Mujahid Farid,

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).

I am writing to comment on the proposed regulatory changes to the Parole Board's charter. 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 to release people who demonstrate low risk and/or rehabilitation and readiness for release. Board decisions should be based on assessing the person currently in front of them, rather than their crime of conviction or past criminal history, and the regulations should reflect that approach.

To those ends I hope that the Board of Parole will 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. 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. I believe that 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.

b. The Board should provide, in writing, substantial and compelling reasons why such exceptional circumstances warrant an override of COMPAS.

c. An applicant's crime of conviction or past criminal history, in and of themselves, should not constitute the requisite exceptional circumstances, and may not form the predominant basis for release denial.

2. Similar to the recommendations I have made regarding the Risk and Needs Assessment, I believe that 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

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. If denied, the Board must provide, in writing, compelling reasons why such exceptional circumstances warrant a denial, and an applicant's crime of conviction or past criminal history, in and of themselves, should not be considered as requisite exceptional circumstances.

3. The Parole Board should not 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. Several of these factors are already taken into consideration as part of the COMPAS risk assessment instrument. 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.

4. Regarding the Board's proposed regulations on youthfulness at the time of conviction as a factor, I believe them to be insufficiently far reaching.

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. While Section 8002.2(c) of the proposed parole regulations comes in response to this decision, it is woefully inadequate. 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 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.

5. Section 8002.3(b) adds new language that requires the Board to provide "factually

individualized” reasons for denying a person parole release. I agree that the Board must ensure that parole decisions are individually tailored and based on evidence drawn from the record and the interview, but I believe that the reasons given for denials should also be “comprehensive” and “exhaustive.”

6. 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 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.

In addition to the above changes to the proposed regulations, I have also included a number of recommendations for additional factors for the Board to consider.

1. 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, shall 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.
2. The Board must provide a more meaningful and timely process for appealing parole denials.
3. 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.

I greatly appreciate the opportunity to participate in the regulatory reform process.

Sincerely,

Elaine Arsenault
Amherst, Massachusetts