



TESTIMONY OF:

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and the New York State Senate Standing Committee on Crime Victims, Crime, and Corrections

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On behalf of the Partnership for the Public Good ("PPG"), I would like to thank Chairperson Salazar and the Senate Standing Committee on Crime Victims, Crime, and Corrections, and Chairperson Hoylman and the Senate Standing Judiciary Committee, for jointly holding today's hearing on Elder Parole (S15A-Hoylman) and Fair and Timely Parole (S7514-Salazar).

PPG is a Buffalo think tank with over 370 partners working to create a more fair and inclusive Buffalo-Niagara region. We provide research and advocacy support across issue areas for more just policies on the state and local levels.

New York State's investment in mass incarceration outpaces funding for critical community-based services—including elder services, mental health services, and youth programming.¹ Spending billions to criminalize and incarcerate each year supports an endless cycle of punishment that results in disinvested communities and generational trauma. New York can no longer afford to perpetuate harm by doing more of the same. The safest neighborhoods do not have the fullest jails and prisons. Decarceration is an evidence-based approach to public safety² we can achieve through a fairer parole determination process—passing Elder Parole (S15A-Hoylman) and Fair and Timely Parole (S7514-Salazar)—to restore families and heal communities.

I. "Death by Incarceration": New York's New Death Penalty

New York incarcerates people at a rate higher than the United Kingdom and Canada combined.³ Although the state abolished capital punishment, a new death penalty claims a life every three days.⁴ "Death by incarceration" reflects the lives lost while in the New York State Department of Corrections and

¹ Schaffer, Katie, and Rob Callahan. "Carceral Cash: An Analysis of New York Local, County, and State Budgets in 2019." Center for Community Alternatives, 2021.

<https://www.communityalternatives.org/wp-content/uploads/2021/02/cca-carceral-cash-report.pdf>.

² "New Studies Say Decarceration Does Not Compromise Public Safety." National League of Cities, July 30, 2021.

<https://www.nlc.org/article/2021/07/30/new-studies-say-decarceration-does-not-compromise-public-safety/>

³ "New York Profile." Prison Policy Initiative. Accessed November 29, 2022.

<https://www.prisonpolicy.org/profiles/NY.html>.

⁴ *New York State's New Death Penalty: The Death Toll of Mass Incarceration in a Post Execution Era*. Columbia University Center for Justice, October 2021.

<https://centerforjustice.columbia.edu/sites/default/files/content/New%20York%27s%20New%20Death%20Penalty%20Report.pdf>.



Community Supervision ("DOCCS") custody. In the past 10 years, more people died in state custody than the total number of persons executed during the 364 years New York had the death penalty.

Since the 1980s, there has been a 777% increase in persons serving 15 or more years who died behind bars. Repeat parole denials contribute to the spike in prison deaths, including elders, as more than 1 in 2 people who die in DOCCS custody today are 55 and older. "Death by incarceration" is the state's new legalized death penalty. Without meaningful policy interventions, New York will again lead the nation in executions.

II. The Impact of Mass Incarceration in Upstate New York

Upstate New York disproportionately represents the state's imprisoned population, sending the most people to prison per capita.⁵ Rochester has an incarceration rate (1,051 per 100,000 city residents) over five times the rate in New York City (185 per 100,000 city residents).⁶ Syracuse has over 4.5 times the incarceration rate (864 per 100,000 city residents) than the most populous city in the state.

As the second-largest city in New York State, Buffalo has an incarceration rate (608 per 100,000 city residents) over three times the rate in New York City.⁷ Three neighborhoods on the East Side—Genesee-Moselle, Delavan Grider, and Fillmore-Leroy—account for almost 20% of the city's imprisoned population, though representing only 7% of Buffalo's total population. The neighborhood trends overlap with inequities these majority-Black communities have endured through generations of disinvestment and segregation.

The City of Buffalo's East Side has Erie County's largest community of color, with 86% of the population in the area non-white (77% are Black).⁸ Black residents in East Side neighborhoods overrepresent undesirable health outcomes, with 73% of the Erie County Department of Health's clinical patients in five zip codes within that region.⁹ All of Buffalo's 51 Census block groups with limited access to supermarkets are on the city's East Side,¹⁰ creating food deserts that lack healthy, affordable options. Neighborhoods in

⁵ Widra, Emily, and Nick Encalada-Malinowski. "Where People in Prison Come From: The Geography of Mass Incarceration in New York." Prison Policy Initiative, June 2022.

<https://www.prisonpolicy.org/origin/ny/2020/report.html#methodology>.

⁶ "Number of People in Prison in 2020 From Each New York City or Village." Prison Policy Initiative. Accessed November 29, 2022. <https://www.prisonpolicy.org/origin/ny/2020/city.html>.

⁷ Ibid.

⁸ Krolkowski, Aaron, and Sam McGavern. "Working Toward Equality, Updated: Race, Employment, and Public Transportation in Erie County." Partnership for the Public Good, July 2017.

https://ppgbuffalo.org/files/documents/working_toward_equalityfinal.pdf.

⁹ "Striving for a Healthier Buffalo: A Community Health Needs Assessment for the Greater Buffalo United Ministries." University at Buffalo. Greater Buffalo United Ministries, December 2014.

https://ubwp.buffalo.edu/aps-cus/wp-content/uploads/sites/16/2015/04/Final-GRUM-Community-Health-Needs-Assessment_December-2014-2.pdf.

¹⁰ Blatto, Anna. "A City Divided: A Brief History of Segregation in Buffalo." Partnership for the Public Good, April 2018.

https://ppgbuffalo.org/files/documents/data-demographics-history/a_city_divided_a_brief_history_of_segregation_in_the_city_of_buffalo.pdf



this area contend with higher rates of targeted policing¹¹ that lead to disparities in arrests and a constant state of community surveillance.

Many Black Buffalonians living on the East Side are no better today than three decades ago because of policies that kept neighborhoods underdeveloped and under-resourced.¹² As a result, Buffalo's communities with the highest imprisonment rates correlate with poverty and challenges in meeting basic needs. This requires an intentional investment in supportive services outside the legal system to address root causes.

III. New York's Broken Parole System

The lack of meaningful release and an understaffed Parole Board ("the Board") fuel New York's mass incarceration crisis. The Board granted parole to approximately 40% of eligible people incarcerated in 2019.¹³ Although the release rate increased by a single percentage point in 2020—during the height of the global health crisis—New York still trails states like Idaho and Kentucky that grant parole more than half of the time, or New Hampshire over 80% of the time.¹⁴

The parole process should offer persons eligible the opportunity to go before the Board to petition for their release based on demonstrated behavior and participation in available programming. Yet, the Board routinely denies freedom due to the original crime and not who a person is today. New York's legal standards remain in direct conflict with the essence of parole that traps people in a state of perpetual punishment.¹⁵

A. The Rise of Elders in New York Prisons

Despite the decline in New York's prison population, "the older population has doubled."¹⁶ People 60 and over in state prison almost tripled from March 2008 to March 2021. Those 50 and above now account for roughly 1 in 4 of New York's prison population. New York State Comptroller Thomas DiNapoli urges lawmakers to identify ways to lower the number of people incarcerated over the age of 50. Without swift action, elders will continue to languish behind bars.

¹¹ Kelly, Geoff. "911 Calls Down 5%; Traffic Stops Up 48%." Investigative Post, October 18, 2021.

<https://www.investigativepost.org/2021/10/18/911-calls-down-5-traffic-stops-up-48/>.

¹² Taylor, Henry-Louis, Jin-Kyu Jung, and Evan Dash. Rep. *The Harder We Run: The State of Black Buffalo in 1990 and the Present*. University at Buffalo Center for Urban Studies, September 2021.

<http://centerforurbanstudies.ap.buffalo.edu/news-items/the-harder-we-run/>.

¹³ Heller, Benjamin, Cherrell Green, Shirin Purkayastha, Alex Boldin, and Brian King. Rep. *Toward a Fairer Parole Process: Examining Parole Denials in New York State*. Vera Institute of Justice, December 2021. <https://www.vera.org/downloads/publications/toward-a-fairer-parole-process-report.pdf>.

¹⁴ Alper, Mariel E. Rep. *By the Numbers: Parole Release and Revocation Across 50 States*. Robina Institute of Criminal Law and Criminal Justice, 2016. <https://perma.cc/Q9ZL-9MHY>.

¹⁵ Rep. *The Problem With Parole: New York State's Failing System of Release*. NYU Law/Parole Preparation Project, June 2021.

<https://drive.google.com/file/d/1BstQpE8BufZ2HiqqJ2fNL1E2ieaJ7Nfr/view?usp=sharing>.

¹⁶ "New York's Prison Population Continues Decline, But Share of Older Adults Keeps Rising." Office of the New York State Comptroller, January 13, 2022.

<https://www.osc.state.ny.us/press/releases/2022/01/new-yorks-prison-population-continues-decline-share-older-adults-keeps-rising>.



The Columbia University Center for Justice report *New York State's New Death Penalty: The Death Toll of Mass Incarceration in a Post Execution Era* reveals a 504% increase in deaths of people aged 55 and older since the 1980s.¹⁷ Medical costs associated with caring for an elder in prison can account for the second-highest budget item for a state corrections agency.¹⁸ Prison officials consistently deny requests for medical parole before the Board can decide.¹⁹ This leaves elders incarcerated with little to no recourse in the event of escalating health complications and lack of prompt routine care.

IV. Racial Disparities in State Prisons

Across the nation, Black people experience an incarceration rate almost five times higher than their white counterparts.²⁰ In New York, Black people make up 15% of the state population and nearly half (48%) of the prison population. Latine individuals account for 19% of New York's state population and almost a quarter (24%) of the prison population. There are glaring disparities in who gets incarcerated and who gets to go in front of the Board.

The June 2021 NYU Law and The Sentencing Project report *The Problem With Parole: New York State's Failing System of Release* illustrates inequities within the system that prevent non-white people from parole release consideration. Between January 2018 and January 2020, the state released 39% of people of color seeking parole, compared to 46% of white people. From October 2017 to October 2019, 43% of white first-time parole applicants received release, and just 33% of people of color who appeared before the Board for the first time.

The overrepresentation of Black and brown people in state prisons shows the presence of racially biased policies that solidify structural disadvantages and exacerbate disparities. Opening the pathway to meaningful parole release is one opportunity lawmakers can take to correct decades of unjust treatment.

V. Conclusion: Pass Elder Parole and Fair and Timely Parole

The current law enshrines barriers for people in prison to have a pathway for release—regardless of their transformation behind bars and whether they present any risk to public safety. This includes people serving life without parole or sentences exceeding their natural lifetimes. Thousands more are, or will become, eligible for parole release consideration. Yet, current Board practices leave them little to no hope of approval.

¹⁷ Ibid.

¹⁸ Nellis, Ashley. Rep. *Nothing But Time: Elderly Americans Serving Life Without Parole*. The Sentencing Project, June 2022.

https://drive.google.com/file/d/1GIbfs7wcXU9IolIHZwkKUj_N5wLLHvul/view?usp=sharing.

¹⁹ Law, Victoria. "Prison Officials Block Most Requests From Terminally Ill New Yorkers for Medical Release." *New York Focus*, April 14, 2022.

<https://www.nysfocus.com/2022/04/14/medical-parole-prisons-doccs/>.

²⁰ Nellis, Ashley. "The Color of Justice: Racial and Ethnic Disparity in State Prisons." The Sentencing Project, October 13, 2021.

<https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>.



New York lawmakers have an opportunity to right this wrong and heal families by passing the Elder Parole (S15A-Hoylman) and Fair and Timely Parole (S7514-Salazar) bills. Together, these two parole justice measures will reunite families, improve community safety, and save the state an estimated \$522 million annually²¹ that lawmakers can reallocate toward urgent community needs.

Elder Parole would allow people aged 55 and older to go before the Board for a hearing. Such an opportunity would reduce New York's death by incarceration, as 40% of all elder deaths behind bars since 1976 happened in the last decade.²² Approximately 1,000 elders would become parole-eligible, which would save lives. Elders suffer behind bars without proper medical care. New York State spends roughly \$120,000 to \$240,000 to incarcerate one elder—at least double the amount to imprison a non-elder.²³ New York could reinvest these cost-savings into community resources that promote public health and safety.

Fair and Timely Parole provides a more meaningful parole hearing for eligible people based on who they are today. Parole commissioners would maintain discretion but not center their decision on the original crime—moving New York towards the intended purpose of parole: to determine an individual's readiness for release, not to relitigate a case. The Board denies release to the majority of people eligible for parole. Changing this standard of parole would help address racial disparities with release and promote opportunities for a second chance instead of a cycle of punishment.

We're pleased to join Assembly Majority Leader Crystal Peoples-Stokes and Senator Tim Kennedy—leaders of the WNY Delegation—along with victim and survivor advocacy groups and hundreds of organizations across the state to call on lawmakers to pass Elder Parole and Fair and Timely Parole. This legislative session must be the year for parole justice. The time to act is now.

²¹Rep. *Unlocking Billions: A Fiscal Analysis of Pending Justice Reforms in New York State*. Columbia University Center for Justice, February 2021.
<https://drive.google.com/file/d/1ZEaBhTLMe6LvlvU7khLOJ5uL8SNrsEY/view?usp=sharing>

²² Ibid.

²³ "Aging and Elderly People in New York State Prisons." Release Aging People in Prison (RAPP). Accessed November 30, 2022.
https://bds.org/assets/files/Older-People-in-Prison-Short-Fact-Sheet-UPDATED_fixed.pdf.