

An aerial photograph of New York City, including Manhattan, the Bronx, and parts of Queens and Richmond, is shown with a strong blue color cast. The image is used as a background for the report cover.

A MORE JUST NEW YORK CITY

PROGRESS REPORT AND LEGISLATIVE AGENDA

DECEMBER 2018

DEAR FELLOW NEW YORKERS:

As the Chair of the Independent Commission on New York City Criminal Justice and Incarceration Reform, I write to you at a critical point along the road to a better criminal justice system in our city.

The events of the next year will be decisive. In Albany, there is an opening for profound criminal justice reforms in the upcoming legislative session. Here in New York City, we are at the threshold of a public land use approval process that will determine whether the dysfunctional Rikers Island jail complex can be shut down.

Our Commission was convened in 2016 by then-City Council Speaker Melissa Mark-Viverito to take an independent look at New York City's criminal justice system, including the Rikers jails. After a year of study, we issued *A More Just New York City*, our blueprint for increasing fairness and public safety, cutting the number of people in jail by half, and closing the jail complex on Rikers. At nearly the same time, Mayor Bill de Blasio committed New York City to the goal of closing Rikers within ten years.

Recent events have only confirmed the urgency of putting an end to Rikers and the outdated criminal justice practices that it represents. Out of sight and too often out of mind, the human toll of the status quo at Rikers is unacceptable, for the people who work in the jails, the people who are detained there, and communities across our city.

Closing Rikers goes far beyond the jail walls. It means using jail and prison only as a last resort. It means fostering a justice system that seeks to solve problems in the community as much as possible, rather than one that doles out incarceration as the default solution.

There already has been more movement towards these goals than anyone could have expected when our Commission was established.

The number of people in jail on any given day has dropped by 1,500 people over the past two years, thanks to the combined efforts of City agencies, district attorneys, social service providers, the courts, and the City Council, as well as advocacy from impacted communities. One of the nine jails on Rikers Island has already been shut down. With these reforms, the city remains as safe as ever.

Justice demands that we push further. The great majority of people held in awful conditions on Rikers have not been convicted of a criminal offense. Too many are jailed because they cannot afford to pay bail or because they have allegedly violated the technical terms of parole.

The needless incarceration of thousands, particularly people of color, can be prevented with the passage of criminal justice reform laws in Albany—ending cash bail, enacting real speedy trial and discovery laws, and reforming parole. Collectively, these changes would put the City on track to shut down the Rikers jails on a faster timeline.

In addition to state-level reforms, we also must look toward the urgent goal of building redesigned borough jail facilities to hold a much smaller number of detained people closer to the family and support networks that will help them succeed when they return home. The City has put forward a plan for four facilities, one in each borough except for Staten Island. Three are located next to operating criminal courthouses, on the site of existing or former jails.

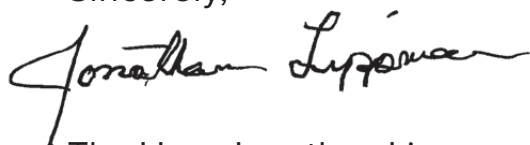
This plan can and should be improved, as we discuss in this report. But it provides the basic framework for a more effective and more humane approach to jail in New York City for the decades ahead.

There have been concerns about the proposal from those who live nearby, all of which are understandable. The City has to overhaul its approach to engaging with these communities, and in particular, reduce the height and density of the proposed facilities so that they better fit with their surrounding neighborhoods.

Despite the challenges, there are great opportunities ahead. Together, we can and will achieve a safer criminal justice system that lives up to our city's values of decency, dignity, and equal treatment, and which can provide a model for ending our nation's tragic reliance on mass incarceration.

In New York City and in Albany, now is the time to act.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Lippman". The signature is written in a cursive, flowing style with a prominent initial "J".

The Hon. Jonathan Lippman

EXECUTIVE SUMMARY

In April 2017, our Commission called for deep changes to the criminal justice system in New York City, including the permanent closure of the dysfunctional jail complex on Rikers Island.

Our initial report, titled *A More Just New York City*, was a roadmap for making jail a place of last resort and for developing a smaller system of more humane and better designed facilities near the borough courthouses—for a much lower number of incarcerated people.

As our report was released, Mayor Bill de Blasio announced that closing the Rikers jails would be official City policy. Over the past year-and-a-half, the City, district attorneys, and courts have made real headway towards that goal. To make it a reality, legislative reforms in Albany and continued policy reforms from the City, district attorneys, and courts are necessary.

In this report, we evaluate the progress that has been made to date and identify urgent steps to improve the justice system and close the Rikers jails.

RETHINKING INCARCERATION

Criminal justice reforms in Albany could reduce the jail population by over 3,000 people. As the legislative session begins in January 2019, the Governor and legislature have the chance to enact critical changes at every stage of the criminal process. Ending cash bail should be a top priority. Other key legislative changes include passing strong speedy trial and discovery laws, reforming parole so fewer paroled people end up back in jail, and decriminalizing certain low-level offenses. These necessary reforms ultimately could reduce the number of people in New York City jails by 3,000 or more, accelerating the timeline for shuttering Rikers.

City-level reforms have already helped reduce the jail population by 1,500 over the past two years, yet Black and Latinx people continue to constitute nearly 90 percent of those in custody. In this report, we compare the New York City jail population on September 29, 2016, which we analyzed in *A More Just New York City*, to the jail population two years later, on September 29, 2018. Over this relatively short period, the combined efforts of local officials have reduced the number of people in jail by over 15 percent. This decline has occurred in nearly every category of detention, except people jailed for parole-related reasons. One particularly encouraging development is that the largest reduction has come in people aged 18 to 24.

Nevertheless, New York City continues to incarcerate too many people. For example, almost a third of the people admitted to jail are released within four days, suggesting that many should not have been jailed at all. Despite the significant drop in the number of people in jail, more than 90 percent of the people in custody in New York City are people of color, almost exactly the same percentage as two years ago.

CLOSING RIKERS AND SHIFTING TO BOROUGH FACILITIES

The City’s proposal for four borough facilities is a necessary step towards closing Rikers. The City’s plan for transitioning to a borough justice model reflects many of the design and siting principles the Commission recommended. The City’s preliminary designs reflect best practices with respect to facility floorplans, better environments, visitation procedures, and programming space. The City’s proposal also is generally consistent with our siting principles: three of the four proposed facilities are located next to borough courthouses, on the footprint of existing jails. The fourth site, in the Bronx, is much farther from the borough courthouse, but it is much more accessible than Rikers.

Use the coming months to listen and respond to community concerns.

The City has not been transparent enough about its decision-making process for siting and designing the new facilities, and should use the next four months for productive engagement with stakeholders and residents as it proceeds with its intention to begin the Uniform Land Use Review Process (ULURP) in March 2019.

Reduce the size of the proposed facilities. To address concerns about the proposed facilities, we ask the City to reduce its planned 6,040 bed capacity to the 5,500 bed capacity that we recommended, if not lower, and to look for other ways to design smaller facilities that fit better with their surroundings, including by re-examining a facility in Staten Island.

Destroy the GMDC jail. Over the summer, the City closed the George Motchan Detention Center (GDMC), one of nine jails on Rikers. This important achievement should be matched by a demonstration of the City’s commitment to permanently closing all of the Rikers jails. The City should demolish GMDC as soon as practically possible and begin to repurpose the island for non-jail infrastructure.

While the City moves towards closing Rikers, ongoing problems cannot be ignored. Violence in the jails has increased, there have been serious reports of sexual misconduct by officers against incarcerated women, and the federal monitor for City jails describes a lack of progress by the Department of Correction in implementing court-mandated reforms. These problems illustrate why putting an end to Rikers is so important, but they have to be addressed immediately. One important step is establishing a dedicated training academy for correction officers.

A year and a half after Mayor de Blasio announced the City would close the Rikers jails, the goal is increasingly within reach. Now is the time to press forward with urgency. Without continued progress in the coming year, both in terms of justice reform and laying the groundwork for borough facilities, New Yorkers could be stuck with Rikers for generations to come.

RETHINKING INCARCERATION

In *A More Just New York City*, we recommended a series of reforms to New York City's justice system to increase fairness and cut the number of people in jail from nearly 10,000 to 5,000 or fewer, permitting the closure of the Rikers jails.

There is good news: since September 2016, the City has reduced the number of people in jail by nearly 1,500, a cut of more than 15 percent. This decline cuts across every pretrial category and sentenced people, with the only exception being people detained on parole warrants. Encouragingly, young people aged 18 to 24 years old account for almost half of the reduction, suggesting that the jail census will continue to decline as this group ages.

During this period, the city has only gotten safer. This significant decline in the use of jail demonstrates that more incarceration does not equal more public safety. It also shows that closing Rikers is increasingly within reach.

Despite this progress, much more has to change. Massive racial disparities continue to characterize every stage of the justice system.¹ More than 90 percent of the individuals in City jails are people of color—the same proportion as two years ago.²

Many other indicators suggest that New York City incarcerates too many people unnecessarily, harming them, their families, and communities:

- 32 percent of people who entered jail from July 2017 through June 2018 were released within just four days, suggesting many should not have been jailed in the first place.
- Nearly 2,800 people were held pretrial on misdemeanor or nonviolent felony charges as of September 29, 2018. Many were detained only because they could not afford bail.
- A growing number of people are jailed not for new crimes, but for parole violations like missing an appointment or failing a drug test. On September 29, 2018, 629 people were detained on Rikers for these “technical” violations.³

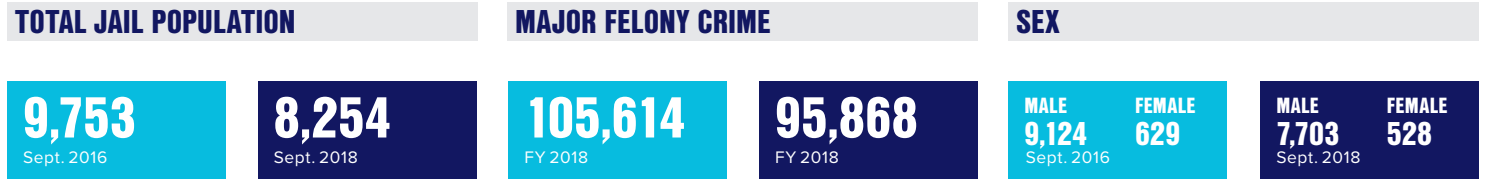
It is time for Albany to act. As the legislative session begins in January 2019, the focus should turn to statewide legislative reform. There is a real opportunity for legislators and the Governor to decriminalize certain low-level offenses, eliminate money bail, reform speedy trial and discovery practices, and reduce the number of paroled persons sent to City jails—reforms that could cut the jail population to a point where closing Rikers becomes possible.

In the following pages, we take a deeper look at changes in incarceration in New York City over the past two years and discuss the reforms that are critical for the coming year.

JAIL IN NEW YORK CITY: 2016–2018

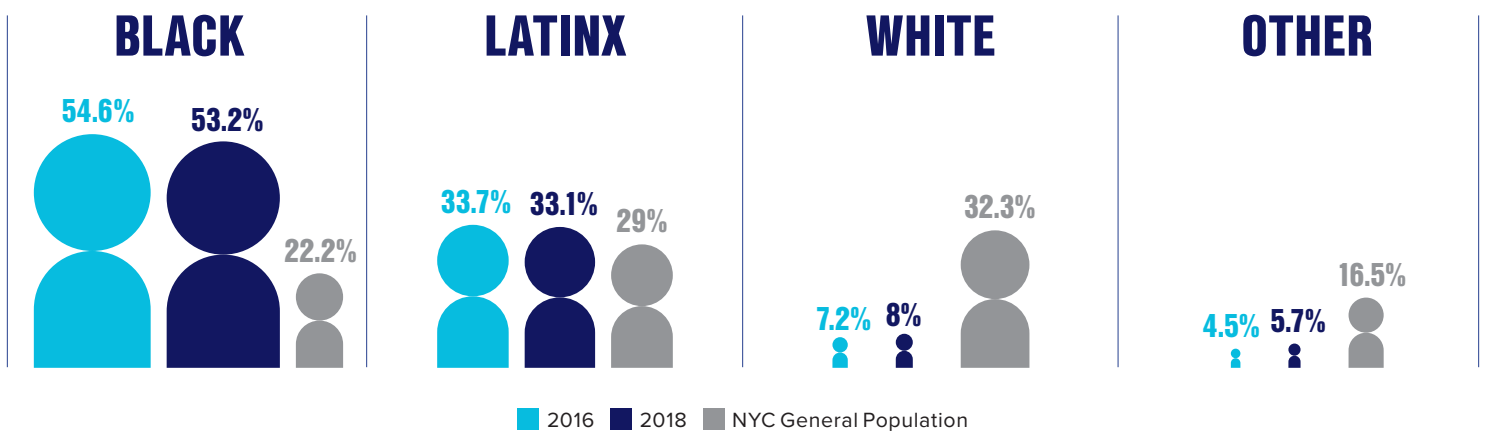
In *A More Just New York City*, we analyzed a snapshot of the people who were incarcerated in New York City jails on September 29, 2016. On that date, there were 9,753 people held in City jails, most of them on Rikers Island.⁴

Two years later, on September 29, 2018, there were 8,254 people in jail—a decline of nearly 1,500 people. In the figures below, we compare these snapshots to illustrate what has changed over the past two years, what has not, and where there are opportunities for further reform.⁵



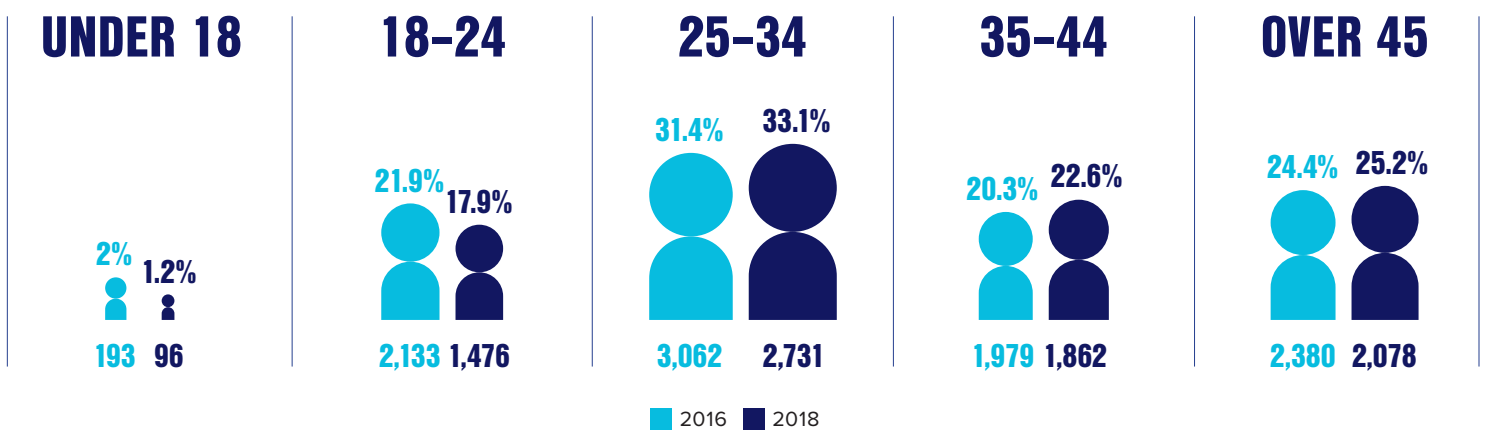
RACE / ETHNICITY

While the number of people in jail has decreased significantly, the racial and gender demographics are essentially unchanged.



AGE

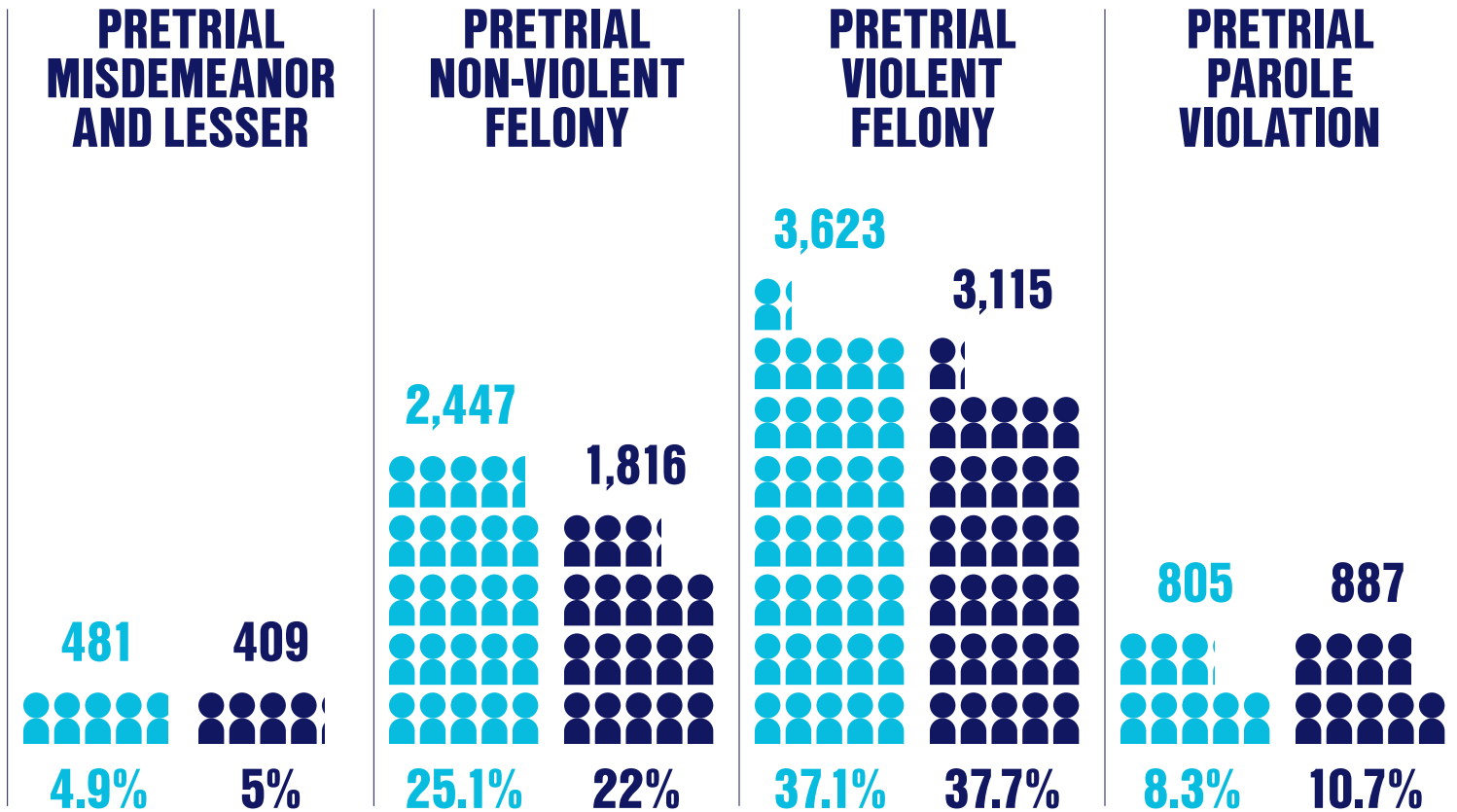
The age of the detained population increased slightly from 2016 to 2018. The large decline in the number of 18 to 24 year-olds in jail is particularly noteworthy—on September 29, 2018, there were 657 fewer people aged 18 to 24 in jail than there were on September 29, 2016. The decline in this cohort amounts to almost 44 percent of the total decline in the number of people in jail.



JAIL IN NEW YORK CITY: 2016–2018

REASON FOR DETENTION

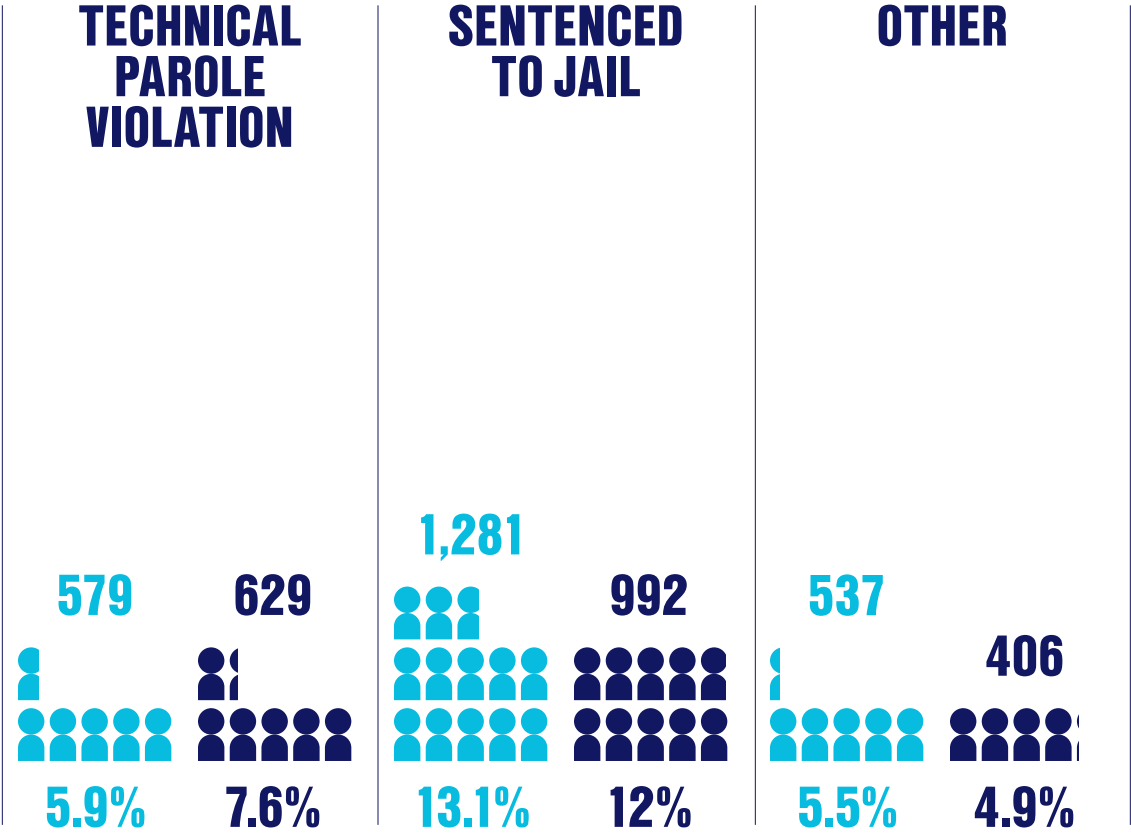
There have been declines in every category of reason for detention, with the exception of parole violations. The number of people detained because of new offenses while on parole (the “Pretrial – Parole Violation” category) and because they allegedly violated other parole conditions (the “Technical Parole Violator” category) are the only categories that increased.



WHAT IS A “VIOLENT FELONY”?

New York law divides felony offenses into two subsets: those that are deemed “violent” and those that are not.⁶ The “violent” label, however, can obscure the range of conduct covered by this category. Some offenses, such as murder, rape, or firearms charges, involve behavior that is obviously violent in nature. Other offenses, however, can encompass behavior that might not ordinarily be viewed as “violent,” including, for example, a person accused of stealing something from the common area of an apartment building or who is charged as an accomplice or accessory,

but who did not themselves use violence. In 2017, 46 percent of all cases charged as violent felonies in the five boroughs were dismissed or resulted in an acquittal—almost as many as resulted in convictions (54 percent). In total, only 12 percent of people accused of a violent felony were sentenced to serve time in state prison.⁷ And according to research from the Center for Court Innovation, 40 percent of violent felony defendants who were detained before trial in 2013 posed only a minimal or low risk of a future violent felony rearrest.⁸



DECLINING JAIL ADMISSIONS

The drop in the daily jail population over the past two years has been matched by a steep decline in the overall number of people who are being admitted into jail. From July 2015 to June 2016, almost 64,000 people were processed into New York City jails. By contrast, from July 2017 to June 2018, fewer than 50,000 were admitted to jail, a 22 percent decline (approximately 14,300 fewer people).⁹

WHAT'S NEXT: LEGISLATIVE PRIORITIES FOR REFORM

The decline in the use of jail over the past two years has been driven by changes at the local level, from City agencies, district attorneys, the courts, and the City Council, as well as by an intensive focus from New York City's strong advocacy community.

There is much farther to go. As the legislative session opens in Albany in January, there are critical opportunities for statewide reform at every stage of the criminal justice system. We project that these reforms could collectively mean over 3,000 fewer people in New York City jails.

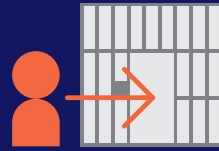
We identify the top priorities below, and discuss them at greater length in the following pages.



1. POINT OF ARREST

→ **Decriminalize Low-Level Offenses:**
Estimated 40 fewer people in jail

Decriminalizing marijuana possession, theft of services, gravity knife possession, and sex work would likely reduce the NYC jail population by a few dozen, but would also put an end to thousands of unnecessary arrests each year that predominantly impact communities of color, conserve court resources, and help reduce case backlogs.



2. PRETRIAL DETENTION

→ **End Cash Bail:**
Estimated 2,000 fewer people in jail

Ending pretrial detention based on wealth should be the upmost priority. Several different proposals for bail reform were advanced by the Governor and state legislative bodies last year. Legislation that incorporates our bail reform recommendations could ultimately mean 2,000 fewer people in jail each day.



3. CASE PROCESSING

→ **Speedy Trial and Discovery Reform:**
Estimated 800 fewer people in jail

A stronger speedy trial law would ensure that cases proceed more quickly, and a more rigorous discovery law would bring New York in line with other states and ensure that people have prompt access to the evidence against them. Both reforms are key to a more fair justice system. They would also lead to faster case processing, likely reducing the daily jail population by 800 or more.



4. SENTENCING, RE-ENTRY AND PAROLE

→ **Limit Jail for Alleged Parole Violations:**
Estimated 650 fewer people in jail

The only growing categories of people in City jails are those who are held on parole violations. Reforming parole practices as we suggest could mean 650 fewer people in jail.

DECRIMINALIZE CERTAIN LOW-LEVEL OFFENSES

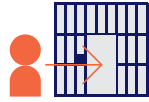


Two-thirds of the arrests in New York City are for low-level misdemeanor offenses. These offenses usually do not result in jail time, but an arrest record and the period of detention from arrest through arraignment can have a significant negative impact on people's lives—threatening their reputation, employment, and housing, and increasing the chances they will be rearrested and jailed in the future.

Over the past year, police and several district attorneys have significantly reduced the criminal enforcement of marijuana and theft of services (usually, fare evasion) offenses, though some have criticized these reforms for not going far enough. There is also growing momentum for the decriminalization of marijuana possession, which would require legislation in Albany.

We encourage decriminalization of misdemeanor charges for marijuana, theft of services, possession of gravity knives (which are commonly used in the construction industry) and engaging in sex work. Shifting these offenses to civil penalties will not immediately result in a significant decrease in the use of jail because most people charged with these offenses are not sent to jail, but it would be a step towards a fairer system and help conserve resources to focus on more serious conduct.

REDUCE PRETRIAL DETENTION BY REFORMING BAIL



The vast majority of people in City jails have not been convicted. Nearly 76 percent are awaiting trial—the same percentage as two years ago. Many are held because they cannot afford to pay bail.

After arrest, people are taken to the borough criminal court, where a judge decides whether to set bail. In New York, the purpose of bail is only to ensure that the person returns to court. The judge has several options: (1) release the person without any conditions (known as “release on recognizance”), (2) order them to participate in an alternative-to-detention program like supervised release, (3) set bail to be paid by one of at least two of the nine forms of bail under the current bail statute, or (4) remand the person directly to jail (only permissible for felonies, or where there is a parole warrant or other hold).

We believe that many more people arrested here can be released safely on their own recognizance or through programs like supervised release. **We have projected that reforms to bail practices could reduce the number of people in jail on any given day by more than 2,000.** Legislation that incorporates our recommendations would accelerate this process and could reduce the jail population even further.¹⁰

Eliminate cash bail. The top priority is legislation that eliminates money as the determinant of a person's liberty and significantly reduces pretrial detention.

Any such legislation should be judged on several principles. First, it should maximize safe pretrial

release, resulting in the detention of many fewer people than today. Second, it should eliminate detention based on a person's wealth. Third, it should include a presumption of release for all defendants under the least restrictive conditions necessary. Fourth, it should provide for expanded pretrial services to support safe pretrial release. Finally, it should permit the detention of people charged with selected serious offenses who truly present a threat to public safety, with stringent due process safeguards to protect against unjustified detention. When people are detained, strict time limits should be imposed on the length of detention.

Fallback Improvements to the Current Bail Statute. Until cash bail is eliminated, we support the following legislative reforms to modify the current bail system.

→ **Provide defendants more options to post bail.** There are nine types of bail permitted in New York, but courts typically impose the two forms that are hardest to pay: cash bail and insurance company bail bonds. The law should require courts to give people the option to post bail in three or more ways, including a partially secured or unsecured bond.

→ **Raise the threshold for charitable bail funds.** Today, charitable bail funds can post bail in misdemeanor cases where bail is no more than \$2,000. They should be allowed to post bail at higher amounts and in felony cases, as permitted by legislation such as A.4880, which passed the Assembly last year.¹¹

→ **Set bail at amounts that defendants can afford.** Courts should take a person's ability to pay into account as a primary factor when making bail determinations.

INCREASE FAIRNESS BY ENSURING PROMPT DISCOVERY AND FASTER CASES



In addition to reducing the number of people who are sent to jail, we must also ensure people spend less time in jail by speeding their cases to disposition.

Most indicted felony cases take much longer to resolve than the court system's 180-day internal standard. The reasons are varied, but include lengthy adjournment periods between court dates, missed court dates because of transportation difficulties from Rikers, and the fact that New York law does not require prosecutors to fully inform people of the evidence against them until trial. While New York has a speedy trial law that asks prosecutors to be ready to take most felony cases to trial within six months, there are so many exceptions that this requirement is largely meaningless.

Delays do more than just keep people locked up for longer. Witnesses' memories can fade. Victims have to wait to see justice done. Taxpayers have to pay for additional jail costs.

Legislative fixes could change this. Last year, Governor Cuomo and state legislators introduced proposals to speed case processing times and provide defendants with earlier access to the evidence against them.¹² None passed.

This session, legislators should consider real speedy trial reforms that enforce hard time limits, with exceptions only for narrowly defined extenuating circumstances. A good first step would be passing Kalief's Law, which would help bring cases to trial more quickly by including court delays within the speedy trial period and requiring prosecutors to certify that they have complied with their discovery obligations when they declare readiness for trial.¹³

We also recommend enacting discovery laws that guarantee early and automatic disclosure of evidence, bringing New York in line with the majority of other states. Better discovery laws would result in more informed plea bargaining and help prevent wrongful convictions. They would also address delays and backlogs by encouraging parties to reach a fair and rapid disposition, whether by plea, trial, or dismissal.¹⁴

Even without legislative change, there are many steps that courts, prosecutors, and defense attorneys can take to make sure that cases proceed quickly and fairly. For example, judges should maintain tighter schedules with fewer adjournments and encourage the prompt sharing of discovery. And prosecutors should implement the longstanding "open file discovery" protocol of the Brooklyn District Attorney's office.

We project that changes in adjournments and other practices that would shorten case processing time (and which are achievable under current law) could reduce the daily jail population by more than 800 people. Legislation that sets enforceable time limits on case processing would likely lead to a comparable reduction in jail.¹⁵

REDUCE JAIL BY LIMITING PAROLE DETENTION



If jail can be considered the front door to today’s system of incarceration, the parole system has become the revolving door at the exit. **The only category of people in City jails that is increasing is people accused of violating parole.**

Nearly all prison sentences in New York are followed by a period of community supervision, typically referred to as parole.¹⁶ Today, New York has approximately 35,000 people on active community supervision—more than two-thirds as many as the 48,000 people in state prison. People on supervision are required to check in periodically with their parole officer and abide by other “technical” restrictions, such as curfews, travel limitations, drug testing, and a prohibition against spending time with other people with criminal records.¹⁷

When a person is accused of violating a “technical” parole condition, they are automatically held in jail for up to 90 days while an administrative judge

determines whether to send them back to state prison. There is no legal option for release, on bail or otherwise. As of September 29, 2018, there were 629 people at Rikers accused of such a technical violation—up from 579 people two years ago.

People can also be detained for violating parole when they are charged with committing a new offense. This number has also increased over the past two years. While some of these paroled people are accused of high-level offenses, 60 percent are charged with lower level misdemeanors or non-violent felonies. Many would be released on recognizance or low bail amounts, if not for the parole warrant that mandates their detention.

The following legislative reforms could help reduce the growing number of paroled people who are detained on Rikers, lowering the daily number of people detained for parole reasons by 650 or more:¹⁸

Good time credits. People on parole should be able to shorten their supervision term by earning credit for good behavior. These credits would incentivize positive reintegration into the community and save resources by reducing the number of people on parole.

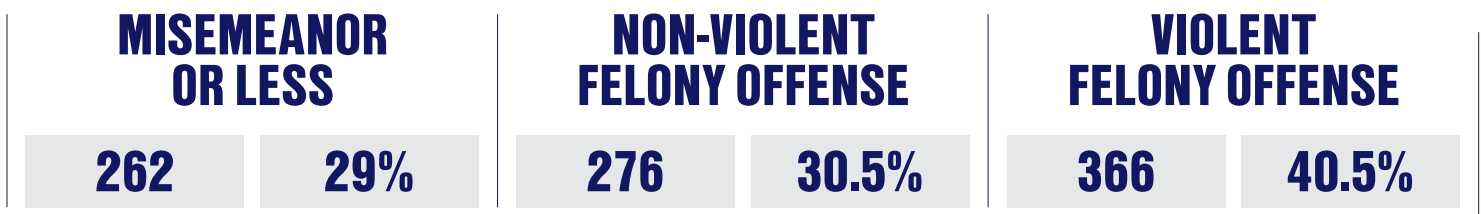
Parole officers could then focus on the people who most need assistance.

End mandatory detention on parole warrants. Today, people with a parole warrant (whether from a technical violation or a new charge) are automatically jailed. They should have a hearing in front of a judge to determine if they are likely to return for their parole hearing. If so, they should be released.

Place caps on revocation sanctions. Short but definite sanctions, paired with faster adjudication times, would reduce the number of people accused of parole violations held in City jails.

Consider shifting persons detained on technical violations to state facilities. Current law requires people accused of parole violations to be detained in local jails pending a decision on the violations. Instead, people accused of technical violations in New York City could be held in nearby state-run facilities, rather than on Rikers. This would not reduce incarceration overall, but could accelerate the closure of Rikers.

CHARGE SEVERITY FOR PRETRIAL DETAINEES WITH PAROLE WARRANTS (SEPT. 29, 2018)



The majority of those detained for parole violations due to new charges are detained on misdemeanor or non-violent felony cases.

THE FUTURE OF JAILS

In April 2017, we called for New York City to create a smaller and more humane detention system that would allow the permanent closure of the nine jails on Rikers Island and the Vernon C. Bain Center, a jail barge moored in the Bronx. We urged the development of facilities located in each of the five boroughs to house the much lower number of people who would be incarcerated following the justice reforms that we recommended.

The goal of closing Rikers is not simply to move jails around the city, but to reimagine the justice system for future generations.

Such a re-envisioned system would put these facilities where they should be: near the courthouses where most detained people are awaiting trial, closer to families and other visitors whose support helps detained people return home successfully, and more accessible for service providers and attorneys. Modern, better-designed facilities would provide a safer and more humane environment for correction officers and detained people alike. We also believe that ending the “out of sight, out of mind” isolation of Rikers Island would encourage better practices at the Department of Correction and help break with the painful history of Rikers.

THE JAILS CRISIS CONTINUES

The developments of the past six months have reinforced our conclusion that the Rikers jails must be shut down. Violence has increased, despite fewer people in jail.¹⁹ The federal monitor for the Department of Correction described an “overall lack of forward progress” in reducing the unnecessary use of force by correction officers.²⁰ And over the past six months, ongoing sexual abuse of women held on Rikers and intolerably slow investigations into those reports have been described in the press, in federal lawsuits, before the Board of Correction, and at a hearing of the City Council. These incidents reveal an ongoing crisis that cannot fully be fixed on Rikers Island.²¹

RAISE THE AGE AND THE CLOSURE OF GMDC

There has been some progress over the past six months. Sixteen- and seventeen-year-olds have been moved off Rikers, though the initial rollout has been challenging. And with fewer people in jail, the City has shut down the George Motchan Detention Center (GMDC) on Rikers, taking more than 1,500 beds off-line.

THE CITY'S BOROUGH JAIL PLAN

In August 2018, the City released its preliminary proposal to build jails in the Bronx, Brooklyn, Manhattan, and Queens to enable the closure of Rikers.

The City's plan shares many of the principles outlined in the Commission's recommendations: that New York City's jails should be accessible to courts, visitors, and service providers and designed to treat those inside with dignity and safety. The timeframe for building these facilities puts the City on track to close the Rikers jails within ten years, and potentially as early as 2024, as we discussed in our April 2018 *One Year Forward* report.

In the City's proposal, each of the four facilities would have 1,510 beds and include housing for women and those with medical and behavioral health needs, as well as specialized spaces for visitation and physical and mental health care services. In its presentations, the City has emphasized design principles that include room for programming, improved sightlines and floorplans, better facilities for visitors, normalized environments, and community space.

OUR VISION FOR BOROUGH-BASED JAILS



Proximity to Family and Community



Proximity to Courts



Proximity to Transportation



Proximity to Legal Services



Building has Civic Exterior



Space for Community Uses and/or Retail

INCARCERATED PEOPLE WHO IDENTIFY AS WOMEN

The negative effects of incarceration are particularly acute for women, who enter the justice system with higher rates of trauma (including physical and sexual abuse) and mental illness and who are often mothers. For those reasons, targeted interventions to keep women out of jail are critical, and for women who are incarcerated, specialized services and programs are necessary. Staff working with women should be trained in gender-responsive practices.

In the City's proposal, women's units are located within each of the four facilities, with

maternity services based in Queens. Some advocates, however, believe that a more centralized model would better ensure that women receive the special focus and security that they need.

We recognize the challenges involved in balancing the unique needs of detained women with the goal of holding them as close to home as possible. As plans are finalized, we strongly urge the City to pay special attention to the needs of women and listen to input from incarcerated women and their families.

While the current proposal is a step forward, there is room for improvement.

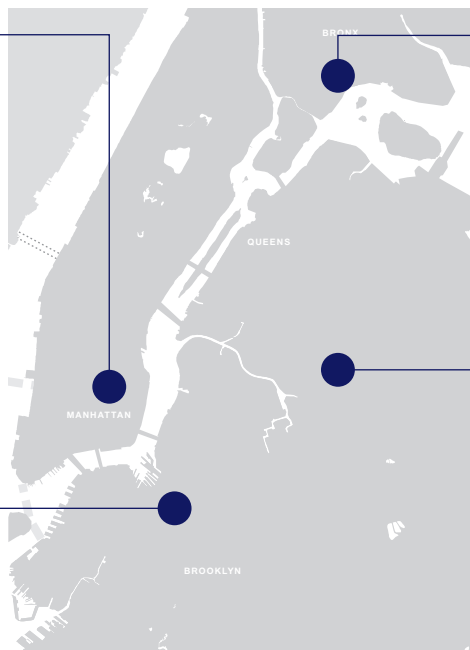
- **First**, the City should fully involve the surrounding communities in the planning process.
- **Second**, the City should reduce the size and height of the proposed facilities, including by planning for 5,500 beds or fewer, rather than 6,040 beds.
- **Third**, the arraignment courtrooms proposed for the Bronx jail should be eliminated because they send the wrong message that incarceration is the default rather than the last resort.
- **Finally**, the City should make plans for a facility on Staten Island, so that detainees from that borough will not remain separated from their families and communities.

MANHATTAN

As of November 2018, the proposed facility in Manhattan is on the site of the existing Manhattan Detention Center (MDC), adjacent to the Manhattan Criminal Courthouse. This is a change from the City's initial August 2018 proposal, which would have closed the MDC and established a new facility at nearby 80 Centre Street.

BROOKLYN

The proposed facility in Brooklyn is on the site of the current Brooklyn Detention Center, adjacent to the Brooklyn Criminal Courthouse.



THE BRONX

The proposed Bronx facility is on the site of an NYPD tow pound in Mott Haven. The City has proposed using one-third of the site for affordable housing or another community use. Unlike the other sites, the proposed Bronx location is two miles away from the borough criminal courthouse.

QUEENS

The proposed Queens facility is on the site of the former Queens Detention Center in Kew Gardens, adjacent to the Queens Criminal Courthouse. The site was used as a jail until 2002. It would contain space for centralized infirmary and maternity ward services.

We believe that borough facilities should be close to the local criminal courthouse, accessible by public transportation, and located on City land. The sites in Brooklyn, Manhattan, and Queens meet these criteria. Although the site in the Bronx is not adjacent to the borough criminal courthouse, it is significantly closer to the courthouse than Rikers, is accessible by public transport, and is on City land.

PUBLIC REACTION AND RESPONSES

The City recently concluded a series of public hearings as part of the land use process necessary for approval of the borough facilities. At these hearings, many people expressed concerns about a lack of community input into the City's plan and about the impact that the proposed facilities would have on their neighborhoods. Some questioned whether the plan would lead to better conditions in the jails and whether Rikers could be closed without any new facilities in the boroughs. Others argued that Rikers should remain open. These concerns and questions have to be taken seriously.

As an initial matter, it is imperative that the City work with local communities to understand and address their concerns. A formal process of engagement should continue through the Uniform Land Use Review Process and afterwards during design and construction. In this respect, we are encouraged by the City's recent formation of neighborhood advisory committees in the boroughs.

Concerning the impact on neighborhoods, residents have taken issue with the size and height of the facilities and the potential for more traffic, decreased property values, and increased crime. All of these issues must be studied and addressed by the City. However, it is important to note that there are already jails in downtown Manhattan and downtown Brooklyn, as well as state and federal correctional facilities in all four boroughs, none of which have harmed property values or increased crime rates.²² This is consistent with studies on the impact of correction facilities in other contexts.²³

With respect to size, a well-designed facility requires sufficient space for programming, visitation, and other features that improve outcomes for both detainees and staff. But to ensure that the proposed jails fit with their surroundings, it is imperative that the City explore ways to decrease their size, including by reducing the bed capacity to 5,500 or lower.

In addition to these concerns, there are some who argue that the Rikers jails should remain open. Others have contended that Rikers should be closed without building any facilities in the boroughs.

We believe that the inhumane conditions in the Riker jails cannot be fixed and that a smaller borough system would be a vast improvement. Closing Rikers, however, cannot realistically be done without additional capacity in the boroughs. Today, there are approximately 2,500 beds in Brooklyn, Manhattan, and the Bronx. It is unlikely that the total number of people in jail could be housed in these facilities any time in the near future—and in the meantime, Rikers would remain open, which is unacceptable. And even if such a number were achievable, the current borough facilities are hardly examples of humane facilities.

Finally, some critics of the borough-based plan have questioned whether the conditions on Rikers will be replicated in the new facilities. **While better design can address some of these concerns, changing the practices and culture of the jails is critical, and cannot wait for the proposed borough facilities.** As part of that process, a purpose-built training facility for correction officers should be built as soon as possible, as we and the federal monitor have recommended.

MOVING FORWARD

We believe that a smaller system of better designed and better operated jails in all five boroughs is the best and fastest path to closing Rikers. **The City's current borough proposal is not perfect, nor is it identical to our vision, but it is a first step towards a better way of doing things.**

Moving forward, we call on the City to:

- Conduct a full community engagement process to keep communities informed and involved in the planning and design process
- Address concerns about the size and height of the proposed facilities by reducing the number of beds to no more than 5,500 and by reconsidering a facility on Staten Island as part of a separate land use process
- Remove the arraignment court rooms from the proposed Bronx facility
- Demolish the GMDC facility on Rikers, which has been closed as a jail and is now used for other DOC purposes, as quickly as possible to demonstrate the City's commitment to decarceration
- Redouble efforts to address ongoing problems of violence and sexual assault at Rikers
- Build a dedicated training facility to improve DOC practices, and
- Develop plans for the future of the island, including memorializing its history, phasing in more productive interim uses as the jails are phased out, and planning for future uses such as critical environmental infrastructure or the extension of LaGuardia Airport

NOTES

- 1 New York Civil Liberties Union (2017) Stop and Frisk Data. Available at: <https://www.nyclu.org/en/stop-and-frisk-data>
- 2 See *NYC Department of Correction at a Glance* (July 2018) Available at: https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_At%20a%20Glance-entire_FY%202018_073118.pdf
- 3 See *NYC Department of Correction at a Glance* (July 2018), Op Cit.
- 4 Lippman, Jonathan et al. (April 2017) *A More Just New York City*. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>
- 5 See DOC data on the NYC Open Data Portal (September 2017; September 2018) Average Daily Inmate Population. Available at: <https://data.cityofnewyork.us/browse?category=Public+Safety&q=DOC>
- 6 See N.Y. Penal Law § 70.02. Available at: <https://www.nysenate.gov/legislation/laws/PEN/70.20>
- 7 See New York State Department of Criminal Justice Services, New York City Adult Arrests Disposed. Available at: www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf
- 8 Rempel, M., Kerodal, A., Spadafore, J., and Mai, C. (2017). Jail in New York City: Evidence-Based Opportunities for Reform. Report submitted to the Annie E. Casey Foundation and the New York City Mayor's Office of Criminal Justice. New York, NY: Center for Court Innovation, see pp. 66–67. Available at: https://www.courtinnovation.org/sites/default/files/documents/NYC_Path_Analysis_Final%20Report.pdf
- 9 See Mayor's Management Report at 83. Available at: https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2018/2018_mmr.pdf
- 10 Our most recent jail reduction projections are set forth on page 8 of our July 2018 report *Beyond Bail or Nothing: A Case for the Expansion of Supervised Release*. Legislation that incorporates our pretrial detention recommendations, most particularly our call for a strong presumption of release for people charged with misdemeanor or non-violent felony offenses, would result in similar expected jail reductions. Our projections are within the range of projections for the impact of state-level bail reform from the Vera Institute for Justice (an estimated 3500 person reduction) and the Mayor's Office of Criminal Justice (an estimated 1500 person reduction). See Vera Institute for Justice (June 2018), *New York Can't Close Rikers Without Real Bail Reform*, available at: https://nycjr.fwd.us/wp-content/uploads/2018/06/NYC-jail-impact_Vera_FWDus.pdf; *Mayor's Office of Criminal Justice, Plan to Close Rikers: Jail Population Reduction Path to 5,000* (on file with authors).
- 11 See Assembly Bill 4880. Available at <https://www.nysenate.gov/legislation/bills/2017/a4880>. For upstate counties, we also support allowing charitable bail funds to pay bail across multiple counties, which is currently prohibited by statute.
- 12 For information on the Governor's criminal justice budget proposals, see: (2018, January 16). FY 2019 New York State Executive Budget: Public Protection and General Government Article VII Legislation. For information on the State Senate's criminal justice proposals, see: Office of New York State Senator Andrea Stewart-Cousins. (2018, February 13). Senate Democrats Fight To Reform New York's Criminal Justice System [Press Release]. Albany, NY: The New York State Senate. Available at: <https://www.nysenate.gov/newsroom/press-releases/andrea-stewart-cousins/senate-democrats-fight-reform-new-yorks-criminal>. For information on the Assembly's criminal justice proposals, see: Office of New York State Assembly Speaker Carl E. Heastie. (2018, February 12). Assembly Majority Introduces Comprehensive Criminal Justice Reform Package [Press Release]. Albany, NY: The New York State Assembly. Available at: <http://assembly.state.ny.us/Press/files/20180212.php>.
- 13 See Assembly Bill 8296-A. Available at: <https://www.nysenate.gov/legislation/bills/2015/a8296/amendment/a>
- 14 See Assembly Bill 10135-A. Available at: <https://www.nysenate.gov/legislation/bills/2017/a10135>. See Assembly Bill 4360-A. Available at: <https://www.nysenate.gov/legislation/bills/2017/a4360>. New York State Bar Association, Task Force on Criminal Discovery Final Report (2014). Available at: <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=54071>; New York State Justice Task Force, Recommendations Regarding Criminal Discovery Reform. Available at: <http://www.nyjusticetaskforce.com/pdfs/Criminal-Discovery.pdf>
- 15 Lippman, Jonathan et al. (July 2018) *Beyond Bail or Nothing: A Case for the Expansion of Supervised Release*. Available at: <https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/5b4380e088251beed8d4c188/1531150581999/Beyond+Bail+or+Nothing>.
- 16 "Parole" is a broad term describing for different types of community supervision; presumption of release, conditional release, post release supervision, medial parole, and parole. See also Bellafante, Gina. (2018) Criminal Justice Reform Empties Cells, Parole Fills Them Up Again. Available at: <https://www.nytimes.com/2018/02/02/nyregion/criminal-justice-reform-empties-cells-parole-fills-them-up-again.html>
- 17 Schiraldi, Vincent (2018). *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*. Available at: http://justicelab.iserp.columbia.edu/img/Less_is_More_in_New_York_Report_FINAL.pdf
- 18 To calculate the projected reduction from parole reforms, we first assumed that ending mandatory detention and capping revocation sanctions could reduce the number of people jailed for technical violations by 50 percent, resulting in a reduction of 314 people. Then, to calculate the impact of ending mandatory detention for paroled persons charged with new offenses, we multiplied the number of paroled persons detained on new charges for misdemeanors, non-violent felonies, and violent felonies by the rate at which people charged with those categories of offenses were released on recognizance in 2016, as set forth on page 18 of the Criminal Justice Agency's Annual Report 2016. We then built in a 25 percent "implementation discount" to account for the likelihood that courts may be less likely to release paroled persons on recognizance, resulting in a projected reduction of 342 people. Adding the projected reduction for technical violations to the projected reduction for new charges amounted to a projected total reduction of 656 people.
- 19 Martin, Steve. (2018, October 17) *Sixth Report of the Nunez Independent Monitor, Nunez v. City of New York et. al., 11-cv-5845 (LTS)* at 4. Available at: <http://tillidgroup.com/wp-content/uploads/2018/10/6th-Monitors-Report-10-17-18-As-Filed.pdf>
- 20 FY 2018 Mayor's Management Report at 83.
- 21 Tucker, J. (2018, June 25). *Rape at Rosie's: When the bad guys at Rikers are the guards*. NEW YORK MAGAZINE. Available at: <http://nymag.com/daily/intelligencer/2018/06/rape-at-rikers.html>. New York City Board of Correction. (2018, September) *Audit Report on the New York City Department of Correction's Sexual Assault and Sexual Harassment (PREA) Closing Reports*. Available at: https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/PREA_ClosingReports_FINAL_09.24.18_update.pdf. New York City Board of Correction. (2018 October) *Resolution re Sexual Abuse and Harassment Investigations*. Available at: https://www1.nyc.gov/assets/boc/downloads/pdf/october_2018_resolution_investigations_10_8_18.pdf. New York City Council. (2018, September 6) Oversight Hearing - Sexual Abuse and Harassment in City Jails. Video available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=621670&GUID=945E99AF-A0BE-4A08-AEB2-231784A965C8&Options=&Search=>
- 22 DiPrinzio, Harry. (2018) *The Jail Next Door: A Look at the 14 Correctional Facilities in New York's Neighborhoods*. Available at: <https://citylimits.org/2018/07/17/the-jail-next-door-a-look-at-the-14-correctional-facilities-in-new-yorks-neighborhoods/>.
- 23 See, for example: Abrams, K. S., Lyons, W., Cruz, R., Dahbura, A., deHaven-Smith, L., Johnson, P., ..., & Scher, R. (1992). *Issues in Siting Correctional Facilities: An Informational Brief*; McGeever, K. (2018). *Correctional Facility Establishments and Neighborhood Housing Characteristics*. SOCIOLOGICAL PERSPECTIVES. Advance Online Publication.

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An aerial photograph of New York City, including the Hudson River and the Manhattan skyline, rendered in a monochromatic blue color. The image shows a dense urban landscape with a mix of residential and commercial buildings, a large bridge crossing the river, and a prominent stadium in the foreground.

A MORE JUST NEW YORK CITY PROGRESS REPORT AND LEGISLATIVE AGENDA DECEMBER 2018

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