

Original sponsor: Parr

Offered: 3/10/82
Referred: Judiciary

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 327 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND 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 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 board shall choose its presiding officer from among its
20 membership for a two-year term. The presiding officer shall have at
21 least two years judicial experience or experience in corrections,
22 probation, or parole work.

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

28 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The
29 governor shall appoint board members on the basis of their qualifica-

1 tions to make decisions that are compatible with the welfare of the
2 community and of individual offenders. The governor shall appoint
3 board members who are able to consider the character and background of
4 offenders and the circumstances under which offenses were committed.

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

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

10 Sec. 33.16.040. REMOVAL OF MEMBERS. (a) The governor may remove
11 a board member only for disability, nonfeasance, neglect of duty, mal-
12 feasance in office, or conviction of a felony.

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

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

1 the governor or his designee is pending.

2 Sec. 33.16.050. COMPENSATION AND EXPENSES. (a) A board member
3 is entitled to compensation of \$100 per day for each day he is concerned
4 with the business of the board and is also entitled to the per diem and
5 travel allowances provided by law for other boards and commissions.

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

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

12 (b) Three members of the board constitute a quorum for the conduct
13 of business.

14 (c) Decisions and orders of the board require the votes of a
15 majority of the members present and in no case less than the votes of
16 two members.

17 (d) Except in the consideration of matters involving the release
18 of a prisoner on parole or parole revocation, the board may conduct a
19 meeting over the telephone or by the use of teleconference facilities.

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

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

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

25 (2) consider the suitability for parole of all prisoners
26 serving sentences who are eligible for consideration for parole, unless
27 a prisoner waives consideration of parole;

28 (3) discharge a person from parole when supervision is no
29 longer required;

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

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

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

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

10 (8) execute other responsibilities prescribed by law.

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

13 (1) establishing the standards, which shall apply fairly to
14 all prisoners, under which the suitability of a prisoner for parole will
15 be decided; and

16 (2) providing for the supervision of parolees and for recom-
17 mitment of parolees;

18 (3) governing procedures of the board.

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

25 Sec. 33.16.100. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A
26 state prisoner other than a juvenile delinquent, wherever confined, who
27 is serving a definite term of over 180 days or a term the minimum of
28 which is at least 181 days and who is not imprisoned in accordance with
29 AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2),

1 may, in the discretion of the board, be released on discretionary parole
2 subject to AS 12.55.086(b), AS 33.16.110, and 33.16.120(b).

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

6 (c) A state prisoner imprisoned in accordance with AS 12.55.125(c)-
7 (1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), who is released
8 under AS 33.20.030, shall be placed on mandatory parole for the period
9 specified in the certificate of deduction, less 180 days, subject to
10 written conditions imposed by the board.

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

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

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

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

29 (b) A prisoner may not be released on discretionary parole until

1 the prisoner has served at least one-third of the period of confinement
2 to which he was sentenced or the minimum term prescribed in AS 12.55.-
3 125, whichever is greater.

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

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

8 (2) the recommendations made by the sentencing court, by the
9 prosecuting attorney, by the defense attorney, and any statement made
10 by the prisoner at sentencing;

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

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

15 (5) official reports of earlier crimes and earlier probation
16 and parole experiences;

17 (6) physical, mental, and psychiatric examinations of the
18 prisoner;

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

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

23 Sec. 33.16.140. LACK OF TREATMENT. The board may not deny parole
24 to a prisoner otherwise suitable for parole solely on the ground that
25 the prisoner did not obtain necessary or desirable treatment while
26 confined if the treatment was not available to the prisoner at the
27 correctional facility to which the prisoner was assigned by the depart-
28 ment.

29 Sec. 33.16.150. HEARING ON APPLICATION FOR DISCRETIONARY PAROLE.

1 (a) A prisoner has the right to a preliminary hearing before a single
2 member of the board or a person authorized by the board to act as a
3 hearing officer to determine the suitability of a prisoner for parole
4 or for the setting, posting, or rescinding of parole dates. The
5 prisoner shall be provided reasonable notice of the hearing. The
6 preliminary hearing shall be electronically recorded. The recording of
7 the preliminary hearing shall be reviewed by the full board within 60
8 days of the preliminary hearing.

9 (b) The prisoner shall be permitted to have a copy of the pre-
10 parole report and records that will be considered by the board no less
11 than 10 days before the hearing. The prisoner has a right to enter
12 written responses to all reports and records that will be considered by
13 the board.

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

17 (d) On review of the recording of the preliminary hearing or
18 after a hearing by the full board, the board shall issue its decision
19 in writing and provide reasons for the decision. The prisoner is
20 entitled to a copy of the decision at the time it is issued.

21 Sec. 33.16.160. ORDER FOR PAROLE. The board shall furnish to
22 each person released under its supervision an order for parole. The
23 order for parole shall contain the conditions imposed by the board for
24 parole and the date that the parole supervision expires. The order for
25 parole does not take effect until it is accepted and signed by the
26 parolee.

27 Sec. 33.16.170. CONDITIONS OF PAROLE. (a) The board shall re-
28 quire that a prisoner released on parole refrain from violation of
29 state or federal law as a condition of parole.

1 (b) Depending on the nature and circumstances of the crime for
2 which the prisoner was convicted and the background of the prisoner, the
3 board may require as a condition of parole under AS 33.16.160 that a
4 parolee accept one or more of the conditions:

5 (1) that he meet his family obligations;

6 (2) that he apply himself to employment, education, training,
7 or subsistence;

8 (3) that he remain within stated geographic limits unless
9 granted written permission from his parole officer to depart from the
10 stated limits;

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

12 (5) that he report at regular intervals to his parole
13 officer;

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

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

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

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

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

24 (11) that he refrain from entering into an agreement or other
25 arrangement with a law enforcement agency that will place him in the
26 position of violating a state or federal law or a condition of his
27 parole;

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

1 (13) that he refrain from entering into a contract, other
2 than a prenuptial contract or a contract of marriage, without permis-
3 sion in writing from his parole officer;

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

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

7 (c) The board may by regulation adopt additional conditions that
8 are consistent with (b) of this section.

9 Sec. 33.16.180. HEARING ON APPLICATION FOR CHANGE IN PAROLE CON-
10 DITIONS. (a) A parolee is entitled to reasonable notice of and may
11 request a hearing on a proposal to change a parole condition or to add
12 new parole conditions. The board shall provide the parolee with the
13 reasons for the proposal.

14 (b) The parolee shall be permitted to have a copy of the infor-
15 mation and records that will be considered by the board no less than
16 seven days before the hearing. The parolee has a right to enter written
17 responses to the information and records that will be considered by the
18 board.

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

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

25 Sec. 33.16.190. WAIVER OF HEARING. A prisoner or parolee may
26 waive a hearing provided under AS 33.16.150 or 33.16.180 by submitting
27 a written waiver to the board.

28 Sec. 33.16.200. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
29 pre-parole reports submitted to the board are confidential and may not

1 be disclosed to anyone other than the board, the sentencing judge, the
2 prosecuting and defense attorneys, the prisoner and the prisoner's
3 attorney, or others granted the right under this chapter to receive the
4 information.

5 Sec. 33.16.210 APPEALS. A prisoner or a parolee may appeal a
6 decision or order of the board to the superior court on the ground of
7 arbitrariness or abuse of discretion.

8 Sec. 33.16.220. DUTIES OF THE COMMISSIONER. The commissioner
9 shall

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

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

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

17 (4) provide the board within 30 days after sentencing with
18 information on sentenced prisoners;

19 (5) keep records, files and accounts as the board requests.

20 Sec. 33.16.230. ACCESS TO LAW BY PRISONERS. The commissioner
21 shall make available at each correctional facility in the state and at
22 each correctional facility outside the state at which a prisoner of the
23 state is maintained a current edition of Alaska Statutes, of the Alaska
24 Administrative Code, and of the Alaska Rules of Court.

25 Sec. 33.16.240. PAROLE OFFICERS. The commissioner may assign the
26 duties of probation officers under AS 33.05 to parole officers appointed
27 under AS 33.16.220(3).

28 Sec. 33.16.250. DISCHARGE OF PAROLEE. (a) The board retains
29 legal custody of a discretionary parolee until the expiration of the

1 maximum term or terms to which the parolee is sentenced less 180 days.
2 The board retains legal custody of a mandatory parolee released in
3 accordance with AS 33.16.100(c) and AS 33.20.040 until the expiration of
4 the maximum term or terms to which the prisoner was sentenced less 180
5 days.

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

10 (c) A parolee who has been on parole for five years and who has
11 not absconded or been charged with a felony since entering parole shall
12 be discharged from parole and from the custody of the board. A parolee
13 who is charged with a felony within the five years remains in the
14 custody of the board pending a final decision on the charge. If the
15 parolee is acquitted or the charge is dismissed, the board shall dis-
16 charge the parolee from custody.

17 Sec. 33.16.260. DISCRETIONARY DISCHARGE OF PAROLEE. The board may
18 discharge a parolee from supervision and the custody of the board and
19 from further liability under his sentence after the parolee has com-
20 pleted 20 months of parole.

21 Sec. 33.16.270. RELEASE OF PRISONER TO ANSWER PROCESS. If a court
22 of this state, another state, or the United States, or other authority
23 issues a warrant charging a prisoner with a crime, the board may release
24 the prisoner on parole to answer the warrant.

25 Sec. 33.16.280. REVOCATION OF PAROLE. (a) The board may revoke
26 the parole granted to a parolee for violation of a state or federal law
27 or a condition imposed by the board under AS 33.16.170(b).

28 (b) A parolee has the right to a preliminary hearing before a
29 single member of the board or a person authorized by the board to act

1 as a hearing officer to determine whether probable cause exists to
2 revoke parole. The preliminary hearing shall be held within 14 days of
3 the arrest of the parolee on the charge of violation of a state or
4 federal law or violation of a condition of parole. The single member
5 of the board or the hearing officer who holds the hearing may release
6 the parolee pending the hearing under (c) of this section.

7 (c) The parolee is entitled to a hearing before the board at the
8 first meeting of the board held after the preliminary hearing held
9 under (b) of this section. The parolee has the rights of a parolee
10 under AS 33.16.150 and 33.16.180 at the hearing. The board shall issue
11 its decision in writing and provide reasons for the decision. The
12 parolee is entitled to a copy of the decision on its issuance.

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

16 (e) If after the hearing the board determines that a violation of
17 a condition of parole has occurred, it may revoke a portion of the
18 parole granted or change the conditions of parole. If the board does
19 not revoke a portion of the parole granted, the parolee shall be re-
20 leased from confinement and continued on parole under terms and condi-
21 tions established by the board.

22 (f) If after the hearing the board determines that a parolee has
23 violated a state or federal law, the board may require the parolee to
24 serve all or a part of the remainder of the term to which he was sen-
25 tenced.

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

29 (h) A parolee may waive a hearing under (b) or (c) of this section

1 by submitting a written waiver to the board.

2 Sec. 33.16.290. ARREST OF PAROLE VIOLATOR. (a) A parolee charged
3 with violation of a condition of his parole may be arrested only on a
4 warrant for arrest issued by a judicial officer based on probable cause
5 to believe that a violation of the condition of parole has occurred.

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

9 Sec. 33.16.300. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
10 A parole officer or a peace officer acting at the request of a parole
11 officer shall execute the warrant issued under AS 33.16.290 by arrest-
12 ing the parolee and confining the parolee in a correctional facility
13 designated by the commissioner.

14 (b) The parole officer shall immediately notify the board or a
15 member of the board of an arrest under (a) of this section. If the
16 arrest was without warrant, the parole officer shall immediately provide
17 the board or a member of the board with a report in writing indicating
18 in what manner the parolee violated a condition of his parole.

19 Sec. 33.16.310. APPLICABILITY TO PERSONS ON PAROLE OR INCAR-
20 CERATED. (a) This chapter applies to all persons convicted and sen-
21 tenced in the superior court and the district courts of the state.

22 (b) If the appropriate officers of the United States agree, the
23 legislature intends that this chapter also apply to persons convicted
24 before Alaska statehood of a crime punishable under the laws of a state
25 notwithstanding the fact that the prosecution may have been brought by
26 the United States and the prisoners were convicted and sentenced in
27 courts of the United States before Alaska became a state or before the
28 Alaska state court system was in operation.

29 Sec. 33.16.320. DEFINITIONS. In this chapter

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

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

4 (3) "department" means the Department of Health and Social
5 Services;

6 (4) "discretionary parole" means the release of a prisoner
7 to the community by the board before the expiration of his term or
8 terms, subject to conditions imposed by the board and subject to its
9 supervision;

10 (5) "mandatory parole" means the release of a prisoner to
11 the community by operation of law before the expiration of his term or
12 terms, subject to conditions imposed by the board and subject to its
13 supervision;

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

16 * Sec. 2. AS 33.20.040(a) is amended to read:

17 (a) A prisoner serving the term or terms for which he was sen-
18 tenced less good time deductions shall be released unconditionally if
19 there remains less than 180 days to serve under his sentence. If there
20 remains more than 180 days to serve under his sentence a prisoner
21 shall be released on parole under AS 33.16.100(c) [, UPON RELEASE,
22 SHALL BE CONSIDERED AS IF RELEASED ON PAROLE UNTIL THE EXPIRATION OF
23 THE MAXIMUM TERM OR TERMS FOR WHICH HE WAS SENTENCED LESS 180 DAYS].

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

25 (3) [STATE] Board of Parole (AS 33.16.010) [(AS 33.15.-
26 010)] -- June 30, 1986 [1982];

27 * Sec. 4. AS 33.15 is repealed.

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

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

7 * Sec. 7. This Act takes effect June 29, 1982.
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