



**TESTIMONY BY PROFESSOR STEVEN ZEIDMAN
BEFORE THE NEW YORK STATE SENATE
COMMITTEE ON CRIME VICTIMS, CRIME & CORRECTION HEARING ON HOW
THE ELDER PAROLE AND FAIR & TIMELY PAROLE BILLS WILL IMPROVE
PAROLE RELEASE LAWS AND PUBLIC SAFETY IN NEW YORK STATE**

December 7, 2022

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) and Fair & Timely Parole (S.7514-Salazar) bills. Together, these two parole justice measures will provide a measure of hope for thousands of people in prison that they are not consigned to die behind the walls. I submit this testimony in support of both bills and respectfully urge the Legislature to finally call a vote on them.

I am a Professor at CUNY School of Law and since 2015 I have been working with law students in our *Second Look Project: Beyond Guilt* (<https://www.law.cuny.edu/slp/>) on behalf of hundreds of people serving life and long-term sentences in New York State prisons. That work entails filing clemency applications with the Governor, and also helping people prepare for parole interviews and filing appeals if parole is denied. That work has made abundantly clear the desperate need for passage of the Elder Parole and Fair and Timely Parole bills. I do not believe it is hyperbole to say it is a matter of life and death.

There is ample evidence to support the need for reforming the parole system, including the disparate racial impact of the criminal legal system from arrest through parole, the exponential growth of older people in prison, the unacceptably low parole release rates, and the social and economic costs of unnecessarily keeping so many people in prison who long ago transformed their lives. But rather than focus on data and numbers, I would like to talk to you about people who suffer under the current punitive parole regime.

Several years ago, a woman, Ms. M., came to talk to me at the law school about her son. She said that thirty years ago, when he was twenty-five years old, he participated in a robbery gone terribly wrong and two people were killed. Her son was sentenced to fifty years to life. Now, three decades later, her son was fifty-five years old. He readily acknowledged his responsibility for the irreparable harm he caused, he was wracked with remorse, and he had devoted the past thirty years to personal growth and change. In other words, he was no longer the same impulsive young man but was now a mature and thoughtful middle-aged adult. Recognizing that her son would not be eligible for parole for another twenty years, at which point he would be seventy-five years old, Ms. M. asked if there was anything we could do for him.

It pained me to tell her that there was not a single statutorily authorized thing that we could do – he would have to serve another twenty years before seeing the Parole Board.

And that is the reason we need the Elder Parole Bill. With this bill, Ms. M's son, having served well beyond fifteen years and now being fifty-five years old, would see the Parole Board and have an opportunity – a chance – to make his case for release. Without the bill, given the average life expectancy of people in prison, he would most likely die behind the walls without ever even having the chance to see the Parole Board. And his case is hardly unique – that is why I refer to passage of the bill as a matter of life and death.

To be sure, the situation I just described – a person serving a draconian sentence like fifty years to life - is not unusual. The extant crisis of mass incarceration was fueled by the war on drugs and hyper-aggressive, get tough on crime, policing, but also by the massive sentences that were routinely handed down, particularly in the 1980s and 90s. These sentences were to a large degree fueled by racist tropes like “super-predator,” “wilding,” and “wolfpack” that led to massive sentences for thousands of people of color. And while there seems to be agreement among left and right, liberal and conservative, that there is indeed a crisis of mass incarceration, little is being done to redress that crisis. The Elder Parole Bill is one step toward rectification.

Keep in mind two significant facts about the Elder Parole bill that should mollify anyone opposed. First, most people impacted by the bill will have served well over fifteen years before becoming eligible for parole; they have surely been punished. Think again of the example I just described. Even with the Elder Parole bill, a twenty-five-year-old man sentenced to fifty years to life will need to serve thirty years before they see the Parole Board. Second, the bill is simply an opportunity for parole, it is not a guarantee; it simply provides a chance for someone to make their case for release to the Parole Board.

Also bear in mind that that chance at release provides an incarcerated person serving a lengthy sentence with hope that they might not die in prison. It provides an incentive for them to confront the confluence of factors that led them to where they are and to do their best to repair, atone, and transform, and as a result also makes for a safer prison environment.

However, while making older people who have already served substantial time in prison eligible for parole is a crucial step toward addressing New York State's antiquated and punitive parole system, more needs to be done. One of the first people I worked with in pursuit of parole, JR, had been sentenced to twenty-five years to life. When I met him, he had been denied parole eleven times and had served forty-two years. Reviewing all his parole decisions it quickly became clear that the Parole Board's stated basis for denial was always the same – the seriousness of the crime.

At first blush, that seems to make intuitive sense. After all, a serious crime carries more consequences than one that is not serious. But as we talked about how to approach his next parole interview, the problem, if not the irrationality, of focusing on the serious nature of the crime became apparent. JR became increasingly frustrated and despondent and asked me why he should even bother going through with yet another parole interview. In his words, “The crime was serious when it happened, it is serious today, and it will be serious tomorrow and forever. If

that is the reason to deny parole then why should I bother going through the charade of a process?”

And that crystallizes the need for passage of the Fair and Timely Parole Bill.

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 – their crime of conviction.

Notably, the 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, but the bill represents 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. Put another way, the bill recognizes and values the human potential for transformation and redemption.

2023 must be the year for parole justice. I respectfully ask that you pass the Elder Parole and Fair & Timely Parole bills this session.

Thank you for considering my comments.