

Introduced: 3/9/83
Referred: Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 167

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to correctional facilities, good
7 time computation, and the imprisonment and rehabili-
8 tation of offenders."

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

10 * Section 1. AS 33.30.010 -- 33.30.190 and AS 33.30.250 -- 33.30.900
11 are repealed.

12 * Sec. 2. AS 33.30 is amended by adding new sections to read:

13 CHAPTER 30. CORRECTIONAL FACILITIES AND PROGRAMS.

14 ARTICLE 1. ESTABLISHMENT, CONTROL, AND MANAGEMENT.

15 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

16 (1) establish, operate, and control correctional facilities
17 suitable for the custody, care, and discipline of persons charged or
18 convicted of offenses against the state or held under authority of
19 state law;

20 (2) classify prisoners and establish programs for persons
21 committed to the custody of the commissioner that are reasonably cal-
22 culated to

23 (A) protect the public;

24 (B) maintain health;

25 (C) create or improve occupational skills;

26 (D) enhance educational qualifications;

27 (E) support court-ordered restitution; and

28 (F) otherwise provide for the rehabilitation and ref-
29 ormation of prisoners, facilitating their reintegration into

1 society;

2 (3) provide necessary medical services for prisoners in
3 correctional facilities or who are committed by a court to the custody
4 of the commissioner, including examinations for communicable and in-
5 fectious diseases; and

6 (4) provide necessary psychological or psychiatric treat-
7 ment if a physician or other health care provider, exercising ordinary
8 skill and care at the time of observation, concludes with reasonable
9 medical certainty that

10 (A) a prisoner exhibits symptoms of a serious disease
11 or injury that is curable or may be substantially alleviated; and

12 (B) the potential for harm to the prisoner by reason
13 of delay or denial of care would be substantial.

14 Sec. 33.30.021. REGULATIONS. The commissioner may adopt regula-
15 tions to implement this chapter.

16 Sec. 33.30.031. CONTRACT FOR CONFINEMENT AND CARE OF PRISONERS.

17 (a) The commissioner shall determine the availability of state cor-
18 rectional facilities suitable for the detention and confineme.t of
19 persons held under authority of state law. If the commissioner deter-
20 mines that suitable state correctional facilities are not available,
21 he or she may enter into an agreement with a public or private agency
22 to provide necessary facilities. Correctional facilities provided
23 through agreement may be in this state or in any other state. The
24 commissioner may not enter into an agreement with an agency unable to
25 provide a degree of custody, care, and discipline similar to that
26 required by the laws of this state.

27 (b) The commissioner may not enter into an agreement with a pri-
28 vately operated correctional facility under (a) of this section except
29 when the primary purpose is to involve prisoners in a program

1 established under AS 33.30.091 -- 33.30.131.

2 (c) The commissioner may enter into an agreement with the United
3 States, another state, or a municipality of this state to provide a
4 correctional facility for the custody, care, and discipline of a per-
5 son held under authority of the law of that jurisdiction.

6 Sec. 33.30.041. LEASE OF CORRECTIONAL FACILITY TO MUNICIPALITY.

7 (a) The commissioner may enter into an agreement with a municipality
8 of the state for the lease of a state correctional facility or for the
9 use and operation of a state correctional facility for the joint bene-
10 fit of the municipality and the state, if the commissioner determines
11 that it would be in the best interests of the state.

12 (b) An agreement executed by the commissioner under (a) of this
13 section must provide that

14 (1) the state has the right to detain or confine persons
15 held under authority of law in the correctional facility;

16 (2) the administrator of the correctional facility agrees
17 to implement an order concerning a prisoner issued by a court of the
18 state;

19 (3) the administrator of the correctional facility shall
20 comply with the law, and regulations adopted by the commissioner,
21 relating to the custody, care, and discipline of persons detained or
22 confined in the correctional facility; and

23 (4) the commissioner may inspect the correctional facility
24 at reasonable times to determine the conditions under which a prisoner
25 is detained or confined.

26 (c) The agreement executed by the commissioner under (a) of this
27 section may require the administrator of the correctional facility to
28 comply with requirements that the commissioner considers necessary for
29 the protection of the public or for the quality of care and programs

1 for prisoners required by this chapter and regulations adopted under
2 it.

3 ARTICLE 2. COMMITMENTS, PROGRAMS, AND FURLOUGHS.

4 Sec. 33.30.051. COMMITMENT TO COMMISSIONER. A person convicted
5 of an offense against the state must be committed to the custody of
6 the commissioner for the term of imprisonment which the court directs.

7 Sec. 33.30.061. COMMISSIONER TO DESIGNATE FACILITY. (a) The
8 commissioner shall designate the correctional facility to which a pri-
9 soner is to be committed to serve a term of imprisonment or period of
10 temporary commitment. The commissioner may designate a facility with-
11 out regard to whether it is maintained by the state, is located within
12 the judicial district in which the prisoner was convicted, or is
13 located in the state.

14 (b) In designating a facility the commissioner shall consider

- 15 (1) the prisoner's security classification;
16 (2) the availability of programs and facility space;
17 (3) the location of family or other supportive relation-
18 ships including cultural affiliations;
19 (4) the length of the prisoner's sentence;
20 (5) the preferences of the prisoner; and
21 (6) recommendations made by the sentencing court.

22 (c) The decision of the commissioner to designate a facility for
23 the commitment of a prisoner pending appeal is not subject to review
24 absent a clear and convincing showing by the prisoner that he would be
25 denied his constitutional right to counsel. The decision of the com-
26 missioner to designate a facility is not under any other circumstance
27 subject to review unless the prisoner makes a clear and convincing
28 showing of an abuse of discretion.

29 Sec. 33.30.071. RESPONSIBILITY FOR PRISONERS PENDING COMMITMENT.

1 (a) Notwithstanding AS 33.30.011(1) and (2), the commissioner of public
2 safety shall provide for the custody, care, and discipline of
3 prisoners pending transfer to the custody of the commissioner of
4 health and social services at a state correctional facility. Except
5 as provided in (c) of this section, the responsibility for providing
6 necessary medical services for prisoners remains with the commissioner
7 of health and social services under AS 33.30.011(3). The commissioner
8 of health and social services and the commissioner of public safety
9 are not responsible for providing custody, care, and discipline for a
10 person detained under AS 47.37.170, unless the person is admitted into
11 a state correctional facility.

12 (b) The responsibility of the commissioner of public safety un-
13 der (a) of this section does not begin until a prisoner is accepted
14 into his custody or admitted into a correctional facility or other fa-
15 cility designed for holding prisoners, and the commissioner of public
16 safety is notified of the acceptance or admission.

17 (c) Medical services for a prisoner who is unconscious or in im-
18 mediate need of medical attention before admission to a correctional
19 facility or commitment by a court to the custody of the commissioner
20 of health and social services must be provided by the law enforcement
21 agency having custody of the prisoner.

22 Sec. 33.30.081. TRANSPORTATION OF PRISONERS. (a) The commis-
23 sioner of public safety is responsible for transporting a prisoner to
24 and from the court having jurisdiction over the prisoner and for de-
25 livering a prisoner to a correctional facility upon temporary or final
26 commitment by a court or upon transfer of a prisoner from one correc-
27 tional facility to another either inside or outside the state.

28 (b) The commissioner of health and social services is responsi-
29 ble for furnishing return transportation to the place of arrest for a

1 prisoner held in a state correctional facility, upon release from cus-
2 tody.

3 (c) The commissioner of public safety is responsible for fur-
4 nishing return transportation to the place of arrest for a prisoner
5 who is released from custody before admission to a state correctional
6 facility.

7 (d) The commissioner of health and social services shall adopt
8 regulations governing the furnishing of transportation, discharge pay-
9 ments, and clothing to prisoners upon release at any stage of a crimi-
10 nal proceeding.

11 Sec. 33.30.091. DESIGNATION OF PROGRAMS. Except as provided in
12 AS 33.30.111, the commissioner may assign a prisoner committed to his
13 custody to any program established under AS 33.30.011(2) considering

- 14 (1) safeguards to the public;
- 15 (2) the prospects for the prisoner's rehabilitation;
- 16 (3) the availability of program and facility space;
- 17 (4) the prospect of future judicial proceedings requiring
18 the presence of the prisoner;
- 19 (5) the nature and circumstances of the offense for which
20 the prisoner was sentenced;
- 21 (6) the needs of the prisoner as determined by a classifi-
22 cation committee and any recommendations made by the sentencing court;
- 23 (7) the record of convictions of the prisoner with particu-
24 lar emphasis on crimes specified in AS 11.41;
- 25 (8) the use of drugs or alcohol by the prisoner;
- 26 (9) the length of the prisoner's sentence; and
- 27 (10) other criteria considered appropriate by the commis-
28 sioner, including experimental evaluation of correctional programs
29 that are consistent with protection of the public.

1 Sec. 33.30.101. FURLOUGHS. (a) Programs established under
2 AS 33.30.011(2) must include furloughs. The commissioner shall adopt
3 regulations governing the granting of furloughs to prisoners

4 (1) to obtain counseling and treatment for alcohol or drug
5 abuse;

6 (2) to secure or attend vocational training;

7 (3) to obtain medical or psychiatric treatment;

8 (4) to secure or engage in employment;

9 (5) to attend educational institutions;

10 (6) to secure a residence or make any other preparation for
11 release;

12 (7) to appear before any group whose purpose is a better
13 understanding of crime or corrections; or

14 (8) for any other rehabilitative purpose the commissioner
15 determines to be in the interests of the prisoner and the public.

16 (b) If the commissioner determines that a prisoner can live un-
17 der reduced supervision without violating the law or the conditions
18 established for the conduct of the prisoner, the commissioner may
19 grant a furlough after considering

20 (1) the factors in AS 33.30.091;

21 (2) violations by the prisoner of a condition of a prior
22 furlough;

23 (3) the history of institutional misconduct by the prison-
24 er; and

25 (4) the best interests of the prisoner and the public.

26 Sec. 33.30.111. PRE-RELEASE FURLOUGHS. (a) Furlough programs
27 established under AS 33.30.101 must include pre-release furloughs de-
28 signed to facilitate the reintegration of a prisoner into society.

29 (b) A facility may be used for a prisoner on a pre-release

1 furlough that is specifically adapted to provide a residence outside
2 prison, including halfway houses, group homes, or other placements
3 which provide varying levels of restriction and supervision.

4 (c) The restrictions and supervision required for a pre-release
5 furlough must provide safeguards that minimize risk to the public and
6 include, as a minimum,

7 (1) frequent contact with the prisoner by persons supervis-
8 ing the prisoner;

9 (2) knowledge by supervisory staff of the location of the
10 prisoner;

11 (3) periodic reports by supervisory staff to the commis-
12 sioner on the performance of the prisoner while on furlough; and

13 (4) a residential setting in which persons supervising a
14 prisoner are obliged to immediately report to the commissioner any
15 violation of a condition set for the prisoner's conduct.

16 (d) Notwithstanding AS 33.30.101(b),

17 (1) a prisoner sentenced to a definite term of imprisonment
18 of more than one year but less than five years is eligible for a pre-
19 release furlough only after he has served at least one-third of his
20 sentence;

21 (2) a prisoner sentenced to a definite term of imprisonment
22 of five years or more is eligible for a pre-release furlough only af-
23 ter he has served at least one-third of his sentence or is within
24 three years of his release date, whichever is later.

25 (e) A prisoner may request a pre-release furlough under proce-
26 dures adopted by the commissioner. If the commissioner denies a re-
27 quest for a pre-release furlough, he shall provide the prisoner with a
28 written explanation of the reasons for the denial.

29 Sec. 33.30.121. SHORT-DURATION FURLOUGHS. (a) A short-duration

1 furlough is an authorized leave of absence from a correctional facili-
2 ty for a period not to exceed 12 hours at any one time, except for

3 (1) family visitations, which may not exceed one week nor
4 occur more frequently than once in each six month period; or

5 (2) medical treatment, for which the furlough may not last
6 longer than necessary for the treatment.

7 (b) A short-duration furlough may be granted to a prisoner at
8 any time under regulations adopted by the commissioner.

9 Sec. 33.30.131. PRE-RELEASE FURLOUGH INVOLVING EMPLOYMENT. (a)
10 Unless alternative arrangements are expressly approved by the commis-
11 sioner, when a prisoner is employed outside a correctional facility as
12 part of a furlough program, the earnings of the prisoner must be sent
13 by the employer to the commissioner. If an employer transmits the
14 earnings to the commissioner, the employer has no liability to the
15 prisoner for the earnings. The commissioner shall disburse the earn-
16 ings of the prisoner under procedures adopted by the commissioner

17 (1) to pay for the room, board, and personal expenses of
18 the prisoner in an amount or at a rate determined by the commissioner;

19 (2) to pay any restitution or fine ordered by the sentenc-
20 ing court;

21 (3) to reimburse the state for an award made for violent
22 crimes compensation under AS 18.67 arising out of the criminal conduct
23 of the prisoner;

24 (4) to pay a civil judgment arising out of the criminal
25 conduct of the prisoner; and

26 (5) to support the dependents of the prisoner.

27 (b) After making the disbursements authorized under (a) of this
28 section, the balance remaining in the account of the prisoner must be
29 retained by the commissioner and given to the prisoner at the time of

1 his release. The commissioner may permit the prisoner to draw upon a
2 portion of this money for other purposes which the commissioner con-
3 sider s appropriate.

4 (c) Only the earnings retained by the commissioner under (b) of
5 this section are subject to lien, attachment, garnishment, execution,
6 or other proceedings to encumber money or property.

7 Sec. 33.30.141. EFFECT OF VIOLATION OF FURLOUGH CONDITIONS OR
8 FAILURE TO RETURN. (a) If a prisoner on a furlough violates the con-
9 ditions established for his conduct, the commissioner may immediately
10 require the return of the prisoner to actual confinement for a period
11 not to exceed the balance of the term of his imprisonment and may ini-
12 tiate disciplinary proceedings authorized by regulations adopted by
13 the commissioner.

14 (b) The failure of a prisoner on a furlough to return to his
15 place of confinement or residence within the time specified by those
16 having direct supervision over him is an unlawful evasion under
17 AS 11.56.340 -- 11.56.350.

18 Sec. 33.30.151. TRANSMISSION OF DOCUMENTS. (a) When a prisoner
19 is admitted to a correctional facility, a copy of the commitment must
20 be delivered with the prisoner; it serves as the authority of the cor-
21 rectional facility to hold the prisoner.

22 (b) When a person is sentenced to a term of imprisonment, copies
23 of the pre-sentence report, sentencing report prepared under AS 12.-
24 55.025, and any other information of the probation office or of the
25 court which may affect the person's rehabilitation must be transmitted
26 to the superintendent of the correctional facility in which the pris-
27 oner will be confined.

28 (c) The commissioner shall adopt regulations providing for the
29 security, confidentiality, and use of documents transmitted under (b)

1 of this section.

2 Sec. 33.30.161. SUPERINTENDENT OF CORRECTIONAL FACILITY MAY AD-
3 MINISTER OATHS AND ACKNOWLEDGEMENTS. The superintendent of a correc-
4 tional facility or his assistant may administer oaths to and take ac-
5 knowledgements from a prisoner, but may not request nor accept compen-
6 sation from a prisoner for acts performed under this section.

7 ARTICLE 3. GENERAL PROVISIONS.

8 Sec. 33.30.171. TELEPHONE MONITORING INSIDE CORRECTIONAL INSTI-
9 TUTIONS. Notwithstanding AS 42.30.300 and 42.30.310, the commissioner
10 may authorize the use of monitoring or recording equipment to listen
11 to a telephone conversation of a prisoner in order to preserve the se-
12 curity and orderly administration of the institution and to protect
13 the public, if a warning is posted by the telephone informing the pri-
14 soner that his call may be monitored or recorded. Prisoner telephone
15 calls to attorneys may not be monitored nor recorded except when au-
16 thorized by a court.

17 Sec. 33.30.181. EFFECT OF JUDGMENT OF CONVICTION ON CIVIL
18 RIGHTS. (a) A person who is convicted of a felony involving moral
19 turpitude as defined in AS 15.60.010 is disqualified from voting in a
20 state or municipal election until his unconditional discharge.

21 (b) A person who is convicted of a crime is disqualified from
22 serving as a juror until his unconditional discharge.

23 (c) In this section, "unconditional discharge" has the meaning
24 ascribed to it in AS 12.55.185.

25 Sec. 33.30.201. DEFINITIONS. In this chapter, unless the con-
26 text requires otherwise,

27 (1) "commissioner" means the commissioner of the Department
28 of Health and Social Services or his designee;

29 (2) "correctional facility" or "facility" means a prison,

1 jail, camp, farm, half-way house, group home, or other placement de-
2 signated by the commissioner for the custody, care, and discipline of
3 prisoners; a "state correctional facility" means any correctional fa-
4 cility owned or run by the state;

5 (3) "court" means the supreme court, the court of appeals,
6 the superior court, the district or magistrate court, or a justice or
7 judge of a court;

8 (4) "department" means the Department of Health and Social
9 Services;

10 (5) "furlough" means an authorized leave of absence from
11 actual confinement for a designated purpose and period of time;

12 (6) "municipality" means a borough or city in the state, or
13 a municipality unified under AS 29.68.240 -- 29.68.440, authorized by
14 law to establish a correctional facility;

15 (7) "prisoner" means a person, other than a juvenile, held
16 under authority of state law in official detention as defined in
17 AS 11.81.900(b);

18 (8) "temporary commitment" means detention of a person for
19 any period under authority of state law, but does not include confine-
20 ment upon conviction and judgment of a court of this state.

21 * Sec. 3. AS 33.20.010 is repealed and reenacted to read:

22 Sec. 33.20.010. COMPUTATION OF GOOD TIME. (a) Notwithstanding
23 AS 12.55.125(f)(3) and (g)(3), each prisoner, other than a juvenile
24 delinquent, convicted of an offense against the state and sentenced to
25 imprisonment, whose record of conduct shows that he has faithfully ob-
26 served the rules of the institution in which he is confined, is enti-
27 tled to a deduction from his term of imprisonment of one day for every
28 three days of good conduct served.

29 (b) Notwithstanding the provisions in (a) of this section, each

1 prisoner whose record of conduct shows that he has faithfully observed
2 the rules and conditions pertaining to a furlough program in which he
3 participates under AS 33.30.111 is entitled to a deduction from his
4 term of imprisonment of one day for every two days of good conduct
5 served while he participates in the furlough program.

6 (c) A prisoner who is entitled to a deduction from his term of
7 imprisonment under (b) of this section may not also receive a deduc-
8 tion under (a) of this section.

9 * Sec. 4. AS 33.20 is amended by adding a new section to read:

10 Sec. 33.20.075. EFFECT OF PARDON. (a) Unless otherwise spec-
11 ified on the face of the document granting a pardon by the governor, a
12 pardon sets aside the conviction and prevents the fact of conviction
13 from subsequently being used for any purpose. However, the facts giv-
14 ing rise to that conviction may be considered in any context in which
15 the person's character is in issue.

16 (b) A pardon automatically restores civil rights under AS 33.-
17 30.181.

18 * Sec. 5. AS 11.56.340 is repealed and reenacted to read:

19 Sec. 11.56.340. UNLAWFUL EVASION IN THE FIRST DEGREE. (a) A
20 person commits the crime of unlawful evasion in the first degree if,
21 while charged with or convicted of a felony,

22 (1) he fails to return to official detention within the
23 time authorized following temporary leave granted for a specific pur-
24 pose or limited period; or

25 (2) while on furlough under AS 33.30.101 -- 33.30.131 he
26 fails to return to his place of confinement or residence within the
27 time authorized by those having direct supervision over him.

28 (b) Unlawful evasion in the first degree is a class A misdemean-
29 or.

1 * Sec. 6. AS 11.56.350 is repealed and reenacted to read:

2 Sec. 11.56.350. UNLAWFUL EVASION IN THE SECOND DEGREE. (a) A
3 per on commits the crime of unlawful evasion in the second degree if,
4 while charged with or convicted of a misdemeanor,

5 (1) he fails to return to official detention within the
6 time authorized following temporary leave granted for a specific pur-
7 pose or limited period; or

8 (2) while on furlough under AS 33.30.101 -- 33.30.131 he
9 fails to return to his place of confinement or residence within the
10 time authorized by those having direct supervision over him.

11 (b) Unlawful evasion in the second degree is a class B misde-
12 meanor.

13 * Sec. 7. Regulations adopted under a statute amended or repealed by
14 this Act continue in effect until amended or repealed by the Department of
15 Health and Social Services or, if the legislature does not disapprove
16 Executive Order No. 54, the Department of Corrections.