



**TESTIMONY OF:
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Release Aging People in Prison/RAPP Campaign**

**Presented before
Members of the New York State Legislature
Public Protection Budget Hearing - February 7, 2023**

INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

My name is Jose Saldana and I am the Director of the Release Aging People in Prison (RAPP) Campaign. I served 38 years in prison and was denied parole release four times, extending my sentence by nearly a decade. In my service to my community, and other communities across the state, I am living proof that each and every one of those denials was wrong. Recently, I received a letter from the former Chair of the Parole Board in which she acknowledged this fact. Yet countless others continue to be denied a fair shot at release – people who would be assets to their families and communities – and that is what I will focus my testimony on today. As Governor Hochul and legislators consider a budget with massive expenditures and policy changes to address concerns about crime, I implore you to prioritize one initiative that would save, rather than cost, hundreds of millions of dollars: Allowing incarcerated people a fair chance to come home, continue to make amends, and uplift struggling communities across the state with solutions to our most urgent challenges. Pass the Elder Parole and Fair & Timely Parole bills, which have the support of a majority of state lawmakers, along with leading justice reform and crime victim advocacy organizations, to return anti-violence educators, mentors, scholars, and artists to return to their families and communities and help struggling neighbors across the state to thrive and flourish.

BACKGROUND

The 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 substandard and unaccountable nursing homes.

This testimony draws on the expertise of currently and formerly incarcerated New Yorkers, family members of people in prison, and families of people who tragically died in prison.

During my decades in prison, I watched as many of my peers and mentors grew old, sick, and died in behind bars. People die in New York State prisons every 2.67 days and more died in these

facilities in just one decade under the previous Governor than the total number of people executed during the 367 years in which New York administered capital punishment. Their all-too-common stories of 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. Recent years have been particularly deadly because of the pandemic and the state's failure to take meaningful action to release vulnerable people and reduce the prison population. 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. That is why we help lead the People's Campaign for Parole Justice, the grassroots campaign working to realize the following platform to save lives, improve safety for all, and make our state more fair and just:

1. **Fair and Timely Parole, S.307 (Salazar) / A.162 (Weprin):** This bill restores the Parole Board to its original purpose of evaluating people's readiness for release, ensuring that parole release considerations in New York State are based on peoples' rehabilitation and current risk of violating the law.
2. **Elder Parole S.2423 (Hoylman) / A.2035 (Davila):** Provides an opportunity for an individualized parole interview for release consideration to older adults, which is categorized by DOCCS as 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 who embrace notions of mercy, redemption and rehabilitation. There are currently 14 Commissioners on the Board, leaving three vacancies. Last year, the Governor and legislature budgeted \$8 million to accomplish this, yet Governor Hochul appointed only one Commissioner and another two departed, leaving the Board with more vacancies that when she first took office.

The People's Campaign for Parole Justice is a grassroots coalition started by 15 organizations across New York State, with the support for [more than 350 organizations](#) across New York State, including some of [the largest crime victims and survivor advocacy groups: The New York State Coalition Against Sexual Assault, Crime Victims Treatment Center](#), along with the Rev. Al Sharpton, Dr. Hazel Dukes, several U.S. Congressmembers and current and former District Attorneys, The Working Families Party, 1199 SEIU, CWA District 1, VOCAL-NY, Citizen Action, New Hour for Women and Children, LiveOn NY, JASA, the Brookdale Center for Healthy Aging, NY Communities for Change, Center for Community Alternatives, Osborne Association, NYCLU, FWD.us, and more. We work to promote fair and meaningful release opportunities for incarcerated people in New York State prisons. We advocate for the above initiatives because we value the worth and dignity of all people. We believe no one is disposable, nor should anyone be defined by the worst thing they've ever done. We believe in redemption and transformation. We believe in families, communities, and collective care. We also recognize that prison sentences that don't allow for meaningful opportunities for release don't keep us safe.

ADDITIONAL COMMENTS ON THE FY 2024 EXECUTIVE BUDGET

TSA-Style Body Scanners in Prison

The RAPP Campaign has three concurrent campaigns: winning parole justice, expanding the use of clemency, and protecting human rights behind bars. The Executive Budget proposal includes provisions that would subject incarcerated people *and* visitors to TSA-style body scanners, which amount to digital strip searches conducted by prison officers who are often rude, dehumanizing or worse. Notably, the provisions exempt staff from being searched, despite widespread knowledge that they bring in the majority of all contraband.

This provision follows recent action by DOCCS to ban family care packages (except those purchased through price-gouging vendors that often lack essentials), block letters and greeting cards and instead scan them and deliver crude print jobs, curtail visiting, and more – on top of widespread racialized physical, sexual, and verbal abuse. Together, these policies only breed resentment and tension, deprive families of life-saving connections, and increase violence.

If Governor Hochul is serious about improving safety behind bars, she must reverse these policies, hold staff accountable for misconduct, and respect human rights.

The SAVE Program & Expansion of Electronic Monitoring

The proposal by Governor Hochul subject people on parole, who have already been approved for release from prison, to electronic monitoring, or e-shackling, would subject people to needless and harmful surveillance. E-shackles make re-entry more difficult, obstructing family reunification and employment and stigmatizing those forced to wear them. Such isolation and marginalization create the conditions in which violence is most likely to occur, rather than improving safety as advertised in the Governor’s briefing book. There is absolutely no evidence that electronic monitoring promotes safety in any way. It only prevents formerly incarcerated people from fulfilling their potential as forces for good in the community. Had my peers and I been forced to wear electronic monitors while on parole, we wouldn’t have been able to contribute to communities as much as we have.

Removal of the Standard in the Bail Law

While Governor Hochul stated that her budget would remove the “least restrict means” language from the bail law to clear up confusion for judges, she in fact proposes to remove the entire standard and replace it with nothing. This will create more confusion and, importantly, cause greater harm to oppressed people. Amid record-breaking rate of deaths in NYC jails, and ongoing human rights crises in other jails across the state, elected officials should be focused on providing resources to prevent incarceration and safely releasing people currently behind bars. We respectfully urge the Legislature to reject the Governor’s proposal.

OLDER PEOPLE IN PRISON

New York’s graying prison population is a worsening epidemic rooted in the legacy of racism, revenge, perpetual punishment and misconceptions of the causes and remedies for violence in the

United States. Older adults in prison are defined as such by NYS DOCCS at age 55, due to accelerated aging behind bars; other prison authorities use age 50.

Due to the extreme sentences of the mass incarceration era, as well as limited release mechanisms, the crisis of aging in prison is only getting worse. **While the entire New York State prison population is as low as it's been in more than 30 years, the population of incarcerated older New Yorkers is nearly four times higher today than back then.**

Conservative estimates indicate that the total financial cost associated with keeping older people locked up in the New York State prisons is \$1 billion. 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.

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 after release. DOCCS' own recidivism numbers validate this conundrum: **while the overall recidivism rate in New York State 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.

Racial Disparities in Parole Release:

Racism infects the parole release system just as it does every element of the criminal legal system. A white person in a New York prison is significantly more likely on average to be released on parole than a Black or Latinx person and the disparity widened in 2020, according to a Times Union analysis of the nearly 19,000 parole board decisions over the last two years. The data, which spans October 2018 through October 2020, shows the Parole Board granted parole release to 41 percent of white people, compared to 34 percent of Black people and 33 percent of Latinx people.

Importantly, these racial disparities are not new. In 2016, the New York Times conducted a investigation of parole release data and similarly found Black and Latinx people were significantly less likely to be released than their white counterparts.

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. The original purpose of the Parole Board was to evaluate people's readiness for release and act accordingly, yet in the era of mass incarceration, the Board denies most people

based solely or primarily on the one thing they can never change, namely their crime of conviction from however many years and decades ago.

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 continues to deny parole to the large majority of older parole applicants who appeared before them, based 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 did indeed increase after the new regulations were put into place, and new Commissioners were appointed by the Governor and confirmed by the Republican-led Senate in June 2017 and then again in the Democratic-led Senate in 2019, release rates then dropped again. 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 14 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) in which a tie functions as a denial, 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. Fortunately, Governor Hochul and the Legislature took care of that in last year’s budget. Now, the Governor and State Senate must 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, onboarded 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.1415 (Rivera) / A.4231 (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—which 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, evaluation of rehabilitation, or release consideration. No matter how much 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. Black and Latinx people 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 their families. For this reason, just about all countries throughout the world do not have life without parole and virtual life without parole sentences. Pope Francis has rightly called them “hidden death penalties”. 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.

Detailed Recommendation:

- 1. Elder Parole S.2423 (Hoylman) / A.2035 (Davila):** There are roughly 1,700 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 serves as nothing more than endless 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 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.

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