

**Testimony of
The Legal Aid Society of the City of New York,
Parole Revocation Defense Unit**

**at a public hearing on
Policies and Procedures of the
Division of Parole**

Presented to:

New York Assembly Committee on Correction

Presented by:

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The Legal Aid Society welcomes the opportunity to testify before the New York State Assembly Committee on Correction on the subject of the Policies and Procedures of the Division of Parole.

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for poor families and individuals. The services we provide reflect the entire gamut of the needs of our clients, from immigration representation for the newest arrivals, to health care benefits for the oldest New Yorkers.

By contract with New York City, the Society serves as the primary defender of accused parole violators prosecuted in the State court system in New York City. Annually, we represent approximately 10,000 accused parole violators. As members of the Committee may know, The Legal Aid Society has sought through its own staffing and programming efforts to meet the special needs of parolees with chemical addiction and parolees with mental illness in order to prevent the cycle of re-arrest, release and recidivism. The Parole Revocation Defense Unit employs three social workers who identify special need parolees and refer them for necessary services and programs.

The Legal Aid Society has also sought through current litigation to compel the State to fund more residential placements for persons with both a mental illness and a chemical addiction (MICA) and has been involved in seeking better discharge planning for mentally ill

inmates so that they have the medication, housing and counseling they need immediately upon release.

The Legal Aid Society supports practical, effective and sensible measures for The Division of Parole to protect the safety of the community and to assist parolees in establishing stable residences and employment. Unfortunately, the policing aspect of the parole officer's job is often stressed to the exclusion of these last two measures. Parole officers find little time to counsel a parolee in finding work or necessary programming; but the truth of the matter is that we protect our communities best when we serve our parolees well.

Proposed Revisions in Policies and Procedures

The Division of Parole has issued a draft proposal that amends 9 NYCRR § 8004.3 and 8005.20 to enhance current penalties for technical parole violations. See Attachment. Unlike Connecticut, Virginia, and many other states which have begun programs to substitute the diversion of technical and non-violent parole violators into drug and alcohol programs, rather than mandatory prison sentences, this proposal moves New York in the opposite and wrong direction.

The proposed revisions make three significant changes. First, the proposed regulation doubles the present three-month assessment to a minimum of six months in prison even for those parolees who are under supervision for non-violent offenses, and have no violence in their criminal histories in the last 10 years. (9 NYCRR § 8005.20(3)).

Secondly, the proposed revision adds a 12 - 24 month time assessment for any

sustained charge of absconding from supervision. Proposed 9 NYCRR § 8005.20 (6).

“Absconding” is defined as failing to report to Division of Parole staff as directed, and leaving an approved residence without parole approval. Proposed 9 NYCRR § 8004.3(h).

These two changes will create a significant increase in jail time for non-violent offenders who comprise the majority of parole violators. The provision requiring a one to two year sentence for failing to report is especially ill advised. In our experience, most parolees abscond due to a relapse to drug use, or as a result of mental illness and their inability to negotiate systems when discharged into homeless shelters. This proposed regulation does not distinguish between violent and non-violent offenders, and will penalize the most vulnerable client populations who could be better and more economically served by treatment and other support services.

Finally, the proposal eliminates jail time credit for pre-hearing detention toward any time assessment. It requires that even time assessments for one year, be “**time served plus**” the assessment. This will significantly increase incarceration for anyone who challenges the violation charge, or unsuccessfully explores alternatives to incarceration, or delays their hearing while awaiting the outcome of criminal charges in the State courts.

Under current practice, parole violators who face corresponding felony charges may choose to postpone their parole hearings until the felony has been adjudicated. This is known as the “K-Calendar.” This procedure allows suppression motions and other evidentiary matters, which cannot be heard at the parole violation hearing, to be resolved prior to placing the case back on the parole calendar. Under current law, if a parolee is convicted of a new felony

offense, a parole violation hearing is not required, saving scarce resources.

If this regulatory change is adopted by the Division of Parole, parolees will be reluctant to delay their hearings by agreeing to place them on the K-Calendar, because, should the criminal charges not result in a conviction and the parolee returned to face the parole violation charges, the time spent in custody will not be credited against any potential time assessment. This will also place a significant burden on the criminal justice system in that police officers and complaining witnesses will have to appear twice, as the parole calendar moves at a much faster pace than the criminal court calendars.

The proposed regulation also discourages parolees from seeking alternative drug or mental health programs that they need and that the court would approve. It may take months to place a parolee in a residential treatment program, especially a mental health program, and often an appropriate 'treatment bed' never opens at all. It is unfair to penalize these vulnerable parolees with essentially a longer sentence because they were willing to accept treatment for their addiction and/or mental illness, but, through no fault of their own, a program could not be found.

Using The Willard Drug Treatment Campus More Effectively

As this Committee recognizes in the announcement for this hearing, the vast majority of persons placed at the Willard Drug Treatment Campus are parole violators rather than sentenced inmates. Therefore, Willard's success depends almost exclusively on how well it is used by The Division of Parole. Unfortunately, there are significant deficiencies in the

placement of parole violators at Willard.

First, Willard is often used inappropriately. Willard is used almost exclusively by The Division of Parole for drug addicts who have violated parole. For many parole violators, however, the relatively short drug treatment at Willard is insufficient to meet their addiction problems. Often these parolees are willing to commit to a longer term (12-24 month) in a recognized community-based program which has agreed to accept the parolee. Nevertheless, the parole specialist and the Administrative Law Judge mandate drug treatment at Willard instead.

It makes no sense for the Division to mandate a shorter, less effective drug treatment program when a longer more effective one is available. Certainly, the community program is less costly to the State. But even more importantly, longer community-based treatment programs with extended aftercare and reintegration services often work better. While Willard's short, bootcamp experience away from the community and its subsequent release with minimal or no aftercare may be appropriate for some, it condemns many addicts to a revolving door of relapse and recidivism.

Additionally, Division regulations mandate placement at the Willard Program for all parole violators under supervision for a drug offense (other than A-1 felonies) whether or not they are currently using drugs. 9 NYCRR §8005.20 (2). This results in parolees being sent to complete the Willard drug treatment programs when it is not needed, and when other services, such as job training, would be most beneficial.

A second problem presented by the Division's use of Willard is the continued

significant delay in transferring sentenced parolees to the Willard Campus. In previous years, parolees languished for months at the Rikers Island Correctional Facility awaiting transfer. This resulted in some parolees' release on habeas writs because they were being held longer awaiting transfer than the sentence itself. More recently, parolees have been more promptly removed from Rikers to the Ulster County Correction facility or to Downstate, only to languish there awaiting transfer. Parolees have told us that they have waited in State Corrections for up to three months before transfer to Willard.

This extensive pre-Willard incarceration unfairly increases parolees' sentences, creates unnecessary additional detention costs, and delays and frustrates treatment. We do not know whether this delay is caused by administrative inefficiencies or inadequate space at Willard, perhaps caused by numerous inappropriate admissions. Whatever, the cause, however, the Division must take remedial steps so that parolees sentenced to 90 days at the Willard Drug Treatment Campus are not incarcerated for months waiting for their sentences to begin.

Division of Parole Compliance with the Drug Law Reform Act of 2004

This Committee also has inquired how the Division has implemented the drug law reform enacted in 2004. In sum, The Division of Parole has failed to make minimal administrative efforts to comply promptly with legislative changes removing persons from parole supervision and has very narrowly construed the Drug Law Reform Act of 2004, L. 2004, Ch 738, in ways that undercut the intent of the drafters of the statute.

The Drug Law Reform Act amended Executive Law 259-j to require the Division of

Parole to terminate parole supervision for people convicted of drug offenses after three years of unrevoked parole for people convicted of “A” felonies and after two years for all other felonies. Prior to this law the Division had discretion to terminate parole supervision in these cases.

The Division has failed to apply mandatory termination to broad classes of people who should have ended their parole supervision. In the opinion of the Division of Parole, the new law does not apply to a person who is serving any sentence in addition to a drug conviction. It does not matter if the other sentence is for an old case on which the person was on parole at the time of the new drug offense or that the other sentence is a very short concurrent sentence that should have expired long before the granting of parole on the drug offense. So long as any other conviction is involved, the Division has not terminated parole. In both of the cases in which a judge has had the opportunity to review this overly narrow interpretation, the court has declared it to be improper. People ex rel. Ordonez v. Warden, Rikers Island, 2005 N.Y. Slip Op. 25411, Walker v. Dennison, Alb. Co. Index No 5248-05.

In a similar way, the Division has refused to terminate parole supervision for anyone who has been released on conditional release as opposed to being paroled by the Board of Parole. Even though the parolee has the necessary two or three years of unrevoked parole supervision on an indeterminate sentence as required by the statute, the Division refuses to terminate parole because he or she was not released on “parole.” Litigation on this issue is now being prepared.

Finally, implementation of the new law has also been slow and haphazard. Those cases

that the Division agrees meet the requirements for termination of parole have been slow to receive a decision. As far as we can tell, there still are insufficient procedures in place to ensure compliance with the statute. As opposed to the New York State Department of Correctional Services which wrote a computer program to identify those people who were covered by the new statute, the Division conducted a lengthy individual case by case review of every parolee in the state. While the review was conducted, the Division provided no guidance to individual parole officers who were responsible for supervising people who thought they should have been terminated. We were told by a number of parole officers that questions to Albany from the field were discouraged.

The Division reports that its review has now been completed. However, we still encounter cases where parolees who should have been terminated remained under supervision. Some were even subjected to violation proceedings even though the Division should have terminated their parole months earlier. We suspect that the Division has failed to implement a system which provides a continuing update of each parolee's status, so that a parolee who successfully reaches the two or three year unrevoked supervision point is promptly identified and discharged from parole. Guidance to parole officers in these situations remains a problem.

Thank you very much for the opportunity to share our thoughts and experiences with your Committee.