

**Testimony of the Osborne Association to the
New York State Senate
Standing Committee on Crime Victims, Crime and Correction
Standing Committee on Elections**

Strengthening and Supporting the Parole Board and the Rule of Law

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**Presented by
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**Transforming Lives, Communities,
and the Criminal Justice System**

Thank you for the opportunity to speak with you today. My name is Elizabeth Gaynes, President of the Osborne Association, a criminal justice organization established nearly 90 years ago to honor the memory and legacy of founder Thomas Mott Osborne of Auburn, NY. Mr. Osborne was warden of Sing Sing more than a century ago, and my predecessor leading the Association had been the Commissioner of the NYC Department of Correction in the 1930's under Mayor LaGuardia, so we have a long history of working with people incarcerated in prisons and jails.

Today, we operate a wide range of family, treatment, diversion and reentry programs at sites in the Bronx, Brooklyn, and Manhattan in NYC, Newburgh in Orange County, and soon in Erie County. Osborne also provides services at 27 New York State prisons from Western and Central New York through the Hudson Valley as well as 7 Rikers Island jails. Most relevant to this hearing are the programs we offer to people serving long sentences, including the Longtermers Responsibility Project for individuals serving sentences for homicide-related offenses, and the Elder Reentry Initiative, established in response to the fact that the fastest growing population in New York and nationally are older adults. (We recently issued a White Paper, *The High Cost of Low Risk*, highlighting the growing crisis of aging in prison.) A significant driver of this growth is extremely long prison terms, which in NY has typically been the result of repeated parole denials based solely on the original crime.

The Osborne Association supported the recent changes to the Parole Board regulations and commends the Chairperson for continuing to encourage transparency in Parole Board decision-making. The changes were designed to refocus the Parole Board on rehabilitation and public safety, rather than on retribution and permanent punishment. The changes will over time provide a clearer sense of how and why Board Commissioners deliver their hearing outcomes, increasing confidence in the fairness and specificity of this process.

The need for this was made very clear to me some years back when I was joined by two prior Parole Board chairs and two people on parole to make a presentation to the Parole Board urging them to reduce the length of parole supervision for "lifers" who had been living successfully in the community for many years. After pointing out that this group of individuals had a recidivism rate for new felonies that was close to zero, and that they posed virtually no risk to public safety, one of the parole board members said: this is not about public safety. It's about punishment.

That has stayed with me even 10 years later. (By the way, shortly after this discussion, the same Board member was arrested for child sexual abuse and is now serving a 12-year sentence in a federal penitentiary.) Of course, I am not saying that all parole board members are pedophiles, any more than you should conclude that all people who committed a violent act 10+ years ago are irredeemable. In fact, the view that even people convicted of some of the worst crimes transform their lives and demonstrate it every day is shared by most corrections professionals.

They know people change because they see people change every day, and they clearly support the release of many of the Longtermers and Lifers they have come to know.

But how would we expect parole board members to recognize this? I have probably read 1,000 transcripts of parole hearings, and until recently very little time was focused on what the person has done since his or her incarceration, or even gave the person much of an opportunity to demonstrate the transformation that they have worked hard to accomplish. Most hearings are now by video-conference. My granddaughter thinks I look like a monster seeing me on Face Time, imagine what men and women in prison look like. They can barely see who is talking to them, the parole board members (too often two of them instead of three because you have not filled openings on the parole board) are shuffling through paper. PAPER! In 2018! The records have not been digitized, they are barely organized, rarely reviewed in advance except in the most notorious cases, and key medical and mental health information that would provide context for who the person actually is often missing or buried. Since there is only one copy, apparently, commissioners have to travel long distances so they can sit with other commissioners in front of a screen. So this understaffed board has only a few minutes to make momentous decisions.

Because of the recent positive changes to parole regulations, the Board has been moving toward a fairer process that re-balances parole decision-making away from relying nearly exclusively on the original crime – for which the person has already been sentenced by a court of law – to a risk and needs assessment focused on current risk of re-offending along with an individual's institutional record, his insight and remorse regarding his crime, and his or her age at the time of the crime. Input from the sentencing court, district attorney and victim should certainly be viewed if submitted, but they are not and should not be controlling as they generally are not informed by anything subsequent to the crime of conviction. Since the original crime can never be changed, and since people change, it is the current risk to public safety and current likelihood of leading a law-abiding life that should be the primary factors to be considered in evaluating an individual for release. The new regulations make this clear, and it would be of greater value if courts, prosecutors and elected officials explained to the victims and the public accurately how sentencing works – starting at the moment a sentence is imposed – rather than excoriating parole commissioners who vote to release someone.

Emphasizing these more dynamic factors as primary factors help to further distinguish the role of the Board from the province of the judiciary and reassure the public that the Board is not a (re)sentencing body, but instead fulfilling its **mandate to evaluate an individual's readiness for release based on who they are today.**

This is why it was so disappointing to me – and should have been an embarrassment to elected representatives and law enforcement officials who are sworn to uphold the rule of law – that we found ourselves in a situation following a parole decision that some of you disagreed with,

wherein it was considered appropriate to criticize and demonize the duly appointed parole commissioners who made a decision to release Herman Bell. By name. You allowed NYPD and the tabloids to basically put a target on their backs, when you – who confirmed them and know that they followed the law in making their decision – should have defended them.

I have known both of these individuals for many years, one is a crime survivor and worked for the NYC Department of Correction and the other served as a parole officer. Both of them, having spent more hours actually reading the files and giving serious consideration to all the factors to be considered, showed great courage by upholding the law and following the regulations. I for one thank them for their service. While the newer members all have professional backgrounds in the justice system and/or social services that enable them to better assess those before them, it is clear that the longer serving members have neither the background, temperament nor the willingness to adjust to the new regulations and continue to routinely deny parole to nearly everyone convicted of a violent crime. Of course, there are exceptions. Recently, a former police officer who murdered a man two miles from my house was released at his first parole hearing despite the fact that he did not take responsibility for the crime and his release was opposed by the survivor. I don't know if the decision would have been different if NYPD had supported the victim in that case. Frankly, I hope not. This country has a shameful history of public lynching including by those sworn to uphold the law. Enough.

At the same time, we believe strongly that victims should be heard. We understand that input from crime victims and survivors is an important part of the process at sentencing and may be pertinent to the parole decision. We also believe that victims deserve a summary of the accomplishments, programs completed, and other relevant updates. (Taking into account the opinion of those opposing an individual's release who have no connection to the victim or the specific harm caused and are simply expressing an opinion that, for example, people who have committed certain crimes should never be released, is not the law and should not be considered in individual cases.)

But victims deserve much more than a platform. They deserve it from the moment they are harmed. We didn't wait until Osama bin Laden was captured before the victims and survivors of 9/11 received a vast array of support and services, including medical, therapeutic and financial support. Victims and survivors deserve WAY more than the incarceration of the person who caused their harm. When that is all we give them, it is no wonder that some (by no means all) ask for that incarceration to never end, even if there is no further risk to their safety.

Interestingly, research challenges conventional wisdom on victims' views on criminal justice policy. A new survey released by the Alliance for Safety and Justice (ASJ) demonstrates clearly that despite popular assumptions that victims support long prison sentences, the vast majority of crime survivors in the survey believe the criminal justice system invests too little in rehabilitation

and treatment and focuses too much on punishment.

According to the survey, crime victims want accountability, but they also believe, by a margin of 4 to 1, that prison makes people more likely to commit crimes in the future. Victims prefer options beyond incarceration and would rather their taxpayer dollars be spent on education, job training, and workforce development. These views hold true across demographic groups, with wide support across race, age, gender, and political party affiliation.

Among the key findings:

- More than 6 out of 10 victims (64 percent) support shorter prison sentences and more spending on prevention and rehabilitation programs over sentences that keep people in prison for as long as possible
- 3 out of 4 victims (73 percent) believe rehabilitation, drug treatment, and mental health treatment more effectively prevent future crimes than punishment through incarceration
- 7 out of 10 victims believe that prison worsens mental illness and makes people with mental health issues more of a safety risk, rather than rehabilitating them
- 8 out of 10 victims support reducing prison sentences for people in prison who participate in rehabilitation, mental health, substance abuse, or educational or vocational programs

In some cases, victims of violent crime are even more likely to prefer alternatives to prison. The survey also shows that (1) too many victims suffer from trauma with no help from the criminal justice system; (2) victims prefer shorter sentences and more spending on prevention and treatment to long prison sentences; (3) victims support policies that restore judicial discretion, utilize risk and needs assessment in decision-making, and reduce sentence lengths for people who engage in rehabilitative programming.

These findings point to several recommendations that align with crime victims' views on safety and justice policy:

- Increase investments in evidence-based services that protect victims and stop the cycle of crime, expand trauma recovery center network.
- Target victims' services funding for the communities that have been most harmed by crime.
- Advance sentencing and corrections policies that more closely align with crime victims' needs and that place more emphasis on investments in new safety priorities that improve community health.

Each of us, all of us, believe that survivors of crime need to be heard, listened to, and have their needs considered during sentencing and parole. And we know what happens when we slide from considering those needs, and weighing what people in prison have done to transform their lives and makes amends, to simply rejecting parole outright. Keep in mind that many of these older

adults in prison were crime victims whose needs were unmet or long before they committed a crime or went to prison.

The problems resulting from excessive sentences for serious offenses do not recognize that most violent crime is situational, that research shows there is a low public safety risk for long-term prisoners, and costs of excessive sentences. But apparently, we have moved away from a focus on rehabilitation as the salient purpose of punishment to retribution as the primary goal.

Studies of recidivism rates among lifers, while few in number, consistently suggest that the recidivism rate—as defined by recommitment for a new offense—is relatively low.² Studies nationally and in New York have proven recidivism among life-sentenced prisoners who are granted parole is low, calling into question the accuracy of public safety arguments in support of lengthy terms of imprisonment. (A 2011 California-based study tracked 860 people convicted of homicide and sentenced to life, all of whom were paroled beginning in 1995. Longitudinal analysis of their outcome finds that in the years since their release, only five individuals (less than 1%) have been returned to prison or jail because of new felonies.⁴

And while cost is often only a barrier when we're trying to strengthen a safety net, let's not forget that effective life sentences are not just shortsighted and ignore the potential for rehabilitation, they are expensive. The United States currently spends more than \$16 billion annually on incarceration for individuals aged 50 and older more than the entire Department of Energy budget or Department of Education funding for school improvements.¹ While the nation's crime rate has declined, the number of incarcerated elders has outpaced the growth the nation's prison system: while the overall prison population grew 42 percent from 1995-2010, the aging population increased by 282 percent. Here at home in New York, 20 percent of our prison population—more than 10,000 people are aged 50 and older¹—and those aging in prison are the fastest growing demographic in corrections.

If we take this seriously, and take seriously the idea that corrections policy should be based on safety and justice, what can we do to reverse this startling trend and move towards more effective policies? At Osborne, we've been working for years with people who have committed violent crimes as they take radical accountability for the rippling effects of the harm they have caused. We see them transform their lives, and when they have, we work with them to prepare for reentry.

Many of these Longtermers are older adults before they have an opportunity for parole, and our Elder Reentry Initiative prepares them for the dramatically changed world they will face when they're released, pairing them with services like housing, medical treatment, and when possible, employment. Because of their own demonstrated transformation and this connection to services,

ERI participants are three times more likely to be released than the very low parole release rate of 20%. Remember, older adults who are released have a near-zero risk of recidivism, and yet they are denied parole nearly 80 percent of the time despite strong indicators of reform, rehabilitation, and responsibility. Despite my general skepticism about algorithmic risk scores, the fact is that age is the best predictor of risk of recidivism, and individuals who have aged in prison are, by virtually every measure, safe bets. I don't believe there is a senior corrections official who isn't both appreciative of the lifers for their work and positive influence, and baffled by why they are still in prison at all. We should not have to depend on the Governor's generosity in granting clemency to do what is right: the law should provide presumptive parole for individuals with low risk scores who are over 60 and have served at least a decade behind bars.

That's just a small part of what Osborne does, and we work every day to strengthen and expand those services. We're part of a community of providers who meet the needs of older folks in prison and when they come home. And we're part of the larger community calling for the use of Parole to be broadened and strengthened.

I came here today to support the notion that the Parole Board must follow the law and must not be threatened when they courageously do so. And while the reforms from 2017 made strides towards a fairer and more just process, there is more to do to achieve the critical aims of corrections—safety, justice, and fairness. And if I understand the mission of this committee, I think we share them as a primary goal.

- Fully staff the Parole Board: 12 of 19 commissioners are not enough commissioners to do this work the way it was meant to be done.
- Allow for all parole records to be digitized and shared with Parole staff long before a scheduled hearing.
- Restore in-person parole hearings. Parole commissioners should not be asked to consider a person's readiness to be released based on a short video conference call.
- Restore—don't diminish—the role of parole. Review processes should be a meaningful opportunity to demonstrate that the individual is capable of making responsible decisions and does not pose a threat to public safety. Parole boards should be staffed with members who have a background in corrections or relevant social services in order to best assess the suitability for release.
- Expand and increase the mechanisms for releasing aging men and women who pose little risk and can be assets to our communities.
- Increase utilization of compassionate release and medical parole policies by broadening eligibility criteria and streamlining the process for approval, including the availability of "fast-tracking" medical parole should the individual's condition significantly or suddenly decline.
- Improve discharge planning and reentry preparation for older adults by expanding or replicating Osborne's Elder Reentry Initiative across the system.

- Provide the Parole Board with information about cognitive impairments and medical information to inform their interactions at parole hearings and their decisions regarding release.
- Ensure continuity of care through specialized transitional planning and follow up for the aging population, including connection to geriatricians, health insurance and care coordinators.ⁱ

Final note re voting. Apparently there was an objection to the notion that people with certain criminal histories are being rewarded by the vote. Just a reminder: voting is not a reward. Voting is a right. It is settled that people do not lose all rights at the jailhouse door, and NY is finally joining the many states and countries that recognize voting as one of them. It is not only a right, it is the obligation of the citizen. Every citizen, although the majority of us seem not to bother, perhaps because they see little to vote for. And it is my greatest hope that people emerge from prison with the desire for full participation in society, with all of the rights and obligations that come with it. Including choosing our leaders and demanding that they respect the rule of law. We will all be better for it.

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