



Testimony of
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Before the
New York City
Committee on Aging
&
Committee on Criminal Justice

Joint Public Hearing
Justice in Aging – Reentry Issues for Older New Yorkers
Res. 241: Resolution calling upon the New York State Legislature to pass, and the Governor to sign [Parole Justice Bills], Fair and Timely Parole Act (S7514/A4231A) and Elderly Parole Act (S15A/A8855)

February 17, 2022

Good afternoon. My name is Raji Edayathumangalam. I am a Forensic Social Worker at New York County Defender Services. Thank you to the New York City Committee on Aging and Committee on Criminal Justice—especially Chair Hudson—for the opportunity to present testimony today on the crucial re-entry issues for older New Yorkers, and to strongly support and urge City Council to pass Resolution 241.

Today, I testify to how deeply broken the parole and the inadequate re-entry systems are for our justice-involved elders, and what their vital and urgent needs are, even more so after Covid-19 has wiped out a staggering number of older adults. Our elders have always served as living witnesses to our nation’s history and to our sense of continuity day-to-day as human beings. If we are truly invested in improving community safety, it comes with the moral imperative to do the right thing by reuniting families and reallocating crucial resources toward urgent community needs and goals, including those for older adults.

¹ The testimony was written together with Catherine Perrone (Law Graduate), Heidi Welty (Forensic Social Worker), and Kirsten Spencer (Supervising Forensic Social Worker).

I. SOCIAL WORK ADVOCACY FOR OLDER ADULTS

My testimony comes from a place of extensive professional experience and advocacy in the areas of older adults and re-entry issues that are specific to them. First, I worked with older adults at a senior center funded by the Department for The Aging (DFTA) in a NYCHA housing development in Brownsville, Brooklyn. The community was made of almost entirely African-American, Afro-Caribbean, and Latin-Caribbean elders. I learned firsthand from many of them how generations were scarred by legal involvement and the legal systems. In Brownsville, I met the oldest human being that I know. She was 103 years old when I met her and I know she would have so much to say about today's topics of discussion. Second, I am a licensed clinical social worker and practicing psychotherapist. I have worked with older adults in a community clinic in East Harlem, again another neighborhood with a concentration of older adults particularly impacted by the legal systems. Finally, in my role as a Forensic Social Worker at New York County Defender Services, I have learned in depth about the vast challenges experienced by older adults trapped in cycles of disenfranchisement, legal involvement, and futile cycles of no real resources and no real help.

II. CLIENT STORY

Our existing parole system bars elders from humane and timely release, and then trips them up constantly at every step when they ultimately return to the community. Take, for instance, the story of an elder client whom I will refer to as Mr. Jones. We have changed his name to protect his confidentiality. There's the part of his story before the emergency re-entry hotels ("hotels") were an option and the part after the "hotels" became an option, and you will hear the difference. My wonderful colleague and attorney Catherine Perrone and I currently work with Mr. Jones. Please bear in mind that he is 82 years old.

Mr. Jones was released on lifetime parole in 2019 at the age of 79 after well over four decades in state prison. If he was convicted today, his sentencing range minimum would have been 15-Life; the range on his RAP sheet from the 1970s reads "3 to Life." When Mr. Jones was released from state prison, the devastating Covid-19 pandemic was lurking just around the corner. He also returned to a New York that was an entirely new universe than he remembered—a dysphoric universe with cell phones and MetroCards instead of phone booths and subway tokens. His family in New York had dwindled away over the years and, while incarcerated, he also developed Alzheimer's disease and a host of other health conditions that are often accelerated in prison.

Mr. Jones was never permitted to have his case go before the parole board, and in 2019, he was finally released to parole with no re-entry plan to meaningfully integrate into his community at the age of 79. He was left to the elements with little to no family or financial support in New York. He was not connected to any elder re-entry initiatives, such as that at Osborne Association. Family from out of state came and tried to get him settled in an apartment. Eventually, Mr. Jones was arrested on a parole warrant in early 2022. He was remanded on that warrant and incarcerated at Rikers Island for failure to maintain appointments with parole. Picture the tragedy and absurdity of expecting an elder with dementia with no appropriate supports whatsoever, and an elder who never heard of a cell phone or a computer in his growing years to track his parole appointments!

While remanded at Rikers for failure to keep his parole appointments, Mr. Jones waited for his parole hearing date that never came. They changed his parole hearing date several times. One day, he became so ill that he fainted and was brought to Bellevue Hospital for emergency care where they diagnosed that he had contracted sepsis. Mr. Jones, an elder with the highest risk to die from complications of Covid was allowed to languish in Rikers by a failed parole system and he could have died. A writ was filed and denied, in spite of his very old age, in spite of his risks for Covid complications, and in spite of his near-death experience while on the Island.

Ultimately, Mr. Jones was released to parole again in early 2022 and he was able to return to the community. However, he has no place to live and no supports he knew of in the city. Thanks to the option of MOCJ emergency re-entry hotels with its low barrier to access (with the need for housing being the criteria for housing), Mr. Jones was able to get a hotel room in one of the MOCJ emergency hotels. There, Mr. Jones was able to begin to stabilize after decades of incarceration and instability. He was able to get a private room with some peace and quiet so he could sleep at night amidst his dementia and health issues. He was able to use a private bathroom without fear of being assaulted. He was able to get a hot meal three times a day. He was able to have clean laundry. He was able to get a medical treatment plan. He was able to get his first cell phone. He was able to learn how to use his cell phone.

Without the emergency re-entry hotel option, an elder like Mr. Jones would have yet again been cast away by our society and he would have been without a home upon his return to the community, this time from Rikers. Moreover, without his emergency re-entry hotel room, Mr. Jones could have been immediately violated on his parole as he would not have had a reportable address.

III. THE FAIR & TIMELY PAROLE ACT

Mr. Jones' story points to the critical changes that are long overdue in our parole systems. We must begin by passing the Fair & Timely Parole Act (S.307-Salazar/A.162-Weprin) to ensure that people have a meaningful opportunity to demonstrate their rehabilitation and be released. This bill will 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 will no longer be able to perpetually deny people release based solely on the one fact that they can never change.

The current practice relies on judging people solely based on the past actions that resulted in their incarceration, while wholly ignoring the person that they are today. While incarcerated, people engage in critical self-reflection that allows them to develop insight into the underlying factors that led to their involvement in the criminal legal system. These essential efforts should be acknowledged and honored, as they are the basis for true reform and healing. For many people, their criminal behavior is directly linked to a lack of fair access to basic resources (such as stable and secure housing, food, education, and healthcare); to their health, mental health, and substance use issues; to lack of quality and timely treatment, and to their unresolved past and ongoing trauma (including incarceration trauma). During their incarceration, people come to understand their actions and behaviors in a more meaningful way through programming and reflection, making

them more open and willing to seek appropriate support and treatment in the community. This bill would give people the reasonable opportunity to prove their growth and readiness to be released.

Passage of 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. This 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. This bill would simply allow for a more comprehensive assessment that includes acknowledgement of a person's transformation while incarcerated.

IV. ELDER PAROLE

New York must provide hope for families across this state by passing Elder Parole (S.2423-Hoylman-Sigal/A.2035-Davila). If enacted, this bill will allow older adults in prison who have served at least 15 consecutive years of their current sentence to be eligible for individualized parole consideration. Such a bill would benefit people like Mr. Jones who never had the opportunity to go before the Parole Board. The bill is not a "blanket release" policy, nor does it guarantee release for anyone based on their age. Rather, it will give people who have transformed themselves an opportunity to be heard by the Board, and subject to the Board's discretion, to be released to their families and communities to live their final years with dignity. Importantly, as stated before, it is well known that reincarceration rates for older adults are vanishingly small.

The age of eligibility in the bill is 55 for two critical reasons. First, 55 years is the age at which the Department of Correction and Community Supervision, like many other prison authors, classifies people as older adults, in line with the reality of accelerated aging behind bars. Second, the average age of death by so-called natural causes in New York State prisons is only 58. Sadly, the cumulative stressors of the prison environment and separation from one's family when compounded by the systemic malnourishment, unclean water, and other harms endemic to incarceration, contribute to premature deaths. Research shows that older adults are much less likely to commit crimes, and the cost of incarcerating aging adults significantly outweighs the actual risk that they pose to society. According to a 2012 report by the ACLU, "*the rates of crime decline dramatically after age 55, while the costs of care for older adults greatly exceed care costs for younger adults.*"² Considering the health risks associated with elder incarceration and the low recidivism rates among the elder population, we believe that the Elder Parole bill both supports public safety and promotes justice.

V. CONCLUSION

In conclusion, older adults are national treasures, and even more so during this devastating Covid-19 pandemic when mortality among people 65 and older in the US was at 75% of the total Covid-19 mortality through the end of last year.³ In this regard, we at New York County Defender Services strongly support and urge the City Council to pass Resolution 241.

² https://www.aclu.org/sites/default/files/field_document/elderlyprisonreport_20120613_1.pdf

³ <https://www.kff.org/coronavirus-covid-19/issue-brief/deaths-among-older-adults-due-to-covid-19-jumped-during-the-summer-of-2022-before-falling-somewhat-in-september/>

For elders returning home from jails and prisons, a group of people who little to no risk for re-arrest or safety risk upon release, we ask that our city and state ensure that they have a robust re-entry plan. We strenuously ask for expanded access to Senior Living Programs (SLPs), such as those at Ulster Correctional Facility, but throughout the period of incarceration for older adults. Presently, elders are only offered SLPs toward the end of their sentence. We ask that our city and state protect and expand on the low barrier emergency re-entry hotel model, which has been a lifesaver for so many New Yorkers, like other members of the public testified today and as Council Member Restler highlighted. We ask that all older adults also have supportive housing and access to elder re-entry initiatives even as they prepare for their return home. Furthermore, we urge that elders have coordinated programming and services in the community (not services in silos) that are specific to their needs, including on-site healthcare, technology assistance, education, employment, prosocial services, and wraparound services. I also want to highlight the testimony from earlier today strongly urging our city and state to provide disability assistance and services to elder New Yorkers in need.

We also strongly support and urge the City Council to pass Resolution 156-2022 in support of the Treatment Not Jail Act to grant judges the authority to divert elders who become entangled in the criminal legal system because of underlying mental health or substance use concerns out of our jails and prisons and into community-based treatment options.

We believe that thriving families and communities with fair access to resources, and our collective care for all, especially our elderly, are our only path to community safety.

Thank you again for this opportunity to testify. Please do not hesitate to contact me with any questions about this testimony at redayath@nycds.org.