Evaluation of the Implementation by DOCCS of Gov. Cuomo's initiative to release, during the pandemic, persons in county jails held on charges of technical parole violations

Oral Testimony for the New York Senate
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My name is Stephen Hart. I am a Senior Research Scientist at Frontier Science Foundation and an Adjunct Associate Professor at University at Buffalo, but I'm not speaking today for either organization. I hold a Ph.D. in Sociology from Berkeley, and my professional life includes 35 years in quantitative data collection and analysis, in various applied settings.

My testimony previews a report that will soon be published by the Partnership for the Public Good. Given the time limit, I'm leaving out the details and nuances, but I'll be glad to answer questions, and I'll file the report with the committee.

The study concerns a pandemic-related program, initiated by Gov. Cuomo, to release people held in county jails on charges of what are called technical parole violations – things like staying out past curfew, changing jobs without permission, or having been arrested on a minor criminal charge. The way parole works in New York, in all these situations a person is imprisoned, without any way to be released, even on bail, until the parole violation charges are resolved, which takes weeks or months. During this time, people often lose their jobs, housing, and marriages. Unlike other county jail prisoners, their fate is controlled by DOCCS, which issues an arrest and detention warrant.

In late March, Gov. Cuomo instructed DOCCS, instead, to release most parolees awaiting hearings. DOCCS announced a release program, which ran from about March 27 to April 18. But we didn't see many releases in Buffalo, so I decided to research the outcomes.

The analysis used data from DOCCS that was furnished in response to a query from Senator Sepulveda and Assembly Member Weprin, and jail population figures from the Division of Criminal Justice Services. The data from DOCCS, unfortunately, is problematic. In particular, its claims about how many people were released under Cuomo's program appear to be badly inflated for many counties. For example, DOCCS claims ten releases in Westchester, but DCJS shows the average technical population going down only one person from March to April. At this time hearings were scarce and the Governor discouraged parole arrests, so churn was low. The claim of ten pandemic-program releases just isn't plausible unless the DCJS numbers are wrong.

The analysis shows two things very clearly.

First, that far fewer people were released than should have been given the Governor's intention. Overall, only about 650 people, or 38% of the approximately 1,700 in jail when the release program started, were released, leaving over 1,000 people behind. Even DOCCS only claims 791 releases. The Governor wanted everyone out who was not a risk to public safety, and it is <u>inconceivable</u> that <u>five-eighths</u> of jailed parolees were real dangers. The alleged misbehavior, in the vast majority of cases, was either non-criminal or a low-level, non-violent crime. Most had been approved for release by the Parole Board, and that doesn't come easily. Of 37 people followed in Erie County, none of whom were released under this program, only two – that's 5% - had allegedly done something raising public safety concerns. In short, DOCCS implemented Cuomo's directive in a minimalist way, thwarting the goal of getting people out of jail during the pandemic.

Second, the outcomes varied enormously from county to county. For example, the release rate was 58% in Monroe County but only 29% in Erie. Are Buffalonians an especially fearsome lot compared with our neighbors in Rochester? Probably not … which means that attitudes of local parole bureaus, or particular DOCCS staff, must have greatly influenced who got out. That is deeply unjust. Unfortunately, the available data don't allow us to determine what role race may have played.

What conclusions can we draw? The core mission of parole, to my mind, is to maximize the likelihood that returning citizens will successfully reintegrate into the community. That's good for them, for public safety, for taxpayers, and for our social fabric. Given this mission, pre-hearing detention of people charged with technical parole violations is problematic even in normal times. Right now, with many jails COVID hotspots and many people on parole having medical conditions placing them at high risk, it is unconscionable, as Gov. Cuomo saw.

The fact that even in these extreme circumstances, DOCCS clung to keeping the maximum number of alleged violators in jail shows, I think, that this agency is fundamentally and irremediably unfit for the mission of reintegration. DOCCS is mostly a prison agency. Prisons are its basic tool, just like exercises are for a physical therapist. It behaves as if the constant threat and frequent use of reincarceration would enhance reintegration. It also has a conflict of interest, in that reincarcerating people on parole functions to keep prisons full. Currently more than one-third of admissions to New York

prisons stem from technical parole violations rather than court-imposed sentences for actual crimes.[1]

The pandemic is testing many institutions, and parole is failing the test. In the long run, the function of helping returning citizens reintegrate needs to be turned over to a completely different agency, one with a social service rather than carceral mindset. Given that this won't happen overnight, I suggest two short-term actions:

First, the legislature should permanently ban pre-hearing detention of persons accused of technical parole violations.

Second, DOCCS should immediately finish the work left undone by the pandemic release program, releasing all parolees currently held in jails, except the very few whose current actions demonstrate a concrete and serious threat to the public.

I believe that these changes would make our state's parole system more effective, fair, and humane – during the pandemic and beyond.

Thank you for your attention.

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[1] The DOCCS Admissions and Releases Calendar Year Preliminary Report for 2018 shows 5,844 technical violation admissions and 11,607 court-ordered admissions. There were also 1,648 alternative program admissions, of which some are probably parolees, and 296 other admissions. Leaving the last two categories aside because of their indeterminacy, technical admissions were 5,844 / (11,607 + 5,844) = 33.5%.