

# PAROLE PREPARATION PROJECT



A PROJECT OF  
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## Senate Hearings on Parole and Voting Rights *Testimony by Executive Director Michelle Lewin, Esq.* October 1, 2018 in Albany, NY

### I. Introduction and Background

My name is Michelle Lewin and I'm an attorney in New York State and the Executive Director of the Parole Preparation Project. Founded in 2013, the Project supports and advocates for the release of people serving life sentences in New York State prisons. We train community volunteers to assist hundreds of parole-eligible people with their applications for parole. We also help lead the statewide campaign for parole justice.

In addition to running the Parole Preparation Project, I coordinate a contingent of attorneys working on parole-related litigation across the state, and am deeply familiar with parole policy and procedures, and the inner-workings of the Board of Parole and the Department of Corrections and Community Supervision (DOCCS). I'm considered one of the statewide experts in this issue, and I consult on cases nationwide.

Just recently, in conjunction with the Release Aging People in Prison Campaign, we at the Parole Preparation Project published a 30-page report entitled "*The New York State Parole Board: Failures in Staffing and Performance.*" In this report, we detail how severe understaffing on the Parole Board has led to myriad procedural problems, over-worked Commissioners, higher caseloads, shorter parole interviews, and less time for individualized evaluations of parole applicant files. These realities have led to devastating consequences for people in prison and their loved ones.

To be plain about it, our work is about advocating for the release of more people from prison. It is about ensuring that parole-eligible people have a fair and meaningful opportunity for parole, and that their freedom is not determined by a political agenda, a special interest group, or an antiquated approach to "law and order." Our work is about safety, healing and justice.

### II. Our Values and Principles

Before addressing any arguments in greater detail, I want to outline some of the core principles that guide our movement for parole justice, and, from our perspective, should guide the criminal legal system at large. These principles are the foundation of our work, and drive us to advocate for a parole system that releases the vast majority of people who appear before it.

We believe that *all* people are valuable, and that regardless of the harm a person has caused, they deserve to be treated with dignity, respect and compassion. Further, no lives are *more* valuable than any other, and that members of law enforcement are no more important than the people who harm them.

We also see the humanity in all people, and recognize that people harm others for a whole host of reasons, often related to their own trauma and the ways in which we as a society have failed them. Violence stems from the painful realities of structural oppression, including racism and white supremacy.

We define people by who they are today. We do not define people by the worst thing they've ever done, but by their accomplishments, their aspirations and their personal transformations. All people are capable of change and of making incredible contributions to their communities. So many of our leaders in the parole justice movement who were not invited to testify, but are here today, were convicted of serious crimes decades ago and have since made tremendous contributions to our world. They are model human beings that we would should all aspire to emulate.

Further, we believe that the only determinative factors that should be used when assessing a person's readiness for release are these forward-looking markers: their achievements, their personal growth and their potential risk to public safety. According to DOCCS' own statistics, the vast majority of people in prison serving sentences for violent crimes such as murder, pose almost no risk to the community and rarely, if ever, recidivate. They have aged out of crime. This reality should form the basis of Parole Board determinations.

While advocating for the release of our people, we also simultaneously honor the experiences of all those who *are* harmed by crime and violence. We think of them daily—both victims and their families. We have learned this practice from those in prison. Further, we believe wholeheartedly in a victim's right to access a process of accountability, and to seek healing and restoration, in the many forms those take.

We do not suggest that there should be no accountability for harming other human beings. What we do not support is the current process rooted solely in punishment that serves no other purpose than to banish and indefinitely warehouse those who cause harm. We do not believe such a system helps our communities overcome the effects of crime and violence, nor does it soothe wounds, bring resolution or keep any of us safe.

In fact, the majority of crime victims in this country agree. In the first survey of its kind, the Alliance for Safety and Justice found that by a two to one margin, victims prefer that the criminal justice system focus more on rehabilitating people who commit crimes than punishing them. Six in ten victims prefer shorter prison sentences and more spending on prevention and rehabilitation. This research included family members of those killed in homicide-related crimes.

From this research and from personal experience, we know that most victims and their families, want something different than what the criminal justice system can provide, and what Senate Republicans are so boldly proffering.

What we want is to bring our people home—our people who pose no risk to public safety, have done tremendous work to demonstrate their suitability for release, and will make invaluable contributions to our communities upon their return.

### III. History of Parole and Current Law

In 2011, the New York State legislature amended the Executive Law governing parole to require the Board to “establish written procedures...incorporat[ing] risk and needs principles...” Prior to this change, use of evidence-based risk and needs tools was discretionary. The amendment required the Board to adopt and utilize an empirically validated risk assessment instrument, and to develop procedures for how to use such a tool.

When the 2011 law passed, it was hailed as a potentially momentous shift towards a new rehabilitative approach and more forward-looking parole release decisions. However, no grand overhaul ever materialized. Release rates did not increase, and people in prison reported that the parole release interview remained virtually the same, with an almost exclusive focus on the nature of the person’s crime.

In September 2017, after a yearlong process of soliciting public comments, the Board of Parole finally revised their regulations. This time, with even more emphasis on the role of risk and needs evaluations in release determinations. The regulations now state that if the Board departs from the risk assessment instrument, then it must give an “individualized reason for such departure.”

Additionally, when denying parole, the Board must give reasons for the denial “in detail... and in factually individualized and non-conclusory terms.” These changes in the regulations indicate a further shift away from the punitive “backward-looking” approach that has defined the Parole Board for decades, towards a more rehabilitative and risk-based analysis.

What I have heard others testify about today—and what Senator Gallivan has claimed in several public appearances, including most recently on Capitol Tonight just two weeks ago—is that advocates misunderstand the law. Senator Gallivan claims that the Executive Law that governs parole has within it an inherent requirement that the Parole Board consider a community’s opposition to a person’s release when making their determinations, and should weigh that opposition heavily.

This is not the law. The passage in dispute states that release shall be granted so long as it is not “incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.”

Other than this vague phrase, the Executive Law contains no factor requiring the Board to consider “community opposition,” a refrain we hear repeatedly from state Republican Senators. In fact, courts have held that the only opposition the Board may consider is the testimony from victims directly impacted by the crime and their families, and the district attorney. It is the job of the Parole Board, not special interest groups, to make individualized, independent decisions about someone’s freedom.

The “community opposition” state Senators and the Parole Board reference is also shrouded in secrecy. Parole applicants and their advocates are not permitted access to this so-called opposition, and in some cases, upon judicial action, have discovered it never really existed at all.

In other instances, “community opposition” merely refers to a petition, signed by people who have no knowledge of the case or any connection to the victim or their family. There is nothing in the law that prohibits parole applicants from seeing this material, and if Senate Republicans and members of the Board are so adamant about its power, then it should be made available to the very people it impacts most.

Senate Republicans claim that releasing anyone who has killed a member of law enforcement would “deprecate the seriousness of the crime,” and therefore violate the law. What is actually unlawful is their demand that the Board resentence people and issue blanket denials of people based solely on their crimes of conviction.

Senate Republicans are also saying that no amount of time, rehabilitation or transformation could meet the “deprecate” standard, and that the Board of Parole should resentence all people with these crimes to life without parole. Sentencing remains within the purview of the courts, not the Board.

Significantly, and perhaps surprisingly to this Committee, the new regulations published in September 2017 eliminate altogether the “welfare of society” and “deprecate” language, perhaps in light of how impossible it is to implement such vague language. While these phrases remain in the Executive Law, they appear nowhere in the revised version of the regulations.

Even if Commissioners were permitted to consider input from the general public, the question remains, which public and whose community are you even referring to? It seems you refer just to your own constituency, and even then, it is not clear that your “throw away the key” mentality is shared by your voters. “Undermining respect for the law” also does not refer to undermining respect for law enforcement officers. It refers to the legal system.

Further, the vast majority of people living in communities where people in prison (and most victims) come from, believe that continued incarceration and death behind bars in no way serves the “welfare of society.” Bringing people home, reuniting families and restoring fractured communities is the only form of welfare we seek.

Distorting the law in this way is an attempt by Senate Republicans to erase the progressive amendments made to the Executive Law in 2011 and the regulations in September 2017. It is an attempt to amplify and exaggerate the minority of voices in this state who want perpetual punishment and believe death in prison is the only form of justice. It is an attempt to silence Black and brown communities that have, for decades, fought for the release of their loved ones.

#### **IV. Devastating Impact of Parole Denials on People Serving Life Sentences**

The amendments to the regulations that govern parole, as well as the appointment of new Commissioners in June 2017—Commissioners this very Committee appointed—has led to an increase in release rates. Just last month, the Board of Parole released 48% of people who appeared before it. We welcome and celebrate these changes with an air of caution and skepticism.

Even with increased releases, more than 50% of people appearing before the Board are denied parole and remain locked up and away from their families.

Although most people appearing before the Board have accepted full responsibility for their crimes, completed extensive programming, undergone deep personal transformations, and developed strong release plans, the Board continues to rely almost exclusively on the nature of a person's crime in their denials. They disregard the many accomplishments of parole-eligible people, and their often categorically low risk for recidivism. They base a person's freedom on a single, unchanging moment that often occurred decades ago.

As you know, many applicants appear before the Board multiple times before they are granted release, forcing them to languish in prison for many years longer than their minimum sentence. These practices have an especially devastating consequence for the more than 9,000 people serving sentences with a maximum of life, who represent almost 20% of the prison population.

High rates of parole denials leave this group subject to potentially indefinite confinement, as they have no other path to release. Executive clemency is also rare, and compassionate release statuses are limited to those serving time for less serious crimes. Many people serving life sentences have lost hope of ever obtaining freedom. Many believe they will die in prison, and in reality, some will.

I hope by now you know the story of John Mackenzie, who at 70 years old and after 40 years in prison, committed suicide following his tenth parole denial. John was a scholar and writer, and a mentor to hundreds in prison. He founded a program that focused specifically on victims of crime and their experiences. He left behind two daughters, grandchildren and many loved ones.

As in John's case, although the Board does not legally have the power to impose new sentences, it effectively serves as a re-sentencing body, doling out longer punishments than the courts ever intended, and doing so in a manner largely hidden from the view of the system that originally arrested, convicted, and sentenced the applicant.

The Board's practices also exemplify nationwide criminal justice policies that are rooted in retribution and racism and result in extreme punishment. As with the criminal legal system at large, people of color, and more specifically Black men, are profoundly and disproportionately impacted by parole policy.

The Board's practices also systematically deny release to aging and elderly people. Many parole-eligible people serving life sentences are over the age of 50, with some entering their 60s and 70s. This mass aging in prison—which is happening not only in New York State, but across the country—means we are building nursing homes inside prison walls and graveyards on prison grounds. And I don't mean this metaphorically.

Just this past July, my client Joseph James died in prison at age 70, after a short battle with pancreatic cancer. He was scheduled to appear for his 10<sup>th</sup> Parole Board interview, but on the date of his appearance, no staff member or Parole Commissioner came to the hospital at Wende Correctional Facility to retrieve him. Instead, days later, the Board issued a decision stating that

Mr. James had refused his interview and was denied parole as a result. Shocked by this news and the sudden reality that he would likely die before seeing his family again, Mr. James and I were momentarily silent on the phone. Weeks later he died.

Mr. James was not disposable. He was a human being with a sense of humor, favorite foods and a family. He saved the life of a man in prison and he was an important person to so many, including me.

Let's be clear that in New York State, repeatedly denying someone parole means sentencing them to die in prison. When Republican Senators say "people who kill police officers should not be released," what they mean is that they should die behind bars.

In fact, more than 960 people have died in prison since 2011. Their deaths are on the hands of this committee, the Governor and so many others.

## V. Conclusion

I almost hesitate to share these stories about people languishing in prison for decades. You know these stories. Your policies, your political influence, your appointments, and even your own service on the Parole Board created the very conditions that people in prison and their loved ones now face.

I will also add that while we are here participating in this process, we see these hearings as a political ploy and an attempt to rally your base and scare voters into re-electing you in November. Your proposed policies do not serve any of your stated goals of "public safety," "protecting victims," or "law and order." They are purely for punishment and nothing else.

Further, your characterization of incarcerated people and those who have been convicted of violence as "dangerous," "barbaric," and other words I am ashamed to repeat, is not only factually inaccurate, but racist, bigoted and harmful. The same is true of your efforts to disenfranchise people on parole who only recently obtained the right to vote. Republicans across the country use fearmongering, deception and hate to rally their constituents, and you are no different.

I am hopeful that in November, "community opposition" will refer not to a small contingent of law enforcement opposing the release of aging people in prison, but the masses who have decidedly said "enough." No more perpetual punishment. No more death in prison.

Thank you.