Naveena Darshan
Suffern, NY

Dear Sir or Madam:

My name is Naveena Darshan and my son is currently incarcerated for the last 17 years since he was 17 years old. Despite my son's low COMPAS risk, rehabilitative efforts, many accomplishments and personal transformation, he still continues to be denied parole release. He has seen the Parole Board now 3 times (including LCTA) and has been denied parole all three times for the same reason "the nature of the crime". I'm more confused now than I've ever been as to what my son needs to do to be paroled.

I writing to you with hope that the Parole Board will create clear regulations to begin doing what Parole Boards should: release people for whom further incarceration serves no purpose—neither protecting public safety nor advancing personal growth and rehabilitation.

- The Parole 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, rehabilitative efforts, many accomplishments and personal transformation.
- 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.
- By denying parole 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.
- Board decisions must be based on assessing the person currently in front of them today, rather than their crime of conviction or past criminal history, and the regulations must fully reflect that approach.

We know that Recidivism Rates Are Low for Those Serving Long Sentences. Today in New York State, nearly 10,000 people are serving life sentences, and more than 5,000 people have served 15 years or more in prison. A 2010 study by the Department of Corrections and Community Supervision (DOCCS) provided that recidivism rates for people who have served these long sentences for the most serious crimes, specifically murder, are exceptionally low—less than 1% of people return for a new conviction. In 2010, recidivism rates for those 50 and older, regardless of their crime, averaged 5.5% for new commitments. It is clear that aging and elderly people, and those convicted of the most serious crimes who have done extensive time in prison, pose almost no identifiable risk to society and should therefore be released.

Many families including mine have become hopeless and despair with the repeated and unexplained Parole denials. The Parole Board is responsible for keeping thousands of people locked up and away from their families for decades beyond their minimum sentence. Myself and many families like my own have lost hope of ever obtaining freedom. This hopelessness often lead us to desperation, lack of will to pursue meaningful opportunities inside, and sometimes even suicide, as in the case of John Mackenzie who died on August 4, 2016. John was 70 years old and had spent more than half of his life—over 41 years—in prison. He was denied parole ten times, despite an impeccable institutional record, low risk to society, and demonstrated personal transformation. I am afraid and

don't know how to overcome these emotions that take over our lives. Repeated parole denials deny many families and communities of invaluable members, like my son, who could make incredible contributions on the outside if released.

I beg and asked that you please consider these PROPOSED REGULATIONS:

Use of a Risk and Needs Assessment and an Evaluation of Youthfulness Should Not Be Deemed "Factors"

- Section 8002.2 begins: "Parole release decision-making: factors to be considered." These so-called "factors" refer to a risk and needs assessment (utilizing COMPAS), an evaluation of a person's young age at the time of the crime, and the eight factors outlined in the Executive Law that the Board has historically considered (seriousness of the offense, release plans, prior criminal record, etc.) in their determinations.
- The Board's proposal to qualify the risk and needs assessment and an evaluation of youth as "factors" is not only confusing, but inaccurate and unconstitutional.
- 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."

Low COMPAS Scores Should Create a Presumption of Release

- The proposed changes to Section 8002.2(a) require Board members, when denying release to a person with a low risk score, to give individualized reasons for departing from COMPAS.
- This amendment does not go far enough. 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.
- Further, a high COMPAS score cannot create a presumption of further incarceration. If an applicant presents with a high score, the Board must still consider each enumerated factor from the Executive Law in their determination.

Demonstrated Rehabilitation & Readiness Should Create a Presumption of Release

- Similar to the provisions related to COMPAS scores, 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.
- In turn, 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, in and of themselves, may not constitute the requisite exceptional circumstances.
- At the very least, any denial that overrides an applicant's demonstrated rehabilitation or readiness must include individualized reasons for the continued denial.

The Board Should Not Be Permitted to Consider Any Factor Twice

- In Section 8002.2(b), the regulations list the eight factors drawn from the Executive Law that the Board must consider in their release determinations. However, several of these factors are already taken into consideration in the COMPAS risk assessment instrument, which, as stated above, is now formally incorporated into the proposed regulations.
- As such, 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 considered by DOCCS when preparing the COMPAS report.

The Board's Proposed Regulations Regarding Youthfulness at the Time of Conviction is Woefully Inadequate

- 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." *Graham v. Florida*, 560 U.S. 48, 75 (2010); *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).
- 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. *Hawkins v. NY State Department of Corrections*, 140 A.D.3d 34, 38 (3rd Dep't 2016).
- While Section 8002.2(c) of the proposed parole regulations comes in response to this Third Department decision, it is woefully inadequate and a complete misstatement of the law.
- Despite the proposed introductory language in 8002.2, youth is not a discretionary matter or a "factor" for the Board to potentially consider. 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 heighted 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 affords them such protections.

Justifications for Parole Denials Must Be Factually Individualized, Comprehensive and Exhaustive

- Section 8002.3(b) adds new language that requires the Board to provide "factually individualized" reasons for denying a person parole release. While we agree that the Board must ensure that parole decisions are individually tailored and based on evidence drawn from the record and interview, the reasons given for denials should also be "comprehensive" and "exhaustive."
- The Board should also 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 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.

Further Additions to Consider:

- 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.

- Applicants over age 50 years, or applicants who have served 15 consecutive years of imprisonment, shall be afforded review of their case. 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.
- The Board must provide a more meaningful and timely process for appealing parole denials.

Thank you for your time and consideration in this matter.

Sincerely,

Naveena Darshan