
THE PROBLEM WITH PAROLE:

New York State's Failing System of Release

A Note on the Authors

The Center on Race, Inequality, and the Law at New York University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. Accordingly, the Center uses public education, research, advocacy, and litigation to highlight and dismantle structures and institutions that have been infected by racial bias and plagued by inequality. The Center focuses, in part, on the intersection of race, bias, and the criminal legal system, including the exercise of discretion by actors in that system. We view the parole system, in New York and nationwide, as a site of structural challenges defined by racial inequity and undergirded by the ongoing crisis of mass incarceration. Through appropriate measures, however, parole carries with it the potential to dramatically reduce the number of people in prison and returning those people to their loved ones and communities, to the benefit of us all.

The Parole Preparation Project (PPP) provides critical advocacy and direct support to currently and formerly incarcerated people serving life sentences, and seeks to transform the parole release process in New York State. Since 2013, PPP has trained over 600 community volunteers to work alongside more than 300 parole-eligible people as they prepare to go before the Board of Parole. Together, volunteers and applicants work in teams to develop solid release plans, create compelling advocacy materials, and practice interviewing skills. Nearly 60% of Project applicants who appear before the Board are granted release, compared to the statewide average of 35%. In addition to securing the release of parole-eligible people from prison, we work with partners across the state to advocate for a more transparent, just, and merciful parole release process; support currently and formerly incarcerated leaders of the prison and parole justice movements and amplify their voices and visions; and provide access to services and supportive communities for people returning home from prison.

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Table of Contents

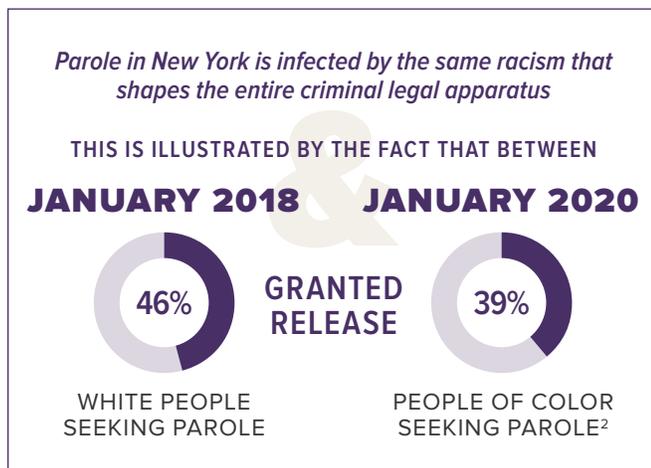
Executive Summary	4
Introduction	5
Brief Historical Context	7
Life and Long Sentences	7
Parole Release	9
Parole Release in New York State	10
A Harmful and Vague Statutory Standard at Odds With the Intent of Parole	10
Procedural Barriers in Parole Release	11
Political Nature of Parole Board Appointments	12
Influence of Special Interest Groups	13
Data and Findings	13
Race Disparity	13
Age Disparity	15
Regional Disparity	16
Profiles	17
Keith Winters: 36 Years in Prison and 13 Parole Denials	17
Stanely Bellamy: Serving a Sentence of 62 ½ Years to Life	17
Recommendations for Reform	18
1. Remove Vague Statutory Language from the Executive Law and Focus the Release Decision Inquiry on a Person’s Transformation, Rehabilitation, and Readiness for Release	18
2. Expand Release Mechanisms for People Serving Natural Life Sentences	19
3. Expand Judicial Power and Create New Remedies	19
4. Reduce Structural Barriers	20
5. Increase Transparency and Publish Data	21
Conclusion	21

Executive Summary

The data is clear: Race is a significant factor in the parole release process¹

In New York today, thousands of people sit in prisons wondering if they will be granted release on parole—in many cases, the only way in which they will ever leave prison. As the end point of the racial disparities and inequities that define New York's criminal legal system, the state's parole system has many problems that call for immediate action. Parole interviews are often a cursory, dehumanizing process, taking place over video conference and lasting only twenty or so minutes. People seeking parole lack any right to representation in the process, placing them at a serious disadvantage. Parole commissioners face excessive caseloads and frequently provide only boilerplate reasons for their decisions.

These problems hurt all incarcerated people seeking parole release. But it does not hurt all incarcerated people equally. The harms of the system fall most heavily upon people of color, who are consistently granted parole at lower rates than white applicants. Even as New York has taken steps in recent years to reduce the number of New Yorkers locked in cages, racial disparities in parole release persist.



Race is not the only vector of disadvantage for those seeking parole. Where a person resided in New York State also affects their chances of being granted parole. The data shows that people from Westchester, New York City, and other downstate regions are granted release at lower rates than people from upstate regions. From 2017 to 2019, 67% of people eligible for parole in Schuyler County were released. This number is in stark contrast to the Bronx—where only 33% of eligible people were released during that same period.³ New Yorkers of all regions may live under the same state government, but how that government treats them depends on where they come from.

These factors add up to a profoundly inequitable system that condemns thousands to a slow death in prison, their applications for parole rejected time and time again. Would they have been granted release if they were of a different race? Would they have been granted release if they had lived in another part of the state? These are the questions that New York's parole system leaves too many people to ask. And in too many cases, the answer is “yes.”

But it does not need to be. New York policymakers can change this. This report offers specific reform proposals that, if enacted, can save thousands of lives and make New York a beacon of progress across the nation. With so many lives on the line, there is no time to waste.

¹ This report's conclusions are drawn from an analysis of two separate but overlapping data sets compiled by the Vera Institute of Justice. One, covering October 2017 to October, details parole release decisions by race of the applicant. The second, covering January 2018 to January 2020, details parole release decisions by commissioner and by race of the applicant. People whose race was unknown were not included in the analytical conclusions.

² Vera Data, 2018–2020 (on file with authors).

³ Vera Data, 2017–2019, Table I (on file with authors).

Introduction

TODAY IN NEW YORK STATE, THERE ARE ROUGHLY
35,000
 people in state prisons⁴

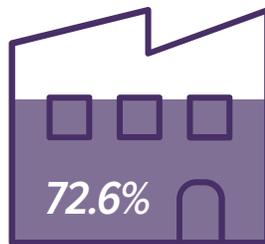


THIS IS MORE THAN THE NUMBER OF ENSLAVED PEOPLE IN NEW YORK
21,324 in 1790⁵



THOSE INCARCERATED COME FROM EVERY CORNER OF THE STATE.⁶

THE VAST MAJORITY ARE PEOPLE OF COLOR, WITH BLACK AND LATINX PEOPLE MAKING UP
72.6% OF THE TOTAL PRISON POPULATION⁷



WHILE REPRESENTING ONLY **36.9% OF THE STATE POPULATION OVERALL**⁸

Of those in prison, 18,082 people (approximately 38% of the prison population) are serving what the state calls an “indeterminate sentence,” or a sentence with a range of years (for example, two to four years, or five to fifteen years).⁹ Those with indeterminate sentences are eligible for release after serving the minimum number of years required by their sentence, but may be held until they reach the maximum expiration date of their sentence.¹⁰ The number of people serving an indeterminate sentence in New York is staggering. For perspective, at the end of 2020, 30 states had smaller prison populations overall than New York’s indeterminate population alone.¹¹

⁴ N.Y. STATE ASSEMBLY COMM. ON CORR., 2019 ANNUAL REPORT 1 (2019), https://nyassembly.gov/write/upload/postings/2020/pdfs/20201110_0094293.pdf.

⁵ U.S. CENSUS BUREAU, 1790 CENSUS: RETURN OF THE WHOLE NUMBER OF PERSONS WITHIN THE SEVERAL DISTRICTS OF THE UNITED STATES (1793), <https://www.census.gov/library/publications/1793/dec/number-of-persons.html>.

⁶ See *Mapping Disadvantage: The Geography of Incarceration in New York State*, PRISON POL’Y INITIATIVE (Feb. 19, 2020), <https://www.prisonpolicy.org/origin/ny/report.html>.

⁷ N.Y. STATE ASSEMBLY COMM. ON CORR., 2019 ANNUAL REPORT 1 (2019), https://nyassembly.gov/write/upload/postings/2020/pdfs/20201110_0094293.pdf (“The total under-custody population is 48.1% African American, 24.5% Caucasian, and 24.5% Hispanic as of November 1, 2019”)

⁸ U.S. CENSUS BUREAU, QUICK FACTS NEW YORK, <https://www.census.gov/quickfacts/NY> (last accessed Mar. 11, 2020).

⁹ N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, UNDER CUSTODY REPORT 27 (2020), https://doccs.ny.gov/system/files/documents/2021/03/under-custody-report-2019_0.pdf.

¹⁰ The maximum expiration date is often slightly shorter than the maximum sentence as a result of good time and conditional release. See N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, COMMUNITY SUPERVISION HANDBOOK 3–5 (2019), https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf.

¹¹ VERA INST. OF JUST., PEOPLE IN JAIL AND PRISON IN 2020, at 20-23 (2021), <https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-2020.pdf>.

The New York State Board of Parole (“the Board” or “Parole Board”) is the administrative body responsible for determining who—of those who have served their minimum sentence—should be released from prison. The Board reviews the cases of more than 12,000 people every year, evaluating individuals based on a written record compiled by the Department of Corrections and Community Supervision (DOCCS) and a videoconference interview.¹²

Due to a series of factors, both political and structural, the Board releases only a small portion of people who appear before it, granting parole to approximately 41% of applicants.¹³ Unsurprisingly, as with the broader criminal legal system, Parole Board decisions are infused with racial and age-related disparities. People of color are released at lower rates than their white counterparts despite similar backgrounds and convictions for similar crimes; aging and elderly people are released at rates similar to younger populations, despite the measured lack of risk to public safety that aging and elderly people present; and people convicted at a young age fare no better than their older peers, despite evidence that they are uniquely capable of rehabilitation and reform.

For another cohort of incarcerated New Yorkers, the Parole Board’s practices have an especially devastating effect. As of January 1, 2019, there are 8,150 people (representing about 17% of the prison population)¹⁴ serving a sentence with a maximum term of life in prison (for example, 15 years to life or 25 years to life). For these “lifers,” the Parole Board is the only way out of prison, as their sentence contains no maximum expiration date. The Board’s high rates of parole denial leave this group subject to potentially indefinite confinement, regardless of what they have done to demonstrate their rehabilitation. Because of repeated parole denials, many will languish in prison for decades longer than their minimum sentence.

As of January 2018, almost 30% of those eligible for parole spent at least five years over their minimum sentence incarcerated.¹⁵ Many believe they will die in prison, and in reality, given the challenges of the parole hearing process, some already have and will continue to.¹⁶ This already deadly situation has been worsened by the spread of COVID-19, which poses a severe risk to elderly people trapped in an environment in which social distancing and other basic safety measures are impossible.¹⁷

¹² While some interviews are conducted in person, the vast majority are done by videoconference.

¹³ Vera Data, 2018–2020 (on file with authors). Due largely to the work by advocates, this rate has increased from its pre-2017 rate of about 26%. See N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITIONS 2, https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2017.pdf.

¹⁴ N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, UNDER CUSTODY REPORT 18 (2020), https://doccs.ny.gov/system/files/documents/2021/03/under-custody-report-2019_0.pdf.

¹⁵ NYS Prison Population in January 2018 provided by Parole Preparation Project.

¹⁶ PAROLE PREPARATION PROJECT & THE RELEASE AGING PEOPLE IN PRISON CAMPAIGN, NEW YORK STATE PAROLE BOARD: FAILURES IN STAFFING AND PERFORMANCE 4 (2018), <http://rappcampaign.com/wp-content/uploads/AAA-Parole-Board-Report-Final-3.pdf>.

¹⁷ See Older Adults, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last updated Sept. 11, 2020).

In addition to this group of parole-eligible lifers, who will, at some point in their adult lives, see the Parole Board and be given an opportunity for release, there are approximately 1,000 people who are currently sentenced to die in prison, with no chance of ever obtaining freedom.¹⁸ These individuals are serving either life without parole sentences or “virtual life” sentences—for example, a sentence of 100 years to life, where the minimum term of incarceration extends beyond one’s natural life. At the time of sentencing, their fate was sealed, and without intervention, they are guaranteed to die behind bars.

In New York State, extreme sentences extending beyond natural life, along with repeated parole denials for those who are release-eligible, have contributed significantly to the crisis of mass incarceration and its fatal grip on people of color, the elderly, and other marginalized groups. The economic costs of continuing to incarcerate as New York does today are exorbitant, entailing major financial investments that could be better targeted at other vitally important public goods, like education, housing, and healthcare. And the costs to human rights, human dignity, and communities across the state are immeasurable.

While criminal justice reform has most recently focused on pre-trial issues, parole release and other back-end decarceral efforts are a crucial part of ending this crisis. In order to reduce the number of people in prisons and jails—and ensure that every person who enters the system has a meaningful opportunity for freedom—we must improve and expand mechanisms for release. We must change the standard that governs parole release and create new avenues of parole-eligibility for people serving “death-by-incarceration” sentences.

This report will offer recommendations for reforms to parole and other levers of release. Our assessments of the system, and the recommendations that follow, are informed by qualitative and quantitative data generated by various stakeholders, including state agencies, academics, advocates, and organizers for parole reform, including people who have successfully navigated New York’s parole process.

Brief Historical Context

LIFE AND LONG SENTENCES

The challenges wrought by New York’s parole release system are a function of America’s enduring commitment to excessive punishment and mass incarceration. Since the 1970s, the number of people imprisoned in the United States has exploded. From 196,092 in 1972 to over a million in 1995 to more than a million and a half by 2010, an increasingly large portion of American society is being locked away.¹⁹ Today, America’s criminal legal system holds 2.3 million people in custody—nearly 1.5 million of whom are serving a prison sentence.²⁰ One in two American adults has an immediate family member who is currently or who has previously spent time behind bars.²¹ Not only have more people been incarcerated than ever before, but more people have been incarcerated for longer periods of time. About one in nine people in prison are serving life sentences,²²

¹⁸ See ASHLEY NELLIS, *THE SENT’G PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 7* (2017).

¹⁹ See *Data Toolbox, PRISON POL’Y INITIATIVE*, <https://www.prisonpolicy.org/data/> (last visited Feb. 9, 2020).

²⁰ Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, *PRISON POL’Y INITIATIVE* (Mar. 14, 2018), <https://www.prisonpolicy.org/factsheets/pie2018.pdf>.

²¹ *Every Second*, *FWD.US*, <https://everysecond.fwd.us/>.

²² ASHLEY NELLIS, *THE SENT’G PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 5* (2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.

representing an almost five-fold growth of this group since 1984.²³ Many of these life sentences do not include even the possibility of parole, a punishment that many jurisdictions expanded during these years to drug offenses,²⁴ “three strikes” law violations,²⁵ and other non-homicide offenses.²⁶ The number of people condemned to these death in prison sentences has risen even in recent years, growing by 59% between 2003 and 2016.²⁷

New York was no exception to this trend, with almost one in five imprisoned New Yorkers serving life sentences or virtual life sentences in 2016.²⁸ With the enactment of the Rockefeller Drug Laws in the 1970s, which established lengthy sentences for even minor drug offenses, New York became a leader in the “tough on crime” approach to social policy that would hold strong for the next several decades.²⁹

In recent times, New York has begun to reverse course, sharply reducing its prison population.³⁰ However, much work remains. That work has grown more important than ever as overcrowding turned New York’s prisons into COVID-19 hotspots, threatening the lives of incarcerated people, correctional officers, and surrounding communities.³¹ To effectively address the crisis of mass incarceration, New York must address serious problems in the process through which most incarcerated people are released: parole.

²³ ASHLEY NELLIS, *THE SENT’G PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 7* (2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.

²⁴ See, e.g., *Anti-Drug Abuse Act of 1986*, Pub. L. No. 99–570 (HR 5484), PL 99–570, § 1002, 100 Stat. 3207 (1986).

²⁵ See J. CLARK ET AL., “THREE STRIKES AND YOU’RE OUT”: *THE IMPLEMENTATION AND IMPACT OF STRIKE LAWS 1–4* (2000) (discussing these laws).

²⁶ See Ashley Nellis, *Throwing Away the Key: The Expansion of Life Without Parole Sentencing in the United States*, 23 *FED. SENT. REP.* 27, 27–28 (2010) (reviewing offenses for which states have imposed life without the possibility of parole).

²⁷ ASHLEY NELLIS, *THE SENT’G PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 20* (2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.

²⁸ ASHLEY NELLIS, *THE SENT’G PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 7* (2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.

²⁹ See Brian Mann, *How the Rockefeller Drug Laws Changed America*, N. COUNTRY PUB. RADIO (Jan. 24, 2013), <https://www.northcountrypublicradio.org/news/story/21316/20130124/how-the-rockefeller-drug-laws-changed-america>

³⁰ See Judith A. Greene & Vincent Schiraldi, *Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety*, 20 *FED. SENT. REP.* 22, 22 (2016).

³¹ See Chelsia Rose Marcius, *Four New York Prisons Still See High Numbers of Coronavirus*, N.Y. DAILY NEWS (Aug. 10, 2020, 5:35 PM), <https://www.nydailynews.com/new-york/ny-coronavirus-new-york-prisons-still-see-high-numbers-of-covid-19-20200810-dwovpwlumvhjlnwpbjcob42ohu-story.html> (reporting that “Shawangunk Correctional Facility, Wallkill Correctional Facility, Fishkill Correctional Facility and Green Haven Correctional Facility have a coronavirus infection rate of 4.6% — over twice the statewide infection rate of 1.9%”).

PAROLE RELEASE

In 1889, New York became one of the first states in the nation to establish indeterminate sentencing,³² an innovation animated by the understanding that people can profoundly change while incarcerated and that sentencing should take that into account.³³ Thus, one's fitness to rejoin society was of paramount concern; passing judgment on the crime of conviction was not the function of the parole board. In recent decades, however, buoyed by a "tough on crime" attitude³⁴ and the influence of powerful special interest groups,³⁵ the parole process has too often failed to adhere to its original intent and genuinely assess a person's fitness to reenter society.

Analysis of historical trends shows that even after New York's prison population peaked in 1999 and proceeded to decline, parole release rates also proceeded to decline for the next two decades,³⁶ especially under Governor George Pataki's three-term administration. In 1997, the parole release rate was 59.1%.³⁷ By 2006, the release rate had dropped to 47.8%.³⁸

Downward trending release rates under the Pataki administration were particularly stark for those with indeterminate life sentences.³⁹ In 1994, the year prior to Governor Pataki's inauguration, the Board granted release to 25% of those with homicide convictions.⁴⁰ However, by the final year of Pataki's first term, in 1999, only 4% of such people were granted release.⁴¹

That downward trend persisted into Governor Cuomo's administration, with a release rate of 37.4% during his first year in office.⁴² By 2016 that figure dropped to 26.2%.⁴³ However, as advocates and formerly incarcerated

³² J. BRAMER, *A TREATISE GIVING THE HISTORY, ORGANIZATION AND ADMINISTRATION OF PAROLE* 21 (1926).

³³ See N.Y. STATE PERMANENT COMM'N ON SENT'G, *A PROPOSAL FOR "FULLY DETERMINATE" SENTENCING FOR NEW YORK STATE* 2 (2014), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-12/Determinate%20Sentencing%20Report%20Final%20Delivered.pdf>.

³⁴ See, e.g., SHELDON SILVER & JOSEPH LENTOL, N.Y. STATE ASSEMBLY, *THE TOUGHEST CRIME LAWS IN A GENERATION* (2000), <https://nyassembly.gov/Updates/Codes/200002toughlaws.pdf>.

³⁵ See Michelle Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. Rev. 249, 263–64 n.43 (2017) (discussing the Police Benevolent Association's frequent vocal opposition to granting parole release).

³⁶ OFF. OF THE N.Y. STATE COMPTROLLER, *NEW YORK STATE'S AGING PRISON POPULATION* 1 (2017), <https://osc.state.ny.us/reports/aging-inmates.pdf> (noting that New York's prison population peaked in 1999 at 72,000); N.Y. STATE DEP'T OF CORR. SERVICES, *PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITION, CALENDAR YEAR 2006*, https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2006.PDF (analyzing release rate trends from 1997 through 2006).

³⁷ N.Y. STATE DEP'T OF CORR. SERVICES, *PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITION, CALENDAR YEAR 2006*, at 3, https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2006.PDF.

³⁸ N.Y. STATE DEP'T OF CORR. SERVICES, *PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITION, CALENDAR YEAR 2006*, at 3, https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2006.PDF.

³⁹ See generally Edward R. Hammock & James F. Seelandt, *New York's Sentencing and Parole Law: An Unanticipated and Unacceptable Distortion of the Parole Board's Discretion*, 13 J. C.R. & ECON. DEV. 527 (1999), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1302&context=jcred>.

⁴⁰ See Edward R. Hammock & James F. Seelandt, *New York's Sentencing and Parole Law: An Unanticipated and Unacceptable Distortion of the Parole Board's Discretion*, 13 J. C.R. & ECON. DEV. 527, 527 n.5 (1999), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1302&context=jcred>. Notably, in 1987 the Board granted release to 60% of people with homicide convictions who sought parole. *Id.*

⁴¹ See Edward R. Hammock & James F. Seelandt, *New York's Sentencing and Parole Law: An Unanticipated and Unacceptable Distortion of the Parole Board's Discretion*, 13 J. C.R. & ECON. DEV. 527, 527 n.5 (1999), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1302&context=jcred>.

⁴² https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2011.pdf at 1

⁴³ N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, *PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITIONS, CALENDAR YEAR 2011*, at 2, https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2016.pdf. For more on release rate trends, see also Bill Hughes, *Even Model NYS Inmates Face Steep Barriers to Parole*, CITYLIMITS (Sept. 17, 2014), <https://citylimits.org/2014/09/17/even-model-nys-inmates-face-steep-barriers-to-parole/>.

leaders began to mount campaigns targeted at the Parole Board and the governor, parole release rates begun to improve in 2017. Governor Cuomo's appointment of new parole commissioners and revisions to the regulations that govern parole contributed to this increase.⁴⁴ Yet even in 2019, only about 40% of those eligible for parole were granted release at their initial appearance before the board.⁴⁵

Parole Release in New York State

The parole release process in New York state is plagued with a host of problems that, as detailed below, contribute to unfairness for those seeking release. While further analysis is necessary to determine how these challenges contribute to disparities along race, age, and geography, it is clear that policymakers must act now to address these concerns.

A HARMFUL AND VAGUE STATUTORY STANDARD AT ODDS WITH THE INTENT OF PAROLE

Chief among the hurdles in the parole release process are the legal standards that govern parole review. These standards allow for release only where “release is not incompatible with the welfare of society,” and where release, “will not so deprecate the seriousness of his crime as to undermine respect for the law.”⁴⁶ This latter requirement—which focuses on the static facts of the underlying crime—contravenes the original intent of parole: to assess whether a person who had been convicted of an offense was ready to return to their community. Thus, parole was originally designed to gauge whether people who had been sufficiently punished had also demonstrated adequate rehabilitation and readiness for release. Yet today, far too frequently, a myopic focus on the offense, or the facts of the underlying crime, eclipses any consideration of evidence that an incarcerated person has matured, demonstrated rehabilitation, and is otherwise prepared to return to loved ones and contribute to our communities. By allowing for the rejection of parole applications solely on the basis of the original offense—a common experience for applicants—the current legal standard turns the parole process entirely on its head.

Assessments as to the seriousness of the crime also put an onus on commissioners to decide whether someone has served enough time to satisfy the punitive purposes of their sentence. Such review is duplicative—this is a decision already made by the sentencing judge who set the minimum sentence to be served and found that satisfactory for punitive interests. It also is unduly burdensome. Any meaningful consideration of the seriousness of the offense of conviction transforms the parole interview from an assessment of one's readiness to rejoin society into a retrial of the facts and circumstances that led to one's

⁴⁴ See N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITIONS 1 (https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2017.pdf (reporting a 33% release rate in 2017); N.Y. STATE ASSEMBLY COMM. ON CORR., 2019 ANNUAL REPORT 3 (2019), https://nyassembly.gov/write/upload/postings/2020/pdfs/20201110_0094293.pdf (reporting a release rate of 40% for initial appearances and 38% for reappearances in 2019); see also Jerrett Murphy, *Advocates Press Albany to Fix New York's Parole System*, CITYLIMITS (Jan. 30, 2019), <https://citylimits.org/2019/01/30/pressing-albany-to-address-flaws-in-new-yorks-parole-system/>. See also THE PAROLE PREPARATION PROJECT & THE RELEASE AGING PEOPLE IN PRISON CAMPAIGN, NEW YORK STATE PAROLE BOARD: FAILURES IN STAFFING AND PERFORMANCE 2 (2018) https://www.prisonlegalnews.org/media/publications/Parole_Preparation_Project_-_New_York_State_Parole_Board_-_Failures_in_Staffing_and_Performance_2018.pdf.

⁴⁵ N.Y. STATE ASSEMBLY COMM. ON CORR., 2019 ANNUAL REPORT 3 (2019), https://nyassembly.gov/write/upload/postings/2020/pdfs/20201110_0094293.pdf (reporting a release rate of 40% for initial appearances and 38% for reappearances in 2019)

⁴⁶ N.Y. Exec. Law § 259-i(2)(c)(A).

incarceration. Moreover, the standard provides no guidance to commissioners as to how to assess whether a parole grant would be compatible with the welfare of society or deprecate the seriousness of the offense, thus engendering arbitrary and racially biased decision-making.

The inefficiencies of revisiting ground already trodden in a parole determination—in proceedings that provided the sentencing judge with far more insight into underlying facts of the offense of conviction and provided people convicted of a crime with far more expansive due process protections—are obvious and significant. In deciding if and when a person should be eligible for parole, the sentencing judge already took into account the nature of the original offense. The parole system only makes sense if the focus of parole commissioners is on information that was unavailable to the judge at the time of sentencing: how the applicant has grown and changed since that sentencing.

PROCEDURAL BARRIERS IN PAROLE RELEASE

Beyond the burdens imposed by the applicable standard, myriad logistical challenges hamper applicants' access to release. To consider 12,000 applications a year, commissioners must conduct anywhere from 40-60 parole interviews a day. Interviews often last 15-20 minutes⁴⁷ and are conducted mostly via video conference.⁴⁸ Videoconference systems create an added level of distortion and strips away the humanity of parole interview participants—especially for those applicants incarcerated before this technology became common—to an already fraught process, preventing commissioners from building rapport with applicants and from making credibility assessments more easily undertaken in person.⁴⁹ Videoconferencing can also foster inattention to details of a person's interview responses and application materials which exist only in paper form.⁵⁰

Since applicant files are not digitized, panel members often review an applicant's file minutes before, or even during the interview itself.⁵¹ And with the technological difficulties inherent in video conferencing, such as delays in transmission, effective communication between the Board and the applicant may be frustrated.⁵²

While parole interviews are designed to be conducted by three commissioners—mainly to avoid deadlocked decisions—many interviews routinely include only two. Significant understaffing has led to smaller interview panels, more split decisions, postponements of interviews and other obvious procedural issues.

⁴⁷ The American Correctional Association standards instruct that parole interviews should take approximately 20 minutes. While arguably a 15-minute interview would score a passing grade by that scale, even 20 minutes gives shockingly short shrift to the people being interviewed given the import on their lives of parole review.

⁴⁸ Videoconferences are conducted to reduce Commissioner travel expenses. However, many Commissioners must still travel, sometimes conducting videoconferences only blocks away from the incarcerated people they are assigned to interview.

⁴⁹ Stephen Rex Brown, Trevor Boyer, & Reuven Blau, *N.Y. Parole Commissioners Travel the State to Conduct Video Hearings and Rarely Step inside Prisons, Daily News Analysis Shows*, N.Y. DAILY NEWS (Jan. 20, 2019), <https://www.nydailynews.com/new-york/ny-metro-parole-travel-video-hearings-20190117-story.html>.

⁵⁰ Parole files, including records compiled by DOCCS and the Parole Board, as well as submissions made by incarcerated people are only available in hard copy. DOCCS and the Parole Board do not have the resources or technology to digitize records.

⁵¹ David Lombardo, *CAPITOL PRESSROOM: FORMER PAROLE BOARD MEMBER DESCRIBES BROKEN SYSTEM, RIPE FOR CHANGE*, WCNY (May 24, 2021), <http://www.wcny.org/former-parole-board-member-describes-broken-system-ripe-for-change/> (interview with former New York Parole Board Commissioner Carol Shapiro discussing the logistical challenges presented by the parole interview process)

⁵² See, e.g., AM. C.L. UNION, *FALSE HOPE: HOW PAROLE SYSTEMS FAIL YOUTH SERVING EXTREME SENTENCES* 121 (Nov. 2016) (reporting on Eric Campbell's experience during his second hearing in 2003). As Campbell described, "They would ask me a question and the delay was so bad we couldn't hear anything. It would just cut out . . . It was short, only a four-minute hearing." He was then denied based on seriousness of the offense. *Id.*

Legal representation is not provided or permitted for Parole Board appearances, creating high risks that applicants unintentionally waive appealable issues by failing to raise them during the interview.⁵³ This disadvantage is compounded by the very limited legal and therapeutic assistance available to applicants in preparing for an interview in which they will be asked to speak in explicit detail about events that may have happened decades ago and to expertly convey their sense of remorse to the Board. For those before the Board, this may be the first time since their trial, plea negotiation process, or the imposition of their sentence that they have discussed their case in any detail. Lacking the resources necessary to adequately prepare for a parole interview, applicants often face an insurmountable burden in trying to effectively represent themselves to commissioners who themselves may lack the psychological expertise to make accurate “remorse assessments.”

Written denials of parole issued by commissioners typically use boilerplate language that tracks the statute, giving people scant guidance for how to prepare for subsequent reviews or what behavior they need to engage in to improve their chances for release going forward.⁵⁴ In rare cases when an applicant is able to successfully appeal, first to the Board’s appeals unit and then eventually to the courts, the only remedy available is a new interview, sometimes before the same commissioners. Adding to the frustration, the entire process can take up to 24 months. That is significant because most parole adjournments are for 24 months or less, such that a person’s next interview will likely arrive before they ever complete their appeal and receive a decision from the court.⁵⁵

POLITICAL NATURE OF PAROLE BOARD APPOINTMENTS

In New York, Parole Board commissioners are nominated by the governor and confirmed by the New York State Senate. Commissioners often come from prosecutorial or law enforcement backgrounds that can naturally engender a punitive approach to parole.⁵⁶ Campaign contributors have also been favored for appointment to the Board.⁵⁷ As political appointees serving at the pleasure of the governor, commissioners are burdened by a conflict of interest when making a parole decision that is at odds with the governor’s will endangers their jobs.

The Parole Board has been persistently understaffed and under-resourced. Although the legislature permits a Parole Board of 19 commissioners,⁵⁸ staffing in recent years has lagged. At its lowest, in 2019, the Board had only ten acting commissioners.⁵⁹ As of May 2021, there are 16 seated commissioners, still three shy of the total allowed and far from adequate to carefully review tens of thousands of parole applications each year.⁶⁰ This understaffing has harmed parole applicants, as panels consisting of only two commissioners have granted parole release at lower rates than panels consisting of a full three commissioners.⁶¹

⁵³ Michelle Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. Rev. 249, 266 (2017).

⁵⁴ Michelle Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. Rev. 249, 266 (2017).

⁵⁵ N.Y. Exec. Law § 259-i(2)(a) (providing that “[t]he board shall specify a date not more than twenty-four months from [the denial of relief] for reconsideration[.]”).

⁵⁶ See Michelle Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. Rev. 249, 263 (2017).

⁵⁷ Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

⁵⁸ N.Y. Exec. Law § 259-b(1).

⁵⁹ Michelle Lewin, *Parole Isn’t Working in New York: Our Urgent Duty Is to Properly Staff the Parole Board*, N.Y. DAILY NEWS (Apr. 19, 2019, 11:01 AM).

⁶⁰ The parole board chair conducts a small number of interviews annually relative to the other members of the board, which means that the vast majority of parole interviews are conducted by 15 commissioners.

⁶¹ Vera Data, 2018–2020 (on file with authors). The challenges that parole boards of three commissioners face in preparing for hearings are exacerbated by understaffing.

The current process of selecting parole commissioners is not working. The results speak for themselves. If New York is to have a fair parole system, the commissioner selection process must be changed.

INFLUENCE OF SPECIAL INTEREST GROUPS

Excessive caseloads and pressure from elected officials are not the only challenges that commissioners face. Special interest groups also pressure commissioners to reject even meritorious parole applications. For example, the Patrolmen's Benevolent Association, which represents New York City police officers, routinely encourages the public to submit opposition letters any time that a person convicted of a police-related crime is due to be heard by the Board.⁶²

In such cases, commissioners are keenly aware that their decision to release will be subject to heightened media scrutiny and sensationalized coverage. Commissioners who make a sound, evidence-based decision to grant release may face unfair media criticism for not treating a parole hearing as a retrial. Faced with this pressure, commissioners may often feel they have little choice but to reject a parole application regardless of the applicant's merit.⁶³ Redirecting the scrutiny so that it considers the likelihood of successful reentry is key to improving access to release.

Data and Findings

RACIAL DISPARITIES

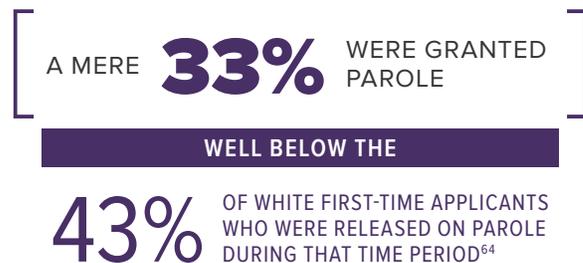
The racial disparities in the parole system are striking

FROM:

OCTOBER 2017 TO OCTOBER 2019



People of color appearing before the Parole Board for the first time faced an even greater hurdle



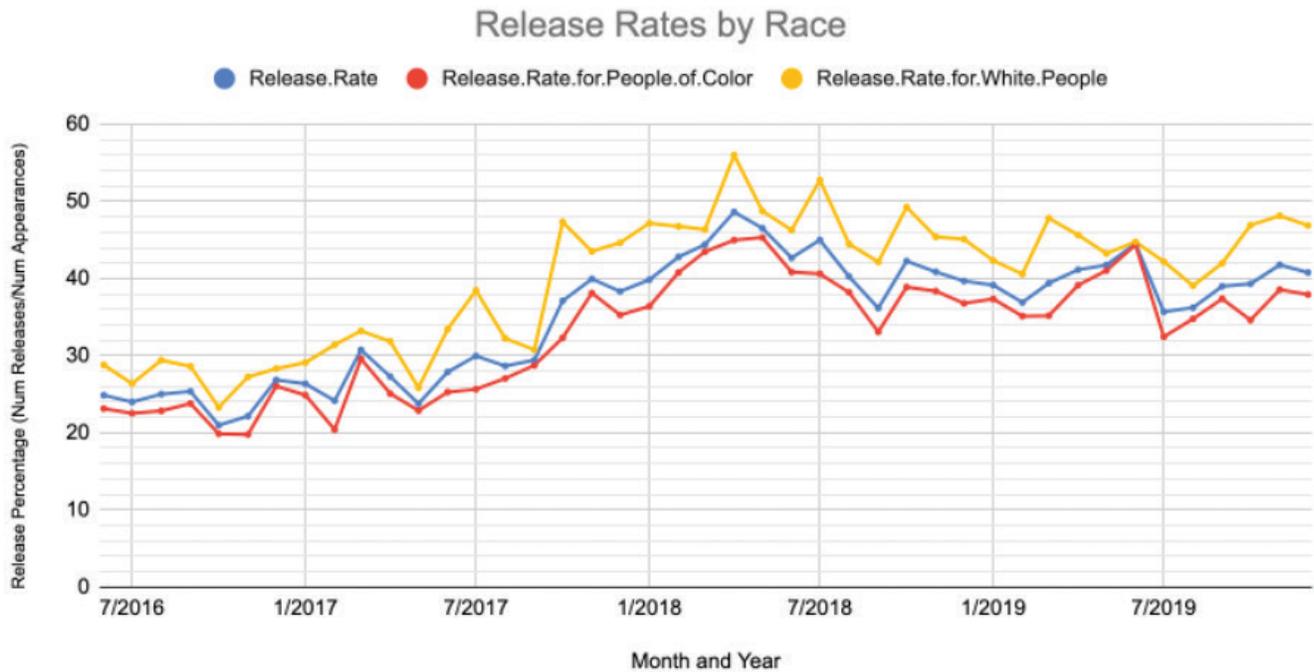
Release rates for applicants of color have been lower regardless of their age at the time of the interview⁶⁵ or how old they were at the beginning of their imprisonment,⁶⁶ both of which closely relate to how much a person has grown and changed.

⁶² See Michelle Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. Rev. 249, 263–64 n.43 (2017).

⁶³ See Beth Schwartzapfel, *A Parole Hearing in New York, With a Governor's Blessing This Time*, MARSHALL PROJECT (Jan. 5, 2017, 10:01 PM), <https://www.themarshallproject.org/2017/01/05/a-parole-hearing-in-new-york-with-a-governor-s-blessing-this-time>.

⁶⁴ Vera Data, 2017–2019, Table A (on file with authors).

⁶⁵ Vera Data, 2017–2019, Table D (on file with authors).



These racial disparities are particularly glaring when one looks at people serving life sentences. Throughout New York’s regions, less than a quarter of incarcerated people overall are serving life sentences. Yet 62% of incarcerated people of color are serving such sentences.⁶⁷ Racial disparities infect every level of this process. In recent years, Black and Latinx applicants⁶⁸ have been denied parole at a higher rate than white applicants and imprisoned beyond their minimum sentence for longer than white applicants.⁶⁹

These trends are not new. A December 2016 *New York Times* article shed light on the severity of racial bias which taints New York’s parole review process.⁷⁰ Controlling for variables like prior offenses and the seriousness of the underlying crime, an analysis of 2013 to 2016 data showed 41% of white people with no prior prison sentences convicted of third-degree burglary were paroled, compared to just 30% of similarly situated Black and Latinx people.⁷¹ Controlling for age made the disparities in parole release even more glaring: “[a]mong [people] under 25 who had no prior state prison sentences, the Parole Board released 30 percent of whites but only 14 percent of blacks and Latinos.”⁷² As reported, overall, fewer than one in six Black or Latino men were released at their first hearing, compared with one in four white men.⁷³

⁶⁶ Vera Data, 2017–2019, Table F (on file with authors).

⁶⁷ Regional Data.

⁶⁸ Vera Data, 2017–2019 (on file with authors).

⁶⁹ Vera Data, 2017–2019 (on file with authors).

⁷⁰ Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

⁷¹ Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

⁷² Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

⁷³ Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

More recent data demonstrates that racial disparities continue to haunt parole decision-making. Over the last several years, individual commissioners have consistently granted release to applicants of color at lower rates than white applicants, creating in the aggregate a system in which 46% of white people seeking parole were given their freedom, compared to only 39% of people of color.⁷⁴ In some cases, this has been particularly egregious and unlikely to be explainable by the “dangerousness” of applicants; commissioners granted release to Black and Latinx applicants at lower rates than white applicants within every single security category.⁷⁵

AGE DISPARITY

Ample research has established that elderly incarcerated people typically “age out” of crime and present a minimal risk of reoffending.⁷⁶ Even elderly people convicted of the most serious violent crimes present next-to-no risk of reoffending; between 1985 and 2012, 98.1% of elderly people previously convicted of murder and released on parole committed no new offense.⁷⁷

However, despite the well-demonstrated fact that aging and elderly people pose no risk to public safety, parole decisions do not vary by age at interview, and people convicted of more serious offenses consistently face an uphill battle to being granted release regardless of how likely they are to commit any future offense.⁷⁸

The overall parole release rate for people:

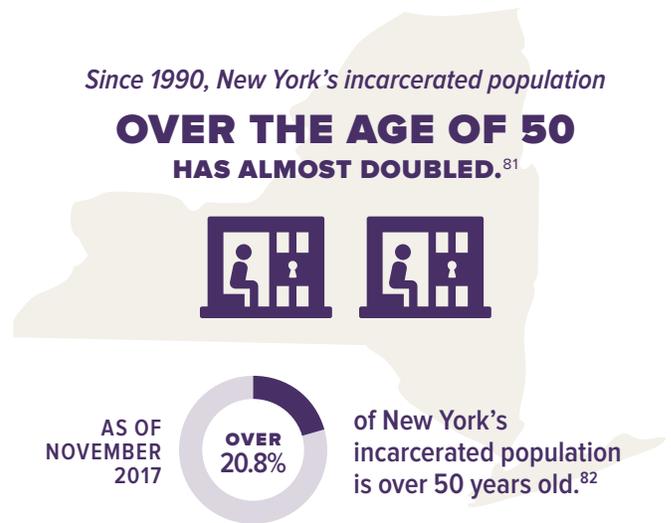
55
YEARS
OR OLDER — 40%

54
YEARS
AND UNDER⁷⁹ — 41%

These numbers mean that hundreds and thousands of aging and elderly people remain in prison despite their undeniable suitability for release and that DOCCS continues to pay for their care.⁸⁰

Since 1990, New York’s incarcerated population

**OVER THE AGE OF 50
HAS ALMOST DOUBLED.⁸¹**



⁷⁴ Vera Data, 2018–2020 (on file with authors).

⁷⁵ Vera Data, 2018–2020 (on file with authors).

⁷⁶ See Jeffery T. Ulmer & Darrell Steffensmeier, *The Age and Crime Relationship*, in *The Nurture Versus Biosocial Debate in Criminology 377* (Kevin M. Beaver, J.C. Barnes & Brian B. Boutwell eds., 2014).

⁷⁷ Mark Miller, *New York Plan Puts Spotlight on Graying of U.S. Prison Population*, REUTERS (Mar. 8, 2018, 7:17 AM), <https://www.reuters.com/article/us-column-miller-prisons/new-york-plan-puts-spotlight-on-graying-of-u-s-prison-population-idUSKCN1GK1LG>.

⁷⁸ Vera Data, 2018–2020 (on file with authors).

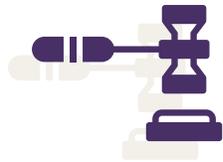
⁷⁹ Vera Data, 2018–2020 (on file with authors).

⁸⁰ OFF. OF THE N.Y. STATE COMPTROLLER, *NEW YORK STATE’S AGING PRISON POPULATION 2–3* (2017), <https://osc.state.ny.us/reports/aging-inmates.pdf>.

⁸¹ THE OSBORNE ASS’N, *THE HIGH COSTS OF LOW RISK: THE CRISIS OF AMERICA’S AGING PRISON POPULATION 10* (2018) <http://www.osborneny.org/resources/the-high-costs-of-low-risk/hclr/>.

⁸² *Id.*

People admitted to prison before the age of 18 should also see higher release rates due to both judicial precedent that requires special considerations for juveniles and evidence-based research that shows that adolescents have a unique ability to change and transform. As the U.S. Supreme Court has recognized, “children who commit even heinous crimes are capable of change” and should have the opportunity for release.⁸³ A New York appellate court explicitly acknowledged that this principle extends to parole decision-making for all applicants,⁸⁴ and the state has codified this through a regulation requiring that commissioners give “factually individualized” reasons for their decision.⁸⁵



Despite these requirements laid out by the courts



While 42% of those who were admitted to prison after 24 were granted parole.⁸⁶

ONLY 32% OF PEOPLE WHO WERE ADMITTED TO PRISON BEFORE THE AGE 18 WERE GRANTED PAROLE

BETWEEN OCTOBER 2017 AND OCTOBER 2019

THIS IS A CLEAR AND DISTURBING INDICATION THAT THIS JUDICIAL GUIDANCE, AS WELL AS THE REGULATION EMBODYING IT, ARE BEING IGNORED.

REGIONAL DISPARITY

Age and race are not the only lines along which disparities in the parole system exist. Regional disparities are also present, with people convicted in urban, downstate regions facing harsher treatment than those convicted in more rural, upstate regions. Between October 2017 and October 2019, Westchester led the pack. People in prison stemming from convictions there were denied parole release, on average, 3 times after they became eligible for release and forced to serve 5 years beyond their minimum sentence on average. Those convicted and sentenced out of New York City fell just behind, with people in prison there denied parole on average nearly 3 times and forced to serve just over 4 years beyond their minimum sentence on average.⁸⁷

Overall, people who were convicted in downstate counties were denied parole close to 3 times and forced to serve just over 4 years beyond their original sentence.⁸⁸ By contrast, people convicted in upstate counties were denied parole 2 times and forced to serve close to 3 years past their minimum sentence on average.⁸⁹

This troubling disparity in how people from different regions are treated might be explained by the frequent lack of a shared background between applicants and commissioners. Commissioners largely from upstate may have more difficulty relating to a person from Brooklyn than a person from Rochester.⁹⁰ By building a more diverse membership, the Parole Board will be better positioned to administer equal justice.

⁸³ *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

⁸⁴ *Hawkins v. New York State Dep’t of Corr. & Cmty. Supervision*, 140 A.D.3d 34, 38–39 (3d Dep’t 2016).

⁸⁵ *N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3* (2019).

⁸⁶ *Vera Data, 2017–2019, Table E* (on file with authors).

⁸⁷ *Vera Data, 2017–2019, Table 9* (on file with authors).

⁸⁸ *Vera Data, 2017–2019, Table 13* (on file with authors).

⁸⁹ *Vera Data, 2017–2019, Table 13* (on file with authors).

⁹⁰ See Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, *N.Y. TIMES* (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

PROFILES

Keith Winters: 36 Years in Prison and 13 Parole Denials

Keith Winters⁹¹ is a 66-year-old Black man. In 1985, he was convicted of second-degree murder and sentenced to 15 years to life in prison. At the time of his arrest, he was 28 years old. He had no prior arrests or convictions, and was gainfully employed by the City of New York. Throughout his incarceration, Keith did everything possible to rehabilitate himself. He completed every program available to him, earned three college degrees, including a Bachelor in Psychology and a Masters in Ministry Studies. He was a teaching assistant, a chairman of the Inmate Liaison Committee, a facilitator for multiple anti-violence programs, a legal research specialist and much more. Despite his many accomplishments, and deep personal transformation, Keith remains in prison. He's been denied parole thirteen times and is entering his 36th year in prison.

Stanely Bellamy: Serving a Sentence of 62 ½ Years to Life

In 1985, Stanley Bellamy and his two co-defendants were convicted of murder during the course of a robbery. He was sentenced to 62 ½ years to life in prison. Soon after entering prison, Stanley faced and began to address the damage and pain his crime caused. He earned a college degree and is now just a few credits shy of a second degree. He founded and continues to facilitate transformative in-prison programs, including the Civic Duty Initiative, which helped organize the first-ever gun buy-back program created and led by New Yorkers in prison. He takes full responsibility for the harm he caused and has mentored countless people to do the same. Today, Stanley is a soft-spoken 57-year-old father and grandfather who has served 33 years in prison. Without some form of legislative or executive intervention, his first chance at parole will come in 2048—he will be 86 years old and will have served 63 years in prison.

⁹¹ Name changed.

Recommendations for Reform

Policymakers must play a pivotal role in remediating barriers to release. We propose the following recommendations for state-wide policy making in 2021, and beyond.

1

Remove Vague Statutory Language from the Executive Law and Focus the Release Decision Inquiry on a Person's Transformation, Rehabilitation, and Readiness for Release

The New York State legislature should amend the Executive Law by removing language from parole statutes which prohibit release where it will so “deprecate the seriousness of the crime as to undermine respect for the law,” replacing it with language that focuses the Parole Board’s attention on a person’s readiness for release from prison. Under this new standard, the Board may deny release only when commissioners can show that a person presents an unreasonable risk of violating the law, and such risk cannot be mitigated by parole supervision.

The statutes and standards that govern parole review should be based on a person’s accomplishments in prison, their personal transformation, and who they are today. Far too often, commissioners use the boilerplate language of “deprecation” and “undermining respect for the law” as a basis for denying parole. Such denials send the message that the Board neither recognizes nor rewards transformation. The current review standard improperly allows the Board to deny release based on commissioners’ views that the person seeking parole has been inadequately punished.

As discussed, punishment is the province of the sentencing court, which assesses the minimum amount of time needed to serve punitive interests. Interests in rehabilitation, by contrast, require consideration of whether someone still presents a risk to the public and whether he or she is ready for reentry. This is the province of the Parole Board. Release denials must be justified exclusively by credible, serious risks to the public and on readiness for transition back into the community—matters which, unlike the seriousness of the offense, the Board is uniquely situated to assess based on information that was not available to the sentencing judge.

These modifications require changing the question posed for review. Commissioners should not be asked to justify release but instead should be asked to justify why continued incarceration is appropriate. Changing our default question from “why release?” to “why continue confinement?” is critical to ensuring the release of people who pose no risk to public safety.

While justifiable reasons for rejecting release will be applicable in some cases, a standard that fosters release appropriately insulates the independence of commissioners. At the same time, shifting the scrutiny to focus on justification(s) for continued confinement promotes accountability for unreasonable decisions to deny release.

New York has already recognized the principle underlying this recommendation in the Earned Eligibility Program, which expressly requires that program participants be granted release unless the Board finds

that release will likely lead to future offenses or is incompatible with social welfare.⁹² Adopting this reform will only build on existing law.

People are languishing in prison after decades of repeated parole denials. A person's freedom should not be determined solely by the nature of their crime of conviction—something that no one can change. The majority of people who appear before the Board, especially those serving life sentences, pose no risk to public safety and should be released to their communities. This statutory shift will establish that norm.

2

Expand Release Mechanisms for People Serving Natural Life Sentences

The legislature should pass a provision that grants all people aged 55 or older, who have served 15 years or more in prison, immediate parole consideration, regardless of crime or sentence.

Roughly 1,000 people are serving life without the possibility of parole or virtual life sentences. Without intervention, they are guaranteed to die in prison. Aging people who are not yet eligible for parole, or people who will never be eligible in their natural life but have served decades in prison, should have an opportunity to return home and reunite with their families.

Expanding access to parole must include a focus on the growing proportion of New York's prison population which is over the age of 55, and those who are otherwise seriously ill or infirm. Requiring parole interviews of all incarcerated people aged 55 and older where they have served at least 15 years is consistent with the very low recidivism risks posed by this demographic and presents a more fiscally responsible use of tax-payer dollars than the ongoing incarceration of the elderly. And it will incentivize good behavior by people who now have new hope of possible parole release and recognize that good behavior can help make that a reality.

3

Expand Judicial Power and Create New Remedies

The legislature should authorize the judiciary to directly grant release to people who successfully appeal a denial of parole.

Parole applicants denied release are very limited in their ability to seek recourse. Although applicants can seek judicial review of the decision through a proceeding challenging the action of a state official or administrative agency, reviewing judges have only the power to annul the denial and order a new interview. For the applicant who is repeatedly denied parole no matter how clear their evidence of rehabilitation is, this narrow remedy is no remedy at all.

⁹² N.Y. State Dep't of Corr. & Cmty. Supervision, Directive 4793: Earned Eligibility (2019), <http://www.doccs.ny.gov/Directives/4793.pdf>.

The legislature should empower reviewing judges to directly order the release on parole of applicants who successfully challenge a denial. Although ordering a new parole interview may be appropriate in some cases, in others it impedes the judicial discretion necessary to craft an effective remedy to a wrongful parole decision. This allows for a Kafkaesque system in which a judge might recognize that an applicant is repeatedly being wrongfully denied parole but be unable to do anything beyond subjecting that applicant to the same process over and over.

By establishing a level of judicial discretion in developing remedies for wrongful parole denials, the legislature can prevent these cycles of injustice. The power to expediently and conclusively resolve wrongful parole denials should be placed in the hands of the same court system that already played such an integral role in the applicant's prosecution and conviction.

4

Reduce Structural Barriers

The Parole Board, the legislature, and the governor should reduce structural barriers that prevent applicants from receiving a full and fair review by the Parole Board.

With the excessive caseloads that parole commissioners must shoulder, it is impossible for parole commissioners to dedicate the time and care to each individual parole application that it deserves. The governor should ease this burden by appointing three more commissioners to fill the Board and by keeping the Board consistently filled with qualified candidates comprised of a broad range of professional backgrounds, including social workers, public defenders, medical professionals, people of faith, and others who, through their work or experience have demonstrated a commitment to the principles of rehabilitation, mercy, and redemption, as well as those who can bring to bear expertise in trauma-informed care.

The legislature can further ease this burden by increasing the number of commissioners that can be appointed to the Board. These steps will benefit commissioners and applicants alike.

Other structural barriers to full and fair parole review can be addressed by the Parole Board itself. Rather than evaluating an applicant from hundreds of miles away via video feed, commissioner should conduct parole interviews in person. For applicants, this will mean a greater chance to build rapport with their interviewers. For commissioners, this will mean the opportunity to incorporate into their assessment all the nuances of in-person conversation that are lost in video conferences.

A final structural barrier that should be addressed is the lack of digitized records. For people seeking parole and their advocates, the ability to review records related to parole is essential to obtaining a favorable disposition. To ensure that applicants can fairly prepare for interviews, the Board should digitize parole records as fully as possible to ease access.

None of these barriers can be overcome without an investment of resources to ensure the fair operation of the parole review system. The resources spent to assist people in preparing for parole interviews, staffing of the Parole Board, and ensuring the fair operation of the parole release process are woefully inadequate.

5

Increase Transparency and Publish Data

The Board of Parole should publish annual reports on parole release statistics, which include detailed demographic data—including race, ethnicity, age, region of incarceration—for those granted and denied parole. Reporting should also consider resources allocated per decision; time expended per interview; and the reasons offered to justify denials. Such reports should further disclose disparities in release decision rates by individual commissioners. All annual reports should be made available to the public and accessible on the Department of Corrections and Community Supervisions' website.

Section 259-c(13) of the Executive Law already requires the Board of Parole to report to the governor and the legislature on its activity for the previous calendar year. However, more rigorous and transparent reporting requirements are necessary. As it stands, there is a gaping lack of parole data available to the public. Mandatory legislative reports are rarely published and basic demographic information about who is granted and who is denied parole is unavailable to the public. With so much data hidden from public view, recognizing problems in and improving the parole process is far more difficult. Generating information and metrics that consider these questions will create bodies of research which facilitate fresh, creative, and effective changes in the policies and guidelines that animate the Parole Board authority.

The analysis and publication of such data not only better equips decision-makers tasked with structuring policy-driven guidelines and systems for the Parole Board, it empowers other stakeholders with tools needed to employ evidence-based measures of how well different components of those guidelines and systems are working. With more sound data in hand, policymakers, advocates, and other stakeholders will be better equipped to achieve mutual goals and make New York a national leader in innovative parole practices.

Conclusion

New York must make use of the tools at their disposal to return people to their communities, shrink the carceral state, easing the burden placed on state budgets and overworked correctional officers, and reverse these trends. Parole release is one such tool with the potential—when reformed—to turn the tide against the damage done by the harms of mass incarceration and mass criminalization. Justice demands nothing less than the implementation of the modest reforms outlined in this report.