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Board of Parole
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NYS Catholic Conference Criminal Justice Committee Comments
re: Notice of Proposed Rule Making, 9 NYCRR, Part 8001 and Sections 8002.1(a) and (b), 8002.2(a)
and 8002.3

Terrence X. Tracy, Esq.:

We are pleased to have this opportunity to submit comments on the NYS Parole Board's proposed regulations that were published in the New York State Register on December 18, 2013. The Criminal Justice Committee of the NYS Catholic Conference has been in existence for almost four decades. Some of the impetus for the establishment of the committee was the concern of the Catholic Church regarding conditions that led to events at Attica C.F. in the early 1970's. For many years there has been great concern about the lack of predictability in the parole process. We had hoped that the publication would help to provide greater clarity.

Rules governing the parole process that were amended in 2011 go back to 1978 when the Board was still setting minimum periods of incarceration. That provision changed in 1980, but the statute governing factors to be considered in the parole process remained the same. Executive Law 259i enumerates the factors that must be considered in release determinations. However, it remained at the Board's discretion to determine what weight to give to any factor. In 2011 the Executive Law was amended requiring the Board to "establish written procedures for its use in making parole decisions." The procedures that are before us are intended to satisfy that requirement. We view the proposed changes as an important first step, but believe they do not provide the degree of clarity that would make the parole release process more predictable and transparent.

The amendments that were made in 2011 added two new factors to be considered; current risk assessment as measured by an objective instrument and evaluation of adherence to individual case management plan addressing program and treatment needs during period of incarceration. Once again there is no direction given regarding the weight to be given each factor. We believe that the parole release decision should be based on a dynamic assessment of an individual's readiness for release. There are only a limited number of individuals whose instant offense and prior criminal history would disqualify them for release and in those instances it should be possible to clearly articulate those reasons in non-conclusory terms.

When an individual appearing before the Parole Board has an evaluation that indicates a low risk of reoffending and has participated in programs and treatment as directed, in accordance with plan developed starting at reception, they should have a presumption of release. In order to rebut that presumption the Board should be required to review and consider the sentencing minutes. It is not the Board's role to substitute their judgment for the sentencing court and particularly in cases where the court has sentence to the statutory maximum these minutes may shed light on the view of the court at the time of sentencing. Protection of society and advancing respect for the law are roles of the Parole Board that can be best achieved by following clear and predictable guidelines.

Sincerely,

Dennis J. Duprey

Msgr. Dennis Duprey, Chair
NYS Catholic Conference
Criminal Justice Committee