

PUBLIC SAFETY CROSSROADS

By Joseph Robinson

In his 2011-2012 Executive Budget, Governor Cuomo added refreshing language to parole statutes so that they now seek “to measure the rehabilitation of persons appearing before the board, [and] the likelihood of success of such person upon release...” [Newly amended Executive Law §259-c(4)]

Unfortunately, any discussion about the state of parole in New York doesn’t end there. Instead, it gets more complicated. Despite the addition of the progressive amendments, the parole board stubbornly clings to Pataki-era policies and practices that systematically deny parole to those bearing the scarlet label of A-1 violent felony offender. While the board is to now use validated risk and needs assessment principles and an accompanying instrument—and to consider both the rehabilitation of persons appearing before the board and their likelihood of success upon release—it has retained its statutory mandate to also consider the “seriousness of the offense.”

The situation is mired in “...a contradiction that the parole board will find very difficult to conceptually reconcile,” as Alan Rosenthal and Patricia Warth, co-directors of the Justice Strategies division at the Center for Community Alternatives, have noted.¹

In short, New York State is at a public safety crossroads.

One need only read Parole Board Chairwoman Andrea Evans’ memo of October 5, 2011 to come away with the sad realization that little would improve. Her memo to parole commissioners plainly states that despite the recent amendments to Executive Law §259-c(4), commissioners should “...know that the standard for assessing the appropriateness for release, as well as **the statutory criteria you must consider has not changed through the aforementioned legislation.**” (Emphasis added)

Statistically, individuals convicted of murder—historically and consistently the **least** likely of all offenders to commit a new crime upon release from prison—were granted parole at the dismal rate of about 4 percent in the period since the new law came into effect, down from about 10 percent in each of the two previous years.

In a New York Law Journal article published April 30, the writer John Caher put the parole conundrum in context, and explained that “part of the problem is that there is uncertainty about why the statute was changed and what the revision was supposed to achieve.”² He was referring to the fact that no executive or legislative memorandum was attached to the statute to provide explanation or justification. But perhaps none was warranted when, “measuring the rehabilitation of persons appearing before the board and the likelihood of success of such persons upon release” means precisely that. (See McKinney’s Statutes §76, §94 and §96)

¹ Rosenthal, Alan. 2012. “New York State Still in Need of Parole Reform.” Atticus, Volume 24 Number 1, Spring 2012. New York State Association of Criminal Defense Lawyers.

² Caher, John. April 30, 2012. “Effect of Risk Assessment Rule on Parole Decision is Unclear.” New York Law Journal, pps. 1,9.

At the end of the day, the old backward-looking, static factors used to determine parole release—like “nature of the crime”—vitate new future-focused factors like risk and needs assessments, rendering the progressive amendments to Executive Law §259-c(4) irrelevant.³ How else to explain the markedly declining parole release rates for the category of offenders with the best track record, not only while incarcerated but also on parole?

This appalling trend flies in the face of logic, common sense and the intent of the new mandate requiring that rehabilitation and likelihood of success be measured.

To be sure, the declining release rates are inextricably tied to the **fear** that drives parole board decision-making—fear of the notion of violent crime and fear of screaming tabloid headlines should the board decide to release so-called “violent criminal offenders.” As a result, concern over public opinion about violent crime too often trumps fairness and public-safety realities.⁴

In the popular imagination, “violent criminal offender” is synonymous with “high risk.” According to this thinking, once a violent offender, always a violent offender. The very thought of releasing incarcerated men and women who bear this scarlet label conjures up images of violent crime and fears of imminent danger. Freeing them is widely viewed as putting society at great risk.

Because of these pervasive yet misguided fears, many people readily accept the politically and economically motivated lock-’em-up-and-throw-away-the-key policies that have held hearts and minds captive over the past thirty-five years.

The blind assumption is that people who have committed violent crimes pose a higher risk to society than those who are guilty of so-called nonviolent crimes. But, in fact, violent offenders—especially those convicted of murder and manslaughter—pose a **much lower public safety risk** than nonviolent offenders. Once released, violent offenders seldom return to prison for a new crime. Since the recidivism rate is the standard by which failure is usually measured in the criminal justice system, it behooves the parole board to factor into its decision-making process the comparative release and return rates of a broad cohort of violent and nonviolent offenders.

Nothing short of a Commission on Parole can adequately hold the parole board accountable and address a history of decision-making that is driven by unfounded fear.⁵ Several recent court cases bear out the need for such a commission, including *Matter of Thwaites v. NYS Board of Parole*, *Matter of Velazquez v. NYS Board of Parole*, and *Matter of Hamilton v. NYS Board of Parole*.

Simply put, we need to stop tinkering with the parole statutes and, once and for all, initiate a thorough system-wide analysis and overhaul of the parole board. Through an Executive Order, Governor Cuomo should establish a temporary bi-partisan Commission on Parole to bring about transparency, accountability and public confidence in the board. Commission members would

³ *Id.* footnote 1.

⁴ Robinson, Joseph. 2007. “Redefining Risk: A Quantitative and Qualitative Approach,” p. 18.

⁵ Second Look Think Tank. February 18, 2012. Written recommendations presented to the 41st Annual Legislative Conference of the NYS Association of Black and Puerto Rican Legislators, Albany, NY

comprehensively study and evaluate parole release considerations and decisions, and determine their public safety implications. They would also be charged with presenting to the Governor actionable recommendations relating to the following:

1. Establishing definitive criteria to determine the "current" level of high, moderate or low risk that a parole-eligible person poses to public safety
2. Preparing and presenting to the Governor an annual performance-based Public Safety Report Card
3. Developing, promulgating and implementing best evidence-based policies and practices that conform to Penal Law §1.05(6).
4. Determining the parole board's degree of compliance with the 2011 amendments to Executive Law §259-c(4)
5. Removing "nature of the crime" from the parole board's consideration, as the sentencing court has already taken this factor into consideration
6. Investigating, on its own initiative, complaints against individual parole board commissioners and, where appropriate, censuring a commissioner or removing him or her from the board, subject to the Governor's review
7. Determining whether a permanent Commission on Parole with continuous oversight responsibilities is necessary in order to ensure a lasting effect on parole board policies and practices

If New York State is to seriously address the twin issues of public safety and successful reintegration, we must take a hard, evidence-based look at the parole board's entire operation. A Commission on Parole would serve this important end.

Joseph Robinson leads Second Look Think Tank, an approved policy group at Sullivan Correctional Facility in New York State that researches, analyzes and proposes policy on parole issues. He is certified in legal research and law library management and has authored or co-authored a number of NYS parole-related white papers, including "Redefining Risk: A Qualitative and Quantitative Approach;" "Realizing Successful and Productive Reentry and Reintegration: A Proposal for Revising New York State's Division of Parole's Guidelines Application Manual;" "Policy Recommendations for the Division of Parole's Back-End Staff Training;" and "Reintegrative Sentencing: A Collaborative and Holistic Approach to Public Safety and Successful Reintegration in New York State." He is also the author of the well-received book, *Think Outside the Cell: An Entrepreneur's Guide for the Incarcerated and Formerly Incarcerated*. (Resilience Multimedia)