

Memorandum in Support

NYSBA #2

April 29, 2021

S. 1144
A. 5576

By: Senator Benjamin

By: M. of A. Forrest

Senate Committee: Finance

Assembly Committee: Correction

Effective Date: First of April next
succeeding the date on
which it shall have become
a law

AN ACT to amend the executive law and the penal law, in relation to revocation of community supervision.

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association Task Force on the Parole System (the “Task Force”) was appointed by then State Bar President Henry M. Greenberg in June 2019 to examine the parole system in New York State and consider ways in which that system can be improved. The Task Force has issued two interim reports and continues to conduct a detailed review of parole rules, regulations, practices and procedures in New York and other states to develop additional recommendations for improvement.

The Task Force has reviewed Proposed Bill S1144 and recommends its passage, particularly to the extent that it: i) limits the use of reincarceration for what are considered technical violations of parole conditions; and ii) permits individuals on parole to receive “earned time credits” that reduce their period of supervision if they comply with the terms and conditions of their supervision.

A large number of persons on parole each year are detained and then re-incarcerated for minor, “technical” violations of the conditions of their supervision such as missing a curfew, changing one’s residence without approval or failing to attend a mandated program. This longstanding policy of reincarceration is counterproductive and costly, both in human and financial terms, and the Task Force has recommended that it be promptly addressed through remedial legislation.

It has been reported that New York ranks second highest (after Illinois) in sending individuals who commit technical parole violations back to prison.ⁱ It is estimated that nearly 40 percent of persons sent to state prison in New York each year are incarcerated not for a new criminal conviction, but for a technical parole violation.ⁱⁱ The financial cost to the State and its localities of incarcerating all these individuals accused of technical parole violations is substantial. It has been estimated that, each year, New York State

spends approximately \$359 million incarcerating people returned to state prison for technical parole violations,ⁱⁱⁱ and that localities across the State, including New York City, spend a total of nearly \$300 million incarcerating these individuals accused of alleged parole violations while they await disposition of the charges.^{iv}

There is little or no evidence that the current revocation process for persons accused of technical parole violations in New York actually enhances public safety or reduces recidivism as intended. A more forceful argument exists that incarcerating people for technical parole violations plays a decidedly negative role in terms of integrating these persons back into the community, and is extremely costly in human and economic terms. Even a brief period of incarceration on a technical parole violation can result in the person losing his or her job and housing and can render both them and their families homeless and with no viable source of income. It can also interrupt ongoing community-based treatment services and educational opportunities the person may have been pursuing in order to improve his or her chances of a successful reentry into the community. Further, where a person on parole is fortunate enough to have a partner, parents and/or children, very frequently those family members will count on the paroled person for child care, care of elderly family members and the like. Sending the person to jail or prison for a technical parole violation disrupts these vital stabilizers for the person and their family, often with detrimental consequences to the children or other family members of the paroled person who must deal with the trauma of suddenly losing their parent or other family member yet again. These issues raise troubling questions about the fundamental fairness of the process, and strongly support legislative action to substantially reduce incarceration for technical parole violations in New York.

The parole system would also benefit from the institution of a system of earned time credits as provided in S1144. Consistent with the research showing that most people who reoffend after leaving prison do so within a year of release,^v New York State's own offender data indicate that the risk of re-arrest is highest during the first few months after release on parole, significantly declines between the six and twelfth months, and continues to decrease through to the thirtieth month following release.^{vi}

It has been noted that, in addition to reducing the overall length of supervision terms, the granting of so-called "earned early discharge" from supervision "can serve to further focus resources on those most in need of supervision while incentivizing meritorious behavior by those under supervision."^{vii} A 2017 analysis by the Pew Charitable Trusts of 35 states participating in the federal Justice Reinvestment Initiative revealed that in 18 of those states persons on community supervision can shorten their periods of supervision up to 30 days for 30 days of compliance.^{viii} The Task Force believes that New York should join these other states by creating a statutory system of "earned time credits" to incentivize good behavior while on parole that is similar, in effect, to the current practice of "good time" reductions in prison terms for incarcerated individuals who can have their maximum sentence reduced by one third for good behavior. This system would, among other things, strongly encourage compliance with conditions of parole, discourage absconding from supervision and significantly reduce

parole officers' caseloads, thereby allowing them to focus their time and programmatic resources on those most in need of support and services.

For these reasons the NYSBA supports S1144 and urges its passage.

ⁱ *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, at 4. [citing, United States Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2016 (April 2018), Appendix Table 7, BJS, 2016]. Available at: <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>

ⁱⁱ *Id.*, at 1.

ⁱⁱⁱ *Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets*, Council of State Governments Justice Center. Available at: <https://csgjusticecenter.org/confinedandcostly/?state=NY>

^{iv} *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York*, Independent Commission on New York City Criminal Justice and Incarceration Reform, June 2019, *supra.*, at 9.

^v *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, Pew Charitable Trusts, July 2019, *supra.*, at 4.

^{vi} *The Future of Sentencing in New York State: Recommendations for Reform*, New York State Commission on Sentencing Reform, 1/30/09, at 142.

^{vii} *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 29, 2018, *supra.*, at 7.

^{viii} *Id.*, citing *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts, July 2018, at 2.