

News Picks from the New York State Defenders Association

Board of Parole Adopts New Parole Release Regulation. In 2011, the Legislature directed the Parole Board to modernize its release decision-making process. By Oct. 1, 2011 the Board was directed to establish new written procedures incorporating "risk and needs principles" to measure a person's "rehabilitation" and "likelihood of success upon release." But the Board failed to act until July 2014 and the regulation it belatedly adopted - calling for mere unguided and indiscriminate "use" of the COMPAS risk and needs assessment instrument - was roundly criticized as meaningless. Court challenges to the 2014 regulation were complicated by procedural issues. See [Matter of Linares v Evans](#), 26 NY3d 1012 (2015) (declining to rule on legality of regulation for prudential reasons). Nevertheless, the issue gained traction with a highly critical [New York Times editorial](#) and Governor Cuomo called for reform in his 2016 State of the State address. The Board has now finally adopted a new regulation in conformity with the 2011 legislation. Under the regulation, Board members must now be "guided" by a risk and needs assessment instrument when making release decisions. Importantly, the regulation provides that "[i]f a Board determination, denying release, departs from the Department Risk and Needs Assessment scores, the Board shall specify any scale within the ... Assessment from which it departed and provide an individualized reason for such departure." Other changes include a direction that all statutory parole release factors be discussed during a parole release interview, and that reasons for parole release denials be explained in "factually individualized and non-conclusory terms." The regulation also includes new parole release criteria for persons serving sentences for crimes committed as a minor (under 18). See [Matter of Hawkins v NYS Dept. of Corr. & Comm. Supervision](#), 140 AD3d 34 (3rd Dept 2016). Board members are now directed to consider "the diminished culpability of youth" and a person's "growth and maturity." Board members must also consider whether certain "hallmark features of youth" ("immaturity, impetuosity, a failure to appreciate risks and consequences, and susceptibility to peer and familial pressures") were "causative" or "contributing factors" to the crime of conviction. The new regulation, repealing and replacing 9 NYCRR 8002.1, 8002.2, and 8002.3, took effect Sept. 27, 2017. The text of the regulation and the Board's assessment of public comment can be found in the [Sept. 27, 2017 issue](#) of the State Register (starting on p. 1).