TESTIMONY OF:
Dave George, Associate Director
Release Aging People in Prison/RAPP Campaign

Presented before
Members of the New York State Legislature:
2018 Public Protections Budget Hearing: January 30th, 2018

Introduction:

Good afternoon, my name is Dave George, Associate Director of the Release Aging People in Prison/RAPP Campaign. I would like to thank the Chairs, Members, and staff of the Senate Committee on Crime Victims, Crime, and Corrections, the Assembly Committee on Correction, and all other legislators and staff for allowing me the opportunity to present testimony before you. The RAPP Campaign works to end mass incarceration and promote racial justice by getting older people out of prison through changes to the "back-end" of the legal system, including, parole, medical parole, and clemency. To our knowledge, in the midst of a national crisis driven by rising numbers of older people in prisons and the escalating costs associated with those numbers, we are the only campaign in New York State and the country as whole with the central focus of *releasing* older people from prison, rather than expending additional resources retrofitting prisons as nursing homes.

This testimony draws on the expertise and leadership of currently and formerly incarcerated older people, including and especially RAPP's Founder, Mujahid Farid, who founded RAPP after serving 33 years in the New York State prison system on a 15-year-life sentence after being denied parole nine times despite major accomplishments and a nonexistent risk to public safety.

We believe that Governor Cuomo's calls to reform New York's criminal legal system are potential steps in the right direction. We particularly acknowledge and will comment on his proposal to expand medical parole for incarcerated older people with debilitating health conditions, as well as proposed initiatives related to other release mechanisms, the New York State Parole Board, in-prison programs, and reentry.

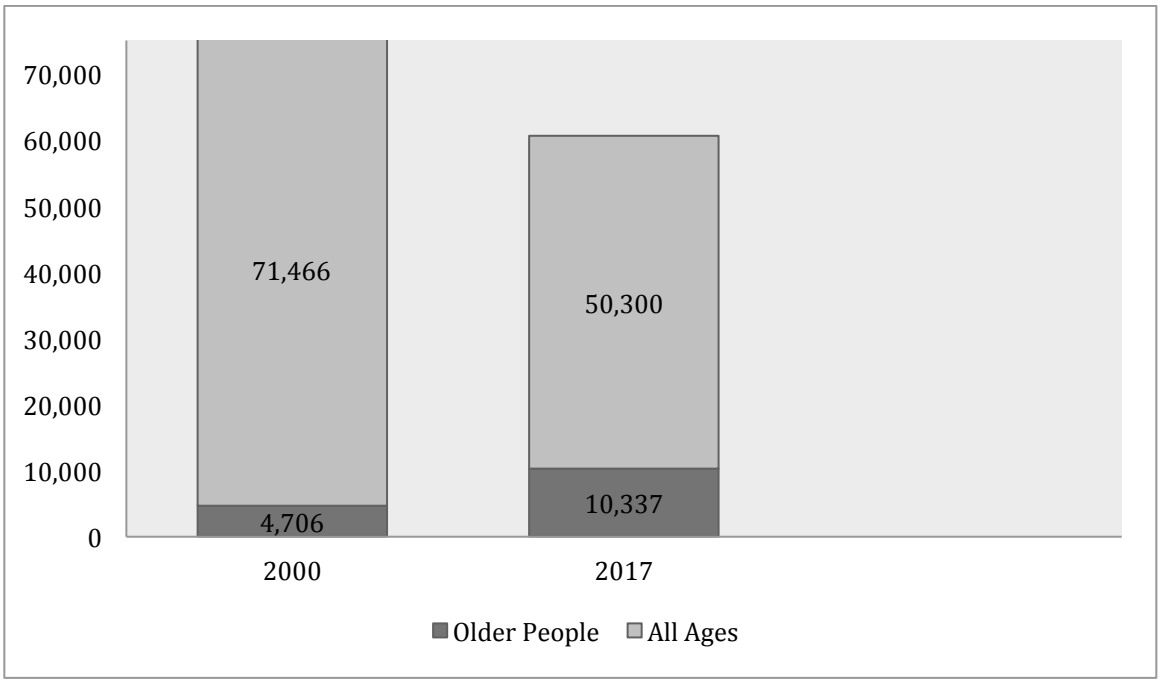
Older People in Prison:

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 given medical

practitioners and corrections professionals agree that adverse life circumstances both during and prior to incarceration lead to accelerated aging: 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 10,337 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%.**

New York State Prison Population by Age: 2000-2017



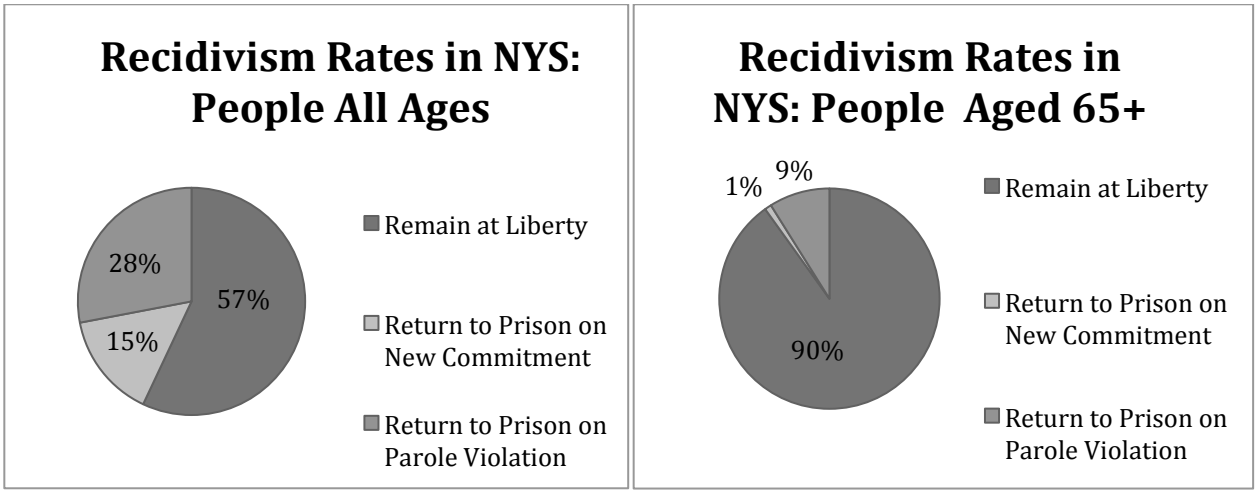
Source: NYS DOCCS Prison Population Data

Despite the fact that older people, especially those convicted of the most serious crimes, pose minimal risk to public safety, they are denied parole at nearly the same and often higher rates than their younger colleagues. 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 one percent for those aged 65 or older.** The Parole Board's own evidence-based risk and needs instrument—COMPAS—which the legislature mandated guide the Board's decisions, 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 healthcare concerns and costs.

In April, 2017,these costs prompted New York State Comptroller Thomas DiNapoli to release a report, "New York State's Aging Prison Population," showing the rise in medical costs associated with the increase in the aging prison population. His report should serve as a guide for the Governor and the legislature in deciding how to design criminal justice initiatives in this year's state budget.

Recidivism Rates in NYS Prisons by Age



Source: NYS DOCCS Recidivism Data

"**Geriatric Parole":**

The Governor's proposed "geriatric parole" initiative, which would create an additional medical parole provision for incarcerated older people with debilitating health conditions, comes at a crucial moment in the history of New York State prisons. With few meaningful opportunities for release, the older prison population is increasingly aging, growing ill, and dying. For far too long, New York's rarely used, limited, and at times exclusionary medical parole program has directly contributed to this problem. Older people who pose minimal risk to public safety with medical conditions that could be adequately and safely cared for in the community are frequently not qualified, certified, assessed for or released on medical parole and instead die in prison.

Only 13 total people were released on Medical Parole in 2016, a number that falls to just 8 people in 2017. So few medical parole releases occur despite the fact that DOCCS' five Regional Medical Units (RMUs), which provide services to the sickest imprisoned New Yorkers who require complex care, continue to be mostly occupied by older patients. As of January 2016, **64 percent (183 people) of the total RMU population was aged 50 or older and 47 percent (135 people) was aged 65 or older.** Some in the RMUs are bedridden by terminal illness while others are so cognitively impaired that they don't remember their crimes or why they are in prison. Therefore, it is not that New York's medical parole program releases few people because

of a limited number of candidates, but instead due to restrictive medical parole policies and a lack of political will to change them.

The Governor's "geriatric parole" proposal is potentially a step in the right direction. While we define older people in prison as those aged 50 and older, we appreciate that the qualifying age for the proposal—55 years old—is rooted in evidence associated with older people in prison and the degree to which aging accelerates with incarceration. We also agree with the proposal's provision to mandate the Parole Board consider three additional factors for "geriatric parole" applicants: the nature of the conditions, diseases, syndromes or infirmities and the level of care; the amount of time the person must serve before becoming eligible for release; and the person's current age and their age at the time of the crime. Finally, we acknowledge that the extent of the Commissioners' determination to certify an individual for "geriatric release" and send them to the Parole Board is limited to matters of health and not an individual's risk to public safety, which is already assessed by the Board. We welcome and agree with this change.

For decades, the narrow medical criterion used to determine whether or not an individual was released on medical parole was based on their ability to self-ambulate in light of their serious condition. Despite recent changes to the Executive Law, which broadened this medical standard beyond self-ambulation, few people are still granted medical parole. If implemented appropriately and as intended, we believe that certifying "geriatric parole" applicants based on a condition "exacerbated by age, that has rendered the person so physically or cognitively debilitated or incapacitated that the ability to provide self-care within prison is substantially diminished" will lead to better, safer, and more humane outcomes. To ensure that this better health standard is not convoluted with criteria or procedures of the past, the new "geriatric parole" proposal should be amended by removing language related to self-ambulation—"…and a statement by the physician of whether the [incarcerated person] is so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate…" Such language is proven to lead to poor outcomes, is inconsistent with the new, broader language, and is potentially contradictory to the overall intent of the proposal.

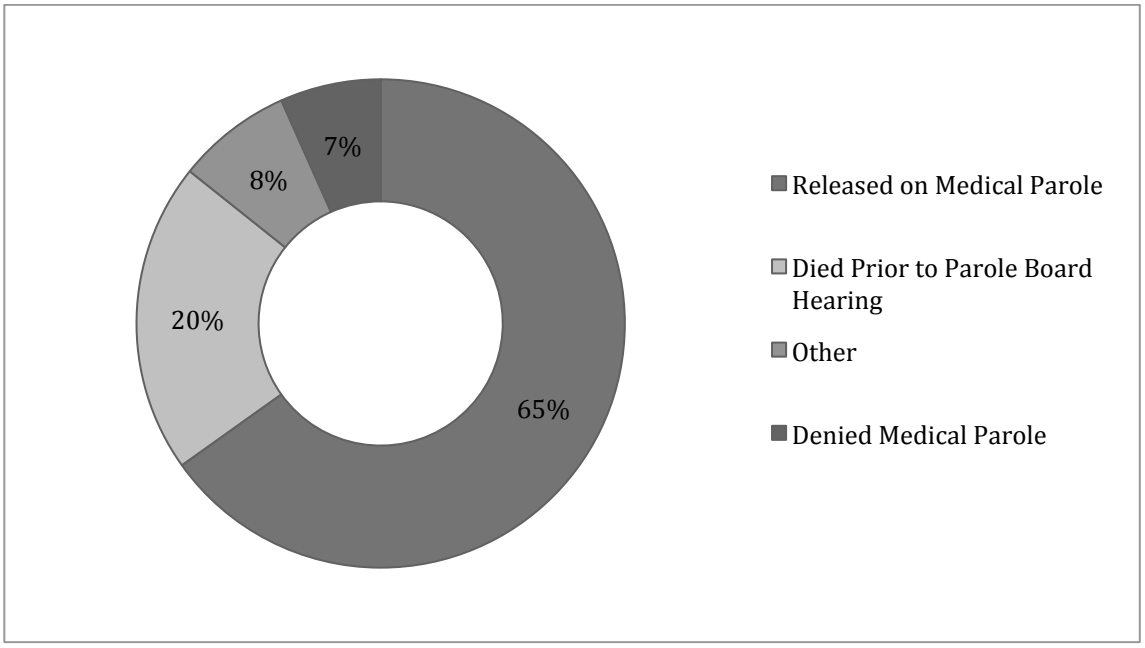
While we are cautiously optimistic by some components of this proposal, others are deeply concerning. To start, the initiative excludes some incarcerated older people based exclusively on crime of conviction—people convicted of murder in the first degree, aggravated murder, a conspiracy to commit first degree or aggravated murder, and those serving life without parole sentences. This provision is rooted entirely in retribution and not evidence. Older people convicted of the most serious crimes in New York and beyond are *least likely* to return to prison after being released despite the serious harm they may have caused. **Between 1985 and 2012, only 1.9 percent of people released after serving time for a murder conviction returned to DOCCS custody on a new commitment, compared to 14.5 percent of all people released during the same time period.** Additionally, by excluding certain people based on crime of conviction, New York guarantees that some older people will die in prison, effectively reinstating the death penalty in New York. If our state truly values compassion, mercy, and rehabilitation, then this new policy will be inclusive of all people regardless of their crime.

Similarly retributive is the continued use of Executive Law language that allows the Parole Board to determine medical parole release, as well as discretionary parole release, based on

whether or not their "release is not incompatible with the welfare of society and *will not so deprecate the seriousness of the crime as to undermine respect for the law*," (emphasis added). This punitive language is used in boilerplate fashion in the standard parole denials of tens of thousands of currently and formerly incarcerated New Yorkers. It allows the Parole Board to deny someone based solely on the nature of their crime. Denying "geriatric parole," medical parole, or discretionary parole based on one, unchangeable factor runs fundamentally counter to the philosophy of rehabilitation and the intent of this pending initiative. Such language should be removed from this proposal and all other Executive Law statutes in which it appears.

The Governor's proposal does nothing to better trigger or accelerate the process by which DOCCS, approved medical professionals, and the Parole Board evaluate individuals for release. In fact, the 30-day comment period this proposal gives to the Sentencing Court, relevant District Attorney, and others before the Parole Board is able to conduct a "geriatric parole" interview is twice as long as the 15-day waiting time included in the existing medical parole statute. **Medical parole in New York is often so slow-moving that many medical parole applicants already certified by DOCCS and relevant medical staff die prior to their interview with the Parole Board**. DOCCS' most recently published data on medical parole shows that **between 1992 and 2014, 108 of the 525 total certified medical parole applicants died prior to their Parole Board interview.** In order for "geriatric parole" to prevent death and meet its intended purpose of releasing more people, it must be amended to include strict and urgent time limits on the various procedures included in the proposal. DOCCS should also create rules that require facility medical providers to do initial "geriatric parole" screenings for people aged 55 and older with serious chronic illnesses to see if such incarcerated people might be eligible for medical parole. This process requirement could begin in the RMUs and DOCCS' hospice units.

Certified Medical Parole Applicants: 1992-2014



Source: NYS DOCCS Medical Parole Data

As is the case with discretionary parole release, neither the current medical parole process nor the "geriatric parole" proposal offers crime survivors and victims any opportunity to understand who incarcerated people are today. Those who may have been harmed by a medical parole applicant years or decades ago are asked to support or oppose release without being provided any information related to the applicant's health condition, rehabilitation, in-prison conduct, or current risk to public safety. Unless through outside means, survivors and victims of crime have no way of knowing the degree to which incarcerated people have taken steps to express remorse or take accountability—information often critical for their healing process. "Geriatric parole" could by strengthened by creating a voluntary and HIPAA compliant mechanism by which crime victims and survivors have the opportunity to better understand who an incarcerated person is today. Such information should also be accessible to the District Attorney, Sentencing Court, and all others to whom the Parole Board sends notification for comments.

Finally, DOCCS should use the "geriatric parole" proposal to create more transparency and accountability that has rarely if ever existed with medical parole. The most recently published and available DOCCS medical parole report is dated May 2015 and while providing some information, lacks the detail and data required to adequately inform advocates and the public. Medical and "Geriatric Parole" reports should be published and accessible on DOCCS website at least annually and include HIPPA compliant information related to medical parole applicants' demographics and health conditions (general medical conditions, crime of conviction, race, gender, age, etc.). Such reports should also include more detailed summaries of the number of applicants who reached each of the various phases in the application processing.

Coupling the positive components of the proposal with the aforementioned recommendations would likely meet this administration's intended outcomes of more compassion and cost-savings. We hope that this proposal promotes the release of more older people with hard-to-manage conditions and is a catalyst for the expanded use of medical parole for all eligible people.

Beyond Medical Parole: "If the Risk is Low, Let Them Go"

While some incarcerated older people are sick enough to qualify for medical or "geriatric" parole, most aren't. Despite the welcomed, proposed addition to medical parole, thousands of incarcerated older people will continue to languish and despair in prison despite in-prison accomplishments and a minimal risk to public safety. This comes at a great human cost to them and their loved ones and a growing financial cost to all New Yorkers.
Incarcerated older peoples' wellness should not limit opportunities for release—older people should not have to become ill in order to be considered worthy of returning home. People should be able to come home *before* they're stricken with a debilitating illness. If New York truly values compassion, redemption, and rehabilitation, and seeks to reduce the costs associated with incarcerating older people, then much more is needed to end the mass incarceration of older people in New York. Additionally, such a move makes fiscal sense. Releasing elders when they are still able to care for themselves and contribute to society is clearly more cost effective than releasing them only when they require additional public healthcare spending.

To most fundamentally address the individual, familial, communal, and financial costs associated with older people in prison, the Governor and legislature must take bolds steps to transform

discretionary parole release in New York. To continue to annually deny parole release to roughly 80 percent of incarcerated older people is to all but guarantee New York prisons will face growing numbers of incarcerated older people. Of the many parole reform initiatives RAPP supports, we believe that two in particular are most important and thus should be prioritized in this budget and legislative session:

1. **Presumptive Release:** Parole Board decisions should be rooted in a holistic and lawful evaluation of the factors outlined in the Executive Law and not reliant on the punitive introductory language of the statute, which allows the Board to deny release based on one, unchangeable factor: the nature of the crime. The Governor and legislature should take the appropriate steps to require the Parole Board to release individuals unless there is a clear and current public safety reason to keep them in prison.

   Assembly Member Weprin's proposed bill—A.7546—would do just that and require a presumption of release on incarcerated peoples' subsequent Board appearances, unless the Board determines that an incarcerated person poses an unreasonable, current public safety risk. To be clear, this legislation would not be necessary if the Parole Board adequately and fairly determined release based on evidence-based public safety standards. However, their practice indicates an unwillingness to do so. Therefore, if the Parole Board is unwilling to do this on their own, then the Governor and legislature should legislate this change.

2. "**A Second Look":** We also believe that older people 50 years of age plus who are not parole-eligible, serving prison terms that amount to death sentences, should be given a "second look," and appear for parole consideration after serving 15 consecutive years. Based on an overwhelming quantity of evidence indicating that incarcerated people typically engage in meaningfully transformative and rehabilitative change within 10-15 years of their incarceration, combined with the incredibly low-risk older people pose to public safety, some states are already engaging in this sort of initiative. Decades-long and life sentences pose as nothing more than harmful punishment at great costs to all New Yorkers.

In addition to the above two measures, which will require the Governor and legislature to exercise real leadership and political will, **we recommend New York mandate the Parole Board adopt, track, and publish key performance indicators** that allow the Department, incarcerated people, advocates, and the public at large to evaluate and monitor the practices of the Board and its Commissioners. Despite being tasked with the powerful responsibility of determining the fate of thousands of peoples' freedom, the Board has little, if any, oversight and public accountability measures. Data related to Commissioners' and the Boards' release rates, recidivism rates of those the Board is releasing, and the degree to which the Board deviates from its evidence-based risk assessment tool—COMPAS—would give the public a better sense for the conduct and outcomes of the Board and its Commissioners.

The combination of determining release based on peoples' current risk to public safety, offering a "second look" to incarcerated older people, and monitoring the Board with key performance

indicators would fairly and safely release more older people from prison and meet the Governor's calls for more compassion and cost-savings.

Additional Proposed Budget Initiatives:

Parole Board Commissioners:

Tasked with interviewing more than 11,000 parole-eligible people per year, the Parole Board has a heavy workload and limited resources. Despite this daunting task, the Board has operated under capacity, ranging between 11 and 17 Commissioners at a time—out of a possible 19 total Commissioners—for the last several years. So few Commissioners conducting such a large number of Board hearings means that incarcerated people receive limited time to make their case for freedom. On average, the Parole Board conducts 5-30 minute hearings, most often via videoconference, calling deeply into question whether or not people are given a fair and meaningful opportunity for release. Though the Parole Board's online roster is unreliable and rarely updated, advocates believe that the Board currently has 14 working Commissioners.

We appreciate the Governor's proposed budget allocation for three additional Parole Board Commissioners. We hope that this step in the right direction leads the Governor towards fully staffing the Board with Commissioners that believe in rehabilitation and come from professional, personal and geographic backgrounds that reflect the identities of people in prison.

Time Cuts and Temporary Release Programs:

We welcome the Governor's proposed changes to merit time for people who complete two semesters of college and the addition of four in-prison programs that will potentially qualify more people for the Limited Time Credit Allowance Program. Additionally, we acknowledge and appreciate the Governor's proposed college release program for 50 incarcerated people and expansion of work release. However, we believe that these changes are only as successful as the resources and staff dedicated to them. In order to ensure that these programs create positive outcomes and be brought to a large enough scale to serve the number of people they have in the past and more—at its peak in 1994, work release served more than 24,000 New Yorkers in prison—the Governor and Department should allocate more program resources and personnel.

Reentry:

We thank the administration for repealing the $30 per month parole supervision fee that places unneeded financial strains and stress on people on parole. Additionally, the removal of employment and licensing barriers for people with criminal convictions will likely lead to more successful reentry experiences for recently released and formerly incarcerated people. We believe that the Governor and legislature should build-off of these positive steps to allocate more resources to support reentry in New York. Specifically, more needs to be done for formerly incarcerated older people, who face unique, age-specific difficulties upon release. In 2016, nearly 60% of older people—1,699 people—leaving prison were homeless immediately upon release. The New York City Council and Mayor recently passed legislation to address the needs of formerly incarcerated people, while the Osborne Association continues to operate its Elder

Reentry Initiative. New York State should join these efforts by partnering with local public and non-profit sectors working to better support formerly incarcerated people.

Conclusion:

While Governor Cuomo's calls to reform New York's criminal legal system are potential steps in the right direction, much more is needed to bring meaningful changes to safely and effectively practice justice in New York. In regards to incarcerated older people in particular, the values of mercy and redemption must be at the center of bolder, more transformative measures that go beyond "geriatric parole." Fundamental change to the Parole Board is needed, and short of a mass clemency program, is the only way to release the significant number of older people whom the Board ought to release. Without such changes, aging in prison will continue to be New York's new death penalty.

RAPP's priorities and suggestions will require political will from the Governor and all branches of state government across the political spectrum. We hope that all parties work with us and listen to the statewide community of formerly incarcerated leaders, families, and concerned New Yorkers. Taking meaningful and expanded action to release older people in prison will prevent death, despair, aging, and illness behind bars, and under Governor Cuomo's leadership, make New York a true leader in the struggle to end mass incarceration. Thank you for consideration and we look forward to working with you.

Attachments:

1. New York State's Mass Incarceration of Older People: The Facts

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