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Kathleen M. Kiley, Counsel to the Board of Parole
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
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November 1, 2016

Re: I.D. No. CCS-39-16-00004-P, Amendment §§§ 8002.1, 8002., 8002.3

Dear Ms. Riley and Chairwoman Stanford;

Please accept this as public comments pursuant to State Administrative Procedure Act, in response to the notice of Propose Rule Making as published in the New York State Register on September 28, 2016.

Are The New Amendments Simply More of the Same?

Inasmuch as I applaud the bold step to amend the current regulations in order "to further define the Board's role in conducting interviews and their decision making process," I still believe that there are a number of significant issues require further explanation. Before I proceed I would like to express my support for the comments submitted by **Release of Aging People in Prison (RAPP)** and so there is no need to repeat what has already been thoroughly articulated. The following issues come from insight of my personal experience and desire for more transparency in the parole decision-making process. Although the new amendments have taken steps for greater transparency they still fall short in effectively changing the culture of parole decision-making that currently exists.

Why Should We Be Concerned?

If there are new requirements being implemented how could there be no Job Impact Statement? In the proposed rules the COMPAS and Case Plan instruments form the basis in which parole releases decisions shall be evaluated. The previous rules did not illustrate a Job Impact Statement and COMPAS assessments have been implemented. These instruments do not appear from out of a vacuum. DOCCS staff are charged with the responsibility to implement these instruments and apply the COMPAS according to NORTHPOINTE'S *Practitioners' Guide to COMPAS*. This is an extensive manual in which introductory training and ongoing follow-up trainings should be required.

Yet, according to DOCCS "[A] JOB IMPACT STATEMENT IS NOT BEING SUBMITTED WITH THIS NOTICE FOR THE PROPOSED RULES WILL HAVE NO ADVERSE IMPACT UPON JOBS OR EMPLOYMENT OPPORTUNITIES, NOR DO THE PROPOSED RULES IMPOSE ANY REPORTING, RECORD KEEPING OR OTHER COMPLIANCE REQUIREMENTS UPON EMPLOYERS. THE PROPOSED

RULES ONLY AFFECT THE DECISION-MAKING PRACTICES OF THE PAROLE BOARD FOR INMATES CONFINED."

According to the proposed rules parole release decisions shall be guided by COMPAS risk and needs instrument—an instrument which are conducted by the DOCCS and considered by the Board of Parole. Yet there is no explanation as to how DOCCS has trained its employees to ensure that both departments are utilizing the mandated instruments properly. There are a number of significant reasons why the trainings must be included in the Job Impact Statement section. For one, records need to be kept of the COMPAS risk assessments and its interplay relationship with Case Plan in order to effectively assess whether these instruments have been adequately considered. Currently the parole denial determinations do not provide an analysis of the interplay between the COMPAS and Case Plan.

Secondly, current DOCCS/Board of Parole practices demonstrate that they are not applying the review of the COMPAS and Case Plan instruments appropriately. For instance, in several cases non-violent arrests have been counted as violent arrests in an inmate's COMPAS History of Violence scores. Surprisingly, DOCCS directive clearly distinguishes the History of Violence scores to include assault type offenses and weapons. However, DOCCS staff has counted Theft of Services, (jumping a turnstile), Marijuana possession, and possession of stolen property as violent arrests. The mischaracterization of arrests can wrongfully influence History of Violence scores and subsequently a parole panel's fair consideration of a parole applicant's bid for release to parole.

The above two examples illustrates the importance of implementing ongoing trainings for DOCCS/Board of Parole staff and such trainings must be included in the Job Impact Statement.

What does "denial of release shall be given in detail, and shall, in factually individualized and non-conlusory terms," mean? § 8002.3 (b)

The proposed rules have not changed the mandates of Executive Law §259-i (2)(c) which require the Board of Parole to determine whether "there is a reasonable probability that, if such inmate is released, he will remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for the law." Currently, a denial of parole explanation must explain in detail and not in conclusory terms how there is a reasonable probability that an individual would not be able to remain at liberty without violating the law, that there's a reasonable probability that the individual's release would pose a threat to welfare of society and/or deprecate the seriousness of his crime, etc.

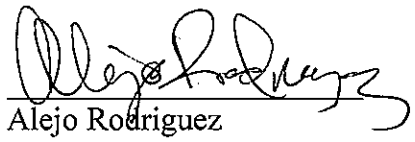
The proposed rules however, suggest that the "REASONS FOR THE DENIAL OF PAROLE SHALL BE GIVEN IN DETAIL, AND SHALL IN FACTUALLY INDIVIDUALIZED AND NON-CONCLUSORY TERMS ADDRESS HOW THE APPLICABLE FACTORS LISTED IN 8002.3 WERE CONSIDERED IN THE INDIVIDUAL'S CASE." Accordingly, the proposed rules require a reasonable probability explanation based on the weighing of the factors to be considered and not a reasonable probability if whether a parole applicant's release would a threat to society. In other words, there is the danger that the weight of the factors to be considered will be stronger than the weight of the mandate of the statute.

Why are the Nature of the Crime and Criminal History factors to be considered at parole hearings?

Lastly, the Board of Parole has not provided an explanation as to why the nature of the crime and criminal history has been included among the factors for parole release determinations. These factors were apart of Executive Law §259-i (1) Minimum Period of Imprisonment which has been abolished. The nature of the crime and criminal history were relevant factors in determining how a person's minimum period of imprisonment to be served before being eligible for parole. In terms of determining whether an individual's release to parole would pose a threat to society, these factors are not factors but backward looking variables that will never change. Moreover, in homicide cases, by nature of the crime individuals who have committed murder have the lowest recidivism rate. So how is it that by this same factor, i.e. nature of the crime, that individuals are denied parole? It is impossible to be both less likely to reoffend and likely to reoffend based on the same factor at the same time. The consideration of the nature of the crime after it had already been considered at sentencing is a duplication of the same process that does not allow for change and is inconsistent with the **Department of Corrections and Community Supervision Mission Statement,** which is: "TO IMPROVE SAFETY BY PROVIDING A CONTINUITY OF APPROPRIATE TREATMENT SERVICES IN SAFE AND SECURE FACILITIES WERE OFFENDERS' NEEDS ARE ADDRESSED AND THEY ARE PREPARED FOR RELEASE, FOLLOWED BY SUPPORTIVE SERVICES UNDER COMMUNITY SUPERVISION TO FACILITATE COMPLETION OF THEIR SENTENCE."

Thank you for time, attention and consideration of the issues raised herein.

Sincerely,



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