



Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (347) 457-5194
info@bds.org

Via email: Rules@Doccs.ny.gov

Kathleen M. Kiley, Counsel
New York State Board of Parole
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 4
Albany, New York 12226

Dear Kathleen M. Kiley,

Brooklyn Defender Services submits this comment in response to the New York State Board of Parole rule change regarding Section 8002.2 of Title 9 N.Y.C.R.R.. BDS supports the proposed amendments to the draft regulations governing parole release consideration for people serving life prison sentences for crimes committed at a young age. While we support the proposed amendments, we strongly urge the Board to adopt some changes designed to make the regulation fairer and more effective.

Brooklyn Defender Services (BDS) is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For nearly 30 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality.

We represent thousands of people each year who are accused of a crime, facing the removal of their children, or challenging deportation. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing and benefits advocacy, as well as immigration advice and representation. Our Adolescent Representation Team specializes in representing young people who are 18 years old or younger at the time of an alleged offense. Many of our attorneys, social workers, and support staff are specialists in issues relating to youth justice. We also provide reentry and rehabilitation support to clients who are returning to their communities on parole after a period of incarceration.

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BDS respectfully offers the following suggested amendments to the proposed regulation:

1. Include a requirement that the Parole Board provide adequately detailed reasons for any parole denial.

The regulation should be amended to require an explanation whenever application of these special rules has resulted in a panel decision denying parole release. A duty of explanation, separate and apart from the general obligation to provide reasons for a parole release denial, will ensure that the special rules are applied in consideration of all eligible applicants. An explanation will also promote consistent application of these rules by the Board and facilitate fair and thorough review of any claims of error raised in the administrative appeal process and in Article 78 proceedings.

We therefore urge the Board to incorporate the following language in subsection (a):

“If parole is denied, the panel shall in the statement of reasons required by Executive Law section 259-i (2)(i) additionally provide a detailed explanation of why the factors applicable to applicants who were a youth at offense did not result in the grant of parole release.”

2. The Final Regulation Should Not Impose A Heightened Burden on the Covered Population

The Proposed Regulation moves New York closer into compliance with the Eighth Amendment’s command that children sentenced to indeterminate life terms must be given a meaningful opportunity for release. To ensure that the regulation is applied consistently with that purpose, the Board should clarify that the requirement that it meaningfully consider and give great weight to the “minor offender characteristics” articulated in (c)(1), (2), and (3) does not place a burden on “minor offenders” to affirmatively establish those characteristics. The Supreme Court has made clear that, as a matter of brain science, the characteristics of youth apply to—and mitigate—every offense committed as a child. The regulation therefore directs commissioners to independently weigh the “minor offender characteristics” in each case “in favor of release.” In addition, these parole applicants should not be saddled with a burden of making any greater showing of rehabilitation, achievement, reentry planning, or any other factor, than is required from any other parole applicant. The regulation should not be misconstrued to defeat its purpose by creating greater procedural hurdles for “minor offenders.” We therefore urge the Board to incorporate the following clarifying language in subsection (a):

“These regulations are to be viewed as special considerations relevant to Youth at Offense parole applications. These regulations must not be construed to impose any burden on a person appearing before the Board to satisfy the considerations articulated in (c)(1), (2), and (3), below.”

For the same reasons, the Board should clarify that subsection (c)(3) provides illustrative examples of growth and maturity—not a “checklist” for release. We therefore suggest the following change to (c)(3), with new text in bold:

“Subsequent Growth and Increased Maturity of the Individual While Incarcerated. Evidence of the subsequent growth and increased maturity of the individual may be shown by, but is not limited to:”

3. The Final Regulation Should Consider Obstacles Limiting an Individual’s Access to Rehabilitation

There can be many obstacles to an individual’s access to programming, work, education, mental health services and other rehabilitation opportunities in prison, including limited availability, illness, disability, and inability to pay (e.g., college tuition). Therefore, the Regulation should include:

“When considering evidence of rehabilitation, the Board must consider any factors that may have limited the individual’s access to rehabilitation opportunities and should not penalize the individual for these limitations.”

4. Remove Outdated Language

Replace the term “minor offender” with “youth at offense.” New York State policy has already moved toward people-first language. State law has replaced “inmate” with “incarcerated individual” in the Correction Law. L.2021, chap. 322. The intent of the change was clear: legislative leaders recognized that terms like “offender” dehumanize and stigmatize (See NYS Senate bill S8216¹). Then-Assemblymember Jeffrion L. Aubry said, “Penological terms such as felon, inmate, prisoner, offender, and convict dehumanize, degrade, and stigmatize people”

¹ NYS Senate Bill S8216 <<https://www.nysenate.gov/legislation/bills/2021/S8216>> (accessed 10/9/25).



(Governor press release, 2022²). The language of the regulation should be consistent with this direction and purpose.

5. Do Not Introduce Any New Forms or Special Procedures Without Collecting Feedback

The proposed regulations mention a pre-board appearance interview form and structured decision-making form. If the Board intends to use such forms in its determinations or create any special procedures for young people, the Board should provide drafts and an opportunity for public comment.

With these recommended changes, the proposed regulations, would represent an important step in helping to promote fair treatment in the parole release application process for persons who were youths at the time of offense. Thank you for your consideration.

Gina Mitchell, Esq. (she/her)

Attorney in Charge of Law Reform and Policy

Brooklyn Defender Services

Queens Office

O: (718) 261-3047 ext. 543

M: (929) 884-8293

118-21 Queens Blvd, 2nd Floor | Forest Hills, NY 11375

² Media Release - Governor Kathy Hochul, “Governor Hochul Signs Legislative Package to Promote Greater Fairness and Restore Dignity for Justice-Involved Individuals” <<https://www.governor.ny.gov/news/governor-hochul-signs-legislative-package-promote-greater-fairness-and-restore-dignity-justice>> (accessed 10/9/25).