



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

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Members of the New York State Legislature
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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. We are horrified that, amid the crisis of COVID-19 behind bars, Governor Cuomo and NYS Department of Correction and Community Supervision (DOCCS) did just that, creating a prison nursing home near the Canadian border and putting lives at risk.

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 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. This past year was 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, this year, we helped to launch the People's Campaign for Parole Justice, the grassroots campaign working to realize the following platform to save lives and make our state more fair and just:

1. **Fair and Timely Parole, S.1415 (Rivera) / A.4231 (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.15 (Hoylman) / A.3475 (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.

The People's Campaign for Parole Justice is a grassroots coalition started by 15 organizations across New York State, with the support for nearly 300 local organizations from Long Island to Buffalo and everywhere in between, that works to promote fair and meaningful release opportunities for incarcerated people in New York State prisons. The primary goals of our campaign are decarceration and family reunification. 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. Further, no one, regardless of the harm they have caused, should die in prison. 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.

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 8,291 older people in New York State prisons, making up nearly 25% of the total prison population. 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 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.

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.

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.

In response to the Times' investigation, the Cuomo Administration simply announced its own investigation -- an apparent stalling tactic, because more than four years later, there is no evidence or indication that such an investigation ever occurred.

The Cuomo Administration appears even less motivated to take meaningful action following this most recent investigation by the Times Union. Simply put, the Legislature must take swift action to reform parole.

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 2017 and then again in the Democratic-led Senate in 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.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—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.15 (Hoylman) / A.3475 (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.

COVID-19 and Parole Justice:

COVID-19 laid bare a problem that always existed: prisons are dangerous, often deadly places with inadequate access to health care. While Center for Disease Control guidance says social distancing is required to reduce the spread of COVID-19, it is virtually impossible to do this in correctional facilities. Coupled with limited and often inadequate personal protective equipment, tens of thousands of people in these facilities are unable to sufficiently protect themselves from

this deadly virus. The pandemic presents an especially grim reality for older and immunocompromised people, who are most at risk of grave harm or death if they contract the virus. Public health officials have made clear that reducing the prison population is critical to combatting the virus, which has only worsened in the past several months. Unfortunately, the Governor has only authorized the release of a tiny fraction of vulnerable people. In addition, the Department of Corrections and Community Supervision (DOCCS) has only approved 6 medical parole applications (this doesn't mean the person was ultimately released, just that their application was approved), hundreds of applications were denied during the pandemic. It is time for the Legislature to intervene and create more meaningful parole release opportunities to parole eligible people to stave off more deaths and cases and to meet a moment that the Executive branch has yet to adequately address.

The COVID-19 pandemic took a toll on New York prisons. New outbreaks happen almost weekly and there appears to be no end in sight. Upwards of 5,000 people have tested positive for the virus since the start of the pandemic; most of these cases happened in the last two months. Thirty one (31) people died from COVID-19 in state prisons so far; 13 of these deaths happened in the last two months.

OVERVIEW OF COVID IN NY PRISONS

Since the outbreak of COVID-19 in the New York State prison system, older people and those serving long sentences have disproportionately died from COVID-19 behind bars. While people aged 75 and older represent 0.4% of the incarcerated people in New York State, 18.5% of people who died in custody since the first COVID death were aged 75 and older. While people aged 65 and older represent 2.8% of incarcerated people in New York State prisons, 44.4% of people who died in custody since the first COVID death were aged 65 and older. While people aged 55 and older represent 13.7% of incarcerated people in New York State prisons, 77.8% of people who died in custody since the first COVID death were aged 55 and older. Data from last summer show that people of color constituted 81% of those who died in prison during the first several months of the pandemic in New York. Black people made up 60% of the deaths, despite being around 50% of the incarcerated population and 14% of the general New York State population. It is likely that these rates have remained constant or even worsened as the crisis worsened and more incarcerated New Yorkers died. The rate at which people have died in New York State prisons is 3.24 times higher since March 30 than for the first three months of the year, indicating that the COVID curve is not flattening in prisons but only worsening.

Parole reform would offer an immediate opportunity for many people to go home and be with their families rather than in a congregate setting, where the virus spreads most easily. Elder Parole would allow many older incarcerated New Yorkers, who are more at risk of harm if they contract COVID-19, a meaningful opportunity for release that could ultimately save their lives. Fair & Timely Parole (S1415) would require parole commissioners to evaluate a person's readiness for parole release based on more than just the crime they committed, meaning thousands more people who go before the Parole Board would have more meaningful opportunities for release than in years past and as the pandemic continues to worsen. To date, New York has not released a comprehensive plan for vaccinating all incarcerated New Yorkers. Failure to prioritize this group for vaccination will put more people at risk, and passing parole

reform is one of the few options left to protect incarcerated New Yorkers and save lives. The state's \$15B budget deficit that is largely the result of the pandemic can be lessened by passage of parole reform. On average, it costs \$60,000 annually to incarcerate a person in a New York prison. This number can double or even quadruple for older and immunocompromised New Yorkers. The cost savings associated with parole reform could help resolve the budget deficit, save the state millions of dollars, and free up resources to begin addressing the root causes of crime.

Support for Parole Justice:

The People's Campaign for Parole Justice is supported by more than 300 groups from across New York State, including advocates for incarcerated people, victims and survivors of crime, grassroots advocates, faith and civic organizations, civil rights and antiracist groups, public defenders and more.

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.

For further questions and inquiries, please contact Jared Chausow, Policy and Communications Director of the RAPP Campaign, at 650.814.0565 or jchausow@gmail.com