We put money in the hands of farmers and power in the hands of the criminal justice movement.

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November 10, 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

Dear Ms. Kiley, Chairwoman Stanford and members of the Board of Parole:

Please accept this public comment pursuant to the State Administrative Procedure Act, in response to the Notice of Proposed Rule Making as published in the New York State Register on September 28, 2016 (I.D. No. CCS-39-16-00004-P).

Milk Not Jails is a statewide coalition representing over 70 farms, 50 community-based organizations, as well as a network of over 3,000 activists across the state dedicated to changing New York State's use of incarceration as an economic engine for upstate, rural New York and demand that the state instead support and sustain family farms and economic and criminal justice policies that are mutually beneficial for upstate and downstate New Yorkers.

We are writing to comment on the proposed regulatory changes to the Parole Board's methods. Milk Not Jails has included parole reform and specifically the passage of the SAFE Parole Act as part of our legislative agenda for over five years. In light of the Legislator's inability to address meaningful and urgently needed parole reform, we feel it best to address our concerns directly to DOCCS and to The Parole Board itself.

The Board has historically denied release to far too many people in an arbitrary and inconsistent manner, often basing decisions on people's crime of conviction or past criminal history, rather than their low risk to society.

We urge the Parole Board to adopt new regulations that direct the Board to base its decisions on evidence-based criteria and to release people who demonstrate low risk and/or rehabilitation and readiness for release. Board decisions should be based on an assessment of the person in front of them, rather than their crime of conviction or past criminal history, and the regulations should reflect that approach.

It is our opinion that the Board should seriously consider the following suggestions:

1. Use of the COMPAS Risk and Needs Assessment should be considered a *guiding principle*, not just one more in a series of factors when considering the applicant for release. A low COMPAS score should create *a presumption of release*, meaning that an applicant who has a low risk score shall be granted parole unless exceptional circumstances exist as to warrant a denial. In such cases, the Board should provide, in writing, substantial and compelling reasons why such exceptional circumstances warrant an override of COMPAS.

2. The regulations should include a mandatory requirement that creates a presumption of release for applicants who successfully achieve program completion or otherwise demonstrate their rehabilitation or readiness for release. In turn, an applicant who has successfully demonstrated rehabilitation or readiness shall be released absent exceptional circumstance.

3. The Board's proposed regulations regarding parole considerations for people convicted of crimes committed as minors do not go far enough to remedy the specific concerns of people in this situation.
   The U.S. Constitution demands that juveniles sentenced to life before the age of 18 must be given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." A recent case from the New York Appellate Division, Third Department recognized that these substantive principles apply just as much to the New York State Board of Parole as to a sentencing court.
   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. The Constitution also guarantees heightened procedural protections for juveniles sentenced to life, including access to attorneys at all parole hearings. No such accommodation is outlined in the current regulation.
   In sum, the proposed regulations protect neither the substantive nor due process rights of people convicted as juveniles. Their diminished culpability and enhanced capacity for reform should afford them such protections.

4. In order for Parole to be meaningful, the Board should inform an applicant, upon denial of parole, of specific steps the applicant can take to improve their chances of release at future appearances. The lack of such a provision is a failure to comply with Section 259-c (4) of the Executive Law and the "needs" component of the 2011 legislative amendment. If an applicant successfully completes and provides documentation of the specific steps outlined by the Board in the most recent appearance resulting in denial, the Board may not re-issue the same, or inherently similar, demands at future hearings.

5. Milk Not Jails would like to take this opportunity to address an important issue that the proposed regulatory changes ignore; the particularly egregious circumstances that affect the ever growing population of men and women over the age of 50 years who have spent sometimes decades in prison. In recognition of the low recidivism rate of people over the age of 50, all such applicants, or applicants who have served 15 consecutive years of imprisonment, should have their case reviewed. The purpose of the review will be to determine the person's suitability for reduced security classification or recommended release on parole through the clemency process.

Thank you for this opportunity to participate in the regulatory reform process.

Sincerely,

Lauren Melodia
General Manager, Milk Not Jails