March 6, 2024

The Honorable Scott Kawasaki, Chair
Senate State Affairs Committee
Alaska Capitol Building
Juneau, AK 99801

Re: Senate Bill 176: BOARD OF PAROLE: MEMBERSHIP

Dear Chair Kawasaki and members of the Senate State Affairs Committee,

The ACLU of Alaska writes to express our support for Senate Bill 176, which would take critical steps to ensure that incarcerated individuals appearing before the Alaska Board of Parole ("the Board") receive fair consideration. Compared to current statutes, the bill would achieve a more appropriate balance between the punitive and rehabilitative purposes of Alaska's criminal legal system.

Alaska's Constitution, Article I, section 12, requires the state to base its criminal administration on the principle of reformation, as well as on protecting the public, condemning criminal conduct, and respecting the rights of victims. However, these principles are not all being served by the Board, which has taken an increasingly punitive approach in recent years. **During the past three years, in a reversal from historical trends, the Board has denied more than twice as many applications for discretionary parole as it has granted.**[i,ii] The Board recurrently denies parole to individuals who already have served decades in prison and who have, through their own efforts and the programs provided by the Department of Corrections, matured and reformed themselves, so they are no longer a danger to the public and are ready to contribute to their communities.

We observe two primary reasons why the proposed changes to the Board's structure and authority are needed. First, the current membership requirements do not ensure that the Board includes a sufficiently diverse membership, including professionals and those with lived experience who can assess an applicant's growth and likelihood of succeeding upon release.

Second, the statutory criteria used for determining discretionary parole outcomes are vague, subjective, and give the Board quasi-judicial authority to deny parole even when both the legislature and the sentencing judge have determined that granting discretionary parole after the number of years served is appropriate. SB 176 would address both of these problems.

Diversity is needed to assess parole applicants

Presently, the statutory criteria for appointment to the Parole Board require generally only that members are qualified "to make decisions that are compatible with the welfare of the community and of individual members" and "are able to consider the character and background of offenders and the circumstances in which offenses were committed."[iii] The only specific criterion is that "[a]t least one person appointed to the board must have experience in the field of criminal justice."

Of the five current members of the Board, all have some experience in the field of criminal justice; four of them worked for the Department of Corrections. Plainly, the statute as currently drafted does not guarantee a diverse membership. **Having different experiences at the table would make the**

Board better able to evaluate accurately whether a prisoner will further their rehabilitation by being on parole and will not pose a danger to the public.

SB 176 would help establish diversity. For example, ensuring that the Board includes a licensed psychologist would help the Board professionally assess an applicant's mental wellbeing and growth. A member with drug or alcohol addiction recovery experience would bring an informed view of whether an applicant with a substance misuse disorder has a viable plan to manage the disorder upon release. And a member who is selected as a victim advocate would be well positioned to evaluate how release would affect the welfare of the community. Designating these roles as Board seats would ensure that all these perspectives are considered when making parole decisions.

Other states have taken similar steps as SB 176. Oklahoma, for example, requires two members of its parole board to have five years of training or experience in mental health services, substance abuse services, or social work. Connecticut, Iowa, Massachusetts, North Dakota, South Dakota, and Rhode Island all explicitly guarantee that at least one board member represent a field outside law enforcement.

Alaska should not grant the Board judicial-type authority

State law currently authorizes the Board to release an applicant on discretionary parole if it determines that a "reasonable probability" exists that four criteria are met. Three criteria focus on whether the prisoner will be able to further his rehabilitation if released on parole and whether he can live at liberty without violating the law or posing a threat to the public. These criteria appropriately focus the Board on how the individual has developed in the years since the crime. **The fourth criterion is an anomaly; it is backward-looking.** It conditions parole release on the Board's determination that release "would not diminish the seriousness of the crime."[iv]

The language of the fourth criterion provides no guidance at all for how the Board should approach this question. The statute allows for a purely subjective assessment of how much time is "enough" for the seriousness of the crime. More troubling, the language allows the Board to substitute its views about minimum times to serve for the views of the legislature and the court.

Existing statutes defining crimes, criminal procedure, sentencing ranges, and parole eligibility already establish how serious the state finds certain offenses. The legislature defines crimes and appropriate sentences and sets the minimum period of time a person convicted of that type of crime must serve before being eligible for discretionary parole; sometimes the legislature precludes parole entirely for a type of crime. The legislature's determination to allow parole after serving a specified amount of time is the legislature's determination that release after serving that much time would not diminish the seriousness of the crime, and that release on parole would be appropriate if the prisoner meets the other criteria that consider the characteristics of the prisoner and his release plan.

The legislature also authorizes each sentencing judge, in imposing a sentence in a particular case, to set a period greater than the statutory minimum that the prisoner must serve before becoming eligible for release on discretionary parole. When a judge declines to set a longer minimum period, this is a judicial determination that, on the facts of the case, parole release after serving the minimum time mandated by the legislature would not diminish the seriousness of the crime.

There is no reason to give the Parole Board a super-power to override these determinations and to deny parole release based on the seriousness of the crime, even when all other criteria for parole release are met.

Recent experience shows the consequences of giving the Board such power. We have observed numerous cases in which the Board has rejected an applicant who has served more than the legislative and judicial minimum, solely because a majority of the Board believes the person has not yet served enough time — even though the applicant has demonstrated growth and reformation and has articulated a clear release plan. When the Board possesses such broad authority, it can act with impunity.

Additional reasons to advance SB 176 include:

- **Institutional safety:** When the Board consistently denies parole to people who have good institutional records and have completed extensive rehabilitative programming, this diminishes hope and an important incentive for good behavior. Institutions are safer for incarcerated Alaskans and Corrections staff when parole is an achievable goal.
- **Addressing racial disparities:** Longstanding racial disparities in Alaska's prison population are perpetuated by the Board. In 2021 and 2022, white applicants were granted parole at higher rates than every other racial or ethnic group tracked by the Board.[v]
- **Cost and workforce potential:** It costs Alaska on average $202 per day to incarcerate an individual. Costs escalate as people who are incarcerated age, manage chronic diseases, or require emergency medical care. It would benefit Alaska to take advantage of opportunities to release people who have demonstrated they can return safely to their communities, especially when they have demonstrable skills or professions that can contribute to the state's workforce.

We urge the committee to state explicitly that the bill applies to all individuals eligible to apply for parole after the bill takes effect, including people who have already been convicted and are currently incarcerated. With that change, the reforms instituted by SB 176 would create a fairer parole system, and we urge you to advance it.

Thank you for your consideration of our views. If you have any questions, please do not hesitate to contact me at mgarvey@acluak.org.

Sincerely,

Michael P. Garvey
Advocacy Director

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[i] Alaska Board of Parole, *Discretionary Hearings 2023* (page 3), available at https://doc.alaska.gov/Parole/documents/Discretionary%20Hearings%202023.pdf.
[ii] Alaska Board of Parole, *Discretionary Hearings 2020* (page 3), available at https://doc.alaska.gov/Parole/documents/discretionary-hearings-2020.pdf.
[iii] AS 33.16.030
[iv] AS 33.16.100(4)
[v] State of Alaska Board of Parole, *Quick Facts*, Dec. 31, 2021, available at https://doc.alaska.gov/Parole/documents/quick-facts-2021.pdf; State of Alaska Board of Parole, *Quick Facts,* Dec. 31, 2022, available at https://doc.alaska.gov/Parole/documents/Quick%20Facts%202022.pdf.