

Lisa Schreibersdorf, Esq.
Executive Director



January 31, 2014

Tina M. Stanford, Chairwoman and
Terrence X. Tracy, Counsel
New York State Board of Parole, DOCCS
Harriman State Campus, Building 2
Albany, NY 12226

VIA EMAIL

Re: Public Comment, Notice of Proposed Rule Making, 9 NYCRR, Part 8001 and Sections 8002.1 (a) and (b), 8008.2 (a), and 8002.3.

Brooklyn Defender Services is a public defender organization that represents more than 40,000 clients in criminal proceedings each year. Many of our clients are subject to the Board of Parole's discretionary release provisions after conviction and will be directly affected by the Board's proposed Rules.

In 2011, the New York Legislature amended the parole statute to require the Parole Board to incorporate social science research in assessing post-release and recidivism risks, and replace static, past-focused guidelines, centering on the nature of the underlying offense, with more dynamic present- and future-focused risk assessment procedures. On December 18, 2013, the New York State Parole Board promulgated revised regulations guiding parole release decisions in compliance with the legislature's directive, Executive Law Section 259-c(4) (directing the Parole Board to use objective risk and needs principles in making release decisions, and to promulgate written procedures for using those principles to assess the rehabilitation and likelihood of success of potential parolees).

When the Legislature materially changed the language of a statute, it intended a material change in the way in which the Parole Board reaches its release determinations. The amendment was plainly remedial in nature. The revised regulations recently promulgated by the Parole Board do not, however, ensure that rehabilitation and actual risk posed to the community will determine the Board's release decisions, as the Legislature commanded.

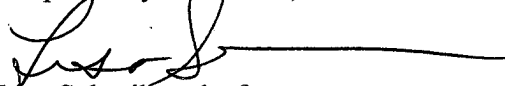
First, the Board's proposed revisions to 9 NYCRR Section 8002.3 betray the Legislature's remedial intent in mandating Board rule-making. The Legislature's addition of a specific mandate that the Board adopt and be guided by procedures that require it to evaluate a

person's rehabilitation and likelihood of success upon release were clearly intended to make parole decisions turn on who the person appearing before the Board is today, not solely on who the person was when the crime was committed. But the Board's revised Rule frustrates this intent by continuing to emphasize past-focused factors and not future-focused risk assessment principles and procedures. The proposed Rule merely tacks on forward-looking principles, which the Legislature intended to permeate all the statutory release factors, as two additional factors that Commissioners may consider and assign whatever weight they choose (if any). The proposed Rule thus falls well short of ensuring that all future parole decisions will be guided by evidence-based assessments of a person's present risk to the community as the Legislature contemplated.

Furthermore, the proposed revisions to 9 NYCRR Section 8002.3 make the Board's consideration of objective risk and needs optional when making release decisions, when the Legislature deemed such considerations primary and mandatory to all parole decision-making. *See* Exec. Law Sec. 259-c(4) (directing that the Board "shall" incorporate risk and needs considerations into its release procedures). Risk of recidivism, rehabilitation, and readiness for re-entry should guide *every* parole decision pursuant to the Legislature's amendment—not be one of twelve factors Commissioners consider with equal weight (or none at all). The proposed Rule, as written, would allow Commissioners to assign zero weight to a potential parolee's rehabilitation, low risk to the community, and positive future prospects—all of which should now justify release—and be overridden by some other listed factor, such as the seriousness of the underlying offense. Under such a rule, the fundamental policy shift embodied in the Legislature's amendment is rendered illusory and the backward-looking status quo is maintained. Future prospects remain irrelevant.

The procedures ultimately adopted by the Board should base parole decision-making on evidence-based factors that favor release for those people who have demonstrated rehabilitation, low risk to the community, and readiness for re-entry into society—not on a laundry-list of factors that invite a subjective, static assessment of prior misdeeds rather than probable future conduct. This is the result the Legislature intended, and rule-making should proceed accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Schreibersdorf", followed by a long horizontal line extending to the right.

Lisa Schreibersdorf
Executive Director
Brooklyn Defender Services

Cc: John Koury, Director

New York State Senate Administrative Regulations Review Committee
State Capitol
Albany, NY 12247

Mujahid Farid
Correctional Association of New York
2090 Adam Clayton Powell Jr. Blvd. #200
New York, NY 10027

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