



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**James Royall – Reentry Advocate**

**BROOKLYN DEFENDER SERVICES**

**Presented before**

**The New York Senate Standing Committee on Crime Victims, Crime and Corrections and  
Committee on Elections**

**Hearing on Parole Board and Conditional Pardons**

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My name is James Royall 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 and advocacy team, I provide comprehensive support for people upon release from prison or jail, and direct advocacy on behalf of our clients while they are incarcerated.

I thank the Senate Standing Committee on Crime Victims, Crime and Corrections and the Standing Committee on Elections for the opportunity to testify about the current underuse of parole for the elderly prison population and the positive impacts of restoring voting rights on reintegration for formerly incarcerated people. As an advocate who interacts with formerly incarcerated and currently incarcerated people on a day-to-day basis, I know the meaning of parole release – the heartbreak and devastation of being denied and the unutterable joy when it is granted. Likewise, I have already witnessed the change brought by Governor Cuomo’s Executive Order, which turned the page on a shameful Jim Crow-era policy and elevated our state’s commitment to democracy.

**Introduction**

By countless indicators, incarceration throughout the United States, including in New York, is a historic and global anomaly. There are more people under correctional supervision<sup>1</sup> across the

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<sup>1</sup> An estimated 7 million people are under correctional supervision. Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, March 14, 2018, available at <https://www.prisonpolicy.org/reports/pie2018.html>.

country than were in the Gulag<sup>2</sup> at its peak in the early 1950's.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

The stark and persistent racial disparities in incarceration rates and every other aspect of the criminal legal system have led many to call it the New Jim Crow. Black people represent approximately 18 percent of the total New York State population and 50 percent of those incarcerated in our state prisons.<sup>7</sup> For 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.<sup>8</sup> 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.<sup>9</sup>

While New York's prison population has gradually declined over the past two decades, the number of incarcerated people aged 50 or older jumped by 46 percent between 2007 and 2017.<sup>10</sup> There were 10,337 people in this older adult category as of 2017. Though parole was created to promote self-rehabilitation, reward good behavior, and mitigate lengthy sentences, New York's parole review process often serves as a barrier to release wherein the original crime of conviction – the one thing an incarcerated person cannot change – becomes the sole deciding factor.

Ultimately, accelerating parole release, in addition to front-end reforms to the criminal legal system, will be necessary to end mass incarceration in New York.

<sup>2</sup> The gulags were a system of labor camps maintained in the former Soviet Union from 1918 to 1956 in which scholars estimate that 15 to 30 million people died. Encyclopaedia Britannica, updated May 2018, available at <https://www.britannica.com/place/Gulag>.

<sup>3</sup> U.S. Nat'l Park Serv, *GULAG Fact Sheet*, available at: [https://www.nps.gov/malu/learn/news/upload/Gulag\\_Fact\\_Sheet.pdf](https://www.nps.gov/malu/learn/news/upload/Gulag_Fact_Sheet.pdf)

<sup>4</sup> Ernest Drucker, *A Plague of Prisons*. 50-51 (New Press, 2013).

<sup>5</sup> *Ibid.*

<sup>6</sup> Division of Criminal Justice Services, *2009 Drug Law Changes* (2014 update), available at <http://criminaljustice.ny.gov/drug-law-reform/documents/dlr-update-report-may-2014.pdf>. See also, Mike Riggs, *Why America Has a Mass Incarceration Problem, and Why Germany and the Netherlands Don't*, *City Lab*, Nov. 12, 2013, *The Atlantic*.

<sup>7</sup> *Solitary Confinement in New York: The Facts*, *The New York Campaign for Alternatives to Isolated Confinement*, available at <http://nycaic.org/facts/>.

<sup>8</sup> Ernest Drucker, *A Plague of Prisons* 60-61 (New Press, The 2013).

<sup>9</sup> 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.

<sup>10</sup> NYS Comptroller Thomas P. DiNapoli, *New York State's Aging Prison Population*, *The Office of Budget & Policy Analysis* 2017, available at <http://osc.state.ny.us/reports/aging-inmates.pdf>.

## Underuse of Parole

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 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.<sup>11</sup> 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."<sup>12</sup> 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 10<sup>th</sup> time. A week later, he hanged himself with a sheet.

Though the Board Chair has stated in testimony before the Legislature that the parole decision-making process is neutral and each decision follows the guideline 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."<sup>13</sup> However, 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 focus of the decision.<sup>14</sup> Notably, a New York Times investigation from 2016 found that Black and Latinx people were denied parole at significantly higher rates than white people.<sup>15</sup> In short, despite the statutory mandates 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.

## Older Adults in New York State prison

In New York State over the past decade, the overall prison population decreased to 52,344 as of 2016. Simultaneously, there was an increase in people over 50 years of age in NYS prison; as of 2016 19.4 percent of the population is over the age of 50.<sup>16</sup> The primary contributing factors to the increase in the aging prison population are retributive sentencing, and the consistent underuse of release mechanism such as parole.

Aging people in prison, particularly those convicted of committing the most serious violent crimes (usually given long sentences), are often perceived as high risk of reoffending and a

<sup>11</sup> 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/>

<sup>12</sup> *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>

<sup>13</sup> 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](http://www.doccs.ny.gov/Commissioner/Testimony/Testimony_Board_of_Parole_Tina_Stanford.pdf)

<sup>14</sup> Scott Paltrowitz, *Parole Review Process has Serious Shortcomings*. November 6, 2013, available at <http://www.correctionalassociation.org/news/parole-review-process-has-serious-shortcomings>

<sup>15</sup> <https://www.nytimes.com/2018/09/04/nyregion/racial-bias-prisons-cuomo.html>

<sup>16</sup> 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>

danger to public safety. However, a plethora of research indicates how and why people “age out of trouble.”<sup>17</sup> Along with their mental development, the elderly lose their physical ability to commit crime and have experienced the severe punishment for any crime due to their time in prison. The parole board’s consistent reliance on the original crime, without any appreciation of the documented rehabilitation of the individual person, as the basis to deny people release from prison. This suggests that it is retribution, not public safety that drives New York to incarcerate people long past their proclivity to commit crime or risk to society.

### **Restoring the Right to Vote for People on Parole**

The right to vote is the core tenet of American democracy, but it is a right that has been denied to communities of color in different ways since our nation’s founding. Scholars have noted that disenfranchisement of formerly incarcerated people and the fear mongering around conditional pardon for people on parole is rooted in Jim Crow laws that denied Black people the right to vote and incited institutional violence against these communities.<sup>18</sup>

People who are formerly incarcerated keenly feel the stigma of being denied the right to vote. David Waller, a Maryland citizen, spoke to public radio about the importance of restoring his right to vote:

According to the state of Maryland I was not a full citizen. In my eyes, I was not a full citizen. After finishing my sentence for things I had done in the past, I was denied the right to vote. And without it, I was not afforded all the rights and privileges of citizenship. Today all that changes. When I walk into the Board of Elections and hand in my signed voter registration, I will no longer be fragmented from society. I’ll be a father, grandfather, uncle, and friend who is able to give more of a hand in creating a better place to live, work, and go to school.<sup>19</sup>

True re-entry means becoming a full citizen in the eyes of the law and of the community. The alleged purpose of parole is to facilitate successful reintegration. The ability to be a full participant in society is crucial to increasing the chances of success for people being released from prison.

As the Brennan Center for Justice notes, the continued disenfranchisement of returning citizens places the U.S. at odds with the vast majority of the world’s modern democracies. Almost half of the people in the world who are barred from voting because of criminal convictions are U.S. citizens, even though Americans make up less than five percent of the world’s population. How can the U.S. credibly market democracy abroad if we continue to disenfranchise American citizens because of a criminal record?<sup>20</sup>

As a reentry advocate, I always encourage people to fully and actively participate in their community and to model positive citizenship behaviors and the right to vote is a fundamental

<sup>17</sup> Dana Goldstein, *Too Old to Commit Crime?*, March 20, 2015, available at <https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime>.

<sup>18</sup> Jennifer Rae Taylor, *Jim Crow’s Lasting Legacy at the Ballot Box*, August 20, 2018, available at <https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box>.

<sup>19</sup> Web Broadcast: *Newly Eligible Former Felons Register to Vote* (Baltimore Grassroots Media 2007), <http://www.baltimoregrassrootsmedia.org/files/cd56b622a2e1b6c4cf8ca24effd5d8e8-66.html>.

<sup>20</sup> Erika Wood, *Restoring the Right to Vote* (Brennan Center for Justice, 2009), available at <https://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf>.

piece of citizenship. Excluding thousands of people on parole, disproportionately Black and Latinx people, from voting was egregious and delegitimized our democratic system. I believe the same was and continues to be true with respect to the disenfranchisement of people who are currently incarcerated.

I also want to address head on the issue of people previously convicted of sex offenses voting on school grounds, which has been raised by some state legislators and political candidates. It is important to step back and reconsider the laws establishing movement restrictions on these people, which generally prohibit them from knowingly entering any area within 1000 feet of most spaces where young people gather. I am a parent and I understand as well as anybody the critical importance of protecting our children. That said, the exclusion statute is not an effective, or even rational, means of achieving this result.

In densely populated areas like New York City, the prevalence of these exclusion zones effectively precludes many subject offenders from legally entering their home neighborhoods, and even boroughs, including – absurdly – attend mandatory parole check-ins. Studies highlighted by the New York State Division of Criminal Justice Services (“DCJS”), the State agency responsible for administering the Sex Offender Registry, show that most people who molest children molest family members and close acquaintances. The U.S. Department of Justice reports that 93% of sexual assault victims under the age of 17 were assaulted by someone they knew.<sup>21</sup> Thus, opportunities for the most likely offenses against school-aged children are not diminished by keeping offenders away from schools, and the prohibition does not advance that purpose.

Efforts to rehabilitate people and minimize the rate of re-offending are much more successful when they are employed, have family and community connections, and have a stable residence—all of which are undermined by exclusion restrictions. Exclusion statutes are known to drive people into homelessness, which makes it harder to supervise them. Within six months of the implementation of Iowa's exclusion restriction, for example, thousands of sex offenders became homeless or transient and thus more difficult for authorities to track and monitor. According to a report by the New York State Division of Criminal Justice Services, “The number of registered sex offenders in Iowa who could not be located more than doubled, damaging the reliability and validity of the sex offender registry.” The report quotes an Iowa Sheriff: “We are less safe as a community now than we were before the residency restrictions.”<sup>22</sup> And in January 2008, the California Sex Offender Management Board reported an increase of 715% in parolees subject to exclusion restrictions who registered as “transient” since the law took effect.<sup>23</sup> General criminal recidivism research also shows that forcing sex offenders into homelessness doesn’t mitigate the problem either: risk of re-incarceration increased 17% with post-release shelter stays.<sup>24</sup>

All of this is to say that, rather than focusing attention on obstructing voting rights, policymakers should be questioning their underlying assumptions about what keeps us and our children safe. To the extent there are legitimate concerns about any individual entering a poll site,

<sup>21</sup> See DCJS Website, “Myths and Facts: Current Research on Managing Sex Offenders,” Myth 1, available at [http://www.criminaljustice.ny.gov/nsor/som\\_mythsandfacts.htm](http://www.criminaljustice.ny.gov/nsor/som_mythsandfacts.htm) (last visited Apr. 1, 2014).

<sup>22</sup> See DCJS Website, “Myths and Facts: Current Research on Managing Sex Offenders,” Myth 9, available at [http://www.criminaljustice.ny.gov/nsor/som\\_mythsandfacts.htm](http://www.criminaljustice.ny.gov/nsor/som_mythsandfacts.htm) (citing Rood, 2006; Human Rights Watch, 2007).

<sup>23</sup> *Id.* (citing California Sex Offender Management Board, 2008).

<sup>24</sup> *Id.* (citing Metraux & Culhane, 2004).

policymakers should work with voting rights advocates to develop and facilitate viable and accessible alternatives.

### **Conclusion**

John Mackenzie's story is not unique, it is representative of the individuals who have done their time in prison and found paths to rehabilitation in the face of adversity. Through my work, I am constantly interacting with men and women who are formerly incarcerated that continue to make tremendous contributions to our society, whether as entrepreneurs, mentors, or loving family members. This is why I am here today and will continue to urge the New York State Legislature to allocate resources towards reducing the number of people in prison and halt the retributive use of the criminal legal system. Also, Brooklyn Defender Services (BDS) strongly urges the legislature to do the following:

- **Pass Elder Parole/"Second Look" S.8581 (Hoylman)/A.6354A (Weprin)**, which would allow the Board of Parole to consider for release all incarcerated older people for parole who are 55 years and older and have already served 15 years in prison.
- **Pass Presumptive Parole S.8346 (Rivera)/A7546 (Weprin)**, which would require the Board of Parole to release people to community supervision once they become eligible for parole, unless they pose an unreasonable and current risk to public safety.
- **Diversify the expertise of individuals who serve on the Parole Board.** Currently, the Board comprises of former law enforcement officers and individuals 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) in all aspects of the criminal legal system and adheres to transformative justice.

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