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# COVID-19 and the New York City Jail Population

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By Michael Rempel

 Center  
for  
Court  
Innovation

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© November 2020

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# Acknowledgements

I am deeply grateful to my Center for Court Innovation colleague, Shane Correia, whose questions prompted the development of this research brief. Thank you to Marie Ndiaye at the Decarceration Project at the Legal Aid Society for graciously reviewing an earlier version. A special thank you as well to Jaeok Kim at the Vera Institute of Justice, who kindly shared her saved dataset for the New York City jail population on April 29, 2020.

I am also indebted to Tia Pooler, Krystal Rodriguez, and Courtney Bryan for their valuable comments on an earlier version; and to Matt Watkins for his impeccable editorial judgment and guidance. Thank you to Samiha Amin Meah for designing the summary version.

Data for this report were initially posted by the New York City Department of Correction on the public [NYC Open Data](#) web site. The analyses and results reported therein, however, are those of the author, who is solely responsible for the findings and conclusions.

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# Introduction

On February 29, 2020, New York City saw its first confirmed case of COVID-19. One week later, there were 7 cases. After another week, there were 642. By March 18, the count ballooned to nearly 3,000. New York City had rapidly become the epicenter of the most serious global pandemic in 100 years. Over the ensuing months, as COVID-19 infections spread across the country, the city's case count continued to rise, reaching almost 260,000 cases, 60,000 hospitalizations, and 20,000 confirmed deaths by early November.<sup>1</sup> Coming as no surprise to correctional healthcare providers and advocates, jails and prisons became among the most dangerous transmission hotspots, both in New York City and nationwide.<sup>2</sup>

## The COVID-19 Outbreak at Rikers Island

March 18 holds particular significance in New York City's timeline, because it marked the first reported case among someone held at the notorious Rikers Island jail complex.<sup>3</sup> By nightfall, *The Intercept* reported on unsanitary conditions throughout the city's jails and predicted a rapid outbreak, absent steps to release people to safety.<sup>4</sup> That is precisely what transpired in the days and weeks that followed.

By April 18, one month after the first case was detected, an individual held at Rikers had died while in custody,<sup>5</sup> and the city's jails had become the site of more than 1,200 COVID-19 infections, including 363 incarcerated individuals and 848 Department of Correction or Correctional Health Services staff.<sup>6</sup> The infection rate among incarcerated people was almost six times that for New Yorkers as a whole and more than 40 times the national rate at the time.<sup>7</sup>

Black New Yorkers disproportionately shouldered this high risk of infection at Rikers,<sup>8</sup> comprising 24 percent of the city's general population but 57 percent of those trapped in the city's jails. While the introduction of new testing, cleaning, and social distancing measures might have mitigated the health risks, there is little evidence that such steps were implemented. Instead, reports from the summer of 2020 suggest that testing protocols at the jails remained inadequate, and in violation of official policy, New York City correction officers were routinely not wearing masks and neglecting to practice social distancing.<sup>9</sup>

## About This Report

This **research brief** summarizes what we know about New York City's jail population since the COVID-19 outbreak. The data point to a 30 percent reduction in the city's daily jail population from March 18 to April 29—attributable to urgent efforts to gain people's release as well as to declining arrests, as people sheltered indoors at the start of the pandemic. Since then, the use of jail re-increased, reversing over half of the prior reductions. If the current

trend continues, the jail population will return to its pre-COVID-19 level by mid-February 2021.

The COVID-19 era has also seen considerable variations in the jail trends applicable to different subgroups, with the numbers held in pretrial detention progressively rising, even as incarceration has remained low among people convicted and serving sentences of one year or less.

After reviewing key emergency release strategies adopted at the outset of the pandemic, this research brief documents overall jail trends and more specific changes in the composition of the jail population from mid-March to the beginning of November 2020.

## Releasing People to Safety

On the days before and after the first reported COVID-19 case at Rikers Island, local officials and agencies began weighing in, with the City Council Speaker,<sup>10</sup> Public Advocate,<sup>11</sup> Board of Correction,<sup>12</sup> public defender agencies,<sup>13</sup> and Rikers' chief medical officer<sup>14</sup> all calling for the prompt release of large numbers of people whose lives were endangered by the increasingly unsafe jail conditions.

### Populations Considered for Release

Although specific recommendations varied, most stakeholders who took a position advocated for releasing, at a minimum, four key subgroups:

- **High Risk for COVID-19:** People ages 50 and older or with preexisting health conditions, making them especially vulnerable to complications from COVID-19.
- **City Jail Sentences:** People convicted and sentenced to jail for one year or less, where prior research found that serving such short sentences at Rikers tends to *increase* people's post-release recidivism.<sup>15</sup>
- **Technical Parole Violations:** People sent to jail while awaiting the adjudication of a violation of technical parole conditions, such as missed appointments or positive drug tests—where no new crime has been alleged.
- **Incarceration for Administrative Reasons:** People held in detention for missing a court date or for other reasons unrelated to alleged or proven criminal behavior.

Some organizations proposed additional categories for release, including more people held during the pretrial period—without a conviction—because they are unable to afford bail.<sup>16</sup>

## Early Release Policies and Practices in March and April 2020

At the beginning of the crisis, city and state officials adopted a range of measures to secure people's release. These officials acted on several of the recommendations cited above as well as responded to a surge of media reporting and advocacy across the city and the country.

**The Early Release (6A) Program.** Within days of the first COVID-19 case at Rikers, Mayor Bill de Blasio launched the Early Release (6A) Program for people held on a jail sentence of one year or less.<sup>17</sup> Designed by the Mayor's Office of Criminal Justice and Department of Correction in partnership with three nonprofit agencies—the Center for Court Innovation,<sup>18</sup> CASES, and NYC Criminal Justice Agency—this program led to the release of 296 sentenced individuals from March 22 to March 27. The program included a wide range of offenses, with 54 percent convicted of a felony and 46 percent of a misdemeanor, largely mirroring the distribution of charges in the overall sentenced population. Participants had to attend daily remote check-ins (including weekends) with social workers or case managers from the three nonprofit agencies. As needed, the city paid for phones to ensure participants could comply with daily check-in requirements. Some participants also received remote job training or other services from local reentry providers. The city provided housing at hotels near La Guardia Airport for people who lacked a place to stay. This last step both addressed people's need for housing and minimized the likelihood that participants would contract COVID-19 or transmit it to others if unstably housed or in crowded shelters. Re-arrest rates while participating were 2 percent after one month and 9 percent after six months. Less than 1 percent—two people—were re-arrested for a violent felony.<sup>19</sup>

**People Held on Parole Violations.** On March 27, Governor Andrew Cuomo ordered the state Department of Corrections and Community Supervision (DOCCS) to review the cases of 1,100 people held in jail for technical parole violations, including about 400 in New York City. In a May 27 report, DOCCS indicated that 300 people from those held in the city had been released.<sup>20</sup> (Some of these releases may have taken place past March and April.) In addition, lawsuits won by the Legal Aid Society led to the release of 106 people held on parole violations on March 27,<sup>21</sup> 28 people on April 9,<sup>22</sup> and 51 on April 13.<sup>23</sup> In these cases, the lawsuit was the direct cause of release. It is plausible, then, that some of the 300 people reported to have been released through the DOCCS reviews were, in fact, released before these reviews were complete, driven instead by the outcome of the lawsuit.

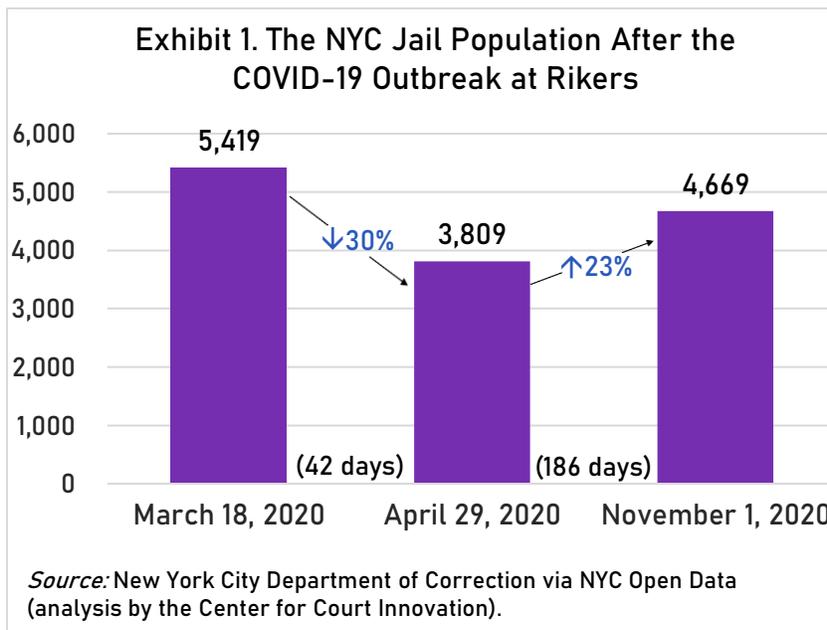
**Additional Releases.** Public defenders secured a significant number of additional releases, both through lawsuits<sup>24</sup> and by arguing bail writs before judges who presided over the individual cases of people held in pretrial detention. New York City's District Attorneys and other city officials also facilitated an unquantifiable number of releases, based largely on reviewing the cases of people ages 50 and older or with serious health conditions.<sup>25</sup>

**Sustainability.** The above-noted measures, however, were largely *not* institutionalized past March and April. For instance, while continuing to serve its existing participants, the Early

Release (6A) Program has not enrolled *new* releases since late March; and DOCCS has not implemented an ongoing policy during the pandemic to review cases and identify people held on parole violations who meet the criteria considered to make them suitable for release.

## Jail Trends Since the COVID-19 Outbreak

**New York City’s daily jail population plummeted by 30 percent over a critical 42-day stretch beginning on March 18.** The population of 3,809 reached on April 29 was the city’s lowest since the 1940s (Exhibit 1). Over the much longer 186-day period that followed, the jail population gradually rose to 4,669 by November 1—a sizable increase, although still 14 percent less than the pre-COVID-19 baseline. By November 9, just prior to this report’s publication, the population climbed to 4,706.



### Steep Jail Reduction from March 18 to April 29

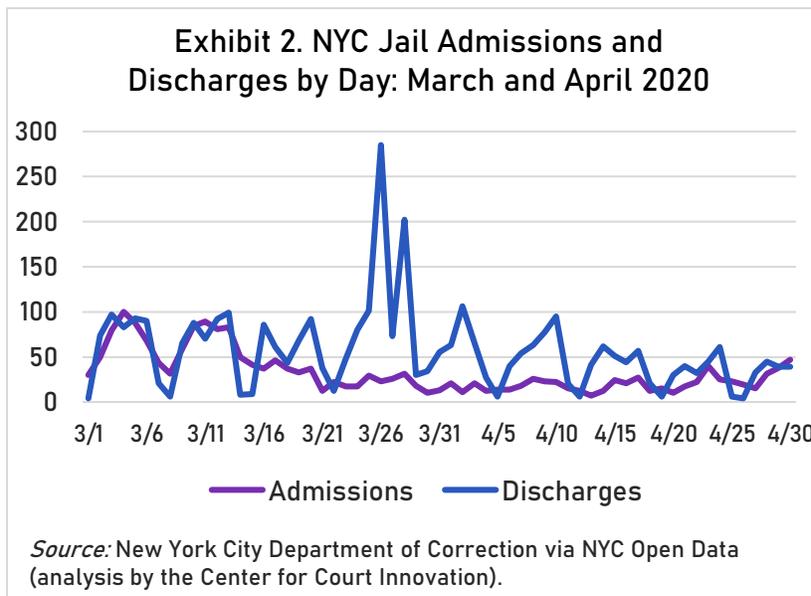
Daily tracking by the Vera Institute of Justice makes clear that the number of people held in jail declined virtually every day from March 18 to April 29.

**The daily jail population experienced an especially swift decline over a mere five days from March 24 to March 29, dropping by 630 people in this time—accounting for 39 percent of the 42-day total.**<sup>26</sup> The changes over these days largely reflect the fruits of three efforts: (1) the release of 296 serving sentences of one year or less into the Early Release (6A) Program; (2) the release of 106 people held on parole violations, pursuant to a Legal Aid lawsuit decided on March 27; and (3) the start of reviews ordered by Governor Cuomo of other people held on technical parole violations. (These case-by-case reviews continued past March, resulting in further releases in the weeks that followed.)

Exhibit 2 further captures the developments of late March and April (punctuated by the habitual drop-off in jail admissions and discharges each weekend). While the daily numbers of admissions and discharges were similar through the first two-thirds of March, discharges significantly outpaced admissions over a one-month period beginning March 22. Most of this

spike in discharges was concentrated at the tail end of March, leading to the above-noted precipitous fall in the jail population from March 24 to 29.

- **March 26:** On the highest single day for discharges, about 225 of the 277 people discharged were serving time on a **jail sentence**. This largely reflects the impact of the Early Release Program.



- **March 28:** On the second highest discharge date of March 28, about 171 of the 191 releases were people held on **parole violations**. This largely reflects court-ordered

releases secured by the Legal Aid Society and additional releases pursuant to reviews ordered by Governor Cuomo.

## Jail Increase from April 29 to November 1

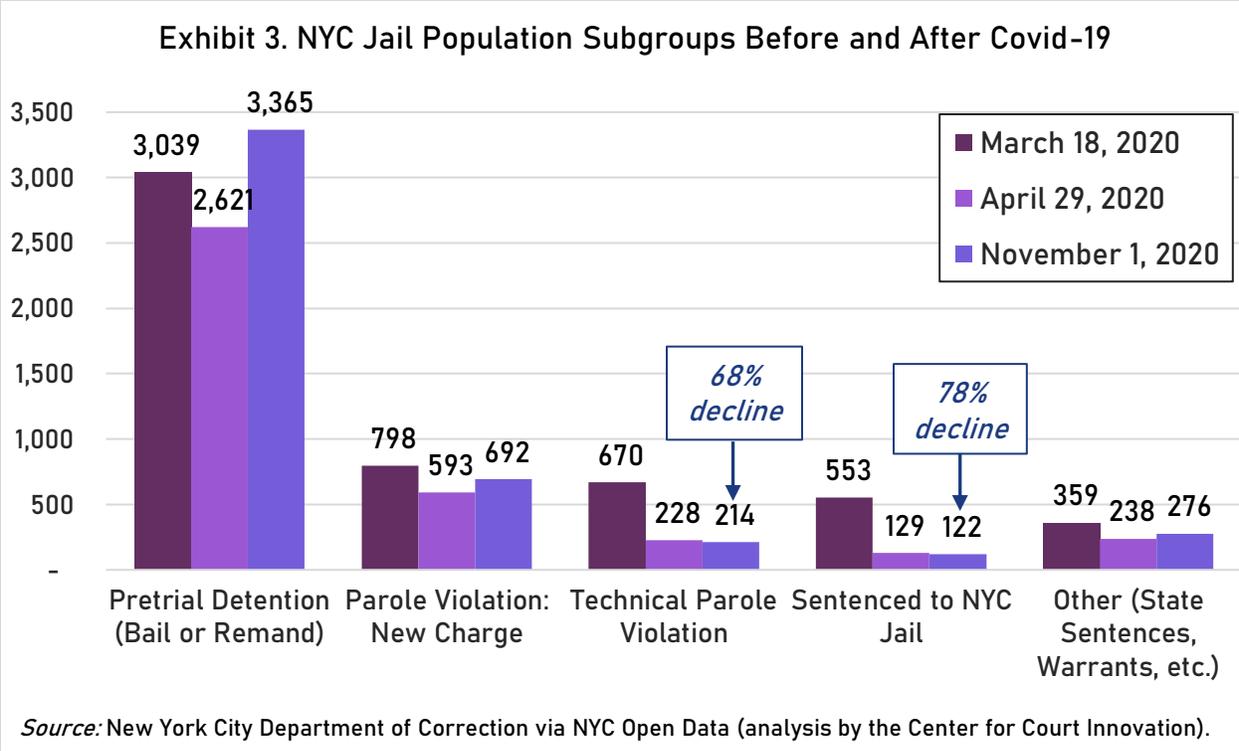
After reaching 3,809 on April 29, the daily jail population increased to 4,669 on November 1. A finer review of daily tracking data indicates that the jail population gradually increased in May; hovered at about 4,000 in June and July; and then gradually rose from the beginning of August through October.<sup>27</sup> In September and October, the daily population rose by 461 people. Should that rate of increase continue, by mid-February 2021, the jail population will return to what it was at the start of the pandemic.<sup>28</sup>

## Divergent Trends Among Key Subgroups

Shown in Exhibits 3 and 4, the overall trends reported above were *not* duplicated among the specific subgroups that make up the city’s jail population—including, respectively, those held while awaiting trial, on parole violations, and on a sentence.<sup>29</sup>

## Rise in Pretrial Detention Fuels Overall Population Increase

**Pretrial Detention.** *Unlike all other subgroups, the number of people held in pretrial detention—not for a parole violation, but due either to an inability to post bail or a remand order by the judge—increased 11 percent from March 18 to November 1 (3,039 to 3,365).*



More precisely, those held pretrial declined by 14 percent immediately after the COVID-19 outbreak (from mid-March to late April) but re-increased significantly since that time—and was on an upward trajectory as of this research brief’s early November publication.

The charge-specific results shown in Exhibit 4 indicate that, from March to November, the numbers held pretrial on burglary in the second degree increased by a net of 70 percent. This shift is largely a byproduct of a partial rollback to the state’s bail reform law, which went into effect July 2, 2020 (discussed below).

Besides second-degree burglary, the pretrial increase for nearly all other charges (murder, sex offenses, weapons-related, robbery, etc.) stayed within ten percentage points of the overall average increase in pretrial detention of 11 percent.

Further unpacking the trends, the graph in Exhibit 5 tracks **daily pretrial admissions**—the number of people newly sent to jail each day due to an inability to pay bail or a remand order—in the first ten months of 2020. The data point to four notable sub-trends:

1. **January to Mid-March:** Relatively stable pretrial admissions, averaging about 40 per day (notwithstanding normal fluctuations between weekdays and weekends).
2. **Mid-March to Mid-April:** A precipitous fall to less than 10 admissions on some days.

**Exhibit 4. Changes in the NYC Jail Population: March 18, 2020 to November 1, 2020**

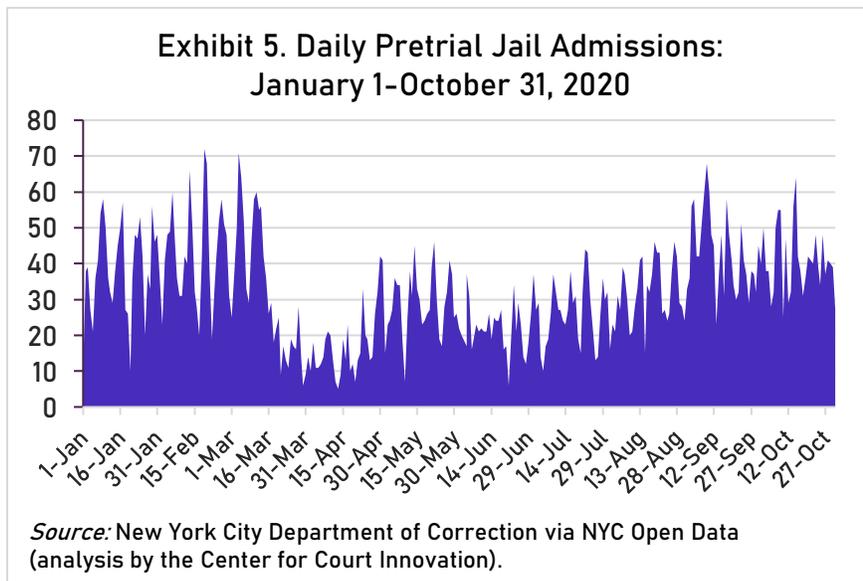
| <b>Jail Status</b>   | <b>March 18, 2020</b> | <b>November 1, 2020</b> | <b>Percent Change</b> |
|--|-----------------------|-------------------------|-----------------------|
| <b>Total Jail Population</b>                               | <b>5,419</b>          | <b>4,669</b>            | <b>-13.8%</b>         |
| <b>Pretrial: Unable to Pay Bail or Remanded</b>            | <b>3,039</b>          | <b>3,365</b>            | <b>10.7%</b>          |
| Misdemeanor or lesser                                      | 162                   | 179                     | 10.5%                 |
| Nonviolent felony  | 523                   | 526                     | 0.6%                  |
| Violent felony (incl. violent Class A felonies)            | 2,354                 | 2,660                   | 13.0%                 |
| Murder (PL 125.25, 125.26, 125.27)                         | 859                   | 1,015                   | 18.2%                 |
| Sex offense (any PL 130 violent felony)                    | 206                   | 222                     | 7.8%                  |
| Weapons offense (any PL 265 violent felony)                | 200                   | 240                     | 20.0%                 |
| Robbery (PL 160.10, 160.15)                                | 437                   | 481                     | 10.1%                 |
| Burglary in the first degree (PL 140.30)                   | 82                    | 75                      | -8.5%                 |
| Burglary in the second degree (PL 140.25)                  | 106                   | 180                     | 69.8%                 |
| Assault (any PL 120 violent felony assault)                | 363                   | 354                     | -2.5%                 |
| All other violent felony offenses                          | 101                   | 93                      | -7.9%                 |
| <i>Domestic violence (any charge severity)<sup>1</sup></i> | 260                   | 288                     | 10.8%                 |
| <b>Parole Violation Due to New Charge</b>                  | <b>798</b>            | <b>692</b>              | <b>-13.3%</b>         |
| Misdemeanor or lesser                                      | 205                   | 200                     | -2.4%                 |
| Nonviolent felony  | 197                   | 115                     | -41.6%                |
| Violent felony (including Class A)                         | 396                   | 377                     | -4.8%                 |
| <i>Domestic violence (any charge severity)<sup>1</sup></i> | 92                    | 75                      | -18.5%                |
| <b>Technical Parole Violation</b>                          | <b>670</b>            | <b>214</b>              | <b>-68.1%</b>         |
| <b>Sentenced to NYC Jail</b>                               | <b>553</b>            | <b>122</b>              | <b>-77.9%</b>         |
| Misdemeanor or lesser                                      | 226                   | 57                      | -74.8%                |
| Nonviolent felony  | 167                   | 32                      | -80.8%                |
| Violent felony (including Class A)                         | 98                    | 27                      | -72.4%                |
| Missing charge information                                 | 62                    | 6                       | -90.3%                |
| <b>State Sentences, Warrants, &amp; Other Holds</b>        | <b>359</b>            | <b>276</b>              | <b>-23.1%</b>         |

Source: New York City Department of Correction via NYC Open Data (analysis by the Center for Court Innovation).

<sup>1</sup> Domestic violence charges are estimated, adapting a method first developed for the Independent Commission on New York City Criminal Justice and Incarceration Reform (see Appendix B in Lippman, J., et al. (2017). *A More Just New York City*). Specifically, based on criminal cases detained at arraignment in New York City in 2019, the percentage of each penal law charge that involved domestic violence was calculated and, for charges where that percentage exceeded 10%, the given percentage was imputed to the corresponding charges found in Department of Correction jail population data.

3. **Mid-April to Mid-June:** A modest rise in admissions followed by a modest fall (largely mirroring a similar rise and fall in the city’s arrest trend over these two months).
4. **Mid-June through October:** A gradual, prolonged increase in pretrial admissions.

**Albeit imperfectly, the patterns in Exhibit 5 generally track variations in arrest trends—felony arrests, especially.** (Few misdemeanors are eligible for pretrial detention under bail reform, making the felony trend more pertinent.) Comparing the change between the entire months of March and April 2020, pretrial admissions and felony



arrests both declined exactly 30 percent. Then, comparing the change from April to May, pretrial admissions re-increased 61 percent and felony arrests re-increased 59 percent. But illustrating that these two trends are not inexorably linked, from June to July, pretrial admissions increased 15 percent, while felony arrests *dropped* 8 percent. This disparity likely reflects the independent effect of the bail amendments implemented in July (see below).

In short, variations in arrest trends over time are a major driver of variations in pretrial detention—but the relationship is not absolute; other changes to law, policy, and practice have the potential to be impactful as well.

**Parole Violations Stemming from a New Charge.** *The initial mid-March to late April period saw a 26 percent drop in people held on parole violations that stem from a pending new arrest; but this subgroup too has re-increased since that time.* More specifically, daily tracking data indicate that after bottoming out in the mid-500s in August, the size of this subgroup re-increased from August to November, leading to a net decline of 13 percent over the entire mid-March to November period.<sup>30</sup> Absent sustainable policy reforms—for example, passing the pending *Less is More Act*<sup>31</sup> in Albany—the most recent trend from August to November indicates that the jail numbers are ascending on a pace to wipe out the remaining jail reduction by early 2021.

Currently, people re-arrested while on parole are automatically incarcerated if a violation is filed. **However, if the bail reforms were extended to these individuals (an element of the**

Less is More Act), only 59 percent of those held on November 1 would have faced a bail-eligible charge—meaning the other 41 percent would have had to be released.<sup>32</sup>

## Sustained Reductions in Jail Sentences and Technical Violations

**Sentenced to Jail.** *People serving jail sentences of one year or less dropped by 78 percent from mid-March to the beginning of November (553 to 122).* Decreases were proportionately similar for misdemeanor and felony charge severities (see Exhibit 4). The sustained reduction in the sentenced component of the jail population is not merely a result of the Early Release (6A) Program. While this program brought about a precipitous drop in incarceration on sentences in late March, only 10 of its 296 participants were enrolled on November 1 (meaning they had yet to serve the balance of their original sentence). Even if the Early Release Program had never existed, the other 286 individuals would still have been discharged by November. Therefore, while the program served as a timely humanitarian response to the plight of its participants, it was the subsequent reduction in the imposition of *new* jail sentences that explains the durable decline in the number of people held on sentences since the start of the pandemic.

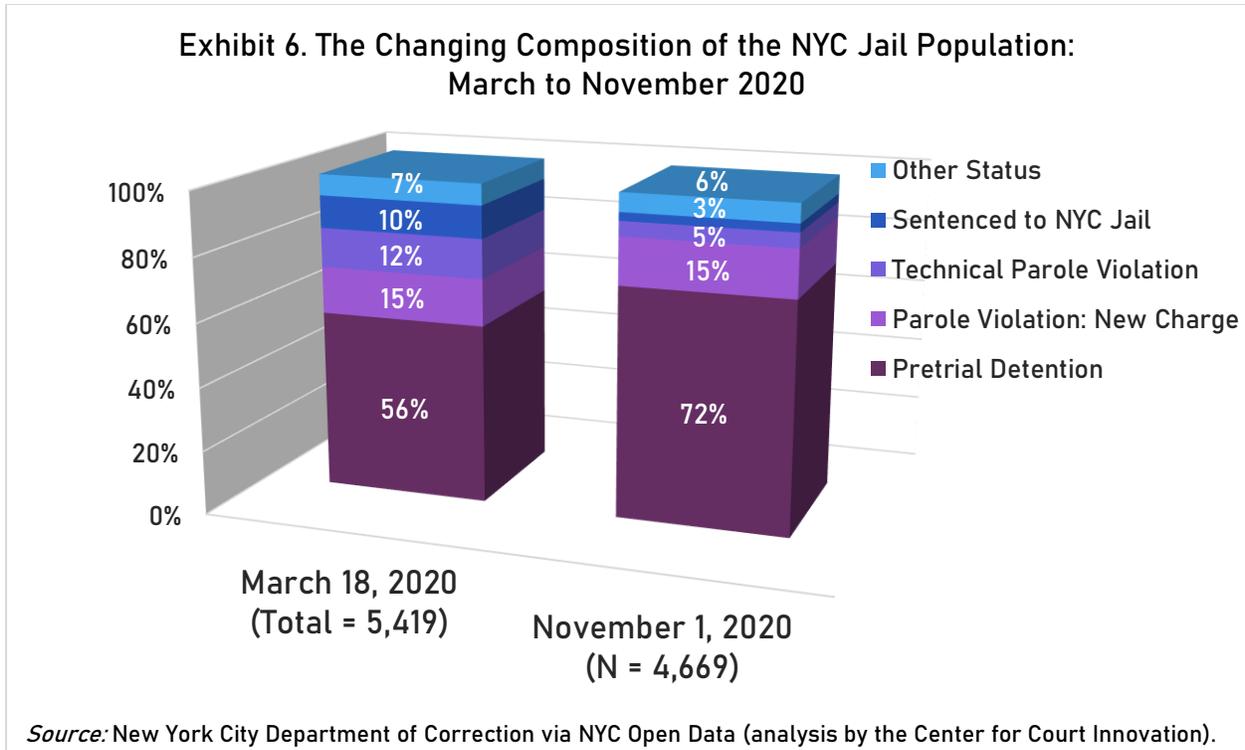
The fact that the sentenced population at Rikers has remained low is a promising finding for maintaining jail reductions in the long-term. Institutionalizing the Early Release Program and enrolling new participants in community supervision on an ongoing basis, in lieu of the one-time release of late March 2020, would further ensure sustained progress.

**Technical Parole Violations.** *After several years when people held on (non-criminal) technical parole violations were the only subgroup to have their jail numbers increase,<sup>33</sup> they declined sharply by 68 percent from mid-March to November (670 to 214).* Based on their average length of stay in jail of around two months,<sup>34</sup> by November, the vast majority of people who had their technical violations lifted back in March and April would have been released. Analogous to the sentenced subgroup, this indicates that reductions in the filing of technical violations have lasted throughout the COVID-19 era. It bears, noting, however, that the low point for people held on technical violations was just under 160 people at the tail end of August, signaling a modest uptick over the more than two months that followed.

## Net Ramifications for the Makeup of the Jail Population

The data in Exhibit 6 reveal that close to eight months after the COVID-19 crisis began, significant shifts have taken place in the specific detention statuses that make up the jail population. People held awaiting trial due to an inability to post bail or a remand order expanded to occupy a far greater share of those in jail— from 56 percent before the COVID-19 outbreak, to 72 percent by November 1. If we add those held pretrial due to the filing of a parole violation, that percentage grew from 61 to 87 percent. At the same time, those sentenced to jail declined from 10 to 3 percent of the total jail population, and people held on

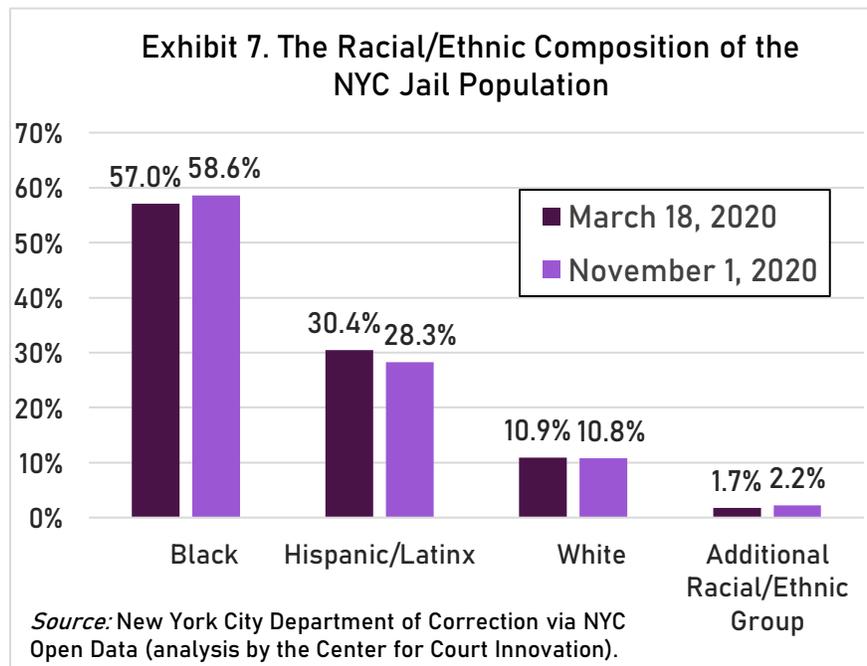
a technical parole violation fell from 12 to 5 percent. **This evidence suggests that to proceed on a path towards significant jail reduction, policy efforts will have to focus primarily on people held pretrial.**



## Changing Background Characteristics

### Persistent Racial Disparities

**The onset of a global pandemic has had little effect on the stark racial disparities structuring New York City’s jails.** Since the crisis began, the Black proportion of the city’s jail population increased modestly from 57 to 59 percent, and the Hispanic/Latinx proportion declined from 30 to 28 percent. The data



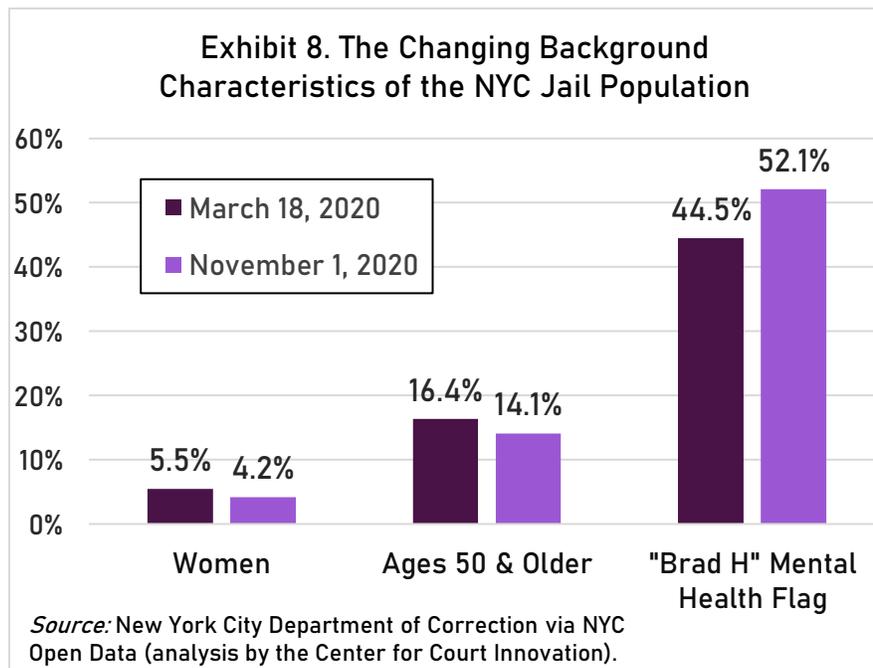
in Exhibit 7 show that, as of the beginning of November, Black New Yorkers were overrepresented in jail by a factor of 2.5 relative to the city’s general population.

In absolute terms, it is also true that the overall decline in the jail numbers reached all racial/ethnic groups. For example, the total number of Black incarcerated persons declined by 11 percent from 3,074 on March 18 to 2,730 on November 1. However, because the within-group declines were somewhat greater for incarcerated white and Hispanic/Latinx people, the relative disproportionalities impacting Black New Yorkers continued and, in fact, have grown slightly since March.

## Changes Involving Other Background Characteristics

As shown in Exhibit 8, there were significant changes in the gender, age, and mental health composition of the jail population.

- **Gender:** From March 18 to November 1, the proportion of women in the jail population declined from 5.5 to 4.2 percent. Problematically, publicly available data does not indicate people who identify as gender-nonbinary. However, the Board of Correction separately tracks this data, and as of October 30, the distribution was 3.6



percent cis female, 95.8 percent cis male, 0.5 percent trans female (including 25 people), and 0.1 percent trans male (including 4 people).<sup>35</sup>

- **Age:** Many of the case-by-case review efforts of late March and April 2020 specifically sought to identify people ages 50 and older who might be suitable for release. Data point to a modest 2 percentage-point reduction in the 50 and over share of the jail population, although on November 1, there remained 660 incarcerated people from this age group.
- **Mental Health Status:** The “Brad H” flag, while not signifying a confirmed mental health diagnosis, includes people diagnosed, screened for, or receiving or requesting

mental health services during their incarceration. Jail reductions since mid-March exclusively involved people *without* the Brad H flag. As a result, the Brad H share of the jail population increased considerably, from 45 to 52 percent, with the result that 2,433 incarcerated New Yorkers flagged for a mental health concern on November 1.

## Significance of New York State's Bail Reform Law

The same pretrial population that has proved resistant to lasting jail reductions during the COVID-19 era previously experienced a substantial downsizing brought about by the state's new bail reform law, which went into effect January 1, 2020.

### Impact of the Original Bail Reform

**The Center for Court Innovation previously reported that bail reform was largely responsible for a 40 percent reduction in pretrial detention over the period immediately preceding the COVID-19 crisis moment.**<sup>36</sup> Put in human terms, from the date bail reform was passed into law on April 1, 2019, when courts began adjusting their decisions in anticipation of its January implementation, to the COVID-19 outbreak at Rikers in March 2020, there were nearly 2,000 fewer people held pretrial citywide.<sup>37</sup> With bail reform producing most of this reduction, this new law likely prevented hundreds of New Yorkers from contracting COVID-19 and may well have saved lives—a point some county jail officials have also articulated.<sup>38</sup>

### Impact of the 2020 Bail Amendments

**On July 2, 2020, several amendments to the initial reform law went into effect, with the main consequence of increasing the number of charges and categories of defendants legally eligible for bail and detention while awaiting trial.**<sup>39</sup> Putting aside independent dynamics associated with COVID-19, the Center for Court Innovation projected that these amendments would be responsible for a 16 percent re-increase in the pretrial jail population.<sup>40</sup>

Turning to what has empirically taken place, based on the charges of people held pretrial on November 1, we estimate that the bail amendments have already led to a 7 to 11 percent increase in the pretrial jail population from what it would otherwise have been.<sup>41</sup>

After more time passes with the amendments in effect, leading judges to arraign more cases for which they can set bail *only due to the amendments*, this increase will grow, absent counteractive policies and practices.

## Emergent Findings and Conclusions

Early release efforts, combined with a simultaneous drop in arrests, led the city's daily jail population to plummet by 30 percent from mid-March to the end of April. The resulting jail population of just over 3,800 people was a low mark not seen since the end since the 1940s. While this milestone has garnered considerable attention, the steady, gradual increase since then has been less publicized. By November 1, the jail population had reached 4,669, reversing over half of the prior reduction.

Analysis indicates that the increase seen since late April did not stem from people held on jail sentences or technical parole violations. Instead, the overriding driver was a significant rise in pretrial detention. By the beginning of November, almost nine of 10 New Yorkers in jail—a historically high 87 percent—were incarcerated awaiting trial, without a conviction. (This figure combines people held pretrial due to an inability to pay bail or a remand order from a judge—72 percent—and those held because a parole violation was filed in response to a new charge—15 percent.)

As an added factor, the amendments to the state's bail reform implemented in July led to a 7 to 11 percent increase in the pretrial jail population (calculating this increase independent of the effects of COVID-19 and other factors). As noted above, absent new reforms to policy and practice, these amendments will produce a cumulatively greater increase over time.

### Next Steps

Returning to the historically low incarceration levels of late April 2020 will require renewed dedication to safe and effective release strategies, including those employed at the onset of the pandemic (such as the Early Release 6A Program and case-by-case reviews of people held on technical parole violations).

At present, the greatest urgency concerns people held in pretrial detention. Specific measures could include encouraging greater fidelity to the city's science-based *Pretrial Release Assessment* to restrict the use of pretrial conditions to those who truly pose a flight risk;<sup>42</sup> accelerated efforts to consider non-monetary conditions such as Supervised Release in lieu of bail; consideration of what people can afford when bail is set, as enjoined by the current reforms; and automatic, formal reviews for the express purpose of reducing bail amounts whenever it proves to be the case that a defendant was unable to secure payment of the initial amount.

Both the Center for Court Innovation and the Independent Commission on New York City Criminal Justice and Incarceration Reform (the Lippman Commission) recently emphasized the potential for these and other reform strategies to contribute to a culture change within the

courts, mitigating the increase in the pretrial jail population that will otherwise continue to be generated by the recent bail amendments.<sup>43</sup>

Another important subgroup that saw its jail numbers increase in the summer of 2020 consists of those held in jail on a new charge where their detention follows from the filing of a parole violation. The Columbia Justice Lab and other organizations have drawn attention to a combination of reasonable administrative and legislative steps, which could curtail incarceration in these cases.<sup>44</sup>

Jump-starting safe and effective release strategies is especially critical in the current moment, given that, as of this research brief's publication, the COVID-19 case count throughout New York City is rising, and the virus continues to pose an elevated danger to those held in the city's jails. On October 30, there were 224 incarcerated individuals infected with COVID-19,<sup>45</sup> and as we head into the winter, there is every reason to expect this number to rise.

Finally, it bears noting that even April's low mark of just over 3,800 people in the city's jail population is 500 higher than the population of 3,300 that must be attained to close the Rikers Island jails on schedule in 2026, as approved by the city council.

The health risks posed by COVID-19 have brought the urgency of reducing our reliance on jail into stark relief. But there was already ample justification for action. The long-term harms of even a short stay in jail for defendants, their families, and communities—especially communities of color—have been widely documented.<sup>46</sup> By the fall of 2020, while the period of emergency measures at Rikers Island appears to have passed, the pandemic persists, as does the underlying rationale for action.

# Endnotes

<sup>1</sup> NYC Health. (2020). *COVID-19: Data*. New York, NY: Department of Health and Mental Hygiene. Available at: <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

<sup>2</sup> By late October, over 250,000 people were infected and over 1,400 had died in the nation's jails and prisons, including both incarcerated persons and correction officers; see *New York Times*. "COVID in the U.S.: Latest Map and Case Count." Downloaded November 3, 2020 at: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>. For reports of infectious conditions in jail and prison settings, see, e.g., Williams, T., Weiser, B., & Rashbaum, W. K. (March 30, 2020, Updated May 20, 2019). "'Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars." *New York Times*. Available at: <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>; and Bedard, R. (April 20, 2020). "I'm a Doctor on Rikers Island. My Patients Shouldn't have to Die in Jail." *Washington Post*. Available at: [https://www.washingtonpost.com/outlook/doctor-rikers-compassionate-release/2020/04/10/07fc863a-7a93-11ea-9bee-c5bf9d2e3288\\_story.html](https://www.washingtonpost.com/outlook/doctor-rikers-compassionate-release/2020/04/10/07fc863a-7a93-11ea-9bee-c5bf9d2e3288_story.html).

<sup>3</sup> Board of Correction. (2020). *COVID-19 Update: Version 5/11/2020*. New York, NY: NYC Board of Correction. Available at: [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/BOC%20Board%20Update%20-%20COVID-19\\_5.11.2020.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/BOC%20Board%20Update%20-%20COVID-19_5.11.2020.pdf).

<sup>4</sup> Pinto, N. (2020). "Coronavirus Has Arrived at Rikers Island: Inside New York City Jails, Where the Pandemic is Set to Explode." *The Intercept*. Available at: <https://theintercept.com/2020/03/18/coronavirus-rikers-island-jail/>.

<sup>5</sup> This first fatality in the New York City jails involved an individual held at Rikers Island and later transferred to Bellevue Hospital for treatment, while awaiting a hearing on a technical parole violation; see Blau, R. & Goldensohn, R. (April 6, 2020). "First Rikers Virus-Positive Fatality was Jailed on Technicality." *The City*. Available at: <https://www.thecity.nyc/2020/4/6/21210370/first-rikers-virus-positive-fatality-was-jailed-on-technicality>. As of October 30, 2020, there have been three deaths among people held in the city's jails, although according to the Board of Correction, this number omits anyone who may have been infected in the jails and then died subsequently, after their release.

<sup>6</sup> As reported by the Board of Correction, the number of incarcerated persons with COVID-19 (363) includes only those held in jail on April 18, 2020. People infected with COVID-19 and released prior to April 18 are excluded. However, the infection does not have to be active; people incarcerated as of April 18 who were infected earlier and then recovered are included in the total. On the other hand, the number of staff with COVID-19 (848) is reported cumulatively to date, regardless of updated employment or infection status. See Board of Correction. (2020). *Daily COVID-19 Update: Saturday, April 18, 2020*. New York, NY. Available at: [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public\\_Reports/May-11-Updates/Board%20of%20Correction%20Daily%20Public%20Report\\_4\\_18\\_2020%20-%20FINAL.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/May-11-Updates/Board%20of%20Correction%20Daily%20Public%20Report_4_18_2020%20-%20FINAL.pdf).

Since April, updated reports by the Board of Correction indicate that the number of cases among people held has dropped, yet cumulative staff cases are close to double the April 18 number, as the virus has continued to spread among those who must continue to work in the jails. On October 30, the case count included 224 incarcerated individuals and 1,656 staff according to the Board of Correction. (2020). *Weekly COVID-19 Update: Week of October 24 – October 30, 2020*. New York, NY. Available at: <https://www1.nyc.gov/site/boc/covid-19.page>.

<sup>7</sup> The Legal Aid Society. (April 18, 2020). *Analysis of COVID-19 Infection Rate in NYC Jails*. New York, NY. Available at: [https://legalaidnyc.org/wp-content/uploads/2020/04/4\\_18\\_Analysis-of-COVID-19-Infection-Rate-in-NYC-Jails.pdf](https://legalaidnyc.org/wp-content/uploads/2020/04/4_18_Analysis-of-COVID-19-Infection-Rate-in-NYC-Jails.pdf).

<sup>8</sup> Researchers have also found that there exist prior racial and ethnic disparities in the general prevalence of COVID-19 cases, hospitalizations, and deaths nationwide. See, e.g., Artiga, S., Corallo, B., & Pham, O. (2020). *Racial Disparities in COVID-19: Key Findings from Available Data and Analysis*. Washington, D.C.; KFF. Available at: <https://www.kff.org/report-section/racial-disparities-in-covid-19-key-findings-from-available-data-and-analysis-issue-brief/>; and Karaca-Mandic, P., Georgiou, A., & Sen, S. (2020). "Assessment of COVID-19 Hospitalizations by Race/Ethnicity in 12 States." *JAMA Internal Medicine*. Published Online: August 17, 2020. doi:10.1001/jamainternmed.2020.3857. Available at: [https://scholar.google.com/scholar\\_url?url=https://jamanetwork.com/journals/jamainternalmedicine/articlepdf/2769369/jamainternal\\_karacamandic\\_2020\\_id\\_200052\\_1596731782.60737.pdf&hl=en&sa=T&oi=ucasa&ct=ufr&ei=BVR-X5XAMlEfmAGhpZvYCw&scisig=AAGBfm2ojZuDx7RrYjgEc1AHSRm76q01cQ](https://scholar.google.com/scholar_url?url=https://jamanetwork.com/journals/jamainternalmedicine/articlepdf/2769369/jamainternal_karacamandic_2020_id_200052_1596731782.60737.pdf&hl=en&sa=T&oi=ucasa&ct=ufr&ei=BVR-X5XAMlEfmAGhpZvYCw&scisig=AAGBfm2ojZuDx7RrYjgEc1AHSRm76q01cQ).

<sup>9</sup> See, e.g., Luongo, J. (September 4, 2020). Letter to the Department of Correction Re: "Staff Failure to Adhere to COVID-19 Mask Protocols in New York City Jails." Available at: <https://legalaidnyc.org/wp->

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[content/uploads/2020/09/LAS-Letter-to-NYC-re-DOC-Staff-Failure-to-Wear-Masks-in-City-Jails-Sept.-4-2020.pdf](#); and Schulberg, J. (July 31, 2020). “Rikers Island Worker Blows Whistle on COVID-19 Risk in Infamous New York Jail.” *Huffington Post*. Available at: [https://www.huffpost.com/entry/rikers-island-coronavirus-whistleblower\\_n\\_5f207377c5b638cfec4b076e](https://www.huffpost.com/entry/rikers-island-coronavirus-whistleblower_n_5f207377c5b638cfec4b076e). For an article just prior to this report’s fall publication identifying ongoing challenges to proper social distancing in the jails, see, also, Marcius, C. R. (November 9, 2020). “NYC Jail Dorms are Becoming Overcrowded, Raising Concerns over Social-Distancing as Inmate Population Continues to Climb.” *New York Daily News*.” Available at: <https://www.nydailynews.com/coronavirus/ny-coronavirus-jails-rikers-island-social-distancing-housing-capacity-20201109-2qzrdexmbngvbokafk6mgkdzjm-story.html>.

<sup>10</sup> Johnson, C., Richards, D., & Lancman, R. I. (March 18, 2020). *Criminal Justice COVID-19 Letter*. Available at: <https://council.nyc.gov/press/2020/03/18/1881/>.

<sup>11</sup> Williams, J. & Lander, B. (March 18, 2020). Public Advocate *Jumaane Williams and Council Member Brad Lander Call on City and State Officials to Immediately Halt Broken Windows Arrests and Release Most Rikers Detainees over 50 to Limit Spread of COVID-19*. Available at: <https://council.nyc.gov/brad-lander/2020/03/18/public-advocate-jumaane-williams-and-council-member-brad-lander-call-on-city-and-state-officials-to-immediately-halt-broken-windows-arrests-and-release-most-rikers-detainees-over-50-to-limit-spread-of/>.

<sup>12</sup> Board of Correction. (March 17, 2020). *New York City Board of Correction Calls for City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19*. Available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf>. See, also, Sherman, J. (March 21, 2020). *Letter to New York City’s Criminal Justice Leaders*. Available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf>.

<sup>13</sup> NYC Defenders. (March 12, 2020). *Joint Defender Statement Calling for Immediate Release of Vulnerable Incarcerated New Yorkers in Response to Coronavirus*. Available at: <https://legalaidnyc.org/wp-content/uploads/2020/03/03-12-20-Joint-Defender-Statement-Calling-for-Immediate-Release-of-Vulnerable-Incarcerated-New-Yorkers-in-Response-to-Coronavirus.pdf>.

<sup>14</sup> Gay, M. (March 21, 2020). “Don’t Put More People in New York’s Jails During a Pandemic.” *New York Times*. Available at: <https://www.nytimes.com/2020/03/21/opinion/nyc-jails-bail-coronavirus.html?referringSource=articleShare>.

<sup>15</sup> See pgs. 86-87 in Rempel, M., Kerodal, A., Spadafore, J., & Mai, C. (2017). *Jail in New York City: Evidence-Based Opportunities for Reform*. New York, NY: Center for Court Innovation and Vera Institute of Justice. Available at: <https://www.courtinnovation.org/publications/jail-new-york-city-evidence-based-opportunities-reform>.

<sup>16</sup> See, especially, Johnson et al. (March 18, 2020), Op Cit.; a statement from elected prosecutors nationwide that included the Brooklyn and Manhattan District Attorneys as signatories: *Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody*. (March 25, 2020). Fair and Just Prosecution. Available at: <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>; and, see also, National Academies of Sciences, Engineering, and Medicine. (2020). *Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25945>. A pdf may be obtained at: <https://www.nap.edu/catalog/25945/decarcerating-correctional-facilities-during-covid-19-advancing-health-equity-and>.

In addition, in a memorandum distributed to city officials, city council members, and advocacy groups on March 23, 2020 (updated March 30), the Center for Court Innovation supported releasing people held pretrial if the alleged crimes were nonviolent or the defendant posed a documented low risk of skipping court and, therefore, was recommended for ROR on the city’s *Pretrial Release Assessment*. Information about this science-based assessment tool may be found on the website of the New York City Criminal Justice Agency at: <https://www.nycja.org/release-assessment>. The Center for Court Innovation’s memo is available on request from the present author.

<sup>17</sup> Technically, program participants received “work release” status, and their release was made possible under section 6A of the New York State Correction Law.

<sup>18</sup> In full disclosure, the author contributed to the development of *Early Release (6A) Program* policies and protocols and works at the Center for Court Innovation, one of the three implementing agencies.

<sup>19</sup> Center for Court Innovation, New York City Criminal Justice Agency, and CASES. (2020). *The Early Release (6A) Program Documented Results: Six Month Update (September 22, 2020)*. New York, NY. Available at: <https://www.courtinnovation.org/publications/Rikers-early-release>.

<sup>20</sup> Schiraldi, V. (2020). *Two Months Later: Outcomes of the March 27th Order to Release People Jailed for Technical Violations During the Pandemic*. New York, NY: Columbia Justice Lab. Available at:

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<https://justicelab.columbia.edu/sites/default/files/content/NY%20Two%20Months%20Later%205.27.20%20final.pdf>.

This report, in turn, cites a May 27 DOCCS report indicating that 300 people were released in New York City.

<sup>21</sup> The Legal Aid Society. (2020). *LAS Secures Release of 106 Incarcerated New Yorkers at High Risk of COVID-19*. New York, NY. Available at: <https://www.legalaidnyc.org/news/legal-aid-secures-release-106-incarcerated-new-yorkers-rikers-island-covid-19/>

<sup>22</sup> Weill-Greenberg, E. (April 9, 2020). “Parole Violations Nearly Sentenced These People To COVID-19.” *The Appeal*. Available at: <https://theappeal.org/parole-violations-coronavirus-new-york-city-jails/>.

<sup>23</sup> Wester, J. (April 13, 2020). “Legal Aid Wins Release of 51 More Persons Held at Rikers Island on Alleged Parole Violations.” *New York Law Journal*. New York, NY. Available at: <https://www.law.com/newyorklawjournal/2020/04/13/legal-aid-wins-release-of-51-more-persons-held-at-rikers-island-on-alleged-parole-violations/>.

<sup>24</sup> See, e.g., Goldberg, N. (March 27, 2020). “Manhattan Judge Rules 16 ‘Vulnerable’ City Inmates Will Be Released Due to Coronavirus Concerns on Rikers Island.” *Daily News*. Available at: <https://www.nydailynews.com/coronavirus/ny-coronavirus-city-detainees-vulnerable-released-legal-aid-20200327-6uqfk54zgzbi7jkvajwrlgsszu-story.html>.

<sup>25</sup> See, e.g., the letter released by New York City’s District Attorneys on March 30, 2020 representing their efforts to review cases and consent to people’s release due to their age, health, or other factors. Available at: <https://www.nyl.com/content/dam/News/static/nyc/pdfs/6%20DA%20Letter.pdf>; see, also, the description of efforts by city officials in Ransom, J. & Feuer, A. (March 30, 2020, Updated July 30, 2020). “We’re Left for Dead”: Fears of Virus Catastrophe at Rikers Jail.” *New York Times*. Available at: <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>.

<sup>26</sup> Vera Institute of Justice. *NYC JailViz 2.0 Application: Tracking New York City Jail Population Trends*. Updated daily and available at: <https://greaterjusticenyc.vera.org/nycjail/>.

<sup>27</sup> Vera Institute of Justice, Op Cit. The two-month period when the population held at about 4,000 in part reflects variations in arrest trends shown farther below, with arrests rising in May but then declining again in June, leading jail admission numbers to briefly restabilize before increasing once again in August and September.

<sup>28</sup> The jail population rose from 4,184 on August 31, 2020 to 4,645 on October 31, 2020 (Vera Institute of Justice, Op Cit.) The Department of Correction did not release jail population information for September 1; thus, the two-month rate of increase was based on August 31 through October 31. Technically, if the jail increase continues at 461 per two months (230.5 per month), the population will return to its March 18 total on February 11, 2021.

<sup>29</sup> Calculations of the breakdown of people with each detention status differ slightly from those reported by other sources, due to the author’s standard practice of recoding small numbers of cases where there are apparent contradictions and, thus, likely miscoding within raw data provided by the Department of Correction.

<sup>30</sup> Vera Institute of Justice, Op Cit.

<sup>31</sup> Schiraldi, V. (2020), Op Cit.; and for the *Less is More Act* legislation, see State of New York. (February 12, 2019). 5493-A In Assembly. Available at: <https://legislation.nysenate.gov/pdf/bills/2019/A5493A>.

<sup>32</sup> Bail-eligible charges are coded based on the amended reform law, which went into effect July 2. See Rodriguez, K. (2020). *New York’s Amended Bail Statute: Pretrial Options*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/bail-revisited-bench-card>; and for further information on the technical methodology for coding cases held in the NYC jail population, see Rempel, M. & Rodriguez, K. (2020a). *Projecting the Impact of New York’s Amended Bail Reform on the Pretrial Jail Population: A Technical Supplement*. Available as the final linked report at: <https://www.courtinnovation.org/publications/bail-revisited-NYS>.

<sup>33</sup> See Schiraldi, V. & Arzu, J. (2018). *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Population*. New York, NY: Columbia Justice Lab. Available at: [https://justicelab.columbia.edu/sites/default/files/content/Less is More in New York Report FINAL.pdf](https://justicelab.columbia.edu/sites/default/files/content/Less%20is%20More%20in%20New%20York%20Report%20FINAL.pdf);

<sup>34</sup> NYC Criminal Justice. (2018). *Jail: State Parolees*. New York, NY: Mayor’s Office of Criminal Justice. Available at: [https://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/Parole\\_Violators\\_Fact\\_sheet\\_2\\_18.pdf](https://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/Parole_Violators_Fact_sheet_2_18.pdf).

<sup>35</sup> Board of Correction. (2020), Op Cit.

<sup>36</sup> Rempel, M. & Rodriguez, K. (2020). *Bail Reform Revisited: The Impact of New York’s Amended Bail Law on Pretrial Detention*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-revisited-NYS>.

<sup>37</sup> The exact reduction in the pretrial jail population was 1,957 people.

<sup>38</sup> O’Keeffe, M. (April 10, 2020). “Officials: Bail Reform Helping Stem Virus Spread in LI Jails.” *Newsday*. Available at: <https://www.newsday.com/news/health/coronavirus/coronavirus-jails-bail-reform-1.43761323>.

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<sup>39</sup> Rempel, M. & Rodriguez, K. (2020), Op Cit.

<sup>40</sup> Rempel, M. & Rodriguez, K. (2020), Op Cit.

<sup>41</sup> Providing a range of 7 to 11 percent reflects limitations in public Department of Correction data, previously discussed in Rempel & Rodriguez (2020a). Similarly, in future research determining the final increase in the city's pretrial jail population resulting from the amendments, it will continue to be necessary to present a range.

To increase the confidence of our estimates, we produced them using four alternative methods. First and most straightforward, compared to March 18, 2020, the November 1, 2020 pretrial jail population included 326 more people, representing a 10.7 percent increase. This method is accessible and elegant, yet it does not consider any number of factors that may have caused this 326-person increase, bail reform notwithstanding.

Second, based on the specific top charges of everyone held in pretrial detention on November 1, 2020, 257 people had a bail-eligible top charge solely under the amendments, but not under the original reform law, representing an 8.5 percent increase. This second method, however, contains varying biases working in each direction. This method may overstate the increase, because it is likely that at least some people who appear from their top charge to have been detained solely due to the amendments would, in fact, have still been detained due to unrelated holds or other legal reasons not indicated in the available data. The third and fourth methods represent efforts to correct for this bias. On the other hand, the second method—as well as the third and fourth—may all underestimate the increase, because several categories of cases made eligible for bail specifically due to the amendments cannot be identified with available jail data: (1) people with both a current and open case involving harm to persons or property; (2) people charged with a felony and on probation; (3) people with persistent felony offender status; and (4) people held after a conviction while awaiting sentencing (see Rempel & Rodriguez 2020, Op Cit.). Because cases held pretrial for these reasons cannot be identified in the data, they are instead grouped into a residual category (encompassing 14.1% of those held pretrial on November 1). In effect, we assume this residual subgroup would have been detained under *either* reform scheme, presumably due to a mandatory hold not clarified in the data; but some of these people probably had their detention result specifically from the amendments. Given the competing, perhaps offsetting biases, the second method may well provide the closest available approximation.

The last two methods involved more complex computations intended to quantify the number of cases in jail on November 1 that may still have been detained under the original bail reforms even if their top charges suggest that their detention resulted solely from the amendments. These methods respectively produced estimates of a 7.3 percent and a 6.6 percent pretrial jail increase. These last two methods seek to address the above-noted upward bias of the second method; but these methods include a similar downward bias as the second by not attributing the detention of any cases in the above-noted residual 14.1% group to *either* reform scheme, although some of these cases were likely detained due to the amendments.

After rounding, the four methods yielded the reported range of 7 to 11 percent. Please contact the author for further details on these approaches or for any clarifications regarding their respective advantages and limitations.

<sup>42</sup> For information about the Pretrial Release Assessment, see the website of the New York City Criminal Justice Agency at <https://www.nycja.org/release-assessment>.

<sup>43</sup> See pages 15-18 in Rempel & Rodriguez (2020), Op Cit.; Independent Commission on New York City Criminal Justice and Incarceration Reform. (2020). *The Impact of Bail Changes on Rikers: Rollbacks Require a Renewed Focus on Arraignment Practices, Parole Reform, and Ending Case Delays*. New York, NY. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5ee4023a7a6102337eb84c0d/1592001100843/Th+e+Impact+of+Bail+Rollbacks>; see, also, National Academy of Sciences, Engineering, and Medicine. (2020). Op Cit.

<sup>44</sup> See Schiraldi, V. & Arzu, J. (2018), Op Cit.; and Schiraldi, V. (2020), Op Cit.

<sup>45</sup> Board of Correction (2020), Op Cit.

<sup>46</sup> See, e.g., Digard, L. & Swavola, E. (2019). *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>; Lippman, J., Aborn, R., Cartagena, J. et al. (2017). *A More Just New York City*. New York, NY: Independent Commission on New York City Criminal Justice and Incarceration Reform. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lip+man%2BCommission%2BReport%2BFINAL%2BSingles.pdf>; Rempel, M., & Pooler, T. (2020). *Reducing Pretrial Detention in New York City: Data-Driven Strategies for Decarceration*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/reducing-pretrial-detention>; and Subramanian, R., Delaney, R., Roberts, S., & Fishman, N. (2015). *Incarceration's Front Door: The Misuse of Jails in America*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>.