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Kathleen M Kiley
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Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
Albany, New York 12226

October 20, 2016

RE: Comments on Proposed Rule

Dear Ms./Mrs. Kiley:

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).

First and foremost, please allow me to applaud the Board of Parole ("Board"), and the Department of Corrections and Community Supervision ("DOCCS"), for making a genuine effort to repair New York State's failing parole system. DOCCS' continued emphasis on the importance of an inmate's rehabilitation while incarcerated, and the Board's acknowledgement of the fact that an inmate's rehabilitation should be the most significant factor in making a parole release decision is commendable.

I'm contacting you because I am intimately aware of the Board's current and long-standing practices; I've seen its effects firsthand and I've personally felt the sting of denial. Indeed, I am an inmate whose release and successful reintegration into society is dependent on an effective parole system. As such, I firmly believe that I have the right -- the obligation -- to tell you that the proposed rule in question is a good start to reform, yet it sidesteps the core problem with New York State's parole system.

Please allow me to explain (and offer a couple suggestions), how I believe a minor alteration to the proposed rule will effect significant change, thereby reducing the vast expenditure of time and money on the continued, unnecessary incarceration of many inmates, and in defending against litigation of parole release decisions.

"Seriousness of the offense;" (§8002.2[a][7]); I believe you'll agree when I say that this phrase has had an unprecedented effect upon the lives of so many people; that never before have four words led to such drastic measures and differing opinions. To those individuals who are unfamiliar with the criminal justice system, every single crime is serious and, perhaps, should preclude an inmate's release to parole. On the other hand, your expertise, and my experiences,

makes two things incontrovertible: no two crimes are alike, and some crimes are more serious than others.

That phrase, that "reason" is used liberally and routinely by the Board to deny inmates parole release. There are scores of cases where inmates were denied parole release based solely on the "seriousness of the offense," and scores more based, in part, upon the "seriousness of the offense" It's painfully obvious that the Board places more value on the "seriousness of the offense" than any other factor enumerated in Executive Law §259-i.

I strongly believe that the proposed rule doesn't go far enough; rather, it merely codifies the existing body of case law governing parole release determinations. Alas, simply adding a proviso that states COMPAS and TAP must play a more prominent role in the Board's decision-making process while requiring an "individualized" written decision for those Board members electing to depart from the COMPAS scores, has little effect when Board members can still claim that the "seriousness of the offense" warrants a denial of release to parole.

Ultimately, the problem lies with the definition of "seriousness." The answer to the question: "What constitutes a serious offense?" is, of course, entirely subjective. Therefore, I submit that the phrase "seriousness of the offense" needs a qualifier -- an explanation -- that's consistent with the spirit of the law and public policy.

For example: "the seriousness of the offense is such that it shocks the conscience, or so offends the current standards of decency that it will likely evoke outrage in the community..." Modifying the phrase as such limits its application and requires the Board to consider the community's view of that particular offense. While the changes still allows for some subjectivity on the part of the Board, it would also require that they consider a wholly objective point of view (the community's).

In addition, the example I've supplied is fluid, that is, it can evolve with society's ever-enlightening views on crime and punishment within the state. Isn't this the implicit goal of every law?

Finally, with regard to the incorporation of a risk and needs assessment in the proposed rule (§8002.2[a]); I fear that the proposed rule, as it's currently written, will allow the Board to continue with business as usual. More specifically, requiring an "individualized reason" for departing from an inmate's COMPAS score is antithetical to the fundamental concept and purpose of the risk and needs principles, and even COMPAS itself.

As you most certainly know, the risk and needs principles and its progeny (COMPAS & TAP) are empirically validated, in other words, scientifically proven to effectively and accurately determine which inmates need treatment, and what type of treatment they need so as to increase the chance of their rehabilitation and reduce the likelihood of recidivism.

The risk principle holds that, when low-risk inmates receive treatment in prison their recidivism actually goes up. This is so because lower-risk inmates are not "broken" and putting them in treatment they don't need tells them they are broken, makes them angry, and mixes them

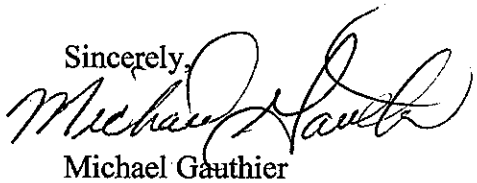
with higher-risk inmates who are broken and who negatively influence other people. Furthermore, keeping lower-risk inmates in prison takes them away from all the things that keep them low-risk -- supportive spouses and children, pro-social friends, etc. Higher-risk inmates, however, are "broken" and when they receive the right treatment their recidivism goes down.

The risk principle shows DOCCS who they should focus their scarce resources on -- the higher-risk inmates -- while the needs principle simply tells DOCCS what they need to focus on once they know which inmates require the most help.

What is gained when a Board member chooses to depart from an inmate's low COMPAS score? Nothing. In fact, the risk and needs principles tell us that an inmate's chance of recidivism is increased thereby, and continuing to confine and treat him or her is a vast waste of limited resources. Thus, a question remains: What rational reason can be used to justify departing from the COMPAS scores? Absent some compelling, countervailing scientific evidence, a Board member cannot reasonably depart from the COMPAS scores. Simply requiring an "individualized reason" is superfluous, and as shown above, detrimental to every inmate's rehabilitation, and the welfare of the community.

I appreciate your consideration of my views regarding the proposed rule. I hope you'll seriously contemplate incorporating my suggestions and comments (or similar ones), and change the proposed rule. Doing so will make it one of the largest steps towards a path for reform for New York State's parole system. Thank you for your time and attention to this matter.

Sincerely,



Michael Gauthier