

CS FOR SENATE BILL NO. 215 (HES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SESSION****BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE****Offered: 2/18/92**
Referred: Judiciary**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE 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 AS 12.55.125(g) is repealed and reenacted to read:

8 (g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the
9 extent permitted under AS 12.55.155 - 12.55.175,

10 (1) imprisonment may not be suspended under AS 12.55.080;

11 (2) imposition of sentence may not be suspended under AS 12.55.085;

12 (3) terms of imprisonment may not be otherwise reduced.

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

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

19 * Sec. 5. AS 33.16.090(b) is repealed and reenacted to read:

20 (b) A prisoner is not eligible for discretionary parole during the term of a presumptive
21 sentence; however, a prisoner is eligible for discretionary parole during a term of sentence
22 enhancement imposed under AS 12.55.155(a) or during the term of a consecutive or partially
23 consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

24 * Sec. 6. AS 33.16.090(c) is amended to read:

25 (c) Except as provided in AS 33.22.030, a [A] prisoner eligible for discretionary parole
26 during a period of sentence enhancement imposed under AS 12.55.155(a) or during a consecutive
27 or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g) shall serve
28 the unenhanced portion of the sentence or the initial presumptive sentence before being otherwise
29 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this subsection,
30 the sentence for the most serious offense in the case of consecutive or partially consecutive
31 presumptive sentences shall be considered the initial presumptive sentence. The unenhanced

1 sentence or the initial presumptive sentence is considered served for purposes of discretionary
2 parole on the date the unenhanced or initial presumptive sentence is due to expire less good time
3 earned under AS 33.20.010.

4 * Sec. 7. AS 33.16.090(c) is repealed and reenacted to read:

5 (c) A prisoner eligible for discretionary parole during a period of sentence enhancement
6 imposed under AS 12.55.155(a) or during a consecutive or partially consecutive presumptive
7 sentence imposed under AS 12.55.025(e) or (g) shall serve the unenhanced portion of the
8 sentence or the initial presumptive sentence before being otherwise eligible for discretionary
9 parole under AS 33.16.100(c) or (d). For purposes of this subsection, the sentence for the most
10 serious offense in the case of consecutive or partially consecutive presumptive sentences shall
11 be considered the initial presumptive sentence. The unenhanced sentence or the initial
12 presumptive sentence is considered served for purposes of discretionary parole on the date the
13 unenhanced or initial presumptive sentence is due to expire less good time earned under
14 AS 33.20.010.

15 * Sec. 8. AS 33.16.100(c) is amended to read:

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

21 * Sec. 9. AS 33.16.100(c) is repealed and reenacted to read:

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

27 * Sec. 10. AS 33 is amended by adding a new chapter to read:

28 CHAPTER 22. PRISON POPULATION MANAGEMENT.

29 Sec. 33.22.010. 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

1 **correctional system.**

2 **Sec. 33.22.020. 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 33.22.030 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 system.

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

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

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

23 (1) 15 days after a determination is made by the commissioner under
24 AS 33.22.030(c) or 33.22.050(d); or

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

27 **Sec. 33.22.030. SPECIAL DISCRETIONARY PAROLE ELIGIBILITY.** (a) If the
28 average daily prisoner population exceeds the maximum capacity of the system for the 15-day
29 period following the commissioner's notification to the governor under AS 33.22.020(a)(1), a
30 prisoner who is in, or within the next 105 days falls into, the class of prisoners eligible under
31 AS 33.22.040 for special discretionary parole is eligible for special discretionary parole if, by the

1 end of the 105-day period, the prisoner will have served the greater of

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

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

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

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

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

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

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

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

24 (3) a class B felony that was:

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 11.31.110.

30 Sec. 33.22.050. 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 33.22.020(c), the commissioner shall release each prisoner eligible under
2 AS 33.22.070 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 is subject to the provisions of (c)
5 of this section and shall be placed on supervised 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) Notwithstanding (b) of this section, a prisoner released early under (a) of this section,
21 who has 30 days or longer remaining to serve at the time of early release, shall be required as
22 a condition of probation or parole to reside at a community residential center and follow the rules
23 of the center during the period of supervision resulting from early release. If there is insufficient
24 space at community residential centers to accommodate the number of prisoners released early
25 under (a) of this section, the commissioner shall determine which prisoners shall reside at a
26 center and which prisoners may be permitted to reside outside a center. In making this
27 determination, the commissioner shall consider such factors as the time remaining to be served
28 on each prisoner's sentence, protection of the public, and the proximity of community residential
29 centers to the correctional facilities from which prisoners will be released.

30 (d) A prisoner may not be released early if, during the five-working-day period following
31 the commissioner's notification of the governor under AS 33.22.020(c), the commissioner

1 determines that the maximum capacity of the system will be increased, or additional space will
2 become available by contract, so that the average daily prisoner population will be less than the
3 maximum capacity of the system within 45 days.

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

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

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

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

17 (1) is serving a sentence for an offense other than one listed in AS 33.22.040;

18 (2) has not had special discretionary parole or early release under this chapter
19 revoked previously;

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

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

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

23 (4) has no outstanding detainers; and

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

27 Sec. 33.22.080. LIMITATION ON CIVIL ACTION. A person may not commence a
28 civil action against the state or an employee of the state for failure to comply with the time limits
29 established in this chapter.

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

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

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

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

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

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

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

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

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

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

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

22 * **Sec. 11.** AS 33.22 is repealed July 1, 1995.

23 * **Sec. 12.** Sections 1, 2, 4, 6, 8, 10, 11, 12, and 13 of this Act take effect immediately under
24 AS 01.10.070(c).

25 * **Sec. 13.** Sections 3, 5, 7, and 9 of this Act take effect July 1, 1995.