

**Testimony of Jared M. Trujillo, Esq. On Behalf of the New York
Civil Liberties Union Before the 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 Enhance Community Safety
In New York State**

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The New York Civil Liberties Union (NYCLU) thanks the New York State Senate Committee on Crime Victims, Crime and Correction for holding this important hearing on the Elder Parole Act (S15A/Hoylman) and Fair and Timely Parole Act (S7514/Salazar).

The NYCLU is the New York affiliate of the American Civil Liberties Union. It is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution. Ending the scourge of unduly harsh prison sentences that do not enhance community safety is a top priority for the organization.

In New York, lengthy state prison sentences continue to spur the mass incarceration and mass criminalization crises of our time. Although New York's prison population has decreased over the last decade, as of 2019 the average minimum sentence has lengthened from 106 months to 124 months.¹ Thirty-three percent of the state prison population are serving maximum terms of 15 years or more, including 9,000 individuals who are facing possible life in prison if they aren't paroled first.² New York has the nation's eighth highest rate of people serving life sentences. This includes approximately 280 individuals who are serving a life term without the possibility of parole.³

Next year marks the 50th anniversary of the Rockefeller Drug Laws, a draconian sentencing paradigm that caused incarceration rates to dramatically skyrocket, with Black and brown communities

¹ Jarrett Murphy, *Advocates Press Albany to Fix New York's Parole System*, City Limits (Jan. 30, 2019), <https://citylimits.org/2019/01/30/pressing-albany-to-address-flaws-in-new-yorks-parole-system/> (citing NYS DOCCS data).

² *Id.*

³ *Id.*

overwhelmingly impacted. New York led the nation in passing harsh sentencing laws over the next twenty years, which ultimately led to the crisis of people serving unjustly long sentences that persists in New York today. The lack of humanity in New York's parole laws cause fathers, brothers, aunts, cousins, daughters, sons, friends, and other community members to languish in prison, without a meaningful opportunity to present their case to the parole board to be considered for release. Grandparents are dying by incarceration, because they have no meaningful opportunity to demonstrate their rehabilitation to parole boards.

Elder Parole and Fair and Timely Parole are common sense reforms that New York desperately needs to pass without delay.



ELDER PAROLE ACT S15/HOYLMAN

In recent decades, New York's aging prison population has ballooned. Individuals 50 and older comprise more than 24 percent of the state prison population, compared to only 12 percent in 2008.⁴ A 2018 analysis by the Prison Policy Project showed that the prison population older than 50 years continued to increase over the previous decade despite decreases in the younger prison population.⁵

The Elder Parole Act would allow people in prison who are 55 years old or older and have a hearing before the parole board to be considered for release to community supervision, and allow those who are denied parole a chance to have that determination reconsidered within two years. This bill is an important step towards addressing the needless cruelty of incarcerating elders, and the legislature must pass it posthaste.

Prisons are poorly equipped to house aging populations and are not structured to address their growing medical needs, most of which are only exacerbated by the conditions of incarceration.⁶ Research shows

⁴ Office of the New York State Comptroller, *New York State's Aging Prison Population: Share of Older Adults Keeps Rising*, (January 2022), available at <https://www.osc.state.ny.us/files/reports/pdf/aging-prison-population-2022.pdf>

⁵ Maddy Troilo, *New York State's elderly prison boom: an update*,

⁶ The Osborne Association, *The High Costs of Low Risk: The Crisis of America's Aging Population* at 22 (May, 2018),

https://www.prisonlegalnews.org/media/publications/The_Osborne_Association_Report_May_2018_The_High_Costs_of_Low_Risk_-_The_Crisis_of_Americas_Aging_Prison_Population.pdf.

“Compared to their non-incarcerated peers, aging individuals in prison present with an array of serious medical issues that are exacerbated by their incarceration.”



that people in prison age faster and are more susceptible to certain health issues than non-incarcerated aging people.⁷ The lack of medical or correctional staff with specialized knowledge in geriatric care significantly impairs prisons from providing appropriate care to people experiencing chronic medical problems. Individuals aging in prison experience health challenges that correlate with socioeconomic factors. The same demographic groups that are disproportionately arrested and incarcerated – people of color and individuals with little to no socioeconomic capital – are also more likely to be at risk for poor health prior to their incarceration.⁸

Further, keeping older people behind bars after they have served lengthy sentences is bad public policy. The boom in the aging prison population is largely the result of tough-on-crime sentencing laws and deficient release policies. Factors contributing to the aging of state prison populations include the increase in the number of people sentenced to and serving longer periods in prison, and increased admissions of older persons. Across the country, more than four times as many prisoners aged 55 or older were admitted to state prisons in 2013 than in 1993.⁹

There is overwhelming research to show that incarcerating aging people can lead to death by incarceration and does little to deter crime or promote safety.¹⁰ People in prison aged 50 and older are far less likely to return to prison for new offenses than their younger counterparts.¹¹ For example, only 6.4% of people incarcerated in New York State released at age 50 and older returned to prison for new convictions. Nationally, arrest rates are just over 2% for people aged 50 and older.¹²

Incarcerating older New Yorkers also has serious financial implications. The cost of keeping someone aged 50 and older in prison is two to three

⁷ Chammah, Maurice, *Do You Age Faster in Prison?*, The Marshall Project (2015), available at <https://www.themarshallproject.org/2015/08/24/do-you-age-faster-in-prison#.NvmtHHkZA>.

⁸ THE OSBORNE ASSOCIATION, *supra* note 6 at 22.

⁹ U.S. Dep't of Justice, Bureau of Justice Statistics, *Aging of the State Prison Population 1993-2013* (May 2016), <https://www.bjs.gov/content/pub/pdf/aspp9313.pdf>.

¹⁰ Human Rights Watch, *Old Behind Bars: The Aging Prison Population in U.S.* (2012), p. 84,

https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf (“In New York, inmates 65 years and older comprise 1 percent of the inmate population, but account for 15 percent of deaths; inmates aged 55 to 64 account for 4 percent of the population and 23 percent of the deaths”).

¹¹ U.S. Dep't of Justice, *supra* note 9 at 22.

¹² *Id.* at 13.



times the cost of incarcerating someone 49 and younger.¹³ This money would be better spent helping aging community members reintegrate into their communities, and ensuring families benefit from the companionship, financial support, and love of their aging relatives.

New York must not allow elders to languish unnecessarily in its state prisons, where they face heightened risk as COVID-19, Monkeypox, and other ailments continue to pose risk. Incarcerating aging people is ineffective at addressing crime, has had a devastating impact on the wellbeing and safety of poor people and people of color, and threatens to worsen an ongoing public health crisis. Our parole laws should center values of redemption, which will promote true community safety. Passing the Elder Parole Act now will take us in that direction.

FAIR AND TIMELY PAROLE ACT

From 2007 to 2016 the number of releases to parole supervision decreased by 19 percent. In 2014-2015, only one in four initial appearances before the parole board resulted in a release. But in 2005, the release rate was far higher, at 51 percent.¹⁴ Keeping community members in cages, without a meaningful opportunity to show the parole board that they've changed, does not enhance community safety. Rather, it perpetuates the harms of family separation in a system that prioritizes punishment over rehabilitation. To address this, New York needs to pass the Fair and Timely Parole Act and reform the state executive law to make parole more accessible to people serving sentences that are far too long and make the process for determining parole release fair. If successful, it could make 12,000 people eligible for release.¹⁵

The Fair and Timely bill would do the following:

- Change the standard of parole to prioritize factors demonstrating rehabilitation, based on factors that reflect how the person appears before the parole board on the day of review and not at the time of sentencing;
- Make parole board decisions more transparent; and

¹³ ACLU, *At America's Expense: The Mass Incarceration of the Elderly* (2012) at 28, <https://www.aclu.org/americas-expense-mass-incarceration-elderly/>; see also Office of the New York State Comptroller, *New York State's Aging Prison Population* (2017) at q, available at <http://www.osc.state.ny.us/reports/aging-inmates.pdf>.

¹⁴ MURPHY, *supra* note 1.

¹⁵ MURPHY, *supra* note 1.

- Require parole board commissioners to make individualized determinations as opposed to generalized decisions based on certain factors.

Our parole laws should center the values of redemption, which will promote true community safety. To that end, along with a broad and growing coalition of advocates, the NYCLU supports Fair and Timely Parole, which would ensure that parole release is based on rehabilitation and current risk to community safety.

