

Kathleen M. Kiley
Counsel to the Board of Parole
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
Albany, New York 12226

Dear Ms. Kiley, as well as Chairwoman Stanford and members of the Board of Parole: Please accept this public comment pursuant to the State Administrative Procedure Act, in response to the Notice of Proposed Rule Making as published in the New York State Register on September 28, 2016 (I.D. No. CCS-39-16-00004-P).

“Confidence in the criminal justice system is paramount and these new regulations will help increase transparency, fairness and accountability in the parole process.”
-Governor Andrew Cuomo

The Parole Board (“Board”) has, for too long, degraded that confidence in the criminal justice system by denying release to far too many people in an arbitrary and inconsistent manner. The Board has too often based its decisions primarily on people’s crimes of conviction or past criminal history, static factors which can never change, rather than the current risk to public safety, degree of rehabilitation, or readiness to return to their community.

In 2011, the Legislature attempted to remedy this situation by amending the Executive Law to direct the Board to focus on risk and needs principles and to measure rehabilitation and likelihood of success upon release. The board’s continued denial of parole based upon the nature of the crime indicates that those directives are being ignored and that the rehabilitation of the applicant is of little or no value in those proceedings.

Judgement of the crime is the domain of the Courts and the Judges that preside over them. *They* determine minimum sentencing at the time of conviction, years or even decades before an applicant appears before the Board, a group which is dominated by former prosecutors and law enforcement. Denying Parole for “nature of the crime” effectively imposes additional consecutive 2-year sentences *for that crime* upon applicants, indefinitely. This could not have been the intention of the convicting Judge, or the initial sentencing would have reflected as much.

The amendments of 2011 gave the Board the tools, including COMPAS, to make informed, impartial decisions based upon objective, evidence-based factors. Other tools at their disposal include Institutional Records; Employability Profiles

containing educational, vocational and therapeutic programs completed, as well as voluntary extracurricular programs. The amendments failed to require that the Board give due weight to these assessment tools. Therefore, despite those amendments, the Board has largely continued to ignore these legitimate determining factors.

It has become increasingly obvious that certain of the Board Commissioners still sitting are unwilling or incapable of utilizing the evidence-based tools at their disposal to evaluate an applicant's readiness to be reintegrated into society, *even once directed to do so*. And, perhaps some of the more intransigent (contemptuous) Parole Commissioners have grown incapable of impartiality and should no longer be serving in that capacity.

As you are evaluating the necessary changes to these regulations, please consider that any parole regulations, in order to support the intent of Rehabilitation, of the Criminal Justice System and of the law:

- Would necessarily require express language that forbids empaneled Commissioners from citing the "nature of the offense" as primary reason for denial.
- Would direct the Board to focus primarily upon the applicant's institutional records, COMPAS and/or other psychological evaluations, Employability Profile and release plans in determining readiness for release.
- Would require that denials be accompanied by individualized legitimate reasons for denial and,

In the interest of Board Hearings not serving as an opportunity to impose an indefinite string of re-sentencings,

- A list of prerequisites toward bettering the probability of release at their next Board Hearing should be provided.

Until we see regulations being proposed which concretely address these issues, or witness the appointment of Commissioners to the Board of Parole from more diverse backgrounds who will follow the intent of the law, the New York State Parole, Clemency, and Compassionate Release systems will remain severely broken.

Thank you for your time and attention to this matter.

Sincerely,

Karen Flynn

"I suppose it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail."

- Abraham Maslow,