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January 3, 2014



Sent Via E-Mail: terrence.tracy@doccs.ny.gov

Tina M. Stanford, Chairwoman, and
Board of Parole
Harriman State Campus, Building #2
1220 Washington Ave.
Albany, NY 12226-2060

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 Chairwoman and Members of the Board of Parole:

Please accept this letter as public comment submitted on behalf of the Center for Community Alternatives 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.

Below, we address the following four issues:

1) The proposed regulations do no comport with the authorizing statute, Executive Law § 259-c(4), and the intent of the Legislature.

As proposed in 9 NYCRR § 8002.3, the risk and needs assessment instrument is reduced to merely one of twelve factors to be considered by the Board of Parole. Since the Board of Parole has previously taken the position that it can give as much or as little weight as it so chooses to any "factor," the risk and needs principles contemplated in the statute may be *de minimus* in any given case. By enacting Executive Law § 259-c(4) to specifically reference risk and needs principles, and not simply adding the risk and needs assessment into Executive Law § 259-i where the other factors are referenced, it is clear that the Legislature intended that the risk and needs assessment guide and give structure to every Board of Parole decision and not be treated merely as one of twelve factors. Such an interpretation is consistent with the plain meaning of Executive Law 259-c(4) which requires that the risk and needs assessment instrument be used to measure "the likelihood of success of such persons upon release and assist members of the state board of parole in determining which inmates may be released to parole

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supervision." If the instrument is relegated to a mere factor, the structure and guidance contemplated by the amended statute is thwarted.

2) The procedures should provide for an override process.

For a risk and needs assessment instrument to give structure and guidance to decision-making by the Board of Parole it must be utilized in every case as the rule and not the exception. Therefore, in order for the Board of Parole to reject a parole applicant's risk level score on the risk assessment instrument and substitute its own judgment that there is a "reasonable probability" that such person will or will not live and remain at liberty without violating the law, there must be rules to justify an "override" of the risk and needs instrument. This is consistent with the process that the Department of Corrections and Community Supervision (DOCCS) established for overriding the risk and needs assessment for supervision status levels (Directive No. 8500). That is, the instrument controls the supervision status level unless there are substantial and compelling reasons, consistent with the specific policies and procedures DOCCS has established, to override it. In the context of parole release decisions, there should be no override of the risk and needs instrument without substantial and compelling reasons to do so. Thus, like DOCCS, the Board of Parole should set forth written policies and procedures to establish the standard that must be met before it can override the risk and needs instrument. Without such a process the statute [Executive Law § 259-c(4)] is rendered meaningless.

3) The use of the risk and needs assessment instrument and TAP for parole decision-making are mandatory yet the language of the proposed regulations makes them discretionary.

Proposed regulation 9 NYCRR § 8002.3 factors "11" and "12" use the word "may" with regard to the use of the risk and needs assessment instrument and TAP, indicating that use of these instruments is discretionary. To comply with Executive Law § 259-c(4), the procedures must indicate that use of these two instruments, as set forth in factors "11" and "12," is mandatory, and that a parole release decision cannot be made without a risk and needs assessment instrument and a TAP being provided to the Board of Parole.

4) The sentencing court sets the minimum.

The minimum period of imprisonment is set by the court. The proposed amendment of 9 NYCRR § 8002.2 (a) makes it sound as if the minimum is fixed by the Department of Corrections and Community Supervision as it was under the old, and much outdated, regulation.

Thank you for your consideration of these comments.

Very truly yours,

Alan Rosenthal, Co-Director of Justice Strategies

Patricia Warth, Co-Director of Justice Strategies