



TESTIMONY OF:
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Release Aging People in Prison/RAPP Campaign

Presented before
Members of the New York State Legislature
2020 Public Protection Budget Hearing: February 12, 2020

Introduction and Summary Recommendations:

The Release Aging People in Prison (RAPP) Campaign works to end mass incarceration and promote racial justice through the release of older and aging people from prison. To our knowledge, we are the only campaign in New York State and across the country with the central focus of *releasing* aging people from prison, rather than expending additional resources to retrofit prisons as nursing homes.

This testimony draws on the expertise and leadership of currently and formerly incarcerated older New Yorkers, including RAPP's Director, Jose Saldana, who served 38 years in prison and was denied parole four times, despite his many accomplishments, positive ties to the community, and minimal risk to public safety. As the Director of RAPP, Mr. Saldana advocates for the parole release and successful reentry of incarcerated older people who have transformed their lives after decades in prison.

During Mr. Saldana's decades in prison, he watched as many of his peers and mentors grew old, sick, and died in behind bars. Just since Governor Cuomo took office in January 2011, more than 700 older adults have died in New York State prisons. Their all-too-common stories of a long prison sentences, frequent parole denials, and eventual in-prison deaths should be the impetus for much needed changes to the Parole Board and the parole release process in New York State. New Yorkers cannot wait any longer. Parole justice is needed now. The Governor and legislature must take action this legislative session to overhaul the parole system. We strongly recommend the following:

1. **Fair and Timely Parole, S.497A (Rivera) / A.4346A (Weprin):** Ensures that the parole release process in New York State is based on peoples' rehabilitation and current risk of violating the law if released.
2. **Elder Parole S.2114 (Hoylman) / A.9040 (Carmen de La Rosa):** Provides an opportunity for an individualized parole interview for release consideration to older people, age 55 and over who have served at least 15 years of their sentence in prison.
3. **A Fair and Fully Staffed Parole Board:** The Parole Board should be fully staffed with 19 Commissioners who are social workers, psychologists, nurses, and other professionals

that embrace notions of mercy, redemption and rehabilitation. There are currently 16 Commissioners on the Board, leaving three vacancies. This requires an increase in the money proposed for Parole Board staffing in the executive budget by \$360,000. However, taken together, these three parole reforms would quickly produce cost savings associated with releasing more older people from prison.

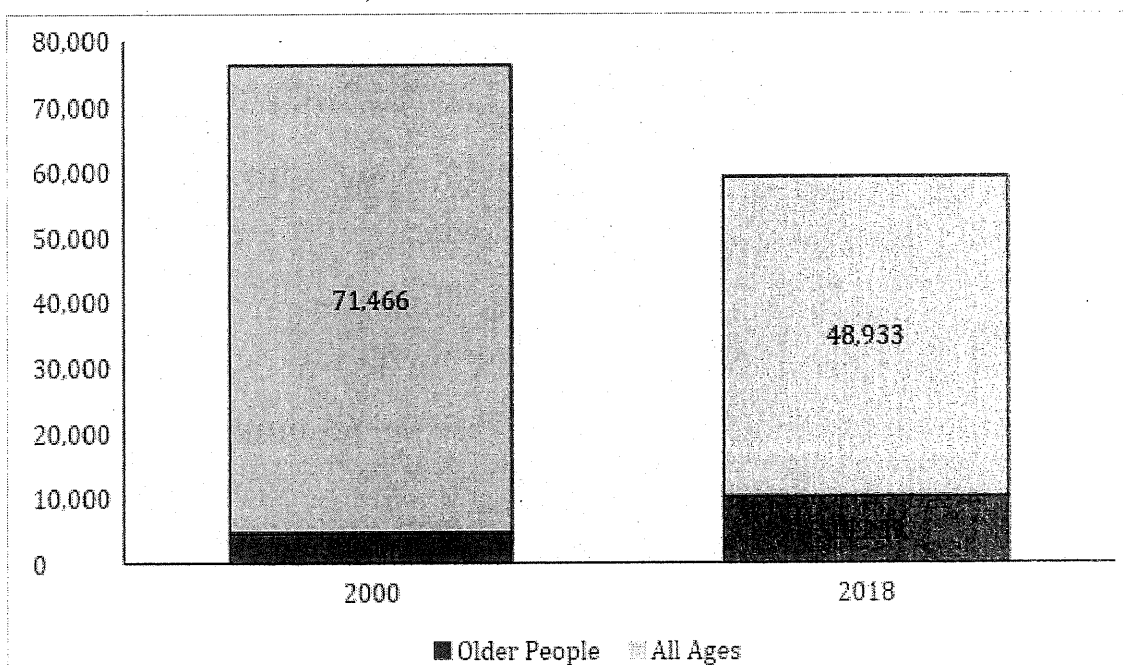
Older People in Prison:

New York's graying prison population represents a relatively new epidemic rooted in the legacies of racism, revenge, perpetual punishment and misconceptions of the causes and remedies for violence in the United States. Although there is no commonly agreed-upon age at which an incarcerated individual is considered "old," definitions usually begin between 50 and 55. Medical practitioners and corrections professionals agree that adverse life circumstances both during and prior to incarceration lead to accelerated aging in prison: a phenomenon that increases the physiological pace at which a person ages. RAPP defines incarcerated older people as those aged 50 or older, a definition informed by former DOCCS Commissioner Brian Fischer.

Due to the continued use of long and life sentences, limited release mechanisms, and a dearth of community support, the crisis of aging in prison remains. **There are 10,239 older people in New York State prisons, making up 21% of the total prison population. In the last 25 years, the number of older people in New York Prisons increased four-fold—from 2,461 people to 10,239 people—and since the year 2000, the number of older people in prison has more than doubled even as the total prison population has decreased by roughly 30%.** For the first time in 20 years, the number of older and aging people in prison in New York State fell slightly in 2018. However, the aging prison population continues to lead to both human and financial costs to all New Yorkers, diverting resources and funds from communities and programs that could promote and expand public safety.

Conservative cost estimates indicate that the total financial cost associated with keeping older people locked up in the New York State prisons is \$1billion. The cost paid by people, families, and entire communities across the state who are harmed by aging in prison is incalculable. Countless New Yorkers will continue to suffer from this crisis if state lawmakers and the governor do not act.

New York State Prison Population by Age: 2000-2018



Source: NYS DOCCS Prison Population Data

Criminologists, corrections experts and currently and formerly incarcerated people have long known that older people, including those convicted of serious violent crimes like murder, pose the lowest risk to public safety. DOCCS' own recidivism numbers validate this conundrum: **while the overall recidivism rate in NYS is 43 percent, with a new commitment rate of 15 percent, people aged 50-64 have a new commitment rate of just six percent, a percentage that falls to a mere four percent for those aged 65 or older.** The Parole Board's own evidence-based risk and needs instrument—COMPAS—also validates older people's low-risk, as they almost always receive a low-risk COMPAS score before Parole Board hearings. Denying older people who pose little to no risk to public safety is inhumane, counterproductive, and comes with huge health concerns and costs.

The Need for Broad Parole Reform:

For decades, currently and formerly incarcerated people, their families and concerned community members have closely studied Executive Law 259-i, which governs the parole release process. In 2011, the New York State legislature amended this Executive Law to require that the Board "establish written procedures... incorporat[ing] risk and needs principles..." This important amendment gave many older people in prison hope. It meant that the standard of parole was to shift to more forward-looking factors of how someone has changed over time and who they are today, as opposed to the nature of their crime. Despite these positive changes, the Parole Board continued to deny parole to the large majority of older parole applicants who appeared before them, based exclusively on the nature of the crime.

In September 2017, the Parole Board revised their regulations to better align with the changes made to the Executive Law in 2011. The new rules solidified the Board's new standard of risk and needs principles by mandating "an individualized reason for departure" when Parole Commissioners depart from a person's COMPAS risk assessment score. The regulations also required the Parole Board to issue more detailed written decisions, stating that reasons for denial be "in detail...and in factually individualized and non-conclusory terms." These were steps in the right direction and led Parole Commissioners to make fairer and more thorough decisions.

While the Board's release rates have indeed increased since the new regulations were put into place, and new Commissioners were appointed by the Governor and confirmed by the Republican-led Senate in June 2019, more changes to parole are urgently needed.

The Department of Corrections and Community Supervision's (DOCCS) own statistics indicate that the majority of parole-eligible people, including those who are older, are still not granted parole release. That means that thousands of people continue to spend years and decades beyond their designated minimum sentences and that more people will grow old and die in prison. It means that many of our loved ones will die behind bars and others will eventually be released but have little time to embrace their freedom and benefit our communities. For these reasons and more, we must make the necessary changes to expand parole release in New York State.

Detailed Recommendations:

- 1. A Fair, Fully Staffed & Properly Funded Parole Board:** The New York State Parole Board remains understaffed with 16 out of a possible 19 Commissioners who are tasked with annually interviewing 12,000 parole applicants. The Board's understaffing leads to two-person panels (as opposed to three), frequent postponements, and rushed and unfair interviews. The first step to fully staffing the Parole Board is ensuring there is enough money in the budget to pay for it. The Governor's executive budget proposal allocates money for only up to 16 Commissioners. The Governor and legislature should allocate an additional \$360,000 that would allow the Board to increase staffing to full capacity. Subsequently, the Governor and State Senate should respectively appoint and confirm Parole Commissioners who believe in rehabilitation, come from rehabilitative professional backgrounds and better reflect the identities and experiences of people in prison. The process by which Commissioners are appointed, confirmed, on boarded and trained should be thorough, transparent, include community input, and take place during the early part of the legislative session.
- 2. Fair and Timely Parole, S.497A (Rivera) / A.4346A (Weprin):** Thousands of incarcerated older people remain in prison years and often decades past their court-ordered minimum sentence because the Parole Board denies them release. Despite incredible rehabilitative efforts, minimal risk to public safety and meaningful ties to the community, the Parole Board denies release based on one unchangeable factor: the nature of the crime. "Fair and Timely Parole" would ensure that the parole release process in New York State is based on rehabilitation and peoples' current risk of violating the law.

The Need to End Death-By-Incarceration Sentences:

While the Parole Board's parole release denials—that extend peoples' sentences over years and decades—are a leading cause of the aging in prison crisis, New York's use of life without parole sentences and virtual life without parole sentences (sentences with a minimum sentence of 50 years or more) are also to blame.

There are currently roughly 1,000 New Yorkers sentenced to die in prison without any public safety assessment, rehabilitative evaluation, or release consideration. No matter how they change or transform their lives, their sentences don't allow them any hope or redemption. Inevitably, such sentences cause people to grow old and sick behind bars. People of Color are disproportionately sentenced to death behind bars.

It has long been proven that lifelong prison sentences do not promote public safety, deter crime, or even meet the many needs and desires of victims and survivors of crime. These sentences are purely for the purposes of permanently punishing people and families impacted by them. For this reason, just about all countries throughout the world do not have life without parole and virtual life without parole sentences. The large majority of countries in the world, including Mexico, Germany, France, and Denmark allow people serving the most serious criminal penalties for the most serious crimes an individualized assessment and chance at parole release after serving 12-20 years. New York State should take steps towards this international model and come into line with the rest of the world.

Detailed Recommendation:

1. **Elder Parole S.2114 (Hoylman) / A.9040A (Carmen De La Rosa):** There are roughly 1,000 older people in prison who have already served at least 15 years and are not yet eligible for release. For the extreme majority, if not all, continued incarceration poses as nothing more than punishment. It creates despair, family disconnectedness, aging, and death and does nothing to enhance public safety or deter crime. It also costs tens of millions of dollars in medical costs and other expenses associated with aging in prison. Elder Parole would create a consideration of parole release for older people, aged 55 and older who have served at least 15 years in prison. It would end death-by-incarceration sentences in New York State, restore hope for thousands of New Yorkers, re-connect families, and allow valuable resources to be re-directed to other worthy programs.

Conclusion:

New York State has the historic opportunity of taking bold steps toward ending the crisis of life-long despair, death by incarceration and permanent family separations created by the racist policies of mass incarceration. These steps include fully staffing the Parole Board with 19 Commissioners, who believe in redemption and transformation; restoring the Parole Board to its original intent and purpose as an independent body to measure a person's suitability to be returned to society based on his/her rehabilitative endeavors during years of incarceration; the passage of the Fair and Timely Parole Bill and the Elder Parole Bill. **Without such fundamental changes, the crises of aging in prison will continue to be New York's new**

death penalty. We'll continue to keep people in prison for no reasons other than punishment and vengeance and spend millions more dollars.

RAPP's priorities are fair, effective, evidence-based and safe ways for New York to end mass incarceration and promote public safety. We invite members of the legislature and Governor to join our statewide community of formerly incarcerated leaders, families, and concerned New Yorkers. Taking meaningful and expanded action to release older people from prison will prevent death, despair, aging, and illness behind bars, and make New York a true leader in the struggle to end mass incarceration. Thank you and we are happy to answer any questions at this time.

Attachments:

1. "Elder parole law is needed to give second chances," Donna Robinson, *The Buffalo News*
2. "Parole reform is the next criminal justice frontier," Gustavo Rivera, *The Daily News*

For further questions and inquiries, please contact Dave George, Associate Director of RAPP, at 631-885-3565 or ddgeorge23@gmail.com