

Introduced: 1/28/85
Referred: Health, Education &
Social Services and Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 141

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST 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 12.55 is amended by adding a new section to read:

10 Sec. 12.55.115. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT
11 SENTENCING. The court may, as part of a sentence of imprisonment,
12 further restrict the eligibility of a prisoner for discretionary
13 parole for a term greater than that required under AS 33.16.100.

14 * Sec. 2. AS 33 is amended by adding a new chapter to read:

15 CHAPTER 16. PAROLE ADMINISTRATION.

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

19 (b) A prisoner who is eligible under AS 33.16.090 may be granted
20 discretionary parole by the board of parole.

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

25 (d) A prisoner released on discretionary or mandatory parole is
26 subject to the conditions of parole imposed under AS 33.16.150.
27 Parole may be revoked under AS 33.16.220.

28 Sec. 33.16.020. BOARD OF PAROLE. (a) There is in the Depart-
29 ment of Corrections a board of parole consisting of five members

1 appointed by the governor.

2 (b) Members of the board serve for staggered terms of five years
3 and until their successors are appointed.

4 (c) The governor shall choose the presiding officer of the board
5 from among the membership.

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

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

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

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

19 Sec. 33.16.040. COMPENSATION AND EXPENSES. A board member is
20 entitled to compensation of \$150 a day for each day the member is
21 participating in business of the board, and is also entitled to the
22 per diem and travel allowances provided under AS 39.20.180.

23 Sec. 33.16.050. MEETINGS OF THE BOARD. (a) The board may meet
24 as often as it considers necessary to carry out its responsibilities,
25 but shall meet at least four times a year.

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

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

1 (d) The board may conduct meetings by the use of teleconferenc-
2 ing facilities.

3 Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

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

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

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

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

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

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

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

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

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

23 (10) execute other responsibilities prescribed by law.

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

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

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

1 (3) governing procedures of the board.

2 Sec. 33.16.070. PROCESS. The board or a member of the board may
3 issue subpoenas and subpoenas duces tecum in the performance of board
4 duties under AS 33.16.060(a).

5 Sec. 33.16.080. EXECUTIVE DIRECTOR. The board shall hire an
6 executive director to serve the board in the discharge of its duties.
7 The executive director must have had training and experience in the
8 field of criminal justice. The executive director may employ addi-
9 tional staff to assist the board.

10 Sec. 33.16.090. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A
11 prisoner who is serving a term of at least 181 days, and who is not
12 otherwise ineligible under (b) of this section, may, in the discretion
13 of the board, be released on discretionary parole subject to AS 12.-
14 55.086(b), 12.55.115, and AS 33.16.100(c) and (d).

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

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

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

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

28 Sec. 33.16.100. GRANTING OF DISCRETIONARY PAROLE. (a) The
29 board may authorize the release of a prisoner on discretionary parole

1 if it determines that

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

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

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

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

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

25 Sec. 33.16.110. SUITABILITY FOR DISCRETIONARY PAROLE. In de-
26 termining whether a prisoner is suitable for discretionary parole, the
27 board shall consider the preparole reports including,

- 28 (1) the presentence report made to the sentencing court;
29 (2) the recommendations made by the sentencing court, by

1 the prosecuting attorney, by the defense attorney, and any statements
2 made by the victim or the prisoner at sentencing;

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

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

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

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

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

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

16 Sec. 33.16.120. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISON-
17 ER. (a) Upon request of the victim, notice of a hearing to review or
18 consider the parole eligibility or the setting of a parole date for a
19 prisoner in a state prison who is convicted of a crime against a
20 person must be sent to the victim of the crime at least 30 days before
21 the scheduled hearing.

22 (b) It is the responsibility of the victim to keep the board
23 apprised of the victim's most current mailing address. The board
24 shall send the notice required under (a) of this section to the last
25 known address of the victim. The address of the victim may not be
26 disclosed to the prisoner or the prisoner's attorney.

27 (c) The victim has a right to comment in writing on the proposed
28 action of the board. Copies of the comments must be provided to the
29 prisoner and the prisoner's attorney before action by the board.

1 (d) The board shall consider the comments presented under (c) of
2 this section in deciding whether to release the prisoner on parole.

3 (e) Upon request of the victim, if the board decides to release
4 on parole a prisoner who is convicted of a crime against a person, the
5 board shall make every reasonable effort to notify the victim before
6 the prisoner's release date. Notification under this subsection must
7 include the expected date of the prisoner's release, the geographic
8 area in which the prisoner is required to reside, and other pertinent
9 information concerning the prisoner's conditions of parole that may
10 affect the victim.

11 (f) Upon request of the victim, if a prisoner is released under
12 AS 33.16.010(c), the board shall make every reasonable effort to
13 notify the victim before the prisoner's release date. Notification
14 under this subsection must include the expected date of the prisoner's
15 release, the geographic area in which the prisoner is required to
16 reside, and other pertinent information concerning the prisoner's
17 conditions of parole that may affect the victim.

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

24 (b) Before the board determines a prisoner's suitability for
25 discretionary parole, the prisoner is entitled to a hearing before the
26 board. The prisoner must be furnished a copy of the preparole reports
27 listed in AS 33.16.110, and permitted access to all records, except
28 those that are otherwise excluded by law, that will be considered by
29 the board in making its decision. The prisoner may also respond in

1 writing to all materials considered by the board, be present at the
2 hearing, and present evidence to the board.

3 (c) The board shall issue its decision in writing and provide
4 the basis for a denial of discretionary parole. A copy of the deci-
5 sion must be provided to the prisoner.

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

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

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

15 (1) meet family obligations;

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

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

19 (4) report upon release to the parole officer assigned to
20 the parolee;

21 (5) report as required to the parole officer assigned to
22 the parolee;

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

25 (7) not possess or control firearms or other dangerous
26 weapons;

27 (8) refrain from possessing or consuming alcoholic bever-
28 ages;

29 (9) refrain from possessing or consuming a controlled

1 substance without a doctor's prescription;

2 (10) submit to reasonable searches and seizures by a parole
3 officer, or a peace officer acting under the direction of a parole
4 officer;

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

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

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

11 (14) refrain from opening, maintaining, or using a checking
12 account or charge account;

13 (15) refrain from entering into a contract other than a
14 prenuptial contract or a marriage contract;

15 (16) refrain from operating a motor vehicle;

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

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

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

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

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

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

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

19 (d) A condition of parole may be changed, a new condition of
20 parole may be imposed, or a new or changed condition imposed under (c)
21 of this section may be extended by a member of the board or the
22 board's designee if, after a preliminary hearing, an emergency situa-
23 tion is found which requires a change in condition. The effective
24 period of a change in condition under this subsection, the imposition
25 of a new condition under this subsection, or the extension under this
26 subsection of a new or changed condition imposed under (c) of this
27 section may not exceed 90 days.

28 Sec. 33.16.170. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
29 preparole reports listed in AS 33.16.110, and other information

1 obtained and used by the board under this chapter, are confidential
2 and may not be disclosed to anyone other than the board, the sentenc-
3 ing judge, the prosecuting and defense attorneys, the prisoner, the
4 prisoner's attorney, the attorney for the board, the staff of the
5 board, or others granted access to this information under this chap-
6 ter.

7 Sec. 33.16.180. DUTIES OF THE COMMISSIONER. The commissioner
8 shall

9 (1) conduct investigations of prisoners eligible for dis-
10 cretionary parole, as requested by the board;

11 (2) supervise the conduct of parolees;

12 (3) appoint and assign parole officers and personnel;

13 (4) provide the board, within 30 days after sentencing,
14 information on a sentenced prisoner who may be eligible for discre-
15 tionary parole under AS 33.16.090;

16 (5) notify the board and provide information on a prisoner
17 120 days before the prisoner's mandatory release date, if the prisoner
18 is to be released to mandatory parole; and

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

21 Sec. 33.16.190. PAROLE AND PROBATION OFFICERS. An officer ap-
22 pointed by the commissioner under AS 33.05.020(a) or under AS 33.16.-
23 180, may discharge duties under AS 33.05 or AS 33.16.

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

28 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-
29 tionally discharge a parolee from the jurisdiction and custody of the

1 board after the parolee has completed two years of parole, if the
2 sentence of the parolee does not include any residual period of pro-
3 bation. A parolee with a residual period of probation may, after two
4 years of parole, be discharged by the board to immediately begin
5 serving the residual period of probation.

6 Sec. 33.16.220. REVOCATION OF PAROLE. (a) The board may revoke
7 parole for violation of a state or federal law, a municipal ordinance,
8 or a condition imposed under AS 33.16.150(b).

9 (b) Except as provided in (e) of this section, within 15 working
10 days after the arrest and incarceration of a parolee for violation of
11 a condition of parole, the board or its designee shall hold a prelimi-
12 nary hearing. At the preliminary hearing, the board or its designee
13 shall determine if there is probable cause to believe that the parolee
14 violated the conditions of parole and, when probable cause exists,
15 whether the parolee should be released pending a final revocation
16 hearing. A grand jury indictment or a finding of probable cause at a
17 preliminary hearing in a criminal case is conclusive proof of probable
18 cause that a parole violation occurred.

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

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

24 (2) the seriousness of the alleged violation;

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

26 and

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

29 (d) If the parole violator is released pending a final

1 revocation hearing, the board or its designee may impose additional
2 conditions necessary to ensure the parolee's appearance at the final
3 revocation hearing, and to prevent further violation of conditions of
4 parole.

5 (e) A preliminary hearing under (b) of this section is not re-
6 quired if the board holds a final revocation hearing within 20 working
7 days after the parolee's arrest and incarceration.

8 (f) The board shall hold a final revocation hearing no later
9 than 120 days after a parolee's arrest, subject to restrictions aris-
10 ing under AS 33.10.010 and (g) of this section.

11 (g) When the basis for the revocation proceeding is a criminal
12 offense, the parolee may request, or the board upon its own motion may
13 propose that further proceedings on the revocation be delayed. In
14 making the determination to delay further proceedings, the board shall
15 consider prejudice that may result to the parolee's and the state's
16 interests in the pending criminal case and the parolee's decision to
17 delay final revocation proceedings. If good cause to proceed is
18 found, the board shall consult with the attorney general before con-
19 tinuing the final revocation proceeding.

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

22 (i) If, after the final revocation hearing, the board finds that
23 the parolee has violated a condition of parole imposed under AS 33.-
24 16.150(b), or a law or ordinance, the board may revoke all or a por-
25 tion of the parole, or change any condition of parole.

26 Sec. 33.16.230. WAIVER OF HEARING. A prisoner or parolee may
27 waive the right to a hearing provided under AS 33.16.120, 33.16.160,
28 or 33.16.220 by submitting a written waiver to the board.

29 Sec. 33.16.240. ARREST OF A PAROLE VIOLATOR. (a) A parolee may

1 be arrested, with or without a warrant, for a violation of parole.

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

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

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

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

17 (f) Time spent in custody pending revocation proceedings must be
18 credited toward the unexpired term of imprisonment of the parolee;
19 however, the time the parolee was at liberty on parole does not alter
20 the time the parolee was sentenced to serve.

21 Sec. 33.16.250. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
22 A parole officer, or a peace officer acting at the request of a parole
23 officer, shall execute a warrant issued under AS 33.16.240 by ar-
24 resting the parolee and confining the parolee in a correctional facil-
25 ity designated by the commissioner.

26 (b) The parole officer or peace officer shall immediately notify
27 the board or a member of the board of an arrest under (a) of this
28 section.

29 Sec. 33.16.260. DEFINITIONS. In this chapter

- 1 (1) "board" means the board of parole;
- 2 (2) "commissioner" means the commissioner of corrections;
- 3 (3) "controlled substance" means a drug, substance, or
4 immediate precursor included in the schedules set out in AS 11.71.-
5 140 -- 11.71.190;
- 6 (4) "crime against a person" has the meaning given in
7 AS 33.30.900;
- 8 (5) "department" means the Department of Corrections;
- 9 (6) "discretionary parole" means the release of a prisoner
10 by the board before the expiration of a term, subject to conditions
11 imposed by the board and subject to its custody and jurisdiction;
- 12 (7) "mandatory parole" means the release of a prisoner who
13 was sentenced to one or more terms of imprisonment exceeding 180 days,
14 for the period of good time credited under AS 33.20, subject to con-
15 ditions imposed by the board and subject to its custody and jurisdic-
16 tion;
- 17 (8) "parolee" means a prisoner, sentenced to one or more
18 terms of imprisonment exceeding 180 days, released by the board or by
19 operation of law before the expiration of the term, subject to the
20 custody and jurisdiction of the board;
- 21 (9) "prisoner" means an offender confined for a violation
22 of state law, but does not include a person confined under AS 47;
- 23 (10) "victim" has the meaning given in AS 12.55.185.

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

25 Sec. 33.20.040. RELEASED PRISONER. (a) A prisoner released
26 under AS 33.20.030 must be released on mandatory parole to the custody
27 and jurisdiction of the parole board under AS 33.16, until the expir-
28 ation of the maximum time to which the prisoner was sentenced, if the
29 time of imprisonment exceeded 180 days. However, a prisoner released

1 on mandatory parole may be discharged under AS 33.16.210 before the
2 expiration of the term. A prisoner who was sentenced to an imprison-
3 ment of 180 days or less must be unconditionally discharged, except as
4 provided in (c) of this section.

5 * Sec. 4. AS 33.20.040 is amended by adding a new subsection to read:

6 (c) If a prisoner's sentence includes a residual period of
7 probation, a prisoner released under AS 33.20.030 must immediately
8 begin serving the residual probationary period, except that if manda-
9 tory parole is required under (a) of this section, serving the proba-
10 tionary period must immediately follow discharge from parole.

11 * Sec. 5. AS 39.50.200(b)(20) is amended to read:

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

13 * Sec. 6. AS 44.66.010(a)(3) is amended to read:

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

15 -- June 30, 1989 [1985];

16 * Sec. 7. AS 33.15 is repealed.

17 * Sec. 8. The terms of members of the board of parole appointed under
18 AS 33.15.010, repealed in sec. 7 of this Act, terminate on the effective
19 date of this Act. The governor shall appoint members to the board of
20 parole under AS 33.16.020 for the following initial terms: one member for a
21 five-year term; one member for a four-year term; one member for a three-
22 year term; one member for a two-year term; and one member for a one-year
23 term.

24 * Sec. 9. This Act takes effect January 1, 1986.