

January 31, 2014

*Via Email To:*

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Parole Board  
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And

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

Dear Sirs:

Please accept my public comment 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.

My husband, Herman Bell, has been incarcerated in the prisons of the State of New York for nearly 35 years. He has been to the Parole Board 5 times and been denied 5 times. He has a very impressive record that he presents each time to the Parole Board, including having achieved both a Bachelor's and Master's degree while imprisoned, obtaining his paralegal certificate, coaching football and basketball, tutoring and mentoring, having job offers on the outside despite his age of now 66 years, and having abundant and long-term family and community support on the outside. He has a very low risk score on the Risk and Needs Assessment form, indicating his very high likelihood of living a successful, crime-free life on the outside. In addition, his advanced age and long years of imprisonment put him into the category of a very low recidivism rate (less than 1%). Nevertheless, he continually experiences denials at his parole hearings because, the Board says, to parole him would deprecate the serious nature of his charge of conviction. In spite of his over 3.5 decades of imprisonment and clear demonstration of rehabilitation, the Parole Board continues to say he is a serious threat to the community. My husband is not alone – this is what happens to thousands of people, including elders, who go to the Parole Board. In effect, these people, who have worked so hard for so many decades to improve their lives – much more hard work and dedication than could be shown by the average citizen to improve his or her life – these prisoners are being de facto resentenced by the Parole

Board to life without the possibility of parole. This de facto resentencing is both unlawful and immoral.

The Board's proposed regulations *do nothing* to correct the Board's failures, despite legislative amendments requiring the Board to focus on risk and needs principles and rehabilitation factors. The Board's regulations should require the Board to base its decisions on evidence-based factors and release people who have demonstrated low risk or rehabilitation and readiness for reentry.

The elderly population in New York State prisons has increased by over 73% in the past 12 years, while the overall prison population has decreased by around 22%; yet the recidivism rates for new commitments are only 5.2% for those between 50 and 65 and .6% for those over 65 years of age. What's more, elderly prisoners should not even have to come to the Parole Board with job offers. It's ridiculous to assume that they would be considered as viable employment candidates on the outside. Yet in spite of this fact, my husband – and many other prisoners of advanced age – continue to somehow manage to find employment offers to present to the Board, only to be continually denied on the basis of their charge of conviction, which they cannot change, and then given another 2-year hit.

New York, like so many other states, is economically under water. Millions of its citizens are suffering continual deprivations of basic rights to health care, education, adequate housing, etc., due to constant budgetary cutbacks. The cost of imprisoning millions of people is astronomical, and the waste of imprisoning many thousands of people who could survive successfully on the outside is unconscionable and deeply hurts multitudes of New York's citizens. The cost to families of prisoners is continually compounded – family members have to pay dearly simply to travel to visit their loved ones, pay telephone bills to maintain family ties, send food packages to supplement the inadequate diets given to their imprisoned loved ones, and manage to survive on the outside without the income their imprisoned loved ones could be providing, not to mention the love, companionship, and mentoring their loved ones could be providing on a daily basis to their family members.

Following are some examples of specific language that could be included in the Board's Regulations:

\*A parole applicant's most current risk and needs assessment instrument and Transitional Accountability Plan ("TAP")/case plan shall be the mechanisms for weighing the factors listed in Executive Law section 259-i(2)(C)(A) and for determining whether there is a reasonable probability that if a parole applicant is released, s/he will live and remain at liberty without violating the law and that his or her release is not in compatible with the welfare of society and will not so deprecate the seriousness of his or her crime as to undermine respect for the law.

Public Comment by Nancy Jacot-Bell  
January 31, 2014  
Page Three

\*Age of 50 at the time of application for parole release and 15 years of non-interrupted incarceration shall be given a weighted presumption of release.

\*An applicant who has a low risk score *or* who has substantially participated in her or his TAP/case plan activities or who has a certificate of earned eligibility shall be released unless exceptional circumstances exist as to warrant denial of release.

\*If an applicant is denied release because of exceptional circumstances, the Board must provide in writing substantial and compelling reasons why such exceptional circumstances warrant denial. An applicant's crime of conviction or past criminal history, in and of themselves, may not constitute the requisite exceptional circumstances, and may not form the predominant basis for release denial.

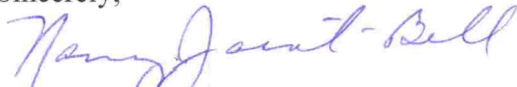
\*For any applicant who is denied release, the Board shall provide specific written instructions as to the steps the applicant needs to take in order to obtain release.

\*For any applicant with a presumptive right to release pursuant to a certificate of earned eligibility, the Board shall specify the bases for rebutting the presumption of release in cases where parole is denied.

\*Any applicant who has successfully participated in temporary work release shall be released at her or his next parole hearing date.

It's time for the Parole Board to justify its existence and create some regulations that will parole men and women who have demonstrated – over and over again – their great likelihood of leading positive and successful lives on the outside. To do otherwise in reality sends the citizens of New York the message that the Parole Board is focused merely on revenge and capitalizing on the warehousing of human beings who have paid their debt to society. The above examples for the Board's Regulations are most do-able. Thank you for your consideration of my comments.

Sincerely,



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