



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #13

To supplement the materials in your package, attached is a letter from the Committee on Mandated Representation indicating support for the recommendations of the Task Force on the Parole System.



COMMITTEE ON MANDATED REPRESENTATION

ROBERT S. DEAN, CHAIR
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Dear Executive Committee:

The Committee on Mandated Representation has reviewed the report issued by the Parole Reform Task Force, and while we support the reforms recommended in the report, we seek further clarification on their proposed implementation and effect on current Executive Law, state regulations, and Penal Law Sections.

We support eliminating consideration of the instant offense in determining a time assessment. The instant offense is a past-focused event, and if that event does not affect a violator's current violative behavior, then its consideration may amount to a re-sentencing of the violator. Nevertheless, 9 NYCRR 8005.20 (1) designates as Category 1 violators those individuals who have certain, enumerated instant offenses. We would recommend also changing 9 NYCRR 8005.20 (1) to conform to this Task Force's recommendation.

We also agree that pre-adjudication detention without a hearing runs afoul of due process. While we support the concept of a notice of violation, we encourage the Task Force to explore the process following the issuance of a notice of violation. If that process continues to include local jails as the venue for final revocation proceedings, then we propose that any hearings held for failure to respond to a notice of violation be held in the corresponding County Court or before a lawyer judge (based on the contents of the April 2018 Report presented by the Criminal Justice Section and adopted by the House of Delegates).

We also agree that alternatives to incarceration should be exhausted before a time assessment is imposed. We would like the Task Force to develop where a time assessment would be served if it has caps or is shortened. Current law mandates that a parole violator be returned to DOCCS custody (a correctional facility) upon adjudication of final revocation proceedings, but ordering violators to serve short sentences or intermittent sentences in DOCCS facilities might not be administratively feasible. It would not be fair to pass the costs of incarcerating those "state inmates" onto counties, either, even if only for a short time or intermittently. The law does not allow for that. We also would like the Task Force to explore the feasibility of transferring state savings into private, community-based organizations for the purpose of assisting parole violators. Alternatively, we would like the Task Force to explore the feasibility of training parole officers in assisting parolees with seeking private, community-based programs to address mental health and substance abuse behaviors before they become violative conduct.

We support that jail time credit run from the date that a parole warrant is executed, as it currently does under Penal Law § 70.25. We oppose the pending proposal that no jail time credit be given to a parole violator detained on a warrant while their violation charges remain pending.

We support Earned Time Credit. We understand that parolees may be awarded early release from parole supervision, currently; however, such release often is at the parole officer's discretion. We encourage the adoption of codified standards for the awarding and loss of Earned Time Credit.

We agree that Parole Board Commissioners should dedicate more time and pay more attention to each inmate who appears before them for consideration of parole release. Increasing the number of commissioners may achieve this. Nevertheless, we also recommend changing the information upon which those commissioners rely when considering release (such as eliminating the instant offense as a factor under consideration), or enhancing their training on the factors to be considered in release. Alternatively, a move toward determinate sentencing for all crimes would reduce the amount of inmates appearing for parole release; therefore, it may eliminate the need to increase the number of commissioners.

Finally, our Committee would support attorney representation at parole release hearings.

Very truly yours,

A handwritten signature in black ink that reads "Robert S. Dean". The signature is written in a cursive, slightly slanted style.

Robert S. Dean
Chair, Committee on Mandated Representation