County of Erie
Mark C. Poloncarz
County Executive
Department of Probation

Brian McLaughlin
Commissioner

Ysaias Feliz
Deputy Commissioner

March 4, 2015

Honorable Members
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Re: Conditional Release Program

Dear Honorable Legislators:

I am writing to provide an update regarding the potential re-establishment of a conditional release program and commission in Erie County government.

First, in order to advance this process, it is necessary that your Honorable Body introduce, hold a public hearing on, and adopt a local law intro re-establishing the program and a governing commission. To this end, in July 2014, Legislator Barbara Miller-Williams introduced a local law (Local Law Intro. 7-1); however, for technical and legal reasons, that version requires modification before it can be voted upon. After consulting with the office of the Erie County Executive and County Attorney's Office, I recommend that a legislator who wishes to sponsor a local law contact the Department of Law, which will provide the necessary language.

Second, in the course of doing our due diligence regarding this program, we discovered something that brings into question whether the expense of creating a local conditional release program can be justified. Let me bring to your attention that the New York State Division of Parole ("Parole"), which oversees parolees from state and county prisons and correctional facilities, already maintains a conditional release program which is used not only in Monroe County but throughout the state, including in Erie County. In 2013, Parole received 31 requests from inmates at the Erie County Correctional Facility and in 2014, 18 requests for conditional release with an extended parole supervision period.

Given the existence of the state program, we should seriously revisit the question of whether the County should re-create the conditional release program thereby

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duplicating a program which already exists. Instead, County resources might be better spent strengthening the Erie County Re-entry Task Force, which is dedicated to working with those recently released from prison. While the John R. Oishei Foundation has been tremendously supportive and shown an interest in receiving a County grant request for partial funding for a conditional release program, all parties need to reassess the need for a program, considering one already exists, though administered by New York State. It seems that such funding, whether provided by the County or the John R. Oishei Foundation, might be better utilized in other community and philanthropic needs, such as helping to avoid prisoner recidivism and transitioning persons back into the community.

In the event that your Honorable Body wishes to re-establish a local conditional release program using County and (potential) Oishei funds, it will be necessary to follow the rules and regulations for local conditional release, as explicated by the New York State Division of Probation and Correctional Alternatives (a separate state agency). Information concerning these rules and processes are attached for your review.

I am available to attend a meeting of your Honorable Body's Public Safety Committee to discuss this issue in greater detail. Thank you.

Sincerely,

Brian McLaughlin
Commissioner
Erie County Probation Department

BM/tc

cc: Erie County Executive Mark C. Poloncarz, Esq.
Erie County Sheriff Timothy Howard
Erie County Attorney Michael Siragusa, Esq.
Rev. Daniel Schifeling, VOICE Buffalo
Lawrence Cook, John R. Oishei Foundation
Robert Gioia, John R. Oishei Foundation
Rev. James Giles

LOCAL CONDITIONAL RELEASE*

- WHAT IS IT?
- WHO IS ELIGIBLE?
- HOW TO APPLY
- BENEFITS
- PERIOD OF SUPERVISION
- CONDITIONS OF SUPERVISION
- REVOCATION

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES
80 WOLF ROAD – SUITE 501
ALBANY, NEW YORK 12205
September, 2009

*For use in jurisdictions with a Local Conditional Release Commission.

WHAT IS CONDITIONAL RELEASE?

An eligible inmate serving a definite sentence in a local facility can be released before serving the full sentence. This is called a "conditional release." A conditional releasee is under the legal custody of the Local Conditional Release Commission and is supervised in the community by the local Probation Department, or, if a county does not have a Local Conditional Release Commission, the release is under the legal custody of the Board of Parole and is supervised by the New York State Division of Parole. Where there is a Local Conditional Release Commission, this commission is responsible for determining who may be conditionally released, and when and under what conditions. Where there is no commission, the Board of Parole makes such determination and this form is not applicable.

WHO IS ELIGIBLE?

You are eligible to apply to the Local Conditional Release Commission for a conditional release if you receive a definite sentence of more than 120 days to a local jail and have served a minimum period of 60 days and meet other eligibility criteria.

You must never have been convicted of any crime which is not eligible for merit time; and have never been convicted of any obscenity and/or related offense involving disseminating indecent material to minors; and never have been convicted of any crime of domestic violence.

You must have verifiable community ties in one of the following areas: employment, permanent residence and family.

Inmates committed to definite terms by the Family Court or those serving an intermittent sentence (for example, weekends in jail) are ineligible for consideration in the conditional release program.

You are eligible for release when you have served a minimum of 90 days including pre-sentence (jail) time and good time credit, and have agreed in writing to the conditions set by the Commission.

HOW TO APPLY

You must fill-out a written application to the Local Conditional Release Commission in the County where your sentence was imposed. An application can be obtained from a designated official at your local correctional facility. Read the application very carefully to make sure you understand the conditions and obligations should you be granted the conditional release. If you have questions about the application, contact the designated official at your local correctional facility.

The Local Conditional Release Commission will review the application, and any pertinent reports and recommendations, and will make a determination within 30 days of its receipt of your application. If conditional release is not granted, the Local Conditional Release Commission must inform you in writing of the factors and reasons for denial of conditional release within 15 days of the denial. Inmates denied conditional release are eligible to reapply 60 days after the date of denial.

BENEFITS

During the time you are on conditional release in the community, you will be under the immediate supervision of a probation or parole officer. You will report regularly to that officer. That officer may also visit you at home and at work. Your probation/parole officer is a trained, skilled professional who is experienced in helping you to obtain services that you may need in the community. For example, if you have a drug or alcohol problem, your probation/parole officer can help find treatment for you. Your probation/parole officer can assist you in developing job skills or obtaining a high school equivalency diploma. These are only a few of the many services probation/parole supervision provides.

PERIOD OF SUPERVISION

Any individual who is conditionally released to the legal custody of the Local Conditional Release Commission shall be under supervision for a period of one year from the date of release. Should you be allowed by the Local Conditional Release Commission to reside in another county, you will be under the legal custody of either another Local Conditional Release Commission if established or the New York State Board of Parole where no commission exists upon the consent of such other commission or the Board. Where transfer occurs, you will be under the supervision of the local probation department if a commission exists or the Division of Parole in all other cases.

CONDITIONS OF SUPERVISION

If your application is granted, you must adhere to the conditions of release specified by the Commission.

REVOCATION OF CONDITIONAL RELEASE

If you as a conditional releasee violate one or more conditions of the conditional release and are returned to a facility, you will not get credit for the time spent under local conditional release supervision. Therefore, if a revocation occurs you will be returned to the facility from which you were released to resume service of the remainder of your sentence of imprisonment.

ELIGIBILITY

(excerpt from Section 273(1) of the Correction Law)

"Any inmate who is eligible for conditional release by a commission pursuant to subdivision two of section 70.40 of the penal law and who has served a minimum period of sixty days in a local correctional facility may apply for conditional release. "

For further details on Local Conditional Release, see Chapter 56, Part SS of the Law of 2009, effective April 7, 2009 which amends relevant provisions of the Executive Law and Penal Law and adds a new Article 12 of the Correction Law. Additionally, see DPCA website at www.dpca.state.ny.us.

LOCAL CONDITIONAL RELEASE LAW HIGHLIGHTS

(Part SS of Chapter 56 of the Laws of 2009; Effective April 7, 2009)

- Reestablishes at local option local conditional release for interested jurisdictions (any county and New York City) whereby release decision-making of eligible inmates in a local correctional facility is carried out by a local conditional release commission. If granted release, the releasee is under 1 year of local conditional release supervision performed by the supervising probation department.

- In order to implement, any interested jurisdiction must adopt a local law establishing a local conditional release commission. Specific qualifications and powers and duties of any such commission are statutorily enumerated as are appointments, terms of office and filling of any vacancy (see Correction Law §§271 and 272). Each commission must have 5 members, the local probation director or director's designee must serve as an ex-officio non-voting member, and the local probation department must assign staff to support the commission.

- An eligible inmate is:

  1. a person who is serving a definite sentence imposed by a Criminal Court with a term in excess of 120 days and who has served a minimum period of 60 days in a local correctional facility;
  2. a person who has not been previously convicted and does not stand convicted of any crime which would make him/her ineligible for receipt of merit time, any Penal Law Article 235 (Obscenity and related offenses) when the victim of the offense was under 18 at the time of the offense, or any crime which the commission determines constitutes a crime of domestic violence;
  3. a person who has jail records making him/her eligible for a reduction of sentence under Correction Law §804 (good behavior allowance); and
  4. a person who has verified community ties in one of the following areas: employment, permanent residence and family.

  Note: Inmates committed to definite terms by a Family Court or serving an intermittent sentence of imprisonment are ineligible.

- A commission *may* require the probation department situated in its jurisdiction to conduct a supplemental investigation and prepare a report as to any application (see below reference to DPCA rule in this area).

- The sentencing court, district attorney, and defense counsel must receive notice of any application received within 5 business days of receipt of an application filed and afforded 15 days to comment. Comments received must be provided to the commission and all parties.

- The minutes of all commission meetings must be recorded and such records must be retained according to applicable standards. Note: Record retention and disposition of local government records are governed by Article 57-A of the Arts and Cultural Affairs Law. There exists a Records Retention and Disposition *Schedule CO-2* with respect to Counties issued by the State Archives, State Education Department pursuant to Arts and Cultural Affairs Law §57.25 and 8 NYCRR Part 185. It is accessible on the State Archives website: http://www.archives.nysed.gov. In New York City, retention periods are established by the New York City Department of Records and Information Services.

- Every commission must make a determination within 30 days of receipt of an application. A decision in this area requires a majority vote of at least 3 members present. No release is to be granted *unless* the individual is an eligible inmate and there is a reasonable probability that if released: the inmate shall live and remain at liberty without violating the law, that the release is not incompatible with the welfare of society, and shall not so deprecate the seriousness of the crime as to undermine respect for law.

- If conditional release is not granted, the commission must inform the inmate in writing of the factors and reasons for denial within 15 days of the denial. Such reasons must be given in detail and not in conclusory terms. Individuals denied *may* reapply within 60 days after the date of denial.

- Conditions of conditional release must be in accordance with DPCA rules and regulations, 9 NYCRR Part 364. Where appropriate there must be a condition requiring the individual to comply with any restitution order previously imposed by a court of competent jurisdiction which applies to such individual. This rule contains mandatory and permissive conditions of release. DPCA strongly recommends that a local conditional release commission carefully consider and incorporate recommended conditions of conditional release sought by the supervising probation department, especially with certain offender populations (i.e., sex offense, DWI, domestic violence). Specialized conditions of this nature are nationally recognized to immeasurably assist supervising agencies to better manage certain types of offenders with a current or past criminal history. Such conditions typically include other appropriate legal requirements which in turn safeguard the public (i.e., compliance with Sex Offender Registration Act, submission of DNA, adherence to ignition interlock restriction, obeying Order of Protection).

- No person granted conditional release shall be released *until* he/she has served a minimum period of 90 days and agrees to such conditions imposed. In computing 90 days, credit allowed for jail time shall be granted as time served.

- The period of local conditional release supervision is 1 year. The commission must impose a minimum of 4 supervision contacts per month while the individual is under conditional release unless the commission determines that fewer contacts are appropriate in any individual case. It is further recognized that a supervising probation officer shall contact a conditional releasee pursuant to DPCA rules and regulations. The process of risk and needs assessment is still required to inform the probation department of the

proper level of supervision and develop an individual plan of supervision. Remaining DPCA regulatory requirements in the area of supervision still control and are effective, including but not limited to provisions relating to authorized search, record-keeping, and reporting requirements. I-PRS will be the vehicle for probation departments to report client specific conditional release information. DPCA has recently issued I-PRS Guidance with respect to reporting such case information.

- Procedures as to violation, delinquency, warrants and revocation are virtually identical to the prior law in this area. If at any time during the period of conditional release the commission has reasonable cause to believe that a conditional releasee has lapsed into criminal ways or company or has violated one or more conditions of conditional release, the commission or such member may declare the individual delinquent and issue a written declaration of delinquency. Upon such declaration, the commission or a member may issue a warrant for retaking and temporary detention of the individual. A warrant issued constitutes sufficient authority to the chief administrative officer of any local correctional facility to whom it is delivered to hold in temporary detention the person named therein. A warrant issued may be executed by a probation officer or any officer authorized to serve criminal process or any peace officer, acting pursuant to his/her special duties, or any police officer. Any officer to whom it is delivered is authorized to execute the warrant by taking the person into custody and having him/her temporarily detained. A notice of violation must be given to the releasee within 5 days of execution of the warrant. The notice must relay the time, place and purpose of the hearing and state what conditions of conditional release are alleged to have been violated and in what manner and must inform the individual of his/her right to counsel at all stages of the proceeding. A hearing must occur within 20 days of execution of a warrant. At the time of the alleged violator's appearance, the commission must ask the individual whether he/she wishes to make any statement with respect to the violation. If the alleged violator makes a statement, the commission may accept it and base a decision thereon. If the commission does not accept it or the individual does not make a statement, the commission must proceed with a hearing. The commission may receive any relevant evidence. The alleged violator may cross examine witnesses and may present evidence on his/her own behalf. At the conclusion of the hearing, the commission must issue a finding. If not satisfied that there is a preponderance of evidence in support of the violation, the commission must dismiss the violation, cancel the delinquency, and restore the individual to supervision. If satisfied that there is a preponderance of evidence that the individual violated one or more conditions in an important respect, the commission must so find and may revoke the conditional release, continue, or modify the conditions of release. If revocation occurs, the individual must be committed to the custody of the local correctional facility to serve the remaining sentence of imprisonment. Where the commission modifies conditions of conditional release, the commission must provide the modified conditions in writing to the conditional releasee.

- Any actions by the commission pursuant to Correction Law Article 12 are deemed a judicial function and are not reviewable if done in accordance with law.

- As for transfer of custody and supervision of conditional release, the commission *may* designate any other commission to assume custody and transfer custody upon the consent of the other commission or the Board of Parole. Where transferred to another commission, the probation department in the receiving jurisdiction assumes the duty to supervise the individual.

- The Division of Probation and Correctional Alternatives has authority to promulgate regulations in conformance with this new Correction Law Article 12 with respect to commission operations. See 9 NYCRR Part 361 Supervision of Conditional Releasees, Part 362 Violations of Conditional Release, Part 363 Conditional Release Supplemental Investigations, and Part 364 Conditional Release Conditions available on DPCA's website: www.dpca.state.ny.us .

- A new Executive Law §257-b as to probation departments duties of supervising local conditional releasees is virtually identical to prior law in this area.