

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 9, 2016

**SUBJECT:** "Geriatric" parole (CSSSSB 91(FIN);  
Work Order No. 29-LS0541\Y)

**TO:** Senator Bill Stoltze  
Attn: Daniel George

**FROM:** Hilary V. Martin   
Legislative Counsel

You have asked if the "geriatric" parole provision in sec. 105 of CSSSSB 91(FIN) is constitutional.

The bill draft provides authority for the parole board to grant a prisoner discretionary parole. The two criteria that make a prisoner eligible are limited to: (1) the prisoner reaches the age of 60 years; and (2) the prisoner has served 10 years of the prisoner's active term of imprisonment. This provision as drafted is likely unconstitutional under the due process and equal protection clauses of the Constitution of the State of Alaska and the U.S. Constitution.

A hypothetical demonstrates the issue. If two defendants commit murder in the first degree on the same day; one is 20 years old and the other is 50 years old. Both plead guilty and are sentenced to 99-year terms as provided by AS 12.55.125(a). The 20-year-old offender will have to serve all of his term through age 60 to be eligible for discretionary parole, which would be 40 years. The 50-year-old offender also convicted under AS 12.55.125(a) would be eligible for discretionary parole when the offender reached the age of 60 years and after service of 10 years of the offender's active term of imprisonment. While the commission concluded that older offenders are less likely to recidivate, a court would likely find, under an equal protection or due process analysis, that treating similarly situated offenders so differently may violate both constitutional provisions.

In addition, under current law at AS 33.16.090(a), an offender applying for discretionary parole where the court imposed a parole restriction at sentencing under AS 12.55.115, to protect the public, is not eligible for discretionary parole until a court modifies the prisoner's sentence to provide parole eligibility. The prisoner must return to the court to have the court remove the parole restriction or wait until the restriction period has ended to be eligible for discretionary parole. The bill as drafted overrides AS 33.16.090(a)(2) (judgment issued by the court restricting parole eligibility). The provision regarding

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geriatric parole overriding a court judgment raises a significant separation of powers problem.

If I may be of further assistance, please advise.

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