

Mr. Marvin Everett (04A3718)

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**Attention:**

HON. KATHLEEN M. KILEY, ESQUIRE  
Counsel to the Board of Parole  
N.Y.S. Department of Corrections  
& Community Supervision

1220 Washington Ave Bldg.#2  
Albany N.Y. 12226-2050

Dated: 11/1/16

Re: PAROLE DECISION MAKING

Dear Counselor Kiley

I am writing to you in opposition to the proposed **Parole Board Decision Making**, I.D. No. CCS-39-16-00004-P.

The parole board should never have the power to resentence an inmate over and over again because the commissioner's does not like or agree with the **past behavior** of the person before them.

This has been a continued response from the parole board since the Pataki era. In the recent years (2014-2016) there are many court decisions that the courts has ruled that the parole commissioner's have over stepped the boundries inwhich the parole panel should act.

Since that time there has been a historic amount of **denovo** hearings being held due to the abuse of authority and position.

The Court in Matter of Turner v. NYS Board of Parole,\* 40543/07, decided 6/24/09, The Tuner Court Commented, "Quite possibly, respondent did not speak to the required factors because at this point in time respondent very well could not state the petitioner is a danger to the community and that there is not a reasonable probability that she can live free outside jail without again violating the law". In granting the de novo hearing, the court said, "upon the new hearing, the respondent should and must, consider whether petitioner has evidence through her behavior during her last several years in prison that she has redeemed herself and, in reasonable probability, can now live in society without violating the law. We, as a civilized society, must remain hopeful that those who break the law can rehabilitate themselves, with help while in prison, before their maximum sentencing period is reached.

Never should the parole board weigh so much on the nature of the crime, criminal history, nor the seriousness of the crime, because the courts has already weighed in on these facts before passing sentenncing.

In the case of philip Rabenbauer v. NYSDOCCS, 2013 NY Slip O 51982, the court stated, "while the parole board enjoys a significant level of descretion the descretion is not unlimited.

There are three things a parole board cannot do. First, a parole board cannot base it's decision to deny parole release soley on the serious nature of underlying crime. Rios v. New York State Div. of Parole, 15 Misc 3d 1107(A) [Sup. Ct. Co. 2007] Second, while the board need not consider

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each guideline seperately, and has broad discretion to consider the importance of each factor, the board must still consider the guidelines. **Executive law 259-i (2)(a)**; Rios supra. Third the reasons for denying parole must be given in detail and ~~not~~ **conclusory terms**.

The **State Legislators** of this state has for years tried to get the parole panel to do the right thing and to stop using incarcerated poeple as some kind of political pawns, by abusing the discretion given to them in the position of parole commissioner's.

The amendments of 2011 to 259-i, was an attempt to stop the abuse and. the resentencing of the incarcerated, **guidelines** was removed and **statutory requirements** went in it's place to force the board to be coopertive, yet that changed very little.

The factors found in **section 8002.2(b)(7)(8)**, **serious offense and pior criminal history** should be removed altogether because by it's design and nature it creates a false since of justice and does an injustice to the incarcerated person because of it's nature to only focus on the past that can not be changed by the incarcerated person.

This is a big problem and why the system is broken in the first place, instead the main focus should be on the rehabilitation process of the person appearing before the parole board, and lets not forget the COMPAS, that has taken in all the relevant factors of anyone who has been incarcerated by weighing and evaluating the **risk factors on recidivism, re-offending, violence behavior**, these factors are based risk/needs assessments, which has been accepted and used in many other states across the U.S.A., since 1998, many research studies have concluded that objective statistical assessments are **"infact, superior to human judgement"**, this study was done on over 30,000 COMPAS ASSESSMENTS conducted from 1/04 to 11/05 at prisons, parole, jail and probation sites across the U.S. and were found to be accurate in it's results.

**"Criminal Justice Research Report"** done in NYC from 56 counties(16,303,62%) of (26,315 of admission cases in 2009)

FACTS

The study found that **"the recidivism scale worked effectively and achieved satisfactory predictive accuracy.**

So please will someone explain why so many possible parolee's are getting 2 year denials when this great system is giving them low scores by COMPAS, they have completed all mandated programs and has completed various voluntary therapeutic programs and there is nothing left for them to achieve in DOCCS.

This is why I am opposing and is in complete opposition to this Proposed Rule Making by the Department of Corrections and Community Supervision because what is being offered in the decision making process is nothing more then giving the parole board more power to do the same old thing it has been doing , without recourse.

To say that the parole panel feels that a rehabilitated person would not be. and live and remain at liberty without again violating the law and that their release would be incompatible with the welfare and safety

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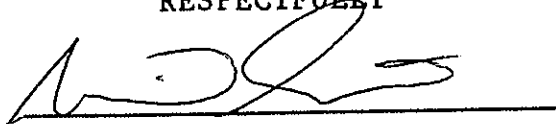
of society, and would so deprecate the serious nature of the crime, as to undermine respect for the law, tells me that no matter how well I may have rehabilitated myself, my criminal history and the seriousness of the crime will always be the reason that the Parole Board will decide to **resentence** me, without a current incident or mitigating factor to establish the denial.

What should be changed in 259-i executive law is all the things that are wrong with it, that denies a person a chance to fulfill a hope or a dream of doing right by redeeming oneself in the eyes of society, family and community.

This is what the criminal justice system sought out to accomplish when it hands out a sentence to someone who has broken the law, that in it's punishment that the wrong doer will see the error of their ways and they will make the right changes to be made whole and law abiding.

I hope that this letter will create a sense of well being through fairness and doing the right thing by all of the incarcerated that are in here making a difference in not only their lives, but also in their fellow man.

RESPECTFULLY

A handwritten signature in black ink, appearing to be 'W. J. S.', written over a horizontal line.