PREVENTING VIOLENCE
AND DEVELOPING
YOUTH LEADERS

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The Honorable Josh Newman
California State Capitol, Room 4082
Sacramento, California 95814

Re: SB 1242 – as amended - OPPOSE

Dear Senator Newman:

On behalf of Youth ALIVE!, we respectfully oppose SB 1242, which would add arbitrary hurdles to earning parole that are unrelated to public safety, and lead to exorbitant costs associated with extensive litigation and the continued incarceration of hundreds or thousands of people after they would not pose a threat to public safety if released.

Youth ALIVE! is a violence prevention and intervention organization that helps young people become leaders and advocates for the change they would like to see in their communities through our Teens on Target Program, mentors and supports healing for young people who have been violently injured through our Caught in the Crossfire program, and works with families grieving in the wake of a homicide through our Khadafy Washington Project.

Under current law, the Board of Parole Hearings (BPH) "shall grant parole to an inmate unless … consideration of the public safety requires a more lengthy period of incarceration for this individual" (Penal Code § 3041(b)). The California Code of Regulations further governs this process, listing factors that are considered to determine a person's suitability or unsuitability for parole, and dictating that parole should be denied if the parole board (Board) determines that "the prisoner will pose an unreasonable risk of danger to society if released from prison" (15 CCR § 2402, 2281). In other words, the impact on public safety is the primary consideration in determining whether a person is suitable for parole.

SB 1242 would create new statutory requirements to earning parole that are unrelated to public safety. This law would require that, to earn parole, someone must have insight and remorse, has been free from disciplinary action for a "reasonable period of time", and the Board must believe the person's version of the crime. On April 24, the Public Safety Committee requested the production of evidence that the presence of "insight" and "remorse" correlate to a reduced risk of violence for people who have been incarcerated for decades, but it has not yet been produced. Absent such evidence, the rationale for this bill is totally lacking. These new requirements would be in direct conflict with the existing "public safety risk" standard that has governed California parole law for decades. These new standalone requirements would require BPH to deny parole to a person who purportedly lacks insight or remorse, tells a version of the crime that the Board does not believe, or has had a minor disciplinary infraction in an undefined "reasonable" time period *even if* the Board is confident the person is not currently dangerous.

There is also no need for this bill as thousands of people with life sentences have been denied parole or had their parole grant reversed based on nebulous assertions by BPH or the Governor that they lack or have insufficient "insight" under the existing statutory and regulatory scheme. There is no evidence that people with life sentences paroled under this scheme have gone on to commit new violent crimes. The

California Supreme Court has recognized that a "lack of insight" can be a sufficient basis to deny someone parole **only if** it demonstrates that the person presents an unreasonable risk to public safety if released. Still, courts have acknowledged the potential difficulty in assessing "insight" because "expressions of insight and remorse will vary from prisoner to prisoner and that there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior." The California Supreme Court and Courts of Appeal have issued many opinions highlighting the risks inherent in relying on the vague, undefined nature of insight and remorse and SB 1242 will codify these risks and leave the parole process susceptible to years of litigation. See *In re Shaputis* (2011) 53 Cal.4th 192, 229-230 (Shaputis II); *In re Shaputis* (2008) 44 Cal.4th 1241, 1260, fn. 18 (Shaputis I); *In re Ryner* (2011) 196 Cal.App.4th 533, 548; *In re Perez* (2016) 7 Cal.App.5th 65, 86; and *In re Morganti* (2012) 204 Cal.App.4th 904, 925. A case that explicitly found that the prisoner lacked insight AND that the lack of insight did not render him dangerous or otherwise unsuitable for parole is *In re Rodriguez* (2011) 193 Cal.App.4th 85, 97-98.

Under SB 1242, hundreds of people that post no threat to public safety would be denied due to their inability to communicate their insight/remorse/responsibility to meet these new, vague standards. This includes people with intellectual disabilities, serious mental disorders, senility (with advanced age), illiteracy, and other language difficulties. This bill would also require parole to be denied to any person who has ever minimized his or her role in the crime regardless of whether they are *presently* minimizing their role. It would also require that a person's description of their role in a crime must be "credible" a change from the current "plausible" standard. Existing law prevents BPH from finding a person is minimizing if the crime *could have happened* the way the person describes. This new requirement would require the Board to actually believe the person's version of events, which turns the BPH Commissioners into detectives required to investigate events that happened decades ago. Numerous courts have established and reaffirmed the "plausibility" standard that SB 1242 seeks to overturn. See *Shaputis II*, supra, 53.Cal.4th at 216; *In re Sanchez* (2012) 209 Cal.App.4th 962, 974; *In re Perez* (2016) 7 Cal.App.5th 65, 90; *In re Pugh* (2012) 205 Cal.App.4th 260, 272; *In re Busch* (2016) 246 Cal.App.4th 953, 970; *In re Jackson* (2011) 193 Cal.App.4th 1376, 1389-1391; and *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110-1112, disapproved on another ground in *In re Prather* (2010) 50 Cal.4th 238, 252-253.

The changes proposed by SB 1242 will **undoubtedly lead to years of costly litigation** because they affect every single one of 35,000 incarcerated people with life sentences. Furthermore, **each person denied parole based on these new standards that are unrelated to public safety costs the state more than $75,000 annually to incarcerate;** since the minimum parole denial is three years, **each denial will cost at least $225,000.**

For all the foregoing reasons, Youth ALIVE! does not support SB 1242 (Newman).

Sincerely,

Anne Marks
Executive Director

cc: Senate Committee on Appropriations
Senate Committee on Public Safety
Lizzie Buchen, ACLU
Julie Hess, Uncommon Law