

SENATE BILL NO. 34

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/23/19

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to probation; relating to a program allowing probationers to earn**
2 **credits for complying with the conditions of probation; relating to early termination of**
3 **probation; relating to parole; relating to a program allowing parolees to earn credits for**
4 **complying with the conditions of parole; relating to early termination of parole; relating**
5 **to eligibility for discretionary parole; relating to good time; and providing for an**
6 **effective date."**

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

8 * **Section 1.** AS 12.55.025(c) is amended to read:

9 (c) Except as provided in (d) of this section, when a defendant is sentenced to
10 imprisonment, the term of confinement commences on the date of imposition of
11 sentence unless the court specifically provides that the defendant must report to serve
12 the sentence on another date. If the court provides another date to begin the term of
13 confinement, the court shall provide the defendant with written notice of the date,

time, and location of the correctional facility to which the defendant must report. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which the sentence was imposed [INCLUDING A TECHNICAL VIOLATION OF PROBATION AS PROVIDED IN AS 12.55.110]. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

* **Sec. 2.** AS 12.55.051(a) is amended to read:

(a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant [SUBJECT TO THE LIMITS SET OUT IN AS 12.55.110]. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts to pay the fine or restitution. If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay. If the court does not find that the default was attributable to the defendant's inability to pay despite having made continuing good faith efforts to pay the fine or restitution, the court may order the defendant imprisoned [SUBJECT TO THE LIMITS SET OUT IN AS 12.55.110]. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

* **Sec. 3.** AS 12.55.090(g) is amended to read:

(g) A probation officer may [SHALL] recommend to the court that probation be terminated and a defendant be discharged from probation if the defendant

(1) [HAS COMPLETED AT LEAST

(A) TWO YEARS ON PROBATION IF THE PERSON WAS
CONVICTED OF A CLASS A OR CLASS B FELONY THAT IS NOT A
CRIME UNDER (5) OF THIS SUBSECTION; OR

(B) 18 MONTHS ON PROBATION IF THE PERSON WAS
CONVICTED OF A CRIME THAT IS NOT A CRIME

(i) UNDER (A) OF THIS PARAGRAPH; OR

(ii) UNDER (5) OF THIS SUBSECTION;

(2)] has completed all treatment programs required as a condition of
probation;

(2) [(3) HAS NOT BEEN FOUND IN VIOLATION OF
CONDITIONS OF PROBATION BY THE COURT FOR THE PERIOD SPECIFIED
IN (1) OF THIS SUBSECTION;

(4)] is currently in compliance with all conditions of probation for all
of the cases for which the person is on probation; and

(3) [(5)] has not been convicted of an unclassified felony offense, a
sexual felony as defined in AS 12.55.185, or a crime involving domestic violence as
defined in AS 18.66.990.

* **Sec. 4.** AS 33.05.020(h) is amended to read:

(h) The commissioner shall establish by regulation a program allowing
probationers to earn credits for complying with the conditions of probation. The
credits earned reduce the period of probation. Nothing in this subsection prohibits the
department from recommending to the court the early discharge of the probationer as
provided in **AS 12.55 and this chapter** [AS 33.30]. At a minimum, the regulations
must

(1) require that a probationer earn a credit of **one day** [30 DAYS] for
each **three-day** [30-DAY] period served in which the defendant complied with the
conditions of probation;

(2) include policies and procedures for

(A) calculating and tracking credits earned by probationers;

(B) reducing the probationer's period of probation based on
credits earned by the probationer; and

(C) notifying a victim under AS 33.30.013;

(3) require that a probationer convicted of a [SEX OFFENSE AS DEFINED IN AS 12.63.100 OR A] crime involving domestic violence as defined in AS 18.66.990 complete all treatment programs required as a condition of probation before discharge based on credits earned under this subsection.

* **Sec. 5.** AS 33.05.020 is amended by adding new subsections to read:

(i) A probationer convicted of a sex offense, as defined in AS 12.63.100, may not be enrolled in a program established under (h) of this section.

(j) If a probationer is found in violation of the conditions of probation, the probationer forfeits any credits earned under (h) of this section before the date of the violation.

* **Sec. 6.** AS 33.05.040 is amended to read:

Sec. 33.05.040. Duties of probation officers. A probation officer shall

(1) furnish to each probationer under the supervision of the officer a written statement of the conditions of probation and shall instruct the probationer regarding the same;

(2) keep informed concerning the conduct and condition of each probationer under the supervision of the officer and shall report on the probationer to the court placing that person on probation;

(3) use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition;

(4) [KEEP RECORDS OF THE PROBATION WORK, INCLUDING ADMINISTRATIVE SANCTIONS AND INCENTIVES THE PROBATION OFFICER IMPOSES UNDER AS 33.05.020(g), KEEP ACCURATE AND COMPLETE ACCOUNTS OF ALL MONEY COLLECTED FROM PERSONS UNDER THE SUPERVISION OF THE OFFICER, GIVE RECEIPTS FOR MONEY COLLECTED AND MAKE AT LEAST MONTHLY RETURNS OF IT, MAKE THE REPORTS TO THE COURT AND THE COMMISSIONER REQUIRED BY THEM, AND PERFORM OTHER DUTIES THE COURT MAY DIRECT;

(5)] perform duties with respect to persons on parole as the

commissioner shall request, and in that service shall be termed a parole officer;

(5) [(6) USE ADMINISTRATIVE SANCTIONS AND INCENTIVES DEVELOPED UNDER AS 33.05.020(g) TO RESPOND TO A PROBATIONER'S NEGATIVE AND POSITIVE BEHAVIOR, INCLUDING RESPONSES TO TECHNICAL VIOLATIONS OF CONDITIONS OF PROBATION, IN A WAY THAT IS INTENDED TO INTERRUPT NEGATIVE BEHAVIOR IN A SWIFT, CERTAIN, AND PROPORTIONAL MANNER AND SUPPORT PROGRESS WITH A RECOGNITION OF POSITIVE BEHAVIOR;

(7)] upon determining that a probationer under the supervision of the officer meets the requirements of AS 12.55.090(g), **consider recommending** [RECOMMEND] to the court [AS SOON AS PRACTICABLE] that probation be terminated and the probationer be discharged from probation;

(6) [(8)] for each probationer who owes restitution and who is under the supervision of the officer, create a restitution payment schedule based on the probationer's income and ability to pay if the court has not already set a restitution payment schedule;

(7) [(9)] accommodate the diligent efforts of each probationer to secure and maintain steady employment or to participate in educational courses or training programs when prescribing the times at which a probationer shall report;

(8) [(10)] permit each probationer to travel in the state to make diligent efforts to secure and maintain steady employment or to participate in educational courses or training programs if the travel is not inconsistent with other terms and conditions of probation.

* **Sec. 7.** AS 33.16.060(a) is amended to read:

(a) The board shall

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

(2) **upon receipt of the prisoner's application,** consider the suitability for parole of a prisoner who is eligible for discretionary parole **and** [AT LEAST 90 DAYS BEFORE THE PRISONER'S FIRST DATE OF ELIGIBILITY AND UPON RECEIPT OF THE PRISONER'S APPLICATION FOR] special medical parole;

(3) impose parole conditions on all prisoners released under special medical, 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.

* **Sec. 8.** AS 33.16.090(b) is amended to read:

(b) A prisoner eligible under (a)(1) of this section who is sentenced

(1) to a single sentence under AS 12.55.125(a) or (b) may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment imposed, or any term set under AS 12.55.115, whichever is greatest;

(2) to a single sentence within or below a presumptive range set out in AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i) [AS 12.55.125(i)(1) AND (2)], and has not been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release, may not be released on discretionary parole until the prisoner has served the term imposed, less good time earned under AS 33.20.010;

(3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i) [AS 12.55.125(i)], and has been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release during the second half of the sentence, may not be released on discretionary parole until

(A) the prisoner has served that portion of the active term of imprisonment required by the three-judge panel; and

(B) in addition to the factors set out in AS 33.16.100(a), the

board determines that

(i) the prisoner has successfully completed all rehabilitation programs ordered by the three-judge panel that were made available to the prisoner; and

(ii) the prisoner would not constitute a danger to the public if released on parole;

(4) to a single enhanced sentence under AS 12.55.155(a) that is above the applicable presumptive range may not be released on discretionary parole until the prisoner has served the greater of the following:

(A) an amount of time, less good time earned under AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth of the amount of time above the presumptive range; or

(B) any term set under AS 12.55.115;

(5) to a single sentence under any other provision of law may not be released on discretionary parole until the prisoner has served at least one-fourth of the active term of imprisonment, any mandatory minimum sentence imposed under any provision of law, or any term set under AS 12.55.115, whichever is greatest;

(6) to concurrent sentences may not be released on discretionary parole until the prisoner has served the greatest of

(A) any mandatory minimum sentence or sentences imposed under any provision of law;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) - (5) of this subsection for the sentence imposed for the primary crime, had that been the only sentence imposed;

(7) to consecutive or partially consecutive sentences may not be released on discretionary parole until the prisoner has served the greatest of

(A) the composite total of any mandatory minimum sentence or sentences imposed under any provision of law, including AS 12.55.127;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) -

(5) of this subsection for the sentence imposed for the primary crime, had that been the only sentence imposed, plus one-quarter of the composite total of the active term of imprisonment imposed as consecutive or partially consecutive sentences imposed for all crimes other than the primary crime [;

(8) TO A SINGLE SENTENCE UNDER AS 12.55.125(i)(3) AND (4), AND HAS NOT BEEN ALLOWED BY THE THREE-JUDGE PANEL UNDER AS 12.55.175 TO BE CONSIDERED FOR DISCRETIONARY PAROLE RELEASE, MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED, AFTER A DEDUCTION FOR GOOD TIME EARNED UNDER AS 33.20.010, ONE-HALF OF THE ACTIVE TERM OF IMPRISONMENT IMPOSED].

* **Sec. 9.** AS 33.16.100(a) is amended to read:

(a) The board may authorize the release of a prisoner [CONVICTED OF AN UNCLASSIFIED FELONY] who is otherwise eligible under AS 12.55.115 and AS 33.16.090(a)(1) on discretionary parole if it determines a reasonable probability exists that

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

(2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole;

(3) the prisoner will not pose a threat of harm to the public if released on parole; and

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

* **Sec. 10.** AS 33.16.100 is amended by adding a new subsection to read:

(h) If the parole board considers an application for discretionary parole and denies parole because the prisoner does not meet the standards in (a) or (g) of this section, the board may make a prisoner ineligible for further consideration of discretionary parole, or may require that additional time be served before the prisoner is again eligible for consideration for discretionary parole.

* **Sec. 11.** AS 33.16.130(a) is amended to read:

(a) The parole board shall hold a hearing before granting an eligible prisoner special medical or discretionary parole. Upon receipt of an application under AS 33.16.060(a), a [A] hearing shall be conducted within the following time frames:

(1) for prisoners eligible under AS 33.16.100(a) [OR (f)], not less than 90 days before the first parole eligibility date;

(2) for all other prisoners, not less than 30 days after the board is notified of the need for a hearing by the commissioner or the commissioner's designee.

* **Sec. 12.** AS 33.16.210(a) is amended to read:

(a) The board may unconditionally discharge a parolee from the jurisdiction and custody of the board [AFTER THE PAROLEE HAS COMPLETED ONE YEAR OF PAROLE]. A discretionary parolee with a residual period of probation may [, AFTER ONE YEAR OF PAROLE,] be discharged by the board to immediately begin serving the residual period of probation.

* **Sec. 13.** AS 33.16.210(c) is amended to read:

(c) A parole officer may [SHALL] recommend to the board early discharge for a parolee who

(1) [HAS COMPLETED AT LEAST ONE YEAR ON PAROLE;

(2)] has completed all treatment programs required as a condition of parole;

(2) is currently in compliance with all conditions of parole for all of the cases for which the person is on parole; and

(3) [HAS NOT BEEN FOUND IN VIOLATION OF CONDITIONS OF PAROLE BY THE BOARD FOR AT LEAST ONE YEAR; AND

(4)] has not been convicted of

(A) an unclassified felony offense under AS 11;

(B) a sexual felony as defined in AS 12.55.185; or

(C) a crime involving domestic violence as defined in

AS 18.66.990.

* **Sec. 14.** AS 33.16.220(b) is amended to read:

(b) Except as provided in (e) of this section, within 15 working days after the arrest and incarceration of a parolee for violation of a condition of parole [, OTHER

1 THAN A TECHNICAL VIOLATION UNDER AS 33.16.215], the board or its
 2 designee shall hold a preliminary hearing. At the preliminary hearing, the board or its
 3 designee shall determine if there is probable cause to believe that the parolee violated
 4 the conditions of parole and, when probable cause exists, whether the parolee should
 5 be released pending a final revocation hearing. A finding of probable cause at a
 6 preliminary hearing in a criminal case is conclusive proof of probable cause that a
 7 parole violation occurred.

8 * **Sec. 15.** AS 33.16.220(i) is amended to read:

9 (i) If, after the final revocation hearing, the board finds that the parolee has
 10 violated a condition of parole imposed under AS 33.16.150(a), (b), or (f), or a law or
 11 ordinance, the board may revoke all or a portion of the remaining period of parole
 12 [SUBJECT TO THE LIMITS SET OUT IN AS 33.16.215,] or change any condition
 13 of parole. [A PAROLEE'S PERIOD OF PAROLE IS TOLLED FROM THE DATE
 14 OF FILING WITH THE PAROLE BOARD OF A VIOLATION REPORT FOR
 15 ABSCONDING AND THE DATE OF THE PAROLEE'S ARREST, IF THE
 16 PAROLE BOARD FINDS, AFTER A HEARING, THAT THE PAROLEE
 17 VIOLATED PAROLE BY ABSCONDING, AS DEFINED IN AS 33.16.215(f). THE
 18 BOARD MAY NOT EXTEND THE PERIOD OF PAROLE BEYOND THE
 19 MAXIMUM RELEASE DATE CALCULATED BY THE DEPARTMENT ON THE
 20 PAROLEE'S ORIGINAL SENTENCE PLUS ANY TIME THAT HAS BEEN
 21 TOLLED AS DESCRIBED IN THIS SECTION.]

22 * **Sec. 16.** AS 33.16.270 is amended to read:

23 **Sec. 33.16.270. Earned compliance credits.** The commissioner shall establish
 24 by regulation a program allowing parolees to earn credits for complying with the
 25 conditions of parole. The earned compliance credits reduce the period of parole.
 26 Nothing in this section prohibits the department from recommending to the board the
 27 early discharge of the parolee as provided in this chapter. At a minimum, the
 28 regulations must

29 (1) require that a parolee earn a credit of one day [30 DAYS] for each
 30 three-day [30-DAY] period served in which the parolee complied with the conditions
 31 of parole;

(2) include policies and procedures for

(A) calculating and tracking credits earned by parolees;

(B) reducing the parolee's period of parole based on credits earned by the parolee and notifying a victim under AS 33.30.013;

(3) require that a parolee convicted of a [SEX OFFENSE AS DEFINED IN AS 12.63.100 OR A] crime involving domestic violence complete all treatment programs required as a condition of parole before discharge based on credits earned under this section.

*** Sec. 17.** AS 33.16.270 is amended by adding new subsections to read:

(b) A parolee convicted of a sex offense, as defined in AS 12.63.100, may not be enrolled in a program established under (a) of this section.

(c) If a parolee is found in violation of the conditions of parole, the parolee forfeits any credits earned under (a) of this section prior to the date of the violation.

*** Sec. 18.** AS 33.20.010(c) is repealed and reenacted to read:

(c) A prisoner may not be awarded a good time deduction under (a) of this section for any period spent in a treatment program, in a private residence, or while under electronic monitoring.

*** Sec. 19.** AS 44.19.645(g) is amended to read:

(g) The Department of Corrections shall report quarterly to the working group authorized in (b)(3) of this section. The report shall include the following information:

(1) data on pretrial decision making and outcomes, including information on pretrial detainees admitted for a new criminal charge; detainees released at any point before case resolution; time spent detained before first release or case resolution; pretrial defendant risk level and charge; pretrial release recommendations made by pretrial services officers; pretrial conditions imposed on pretrial detainees by judicial officers, including amount of bail, and supervision conditions; and information on pretrial outcomes, including whether or not the defendant appeared in court or was re-arrested during the pretrial period;

(2) data on offenders admitted to the Department of Corrections for a new criminal conviction, including the offense type, number of prior felony convictions, sentence length, and length of stay;

(3) data on the population of the Department of Corrections, using a one-day snapshot on the first day of the first month of each quarter, broken down by type of admission, offense type, and risk level;

(4) data on offenders on probation supervised by the Department of Corrections, including the total number of offenders supervised using a one-day snapshot on the first month of each quarter; admissions to probation; assignments to a program under AS 33.05.020(f); probation sentence length; time served on the sentence; whether probation was successfully completed, any new convictions for a felony offense, and any sentences to a term of imprisonment while on probation;

(5) data on parole, including the number of offenders supervised on parole, using a one-day snapshot on the first month of each quarter; the number of parole hearings; the parole grant rate and number of parolees released on discretionary and special medical parole; and information on parolees, including time spent on parole, whether parole was successfully completed, any new convictions for a new felony offense, and any sentences to a term of imprisonment while on parole;

(6) data on the implementation of policies from the 2015 justice reinvestment report, including the number and percentage of offenders who earn compliance credits under AS 33.05.020(h) or AS 33.16.270 in one or more months, and the total amount of credits earned; [THE AVERAGE NUMBER OF SANCTIONS ISSUED UNDER AS 33.05.020(g) BEFORE A PETITION TO REVOKE PROBATION OR PAROLE IS FILED;] and the most common violations of probation or parole; and

(7) data on probation and parole revocations, including information on probationers and parolees admitted for a supervision violation pre-case and post-case resolution; probationers and parolees admitted solely for a technical violation; probationers and parolees admitted for a new arrest; the number of previous revocations on the current sentence, if any; the length of time held pre-case resolution; the length of time to case resolution; and the length of stay.

* **Sec. 20.** AS 12.30.055(b); AS 12.55.090(n), 12.55.100(a)(2)(H), 12.55.110(c), 12.55.110(d), 12.55.110(e), 12.55.110(f), 12.55.110(g), 12.55.110(h); AS 33.05.020(g),

33.05.080(1); AS 33.16.100(f), 33.16.180(8), 33.16.210(b), 33.16.215, 33.16.220(j),
33.16.240(h), 33.16.900(2); and AS 33.20.010(a)(4) are repealed.

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) The following sections apply to sentences imposed on or after the effective date of those sections for conduct occurring on or after the effective date of those sections:

(1) AS 12.55.025(c), as amended by sec. 1 of this Act; and

(2) AS 12.55.051(a), as amended by sec. 2 of this Act.

(b) The following sections apply to probation ordered on or after the effective date of those sections for conduct occurring on or after the effective date of those sections:

(1) AS 12.55.090(g), as amended by sec. 3 of this Act;

(2) AS 33.05.020(h), as amended by sec. 4 of this Act;

(3) AS 33.05.020(i) and (j), enacted by sec. 5 of this Act; and

(4) AS 33.05.040, as amended by sec. 6 of this Act.

(c) The following sections apply to parole ordered on or after the effective date of those sections for conduct occurring on or after the effective date of those sections:

(1) AS 33.16.060(a), as amended by sec. 7 of this Act;

(2) AS 33.16.090(b), as amended by sec. 8 of this Act;

(3) AS 33.16.100(h), enacted by sec. 10 of this Act;

(4) AS 33.16.130(a), as amended by sec. 11 of this Act;

(5) AS 33.16.210(a), as amended by sec. 12 of this Act;

(6) AS 33.16.210(c), as amended by sec. 13 of this Act;

(7) AS 33.16.220(b), as amended by sec. 14 of this Act;

(8) AS 33.16.220(i), as amended by sec. 15 of this Act;

(9) AS 33.16.270, as amended by sec. 16 of this Act;

(10) AS 33.16.270(b) and (c), enacted by sec. 17 of this Act; and

(11) AS 33.20.010(c), as repealed and reenacted by sec. 18 of this Act.

(d) AS 33.16.100(a), as amended by sec. 9 of this Act, applies to parole granted on or after the effective date of sec. 9 of this Act, for conduct occurring before, on, or after the effective date of this Act.

1 * **Sec. 22.** This Act takes effect July 1, 2019.