



ALABAMA APPLESEED CENTER for LAW & JUSTICE

2 Office Park Circle, Suite 10
Birmingham, Alabama 35223

Comment on Alabama Board of Pardons and Paroles Rule No. 640-X-A-2, Form ABPP-2; Parole Guidelines

Carla Crowder, Scott Fuqua, and Ronald McKeithen

Alabama Appleseed Center for Law and Justice

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Alabama Board of Pardons and Paroles

Alatia R. Midkiff

Attn: Legal Department

301 South Ripley Street

Montgomery, Alabama 36104

We write to provide input on the proposed guidelines. Carla Crowder and Scott Fuqua bring a combined 30 years of experience in criminal defense, post-conviction and parole representation. Ronald McKeithen brings 37 years experience incarcerated in the Alabama Department of Corrections, plus four years as a reentry support specialist. He currently serves on the Alabama Reentry Task Force.

In October 2024, the Alabama Reentry Commission released its “Reentry System Assessment First Findings Presentation.” The Commission, comprising a bipartisan group of lawmakers and leadership from numerous state agencies including the Bureau of Pardons and Paroles, the Department of Human Resources, the Department of Corrections, the Department of Labor, and the Department of Veterans Affairs shared serious concerns about the lack of available programming within ADOC and the entrenched gaps in reentry staffing and services within multiple state agencies. This Commission was created by legislation, held meetings for months, and worked alongside the Council on State Governments to produce its *System Mapping and Findings*.¹ (Relevant pages attached.)

¹ Alabama Reentry Commission, Reentry System Assessment, First Findings Presentation, Council on State Government’s Reentry 2030 Project, October 2024.

The proposed guidelines place considerable weight on completion of specific ADOC programming and on an individual's success in securing a reentry plan, especially a home and job plan, including a letter from an employer. The Reentry Commission has repeatedly cited deficits in funding, staffing, timeliness, and clarity with the services necessary for incarcerated people to create reentry plans. For example:

“Transition planning starts too late, and ADOC reentry staff and partners are not getting timely notice of when people are leaving, creating barriers to enrolling in health insurance, ensuring vital documents are received prior to release, and making referrals for housing and treatment.”

While we detail below numerous concerns about the proposed guidelines, we emphasize that a point system tailored to penalize incarcerated individuals based on factors that a statewide commission has, after thorough investigation, determined are difficult to achieve because of shortcomings within state agencies seems unfair, at a minimum, and deserves reconsideration.

The requirement that new guidelines be adopted provides an opportunity for the State to recognize that incarcerated individuals should not be additionally punished in their parole efforts based on the failures of the State to provide access to required programs and services. One third of the factors considered in the Proposed Guidelines are impacted by these agency shortcomings. A full assessment of these factors and our recommendations are listed under IV and V.

We highlight here because of the urgency for authorities tasked with considering the proposed guidelines to understand the enormous hurdles that parole applicants face in attempts to achieve a favorable score under these guidelines, not because of a lack of effort on their part, but because of barriers beyond their control.

I. Severity of the Offense

The proposed guideline would increase the points given based on severity of offense from a maximum of 2 to a maximum of 4. Felonies involving personal injury and sex cases are automatically scored “very high” (4 points) and cases with victims are scored “high” (3 points). This proposed change is problematic for two reasons. First, it ignores years of research that show reoffense and recidivism is lowest among people convicted of a violent offense,² thereby reducing the numbers of people paroled who are most likely to succeed and not commit additional offenses in Alabama. Second, it further penalizes individuals based on a static factor,

² Mariel Alper, PhD, Matthew R. Durose, and Joshua Markman, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2018 Update on Prisoner Recidivism, A Nine-Year Follow-up Period (2005-2014), <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>.

the original offense, that no amount of rehabilitation, education, or reentry preparation can change, which risks discouraging participation in positive programming.

In 15 years of legal practice, we have represented dozens of individuals in parole and post-conviction proceedings. Some clients have been convicted of violent offenses, others non-violent. To a person, none of the more than 25 people with violent offenses has returned to prison, this includes 4 people with murder convictions and numerous others with convictions for robbery and burglary. Our experience in Alabama backs up what the research shows: conviction of a more serious offense does not equate with increased risk of reoffense on parole and risk to public safety.³

Moreover, factor VI. Stakeholder and Community Input, also provides an opportunity for a victim's opinion to be weighed. Thus, as proposed, the guidelines potentially double count the fact that a case involves a victim, both in adding points in the "Severity of the Offense" category and adding points in the "Stakeholder and Community Input" category.

Appleseed's recommendation would be to maintain the current scoring system for this factor.

II. Actuarial Assessment

No proposed changes

III. Institutional Behavior

This factor only considers disciplinarys within the last 12 months. This is counterproductive for multiple reasons.

First, it would permit an incarcerated individual with a long history of institutional violence and misconduct to receive 0 points, even if they stabbed or otherwise assaulted a fellow prisoner or officer, as long as that behavior occurred more than 12 months prior to the parole hearing. In fact, it is not uncommon for someone with a history of extreme violence to avoid disciplinarys for months at a time. Here is how this happens: Following the most serious assaults, prisoners are placed in disciplinary segregation. Isolated from other prisoners and without access to most of the prison, these prisoners are less likely to receive disciplinarys while in segregation and can fairly easily acquire a 12-month clear record. Thus, under the proposed guidelines, someone who has spent 12 months disciplinary-free in disciplinary segregation following the murder or rape of a fellow prisoner would receive 0 points. Yet someone with a sterling disciplinary record over decades who's found to have an extra packet of ramen or ketchup within the last 12 months would be penalized with one point.

³ Id., finding that "prisoners released for a property offense were the most likely to be rearrested," at 9.

Additionally, this factor fails to take into account the remarkable efforts of prisoners who avoid disciplinaries for multiple years or even decades. The ability to follow strict institutional rules and avoid conflict with other individuals in overcrowded, unairconditioned, dilapidated, understaffed prisons and avoid disciplinaries year after year is a strong indicator that someone has developed the skills and character to do extremely well outside of prison. Only considering 12 months of behavior fails to take into account the fuller picture of someone's rehabilitation and dedicated adherence to rules long-term.

Considering only 12 months also disincentivizes good behavior for four years for people who are denied and set off for reconsideration after 5 years. There's no reason for someone to avoid drugs, trouble, and violence for years after such a set off, if only the last 12 months are considered, which contributes to hopelessness and violence in Alabama's prisons.

Finally, the guidelines must be structured in a way that accounts for the extreme dysfunction of the Alabama prison system over the last decade, in which more than 100 people have died by homicides and thousands have been assaulted and seriously injured.⁴ Often individuals receive a "disciplinary involving violence" for protecting themselves against an aggressor. For example, the disciplinary "fighting without a weapon," could be applied to a new prisoner who is returning to his cell from the store with supplies such as shampoo and coffee and is confronted by a prisoner with a knife trying to rob him. With no correctional officers nearby, which is often the case in prisons with staffing levels at 50%, the new prisoner is forced to fight off the aggressor to defend himself, or earn a reputation as weak and spend the entirety of his incarceration getting robbed of his food and personal care items. No one, not even incarcerated people, should be penalized for protecting their own property. But that is what these guidelines do.

The proposed guidelines should be adjusted as follows:

Amend the fourth and fifth lines to read:

- 1 or more disciplinaries involving violence, in which the inmate was the aggressor as determined following a hearing, within the last 12 months: +3
- Multiple disciplinaries involving violence, in which the inmate was the aggressor as determined following a hearing, within the last 12 months: +4

Add the following:

- No disciplinaries for at least three years - Minus 1 point

⁴ See Alexander Willis, Alabama Daily News, Fighting, Assaults on Staff in Alabama Prisons Increase in Latest Report, Act. 21, 2024, at <https://aldailynews.com/fighting-assaults-on-staff-in-alabama-prisons-increase-in-latest-report/>;

Cynthia Gould, Inmate Deaths Remain High In Alabama Highlighting Urgent Need for Prison Reform, abc33/30, Jan. 29, 2025, at <https://abc3340.com/news/local/inmate-deaths-remain-high-in-alabama-highlighting-urgent-need-for-prison-reform>.

- No disciplinarys for at least five years - Minus 2 points
- No disciplinarys for at least 10 years - Minus 3 points

IV. Participation in risk-reducing programming/treatment

The proposed guidelines state: “Only programs and treatments ordered by the Court or the Board, or recommended by the ADOC that are risk-reducing/cognitive behavioral as defined by ADOC are scored.”

We have multiple concerns with this factor. First and foremost, incarcerated individuals are not routinely informed as to which programs are considered “risk reducing/cognitive behavioral as defined by the ADOC.” It is difficult to participate in programs that can reduce one’s score if one has no way of knowing what those programs are. Moreover, there are often long waiting lists for programs ordered by the Court or the Board because of lack of available staffing or services. This deficit was specifically raised by the Alabama Reentry Commission, which made the following findings regarding program availability:

- The availability and accessibility of ADOC reentry programming is limited, impacting the ability of individuals to receive critical programming prior to release.
- Evidence-based programming is not offered consistently across all facilities to help prepare people for reentry, including a lack of in reach from community providers to support people to prepare to reenter.
- Individuals are not always matched with programming based on their individual needs or risk level, and incarcerated individuals report long wait lists to join programs and barriers to participate based on their conviction.⁵
- Facility conditions, including overcrowding, acts of violence, and drug use has resulted in fewer programming opportunities being available and accessible to incarcerated individuals.
 - ADOC does not have the staffing capacity needed to provide a full array of reentry programming, including a lack of specialized staff to implement evidence-based programs, such as Thinking for a Change.⁶ Additionally, there is a limited number of

⁵ Alabama Reentry Commission, Reentry System Assessment, First Findings Presentation, Council on State Government’s Reentry 2030 Project, October 2024, at page 42.

⁶ Thinking for a Change was a program specifically cited in the original parole guidelines as an evidence-based program recommended by the Guidelines.

dedicated reentry coordinators in each facility and the ratio of staff to individuals served does not allow for individualized case management and reentry planning.⁷

These findings strongly suggest difficulty by incarcerated individuals in accessing the ADOC and court-ordered programming required for a lower score on the Risk Assessment. As a result, incarcerated people face an increased score based on shortcomings in state agencies, not their own unwillingness to enroll in programs. At a minimum, these guidelines should take into account these shortcomings in program accessibility identified by a commission comprising leaders in multiple state agencies, and not punish prisoners for factors beyond their control.

Moreover, the most significant growth in ADOC programming over the last few years has been in faith-based and vocational programming. Additionally, ADOC offers non-evidence-based programming considered to be productive activities such as Alcoholics Anonymous, Narcotics Anonymous, Alabama Correctional Industries, CORE, Technical School, Adult Basic Education, Unbound 217, and many others.

Some of the faith-based programs, including Church of the Highlands CORE program and Prison Fellowship's programs at Bibb County and St. Clair Correctional facilities, have been highly effective at reducing violence and improving living conditions at those prisons. These are long-term, structured programs that require dedication and commitment. It seems shortsighted to overlook participation in these programs in parole decisions.

Finally, one of the bright spots at the Department of Corrections is J.F. Ingram State Technical College, which had 850 students on its rolls in April, according to the most recent ADOC statistical report. According to Ingram's own data, 415 students were employed in 2024. It is unclear from these guidelines if completion of certifications or degrees at Ingram is considered. If not, we recommend adding Ingram classes to the program requirements resulting in a "0" score.

The new guidelines should take a comprehensive look at each incarcerated person's efforts towards rehabilitation. Any course that a person participates in, whether it is offered through ADOC, a prison ministry, or Ingram State demonstrates commitment to growth that should be taken into consideration. Numerous incarcerated people are employed at ADOC or in work release programs that enormously benefit the state, providing free or very inexpensive labor that would otherwise cost taxpayers. These individuals' efforts should be recognized and count toward lowering their scores.

We recommend expending the types of programming and jobs that result in a score of 0 to encompass the above listed programs.

⁷ Id. at page 44.

V. Reentry Plan

The proposed scores for the reentry plan also warrants revision based on the limited assistance available to individuals in ADOC to secure the housing and employment necessary to reduce their score.

Individuals are assessed one point if their plan is still in progress and two points if no efforts have been made. However, the board should recognize that significant barriers often prevent incarcerated individuals from securing housing, employment, and treatment, especially when they do not know if or when they will be released.

Under the proposed guidelines, someone who has completed numerous educational courses and submitted multiple job applications is penalized for not securing employment from the confines of prison in an era where many employers only accept applications from electronic portals or after offer employment after in-person interviews, neither of which are equally available to people in ADOC custody.

Again, in our 15 years of representing people before the Board, only twice have our dozens of clients secured employment in advance of a parole hearing. Moreover, one of those clients was ordered to complete DRC programming as a condition of parole, during which full time employment is not permitted. He then had to decline the job offer (as a journeyman plumber) in order to abide by his parole plan and attend the DRC.

Statewide, hundreds of paroled individuals are ordered to DRC programs as a condition of parole. Yet it is impossible to follow DRC rules and maintain employment. This leaves a prospective parolee in a nearly impossible situation: they must secure a job from prison in order to avoid points against a parole grant, then if parole is granted with the condition of DRC they must inform that employer that, actually, they will not be available for several months - not a great way to start off an employee-employer relationship.

In terms of housing, a questionnaire conducted by The Council of State Governments found that departments of corrections in 37 states, including Alabama, reported significant barriers to housing access for people leaving prison, including “lack of affordable housing options, discrimination/stigma based on criminal justice history or record, and restrictive housing provider and landlord policies, in addition to widely reported gaps in supportive and permanent housing.”⁸

⁸ Charles Francis, Joseph Hayashi, and Alexandria Hawkins, The Council of State Governments, https://csgjusticecenter.org/wp-content/uploads/2023/04/Building-Connections-to-Housing-During-Reentry_508.pdf, March 2023

The Alabama Reentry Commission also addressed gaps in access to housing in the October, 2024 report, noting:

- There is a significant gap in consistency around prerelease and reentry planning to facilitate individuals transition home from incarceration.
- **Transition planning starts too late, and ADOC reentry staff and partners are not getting timely notice of when people are leaving, creating barriers to enrolling in health insurance, ensuring vital documents are received prior to release, and making referrals for housing and treatment. (emphasis added.)**⁹

It seems blatantly unfair to penalize incarcerated individuals for their inability to secure housing while in prison when a statewide commission has cited gaps in the state's own provision of services as a reason for the struggles accessing housing.

We would recommend adding no more than 1 point if there is no home or job plan submitted. Additionally, we would recommend subtracting at least 1 point if there is a satisfactory home and job plan. Given the limitations in services from the state, someone who has obtained housing and employment on their own has shown remarkable capabilities and should be rewarded for their efforts.

VI. Stakeholder and Community Input

It is common practice at Alabama parole hearings for the Alabama Attorney General's Office and Victims of Crime and Leniency, an advocacy group, to oppose parole for nearly every candidate with an offense involving violence. These groups have opposed parole in the following instances:

- the actual victim of an offense supports release;
- a parole candidate has been victimized as well, either through an assault at a correctional facility or during the course of the offense for which they were convicted;
- a parole candidate has a sterling record of rehabilitation and multiple commendations from within the Department of Corrections, educational providers, and faith-based groups working in the prisons.

While we are not suggesting that law enforcement and VOCAL have no voice in the process, we question whether their input should be weighted as heavily as input from the actual victims of the offense.

⁹ Reentry Commission Report, at 46.

Additionally, these Guidelines should provide an opportunity for individuals who are the most familiar with the institutional history and rehabilitation (or lack thereof) of an incarcerated person to share their knowledge. ADOC officers and staff work daily alongside the individuals up for parole consideration and have valuable insights as to someone's ability to handle anger, respond to stress, avoid conflict, avoid drugs, and so much more. Also, the recommendation of parole officers who conduct the investigations prior to parole hearings should be given weighted consideration. The parole officers are far more familiar with the individual through their investigation and their professional opinion on who is a good candidate for parole should be one of the most important data points that the board considers. Moreover, the State invests significant resources in employing the officers who conduct these investigations. What a waste of public dollars if their recommendations are ignored.

We therefore recommend the following revisions to the proposed guidelines:

Institutional support from either ADOC or Institutional Parole Officer = Minus 1

Other support, such as family or community support, with no opposition = +0

Support and victim opposition, or no input = + 1

Opposition from law enforcement or advocacy group = + 1

Opposition from victim(s) of the offense = + 2

Thank you for this opportunity to comment on the proposed guidelines. We look forward to following the process for review and implementation of new guidelines.

Sincerely,

Carla Crowder
Attorney at Law

Scott Fuqua
Attorney at Law

Ronald McKeithen
Certified Peer Support Specialist
Director of Second Chances