



Working to end solitary confinement
for people with psychiatric disabilities

MHASC

Mental Health Alternatives to Solitary Confinement

Alliance for Inmates with AIDS
AMI St. Lawrence Valley
Association for Community Living
Brooklyn Defender Services
Capital District Center for Independence
CASES
Cephus Attica, Inc.
Coalition for the Homeless
Coalition of Voluntary Mental Health Agencies
Community Access
Correctional Association of New York
Correctional Educational Consortium
Family Justice, Inc.
Howie the Harp Advocacy Center
Human Rights Watch
Jericho Project
Latino Commission on AIDS
Legislative Action Coalition on Prison Health
Mental Health Empowerment Project
Mental Health Association of New York State
Mental Health Association of New York City
Mental Health Association of Suffolk County
Mental Health Association of Westchester
NAMI Buffalo and Erie County
NAMI Central Suffolk
NAMI Champlain Valley
NAMI Chemung & Steuben Counties
NAMI Concerned Citizens for Pilgrim
NAMI Finger Lakes
NAMI Hope
NAMI Huntington
NAMI New York City Metro
NAMI NYC Staten Island
NAMI New York State
NAMI Mid-Hudson
NAMI Ontario, Yates and Seneca
NAMI Queens-Nassau
NAMI Rochester
NAMI Ulster and Dutchess Counties
NAMI Westchester
NASW New York State
New Connections & Rehabilitative Services
NYAPPS
New York City AIDS Housing Network
New York State Defenders Association
NYS Council for Community Behavioral
Healthcare
North Franklin Public Defender's Office
Office of the Appellate Defender
Open Door Club
Prison Families of New York
Project Hospitality, Inc.
Restoration Society
RIPPD
Steps to End Family Violence
Schuyler Center for Analysis and Advocacy
TARA National Association for Personality
Disorder
Thorpe Family Residency, Inc.
Urban Justice Center
Urban Pathways, Inc.
Venture House
Women's Prison Association & Home, Inc

January 31, 2014

By Electronic Mail
terrence.tracy@dockets.ny.gov

Terrence Tracy
Counsel
Board of Parole
The Harriman State Campus - Bldg. #2
1220 Washington Ave.
Albany, N.Y. 12226-2050

**Re: Comment on Proposed Rule-Making “Parole Board
Decision-Making”
I.D. No. CCS-51-13-00013-P**

Dear Mr. Tracy:

Mental Health Alternatives to Solitary Confinement (MHASC) submits these comments on the proposed rule-making governing “Parole Board Decision-Making.” MHASC is a coalition of more than sixty organizations and hundreds of concerned citizens, advocates, mental health and criminal justice professionals, formerly incarcerated people and their family members, working to end the cruel practice of placing people with psychiatric disabilities in solitary confinement and advocating for humane criminal justice policies for people with psychiatric disabilities.

The proposed regulation fails to set out a procedure that incorporates risk and needs principles as required by law.

In 2011, the Legislature passed amendments to the Executive Law governing parole decisions (“2011 Amendments”). Without changing the governing standards,¹ the 2011 Amendments specifically mandate that the Board create procedures for making parole decisions. The new procedures must:

incorporate risk and needs principles to
measure the rehabilitation of persons
appearing before the board, the likelihood

¹ There are two standards that apply. See, Corr. L. § 805 and Exec. L. § 259-i (For people who have received an Earned Eligibility Certificate (“EEC”) and those who have not – both standards require the Parole Board to determine “reasonable probability” of future lawfulness.).

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 supervision.

Exec. L. § 259-c. The 2011 Amendments were enacted because the Board failed to appropriately base its decisions on actual evidence of a “reasonable probability” of future criminal conduct.

The proposed regulations do not fulfill the statutory mandate to create appropriate decision-making procedures that “incorporate risk and needs principles.” Exec. L. § 259-c. The proposed regulations merely tack on two additional factors to the list of factors to be considered. The two additional factors are a risk and needs assessment and the potential parolee’s case plan – currently the COMPAS ReEntry Risk Assessment (COMPAS) and the Transitional Accountability Plan (TAP) instruments. Yet, the regulations do not provide the Parole Board with any instruction as to the weight to be given to either COMPAS or TAP in decision-making about parole release decisions. The failure to affirmatively define the use of COMPAS and TAP relegates these instruments to additional factors for consideration rather than the important reform measures the legislature ordered to improve the Parole Board decision-making process. In addition, we have serious concerns about the ongoing failure to accommodate the needs of parole candidates with mental disabilities and the use of COMPAS in making parole decisions about parole candidates with mental disabilities.

Risk and needs assessments used in parole decision making must be tailored to and validated for use to assess individuals with mental illness.

New York’s use of the COMPAS ReEntry Risk Assessment (COMPAS) for individuals with mental disabilities is troubling. Independent verification and validation of a risk assessment tool is fundamental to its utility. No risk assessment tool is universally applicable; each must be validated in particular settings for particular purposes and particular populations.² Northpointe Institute for Public Management, Inc., the private consulting firm that developed COMPAS, itself warns state department of corrections systems and other users that “discretion may need to be used as to the appropriateness or accuracy of any assessment on a chronically mentally ill person. In some cases no standard assessments may be applicable and may need to rely on the clinical community.”³ Despite this clear warning of its limitations, DOCCS has never tested the reliability and validity of COMPAS on the population of parole candidates with mental illness.

The discretion called for by designers of the COMPAS when assessing people with mental illness is entirely missing from the DOCCS process.⁴ While the COMPAS can be tailored to

² Stephen J. Gottfredson & Laura J. Moriarty, *Statistical Risk Assessment: Old Problems and New Applications*, Crime & Delinquency (Jan. 2006); see generally Tracy.L. Fass *et al.*, *The LSI-R and the COMPAS: Validation Data on Two Risk-Needs Tools*, Criminal Justice and Behavior (2008) (showing COMPAS has inconsistent predictive validity when used with different ethnic and racial populations).

³ Northpointe Institute for Public Management Inc., *COMPAS Risk and Need Assessment System: Selected Questions Posed by Inquiring Agencies*, at 3 (Jan. 14, 2010).

⁴ Thus far, DOCCS has refused to provide information about its use of the COMPAS, such as how it was developed, information regarding scoring, instructions and training for administrators, and how it is used in practice. The Urban Justice Center submitted a FOIL request for this information on May 2, 2013, but has yet to receive any information about the design or validation of the COMPAS.

include parole candidate interviews and guided discussions, the standard practice of DOCCS seems to be to have an administrator fill out a questionnaire of 34 questions, to have the parole candidate fill out another questionnaire of 40 questions, to input the answers into the computer program, and to retrieve the risk score.

Other New York agencies use versions of the COMPAS which are more tailored to individuals with mental illness. For example, the COMPAS-Probation Risk and Needs Assessment, used by probation departments throughout New York State, has much more extensive inquiries about mental health status of the person evaluated. The COMPAS-Probation Risk and Needs Assessment is comprised of 95 questions, seven of which concern mental health. Moreover, the probation departments use, in conjunction with the COMPAS, a separate risk assessment tool specifically designed for offenders with mental health problems.⁵

The requirement that the Parole Board base its decisions on actual evidence of a “reasonable probability” of future criminal conduct is not satisfied by the use of the invalid and unverified COMPAS on individuals with mental disabilities.

Parole must accommodate the needs of parole candidates with mental disabilities

The Board of Parole does not inform parole candidates with disabilities that they can request reasonable accommodations to the Parole Board’s practices and procedures pursuant to the Americans with Disabilities Act (ADA). Nor have the Department of Corrections and Community Supervision (DOCCS) and the New York State Office of Mental Health (OMH) developed any procedures for providing accommodations at the parole board interview. Many parole candidates with mental disabilities have symptoms which affect the manner in which they interact with other people. Symptoms of such disabilities can be misinterpreted to undercut an individual’s credibility and level of remorse and limit one’s ability to present reasons for release persuasively. In addition, individuals with mental illness may be unable to develop a release plan and present it to the Board without assistance.

Neither DOCCS nor OMH provide individuals with mental disabilities with accommodations that would allow them equal access to the parole process. There is no process in place to determine the severity of the individual’s disability, whether it will negatively impact on the discretionary release determination, and, if so, how an accommodation would alleviate such negative impact based on disability. In certain cases OMH may submit a mental status report in advance of the parole interview. However, OMH does so *only* at the request of parole staff. Most significantly, the mental status report does not set forth a plan for the individual to receive mental health treatment and services in the community. The OMH pre-release coordinators only begin developing a discharge plan *after* the individual has been approved for parole. The Parole Board considers an individual’s release plan in its release determination. Therefore, individuals with disabilities must be provided the necessary assistance to formulate such plans. The failure to provide such assistance to individuals with mental disabilities is a failure to provide a reasonable accommodation in accordance with the ADA.

⁵ See, Sharon Lansing, Division of Criminal Justice Services, *New York State COMPAS-Probation Risk and Need Assessment Study: Examining the Recidivism Scale’s Effectiveness and Predictive Accuracy*, at 21-28 (2012).

Parole commissioners must understand the challenges that individuals with mental disabilities experience while in prison and how an individual's disability may affect his or her life after release. Commissioners must be aware of the limited mental health treatment options available to incarcerated people and the oft times punitive response of DOCCS and OMH staff to symptoms of mental illness and behavioral issues. Without this knowledge, they cannot properly assess prison records and how they may reflect the presence of mental disability and the problems for individuals with mental disabilities that are due to the prison environment. In addition, in evaluating a parole candidate's post-release plan, parole commissioners must be knowledgeable of means to successfully reintegrate individuals with mental disabilities into the community. Without this knowledge, they may inappropriately deny release based upon factors that are related to the individual's disability. For example, failure to secure employment should not bar release when a mental disability prevents a person from working.

Conclusion:

The proposed regulations purport to set out procedures for parole decision-making as required by the 2011 Amendments. They do not. The regulations must be more explicit in order to appropriately guide the Parole Board and avoid failures to consider risks and needs appropriately. The determination of "reasonable probability" of future criminal conduct must be based on appropriate evidence-based practices that incorporate information from valid instruments that are validated for the various populations in DOCCS custody including individuals with mental disabilities. New York should modify the proposed procedures to ensure parole decisions incorporate risk and needs based inquiries in accordance with the 2011 Amendments.

Thank you for your consideration of these comments.

Sincerely,

MHASC Coalition
c/o Urban Justice Center
123 William Street, 16th floor
New York, NY 10038
(646) 459-3047
hfitzgerald@urbanjustice.org