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Napanoch, NY 12458-0338

Monday, January 27, 2014

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

Re: Public Common, Notice of Proposed Rule Making, 9 NYCRR, Part
8001 and Section 8002.1(a) and (b), 8000.2(a) and 8002.3

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

Please accept this 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.

EVOLUTION

A process of change in a certain direction:

Born in 1965 and growing up I remembered the black & white
television set, the rotary dial telephones, the station wagon,
skippy sneakers, eye glasses frames, and much more. And here we
are nearly 50 years later and the evolution of these aforesaid
items has changed into a direction to created appealing, comfort
and most important due to the evolve of the human race ways. All
is determined, simply by compiling data, such as, studies,
statistics and survey, with a mind set to propalled the human
race forward to a better future, socially and economically.

One example of changes are founded in three ruling made by the
U.S. Supreme Court since 2005 including Miller v. Alabama, have
suggested that the brain of teenagers doesn't developed
sufficiently by the age 16 or 17 to adequately comprehend
responsibility for criminal behavior, and there are countless of
scientific studies done by experts that confirmed it.

In Governor Cuomo's State Address, he is backing an increase in
the age of criminal responsibility to 18 from 16, and stressed
that the juvenile justice laws are outdated. I strongly opined
that this new understanding in the developing of a juvenile's
mind, that it will changed the way they are punished, whether by
the criminal justice system or at home, a positively changed.

The Division of Parole has beened providing public services to
the people of New York State, since its establishment in the

Executive Department on July 1, 1930. Jurisdiction over releases from training schools and correctional institutions for mentally disabled prisoners was added to the Parole Board's authority in 1945.

A 1967 law extended the Boards' release authority to person incarcerated in local reformatories, transferred the functions of the New York City Parole Commissioner to the New York State Division of Parole and gave the agency control over the conditional release of inmates under definite sentences.

In 1971, the Division of Parole was consolidated with the Department of Corrections to form the Department of Correctional Services. In the wake of the Attica Prison riot and demands from the courts and other quarters that the procedural rights of releases be protected, the Division was again established in 1977 as an autonomous agency within the Executive Department. The same reform act mandated adoption of formal release guidelines to eliminate any perception of arbitrariness.

A 1978 law made the Division of Parole responsible for determining the appropriateness of releasing juvenile convicted of certain serious felonies and for their post-release community supervision. With the surge in State incarcerations in the 1980s and 1990s, the Division of Parole expanded significantly, as did the array of substance abuse treatment and other services available to help releaseses maintain a law-abiding life style.

The Sentencing Reform Act of 1998, commonly referred to as "Jenna's Law," added a new dimension to the Division through the elimination of discretionary release for all violent felony offenders while mandating court-imposed period of post-release supervision of 1½ to 5 years that the offender must serve after completing the period of incarceration imposed by the court.

The 2011 Executive Budget Law included the creation of the Department of Community Supervision by merging the Department of Correctional Services with the Division of Parole, again and since its creation, the core mission of the Division has remained consistent and unchanged - to protect public safety while supervising releaseses in the community and working closely with them to ensure their successful and productive re-entry into society.

In the 80s and 90s the prison population surge to about 70,000, then it began to decline to about 56,000 today, evidence of changes, but not in parole release for certain applicants who served long sentencing for the most serious crimes that have a recidivism rate of 13% - lower than any other category- yet far too often are denied release based on the nature of their crime. Furthermore, the elderly population in NYS prisons has increased by 73% in the past 12 years while 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 65+.

These statistics are solidifying facts that the human mind continues to change and maturing as we aged. People, places and things change, whether it takes a minute, a hour, a day, a month or a year, the common denominator is that change is inevitable, and when people have changed for the good of humanity, it should be duly noted and rewarded. Therefore, parole board decisions should be based on evidenced-based, dynamic, forward-looking factors related to people's rehabilitation while incarcerated, current readiness for reentry and assessed to risk level.

This brings me to the New York Executive Law §259i(2)(c), this section provides in pertinent part: "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not so deprecate to the seriousness of his crime as to undermine respect for law." This section is antiquated and written with ingredient words that defined a particular era in the past and not align with today's changes in society or with the criminal justice system.

For instance, the part that says that parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined, is going against what public safety really means because when a violent offender who does not take the time to change their behavior then society is not safe. On the flipped side of the coin, if that violent offender behaves and completes school, vocational programs, and much more, statistics has shown that they are less likely to return back to prison, which means that they are behaving and living at liberty without violating the law and that equals to a safe society.

Also the word "not" can convey a negative perception to offenders that want to change their lives, that although if you behaved it does not mean anything. Words are powerful and negative words (Not) doesn't coincide with positive actions (Good Behavior).

In other areas of this section such as reasonable probability, remain at liberty without violating the law, ect., is going against the new implemented factors. In a criminal court if these facts are not proven by evidence then the case is dismissed. Also, the parole appeal process should be fixed because it takes too long and in many cases nearly 2 years, considering if one has to use an Article 78 or the Appellate Division appeal process.

Furthermore, the deliberation operation just before a decision is rendered be recorded, so that the law be adhered and be conducted without bias or personal feelings. And last, that rather than given the applicants file folder to the commissioner

the on the day before or on the day of the hearing, it should be provided to the commissioners at least 7 to 10 days in advance, so that they may be able to absorb the complete record with out haste and have time to communicate with the applicant's programmed area civilian or officer, which can be achieved simply by video conference.

In conclusion, history has it that laws were made to protect, that is why our Fore-Fathers confabulated and the Constitutions were born, and amended as time went by, due to changes. To continued to punished a changed person for his/her past actions, one who has redeemed themselves, is like sentencing and condemning a innocent person to death.

Thank you for your time, attention and consideration in this matter.

Sincerely,

Rafael R. R. R.

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