# The Will to Decarcerate

## COVID-19 and New York City's Early Release (6-A) Program

**By Andrew Martinez, Joanna Weill, Lina Villegas, Camille Wada, Michael Rempel, and Tia Pooler**

Center for Justice Innovation

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# Executive Summary

Where the political will exists, efforts to reduce jail populations can be carried out swiftly and humanely. That is the primary lesson to emerge from our study of New York City's Early Release (6-A) Program, quickly constructed as the pandemic first reached the Rikers Island jail complex in March 2020.

The program saw the release of almost 300 people from life-threatening conditions behind bars into community-based supervision and services. In tandem with other efforts to reduce the population at Rikers, the program contributed to a citywide jail population of just over 3,800 by the following month, a low not seen since just after World War II.[1]

People held in our nation's jails and prisons have proven especially vulnerable to infection from COVID-19, with nearly 600,000 infections and nearly 2,900 deaths to date.[2] Rikers Island was no exception; the complex experienced sharply rising infections following the identification of the first positive case on March 18, 2020.[3] Led by the Mayor's Office of Criminal Justice (MOCJ) and the Department of Correction, and implemented in partnership with three local nonprofits (including our own), the Early Release Program facilitated the release of 296 people who had been held on a jail sentence of less than one year.

The program involved daily (remote) supervision check-ins along with services to meet people's needs. The first participants left Rikers Island in the early morning hours of March 23, 2020. All other participants were released from the city's increasingly dangerous jails by March 27.

## Purpose of the Current Study

With funding from the New York Community Trust and the Langeloth Foundation, the Center for Court Innovation conducted in-depth interviews with former Early Release Program participants and staff who planned and implemented the program. We sought to answer three main questions:

1. **Firsthand Accounts of a Mounting Crisis:** According to people who experienced it, what were jail conditions like in the earliest days of the pandemic in March of 2020?

2. **The Early Release Program:** What was the program model, how was it implemented, and how did former participants and staff perceive its strengths and limitations?

3. **Recommendations Moving Forward:** How might policymakers in New York City or elsewhere best sustain or replicate the program as an ongoing jail reduction strategy?

In New York City, the question of whether and how to sustain the program has recently grown urgent. Neither the Early Release Program nor other release efforts have been sustained, despite the persistence of the pandemic. This has contributed to a 60 percent increase in the city's daily jail population—from just over 3,800 at the end of April 2020 to almost 6,100 in September 2021 (before the population modestly receded to about 5,700 as of March 2022). In a context of longstanding mismanagement,[4] the jails proved incapable of handling the climbing population, precipitating a new humanitarian crisis amidst widespread reports of escalating violence, corrections officers not reporting for duty, rampant failures to link people to medical care, and growing self-harm incidents and deaths of people in custody.[5]

To aid deliberations over reactivating the Early Release Program, a forthcoming report will provide the results of a quantitative evaluation examining its impact on recidivism. Our prior research shows that over the first six months of the program, only 2 of the 296 participants were re-arrested for a violent felony while under supervision following their release (and, according to available data, in only one of those instances was there an allegation of possible physical harm). Overall, 26 participants (9%) experienced a re-arrest for any charge during the program, though almost a third of those were only issued Desk Appearance Tickets.[6]

# Firsthand Accounts of Jail Conditions

In-depth interviews with 28 former program participants focused heavily on conditions of confinement at the onset of the pandemic, prior to their release:

- **Lack of Information:** Most participants reported that they learned about COVID-19 from the television news or family members during phone calls. Many answered with a firm "no" when asked if corrections staff provided information about COVID-19.

- **Chaotic Conditions, Heightened Emotions:** Participants described widespread anxiety, fear, confusion, desperation, and "pandemonium" in the initial days of the pandemic. They also recalled concerns over the wellbeing of their loved ones and a sense of powerlessness as the virus spread. ("Everyone thought they were going to die in there.")

- **Safety Measures:** Many participants cited the futility of social distancing given close quarters and described additional health and safety measures as piecemeal or non-existent—though it should be noted that the Centers for Disease Control had yet to offer definitive guidance concerning masks and other PPE in the March 2020 period when participants were in jail. Participants also described strategies of their own, such as developing makeshift masks, avoiding common areas, questioning people transferred to their unit about COVID exposure, and organizing group cleaning efforts.

# Early Release Program Implementation

State Correction Law 6-A authorizes local officials to grant early work release for people serving jail sentences, providing the legal basis for the Early Release Program. Interviews with former participants as well as focus groups and interviews with approximately 50 staff, program directors, and project planners yielded a rich set of insights.

- **A Swift Rollout:** Staff at the Mayor's Office of Criminal Justice informed the three nonprofit providers (CASES, the Center for Court Innovation, and the NYC Criminal Justice Agency) of the impending program on March 20, 2020. After rapid planning, the first releases took place just three days later. A total of 296 people were released to the Early Release Program over the course of one week.

- **Release from Rikers Island:** DOC staff were tasked with giving participants provider contact information, and conversely, supplied providers with contact information for participants via discharge paperwork; often however, providers reported receiving incomplete, inaccurate, or outdated contact information, at times leading participants to immediately fall out of compliance due to an inability to make initial contact.

- **Hotel Rooms and Phones:** MOCJ arranged for a hotel room and meals for about 40 participants with nowhere else to stay. The program also distributed nearly 170 phones (though not everyone needing a phone received one immediately upon release).

- **Supervision:** The program required daily phone check-ins (including weekends) for the remainder of the original sentence. For 33 participants (11% of the total), this lasted more than six months. In interviews, most participants reported finding it easy to establish a positive rapport with their case manager. According to both staff and participants, check-ins were generally brief, and topics varied depending on people's needs.

- **Discussions Over the Frequency of Check-Ins:** Some participants and nearly all staff reported that *daily* contact was pro forma and unnecessary, especially for those doing well or with full-time jobs. In August 2020, the three providers and MOCJ agreed upon a step-down schedule for those in-compliance to three days per week and eventually one day per week, but DOC vetoed the proposal, and it was not implemented at that time.[7]

- **Limited Resources at Pandemic Onset:** The providers linked participants to needed supports (e.g., housing, food, employment services, medical treatment, or help signing up for benefits). However, staff relayed that agency closures while transitioning to remote services sometimes thwarted providers' efforts to link people to community resources.

- **Compliance:** The providers had to immediately notify MOCJ and DOC of any re-arrest and submit a noncompliance report after two consecutive missed daily check-ins. Program staff reported that DOC's responses to noncompliance (e.g., requiring an electronic monitoring bracelet, re-incarceration, or no action) appeared arbitrary, citing examples where participants seeking to comply but facing barriers (e.g., temporary lack of a phone) were sanctioned, and other instances when there was no response.

# Recommendations

## Recommendations for Criminal Justice Leaders

1. ***Pursue safe decarceration strategies.*** Especially as the pandemic persists alongside widely reported inhumane conditions in New York City jails (and jails and prisons nationwide), system responses can begin with efforts to minimize the numbers incarcerated. Incarcerating fewer people could, in turn, offer greater opportunities to practice social distancing in corrections facilities, curtailing the spread of COVID-19 both in jails and in the communities to which people return after their release.

2. ***Sustain, replicate, and evaluate the Early Release Program.*** The promising evidence to date stands in contrast to the widely known harms of jailing people, including research linking jail sentences of under a year to greater recidivism.[8]

## Recommendations for Early Release Program Implementation

3. ***Maintain nonprofit providers to perform supervision.*** The providers centered the skills and values of their social workers over a law enforcement model. This allowed staff to connect participants to needed services and empathize with their experiences.

4. ***Formalize the program's structure and protocols.*** Future rollouts should include written rules and protocols, for instance regarding discharge planning and responses to noncompliance. They should be documented in a program manual provided to staff and distributed to participants as a readable one- or two-page handout.

5. ***Have program staff present to facilitate discharge.*** To ensure reliable handoffs, program staff could consistently orient participants in-person at jail discharge.

6. ***Connect more participants with phones and housing.*** Discharge planning could involve probing more deeply over whether people possess a cell phone and have a place

to stay with their name on the lease or mortgage, reducing the likelihood that people will lack these resources at or soon after their release. The program could also consider simply disseminating cell phones to all participants at the point of release.

7. ***Create graduated supervision levels.*** In lieu of long-term daily check-ins, the program should reduce check-in frequency for participants who maintain compliance.[9]

### Recommendations for Correctional Agencies

8. ***Effectively disseminate health and safety information.*** Now past the crisis of March 2020, jail officials could ensure that incarcerated people and corrections staff receive important health and safety information, including updates as conditions change.

9. ***Review and, where necessary, improve COVID-19 prevention in the jails.*** Strategies to limit viral spread could include timely access to testing, prompt distribution of test results, vaccine access, and enforcement of mask-wearing by staff. Jails could also promote social distancing, such as by staggering the use of common spaces.

## Conclusion

The fast response to the conditions on Rikers Island at the start of the pandemic shows how much government can accomplish when the necessary commitment and compassion for people's wellbeing exists. In March of 2020, New York City's mayoral administration removed almost 300 people from dangerous jail conditions and placed them into the Early Release Program in a matter of days. In 2022 and beyond, rekindling the same will to respond humanely can promote health and safety for additional people deprived of liberty, whose lives depend on the mercy of powerful government officials.

## Chapter 1

# Introduction: A Release Model Forged in a Crisis

The COVID-19 pandemic has upended people's lives across the globe and resulted in over 900,000 deaths in the United States and nearly 6 million worldwide as of March 2022.[10]

People held in our nation's jails and prisons have proven especially vulnerable to infection, given overcrowding, widespread unsanitary conditions, barriers to medical care, hygiene item restrictions, inadequate testing, and the near impossibility of proper social distancing.[11] To date, there have been nearly 600,000 infections and nearly 2,900 deaths in carceral settings.[12] During the early stages of the pandemic, jails and prisons accounted for eight of the country's ten largest COVID-19 hotspots.[13] Incarcerated people also tend to face an elevated risk of experiencing health complications, with approximately half already possessing at least one chronic illness, such as asthma or heart disease.[14]

Preventing the spread of COVID-19 in carceral settings is not only a humane response to those directly impacted but has broader public health ramifications. Research has demonstrated that high rates of infection in jails and prisons can accelerate viral spread in surrounding communities when people are released.[15]

The experience in New York City jails has been no different. Soon after the onset of the global pandemic, the Rikers Island jail complex saw its first COVID-19 diagnosis on March 18, 2020. Given shockingly unsanitary conditions, dire predictions immediately surfaced of a rapid and severe outbreak at Rikers, absent swift efforts to release people.[16] Indeed, one month later, over 1,200 people (over 350 incarcerated and almost 850 staff) were diagnosed across the jail complex.[17] Almost nine out of ten incarcerated people in New York City, and therefore the vast majority of those infected, were Black or Brown.[18]

## Launch of the Early Release (6-A) Program

Coinciding almost immediately after the first confirmed COVID-19 case at Rikers, New York City Mayor Bill de Blasio authorized the Mayor's Office of Criminal Justice (MOCJ) to plan an urgent release initiative relying on state Correction Law 6-A, which permits local

jails to authorize early work release for sentenced individuals. Because city jails were mostly holding people either detained before trial or on parole violations, only 10% of the March 18, 2020 jail population was held on an actual jail sentence—yet in absolute terms, this translated to about 550 sentenced individuals potentially eligible for work release.[19]

On March 20, MOCJ staff reached out to the city's three pretrial supervision providers, CASES (Center for Alternative Sentencing & Employment Services), the Center for Court Innovation (CCI), and the NYC Criminal Justice Agency (CJA), to help plan and implement the Early Release (6-A) Program.[20] Although these agencies had been working with a different population—people held before trial, not after sentencing—they already had the necessary infrastructure to conduct community supervision in lieu of incarceration.

MOCJ and the providers jointly planned the basic program model in less than three days, with ongoing refinements over the weeks that followed. Working with staff at the Department of Correction (DOC), MOCJ secured the release of the first participants from Rikers after 1:00 a.m. on March 23. By March 27, the program had admitted its final total of 296 participants, representing almost 55% of people serving jail sentences at the time of implementation. Over half of the participants (54%) were charged with a felony and the rest with a misdemeanor offense.[21]

## Overview of the Program Model

Further detailed in Chapter 3, the program integrated daily remote supervision (usually by phone) with individualized services and supports until the original sentence completion date. City jail sentences run for less than a year.[22] (Longer sentences are served in upstate prisons.) In practice, 60% of Early Release Program participants had fewer than 90 days and 95% had fewer than 180 days left on their sentence.

Besides daily supervision and wellness checks, program providers offered participants supplemental services, including employment services from Exodus Transitional Community or other local nonprofits. In addition, the program provided nearly 170 phones to participants without one to facilitate supervision.[23] Many participants (approximately 40 individuals) without a place to live received beds in a hotel. Program providers were required to report missed check-ins over more than two consecutive days to staff at both MOCJ and DOC.

### Program Outcomes to Date

Six months after program implementation, 9% of participants had been re-arrested while under supervision, including just 4% of people who had been originally charged with a felony. Less than 1% (two people) were re-arrested on a violent felony charge. Only 4% of participants (13 people) were re-incarcerated before their sentence end date.[24]

## Purpose of the Current Study

With funding from the New York Community Trust and the Langeloth Foundation, the Center for Court Innovation conducted this study to answer three main questions.

1. **What were jail conditions like in the earliest days of the pandemic?** Through in-depth interviews with over two dozen former participants, we obtained firsthand accounts of people's experiences in city jails during an unprecedented health emergency.

2. **What was the Early Release Program model, and how did staff and participants perceive it?** We sought to document the model; understand staff experiences while implementing it; and understand the perceptions of participants, including whether the program met their needs and what, if any, challenges arose.

3. **How might policymakers sustain the program?** Should the program yield a positive impact, public officials may wish to sustain or adapt it in the future. We sought to provide lessons and recommendations for how jurisdictions across New York State, and in other states where the law allows for early release, might modify and sustain the model as an ongoing jail reduction strategy.

**A forthcoming companion publication will report the results of a quasi-experimental evaluation, comparing recidivism between participants and a matched comparison group composed of people sentenced to jail one year earlier, who did not enroll.**

## Timeliness of the Inquiry

Over five days in late March 2020, city officials answered a public health crisis by calling on the 6-A work release law and releasing nearly 300 people serving a jail sentence. Yet from that moment forward, the city neglected to authorize any further releases to the Early Release Program. While the effective discontinuation of the program fell largely under the public radar for 18 months, in September 2021, public officials and the local media again brought it to people's attention amidst reports of newly horrifying conditions in the city's jails—a

humanitarian crisis that persists as of this report's March 2022 release. News accounts and reports from a court-appointed federal monitor pointed to escalating violence levels; a shortage of correction officers reporting for duty; lack of access to medical care; inability to bring people to court for scheduled appearances; and growing self-harm incidents and deaths of people held in city jails (totaling 16 deaths for all of 2021, a number not seen since 2013 when the total jail population was twice as high).[25]

In part, the drumbeat of shocking stories reflected greater transparency from within the jail system regarding its longstanding challenges, beginning with the appointment of a reformer, Vincent Schiraldi, to serve as Commissioner from June to December 2021. But there is also a broad consensus that jail conditions objectively deteriorated amidst a toxic blend of decades-long mismanagement[26] and a steep rise in the numbers held beyond what the system could realistically handle. In this second regard, while a range of release efforts at the outset of the pandemic helped the population reach a historic low not seen since World War II of 3,809 held on April 29, 2020, the population then rose by 60% over the next 18 months, peaking at almost 6,100 in mid-September 2021, before modestly receding to about 5,700 as of March 2022.[27] The drivers behind this rise were manifold. They included a significant increase in judges' setting unaffordable bail on types of cases where they had been releasing people in the first half of 2020; a mounting case backlog amidst the court system's ongoing struggles to hold trials during the pandemic; and an increase in arrests after low arrest numbers at the onset of the pandemic.[28] These drivers led the pretrial detention numbers to climb significantly. The sentenced jail population, on the other hand, remained relatively low, standing at about 230 people as of mid-September 2021, compared to 550 back in mid-March 2020. Nonetheless, state officials and advocates publicly implored Mayor de Blasio to restart the Early Release (6-A) Program in September and October 2021—alongside intensified calls for judges and state officials to release people respectively held before trial or on parole violations.[29] Yet the mayor authorized just six new releases to the program at the end of September 2021 and another four at the end of December 2021, effectively leaving it to future administrations (or leaders in other jurisdictions) to determine the model's future, if any.

**This report and a forthcoming impact evaluation, thus, emerge in the context of the most recent crisis at Rikers and a debate over whether to sustain the very program in question.**

# Research Methodology

We interviewed two sets of individuals: 1) former program participants; and 2) staff who served them or developed program policies across the three nonprofit supervision agencies and at MOCJ.

## Interviewing Former Participants

**Recruitment.** All participants were eligible to participate in interviews, except for an extremely small number who were still actively participating while recruitment took place or who were under separate parole supervision at the time. After initial outreach by the agencies providing supervision, the research team then contacted former participants to explain the study and, with their informed consent, conduct the interviews.

**Final Sample.** The three supervision agencies referred a total of 45 eligible former participants to the research team, which interviewed 28 (27 by phone and one online using Zoom) between February and July 2021. In many instances, the researchers could not reach former participants due to changes in contact information. Table 1.1 presents the resulting interview sample's demographic characteristics. Nearly all were serving a sentence at Rikers Island at the time of their release except one participant held at the Manhattan Detention Complex,[30] and most (92%) were living in New York City when they were interviewed.

In general, the sample of participants interviewed was relatively representative of the overall Early Release population. According to available demographic information, the sample was slightly older than the overall population (40 vs. 36 years-old on average), but given the small sample size, no significant differences were identified.

**Analysis.** The interviews were audio-recorded (with the permission of study participants) and transcribed into an MS-Word document, which the researchers uploaded into Dedoose software to enable qualitative data analysis. The research team then reviewed each transcript individually and developed a codebook based on deductive (i.e., starting with pre-set themes) and inductive (i.e., themes emerging from open coding of the data) coding. The researchers also took annotated notes during both the staff focus groups and interviews, organized these notes by topic, and reviewed them for common themes.

**Interview Instrument.** Participant interviews averaged about one hour and were conducted in English and Spanish. The interview instrument consisted of two main sections. The first

asked participants about their experiences in detention at the onset of the COVID-19 pandemic. The second asked about their experiences in the Early Release Program. Participants received a $30 incentive for participating in the interview and a resource sheet with contact information for various supports in New York City (e.g., housing services).

**Table 1.1. Participant Demographics**

| Number of Participants | 28 |
|---|---|
| **Gender** | |
| Male | 86% |
| Female | 14% |
| | |
| **Average age (years)** | **40** |
| | |
| **Race/Ethnicity** | |
| Hispanic/Latinx | 32% |
| Black | 29% |
| White | 14% |
| Asian /Pacific Islander | 11% |
| Additional Groups | 14% |
| | |
| **Housing status at time of release** | |
| Private apartment/house/room | 79% |
| Unstable or temporary housing* | 18% |
| Public housing | 3% |
| | |
| **Type of financial support received since release**** | |
| Employed (Full or part time) | 61% |
| Support from family/friends | 14% |
| Unemployment | 11% |
| Employed ("off the books") | 10% |
| Government assistance | 10% |
| Other | 4% |

* Includes living with someone temporarily, in a shelter/group home, or hotel provided by MOCJ.
** The sum of these values exceeds 100% because participants could select multiple options.

## Interviewing Program and Policy Staff

Researchers also recruited staff to share their experiences and insights in a series of focus groups and interviews (held online using Zoom) across the three agencies that provided supervision: CASES, CCI, and CJA. The focus groups included mostly staff who provided direct supervision, while individual interviews were with program directors who were responsible for broader program implementation.

In the fall of 2020, researchers interviewed approximately 30 people across five staff focus groups lasting approximately an hour and a half and conducted 16 virtual interviews lasting about one hour with agency supervisors and city officials from MOCJ. Ultimately, approximately 50 program staff and city officials were interviewed. Some interviews were supplemented with written information provided by the interviewee.

Focus group and interview questions spanned seven topics: 1) program planning; 2) initial contact between program staff and program participants; 3) daily check-ins; 4) program compliance; 5) other organizations and providers involved in the program; 6) data and information management; and 7) program discharge.

## Study Limitations

This study has several limitations. First, the sample is limited to 28 program participants. It is possible that the experiences of those who participated may differ from those who did not; in particular, those we were unable to contact may have faced additional barriers, possibly mirroring barriers that some participants faced at the point of program engagement.

Second, the individuals we interviewed were released from jail in late March 2020 and, as such, their experience is limited to the earliest stages of the pandemic when PPE and COVID testing was still limited nationally, and much was still unknown about the virus.

A third and related timing limitation stems from the extraordinarily rapid initiation of the program as a function of the unprecedented emergency that precipitated it. Given the speedy rollout, participants' frequent accounts of lacking information, inadequate discharge planning, and certain unduly onerous requirements may have partly reflected the unique circumstances of the moment and not how the model might have been experienced and implemented after a normal (e.g., several-week or several-month) planning process.

Fourth, we did not interview corrections staff, or staff from other non-profit service providers, who could have offered additional insight into some of the protocols the jails put into place to ensure safety or connect individuals to resources.

Despite these limitations, this study captures the experiences of formerly incarcerated people while held in jail and released at the earliest stages of a global pandemic.

## Chapter 2
# Firsthand Accounts of Confinement

This chapter presents Early Release Program participants' firsthand accounts of conditions at the Rikers Island jail complex at the onset of the pandemic—prior to their release at the end of March 2020. We describe: 1) how participants learned about COVID-19; 2) how they felt (e.g., emotionally) as conditions began to worsen; 3) efforts by the staff to keep people safe; and 4) efforts individuals in detention themselves took to keep safe.

## How Did People Learn About COVID-19?

### "Everybody Was Just Watching the News"

Most participants reported that they learned about COVID-19 from the news or family members during visitations or phone calls. Participants reported that they and others held in jail were anxiously watching the news for new information about COVID-19, to the extent that "some didn't care about missing meals." One participant noted that because those incarcerated at Rikers were consistently exposed to news coverage about the virus, they often briefed jail staff about recent developments.

### Lack of Information

Absent from most interviews were descriptions of formal or systematic efforts by the Department of Correction to provide incarcerated people with information about the COVID-19 virus. Some participants reported receiving information through distributed memos or posted signs, as well as from medical professionals; but most seemed unaware of any such efforts.

Across many interviews, participants answered with a very firm "no" when asked if corrections staff provided information about COVID-19. One participant reported that staff "would not tell us anything about COVID-19" and another even believed they would not have known about the virus had they not been exposed to news coverage on television. When asked how people first learned about COVID-19, one participant stated:

> It would have been good at the jail if they came around and told everyone that there was this virus going around and it was serious. But they didn't do that. We found out about it on the news. If I had been in jail with no TV, the whole jail would have been in the dark about this COVID.

## Suppressing Information

Some participants reported that jail staff actively minimized or suppressed information about COVID-19, which some believed staff did to maintain safety by minimizing fear among those held in the jails. This information suppression contributed to conflicting narratives about the virus. Participants reported that fear and anger increased as they learned more about the severity of the virus and number of people getting sick. One participant indicated that staff minimized the gravity of the virus by describing it as a stronger version of a cold.

> We had a correctional officer come in. She was a captain and she told us, "Everybody relax. It's nothing but a cold on steroids," and then stuff like that, it's like "Oh, did you ever have a cold before? It's nothing to you." Then people started catching fevers and dropping down. It [became] just scary for everybody.

In some instances, correctional officers censored information about COVID-19—"they don't let you see the entire newspaper so they cut articles out of the newspapers." Information suppression at times included not letting people watch television—the primary source of information for many.

> We went back to the officers and they wouldn't let us watch TV. One, something is happening there, and we went to the TV and I turned it on…We watch the news and we heard stuff about COVID and I said, "What the hell? What? There's no way!" So, that's how we found out and everyone screaming like, "Oh, you're kidding me? We're going to die in here. Oh my God!"

## Demanding Information

Participants explained that when staff *did* provide information about the virus, it was the result of people demanding it or because "everybody just made a big fuss about it." At times, the calls for information became confrontational or potentially self-harming as, according to one participant, "it was only after going on this hunger strike that a doctor was brought to explain…what was going on."

# How Did People Feel?

## "It Was Pandemonium"

Researchers asked participants to describe the general atmosphere or mood within the jail as COVID-19 cases in the city's general population began to increase in early March of 2020. Participants described a range of emotions that reflected a sense of desperation, reporting that they felt anxious, confused, depressed, angry, fearful, and helpless. Others reported a general sense of chaos, panic, and pandemonium. One participant recalled people's phone calls to loved ones becoming "more heavy" and people engaging in more fights or "acting out." One participant described a strong sense of despair at Rikers stating, "Everyone thought they were going to die in there."

## Worried About Loved Ones

Many participants expressed that at the time they were still in Rikers, they were extremely concerned about their family and worried loved ones could become ill or die—concerns that intensified as the jails stopped permitting visitation (for people's safety). One participant shared that he would pray for the safety of his children, grandmother, and extended family and was "hoping nobody died of it." Another feared that he himself would become a "burden" to his family.

> You start getting nervous because you see people getting sick…Don't want to get sick and have to put the burden on my family. I didn't want to have to be sick or come home to my children and my wife and get them sick.

## Feeling Powerless

Participants described a sense of powerlessness while incarcerated amidst the uncertainty of COVID-19. Besides the lack of information noted above, participants believed correction officials did not put safety precautions into place. One participant described a sense of powerlessness: "we really didn't have much access to the outside world...there's really not much we can do because we're literally incarcerated, locked up like animals." Others believed that the virus would inevitably spread throughout the jail because jail staff left their facilities daily and were not taking proper safety precautions.

# How Did the Jails Keep People Safe?

Researchers asked participants to describe safety measures implemented by the jail at pandemic onset. Most reported that safety measures were either non-existent or limited—though a review of Centers for Disease Control recommendations indicates that, in fact, definitive federal guidance had not yet been issued regarding masks and other PPE as of the March 2020 period when program participants had been incarcerated.[31]

## Personal Protective Equipment (PPE)

Some participants reported that they received PPE such as masks, gloves, soap, hand sanitizer, or cleaning products, while other participants reported not receiving them. One participant noted that some correction officers felt driven to provide masks because they believed it was unfair that those imprisoned were not receiving masks. Participants also gave mixed accounts of whether they were released from Rikers with a mask; some described being transported out of Rikers in a bus full of unmasked people. Others reported that staff only provided masks on request— sometimes only after people explicitly communicated concerns about their chronic health conditions. One incarcerated participant who worked inside the detention facility described needing to demand a mask before entering the facility's medical unit.

> We said, "Give us masks," and they said, "Grow up." So, we went in there and then asked for it. And I am like, "…You understand that you got sick patients in here, like, really, really sick patients with AIDS and everything in there…and then with COVID and all that, too, makes it worse." …[they] told me that it [the masks] is only for staff.

## Testing

Some participants reported that they were tested for COVID-19 or that testing occurred with some frequency, such as when people were potentially exposed, visibly sick, or waiting to be released. Yet, others reported diverging accounts that testing *did not* occur (e.g., "No one was ever tested"). The reasons for these divergent narratives are not fully clear but may reflect practices within different jails (there are eight operating jails on Rikers), or units within jails, or that COVID testing was still at very early stages, or simply that participants' recall may have varied. It also bears qualifying that, realistically, testing was not widespread anywhere in the country during the period when programs participants were held in jail.

When testing did take place, participants reported that staff often did not provide test results in a timely fashion. As a result, some people were transferred to a new unit without knowing their test results. One participant reported being tested for COVID-19 while incarcerated, but not being told of the results until long after his release.

> When I got early released from Rikers, I did not know I was positive myself. I came out [of Rikers] sort of hanging with my friends and family and stuff. I did not know… until two months later. Then, I got called and they told me I was positive…so lucky that nothing bad happened...it could have been much worse.

## Inability to Implement Social Distancing

Many reported that the jails implemented social distancing strategies but pointed to the futility of these efforts given the reality of the jail and the close quarters in which people are housed. One participant noted, "They're telling us to stay six feet away, but they gave us beds that are less than a foot, maybe eighteen inches, away from each other." Others simply reported, "there is no way to social distance due to the jail being overcrowded."

Nevertheless, some participants described efforts by their facilities to socially distance, such as having people "sleep opposite of each other like head-to-toe" or by maintaining an empty bed between the dormitory beds. Others described the guards as trying to socially distance by staying "inside the bubble,"[32] though at times participants also perceived these guards as less inclined to intervene in violent incidents to avoid contracting the virus.

Others reported infectious disease hardening strategies, which included limiting access to common areas such as the library, cafeteria, gym, or "the yard."[33] These strategies also included stopping visitations and engaging in lockdowns—often resulting in boredom and isolation, and, ultimately, more violence.

Participants reported that in some instances, the jails engaged in strategies that defied social distancing recommendations and directly placed people at risk of exposure. For example, they reported that staff *increased* the number of people in some dorms, despite the dormitories already being overcrowded.

> They put I think fifty-six girls in each dorm. Why would they put sixty or fifty, sixty people altogether and they know there is Corona out there? There was like twelve people in this dorm, twenty in this one, thirty-two in this one. So, they start … you know, like, doubling people up.

Overcrowding the dormitories and transferring COVID positive people to new units and dormitories angered many and led to distrust of management's intentions—some believed that Rikers staff were experimenting with the virus on those incarcerated. Others were angered by the overcrowding of dormitories because it led to more competition for showers and toilets, further escalating tensions and violence. Recognizing that many were resistant to new transfers to their unit, some participants reported that guards resorted to moving people into new units in the middle of the night as people slept.

## Mixed Implementation of Medical Assistance

Staff provided medical attention to those with possible COVID-19 symptoms or positive tests. One participant described a correctional officer as "really nice," because she allowed her to see a doctor whenever she needed. Another participant, a cancer survivor, shared being transferred to his home in an ambulance when he was released from Rikers.

However, many participants offered less favorable depictions concerning medical attention, as wait times could take up to several hours and multiple people were placed in a cell while waiting—increasing their risk of infection. One participant recounted serving as a translator for a sick person and being placed in a waiting cell with others who were potentially sick. Another frustratingly explained the medical process as follows: "You sign up for sick call. So, you sign the paper and then they call you, you go to the medical and then you sit in a cell for about six hours before you even see the doctor."

One participant described instances in which pleas for help were ignored despite being "feverish" and, as another explained, "begging them for almost a whole week." Another participant vividly recounted an incident in which people were visibly sick, but staff did not provide them with necessary medical assistance.

> There was two incidents where somebody had all the symptoms and you can physically see that that person was sick. You can see sweat coming off this face, coughing, he would cry out that his body was in pain, and all that they would be able to do is tell them to go back into his cell.

# How Did People Keep Themselves Safe?

## Personal Efforts to Stay Safe

We asked participants to describe how they and others who were incarcerated personally kept safe as the COVID-19 virus began to spread at the onset of the pandemic.

Participants we interviewed reported developing makeshift masks using pillowcases, towels, and bandanas. One participant stated, "we tied our shirts around our necks and around our mouths or nose and our eyes." Some reported washing their hands more frequently with soap, whereas others sought to boost their immunity by exercising—sometimes in the bathroom to have space from others.

To socially distance, some would forego their medication, medical treatment, or other responsibilities such as working in their facility. Additionally, others reported avoiding common areas or only visiting common areas when they were less crowded. Still others engaged in what appeared to be self-isolating measures such as "staying in bed most of the time." One participant reported that court dates were postponed to avoid potential exposure: "If we had a trial … we just didn't go to trial because people had COVID down there."

## Working Together to Stay Safe

Some of the people incarcerated at Rikers engaged in collaborative efforts to stay safe. Sometimes this included cleaning more or creating cleaning routines that included the teamwork of multiple people. As one person stated:

> The people in the facility…all of us, we all used to take turns in cleaning because it was like a little house group, like a family. We will come in there and when they come to check, it was always clean. We used to mop. We used to help each other out.

Some reported that those detained regulated the transfer of new people into their unit. For example, as people were transferred to a new unit by correction officers, those already living there would ask pointed questions intended to screen for COVID-19 exposure to assess where the new people were coming from, whether they had been around sick people, and if they had been tested and received their results.

At times, regulating entry to units became confrontational, such as when people worked together to barricade the doors to prevent new transfers from entering, or when people

handed “beatdowns” to those who had “sniffles” so that the guards would remove them from the unit. One person stated the following:

> We will be getting a new inmate into our dorm every other day and we really didn’t like it. We were so opposed to it that at the end of the very last week and a half, we actually stood by the door, not willing to let any of the new people who got sentenced to come into our dorm...Everybody was just at the door, holding the door and not let anybody new to come in.

## A Hunger Strike

Finally, some people in Rikers held a hunger strike to protest Rikers’ worsening conditions, minimal safety measures, and limited communication about COVID-19. The hunger strike was effective in drawing the attention of higher-level officials and medical personnel within the facilities and obtaining needed protective equipment. One participant described arranging a hunger strike and having their demands met.

> Everybody was freaking out. We decided to do a hunger strike … Correctional officers weren’t telling us what’s going on…everybody teamed up…The hunger strike went on for about a day and a half, I guess before we had a captain come and discuss with us. He had to bring in a doctor to explain to us what was going on. At that point, masks were distributed to each inmate.

Chapter 3

# Implementing the Early Release Program

This chapter documents the Early Release (6-A) Program model and how it was implemented according to staff and participants.

## A Swift Rollout

Described in Chapter 1, New York City officials worked to implement the Early Release Program in a matter of days to minimize people's elevated risk of contracting COVID-19 if they continued to be incarcerated. Approved by Mayor Bill de Blasio, staff at the Mayor's Office of Criminal Justice (MOCJ) and Department of Correction (DOC) led the program. The unprecedented need for a swift rollout led MOCJ to call upon and leverage the city's three preexisting pretrial supervised release providers to serve the participants.[34]

MOCJ met with the envisioned program providers late on Friday afternoon March 20, 2020 to inform them of the concept. The providers and MOCJ jointly designed the program, exchanging draft policy documents in rapid sequence over the days that followed.

Shortly after 1:00 a.m. early Monday morning on March 23, DOC released the first group of individuals to finish out the remainder of their sentence in the community—the program was created in two days.

## Transitioning Out of Rikers

### Release Criteria

People convicted and sentenced to city jail time (less than one year) were eligible to be released under state Correction Law 6-A, which provides for early work release.

Of the approximately 550 people serving a jail sentence at the time, MOCJ, DOC, and the District Attorney's Office in each of the city's five boroughs compiled lists of eligible individuals who they also deemed appropriate for the program, based on several criteria

including medical vulnerabilities, remaining time left on their sentence (those with less time were prioritized), and criminal history. DOC made the final release decision, and ultimately 296 people were released to the program over the course of one week. It should be noted that at the onset of the pandemic, additional individuals were released from jail due to efforts targeting people held on parole violations and in response to writs submitted by individual defense attorneys;[35] however, this study is limited to the experiences of the work release participants only.

Early Release Program participants were unsystematically assigned amongst the five borough-based programs. The Center for Court Innovation operated three of the programs, while CASES and the NYC Criminal Justice Agency each operated one. Since all supervision would be remote, participants were *not* generally assigned based on matching people's arrest or home borough to the provider's usual borough of operations.

Although providers originally expected to only receive individuals with fewer than 90 days left on their sentence, this was not the case for more than 40% of the 296 releasees.

## The Release Process

Providers experienced a shift between two release protocols: 1) an initial release process liaised by a MOCJ representative, and 2) a subsequent process that was liaised by DOC.

**First Releases Facilitated by MOCJ.** The first group of about a dozen releases met a MOCJ representative at the Rikers jail complex around 1:00 a.m. on March 23. The representative assigned and connected each participant to one of the service providers by phone before discharge. On that initial phone call, supervisors from the supervising agencies provided information about the program, briefly explained program requirements, and collected basic intake data (e.g., contact information, where they were staying, contact information for collateral contacts, birthdate, and any immediate needs or medical conditions). Those who self-reported that they did not have access to a phone received one from the MOCJ representative, and those who self-reported that they did not have a safe place to stay were bused directly to a hotel with which MOCJ had contracted (see below for further information about the hotel arrangement). All participants received and signed discharge paperwork.

**Subsequent Releases Conducted by DOC Only.** Subsequent releases were conducted by DOC staff and not liaised by MOCJ. Before leaving the jail complex, participants met

with a DOC staff member, who gave them a one-page document with contact information for their assigned provider organization and instructions to contact program staff as soon as they were released.[36] In some cases, DOC also provided participants with a phone or drove them to a hotel.

The release process conducted by DOC staff had two key adverse impacts:

1. **Participants were responsible for making initial contact with providers:** Participants became responsible for reaching out to program staff themselves upon release. Calls from newly released participants came in at all hours of the night, with staff on standby around the clock to receive any initial contact. If a participant did not reach out to staff within 24 hours, the staff would begin outreach to the participant and collateral contacts (e.g., friends, family) who may know their whereabouts. Providers had access to participant contact information from disparate sources, including DOC discharge paperwork and a master spreadsheet compiled by MOCJ, which listed provider assignment and, where available, contact information collected when participants were first arraigned in court—potentially many months earlier at the outset of their criminal case. However, the contact information from these sources was often incomplete, inaccurate, or out of date by the time of program entry. Therefore, a small number of participants ($N$ = 28) were never in contact with the program and immediately fell out of compliance.

2. **Participants gained minimal knowledge of the program upon release:** Program staff we interviewed reported that DOC provided little information about the program or why participants had been released. Although participants signed DOC discharge paperwork explaining the program in writing, many participants did not fully understand its rules or requirements. According to program staff, some participants thought they were in a job training program or reentry program (in line with the "work release" terminology in the 6-A release statute, which DOC staff may have used in their brief explanations). Others knew there would be some form of supervision involved but were not aware of the extent, such as thinking that the check-ins occurred monthly, when in fact they were daily. Many knew almost nothing: just that they were given a phone number to call but did not know who they were calling or why.

## Perceptions of the Release Process

Participant and staff perceptions of the release process largely mirrored each other (the first set of releases facilitated by MOCJ potentially notwithstanding).

**Released with Little Warning.** Participants typically reported having little advance warning prior to their release. Some were told the day before, but others recounted being unexpectedly called by guards and told to "pack up" while in the middle of their daily routine or while sleeping. One provider shared that a participant was in such a rush that he did not

remember to pack his underwear, and his case manager had to mail some to him, post-release. Program staff reported that participants found the city deserted and changed since the onset of COVID-19, making navigating release particularly difficult for those without a phone or place to stay (discussed more below).

**Inadequate Discharge Planning.** MOCJ told the providers that each participant would be paired with a DOC discharge planner, and MOCJ staff confirmed that DOC discharge planning staff conducted a full discharge process for the second group of releases. However, it was not clear what the discharge process encompassed. Nearly all staff we spoke to from the Early Release Program provider organizations said that most participants did not have a discharge planner. This may reflect a difference in definitions of a "discharge planner." It appears that DOC staff implementing the discharge process took a relatively minimalist approach, potentially contributing to participants' lack of information.

# Daily Check-ins

Participants had to check in daily (including weekends and holidays) with a designated case manager from their assigned program. All check-ins were conducted remotely.

## First Check-in

The first check-in typically occurred within 24 hours of initial staff contact. Most providers finished the program intake process during the first check-in, which included a needs assessment. Providers also began to address participants' immediate and pressing needs, such as retrieving any belongings from DOC.

## Subsequent Check-ins

**Frequency.** Initially, providers proposed a check-in frequency of 2-3 times per week as the official program protocol; however, once participants were released, DOC mandated daily check-ins.

Nearly all provider staff, and some participants, reported that daily check-ins ultimately seemed pro forma and unnecessary, especially for those participants who were doing well and for those with full-time jobs. For the latter group, scheduling daily check-ins during the workday seemed to potentially hinder reintegration. Thirty-three participants remained in the program for more than six months and were still required to check-in every day.

Many staff advocated introducing a step-down protocol for participants who maintained compliance for an extended period. In early August 2020, the providers and MOCJ reached agreement on a new policy where all participants still active and in-compliance would receive an immediate check-in downgrade to three days per week and a second downgrade to one day per week in response to an additional two months of compliance. The policy included a provision for reverting to daily check-ins upon any report of noncompliance. DOC vetoed the policy, however, and it was not implemented.[37]

In interviews, some participants expressed frustration with the frequency of required check-ins to maintain compliance as the conversations often became mundane.

**Initiating Check-ins.** Some staff reached out to participants daily while other staff expected participants to reach out to them. However, all providers reported flexibility and would often reach out via text message or phone call if the participants did not call in first. Most staff had set times or blocks of time scheduled for their check-ins. These were set to be convenient for participants' schedules. Nearly all standard check-ins occurred via phone. However, some staff and provider organizations allowed text messages or voicemails in extenuating circumstances (e.g., work schedules that did not allow them to call, contacting from the hospital). These typically had to be received prior to 9:00 a.m. the following day.

**Participant-Driven Content and Duration.** Participants and staff described participant needs as generally guiding the content and duration of the check-ins as opposed to pre-established topic areas—outside of the standard wellness check—or length. Some calls were brief. For other participants, daily phone sessions could last 30 to 40 minutes and consisted of discussing needs, providing counseling, and connecting participants to services. One participant described the support provided during the check-ins as follows:

> [We talk] Just about anything, we talk about my family, how I felt beneath. If I needed anything, they would always send me resources, information for all kinds of programs, and my experience in here on Rikers.

**Positive Relationship-Building.** Despite the brevity of the check-ins, many participants developed a positive rapport with their case manager and described them as very accessible. Some stated that the case managers were "amazing," "nice," "polite," and "flexible," or that they felt comfortable with their case manager to the point that they "told them everything." One participant described establishing a positive connection with her case manager at a time when she had lost the trust and support of her family ("She was there more than my family

sometimes."). Others emphasized their case manager's effective listening skills. As one person described:

> I mean, she was amazing. She was really there for me when I, you know, …We used to talk when I feel down, when I was sad, and she was a listener. She gave me that advice. I mean, I think that she was amazing. She was an amazing person, very, very kind.

Case managers also felt strongly about building and maintaining good rapport with their participants and, therefore, wanted to be consistent in *with whom* participants spoke. However, maintaining this consistency was difficult because check-ins were required seven days a week. Some case managers worked seven days a week, at least initially. Some sites had supervisors or alternate staff covering on weekends. One site tried to create consistency by assigning the same alternate staff to a specific case every weekend.

**Anxiety Surrounding Missed Check-ins.** As above, some staff expressed distress around the logistics of the program's daily requirements, citing the potential consequences of reporting participant non-compliance. Daily check-ins caused anxiety for some participants. Those who found full-time work reported having a difficult time trying to schedule their daily phone call during working hours. One hospitalized participant made sure to continue texting his case manager every day until the day he passed away in the hospital.

**Checking in with Multiple Agencies.** Although the three provider agencies were the main organizations charged with ensuring compliance, some participants reported also having daily or regular check-ins with other organizations. For example, a small number of participants were on parole and had regular check-ins with parole officers. And a small number fitted with an electronic monitor bracelet had regular check-ins with the Department of Probation, which provided the electronic monitors. This meant some participants had to do additional daily check-ins to maintain compliance. Some staff expressed their frustration with the redundancy of these duplicative check-in requirements and shared that they had participants who were similarly frustrated.

## Phone Distribution to Facilitate Check-ins

Given its importance for maintaining compliance, MOCJ staff indicated that they provided a phone to all participants who reported needing one. Despite the barriers described below, program data indicates that either MOCJ or the providers ultimately distributed a total of nearly 170 phones to participants needing them.[38]

According to staff who we interviewed, many participants who ultimately required phones did not receive them at first and relied on friends and family, hotel phones, or free New York City public phones. Program staff stated that participants without phones who were also homeless or living in shelters were the hardest to reach. They shared the story of a participant who called the assigned provider from a LinkNYC phone after he was released, after which the provider was unable to get in touch with him again.

Additionally, program staff said that some participants who *did* receive phones had problems figuring out how to activate and operate them. The phones originally came with 60 paid minutes available, but providers reported that some participants were not aware of this limit and quickly ran out of minutes. One provider pointed out that it was easy to quickly use up an hour of minutes when a person was unexpectedly released from jail in the middle of the night and needed to arrange where to go. Over time, the providers reported distributing more phones to those in need and figuring out a way to add minutes to the phones as needed. Providers reported going out of their way to get phones to participants, including mailing them, holding drop-in hours, and even dropping them off at a participant's home in one instance.

According to staff, a last important barrier was a *lack of internet access*.[39] For participants without a smartphone or laptop, functioning in a remote world was difficult. Job and benefits applications had moved entirely online because of the pandemic, with no in-person alternative. At least one case manager reported that this created a dependent relationship, where anytime participants wanted to apply for a job or benefits, they had to share their personal information with their case manager over the phone, who filled out the online application for them.

# Connecting with Community-Based Services

Sometimes, but not always, the name of a reentry provider was indicated on the DOC discharge paperwork. It was unclear to Early Release providers whether these providers worked with the participant while they were at Rikers or if the participant was assigned to work with them after release. Early Release providers reported that the reentry providers would sometimes reach out to them trying to get in touch with participants.

In general, drawing on existing relationships (and forging new ones) with community-based organizations throughout the city, the providers connected participants with a wide range of resources and services.

## Common Participant Needs

According to available needs assessment data reported by providers, participants were most commonly in need of employment and housing services.

## Housing Assistance

With COVID-19 spreading quickly in group settings and given the potential exposure participants faced at Rikers Island, it was especially important for participants to have a place to isolate, both for their own safety and the safety of others.

**Use of Hotels.** MOCJ indicated that they provided rooms in New York City hotels to "everyone who reported that they did not have a safe place to stay." These participants—over 40 of them—were bused directly from Rikers Island to the hotel. Once at the hotel, program staff identified some participants for services from available housing specialists at local social service agencies. Due to the city's COVID-19 lockdown, hotel residents received water and meals, although provider staff reported that access to these necessities was inconsistent at first. Over the course of the program and depending on their sentence end date, some participants were transferred twice to new hotels, staying at a total of three hotels.

**Perceptions of Hotels.** Experiences were mixed across those we interviewed who stayed at hotels. Some described their experience favorably, as they received a safe place to stay as well as meals. Others described the hotels as unsafe due to weapons and drugs being brought into them and people getting "high." One participant described the hotel experience as akin to being incarcerated, or "Rikers Island two" with the only difference being that "You can leave the hotel." Another participant reported feeling unsafe, as staff members would come into her room without knocking, even when she was "not dressed" to check on her. Some participants also expressed frustration about the transfers between hotels, which sometimes came without forewarning. Program staff echoed this response, noting that the transfers created instability and could make it more difficult to connect participants with community-based resources in near proximity. The providers also knew that the hotels were only a temporary solution for their participants' lack of access to stable housing and reported a lack of clarity over how long MOCJ would sustain the hotel option.

**Lack of Safe Housing for Other Participants.** According to staff, some participants not initially linked to a hotel lacked "a safe place to stay." These individuals had to secure and transport themselves to shelter on their own after being dropped off at a central location.

Staff added that for other participants, safe housing with family or friends sometimes fell through. In one example shared by a staff member, a landlord did not let an individual return to their expected housing because they thought the participant may have caught COVID-19 at Rikers and the participant was not specifically listed on the lease. As in these examples, significant housing needs could sometimes emerge soon *after* the initial release date, leading participants to be homeless until the program secured a hotel room.

## Additional Linkages to Resources and Services

When needed, providers could connect participants to employment services, substance use and/or mental health treatment, methadone access, medication and medical treatment, health insurance, benefits (Medicaid, unemployment, food stamps), and vital documents (driver's license, and IDNYC). As of six months after program launch, previous research indicates that providers made more than 400 referrals for additional services.[40] Providers also assisted participants with immediate necessities such as food, clothing, a MetroCard, and PPE.

However, providers communicated two overarching barriers that made connecting participants to services uniquely challenging.

1. **Participants were located all over New York City:** Each of the five programs (CASES, CJA, and the three CCI programs) served participants living across all five New York City boroughs, yet the programs had previously provided pretrial supervision in only one borough and initially lacked knowledge of local services in many participants' communities. Program staff had to quickly learn about new services, assess the organizations providing them for reputability, and establish new relationships with those organizations.

2. **Accessing services was difficult at the onset of COVID-19:** Providers discussed specific difficulties connecting participants to resources at the onset of the pandemic.

    - **Closures:** Many services and government institutions were closed at the onset of the pandemic, including the Department of Motor Vehicles, social security offices, IDNYC offices, some shelters, employment services, transportation to methadone clinics, and public assistance agencies. Program staff also reported that some participants had trouble connecting to employment opportunities and supports.

    - **Intake freezes and their impact on medical crises:** Many inpatient services, such as for substance use and mental health treatment, froze intake to stop COVID-19 from spreading in their facilities. As a result, the early release providers reported having to increase their reliance on outpatient services and methadone treatment. Providers also had to decide whether medical, mental health, and substance use crises necessitated

participants going to the emergency room, since hospitals were at capacity with COVID-19 patients.

- **Going remote:** When the Early Release Program was launched, community-based service agencies across the city were amidst the process of transitioning to a remote service delivery model; with so many agencies in flux, it was difficult for program providers to connect participants to supplemental services.

- **Overwhelmed:** Some community-based agencies were overwhelmed by the number of individuals needing assistance at the outset of the pandemic. For example, some food pantries were running low on food.

# Service Coordination with Jail Staff

## Coordination with the Department of Correction

Providers reported that in most cases, when they had questions regarding a participant's time at Rikers, there was no DOC point person available—except regarding medical conditions (as noted just below). For instance, providers reported that some participants asked about accessing certificates they had earned while incarcerated (i.e., GED, barber and food handling certificates) and about money that had been held in their Rikers commissary accounts. Lacking a DOC point of contact, providers struggled to help participants with these requests.

## Coordination with Correctional Health Services

Providers reported that one particularly helpful resource was the Correctional Health Services hotline set up for anyone who had been receiving medical care at Rikers Island. This hotline made it possible for providers to help participants find out whether their insurance and Medicare applications were submitted, receive refills on medications, access their Rikers Island medical records, and connect to methadone programs.

# Compliance and Re-Arrest

The results of participant interviews suggest that they understood the program's core compliance expectations: calling into the program daily (e.g., "call them every day") and staying out of trouble (e.g., "stay away from anybody who is drinking, anybody that is smoking"). Most of those interviewed also seemed to understand that violating the rules

could result in re-incarceration.[41] As one participant put it: "You have to call every day in and if you won't call in two or three times, then you will have to return back to Rikers."

## Noncompliance Protocols

**Re-Arrest.** Program policies required providers to immediately notify MOCJ and DOC of any new arrest that occurred while under supervision. However, case managers reported not always knowing when a new arrest had occurred.[42]

**Supervision Noncompliance.** If a participant missed a daily check-in, providers had to initiate extensive outreach to relatives and other collateral contacts to reach the participant. After the second day of no contact, providers had to report noncompliance in a daily compliance report submitted to MOCJ by 9:00 a.m. the next morning. In turn, MOCJ then shared the daily compliance reports with DOC. MOCJ and the providers developed this reporting protocol to allow at least 24 hours for re-engagement following a missed check-in before notifying DOC of noncompliance. Program staff who were interviewed reported that they were usually able to re-engage with participants and bring them back into compliance prior to report submission. However, they also reported being unable to contact some participants for long periods of time; in those cases, providers would continue to reach out to participants every day for two weeks and every other day for two more weeks, at a minimum.[43]

**Additional Noncompliance Notification.** Staff also described a change in protocol initiated by DOC around one month after program start. In addition to the daily compliance reporting protocols described above, DOC required providers to send a program "noncompliance notification letter"—via certified mail—to participants who were out of compliance either due to a re-arrest or after two consecutive days of non-engagement. The letter stated that due to the noncompliance, the participant could be returned to custody or placed on electronic monitoring for the remainder of their sentence. If a participant did not contact their case manager soon after program sent the letter, DOC then required providers to submit a separate (and also newly developed) "notice of violation" document to DOC and MOCJ, intended to trigger an official response from DOC.

## Reasons for Noncompliance

When asked to describe reasons for noncompliance, nearly all program staff mentioned phone-related challenges, including lost phones, broken phones, dying batteries, and

especially, phones running out of minutes. Providers also mentioned that substance use and psychiatric needs could impact some participants' compliance, as could a conflict between a participant's job hours and their check-in schedule. In at least four instances, staff later discovered that a "noncompliant" participant was hospitalized or even sometimes had passed away.

### Response to Noncompliance

Providers reported that DOC responded inconsistently to re-arrest and supervision noncompliance. In some instances, DOC investigators would search for a participant who had fallen out of compliance. Sometimes DOC would take them back into custody; sometimes the participant received an electronic monitoring bracelet; and at other times DOC allowed participants to stay in the program without new conditions.

Providers reported that DOC's variable responses appeared arbitrary. In one instance, a provider reported the case of a participant who was re-arrested and released on his own recognizance at arraignment. The participant notified his case manager himself, but when DOC staff found out they wanted to re-incarcerate him; the case manager ended up in the position of having to encourage the client to turn himself in. The participant did this, but the case manager worried that this type of event jeopardizes the trust they aim to build with participants. In another example, a participant was homeless and did not initially have a phone, but became compliant once staff secured both a phone and hotel room for them. However, DOC decided to fit him with an electronic monitor due to his previous noncompliance. He ultimately fell back out of compliance and was re-incarcerated. In a third example, a participant received an ankle monitor after being issued a Desk Appearance Ticket for a new minor charge. Yet, in other instances, re-arrests did not result in any response at all.

## Program Discharge

When a participant had reached their original sentence end date, the provider would submit a discharge notice to MOCJ and DOC. In some instances, participants disagreed with the sentence end date that providers had on file from DOC. Some participants' claims of having an earlier end date were confirmed after the staff reconciled any discrepancies with the aid of MOCJ. There were also a few individuals initially assigned to the program whose sentence end dates were on or within a day or two of the date of their release from Rikers; MOCJ

ultimately determined these individuals were not truly intended to be participants. (They are not counted towards the participant total of 296.)

Leading up to discharge, some case managers reported preparing with the participants for subsequent success and stability. In rare instances, case managers reported keeping the lines of communication open with a participant after discharge, such as when the case manager was trying to help the participant receive documentation (e.g., a social security card).

# Overall Staff and Participant Perceptions

Overall, staff relayed that they believed the program was valuable and benefited the participants, despite its hurried and at times problematic rollout.

For their part, participants held a range of perceptions. Those who responded positively described the program as providing a general sense of security or "peace of mind." Others reported that the program helped them to stay focused—in part due to the frequency of check-ins—or as one person stated, "they kept my mind on the straight, making sure that I didn't do anything that would put me back in the wrong position." Others pointed to the program's ability to connect them to needed resources (e.g., health insurance). Still others generalized that the program helped them to shift their overall outlook (e.g., "The program helped me open my eyes … that there are bigger things than just me.") or change their life entirely (e.g., "My social worker was the best thing that happened to me in my life. She's a godsend, she's a blessing…. She really helped me change my life.").

Other participants, however, did not describe the program as impactful. In some instances, and as described earlier in this chapter, New York City's shelter-in-place orders limited the program's impact by hindering people's ability to connect with needed supports and resources (e.g., "It is not [the program's] fault because once COVID happened, a lot of companies stopped hiring and all that"). Others clarified that because they were quarantining, they would not have been re-arrested anyway—even if they did not have a program with which they had to check-in. Others believed that the program was impactful for *other*s or those "who actually needed it," but clarified that they already had necessary supports in place.

## Chapter 4
# Conclusions and Recommendations

In this chapter we briefly summarize the overarching findings and offer a series of recommendations should New York City or other jurisdictions respectively sustain or replicate the model.

## Firsthand Accounts of Confinement

The overarching portrayal of Rikers Island at the beginning of the COVID-19 pandemic was one of desperation, intensified by the realities of being incarcerated and fears for one's personal safety and the safety of loved ones. Amid these concerns, firsthand accounts point to several concrete shortcomings, including a lack of systematic information provided to incarcerated people about the pandemic; minimal distribution of masks (though in a context of limited federal guidance at the onset of the pandemic); and a practice of at times increasing the number of people in dormitory settings, despite its effect of exacerbating the jails' lack of social distancing. Though qualified as participants' recollections months after their experience at Rikers, participants' narratives reflect an overarching theme of disregard toward people held in jail, manifested in the lack of responsiveness in terms of information, safety precautions, and medical attention at a time when infection rates were rapidly accelerating.

## The Early Release Program

The Early Release (6-A) Program provided the opportunity for nearly 300 sentenced individuals experiencing worsening conditions at Rikers Island to leave the jails, and instead, check in daily with a designated supervision and service provider. The program materialized over the course of a weekend, as city officials and three nonprofit providers scrambled to get people out of the jails quickly. When first released, many participants knew little about the program, but program staff quickly explained it and set up the requisite daily check-ins.

Although service provision was difficult at the start of the pandemic, the staff relayed the significant efforts they took to help participants find the services they needed. For its part, the Mayor's Office of Criminal Justice (MOCJ) secured hotel rooms for more than 40 participants, and either MOCJ or the providers distributed almost 170 phones to keep people

safe and to allow them to engage in check-ins. However, the Department of Correction imposed inconsistent consequences for noncompliance (either a re-arrest or report of noncompliance with check-ins). To no avail with the DOC leadership in place at the time, program staff and participants alike—as well as staff at MOCJ—sought a relaxing of daily check-ins for people who had proven their ability to maintain compliance over time.

# Recommendations

## Recommendations for Criminal Justice Leaders

1. ***Pursue safe decarceration strategies.*** Especially as the pandemic persists alongside recently and widely reported inhumane conditions in New York City jails (as well as many jails and prisons, nationally) as of the end of 2021, health and safety strategies can begin by reducing the numbers incarcerated. The city has already accomplished much with its sentenced population, which declined from 550 at the outset of the pandemic to close to 210 as of this report's publication. Besides reintroducing the Early Release Program for the remaining people serving city sentences (pending results from the current research team's forthcoming impact evaluation), judges locally and nationally could reduce their reliance on unaffordable bail and curtail incarceration on pending parole violations, especially for technical (non-criminal) matters or new nonviolent accusations.[44] Jailing fewer people could offer greater opportunities to practice social distancing within the jails and, in turn, to curtail the spread of COVID-19 both in jail and in the communities to which people return when they are inevitably released. In this regard, it is worth noting that as of February 11, 2022, 1,133 people held in New York City jails had a COVID-19 infection at some point during their incarceration.[45]

2. ***Sustain, replicate, and evaluate the program.*** Given the widely documented harms of incarceration, including past research that sentencing people in New York City and nationwide to less than a year of jail time *increases* recidivism,[46] the program merits replication—even when the pandemic is over—as an ongoing jail reduction strategy. Sustaining the program reduces exposure to the criminogenic effects of incarceration, ultimately serving to increase community safety. If results from the forthcoming impact study are less promising than hypothesized, or if the program promotes public safety only for some but not other sub-populations, plans can be revised accordingly. Beyond the Early Release Program per se, our research also underscored the need for carceral systems to have a comprehensive release protocol on-hand for health-related or other emergencies requiring swift decarceration—including a thought-out and effective discharge protocol.

## Recommendations for Early Release Program Implementation

## The Early Release Program

3. ***Maintain nonprofit providers to perform supervision.*** Interestingly, themes and findings in our interviews with participants and program staff repeatedly converged—a fact that underscores the capacity of staff to serve participants, as well as empathize with their experiences. By valuing the skill and outlook of social workers and case managers at local nonprofits to provide supervision over a law enforcement model (as one might find in a traditional probation or parole agency), the Early Release Program and the well-regarded Supervised Release Program on which it is based may be able to both enhance public safety and perceptions of fairness in our most vulnerable communities—disproportionately composed of Black and Brown people. Research confirms that services are more effective when conducted according to key principles of positive human interaction, which are especially likely to be found in community-based service agencies as a natural result of how their staff tend to be trained.[47]

4. ***Formalize the program's structure and protocols in collaboration with all stakeholders.*** With more time for planning, future program rollouts should include a more comprehensive set of rules and protocols. These would include discharge planning and the distribution of clear and accurate information by assigned DOC staff to participants; and reliable procedures for connecting participants with supervision staff immediately after release (preferably including the transfer of discharge paperwork to providers in advance of release). These protocols should be documented in writing—preferably through a single program manual created for policymakers and staff—and distributed to participants via readable one- or two-page summaries translated into multiple languages. Clear "point people" representing each agency should be identified as a first step in effective planning. They could aim to create an interagency working group to make decisions quickly, set up information-sharing systems, and facilitate consensus on key policies.

5. ***Have program staff present to facilitate discharge.*** We found that when facilitated by a MOCJ staff member, initial releases featured better information sharing with participants and a more reliable handoff to program staff. Under a sustained or replicated model, program providers themselves could play this role, greeting and orienting future participants in-person during the discharge process.

6. ***Connect more participants with phones and housing.*** Despite significant efforts in this direction, not all individuals needing a phone or housing receiving them at the point of discharge. (For example, some people ostensibly had places to live that quickly proved to be unsafe or unavailable, in practice.) Questions asked during discharge planning might probe more deeply, for example asking whether people have their own cell phone for daily communication with a case manager and whether they have a place to stay where their name is on the lease or mortgage. The program could also consider

simply disseminating phones to all participants at point of release. Program policies should also facilitate rapid linkages to a place to live should people lose housing they genuinely believed would exist.

7. ***Create graduated supervision levels.*** As reported in interviews, required daily supervision often became pro forma and frustrated many staff and participants alike. When the program was brought back on an extremely small scale in Fall 2021, the DOC allowed a step-down check-in schedule. Any future iterations of the program should continue to allow a step-down approach for participants who maintain compliance and are to be supervised for an extended period. This will help support them in building a life outside of jail (employment, childcare, etc.). However, should some participants desire the daily support of their case manager, it should be provided but not required.

## Recommendations for Correctional Agencies

8. ***Effectively disseminate health and safety information.*** With the benefit of time since the onset of COVID-19, jail officials can ensure that both correction officers and those incarcerated receive important health information (e.g., about safety precautions, testing, and available health services), and can institute appropriate mechanisms to solicit questions. Recognizing that most participants learned about COVID-19 by watching TV, internal public service announcements could be screened on televisions in each facility. Information dissemination should also include updates about protocols to maintain safety.

9. ***Review and, where necessary, improve COVID-19 prevention in the jails.*** Both participants' stories within the current study and news accounts continuing to emerge months into the pandemic[48] pointed to a lack of best practices to mitigate viral spread in New York City jails—though it is also true that the participants we interviewed were in jail during the earliest days of the pandemic, before clear federal guidance existed regarding appropriate health and safety practices. Moving forward, strategies could include timely access to testing as well as prompt distribution of test results; vaccine access; diligent PPE distribution; enforcement of mask-wearing by staff; and thoughtful decision-making regarding the introduction of people into jail units that may currently be free of positive COVID-19 cases. The pandemic has also precipitated an increased need for people in jail to receive timely access to medical personnel, yet in New York City, recent news accounts have pointed to accelerated bottlenecks in scheduling and bringing people to medical appointments.[49]

# The Role of Political Will in an Emergency

One of the fundamental lessons learned from this study is the catalyzing effect of political will. News accounts and popular impressions often portray government agencies as slow-moving bureaucracies, containing many stakeholders, moving parts, and battles over control and credit. But the unified, fast response to conditions on Rikers Island at the onset of the

COVID-19 emergency shows how much government can accomplish when the necessary commitment and compassion for people's wellbeing exists. Despite no previous roadmap for the Early Release Program's policies and procedures, the sudden need to rely on remote in lieu of in-person supervision, and limited access to many essential services at the onset of the pandemic, city officials implemented a program removing almost 300 people from dangerous jail conditions *in a matter of days*. In 2022 and beyond, rekindling the same will to respond humanely can promote health and safety for additional people deprived of liberty, whose lives depend on the mercy of a powerful government.

# Endnotes

[1] Rempel., M. (2020). *Covid-19 and the New York City Jail Population*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/publications/nycjails-covid. . The milestone was celebrated in a New York City press release in April 2020: "City Jail Population Drops Below 4,000 for First Time Since 1946." Available at: https://www1.nyc.gov/office-of-the-mayor/news/278-20/city-jail-population-drops-below-4-000-first-time-since-1946.

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[7] For ten participants released into the Early Release Program in September or December 2021, a supervision step-down approach was incorporated in response to continued compliance. Participants start with three check-ins during the first two weeks, moving to two check-ins during weeks three through 12. After 12 weeks of continued program compliance, participants may be reduced to one required check-in per week for the remainder of their sentence.

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[9] See endnote 7.

[10] World Health Organization. (2021). *WHO Coronavirus (COVID-19) Dashboard.* Available at: https://covid19.who.int/.

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[17] 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. COVID-19 cases reported by the Board of Correction for April 18, 2020, one month after the first case was detected (363 people held and 848 correction officers), included only those held in jail on that date. People infected and released prior to April 18 were excluded. However, the staff number is cumulative, regardless of updated employment or infection status.

[18] Rempel., M. (2020), Op Cit.

[19] IBID.

[20] In full disclosure, the authors of this report all worked for the Center for Court Innovation at the time of program implementation. Three were involved in both model planning and conducting early research.

[21] Pooler, T. & Wada, C. (2020), Op Cit.

[22] On rare occasions, whether due to serving multiple sentences on different cases or other unique reasons, individuals may serve a sentence in jail that runs for longer than one year.

[23] IBID.

[24] IBID.

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[29] See, *e.g.*, Pazmino, G. (September 30, 2021). "De Blasio Has the Power to Release More Rikers Detainees. Here's Why He Won't Do It." *Spectrum News NY1*. Available at: https://www.ny1.com/nyc/all-boroughs/politics/2021/10/01/rikers-island-nyc-crisis-bill-de-blasio-not-releasing-detainees-why; and The Legal Aid Society. (September 16, 2021). "Mayor's Refusal to Decarcerate Will Cost Lives." Available at: https://legalaidnyc.org/news/mayor-refusal-to-decarcerate-will-cost-lives/.

[30] The NYC Department of Correction operates three jails off Rikers Island.

[31] Centers for Disease Control (CDC) mask wearing guidelines began April 3, 2020.

[32] The "bubble" refers to a correctional facility's command watch post station.

[33] Although these strategies appeared to be implemented to contain the spread of the virus, some participants reported that these restrictions could have also resulted from staffing shortages.

[34] For a research summary on the city's supervised release program, see Pooler, T. & Wada, C. (2021). *Supervised Release Five Years Later*. New York, NY: CASES, Center for Court Innovation, and the NYC Criminal Justice Agency. Available at: https://www.courtinnovation.org/publications/supervised-release-five-years-later.

[35] Rempel., M. (2020), Op Cit.

[36] For this purpose, five providers might be assigned, with Bronx Community Solutions, Brooklyn Justice Initiatives, and the Staten Island Justice Center all distinct projects of the Center for Court Innovation.

[37] See endnote 7.

[38] Pooler, T. & Wada, C. (2020), Op Cit.

[39] Originally, providers reported hearing that many participants would receive laptops to support employment searches. However, hardly any staff we interviewed knew of a participant who had received a laptop. Further discussion with supervisors at three of the five Early Release Programs suggested that DOC distributed laptops to a few participants who were released on the first night. However, even among those who received one, participants did not use the laptops for checking in. Providers reported that participants did not receive instructions and did know how to turn the computers on or log-in (e.g., did not know the log-in password).

[40] Pooler, T. & Wada, C. (2020), Op Cit.

[41] Our participant interview sample did not include any of the 13 participants who were re-incarcerated prior to their sentence end date.

[42] Some case managers stated they had access to a daily arrest report that was shared by one of the provider organizations where providers could check if their participants had been re-arrested. A few other case managers stated that they had to search various court data systems or rely on participants self-reporting to confirm re-arrest information.

[43] This protocol changed slightly as the Early Release Program continued to be refined. Providers shared that when the phone number on file was a family member or friend who did not know where the participant was, the friend or family member sometimes became frustrated with these daily outreach calls, and staff would curtail them earlier than the official policies may have indicated.

[44] See, *e.g.*, Rempel, M. (2021), Op Cit.

[45] Board of Correction. (2022). *Board of Correction Weekly COVID-19 Update (February 5-11, 2022).* New York, NY. Available at: https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-02-05-02-11-22.pdf.

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[48] 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-content/uploads/2020/09/LAS-Letter-to-NYC-re-DOC-Staff-Failure-to-Wear-Masks-in-City-Jails-Sept.-4-2020.pdf; 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.

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