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INNOVATIVE SOLUTIONS FOR JUSTICE

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Re: Public Comment on Proposed Regulations 9 NYCRR § 8002.1- § 8002.3

Dear Ms. Kiley:

You and the Chairperson of the Parole Board are to be commended for your leadership in moving the Parole Board towards compliance with Executive Law § 259-c (4).

Although it has taken more than five years for the Parole Board to comply with the 2011 legislative mandate that the risk and needs assessment instrument be used, not merely as a factor, but as a guiding decision-making framework, given the disparate and antagonistic views of the individual Parole Board Commissioners, bringing the Parole Board to accept its responsibility surely cannot have been an easy task.

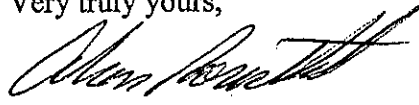
Implementation may prove more challenging as recalcitrant Parole Board Members, who have resisted the legislative mandate and opposed the new proposed regulations, may seek to undermine the proper use of COMPAS. The new regulations will test whether New York's Parole Board will move forward in the implementation of evidence-based decision-making, or move backward to making release determinations based upon intuition, or as one noted criminologist has dubbed it, "correctional quackery."

One issue not addressed by the proposed regulations, which is of particular concern to me, is the consideration by the Parole Board of COMPAS at the time of parole decision-making for juveniles serving sentences in OCFS facilities. As recently as September 2015 the Parole Board was still taking the preposterous position that it did not have to consider, or even have in its possession, a COMPAS instrument in order for it to make a parole decision for a juvenile incarcerated in an OCFS facility. In an Article 78 proceeding involving one such juvenile who was denied parole release by the Parole Board without a COMPAS having even been prepared, the Attorney General's office wrote to the Judge before whom the case was pending to inform him it "finds merit in Petitioner's contention that the Department did not conduct a COMPAS Re-Entry Risk Assessment for the Boar's review..." and consented to a *de novo* hearing with a COMPAS. Incidentally, once the COMPAS was administered, establishing his low risk, he was granted parole release.

So the question remains, will these OCFS cases require individual litigation, as the Parole Board required in the run-up to *Garfield v. Evans*, 108 A.D.3d 830 (3rd Dept. 2013) as they took the equally preposterous position for over two years that COMPAS was not required for anyone going before the Parole Board, or will the Parole Board and DOCCS concede that all juveniles appearing for parole consideration while detained at an OCFS facility, are entitled to have the Parole Board decision-making be guided by the use of COMPAS?

Thank you for your willingness to move the Parole Board to a position that reflects respect for controlling legislation. I would appreciate it if you could address the concerns I have expressed regarding the preparation and consideration of COMPAS for individuals up for parole release consideration while in the custody of OCFS.

Very truly yours,



Alan Rosenthal
Counsel

cc: John Koury, Director, ARRC
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