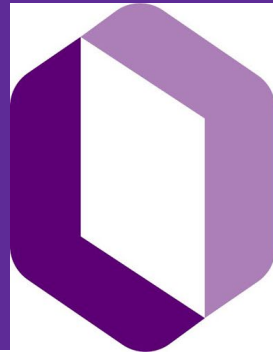


# Equity Solutions in New York's Criminal Justice System

A New Advocacy Program for People with Technical Parole Violations

June 17, 2021



**Osborne**  
ASSOCIATION

# Introduction to Presenters

## Who are we?

- Kristin Hogan, Program Coordinator
- Emily Appel, Mitigation Specialist
- Program: Court Advocacy's TPV Services

# Introduction to Osborne

## What is Osborne?

- Osborne offers a variety of programs & services across the criminal justice spectrum in New York, mainly NYC.
- These include Courtroom Advocacy Services (CAS) as well as youth and family services, services for children of incarcerated parents, prison and jail-based services, reentry services, substance use treatment, and more.
- We are always expanding our services to meet the needs of our clients and their families.

# Introduction to Court Advocacy Services (CAS)

## What is Court Advocacy Services (CAS)?

- CAS partners with indigent defense attorneys in all five boroughs of New York City, mainly attorneys on the 18(b) panel.
- We provide mitigation reports and individualized service plans for clients with criminal justice involvement.
- We advocate for alternatives to incarceration (ATI) or, where that is not possible, lesser prison time.
- Our advocacy program for people with technical parole violations is a new expansion of this work.

# Learning Objectives

1. Understand technical parole violations as a driver of the destructive cycle of mass incarceration.
2. Briefly discuss how a few other states handle technical parole violations.
3. Discuss Osborne's parole advocacy program and how it was conceived as a solution to the problem of technical violations in New York City.

\*Footnote: The Less is More Act

# What is a Technical Parole Violation (TPV)?

- A technical parole violation is a non-criminal violation.
- In other words, TPV means that there has been no new arrest.
- Rather, the person is alleged to have violated the conditions of his/her parole by breaking one of a series of rules that people under parole supervision are mandated to follow.

## Examples of Technical Parole Violations:

- Missing a meeting with a parole officer.
- Not residing at one's approved address.
- Being late for curfew.
- Disappearing for a period of time (“absconding”).
- Failing a drug test.

## Technical Parole Violations as a Driver of Incarceration: NY

- New York imprisons more people for TPV than any other state in the country.
- There are approximately 35,000 people under active parole supervision in New York State.
- Of people whom NYS sent back to prison for parole violations in 2018, over 7,500 or **85%** were reincarcerated for technical parole violations -- six times the national average.

(Katal, 2021)



## Technical Parole Violations as a Driver of Incarceration: NY

- In 2019, **40%** of people newly admitted to New York State prisons were incarcerated for a technical parole violation.
- On average, New York State taxpayers spend over **\$680 million** annually to incarcerate people with technical parole violations.
- **\$273 million** of this is spent in New York City.

(Nims et al., 2021)

## TPV in New York: Stark Racial Disparities

- **Black people are incarcerated in NYC jails for technical parole violations at more than 12 times the rate of white people.**
- Latinx people are incarcerated in the same jails at 4x the rate of white people.
- Across New York State, Black people are 5 times more likely and Latinx people are 30% more likely to be reincarcerated for a technical parole violation than whites.

(Nims et al., 2021)

## TPV in New York: Practical Consequences

- Reincarcerating people for TPV at such a high rate disrupts their lives, families, and efforts to reintegrate into the community.
- It also drives mass incarceration and takes up more space in our jails and prisons.
- It is an enormous waste of taxpayer money.
- Public safety gains are not commensurate with the disadvantages.

(Katal, 2021)

## TPV: General Solutions

- Increasing investment in community resources would reduce the barriers people face in returning to the community, and lower their chances of violating parole.
- Some key areas of investment: housing, workforce development and employment services, education, and mental health.
- Providing increased community services can be far more cost-effective than dealing with the costs of parole violations.

(Nims et al., 2021)

## TPV Solutions Elsewhere: Colorado

- Example of an approach where savings from parole reforms were reallocated into developing community services.
- Colorado Criminal Justice Reform Coalition guided state legislature in re-allocating \$80 million in savings from parole reforms into projects such as the Transforming Safety Project (which supports local-identified safety strategies and expands small business lending) and Work and Gain Education and Employment Skills (WAGEES), which redirects dollars saved to community workforce development services.
- Fewer than 3% of WAGEES participants returned to jail or prison.

(Nims et al., 2021)

## TPV Solutions Elsewhere: Massachusetts

- Massachusetts has the lowest proportion of state prison admissions that are due to supervision violations, of any state in the country (though part of this is a statistical quirk having to do with the way their jail/prison system is set up, it is still quite low.)
- What are they doing right?
- Parole uses graduated sanctions for violations after release.
- Attitudes towards substance use and relapse have changed: “We want to look at a variety of options before going to the most restrictive.”
- More of a focus on services, understanding the reasons for violation.

(Schoenberg, 2019)

## TPV Solutions Elsewhere: Maryland

- Like Massachusetts, Maryland has a very low rate of state prison admissions that are due to supervision violations (third lowest in the country.)
- What are they doing right?
- Justice Reinvestment Act of 2016 established a system of graduated sanctions for TPV: no more than 15 days in jail for the first violation, 30 days for the second, and 45 for the third.
- Prison population has dropped, and more people are getting treatment instead of jail time.

(Cochran, 2019)

## TPV in New York: Population

- In New York City in 2019 (prior to the COVID-19 pandemic), an average of 738 people were incarcerated each day in NYC jails for technical parole violations only -- more than 10% of the city jail population.
- During the pandemic, in March 2020, many people were released due to a DOCCS decision to lift about 650 parole warrants for technical violations, and the population fell substantially.
- However, people subsequently continued to be incarcerated for these violations, though the population has not yet reached pre-pandemic levels. (Current NYC TPV population: around 220.)

(Nims et al., 2021)



## TPV in New York: The Landscape/Procedure

- In New York City, people with technical parole violations are incarcerated in local jails while they wait for hearings, which can take months.
- They are not eligible for bail.
- Hearings can take up to 105 days or even longer. (Nims et al., 2021)

## TPV in New York: The Landscape/Procedure

- People often wait weeks or even months for a hearing while detained for a TPV -- particularly if they waive preliminary hearings, which often happens because of bad advice and a lack of attorney consultation in time. (Legally, a preliminary hearing must happen within 15 days, but not if there is a waiver. Final hearing then must happen within 90 days.)
- Though everyone is entitled to an attorney at the hearings (Legal Aid takes 98% of these cases), often attorneys are unable to be as effective as they could be because of a lack of information in advance.
- Sometimes, attorneys only learn they are assigned to a case days or even hours before a hearing

## Background: The Rationale for CAS's TPV Services

- For some time now, various advocacy groups have been pushing to close Rikers Island, New York City's vast, sprawling island jail complex where a litany of human rights abuses have often been reported.
- In October 2019, City Council voted to close the complex and replace it by 2026 (now 2027) with four smaller, borough-based jails.
- The new facilities will have far less capacity than Rikers does now and the plan will require cutting the jail population by more than half by 2026 -- to around 3,300, a number the city hasn't seen in more than 100 years.

(Haag, 2019)

## Background: The Rationale for CAS's TPV Services

- As part of the plan to close Rikers Island, City Council provided The Osborne Association with funding to launch a program that would be designed to shorten jail stays for people with technical parole violations only (no open criminal court case).
- The funding was sponsored by Corey Johnson, City Council Speaker.

## Background: Program Development

- In late 2019 and early 2020, prior to the COVID-19 pandemic, we worked with Legal Aid to develop a program that would help accomplish City Council's goals.
- The idea of our program was to extend CAS's current mitigation efforts to hearings for people with TPV, to advocate for those who were in jail for parole violations that did not involve a new arrest.
- Our goal was to decrease jail stays for TPV, while also increasing equity in the system by improving outcomes for our clients -- largely people of color -- and directing them to helpful community services that would address the root causes of violations.

## CAS's TPV Services: Original Program Design

- Prior to COVID, our plan for the program was to screen people in the jails within 72 hours of their admission for eligibility (mainly consisting of ensuring they have a TPV and do not have a new arrest).
- During screenings, we would distribute a flyer with Legal Aid-approved “Know Your Rights” information to try to cut down on waiver of preliminary hearings.
- We would then contact Legal Aid and inform them of the person’s existence (as, more often than not, they did not learn of them otherwise until 10 days to two weeks after their admission.)
- We would then work with Legal Aid to gather information about the person, make referrals, prepare a mitigation letter, etc., so that they could more effectively advocate for the person to be released (revoke & restore) at their next hearing.

## CAS's TPV Services: COVID-19 Pandemic

- Immediately prior to COVID, we had begun to sit in on some hearings at Rikers Island and learn how the process worked, and were getting ready to launch our services in the near future.
- COVID-19 and the city's shutdown threw a wrench into our plans.
- We were no longer able to visit clients in the jails (this is still the case.)
- Videoconferences with jailed clients were not available to us in the initial months of the pandemic and when they did become available, it was difficult to get them, due to competing with video court needs.

## CAS's TPV Services: Adapting in the COVID -19 Pandemic

- Eventually, the videoconference system stabilized and in FY21, we were able to begin rapid screenings using the videoconference process.
- We now receive a list weekly from DOC of everyone who is in jail on technical parole violations only, and by scheduling videoconferences, we endeavor to screen everyone new on the list from week to week to see if they are eligible for our program.
- Screen is for eligibility -- we collect only basic information.
- After our screenings, we contact Legal Aid to inquire as to whether the attorney wishes us to work on the case. If so, they send a referral form.



## CAS's TPV Services: Impact of the Screening Process

- Quite often, we find that our screening is the first Legal Aid is hearing of the case, even though the videoconference system doesn't allow us to screen folks quite as rapidly as we had initially envisioned doing in person (a few days' lead time is usually involved.)
- We are also able to facilitate faster contact between attorneys and their clients/families by collecting contact information for family members in the community, who the assigned attorneys can then reach out to to let them know who they are.

## CAS's TPV Services: Screening Data for FY 21 (ends June 30)

- So far, we have conducted **128\*** screenings, surpassing our target of **100** screenings for the fiscal year. Dozens more screenings are scheduled.
- Of those, we have solicited every eligible case from Legal Aid -- a total of **96** case solicitations so far, surpassing our target of **75** solicitations for the fiscal year.
- **43** of the cases that we solicited have been referred -- nearly half!
- Some additional cases have been referred to us directly by Legal Aid attorneys, as well (i.e., not as a result of screenings.) Total referrals: **56**.

\*All data as of Tuesday, June 15, 2021

## CAS's TPV Services: Next Steps After Case Referral

- Once we receive the Attorney Request for Services form (ARFS) from the assigned attorney, we schedule another videoconference with the client, this time to do a full program intake/enrollment and an assessment of their needs.
- If the hearing is scheduled sooner than we're able to do intake, we can prepare an initial letter for the judge (ALJ) and "prosecutor" (PRS), explaining that we are on the case and that we are prepared to arrange services for the client if the parties are open to programming.

# CAS's TPV Services: Types of Violations

## Types of violations we see the most:

- Failure to report/absconding
- Failure to reside at approved address (very often, this translates to homelessness.)
  - About half of the people we have met with were living in shelters prior to their violation.
  - In a concerning number (nearly 25%) of cases, the person was paroled to a congregate environment, like a shelter, but left because of COVID-19 concerns.
- A negligible number of clients have had marijuana (now legal in NY) or other drug-related violations, though many struggle with substances.

# CAS's TPV Services: What We Do for Clients

## Services we provide:

- Brief psychosocial assessment by videoconference or telephone
- Needed referrals -- housing, substance use treatment, and more
- Written release plans and/or mitigation reports for submission
- Advocacy for client's release during virtual hearings
- “Warm handoff” to services upon release
- 30-day monitoring in community after release

# CAS's TPV Services: Frequently Requested Services

## What are we doing most often?

- Finding housing -- perhaps our most requested service.
  - Difficult -- there are a couple of temporary options we've had success with, but permanent housing placement in NYC is hard to find, particularly on our timeline.
- Outpatient substance use treatment and/or mental health referrals.
- **Brief** written release plans, including some mitigation information.

# CAS's TPV Services: Data/Program Outcomes

- So far, we have had **38** program enrollments out of a target of **55** for the fiscal year. (Several more are scheduled.)
- So far, we have had **28** successful dispositions out of a target of **30** for the fiscal year (this includes cases that were resolved with a lower time assessment than was originally offered due to our mitigation efforts, as well as revoke and restore outcomes.)
- Most of our successful dispositions were revoke and restore outcomes (i.e., client was released to the community.)
- Only **2** dispositions were unsuccessful (i.e., zero reduction in time assessment.)

\*All data as of Tuesday, June 15, 2021

# Success Story #1: Mr. Torres

## **The situation:**

Mr. Torres was charged with absconding from parole for over three years. He had given a positive toxicology screen, was scared of going back to jail, so he changed his address and stopped reporting. In the time that he did not report to parole, Mr. Torres not only worked hard to become sober, but met his fiancée and had a baby. He and his fiancée went into a shelter with their child, which alerted parole to his location.



# Success Story #1: Mr. Torres

## **The plan:**

We worked with Mr. Torres to create an individualized release plan. We also were in contact with his fiancée to coordinate services for them. During our conversations, it became apparent that Mr. Torres was on the right path -- he had stayed sober for three years, was dedicated to his family, and needed support in obtaining gainful employment. Since he was on the run from parole, he had not been able to work any on-the-books jobs. We referred Mr. Torres to our Prepare program, a workforce development program for fathers and father figures. We also wrote an advocacy letter including some mitigating information about his situation.

# Success Story #1: Mr. Torres

## The outcome:

**Revoke and Restore to community supervision!** Mr. Torres is now back with his family, participating in our workforce program, and on his way to stability in the community. He told us that he is thrilled to be back with his son, and that it feels great to live without looking over his shoulder.

## Success Story #2: Ms. Brown

### **The situation:**

Ms. Brown was brought in under charges of a positive toxicology screen and absconding for over a year. She had relapsed on heroin, was scared she would be sent to jail if she reported to parole, so she decided to leave. She had been homeless, living alternately in shelters and on the street. She also has a diagnosis of bipolar disorder, which was untreated in the community.

## Success Story #2: Ms. Brown

### **The plan:**

We worked with Ms. Brown at great length to find a program that would be a good fit for her. She was anxious about the idea of long-term treatment, and was more concerned about her housing status. In our conversations, she identified homelessness as the primary trigger for her substance use and worsening mental health. She began Medication-Assisted Treatment (MAT) while incarcerated and was being treated with medication for her mental health. We created an individualized service plan, in which she would go to inpatient treatment for a short period of time, followed by a transitional housing program with outpatient substance use treatment.

## Success Story #2: Ms. Brown

### **The outcome:**

**Revoke and Restore!** We coordinated transportation to the program we had planned, and Ms. Brown is safely in her program and doing well. She looks forward to stable housing and is excited to take her next steps.

## “Footnote”: The Less is More Act

- Concern over the earlier-cited statistics on NY detention for technical parole violations led to the Less is More: Community Supervision Revocation Reform Act (S.1144A -- Benjamin / A.5576A -- Forrest.)
- The Act is geared towards reducing incarceration for people with technical parole violations, and making the system more equitable.

# “Footnote”: The Less is More Act

## Major policy win:

- The Less is More Act passed the New York legislature on Thursday, June 10, 2021.
- It is awaiting Governor Cuomo’s signature (which seems assured).
- **HUGE WIN for our population!**

# “Footnote”: The Less is More Act

## Key provisions:

- **People will remain at liberty while awaiting hearings for TPV!**
- Hearings must happen within 30 days
- Incarceration eliminated as a sanction for most types of TPV
- Where incarceration is allowable, it is capped at 30 days
- People will be eligible for a 30-day “earned time credit” reduction in their community supervision for every 30 days in which they don’t violate.



# “Footnote”: The Less is More Act

- Impact on our work is somewhat TBD.
- The Act does not take full effect until March 1, 2022.
- We envision a continuing role for our advocacy in hearings for technical parole violations, and a continuing need for referrals to appropriate community services (perhaps even an increased one, now that incarceration is less likely to be a sanction.)
- However, funding for FY 22 is still to be determined by City Council.

## Conclusion

- We are proud of the impact we have made thus far, particularly as to our adjustments during a difficult time.
- We believe that for our clients, we have been able to improve their outcomes and tip the balance of the system further toward equity.
- We look forward to continuing our work in the future.

# Questions?

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