

**New York State Senate  
Joint Committee  
on Crime Victims, Crime and Corrections & the Judiciary Hearing**

**Testimony Regarding**

**S.15A - Elder Parole Bill  
S.7514 - Fair and Timely Parole Bill**

**December 7, 2022**

**Presented by:  
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Thank you to the members of the New York State Senate Crime Victims, Crime, and Correction and Judiciary Committees and its chairs Julia Salazar and Brad Hoylman, for the opportunity to provide testimony in support of the Elder Parole (S.15A-Hoylman) and Fair & Timely Parole (S.7514-Salazar) bills. My name is Wendell Walters, and I am the Manager of Policy and Advocacy in the Osborne Center for Justice Across Generations, the policy arm of the Osborne Association. Osborne is a member of the People's Campaign for Parole Justice and is one of the oldest and largest criminal justice organizations in the state, serving 10,000 participants each year. From arrest to reentry, Osborne offers a full spectrum of services for those who are justice-involved and their families from five community sites in the Bronx, Brooklyn, Harlem, Newburgh, and Buffalo, and inside 30 state prisons, and New York City's jails.

As you know, there has been a dramatic reduction in New York's prison population over the last 20 years. What was once a population over 77,000 is now 31,269 (as of December 1, 2022). Due to the efforts of many, there was an exceptional campaign to combat mass incarceration: sentencing laws were amended, particularly around drug charges, and more of an emphasis was directed at alternatives to incarceration. All categories of demographics were decreased - with the notable exception of those who are 50 years of age and older. According to a NYS Comptroller report issued in January 2022, the percentage of those 50 years of age and older in NY's prisons has doubled from 12% in 2008 to 24% in 2021.<sup>1</sup> It is projected that by the year 2030 the population of people aged 50 and older will account for one-third of all people incarcerated in the United States, amounting to a staggering 4,400 percent increase over a 50-year span.<sup>2</sup>

Most of the older adult population in prison today were subject to the extremely harsh sentencing of a different era and a racially biased parole system<sup>3</sup> that values vengeance and perpetual punishment above redemption and transformation. Besides the acute trauma of incarceration, these individuals have served decades inside walls of isolation that deprive them of adequate health care and nutrition, in an environment completely non-conducive for those of advancing age that actually accelerates the aging process. Under such conditions, a New Yorker dies in state prison more than once every three days, a crisis that academics have called New York's new death penalty.<sup>4</sup>

Under the current parole system, there is no viable pathway to release for thousands of individuals serving life or virtual life sentences, even if they have used their time in

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<sup>1</sup> Office of the New York State Comptroller, January 2022, [New York State's Aging Prison Population: Share of Older Adults Keeps Rising](#).

<sup>2</sup> American Civil Liberties Union, June 2012, [At America's Expense: The Mass Incarceration of the Elderly](#).

<sup>3</sup> Albany Times-Union, November 23, 2020, [A 'Broken' Parole Process: Data Shows Widened Racial Bias](#)

<sup>4</sup> Columbia University Center for Justice, October 2021, [New York State's New Death Penalty](#).

prison in the most productive manner and transformed their lives. The parole system does not afford any opportunity for any review of their case even if they were sentenced as young adults and have served decades behind bars. And for the thousands who are parole eligible and afforded an opportunity to present their case for release as determined by a sentencing judge, the parole board continually denies such relief based on the one thing those eligible for parole have no ability to change: the nature of the original crime for which they were convicted, no matter how long ago it occurred.

The parole board process is also inefficient. The board lacks a full complement of 19 commissioners to review the 10,000 parole interviews that are conducted each year, mostly by video, and too often with only two commissioners making a tie result in a denial, and the individual serving two more years until the next parole interview. Furthermore, the whole system is still operating by paper; records are not digitized so that commissioners have to travel to the file rather than the other way around.

And what is the cost for such a system? First, the incarcerated are not the only people suffering under these conditions. Tens of thousands of incarcerated individuals have families that are struggling with the absence of their loved one. Wives, husbands, partners, children, grandchildren, great-grandchildren and whole communities suffer from the extended absence of an incarcerated loved one. In NYS, it is estimated that 105,000 children have parents who are incarcerated. Neither Corrections nor Parole keep statistics nor can report on an exact number, and the estimate does not include “children” who are now in their 30s or 40s and still awaiting their mom or dad’s homecoming.<sup>5</sup> The financial cost to families of supporting an incarcerated loved one over decades is enormous, compounded by the emotional weight of missing family members which can affect children’s educational success, social interactions, and well-being.

The cost to taxpayers in dollars is enormous, too, especially when it comes to incarcerating those of advancing age. New York State spends an average of \$60,000 annually to incarcerate one person in prison, and between \$100,000 and \$240,000 annually per older adult in prison.<sup>6</sup> This is money that can be saved and reinvested into communities in need throughout the state.

As with all aspects of the criminal legal system, this is also an issue of racial justice. The vast majority of people in the New York State prison system are black and brown.<sup>7</sup>

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<sup>5</sup> OCFS, <https://ocfs.ny.gov/programs/fostercare/incarcerated-parents.php>

<sup>6</sup> Osborne Association, May 2018, [The High Cost of Low Risk: The Crisis of America's Aging Prison Population](#).

<sup>7</sup> New York State Department of Corrections and Community Supervision, January 2021, [Under Custody Report](#): Profile of Under Custody Population as of January 1, 2021

This community of people are over-policed, over detained, over prosecuted, incarcerated for longer and denied parole more often than their white counterparts due to systematic racism in our country. This is evidenced by an Albany Times-Union investigation in a 2020 report that looked at close to 19,000 parole determinations over two years. It found that the parole board was 8 times more likely to release a white person than a black person, and 7 times more likely to release a white person than a latinx person. The report also showed that 675 more people would have been released if the rate of release was equal.<sup>8</sup> That's 675 more people that would be reunited with their families, their children, and their communities. And that's just for the two year period for which analysis was conducted. Thousands of lives would be different if not for the racial injustice that the parole system in our state perpetuates.

Osborne has been a leader in the field of aging and the incarcerated. In a white paper first published in 2014 (updated in 2018) entitled, *The High Cost of Low Risk: The Crisis of America's Aging Prison Population*, we concluded that warehousing older people for decades is an entirely insufficient and counterproductive response to violent crime. We believe the financial costs, which as noted are significant, will continue to rise with the increasing numbers of older adults in prison, and may in fact make it financially untenable for the state while further eroding conditions inside.

Perhaps the fiscal cost would be worth it if this were keeping us safer, but it's not. After decades of incarceration, older people present little to no public safety risk upon release. They have the lowest recidivism rate of any age group in the country's prisons.<sup>9</sup> So the question is: is it good, sound policy to give incarcerated older adults who have spent decades in prison a fair and equal opportunity for release since they pose close to no public safety risk and releasing them will save hundreds of millions of dollars each year? The Elder Parole and Fair and Timely Parole bills are sensible policy initiatives that answer this question with a firm, "yes."

The Fair and Timely Parole bill, sponsored by the Corrections Chair, provides a meaningful opportunity for an incarcerated individual to demonstrate their rehabilitation while in prison. It shifts the focus of review away from the immutable past to who the individual is today. It changes the standard of parole review to primarily consider the person's rehabilitation while incarcerated and their *current risk* of violating the law. The proposed changes would no longer allow commissioners to deny people solely on their original crime, something that can never be changed. The commissioners still maintain their discretion under the bill to consider the original crime.

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<sup>8</sup> Albany Times-Union, November 23, 2020, [A 'Broken' Parole Process: Data Shows Widened Racial Bias](#).

<sup>9</sup> Osborne Association, May 2018, [The High Cost of Low Risk: The Crisis of America's Aging Prison Population](#).

The Elder Parole bill, sponsored by the Judiciary Chair since its introduction 4 years ago, would allow older adults in prison who have served at least 15 consecutive years of their current sentence and have reached the age of 55 to be eligible for individualized parole consideration. It is not a “blanket release” policy, nor does it guarantee release for anyone based on their age. Rather, it would give people who have already served significant sentences and reached the age of 55 or older an opportunity to be heard by the Board of Parole and, subject to the Board’s discretion, be released to their families and communities to live out their final years with dignity. The possibility of freedom for this group of people relies on this bill passing or on clemency (which is also unjustly and tragically severely under-utilized by the Governor).

Much has been said about the age of eligibility in the bill. It is 55 years of age and older for two critical reasons: (1) that is the age at which the Department of Corrections and Community Supervision (DOCCS) classifies people as older adults, in line with the reality of accelerated aging behind bars; (2) the average age of death by so-called natural causes in New York State prisons is only 58<sup>10</sup>. Sadly, the constant stress of the prison environment and separation from one’s family, compounded by systemic malnourishment, unclean water, and other harms endemic to incarceration, causes, on average, what can only be called premature deaths.

Osborne supports these two bills because we believe in transformation, redemption, and the need for equity in the parole system. We believe in our shared humanity and the human capacity to change and mature as those who have committed harm in their past grow old. No one should die in prison nor be defined by the worst thing they have ever done. We call on the legislature to pass and the Governor to sign these two bills. Osborne joins 350 other organizations and supports these bills without reservation.

Thank you.

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<sup>10</sup> Release Aging People in Prison, January 2022, [Testimony by Testimony by Theresa Grady, Jeannie Colon, Lisette Nieves and Nawanna Tucker Community Leaders with the Release Aging People in Prison \(RAPP\) Campaign Before the FY 2022-23 Joint Legislative Hearing on the Executive Public Protection Budget Proposal](#)