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John Koury
Director
Administrative Regulatory
Review Commission
State Capital
Albany, NY 12247

CC: Terrence Tracy Esq.
CC: NYS Board of Parole
CC: Corrections Committee

RE: Public Comments
Proposed Rule Making
NYS Board of Parole

January 4, 2013

Dear Mr. Koury,

As an attorney, activist and tax payer, I am outraged by the illegal and unaccountable actions being taken by the NYS Board of Parole, and how they are functioning in NYS at the current time. I believe the Governor should turn his investigatory power of corrupt agencies and illegal actions in this agency's direction. A complete investigation should be conducted as to how there is **no due process** in the Appeals Unit wherein appeals are sloppily reviewed and rubber-stamped. Inmates wait well beyond 120 days to have their issues reviewed and there is a HUGE waste of state funds going on here, where when the agency fails to respond to an appeal, the court system and NYS AG office are clogged up with unnecessary litigation.

This agency has operated outside of the law, and ignores attempts by the legislature and the judiciary to check their abuse of power by continuing to operate

status quo. In October 2011, laws were passed to govern this agency's conduct including that a risk and needs assessment and or TAP plan be used in the parole release decision-making process. Yet despite this change, there were NO written guidelines until the proposed rule-making filed December 2, 2013. Despite filing these proposed guidelines, the Division of Parole continues to maintain the position that the October 5, 2011 memo authored by Andrea Evans served as their guideline and that they are required to do nothing further. This memo is out-dated and cannot even be deemed to represent what must be done at the current time based on current practices being implemented by the NYS Board of Parole and the NYS Department of Corrections. This contention directly conflicts with the testimony given by Andrea Evans and Brian Fischer , then Commissioners at Corrections and Parole to the Corrections Committee at a November legislative hearing in 2011, one month after the memo was written, wherein both parties testified about the processes being undertaken by both agencies in respects to the implementation of the policies etc. for the use of COMPAS risk assessments and TAP.

In December 2013, additional hearings were held wherein Tina Stanford and Anthony Annucci testified again remaining silent as to the filing made on December 2, 2013. In recent court proceedings, this agency continues to maintain that as a government agency they only have to consider "risk and needs". **They indicate there is NO requirement to indicate how they must do so.**

The Directive 8500 recently filed by the DOCCS in August 2013, details that the procedures used in the correctional facilities will involve use of the COMPAS "risk and needs" instrument and the COMPAS Offender Case Plan (taking the place of TAP). Despite being issued in August, these procedures are also being ignored and not fully implemented across the state at all correctional facilities. None of the female clients I

represent have been given a gender-specific COMPAS. Many clients do NOT see their counselors quarterly and the Case plan is NOT being used at all facilities.

Because this risk and needs tool is being used, people who have not had one completed after October 2011, were denied procedural due process in that an evaluative tool being used **for some** which could increase their chances of making a Parole Board was **NOT given to everyone**. In the cases where the clients have an offender case plan, this tool is not being mentioned at the parole board hearings, an inmate status report is still being used and there is NO review of the proposed plans implemented. Correctional staff continues to fail to release these documents to an inmate in enough time for them to review for errors or to ask that the errors made can be corrected prior to their parole board hearing, yet again complicating the whole process and wasting state resources, money and time.

Any parole board hearing where the law was NOT followed was held outside the guidelines of the state law. It was a hearing NOT HELD in accordance to statutory provisions or what was intended by the statutory enactments. Where is the separation of powers here? and why isn't anyone doing anything to make this agency comply with the law? Are we living back in the times of the Wild, Wild West? Where has the system of checks and balances gone?

There is a COMPAS User's Manual which details how these tools must be used. Again, how irrational is it for a Parole Board Commissioners, who are held to the same standard as the integrity of a judge to indicate in Appeals decisions that if the tool wasn't used properly it is harmless error? If the evidence-based tool is not used in accordance to how it must be done, the risk and needs that were assessed were wrong. There are explicit directions on how the criminal history and the instant offense are counted when completing questions 1-12 on the COMPAS tool. Any error in adding up

this data will in fact alter the scores the inmate will receive on the bar graph portion of the assessment.

There are no provisions in the guidelines or the proposed rules as to how the Appeals Unit will address these errors and or their consideration of such. In the cases, the Appeals Unit are currently responding to at the current time, they are indicating they can consider erroneous information and it holds no bearing that the error is harmless. Preparers are sloppily answering portions of the risk assessment instead of looking up answers in the correctional file and indicating they are unsure. The file provides them with information regarding whether the inmate failed drug tests, has family support, is job ready etc.

There must be some remedy for people who are appearing before the Board to have their fate determined to address erroneous information in their file and or have a remedy to make corrections if they provide records indicating such. There isn't. My office has pursued the appeal process of 7 NYCRR 5.50 and the NYS Inspector General's Office has NOT answered any of the appeals which were filed there raising these issues.

Many inmates have tried to file grievances and this has not been an adequate way to deal with issues. Some superintendent's respond indicating there is a parole appeal pending and unless the Appeals Unit issues a decision directing them to correct the information it remains. The problem with this issue is that NO ONE is taking responsibility. It is one thing if a parole board hearing is held and all of the information is correct, it is another when the Commissioners review erroneous information. When this isn't corrected the transcript can be read for every subsequent parole board and may result in several parole board denials based on something that is incorrect. This is

a travesty of justice and a waste of tax payer's money to incarcerate someone not offering a fair hearing.

As we see, there is a growing concern for people who are wrongfully convicted and innocent lingering in NYS prisons. There are NO remedies in the law for them and or for people convicted under the FELONY MURDER RULE. The COMPAS does not address this if the conviction is involving a death there is one category; homicide and there is no place to address the culpability of the offender and or if they maintain their innocence. How is it logical to conclude that that person is at risk for future violence because of their conviction if they were just a get away driver? Or they didn't do it? The current statute fails to include a provision for this consideration. People are told the Parole Board is bound by your conviction; we cannot retry your case here.

Last but not least, allowing the parole board to continually deny release based on the serious nature of the crime, despite decades of incarceration, is irrational. Allowing a decision which is pre-determined and partially typed out, prior to an inmate entering the parole board hearings and then contending this is just a work sheet, is ludicrous! Reciting the statutory language, to preclude any review, because **the Board has discretion** is a travesty and abuse of that discretion. The laws need to be re-written and in a non-vague, manner wherein the legislature mandates the Board to act in an ethical manner allowing people a second chance wherein after serving their minimum sentence, they can have an expectation that their Parole Board hearing is held in accordance to law wherein they are judged by their conduct in corrections and not just the single act that placed them there sometimes as long as forty years ago.

The burden this incarceration state places on our tax payers to hold people in prison so that people can experience job security or escape being badgered on the front page of a newspaper because a political interest group opposes someone's

release is not what was intended when this country was founded. NYS is currently employing criminal justice policies that are unfair, not within the constraints or the law and in violation of due process. Something needs to be done to allow a check of this unbridled discretion, wherein this state has enjoined a modern day implementation of slavery where the law doesn't apply to all people, only the chosen ones. This needs to be abolished.

Sincerely,

Cheryl L. Kates-Benman Esq.