



TESTIMONY OF:
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Presented before
Members of the New York State Senate:
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Introduction:

Good afternoon, my name is Jose Saldana, Community Organizer with the Release Aging People in Prison (RAPP) Campaign. 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 nursing homes.

This testimony draws on the expertise and leadership of currently and formerly incarcerated older people, including myself. I was released from the New York State prison system in January 2018, after serving 38 years. I was denied parole four times despite my educational and programmatic accomplishments, demonstrated low-risk to public safety, strong connections to the outside community, and having taken full responsibility for the damage that I caused. Tragically, my experience growing old behind the walls after frequent parole denials has become commonplace in NYS prisons.

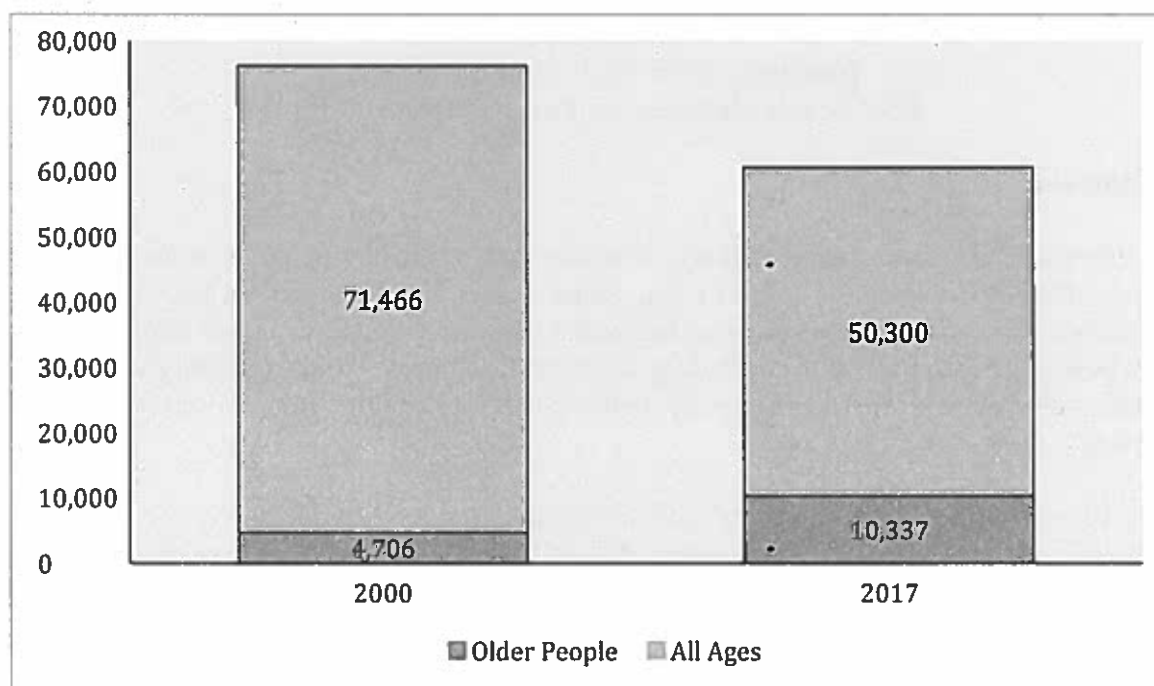
Older People in Prison:

New York's graying prison population represents a relatively new, systemic, human-made epidemic rooted in the legacies of racism, punishment and misconceptions of 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.

There are more older people in New York State prisons and other state and federal prisons throughout the country than ever before. As a result of long sentences, limited release mechanisms, and a dearth of community supports, the population of incarcerated older New

Yorkers is skyrocketing. In total, there are more than 10,000 older people in New York State prisons, making up roughly 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 10,337 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%. Such an increase in the aging prison population has led 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.

New York State Prison Population by Age: 2000-2017



Source: NYS DOCCS Prison Population Data

Throughout my time in the prison, I became one of those older people, and grew older each time the Parole Board denied me release. If we are serious about addressing this issue of older people in prison, then we must take action to change the New York State Parole Board, and not in the ways that many Republican Senators suggest.

Parole in New York State:

For decades, incarcerated colleagues and I closely studied Executive Law 259i, which governs the Parole Board’s release decisions. 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 of us in prison hope. It meant that the standard of parole release shifted towards more forward-looking factors of how someone has changed over time and who they are today, as opposed to the nature of their crime, the one thing that will never change. We thought the changes in the law would mean that the deep personal

transformations many of us had undergone would be recognized as a sign that we posed no risk to public safety and were ready for release. Unfortunately, we were wrong.

From 2011 to September 2017, the Parole Board effectively ignored the changes in the law. During this period I was personally denied parole three times. During one of those denials, a parole panel told me given my age, the amount of time I had served, and the accomplishments I had acquired, that I posed the least risk to public safety. And yet, they denied me parole. Had the Board been guided by their new risk and needs standard, I likely would have been home years earlier. Instead, I had to wait another two years before my next opportunity for release.

In September 2017, the Parole Board revised their regulations to better correspond 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.

Currently and formerly incarcerated people know the law. Many of us were and remain jailhouse lawyers, legal scholars, and paralegals. We publish our legal work in law journals, engage in litigation, and file parole appeals. While we know that some components of the Executive Law are flawed and should be changed, we also know that the law, as it stands today, must apply to all parole-eligible people regardless of their crime. This includes people convicted of harming police officers and others who have engaged in violence.

Senate Republicans have said there are loopholes in the Executive Law that allow for the release of people convicted of killing police officers. Senator Patrick Gallivan recently took this a step further by saying that there is a "seeming automatic release of cop killers, sex offenders and violent felons." Both couldn't be further from the truth. For starters, there is no loophole in the law. The Parole Board must follow their guidelines, factors and standards when determining the release of people convicted of killing police just as they do for any other parole-eligible person. So long as the Board is operating within the confines of the law, they have the independent discretionary power to release any parole-eligible person who meets the standards, regardless of what community members, organizations, or special interest groups lobby for. If the Board denied release to people convicted of certain crimes in a blanket fashion, then they would be acting illegally. Senate Republicans should know this given they are members of a legislature tasked with making and upholding the laws that govern parole practice.

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 2017, by no means does New York State "automatic[ally] release" people on parole. In fact, the Department of Corrections and Community Supervision's (DOCCS) own statistics indicate that the majority of parole-eligible people are still denied 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. I take this very personally because if I hadn't been granted parole release, then I too would have died in

prison. Many of my friends have already died in prison and we as a state guarantee that many more will die unless we make the necessary changes to expand parole release.

Beyond Low Risk: The Value of Formerly Incarcerated People:

Criminologists, corrections experts and currently and formerly incarcerated people have long known that older people convicted of violent crimes, including murder, pose the least risk to public safety. DOCCS' own recidivism rates validate this fact. **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 one percent for those aged 65 or older.** But currently and formerly incarcerated older people aren't just low-risk; we are assets to the community with a lot to offer if only given the opportunity to live free and have full participation in the outside world.

Currently and formerly incarcerated older people promote community safety, real accountability and victims' healing. We are violence interrupters, restorative justice practitioners, and social workers. In fact, some of the leading anti-violence programs in New York State and beyond have been created and led by those who once caused harm through violence.

I personally founded in-prison programs that are now facilitated throughout DOCCS facilities and have been known to prevent crime, reduce recidivism and promote community safety. Had the Parole Board released me sooner, I could have begun that work in the outside community far earlier. And there are hundreds if not thousands of people who currently remain in prison who pose to benefit all of us in similar ways. But before they can help us, we must release, fully enfranchise and empower them; we must treat them as people, and abandon using their experiences and pasts for political gains and more punishment.

On September 13, 2018, I voted for the first time in my life. I was one of the first people to arrive at my polling place in the Bronx because I valued and truly cherished the opportunity to contribute to our electoral political system. Allowing formerly incarcerated people the opportunity to fully participate in democratic elections is critical to our democracy and legacy as a state and country. It sends a message to currently and formerly incarcerated people that our voices and lives matter. Far too often, we receive the opposite message.

For centuries, my family members and ancestors were disenfranchised at the polling place. From poll taxes to grandfather clauses, people who looked like me were legally excluded from weighing into our democracy just because of their race. Today, felony convictions have become proxies for race and political disenfranchisement. We in New York must break this legacy of racism. The punishment for people in prison is their sentenced time away from society, their families and the outside world, not silencing their voice in the democratic process. My continued punishment while on parole is having to continue to be under state supervision, not to be stripped of my right to vote. I work, pay taxes at all levels of government and have just as much of a stake in our political system as any other person in New York. My colleagues and I should be permitted to fully participate in all processes that shape our lives as currently and formerly incarcerated people, including by voting.

Conclusion:

I am in many ways troubled by these hearings. Knowing what I know about myself and many other currently and formerly incarcerated people, I question whether these hearings are truly for the purposes of public protections and policy or purely politically motivated. The large majority of those of us who are currently and formerly incarcerated pose no risk to public safety and are great contributors to the community. We aren't a threat to our neighbors, community members, or police officers, inside polling places and beyond.

These hearings aren't about public safety or the law, but instead another way for elected officials to attack us—currently and formerly incarcerated people—in ways that mobilize the parts of your voting base that don't know us, have never interacted with us, and can be fooled into fearing us. I ask you, distinguished members of the Senate, to refrain from demonizing and attacking us, and I ask your constituents to not take the political bait. I am not an animal, felon, or thug. I am a formerly incarcerated person, doing all that I can to protect, serve and promote safety for my family, community and all New Yorkers. Thank you and I am happy to answer any questions at this time.

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

