

Introduced: 3/31/80
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 983

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to parole of offenders; continuing the
7 Board of Parole; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 33 is amended by adding a new chapter to read:

10 CHAPTER 16. PAROLE ADMINISTRATION.

11 Sec. 33.16.010. BOARD OF PAROLE. (a) There is in the Department
12 of Health and Social Services a Board of Parole consisting of seven
13 members appointed by the governor subject to confirmation by a majority
14 of the members of the legislature in joint session.

15 (b) Members of the board serve for staggered terms of five years
16 and until their successors are appointed and qualified. A vacancy on
17 the board shall be filled for the unexpired term.

18 (c) The governor shall designate the presiding officer of the
19 board.

20 Sec. 33.16.020. NOMINATIONS. The governor shall seek nominations
21 for board members from civic and ethnic organizations in the state and
22 shall make appointments to the board with due regard for representation
23 on the board of the ethnic, racial, and cultural populations of the
24 state.

25 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The
26 governor shall appoint board members on the basis of their qualifica-
27 tions to make decisions that are compatible with the welfare of the
28 community and of individual offenders. The governor shall appoint board
29 members who are able to consider the character and background of

1 offenders and the circumstances under which offenses were committed.

2 (b) At least one person appointed to the board shall have ex-
3 perience in the field of criminal justice, psychology, or human rela-
4 tions.

5 (c) Officers or employees of the department may not be appointed
6 to the board.

7 Sec. 33.16.040. REMOVAL OF MEMBERS. (a) The governor may remove
8 a board member only for disability, inefficiency, neglect of duty, or
9 malfeasance in office.

10 (b) Removal of a board member is initiated by delivering to the
11 board member a written statement of the charges against the board member
12 and by giving the board member an opportunity to be heard in person or
13 through counsel at a public hearing in defense of the charges. The
14 hearing shall be before the governor or his designee. The time fixed
15 for the hearing may not be less than 10 days after the statement is
16 delivered to the board member. At the hearing the board member has the
17 right of confrontation and cross-examination of the witnesses who
18 testify.

19 (c) The removal of a board member is effective 15 days after a
20 statement of the charges made against the board member and the findings
21 on those charges are filed by the governor in the main office of the
22 board. However, the board member may appeal the findings of the gover-
23 nor or his designee to the superior court. The court shall limit its
24 review to a determination of whether the findings of the governor or his
25 designee are substantiated by the evidence presented. The removal of
26 the board member is suspended while an appeal from the findings of the
27 governor or his designee is pending.

28 Sec. 33.16.050. COMPENSATION AND EXPENSES. (a) A board member is
29 entitled to compensation of \$100 per day for each day he is concerned

1 with the business of the board and is also entitled to the per diem and
2 travel allowances provided by law for other boards and commissions.

3 (b) The governor shall adjust the compensation in (a) of this
4 section to compensate the board members for changes in the cost of
5 living as reflected in the consumer price index for Anchorage, Alaska.

6 Sec. 33.16.060. MEETINGS OF THE BOARD. (a) The board may meet as
7 often as it considers necessary to consider its responsibilities. The
8 board shall meet no less than four times a year.

9 (b) Four members of the board constitute a quorum for the conduct
10 of business.

11 (c) Decisions and orders of the board require the votes of a
12 majority of the members present and in no case less than the votes of
13 three members.

14 Sec. 33.16.070. PROCESS. The board or a member of the board may
15 issue subpoenas and subpoenas duces tecum.

16 Sec. 33.16.080. RESPONSIBILITIES OF THE BOARD. (a) The board
17 shall

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

19 (2) consider the suitability for parole of all prisoners
20 serving sentences who are eligible for consideration for parole, unless
21 a prisoner waives consideration of parole;

22 (3) discharge a person from prison when supervision within
23 the prison is no longer required;

24 (4) maintain records of the meetings and proceedings of the
25 board;

26 (5) adopt standards for the determination as of when a pri-
27 soner should be considered for and receive parole;

28 (6) recommend to the legislature changes in the laws ad-
29 ministered by the board;

1 (7) recommend to the commissioner changes in the practices of
2 the department and of other departments of the executive branch.

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

5 (1) establishing the standards under which the suitability of
6 a prisoner for parole will be decided; and

7 (2) providing for the supervision of parolees and for recom-
8 mitment of parolees.

9 Sec. 33.16.090. EXECUTIVE DIRECTOR. The board shall hire an
10 executive director who has training and experience in the field of
11 probation and parole. The executive director shall serve as the execu-
12 tive officer for the board in the accomplishment of its functions. He
13 shall serve at the pleasure of the board. The executive director shall
14 employ the staff of the board.

15 Sec. 33.16.100. ELIGIBILITY FOR PAROLE. (a) A state prisoner
16 other than a juvenile delinquent, wherever confined, who is serving a
17 definite term of over 180 days or a term the minimum of which is at
18 least 181 days and who is not imprisoned in accordance with AS 12.55.-
19 125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), whose
20 record shows that he has observed the rules of the institution in which
21 he is confined, may, in the discretion of the board, be released on
22 parole subject to AS 33.16.110 and 33.16.120(b).

23 (b) A state prisoner imprisoned in accordance with AS 12.55.125(a)
24 or (b) may not be released on parole until he has served at least the
25 prescribed minimum term of imprisonment.

26 (c) A state prisoner imprisoned in accordance with AS 12.55.125-
27 (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) who is released
28 under AS 33.20.030 shall be placed on parole for the period specified in
29 the certificate of deduction, subject to written rules and conditions

1 imposed by the board or his parole officer.

2 Sec. 33.16.110. FIXING ELIGIBILITY FOR PAROLE AT TIME OF SEN-
3 TENCING. When in its opinion justice and the best interests of the
4 public require that a defendant be sentenced to imprisonment for a term
5 exceeding one year, the court having jurisdiction to impose sentence,
6 upon entering a judgment of conviction, may designate in the sentence of
7 imprisonment a minimum term at the expiration of which the prisoner is
8 eligible for parole. The minimum term shall be at least one-third of
9 the maximum sentence imposed by the court.

10 Sec. 33.16.120. GRANTING OF PAROLE. (a) The board may authorize
11 the release of a prisoner on parole if it determines that

12 (1) the prisoner eligible for parole will, in reasonable
13 probability, live and remain at liberty without violating the laws or
14 without violating the conditions imposed by the board; and

15 (2) his release on parole is not incompatible with the welfare
16 of society.

17 (b) A prisoner may not be released on parole until the prisoner
18 has served at least one-third of the period of confinement to which he
19 was sentenced.

20 Sec. 33.16.130. SUITABILITY FOR PAROLE. In determining whether a
21 prisoner is suitable for parole, the board shall consider

22 (1) the presentence report made to the sentencing court;

23 (2) the recommendations made by the sentencing court, by the
24 prosecuting attorney, by the defense attorney, and any statement made by
25 the prisoner at sentencing;

26 (3) the prisoner's history at the correctional facility to
27 which he was assigned by the department;

28 (4) a recommendation made by an officer responsible for the
29 correctional facility to which the prisoner was assigned;

1 (5) official reports of earlier crimes and earlier probation
2 and parole experiences;

3 (6) physical, mental, and psychiatric examinations of the
4 prisoner;

5 (7) information submitted by the prisoner, the attorney of
6 the prisoner, a victim of the crime, or other persons; and

7 (8) other useful information that may be reasonably avail-
8 able.

9 Sec. 33.16.140. LACK OF TREATMENT. The board may not deny parole
10 to a prisoner otherwise eligible for parole on the ground that necessary
11 or desirable treatment was not available to the prisoner at the correc-
12 tional facility to which the prisoner was assigned by the department.

13 Sec. 33.16.150. HEARING ON APPLICATION FOR PAROLE. (a) The board
14 shall hold a hearing to review the suitability of a prisoner for parole
15 or for the setting, posting, or rescinding of parole dates. The prisoner
16 shall be provided reasonable notice of the hearing.

17 (b) The prisoner shall be permitted to have a copy of all infor-
18 mation and records which will be considered by the board no less than 30
19 days before the hearing. The prisoner has a right to enter written
20 responses to all information and records which will be considered by the
21 board.

22 (c) The prisoner has a right to be present at the hearing, to
23 present evidence on his behalf, to cross-examine witnesses who testify
24 against him, and to remain silent.

25 (d) The board shall issue its decision in writing and provide
26 reasons for the decision. The prisoner is entitled to a copy of the
27 decision on its issuance.

28 Sec. 33.16.160. ORDER FOR PAROLE. The board shall furnish to each
29 person released under its supervision an order for parole. The order for

1 parole shall contain the conditions imposed by the board for parole and
2 the date that the parole supervision expires. The order for parole does
3 not take effect until it is accepted and signed by the parolee.

4 Sec. 33.16.170. COMPUTATION OF GOOD TIME WHILE ON PAROLE. A
5 person released from confinement under AS 33.16.120 or under AS 33.-
6 20.040 is entitled to a deduction from the term of parole of one day for
7 every three days of good conduct while on parole. Good time earned
8 while on parole is subject to forfeiture by the board if a violation of
9 a condition of parole occurs during parole.

10 Sec. 33.16.180. CONDITIONS OF PAROLE. (a) The board shall re-
11 quire that a prisoner released on parole refrain from violation of state
12 or federal law as a condition of parole.

13 (b) The board may require as a condition of parole under AS 33.-
14 16.160 that a parolee accept the requirements that he

- 15 (1) meet his family obligations;
- 16 (2) apply himself to employment, education, training, or
17 subsistence;
- 18 (3) remain within stated geographic limits unless granted
19 written permission from his parole officer to depart from the stated
20 limits;
- 21 (4) report on release to his parole officer;
- 22 (5) report at regular intervals to his parole officer;
- 23 (6) reside at a stated place and notify the parole officer of
24 a change in his place of residence;
- 25 (7) have in his possession no dangerous firearm or dangerous
26 weapon unless granted permission in writing by his parole officer;
- 27 (8) refrain from consuming alcoholic beverages;
- 28 (9) refrain from possessing or consuming illegal drugs;
- 29 (10) submit to searches and seizures conducted reasonably by a

1 parole officer or by a peace officer acting under direction of a parole
2 officer.

3 Sec. 33.16.190. HEARING ON APPLICATION FOR CHANGE IN PAROLE CON-
4 DITIONS. (a) A parolee is entitled to reasonable notice of and may
5 request a hearing on a proposal to change a parole condition or to add
6 new parole conditions. The board shall provide the parolee with the
7 reasons for the proposal.

8 (b) The parolee shall be permitted to have a copy of all infor-
9 mation and records which will be considered by the board no less than 30
10 days before the hearing. The parolee has a right to enter written
11 responses to all information and records which will be considered by the
12 board.

13 (c) The parolee has the right to be present at the hearing, to
14 present evidence on his behalf, to cross-examine witnesses who testify
15 against him, and to remain silent.

16 (d) The board shall issue its decision in writing and provide
17 reasons for the decision. The parolee is entitled to a copy of the
18 decision on its issuance.

19 Sec. 33.16.200. WAIVER OF HEARING. A prisoner or parolee may
20 waive a hearing provided under AS 33.16.150 or 33.16.190 by submitting a
21 written waiver to the board.

22 Sec. 33.16.210. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
23 pre-parole reports submitted to the board are confidential and may not
24 be disclosed to anyone other than the board, the sentencing judge, the
25 prosecuting and defense attorneys, or others granted the right under
26 this chapter to receive the information.

27 Sec. 33.16.220 APPEALS. A prisoner or a parolee may appeal a
28 decision or order of the board to the superior court on the ground of
29 arbitrariness or abuse of discretion.

1 Sec. 33.16.230. DUTIES OF THE COMMISSIONER. The commissioner
2 shall

3 (1) conduct investigations of prisoners eligible for parole
4 as the board requests;

5 (2) supervise the conduct of parolees and institute programs
6 for reform and rehabilitation of parolees as the board requests;

7 (3) appoint and assign parole officers and personnel to the
8 judicial districts in the state and to train and supervise parole offi-
9 cers and personnel;

10 (4) keep records, files and accounts as the board requests.

11 Sec. 33.16.240. ACCESS TO LAW BY PRISONERS. The commissioner
12 shall make available at each correctional facility in the state and at
13 each correctional facility outside the state at which a prisoner of the
14 state is maintained a current edition of Alaska Statutes and of the
15 regulations of the board.

16 Sec. 33.16.250. PAROLE OFFICERS. The commissioner may assign the
17 duties of probation officers under AS 33.05 to parole officers appointed
18 under AS 33.16.230(3).

19 Sec. 33.16.260. DISCHARGE OF PAROLEE. (a) The board retains
20 legal custody of a parolee until the expiration of the maximum term or
21 terms to which the parolee is sentenced less a good time allowance
22 provided by AS 33.16.170.

23 (b) The disability imposed by AS 33.30.320 applies to a parolee as
24 long as he is in the legal custody of the board but the disability does
25 not deny a parolee access to the courts to protect rights he may have.

26 (c) A parolee who has been on parole for five years and who has
27 not been convicted of or charged with a felony since entering parole
28 shall be discharged from parole and from the custody of the board.

29 Sec. 33.16.270. DISCRETIONARY DISCHARGE OF PAROLEE. The board may

1 discharge a parolee from supervision and the custody of the board and
2 from further liability under his sentence after the parolee has com-
3 pleted two years of parole.

4 Sec. 33.16.280. RELEASE OF PRISONER TO ANSWER PROCESS. If a court
5 of this state, another state, or the United States, or other authority
6 issues a warrant charging a prisoner with a crime, the board may release
7 the prisoner on parole to answer the warrant.

8 Sec. 33.16.290. REVOCATION OF PAROLE. (a) The board may revoke
9 the parole granted to a parolee for violation of a state or federal law
10 or a condition imposed by the board under AS 33.16.180(b).

11 (b) A parolee has the right to a preliminary hearing before a
12 single member of the board to determine whether probable cause exists to
13 revoke parole. The preliminary hearing shall be held within 10 days of
14 the arrest of the parolee on the charge of violation of a state or
15 federal law or violation of a condition of parole. The single member of
16 the board who holds the hearing may release the parolee pending the
17 hearing under (c) of this section.

18 (c) The parolee is entitled to a hearing before the board at the
19 first meeting of the board held after the preliminary hearing held under
20 (b) of this section. The parolee has the rights of a parolee under
21 AS 33.16.150 and 33.16.190 at the hearing. The board shall issue its
22 decision in writing and provide reasons for the decision. The parolee
23 is entitled to a copy of the decision on its issuance.

24 (d) At a hearing under this section, the commissioner has the
25 burden to show that parole should be revoked by clear and convincing
26 evidence.

27 (e) If after the hearing the board determines that a violation of
28 a condition of parole has occurred, it may revoke a portion of the
29 parole granted, change the conditions of parole, or cancel a portion of

1 the good time earned on parole. If the board does not revoke a portion
2 of the parole granted, the parolee shall be released from confinement
3 and continued on parole under terms and conditions established by the
4 board.

5 (f) If after the hearing the board determines that a parolee has
6 violated a state or federal law, the board may require the parolee to
7 serve all or a part of the remainder of the term to which he was sen-
8 tenced. In fixing the term to be served, the board shall recognize good
9 time earned by the parolee while on parole.

10 (g) If the board revokes parole for a reason other than a violation
11 of a state or federal law, the board may not return the parolee to
12 confinement for a period in excess of six months.

13 (h) A parolee may waive a hearing under (b) or (c) of this section
14 by submitting a written waiver to the board.

15 Sec. 33.16.300. ARREST OF PAROLE VIOLATOR. (a) A parolee charged
16 with violation of a condition of his parole may be arrested only on a
17 warrant for arrest issued by a judicial officer based on probable cause
18 to believe that a violation of the condition of parole has occurred.

19 (b) A parolee may be arrested without a warrant for his arrest for
20 a violation of a condition of parole only under exigent conditions which
21 require immediate arrest.

22 Sec. 33.16.310. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
23 A parole officer or a peace officer acting at the request of a parole
24 officer shall execute the warrant issued under AS 33.16.300 by arresting
25 the parolee and confining the parolee in a correctional facility desig-
26 nated by the commissioner.

27 (b) The parole officer shall immediately notify the board or a
28 member of the board of an arrest under (a) of this section. If the
29 arrest was without warrant, the parole officer shall immediately provide

1 the board or a member of the board with a report in writing indicating
2 in what manner the parolee violated a condition of his parole.

3 Sec. 33.16.320. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED.

4 (a) This chapter applies to all persons convicted and sentenced in the
5 superior court and the district courts of the state.

6 (b) If the appropriate officers of the United States agree, the
7 legislature intends that this chapter also apply to persons convicted
8 before Alaska statehood of a crime punishable under the laws of a state
9 notwithstanding the fact that the prosecution may have been brought by
10 the United States and the prisoners were convicted and sentenced in
11 courts of the United States before Alaska became a state or before the
12 Alaska state court system was in operation.

13 Sec. 33.16.330. DEFINITIONS. In this chapter

14 (1) "board" means the Board of Parole;

15 (2) "commissioner" means the commissioner of health and
16 social services;

17 (3) "department" means the Department of Health and Social
18 Services;

19 (4) "parole" means the release of a prisoner to the community
20 by the board before the expiration of his term, subject to conditions
21 imposed by the board and subject to its supervision;

22 (5) "parolee" means a prisoner released to the community by
23 the board or by operation of law.

24 * Sec. 2. AS 44.66.010(a)(3) is amended to read:

25 (3) State Board of Parole AS 33.16.010 [AS 33.15.010] -
26 June 30, 1984 [1980];

27 * Sec. 3. AS 33.16 enacted in sec. 1 of this Act applies to persons on
28 parole or being considered for parole on the effective date of this Act.

29 * Sec. 4. The terms of the members of the Board of Parole appointed under

1 AS 33.15.010 terminate on the effective date of this Act. The governor shall
2 appoint members to the Board of Parole established under AS 33.16.010 enacted
3 in this Act for the following initial terms: two members for five-year terms;
4 two members for four-year terms; one member for a three-year term; one member
5 for a two-year term; and one member for a one-year term.

6 * Sec. 5. AS 33.15 is repealed.

7 * Sec. 6. This Act takes effect July 1, 1980.

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