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**TESTIMONY OF:**

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**Presented Before**

**The New York State Senate Committee On Crime Victims, Crime & Correction**

**Hearing on How the Elder Parole and Fair & Timely Parole Bills Will Improve Parole Release Laws and Public Safety in New York State**

**December 6, 2022**

Thank you to the New York State Senate Committee on Crime Victims, Crime, and Correction, and in particular Chair Julia Salazar, for the opportunity to present testimony today on the Elder Parole (S.15A-Hoylman) and Fair & Timely Parole (S.7514-Salazar) bills. Together, these two parole justice measures will reunite families, improve community safety, and save New York State money that could be reallocated toward urgent community needs. As Senior Policy Council with Brooklyn Defender Services, I submit this testimony in support of both bills and respectfully urge the State Legislature to finally call a vote on them.

Brooklyn Defender Services (BDS) is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality.

We represent approximately 22,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

## **BACKGROUND**

Because of decades of extremely harsh sentencing and a racially biased parole system that values vengeance and endless punishment above redemption, personal transformation, healing, and safety, New York State has a moral and fiscal crisis of people who are aging, very sick, and dying in our state prisons. Even as the state's overall prison population has declined, the percentage of incarcerated people who are older adults has dramatically increased. A New Yorker dies in state prison more than once every three days, a crisis that academics have called New York's new death penalty.

At the same time, we know that countless formerly incarcerated people have returned home and made tremendous contributions to their communities as mentors, violence interrupters, entrepreneurs, policy advocates, non-profit leaders and more. This is all despite the life-long consequences a formerly incarcerated person faces upon release from prison. Seeking stable housing and obtaining and maintaining gainful employment is tremendously difficult for those with a criminal record and who were formerly incarcerated.

***The Elder Parole and Fair & Timely Parole bills will help to improve community safety*** by reorienting parole release policies to value personal transformation and safety, rather than vengeance, returning people with valuable personal experience back into their communities to act as formal and informal mentors and violence interrupters, and will help NYS save an estimated \$522 million per year that could be better spent on housing, healthcare and treatment, material support for crime victims and survivors, and more.

## **THE PROBLEM**

Under current law, thousands of people in prison have no pathway whatsoever to even be considered for release, regardless of their personal transformation behind bars and whether they present any public safety risk. These include people who are serving life sentences without parole or sentences that exceed their natural lifetimes. Thousands more are, or will become, eligible for parole release consideration, yet current Board of Parole practices leave them little to no hope of getting approved. Specifically, the Board routinely denies release to people based on the one thing they can never change, namely the nature of the offense for which they were convicted however many years and decades ago. People in prison often completely transform themselves, accepting responsibility for their past actions, taking advantage of every opportunity for growth provided to them within the prison setting and even creating new ones, all *before* being repeatedly rejected by the Board. In effect, the Board is acting outside its original purpose of evaluating people's rehabilitation and readiness for release, ignoring people's minimum sentences and re-sentencing them two years at a time with each denial.



Let us be clear: Parole reform is a racial justice issue. The vast majority of people in prison are Black and Latine people as a result of systemic racism in our country. This is not surprising to us, as defenders we see the same systemic racism in policing, where Black and Latine New Yorkers are disproportionately targeted for stops and arrests. Furthermore, a comprehensive 2020 *Albany Times Union* investigation of parole hearing data found the Board of Parole was significantly less likely to release Black and Latine people relative to their white counterparts. This is one part of a long line of racially disparate treatment in the criminal legal system, from school discipline and policing to parole supervision, yet it is an important one. The Times Union's investigation found that the Board released white people eight percentage points more than Black people and seven percentage points higher than Latine people. According to their analysis, at the time of their reporting, 675 incarcerated Black and Latine people would be home, reunited with their families and communities, if release rates were equalized. Over time, that amounts to thousands of families separated by racially biased parole denials.

The grave injustice of mass incarceration extends beyond the harm inflicted on individual people in prison. Tens of thousands of families across our state are missing one or more loved ones: children, parents, grandparents and great-grandparents. Furthermore, New York spends an average of \$60,000 annually to incarcerate just one person, and between \$100,000 and \$240,000 annually per older adult in prison. This is money that should instead be invested in resources that deliver real community health and safety.

## **THE FAIR & TIMELY PAROLE ACT**

New York must reform its parole system by passing the Fair & Timely Parole Act (S.7514-Salazar) to ensure that people have a meaningful opportunity to demonstrate their rehabilitation and be released. This bill would restore the Parole Board to its original purpose of evaluating people's readiness for release, changing the standard of parole release to primarily consider the person's rehabilitation while incarcerated and their current risk of violating the law. In other words, parole commissioners would no longer be able to perpetually deny people release based solely on the one fact that they can never change. Judges at sentencing have already consider the facts about the crime the person has committed, and sentences are issued in a range, such as 1 1/3-4 years, because it is up to the parole board to consider what the person has done *after* they have been sentenced.

Passage of this bill will be a meaningful step towards ensuring fair parole hearings, increasing New York's dimly low parole release rate, and reducing the number of New Yorkers languishing behind bars. This bill will not take away parole commissioners' discretion and it still requires that the Board consider the nature of someone's crime and any victim impact statements in their release decisions.

## **ELDER PAROLE**



New York must reform its parole system to provide hope for families across this state by passing Elder Parole (S.15A-Hoylman). If enacted, this bill would allow older adults in prison who have served at least 15 consecutive years of their current sentence eligible for individualized parole consideration. It is not a “blanket release” policy, nor does it guarantee release for anyone based on their age. Rather, it would give people who have transformed themselves an opportunity to be heard by the Board of Parole and, subject to the Board’s discretion, to be released to their families and communities to live out their final years with dignity. Importantly, reincarceration rates for older adults are vanishingly small. The age of eligibility in the bill is 55 for two critical reasons: (1) That is the age at which the state’s prison agency, the Department of Correction and Community Supervision, like many other prison authors, classifies people as older adults, in line with the reality of accelerated aging behind bars. (2) The average age of death by so-called natural causes in New York State prisons is only 58. Sadly, the constant stress of the prison environment and separation from one’s family, compounded by the systemic malnourishment, unclean water, and other harms endemic to incarceration, causes, on average, what can only be called premature deaths.

## **CONCLUSION**

As defenders we see first-hand the lasting and insurmountable burdens inflicted by the carceral system, and we support these bills because we value the worth and dignity of all people. We believe no one is disposable, nor should anyone be defined by the worst thing they have ever done. Further, no one should die in prison. We believe in redemption and transformation. We believe in families, communities, and collective care, and we must take steps towards change. 2023 must be the year for parole justice. We respectfully ask that you pass the Elder Parole and Fair & Timely Parole bills this session.

If you have any questions about our testimony, please contact Jackie Gosdigian, Senior Policy Counsel with Brooklyn Defender Services at [Jgosdigian@bds.org](mailto:Jgosdigian@bds.org).