

**CS FOR HOUSE BILL NO. 224 (HES)**

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

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered: 4/29/91**

**Referred: Judiciary**

**Sponsor(s): HOUSE RULES/GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to sentencing and to population management in the state correctional  
2 system; and providing 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. However, the legislature views the provisions of AS 33.22 as establishing an extraordinary  
11 remedy to reduce prison crowding. Accordingly, it is expected that the commissioner of corrections will  
12 exhaust all available options for reducing prison crowding so as to minimize the necessity of utilizing  
13 this remedy.

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

1 (g) If a defendant is sentenced under (c), (d), (e) [(d)(1), (d)(2), (e)(1), (e)(2)], or (i) of  
2 this section, except to the extent permitted under AS 12.55.155 - 12.55.175, AS 33.22.030, and  
3 33.22.050:

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

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

8 (b) Except as provided in AS 33.22.030, a [A] prisoner is not eligible for discretionary  
9 parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary  
10 parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term  
11 of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e)  
12 or (g).

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

14 (c) Except as provided in AS 33.22.030, a [A] prisoner eligible for discretionary parole  
15 during a period of sentence enhancement imposed under AS 12.55.155(a) or during a consecutive  
16 or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g) shall serve  
17 the unenhanced portion of the sentence or the initial presumptive sentence before being otherwise  
18 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this subsection,  
19 the sentence for the most serious offense in the case of consecutive or partially consecutive  
20 presumptive sentences shall be considered the initial presumptive sentence. The unenhanced  
21 sentence or the initial presumptive sentence is considered served for purposes of discretionary  
22 parole on the date the unenhanced or initial presumptive sentence is due to expire less good time  
23 earned under AS 33.20.010.

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

25 (c) Except as provided in (d) of this section and AS 33.22.030, a prisoner may not be  
26 released on discretionary parole until the prisoner has served at least one-fourth of the period of  
27 confinement imposed, one-fourth of an enhanced or consecutive or partially consecutive period  
28 of confinement imposed under AS 12.55.025 or 12.55.155(a) [AS 12.55.155(a)] or any minimum  
29 term set under AS 12.55.115 at sentencing, whichever is greater.

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

31 CHAPTER 22. PRISON POPULATION MANAGEMENT ACT.

1           **Sec. 33.22.010. CAPACITY OF CORRECTIONAL SYSTEM.** The commissioner shall  
2 specify, by regulations adopted under the Administrative Procedure Act (AS 44.62), the  
3 maximum capacity of each state correctional facility and the maximum capacity of the correct-  
4 ional system.

5           **Sec. 33.22.020. DUTIES OF THE COMMISSIONER.** (a) If the average daily prisoner  
6 population exceeds the maximum capacity of the system for a 30-day period, the commissioner  
7 shall

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

9                   (2) within 15 days, prepare a list of prisoners who would be eligible under  
10 AS 33.22.030 for special discretionary parole consideration; and

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

13           (b) The commissioner shall notify prisoners of their eligibility under AS 33.22.030 for  
14 special discretionary parole.

15           (c) If the provisions in AS 33.22.030(a) are implemented but the average daily prisoner  
16 population exceeds the maximum capacity of the system for the 30-day period ending 120 days  
17 after the commissioner's notification of the governor under (a)(1) of this section, the  
18 commissioner shall again notify the governor and board of parole and immediately prepare a list  
19 of prisoners eligible under AS 33.22.070 for early release. If prisoners are released early under  
20 AS 33.22.050(a) but the average daily prisoner population exceeds the maximum capacity of the  
21 system for the 15-day period ending 30 days after the commissioner's notification of the governor  
22 under this subsection, the commissioner shall again perform the duties set out in (a)(1) - (3) of  
23 this section.

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

26                   (1) 15 days after a determination is made by the commissioner under  
27 AS 33.22.030(c) or 33.22.050(d); or

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

30           **Sec. 33.22.030. SPECIAL DISCRETIONARY PAROLE ELIGIBILITY.** (a) If the  
31 average daily prisoner population exceeds the maximum capacity of the system for the 15-day

1 period following the commissioner's notification to the governor under AS 33.22.020(a)(1), a  
2 prisoner who is in, or within the next 105 days falls into, the class of prisoners eligible under  
3 AS 33.22.040 for special discretionary parole is eligible for special discretionary parole if, by the  
4 end of the 105-day period, the prisoner will have served the greater of

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

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

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

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

13 (c) Notwithstanding (a) of this section, a prisoner is not eligible for special discretionary  
14 parole if, at the end of the 15-day period described in AS 33.22.020(a)(2), the commissioner has  
15 determined that the maximum capacity of the system will be increased, or additional space will  
16 become available by contract, so that the average daily prisoner population will be less than the  
17 maximum capacity of the system within 45 days.

18 Sec. 33.22.040. CLASS OF PRISONERS ELIGIBLE FOR SPECIAL DISCRETIONARY  
19 PAROLE. A state prisoner whose special discretionary parole or early release under this chapter  
20 has not previously been revoked, and who is serving a sentence of at least 181 days for a crime  
21 other than one of the following, is in the class of prisoners eligible for special discretionary  
22 parole under AS 33.22.030(a):

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

24 (2) a felony against a person under former AS 11.15, arson under former  
25 AS 11.20.010 or 11.20.020, or a felony attempt to commit one of the offenses set out in this  
26 paragraph;

27 (3) a class B felony that was:

28 (A) against a person under AS 11.41;

29 (B) arson under AS 11.46.410;

30 (C) criminal mischief under AS 11.46.480; or

31 (D) attempt or solicitation to commit an offense under AS 11.31.100 or

1 11.31.110.

2 Sec. 33.22.050. EARLY RELEASE AND PROBATION OR PAROLE SUPERVISION.

3 (a) Except as provided in (d) of this section, within five working days after notifying the  
4 governor under AS 33.22.020(c), the commissioner shall release each prisoner eligible under  
5 AS 33.22.070 after the prisoner agrees in writing to abide by the conditions of supervision set  
6 out in (b) of this section.

7 (b) A prisoner released early under (a) of this section is subject to the provisions of (c)  
8 of this section and shall be placed on supervised probation or parole as follows:

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

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

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

23 (c) Notwithstanding (b) of this section, a prisoner released early under (a) of this section,  
24 who has 30 days or longer remaining to serve at the time of early release, shall be required as  
25 a condition of probation or parole to reside at a community residential center and follow the rules  
26 of the center during the period of supervision resulting from early release. If there is insufficient  
27 space at community residential centers to accommodate the number of prisoners released early  
28 under (a) of this section, the commissioner shall determine which prisoners shall reside at a  
29 center and which prisoners may be permitted to reside outside a center. In making this  
30 determination, the commissioner shall consider such factors as the time remaining to be served  
31 on each prisoner's sentence, protection of the public, and the proximity of community residential

1 centers to the correctional facilities from which prisoners will be released.

2 (d) A prisoner may not be released early if, during the five-working-day period following  
3 the commissioner's notification of the governor under AS 33.22.020(c), the commissioner  
4 determines that the maximum capacity of the system will be increased, or additional space will  
5 become available by contract, so that the average daily prisoner population will be less than the  
6 maximum capacity of the system within 45 days.

7 (e) AS 12.55.090(c) does not apply to a prisoner being released early under (a) of this  
8 section.

9 Sec. 33.22.060. VIOLATION OF CONDITIONS OF EARLY RELEASE. (a) The court  
10 may revoke the probation resulting from early release under AS 33.22.050 and the probation  
11 following early release, for violation of a state or federal law or municipal ordinance for which  
12 violation is punishable by imprisonment, or for violation of a condition of probation imposed by  
13 the court or the prisoner's probation officer.

14 (b) The board of parole may revoke the parole resulting from early release under  
15 AS 33.22.050 and the parole following early release, for violation of a state or federal law or  
16 municipal ordinance that is punishable by imprisonment, or for violation of a condition imposed  
17 by the board of parole.

18 Sec. 33.22.070. PRISONERS ELIGIBLE FOR EARLY RELEASE. A state prisoner is  
19 eligible for early release under AS 33.22.050 if the prisoner

20 (1) is serving a sentence for an offense other than one listed in AS 33.22.040;  
21 (2) has not had special discretionary parole or early release under this chapter  
22 revoked previously;

23 (3) at the end of the five-working-day period described in AS 33.22.050(a)

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

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

26 (4) has no outstanding detainers; and

27 (5) in the preceding six months, has not been convicted of a disciplinary infraction  
28 for which good time may be forfeited; a prisoner charged with a disciplinary infraction is not  
29 eligible for early release unless the prisoner is found not guilty of the infraction.

30 Sec. 33.22.080. LIMITATION ON CIVIL ACTION. A person may not commence a  
31 civil action against the state or an employee of the state for failure to comply with the time limits

1 established in this chapter.

2 Sec. 33.22.900. REGULATIONS. The commissioner may adopt regulations necessary  
3 to carry out the provisions of this chapter.

4 Sec. 33.22.910. DEFINITIONS. In this chapter, unless the context requires otherwise,

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

8 (2) "commissioner" means the commissioner of corrections;

9 (3) "community residential center" means a residential facility with varying levels  
10 of supervision and services, made available to the Department of Corrections by contract and  
11 designed to facilitate the reintegration of prisoners into society;

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

15 (5) "felony" has the meaning given in AS 11.81.900(b);

16 (6) "maximum capacity" means the maximum number of prisoners, as determined  
17 by the commissioner under AS 33.22.010, that can be accommodated in areas of a correctional  
18 facility designed for the housing of prisoners, excluding segregation and other temporary holding  
19 areas;

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

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

23 (9) "state correctional facility" means a correctional facility owned or operated  
24 by the state that holds persons charged with or convicted of violations of law.

25 \* Sec. 7. AS 33.22 is repealed July 1, 1995.

26 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).