

**The Bronx
Defenders**

**Redefining
public
defense**

New York State Senate

Committee on Crime Victims, Crime and Correction

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

Written Testimony of The Bronx Defenders

by Tadd Vassell

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 the state massive sums of money that could be reallocated toward urgent community needs. As a Prisoners' Rights Advocate at The Bronx Defenders with lived experience in the prison system, I submit this testimony in support of both bills and respectfully urge the Legislature to finally call a vote on them.

The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

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 aging, sickness, and dying in 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. They are the people leading the work to create meaningful release opportunities for their elders, who helped them transform, and for those they mentored.

The Elder Parole and Fair & Timely Parole bills will help to improve community safety by (1) reorienting parole release policies to value personal transformation and safety, rather than vengeance, (2) returning mentors and violence interrupters to struggling communities, and (3) saving the state an estimated \$522 million per year that could be better spent on housing, healthcare (including drug treatment and mental healthcare), 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 transformation behind bars and whether they present any public safety risk. These include people who are serving life without parole sentences 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: This is a racial justice issue. The vast majority of people in prison are Black and Latinx people as a result of systemic racism in our country. 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 Latinx 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 Latinx people. According to their analysis, at the time of their reporting, 675 incarcerated Black and Latinx 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/A.4231A-Weprin) 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.

Passage of this bill **will** be a meaningful step towards ensuring fair parole hearings, increasing New York's dismally 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/A.8855-Davila). 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.

Prisons are a particularly hazardous place to grow old. In a prison environment, aging occurs at a faster rate. Because of the disadvantages affecting people in prison prior to their incarceration and the health suppressing effect of imprisonment, incarcerated people are considered elderly from the age of 50. Studies show that imprisonment has negative effects on health and longevity. Ailments associated with aging are compounded by the poor health status of those entering

prison and the effects of imprisonment itself. The outcome of this is a prison population in the United States with high rates of chronic and communicable diseases, greater behavioral health issues and cognitive decline. All of which is a significant and unnecessary waste of taxpayer dollars. Although there have been numerous empirical studies about how individuals age out of crime, state lawmakers have, so far, acted from a place of fear rather than logic.

CONCLUSION

At 49 years of age and having been recently released after serving almost 25 years of my life in prison, I can attest to the fact that individuals do age out of crime. My age has contributed to a level of growth and maturity creating a desire to use my experience and skills, not to commit another crime, but to prevent future generations from making the same mistakes I made. I can say the same is true of countless men I know who are and have been incarcerated during their lives. Releasing aging people in prison is not only the fiscally responsible thing to do for our society, but it is the moral, true, and smart thing to do.

Ultimately, 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.

We are pleased to be joined in our support for the bills by Gov. Hochul's key advisor Dr. Hazel Dukes (President, NYS NAACP), the Rev. Al Sharpton (President, National Action Network), Assembly Majority Leader Crystal Peoples-Stokes and Deputy Senate Leader Michael Gianaris, Brooklyn DA Eric Gonzalez and Manhattan DA Alvin Bragg, many of the state's largest crime victim & survivor advocacy groups, the Working Families Party, SEIU 1199, CWA District 1, Citizen Action of New York, and over 350 other organizations from Long Island to Buffalo.

2023 must be the year for parole justice. Again, we respectfully ask that you pass the Elder Parole and Fair & Timely Parole bills this session.

Thank you for considering our comments.