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Thank you to the New York State Senate Committee on Crime Victims, Crime, and Correction, and 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 professor at Fordham Law School, I and my students, over many years, have been deeply involved in representing men and women who are serving life without parole or its functional equivalent and those who are repeatedly denied parole despite having already served long minimum sentences.

I submit this testimony in support of both bills and respectfully urge the Legislature to finally call a vote on them.

I have come to know so many men and women who are being over punished. They were sentenced to life without parole at age 18. They were sentenced to 50 years to life at age 19. They were sentenced to 15 to life or 25 to life, and after thirty or forty years continue to be denied parole, despite every marker of readiness for release.

Elder Parole and Fair and Timely Parole are modest and measured reforms to mitigate excess punishment—neither bill allows anyone to escape severe punishment for severe crimes.

As to Elder Parole, the vast majority of people who will benefit from its passage were young when they committed their crimes and were sent to prison. They will still be subject to decades of harsh punishment—no one is getting off easy. The young man sentenced to 50 years to life will not be parole eligible until he is age 55, which will mean almost 40 years in prison. The 18-year-old sentenced to life without parole will also serve decades in prison before being eligible for parole, and release is far from a given. He must still demonstrate to a parole board that his release is consistent with public safety.

As to Fair and Timely parole, its passage is critical because the current law's amorphous standards for release permit parole commissioners to impose their own sense of justice rather than adhere to a well-defined standard. There are about 7,000 people serving life sentences with the possibility of parole; about 1,200 see the parole board each year. Some are seeing the board for the first time having served their minimum sentences, most others are "reappearances," having been denied in the past. Most people will be denied parole, despite strong prison records and documented reentry plans, and most of those denials cite to these amorphous standards to justify the denials.

Under the current law, the Board is permitted to deny parole for any of three reasons.

The first, which focuses on public safety is fairly well defined. It requires the Board to determine whether there is a "reasonable probability" that the person will "live and remain at liberty without violating the law."

In contrast, the other two standards are vague and ill-defined. One requires the Board to determine whether release would be "incompatible with social welfare" and the other requires an assessment of whether release would "so deprecate the seriousness of the offense so as to undermine respect for the law." NY Exec. Law 259-i (2)(c)(A).

A typical denial decision reads: "After a review of the record, interview and deliberation, the panel has determined that your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law. Parole is denied." The Board has determined there is not a risk the person will reoffend--it has not denied parole for that reason. Instead, this typical denial decision is the Board expressing its opinion that not enough time has been served.

The deprecate standard is impossible to pin down. For example, how does a parole commissioner determine whether release will undermine respect for the law? Whose respect for the law does a commissioner consider? Does this mean that after multiple decades of retributive punishment, if the parole file contains a letter opposing parole then release would express a lack of appreciation for the seriousness of the offense? Or is it the extent and volume of opposition to release that matters? What if there are hundreds of opposition letters, then does release deprecate the seriousness of the crime? If so, then do hundreds of support letters mean that release will not undermine respect for the law? And, if so then should parole be a popularity contest essentially determined by which sector of society or which incarcerated person can mount the most effective campaign for opposition or support?

This standard is not only ambiguous, but it is irrational. Release after service of the minimum sentence or years later cannot possibly undermine respect for the law when the law permits release to parole supervision after service of the minimum sentence.

Similarly, how does a commissioner apply the "incompatible with social welfare" standard. Again, whose social welfare? Might release align with the welfare of certain sectors of society but not others? If the Board is not denying based on the first standard -- i.e. risk of recidivism-- then how is release incompatible with social welfare? It's not clear what this standard means which allows the Board to ascribe whatever meaning it wishes which ultimately results in the Board extending incarceration years beyond what is necessary to ensure public safety.

The current law also prohibits release based on good conduct. It reads: "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined…". *Id.* This means that even people with exceptional accomplishments in prison are denied parole because the current law permits the Board to extend the minimum sentence if it feels more punishment needs to be imposed.

All this ambiguity results in decisions that deny parole based on a host of irrational reasons. For example, the Board denies parole because a prosecutor 30 years ago recommended that the person never be released. The Board denies parole because it believes a strong prison record "does not diminish the serious loss of life caused by your actions." Or, the Board determines that "discretionary release is not yet appropriate," which begs the question when will it be appropriate. Or denies parole because the "community remains aware of your crime and opposes release," which suggests parole will be denied until this unidentified community feels differently.

The Parole Board determines one of the most valued rights in our society—liberty, and it has vast discretion to do so. At the very least, the exercise of that discretion should be delineated by a clear standard that does not permit each commissioner to impose his or her personal sense of justice. Fair and Timely provides that well defined standard.

It focuses the Parole Board on determining whether release aligns with public safety. Under this standard, the Board is tasked with determining whether there is an unreasonable risk of recidivism that cannot be mitigated by parole supervision. This legislation will not allow commissioners to impose their own sense of how much punishment is enough punishment. Under this bill It is enough when the person has served the minimum so long as there is not an unreasonable risk of recidivism.

Thank you for your time.