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WRITTEN TESTIMONY ON PAROLE JUSTICE

This testimony is given in strong support of both the Fair and Timely Parole Bill and the Elder Parole Bill.

Fair and Timely Parole

In 1975, John MacKenzie shot and killed a police officer as part of a burglary gone wrong, and he was sentenced to 25 years to life in prison. He was denied parole 10 times since he was first eligible in 2000.

John had an epiphany in 1983, when he started having empathy for the family members of Matthew, the man he killed. It hit him really hard, and he started explaining to the other men in prison with him how important this was. John eventually started a victim awareness program in prison, where he would bring in family members of those killed to speak to the prisoners about what it was like to lose a loved one in that way. The program was amazingly transformative, until DOCCS shut it down a few years later.

John had a perfect prison record with zero disciplinary violations during his 41 years in prison, and he had an incredible ability to teach other prisoners the lessons he had learned, about empathy and making yourself into a better person. He became a legend within the NYS prison system. Over the years I've spoken to countless guys who knew him, or had heard of him. But John kept getting denied parole, over and over again, even though he helped many others obtain release.

I represented John on two parole appeals, and we eventually succeeded in getting the parole board held in contempt of court for denying release based only on the long-ago offense. But the state appealed (I eventually won, years later) and tragically, John just couldn't wait another year or two for the appeal, and then face the possibility of yet another denial. In August, 2016, soon after turning 70, John took his life in prison. He had recently reconnected with his 2 adult daughters, and they were completely devastated, as were so many of us who knew him.

John's death helped push forward a few changes that led to more people being released. His daughter spoke to the parole board and had some of the commissioners in tears. The governor

appointed some new commissioners. There were new regulations saying that when someone's scores on the COMPAS risk assessment showed a low risk of re-offense, they should be released, unless the board could explain why they were departing from the COMPAS.

Release rates went up, at least for a while, and many of my clients got out. Like Eddie Williams, whose incredibly positive prison record rivaled John's, and who was granted release one year to the day after John's death. I helped get 16 people released on parole since 2017, and all of them are doing well. Many of them, like Eddie, are having a very positive effect on their family and community, and are really helping to make the world a better place.

But it was still hit and miss, depending on which commissioners were on a particular panel, or what judge got the parole appeal. Many people with completely positive records and no real risk of re-offense were still getting denied.

Like Juan, who was recently denied release clearly just based on the nature of the offense so many years ago. Many of my clients are in prisons in the Appellate Division, 2nd Dep't, which says the board can't do that. But Juan was unlucky enough to be in a prison located in the Appellate Division 3rd Dep't, which says it is ok to deny release based only on the long-ago offense, even when the sentencing judge has said the person should get out after serving their minimum term, as long as they did well in prison. The parole board is essentially allowed to resentence people to life without parole.

And this year it's even worse than it has been at any point since 2017. The parole board has come up with ways to ignore the new regulations, and, when the prison is in the 2nd Dep't, the commissioners often come up with some ridiculous but creative window dressing so they can claim they're not denying release based on the offense itself. And too many judges have been letting them get away with it.

The 2017 COMPAS regulations were intended to force the parole board to put more weight on how the person has done *since* the time of the offense, rather than just looking at what happened on that one day 20 or 30 or 40 or even 50 years ago. If the COMPAS shows a low risk of re-offense, the board is generally supposed to grant release, and the regulations say that if they don't, they must explain why they are departing from that low risk score.

After getting reversed by courts several times because they claimed there was a reasonable probability of re-arrest, while the COMAS said there was a very *low risk* of re-arrest, the parole board figured out a way around this. *Now, they often agree that there is a very low risk of re-offense, but they deny release anyway,* based entirely or almost entirely on the nature of the offense. They claim this means they don't have to explain why they departed from the low risk COMPAS scores - they say they DIDN'T depart from the COMPAS scores, they just denied release anyway. That totally defeats the purpose of the COMPAS regulations, but so far, they've been getting away with it.

Another tactic the board uses to improperly deny release based on the nature of the offense is to claim that the person's remorse somehow didn't sound genuine enough to them. Sometimes they

will say this even when the person breaks down in tears before them, talking about how much shame and guilt they feel every day about having taken someone's life so many years ago. And too often courts let them get away with this as well.

Some of the things the commissioners come up during interviews to criticize the prisoner are truly ridiculous yet shocking because they are intended to manufacture reasons to keep them in prison when they clearly pose no risk.

Peter had killed his wife and the mother of his children many years ago, and he was so full of remorse and shame he had a hard time keeping his composure during his interview. He had transformed his life so much over the years that his wife's mother ended up writing an amazing victim impact letter *supporting* his release, as did two of his children.

During his interview, Peter was criticized for reading classic literature in prison. This is how that conversation went:

Q. ...[W]hat books have you read that are not part of what DOCCS would have afforded you?...

A. I've read a lot and it's one of the ways I've adjusted to this strange new world I've put myself in. I've read everything from the Brothers Karamazov by Dostoevsky, Middlemarch, all of Jane Austen, I've read a lot of classic literature, I've read a lot of science, behavioral science.

Q. I was about to say, *why would you read books of that type and subject as opposed to behavioral examination material?*

A. I've read a lot of that also.

Q. But those weren't the first ones you came out with." (Transcript at 17-18, available upon request.)

Peter's administrative appeal is still pending.

In Patrick's case, he had been in prison for 30 years, and his record was so good; his remorse was so strong; and he was such a role model for other prisoners, that the board was grasping at straws for an excuse to deny him. (The prison was in the 2nd Dep't, where they couldn't admit the denial was only based on the offense.) *So a commissioner asked him if maybe having been in prison for 30 years had damaged him to the point where he was no longer ok to ever be released.* This is how that conversation went:

"Q...[Y]ou know what? You've done almost 30 years?

A. Yes.

Q. It's a question: Do you think that someone who has served so much time should participate in mental health treatment? *Do you think you can reintegrate into society?* Because you talked about walking away. That's not so easy when you're in the street.

A. It's not so easy in prison, because there's nowhere to walk away to sometimes.

Q. I get it.

A. It's more of a – Commissioner, I'm glad you brought this up, because this is more of a mental conditioning thing that - it's not something that happens in an instant. It's something that you have to live your life by." (Transcript at 47, available upon request)

And, despite being in the 2nd Dep't, the commissioner in Patrick's case also asked him, 'What if [the victim's] closure is you staying in prison for the rest of your life?' This was his response:

“...I couldn't fault them for that. ... But I would want to convey to them ...that the things I can do outside, the positive things, the hope that I can affect people so [that] other families would never have to experience what [these] families experienced...

...[T]here are organizations that have offered to give me positions where I can influence people before they come to prison, and I would really like that opportunity.”
(Transcript at 41, available upon request)

Patrick recently lost his administrative appeal, and his appeal is now pending in court.

I should point out that in murder cases, which are the cases where the board can deny release over and over, and essentially resentence the person to life without parole, the recidivism rates are lower than for almost any other crime. In fact, I have not found a single murder case in NY where the person was denied release, appealed, won a new hearing and was then released, and ever ended up in prison again for a new crime. 0 percent recidivism in those cases.

Yet the parole board argues that it doesn't matter if there is a nearly 0 percent recidivism rate – they say sometimes the crime is just too awful for the person to ever be released. But these are cases where the sentence is 20 to life, or 25 to life, not life without parole. *It is simply not right for the parole board to deny release because they disagree with the law*, and think the person should never be released, no matter how positive their life has become.

Whether someone gets released shouldn't come down to the luck of the draw in terms of which commissioners they get, or which court they are in, or which judge they get on an appeal. There should be a fair standard where the parole board can't ignore the COMPAS regulations, and can't manufacture ridiculous excuses for denying release.

The Fair and Timely Parole Bill would make it clear that release can't be denied just based on the long-ago offense. The decision must be based on whether (and how) the person has changed over time. In order to deny release, the parole board would have to show that there is a current risk of re-offense, and must show how the record before them shows that risk. This Bill would make the system much fairer and much less arbitrary, and would result in many deserving people being released, without any risk to the public.

Elder Parole

The other Bill I want to support is Elder Parole. Statistics show clearly that when people age, they are much less likely to commit crimes, especially violent crimes. The Elder Parole Bill would allow those who are over 55, and who have served at least 15 years in prison, to at least have a *chance* at parole. It wouldn't mean they have to be released, it would just mean that they would be eligible to go before the parole board.

The Elder Parole Bill is probably the only chance someone like my client James has at ever being released. And James was not even sentenced to life without parole. At the age of 18 he got

caught up with a few other young men in a horrible crime spree, including several robberies and a murder. *Because of consecutive sentencing, James ended up with a sentence of over 1000 years*, and will never be eligible for parole. Yet now, over 40 years later, James is a completely different person, and he should not be denied parole eligibility based on something that happened when he was 18. He should at least be given a *chance* at release.

There is no good reason why NY should be keeping people locked up in expensive prison geriatric wards when they clearly pose no risk to anyone. When aging prisoners have already been locked up for at least 15 years, they should at least have the *chance* to show that they are worthy of release.

I ask you to support both the Fair and Timely Parole Bill and the Elder Parole Bill.

- Kathy Manley