

**HOUSE BILL NO. 224**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 3/20/91**

**Referred: Health, Education & Social Services, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to population management in the state correctional system; and providing  
2 for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1. LEGISLATIVE FINDINGS AND PURPOSE.** The purpose of this Act is to manage the  
5 population in state correctional facilities so as to better enable state correctional officials to achieve the  
6 dual constitutional goals of protection of the public and reformation of the offender. The classes of  
7 prisoners eligible for parole or early release under this Act are considered by the legislature to present  
8 a lesser risk to the public safety than those classes whose release is unaffected. The legislature finds  
9 that the purposes of this Act can be best accomplished by differentiating between these classes of  
10 prisoners.

11 \* **Sec. 2.** AS 12.55.125(g) is amended to read:

12 (g) If a defendant is sentenced under (c), (d)[(1), (d)(2)], (e)[(1), (e)(2)], or (i) of this  
13 section, except to the extent permitted under AS 12.55.155 - 12.55.175, AS 33.25.030, and  
14 AS 33.25.050:

- 1 (1) imprisonment may not be suspended under AS 12.55.080;  
2 (2) imposition of sentence may not be suspended under AS 12.55.085;  
3 (3) terms of imprisonment may not be otherwise reduced.

4 \* Sec. 3. AS 33.16.090(b) is amended to read:

5 (b) Except as provided in AS 33.25.030, a [A] prisoner is not eligible for discretionary  
6 parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary  
7 parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term  
8 of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e)  
9 or (g).

10 \* Sec. 4. AS 33.16.090(c) is amended to read:

11 (c) Except as provided in AS 33.25.030, a [A] prisoner eligible for discretionary parole  
12 during a period of sentence enhancement imposed under AS 12.55.155(a) or during a consecutive  
13 or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g) shall serve  
14 the unenhanced portion of the sentence or the initial presumptive sentence before being otherwise  
15 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this subsection,  
16 the sentence for the most serious offense in the case of consecutive or partially consecutive  
17 presumptive sentences shall be considered the initial presumptive sentence. The unenhanced  
18 sentence or the initial presumptive sentence is considered served for purposes of discretionary  
19 parole on the date the unenhanced or initial presumptive sentence is due to expire less good time  
20 earned under AS 33.20.010.

21 \* Sec. 5. AS 33.16.100(c) is amended to read:

22 (c) Except as provided in (d) of this section and AS 33.25.030, a prisoner may not be  
23 released on discretionary parole until the prisoner has served at least one-fourth of the period of  
24 confinement imposed, one-fourth of an enhanced or consecutive or partially consecutive period  
25 of confinement imposed under AS 12.55.155(a) or AS 12.55.025, or any minimum term set under  
26 AS 12.55.115 at sentencing, whichever is greater.

27 \* Sec. 6. AS 33 is amended by adding a new chapter to read:

28 CHAPTER 25. PRISON POPULATION MANAGEMENT ACT.

29 Sec. 33.25.010. CAPACITY OF CORRECTIONAL SYSTEM. The commissioner shall  
30 specify, by regulations adopted under the Administrative Procedure Act (AS 44.62), the  
31 maximum capacity of each state correctional facility and the maximum capacity of the correct-

1           ional system.

2           Sec. 33.25.020. DUTIES OF THE COMMISSIONER. (a) If the average daily prisoner  
3 population exceeds the maximum capacity of the system for a 30-day period, the commissioner  
4 shall,

5                   (1) on the next working day, notify the governor and the board of parole;

6                   (2) within 15 days, prepare a list of prisoners who would be eligible under  
7 AS 33.25.030 for special discretionary parole consideration; and

8                   (3) with representatives from the executive and legislative branches, explore  
9 alternatives for reducing the prison population, or increasing the maximum capacity of the  
10 system.

11           (b) The commissioner shall notify prisoners of their eligibility under AS 33.25.030 for  
12 special discretionary parole.

13           (c) If the provisions in AS 33.25.030(a) are implemented but the average daily prisoner  
14 population exceeds the maximum capacity of the system for the 30-day period ending 120 days  
15 after the commissioner's notification of the governor under (a)(1) of this section, the  
16 commissioner shall again notify the governor and board of parole and immediately prepare a list  
17 of prisoners eligible under AS 33.25.070 for early release. If prisoners are released early under  
18 AS 33.25.050(a) but the average daily prisoner population exceeds the maximum capacity of the  
19 system for the 15-day period ending 30 days after the commissioner's notification of the governor  
20 under this subsection, the commissioner shall again perform the duties set out in (a)(1) - (3) of  
21 this section.

22           (d) A subsequent 30-day period that might require notification of the governor under (a)  
23 of this section begins to run

24                   (1) 15 days after a determination is made by the commissioner under  
25 AS 33.25.030(c) or AS 33.25.050(d); or

26                   (2) the day after the prison population falls below the maximum capacity of the  
27 system for either of the time periods in (c) of this section.

28           Sec. 33.25.030. SPECIAL DISCRETIONARY PAROLE ELIGIBILITY. (a) If the  
29 average daily prisoner population exceeds the maximum capacity of the system for the 15-day  
30 period following the commissioner's notification to the governor under AS 33.25.020(a)(1), a  
31 prisoner who is in, or within the next 105 days falls into, the class of prisoners eligible under

1 AS 33.25.040 for special discretionary parole is eligible for special discretionary parole if, by the  
2 end of the 105-day period, the prisoner will have served the greater of

3 (1) one-half of the unenhanced portion of the presumptive sentence for the most  
4 serious offense for which the prisoner is sentenced, plus the period of time equal to one-quarter  
5 of an enhanced, consecutive, or partially consecutive sentence;

6 (2) any minimum term required by law; or

7 (3) any minimum term set by the court under AS 12.55.115.

8 (b) Unless special discretionary parole under this chapter is revoked, a prisoner who  
9 becomes eligible for parole under (a) of this section remains eligible despite decreases in the  
10 prison population or increases in the maximum capacity of the system.

11 (c) Notwithstanding (a) of this section, no prisoner becomes eligible for special  
12 discretionary parole if, at the end of the 15-day period described in AS 33.25.020(a)(2), the com-  
13 missioner has determined that the maximum capacity of the system will be increased, or  
14 additional space will become available by contract, so that the average daily prisoner population  
15 will be less than the maximum capacity of the system within 45 days.

16 Sec. 33.25.040. CLASS OF PRISONERS ELIGIBLE FOR SPECIAL DISCRETIONARY  
17 PAROLE. A state prisoner whose special discretionary parole or early release under this chapter  
18 has not previously been revoked, and who is serving a sentence of at least 181 days for a crime  
19 other than one of the following, is in the class of prisoners eligible for special discretionary  
20 parole under AS 33.25.030(a):

21 (1) an unclassified or class A felony under AS 11;

22 (2) a felony against a person under former AS 11.15, arson under former  
23 AS 11.20.010 or AS 11.20.020, or a felony attempt to commit one of these offenses;

24 (3) a class B felony:

25 (A) against a person under AS 11.41;

26 (B) arson under AS 11.46.410;

27 (C) criminal mischief under AS 11.46.480; or

28 (D) attempt or solicitation to commit an offense under AS 11.31.100 or  
29 AS 11.31.110.

30 Sec. 33.25.050. EARLY RELEASE AND PROBATION OR PAROLE SUPERVISION.

31 (a) Except as provided in (d) of this section, within five working days after notifying the

1 governor under AS 33.25.020(c), the commissioner shall release each prisoner eligible under  
2 AS 33.25.070 after the prisoner agrees in writing to abide by the conditions of supervision set  
3 out in (b) of this section.

4 (b) A prisoner released early under (a) of this section shall be placed on supervised  
5 probation or parole as follows:

6 (1) if the prisoner's sentence provides for probation to follow incarceration, the  
7 prisoner is on probation during the period of supervision resulting from early release, subject to  
8 the same conditions of probation ordered by the court and, if the prisoner is serving a sentence  
9 for a felony offense, subject to the reasonable conditions set by the prisoner's probation officer;

10 (2) if the prisoner is scheduled to be released on parole during the period of early  
11 release or after the term of incarceration, the prisoner is on parole during the period of  
12 supervision resulting from early release, subject to the same conditions of parole imposed by the  
13 board of parole; or

14 (3) if the prisoner is not subject to probation or parole after the term of  
15 incarceration, and the prisoner has more than 10 days remaining to serve on the sentence at the  
16 time of early release, the prisoner is on parole during the period of supervision resulting from  
17 early release, subject to conditions imposed by the board of parole; if the prisoner has 10 days  
18 or less remaining to serve on the sentence at the time of early release, the prisoner is  
19 unconditionally discharged.

20 (c) AS 12.55.090(c) does not apply to a prisoner being released early under (a) of this  
21 section.

22 (d) No prisoner may be released early if, during the five-working-day period following  
23 the commissioner's notification of the governor under AS 33.25.020(c), the commissioner  
24 determines that the maximum capacity of the system will be increased, or additional space will  
25 become available by contract, so that the average daily prisoner population will be less than the  
26 maximum capacity of the system within 45 days.

27 Sec. 33.25.060. VIOLATION OF CONDITIONS OF EARLY RELEASE. (a) The court  
28 may revoke the probation resulting from early release under AS 33.25.050 and the probation  
29 following early release, for violation of a state or federal law or municipal ordinance for which  
30 violation is punishable by imprisonment, or for violation of a condition of probation imposed by  
31 the court or the prisoner's probation officer.

1 (b) The board of parole may revoke the parole resulting from early release under  
2 AS 33.25.050 and the parole following early release, for violation of a state or federal law or  
3 municipal ordinance that is punishable by imprisonment, or for violation of a condition imposed  
4 by the board of parole.

5 Sec. 33.25.070. PRISONERS ELIGIBLE FOR EARLY RELEASE. A state prisoner is  
6 eligible for early release under AS 33.25.050 if the prisoner

7 (1) is serving a sentence for an offense other than one listed in AS 33.25.040(1) -  
8 (3);

9 (2) has not had his or her special discretionary parole or early release under this  
10 chapter revoked previously;

11 (3) at the end of the five-working-day period described in AS 33.25.050(a)

12 (A) will have no more than 120 days remaining to serve; and

13 (B) will have served at least one-half of the period of confinement;

14 (4) has no outstanding detainers; and

15 (5) in the preceding six months, has not been convicted of a disciplinary infraction  
16 for which good time may be forfeited; a prisoner charged with such a disciplinary infraction is  
17 not eligible for early release until the prisoner is found not guilty of the infraction.

18 Sec. 33.25.080. LIMITATION ON CIVIL ACTION. No person may commence a civil  
19 action against the state or any employee of the state for failure to comply with the time limits  
20 established in this chapter.

21 Sec. 33.25.900. REGULATIONS. The commissioner may adopt regulations necessary  
22 to carry out the provisions of this chapter.

23 Sec. 33.25.910. DEFINITIONS. In AS 33.25.010 - 33.25.910, unless the context requires  
24 otherwise,

25 (1) "average daily prisoner population" means the total of the daily morning  
26 prisoner counts at each state correctional facility divided by the number of days in the period  
27 under observation;

28 (2) "commissioner" means the commissioner of the Department of Corrections;

29 (3) "detainer" means a written request from another jurisdiction seeking  
30 notification of a prisoner's pending release in order to facilitate securing the prisoner's presence  
31 in that jurisdiction to answer to criminal charges or satisfy a sentence;

1 (4) "felony" has the meaning given in AS 11.81.900(b);

2 (5) "maximum capacity" means the maximum number of prisoners, as determined  
3 by the commissioner under AS 33.25.010, that can be accommodated in areas of a correctional  
4 facility designed for the housing of prisoners, excluding segregation and other temporary holding  
5 areas;

6 (6) "maximum capacity of the system" means the sum of the maximum capacities  
7 for all state correctional facilities;

8 (7) "misdemeanor" has the meaning given in AS 11.81.900(b); and

9 (8) "state correctional facility" means a correctional facility owned or operated  
10 by the state which holds persons charged with or convicted of violations of law.

11 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).