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PUBLIC COMMENTS TO PROPOSED PAROLE REGULATIONS
SUBMITTED BY JustLeadershipUSA

To: 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 8002.3	Title 9 NYCRR

Dear Chairwoman Stanford and Ms. Kiley:

Please accept this public comment 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.D. No. CCS-39-16-00004-P).

JustLeadershipUSA (JLUSA) is dedicated to cutting the US correctional population in half by 2030, while reducing crime. JLUSA empowers people most affected by incarceration to drive policy reform. For example, our members have recounted doing their absolute best to prepare for their parole interviews and impeccable institutional records. Yet they were constantly rejected. These accumulated rejections leave a feeling of hopelessness and despair, which is extremely demoralizing. While as an organization, JLUSA has a number of issues with the manner in which the Parole Board operates, for the purpose of these amendments we will limit our comments to the following:

In 2011, the legislature sought to change the way the Parole Board operated when it amended Executive Law Sec. 259-c (4). The purpose behind this amendment was to modernize parole decision-making so that a more objective approach to release decisions would emphasize public safety, and readiness upon reentry to society. Specifically, the legislature called for the Parole Board to "establish written procedures for its use in making parole release decisions, and that such procedures incorporate 'risk and needs' principles to measure the rehabilitation of inmates, their likelihood of success if released and assist the Board in making its release decisions." This was a good start. However, the Parole Board's new regulations must more strongly direct the Board to base its decisions on evidence-based criteria and release people who have demonstrated low risk

or rehabilitation and readiness for release. Any parole regulations that could bring parole decision-making into the twenty-first century would necessarily have to include express language forbidding Commissioners sitting on panels from ritualistically citing catchall phrases to avoid serious analysis of rehabilitation.

JLUSA notes a few problematic matters that we would be remiss not to address:

First, the invariable use of the term "*factors*" for both the central requirement to employ the "risk and needs assessments," and then again with respect to the eight enumerated items under Section 8002.2, is baffling. The factors found in Section 8002.2(b)(7) and (8), which include the seriousness of the offense and prior criminal record, should be eliminated, as both are already considered by DOCCS when preparing the COMPAS report. Commissioners should not have two opportunities to use such static factors to deny a person release.

Second, the Board's proposed regulations continue the failure of the 2014 regulatory amendments in that there is no requirement for commissioners on Board panels to inform an applicant, upon denial of parole, any specific steps the applicant should take to improve his or her chances of release in the future. This, in itself, is a blatant failure to comply with Sec. 259-c (4), as the proposed regulations still do not address the "needs" component of the 2011 legislative amendment.

Third, the current proposal in Section 8002.2(c), which comes in response to Hawkins v. NY State Dep't of Corrections, 140 A.D.3d 34, 39 (3rd Dep't 2016) (which held the Board must consider youth and its attendant characteristics in relationship to the commission of the crime when making parole release determinations), does address "minor offenders". However, the proposed section is woefully inadequate and a poor articulation of the law. It fails to comport with the standards set in U.S. Supreme Court cases Miller v. Alabama, 132 S. Ct. 2455 (2012) (which held as unconstitutional mandatory sentences of life without parole for juveniles) and Montgomery v. Louisiana, 136 S. Ct. 718 (2016) (which retroactively applied the principles from Miller). The proposed amendment, incorporates "hallmark features" of youth, but does not incorporate a "meaningful opportunity of release" that the the law requires.

The Parole Board has historically denied release to far too many people in an arbitrary and inconsistent manner. In denying parole release primarily because of the nature of an applicants' crime of conviction or other "static" factors that can never change, the Parole Board exemplifies nationwide criminal justice policies that are rooted in retribution and result in extreme and indefinite punishment. We thank the Governor's Reentry Task Force and those working inside and outside of the government to reform the system. To do its part, the Parole Board should amend its regulations to reflect the true intent of the 2011 legislative amendment to Executive Law 259-i.

Sincerely,

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