

CS FOR HOUSE BILL NO. 219(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/20/95

Referred: Rules

Sponsor(s): REPRESENTATIVES MULDER, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to medical care for prisoners; and authorizing special medical
2 parole for severely medically disabled or quadriplegic prisoners."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 11.61.127(b) is amended to read:

5 (b) This section does not apply to persons providing plethysmograph
6 assessments in the course of a sex offender treatment program that meets the minimum
7 standards under AS 33.30.011(a)(5) [AS 33.30.011(6)].

8 * **Sec. 2.** AS 33.16.010(d) is amended to read:

9 (d) A prisoner released on special medical, discretionary, or mandatory parole
10 is subject to the conditions of parole imposed under AS 33.16.150. Parole may be
11 revoked under AS 33.16.220.

12 * **Sec. 3.** AS 33.16.010 is amended by adding a new subsection to read:

13 (e) A prisoner eligible under AS 33.16.085 may be released on special medical
14 parole by the Parole Board.

* **Sec. 4.** AS 33.16.060 is amended to read:

Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

(1) serve as the parole authority for the state;

(2) upon receipt of an application, consider the suitability for parole of a prisoner who is eligible for **special medical or** discretionary parole;

(3) impose parole conditions on all prisoners released under discretionary or mandatory parole;

(4) under AS 33.16.210, discharge a person from parole when custody is no longer required;

(5) maintain records of the meetings and proceedings of the board;

(6) recommend to the governor and the legislature changes in the law administered by the board;

(7) recommend to the governor or the commissioner changes in the practices of the department and of other departments of the executive branch necessary to facilitate the purposes and practices of parole;

(8) upon request of the governor, review and recommend applicants for executive clemency; and

(9) execute other responsibilities prescribed by law.

(b) The board shall adopt regulations under the Administrative Procedure Act (AS 44.62)

(1) establishing standards under which the suitability of a prisoner for **special medical or** discretionary parole shall be determined;

(2) providing for the supervision of parolees and for recommitment of parolees; and

(3) governing procedures of the board.

* **Sec. 5.** AS 33.16 is amended by adding new sections to read:

Sec. 33.16.085. SPECIAL MEDICAL PAROLE. (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term a prisoner may be serving or any restriction on parole eligibility under AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application by the prisoner or the commissioner be released by the board on special medical parole if the board determines

(1) for a prisoner convicted of

(A) an offense other than a violation of AS 11.41.434 -

11.41.438, that the prisoner is severely medically disabled or a quadriplegic as certified in writing by a physician licensed under AS 08.64, was not severely medically disabled or a quadriplegic at the time the prisoner committed the offense or parole or probation violation for which the prisoner is presently incarcerated; or

(B) a violation of AS 11.41.434 - 11.41.438, that the prisoner is a quadriplegic as certified by a physician licensed under AS 08.64 and was not a quadriplegic at the time the prisoner committed the offense or parole or probation violation for which the prisoner is presently incarcerated; and

(2) that a reasonable probability exists that

(A) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board;

(B) because of being severely medically disabled or a quadriplegic, the prisoner will not pose a threat of harm to the public if released on parole; and

(C) release of the prisoner on parole would not diminish the seriousness of the crime.

(b) If the board finds a change in circumstances or discovers new information concerning a prisoner who has been granted a special medical parole release date, the board may rescind or revise the previously granted parole release date.

(c) The board shall issue its decision to grant or deny special medical parole, or to rescind or revise the release date of a prisoner granted special medical parole, in writing and provide a basis for the decision. A copy of the decision shall be provided to the prisoner.

Sec. 33.16.087. RIGHTS OF CERTAIN VICTIMS IN CONNECTION WITH SPECIAL MEDICAL PAROLE. (a) If the victim of a crime against a person or arson in the first degree requests notice of a scheduled hearing to review or consider special medical parole for a prisoner convicted of that crime, the board shall send notice of the hearing to the victim at least 30 days before the hearing. The notice

1 must be accompanied by a copy of the prisoner's or commissioner's application for
2 parole submitted under AS 33.16.085. However, the copy of the application sent to
3 the victim may not include the prisoner's proposed residence and employment
4 addresses.

5 (b) A victim who requests notice under this section shall maintain a current,
6 valid mailing address on file with the board. The board shall send the notice required
7 by this section to the last known address of the victim. The victim's address may not
8 be disclosed to the prisoner or the prisoner's attorney.

9 (c) The victim has a right to attend meetings of the parole board in which the
10 status of the prisoner convicted of the crime against that victim is officially
11 considered and to comment, in writing or in person, on the proposed action of the
12 board. Copies of any written comments shall be provided to the prisoner and the
13 prisoner's attorney before action by the board.

14 (d) The board shall consider the comments presented under (c) of this section
15 in deciding whether to release the prisoner on special medical parole.

16 (e) If the victim requests, the board shall make every reasonable effort to
17 notify the victim as soon as practicable in writing of its decision to grant or deny
18 special medical parole. The notice under this subsection must include the expected
19 date of the prisoner's release, the geographic area in which the prisoner is required to
20 reside, and other pertinent information concerning the prisoner's conditions of parole
21 that may affect the victim.

22 * **Sec. 6.** AS 33.16.140 is amended to read:

23 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole issued by the
24 board, setting out the conditions imposed under AS 33.16.150(a) and (b) [,] and the
25 date parole custody ends, shall be furnished to each prisoner released on **special**
26 **medical,** **discretionary,** or mandatory parole.

27 * **Sec. 7.** AS 33.16.150(a) is amended to read:

28 (a) As a condition of parole, a prisoner released on **special medical,**
29 **discretionary,** or mandatory parole

30 (1) shall obey all state, federal, or local laws or ordinances, and any
31 court orders applicable to the parolee;

(2) shall make diligent efforts to maintain steady employment or meet family obligations;

(3) shall, if involved in education, counseling, training, or treatment, continue in the program unless granted permission from the parole officer assigned to the parolee to discontinue the program;

(4) shall report

(A) upon release to the parole officer assigned to the parolee;

(B) at other times, and in the manner, prescribed by the board officer assigned to the parolee;

(5) shall reside at a stated place and not change that residence without notifying, and receiving permission from, the parole officer assigned to the parolee;

(6) shall remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;

(7) may not use, possess, handle, purchase, give, distribute, or administer a controlled substance as defined in AS 11.71.900 or under federal law or a drug for which a prescription is required under state or federal law without a prescription from a licensed medical professional to the parolee;

(8) may not possess or control a firearm; in this paragraph, "firearm" has the meaning given in AS 11.81.900;

(9) may not enter into an agreement or other arrangement with a law enforcement agency or officer that will place the parolee in the position of violating a law or parole condition without the prior approval of the board;

(10) may not contact or correspond with anyone confined in a correctional facility of any type serving any term of imprisonment or a felon without the permission of the parole officer assigned to a parolee;

(11) shall agree to waive extradition from any state or territory of the United States and to not contest efforts to return the parolee to the state.

* **Sec. 8.** AS 33.16.150(b) is amended to read:

(b) The board may require as a condition of **special medical**, discretionary, or mandatory parole, or a member of the board acting for the board under (e) of this section may require as a condition of mandatory parole, that a prisoner released on

1 parole

2 (1) not possess or control a defensive weapon, a deadly weapon other
3 than an ordinary pocket knife with a blade three inches or less in length, or
4 ammunition for a firearm, or reside in a residence where there is a firearm capable of
5 being concealed on one's person or a prohibited weapon; in this paragraph, "deadly
6 weapon," "defensive weapon," and "firearm" have the meanings given in
7 AS 11.81.900, and "prohibited weapon" has the meaning given in AS 11.61.200;

8 (2) refrain from possessing or consuming alcoholic beverages;

9 (3) submit to reasonable searches and seizures by a parole officer, or
10 a peace officer acting under the direction of a parole officer;

11 (4) submit to appropriate medical, mental health, or controlled
12 substance or alcohol examination, treatment, or counseling;

13 (5) submit to periodic examinations designed to detect the use of
14 alcohol or controlled substances;

15 (6) make restitution ordered by the court according to a schedule
16 established by the board;

17 (7) refrain from opening, maintaining, or using a checking account or
18 charge account;

19 (8) refrain from entering into a contract other than a prenuptial contract
20 or a marriage contract;

21 (9) refrain from operating a motor vehicle;

22 (10) refrain from entering an establishment where alcoholic beverages
23 are served, sold, or otherwise dispensed;

24 (11) refrain from participating in any other activity or conduct
25 reasonably related to the parolee's offense, prior record, behavior or prior behavior,
26 current circumstances, or perceived risk to the community, or from associating with
27 any other person that the board determines is reasonably likely to diminish the
28 rehabilitative goals of parole, or that may endanger the public; **in the case of special**
medical parole, for a prisoner diagnosed with a communicable disease, comply
with conditions set by the board designed to prevent the transmission of the
disease.

1 * **Sec. 9.** AS 33.16.200 is amended to read:

2 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in
3 AS 33.16.210, the board retains custody of special medical, discretionary, and
4 mandatory parolees until the expiration of the maximum term or terms of
5 imprisonment to which the parolee is sentenced.

6 * **Sec. 10.** AS 33.16.900(6) is amended to read:

7 (6) "discretionary parole" means the release of a prisoner by the board
8 before the expiration of a term, subject to conditions imposed by the board and subject
9 to its custody and jurisdiction; "discretionary parole" does not include "special
10 medical parole";

11 * **Sec. 11.** AS 33.16.900 is amended by adding new paragraphs to read:

12 (11) "severely medically disabled" means that a person has a medical
13 condition that requires the person suffering from the condition to be confined to bed
14 and the person is likely to

15 (A) be confined to bed throughout the entire period of parole;

16 or

17 (B) to die from the condition;

18 (12) "special medical parole" means the release by the board before the
19 expiration of a term, subject to conditions imposed by the board and subject to its
20 custody and jurisdiction, of a prisoner who is severely medically disabled or a
21 quadriplegic.

22 * **Sec. 12.** AS 33.30.011 is amended to read:

23 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

24 (1) establish, maintain, operate, and control correctional facilities
25 suitable for the custody, care, and discipline of persons charged or convicted of
26 offenses against the state or held under authority of state law;

27 (2) classify prisoners;

28 (3) for persons committed to the custody of the commissioner, establish
29 programs, including furlough programs that are reasonably calculated to

30 (A) protect the public;

31 (B) maintain health;

- (C) create or improve occupational skills;
- (D) enhance educational qualifications;
- (E) support court-ordered restitution; and
- (F) otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society;

(4) provide necessary

- (A) medical services for prisoners in correctional facilities or who are committed by a court to the custody of the commissioner, including examinations for communicable and infectious diseases;
- (B) [(5) PROVIDE NECESSARY] psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes that

 - (i) [(A)] a prisoner exhibits symptoms of a serious disease or injury that is curable or may be substantially alleviated; and
 - (ii) [(B)] the potential for harm to the prisoner by reason of delay or denial of care is substantial;

- (5) [(6)] establish minimum standards for sex offender treatment offered to persons who are committed to the custody of the commissioner;
- (6) [(7)] provide for fingerprinting in correctional facilities in accordance with AS 12.80.060.

* **Sec. 13.** AS 33.30 is amended by adding a new section to read:

Sec. 33.30.028. RESPONSIBILITY FOR COSTS OF MEDICAL CARE. (a) Notwithstanding any other provision of law, the liability for payment of the costs of medical, psychological, and psychiatric care provided or made available to a prisoner committed to the custody of the commissioner is, subject to (b) of this section, the responsibility of the prisoner and the

- (1) prisoner's insurer if the prisoner is insured under existing individual health insurance, group health insurance, or any prepaid medical coverage;
- (2) Department of Health and Social Services if the prisoner is eligible for assistance under AS 47.07 or AS 47.25.120 - 47.25.310;

(3) United States Department of Veterans Affairs if the prisoner is eligible for veterans' benefits that entitle the prisoner to reimbursement for the medical care or medical services;

(4) United States Public Health Service, the Indian Health Service, or any affiliated group or agency if the prisoner is a Native American and is entitled to medical care from those agencies or groups; and

(5) parent or guardian of the prisoner if the prisoner is under the age of 18.

(b) The commissioner shall require prisoners who are without resources under (a) of this section to pay the costs of medical, psychological, and psychiatric care provided to them by the department. At a minimum, the prisoner shall be required to pay a portion of the costs based upon the prisoner's ability to pay.

* **Sec. 14.** AS 33.30.071(a) is amended to read:

(a) Notwithstanding AS 33.30.011(1), the commissioner of public safety shall provide for the custody, care, and discipline of prisoners pending arraignment, commitment by a court to the custody of the commissioner of corrections, or admission to a state correctional facility. Except as provided in (c) of this section, the responsibility for providing necessary medical services for prisoners remains with the commissioner of corrections under AS 33.30.011(4), **subject to the responsibility for payment under AS 33.30.028.** The commissioner of corrections and the commissioner of public safety are not responsible for providing custody, care, and discipline for a person detained under AS 47.30.705 or AS 47.37.170 [,] unless the person is admitted into a state correctional facility.