

# #LessIsMoreNY

Less Mass Supervision = More Safety and Justice

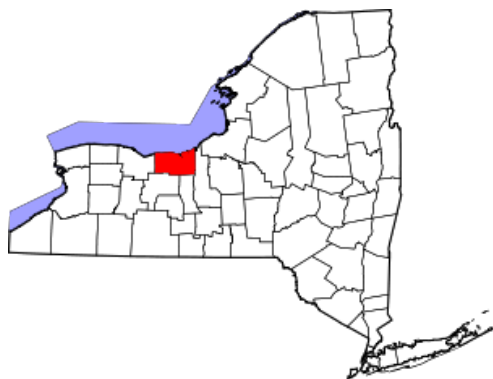
LESS MASS  
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## Examples of the Human Impact of Incarceration for Technical Violations of Parole: Public Defenders in Upstate NY

New York State locks up more people for parole rules violations than any other state in the country. 70% of all people released from NYS prisons are sent back within 3 years for technical parole violations, like testing positive for drugs or alcohol, missing appointments with a parole officer, failing to report a change of address, or being late for curfew. That is triple the national average. There is no evidence this disproportionate re-incarceration improves public safety – not a single study says this outlier, heavy-handed approach actually works. However, it is proven that re-incarceration for technical violations greatly disrupts the lives of people on parole, destabilizing them and *increasing* the chance of recidivism.

Below, public defenders from upstate New York share stories about how New York's broken parole processes impact their clients. The clients names have been changed to protect their privacy.



### Wayne County, New York:

**Mr. Y was jailed on a parole violation warrant in January 2019 which accused him of technical violations of parole**, including possessing and using a smartphone with internet capabilities (even though his crime of conviction had nothing to do with a phone or with internet), possessing a photo of people under 18 without parole's permission (which was a holiday family

photo of Mr. Y's girlfriend and her family), and contact with someone with a criminal record. Mr. Y had to wait in jail for nearly 3 months before he could have a contested hearing (a trial regarding the alleged violations). Mr. Y was in jail the entire time, not entitled to get bailed out. At the time of his incarceration, Mr. Y had just got his feet on the ground with housing, and had an upcoming job interview. He had a positive relationship with his family who supported him, and they enjoyed spending time together. As a result of his incarceration, he lost his housing and obviously did not get the job. He was held to his maximum expiration, even just for these technical violations of parole, which ended up being over 13 months.

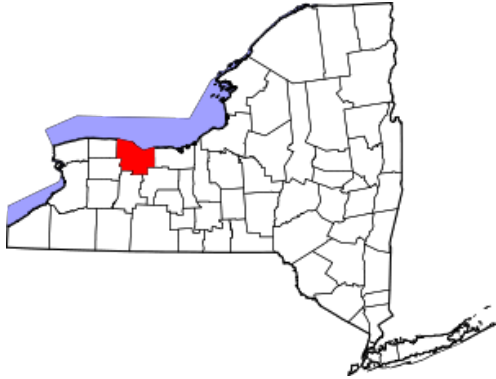
**Mr. C was jailed on a parole violation warrant in August 2020.** He was clean and sober and acting as caregiver for his uncle with developmental disabilities and babysitting his sister's children while she was at work. His new parole officer was immediately and unjustifiably distrustful of him, and the two got off on the wrong foot. Mr. C felt that his P.O. was out to get him, rather than help him. Mr. C didn't drive and had transportation issues getting to and from mental health and substance abuse treatment, so he started missing appointments. He was worried his P.O. was just going to lock him up in jail, so he made the unfortunate decision to stop reporting to parole. A warrant was issued for him in May 2020 charging him with technical violations of parole pertaining to missing substance abuse and mental health treatment appointments, curfew violations, and not making office reports with his P.O. At the time of his arrest, he was working and was about to begin a new job. His girlfriend was pregnant. He was in jail for about 3 weeks waiting for his final parole hearing. He was sent back to prison for more than a year for merely technical violations of parole. Because he is in prison, and due to the Covid-19 visitation limitations at DOCCS, Mr. C has not been able to meet his new baby.

**In early 2019, Mr. S was arrested on a violation of parole,** charging him with only the technical parole violations of testing positive for opiates, missing mental health and substance abuse appointments, and missing an office report with his P.O. Unfortunately, Mr. S had an out of control addiction. It had been an issue for him for a long time. In fact, he had recently been released from prison on a prior parole violation for similar issues, where instead of sending Mr. S to inpatient treatment as requested by Mr. S and his attorney, the parole judge sent Mr. S to Willard. Within 3 months of his release from Willard, Mr. S was arrested again on a parole violation for using drugs. Mr. S reported Willard did little-to-nothing to address his addiction issue and again requested an opportunity to go to inpatient treatment. What would have been the most beneficial to Mr. S would have been to get the immediate help he needed, instead of being locked up in jail without access to adequate substance abuse treatment or the proper medications to address the addiction, such as Suboxone, which the jail was not allowing inmates to take at that time. However, Mr. S had to wait in jail for nearly a

month until his final hearing, where his attorney was finally able to discuss his case with the parole Administrative Law Judge and the Parole Revocation Specialist. The PRS again recommended sending Mr. S to Willard, even though it clearly did not help him last time. The ALJ adjourned Mr. S's case another month to consider whether to grant Mr. S's request to send him to an inpatient treatment facility rather than prison. Eventually, the ALJ agreed to send Mr. S to treatment. It was not until another month later that Mr. S's parole warrant was lifted and he was transported to a residential inpatient treatment facility to get the help he should have gotten back in January 2019.

**Mr. H was released to parole supervision in May 2019.** He was out of prison for just over a year and four months when he was incarcerated again on a parole violation warrant. The violation charged Mr. H with drug use, missing a single substance abuse counseling appointment, and unauthorized contact with his partner of 14 years, Ms. W. Together, they have two young daughters (4 and 10) and a son due in March 2021. During his time in the community, Mr. H was working and financially supporting his family, helping maintain his parents' property, and caring for his elderly, disabled grandmother. Once the pandemic caused widespread shutdown, Mr. H was laid off, but went on unemployment and stayed at home to take care of his daughters who couldn't go to full-time daycare or school while Ms. W, a nurse, was at work. Parole had prohibited him from having contact with Ms. W until he completed a domestic violence course. Even though this was a generic condition, imposed because Mr. H had been charged with misdemeanor assault for a bar fight in the past, unrelated to Ms. W or any other partner, Mr. H agreed to do the course and was half way through it at the time of his incarceration.

With Mr. H in jail, his family has suffered a financial and emotional toll. Ms. W, who is pregnant, has not been able to work since she can't afford daycare. She has no choice but to go back to work as soon as the baby is born because she can barely pay the bills. Mr. H's father was also diagnosed with cancer and without Mr. H to help with their land, his parents have had to hire workers which they cannot afford to keep for much longer. Parole wants to hold Mr. H until his maximum expiration even though this is his first parole violation; there are no allegations of Mr. H committing new charges or breaking the law. Mr. H has been accepted into a residential treatment program where he can finish the domestic violence program but parolee's position is still that he should be incarcerated until his sentence expires.



## Monroe County, New York

### **My client was 24 years old, on parole for Robbery 3, the only conviction he's ever had.**

Violated after over a year out on parole for 2 dirty marijuana screens (only a week apart, so maybe 1 use) and a curfew violation at 730am. The PO signed him up for the 45 day diversion program. He sat in custody for 5 weeks before DOCCS finally picked him up and brought him to the program.

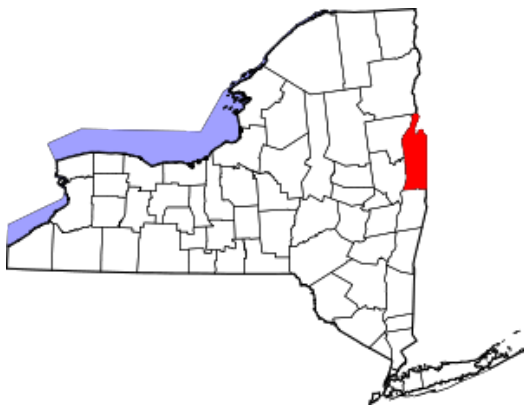
For the first few weeks, everything went well at the program. On his 25<sup>th</sup> day in the program, he apparently has a conversation with a CO that eventually got him kicked out. My client disagreed on the content, but the CO's version was that my client asked her where she lives, she replied that it's none of his business, he said but what if I want to see you, she "gave him a direct order to stop asking personal question," and he did in fact stop.

After this conversation, everything was once again fine for another week. Then the CO decides that the conversation needed to be reported to the stabilization review committee. On the 36<sup>th</sup> day, 11 days after the conversation, my client was removed from the program and returned to the local jail. By the time we got in front of the ALJ, my client had been in custody for 3 months. The ALJ initially offered the Willard program. I was eventually able to talk the ALJ into the revoke and restore, but he stated (on the record) that he would stall on writing the decision for another month so that my client had to waste more time in custody. 4 months just to get a revoke and restore for possibly a single marijuana use and leaving the house 30 minutes early.

**I represented a client on parole who struggled re-integrating back into society after a 17-year prison sentence.** For the first month out he was perfect in following all of his terms and conditions. However, once he moved from a shelter to a new apartment he began to struggle. There was partying going on throughout the night and constant police activity in his neighborhood. He began being unable to sleep. He reached out to his parole officer for help and did not get a helpful response. He ended up cutting off his GPS bracelet after a week of no sleep and walked around all night. In the morning he spotted a police officer and turned himself in. All parties agreed that he was struggling to reintegrate back into society because he spent more than half his life in prison. However, instead of revoking and restoring him to a halfway house that would provide a little bit more structure, he was given a 12 month DOCCS alt sentence. Despite agreeing that he was struggling to reintegrate they decided that the best thing to do was to incarcerate him for purely technical violations.

**I represented a client who was violated for not attending sex offender treatment and a handful of curfew violations.** Parole under the new guidelines also alleged that he absconded from parole even though he was taken to custody the day the warrant was issued as he was in line getting food from a local organization that is familiar with parolees and notifies the local parole office when a parolee who is wanted is there. Simply put, he was not an absconder. One call to the sex offender treatment organization revealed that my client's counselor canceled two out of the three alleged missed appoints. Additionally, my client was still living at his parole approved address. His case was resolved with a 6 month hold.

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### **Washington County, New York**

**In October 2020, our office represented a Category 1 Violator,** who had been convicted of Burglary 2<sup>nd</sup>, and sentenced to 8-year determinate with 5 years post release supervision, at a final revocation hearing via WebEx. This category 1 violator was brought back into NYS custody on a parole warrant for 4 charges, all of which were technical violations,

absconding, failing to report change in residence, and possession of cocaine. This violator was on post release supervision at the time the warrant was issued and was also brought back from an interstate compact transfer. This violator had been on post release for close to two years and this a first violation on this term. There was a max out date of December 2023 relative to post-release. The initial offer from the Parole Revocation Specialist was 12 months. Upon discussing options with client, defenses, and risks, we were able to get him a 12-month time assessment with a 90-day alternative program, as well as all his delinquency time back, which was close to 4 months.

**Our office represented a Category 1 violator,** who had been convicted of Rape 1<sup>st</sup>, and received a sentence of 5-year determinate and 20 years of Post Release Supervision. Our office was assigned to represent the inmate in May of 2019. This was the violator's second violation. The inmate was about to be released from prison and the two charges alleged in this matter were, failing to comply with a direct order of a SORC to sign the Certificate of Release to supervision for refusing to sign the paperwork, and refusing to sign a special condition of release to supervision. This violator required a Spanish translator, and a deportation order was on file. A preliminary hearing was held, as well as a contested. A translator was present in both instances and the hearings were held in

person. There was no delinquency time in this instance, and after a contested hearing, a time assessment of 24 months was imposed.

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These stories underscore why **the Less Is More Act** is so urgently important. Developed by people on parole, people currently incarcerated, family members, Katal, Unchained, Justice Lab at Columbia, Legal Aid, and more, the bill is sponsored by Sen. Brian Benjamin (S.1144) and Assm. Phara Forrest (A.5576). Its provisions include:

- **Restricting the use of incarceration for technical violations**
- **Bolstering due process.**
- **Providing speedy hearings.**
- **Providing earned time credits.**

**#LessIsMoreNY** is supported by district attorneys, sheriffs, other law enforcement officials, the NYS Association of Counties, the New York State Bar Association, and over 250 community-based organizations around New York State.

**For more information about these specific stories, and to talk with the public defenders, please contact:**

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