

January 14, 2014

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Board of Parole
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Sent via email: Terrence.tracy@doccs.ny.gov

Re: Public Comment
Notice of Proposed Rule Making, 9 NYCRR, Part 8001 and Sections 8002.1(a) and (b),
8002.2(a) and 8002.3

Dear Mr. Tracy, Chairperson Stanford and Members of the Board of Parole:

Please accept the Community Service Society of New York's ("CSS") comments submitted 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 December 18, 2013.

CSS and other groups submitting comments believe strongly in parole. Parole sentences serve several important functions. They provide a concrete incentive for individual growth and change. They permit an opportunity to assess the appropriateness of an individual's continued incarceration. They also provide meaningful supports and services to better ensure an individual's successful reentry into the community.

We believe in parole, but we do *not* believe that the Board of Parole (the "Board") now operates in a way designed to ensure that individuals at low risk of reoffending are released. While the 2011 amendments to Executive Law § 259-c(4) were a notable attempt to make the Board's assessment mechanisms more functional, the newly-proposed regulations intended to implement these amendments fall short of this goal. In brief, the proposed regulations fail to properly utilize risk and needs assessment principles incorporated in the 2011 amendments. They do not give the risk and needs assessment process the prominence the legislature intended it to have, but instead relegate it to a list totaling 12 items that the Board must consider.

CSS has a vested interest in making sure that individuals who pose little risk to the community are allowed to rejoin it. A 170-year-old nonprofit organization committed to helping poor New Yorkers become full participants in the civic and community life of the nation's largest city, CSS employs a variety of tools to achieve these ends – advocacy, direct service, research and policy analysis, strategic partnerships, and litigation where necessary. Not surprisingly, perhaps, we have found that imprisonment – and the associated criminal record that, in New York, can never be expunged – keeps thousands upon thousands of New Yorkers from being able to regain a

foothold in our communities. It is our view, given the experiences of our many clients and colleagues in the advocacy community, that prolonged incarceration beyond any demonstrated risk substantially lowers the likelihood of a person's "successful" reintegration into the community. Family members lose touch or pass away, tenuous work networks and skill sets erode, and the stigma of incarceration impairs any reasonable chance to secure employment. In this era of almost ubiquitous background checking, having a criminal record almost guarantees that an individual will be at a serious disadvantage when searching for a job.

CSS works to change this reality to the extent we can. Our Next Door Project, utilizing highly trained older adult volunteers, helps people with conviction histories obtain, understand and fix mistakes in their official records of arrest and prosecution, and counsels them on how to accurately describe their conviction history on employment and housing applications. CSS also founded and hosts the New York Reentry Roundtable, a monthly forum on criminal punishment issues where the formerly incarcerated, practitioners, advocates, and allies meet to discuss matters that impact policy and the families and communities affected by mass incarceration. We work closely with many individuals who appeared before the Board time after time, only to be denied release despite their singular achievements while incarcerated, based in the main on the severity of their crime of conviction. How much better it would have been for these individuals, and for their families and communities, had they had the opportunity for an early and fair evaluation. But the current system has failed all concerned, in the process eviscerating the spirit of parole as it was created over a century ago.

First introduced in the United States in 1876 at the Elmira Reformatory, parole was based on the concept that persons convicted of crimes could be reformed, that every incarcerated person's treatment should be individualized, and that people who had shown definitive achievement and positive attitude change should be released.¹ In the more than 137 years that parole has been a feature of United States correctional policy, however, parole and sentencing laws and practices have undergone significant changes across the country. In New York, decades of "tough on crime" policies inflated the State's prison population, increasing economic and social costs to the State and its citizens.

By properly drafting regulations that require analysis of more factors than the nature of the underlying crime, the Board can bring parole back to its original mission while keeping pace with changing times. New York has recently started a legislative trend to make positive change, which the Board should heed. In 2006, N.Y. Penal Law § 1.05(6) was amended to provide that one of the purposes of punishment, in addition to deterrence, confinement, securing public safety, and rehabilitation is "the promotion of the successful and productive reentry and reintegration [of the incarcerated person] into society." *Id.* This focus is not only practical but necessary, as approximately 22,000 people are released to parole and post-release supervision in New York each year.² In 2011, the New York State Legislature instructed the Board to "establish written procedures for its use in making parole [release] decisions," and mandated that such

¹ Petersilia, J. (Summer 2000). Parole and prison reentry in the United States. *Perspectives*, p. 36. Retrieved from http://www.appa-net.org/eweb/Resources/PPPSW_2013/history.htm.

² N.Y. State Div. of Parole, Annual Report for 2009-10 (2010), available at <https://www.pparole.ny.gov/pdf/parole-annual-report-2010.pdf>.

procedures incorporate ‘risk and needs’ principles to measure the rehabilitation of inmates and assist the Board in making its release decisions.

New York long ago codified a multi-factor approach to balance the disadvantages and advantages or “risk to the general public” associated with a parole applicant’s discretionary release. These factors, which appear in the regulations set for amendment, include:

- the institutional record, program goals and accomplishments;
- academic achievements; vocational education training or work assignments;
- therapy and interpersonal relationships with staff and inmates;
- performance in a temporary release program or release plans along with community resources, employment, education and training and support services available.³

But the most heavily weighted factors reflected in countless Board decisions continue to be the type and severity of the crime and the person’s conviction history, static factors that cannot be changed by a person’s growth or development in prison. *See Morris v. New York State Department of Corrections and Community Supervision*, 5696-13 (NYLJ, April 18, 2013); *Zarro v. New York State Department of Corrections and Community Supervision*, 6073-13 (NYLJ, Aug. 9, 2013); and *Douglas v. New York State Department of Corrections and Community Supervision*, 6213-13 (NYLJ, Aug. 20, 2013).

This inordinate focus on static factors and consequent denial of release to scores of individuals annually has a deleterious effect on their eventual reintegration into society. It is also bad science. Most literature on human development now reports that cognitive and other “growth” occurs well beyond childhood, adolescence and even young adulthood throughout the life course.⁴ The brain, once thought to become rigid and resistant to learning shortly after childhood, is now found to be more neuroplastic than previously believed. This finding has tremendous implications for the goals of social institutions like the prison. There is no longer a scientific justification for incarcerating “bad” people for the rest of their lives based upon an unfortunate act in their youth (and, it should be noted, people aged 50 and over have the lowest overall rates of recidivism), but this is the effect of current Board action. Instead, there is a clear need for a more objective system of assessment based upon a validated scientific instrument, such as COMPAS, that considers multiple factors, particularly age and length of time incarcerated – not just the nature of the crime – when examining a parole applicant’s readiness for release.

For these reasons, CSS believes that the currently proposed regulations fall short of achieving the goals set by the Legislature when it amended Exec. Law § 259-c(4). The Board can and should do better. To this end, CSS strongly supports the alternatives to the proposed Board regulations submitted by RAPP in collaboration with the Correctional Association of New York, which

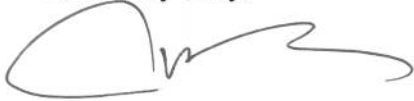
³ 9 N.Y.C.R.R. Section 8002.3.

⁴ Smith-Osborne, A. (Spring 2007). Life span and resiliency theory: a critical review. *Advances in Social Work* (8)1, p. 152; Guglielma, E. (2012). The ageing brain: neuroplasticity and lifelong learning. Retrieved January 13, 2014, from <http://www.eLearningpapers.eu>; Bostrom, L.G. (2013). Lifelong learning challenges and solutions part I. Retrieved January 13, 2014, from <http://www.eLearningworld.eu>.

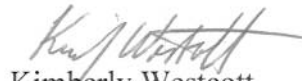
would clearly delineate the Board's method and procedure for parole release assessment. In essence, the proposed regulations would provide clear notice of the "rules of the game," enabling persons who hope to be released to know how to conduct themselves while in prison in order to prepare for reentry and reintegration into the community.

We thank you for this opportunity to submit comments on these very important regulations.

Yours very truly,



Judith M. Whiting
General Counsel



Kimberly Westcott
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