



Testimony of
Kirsten Spencer
Heidi Welty
Forensic Social Workers, Upstate Re-Entry Unit
New York County Defender Services

Before the
New York State Senate
Standing Committee on Crime Victims, Crime & Correction
&
Standing Committee on Judiciary

Joint Public Hearing
On the Parole Justice Bills
Elder Parole (S.15A) and Fair & Timely Parole (S.7514)

December 7, 2022

Our names are Heidi Welty and Kirsten Spencer. We are Forensic Social Workers in the Upstate Re-Entry Unit at New York County Defender Services. NYCDS is a public defense office in New York County, handling thousands of cases in Manhattan’s Criminal and Supreme Courts every year. 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/A.8855-Davila) and Fair & Timely Parole (S.7514-Salazar/A.4231A-Wepin) 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 Forensic Social Workers at NYCDS, we submit this testimony in support of both bills and respectfully urge the Legislature to finally call a vote on them.

I. PAROLE ADVOCACY AT NYCDS

Our testimony comes from a place of deep professional experience in the realm of parole advocacy. In 2019, with generous support from the New York State Senate, NYCDS created our first-of-its-kind Parole Preparation and Re-Entry Support Program, employing full-time re-entry social

New York County Defender Services

100 William St, 20th Floor, New York, New York 10038 | t: 212.803.1500 | f: 212.571.6035 | nycds.org

workers to assist our clients incarcerated in upstate prisons. We prepare our clients serving prison sentences for the parole review process and create discharge plans to help them successfully reintegrate into our community.

As of February 2022, we have supported 117 people incarcerated in upstate prisons during the parole review process. Sixty-two percent were granted parole on their first attempt, as compared to 40.9 percent of people granted parole statewide without the support of our project. We support 100 percent of our released parole preparation clients with discharge planning and reentry social work support to facilitate their return to their communities and to mitigate future criminal legal system involvement.

The success of this program demonstrates that everyone is capable of healing and deserving of a chance at redemption, and that healing can be achieved with the proper supports in place. The proposed parole reform bills achieve true justice by allowing a chance for such transformation to be recognized. NYCDS joins with our colleagues across the state in their comments about the injustices of the current state of the parole system and how the proposed legislation promotes genuine community safety.

II. IMPACT OF CURRENT PAROLE SYSTEM

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.

III. PROBLEM WITH CURRENT PAROLE PRACTICES

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 based on the one thing they can never change, the nature of the offense for which they were convicted however many years and decades ago. We have seen firsthand how people in prison 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 effectively imposing far harsher sentences than they were intended to receive.

Let us be clear: This is a racial justice issue. The vast majority of people in prison are Black and Latinx 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.

IV. CLIENT STORIES

a) Mr. Smith

Our existing parole system bars people from release because of their conviction – the one thing they cannot change no matter how hard they try. We currently work with a client who we will call here Mr. Smith (all names have been changed to protect our clients’ confidentiality). Mr. Smith is currently incarcerated for an assault conviction, for which he was sentenced to fifteen years to life. Now in his sixties, Mr. Smith has already served twenty years in prison, well beyond the minimum. Mr. Smith has used his time incarcerated to deeply reflect on his actions and completely transform his life.

As with all people who become incarcerated, there were many factors in Mr. Smith’s life that contributed to his involvement in the criminal legal system, including him being a victim of

physical and sexual abuse in his childhood and him struggling with a significant substance abuse disorder as an unhealthy response to the trauma he experienced. Mr. Smith's crime is inexcusable, and he has continued to take full responsibility for his actions, submitting an apology letter to the victim and expressing sincere remorse, not only in his words but also in his actions.

Throughout his incarceration, Mr. Smith has eagerly completed all required programming in addition to numerous voluntary programs. The subjects of these programs have addressed all of the aspects of his life that resulted in his incarceration, including substance abuse treatment programming, anger management programming, alternatives to violence programming, relationship groups, trauma groups, and so much more. Mr. Smith has received high praise from group facilitators and countless certificates of achievement from such programming.

Despite Mr. Smith's old age, declining health, and chronic medical disorders; despite his lack of disciplinary infractions; despite his strong re-entry plan and robust familial support—Mr. Smith has been denied parole three times. Mr. Smith is repeatedly denied parole due to the one factor he is not humanly capable of changing: the nature of his crime. In the multiple denials, the Board of Parole states that they believe if Mr. Smith were to be released, he would not remain at liberty without again violating the law, despite all of the evidence during his incarceration pointing to the contrary.

By all accounts, Mr. Smith has completely transformed his life. However, under our current parole system, it is doubtful that his decades of work towards redemption will ever be recognized.

b) Mr. Jones

The existing parole system denies people based on their previous convictions, for which they have already completed their sentence required by law. Mr. Jones, an NYCDS client, is currently incarcerated for drug-related offenses. At the time of his initial parole board appearance, Mr. Jones had two weeks left in the Alcohol and Substance Abuse Treatment [ASAT] program. Mr. Jones had also been working as the ASAT coordinator, assisting the program supervisor with various tasks and responsibilities.

Mr. Jones was fully engaged in his programming and went above and beyond to be helpful and provide support to others. He had a solid re-entry plan, was committed to entering long-term residential treatment for the first time in his life, demonstrated strong insight into the relationship between his criminal history and substance addiction, and was highly motivated to change the course of his life. Despite his efforts, Mr. Jones was denied parole at his initial parole board appearance as a result of his prior convictions, prolonging his access to essential resources and recovery in the community.

c) Mr. Moore

Sometimes the Board of Parole denies people not for their current crime of conviction or any lack of rehabilitation, but because of some element of violence in a previous conviction. Mr. Moore was incarcerated for a drug-related offense. He was incarcerated upstate for a full year before he had his parole board hearing, during which time he completed both required and voluntary

substance abuse treatment programming and had a spotless disciplinary record. Ultimately, he was denied parole at his hearing. The Board of Parole explained it was because of the violence in a previous robbery conviction, despite the fact that he had already served the sentence for the previous conviction, and it was not connected to his current prison sentence in any way.

d) Ms. Williams

For people who are part of the LGBT community, being incarcerated can present serious risks of verbal and physical abuse. One NYCDS client who identifies with this community, Ms. Williams, has faced violence while incarcerated, including attempts to light her bed on fire. Ms. Williams is incarcerated for an assault conviction, a crime for which she expresses sincere and genuine remorse. Because Ms. Williams was still on the waitlist for the anger management program by the time she had her parole board hearing, Ms. Williams was denied parole and had to remain in fear of facing violence again. In addition to her not being given the opportunity to complete her programming Ms. Williams was also denied parole as a result of her prior convictions, facts of her life that she will never be able to change.

V. THE FAIR & TIMELY PAROLE ACT

The client stories shared above illustrate how deeply broken our current system is. Reform is long overdue. We must begin 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.

The current practice relies on judging people solely based on the past actions that resulted in their incarceration, while wholly ignoring the person that they are today. While incarcerated, people engage in critical self-reflection that allows them to develop insight into the underlying factors that led to their involvement in the criminal legal system. These essential efforts should be acknowledged and honored, as they are the basis for true reform and healing. For many people, their criminal behavior is directly linked to addiction, lack of proper mental health treatment, and unresolved trauma from their past. During their incarceration, both through programming and reflection, people come to understand their actions and behaviors in a more meaningful way, making them more open and willing to seek appropriate support and treatment in the community. This bill would give people the reasonable opportunity to prove their growth and readiness to be released.

a) How the Bill Would Impact Clients:

This bill would have a remarkable impact on our clients' lives:

For Mr. Smith, this bill would allow for his immeasurable growth to finally be recognized by the Board of Parole, and they would finally take such rehabilitation into account when making their decision of whether to grant parole.

When Mr. Jones was denied parole, after having completed the substance abuse treatment program, he had no other relevant programming to engage in during his incarceration. This bill would enable Mr. Jones and countless others who have completed their programming and gone above and beyond their responsibilities in the program, to re-enter the community and access critical resources which ultimately reduce their chances of recidivism and bring them closer to being active and positive participants in our society.

Mr. Moore should not have been denied parole based on a previous conviction for which he has already served time. Mr. Moore cannot change the violence in his past; he can only focus on bettering the person he is today.

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. This bill would simply allow for a more comprehensive assessment that includes acknowledgement of a person's transformation while incarcerated.

VI. ELDER PAROLE

New York must 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. Research shows that older adults are much less likely to commit crimes, and the cost of incarcerating aging adults significantly outweighs the actual risk that they pose to society. According to a 2012 report by the ACLU, "*the rates of crime decline dramatically after age 55, while the costs of care for older adults greatly exceed care costs for younger adults*" (Rakes et al., 2018). Considering the health

risks associated with elder incarceration and the low recidivism rates among the elder population, we believe that the Elder Parole bill both supports public safety and promotes justice.

VII. CONCLUSION

New York County Defender Services supports 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. We respectfully ask that you pass the Elder Parole and Fair & Timely Parole bills this session. If you have any questions about our testimony, feel free to contact us at kspencer@nycds.org and hwelty@nycds.org.