November 5, 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: Notice of Propose Rule Making

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

I am writing you concerning 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).

My husband is has been imprisoned in the State of New York since 1979. He has been to seven (7) parole board hearing and has been denied each time, given a two-year hit. Each time, the nature of his crime of conviction is cited as the reason for the denial – something my husband will never be able to change. While I am writing specifically about him, his situation is akin to the predicament of thousands of others imprisoned in the State of New York.

The parole commissioners apparently make their determinations about who should be released, who should be denied based on their own personal feelings about the individual before them and about the crime that individual has been convicted of – instead of giving predominant consideration to how that individual has grown and lived his/her life since being imprisoned. The risk and needs assessment (COMPAS score) is a tool for the commissioners to use to objectively evaluate a person's growth behind prison walls; however, commissioners repeatedly base their denials on a static condition – the crime of conviction. Their reasoning comes out of their own personal prejudice. Basing a decision with such serious consequences on personal bias creates, in effect, a *lawless parole system*. The citizens of the United States have made it quite clear over the centuries that we want to govern ourselves based on a set of laws. Therefore, there need to be clear and explicit guidelines for parole commissioners to follow when evaluating an imprisoned person's conduct and growth during his/her years of imprisonment and that person's suitability to contribute to the welfare of the community on the outside.

In addition to the COMPAS score, and to the accomplishments of each person who comes before the parole board, parole commissioners should give great weight to the age of the person in prison, to the years – often decades – that person has spent behind bars. My husband will be 70 years old when he next appears before the parole board. You all well know that the risk of recidivism from a person that old is next to nothing. Also, when considering a person's previous record, the parole commissioners should take into consideration that decisions people make when they are young are dramatically different and much less rash from the decisions people make when they are elderly. In short, a person's juvenile record or record dating back four or more decades should not be given hardly any weight at all.

If a person has a low COMPAS score (which my husband has, except for his crime of conviction), has demonstrated and expressed remorse, has demonstrated personal growth and made significant rehabilitative efforts made while imprisoned – as my husband has most amply, and especially if the person is now a senior and has had no significant additional charges while imprisoned, and has shown to have sufficient family and community resources to return to on the outside, *then that person should be deemed to be eligible for parole*. The rules governing parole should be rewritten as follows:

The traditional factors of the Executive Law outlined in Section 8002.2(b) should comprise their own section entirely, and the two remaining subsections in 8002.2 should be labeled as "requirements," or mandatory and determinant "principles" or "methodologies."

A low COMPAS score should create a presumption of release, meaning an applicant who has a low risk score shall be granted parole *unless* exceptional circumstances exist as to warrant a denial. The Board must provide, in writing, substantial and compelling reasons why such exceptional circumstances warrant an override of COMPAS. **An applicant's crime of conviction** or past criminal history, in and of themselves, **may not constitute the requisite exceptional circumstances**, and may not form the predominant basis for release denial.

The regulations should include a mandatory or predominant requirement that creates a presumption of release for applicants who have successfully achieved program accomplishments or otherwise demonstrated rehabilitation or readiness for release.

An applicant who has successfully demonstrated rehabilitation or readiness shall be released absent exceptional circumstance. If denied, the Board must provide, in writing, substantial and compelling reasons why such exceptional circumstances still warrant a denial, and **an applicant's crime of conviction or past criminal history** may not constitute the requisite exceptional circumstances.

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 have already been considered by DOCCS when preparing the COMPAS report.

The Board should also *inform an applicant* who has been denied parole *expressly how that applicant can improve* his/her 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 is to successfully complete and provide 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.**

Impact statements that do not come directly from the victims or their families and representatives are not confidential and should therefore be made accessible to the parole applicant. This includes material the Board categorizes as "community opposition." Statements of such opposition should also be considered in terms of the relationship of the declarant to the applicant, rather than the relationship of the declarant to agencies like law enforcement. When giving their impact statements, victims and their families should be encouraged to request information on the applicant's progress and accomplishments in the time since their conviction. The opposition my husband has experienced has come from people who know absolutely nothing about him personally or his progress while imprisoned for over four decades.

Applicants over age 50 years, or applicants who have served at least 15 consecutive years of imprisonment, must be afforded review of their case. The purpose of the review would be to determine the person's suitability for **reduced security classification or** recommended release on parole through the **clemency** process.

The Board must provide a more meaningful and timely process for appealing parole denials. When my husband appeals his parole board denial, the appeal decision comes so late as to mean that he would have nearly back-to-back appellate review and next parole board hearings.

I urge you to explicitly change the rules governing parole board decisions so that the New York State Parole, Clemency, and Compassionate Release systems will be meaningful, effective systems that will afford the many thousands of deserving men and women the chance to right their past mistakes and live productive lives serving their families and communities on the outside. Thank you for considering my remarks.

Sincerely,

Nancy Jacot-Bell

[redacted]

cc: John Koury, Director, NYS Senate ARRC, jkoury@nysenate.gov
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