

Introduced: 3/4/81
Referred: Health, Education &
Social Services and Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE
BY REQUEST

2 HOUSE BILL NO. 261

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

11 CHAPTER 16. PAROLE ADMINISTRATION.

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

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

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

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

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

1 board members who are able to consider the character and background of
2 offenders and the circumstances under which offenses were committed.

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

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

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

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

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

29 Sec. 33.16.050. COMPENSATION AND EXPENSES. (a) A board member

1 is entitled to compensation of \$100 per day for each day he is concerned
2 with the business of the board and is also entitled to the per diem and
3 travel allowances provided by law for other boards and commissions.

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

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

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

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

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

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

- 19 (1) serve as the parole authority for the state;
20 (2) consider the suitability for parole of all prisoners
21 serving sentences who are eligible for consideration for parole, unless
22 a prisoner waives consideration of parole;
23 (3) discharge a person from parole when supervision is no
24 longer required;
25 (4) maintain records of the meetings and proceedings of the
26 board;
27 (5) adopt standards which shall apply fairly to all prisoners
28 for determining when a prisoner should be considered for and receive
29 parole;

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

3 (7) recommend to the commissioner changes in the practices
4 of the department and of other departments of the executive branch;

5 (8) execute other responsibilities prescribed by law.

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

8 (1) establishing the standards which shall apply fairly to
9 all prisoners under which the suitability of a prisoner for parole will
10 be decided; and

11 (2) providing for the supervision of parolees and for recom-
12 mitment of parolees.

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

19 Sec. 33.16.100. ELIGIBILITY FOR PAROLE. (a) A state prisoner
20 other than a juvenile delinquent, wherever confined, who is serving a
21 definite term of over 180 days or a term the minimum of which is at
22 least 181 days and who is not imprisoned in accordance with AS 12.55.-
23 125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), whose
24 record shows that he has observed the rules of the institution in which
25 he is confined, may, in the discretion of the board, be released on
26 parole subject to AS 33.16.110 and 33.16.120(b).

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

1 (c) Any state prisoner, including a state prisoner imprisoned in
2 accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2),
3 (e)(1), or (e)(2), who is released under AS 33.20.030 shall be placed
4 on parole for the period specified in the certificate of deduction,
5 subject to written conditions imposed by the board.

6 Sec. 33.16.110. FIXING ELIGIBILITY FOR PAROLE AT TIME OF SEN-
7 TENCING. When in its opinion justice and the best interests of the
8 public require that a defendant be sentenced to imprisonment for a term
9 exceeding one year, the court having jurisdiction to impose sentence,
10 upon entering a judgment of conviction, may designate in the sentence
11 of imprisonment a term at the expiration of which the prisoner is
12 eligible for parole. The term shall be at least one-third of the
13 period of confinement imposed by the court or the minimum term pre-
14 scribed in AS 12.25.125, whichever is greater.

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

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

20 (2) his release on parole is not incompatible with the wel-
21 fare of society.

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

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

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

28 (2) the recommendations made by the sentencing court, by the
29 prosecuting attorney, by the defense attorney, and any statement made

1 by the prisoner at sentencing;

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

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

6 (5) official reports of earlier crimes and earlier probation
7 and parole experiences;

8 (6) physical, mental, and psychiatric examinations of the
9 prisoner;

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

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

14 Sec. 33.16.140. LACK OF TREATMENT. The board may not deny parole
15 to a prisoner otherwise suitable for parole solely on the ground that
16 the prisoner did not obtain necessary or desirable treatment while
17 confined if the treatment was not available to the prisoner at the
18 correctional facility to which the prisoner was assigned by the depart-
19 ment.

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

24 (b) The prisoner shall be permitted to have a copy of all infor-
25 mation and records which will be considered by the board no less than
26 30 days before the hearing. The prisoner has a right to enter written
27 responses to all information and records which will be considered by
28 the board.

29 (c) The prisoner has a right to be present at the hearing, to

1 present evidence on his behalf, and to cross-examine witnesses who
2 testify against him.

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

6 Sec. 33.16.160. ORDER FOR PAROLE. The board shall furnish to
7 each person released under its supervision an order for parole. The
8 order for parole shall contain the conditions imposed by the board for
9 parole and the date that the parole supervision expires. The order for
10 parole does not take effect until it is accepted and signed by the
11 parolee.

12 Sec. 33.16.170. COMPUTATION OF GOOD TIME WHILE ON PAROLE. A
13 person released from confinement under AS 33.16.120 or under AS 33.-
14 20.040 is entitled to a deduction from the term of parole of one day
15 for every three days of good conduct while on parole. Good time earned
16 while on parole is subject to forfeiture by the board if a violation of
17 a condition of parole occurs during parole.

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

21 (b) Depending on the nature and circumstances of the crime for
22 which the prisoner was convicted, the board may require as a condition
23 of parole under AS 33.16.160 that a parolee accept one or more of the
24 conditions:

25 (1) that he meet his family obligations;

26 (2) that he apply himself to employment, education, training,
27 or subsistence;

28 (3) that he remain within stated geographic limits unless
29 granted written permission from his parole officer to depart from the

1 stated limits;

2 (4) that he report on release to his parole officer;

3 (5) that he report at regular intervals to his parole
4 officer;

5 (6) that he reside at a stated place and notify the parole
6 officer of a change in his place of residence;

7 (7) that he have in his possession no dangerous firearm or
8 dangerous weapon unless granted permission in writing by the board;

9 (8) that he refrain from consuming alcoholic beverages;

10 (9) that he submit to searches and seizures conducted reason-
11 ably by a parole officer or by a peace officer acting under direction
12 of a parole officer;

13 (10) that he submit to necessary medical, psychiatric,
14 alcohol, or other examination or treatment if available;

15 (11) that he refrain from entering into an agreement or other
16 arrangement with a law enforcement agency which will place him in the
17 position of violating a state or federal law or a condition of his
18 parole;

19 (12) that he refrain from opening, maintaining, or using a
20 checking account;

21 (13) that he refrain from entering into a contract, other
22 than a prenuptial contract or a contract of marriage, without permission
23 in writing from his parole officer;

24 (14) that he refrain from operating a motor vehicle;

25 (15) that he refrain from entering a liquor store, bar, pub,
26 tavern, or night club designated by the board.

27 Sec. 33.16.190. HEARING ON APPLICATION FOR CHANGE IN PAROLE CON-
28 DITIONS. (a) A parolee is entitled to reasonable notice of and may
29 request a hearing on a proposal to change a parole condition or to add

1 new parole conditions. The board shall provide the parolee with the
2 reasons for the proposal.

3 (b) The parolee shall be permitted to have a copy of all infor-
4 mation and records which will be considered by the board no less than
5 30 days before the hearing. The parolee has a right to enter written
6 responses to all information and records which will be considered by
7 the board.

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

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

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

17 Sec. 33.16.210. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
18 pre-parole reports submitted to the board are confidential and may not
19 be disclosed to anyone other than the board, the sentencing judge, the
20 prosecuting and defense attorneys, the prisoner and the prisoner's
21 attorney, or others granted the right under this chapter to receive the
22 information.

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

26 Sec. 33.16.230. DUTIES OF THE COMMISSIONER. The commissioner
27 shall

28 (1) conduct investigations of prisoners eligible for parole
29 as the board requests;

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

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

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

7 Sec. 33.16.240. ACCESS TO LAW BY PRISONERS. The commissioner
8 shall make available at each correctional facility in the state and at
9 each correctional facility outside the state at which a prisoner of the
10 state is maintained a current edition of Alaska Statutes, of the Alaska
11 Administrative Code, and of the Alaska Rules of Court.

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

15 Sec. 33.16.260. DISCHARGE OF PAROLEE. (a) The board retains
16 legal custody of a parolee until the expiration of the maximum term or
17 terms to which the parolee is sentenced less a good time allowance
18 provided by AS 33.16.170 and AS 33.20.010.

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

23 (c) A parolee who has been on parole for five years and who has
24 not been charged with a felony since entering parole shall be discharged
25 from parole and from the custody of the board. A parolee who is charged
26 with a felony within the five years remains in the custody of the board
27 pending a final decision on the charge. If the parolee is acquitted or
28 the charge is dismissed, the board shall discharge the parolee from
29 custody.

1 Sec. 33.16.270. DISCRETIONARY DISCHARGE OF PAROLEE. The board
2 may discharge a parolee from supervision and the custody of the board
3 and from further liability under his sentence after the parolee has
4 completed two years of parole.

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

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

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

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

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

29 (e) If after the hearing the board determines that a violation of

1 a condition of parole has occurred, it may revoke a portion of the
2 parole granted, change the conditions of parole, or cancel a portion of
3 the good time earned on parole. If the board does not revoke a portion
4 of the parole granted, the parolee shall be released from confinement
5 and continued on parole under terms and conditions established by the
6 board.

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

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

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

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

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

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

29 (b) The parole officer shall immediately notify the board or a

1 member of the board of an arrest under (a) of this section. If the
2 arrest was without warrant, the parole officer shall immediately provide
3 the board or a member of the board with a report in writing indicating
4 in what manner the parolee violated a condition of his parole.

5 Sec. 33.16.320. APPLICABILITY TO PERSONS ON PAROLE OR INCAR-
6 CERATED. (a) This chapter applies to all persons convicted and sen-
7 tenced in the superior court and the district courts of the state.

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

15 Sec. 33.16.330. DEFINITIONS. In this chapter

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

17 (2) "commissioner" means the commissioner of health and
18 social services;

19 (3) "department" means the Department of Health and Social
20 Services;

21 (4) "parole" means the release of a prisoner to the community
22 by the board or by operation of law before the expiration of his term,
23 subject to conditions imposed by the board and subject to its super-
24 vision;

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

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

28 (3) [STATE] Board of Parole (AS 33.16.010) [(AS 33.15.010)]
29 June 30, 1985 [1980];

1 * Sec. 3. AS 33.20.040(a) is amended to read:

2 (a) A prisoner serving the term or terms for which he was sen-
3 tenced less good time deductions shall be released unconditionally if
4 there remains less than 180 days to serve under his sentence. If there
5 remains more than 180 days to serve under his sentence a prisoner shall
6 be released on parole under AS 33.16.100(c) [, UPON RELEASE, SHALL BE
7 CONSIDERED AS IF RELEASED ON PAROLE] until the expiration of the maximum
8 term or terms for which he was sentenced less 180 days.

9 * Sec. 4. AS 33.15 is repealed.

10 * Sec. 5. AS 33.16 enacted in sec. 1 of this Act applies to persons on
11 parole or being considered for parole on the effective date of this Act.

12 * Sec. 6. The terms of the members of the Board of Parole appointed
13 under AS 33.15.010 terminate on the effective date of this Act. The governor
14 shall appoint members to the Board of Parole established under AS 33.16.010
15 enacted in this Act for the following initial terms: two members for five-
16 year terms; two members for four-year terms; one member for a three-year
17 term; one member for a two-year term; and one member for a one-year term.

18 * Sec. 7. This Act takes effect July 1, 1981.
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