

A MORE JUST NYC

# Beyond Bail or Nothing:

The Case for Expanding  
Supervised Release

July 2018

**In April 2017, the Independent Commission on New York City Criminal Justice and Incarceration Reform released *A More Just New York City*, a blueprint for improving the City’s criminal justice system and closing the dysfunctional jails on Rikers Island.<sup>1</sup> The Commission recommends cutting the jail population nearly in half, replacing the Rikers jails with modern and humane borough-based facilities, repurposing the island for productive public uses, and taking meaningful steps to memorialize its painful history.**

This paper is the first in a series of spotlight reports that expand and elaborate upon the Commission’s recommendations to help policymakers address the challenges ahead.

We are grateful to the New York City Council, the Ford Foundation, the Open Society Foundations, and Trinity Church Wall Street, whose financial support makes our work possible, and to Mary McCormick and the Fund for the City of New York for financial and other crucial support.

We also wish to thank the Mayor’s Office of Criminal Justice for their comments on this report.

# Summary

**Reducing the number of people who are incarcerated in New York City while they await trial is a critical step towards achieving a smaller jail population that will enable the closure of the Rikers Island jail complex.** Most of the people who are held in jail pretrial in New York City are incarcerated because they cannot afford to pay money bail.

As an alternative to money bail, New York City has established a **supervised release program** for certain defendants. **While reforms to New York State's bail statute were not enacted in Albany this year, the City's jail population can be significantly reduced without state-level reform by expanding today's supervised release program.**

In *A More Just New York City*, the Commission emphasized the importance of using supervised release as a safe, community-based alternative to money bail. We project that significantly expanding supervised release, as well as increasing the number of defendants who are released on their own recognizance (i.e. without any conditions), ultimately could reduce the daily jail population by nearly 2,000. Expanding supervised release to this degree will require significant changes to current practice within the courts, District Attorney offices, and defense agencies, as well as additional large-scale investment in capacity. Nonetheless, when combined with jail reduction strategies in other areas, supervised release can help move the City towards a total jail population that falls from approximately 8,400 individuals today to fewer than 5,000 in the coming years, thus enabling the closure of Rikers.

Supervised release can be expanded within New York's current statutory framework, but it would also serve an important role within any future pretrial system created through legislative change. For example, the proposal advanced by Governor Cuomo in the FY2019 executive budget would have abolished money bail for misdemeanors and nonviolent felonies and, instead, permitted courts to impose non-monetary conditions when deemed necessary to assure the defendant's appearance in court. An expanded supervised release program

could serve as the template for non-monetary conditions for those defendants not deemed suitable for release on recognizance.<sup>2</sup>

The Commission's recommendations include:

**Use supervised release in lieu of bail in misdemeanor and nonviolent felony cases.** For misdemeanor and nonviolent felony defendants who are deemed inappropriate for release on recognizance, supervised release should be the default option, except where domestic violence is alleged. Defendants who are currently deemed ineligible due to high-risk status should be considered for supervised release under rigorous monitoring requirements.

**Allow some violent cases to enroll.** Selected violent felony defendants and misdemeanor domestic violence defendants should be admitted into an enhanced supervised release track that combines supervision and other interventions, potentially including required attendance in treatment.<sup>3</sup> Defendants who pose a high risk of future violence and who are charged with the most serious violent felonies would not be eligible.

**Create culture change by investing in implementation.** Educating judges, prosecutors, and defense attorneys about supervised release is critical. Additional funding to expand the program's capacity should be paired with investments in working with judges and attorneys about the harms of money bail and the benefits of supervised release as a safe and effective alternative.

**Use existing data to identify and address barriers to supervised release.** The experience and data that have been developed from the current supervised release program should be used to identify gaps in coverage and barriers to the use of supervised release as an alternative to bail. This research should be used to develop strategies to ensure that eligible defendants receive supervised release rather than bail.

**Increase the use of release on recognizance.**

The overwhelming majority of defendants who are currently released during the pretrial period make all of their court dates. In recognition of this fact, more defendants should be released without any conditions whatsoever, whether monetary or non-monetary (including supervised release).

New York City's current supervised release program has been a success and we believe its use in lieu of bail should be expanded significantly. In misdemeanor and nonviolent felony cases where release on recognizance is not appropriate, supervised release should replace bail as a fundamental policy matter. Although a large-scale expansion of supervised release will require significant changes in practice and new funding for research, education, and capacity, these investments would be money well spent.

# Introduction

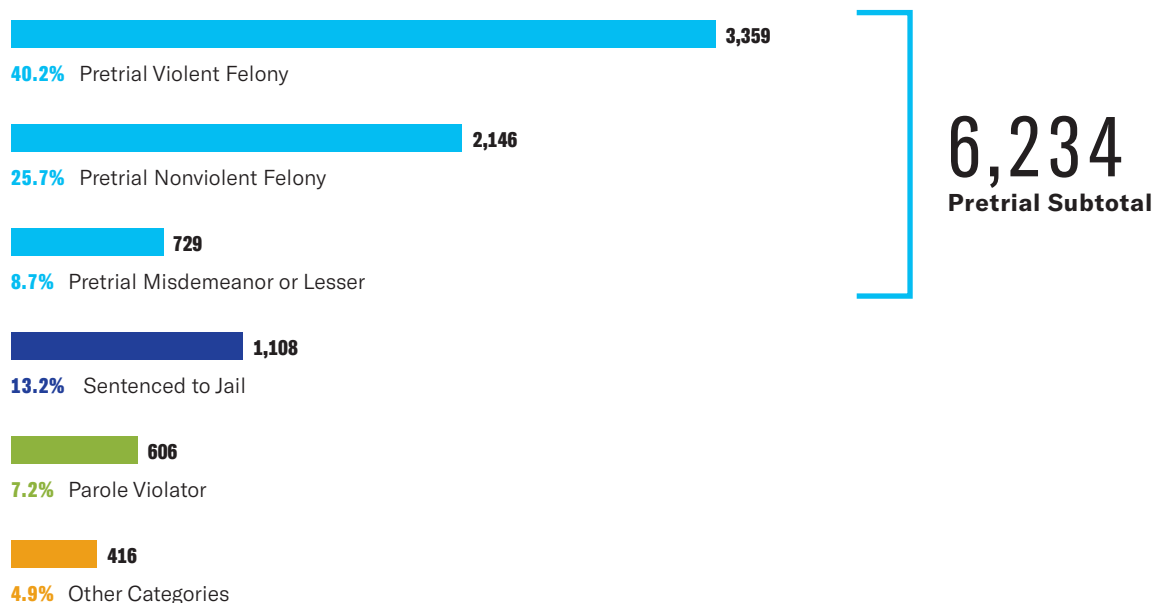
**Money bail is the preeminent driver of the jail population in New York City.** As of May 31, 2018, 75 percent of the people held in City jails (the vast majority of whom were held in Rikers) were detained prior to the resolution of their court case. These detainees have not been convicted of any crime. Most are detained because they could not afford bail.

The justice system's overreliance on money bail is driven, in part, by the lack of sufficient pretrial alternatives. In the vast majority of cases, judges have two options while a case is pending: release on recognizance (70% of cases) or bail (28%). The first number is worth celebrating: New York City releases many more defendants, both in real numbers and as a percentage of total caseload, than any other similar American city. The second

number is cause for concern. When judges set bail, 89 percent of the defendants are unable to secure immediate payment, causing them to spend at least some time in jail.<sup>4</sup>

In *A More Just New York City*, the Commission recommended a significant expansion of the City's supervised release program to provide arraignment judges who are uncomfortable releasing a defendant on recognizance with more options. Supervised release allows defendants to remain in the community while their case is pending, with supervision through frequent court date reminders and contacts with a case manager. It is an especially important strategy for reducing the number of people accused of felonies, who, as shown below, are the vast majority of individuals held in jail without a conviction.<sup>5</sup>

## The New York City Jail Population on May 31, 2018: Total = 8,364



# The Current Supervised Release Program

In March 2016, Mayor Bill de Blasio launched a citywide supervised release program for select defendants charged with misdemeanors or nonviolent felonies. To be eligible, defendants must meet a range of criteria; for example, they must (1) not be charged with domestic violence or a Class A felony, (2) not pose a high risk of future felony re-arrest, and (3) possess verifiable community ties.<sup>6</sup> Judges retain discretion to set bail or release defendants on recognizance, but supervised release provides them with a credible alternative to bail.

A recent independent evaluation by the Vera Institute of Justice and MDRC reported that supervised release has been well received by most judges and attorneys across the City.<sup>7</sup> From 2016

to 2017, the percentage of release decisions involving supervised release nearly doubled, from 5 percent to 9 percent. In 2017, a total 4,256 defendants enrolled, well over the City's initial annual target of 3,000. Of those individuals who completed the program, 92 percent made all of their court dates and 95 percent avoided a felony re-arrest while participating.<sup>8</sup>

Supervised release is funded by the City and the Manhattan District Attorney's Office. The current program was funded with an initial three-year contract for \$17 million that has been bolstered with additional funding, amounting to a total budget of \$21 million for Fiscal Years 2016–2018.<sup>9</sup> In Fiscal Year 2019, the planned funding for supervised release will be expanded to \$12 million.

## How Does Supervised Release Work?

Initiated by MOCJ, supervised release allows certain eligible defendants who might otherwise be subject to bail to remain in the community while their cases are resolved, so long as they comply with certain requirements.

### Providers

The current program is administered by three non-profit providers: Center for Alternative Sentencing and Employment Services (Manhattan), the Center for Court Innovation (Staten Island, the Bronx, and Brooklyn), and the New York City Criminal Justice Agency (Queens).

### Eligibility

Defendants are eligible for supervised release if they are (1) charged with a misdemeanor or nonviolent felony that does not involve domestic violence; (2) have verifiable community ties; and (3) do not have a “high” likelihood of being re-arrested for a felony as calculated by a risk assessment tool created by the Mayor's Office of Criminal Justice.

### Process

The process varies by borough, but in general, the provider screens cases for eligibility prior to arraignment. At arraignment, if the accused person is eligible for and wants to participate in supervised release, the defense lawyer may then propose it as an option to the judge. If the judge agrees, the defendant is released and must report back to the supervised release agency until their case is resolved.

### Supervision

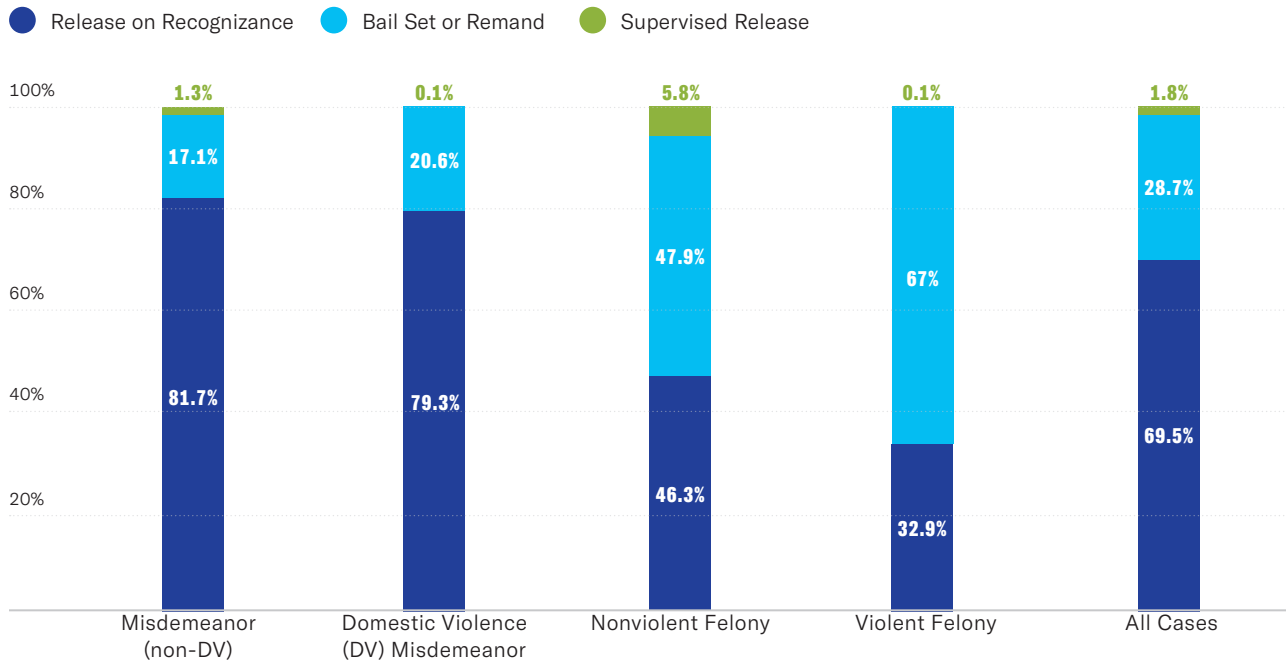
The person on supervised release meets with a social worker who sets a check-in schedule and can provide referrals for program and services. Depending on the level of supervision, which is determined by the person's risk score and other factors, the person on supervised release meets with and/or has phone contact with the social worker from one to four times per month.

The City should be commended for this work. A strong foundation is now in place for expansion, and we note the City’s efforts to expand supervised release in certain areas, including a transitional housing option for female defendants and a pilot program for young defendants who have higher risk scores or are charged with certain violent offenses.

**But there still remains significant room for growth.** In 2016, judges set bail in more than 40,000 cases. Among nonviolent felonies in particular, nearly half of the defendants (47.9 percent) still had to make bail, despite the option for supervised release.

**In short, supervised release works. Now, it should be taken to scale.**

### Release Decisions (March-December 2016)



# Expanding Supervised Release in Lieu of Bail

The numbers speak for themselves regarding the urgency of expanding supervised release.

In *A More Just New York City*, using a baseline of September 29, 2016, when the City’s jail population totaled 9,753, the Commission estimated that its proposed strategies would reduce the jail population by close to half. In the fewer than two years that have passed since the Commission’s original analysis, reforms launched by the City and declining crime rates have led the jail population to drop by nearly 1,500 people. We have revised our projections, taking into account the updated size and makeup of the jail population as of May 31, 2018.<sup>10</sup> The essential story is unchanged: we now estimate that Commission strategies that do not rely on bail reform in Albany could reduce the daily jail population below 5,000, with supervised release expansion and greater release on recognizance for defendants accounting for more than half of the projected reduction.<sup>11</sup>

The Commission has advanced specific recommendations for expanding supervised release in the following categories: (1) general misdemeanors, (2) nonviolent felonies, (3) domestic

violence misdemeanors, and (4) violent felonies.

## Misdemeanors and Nonviolent Felonies

In general, the Commission recommends eliminating money bail in misdemeanor and nonviolent felony cases, except in cases of domestic violence, and relying on supervised release when release on recognizance is deemed insufficient. As our 2017 report stated:

*In general, for cases in which the defendant is not released on recognizance, misdemeanors and nonviolent felonies should be assigned to supervised release, with the specific intensity of supervision determined by pretrial services staff based on the specific risk level.<sup>12</sup>*

The Commission’s position is gaining traction. In his January 2018 State of the State speech, New York Governor Andrew Cuomo advocated legislation that would, as a matter of law, end money bail for misdemeanors and nonviolent felonies—a position the Governor reiterated in a *New York Times* op-ed

## The Impact of Commission Recommendations on the Daily Jail Population

Total Size of the Jail Population on May 31, 2018	8,364	
Commission Recommendations	Projected Reduction	Percent of Projected Reduction
<b>1. Divert Cases at the Point of Arrest</b>	<b>244</b>	<b>6.5%</b>
<b>2. Expand the Use of Supervised Release and Release on Recognizance in Lieu of Bail</b>	<b>1,883</b>	<b>50.4%</b>
Misdemeanors	246	6.6%
Nonviolent felonies	1,411	37.8%
Selected domestic violence misdemeanors	49	1.3%
Selected 18-24-year-old violent felony robbery, burglary, and assault defendants	177	4.8%
<b>3. Facilitate Bail Payment</b>	<b>302</b>	<b>8.2%</b>
<b>4. Reduce Case Delay</b>	<b>837</b>	<b>22.4%</b>
<b>5. Increase Alternatives to Jail at Sentencing</b>	<b>464</b>	<b>12.4%</b>
<b>Total Reduction</b>	<b>3,736</b>	<b>100%</b>
<b>New Jail Population</b>	<b>4,628</b>	



published days later.<sup>13</sup> During the recent legislative session, the Assembly passed a bill that, while different from the Governor’s proposals in several respects, also would have ended the use of money bail for misdemeanors and nonviolent felonies.<sup>14</sup>

While we applaud these efforts in Albany to reform the current bail statute, they were not successful. The legislative session ended on June 20, without bail reform.

However, there is no need for City policymakers, state court leaders, New York City’s District Attorneys, and public defenders to wait for legislative change in upcoming sessions. The current statutory framework already allows judges to use supervised release at their discretion—provided that resources and screening procedures are sufficient and program staff are authorized to accept cases meeting broad eligibility criteria. Crucially, any significant expansion of the program will require significant changes in culture and practice from the courts, the prosecutors, and the defense bar.

We urge policymakers to take the following steps as soon as possible.

**Increase Funding and Capacity.** The City can and should significantly increase funding to make it possible to screen and enroll more misdemeanor and nonviolent felony cases—potentially four to six times more—than are presently enrolled. Even cases meeting existing charge eligibility criteria still face bail far more often than they are enrolled in supervised release. Expanding the program is not only about making more cases eligible but is also about enrolling a far higher proportion of the cases that are already eligible today.

**Change Judicial Practice.** Judges must become more willing to use supervised release. To this end, the City should work closely with judges to promote the program and increase judicial confidence. A particular point of emphasis should be to encourage judges to refer only those cases in which they would otherwise have set bail. Put differently, as the capacity of the program expands, it is important to avoid as much as possible “net-widening”—serving individuals who would otherwise be released on recognizance. State court leaders should aid the process by sending a clear message of support for minimizing the use of bail when cases are eligible for supervised release.

### **Educate Prosecutors and Defense Attorneys.**

The City’s District Attorney’s offices and public defender agencies should also undertake increased training and education efforts to ensure that all attorneys who appear at arraignment are fully informed about the supervised release option. If attorneys argue for supervised release, judges are more likely to order it.

### **Use Existing Data to Identify and Address Barriers to Supervised Release.**

In order to better guide attempts to expand the usage and capacity of the current program, the experience and data that have been developed over the past few years should be studied to identify gaps in coverage, barriers to the use of supervised release in lieu bail, and the varying supervised release practices across boroughs and judges. This research should be used to develop and implement strategies to increase the number of eligible defendants who receive supervised release rather than bail and to generate greater consistency in decision-making for similar types of defendants.

**Establish High-Risk Eligibility.** As the Commission proposed in April 2017, misdemeanor and nonviolent felony defendants who are currently deemed ineligible due to high-risk status should be considered for supervised release under rigorous monitoring requirements. The Commission supports assigning selected high-risk defendants to a special track that would combine supervision with other interventions, potentially including required participation in treatment programs.

As shown above, expanding the use of supervised release for misdemeanors and nonviolent felonies could significantly reduce the daily jail population.<sup>15</sup> The Commission also proposes enrolling and closely supervising a limited number of domestic violence misdemeanors at the discretion of judges in cases in which risk assessments have been conducted and indicate a low propensity for recidivism, dangerousness, and lethality.<sup>16</sup>

## **Violent Felonies**

On one end of the spectrum, offenses that are designated as “violent felonies” include extremely serious conduct involving homicide, rape, arson, and firearms. On the other end, however, violent

felonies also include charges of robbery, burglary, and assault. These latter charges are by no means inconsequential, but they frequently do not involve a firearm or other weapon and are sometimes applied to individuals who are accomplices or accessories, but who did not themselves engage in violence. There is a spectrum of conduct that can be charged as a violent felony, some of which poses more danger than others, and some of which is not what a layperson might generally consider to be “violent.”

Prior research on violent felony defendants in New York City confirms that many were arrested for the first time and do not pose a high risk of violent felony re-arrest. Of the City’s violent felony defendants who were detained pretrial, 40 percent posed only a minimal or low risk of a future violent felony arrest over a two-year follow-up period.<sup>17</sup>

This is why the Commission recommends supervised release eligibility be extended to select defendants ages 16 to 24 who are charged with robbery, burglary, or assault and who do not pose a high risk of future violence.<sup>18</sup> Risk of violence should be ascertained by a risk assessment tool specially calibrated and validated with New York City defendants. These defendants should be ordered to an enhanced form of supervised release combining intensive monitoring and required attendance in evidence-based programs designed to treat anti-social attitudes, impulsive decision-making, and other commonly seen problems in this population.<sup>19</sup> A pilot program in Brooklyn is currently testing this approach.

## The Role of Risk Assessment

Risk assessment plays an important role in the current supervised release program—and in the Commission’s proposal for its expansion. Risk assessments should be used to help determine the right level of supervision.<sup>20</sup>

We recognize that science-based risk assessment tools can be misused. As we stated in *A More Just New York City*, risk assessment tools should be rigorously evaluated and adjusted to mitigate any disproportionate effects based on race, ethnicity, or gender.<sup>21</sup>

As we argue above, defendants classified as “high-risk” should not automatically be detained. Many high-risk cases are potentially appropriate for community supervision, particularly when

combined with rigorous monitoring and, where appropriate, participation in treatment as an added condition of release.

Risk information should inform the level of supervision among those ordered to supervised release. When defendants pose little real risk of re-offending, they should receive a “light touch” supervision regimen that does not impinge on work, school, or other productive activities. Conversely, high-risk defendants can be required to attend frequent face-to-face and phone contacts with case managers and, in some cases, ordered to programmatic interventions.

For defendants charged with domestic violence misdemeanors and selected violent felonies, the Commission recommends a more cautious approach: using appropriately calibrated risk assessment tools to identify low-to-moderate risk cases that are suitable for supervised release, while excluding defendants who pose a high risk of violence.

## Preserving and Increasing High Rates of Release on Recognizance

The Commission believes that most defendants, especially those facing nonviolent charges, can be safely released without any conditions, whether supervised release or bail. Indeed, the City already releases seven out of ten defendants on recognizance. These defendants are largely compliant with court orders during the pretrial period. According to the New York City Criminal Justice Agency, 87 percent of released defendants in 2014 did not miss any court dates, and 94 percent did not disappear from court contact for more than 30 days.<sup>22</sup>

MOCJ is currently revising the assessment tool that is used to classify defendants’ likelihood of appearing in court. The new tool will more accurately convey to decision-makers the reality that most defendants have a high likelihood of making all of their court dates. Once the new tool is made available to judges, the City expects that significantly more defendants will be released.<sup>23</sup> The Commission supports these efforts and is encouraged by the already high rate of release on recognizance. We support supervised release as a fairer and more appropriate condition only for those defendants who truly require pretrial oversight.

# Conclusion

Comprehensive reform at the state level to eliminate or significantly reduce money bail would be an important step forward for criminal justice in New York City, but in the absence of legislative change this session, it will be crucial to keep up momentum towards closing the Rikers Island jail complex by expanding the City's already-successful supervised release program. Doing so will require more than money or changes to policy. To make full use of supervised release will require painstaking work with judges, prosecutors, and defense attorneys to change the practices and culture of the justice system and encourage the widespread adoption of supervised release as an alternative to bail.

## Notes

1. Independent Commission on New York City Criminal Justice and Incarceration Reform. (2017). *A More Just New York City*. New York, NY. Available at: <https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/595d48ab29687fec7526d338/1499285679244/Lippman+Commission+Report+FINAL+Singles.pdf>.
2. *FY2019 New York State Executive Budget: Public Protection and General Government Article VII Legislation*. Albany, NY, see pp. 21. Available at: <https://www.budget.ny.gov/pubs/archive/fy19/exec/fy19artVII/PPGArticleVII.pdf>
3. To be clear, as distinguished from the pretrial stages, we do not recommend treatment programs as appropriate sentences in domestic violence cases, given the heightened threat to victims posed by individuals who are charged with domestic violence offenses and the corresponding need to proceed cautiously in these cases.
4. For the many obstacles to bail payment in New York City, see White, E., Labriola, M., Kerodal, A., Jensen, E., and Rempel, M. (2015). *Navigating the Bail Payment System in New York City: Findings and Recommendations*. Report submitted to the New York City Mayor's Office of Criminal Justice. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/sites/default/files/documents/Bail%20Payment%20in%20NYC.pdf>.
5. Of the 6,234 defendants who were held in jail during the pretrial period as of May 31, 2018, 909 had a parole violation filed as a result of a criminal case that is in the pretrial stages. If these parole violation cases were placed in their own category, the 8,364 defendants in the jail population would break down as follows: 63.7 percent held pretrial on a new case *without* a parole violation (36.3 percent on a violent felony, 22.6 percent on a nonviolent felony, and 4.8 percent on a misdemeanor); 10.9 percent held pretrial with a parole violation that directly resulted from the new case (36.0 percent on a new violent felony, 27.7 percent on a new nonviolent felony, and 36.3 percent on a new misdemeanor); 7.2 percent with a technical parole violation (not resulting or coinciding with a new criminal case); 13.2 percent sentenced to jail, and 4.9 percent with other holds.
6. Prior to 2016, smaller supervised release pilot programs existed in Brooklyn, Manhattan, and Queens.
7. Redcross, C., Skemer, M., Guzman, D., Rahman, I., and Lachance. (2017). *New York City's Pretrial Supervised Release Program: An Alternative to Bail*. New York, NY: MDRC and Vera Institute of Justice. Available at: <https://www.mdrc.org/sites/default/files/SupervisedRelease%20Brief%202017.pdf>.
8. NYC Mayor's Office of Criminal Justice. (2018). *Supervised Release Annual Scorecard 2017*. Available at: <https://rikers.wpengine.com/wp-content/uploads/SR-Annual-Scorecard-2017.jpg>.
9. Finance Division, NYC Council. (March 2017). *Report of the Finance Division on the Fiscal 2018 Preliminary Budget and the Fiscal 2017 Preliminary Mayor's Management Report for the Mayor's Office of Criminal Justice*. New York, NY, see pp 8. Available at: <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/098-MOCJ-1.pdf>
10. The Commission's analysis of the jail population as of May 31, 2018 is based on a case-level dataset provided by the New York City Department of Correction and made publicly available on NYC Open Data <https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb>.
11. The technical appendix of *A More Just New York City* provides an overview of the Commission's methodology for developing credible jail population reduction projections. See Lippman, J., et al. (2017), Op Cit., Appendix B (pp. 140–147). The revised projections in this report were calculated by applying our initial methodology (modified slightly to apply a more conservative implementation discount to our expansion of supervised release and release on recognizance recommendations, as described in note 15 below) to the February 6, 2018 jail population. Then, to develop the revised projections as of May 31, 2018, we applied the proportional breakdown of the February 6, 2018 projections to the May 31, 2018 jail population data. Finer methodological details, including information on small adjustments to the methodology and results between the publication of *A More Just New York City* in April 2017 and the current update are available on request.
12. Lippman, J., et al. (2017), Op Cit., pp. 49.
13. Cuomo, A. M. (2018). *Excelsior—Ever Upward: 2018 State of the State*. New York, NY, see pp. 59–62. Available at: <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>; Cuomo, A. (2018). "The Way to a More Just New York State." *New York Times* (Published January 15, 2018). In his article, Governor Cuomo wrote unambiguously of the effect of his legislative proposal, "The bill will reform our bail system so that anyone facing misdemeanor or nonviolent felony charges should be released without bail." Available at: <https://www.nytimes.com/2018/01/15/opinion/cuomo-prison-reform-new-york.html>.
14. New York State Assembly Bill A10137.
15. With respect to defendants charged with misdemeanors and nonviolent felonies (excluding domestic violence), we first added up the number of such defendants in jail pretrial as of February 6, 2018. Then, we defined the Commission's strategy as re-routing all such cases to release on recognizance or an alternative to bail, generally supervised release. However, instead of assuming that every one of these defendants would actually be released on recognizance or placed in supervised release, we built in a 35 percent "implementation discount." In effect, we assumed that defendants would continue to be detained in approximately 35 percent of all misdemeanor and nonviolent felony cases. The implementation discount, which is slightly more conservative than the 25 percent discount used in our initial April 2017 projections, allows for judicial discretion and special circumstances beyond the immediate control of the judge, such as the reality that some cases have a "hold" that requires pretrial detention as a result of a parole violation. Given this discount, our projections assume that the misdemeanor and nonviolent felony pretrial jail population would be reduced by approximately 65 percent from their current levels. See Lippman, J., et al. (2017), Op Cit., Appendix B (pp. 140–147). Finally, we applied the proportional reductions from the February 6, 2018 projections to the May 31, 2018 jail population.

16. Considering the especially serious threat to victims posed by individuals who are accused of domestic violence, the Commission recommended a more cautious approach. Specifically, we proposed allowing domestic violence misdemeanors to be eligible for supervised release—but only if the defendant does not pose a high risk of perpetrating domestic violence in the future. We projected that this limitation would make supervised release a potential option for half of all domestic violence misdemeanors. From there, we imposed an additional 25 percent implementation discount. Therefore, to review how the math works, if only half of domestic violence misdemeanors qualify for supervised release, and 25 percent of this risk-eligible half (or 12.5 percent of the total) are projected to remain in jail as part of an implementation discount—e.g., the judge still opted to set bail or there was a parole violation on the case—there would be a net 37.5 percent reduction in the pretrial jail population facing misdemeanor domestic violence charges. Notably, only one percent of the total jail population reduction that was projected to result from all Commission strategies was expected to come from enrolling select domestic violence misdemeanors into supervised release. Especially as this strategy does not make sizable inroads into the jail population, it makes good sense to proceed slowly and in close collaboration with victim advocates.
17. 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](https://www.courtinnovation.org/sites/default/files/documents/NYC_Path_Analysis_Final%20Report.pdf).
18. Based on results from a risk assessment tool developed with New York City cases arrested in 2012 and described in Rempel et al. (2017), *Op Cit.*, pp. 22–26, we assumed that 43.1 percent of 16-24-year-old robbery, burglary, and assault defendants in jail pretrial pose a low-to-moderate risk of violence and should be enrolled in supervised release under this recommendation. As in other projections, we then imposed a 25 percent implementation discount. After factoring in this discount, we assumed, on net, that 32.3 percent of 16-24-year-old robbery, burglary, and assault defendants would receive supervised release.
19. Lipsey, M. W., Landberger, N. A., & Wilson, S. J. (2007). *Effects of Cognitive-Behavioral Programs for Criminal Offenders*. Oslo, Norway: Campbell Systematic Reviews. Available at: [https://www.campbellcollaboration.org/media/k2/attachments/1028\\_R.pdf](https://www.campbellcollaboration.org/media/k2/attachments/1028_R.pdf).
20. See Andrews, D. A., and Bonta, J. (2010). *The Psychology of Criminal Conduct* (5th edition). New Providence, NJ: LexisNexis; Lowenkamp, C. T., and Latessa, E. J. (2004). "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders." *Topics in Community Corrections*. Washington, D.C.: National Institute of Corrections; Lowenkamp, C. T., Latessa, E. J., and Holsinger, A. M. (2006). "The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?" *Crime & Delinquency* 52:77-92.
21. Lippman, J., et al. (2017), *Op Cit.*, pp. 47.
22. The reported court appearance rates are for cases arrested in 2014. Results for misdemeanor cases can be found in the 2014 annual report of the New York City Criminal Justice Agency (CJA). Results for felony cases can be found in CJA's 2015 annual report. (The annual reports provide the percent of defendants who miss a court date—13 percent—which is the flipside of the 87 percent who, therefore, make all of their dates.) The two sets of charge-specific results were averaged (and weighted by the number of cases with each charge) to produce citywide appearance rates for 2014 cases. The results omit Desk Appearance Tickets. All CJA reports are available at: <http://www.nycja.org/>.
23. NYC Criminal Justice. (2017). *Smaller Safer Fairer: A Roadmap to Closing Rikers Island*. New York, NY: The City of New York, Office of the Mayor. Available at: <https://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/Smaller-Safer-Fairer.pdf>.