

Introduced: 2/26/81
Referred: Health, Education &
Social Services and Judiciary

1 IN THE SENATE

BY FISCHER

2 SENATE BILL NO. 217

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 existence of the Board of Parole; and providing
8 for an effective 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 five
14 members appointed by the governor and confirmed by a majority of the
15 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. The presiding officer must have a minimum of two years' exper-
21 ience in corrections, probation, or parole work before his designation
22 as presiding officer.

23 (d) A member of the board may not seek or hold a statewide or
24 national elective public office during his term as a member of the
25 board.

26 Sec. 33.16.020. NOMINATIONS. The governor shall seek nominations
27 for board members from citizens and from civic, professional, and
28 ethnic organizations in the state and shall make appointments to the
29 board with due regard for representation on the board of the sexual,

1 ethnic, racial, and cultural populations of the state.

2 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The
3 governor shall appoint board members on the basis of their qualifica-
4 tions and ability to make decisions that are compatible with the welfare
5 of the community and of individual offenders. The governor shall
6 appoint board members who are able to consider the character and back-
7 ground of offenders and the circumstances under which offenses were
8 committed.

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

12 (c) An officer or employee of the department may not be appointed
13 to the board.

14 Sec. 33.16.040. REMOVAL OF MEMBERS. (a) The governor may remove
15 a board member only for disability, nonfeasance, neglect of duty,
16 malfeasance in office, or conviction of a crime.

17 (b) Removal of a board member is initiated by delivering to the
18 board member a written statement of the charges against the board
19 member and by giving the board member an opportunity to be heard in
20 person or through a representative at a public hearing in defense of
21 the charges. The board member may have access to all documents or
22 records considered by the governor in his decision to remove the member.
23 The hearing shall be before the governor or his designee. The time
24 fixed for the hearing may not be less than 10 days after the statement
25 is delivered to the board member. At the hearing the board member has
26 the right of confrontation and cross-examination of the witnesses who
27 testify.

28 (c) The removal of a board member is effective 15 days after a
29 statement of the charges made against the board member and the findings

1 on those charges are filed by the governor in the main office of the
2 board. The board member may appeal the findings of the governor or his
3 designee to the superior court. The court shall limit its review to a
4 determination of whether the findings of the governor or his designee
5 are substantiated by the evidence presented. The removal of the board
6 member is suspended while an appeal from the findings of the governor
7 or his designee is pending.

8 Sec. 33.16.050. COMPENSATION AND EXPENSES. A board member is
9 entitled to compensation of \$100 per day for each day he is concerned
10 with the business of the board and is entitled to the per diem and
11 travel allowances provided by law for boards and commissions under
12 AS 39.20.180.

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

16 (b) Three members of the board constitute a quorum for the conduct
17 of business.

18 (c) Decisions and orders of the board require the votes of a
19 majority of the members present and in no case less than the votes of
20 three members.

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

23 Sec. 33.16.080. RESPONSIBILITIES OF THE BOARD. (a) The board
24 shall

- 25 (1) serve as the parole authority for the state;
- 26 (2) consider the suitability for parole of all prisoners
27 serving sentences who are eligible for consideration for parole, unless
28 a prisoner waives consideration of parole;
- 29 (3) discharge a person from parole when supervision is no

1 longer required;

2 (4) maintain records of the meetings and proceedings of the
3 board;

4 (5) adopt standards which shall apply fairly to all prisoners
5 for determining when a prisoner should be considered for and receive
6 parole;

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

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

11 (8) present a proposed annual operating budget to the gover-
12 nor and to the legislature;

13 (9) execute other responsibilities prescribed by law.

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

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

19 (2) providing for the supervision of parolees and for recom-
20 mitment of parolees;

21 (3) which it considers proper for the operation of the
22 board.

23 Sec. 33.16.090. EXECUTIVE DIRECTOR. The board shall hire an
24 executive director who has training and experience in the field of
25 probation and parole. The executive director shall serve as the execu-
26 tive officer for the board in the accomplishment of its functions. He
27 shall serve at the pleasure of the board. The executive director shall
28 employ the staff of the board.

29 Sec. 33.16.100. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A

1 state prisoner other than a juvenile delinquent, wherever confined, who
2 is serving a definite term of over 180 days and who is not imprisoned
3 in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2),
4 (e)(1), or (e)(2), may, in the discretion of the board, be released on
5 discretionary parole subject to AS 33.16.110, 33.16.120(b), and AS 12.-
6 55.086(b).

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

10 (c) A state prisoner imprisoned in accordance with AS 12.55.125-
11 (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) who is re-
12 leased under AS 33.20.030 shall be placed on mandatory parole for the
13 period specified in the certificate of deduction subject to written
14 conditions imposed by the board.

15 Sec. 33.16.110. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT
16 TIME OF SENTENCING. When in its opinion justice and the best interests
17 of the public require that a defendant be sentenced to imprisonment for
18 a term exceeding one year, the court having jurisdiction to impose sen-
19 tence, upon entering a judgment of conviction, may designate in the
20 sentence of imprisonment a term at the expiration of which the prisoner
21 is eligible for discretionary parole. The term shall be at least
22 one-third of the period of confinement imposed by the court or the
23 minimum term prescribed in AS 12.25.125, whichever is greater.

24 Sec. 33.16.120. GRANTING OF DISCRETIONARY PAROLE. (a) The board
25 may authorize the release of a prisoner on discretionary parole if it
26 determines that

27 (1) the prisoner eligible for discretionary parole will, in
28 reasonable probability, live and remain at liberty without violating
29 the laws or without violating the conditions imposed by the board; and

1 (2) his release on discretionary parole is not incompatible
2 with the welfare of society and would not depreciate the seriousness of
3 the crime.

4 (b) A prisoner may not be released on discretionary parole until
5 the prisoner has served either one-third of the period of confinement
6 to which he was sentenced or the minimum term prescribed in AS 12.25.-
7 125, whichever is greater.

8 Sec. 33.16.130. SUITABILITY FOR DISCRETIONARY PAROLE. In deter-
9 mining whether a prisoner is suitable for discretionary parole, the
10 board shall consider

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

12 (2) the recommendations made by the sentencing court, by the
13 prosecuting attorney, by the defense attorney, and any statement made
14 by the prisoner at sentencing;

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

17 (4) a recommendation made by an officer at the correctional
18 facility to which the prisoner was assigned;

19 (5) official reports of earlier crimes and earlier probation
20 and parole experiences;

21 (6) physical, mental, and psychiatric examinations of the
22 prisoner;

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

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

27 Sec. 33.16.140. HEARING ON APPLICATION FOR DISCRETIONARY PAROLE.

28 (a) A prisoner has a right to an interview with a member of the board
29 to review the suitability of the prisoner for discretionary parole.

1 The prisoner shall be given reasonable notice of the interview..

2 (b) The prisoner shall receive a copy of the material contained
3 in the pre-parole report except for a mental health evaluation on the
4 prisoner and except for an evaluation and recommendation on the prisoner
5 prepared in the division of corrections. The prisoner may respond to
6 the information in the report and may present relevant information.

7 (c) The prisoner may waive his right to an interview.

8 (d) The board shall issue its decision in writing. The prisoner
9 is entitled to a copy of the decision on its issuance.

10 Sec. 33.16.150. ORDER FOR PAROLE. The board shall furnish to
11 each person released under its supervision an order for parole. The
12 order for parole shall contain the conditions imposed by the board for
13 parole and the date that the parole supervision expires. The order for
14 parole does not take effect until it is accepted and signed by the
15 parolee and his parole plan is approved.

16 Sec. 33.16.160. CONDITIONS OF PAROLE. (a) The board shall re-
17 quire that a prisoner released on parole refrain from violation of
18 state or federal law as a condition of parole.

19 (b) Depending on the nature and circumstances of the crime for
20 which the prisoner was convicted and the background of the prisoner,
21 the board may require as a condition of parole under AS 33.16.150 that
22 a parolee accept any condition established by the board under regula-
23 tions adopted by it.

24 (c) Under regulations adopted by the board a parolee may request
25 reconsideration by the board of a condition of parole imposed on him at
26 any time during the period of parole.

27 Sec. 33.16.170. WAIVER OF HEARING. A prisoner or parolee may
28 waive a hearing provided under AS 33.16.140 or 33.16.250 by submitting
29 a written waiver to the board.

1 Sec. 33.16.180. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
2 pre-parole reports submitted to the board are confidential and may not
3 be disclosed to anyone other than the board, the sentencing judge, the
4 prosecuting attorney, or others granted the right under this chapter to
5 receive the information.

6 Sec. 33.16.190. APPEALS. A prisoner or a parolee may appeal a
7 decision or order of the board to the superior court on the ground of
8 arbitrariness or capriciousness.

9 Sec. 33.16.200. DUTIES OF THE COMMISSIONER. The commissioner
10 shall

11 (1) conduct investigations of prisoners eligible for parole
12 as the board requests;

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

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

18 (4) provide the board in a timely manner with information
19 requested on sentenced prisoners who may be eligible for parole release
20 or parole supervision;

21 (5) keep records, files, data, and information as the board
22 requests.

23 Sec. 33.16.210. PAROLE OFFICERS. The commissioner may assign the
24 duties of probation officers under AS 33.05 to parole officers appointed
25 under AS 33.16.200(3).

26 Sec. 33.16.220. DISCHARGE OF PAROLEE. (a) The board retains
27 legal custody of a discretionary parolee until the expiration of the
28 maximum term or terms to which the parolee is sentenced less a good
29 time allowance provided by law. The board retains legal custody of a

1 mandatory parolee released in accordance with AS 33.16.100(c) and
2 AS 33.20.040 until the expiration of the maximum term or terms to which
3 the prisoner was sentenced.

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

8 (c) A parolee who has been on parole for five years shall be
9 discharged from parole and from the custody of the board unless the
10 board finds after a hearing that continued supervision is necessary for
11 the protection of society.

12 Sec. 33.16.230. DISCRETIONARY DISCHARGE OF PAROLEE. The board
13 may discharge a parolee from supervision and the custody of the board
14 and from further liability under his sentence after the parolee has
15 completed two years of parole. (After a parolee has been under super-
16 vision for two years the board shall review his record annually for
17 discharge.)

18 Sec. 33.16.240. RELEASE OF PRISONER TO ANSWER PROCESS. If a
19 court of this state, another state, or the United States, or other
20 authority issues a warrant charging a prisoner with a crime, the board
21 may release the prisoner on parole to answer the warrant.

22 Sec. 33.16.250. REVOCATION OF PAROLE. (a) The board may revoke
23 the parole granted to a parolee for violation of a state or federal law
24 or a condition imposed by the board under AS 33.16.160(b).

25 (b) A parolee arrested on a charge of violation of a state or
26 federal law or a condition of parole has the right to a preliminary
27 hearing before a single member of the board or a person authorized by
28 the board to act as a hearing officer to determine whether probable
29 cause exists to revoke parole. The preliminary hearing shall be held

1 within 14 days of the arrest. The single member of the board or the
2 hearing officer who holds the hearing may release or detain the parolee
3 pending the hearing under (c) of this section.

4 (c) The parolee is entitled to a hearing before the board at the
5 first meeting of the board held after the preliminary hearing held
6 under (b) of this section. The parolee has the rights of a parolee
7 under AS 33.16.140 at the hearing. The board shall issue its decision
8 in writing and provide reasons for the decision. The parolee is en-
9 titled to a copy of the decision on its issuance.

10 (d) At a hearing under this section, the commissioner has the
11 burden to show that parole should be revoked by a preponderance of the
12 evidence.

13 (e) If after the hearing the board determines that a violation of
14 a condition of parole has occurred, it may revoke all or a portion of
15 the parole granted or change the conditions of parole .

16 (f) If the board revokes the parole under (e) of this section,
17 the unexpired term of imprisonment of the parolee shall be served and
18 it begins to run from the date the parolee is returned to the custody
19 of the commissioner under the warrant, and the time the parolee was on
20 parole does not diminish the time he has remaining to serve unless
21 credit is specifically allowed by the board under regulations adopted
22 by it.

23 (g) A parolee may waive a hearing under (b) or (c) of this section
24 by submitting a written waiver to the board.

25 Sec. 33.16.260. ARREST OF PAROLE VIOLATOR. (a) A parolee charged
26 with violation of a condition of his parole may be arrested only on a
27 warrant for arrest issued by the board or a member of it based on
28 probable cause to believe that a violation of the condition of parole
29 has occurred.

1 (b) A parolee may be arrested by a parole officer or at the
2 direction of a parole officer without a warrant for his arrest for a
3 violation of a condition of parole only under exigent conditions which
4 require immediate arrest.

5 Sec. 33.16.270. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
6 A parole officer or a peace officer shall execute the warrant issued
7 under AS 33.16.260 by arresting the parolee and confining the parolee
8 in a correctional facility designated by the commissioner.

9 (b) The parole officer shall immediately notify the board or a
10 member of the board of an arrest under (a) of this section. If the
11 arrest was without warrant, the parole officer shall immediately provide
12 the board or a member of the board with a report in writing indicating
13 in what manner the parolee violated a condition of his parole and why
14 the arrest was made without warrant.

15 Sec. 33.16.280. APPLICABILITY TO PERSONS ON PAROLE OR INCAR-
16 CERATED. This chapter applies to all persons convicted and sentenced
17 in the superior court and the district courts of the state.

18 Sec. 33.16.290. DEFINITIONS. In this chapter

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

20 (2) "commissioner" means the commissioner of health and
21 social services;

22 (3) "department" means the Department of Health and Social
23 Services;

24 (4) "discretionary parole" means the release of a prisoner
25 to the community by the board before the expiration of his term or
26 terms, subject to conditions imposed by the board and subject to its
27 supervision;

28 (5) "mandatory parole" means the release of a prisoner to
29 the community by operation of law before the expiration of his term or

1 terms, subject to conditions imposed by the board and subject to its
2 supervision;

3 (6) "parolee" means a prisoner released to the community by
4 the board or by operation of law.

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

6 (3) [STATE] Board of Parole (AS 33.16.010) [(AS 33.15.-
7 010)] -- June 30, 1984 [1980];

8 * Sec. 3. AS 33.20.040(a) is repealed and reenacted to read:

9 (a) A prisoner released under AS 33.30.030 who is not granted
10 parole under AS 33.16.100 and 33.16.120 shall be released on parole for
11 the period specified in the period of deduction subject to conditions
12 imposed by the board and subject to its supervision.

13 * Sec. 4. AS 33.15 is repealed.

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

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

22 * Sec. 7. This Act takes effect July 1, 1981.
23
24
25
26
27
28
29