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Policy Report: An Analysis of Current NYS Parole Policy
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TABLE OF CONTENTS

ABSTRACT

In New York state based on former Governor Pataki's unwritten parole policy regarding, "end parole for violent felons", there has been an increase in arbitrary and capricious decisions rendered by the NYS Parole Board in denying parole to otherwise qualified individuals. The current statistics for parole releases for A-1 felons in 2005, were 3% as reported by John Caher in the NY Law Journal (Caher, 2006). The rate is astonishingly lower in people that took charges that probably were reached by a plea bargain, i.e.; manslaughter at a shocking 2% (Caher, 2006). The parole release rates dropped significantly where the former Governor took office as demonstrated in the statistics from previous years. The rates for the year prior to Governor Pataki taking office were 2/3rd of people appearing for an initial appearance, meaning 1 of 4 (McCarthy, 2002) The rate now is 1 of 25 (McCarthy, 2002).

These denials are being rendered using only one part of the statutory scheme intended to govern parole release found in NYS Executive Law 259 (i). The Parole Board is ignoring the entirety of the statute and basing their decisions solely on the offender's serious nature of the crime. This is a factor that does not change and often occurred decades before the inmate underwent rehabilitation in the NYS Department of Corrections.

The statute as it is written in NYS Executive Law 259 (i), does not distinguish how an inmate is to be judged on their suitability for release based on the type of crime committed. There is no distinction whether the crime was petit larceny or murder, the standard is still the same. People that have been convicted of murder are not excluded as being eligible for parole release. There also is no distinction in the statute between

inmates that were convicted of the crime by way of plea bargain as opposed to a conviction being reached by a jury or trial verdict. However, the statistics indicate a drastic change has occurred in the release rate of individuals that were convicted of a violent crime under the previous government administration of Governor Pataki.

The current policy presents a problem in that the criminal justice system is being disheveled by the NYS Parole Board due to the discretion they are allowed in the current statutory scheme granted by the NYS Legislature. Violent felony offenders are being singled out by the Parole Board and their sentences are being extended and enhanced. Legal re-dress is rarely available as the NYS Parole Board is deemed a quasi-judicial body by the legislature. The courts are placed in a position, despite the alleged separation of powers between executive and judicial branches, to ignore the unfair practices that are taking place. This phenomenon is all auspiced under the current legislation.

This problem is extremely troubling. Individual's who entered into a plea bargain have surrendered constitutional rights in exchange for entering into a plea bargain only to have the imposed contract ignored by the NYS Parole Board. These individuals are not released upon completion of their minimum sentences. In fact, in many cases their sentences are extended long beyond the sentence they would receive in the event they proceeded to trial and lost. The result of this problem is the plea bargain as we have known it is extinct. There is no longer a benefit entering a plea for the defendant because the Parole Board can ensure that they serve long beyond the agreed upon minimum term.

Recently a class action lawsuit was filed, Graziano v. Pataki, in a federal court alleging constitutional violations in regards to the NYS Board of Parole and its practices.

This issue is of fundamental importance to NYS administration in that the complaint is currently in the process of being amended to include the Spitzer administration as a party.

This policy analysis will include the applicable statutes, a legal analysis, the history and theories of incarceration in NYS, the history of parole in NYS, an analysis of the problem, and suggestions for alternative solutions.

EXECUTIVE SUMMARY

The U.S. sends more people to prison for longer terms than any other Western country (Diminitz, 1983). Currently, there are approximately 1.3 million incarcerated people in the United States (Petersilia, 2001). Sentencing reform has caused the system of parole to change which is the least researched area of corrections (Petersilia, 2001). Prior to the sentencing changes, Parole Boards had wide discretion in determining release (Petersilia, 2001). In 1977 prior to the changes in sentencing laws, 72% of all inmates appearing before the Board were released (Petersilia, 2001). In 1997, that number changed to 28% (Petersilia, 2001). As discussed later, the release rate has astronomically and drastically been reduced for violent felons. When rendering decisions, the Parole Board is ignoring the entirety of the statute and basing their decisions solely on the offender's serious nature of the crime. This is a factor that does not change and often occurred decades before the inmate underwent rehabilitation in the NYS Department of Corrections.

As written in NYS Executive Law 259 (i), the statute does not distinguish how to judge an inmate on their suitability for release based on the type of crime committed. There is no distinction between the crime of petit larceny or murder, the standard is still the same. People convicted of murder are not excluded as being eligible for parole

release. There is no distinction in the statute between inmates that were convicted of the crime by way of plea bargain as opposed to a conviction being reached by a jury or trial verdict. However, the statistics indicate a drastic change occurred in the release rate of individuals convicted of a violent crime under the previous government administration of Governor Pataki.

Currently the legislative statutes governing parole release are as follows:

NYS Executive Law § 259 (i) (2) (c) (a):

"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 incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for the law." The Parole Board shall consider:
(I) The institutional record including program goals and accomplishments, academic achievements, vocational, educational, training or work assignments, therapy and interpersonal relationships with staff and inmates;
(II) Performance, if any, as a participant in a temporary release program;
(III) Release plans including community resources, employment, education and training and support services available to the inmate;
(IV) Any deportation order issued by the federal government against the inmate while in the custody of the Department of Correctional Services and any recommendation regarding the deportation made by the Commissioner of the Department of Correctional services pursuant to Section One Hundred Forty-Seven of the Correction Law;
(V) Any statement made to the Board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated. The Board shall provide toll-free telephone access for crime victims. In the case of an oral statement made in accordance with subdivision one of Section 440.50 of the Criminal Procedure Law, the Parole Board member shall present a written report of the statement to the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person. Such statement submitted by the victim or victim's representative may include information concerning, threatening or intimidating conduct towards the victim, the victim's representative, or the victim's family, made by the person sentenced and occurring after the sentencing. Such information may include, but not be limited to, the threatening or intimidating conduct of any other person who or which is directed by the person sentenced." Executive Law § 259 (i) (2) (c) (a)

The Board must also consider:

"(1) Seriousness of the offense with due consideration to the type of sentence, length of sentence, and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre- sentence report as well as any other mitigating factors and activities following arrest and prior to confinement.
(2) Criminal history, including nature and pattern of offenses, adjustments to previous probation and parole and the adjustment to confinement." NYS Executive Law § 259 (i) (1) (a)

GENERAL PROVISIONS FOR COURTS EVALUATING PAROLE BOARD DECISIONS

The current policy presents a problem, the criminal justice system is being disheveled by the NYS Parole Board due to the discretion allowed in the current statutory scheme granted by the NYS Legislature. Violent felony offenders are singled out by the Parole Board and their sentences are extended and enhanced. Legal re-dress is rarely available as the NYS Parole Board is deemed a quasi-judicial body by the legislature. The courts are placed in a position, despite the alleged separation of powers between executive and judicial branches, to ignore the unfair practices taking place. This phenomenon is auspiced under the current legislation.

It is well-governed precedent that the NYS Parole Board's decisions are discretionary and, if made in accordance with statutory requirements are not subject to judicial review. Matter of Sweeper v. State of New York Exec. Dep't. Bd. Of Parole, 233 A.D. 2d 647, 648 (3rd Dep't. 1996); Matter of Zane v. Travis, 231 A.D. 2d 848 (4th Dep't. 1996); Matter of Secilmic v. Keane, 225 A.D. 2d 628, 628-9 (2nd Dept. 1996). Absent a convincing demonstration that the Parole Board failed to consider the applicable statutory outlined criteria, it must be presumed that the Parole Board fulfilled its duty. Matter of McKee v. New York State Bd. Of Parole, 157 A.D. 2d 944, 945 (3rd Dept. 1990). To warrant judicial intervention, the petitioner must show that the Parole Board's decision

amounted to "irrationality bordering on impropriety." Matter of Russo v. New York State Bd. Of Parole, 50 NY 2d 69, 77 (1980). It is also established that a prisoner's right to liberty was extinguished with his conviction and sentencing and therefore, a petitioner has no constitutional guarantee to parole. Russo, (id). Citing; Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 US 1 , 7 (1979).

The current state of parole for convicted A-1 felons is a grave one. The former Governor implemented an "end parole for all violent felons" policy. He changed the sentencing scheme in the middle of the nineties circumventing the parole system and implementing determine sentences with a post release supervision term creating the above mentioned policy. Thousands of inmates were convicted previously under the old scheme where they must appear before the Parole Board to determine whether they are eligible for discretionary release.

The current statistics for parole releases for A-1 felons in 2005 were 3% as reported by John Caher in the NY Law Journal (Caher, 2006). The rate is astonishingly lower in people that took charges that probably were reached by a plea bargain, i.e.; manslaughter at a shocking 2% (Caher, 2006). The parole release rates have dropped significantly since the former Governor took office as demonstrated in the statistics from previous years. The rates for the year prior to Governor Pataki taking office were 2/3rds of all initial appearances were granted or 1 in 4 (McCarthy, 2002).

This problem is extremely troubling. Individual's who entered into a plea bargain have surrendered constitutional rights in exchange for entering into a plea bargain only to have the imposed contract ignored by the NYS Parole Board. These individuals are not released upon completion of their minimum sentences. In fact, in many cases their

sentences are extended long beyond the sentence they would receive in the event they proceeded to trial and lost. The result of this problem is the plea bargain as we have known it is extinct. There is no longer a benefit entering a plea for the defendant because the Parole Board can ensure that they serve long beyond the agreed upon minimum term.

Recently a class action lawsuit was filed, Graziano v. Pataki, in a federal court alleging constitutional violations in regards to the NYS Board of Parole and its practices. This issue is of fundamental importance to NYS administration in that the complaint is currently in the process of being amended to include the Spitzer administration as a party.

To understand the entirety of this problem an analysis must be done considering the history of incarceration and theories of punishment as well as a history of the division of parole and the plea bargaining process.

HISTORY OF INCARCERATION AND PUNISHMENT THEORIES

Prisons in New York state began in the early nineteenth century (McCarthy, 2002). Reformation was the original goal of these prisons (McCarthy, 2002). Auburn prison was opened in 1817 (Reichel, 2001). It originally implemented the separate and silent model of prisons taken from the Quaker designed prisons in Pennsylvania (Reichel, 2001). The concept of this model was the inmates were separated and forced to be quiet to reflect on their crimes (Reichel, 2001). In 1823, it was determined that this model did not work and the prison began the policy that became known as the Auburn model (Reichel, 2001). The inmates were locked in their cells at night but during the day they worked and ate together in silence (Reichel, 2001). There was an economic factor fashioned into the design where inmates produced work to help support the prison (McCarthy, 2002). The New York prisons were fashioned after the Auburn model where

the prisons were self- sufficient (McCarthy, 2002). Somehow, the goal of prisons turned away from reformation and the prison is now a modern day plantation. The industrial complex of prisons distorted the role they intended to play in society.

Punishment, as stated by Stuart Henry is defined as a process of presenting a consequence delivered after a behavior to decrease the frequency of that behavior (Henry, 2003). Society believes the best way to get someone to change is by inflicting pain and suffering (Connor, 2005). Retribution for crimes goes back to the first criminal code: Code of Hammurabi (Connor, 2005). However, at this time the policy was a life for a life (Connor, 2005).

There are two models explaining the concept of punishment. The economic model indicates punishment should be painful. The exhibited behavior comes with a cost and therefore, should be avoided (Henry, 2003). The psychological model indicates we learn through conditioned responses and when there is a learned response as a consequence of behavior, we learn to avoid the behavior (Henry, 2003). It is important to specify that punishment is an institution (Binder, undated).

There are many motives that shape criminal behavior. Among them are: biological, predisposition, psychological, personality traits, social learning, cognitive thinking, geographical location, relative deprivation, political conflict, and association (Henry, 2005). However, it should be noted that irrational people or those whose behavior is a result of biological, psychological, or social factors rather than free will and they cannot be deterred from committing criminal acts by receiving punishment or prison time (Reichel, 2001). Being that criminal activity stems from so many different things, there are several theories of punishment that were developed.

They are:

Deterrence- When others are aware of the punishment a person receives for committing crimes this will deter them from committing crimes (Leiser, 2005). The implication of this punishment shows criminals that their actions are undesirable because it brings more pain than pleasure (Reichel, 2001). It also shows others who are considering crime what happens to them (Reichel, 2001).

General Deterrence- This focuses on future behavior. The person commits the crime if they don't fear apprehension and punishment. Laws are designed to punish behavior (Keel, 2005). For general deterrence to work, everyone must believe it is certain they will receive punishment for their behavior; the punishment will be severe enough so they will consider it more painful than any pleasure the act may bring; the punishment must be administered soon after the wrongful act; and there must be publicity of the punishment to deter others considering crime (Reichel, 2001)

Specific Deterrence- This is a format to punish known deviants. This is designed so that they never violate norms again. This view focuses on the possibility that the motives and rationales behind the criminal's original behavior can never be delineated (Keel, 2005).

Incapacitation- If an individual is in prison he cannot continue to harm society (Leiser, 2005). This concept goes along with the philosophy of lock them up and throw away the key (Keel, 2005). The belief is that a small proportion of criminals commit a large percentage of crime (Reichel, 2001). If they are incapacitated the crime rate will decrease when they are in prison (Reichel, 2001).

Retribution- If an individual harms a person the state deserves to harm the criminal

(Leiser, 2005). This is the concept of just deserts. (Keel, 2005) The philosophy of retribution includes the concepts of equivalence, proportionality, consistency, just deserts, equity, reciprocity, and retribution (Connor, 2005). The 1975 model of David Fogel indicates that all hopes of rehabilitation are over. (Connor, 2005) Societal interests have primacy over individual rights (Reichel, 2001). Each person is a rational person choosing to commit crime (Reichel, 2001).

Redemption- This concept maximizes forgiveness, hope, accountability, and positive outcomes (Connor, 2005). Harm is done to the victim and we must make them whole again (Reichel, 2001).

Rehabilitation- This is a three part process to rehabilitation; reclamation, reformation, and rehabilitation (Reichel, 2001). Reclamation focuses on the concept that we must rescue wrongdoers from the evil that overcomes them (Reichel, 2001). Offenders are reclaimed or brought back to the correct way of living (Reichel, 2001). Reformation is the concept that offenders rescued from their evil ways are given the opportunity to realize their problems and let goodness return through their educational, vocational, and religious opportunities are offered in prison (Reichel, 2001). Once all of this is achieved the offender is rehabilitated (Reichel 2001).

HISTORY OF THE PLEA BARGAIN

A plea bargain is defined as, "an agreement in a criminal case in which a prosecutor and a defendant arrange to settle a case against the defendant. The defendant agrees to plead guilty or no contest in exchange for some concession from the prosecutor. This concession can include reducing the original charges, dismissing some of the charges against the defendant, or limiting the punishment a court can impose on the

defendant. Generally, a plea bargain allows the parties to agree on the outcome and settle the pending charge or charges". (Wikipedia, 2006).

Please note, the American system of Criminal Justice heavily relies on the concept of plea bargaining and would cease to function without it. The plea bargain allows all involved to reach an agreement that settles the case and implicates a spirit of fairness (Wikipedia, 2006).

Ninety percent of all criminal convictions occur when a defendant waives the right to trial and pleads guilty (Olin, 2002). The plea bargain was an episodic tool prior to the 19th century but gained popularity during the Age of Industrialization (Olin, 2002).

The purpose of a plea bargain in sentencing was primarily for efficiency purposes, avoiding burdensome case loads, and securing a conviction for prosecutors (Fisher, 2003). For judges it decreased the likeliness of reversal because in most cases the defendant also waives their right to appeal (Fisher, 2003). For defendants to enter a plea, the defendant must waive fundamental constitutional rights. These rights may include the right to trial by jury, the right to present witnesses and cross-examination of witnesses, the right to avoid self incrimination, and sometimes the right to appeal the conviction (Fisher, 2003). A defendant enters a plea for many reasons including: receiving a lesser sentence in exchange for his plea, receiving lesser charges in exchange for his plea, receiving dismissal of some charges in exchange for his plea, and a guaranteed outcome in the matter in regards to sentencing in exchange for his plea (Fisher, 2003).

Courts have interpreted the use of plea bargaining. Criminal pleas are considered contracts of a sort in which the defendant enters with the State or Prosecutor. These bargains entitle the defendant specific performance. Santobello v. New York 404 US 257

(1971); People v. World, 121 Misc 2d 148 (1983); People v Youngs, 156 AD 2d 885 (3rd Dept., 1989). Generally the terms of a plea bargain are entered into the record when the defendant accepts the plea. Once the bargain is placed on the record it is incumbent for the sentencing court to inform the defendant of the plea bargain's terms. It is an abuse of the court's discretion to add any non-agreed upon terms after sentencing. People v. Youngs, 156 AD 2d 885 (3rd Dept. 1989). Judicial recognition of a plea bargain is concluded by entry on the record. People v. Hood, 62 NY 2d 863 (1984). Lastly, for a plea bargain to be valid, a defendant must enter a plea knowingly, willingly, and intelligently. People v. Shea, 254 AD 2d 512 (1998); People v. Moissett 76 NY 2d 909 (1990); People v. Harris 242 AD 2d 782(1997).

To represent this factor, a sentencing judge during the plea colloquy, must read the original charges into the record. They must read the charges the defendant agrees to plea to which are generally reduced charges, and indicate if any charges are being dismissed in satisfaction of the plea. The sentencing judge then weighs all factors and imposes the agreed upon plea. Once a defendant admits to the agreed upon conduct to satisfy the elements of the crime and it is read into the record it becomes the defendant's conviction, solely the agreed upon plea and nothing additional.

The NYS Board of Parole in their practices have ignored these factors and have taken it upon themselves to violate the law and become a re-sentencing authority which they are not, ignoring the benefit the defendant entered into as part of their plea bargain. This is a travesty of justice. In essence, it renders the plea bargain invalid. What does anyone have to gain to enter a plea bargain as opposed to going to trial when the Parole Board can ignore the terms of the plea?

HISTORY OF PAROLE

Parole's history can be traced back to the era of Socrates when some inmates were granted temporary release for civic functions (McCarthy, 2002). During this era, parole was fashioned to meet the needs of the state, political purposes, and was influenced when inmates had influential friends or family (McCarthy, 2002). Rehabilitation played no part of the process (McCarthy, 2002).

In 1863, after touring Irish prisons, warden of Sing Sing prison, Gaylord Hubbell, incorporated some of his findings at home (McCarthy, 2002). During the early 19th century, American relied more on using pardons, and commutations to solve the problems of prison overpopulation (McCarthy, 2002) In 1817, NY crafted the first good time law allowing for some early releases (McCarthy, 2002). This practice was extended to include female inmates and most first-time offenders (McCarthy, 2002).

In 1862, reformers implied a law designed to provide inmates with incentives to reform themselves (McCarthy, 2002) This same year, the Elmira Reformatory was built (McCarthy, 2002). At this time, this institution was designed for first time offenders between the ages of 16-30 (McCarthy, 2002). In the 1870's, laws were passed that allowed the managers at Elmira to consider certain offenders for supervised conditional release if they had proven reformation (McCarthy, 2002). These inmates would report once a month to volunteer guardians (McCarthy, 2002).

Between the years of 1907-08, NY was the first state to implement full procedure of parole as we know it today (McCarthy, 2002). During the years 1925-1930, parole was a part of the NYS Department of Corrections. In 1930, the full-time Parole Board was

created to administer release decisions (McCarthy, 2002. At this time, Parole was separated from corrections and implemented as a separate Executive agency (McCarthy, 2002). Once again in 1970, Parole was joined with the Department of Corrections (McCarthy, 2002). Partly in response to the Attica riots in 1977, Parole was again made a separate Executive agency (McCarthy, 2002).

In the middle of the 90's with the Pataki administration we again saw changes in the way parole was administered. This Governor implemented an "end parole for violent felon's campaign" (McCarthy, 2002). He implemented the Sentencing Reform Act of 1995 and Jenna's Law in 1998 changing NYS sentencing laws as they had once been (McCarthy, 2002). During the previous administration of Governor Cuomo the rate of parole releases for first-time offenders was 2/3rd's were released upon their initial Parole Board appearance (McCarthy, 2002). In 2005, under the Pataki administration the release rate for violent felony A-1 offenders was a mere 3% (Caher, 2006). For charges that were likely reached by plea bargain such as manslaughter the rate of release was even lower at 2%. (McCarthy, 2002).

The cost of administration for parole is $2,200 per parolee per year (Petersilia, 2001). The State has implemented a procedure in which they now make parolees share some of that cost. NYS Executive Law 259 a (9) (a) allows parole to charge the parolee $ 30.00 a month for supervision, or a cost of $360.00 a year (Rosenthal, Weissman, 2007) The State of NY between October 2000 and September of 2001 collected $179,498.00 from over 50,000 parolees (Rosenthal and Weissman, 2007),

The NYS Division of Parole is made up of 19 members who are appointed by the Governor for terms lasting 6 years (NYS Division of Parole, 2007). These individuals are

responsible for making determinations of which inmates applying for discretionary release (Parole) after serving the minimum sentence of incarceration, are ready for parole release (NYS Division of Parole, 2007).

RECIDIVISM

A released prisoner is often expected to re-enter society with no more skills than he or she possessed at the time they committed their crime (NYS Catholic Conference, undated). 600,000 men and women re- enter society per year (VOA, 2004). Ninety seven percent of all prisoners will eventually be released into society (VOA, 2004). Statistics show there is a high number of released inmates that go on to re-offend or recidivate. Recidivism is defined as: "the act of a person repeating an undesirable behavior after they have experienced negative consequences of that behavior or have been treated to extinguish the behavior" (Wikipedia, Recidivism, 2007).

The rate of recidivism is approximately 63% (Keel, 2005). The sourcebook of BJS criminal justice statistics showed a study in 1997 that revealed only 24.5% of offenders had no previous criminal offenses (BJS, 2001). Six percent of offenders had eleven or more offenses (BJS, 2002). In 2002, it was found that 39% had three or more previous offenses (BJS, 2002). In 1994, of 272,111 released inmates, 67.5% were re-arrested within a three year period (BJS, 2002). In 1997, the statistics revealed that 35% of all new prison admissions were those of parole violators (Petersilia, 2001).

It should be noted in 2004, of all of the individuals on parole in NYS, only 5% had been paroled with a murder or manslaughter charge (NYS Division of Parole, 2007). The other 95% of parolees had been incarcerated for other offenses such as robbery or drug charges. Statistics have shown that 1% of people aged 50 or older who are released

return to prison (Ryan, 2006). Long-termers incarcerated for decades have the lowest recidivism rate of any group of prisoners. (Ryan, 2006). According to the Department of Justice, in looking at recidivism rates in 1994, the lowest re-arrest rate was in individuals who had been in prison for homicide (Langan and Levin, 2002).

The factors that contribute to recidivism are that offenders re- entering society face many obstacles including poverty, health and or mental health problems, lack of education, and employment experiences (Rosenthal and Weissman, 2007). Of the people released on parole it is reported 49% are unemployed; 81% need drug abuse services and 15% only had a grade school education (Rosenthal and Weissman, 2007). The NYS Department of Corrections reported 36% of all inmates tested below an 8th grade education and 50% had not graduated from high school or received a GED (Rosenthal and Weissmann, 2001). A study by Holtzer cited in Rosenthal and Weisman reported that 60 % of all employers are unwilling to hire someone with a criminal record. (Rosenthal and Weissman, 2007) To reduce recidivism all of these factors must be considered as they are the obstacles the incarcerated face with re- entry to society.

Some studies indicated the most effective way to reduce recidivism is through education, (Steurer, Smith, Tracy, 2001), employment services, and drug and or alcohol treatment (McKean, Ransford, 2004). A Federal Bureau of Prisons study revealed that 73% of inmates that received drug treatment were less likely to be re-arrested (NYS Catholic Conference, undated). An US Department of Education Study showed that participation in state correctional educational programs lowered recidivism by 29% (VOA, 2004). A study done by the Corporation of Supportive Housing in NY revealed that the use of state prisons dropped by 74% when people with mental illness and a past

criminal record obtained supportive housing (VOA, 2004). Yet the current state of corrections has been to reduce these programs sending inmates back into the society having taken fewer programs and with fewer incentives to become a law abiding citizen (Petersilia, 2001).

Latessa advances that the most effective programs address current factors that influence behavior, they are action oriented, structured social learning new skills behavior, cognitive behavior approaches, and they target criminogenic risk factors. (Latessa, undated). Increasing the severity of punishment does not reduce crime occurrence (Henry, 2005).

The costs of recidivism are something that administration should pay attention to and consider when deciding factors regarding reform legislation. The costs of recidivism include public safety, tax dollars, and devastating negative social consequences for families of the incarcerated individual especially on their children.

COSTS OF INCARCERATION

In NYS it costs the state $30,000 to house an inmate per year (Rosenthal and Weissman, 2007). In 2004 and 2005, NYS spent 2.4 billion dollars on corrections. (Rosenthal and Weissman, 2007) This figure only represents the costs to the actual prison and ignores the costs incarceration imposes on inmate families. Outpatient drug treatment costs $5,100 (NYS Catholic Conference, undated). The cost of seeking treatment is nine times less than incarceration (NYS Catholic Conference). Studies have shown that treatment is 10-15 times more effective than incarceration (NYS Catholic Conference, undated).

EFFECTS OF LONG-TERM INCARCERATION

Inmates are a disadvantaged group in many ways including socially, politically, and legally (Howard, 1999). The effects of incarceration affect the individual, families, neighborhoods, and the public at large (Clear and Lengyel, 2006). Long-term incarceration requires that an inmate spend a good portion of their life in a correctional facility separated and isolated from family and friends. They are deprived of their freedom, autonomy, self image as they knew it, and relationships with the opposite sex (Howard 1999). They are forced to live in a structured, unfamiliar environment that is unreflective of the society as they once knew it (Howard, 1999). The prison environment creates an imbalance not reflective of society where the minority becomes the majority, gangs flourish, and personal safety becomes an issue as the inmate is housed among a variety of hardened incarcerated beings (Howard, 1999). The inmate becomes accustomed to his new environment and along with it comes a new set of rules, a subculture of society. This new environment includes a code of silence which is vital to staying alive, where a man can engage in homosexual activities and still be viewed as a masculine man, and where a new world order is imposed by the man in the uniform (Howard, 1999).

Inmates often present to correctional facilities with multiple problems that are barriers to their success. Among these problems are low levels of education, lack of employment history, physical and mental health problems, lack of stable housing, and drug or alcohol addictions (McKean, Ransford, 2004). These issues, if not addressed, definitely play into the cause of recidivism.

These multitude of issues cause effects of incarceration. The system attempts to decrease the inmate to a weak, helpless, dependent status similar to that of a child by attempting to break his spirit (Howard, 1999). This issue along with others described above, may cause a problem with an alteration of the person's self image. They could eventually lose the ability to make decisions for themselves and may become less likely to become productive members of society as they have become institutionalized (Howard, 1999). There is definitely a deterioration of personality among inmates in their mental, emotional, and physical well being (Howard, 1999). Some inmates begin to become depressed and hopeless as it appears that they will never get out (Howard, 1999).

Incarceration causes families to become isolated, communities to be disrupted as families migrate to be near their loved ones, burdens are placed on the social network, families are forced into instability, families face economic strain, and the neighborhood's community economic activity is weakened (Clear and Lengyel, 2006). Long-term incarceration has an effect on the whole community and not just the individual.

ALTERNATIVES

In designing programs, a public administrator must be focused on many issues such as; current day politics, the media, citizen participation, activism, community perceptions, and concerns of constituents (Angelica, 2002). In developing programs, people are forced to face difficult decisions between conflicting values within the sectors (Angelica, 2002). Often times values come into direct conflict with other values of the people concerned (Angelica, 2002).

As pointed out, the government sector uses values that are found within the State and US Constitution (Angelica, 2002). As noted, our system of government, better known as a democracy, was built upon the principle of balancing individual rights vs. government policies (Angelica, 2002). Many individual protections are built into the system to safeguard individuals from government interference and to protect the individual's freedom and integrity (Angelica, 2002).

Angelica explicitly points out the chief role of the government sector is to maintain social stability (Angelica, 2002). Also protection of the public interest and common good should be a major focus (Angelica, 2002). In doing this as mentioned earlier, values may conflict between the individual and the public good. The government achieves this by "protecting the national resources, assuring a justice system that serves all citizens, protects civil liberties, prevents exploitation, discrimination or abuse, developing laws and rules that provide for a safe secure, living and working environment" (Angelica, 2002).

In addressing criminal justice issues, it is very difficult to balance values and rights. Politicians run for office promising to be tough on crime. District attorneys measure their success rate by obtaining convictions. People want to be safe in their communities. There are stereotypical views regarding crime, criminals, and inner-city residents.

Angelica points out the mind is a "categorizing machine" (Angelica, 2002). It is noted we as humans come to conclusions and decisions based on less than complete information relying on assumptions and stereotypes we have formed based on prior learning experiences (Angelica, 2002).

In NYS, decreasing crime rates have been a crucial objective of Governor George Pataki (NYS Governor, 2006). In a press release June 12, 2006, Pataki reported 12 years ago, NY was the 6th most dangerous state in the nation but today it is the 6th safest state and the safest large state (NY Governor, June 12, 2006). In the state of the state address January 5, 2006, Pataki reported, "In NY, 86,168 fewer violent crimes occurred in 2003 than a decade ago. More than 86,000 families were saved from being torn apart by a murder, rape, or vicious assault. Because of tougher laws, the rate of recidivism has fallen 1/3, less crime, fewer criminals. How did we do it? By fighting for bold sweeping fundamental change to our criminal justice system. We instituted the death penalty. We abolished parole for violent felons" (NY Governor, 2005).

In the state of the state address in 2004, Pataki said, "Together we re-tooled the criminal justice system from top to bottom and turned NY from one of the nation's most dangerous states into the safest large state. On behalf of families across New York state let's waste no time in our efforts to keep violent predators off our streets and away from our children. It is clear we must continue to do all we can to protect our citizens from the threat of crime (NY Governor, 2004).

The gubernatorial policy as stated above is very anti-crime and anti-parole. The consequence of this policy in NYS has been a severe denial in parole releases for violent felony offenders. This has become such an issue that the media has taken up a campaign to expose the corrupt policies of the Parole Board. Reporter, John Caher has covered a series of articles in relation to this issue in the NY Law Journal. Caher reports, "In 2004-05, only 3% of A-l felons appearing before the NYS Board of Parole have been released" (Caher, 2006).

Caher further contends: “Thousands of New York prison inmates sentenced at a time when parole release was a realistic prospect are lingering behind bars as the Pataki administration has dramatically restricted parole for violent felons arguably going beyond anything authorized by the legislature, a probe by the NY Law Journal reveals” (Caher, 2006).

This article continues, “Through an administrative process subject to scant judicial review Governor Pataki’s appointees to the NYS Board of Parole have evidently used their broad discretion to implement a gubernatorial policy to keep violent felons behind bars as long as possible notwithstanding the recommendations of sentencing judges guided by a different and more lenient, political, and legislative framework” (Caher, 2006).

The NYS Department of Corrections was established to provide for public protection by administering and maintaining correctional facilities that retain inmates in safe conditions until their release by law (NYS Department of Corrections, 2006). NYS houses 65,000 inmates within 69 correctional facilities across the state (NYS Department of Corrections, 2006).

Pataki has implemented this policy but it is clear that it is not the A-1 felons that are released on parole re-committing crimes or endangering society. It should be noted in 2004, of all of the individuals on parole in NYS, only 5% in the community were paroled with a murder or manslaughter charge (NYS Division of Parole, 2007). The other 95% of parolees were incarcerated for other offenses such as robbery or drug charges. Statistics have shown that 1% of people aged 50 or older who are released return to prison (Ryan, 2006). Long-termers that had been incarcerated for decades have the lowest recidivism

rate of any group of prisoners (Ryan, 2006). According to the Department of Justice in looking at recidivism rates in 1994, the lowest re-arrest rate was in individuals that were in prison for homicide (Langan and Levin, 2002).

In NYS it costs the state $30,000 to house an inmate per year (Rosenthal and Weissman, 2007). In 2004 and 2005, NYS spent 2.4 billion dollars on corrections (Rosenthal and Weissman, 2007). This figure only represents the costs to the actual prison and ignores the costs incarceration imposes on inmate families. Outpatient drug treatment costs $5,100 (NYS Catholic Conference, undated). The cost of seeking treatment is 9 times less than incarceration (NYS Catholic Conference). Studies have shown that treatment is 10-15 times more effective than incarceration (NYS Catholic Conference, undated).

The cost of administration for parole is $2,200 per parolee per year (Petersilia, 2001). The state has implemented a procedure in which they now make parolees share some of that cost. NYS Executive Law 259 a (9) (a) allows parole to charge the parolee $ 30.00 a month for supervision, or a cost of $360.00 a year (Rosenthal, Weissman, 2007). The State of NY between October 2000 and September 2001, collected $179,498.00 from over 50,000 parolees (Rosenthal and Weissman, 2007).

By releasing violent felons into the community as demonstrated by the statistics after decades of imprisonment it is not creating a risk to the community. The recidivism rate of these individuals is very low. The release of these individuals is also cost effective as it costs less money to maintain them on parole as opposed to continued incarceration. After 30 years of incarceration, most inmates have already taken all of the programs the NYS Department of Corrections has to offer so the thought that they will continue to be

rehabilitated is not the case. A-1 felons have indeterminate sentences. Most of them have a sentence of 25 - life. The Division of Parole has the ability to continue to monitor A-1 felons for life. In the event they begin to slip back into a life of crime the division can violate their parole and send them back to prison. The community can use other means such as electronic monitoring or placement in halfway houses with re-entry programs if in certain cases the division felt extra monitoring was necessary. Something has to be done to re-create a fair system of criminal justice. The plea bargain must be honored as it is a contract entered between a criminal defendant and the state. The Parole Board does not have the legal right to cancel the terms of this bargain.

RECOMMENDATIONS

Goals of proposal

- To restore faith in the criminal justice system
- To honor the bargain promised in the plea bargain
- To reduce recidivism by offering re- entry programs in prison prior to release
- To reduce recidivism by offering case management and re-entry programs upon inmates release.

How to achieve proposal

- Parole legislation must be amended to reduce the discretion of the Parole Board and to allow for A-1 felons to be released
- Include criteria regarding parole and release in programs being administered in the prisons

- Implement increased programming including preparation skills for employment, drug treatment, and education for inmates
- Continue programming for re-entry upon release

Expected outcomes of this proposal

- Increase the release rate of violent felons because it is cost effective
- Reduce the recidivism rate by releasing those who are statistically proven to not recidivate
- Reduce recidivism by providing increased support systems for ex- offenders through re-entry programs
- Create a fair criminal justice program
- Restore faith to the plea bargaining process

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