

November 4, 2016

Mr. Philip J. Fernandez
[REDACTED]

Bronx, New York [REDACTED]

Kathleen M. Kiley, Counsel to the Board of Parole
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
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Dear Ms. Kiley, as well as 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 Propose Rule Making as Published in the New York State Register on September 28, 2016 (I.D. No. CCS-39-16-00004-P).

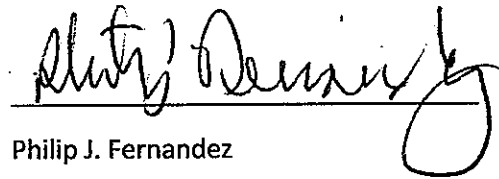
The Parole Board ("Board") has historically denied release to far too many people in an arbitrary and inconsistent manner. The Board has often based its decisions primarily in people's crimes of conviction or past criminal history, static factors that can never change, rather than their risk to public safety, degree of rehabilitation, or readiness to return to their community. In 2011, the Legislature attempted to remedy this situation by amending the Executive Law to direct the Board to focus on risk and needs principles and to measure rehabilitation and likelihood of success upon release. Despite these amendments, the Board has largely continued to ignore objective evidence-based factors and deny people based on the static and unchangeable factors of the nature of the crimes of conviction and past criminal history. Unfortunately, the Board's second round of proposing regulations that incorporate the intent of the 2011 amendments falls short.

This second round attempt falls short mainly because it is clear that there are a number of Board Commissioners still sitting who will resist, by any means necessary, attempts to move them into a more forward-looking and evidence-based process. We have documented and chronicled the actions of some of the more intransigent Parole Commissioners such as Walter William Smith, Lisa Beth Elovich, Kevin Ludlow, and James B. Ferguson. The histories of these Commissioners prove that they are incapable of affording fair parole hearings, and therefore they should not be serving in that capacity. The regulations as they are being proposed do not have the force of language which could compel Parole Commissioners of their type to shift the manner in which they make release decisions and ordinarily do business.

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 the "nature of the offense" and/or "your release is incompatible...etc." as a catchall phrase to cover their own personal inclinations to perpetuate a paradigm of punishment. Until we see regulations being proposed which addresses this issue, and/or we witness the appointment to the Board of Parole Commissioners who follow the intent of the law, the New York State Parole, Clemency, and Compassionate Release systems will remain severely broken.

Thank you for your attention to this matter.

Sincerely,



Philip J. Fernandez

Cc: Mr. John Koury, Director
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