



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

**Samuel Hamilton – Reentry Advocate
Brooklyn Defender Services**

Presented before

**New York Senators Luis Sepúlveda and Gustavo Rivera
Ranking Members of the Standing Committee on Crime Victims, Crime and Corrections
and the Senate Health Committee**

**Public Forum on New York State’s Parole Process, Structure of the Parole Board, and
Data Indicating Systemic Bias in Parole Decisions**

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My name is Samuel Hamilton and I am a reentry advocate at Brooklyn Defender Services. Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 35,000 cases involving indigent Brooklyn residents every year. Over the past 22 years, we have represented close to half a million people in criminal cases in Kings County, New York. As part of the reentry team, I provide comprehensive and individualized support for people upon release from prison or jail, and direct advocacy on behalf of our clients while they are incarcerated. BDS’ reentry team works toward promoting self-rehabilitation, a parole system that rewards good behavior, and mitigating lengthy sentences.

I thank New York State Senators Luis Sepúlveda and Gustavo Rivera for allowing me the opportunity to speak on the current parole system in New York State. I also appreciate your continuous dedication to creating a more balanced parole system that is centered on transformative rehabilitation and restorative justice rather than retributive punishment. As a reentry advocate and someone who has experienced the parole process, I now support people as they mitigate the compounding trauma and disruption caused by incarceration. Reentry and pre-entry (assisting people to prepare for life while incarcerated, so that they develop a goal-oriented plan towards rehabilitation and making amends) comes with a host of extreme hardships and so-

called collateral consequences, our team works with individuals to overcome these barriers and successfully self-rehabilitate and reintegrate into their communities.

Recommendations

Brooklyn Defender Services (BDS) strongly urges the New York State Legislature to:

- **Pass S8581 (Hoylman)/A6354A (Weprin)**, which will create a process of release for people who have served at least 15 years of their sentence and are 55 years or older.
- **Pass Presumptive Parole S8346 (Rivera)/A7546 (Weprin)**, which will require the Board of Parole to release a person to community supervision on their second appearance before the Board, unless that person poses an unreasonable and current risk to public safety.
- **Diversify the expertise of individuals who serve on the Parole Board and ensure that it is fully staffed.** Currently, the Board includes many former law enforcement officers and others who perpetuate a retributive criminal legal system. The Board needs members who possess education and expertise (i.e. social workers, mental health practitioners, public defenders, etc.) in all aspects of the criminal legal system and are trained in restorative and transformative justice praxis. Also, only 12 of 19 parole seats are currently filled, which exacerbates the assembly line nature of the process.
- **Divert people accused of technical violations and low-level offenses to alternative programs.** In order to reduce unnecessary re-incarceration and expenses to the State and City, we need to invest in reentry community programs led by those who have been through the system and can provide individual case planning and management. We also need to eliminate carve-outs that continue to isolate higher risk and high need individuals from reform efforts, such as the one for people on parole in Mayor de Blasio's marijuana non-enforcement policy. These exclusions hinder all efforts for successful reintegration into the community. **Responses for low-risk parole violations should be expanded community-based supports.** More frequent visits or accommodations that address the root cause (i.e. figuring out why an individual did not make curfew) rather than a complete disruption to all progress. Resources should be directed towards expanding opportunities (housing, education, jobs, and more), so that we address criminogenic factors. Returning to jail for any amount of time will not address the reason why an individual committed a technical violation such as failing a drug test, or missing an appointment with their parole officer. The issue of technical violations is complex because in some instances the violation can occur in conjunction with a new crime or the violation can be because of arrest for a crime.¹ That being said, individuals should not be incarcerated once deemed "delinquent" due to technical violations. As a "delinquent" a warrant is generated and the individual can be sent to jail until they are scheduled for a Preliminary Hearing. In these cases, people should instead be connected to social services, drug treatment programs, more frequent visits, and other non-punitive response rather than spending any time in jail.

Background

¹ Columbia University Justice Lab, *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Population*, January 29, 2019, available at: http://justicelab.iserp.columbia.edu/img/Less_is_More_in_New_York_Report_FINAL.pdf

By countless indicators, incarceration throughout the United States, including in New York, is a historic and global anomaly. Until the spread of mandatory minimum sentencing regimes that developed as part of the War on Drugs in the 1970's and 1980's, the national incarceration rate remained relatively stable—between 100 and 200 incarcerated people per 100,000 people—for about a century. Then, it began to rise steeply and, following the Sentencing Reform Act of 1984, skyrocketed before leveling out at above 700 incarcerated people per 100,000 people in recent years. In New York State, the average rate was less than 75 incarcerated people per 100,000 people for a century, and more than quintupled during this period. The current incarceration rate in New York is lower than that of most other U.S. states, and fell by a quarter since its peak in 1999. Still, it is nearly double that of Maine, which has the lowest incarceration rate and the lowest number of violent crimes per capita in the nation, and about three and a half times that of Germany.

Today, there are an estimated 2.3 million people incarcerated nationwide and approximately 75,000 people in prisons and jails across New York State.² As is often said, it is not only the individual that does time, but their entire family and, I would add, their community. Over the past decade, the overall state prison population decreased in the last decade and a half. Simultaneously, however, there was an increase in people over 50 years of age in NYS prison; as of 2016 19.4 percent of the population was over the age of 50.³ The primary contributing factors to the increase in the aging prison population are retributive sentencing and the underuse of release mechanisms such as parole or compassionate release.

Each year, over 10,000 New Yorkers are kept in prison regardless of their rehabilitative achievements while incarcerated because of the arbitrary parole standards for release.⁴ Individuals who are sentenced to indeterminate sentences become eligible for parole after completing the minimum term. Executive Law 259-i(c)(A) stipulates the criteria the Parole Board must consider when approving or denying parole such as: institutional record, release plan, crime victim statements, seriousness of the offense, etc. If denied, a person has to wait a maximum of two years before they can appear before the Board again. This process can continue every two years until one of the two things happen: 1) the applicant is granted parole⁵, or 2) the applicant has served their maximum term, including, in the case of a person with a life sentence, once the person has died while incarcerated. Those most impacted by the continuous two-year “hits” are aging people in prison. They have usually been convicted of serious crimes, often including serious violent crimes, which make their release more of a political risk, but not a risk to public safety. New York's parole process often serves as a barrier to release because too often the original crime of conviction – the one thing an incarcerated person cannot change – becomes the sole deciding factor.

Underuse of Parole

² This figure does not include more than five million people being formally surveilled through parole, probation and other forms of supervised release. Peter Wagner and Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, March 14, 2018, available at: <https://www.prisonpolicy.org/reports/pie2018.html>.

³ There were 10,337 people in this older adult category as of 2017, majority of who are Black and Latinx. Office of the New York Comptroller Thomas P. DiNapoli, State Comptroller, *New York State's Aging Prison Population*, April 2017, available at <https://www.osc.state.ny.us/reports/aging-inmates.pdf>.

⁴ Scott Paltrowitz, *Parole Review Process has Serious Shortcomings*, December 6, 2013, available at: <http://www.correctionalassociation.org/news/parole-review-process-has-serious-shortcomings>

⁵ There are work release program, but only applicable to people with non-violent offenses. Other options are clemency and pardons by the Governor.

Far too often, New Yorkers, especially older adults, are dying in prison after being denied parole multiple times. John Mackenzie's tragic death is symbolic of a broken parole system that continues to undermine the presumed rehabilitative nature of prisons. John, like most incarcerated elders, was an extraordinary person who took full responsibility for his serious crime and did everything to make amends. He started a Victims Awareness Program, obtained multiple college degrees, and helped countless young men transform their lives through group therapy and direct mentorship. He would have been a crucial asset to the community if given the chance.⁶ In fact, Justice Maria Rosa of State Supreme Court in Dutchess County held the Parole Board in contempt for refusing to give any justification for denying Mr. Mackenzie's release beyond his original crime, after throwing out an earlier denial and ordering a new hearing, at which the Board's decision was "virtually the same."⁷ The New York State parole risk assessment, COMPAS, had found that 70 year old John Mackenzie posed absolutely no threat to society, but he was still denied parole for a 10th time. A week later, he hanged himself with a sheet. Unfortunately, John's story is not an anomaly; many elders in prison have self-rehabilitated and some have created programs that exist to this day and directly inform the strategy for numerous nonprofits, grassroots and advocacy. John Mackenzie's is one of more than 1,000 deaths in New York State prison since Governor Cuomo took office.⁸

Though the Board Chair has stated in testimony before the Legislature that the parole decision-making process is neutral and each decision follows the guidelines mandated by law, for John and many others, this has not been their experience. The factors that must be considered include the seriousness of the offense, accomplishments while incarcerated, criminal history, and any "mitigating and aggravating factors."⁹ However, as mentioned earlier, there are approximately 10,000 parole denials per year, generally after curt and remote hearings by video, after which the nature of the crime is too often the sole basis for the decision.¹⁰ Notably, a New York Times investigation from 2016 found that Black and Latinx people were denied parole at significantly higher rates than white people.¹¹ In short, despite the statutory mandate which stipulate that the Parole Board has to conduct a complete assessment of a person rather than centering only their initial crime of conviction, we see a consistently demoralizing process that repeatedly denies parole to eligible people who, by law, should be released.

Racial Disparities in Incarceration Rates and Parole Decisions

Prior to the enactment of S8647 (Sepúlveda)/A2471 (Sepulveda), policymakers and advocates had little statistical data on the demographics of people who appeared before the Board and those who were granted or denied release. But with this new law, we will now bolster what we already know about the system's stark and persistent racial disparities in parole decisions (as highlighted

⁶ Victoria Law, *Suicide of 70-year old John Mackenzie after Tenth Parole Denial Illustrates Broken System*, August 9, 2016, available at <https://www.villagevoice.com/2016/08/09/suicide-of-70-year-old-john-mackenzie-after-tenth-parole-denial-illustrates-broken-system/>.

⁷ *A Challenge to New York's Broken Parole Board*, June 13, 2016, available at <https://www.nytimes.com/2016/06/13/opinion/a-challenge-to-new-yorks-broken-parole-board.html>.

⁸ Victoria Law, *Cuomo's Parole Board Creates A System of Hopelessness, Advocates Say*, August 7, 2018, available at http://gothamist.com/2018/08/07/cuomo_parole_protest.php

⁹ Testimony of Tina Stanford, Chairwoman of NYS Board of Parole. Before the NYS Assembly Standing Committee on Correction, December 4, 2013, available at http://www.doccs.ny.gov/Commissioner/Testimony/Testimony_Board_of_Parole_Tina_Stanford.pdf.

¹⁰ Scott Paltrowitz, *Parole Review Process has Serious Shortcomings*, November 6, 2013, available at <http://www.correctionalassociation.org/news/parole-review-process-has-serious-shortcomings>.

¹¹ Tyler Pager, *Cuomo Ordered an Investigation of Racial Bias in Prisons. Nearly 2 Years later, It's Not Done*, September 4, 2018, available at <https://www.nytimes.com/2018/09/04/nyregion/racial-bias-prisons-cuomo.html>

by the New York Times¹²), incarceration rates and every other aspect of the criminal legal system. Black people represent approximately 18 percent of the total New York State population and 50 percent of those incarcerated in our state prisons.¹³ In the century before the 1973 Rockefeller Drug Laws, Black people were incarcerated at rates between three and six times that of whites in New York. After the drug laws took effect, the disparity jumped to a rate of twelve to fourteen times that of white people. The incarceration rate of white people has remained relatively stable throughout New York history, despite the harsher sentencing regime implemented in the last decades of the twentieth century.¹⁴ Importantly, all marginalized communities are disproportionately impacted by mass incarceration. For example, a survey on transgender discrimination conducted by the National Gay and Lesbian Task Force found that 16 percent of respondents reported having been incarcerated at some point in their lives.¹⁵ I urge policymakers to consider the data when the first report from DOCCS is published and take action to end disparate treatment and impacts of parole policies and practices.

State Technical Parole Violations

As we talk about improving the process of determining release into community supervision, it is imperative we recognize and address the impending risk of re-incarceration for people on parole. A Marshall Project survey of 42 states conducted in 2017 found 61,250 people incarcerated for only technical parole violations such as breaking the rules of parole rather than being convicted of a new crime.¹⁶ That number did not include county and local jails, where thousands more are likely to be held.

New York City Jails

Though the New York City jail population declined over the years, one population has increased: people held for technical parole violations. From 2014 to June of 2018, there was a 26% increase of the number of people incarcerated on parole violations in New York City jails.¹⁷ Individuals on parole must comply with supervisory requirements such as reporting to a parole officer, having unannounced inspections of their home or place of employment, curfews, and refraining from contact with people with criminal records, etc. In addition to these conditions, people on parole must pay a monthly supervision fee of \$30. Failure to pay the supervision fee can be used as a reason to deny early discharge or a person's application for a Certificate of Relief from Disabilities or a Certificate of Good Conduct, further compounding the harmful impacts of the criminal legal system.¹⁸ Failure to comply with any of the conditions can result in re-incarceration, even for missing a visit or possessing low levels of marijuana (an offense that results in a summons for most and is on its way to being legalized). A Columbia Justice Lab report found that on November 16, 2017 there were 1,460 people in New York City jails for state

¹² Michael Winerip, Micahel Schwirtz, Robert Gebeloff, *For Blacks Facing Parole in New York State, Signs of a Broken System*, December 4, 2016, available at: <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>

¹³ *Solitary Confinement in New York: The Facts, The New York Campaign for Alternatives to Isolated Confinement*, available at <http://nycaic.org/facts/>.

¹⁴ Ernest Drucker, *A Plague of Prisons* 60-61 (New Press, The 2013).

¹⁵ Jaime M. Grant, Ph.D., Lisa A. Mottet, J.D. & Justin Tanis, D.Min., *Injustice at Every Turn*, Nat'l Ctr. for Transgender Equal. & Nat'l Gay & Lesbian Task Force 2011.

¹⁶ Eli Hager, *At Least 61,000 Nationwide are in Prison for Minor Parole Violations*, April 23, 2017, available at:

<https://www.themarshallproject.org/2017/04/23/at-least-61-000-nationwide-are-in-prison-for-minor-parole-violations#.iW7kZwNwP>

¹⁷ New York City Mayor office of Criminal Justice, available at: <http://www.closerikers.org/wp-content/uploads/2018/07/MOCJ-Path-to-5K.pdf>

¹⁸ New York State Corrections and Community Supervision, *Community Supervision Fees* (Mar. 9, 2017), available at

<http://www.doccs.ny.gov/Directives/9250.pdf>. See also Center for Community Alternatives, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction* (Feb. 2007), available at <http://www.communityalternatives.org/pdf/financial%20consequences.pdf>.

parole violations (technical violation and arrests); 81% were in for technical violations, misdemeanor, or non-violent felonies—a category of offenses that would be better addressed through community-based programs rather than re-incarceration, as they often are for people who are not on parole.¹⁹ Importantly, as the report notes, Black people are far more likely to face re-incarceration: “While the incarceration rate for white people on parole who are detained in New York City jails was 1.30 per 100,000 white New York City residents on January 18, 2018, the rate for African-Americans was a staggering 16.09 per 100,000 African-American New York City residents.”

NYS DOCCS Facilities

As mentioned above, New York’s prison population has been decreasing; however, similar to New York City jails, the population for parole violations has experienced an increase. In 2012, 9,372 people were released from DOCCS facilities onto parole. Within three years of release 43 percent (4,074) returned for parole violations and 8.5 percent (792) were returned for new crimes²⁰. Those re-incarcerated for parole violations made up 17.5 percent of the released cohort for that year.

To me and other advocates on the ground, this is reflective of a revolving door of incarceration. As we work together to reform the parole process, we also need to transform the other mechanisms that perpetuate interaction with the criminal legal system, including policing practices and parole enforcement practices.

Conclusion

Research show that rates of recidivism decrease significantly with age, with the older adult population having the lowest risk of reoffending. Considering the data, academic research, reports from practitioners, and testimonies from incarcerated and formerly incarcerated people, it is clear that incarcerating the elderly and infirm is, among other things, fiscally irresponsible, morally wrong, and provides no restorative justice to the individuals harmed by the initial crime.

If you have any questions or comments about my testimony, please feel free to reach out to Saye Joseph at scjoseph@bds.org or 718-254-0700 ext.206.

¹⁹ Columbia University Justice Lab, *Less is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Population*, January 29, 2019, available at: http://justicelab.iserp.columbia.edu/img/Less_is_More_in_New_York_Report_FINAL.pdf

²⁰ The initial data does not specify the offense as misdemeanor, non-violent felony, or felony. New York State Corrections and Community Supervision DOCCS Fact Sheet, November 1, 2018, available at: <http://www.doccs.ny.gov/FactSheets/PDF/currentfactsheet.pdf>