

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Parole Board Decision Making

I.D. No. CCS-39-16-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 8002.1, 8002.2 and 8002.3 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 259-c(4), (11) and 259-i

Subject: Parole Board decision making.

Purpose: To clearly establish what the Board must consider when conducting an interview and rendering a decision.

Text of proposed rule: Sections 8002.1-8002.3 are repealed and new sections 8002.1-8002.3 are added to read as follows:

§ 8002.1 Parole release interview.

(a) Each inmate shall be scheduled for a parole release interview at least one month prior to the expiration of the minimum period of imprisonment or parole eligibility date as fixed by the Department of Corrections and Community Supervision, or upon such reconsideration date as previously set by the Board of Parole ("Board").

(b) The parole release interview shall be conducted by a panel of at least two members of the Board.

(c) The panel conducting the parole release interview shall discuss with the inmate each applicable factor set forth in section 8002.2 of this Part, excluding confidential information.

§ 8002.2 Parole release decision-making: factors to be considered.

(a) Risk and Needs Assessments: In making a release determination, the Board shall be guided by the inmate's risk and need scores as generated by the Correctional Offender Management Profiling for Alternative Sanction ("COMPAS") assessment if prepared by the Department of Corrections and Community Supervision. If a Board determination, denying release, departs from the COMPAS scores, an individualized reason for such departure shall be given in the decision. If other risk and need assessments or evaluations are prepared to assist in determining the inmate's treatment, release plan, or risk of reoffending, and such assessments or evaluations are made available for review at the time of the interview, the Board may consider these as well.

(b) Factors to be Considered: The Board shall consider the following factors in making a release determination:

(1) the institutional record, including program goals and accomplishments, a transitional accountability plan developed by the New York State Department of Corrections and Community Supervision as required under Section 71-a of the Correction Law academic achievements, vocational education training or work assignments, therapy and interactions with staff and inmates;

(2) performance, if any, as a participant in a temporary release program;

(3) release plans, including community resources, employment, education and training and support services available to the inmate;

(4) any deportation order issued by the Federal government against the inmate while in the custody of the Department of Corrections and Community Supervision and any recommendation regarding deportation made by the Commissioner of the Department of Corrections and Community Supervision pursuant to section 147 of the Correction Law;

(5) any statement made or submitted to the Board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated;

(6) the length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the Penal Law for a felony defined in article 220 or article 221 of the Penal Law;

(7) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney and the attorney who represented the inmate in connection with the conviction for which the inmate is currently incarcerated, the pre-sentence probation report, as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to the inmate's current confinement; and

(8) prior criminal record, including the nature and pattern of the inmate's offenses, age at the time of commitment of any prior criminal offense, adjustment to any previous periods of probation, community supervision and institutional confinement;

(c) Considerations for inmates serving a maximum sentence of life imprisonment for a crime committed prior to the inmate attaining 18 years of age ("minor offender"):

1. When making any parole release decision pursuant to section 259-i(2)(c)(A) of the Executive Law for a minor offender, the Board shall, in addition to the factors provided under paragraphs (a) and (b) of this section, consider the following:

i. The diminished culpability of youth; and

ii. Growth and maturity since the time of the commitment offense.

2. Evidence that the hallmark features of youth were causative of, or contributing factors to, a minor offender's commitment offense, should not, in itself, demonstrate lack of insight or minimization of the minor offender's role in the commitment offense. The hallmark features of youth include immaturity, impetuosity, a failure to appreciate risks and consequences, and susceptibility to peer and familial pressures.

§ 8002.3 Post-interview requirements and considerations.

(a) Granting of Release. If the Board grants the inmate release following its interview and deliberations, it shall impose the initial set of conditions that will govern his or her community supervision in accordance with the pertinent provisions of article 12-b of the Executive Law.

(b) Denial of Release. If parole is not granted, the inmate shall be informed in writing, within two weeks of his or her interview, of the decision denying him or her parole and the factors and reasons for such denial. Reasons for the denial of parole release shall be given in detail, and shall, in factually individualized and non-conclusory terms, address how the applicable factors listed in 8002.2 were considered in the individual's case. The Board shall specify in its decision a date for reconsideration of the release decision and such date shall be not more than 24 months from the interview.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen M. Kiley, Counsel to the Board of Parole, Department of Corrections and Community Supervision, 1220 Washington Avenue, Building 2, Albany, New York 12226, (518) 473-5671, email: Rules@Doccs.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority: The authority for the proposed revision to Part 8002 of Title 9 of the New York Codes, Rules and Regulations (NYCRR), is derived from Section 259-c(11) of the New York State Executive Law, which states the State Board of Parole (the Board) shall: "make rules for the conduct of its work, a copy of such rules and of any amendments thereto to be filed by the chairman with the secretary of state." The laws that govern these regulations are Section 259-c(4) and Section 259-i.

2. Legislative Objectives: On March 31, 2011, The Division of Parole and Department of Correctional Services were merged into one State agency pursuant to Chapter 62 of the Laws of 2011, Part C, subpart A. Contained within that legislation were amendments to Article 12-b of the Executive Law. Among those amendments was a change to Executive Law § 259-c(4), which requires the Board to "establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the Board, the likelihood of success of such persons upon release, and assist members of the State Board of Parole in determining which inmates may be released to parole supervision." See Chapter 62 of the Laws of 2011, Part C, subpart A, § 38-b. The amendment to Executive Law § 259-c(4) became effective October 1, 2011. See Chapter 62 of the Laws of 2011, Part C, subpart A, § 49-f.

By memorandum dated October 5, 2011, Chairwoman Andrea W. Evans outlined the change made to Executive Law § 259-c(4). In addition, the Chairwoman's memorandum instructed the members of the Board how they should proceed in light of this legislative change when assessing the appropriateness of an inmate's possible release to parole supervision. On July 30, 2014, the aforementioned regulations that had been amended to distill the Board's written procedures into regulations went into effect.

The purpose of amending these rules is to further define the Board's role in conducting interviews and their decision making process.

Under current regulations, the Board shall consider the factors of New York Executive Law § 259-i, as well as the transitional accountability plan referenced in New York Correction Law § 71-a as well as the most current risk and needs assessment that may have been prepared by the Department of Corrections and Community Supervision when conducting an interview and rendering a subsequent decision.

3. Needs and Benefits: The proposed amendments to the regulations

contained within Part 8002 of Title 9 of the NYCRR further define the Board's interview and decision process. The intent is to have the Board discuss each applicable factor with the inmate as set forth in what would be the new 9 NYCRR 8002.2, including the risk and needs assessments as described in the aforementioned NY Executive Law § 259-c(4). In its decision making process, the Board will be guided by the Correctional Offender Management Profiling for Alternative Sanction ("COMPAS"), the risk and needs assessment currently prepared by the Department of Corrections and Community Supervision. If a Board denial decision departs from the COMPAS, the Board shall render individualized reasons for the departure. The regulations also allow the Board to consider other risk and need assessments or evaluations if such assessments or evaluations have been made available for review at the time of the interview. The Board shall also consider and discuss with the individual each applicable factor as listed in New York Executive Law § 259-i (2)(c)(A) as well as the transitional accountability plan, also known as the case plan, as referred to in New York Correction Law § 71-a. In addition, in order to comply with recent United States Supreme Court jurisprudence, including *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), regarding individuals serving a maximum life sentence for crimes committed when they were under the age of 18 Section 8002.2(c) of the new regulations contain additional factors that the Board must consider when making release determinations for such individuals. Finally, in 8002.3, if the Board decides to deny release to Community Supervision, the Board shall provide individualized factual reasons stated in detail as to why, addressing the applicable factors in 8002.2.

The benefit of this will be that the Board will conduct more thorough interviews and produce more individualized, detailed decisions in instances where release to Community Supervision is denied.

4. Costs: The proposed rulemaking will not impose any additional costs.
5. Local Government Mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other district.
6. Paperwork: This amendment should not generate any additional paperwork either for the Board or by the Board.
7. Duplication: There are no relevant State regulations which duplicate, overlap or conflict with the proposed amendment since the regulations are governed by Article 12-B of the New York State Executive Law.
8. Alternatives: Because this refers to Board functions, there are no alternatives other than change the regulations.
9. Federal Standards: There are no federal standards governing the subject matter of the proposed rulemaking.
10. Compliance Schedule: The proposed rulemaking shall be effective upon the filing of a notice of adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not being submitted with this notice, for the proposed rule changes will have no adverse impact upon small businesses and local governments, nor do the rule changes impose any reporting, record keeping or other compliance requirements upon small businesses and local governments. Small businesses and local governments have no role in the Parole Board's parole release decision-making function. The proposed rule making with only affect the Parole Board's decision-making practices for inmates confined in State correctional facilities.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice, for the proposed rules will have no adverse impact upon rural areas, nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon rural areas. The proposed rules will only affect the Parole Board's decision-making practices for inmates confined in State correctional facilities.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice, for the proposed rules will have no adverse impact upon jobs or employment opportunities, nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon employers. The proposed rules only affect the decision-making practices of the Parole Board for inmates confined in State correctional facilities.

Education Department

EMERGENCY RULE MAKING

Annual Professional Performance Reviews (APPR) of Classroom Teachers and Building Principals

I.D. No. EDU-26-16-00015-E

Filing No. 846

Filing Date: 2016-09-12

Effective Date: 2016-09-12

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 30-2.3 and Subpart 30-3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c and 3012-d; L. 2015, ch. 20, subpart C, section 3; L. 2015, ch. 56, part EE, subpart E, sections 1 and 2

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to provide districts and BOCES with additional options for measures to use in the student performance category and greater flexibility in scoring observations in the observation category. It also seeks to clarify that the Department may require changes to a collective bargaining agreement in a corrective action plan subject to collective bargaining under Article 14 of the Civil Service Law and that teacher/principal improvement plans are required to negotiated, to the extent required under Article 14 of the Civil Service Law.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action at the July 2016 Regents meeting is therefore necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide immediate notice to districts of the additional allowable measures in the student performance category, the increased flexibility in scoring observations in the observation category and to clarify the collective bargaining requirements surrounding teacher/principal improvement plans and to clarify that corrective action plans may require changes to collective bargaining agreements, subject to negotiation under Article 14 of the Civil Service Law, while they are negotiating their annual professional performance review plans under Education Law § 3012-d for the 2016-2017 school year. It is also necessary to ensure that the emergency rule adopted at the May 2016 Regents meeting remains continuously in effect until it can be adopted as a permanent rule at the September 2016 Regents meeting.

Subject: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals.

Purpose: Technical Amendments.

Text of emergency rule: 1. Subdivision (c) of section 30-2.3 shall be amended, effective September 12, 2016, to read as follows:

(c)(1) Subject to the provisions of Education Law 3012-c(2)(k), the entire annual professional performance review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is being measured. The teacher's and principal's score and rating on the locally selected measures subcomponent, if available, and on the other measures of teacher and principal effectiveness subcomponent for a teacher's or principal's annual professional performance review shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of their composite ef-