

centerforconstitutionalrights
on the front lines for social justice

January 31, 2014

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

Terrence X. Tracy, Counsel
Dept. of Corrections & Community Supervision
Board of Parole
The Harriman State Campus – Bldg. #2
1220 Washington Ave.
Albany, N.Y. 12226-2050

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 Mr. Tracy, as well as Chairwoman Stanford and Members of the Board of Parole:

Please accept this letter as public comment submitted on behalf of the Center for Constitutional Rights 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.

The Center for Constitutional Rights (CCR) is a national not-for-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR has a long history of advocacy on behalf of people in prison, challenging inhumane conditions of detention and fighting for access to fair designation in determining where prisoners are housed and what restrictions are placed upon them. CCR also provides self-help legal manuals to people in prison to ensure their human rights are protected while incarcerated. Consistent with its commitment to constitutional and international human rights principles, CCR remains steadfast in its belief that people in prison should be afforded the opportunity to take responsibility for their crimes and meaningfully participate in their own rehabilitation so that upon release they may become contributing members of the families and communities that support them while they are imprisoned.

CCR is concerned about the frequent parole denials conferred by the Board and the lack of corrective action concerning the Board's past decisions in regards to the proposed regulations. The Board regularly fails to release people who are "low risk" to society according to evidence-based assessment scores; who have demonstrated their rehabilitation; who have participated in release programs and other institutional endeavors; who have well-prepared release plans; and who are elderly. Instead, the Board has favored the weighting of the original crime and a person's criminal history regardless of any such dynamic factors.

In 2011, Amendments to Executive Law § 259-c(4) required that the Board “incorporate risk and needs principles” into its written procedures. Yet the proposed regulations view risk and needs assessments as simply one of twelve factors for review and neither specify how to weigh these assessments in review decisions nor require that each parole decision include an updated risk assessment. Risk and needs assessments should be the *major* factor in determining who should be granted parole; otherwise, those in prison are stuck in a protracted rehabilitation process without ever having assurance of their release.

Prolonged separation from families and the arbitrary and inconsistent parole denials that result in continued incarceration effectively amount to human rights violations. As legal practitioners and advocates of international human rights law, CCR believes it is especially timely that the Board revise its guidelines to be in accordance with human rights principles, as the United States will be reviewed for its compliance under the International Covenant on Civil and Political Rights (ICCPR), a treaty to which it is party, in March 2014. The ICCPR affirms that arbitrary parole denials that do not take into account prisoners’ rehabilitative histories and other dynamic factors constitute human rights violations. Parole practices must comply with Article 9 of the ICCPR, which states, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”¹ Arbitrary detention has been determined to include “elements of inappropriateness, injustice, lack of predictability.”² As such, the decision of whether or not to grant parole, as well as the determination of parole conditions, must be exercised in accordance with the law. In a discretionary release system such as New York State’s, this means that the criteria for conditional release should be clear and explicit.³ International law also indicates that prisoners should be moved to a noncustodial setting as soon as is practicable and that reviews should take into account individual circumstances and be consistent with the principles of justice and fairness.⁴ In addition, international law has concluded that prolonged detention without the opportunity for release – and sentences that effectively result in life without parole due to perpetual parole denials – constitute human rights violations of torture and inhuman or degrading treatment or punishment and violate the right to human dignity.⁵

¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, *available at*: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [hereinafter ICCPR].

² Van Alphen v. the Netherlands, Communication No. 305/1988, CCPR/C/39/D/305/1988, UN Human Rights Committee (HRC), 23 July 1990, para. 5.8, *available at*: http://www.worldcourts.com/hrc/eng/decisions/1990.07.23_Van_Alphen_v_Netherlands.htm.

³ American Bar Association Rule of Law Initiative, *Handbook of International Standards on Sentencing* (2010), 24.

⁴ Eur. Parl. Ass., Council of Europe Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), 853rd Sess. (September 24, 2003), *available at*: <https://wcd.coe.int/ViewDoc.jsp?id=70103> [hereinafter Council of Europe Recommendation]; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990), *available at*: <http://www1.umn.edu/humanrts/instree/i6unsmr.htm>.

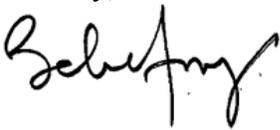
⁵ Vinter and Others v. the United Kingdom, App. Nos. 66069/09, 130/10 and 3896/10 (Eur. Ct. H. R. July 9, 2013, *available at*: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-122664#%22itemid%22:%22001-122664%22>}; [hereinafter Vinter v. UK]; Lebenslange Freiheitsstrafe (Life Imprisonment), 45 BVerfGE 187 (June 21, 1977), *available at*: <http://www.hrcr.org/safrica/dignity/45bverfge187.html>.

International law views incarceration as reform-oriented rather than punitive. According to Article 10 of the ICCPR, “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”⁶ Accordingly, parole reviews should be an opportunity for prisoners to gain sentence reductions or release through demonstrating their rehabilitation, and release opportunities should be encouraged.⁷ Reviews should take into account special considerations such as age, health, and length of sentence in determining whether to release prisoners.⁸ If parole is denied, there should be a clear process for appeal as well as specific instructions to guide prisoners on how to successfully earn their release at the next hearing.⁹

We therefore urge the Board to revise the proposed regulations and include language that prioritizes risk and needs assessments and requires consideration of age, length of incarceration, health conditions, participation in rehabilitative programs, and other dynamic factors in parole decisions. We also urge the Board to include language that allows for a clear and timely process for appealing parole denials and that requires written explanation for parole denials because of exceptional circumstances. CCR believes that people in prison have a right to human dignity and to be able to engage with their families and communities, which must be guaranteed through the Board’s actions in ensuring these rights when legislating parole guidelines.

Thank you for the opportunity to share our concerns with the proposed regulations, and for your consideration of our comments.

Sincerely,



Baher Azmy
Legal Director
Center for Constitutional Rights

⁶ ICCPR, *supra* note 1. See also Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), *available at*: <http://www1.umn.edu/humanrts/gencomm/hrcom21.htm> (“No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner.”); United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), *available at*: http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf [hereinafter UN Standard Minimum Rules].

⁷ Council of Europe Recommendation, *supra* note 4.

⁸ War Criminal case, 72 BVerfGE 105 (1986); Vinter v. UK, *supra* note 5; The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, Pan-African Conference on Prison and Penal Reform in Africa, Ouagadougou, Burkina Faso, (Sept. 18-20, 2002), *available at*: <http://www.achpr.org/instruments/ouagadougou-planofaction>; Council of Europe Recommendation, *supra* note 4.

⁹ UN Standard Minimum Rules, *supra* note 6; Council of Europe Recommendation, *supra* note 4.

cc: John Koury, Director
NY Senate Administrative Regulations Review Committee
State Capitol
Albany, NY 12247
JKoury@NYSenate.gov

Mujahid Farid, Release of Aging People in Prison Campaign
Correctional Association of New York
2090 Adam Clayton Powell Jr. Blvd. #200
New York, NY 10027
MFarid@correctionalassociation.org