steps. First, the actual reduction in the population of county-jail-incarcerated people accused of technical parole violations that took place from just before the releases started to just after they ended was estimated. Second, adjustments were made for factors other than pandemic-program releases that impact the reduction: new arrests and releases resulting from final parole revocation hearings. Since these adjustments refer to events happening during the release period, they are also sensitive to variations in start and end dates.

Step 1: Estimating the reduction in population

The analysis, for each county, started with the average technical population figures for March and April 2020. The raw published figures are by jail, and some counties have more than one, so the data was aggregated to the county level. (The sheriff, not the local parole bureau, decides which facility a person is housed in, so the distinction among facilities is irrelevant to the purposes of this analysis.)

To estimate the before and after technical populations from the March and April averages, one can construct and solve a set of equations. Figure 2 illustrates the logic behind the estimation procedure. Note that the March-April difference is not a good estimate of the reduction in the technical population; it is sure to be too low. In Figure 2, this is evident in that the distance between the two dotted lines – the two monthly averages – is substantially less than the distance between the before and after populations.

Monthly averages of the technical population don't directly tell us how much jail populations were reduced during the release program, but we can calculate an estimate of the reduction from these averages.

FIGURE 2. TECHNICAL POPULATION BY DATE (EXAMPLE; IMAGINARY COUNTY)
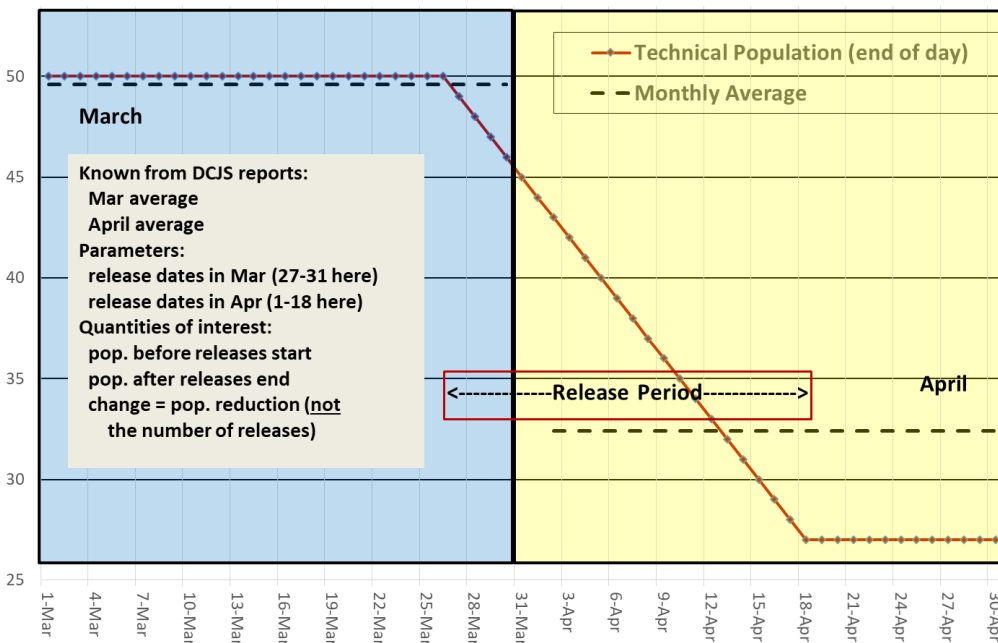
Nomenclature:

Quantities of interest:
b = technical population just before releases start; a = after they end.

Knowns: u = March average technical population; v = April average

Parameters: m = number of release days in March; n = same for April

Note also that the average daily reduction is the total reduction / the number of release days, or (b-a)/(m+n).

The population on each of the first *31 − m* days of March is *b*. Not knowing the time of day (which may vary) at which the daily count is taken that is used by the local jail in calculating the monthly average, assume half-way through the day. Then the population on the first re-lease day is *b - 0.5(b-a)/(m+n),* on the next *b - 1.5(b-a)/(m+n),* and so on. The same logic works in reverse for April. This generates the following equations:

$$u = \frac{1}{31}\left[(31 - m)b + \sum_{i=1}^{m}\left(b - \frac{(i-.5)(b-a)}{m+n} \right) \right] \text{ and}$$

$$v = \frac{1}{30}\left[(30 - n)a + \sum_{i=1}^{n}\left(a + \frac{(i-.5)(b-a)}{m+n} \right) \right], \text{ which after a little algebra become}$$

$$u = b - \frac{1}{62}\left(\frac{b-a}{m+n}m^2 \right) \quad \text{and} \quad v = a + \frac{1}{60}\left(\frac{b-a}{m+n}n^2 \right), \text{ solving to}$$

$$a = \frac{30\,m^2\,v + 31\,n^2\,u - 1860\,v\,m - 1860\,v\,n}{30\,m^2 + 31\,n^2 - 1860\,m - 1860\,n} \quad \text{and} \quad b = \frac{30\,m^2\,v + 31\,n^2\,u - 1860\,u\,m - 1860\,u\,n}{30\,m^2 + 31\,n^2 - 1860\,m - 1860\,n}$$

These solutions were converted into SAS code to estimate *a* and *b* for each county, with the calculations repeated for a few possible start and end dates (i.e. values of *m* and *n*).

Step 2: Adjustments

In the long term, the technical population is subject to many sources of change. Some of these, such as deaths and transfers to state prison (which did not accept arrivals during this period) can be assumed to be zero or too small to affect results in a substantively important way, during the very limited time-frame of the release program. Taking into account the sources of change that do need to be considered, one can say:

Technical population at the end =
  technical population at start
  + new arrests
  – releases stemming from hearings
  – releases made by the pandemic program

Therefore:

Releases made by the pandemic program =
  reduction in population
  + new arrests
  – hearings-based releases

These adjustments are affected by the time assumptions for the release program, since more days means more arrests and hearing releases. For counties outside NYC, the non-NYC totals were distributed to the counties in proportion to each county's share of the March 2020 average technical population for all non-NYC counties. With regard to hearings-based releases, two factors are involved: how frequently hearings are held, and how they come out. In NYC there are estimates ranging from 40% to 70% of hearings resulting in releases. In Erie County, and probably most of upstate, outcomes are much worse; educated guesses are that less than 20% result in release. For this reason more hearings-based releases are assumed in NYC than upstate. Specific rules:

- *New arrests. NYC:* Vera data shows the number of new technical admissions each day. For March 27 through April 18, these total 48. *Non-NYC.* The DOCCS report shows 228 new parole warrants outside NYC from March 28 through May 24, a period of 58 days, for a daily rate of 228/58. *(It is not certain that all of these represent arrests, since 181 of them are for "absconders." Here again, the choice made – to accept these as arrests – results in the pandemic release program being given the benefit of the doubt.[13])* The adjustment was this daily rate * the number of release days * the county share.

- *Hearing releases:* NYC. Hearings were shut down in late March, but resumed on April 6. Assume 25 such releases per week so total releases are 25/7 * release days on or after April 6. *Non-NYC:* Hearings were also shut down for a while and slow afterwards, but the exact dates are not known; assume that they are the same as NYC. Since hearing outcomes are worse, assume 15 releases per week, so a total for each county of 15/7 * days starting April 6 * the county share.

TRIANGULATING FROM THE DOCCS AND DCJS RESULTS

Table 3 shows the DOCCS reports (lifted warrants, maybe releases) for each county and the estimates calculated from DCJS reports. There are evident and substantial differences.

For NYC, the DOCCS data was accepted. The main reason is that the NYC Mayor's office, which was closely watching efforts to reduce the population of Rikers, monitored releases of persons on parole accused of technical violations, and came up with very similar numbers. For the rest of the state, county-by-county decisions were made, using decision rules A-E4 as shown below. Table 3 shows full details of the data and calculations based on both DCJS and DOCCS data, plus the decision rule employed and the triangulated results (which are also what is used in Table 1, in the body of this report).

In sum, for NYC, DOCCS data was used. Of the 53 non-NYC counties with jailed parolees in March 2020, DOCCS data was used for 5, DCJS for 22, and the average for 26.

TABLE 2. DECISION RULES FOR COMBINING DOCCS AND DCJS DATA

Rule ID	N Cases	Decision	Situation
A – D. Missing and zero data situations			
A	4	0	No DOCCS data and DCJS shows technical pop. = 0 in Mar
B	2	DCJS	No DOCCS data for county, have DCJS data
C	3	DOCCS	DOCCS = 1, DCJS shows technical pop. = 0 in Mar
D	1	DCJS (= 0)	DOCCS >= 3, DCJS shows technical pop = 0 in Feb, Mar & Apr
E. Both have data			
E1	22	average	Pandemic releases differ by <= 2 cases or 10%
E2	2	DOCCS	Differ; DOCCS more plausible examining DCJS trend data‡
E3	4	average	Differ; seem equally plausible examining DCJS trend data‡
E4	19	DCJS	Differ; DCJS more plausible examining DCJS trend data‡
Y & Z. Special Situations			
Y	1	DOCCS	NYC: confirmation from Mayor's office
Z	2	sum of components	Aggregates: all non-NYC counties and the entire state
‡ Examining the trend means looking at figures for several months before and after March 2020.			

TABLE 3. PANDEMIC PROGRAM RELEASES BY COUNTY

County	DOCCS data			Avg. technical pop.				Calculated estimates							Triangulation			
	Absconder releases	Other releases	Total releases	February 2020	March 2020	April 2020	May 2020	Before releases	After releases	Reduction	New arrests	Releases from hearings	Pandemic releases	Release rate	Decision rule	Result used	Final pandemic releases	Final release rate
NY State	366	397	763	1815	1684	1119	1022	1697.2	941.6	755.7	138.4	74.3	822.6	48.5%	Z	[sum]	647.9	38.2%
NYC	247	52	299	769	738	393	226	746.1	284.7	461.4	48.0	46.4	463.0	62.1%	Y	DOCCS	299.0	40.1%
Non-NYC	119	345	464	1046	946	726	796	951.2	656.9	294.2	90.4	27.9	359.6	37.8%	Z	[sum]	348.9	36.7%
Albany	6	19	25	60	53	37	42	53.4	32.0	21.4	5.1	1.6	24.9	46.7%	E1	AVG	25.0	46.7%
Allegany	0	1	1	2	3	2	2	3.0	1.7	1.3	0.3	0.1	1.5	50.8%	E1	AVG	1.3	41.9%
Broome	8	5	13	13	8	8	11	8.0	8.0	0.0	0.8	0.2	0.5	6.6%	E4	DCJS	0.5	6.6%
Cattaraugus	1	2	3	8	8	6	7	8.0	5.4	2.7	0.8	0.2	3.2	39.8%	E1	AVG	3.1	38.5%
Cayuga	0	6	6	20	9	6	8	9.1	5.1	4.0	0.9	0.3	4.6	50.8%	E1	AVG	5.3	58.5%
Chautauqua	1	4	5	13	11	9	8	11.0	8.4	2.7	1.1	0.3	3.4	30.8%	E1	AVG	4.2	38.0%
Chemung	1	5	6	12	8	6	9	8.0	5.4	2.7	0.8	0.2	3.2	39.8%	E4	DCJS	3.2	39.8%
Chenango	0	1	1	7	6	6	5	6.0	6.0	0.0	0.6	0.2	0.4	6.6%	E1	AVG	0.7	11.6%
Clinton	0	2	2	7	5	1	1	5.1	-0.3	5.3	0.5	0.1	5.7	111.0%	E3	AVG	3.8	75.4%
Columbia	1	8	9	7	9	4	5	9.1	2.4	6.7	0.9	0.3	7.3	79.9%	E1	AVG	8.1	89.3%
Cortland	1	3	4	7	8	8	8	8.0	8.0	0.0	0.8	0.2	0.5	6.6%	E4	DCJS	0.5	6.6%
Delaware	0	1	1	2	2	2	2	2.0	2.0	0.0	0.2	0.1	0.1	6.6%	E1	AVG	0.6	28.3%
Dutchess	5	9	14	22	24	16	12	24.2	13.5	10.7	2.3	0.7	12.3	50.8%	E4	DCJS	12.3	50.8%
Erie	12	13	25	119	89	74	78	89.4	69.3	20.1	8.5	2.6	25.9	29.0%	E1	AVG	25.5	28.5%
Essex	–	–	–	0	1	2	2	1.0	2.3	-1.3	0.1	0.0	0.0	0.0%	B	DCJS	0.0	0.0%
Franklin	0	2	2	8	7	5	6	7.0	4.4	2.7	0.7	0.2	3.1	44.5%	E1	AVG	2.6	36.5%
Fulton	1	1	2	7	8	7	8	8.0	6.7	1.3	0.8	0.2	1.9	23.3%	E1	AVG	1.9	24.1%
Genesee	0	2	2	1	3	2	5	3.0	1.7	1.3	0.3	0.1	1.5	50.8%	E1	AVG	1.8	58.5%
Greene	–	–	–	0	0	0	0	–	–	–	–	–	–	–	A	0	0.0	NA
Hamilton	–	–	–	1	0	0	0	–	–	–	–	–	–	–	A	0	0.0	NA
Herkimer	1	1	2	4	3	5	5	3.0	5.6	-2.7	0.3	0.1	0.0	0.0%	E4	DCJS	0.0	0.0%
Jefferson	4	13	17	21	19	10	13	19.2	7.2	12.0	1.8	0.6	13.3	69.2%	E4	DCJS	13.3	69.2%
Lewis	–	–	–	3	3	3	4	3.0	3.0	0.0	0.3	0.1	0.2	6.6%	B	DCJS	0.2	6.6%
Livingston	0	4	4	4	3	2	2	3.0	1.7	1.3	0.3	0.1	1.5	50.8%	E4	DCJS	1.5	50.8%
Madison	1	3	4	8	6	4	7	6.0	3.4	2.7	0.6	0.2	3.1	50.8%	E1	AVG	3.5	58.5%
Monroe	12	67	79	128	136	82	85	137.3	65.0	72.2	13.0	4.0	81.2	59.2%	E1	AVG	80.1	58.4%
Montgomery	1	1	2	9	5	6	6	5.0	6.3	-1.3	0.5	0.1	0.0	0.0%	E4	DCJS	0.0	0.0%
Nassau	4	2	6	28	37	30	37	37.2	27.8	9.4	3.5	1.1	11.8	31.8%	E2	DOCCS	6.0	16.1%
Niagara	2	16	18	19	19	13	13	19.1	11.1	8.0	1.8	0.6	9.3	48.5%	E4	DCJS	9.3	48.5%

County	Absconder releases	Other releases	Total releases	February 2020	March 2020	April 2020	May 2020	Before releases	After releases	Reduction	New arrests	Hearing releases	Pandemic releases	Release rate	Decision rule	Result used	Final pandemic releases	Final release rate
Oneida	4	10	14	37	36	29	31	36.2	26.8	9.4	3.4	1.1	11.7	32.5%	E4	DCJS	11.7	32.5%
Onondaga	6	42	48	88	62	42	47	62.5	35.7	26.7	5.9	1.8	30.8	49.4%	E4	DCJS	30.8	49.4%
Ontario	0	3	3	16	10	7	7	10.1	6.1	4.0	1.0	0.3	4.7	46.4%	E1	AVG	3.8	38.1%
Orange	3	5	8	50	46	39	39	46.2	36.8	9.4	4.4	1.4	12.4	26.9%	E2	DOCCS	8.0	17.3%
Orleans	0	1	1	8	5	4	3	5.0	3.7	1.3	0.5	0.1	1.7	33.2%	E1	AVG	1.3	26.6%
Oswego	1	12	13	22	23	15	17	23.2	12.5	10.7	2.2	0.7	12.2	52.7%	E1	AVG	12.6	54.4%
Otsego	1	2	3	0	0	0	3	–	–	–	–	–	–	–	D	DCJS	0.0	NA
Putnam	1	0	1	1	1	0	0	1.0	-0.3	1.3	0.1	0.0	1.4	100.0%	E1	AVG	1.2	100.0%
Rensselaer	2	9	11	30	20	17	23	20.1	16.1	4.0	1.9	0.6	5.3	26.6%	E4	DCJS	5.3	26.6%
Rockland	3	3	6	9	10	8	6	10.0	7.4	2.7	1.0	0.3	3.3	33.2%	E4	DCJS	3.3	33.2%
Saratoga	3	4	7	18	18	16	17	18.0	15.4	2.7	1.7	0.5	3.9	21.4%	E4	DCJS	3.9	21.4%
Schenectady	6	18	24	40	39	24	28	39.4	19.3	20.1	3.7	1.1	22.6	57.5%	E4	DCJS	22.6	57.5%
Schoharie	–	–	–	0	0	0	0	–	–	–	–	–	–	–	A	0	0.0	NA
Schuyler	0	1	1	1	0	0	0	–	–	–	–	–	–	–	C	DOCCS	1.0	~100%
Seneca	1	1	2	7	5	2	2	5.1	1.1	4.0	0.5	0.1	4.3	85.7%	E3	AVG	3.2	62.5%
St Lawrence	2	1	3	7	11	10	12	11.0	9.7	1.3	1.1	0.3	2.1	18.7%	E1	AVG	2.5	23.0%
Steuben	2	4	6	12	13	13	18	13.0	13.0	0.0	1.2	0.4	0.9	6.6%	E4	DCJS	0.9	6.6%
Suffolk	9	12	21	63	57	47	47	57.2	43.9	13.4	5.4	1.7	17.1	30.0%	E4	DCJS	17.1	30.0%
Sullivan	2	1	3	21	22	20	18	22.0	19.4	2.7	2.1	0.6	4.1	18.7%	E1	AVG	3.6	16.2%
Tioga	1	0	1	2	0	0	1	–	–	–	–	–	–	–	C	DOCCS	1.0	~50.0%
Tompkins	0	1	1	3	6	8	9	6.0	8.6	-2.7	0.6	0.2	0.0	0.0%	E3	AVG	0.5	8.4%
Ulster	3	11	14	19	16	19	19	15.9	19.9	-4.0	1.5	0.5	0.0	0.0%	E4	DCJS	0.0	0.0%
Warren	1	0	1	10	12	13	16	12.0	13.3	-1.3	1.1	0.4	0.0	0.0%	E3	AVG	0.5	4.2%
Washington	1	1	2	5	8	6	7	8.0	5.4	2.7	0.8	0.2	3.2	39.8%	E1	AVG	2.6	32.3%
Wayne	0	6	6	0	0	0	0	–	–	–	–	–	–	–	D	DCJS	0.0	NA
Westchester	5	5	10	33	31	30	34	31.0	29.7	1.3	3.0	0.9	3.4	10.9%	E4	DCJS	3.4	10.9%
Wyoming	0	1	1	3	2	1	1	2.0	0.7	1.3	0.2	0.1	1.5	72.6%	E1	AVG	1.2	61.0%
Yates	–	–	–	1	0	0	0	–	–	–	–	–	–	–	A	0	0.0	NA

Notes

DCJS-based reduction estimates < 0 are set to zero.

Release rates are based on the estimated technical population just before the release (even where the number of releases is based on DOCCS data, in the triangulated results). If the March 2020 average population is 0, this is not calculable and if there were any releases a rough estimate is given. However, the counties where this situation occurs are ones with small jails, where any rate calculations could be easily affected by idiosyncratic factors (for example, a 3-day

snow-storm) with no policy significance.

For counties missing from the DOCCS table, it is assumed that DOCCS believes no pandemic-program releases took place in that county.

Figures are shown rounded to integers or one decimal point, depending on the column, but the full-precision values are used in calculating other columns. As a result, there are minor discrepancies in the figures as shown. Also, the non-NYC and statewide rows show sums of the components, and do not always cohere horizontally.

Appendix B. Acknowledgements

ERIE COUNTY PAROLEES INCLUDED IN THE STUDY BY #HALTSOLITARY – WNY AND OTHERS WHO HELPED IN THE CREATION OF THIS REPORT

Thirty-seven parolees incarcerated in Erie County, and/or their contacts (mothers, spouses, etc.), shared information about their situation with members of #HALTsolitary – WNY. This was an act of courage, since retribution from DOCCS is possible. Their stories were often deeply moving; it was a privilege to hear them, even though many were painful to hear. Every one of them, in the opinion of the people who talked to the parolees and their contacts, is unjustly and unnecessarily incarcerated. I thank them for their assistance in evaluating the parolee release program.

Note: Thirty-one (31) of these 37 parolees provided information with regard to medical risks. Of these, 20 (64.5%) have medical conditions (HIV, sickle cell anemia, heart disease, high blood pressure, COPD, asthma, other lung diseases, diabetes, etc.) placing them at elevated risk of death if they become ill with COVID-19, and 11 (35.5%) do not.
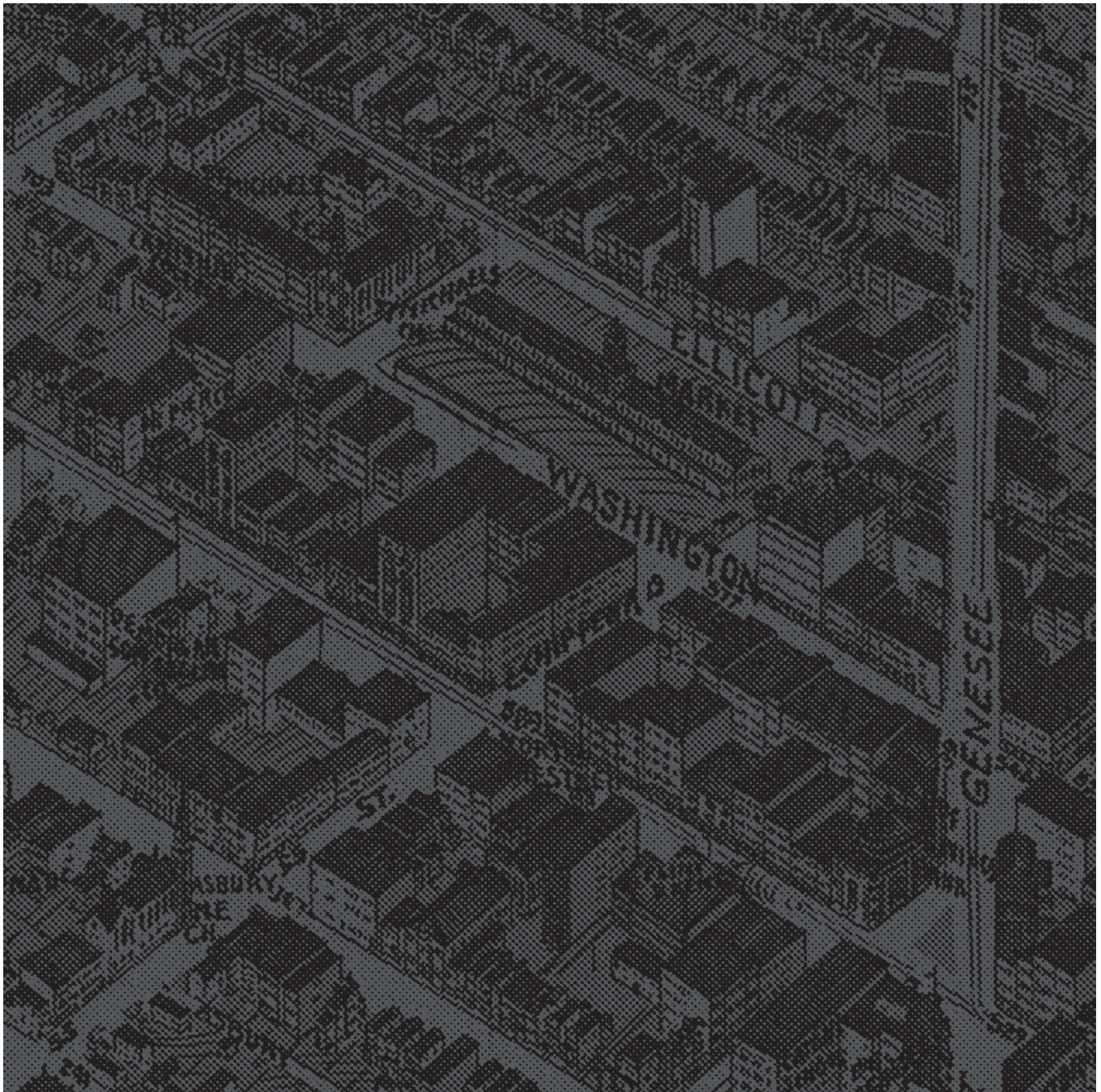
Incarcerated Participants in the Evaluation

Abdallah, Michael	Johnson, Donald	Rivera-Marti, Heriberto
Batchelor, Jordan	Johnson, Marche	Saddler, Mario
Birdsong, Ronald	Lenartowicz, Martin	Saracina, Daniel
Brown, Isaiah	Manso, Carlos	Seeley, Joseph
Busch, James	Morales, Wilfredo	Small, Brandon
Christian, Markee	Nikon, Vanessa	Street, Tristan
Cobb, Timothy	Nix, Evan	Whitfield, James
Cottom, Davon	Orticelli, Angelo	Williams, Brandel
Crespo, Miguel	Ortiz, Manuel	Williams, Derek
Davis, Jose	Patterson, Ernest	Williams, Shammi
Foster, Cortez	Pierre, Salvatore	Williams, Terence
Fuller, Bilal	Prewitt, Marcus	Wilson, Njera
Gonzeles, Michael		

Sources and Notes

1 "More Than 1,000 Dead in Correctional Facilities," New York Times, 18 August 2020, p. A10.

2 "Incarceration And Its Disseminations: COVID-19 Pandemic Lessons From Chicago's Cook County Jail," Eric Reinhart and Daniel L. Chen. Health Affairs, Vol 39, no. 8 (June 4, 2020). Available at http://nrs.harvard.edu/urn-3:HUL.InstRepos:42669496

3 https://doccs.ny.gov/doccs-covid-19-report, accessed 17 August 2020.

4 The Vera Institute of Justice provides on-line, day-by-day figures and charts on NYC jail population and admissions, total and by category, one of which is people accused of technical parole violations, found at https://greaterjusticeny.vera.org/nycjail/. This data is extremely useful for determining the timing of the release program in NYC, showing that releases ran from March 27 through April 18 (see Appendix A for details). Ideally one would use the data in conjunction with Division of Criminal Justice Services (DCJS) data for other purposes. However, it is not clear that Vera's definition of the technical population is the same as the one used by DOCCS or by DCJS. Even the total population figures do not agree with those found in DCJS tabulations for NYC. Vera and DCJS data can therefore not be integrated.

5 Bergamaschi vs. Cuomo, index # 1:20-cv-2817 (CM), document 26, filed 10 April 2020. The criteria also included suitable housing, which may have been used to deny release to some people who could easily have returned to where they lived when arrested; in cases involving drugs, parole bureaus often think of the person's home as 'drug-ridden' and therefore unsuitable.

6 In a June 2020 response to a legislative query, DOCCS shows 791 as the statewide total of cases. However, there are problems with that number. First, it includes 28 people whose locations were not county jails. Second, the figures for many counties outside of NYC appear inflated. And finally, while the legislators asked for information on "releases," the answer studiously avoids that term, speaking instead of "warrants lifted," which are not the same. More details on the problems in the DOCCS data are found in Appendix A.

7 A FOIL request covering the procedures used in the pandemic release program was sent to DOCCS in May 2020, but DOCCS answered the request in November 2020 by declining to provide the requested information.

8 This proportion may seem surprisingly high. However, these are not young people, and have spent many years, sometimes decades, in prison, a very unhealthy environment with poor medical care.

9 These people's situations are described as of when data on them was obtained, and may well have changed since.

10 https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf

11 The term "absconders" carries the connotation that these are people on parole who have gone into hiding and are fugitives from justice. However, a person on parole could be deemed an absconder for simply missing a single parole visit due to miscommunication, a flat tire, etc. In practice, however, some people do stop reporting and communicating with parole, often after other things have gone wrong (e.g. a couple of failed drug tests) that make them think they are likely to be arrested the next time they appear, when they want to change their residence or job but their parole officer won't approve the change, or when their relationship with their parole officer has become hostile. In most cases, they remain in town and only minimally change their identity; they know that the next time they encounter law enforcement, perhaps in a traffic stop, they are likely to be arrested.

12 https://greaterjusticeny.vera.org/nycjail/

13 If some of the absconder warrants did not result in short-term arrests, that would lower the adjustment and therefore the final estimate of pandemic-program releases would be lower (showing even less success for the program). For example, if 1/3 did not result in arrests, the non-NYC subtotal line near the top of Table 3 would show 60.3 instead of 90.4 new arrests, the estimated pandemic releases would be 329.5 instead of 359.6, and the DCJS release rate would be 34.6% instead of 37.8% – a 3 point lower release rate.