October 25, 2016

Kathleen M. Kiley
Counsel to the Board of Parole
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
Albany, New York 12226

RE: I.D. No. CCS-39-16-00004-P
Amendment of 8002.1 Title 9 NYCRR
Amendment of 8002.2 Title 9 NYCRR
Amendment of 8002.3Title 9 NYCRR

Please accept this as public comments pursuant to the 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.

I am a New York resident and concerned about all that I have read and observed about the manner in which your board conducts the parole process the last ten years. While I am relieved you are *finally* taking public comments on revising your own practices, I recall when this happened a few years ago. Thousands of people wrote you, there was some adoption of new rules and the practice of how you conduct parole has continued in the same vein. In short, the parole process is cruel, especially as it relates to people who have been incarcerated with life sentences in New York State prisons.

There are a number of problems with how your board operates and correspondingly, concrete things you can to improve it. I will list them here.

I read as much as I can on the parole process in New York State and its disconcerting to see the absurdly low rate of parole for lifers, especially people who have been in prison for 30, 40 years or more. Many of these men are so ready for release it is patently obvious to all who speak with them, read their parole packets or observe their records inside. To consistently confront these people with their instant offense- something that cannot change and never will- is cruel. They cannot change the facts of their offense but they can and have shown you how they have changed through the years. I see people go up for their 9th, 10th or 14th parole hearing, every two years, and get the same result: a 2 year hit and obsessive focus on elements the person cannot change.

Roughly one fifth of the people in DOCCS custody are serving life sentences. By denying parole as arbitrarily and consistently as you do, you have turned DOCCS into essentially a geriatric nursing home for people who have only done their time and are highly unlikely to recidivate. DOCC's own study, conducted in 2010, found that the recidivism rates for people who have served long sentences for the most serious crimes, specifically murder, are exceptionally low—less than 1% of people return for a new conviction. It is clear that to me that elderly people, and those convicted of the most serious crimes who have done extensive time in prison, pose almost no identifiable risk to society and should therefore be released.

I also feel the need to talk about the mental effect that the continued denials have on the people coming up for parole hearings but also, their families and community. To have people come up for parole, and go through the period of hopefulness- only to be denied every 2 years, is mentally taxing and creates serious depression and hopelessness.

Of course, you must be familiar with John MacKenzie who hung himself in his cell on August 4th of 2016. I have met people who knew Mr. MacKenzie, although I did not have the fortune of doing so, and everything I hear is that this was a man who made his amends, who from the moment he went to prison, took great pains to change his life, create programs for victims and to help other people in prison. Yet, your board denied him for the tenth time this summer, citing his instant offense. I know he killed a police officer and that you treat this as different than your average person being killed, but I disagree. Murder is murder but John MacKenzie did more in his time inside to help people than anyone I have ever heard. It is time to stop being controlled by the Policemen's Benevolent Association (PBA) on matters involving the death of police officers. He could have made incredible contributions to victims of crimes and

their families if he was released. By denying him for the tenth time, you prevented that and contributed to his death by suicide. How many more John MacKenzies will there be before you change? How many more people will you drive to suicide by denying them parole and not seeing the people they have become?

Many people coming to the board have low COMPAS scores and yet, those scores are being ignored at the expense of your *obsession* with the instant offense of the person. Low COMPAS *should* create a presumption of release unless there are significant and extraordinary factors that mitigate this. These extraordinary factors cannot just be criminal history but should be about how that person had conducted themselves in prison.

There should also be a presumption of release if the person has completed higher education courses, behavior programs or have shown themselves to be high functioning and successful people in prison. I have seen many examples of men who have completed college degrees (before Pell grants and TAP was banned for people in prison) and numerous programs and yet, your board just wants to relitigate their cases from, in many cases, 30+ years ago.

The new regulations need to take in account the age of the person up for parole at the time of their conviction. Your proposed regulations do not adequately do this. Age is not just a factor for the board to consider. The principle question in a parole hearing for people sentenced as juveniles, *must* be whether the individual demonstrates "maturity and rehabilitation," as mandated by the Constitution. Your board has to get on board with national thinking and jurisprudence on this topic. The US Constitution and Supreme Court demands that people sentenced to life before age 18 must be given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"

When I hear that people go to the parole board on a Tuesday, get about five minutes before your board in a video hearing and are given denials the next day, I am dismayed. People require meaningful hearings in which they are given a chance to make their case for release and rehabilitation. The idea that 5 minutes could be enough is absurd. For the person getting denied to receive a generic boilerplate denial after having such a small chance to present their case is offensive. Your denials should be comprehensive and exhaustive. They should give people a roadmap of sorts to see how they might seek release. If there are things the person has not done to rehabilitate, then by all means, your board needs to explain them. You cannot just rely on the instant offense and the generic explanation that releasing them somehow would *deprecate respect for the law*. What respect do you expect people to have for the law if *this* is how your board is operating?

In conclusion, I urge you to consider what I have written and make meaningful changes to the parole guidelines. I sincerely hope this is not just a smokescreen to convince the public that you are responsive to the demands that have been made. Just following the executive law of 2011 would go a long way toward meaningful parole hearings. What you have here, a 15% release rate for A1 lifers, is a sham. I do not know why anyone even bothers to go to the hearings as the chances of getting parole is akin to a lottery draw. You have some commissioners who have a connection to law enforcement and will not ever vote for parole for lifers. This needs to change considerably for people to view this process as meaningful and serious.

I urge you to listen to what New Yorkers are telling you and to create a fair and just system of parole for the 10,000 or so men and women facing these hearings every two years.

Thank you for your time,

Daniel McGowan

cc: John Koury, Director, ARRC
Mujahid Farid, Release Aging People in Prison