



**Center on the Administration
of Criminal Law**



April 20, 2020

New York State Governor Andrew Cuomo
State Capitol Building
Albany, NY 12224

Acting Commissioner Anthony Annucci
Department of Corrections and Community Supervision
1220 Washington Avenue
Albany, New York 12226

Chairwoman Tina Stanford
New York State Board of Parole
1220 Washington Avenue
Albany, New York 12226

Attorney General Letitia James
Office of the Attorney General
State Capitol Building
Albany, NY 12224

Re: Recommendations for Immediate Implementation Regarding the New York State Parole Board and its Procedures

Dear Governor Cuomo, Acting Commissioner Annucci and Chairwoman Stanford,

We are in the midst of a global pandemic of unimaginable proportions. While the world works to adjust and enact drastic measures to prevent the spread of COVID-19 in our communities, a

massive humanitarian crisis is unfolding inside New York's state prisons. Of the 43,800 people who are currently in custody, 72% are Black or Latinx, 9,500 are aged 50 and older, and 3,500 have been behind bars for more than 20 years, including 800 people who have served over 30 years.

As of today, at least five incarcerated people have died as a direct result of the COVID-19 virus, 160 have tested positive and the number of infected correctional staff has surpassed 650. Similar to the free world, there are likely far more cases than those in the official tally.

Medical and public health experts across the country agree that the only effective way to prevent a catastrophic loss of life in our prisons is to release vast numbers of people immediately. While we implore Governor Cuomo to take immediate and aggressive action to release people 50 and older and any person with an underlying health condition through clemency or other emergency powers, the state must utilize additional mechanisms to ensure the swift release of more incarcerated people. This is for the sake of those released, the sake of prison staff, and all those who would remain locked up.

The New York State Parole Board has far-reaching power to mitigate the impact of this crisis. Each year parole commissioners interview approximately 10,000 people to determine their eligibility for release. They grant parole to 40% of those who appear before them. It was our expectation and hope that after the outbreak of this pandemic, the Board, cognizant of the enormous humanitarian interests at stake, would dramatically increase their rate of parole grants and would approve more people for immediate release. No such increase has materialized.

Instead, all initial and limited credit time allowance (LCTA) interviews have been postponed two months, release rates have plateaued and even decreased in some categories, interviews are being conducted by two-person panels resulting in "split" decisions and a resultant increase in caseloads, and legal avenues to challenge denials of parole are unavailable, as such litigation has been deemed "non-essential."

All parole-eligible people in New York State prisons are entitled to timely and meaningful interviews. In light of the current pandemic, and even after it subsides, assessments of suitability for release should be based on preventing needless suffering, saving lives, reuniting families and promoting public health and safety.

The undersigned represent a diverse group of advocates and attorneys from across New York State. We speak with our incarcerated clients daily and hear the desperation in their voices. We demand the following actions be taken immediately to prevent severe illness and further death behind bars.

1. Grant Parole to More People in Prison

The Parole Board granted release to a nearly identical number of people in March 2020 than in January or February of this year, despite urgent cries from public health experts calling for mass releases from prison. More disturbingly, the Board granted parole to just 45 people aged 55 and

older, representing 39% of all older parole applicants appearing in March. They released 41% and 45% in this category in January and February respectively.

In applying the standards for making parole determinations, the Parole Board must be responsive to the current health crisis. First, in considering whether an applicant's release would be “incompatible with the welfare of society,” the Parole Board must recognize what public health officials and jurists across the country have warned of, namely that the welfare of society depends upon quick and significant decarceration.

Second, the Board’s frequently-cited, though unsupported, claim that release will deprecate the seriousness of the crime is inapplicable in this moment. Refusing release now, and placing countless individuals at risk of serious illness or death, particularly when based on a subjective assessment of how much punishment is enough, serves no legitimate public interest. We urge the Board to acknowledge that a denial of parole under these conditions, absent objective public safety concerns, is inhumane. In sum, the release of these individuals is in the interest of us all, and would not undermine respect for the law.

2. Increase the Capacity of the Parole Board for the Purpose of Releasing More People

On average each month, the Parole Board conducts 375 initial parole interviews. In late March, DOCCS issued a memo stating that all merit time reviews and initial and LCTA parole interviews would be postponed two months to June and July 2020. The memo claims that these postponements will not impact individuals’ earliest release dates, as the LCTA and initial interview are scheduled far enough in advance of those dates.

Setting aside the questionable legality of these postponements and the power of DOCCS to unilaterally delay interviews, we are most concerned that such postponements will delay releases and create an enormous backlog that the Board at its current capacity cannot and will not be able to clear.

In June 2020, the Board will have to conduct approximately 650 initial interviews (375 carrying over from April, and the initial appearances originally scheduled for June) in addition to the 600 or so regularly scheduled reappearances and other miscellaneous reviews. Even prior to the pandemic, the Board struggled to manage its caseload, postponing approximately 15% of all parole interviews and regularly using two-person panels that resulted in split decisions. With reduced staffing, it is inevitable that there will be more delays and that the Board will be unable to competently handle its duties.

Initial and LCTA reviews are also conducted months in advance to permit parole to establish a community supervision plan in a timely manner. With reduced staffing and a parallel increase in cases, DOCCS will be unable to approve residences and reentry plans in a timely way, and people will be held beyond their scheduled release dates.

To ensure timely interviews and prevent an onslaught of litigation, the Governor and Parole Board must increase the capacity of the Board and fill all vacant seats for the purpose of releasing people as soon as possible. You must hold all initial and LCTA interviews and merit

time reviews on their originally scheduled dates and develop protocols to protect the constitutional rights of incarcerated people. And, upon a grant of parole, the Board must work with the Governor to support commutations or other executive action to allow immediate release.

3. Immediately Release all People Granted Parole with Open Dates

More than 600 people have already been granted parole release but are languishing in prison awaiting their earliest release date. The Parole Board should exercise their power to modify and advance these release dates so people can be freed immediately. If necessary, the Governor should also use his executive power to effectuate the release of this group, conducting minimal sentence reductions of several weeks or months for those already deemed worthy of release.

In addition, DOCCS must expedite and streamline their investigations of residences to ensure individuals are released as soon as possible. Several nonprofits in New York City and across the state, as well as well-resourced philanthropists and corporate executives, have pledged their support in securing housing and supportive services for those returning home who don't yet have firm plans in place. There is no excuse for keeping this group of 600 people in prison.

4. Enable More Advanced Video Conferencing Technology to Increase Capacity and Ensure Regional Diversity in the Commissioner Pool

The vast majority of parole interviews in New York State are performed over video conference. Prior to the pandemic, parole commissioners would travel great distances and convene at local supervision offices near the prisons where interviews were being held. Commissioners would connect via video to question applicants.

In the current crisis, commissioners are still required to travel to supervision offices to conduct video interviews, but have been asked to remain in the regional hubs where they reside. Not only does this heighten the risk of transmission of COVID-19 within the Parole Board (an entity that is already short-staffed), but parole panels no longer reflect the diversity of the commissioner pool.

Now, it is commissioners from upstate counties, many of whom are white and have historically represented the more punitive and conservative corner of the Parole Board, who are interviewing people in upstate prisons, most of which are maximum security facilities where people serving long sentences are being held. Although prior to COVID-19 the parole process was rife with inequities, there is an even greater risk now that parole interviews will be influenced by commissioner bias. At a minimum, having commissioners from every region on each parole panel ensures a more diverse assessment.

The Parole Board must work with DOCCS to implement a video conferencing system that allows commissioners to review and deliberate on cases remotely--but collectively--from across the state, and not just in their regional hubs. This will increase the Board's capacity by removing the need for long-distance travel, diversify the commissioner pool, and protect commissioners from further exposure to the virus. This change, coupled with the following recommendation on file

digitization, will dramatically increase the Parole Board's ability to hold a greater number of meaningful and legally sound interviews.

5. Digitize Parole Files and Submissions

Prior to interviewing people for parole release, commissioners are given a paper file for each candidate appearing before them. These files are compiled at the prison where the applicant is held, and then hand delivered, often on the morning of the interview, to nearby commissioners. Even before the pandemic, this process was arduous and inefficient. Files were often lost or misplaced, and commissioners themselves admit to having no time to review the necessary paperwork.

To ensure informed decision-making and avoid delay in providing critical information to commissioners, DOCCS and the Parole Board must digitize their records immediately and authorize correctional staff to submit the necessary paperwork remotely. The Parole Board must also provide a mechanism for attorneys and advocates to submit advocacy materials electronically.

6. Modify the Standards for Medical Parole Release

DOCCS has granted only a handful of medical parole applications in 2020, despite receiving dozens, if not hundreds, of applications from attorneys, advocates and family members of incarcerated people. The Governor must use his emergency powers to revise the medical parole standard in light of COVID-19 and ensure that it is not only those who face imminent death who are granted release under this provision.

Removing the statutorily-imposed waiting periods and the requirement for in-person parole interviews, as well as reframing the criteria to account for the risks medically vulnerable people now face under COVID-19, will significantly improve this release mechanism. Medical parole should not, under the circumstances, be limited to those who are about to die or those who have such severe disabilities that they can no longer participate in daily life; it should be used to prevent avoidable deaths.

7. The Parole Board Must Join Litigants in Urging Courts To Recognize that Judicial Appeals of Parole Denials and Other Prison-Specific Litigation is "Essential"

Numerous cases in which a person's liberty is at stake are pending in the courts. Yet, some courts are treating such time-sensitive matters as non-essential and refusing new filings, including Article 78 petitions that challenge a recent denial of parole. This means that incarcerated people are not only being denied their initial and LCTA interviews, but upon a denial of parole at a reappearance, no judicial remedy exists.

The Governor's Executive Order should be amended right away to stipulate that any court proceeding that might affect an individual's liberty is an essential proceeding. Rather than approve of this denial of access to justice through silence, DOCCS and the Parole Board should

acknowledge the essential nature of the stakes at issue in parole and prison litigation, and urge the courts to accept new cases and rule on any pending matters immediately.

8. Ensure Transparency and Release Detailed Data

As attorneys and advocates we need proactive communication from your offices so we can adequately and accurately advise and inform our clients. For example, we were not informed about postponements of initial and LCTA interviews. By failing to provide on-going updates and information, our clients are deprived of effective representation and counsel, and you create fertile ground for rumors and misinformation.

We recognize that DOCCS has created a homepage that lists the COVID-19 infection and death rate, along with the measures DOCCS has purportedly taken to slow the spread of the virus inside state correctional facilities. This data is woefully inadequate. We need details on the locations of infections so we can advise our clients and further strategize around their applications for release; demographic information on those who are infected and those who have died, including race, county of conviction and sentence; data on medical parole, including how many applications have been submitted, how many have been granted and how many are still in process; parole board release rates, especially for April and May 2020, when the pandemic will undoubtedly be more severe in prison; and any relevant information relating to parole appeals.

Although we urgently need this data, providing us with statistics and information is not a substitute for action. You need to adopt and implement these eight recommendations immediately, not only to avoid an onslaught of litigation, but to save lives.

Sincerely,

Appellate Advocates

The Bronx Defenders

Brooklyn Defender Services

Cardozo Law School Criminal Defense Clinic

Center for Appellate Litigation

Center for Community Alternatives

Center on the Administration of Criminal Law at NYU Law

Center on Race, Inequality, and the Law at NYU School of Law

Correctional Association of New York

CUNY School of Law Defenders Clinic

Fordham Law School Criminal Defense Clinic

The Innocence Project

The Legal Aid Society

The Legal Aid Society of Suffolk County: Appeals Bureau

Neighborhood Defender Service of Harlem

New Hour for Women and Children

New York Civil Liberties Union (NYCLU)

New York Communities for Change

New York County Defender Services

New York State Defenders Association

New Yorkers United for Justice

Office of the Appellate Defender

The Osborne Association

The Parole Preparation Project

The Release Aging People in Prison Campaign

VOCAL-NY

Women & Justice Project