

Original sponsor: Parr

Offered: 4/17/82  
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 327 (Judiciary)

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 the  
7 existence of the Board of Parole; and providing for an  
8 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 within 30 days of the  
19 vacancy.

20 (c) The board shall choose its presiding officer from among its  
21 membership.

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

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

1 community and of individual offenders. The governor shall appoint  
2 board members who are able to consider the character and background of  
3 offenders and the circumstances under which offenses were committed.

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

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

9 Sec. 33.16.040. REMOVAL OF MEMBERS. (a) The governor may remove  
10 a board member only for disability, nonfeasance, neglect of duty, mal-  
11 feasance in office, conviction of a misdemeanor involving moral turpi-  
12 tude, 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 a designee of the governor.  
18 The time fixed for the hearing may not be less than 10 days after the  
19 statement is delivered to the board member. At the hearing the board  
20 member has the right of confrontation and cross-examination of the  
21 witnesses who 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. The board member may appeal the findings of the governor to the  
26 superior court. The court shall limit its review to a determination of  
27 whether the findings of the governor are substantiated by the evidence  
28 presented. The removal of the board member is suspended while an  
29 appeal from the findings of the governor is pending.

1           Sec. 33.16.050. COMPENSATION AND EXPENSES. A board member is  
2 entitled to compensation of \$150 per day for each day the board member  
3 is conducting the business of the board and is also entitled to the  
4 per diem and travel allowances provided by law for other boards and  
5 commissions.

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) Three 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 two members.

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

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

19           Sec. 33.16.080. RESPONSIBILITIES OF THE BOARD. (a) The board  
20 shall

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

22           (2) consider the suitability for parole of all prisoners  
23 serving sentences who are eligible for consideration for parole, unless  
24 a prisoner waives consideration of parole;

25           (3) discharge a person from parole when supervision is no  
26 longer required;

27           (4) maintain records of the meetings and proceedings of the  
28 board;

29           (5) adopt standards that shall apply fairly to all prisoners

1 for determining when a prisoner should be considered for and receive  
2 parole;

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

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

7 (8) execute other responsibilities prescribed by law.

8 (b) The board shall adopt regulations under the Administrative  
9 Procedure Act (AS 44.62)

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

13 (2) providing for the supervision of parolees and for recom-  
14 mitment of parolees; and

15 (3) governing procedures of the board.

16 Sec. 33.16.090. EXECUTIVE DIRECTOR. The board shall hire an  
17 executive director who has training and experience in the field of  
18 probation and parole. The executive director serves as the executive  
19 officer for the board in the accomplishment of its functions. The  
20 executive director serves at the pleasure of the governor. The execu-  
21 tive director shall employ the staff of the board.

22 Sec. 33.16.100. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A  
23 state prisoner other than a juvenile delinquent, wherever confined, who  
24 is serving a term of at least 181 days and who is not imprisoned in  
25 accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2),  
26 (e)(1), or (e)(2), may, in the discretion of the board, be released on  
27 discretionary parole subject to AS 12.55.086(b), AS 33.16.110, and  
28 33.16.120(b).

29 (b) A state prisoner imprisoned in accordance with AS 12.55.125(a)

1 or (b) may not be released on discretionary parole until at least the  
2 prescribed minimum term of imprisonment has been served.

3 (c) A state prisoner imprisoned in accordance with AS 12.55.-  
4 125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), who is  
5 released under AS 33.20.030, shall be placed on mandatory parole for the  
6 period specified in the certificate of deduction, less 180 days, subject  
7 to written conditions imposed by the board.

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

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

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

23 (2) the release of the prisoner on discretionary parole is  
24 compatible with the welfare of society and would not depreciate the  
25 seriousness of the crime.

26 (b) A prisoner may not be released on discretionary parole until  
27 the prisoner has served at least one-third of the period of confinement  
28 to which the prisoner was sentenced or the minimum term prescribed in  
29 AS 12.55.125, whichever is greater.

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

4                     (1) the pre-sentence report made to the sentencing court;

5                     (2) the recommendations made by the sentencing court, by the  
6           prosecuting attorney, by the defense attorney, and any statement made by  
7           the prisoner at sentencing;

8                     (3) the prisoner's history at the correctional facility to  
9           which assigned by the department;

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

12                    (5) official reports of earlier crimes and earlier probation  
13           and parole experiences;

14                    (6) physical, mental, and psychiatric examinations of the  
15           prisoner;

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

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

20           Sec. 33.16.140. LACK OF TREATMENT. The board may not deny parole  
21           to a prisoner otherwise suitable for parole on the ground that the  
22           prisoner did not obtain necessary or desirable treatment while confined  
23           if the treatment was not available to the prisoner at the correctional  
24           facility to which the prisoner was assigned by the department. This  
25           section does not abrogate the authority of the board to deny a prisoner  
26           parole if, as a result of the lack of treatment, a prisoner is deter-  
27           mined unsuitable for parole under AS 33.16.120(a).

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

29           (a) A prisoner has the right to a preliminary hearing before a single

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

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

13 (c) The prisoner has a right to be present at the hearing, to  
14 present evidence, and to cross-examine witnesses.

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

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

24 Sec. 33.16.170. CONDITIONS OF PAROLE. (a) The board shall re-  
25 quire that a prisoner released on parole refrain from violation of state  
26 or federal law or a municipal ordinance as a condition of parole.

27 (b) Depending on the nature and circumstances of the crime for  
28 which the prisoner was convicted and the background of the prisoner, the  
29 board may require as a condition of parole under AS 33.16.160 that a

1 prisoner released on parole agree to:

2 (1) meet family obligations;

3 (2) pursue employment, education, training, or subsistence;

4 (3) remain within stated geographic limits unless the parole  
5 officer grants the parolee written permission to depart from the stated  
6 limits;

7 (4) report on release to the parole officer of the parolee;

8 (5) report at regular intervals to the parole officer of the  
9 parolee;

10 (6) reside at a stated place and notify the parole officer of  
11 a change in place of residence;

12 (7) have in possession no dangerous firearm or dangerous  
13 weapon unless the board grants written permission for the possession;

14 (8) refrain from consuming alcoholic beverages;

15 (9) submit to searches and seizures conducted reasonably by a  
16 parole officer or by a peace officer acting under direction of a parole  
17 officer;

18 (10) submit to necessary medical, psychiatric, or other exami-  
19 nation or treatment if available or to an examination or treatment for  
20 the use of alcohol or drugs if available;

21 (11) refrain from entering into an agreement or other arrange-  
22 ment with a law enforcement agency that will place the parolee in the  
23 position of violating a state or federal law or a municipal ordinance  
24 or a condition of parole;

25 (12) refrain from opening, maintaining, or using a checking  
26 account;

27 (13) refrain from entering into a contract, other than a  
28 prenuptial contract or a contract of marriage, without permission in  
29 writing from the parole officer of the parolee;

1 (14) refrain from operating a motor vehicle;

2 (15) refrain from entering a liquor store, bar, pub, tavern,  
3 or night club designated by the board.

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

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

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

16 (c) The parolee has the right to be present at the hearing, to  
17 present evidence, to cross-examine witnesses, and to remain silent.

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

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

24 Sec. 33.16.200. CONFIDENTIALITY OF RECORDS AND INFORMATION. The  
25 pre-parole reports submitted to the board are confidential and may not  
26 be disclosed to anyone other than the board, the sentencing judge, the  
27 prosecuting and defense attorneys, the prisoner and the prisoner's  
28 attorney, or others granted the right under this chapter to receive the  
29 information.

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

4           Sec. 33.16.220. DUTIES OF THE COMMISSIONER. The commissioner  
5 shall

6                   (1) conduct investigations of prisoners eligible for parole  
7 as the board requests;

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

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

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

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

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

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

24           Sec. 33.16.250. DISCHARGE OF PAROLEE. (a) The board retains  
25 legal custody of a discretionary parolee until the expiration of the  
26 maximum term or terms to which the parolee is sentenced less 180 days.  
27 The board retains legal custody of a mandatory parolee released in  
28 accordance with AS 33.16.100(c) and AS 33.20.040 until the expiration of  
29 the maximum term or terms to which the prisoner was sentenced less 180

1 days.

2 (b) A disability imposed by AS 33.30.310 - 33.30.320 applies to a  
3 parolee as long as the parolee is in the legal custody of the board but  
4 the disability does not deny a parolee access to the courts to protect  
5 rights the parolee may have.

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

10 Sec. 33.16.260. DISCRETIONARY DISCHARGE OF PAROLEE. The board  
11 may discharge a parolee from supervision and the custody of the board  
12 and from further liability under his sentence after the parolee has  
13 completed two years of parole. After a parolee has been under super-  
14 vision for two years the board shall review his record biennially for  
15 discharge.

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

20 Sec. 33.16.280. REVOCATION OF PAROLE. (a) The board may revoke  
21 the parole granted to a parolee for violation of a state or federal law  
22 or a municipal ordinance or a condition imposed by the board under  
23 AS 33.16.170(b).

24 (b) A parolee has the right to a preliminary hearing before a  
25 single member of the board or a person authorized by the board to act  
26 as a hearing officer to determine whether probable cause exists to  
27 revoke parole. The preliminary hearing shall be held within 14 days of  
28 the arrest of the parolee on the charge of violation of a state or  
29 federal law or violation of a condition of parole. The single member

1 of the board or the hearing officer who holds the hearing may release  
2 the parolee pending the hearing under (c) of this section.

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

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

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

18 (f) If after the hearing the board determines that a parolee has  
19 violated a state or federal law or a municipal ordinance, the board may  
20 require the parolee to serve all or a part of the remainder of the term  
21 to which the parolee was sentenced.

22 (g) If the board revokes parole for a reason other than a viola-  
23 tion of a state or federal law or a municipal ordinance, the board may  
24 not return the parolee to confinement for a period in excess of six  
25 months.

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

28 Sec. 33.16.290. ARREST OF PAROLE VIOLATOR. (a) A parolee charged  
29 with violation of a condition of parole may be arrested only on a

1 warrant for arrest issued by the board or a member of the board based on  
2 probable cause to believe that a violation of the condition of parole  
3 has occurred.

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

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

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

17 Sec. 33.16.310. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED.

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

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

27 Sec. 33.16.320. DEFINITIONS. In this chapter

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

29 (2) "commissioner" means the commissioner of health and

1 social services;

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

4 (4) "discretionary parole" means the release of a prisoner  
5 to the community by the board before the expiration of a term or terms,  
6 subject to conditions imposed by the board and subject to its super-  
7 vision;

8 (5) "mandatory parole" means the release of a prisoner to the  
9 community by operation of law before the expiration of a term or terms,  
10 subject to conditions imposed by the board and subject to its super-  
11 vision;

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

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

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

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

24 (3) [STATE] Board of Parole (AS 33.16.010) [(AS 33.15.010)] --  
25 June 30, 1986 [1982];

26 \* Sec. 4. AS 33.15 is repealed.

27 \* Sec. 5. 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. 6. The terms of the members of the Board of Parole appointed

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

6 \* Sec. 7. This Act takes effect January 1, 1983.

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