



TESTIMONY OF:

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Release Aging People in Prison/RAPP Campaign

Presented before

Members of the New York State Legislature

2019 Public Protection Budget Hearing: January 29, 2019

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 people, including RAPP's Co-Founder, Mujahid Farid, who served 33 years in prison and was denied parole nine times, despite his many accomplishments, positive ties to the community, and minimal risk to public safety. As the Lead Organizer of RAPP, Farid advocated for the parole release and successful reentry of incarcerated older people who had transformed their lives after decades in prison. He died this past November after a yearlong battle with cancer at the age of 69. He had only been free for seven years.

If it weren't for the Parole Board's culture and practice of perpetual punishment, Farid would have been released far sooner and communities throughout New York would have benefited even more from his commitment to public service. Let Farid's all-too-common story of a long prison sentence, frequent parole denials, and a devastating, premature death 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.497 (Rivera) / (Weprin- new bill numbers TBD):** Ensures the parole release process is based on rehabilitation and someone's current risk to public

safety. Creates a presumption of release for individuals appearing before the Parole Board unless there is a current unreasonable public safety risk.

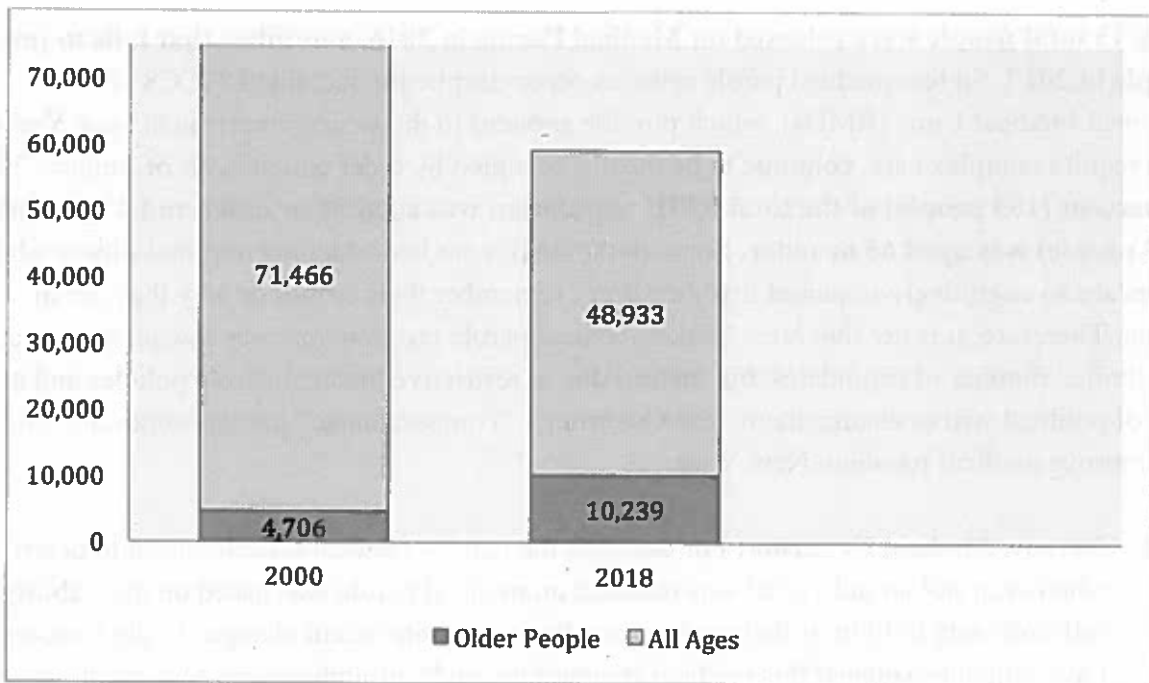
2. **Elder Parole S.2114 (Hoylman) / (Weprin- new bill numbers TBD):** Creates a consideration of parole release for older people, aged 55 and older who have served at least 15 years in prison.
3. **A Fair and Fully Staffed Parole Board:** The Parole Board should be fully staffed with 19 Commissioners who are social workers, psychologists, nurses, and other professionals that embrace notions of mercy, redemption and rehabilitation. This requires an increase in the money proposed for Parole Board staffing in the executive budget by \$305,000. 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, 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 supports, the crisis of aging in prison remains. **In total, 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.**

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.

Severe Limitations to the Governor's "Compassionate" Parole Proposal:

The Governor's "compassionate" parole proposal is identical to the flawed "geriatric" parole proposal in last year's executive budget and does not include any of the detailed recommendations that advocates and experts suggested in 2018. The program would create a narrow, ineffective and exclusionary addition to New York's medical parole program for incarcerated older people with debilitating health conditions. The proposal would not end the crisis of aging in prison. Instead, it 1) includes a narrow medical criterion, 2) excludes certain incarcerated people by categories of crime and sentence, 3) allows the Parole Board to base their denial on the nature of someone's crime (regardless of how sick they are), 4) leaves in place a slow medical parole process and lack of incentives for program use, 5) is flawed for crime victims, and 6) doesn't allow for public transparency.

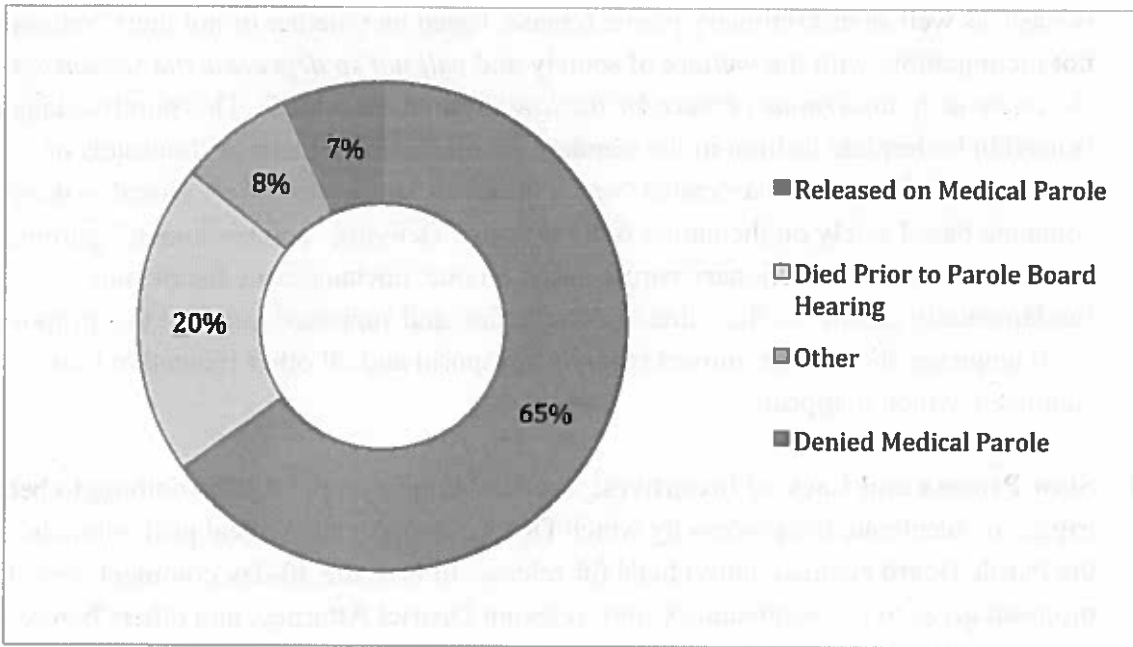
Only 13 total people were released on Medical Parole in 2016, a number that falls to just 8 people in 2017. So few medical parole releases occur despite the fact that DOCCS' five Regional Medical Units (RMUs), which provide services to the sickest imprisoned New Yorkers who require complex care, continue 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 "compassionate" parole proposal would not improve medical parole in New York.

- 1. Narrow Medical Criterion:** 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. The "compassionate" parole proposal re-inserts this problematic language—"...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 and will continue to exclude the large majority of older adults from any sort of medical parole release. This language should be completely removed from the proposal.
- 2. Punitive Exclusions Based on Crime and Sentence:** "Compassionate" parole would exclude some incarcerated older people based exclusively on crime and sentence—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 runs counter to decades of research that shows older people convicted of the most serious crimes are *least likely* to return to prison post release. **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.
- 3. Focus on the Nature of the 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 “compassionate” parole, medical parole, or discretionary parole based on one, unchangeable factor runs fundamentally counter to the value of compassion and supposed intent of this proposal. Such language should be removed from this proposal and all other Executive Law statutes in which it appears.

- 4. Slow Process and Lack of Incentives:** 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 “compassionate” 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 “compassionate” 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 “compassionate” parole screenings—not included in the proposal—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

5. **Flawed Process for Victims:** As is the case with discretionary parole release, neither the current medical parole process nor the “compassionate” 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. “Compassionate” parole could be 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.

6. **No Transparency:** 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 “compassionate” parole reports should be published and accessible on the DOCCS website at least annually and include 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.

The Need for Broader Parole Reform:

While some incarcerated older people are sick enough to qualify for medical or “compassionate” parole, most aren’t. Even if “compassionate” parole passed in an expanded, effective and inclusive form, thousands of incarcerated older people would continue to languish and despair in prison despite in-prison accomplishments and minimal risk to public safety.

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 a system based on real public safety, then broader parole reforms are needed.

Parole in New York State:

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, 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 12 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 \$305,000 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.497 (Rivera) / (Weprin- new bill numbers TBD):** 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 current risk to public safety. It creates a presumption of release for parole applicants unless there is clear evidence that the person poses a current, unreasonable risk to public safety.
- 3. Elder Parole S.2114 (Hoylman) / (Weprin- new bill numbers TBD):** There are more than 1,100 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 a choice between aging, despair and death in prison or fairness, mercy and compassion. If we seek the latter for all New Yorkers, then bolder, more transformative measures that go beyond the parole components of the Governor's executive budget are needed. Fundamental changes to the State Parole Board and parole release process are critical, and are the only ways to end the crisis of aging in prison. **Without such changes, 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 Dave George, Associate Director of RAPP, at 631-885-3565 or ddgeorge23@gmail.com

