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Mass Incarceration Committee
National Lawyers Guild – New York City Chapter
c/o NPAP
499 7th Avenue 12N
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Via email: terrence.tracy@doccs.ny.gov, JKoury@NYSenate.gov

Terrence Tracy
NYS Board of Parole, Counsel's Office
The Harriman State Campus, Bldg. 2
1220 Washington Avenue
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John Koury, Director
Administrative Regulations Review Commission (ARRC)
The New York State Capitol Building
Albany, NY 12247

Re: Public Comment on Notice of Proposed Rule Making, 9 NYCRR, Part 8001 and Sections 8002.1 (a) and (b) 8002.2 (a) and 8002.3

Dear Mr. Tracy:

We submit this letter on behalf of the National Lawyers Guild New York City Chapter's Mass Incarceration Committee pursuant to the State Administrative Procedure Act, in response to the above-referenced Notice of Proposed Rule Making as published in the New York State Register on December 18, 2013.

For far too long the Parole Board has arbitrarily denied release to an unconscionably large number of incarcerated persons despite the fact that they demonstrate substantial rehabilitation and low risk to public safety.

There are thousands of people wrongfully languishing in prison cells in New York State because the Board provides no meaningful hearing and the Appeals Unit no meaningful appeal. Strong regulatory action is desperately needed to bring an end to the Board's abuses. The worst of these is the practice of repeated parole denials based exclusively on an applicant's past criminal history and/or crime of conviction, rather than on his or her readiness to return to the community.

The Board's decisions should be based on forward-looking factors related to an applicant's demonstrated rehabilitation during incarceration, readiness for reentry, and level of risk to society.

In 2011 the New York State Legislature amended Executive Law Sec. 259-c (4) directing the Board to apply a more scientific and objective approach to its parole release decisions, and to incorporate "risk and needs" principles to assess applicants' level of rehabilitation and readiness for reentry. In spite of this clear

legislative mandate, the Board of Parole did next to nothing, leading to litigation and, in some cases, new parole hearings granted by the courts. *See, e.g., Matter of Morris*, 40 Misc. 3d 226, 233 (Sup. Ct. Columbia County 2013).

Hundreds of appeals and two years later, the proposed regulations fall short because they are only an attempt to justify and defend the Board's past actions. What is needed are regulations that require the Board to embrace the legislative changes and implement them. In light of the years of bad faith in parole release decision-making, the new regulations must be more forceful. They must curb the Board's limitless discretion and mandate that the Board change its ways.

Under the proposed regulations, risk and needs assessments and the case plan are merely listed as *one of 12 factors* for the Board to consider, without indicating how much weight should be given to each factor nor directing that these instruments guide every Board decision. The proposed regulations fail to accomplish the Legislature's directives because they fail to address the lack of evidence-based decision-making demonstrated by the Board.

The Board must rely on objective criteria such as risk and needs assessments in every single parole release decision. Furthermore, an incarcerated person's age and length of time served must lead to low risk assessments since these factors are strongly correlated with a low risk of recidivism.

The Board should not deny release based exclusively or primarily on static factors such as the nature of an incarcerated person's crime of conviction or past criminal history. Rather a person who has a low risk score or who has substantially participated in his or her case plan activities should be released because these are the objective indicators of whether someone is ready to be released. Furthermore, when the Board denies an application for release, it should be required to demonstrate that risk was considered, the degree to which risk was considered, and to explain to applicants with a low risk assessment the compelling reasons for overriding this critical factor. In addition, the Board should be required to inform an applicant upon denial of release, what specific steps he or she can take in order to be released in the future. It is crucial that the Board make its decision-making process more transparent and provide specific guidance to people seeking parole. Finally, the Board must provide a meaningful and timely process for appealing parole denials.

The proposed regulations fail to address the historically subjective and political nature of parole release decisions. Stronger and more forceful regulations are needed, and without them, the Board will surely continue to deny parole to many people who should be released.

Sincerely,

/s/

Members of the National Lawyers Guild New York City Chapter Mass Incarceration Committee