

COMPAS Risk Assessment: The Real Deal
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THE MERGER OF PAROLE AND CORRECTIONS

A memorandum was issued in relation to the merger of the NYS Department of Corrections and Parole.

The memo states:

- “The Parole Board will maintain its existing functions;
- DOCCS is required to implement an offender transition accountability plan that includes an integrated team case management plan based on a research based risk assessment tool;
- DOCCS will consist of two operational components, the Parole Board and the non-Parole Board activities;
- Both components are designed to provide all appropriate services for all offenders from entry to release and from release to discharge;
- DOCCS staff will continue to provide information and assistance to the Parole Board such as... preparing the documents for an offender’s Parole Board hearing;
- Re-entry will be expanded to better incorporate services previously provided separately by DOCS and Parole” (NYS Department of Corrections and Community Supervision, 2011).

Part of the merger required the re-organization of how facility Parole offices are run. They are now being run by the NYS DOCCS. Facility parole officers are now “offender rehabilitation counselors” (Lyons, 2012). In February, they were forced to “give up” peace officer status (Lyons, 2012). In a legislative hearing in November, parole staff testified the merger represented a “hostile take over” (Legislative Hearing, November 10, 2011).

CHANGES IN THE LAW

Originally amended in 2009, NYS Executive Law § 259 (c) (4) stated in reference to the Parole Board’s duties:

“Establish written guidelines for its use in making Parole Board decisions as required by law, including the fixing of minimum periods of imprisonment or ranges thereof of different categories of offenders. Such written guidelines may consider the use of a “risk and needs

assessment” to assist members of the state Board of Parole in determining which inmates may be released to parole supervision.” NYS Executive Law § 259 (c) (4)

Eliot Spitzer, under executive order, formed the NYS Sentencing Committee in 2007. The Sentencing Commission filed a final report summarizing their findings while studying sentencing and criminal justice practices.

This report states:

“The cornerstone of evidence-based practices is the use of a validated “risk and needs assessment” instrument. Such an instrument can help supervising agencies accurately assess the risk posed by an offender, identify the personal deficits that have contributed to an offender’s criminality, and capitalize on an offender’s strengths during the re-entry process” (NYS Sentencing Commission, 2009).

Furthermore, the report states:

“Risk is largely assessed based on “static” characteristics that are associated with the likelihood of re-arrest such as age, gender, and criminal history... That is when practitioners use these instruments, they are much more likely to accurately predict who will succeed and who will fail under regular supervision than if they rely on professional judgment alone” (NYS Sentencing Commission, 2009).

Amended again in 2011, NYS Executive Law § 259 (i) (c) (4) indicates the Parole Board must re-write the guidelines and incorporate the use of a “risk and needs” assessment in their decision-making process.

On October 5, 2011, Andrea Evans issued a memorandum to the Parole Board interpreting these changes. She states:

“Through the enactment of Chapter 62 of the laws of 2011, Part C, subpart A, 38- (b) Executive Law 259- (c) (4) was amended to provide that the Board of Parole shall:

“Establish written procedures for its use in making Parole Board decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release and assist members of the state Board of Parole in determining which inmates may be released to parole supervision”

As you know, members of the Board have been working with staff of the Department of Corrections and Community supervision in the development of a transitional accountability plan (TAP). This instrument which incorporates risk and needs principles, will provide a meaningful

measurement of an inmate's rehabilitation. With respect to the practices of the Board, the TAP instrument will replace the inmate status report that you have utilized in the past when assessing the appropriateness of an inmate's release to parole supervision.

To this end, members of the Board were afforded training in July 2011, in the use of a TAP instrument where it exists. Accordingly as we proceed, when staff have prepared a TAP instrument for a parole eligible inmate you are to use that document when making your parole release decisions... It is also important to note that the Board was afforded training in September 2011, in the usage of COMPAS Risk and Needs Assessment tool to understand the interplay between that instrument and the TAP instrument, as well as understanding what each risk levels mean...

Therefore, in your consideration of the statutory criteria set forth in Executive Law § 259 (i) (2) (c) (a) (i) through (viii) you must ascertain what steps an inmate has taken toward their rehabilitation and the likelihood of their success once released to parole release supervision. In this regard any steps taken by an inmate toward effecting their rehabilitation in addition to all aspects of their proposed release plan are to be discussed with the inmate during the course of their interview and considered in their deliberations”

ORIGINS OF COMPAS

2009 SENTENCING COMMISSION REPORT

The COMPAS risk assessment is considered a scientific evidence-based instrument that successfully predicts an offender's need for supervision upon their release from prison (NYS Sentencing Commission, 2009). This tool helps the governing agency maximize the effectiveness of scheduling programmatic needs while incarcerated and continuing rehabilitative planning upon release (NYS Sentencing Commission, 2009). The tool identifies offenders needing increased levels of supervision. This is based on the evaluation of personal issues surrounding the offender's criminal history and looking at the individual's strengths to successfully plan their re-entry (NYS Sentencing Commission, 2009). The successful use of this tool will improve public safety (NYS Sentencing Commission, 2009).

Several factors weigh into the process; static factors such as age, gender, and criminal history which are used to statistically examine probability and allows the examiner to reach a prediction on the offender's level of risk (NYS Sentencing Commission, 2009). Additionally, the offender's criminogenic needs and or dynamic factors are examined (NYS Sentencing Commission, 2009). These factors include personality traits, impulsivity, aggressiveness, and attitudes (NYS

Sentencing Commission, 2009). Additional factors that help gauge an individual's success is looking at their peer group (NYS Sentencing Commission, 2009). Do they have pro-social peers or mentors? What is their education level? Do they face barriers in employment?; and Do they have a history of substance abuse? (NYS Sentencing Commission, 2009).

The risk and needs assessment process statistically demonstrated its accuracy (NYS Sentencing Commission, 2009). The NYS Department of Criminal Justice did a study wherein they evaluated recently released people predicting whether people they gauged at a level 10 would recidivate (NYS Sentencing Commission, 2009). The study indicated 85% would (NYS Sentencing Commission, 2009). Of the predicted eight-five percent, eighty-three percent actually recidivated and violated parole (NYS Sentencing Commission, 2009). In looking at Level 1 offenders (highest risk level), the predicted recidivism rate was 18% (NYS Sentencing Commission, 2009). The actual rate was 14%. The use of this procedure successfully gauges the risk (NYS Sentencing Commission, 2009).

PROBLEMS WITH THE USE OF COMPAS IN NYS

There is currently not a uniform way this test is being administered throughout NY state. The general format seems to be: when the inmate is ready to appear at their Parole Board, they are given a questionnaire consisting of (Q 35-70). The parole officer fills out (Q 1-34). The answers are then fed into a computer and a report is generated evaluating what level risk of re-offending the person presents. (4 being a minimal risk and 1 being the most in need of supervision). Recent reports indicate there are some facilities who are handing out the entire questionnaire to inmates. Additionally, there is nothing being done to address inmates that are illiterate or who speak other languages.

Scoring a high risk does not mean the person is not suitable for release. It just means the offender needs a more intensive level of supervision and or programming to prevent their recidivism. Several factors assist with the transition from prison to the free world: job readiness, family re-integration, and community preparedness. Educational and vocational programming should be

increased in corrections. Statistically, inmates who received job training produced a 5-10% less chance of recidivating and those with a higher education recidivated at a 40% lower rate (NYS Sentencing Commission, 2009). Inmates with successful housing and employment do better with re-integration (NYS Sentencing Commission, 2009). Public safety depends more on the way corrections rehabilitates and plans for re-entry than anything else.

PAROLE STAFF'S RESPONSE TO COMPAS

Recently parole officers protested the use of the COMPAS risk assessment in Albany (Lyons, 2012). The news reported their focus was to indicate the use of COMPAS took away their personal aspect of gauging risk to the Commissioner and the result could be that dangerous criminals would be released (Lyons, 2012). This occurred a week after the same parole officer succumbed to being demoted to glorified corrections counselors under the DOCCS merger (Lyons, 2012). They were ordered to turn in their weapons and surrender peace officer status (Lyons, 2012). Additionally, claims were made the inmates were learning how to beat the system by comparing answers on COMPAS (Lyons, 2012).

CLAIMS OF "BEATING THE SYSTEM"

Inmates are requesting copies of the COMPAS because the Parole Board is functioning in the "business as usual" format. They continue to deny otherwise deserving individuals parole who have scored as a low risk on COMPAS because of the same old reason "the serious nature of the crime".

In the majority of COMPAS risk assessments my office has examined, the facility parole officer made grave errors in filling out (Q 1-34) and this adversely affects the scoring system. Additionally, the questions asked on the COMPAS are not difficult questions to answer. It's not a complex, difficult task. It is meant to identify strengths and weaknesses.

LEGISLATIVE INTENT OF COMPAS

A recent Law Journal article discusses the legislative intent.

On April 30, 2012, the NY Law Journal reports Assemblyman Aubry stated:

“We passed legislation that ought to...give them the freedom to look at the inmate and determine whether or not they are a danger as opposed to simply looking at the instant crime” (Caher, 2012).

Additionally Aubry commented:

“The failure of the Board to recognize and reward the educational, occupational and rehabilitative efforts of offenders could prove counterproductive” (Caher, 2012).

Senator Ruth Hassel-Thompson stated:

“The revised provision was designed to provide the Parole Board with a reasonably objective measure of an offender’s progress a means of redirecting focus away from the underlying crime. Parole is an opportunity not a guarantee but an opportunity and I believe there should be criteria used to determine whether or not people are ready or prepared” (Caher, 2012).

MISUSE OF THE CORRECTIONAL SYSTEM AND OFFENDER’S LIVES

The bottom line is corrections should have NOTHING to do with state employees seeking job security. Prisons should not be a warehouse, housing human beings for no other reason than to provide these employees with jobs. The serious nature of a crime is something that cannot EVER change. There are many, many inmates that have spent their time incarcerated doing positive things. They have changed their lives and achieved rehabilitation. They deserve a chance to re-enter society and try to repair the damage their crime originally caused the community by doing good. The position of “tough on crime” should not be availed for political campaigns, job security etc. Our criminal justice system should be about rehabilitation and repair.

Successful re-integration can help rebuild communities. Offenders can be released on parole and do well in society. The system as we know it, is not working. It is wasting valuable assets. \$50,000 to house an otherwise rehabilitated individual is a waste of this state’s tax payers money. **Parole Commissioners who refuse to follow the current law should be removed from office.**

REFERENCES

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