

Introduced: 2/13/84  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 662

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 CHAPTER 16. PAROLE ADMINISTRATION.

11 Sec. 33.16.010. PAROLE. (a) A prisoner who is serving a term  
12 of at least 181 days is eligible for either discretionary or mandatory  
13 parole.

14 (b) A prisoner who is eligible under AS 33.16.100 may be granted  
15 discretionary parole by the Board of Parole.

16 (c) A prisoner who is not eligible for discretionary parole, or  
17 who is not released on discretionary parole, must be released on  
18 mandatory parole for the term of good time deductions credited under  
19 AS 33.20, if the term or terms of imprisonment exceed 180 days.

20 (d) A prisoner released on discretionary or mandatory parole is  
21 subject to the conditions of parole imposed under AS 33.16.150.  
22 Parole may be revoked under AS 33.16.230.

23 Sec. 33.16.020. BOARD OF PAROLE. (a) There is in the Depart-  
24 ment of Corrections a Board of Parole consisting of five members ap-  
25 pointed by the governor.

26 (b) Members of the board serve for staggered terms of five years  
27 and until their successors are appointed. A vacancy on the board must  
28 be filled for the unexpired term, within 60 days after the vacancy.

29 (c) The governor shall choose the presiding officer of the board

1 from among the membership.

2 (d) The governor shall make appointments to the board with due  
3 regard for representation on the board of the ethnic, racial, sexual,  
4 and cultural populations of the state.

5 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The  
6 governor shall appoint board members on the basis of their qualifi-  
7 cations to make decisions that are compatible with the welfare of the  
8 community and of individual offenders. The governor shall appoint  
9 members who are able to consider the character and background of  
10 offenders and the circumstances under which offenses were committed.

11 (b) At least one person appointed to the board must have ex-  
12 perience in the field of criminal justice.

13 (c) Officers or employees of the state may not be appointed to  
14 the board.

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

18 Sec. 33.16.050. COMPENSATION AND EXPENSES. A board member is  
19 entitled to compensation of \$150 a day for each day the member is  
20 participating in business of the board, and is also entitled to the  
21 per diem and travel allowances provided under AS 39.20.180.

22 Sec. 33.16.060. MEETINGS OF THE BOARD. (a) The board may meet  
23 as often as it considers necessary to carry out its responsibilities,  
24 but shall meet at least four times a year.

25 (b) Three members of the board constitute a quorum for the  
26 conduct of business.

27 (c) Decisions and orders of the board require the affirmative  
28 votes of a majority of the members present.

29 (d) The board may conduct meetings by the use of telecon-

1 ferencing facilities.

2 Sec. 33.16.070. DUTIES OF THE BOARD. (a) The board shall

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

4 (2) upon receipt of an application, consider the suitability  
5 for parole of a prisoner who is eligible for discretionary parole;

6 (3) impose parole conditions on all prisoners released  
7 under discretionary or mandatory parole;

8 (4) under AS 33.16.210, discharge a person from parole when  
9 custody is no longer required;

10 (5) maintain records of the meetings and proceedings of the  
11 board;

12 (6) adopt standards determining when a prisoner should be  
13 granted discretionary parole;

14 (7) recommend to the governor and the legislature changes  
15 in the law administered by the board;

16 (8) recommend to the governor or the commissioner changes  
17 in the practices of the department and of other departments of the  
18 executive branch necessary to facilitate the purposes and practices of  
19 parole;

20 (9) upon request of the governor, review and recommend  
21 applicants for executive clemency;

22 (10) execute other responsibilities prescribed by law.

23 (b) The board shall adopt regulations under the Administrative  
24 Procedure Act (AS 44.62)

25 (1) establishing standards under which the suitability of a  
26 prisoner for discretionary parole will be determined;

27 (2) providing for the supervision of parolees and for  
28 recommitment of parolees; and

29 (3) governing procedures of the board.

1           Sec. 33.16.080. PROCESS. The board or a member of the board may  
2 issue subpoenas and subpoenas duces tecum in the performance of its  
3 duties under AS 33.16.070(a).

4           Sec. 33.16.090. EXECUTIVE DIRECTOR. The commissioner shall hire  
5 an executive director for the board who has training and experience in  
6 probation and parole. The executive director shall serve as the  
7 executive officer for the board in the discharge of its duties. The  
8 executive director may employ additional staff to assist the board.

9           Sec. 33.16.100. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A  
10 prisoner, who is serving a term of at least 181 days and who is not  
11 otherwise ineligible under (b) of this section, may, in the discretion  
12 of the board, be released on discretionary parole subject to AS 12.-  
13 55.086(b), 12.55.115, and AS 33.16.110(c) and (d).

14           (b) A prisoner is not eligible for discretionary parole if the  
15 prisoner is serving a presumptive sentence. A presumptive sentence  
16 means

17           (1) a sentence imposed under AS 12.55.125(c)(1) -- (4),  
18 (d)(1) -- (3), (e)(1) -- (3), or (i)(1) -- (4), including any period  
19 of imprisonment imposed after adjustment under AS 12.55.155(a), (c),  
20 or (d); or

21           (2) sentences imposed under the statutes listed in (1) of  
22 this subsection which are to be served consecutively.

23           (c) In determining the eligibility of a prisoner for discretion-  
24 ary parole, the board may rely upon the verbatim written transcript of  
25 sentencing proceedings prepared under AS 12.55.025(a)(1), as well as  
26 the judgment entered by the court.

27           Sec. 33.16.110. GRANTING OF DISCRETIONARY PAROLE. (a) The  
28 board may authorize the release of a prisoner on discretionary parole  
29 if it determines that

1 (1) the prisoner eligible for discretionary parole will,  
2 with reasonable probability, live and remain at liberty without vi-  
3 olating any laws and without violating any conditions imposed by the  
4 board; and

5 (2) the release of the prisoner on discretionary parole is  
6 compatible with the welfare of society and would not diminish the  
7 seriousness of the crime.

8 (b) If the board finds a change in circumstances in a prisoner's  
9 parole release plan, submitted under AS 33.16.130(a), or discovers new  
10 information concerning a prisoner who has been granted a parole re-  
11 lease date, the board may rescind or revise the previously granted  
12 parole release date. In reconsidering the release date, the proce-  
13 dures set out in AS 33.16.130(b) and (c) must be followed.

14 (c) Except as provided in (d) of this section, a prisoner may  
15 not be released on discretionary parole until the prisoner has served  
16 at least one-fourth of the period of confinement imposed, or any  
17 minimum term set under AS 12.55.115 at sentencing, whichever is great-  
18 er.

19 (d) A prisoner who is sentenced for a term under AS 12.55.125(a)  
20 or (b) may not be released on discretionary parole until the prisoner  
21 has served the mandatory minimum term under AS 12.55.125(a) or (b), at  
22 least one-third of the period of confinement imposed, or any minimum  
23 term set under AS 12.55.115 at sentencing, whichever is greater.

24 Sec. 33.16.120. SUITABILITY FOR DISCRETIONARY PAROLE. In de-  
25 termining whether a prisoner is suitable for discretionary parole, the  
26 board shall consider

- 27 (1) the presentence report made to the sentencing court;  
28 (2) the recommendations made by the sentencing court, by  
29 the prosecuting attorney, by the defense attorney, and any statements

1 made by the victim or the prisoner at sentencing;

2 (3) the prisoner's institutional conduct history while  
3 incarcerated;

4 (4) recommendations made by the staff of the correctional  
5 facilities in which the prisoner was incarcerated;

6 (5) reports of prior crimes, juvenile histories, and previ-  
7 ous experiences of the prisoner on parole or probation;

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

10 (7) information submitted by the prisoner, the sentencing  
11 court, the victim of the crime, the prosecutor, or other persons  
12 having knowledge of the prisoner or the crime; and

13 (8) other relevant information that may be reasonably  
14 available.

15 Sec. 33.16.130. APPLICATION FOR DISCRETIONARY PAROLE. (a) A  
16 prisoner eligible for discretionary parole may apply to the board for  
17 discretionary parole. As part of the application for parole, the  
18 prisoner must submit to the board a parole release plan which includes  
19 the prisoner's plan for employment, residence, and other information  
20 concerning the prisoner's rehabilitative plans if released on parole.

21 (b) Before the board determines a prisoner's suitability for  
22 discretionary parole the prisoner is entitled to a hearing before the  
23 board. The prisoner must be furnished a copy of the preparole reports  
24 listed in AS 33.16.120, and permitted access to all records, except  
25 those that are otherwise excluded by law, that will be considered by  
26 the board in making its decision. The prisoner may also respond in  
27 writing to all materials considered by the board, be present at the  
28 hearing, and present evidence to the board.

29 (c) The board shall issue its decision in writing and provide

1 the basis for a denial of discretionary parole. A copy of the deci-  
2 sion must be provided to the prisoner.

3 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole, setting  
4 out the conditions imposed by AS 33.16.150(a) and by the board under  
5 AS 33.16.150(b) and the date parole custody ends, must be furnished to  
6 each prisoner released on discretionary or mandatory parole.

7 Sec. 33.16.150. CONDITIONS OF PAROLE. (a) As a condition of  
8 parole, a prisoner released on discretionary or mandatory parole shall  
9 refrain from violation of state or federal law or municipal ordinance.

10 (b) The board may require as a condition of discretionary or  
11 mandatory parole that a prisoner released on parole

12 (1) meet family obligations;

13 (2) pursue employment, education, counseling or training;

14 (3) remain within stated geographic limits unless written  
15 permission to depart from the stated limits is granted the parolee;

16 (4) report upon release to the parole officer assigned to  
17 the parolee;

18 (5) report as required to the parole officer assigned to  
19 the parolee;

20 (6) reside at a stated place and notify the board of any  
21 change in place of residence;

22 (7) not possess or control firearms or other dangerous  
23 weapons;

24 (8) refrain from possessing or consuming alcoholic bever-  
25 ages;

26 (9) refrain from possessing or consuming a controlled  
27 substance without a doctor's prescription;

28 (10) submit to reasonable searches and seizures by a parole  
29 officer, or a peace officer acting under the direction of a parole

1 officer;

2 (11) submit to appropriate medical, mental health, or con-  
3 trolled substance or alcohol examination, treatment, or counseling;

4 (12) submit to periodic examinations designed to detect the  
5 use of alcohol or controlled substances;

6 (13) make restitution to a victim of the prisoner's crime,  
7 according to a schedule established by the board;

8 (14) refrain from opening, maintaining, or using a checking  
9 account or charge account;

10 (15) refrain from entering into a contract other than a  
11 prenuptial contract or a marriage contract;

12 (16) refrain from operating a motor vehicle;

13 (17) refrain from entering an establishment where alcoholic  
14 beverages are served, sold, or otherwise dispensed;

15 (18) refrain from participating in any other activity or  
16 associating with any other person that the board determines is rea-  
17 sonably likely to diminish the rehabilitative goals of parole, or  
18 which may endanger the public.

19 (c) Except for a condition imposed under (b)(4), (7), (9), (10),  
20 (12) or (13) of this section, the board may generally delegate imposi-  
21 tion of special conditions under (b) of this section to the discretion  
22 of the parole officer.

23 (d) The board may require a prisoner released on parole to  
24 comply with special conditions imposed under (b) of this section for  
25 any period up to the maximum term under which the prisoner is subject  
26 to the custody and jurisdiction of the board.

27 Sec. 33.16.160. CHANGE IN PAROLE CONDITIONS. (a) Upon appli-  
28 cation of the state or the parolee, the board may change a condition  
29 of parole previously imposed under AS 33.16.150(b).

1 (b) If the proposed change in conditions of parole is more  
2 restrictive of a parolee's liberty, the parolee is entitled to notice  
3 of the proposed change, the reasons for the proposed change, a hearing  
4 before the board, and an opportunity to respond to the proposed change  
5 and to present evidence.

6 (c) Notwithstanding (a) and (b) of this section, when a parole  
7 officer determines that an emergency situation requires an immediate  
8 change in a condition of parole, or the imposition of a new condition,  
9 the parole officer may impose the change or new condition immediately,  
10 without a hearing. The parole officer shall immediately notify the  
11 board of the imposition of the emergency change or new condition and  
12 shall provide a written report setting out the basis for the change or  
13 new condition and the nature of the emergency. A change in condition,  
14 or imposition of a new condition, under this subsection may not be  
15 imposed for a period in excess of 10 working days.

16 Sec. 33.16.170. CONFIDENTIALITY OF RECORDS AND INFORMATION. The  
17 preparole reports listed in AS 33.16.120, and other information ob-  
18 tained and used by the board under this chapter, are confidential and  
19 may not be disclosed to anyone other than the board, the sentencing  
20 judge, the prosecuting and defense attorneys, the prisoner, the pris-  
21 oner's attorney, the attorney for the board, the staff of the board,  
22 or others granted access to this information under this chapter.

23 Sec. 33.16.180. DUTIES OF THE COMMISSIONER. The commissioner  
24 shall

- 25 (1) conduct investigations of prisoners eligible for dis-  
26 cretionary parole, as requested by the board;
- 27 (2) supervise the conduct of parolees;
- 28 (3) appoint and assign parole officers and personnel;
- 29 (4) provide the board, within 30 days after sentencing,

1 information on a sentenced prisoner who may be eligible for discre-  
2 tionary parole under AS 33.16.100;

3 (5) notify the board and provide information on a prisoner  
4 90 days before the prisoner's mandatory release date, if the prisoner  
5 is to be released to mandatory parole; and

6 (6) maintain records, files, and accounts as requested by  
7 the board.

8 Sec. 33.16.190. PAROLE AND PROBATION OFFICERS. An officer ap-  
9 pointed by the commissioner under AS 33.05.020(a) or under AS 33.16.-  
10 180, may discharge duties under AS 33.05 or AS 33.16.

11 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in  
12 AS 33.16.210, the board retains custody of discretionary and mandatory  
13 parolees until the expiration of the maximum term or terms of impris-  
14 onment to which the parolee is sentenced.

15 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-  
16 tionally discharge a parolee from the jurisdiction and custody of the  
17 board after the parolee has completed two years of parole, if the  
18 sentence of the parolee does not include any residual period of pro-  
19 bation. A parolee with a residual period of probation may, after two  
20 years of parole, be discharged by the board to immediately begin  
21 serving the residual period of probation.

22 Sec. 33.16.220. RELEASE OF PRISONER TO ANSWER PROCESS. If a  
23 court of this state, another state, the United States, or other au-  
24 thority issues a warrant, subpoena, detainer, or other legal process  
25 for a prisoner, the board may release the prisoner on parole to answer  
26 the process if the prisoner is determined to be otherwise eligible for  
27 discretionary parole under AS 33.16.100 and 33.16.110.

28 Sec. 33.16.230. REVOCATION OF PAROLE. (a) The board may revoke  
29 parole for violation of a state or federal law, a municipal ordinance,

1 or a condition imposed under AS 33.16.150(b).

2 (b) Except as provided in (e) of this section, within 14 working  
3 days after the arrest and incarceration of a parolee for violation of  
4 a condition of parole, the board or its designee shall hold a prelimi-  
5 nary hearing. At the preliminary hearing, the board or its designee  
6 shall determine if there is probable cause to believe that the parolee  
7 violated the conditions of parole and, when probable cause exists,  
8 whether the parolee should be released pending a final revocation  
9 hearing. A grand jury indictment or a finding of probable cause at a  
10 preliminary hearing in a criminal case is conclusive proof of probable  
11 cause that a parole violation occurred.

12 (c) In determining whether a parole violator should be released  
13 pending a final revocation hearing, the board or its designee shall  
14 consider

15 (1) the likelihood of the parolee's appearance at a final  
16 revocation hearing;

17 (2) the seriousness of the alleged violation;

18 (3) whether the parolee presents a danger to the community;

19 and

20 (4) whether the parolee is likely to further violate con-  
21 ditions of parole.

22 (d) If the parole violator is released pending a final revoca-  
23 tion hearing, the board or its designee may impose additional con-  
24 ditions necessary to ensure the parolee's appearance at the final  
25 revocation hearing, and to prevent further violation of conditions of  
26 parole.

27 (e) A preliminary hearing under (b) of this section is not re-  
28 quired if the board holds a final revocation hearing within 14 working  
29 days after the parolee's arrest and incarceration.

1 (f) The board shall hold a final revocation hearing no later  
2 than 120 days after a parolee's arrest, subject to restrictions arising  
3 under AS 33.10.010 and (g) of this section.

4 (g) When the basis for the revocation proceeding is a criminal  
5 offense, the parolee may request, or the board upon its own motion may  
6 propose that further proceedings on the revocation be delayed. In  
7 making the determination to delay further proceedings, the board shall  
8 consider prejudice that may result to the parolee's and the state's  
9 interests in the pending criminal case and the parolee's decision to  
10 delay final revocation proceedings. If good cause to proceed is  
11 found, the board shall consult with the attorney general before continuing  
12 the final revocation proceeding.

13 (h) At a final revocation hearing, a violation of a condition of  
14 parole must be established by a preponderance of the evidence.

15 (i) If, after the final revocation hearing, the board finds that  
16 the parolee has violated a condition of parole imposed under AS 33.-  
17 16.150(b), or a law or ordinance, the board may revoke all or a portion  
18 of the parole, or change any condition of parole. If parole is  
19 revoked, under no circumstances does the prisoner receive credit,  
20 toward time served on the sentence of imprisonment, for the time that  
21 the prisoner was enrolled in a treatment program.

22 Sec. 33.16.240. WAIVER OF HEARING. A prisoner or parolee may  
23 waive the right to a hearing provided under AS 33.16.130, 33.16.160,  
24 or 33.16.230 by submitting a written waiver to the board.

25 Sec. 33.16.250. ARREST OF A PAROLE VIOLATOR. (a) A parolee may  
26 be arrested, with or without a warrant, for a violation of parole.

27 (b) A warrant for the arrest of a parolee who is charged with a  
28 violation of parole may be issued by the board, or a member of the  
29 board, based on probable cause that a violation has occurred.

1 (c) A parole officer may, without a warrant, arrest a parolee  
2 for a violation of parole only if there is danger to the public, if  
3 there is a likelihood that the parolee will flee, or if the parolee  
4 committed a crime in the presence of the parole officer.

5 (d) If a parolee is arrested without a warrant, the parole  
6 officer shall notify the board no later than the working day immedi-  
7 ately following the arrest. The parole officer shall, within five  
8 working days after the arrest, provide the board with a written report  
9 setting out the alleged violation and circumstances that required  
10 immediate arrest of the parolee.

11 (e) A parolee arrested for violation of parole is not entitled  
12 to bail.

13 (f) Time spent in custody pending revocation proceedings must be  
14 credited toward the unexpired term of imprisonment of the parolee.

15 Sec. 33.16.260. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)  
16 A parole officer, or a peace officer acting at the request of a parole  
17 officer, shall execute a warrant issued under AS 33.16.250 by ar-  
18 resting the parolee and confining the parolee in a correctional facil-  
19 ity designated by the commissioner.

20 (b) The parole officer or peace officer shall immediately notify  
21 the board or a member of the board of an arrest under (a) of this  
22 section.

23 Sec. 33.16.270. DEFINITIONS. In this chapter

- 24 (1) "board" means the Board of Parole;  
25 (2) "commissioner" means the commissioner of corrections;  
26 (3) "controlled substance" means a drug, substance, or  
27 immediate precursor included in the schedules set out in AS 11.71.-  
28 140 -- 11.71.190;  
29 (4) "department" means the Department of Corrections;

1 (5) "discretionary parole" means the release of a prisoner  
2 by the board before the expiration of a term, subject to conditions  
3 imposed by the board and subject to its custody and jurisdiction;

4 (6) "mandatory parole" means the release of a prisoner who  
5 was sentenced to one or more terms of imprisonment exceeding 180 days,  
6 for the period of good time credited under AS 33.20, subject to con-  
7 ditions imposed by the board and subject to its custody and jurisdic-  
8 tion;

9 (7) "parolee" means a prisoner, sentenced to one or more  
10 terms of imprisonment exceeding 180 days, released by the board or by  
11 operation of law before the expiration of the term, subject to the  
12 custody and jurisdiction of the board;

13 (8) "prisoner" means an offender confined under authority  
14 of state law, but does not include a person confined under AS 47.

15 \* Sec. 2. AS 12.55.025(a) is amended to read:

16 (a) When imposing a sentence of imprisonment exceeding 90 days  
17 or upon a conviction of a violation of AS 04, a regulation adopted  
18 under AS 04, or an ordinance adopted in conformity with AS 04.21.010,  
19 the court[,] shall prepare, as a part of the record, a sentencing  
20 report which includes the following:

21 (1) a verbatim written record of the sentencing hearing and  
22 any other in-court sentencing procedures;

23 (2) findings on material issues of fact and on factual  
24 questions required to be determined as a prerequisite to the selection  
25 of the sentence imposed;

26 (3) a clear statement of the terms of the sentence imposed;  
27 and

28 (4) any recommendations as to the place of confinement or  
29 the manner of treatment.

1 \* Sec. 3. AS 12.55 is amended by adding a new section to read:

2           Sec. 12.55.115. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT  
3 SENTENCING. The court may, as part of a sentence of imprisonment,  
4 further restrict the eligibility of a prisoner for discretionary  
5 parole for a term greater than that required under AS 33.16.110.

6 \* Sec. 4. AS 33.20.040(a) is repealed and reenacted to read:

7           Sec. 33.20.040. RELEASED PRISONER. (a) A prisoner released  
8 under AS 33.20.030 must be released on mandatory parole to the custody  
9 and jurisdiction of the parole board under AS 33.16, until the expiration  
10 of the maximum time to which the prisoner was sentenced, if the  
11 time of imprisonment exceeded 180 days. However, a prisoner released  
12 on mandatory parole may be discharged under AS 33.16.210 before the  
13 expiration of the term. A prisoner who was sentenced to an imprisonment  
14 for 180 days or less must be unconditionally discharged, except  
15 as provided in (c) of this section.

16 \* Sec. 5. AS 33.20.040 is amended by adding a new subsection to read:

17           (c) If a prisoner's sentence includes a residual period of  
18 probation, a prisoner released under AS 33.20.030 must immediately  
19 begin serving the residual probationary period, except that if mandatory  
20 parole is required under (a) of this section, serving the probationary  
21 period must immediately follow discharge from parole.

22 \* Sec. 6. AS 39.50.200(b)(20) is amended to read:

23           (20) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010]);

24 \* Sec. 7 AS 44.66.010(a)(3) is amended to read:

25           (3) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010])

26           -- June 30, 1938 [1985];

27 \* Sec. 8. AS 33.15 is repealed.

28 \* Sec. 9. The terms of members of the Board of Parole appointed under  
29 AS 33.15.010, repealed in sec. 8 of this Act, terminate on the effective

1 date of this Act. The governor shall appoint members to the Board of  
2 Parole under AS 33.16.020 for the following initial terms: one member for a  
3 five-year term; one member for a four-year term; one member for a three-  
4 year term; one member for a two-year term; and one member for a one-year  
5 term.

6 \* Sec. 10. This Act takes effect January 1, 1985.

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