TESTIMONY OF:

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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 Committees on Health and Correction 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. 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 State prison system on a 15-year to life sentence after being denied parole nine times despite major accomplishments and a nonexistent risk to public safety. Although Farid is an exceptional person, his story of aging behind the walls while being repeatedly denied release is now common in New York.

The relatively new crisis of New York's graying prison population represents a 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 who are aged 50 or older.

The Rise of Older People in Prison:

Regardless of the age metric one uses, it is clear that the number of older people in prison is skyrocketing and will continue to rise unless meaningful action is taken. In 2000, the New York State (NYS) prison population reached its peak at 71,466 people. At that time, slightly less than seven percent of the population, or 4,706 people, were older adults aged 50 or older. Just 16 years later, the percentage of incarcerated older people increased 194 percent. While the State prison population in January 2016 reached a record low 52,344 people, **the incarcerated older population more than doubled to 10,140 older adults, the vast majority of whom are Black and Latino people.** Incarcerated older adults now make up nearly 20 percent (19.4 percent) of the Department of Corrections and Community Supervision (DOCCS) prison population.

Such a skyrocketing increase is not indicative of a mass crime wave amongst older New Yorkers, but instead a consequence of the combination of longer sentences, increased time served, and frequent parole denials. While the average minimum sentence of people in New York State prisons in 2000 was 87 months, the average in 2016 was 124 months. **As of January 2016, 9,500 people in DOCCS had a sentence of life or life without parole, and more than 3,000 people had already served at least 20 consecutive years in prison.** Combine such staggering sentences with the fact that annually roughly 80 percent of people are denied parole and the result is an unprecedented number of older people in prison. Despite the fact that older people, especially those convicted of the most serious crimes, pose the lowest, if any risk to public safety in New York and beyond, they are denied parole at nearly the same and often higher rates than their younger colleagues.

DOCCS' own recidivism numbers validate this low risk phenomenon: 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 and have already served a minimum sentence agreed upon by all members of the criminal legal process—the judge, prosecutor, and defense attorney—has made it clear that older people are consistently denied their freedom for no reason other than the one factor that will never change with time and effort: the nature of the crime. Placing such a bottleneck on parole release for a population that in general has served

decades in prison, engaged in life-changing transformations, and poses little to no risk to public safety is inhumane, counterproductive, and comes with huge healthcare concerns and costs.

The Connection to Healthcare:

The older and aging prison population is least healthy, with the highest medical needs at the greatest financial cost to all of us. Nearly all research on aging prison populations concludes that **compared to the general prison population, older people have the highest prevalence of chronic and communicable diseases**, including hepatitis C, HIV, hypertension, cardiovascular disease, cancer, and dementia. Such health difficulties amongst the older prison population are validated when considering the ages of people in DOCCS' five Regional Medical Units (RMUs), which provide services to people who require complex care. As of January 2016, **64 percent (183 people) of the total RMU population was aged 50 or older.** Furthermore, though incarcerated people aged 65 or older make up less than five percent of the entire DOCCS population, they make up 47 percent (135 people) of the total RMU population.

The financial costs associated with care for older people in RMUs and DOCCS as a whole are clear. A recent publication by the Office of the New York State Comptroller, entitled New York's Aging Prison Population, states "Aging [incarcerated people] generally are more costly to incarcerate than younger cohorts, primarily due to their increased need for medication and other medical care." The report continues by stating, "…health care costs for [those incarcerated in] New York State generally rise with an individual's age. Overall the health care costs [for people incarcerated in] New York State prison[s] reached $380.6 million in State Fiscal Year 2015-16, an increase of $64.5 million from three years earlier." While we understand that a significant part of the increase in medical care costs to DOCCS is associated with a welcomed increase in funding for life saving medication for incarcerated people with Hepatitis C, we are confident that there is a correlation between the increase in the older prison population and DOCCS' medical costs.

Even more troubling than the costs associated with care for older people is the quality of care itself, and the fact that older people are often given inadequate treatment or no care at all. What is more, this same category of older people is frequently denied parole release despite their healthcare difficulties and minimal risk to public safety.

The Impact:

When combining long sentences and frequent parole denials with inadequate health care, mass incarceration quickly turns fatal. **Between 2009 and 2012, the vast majority of the 501 incarcerated people who died in DOCCS custody were older people, a number representing more than double the 184 people who were executed nationwide during the same four year period.** Though DOCCS has not yet published the number of in-custody deaths for 2016 by age, we estimate given recent trends that the large majority of the 144 people who died in DOCCS custody in 2016 were older.

The following four anecdotes offer insights into the sort of devastating harm faced by many currently and formerly incarcerated older people and show how barriers to release can effectively turn a parole-eligible sentence into a death sentence.

Mark Shervington was incarcerated for 29 years on a 15-life sentence for a crime he committed when he was 20 years old. During his time inside, Mark engaged in meaningful acts of self-transformation, including earning a certificate in International Relations from Cornell University and Legal Specialist and Paralegal certificates for his exceptional work as a jailhouse lawyer. Despite his many accomplishments, Mark was denied parole a total of seven times. Mark occasionally experienced chest pains while incarcerated. On two occasions, DOCCS medical staff told Mark that his pain was nothing more than a stomachache. Despite continued discomfort, Mark took the advice of DOCCS medical staff for the entirety of his 29 years inside. Upon release at age 50, Mark went to the doctor and discovered that he was radically misdiagnosed in prison. Doctors informed Mark that he had undergone two undiagnosed heart attacks while incarcerated. Mark recently received emergency heart valve replacement surgery, without which he likely would have died.

Robert Seth Hayes is 69 years old and has served 45 years on a 25-life sentence after being denied parole 10 times. During his time inside, Mr. Hayes has worked as a prison librarian, prerelease advisor, and AIDS counselor. He has also maintained deep connections to his loved ones in the outside community. In the past decade, Mr. Hayes began experiencing various health difficulties, including type II diabetes. Due to his diabetes, Mr. Hayes often experiences dizziness, sudden falls, dangerously high sugar levels, and diabetic ulcers. He has been rushed to DOCCS' Regional Medical Units on many occasions. It is clear that DOCCS healthcare system is not able to manage Mr. Hayes's diabetes by offering a consistent and reliable standard of care. The legal requirement of providing healthcare in prison that is identical to the standard of care on the street has been shown to be impossible in Mr. Hayes's case, leading to dangerous uncertainty to his health and unneeded stress to him and his family. Like so many, he should be released immediately.

John MacKenzie was sentenced to 25-life in 1975 for a serious crime he committed while under the heavy influence of drugs. While in DOCCS custody, MacKenzie earned college degrees, mentored other incarcerated people, and had not committed a single disciplinary infraction since 1980. MacKenzie also took exceptional pains to atone for the harm he caused, most notably by starting an in-prison program that gave victims of crime the opportunity to speak directly with incarcerated people about the impact of homicide related crimes. Despite his incredible accomplishments, MacKenzie was denied parole 10 times. After his 10th denial, MacKenzie became hopeless and did not receive any psychological or emotional care or support from DOCCS. Regarding his frequent parole denials, MacKenzie once wrote, "Legitimate hope is laudable…false hope is utterly inhumane." Nine days after his 10th parole denial, MacKenzie died by the act of suicide at the age of 70 after a total of 40 years in prison. He is survived by his two daughters, a granddaughter and many other loved ones.

Charles "Chas" Ransom spent a total of 33 years in prison on a 25-year to life sentence for a violent crime he was convicted of in his early 20s. During his time in prison, Chas was devoted to his own personal growth and the improvement of the lives of those around him. Chas was President of the Lifers and Longtermers Organization at Otisville, helped to found and organize Otisville's annual Parole Summit, worked in DOCCS Transitional Services, and was a lead facilitator for the Tribeca Film Institute Community Screening Series. In addition to his personal accomplishments and advocacy, Chas insisted that every conversation about incarceration first begin with a recognition of the suffering experienced by those harmed by crime and violence. After being denied parole four times, Chas was eventually released after his fifth Parole Board hearing at age 53. Just weeks after his release, Chas obtained a job at the Appellate Advocates and took other profound strides in his reintegration process. Just eight days ago, on Sunday, October 22nd, Chas went into cardiac arrest and died just a few months after his release. Chas is survived by countless loved ones who keep his legacy alive in their advocacy efforts and loving relationships.

Recommendations:

These four anecdotes are representative of many incarcerated older peoples' experience with a lack of access to healthcare and parole release. Therefore, while we advocate for many of the same improvements to DOCCS' medical care and personnel as our colleagues, and believe that everyone in DOCCS custody should be given the healthcare they deserve and are constitutionally required to receive, we urge members of both Committees to take critical steps to transform practices and policies associated with older peoples' release, mainly through changes to medical and discretionary parole.

Medical Parole:

Existing medical parole laws are underused, exclude people convicted of certain crimes, include far too many bureaucratic processes, and too narrowly define medical eligibility with devastating impact. Such restrictive and inhumane policies are evidenced by DOCCS' most recently published data, which shows that **between 1992 and 2014, 108 of the 525 total certified medical parole applicants died prior to their Parole Board interview**. Furthermore, **of the 2,370 people who filed medical parole requests between 1992 and April 2012, 950 people died prior to having their application even certified.** Despite the fact that DOCCS holds an unprecedented number of older people in custody, only 13 total people were released on Medical Parole in 2016, a number that falls to just eight people in 2017 through September.

The legislature should increase the utilization of medical parole policies by broadening who is eligible to include all incarcerated people regardless of crime of conviction who suffer from chronic conditions that can be expected to worsen with aging and that cannot be adequately managed in a correctional environment. Furthermore, the process by which people are deemed eligible for medical parole should be streamlined in a way that ensures applicants receive a timely evaluation.

Discretionary Parole:

Given the vast majority of incarcerated older people do not currently have health needs that pose as significant enough for medical parole eligibility, RAPP and many other advocacy groups have placed a particular emphasis on transforming discretionary parole release and the practices, regulations, and policies associated with the New York State Board of Parole. Denying older people parole in mass must be looked at as a crisis to which this legislative body should immediately respond.

Of the many parole reform initiatives RAPP supports, we believe that two in particular are most important and thus should be prioritized in the upcoming budget and legislative session (see Appendix A for the full list of parole initiatives RAPP supports):

1. Ensure that parole denials are rooted in a holistic and lawful evaluation of the factors outlined in the Executive Law, in compliance with the 2011 amendment to Executive Law Section § 259-i, and not reliant on the punitive introductory language of the statute, all of which would reduce the prevalence of boilerplate parole decisions. Pending legislation, A. 4034 (Weprin), would remove language from the Executive Law that effectively allows the Parole Board to deny people based exclusively on

the nature of the crime. The bill would also take the meaningful step of offering parole presumptively absent a current, unreasonable risk to public safety, shifting the burden of proof from the parole applicant to the Parole Board.

2. Create a consideration of parole release for all older people in DOCCS custody aged 50 or older, who have served a minimum of 10 years in prison, and issue parole presumptively to all parole-eligible older people who have minimally served the same amount of time unless there is reliable evidence of current dangerousness to public safety.

Long Sentences:

In addition to expanding opportunities for release, the Legislature must take meaningful action to reduce the devastatingly lengthy and counterproductive sentences that sanction countless numbers of people across New York State everyday to sentences of many years, decades, and life in prison. To continue to employ such sentences is to all but guarantee that DOCCS will continue to face high numbers and percentages of older people in prison with high-cost medical difficulties. Therefore, the legislature must champion changes to sentencing schemes and structures that are in closer compliance with international human rights standards. As a first step, this body should work to abolish life, virtual life, natural life, and life without parole sentences.

Elder Reentry and Continuity of Care:

Lastly, this legislative body should ensure that the unique needs of older people are met after being released from DOCCS custody. Upon release, older people face particular barriers in seeking employment, accessing healthcare and community resources, reconnecting with family, using technology, and especially finding housing.

In 2016, 58 percent of older people—1,699 people—were homeless immediately upon release. Of these people, 1,198 went directly from a NYS prison to a homeless shelter. Such a dearth of housing and community resources significantly decreases the likelihood that older people experience a safe, secure, and healthy reentry process. Members of the legislature should work directly with community-based organizations that support formerly incarcerated older people and allocate the resources needed to ensure successful elder reentry. As a meaningful first step, the legislature should pass A. 7673 (Sepulveda), which would establish a program for soon to be released and formerly incarcerated older adults.

Conclusion:

Prisons are not fit for older people and their high healthcare needs. Therefore, older adults should be released and supported in the outside community. Doing so would save lives, reconnect families and communities, and significantly decrease the medical costs associated with aging in prison. The cost savings associated with releasing incarcerated older adults could be used to adequately address the medical needs of people in prison and for the services and personnel that many of my fellow advocates recommended. It is time for New York State to take bold steps to improve healthcare conditions inside DOCCS prisons and transform release mechanisms that relieve our people, families, communities, of unneeded death and despair. Thank you and I am happy to answer any questions at this time.

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