

**SENATE PUBLIC HEARING**

**Testimony before**

**The New York State Senate  
Standing Committee on Crime Victims, Crime and Correction  
and  
Standing Committee on Judiciary**

**On S.15-A, Elder Parole Act, and S.7514, Fair and Timely Parole Act**

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Thank you, Chairs Salazar and Hoylman and members of the Senate Committees on Crime Victims, Crime and Correction and Judiciary for the opportunity to testify about S.15-A, the Elder Parole Act, and S.7514, the Fair and Timely Parole Act. My name is Susan Bryant and I am the Executive Director of the New York State Defenders Association (NYSDA).

These two parole justice measures will help families, improve community safety, and save money. We have written before in support of these bills and respectfully urge the Legislature to bring them to a vote during the upcoming legislative session.

NYSDA, through our Public Defense Backup Center and Veterans Defense Program, provides comprehensive services to the approximately 6,000 public defenders, legal aid society lawyers, and court-appointed attorneys in over 130 county-based programs who represent people accused of crime and adults involved in family court cases who cannot afford to hire an attorney. We offer training, legal research, a statewide clearinghouse, and substantial technical and legal assistance that is critical to the effectiveness of overburdened defenders, and vital for improving racial and social justice. We advocate for measures that will benefit the public defense system and its clients.

## **Background**

NYSDA has observed and opposed for decades the extremely harsh sentencing and limited parole release actions that focus almost exclusively on retribution and keep people in prison far too long. These practices have denied and defied the principles of redemption, personal transformation, healing, and safety, at high fiscal and moral cost.

Even as the state's overall prison population has declined, the percentage of older adults who are incarcerated has dramatically increased, as the New York State Comptroller reported in January of this year.<sup>1</sup> Close to one in four people who are incarcerated are 50 or older. A New Yorker dies in state prison more than once every three days, a crisis that has been called New York's new death penalty.<sup>2</sup> And, as a result of systemic racism in our society and the criminal legal system, the vast majority of people in prison are Black and Latinx.

The grave injustice of mass incarceration in New York extends beyond the harm inflicted on individual people in prison. Across New York, tens of thousands of families are missing one or more family members: children, parents, grandparents, and great-grandparents. Reunification of families would contribute to, not endanger, public safety. The findings of a recent study of people who have an incarcerated family member "suggest that family member incarceration was associated with lower well-being and lower projected life expectancy, with evidence of a

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<sup>1</sup> "New York State's Aging Prison Population: Share of Older Adults Keeps Rising," available at <https://www.osc.state.ny.us/press/releases/2022/01/new-yorks-prison-population-continues-decline-share-older-adults-keeps-rising>.

<sup>2</sup> Columbia University Center for Justice, "New York State's New Death Penalty: The Death Toll of Mass Incarceration in a Post Execution Era," available at <https://centerforjustice.columbia.edu/research-projects/new-yorks-new-death-penalty-death-toll-mass-incarceration-post-execution-era>.

disproportionate burden among Black family members.”<sup>3</sup> Countless people who have been incarcerated have returned home to the benefit of their families, communities, and the state. Every day, they are making positive contributions to society as mentors, leaders, policy advocates, violence interrupters, entrepreneurs, caregivers, and more.

New York spends an average of \$60,000 annually to incarcerate one person, and between \$100,000 and \$240,000 annually per older adult in prison. This is money that should be invested in community resources that support health and wellbeing—such as housing, health care, and education—and promote justice, through supports for crime victims and survivors and improved public defense representation.

### **Problems with the Current Law**

Thousands of people in prison have no current pathway to be considered for release, regardless of their transformation while incarcerated and the low safety risk they now present. These include people who are serving life without parole sentences or sentences that exceed their natural lifetimes. Thousands more who are, or will become, eligible for parole release consideration have little to no hope of release being approved due to the existing parole release standard in Executive Law 259-i.

Too often, the Board of Parole denies release based on the one thing incarcerated people can never change—the nature of the offense they committed years or decades before. People who have completely transformed themselves, accepted responsibility for their past actions, taken every opportunity for growth available in the NYS Department of Corrections and Community Supervision (DOCCS) system and even created new ones, have still been repeatedly denied release. Instead of evaluating a person’s rehabilitation and readiness for release and considering the minimum sentence imposed by the sentencing court, the Board issues decisions denying release using conclusory and often boilerplate language that does not provide any insight into their analysis or how the individual could, if ever, improve their chances of release in the future. The existing law allows the Board to effectively re-sentence people for two years at a time with little justification or transparency.

It is important to note that individuals who are eligible for parole do not have a right to counsel and rarely have legal assistance when preparing for Board appearances. Attorneys can help people prepare their parole release packages, understand the parole release standard and the factors the Board must consider, and prepare for Board hearings. Appearing before parole commissioners via video conference technology to answer questions about their past, present, and future can be a very stressful, emotional, and intimidating experience. Having an attorney’s guidance and legal advice through this process would make a significant difference.

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<sup>3</sup> Sundaresh et. al, “Exposure to Family Member Incarceration and Adult Well-being in the United States,” *JAMA Netw Open* (2021), available at [https://www.researchgate.net/publication/351945786\\_Exposure\\_to\\_Family\\_Member\\_Incarceration\\_and\\_Adult\\_Well-being\\_in\\_the\\_United\\_States](https://www.researchgate.net/publication/351945786_Exposure_to_Family_Member_Incarceration_and_Adult_Well-being_in_the_United_States).

This is a racial justice issue. As noted above, a great majority of people in prison are Black and Latinx—a result of systemic racism. In 2020, the Albany *Times Union* examined parole release decisions, finding that the Board of Parole was significantly less likely to release Black and Latinx people relative to their white counterparts.<sup>4</sup> The *Times Union*'s investigation found that the Board released a greater percentage of white people, 41%, compared to 34% of Black people and 33% of Latinx people. According to that analysis, at the time of reporting, 675 incarcerated Black and Latinx people would have been 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.

### **Elder Parole and Fair and Timely Parole Will Help Solve These Problems**

The Elder Parole Act and the Fair and Timely Parole Act will help to solve these problems by: (1) reorienting the parole release standard to focus more on the individual's current risk of violating the law and their personal transformation; (2) requiring the Board, when denying release, to issue a detailed and individualized written decision; and (3) allowing the Board to consider release of individuals who have served at least 15 consecutive years of their sentence and are 55 or older.

#### **Fair and Timely Parole Act**

The Fair and Timely Parole Act (S.7514/A.4231-A) would ensure that people in prison have a meaningful opportunity to demonstrate their rehabilitation and be released. The bill would restore the Parole Board's original purpose of evaluating people's readiness for release and change the standard of parole release to primarily consider the person's rehabilitation while incarcerated and their current risk of violating the law. Further, the bill specifically requires that the Board "explain in writing in detailed, individualized, and non-conclusory terms the basis for a denial of parole, including how the parole case record and the enumerated factors were considered and weighed." It is important to note that the bill does not eliminate the discretion of parole commissioners, nor does it remove the requirement that the Board consider the nature of someone's crime and any victim impact statements in making release decisions.

Enacting 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.

#### **Elder Parole Act**

The Elder Parole Act (S.15-A/A.8855) would make older adults in prison who have served at least 15 consecutive years of their current sentence eligible for individualized parole release consideration. The bill does not require release, it merely gives 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.

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<sup>4</sup> "A 'broken' parole process: Data shows widened racial bias," available at <https://www.timesunion.com/news/article/A-broken-parole-process-Data-show-widening-15739596.php>.

The bill sets the age of eligibility at 55, the age at which the state’s prison agency, DOCCS, like others, classifies people as older adults, due to the reality of accelerated aging behind bars. According to a 2022 report from DOCCS, between 2017 and 2021, the average age of death by what is classified as “natural causes” is 60.6, with the overall average being 56.6.<sup>5</sup> Many studies have shown the impact that incarceration has on life expectancy.<sup>6</sup> For example, one study of adults on parole supervision in New York found that “[e]ach additional year in prison ... translated to a 2-year decline in life expectancy ....”<sup>7</sup> Further, the bill will serve public safety as statistics show that reincarceration rates for older adults are extremely low.

## **Conclusion**

On behalf of the New York State Defenders Association, public defense lawyers, and their clients, I thank Chairs Salazar and Hoylman for the opportunity to testify. NYSDA supports these bills because we value the worth and dignity of all people. We believe no one is disposable, and that no one should be defined by the worst thing they have ever done.

NYSDA stands ready to provide further assistance regarding these critical pieces of legislation and other matters related to the criminal legal system and public defense in New York.

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<sup>5</sup> Annual Mortality Report: 2021, available at <https://doccs.ny.gov/system/files/documents/2022/07/2021-annual-mortality-report-final.pdf>.

<sup>6</sup> See, e.g., Robert Wood Johnson Foundation, “Mass Incarceration Threatens Health Equity in America,” available at <https://www.rwjf.org/en/library/research/2019/01/mass-incarceration-threatens-health-equity-in-america.html>.

<sup>7</sup> Patterson, “The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003,” *American Journal of Public Health* (March 2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673515/>.