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Parole—eliminate some, focus other efforts

By Jim Nowlan

Should Illinois prison parolees be granted legal counsel in cases where their parole officers have recommended they be sent back to prison?

That is the nub of a case filed recently in federal court by a justice center at Northwestern University School of Law titled *Morales v. Monreal* (the chairman of the state Prisoner Review Board) that seeks to require legal counsel for those charged with violation of parole.

The bigger issue is that of how can we reduce the high numbers of men and women who end up back in prison.

The lawsuit observes that 40 percent of all Illinois prison inmates are incarcerated because of violation of their parole. Violation of parole can result from such offenses as using drugs, lying to a parole agent, failing to seek permission to change residence and arrest for commission of a crime.

Many of those re-incarcerated are back for having committed a crime after being put out on mandatory supervised release (the more recent term for parole).

There are those cases, however, where the parolee may have a good case that he should not be put back in prison. The legal brief in behalf of the plaintiffs cites situations, for example, where a parolee has been or is in the process of being put back in prison based on arrest charges that have been dismissed.

In Illinois, the state argues that parolees do not have a right to legal counsel, so they must defend themselves in the hearing process as best they can, and without access to the records available to the hearing officers.

The plaintiffs rely on a 1973 U.S. Supreme Court case called *Gagnon v. Scarpelli*, which held, among other things, that provision of legal counsel should be decided on a case-by-case basis. Such a situation might be that in which the parolee has a “colorable claim” that he didn’t commit the alleged violations of his parole.

At present, Kentucky and some other states, including recently California, do provide legal counsel for all alleged technical violation of parole cases.

My non-lawyer assessment is that the plaintiffs in Illinois have a good case that legal counsel should be provided, at least in some cases. My guess is that the plaintiffs and state corrections officials will work out a consent decree that ensures legal counsel in some but not all cases.

But how can we keep much larger numbers of those released from prison from ever going back to our crowded facilities?

When I was a legislator in 1970, there were 7,000 inmates in our state prisons. Now there are 49,000, a multiple of seven. In 1999, according to the U.S. Bureau of Justice Statistics, 84 percent (a national figure) of persons expected to be released from prisons that year were involved with alcohol or drugs at the time of their offense.

I talked recently with a retired parole officer, who earlier in his career had also worked inside Illinois prisons. A thoughtful fellow, Terry Talbert says his job was to re-integrate released inmates back in to society.

“But how,” Talbert mused, “do you do that for someone who was never integrated into society in the first place?”

“We do provide structure, through meeting with us regularly, that many have never had.”

According to Talbert, the Illinois Department of Corrections (IDOC) doesn't really want parolees back in their crowded prisons, which were designed to hold a maximum of 34,000 inmates.

There are, says Talbert, 300-400 parole agents with cars whose job is to find and meet with parolees, more frequently just after release than later.

“But why chase'em down if parole agents can't do anything with them once they find them,” Talbert observes. For example, according to Talbert, IDOC (which employs the parole agents) will not generally issue warrants for arrest of parolees for offenses such as testing positive for drugs.

Ninety-five percent of all inmates will ultimately be released back to society. Talbert says most of those released after serious offenses have either mental illness or substance abuse problems.

Talbert recommends we eliminate parole for low-risk, non-violent offenders and focus the saved resources on more intensive counseling and services for those with mental health and drug problems.

The suggestion makes sense to me.

I hope the negotiations among interested parties over the federal lawsuit discussed above will help us rethink how we might make parole work better in Illinois.