HB
983

#1
(PAROLE
BOARD)

Copies to all members

PIONEER JAYCEES

POST OFFICE BOX 309 — JUNEAU, ALASKA 99802

Representative Charles Parr
Pouch "V"
Juneau, Alaska 99811

Dear Rep. Parr:

On behalf of the Pioneer Jaycees, I would like to invite you to a meeting of the Pioneer Jaycees to be held on Sunday March 9th, 1980 from 1:00 - 3:00 PM. This meeting will be held in the Dining Room at the Southeast Regional Correctional Institution (SERCI).

One of the topics on the agenda will be the lack of available funding for any alcohol and drug rehabilitation programs. Another topic for discussion will be the School program and the funding problem for it. CETA funds will be cancelled on June 31st, due to a new ruling that inmates are not eligible for CETA programs. We would like to see this program continue because without it, there is no rehabilitation here.

I would also ask that you invite the other members of the House Judiciary Committee to this meeting. This is a matter of vital importance to the inmates here at SERCI.

If you will be able to attend this meeting, would you please contact Dan Carothers, the Institutional Counselor, during the hours of 8:30 - 4:00 PM, before March 7th, 1980 so that we can have a full list of those persons who will be attending this meeting. We need this list for Institutional Security Purposes.

I would also like to apologize for the short notice, but we have been having problems obtaining final approval for this meeting from the administration.

Thank you for your time and consideration of this matter.

Awaiting a favorable reply.

Respectfully;
William Hawley
President - Pioneer Jaycees
William Hawley

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

BOARD OF PAROLE

ALASKA BOARD OF PAROLE
POUCH H-01E
JUNEAU, ALASKA 99811
PHONE: (907) 465-3384

November 21, 1979

Ms. Rochelle Plotnick
Administrative Assistant
Committee on Judiciary
House of Representatives
Alaska State Legislature
1016 W. 6th Avenue, Suite 201
Anchorage, Alaska 99501

Dear Ms. Plotnick:

I have enjoyed talking to you on the several occasions we have had a chance to discuss Parole Board matters. Per your recent letter and as you requested personally of me during our attendance at the Criminal Justice meeting on October 13, I have reviewed the letter to the Editor in the Tundra Times dated August 15, 1979, and the following information is provided to you and the Judiciary Committee.

It is evident from the letter the author, who chose to remain anonymous, is currently an inmate at the Juneau Correctional Center. Unfortunately, we do not know anything about his background or involvement with the Parole Board, and therefore we are unable to give the letter any case perspective. This information would probably be invaluable to the members of the committee in assessing the weight to give such correspondence.

The author asserts that "all native inmates" support his contention in the letter that the Board discriminates against all native inmates. As your probably aware, there is a strong native culture group there at the institution. There is no indication that this letter by one inmate was supported by that group. The letter to the Editor is as entitled in the paper, one person's opinion, and <u>not</u> based upon accurate statistics and facts as the author would have the reader believe.

06-F36LH

Let me point out some of the errors in the letter. The author states the appointment of Board members is entirely at the discretion of the Governor. It is true the Governor does appoint all Board members as he does his commissioners, division directors, deputy directors, and hundreds of other board and commission members throughout the state. The Governor also has the authority to appoint all judges in the state. However, all appointments of Board members (the same as any commissioner, director, and other board and commission members) must be confirmed by both Houses of the Legislature. This is a similar selection process to the one utilized in many other jurisdictions. Although the author of the letter implies that the Governor has extraordinary power in Alaska, the process here is not unusual from that utilized in other jurisdictions.

The author states 50% or more of the inmate population in the Juneau Correctional Center are natives. This figure is relatively accurate. However, that information is of little importance specifically. Alaska natives comprise about 27% of the total population in Alaska correctional facilities according to the Division of Corrections. The Parole Board handles all parole applications statewide and it is the statewide statistics that are relevant in considering the scope of its operation. The author suggests the Parole Board membership of Alaska natives needs to be increased to two because of the high native population in Juneau. If that were the case, then the Board should have a higher black composition in other correctional facilities because of the larger percentage of black inmates. His contention does not hold much credence when the overall picture is viewed. The author states Alaska natives have the lowest percentage of being released on parole. He offers no data to support this and I do not believe he has any. Most unfortuantely, there is very little data regarding the parole process in Alaska. We do however have some data regarding release rates of various ethnic groups, and the most recent data we have for the major categories is as follows.

Black	40 %
Native	25.5%
White	22.6%

This information unfortunately has not been updated since the report was completed in early 1977. I would encourage the State to devote more resources to the research on Parole

Board matters that would make this information available to the public on an ongoing basis. By the way, to my knowledge, this study was the only one available that has even attempted to look at the issue of "parole rates", and criminal justice statisticans that have reviewed the report indicate the figures are not statistically significant. This lack of statistical significance is related to the small number of cases reviewed in the sample by the researcher.

The next paragraph in the letter to the Editor states "the Parole Board will continue to be biased to the native inmates" without intervention by the Bush Caucus. Again, there is absolutely no data available to my knowledge regarding the decisions of the Board that indicate a bias toward any racial or minority group. The data I have supplied regarding parole release by racial groups are the facts.

The author states the Board requires full time employment before considering release on parole and will not consider releasing a person on parole to a subsistence life style. The Board's requirement regarding employment is not as stated by the author. The Board's policy reads as follows. "In the best interest of the applicant and society the Parole Board usually insists that the applicant has verified employment, a domicile in which to live when paroled, acceptance back within the family and the community, . . .". The Board maintains the flexiability to review all of the facts in each case and will require suitable employment in most cases where the defendant is released in a "non-subsistence area." The Board has released offenders to subsistence plans including fishing, trapping, ivory and wood carving, training others to carve, chopping firewood to heat the home, repair fishing gear for the next season, etc. The Board has even paroled people to subsistence gardening in an appropriate case. The issue here is not one of native verse non-native, but that of the life style of the offender before his involvement in criminal behavior and the circumstances that will likely lead to his non-involvement in criminal behavior in the future. The Board does release persons other than native persons to a rural Alaska subsistence plans and will continue to do so when the Board members feel the offender's plan is realistic considering his entire life history. Some parole applicants have continually failed in some bush settings and the Board will not release any offender to a remote location so that he can escape supervision or just to get him out of sight.

In the next paragraph of the article the author states a majority of native inmates are from small bush communities. I assume the author's definition "from bush communities" has some relationship to the offender's life style and his place of residence before his current incarceration. Any reasonable definition would use this as a basis. To check the accuracy of the author's statement I reviewed the files from a fairly recent Board hearing of all Alaskan native applicants that applied for parole to get some idea of the proportion of rural to urban applicants. Fortunately information regarding previous residence is easily retrievable from the presentence reports prepared by the Division of Corrections. Sixteen Alaska native offenders applied for parole at the particular Board hearing. Twelve of the sixteen had been residents of Juneau, Anchorage, Fairbanks, or Ketchikan prior to their current incarceration. One had been a residence of Bethel prior to incarceration, and the other three were from small bush communities. Even counting Bethel as a "small bush community", only 25% of the applicants fit into the "bush" category. Only 19% of the applicants came from truly bush communities where subsistence is a way of life for a majority of the residents. The Bethel applicant was not living a subsistence life style before his incarceration. The author's statement regarding a majority of native inmates coming from bush communities is far from being correct.

The author suggests that the village councils be given authority in determining whether or not they would be willing to accept the parolee for supervision. The author also suggests that the village council be given the power to revoke parole, and stated that the Board and councils could "implement a feasible program that is long overdue." The Board has often made contact with village councils through the Division of Corrections when offenders applying for parole presented the Board with a plan to return to a bush community where a village council has been established as an active body. The Board will continue to do so in the future. If a parolee is released on supervision to a bush community, the Board certainly has and will continue to welcome and encourage testimony regarding a parolee's behavior at a hearing if he is alleged to have violated conditions of his parole. The Board actively encourages information from any reasonable persons in a community regarding a parolee and

will continue to do so, whether it be bush or urban communities. There is no need to "implement a feasible program" to accomplish this, this cooperation between correctional agencies and village councils has been a common occurrence in years past. As a matter of fact our policy encourages parole applicants to seek out support in bush areas before they apply for parole and further makes its clear that the Board is interested and concerned with the community's willingness to have the parolee return as a residence of such communities.

A particularily pertinent paragraph from the Board policy reads as follows. "Those inmates who expect to reside in a community not regularly serviced by a parole officer are advised to arrange for a parole advisor. A parole advisor can be anyone who will be living near the parolee and is of reputable character. A parole advisor has no responsibility for the actions of the parolee and no authority over him. An advisor offers to assist and counsel the parolee in anyway possible and to cooperate with the parolee's assigned parole officer." Another short paragraph is also of some value in attempting understanding the Board's position and factors it considers. "The attitude of the community toward the parolee and his release has considerable bearing on the individual's adjustment. Assessment of this community attitude must be made in determining the adequacies of the release plan." Of course, the village councils are an excellent vehicle for assessing this willingness to work with the parolee if he is returning to an area where a council is established.

The author several times throughout his article refers to the Parole Board as being a component of the Department of Corrections. First of all, there is no department of corrections in Alaska. Both the Division of Corrections and the Parole Board are separate administrative entities within the Department of Health and Social Services. Neither entity is responsible to the other although obviously the Division and the Board do work closely together and are interdependent upon each other for information and services. The Legislature did separate the Parole Board from the Division of Corrections in 1972, to insure that the persons responsible for the day to day operation of correctional facilities would not have an undue influence upon the decision-making processes of the Parole Board.

In summary, the article that appeared on page 11 of the August 15, 1979 issue of the Tundra Times is just as it is entitled; "Opinion: A Native Looks at the parole system". The author has offered no citations to research papers for any of the erroneous figures he claims are facts. I certainly believe there are some problems with the parole system in Alaska, and certainly one of the biggest problems we have is lack of concrete data on which to evaluate the system. Unfortunately, the State has shown no interest in the past in devoting the necessary resources to allow for the gathering and analysis of data regarding the parole process.

There is hope. The Parole Board applied for and is currently the recipient of a grant from the National Institute of Corrections to aid us in developing a parole guidelines matrix model. Some research has been completed in order to assist us in developing this model. A final report from the contractor under that grant will be available within the next few weeks. The Division of Corrections grant to establish the OBSCIS system will hopefully give us the capability in the future of providing some ongoing research with a small amount of additional money appropriated to the Parole Board for this task.

I have worked for the Division of Corrections or the Parole Board in Alaska for over 13 years now, and I personally do not feel the decisions of the Board are based upon racial issues. Although the Board has made decisions in which I have been a participant in which I might disagree with the final outcome, I again do not believe my disagreement with any case decision has any relationship to the applicant's race or ethnic background. The Parole Board is the only component I am aware of in the criminal justice system where a black, a native, and a female make up the majority of the voting Board members. I believe the remainder of the system does have something to learn from the makeup of the Board and I personally believe the makeup of the Board does have some relationship to the lack of bias in the Board's decision-making process. Chairman William Lyons and I certainly appreciate the opportunity to appear before the House Judiciary Committee, and we look forward to seeing you in the morning of November 30, 1979.

Again, we do appreciate the invitation to appear before the House Committee. I am glad to see an interest in this segment of the criminal justice system.

Very sincerely yours,

Samuel H. Trivette
Executive Director

SHT/vh

Sandra

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

BOARD OF PAROLE

ALASKA BOARD OF PAROLE
POUCH H-01E
JUNEAU, ALASKA 99811
PHONE: (907) 465-3384

January 31, 1980

Honorable Charles H. Parr
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch Y
Juneau, Alaska 99811

Dear Chairman Parr:

Enclosed with this letter are the ten (10) copies of the Alaska Parole Guidelines report you requested on November 30, 1979. I apologize for not getting them to you at an earlier date, but we are just beginning to get a few copies from central duplicating. I guess all of the other printing work of the State has a higher priority.

I invite you and your committee and staff members to review the text of the report which consists of about the first 140 pages, and I will be happy to try to answer any questions any of you might have at the hearings next week or at your convenience before or after that time. Although the report does not give us all of the data we would like to have, it is at least a start in the right direction.

Feel free to contact me if you have any specific questions before the hearings next week.

Sincerely yours,

Samuel H. Trivette

Samuel H. Trivette
Executive Director

SHT/vh
cc: Allen Korhonen
Deputy Commissioner

06-F36LH

November 14, 1979

Frank Gold, EdD
Program Director
KILA, INC.
3098 Airport Way
Fairbanks, Alaska 99701

David M. Cammack, M.D.
Medical Director

Bonnie McCorquodale
Program Counselor

Cynthia E. Aiken
Program Counselor

Kitty Picotte, LPN
Program Nurse

Dear Staff:

Your letter of October 19 raises a number of issues that require some clarification. The information contained in your letter was based upon facts known to your staff. At least four other persons testified at the revocation hearing and considerable additional information was presented that was not mentioned in your letter. The Board makes decisions based upon all information presented at the hearing and available in the parolee's file. Based upon all of the information available to the Board at the hearing, many of the statements made in your letter to me, to Governor Hammond, Commissioner Beirne, Director Campbell, Parole Board members, Representative Parr, and anyone else that you may have sent copies to, are incorrect, misleading, and obviously intended for one purpose: To put the members of the Board in a very poor light. Your tactic is reprehensible for an organization that represents itself as a group of professionals serving the community and the citizens of the State of Alaska.

The Board members are aware of your staff interpretation of federal regulations that you cannot submit negative reports on any client even though a criminal justice waiver has been signed. Although many other program people and I disagree with your interpretation of the federal regulations and many other drug programs do release some additional information without difficulty, that final decision is yours. Obviously that does not put you in a position of being an unbiased participant in any criminal justice situation and any testimony you present must be placed in proper perspective.

Your letter commented that none of the "professionals" involved with Mr. Heflin's case recommended revocation. For the most part, none of the people testifying before the Board made any specific recommendation at all, and the Board members do not see that as the responsibility of those testifying before it. To say that none of the comments made by any of the professional people testifying before the Board including Gene Kingrea, Allen, Rothrock and your two staff would support revocation of Mr. Heflin's parole is simply not true. Much of the testimony before the Board on October 15 and 16 made it very clear that Mr. Heflin was having many other problems than just his return to the use of drugs, and all of these problems did not subside after the preliminary hearing was held on August 10, 1979. The Board members' decision in this case was made after considerable discussion and review of the case and I believe the decision would withstand close scrutiny by any appellant body that might be responsible for making such decisions.

You commented that he might have been treated differently if he had legal counsel to represent him at the hearing. Mr. Heflin was advised of this right in writing and he could have had legal counsel if he so chose. His not having the assistance of counsel certainly did not prohibit him from presenting any evidence or witnesses he wished, and I do not know of any other information he could have possibly presented through an attorney that he did not present through his own testimony or through the testimony of other witnesses. Again, that decision was Mr. Heflin's.

You commented on the fact that he was released by the hearing officer at the preliminary hearing and therefore should not have been revoked. The purpose of the preliminary revocation hearing is twofold.

First, the hearing officer must determine whether or not there is probable cause that a parole violation may have occurred. Secondly, the hearing officer must determine whether or not the parolee should be released pending the final hearing, based upon the five factors listed on the second page of the hearing form. These five factors are narrowly drawn on purpose and basically relate to the plan of the parolee and his potential risk if returned to the community at that time pending the final hearing. The final decision made by the members of the Board is a significantly different decision than the one made at the preliminary hearing, and the members must consider many other factors. The length of time on parole before violation, the supervisability of the parolee, the number and seriousness of the violations, impact on the parolee and others if revoked, accomplishments, and problems of the parolee, are just a few of these broader factors. The closest analogy would be a preliminary court hearing at which the judge only looks at a few risk factors and then the final decision the judge must make at the time of sentencing considering a number of broad factors other than just the release plan of the defendant. (See Chaney decision).

Obviously Mr. Heflin made some positive strides while on parole. You characterized him as always being "up front", keeping his parole officer advised of his situation, and seeking help before problems arose and dealing with those problems as they took place. The convincing testimony at the final hearing does not support your contention. Obviously Mr. Heflin was having problems some weeks before they were brought to the attention of his parole officer. The parole officer became aware of potential problems through others in the community, not through Mr. Heflin or through the drug program. When the parole officer discussed this situation with Mr. Heflin, he did not advise the officer fully of the problems he had been having. When questioned specifically about the area of drug abuse, he denied the presence of anything illegal at his residence.

Frank Gold testified at the hearing about the necessity for early intervention when problems arise. Of course, the notification of problems must normally come from the parolee himself and as Frank testified at the hearing, "I'm talking about before there is drug use. I am talking about the fact that Joe came over and saw me last night and I really wanted to take some of the stuff, but I didn't. That's when I want to know about it. I don't want to know about it after he uses, that's too late." It was apparent from the testimony at the hearing that Mr. Heflin did not meet this expectation. He did not make contact with his parole officer or with the drug program. The parole officer was the person initiating the contact and after he was unable to get a hold of the parolee himself, notified the drug program personnel who made contact with Heflin.

The Board members encourage the development of a trust relationship by the parolee with whomever he chooses in the community. The Board members do not automatically revoke every person's parole when a violation of parole has occurred, be it the use of drugs or any other specific violation. The Board has in the past had cases in which parolees have returned to the use of drugs in which parole was not revoked. Each case must and will continue to be reviewed individually based upon all information made available. The system does recognize that Mr. Helfin did make some progress while on parole. The parole officer took note of this and as a result did not press forward with the District Attorney's office for a new conviction on the possession of narcotics found in Mr. Heflin's residence. The Board considered Mr. Heflin's progress while on parole and the decision handed down by the Board makes it possible for Mr. Heflin to reapply for parole at any time.

The Board is certainly concerned about rehabilitation and reduced recidivism. Having a parolee return to the use of drugs certainly is not going to decrease recidivism. Because of the infrequent urinalysis that Mr. Heflin was giving, we can only speculate how long he would have gone and how much more deeply he might have become involved in the use of drugs and possibly further criminal behavior before there was any intervention. Let me remind you that Mr. Heflin is not serving time for the possession of drugs, but as a result of his involvement in an armed robbery with a pistol. The responsibility for Mr. Helfin if he becomes involved in serious criminal activity rests with the Board and this is one of the factors it must seriously consider.

Considering the many-faceted responsibility of the Board and taking into the account the testimony of Dr. Rothrock, Gene Kingrea, Don Allen, Donald Heflin, and the drug treatment program staff, along with Mr. Heflin's entire file, I believe any reviewing body would consider the Board's decision responsible and reasonable. Mr. Heflin is verbal and articulate himself, and he certainly has a choice of appealing the Board's decision back to the Board or to the Superior Court if he feels the action the Board took was clearly mistaken. For your information, Mr. Heflin advised us at the final revocation hearing that the chances of his returning to the use of drugs had he been placed on the same urinalysis schedule as he was after the preliminary hearing would have been extremely low. Heflin told us that his giving regular UA's was very helpful to his continued abstinence from the use of drugs after the preliminary hearing. Since you expressed a concern about catching clients before they become heavily reinvolved with drugs, and since we all know that clients are high risk for the first six months or more after release, it would seem to be cost effective in the long run to use more frequent urinalysis than the once or twice a month schedule you had Mr. Heflin on. This whole set of hearings and Mr. Heflin's reincarceration might have been avoided if this was your programs' current policy.

I hope this letter has been of some value in clarifying the Board's position and responsibilities and the fact that a great deal of other information was considered by the Board other than that presented by the staff of the Drug Treatment Center.

Sincerely yours,

Samuel H. Trivette
Executive Director

SHT/vh
cc: Donald Heflin

Fairbanks Drug Treatment Center
(907) 456-5715

Fairbanks Drug Education Center
(907) 452-1841

KILA, Inc.

Locally Controlled
Integrated and Coordinated
Human Services
3098 Airport Way
Fairbanks, Alaska 99701
(907) 452-5972

October 19, 1979

Beverly Dunham
P.O. Box 97
Seward, Alaska 99664

Dear Ms. Dunham:

We would like to register our personal and professional objections to the decision made by the Board regarding Donald E. Heflin on October 15, 19.9. While we know that in all liklihood nothing can be done about it now, we would greatly appreciate your consideration of the following information. Perhaps it will prove helpful to all of us in the future.

The Fairbanks Drug Treatment Center has been operational since April 1974. Since that time we have had contact with and/or treated over 250 persons with serious addiction problems. We have learned a great deal and would like to share some of what we've learned with you. In light of the above mentioned decision, and because you are all familiar with his case, we will use Mr. Heflin as an example.

As you know, the FDTC has a long-standing policy pertaining to Parole Board and Court appearances. We do not appear for any addict simply because he/she happens to be participating in our program. Because of Federal confidentiality regulations we cannot submit negative reports on individuals: we think our absence speaks for itself. When we do appear it is because the individual has demonstrated a commitment to treatment and an ability to take responsibility within the framework of that treatment. Mr. Heflin has done that and much more. 1. I 2. I.

Drug addiction is not merely a social or criminal problem. It is a serious and often dangerous illness. While addicts have no known propensity towards psychosis, they--like millions of other people--often have other emotional problems that must be dealt with before full recovery can be achieved. This is not a simple process--nor does it occur simply because the addict desires recovery.

Our experience indicates that successful recovery (or graduation normally requires 2 - 3 years involvement in a structured treatment program. The exception to this is often people whose treatment began in prison. While there is no denying the value of programs inside the prisons, the final treatment phase must take place in the community where the individual must cope with daily frustrations and the pressure from former associates in the drug world.

Mr. Heflin made a meaningful commitment to treatment while incarcerated. He participated in group and individual counseling for almost two years prior to applying for parole. He was also a full-time student during much of that time. While his progress was significant and his prognosis better than most, it is neither accurate nor fair to say that he was completely recovered. Neither the FDTC nor Mr. Heflin expected any major regression. While we expected "graduation" within a year or so, we knew that the first year out would be a difficult and occassionally traumatic one.

The fact that Mr. Heflin experienced serious difficulties during the fourth month following his release is not at all unusual. What is unusual is the fact that he sought additional help immediately. Far more common is the addict who denies any problem and who is afraid to seek help because the very nature of the problem is a violation of his/her parole or probation conditions. The end result--and the FDTC has seen it happen on a number of occassions--is that the individual successfully hides the problem, becomes re-addicted and eventually, returns to some form of criminal behavior. Mr. Heflin was quite familiar with this syndrome. He knew that unless he honestly confronted the problem in the beginning, his personal growth and eventual success would be seriously threatened. He also knew that part of the problem (association with known felons and two occassions of drug abuse) was a violation of his parole conditions. Mr. Heflin obviously felt that his need for support and treatment outweighed the risk of being violated. He discussed the problems, in detail, with his employer, his supervisor and the FDTC staff. His FDTC counselor spoke with his Parole Officer at some length and advised Mr. Heflin to do the same.

3. I

4. I

5. I

Since Mr. Heflin has since had his parole revoked and is currently serving a minimum of three more months in jail, we now have some serious questions regarding the priorities of both the Parole Board and the Adult Probation and Parole Office. Participation in a treatment program was a condition of Mr. Heflin's original release. What is the point of such a condition if the professional recommendations of the treatment staff are so readily set aside by a board obviously less experienced in this field? For the average individual in treatment, situations such as the one experienced by Mr. Heflin are common in the beginning. When dealt with in an appropriate manner, they decrease in frequency and soon stop altogether. Punishment is not an appropriate response in this case since Mr. Heflin recognized the problem immediately, sought help and stopped the behavior prior to being sent back to jail. 1.C 2.C

It should be noted that in addition to his obvious commitment to treatment, Mr. Heflin is a full-time University student. He has an overall grade point average of 3.4 and has made the Dean's List twice in the last year and a half. Incarceration at this time means that he has to withdraw from school--an event that cannot possibly be in his best interest. There is, however, no advanced education program at F.C.C. this year. Again, we wonder what anyone hopes to accomplish by this action? I.6 I.7

The argument could be made that had Mr. Heflin had legal counsel and had he vigorously denied the Parole Officer's charges, he might still be a free man. There was, after all, considerable evidence of successful rehabilitation in other areas of his life. Such an argument, however, was never considered by Mr. Heflin and would have been in direct opposition to everything the FDTC is striving for. The fact remains that our efforts toward helping addicts re-enter society and develop some trust in the system are made considerably more difficult every time that system fails to recognize genuine effort. 3.C 4.C

We do not know why the Board or the Parole Office felt that it was necessary to re-incarcerate Mr. Heflin--particularly in light of the fact that the Preliminary Hearing Officer released him. We do know that there were other options. Incarceration was not recommended by any of the professionals involved and cannot possibly be viewed as therapeutic. We would like to believe that rehabilitation and reduced recidivism are Board priorities. Unfortunately, the decision in Mr. Heflin's case cannot support such a belief.

5.C
6.C
7.C

Sincerely,

Frank Gold, EdD
Program Director

David M. Cammack, M.D.
Medical Director

Bonnie McCorquodale
Program Counselor

Cynthia E. Aiken
Program Counselor

Kitty Picotte, LPN
Program Nurse

1971 →

Susan Knighton's study on Parole Bd

Parole Guidelines Report
- not out yet -

also, breakdown of crime committed, parole revoked, denied, granted by race — ready in about a month.

Joe Montgomery
was on Board for 4yr.

copy article for Sam
alw. at hotel

write Sam a memo asking
him to respond

write ~~Sam~~ Beirne for invitational
- send Sam a copy

May 16, 1974 - 1/3 in jail
effective
if crime before that date
parole up to discretion of
brd, unless court required 1/3
at time of sentencing
Judges can overrule -

need tech. violations

June - 25-26 (GF)

request info. in writing
presence is up to brd. &
discretion of
~~[illegible]~~ brd.

white - male — 3-76
native - male — 1-77
wht - female 3-76
blk - male 1-71
white - male 12-78

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past members —
(2) Doug Baily —
(1) Joe M. —
(4) Tom Carey —
(3) Bill Sheffield —

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complaints dismissed —

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

BOARD OF PAROLE

JAY S. HAMMOND, Governor

ALASKA BOARD OF PAROLE
POUCH H-01E
JUNEAU, ALASKA 99811
PHONE: (907) 465-3384

February 6, 1980

Honorable Charles H. Parr
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Chairman Parr:

In order that the Parole Board might be able to adequately prepare for testimony at the Sunset Review hearing on Thursday, February 7, 1980, we would respectfully request a copy of any correspondence your Committee has received regarding the Board.

We would appreciate receiving the information by noon on February 7. We will be glad to pick it up or you can contact us in Room 103, Alaska Office Building. Thank you for your assistance.

Sincerely yours,

Samuel H. Trivette
Samuel H. Trivette
Executive Director

SHT/vh
cc: Allen Korhonen
Deputy Commissioner

Called 2pm Feb. 6 - told Sam we'd rec'd no correspondence

06-F36LH

Opinion:

A Native looks at the parole system

The Alaska Parole Board system is unfair to the Native Alaskans. That is the assertion of all Native inmates. You, the reader, may ask, "Why is the Alaska Parole Board unfair to the Natives?"

The parole board is comprised of five members. There are three whites, one Native, and one Black. The Governor personally appoints the members to the board, it is entirely at his discretion. It is the opinion of the Native inmates here at the Juneau Correctional facility that two or more Natives or of Native lineage be appointed to the parole board for the following reasons: 50% of more of the inmate population are Natives. Statistics reveal the Alaska Native receives longer sentences than Whites; furthermore the Native has the lowest percentage of being released on parole. Therefore, it should be the top priority of business for the Bush Caucus to resolve this problem. Without some form of revision, the parole board will continue to be biased to the Native inmates.

The parole Board has certain stipulations an inmate must meet to even be considered as a possible parolee. The stipulation of having a job is the Natives' greatest drawback. It is common knowledge to everyone in the bush areas that jobs are virtually nonexistant. Statistics will also verify this statement.

The majority of Native inmates are from small bush communities. They do not have college degrees or any technical training. All they know is fishing, hunting, and trapping So why not parole them back to their respective villages, as subsistence lifestylers.

There is a considerable amount of controversy on the defininition of the subsistence way of life. In my opinion, subsistence is living in a small bush community without a regular job; hunting, fishing, and trapping for a livelihood. Carving and making artifacts could also fit into this category. There should be a wide generlization in the categorzation of the subsistence way of life due to the wide geographical differences.

An example is comparing Kaltag with Point Hope. Both communities are predominantly Native and can be categorized as maintaining a subsistence lifestyle. However, the similarity ends there. The Point Hope areas is situated on the northwest coast of Alaska. The surrounding area is completely devoid of trees. The people's main source of livelihood is derived from marine mammals, such as seals, walrus and whales, whereas the inhabitants of Kaltag depend chiefly on moose, bear, and beaver to supply their major food supplements. Kaltag also is situated in a wooded region.

Mypurpose is not to discuss the pros and cons of living in either community. It is merely a hypothetical illustration to show the wide differences in the subsistence lifestyles due to geographical locations.

There are communities where fishing is the major source of income. Can inhabitants of such communites be classified on a subsistence basis? It is possible for these people to catch $10,000, $20,000 or even $30,000 worth of fish in a season. At some point there must be a distinction between being a component of the fishing industry and the subsistence person. However a fisherman's income is highly inconsistent, depending on the fish spawn.

Can an ivory carver claim to be a subsistence person when he is carving up to five or six thousand dollars of artifacts yearly. This figure may be a bit high or low, depending on the quantitiy and quality of an individual's work. At what dollar amount does the carver cease being a subsistence individual and becomes a sole propietor of a small business enterprise.

This brief background on life in the bush may seem immaterial to the parole of Native inmates. Nothing could be farther from the truth, based on the following reasons. (1) Jobs are virtually nonexistant in the bush areas; (2) many Native inmates have very little or not formal education or technical skills to secure jobs in metropolitan areas like Anchorage or Fairbanks. For these reasons among others, once again, I argue the Native inmate should be granted parole to his respective village.

While the law will argue against this issue for the following reason; that one law or stipulation imposed on tone citizen should pertain to all. For all practical purposes I would be inclined to agree, however, here lies a very unique situation.

The Federal Government has always introduces special legislation in the past to deal with Indian problems. They recognized the various differences and dealt with them accordingly

page one

For this very purpose the Bureau of Indian Affairs was established. I believe the State Government can follow similar guide lines in setting down policies to insure the Native inmate an equal opportunity on the issue of parole.

I will state agains, it is my firm conviction that the Department of Corrections should lift the stipulation of having a job, a requisite to the Native seeking parole. Simply for the reason there are no jobs in the bush communities.

It should be not great problem for state government to establish a network of acting parole officers within the villages. The village councils could be given impled or expressed powers in determining if they would be willing to accept the parolee. They would also have the power to revoke should the occassion arise. Without a doubt, the Department of Corrections and its component the Alaska Parole Board in conjunction with the village councils can implement a feasible program that is long overdue.

In conclusion, I will say, it is the task of the Native leaders to fight for these reforms. It is now time for the Bush Caucus to stand in unison, and shout, we demand equal treatment for our people

Proposed regulations establishing procedures for Indian tribes seeking to form tribal constitutions or charters or make changes in existing ones are being published in the FEDERAL REGISTER, the Bureau of Indian Affairs announced today.

The purpose of the new regulations is to provide uniformity and order in holding elections, authorized by the Secretary of the Interior, to vote on constitutions and bylaws or charters. The proposed regulations will make this single set of regulations applicable to tribes, including those in Oklahoma and Alaska, now governed by three different sets of regulations, published and unpublished.

A significant change, introduced by the proposed regulations, is that petitioning by tribal members will no longer be recognized as a way to initiate a tribal reorganization. The process, under the proposed regulations, can only be initiated by a valid request from a tribe's governing body or a representative committee. The purpose of this change is to require tribal members to work through their government rather than around it. The petitioning process remaines valid where tribal constitutions recognize it and where the Indian Reorganization Act provides for it as the means whereby the Secretary of the Interior may be requested to issue a charter of incorporation.

page two

SCHEDULE OF PAROLE BOARD

SUNSET REVIEW

Wednesday, February 6

3:00 p.m. - Teleconference testimony:

Anchorage
Ketchikan
Kenai
Dillingham

7:00 p.m. - Teleconference testimony:

Fairbanks
Nome
Bethel
Barrow

Thursday, February 7

3:00 p.m. - In-person testimony:

Juneau

Friday, February 8

3:00 p.m. - Committee consideration of testimony

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: HOUSE JUDICIARY COMMITTEE

FROM: ROCKY PLOTNICK

DATE: SEPTEMBER 13, 1979

SUBJECT: ALASKA BOARD OF PAROLE

The Alaska Board of Parole has been assigned to this committee for sunset review. I have started to gather information about the Parole Board and its duties and will share what I have with you. Please note these are preliminary findings and more specific information will be supplied to you.

Before I go any further, a distinction must be made between parole and probation. Parole is administered by the Executive Branch and must proceed sentenced time in prison. Probation is administered by the Judicial Branch in lieu of prison. The Alaska Statutes specify when a prisoner is eligible for parole. AS 33.15.080 says,

> "However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced, or in the case of a life sentence, has not served at least 15 years." *

*Effective January 1, 1980, delete "or in the case of a life sentence, has not serv-d at least 15 years".

The Parole Board is a separate agency within the Department of Health & Social Services, and not within the Division of Corrections. It has an executive director with one clerical person. There are five part-time members on the Board serving without pay, though they do get travel costs. The Parole Board conducts hearings at least quarterly at state correctional institutions. At those hearings parole may be granted, denied, continued (pending), or revoked.

When parole is revoked it means some law or condition of parole has been violated. However, it is important to note that sometimes parole is revoked and then a person is reparoled, never going back to prison. So while Alaska's revocation rates are higher than the national average on the attached statistics, in reality not that many are returning to prison. Also, the revocations are mainly for technical violations or misdemeanors. An example would be a parolee getting stopped for having one marijuana joint, a misdemeanor in Alaska. That person could have parole revoked and be reparoled at the same time. So in some cases, the revocation serves as a warning.

The Corrections Master Plan makes several recommendations for the Parole Board. They include:

1. three full-time members
2. an increase and reorganization of staff
3. change hearing procedure
4. establish a formal appeals process
5. adopt a guideline or matrix system to aid decision making

6. prepare a manual of policy

7. introduce legislation to allow credit for "street time" when parole is revoked

8. introduce legislation to allow the release from parole after two years of successful parole

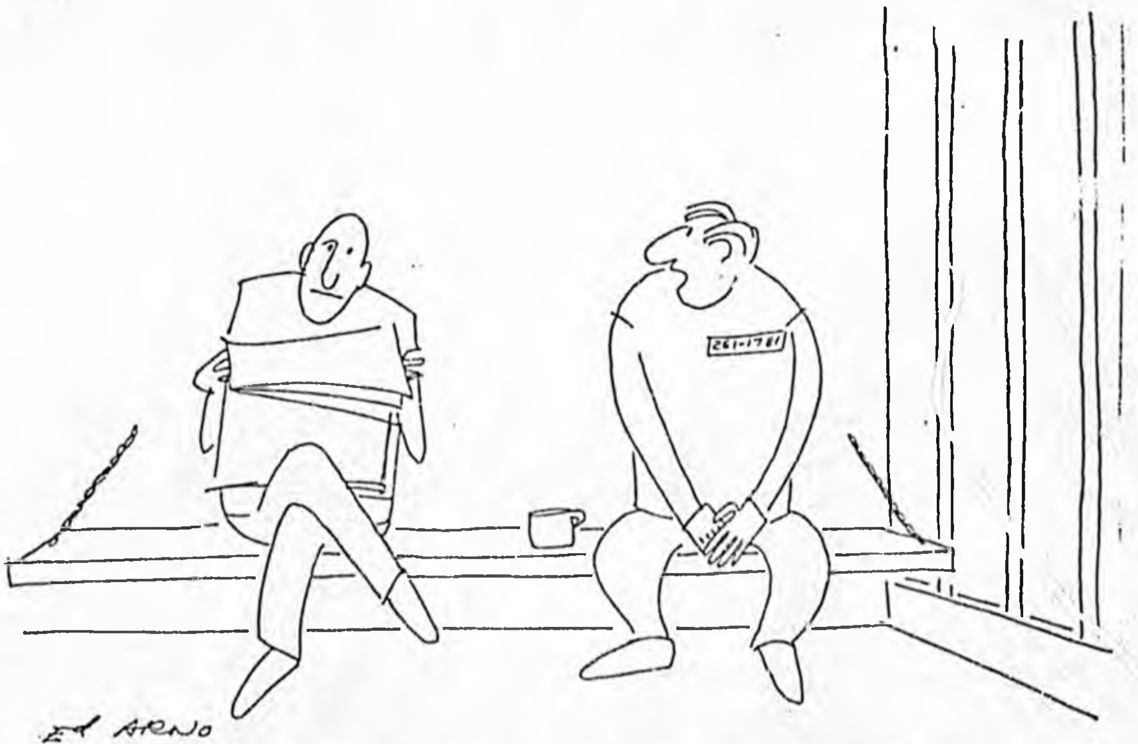
9. conduct hearings to determine presumptive release date

10. obtain a common philosophy between the Parole Board and the Division of Corrections

When I met with Sam Trivette, the executive director, he said he was already working on the recommendations. We went over each one of them and I plan to follow-up in the future.

As we look at the Division of Corrections, keep in mind these people effect a person applying for parole. They are responsible for getting the application to the Parole Board. They make a report of a person's conduct in prison. Indirectly, the Division of Corrections does play a very significant part in the parole process.

THE NEW YORKER JULY 30, 1979



"Which are you—a victim of society or a crook?"

ALASKA BOARD OF PAROLE

STATISTICS

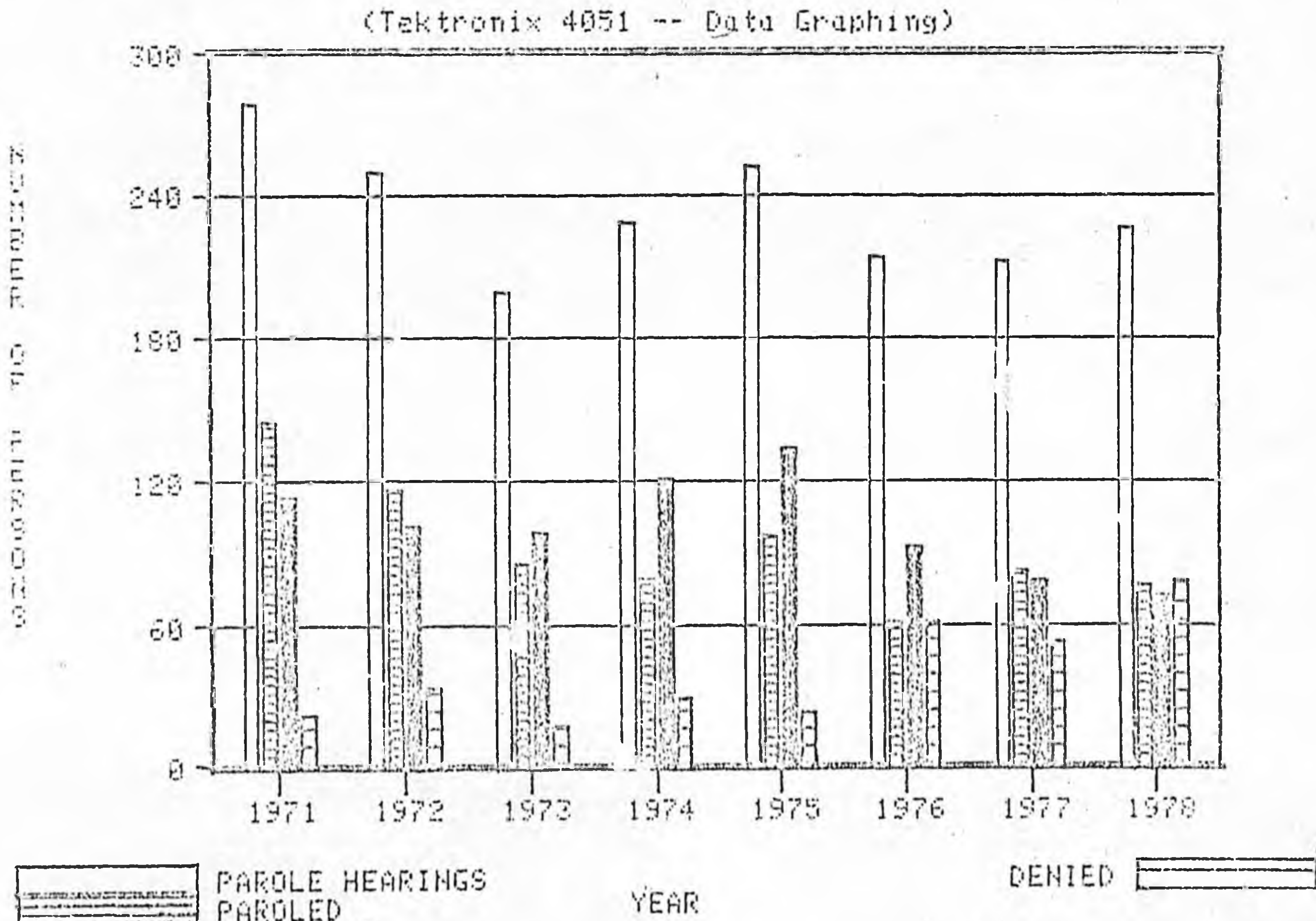
	1975	1976	1977	1978	1979 (First Half)
PAROLE HEARINGS	252	214	212	226	91
PAROLED	93	53	75	64	34
CONTINUED	133	92	78	72	30
DENIED	22	61	52	78	27
OTHER	4	8	7	12	

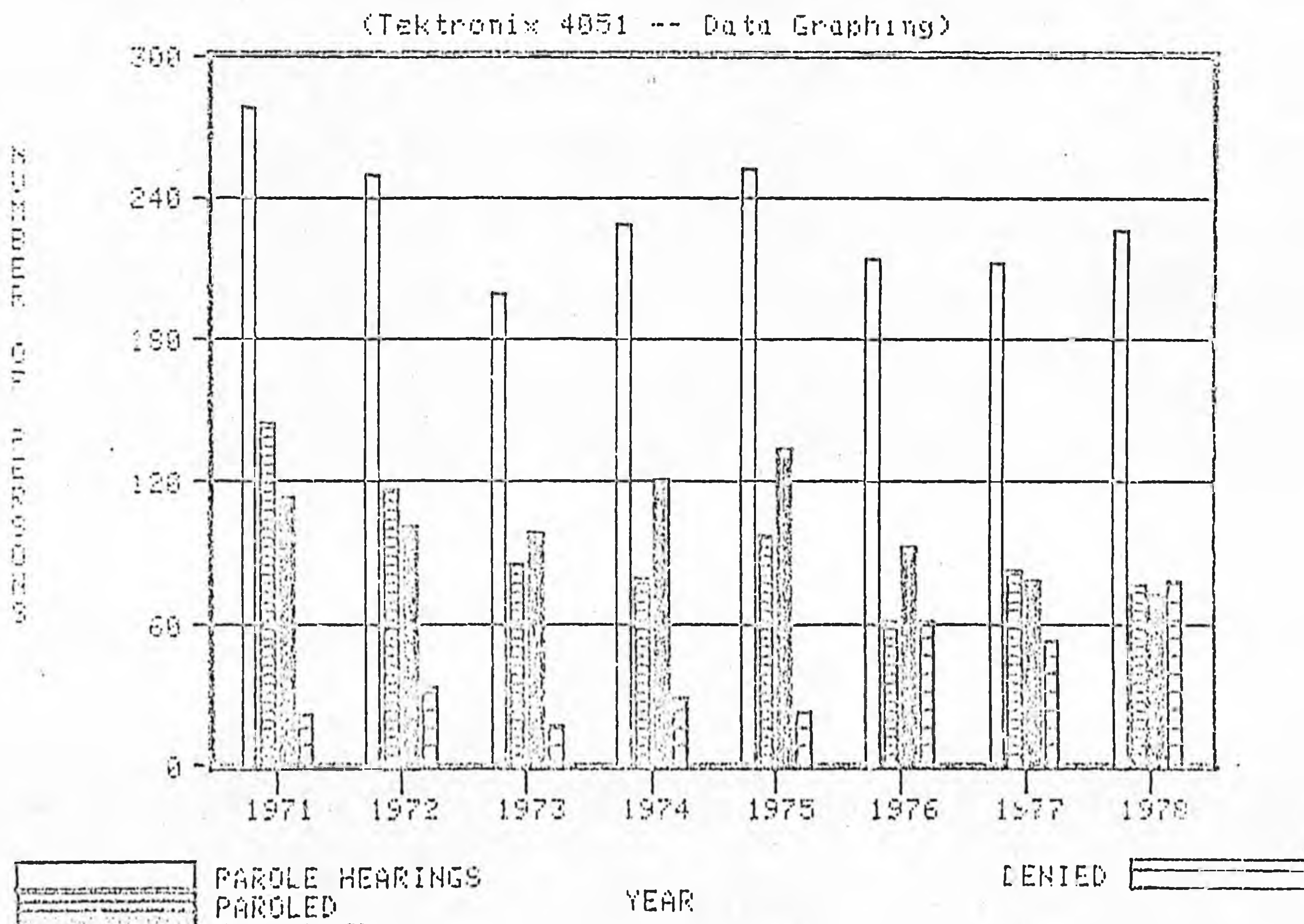
REVOCATIONS	1975 TECH	1975 FELONY	1976 TECH	1976 FELONY	1977 TECH	1977 FELONY	1978 TECH	1978 FELONY	1979 TECH	1979 FELONY
1-3 Months (on parole)	10	3	5	1	5		3	1		
4-6 Months	7		6		6	2	8			
7-12 Months	7		4	2	4		1			
13-18 Months	3				4	1				
19-24 Months	1									
25 Or More Months	2		1			1				
TOTAL	30	3	16	3	19	4	12	1		

	1975	1976	1977	1978	1979 (First Half)
AVERAGE PERIOD * OF SUPERVISION REMAINING	20.3 Mo.	16.6 Mo.	17.4 Mo.	15.4 Mo.	18.1 Mo.
REVOCATION RATE (Total)	3 1/2 Yr. (to 4½ yrs) Follow Up 35%	2 1/2 Yr. (to 3½ yrs) Follow Up 36%	1 1/2 Yr. (to 2½ yrs) Follow Up 31%	6 Mo. (to 18 Months) Follow Up 20%	
FELONY REVOCATION RATE	3.2%	5.6%	5.3%	1.6%	

(nat'l Average @ 8% 1 yr. follow-up — 14% 2 yr.)

* IN EACH YEAR THE BOARD PAROLED A FEW INDIVIDUALS THAT HAD SUCH A LONG PERIOD OF SUPERVISION IT INFLATED THE AVERAGE. THIS FIGURE ONLY INCLUDES THE 90% WITH UNDER FOUR YEARS OF SUPERVISION LEFT.


PAROLE BOARD ACTIVITY
(Tektronix 4051 -- Data Graphing)
300
240
180
120
60
0
1971
1972
1973
1974
1975
1976
1977
1978
PAROLE HEARINGS
PAROLED
CONTINUED
YEAR
DENIED


PAROLE BOARD ACTIVITY
(Tektronix 4051 -- Data Graphing)
300
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1971
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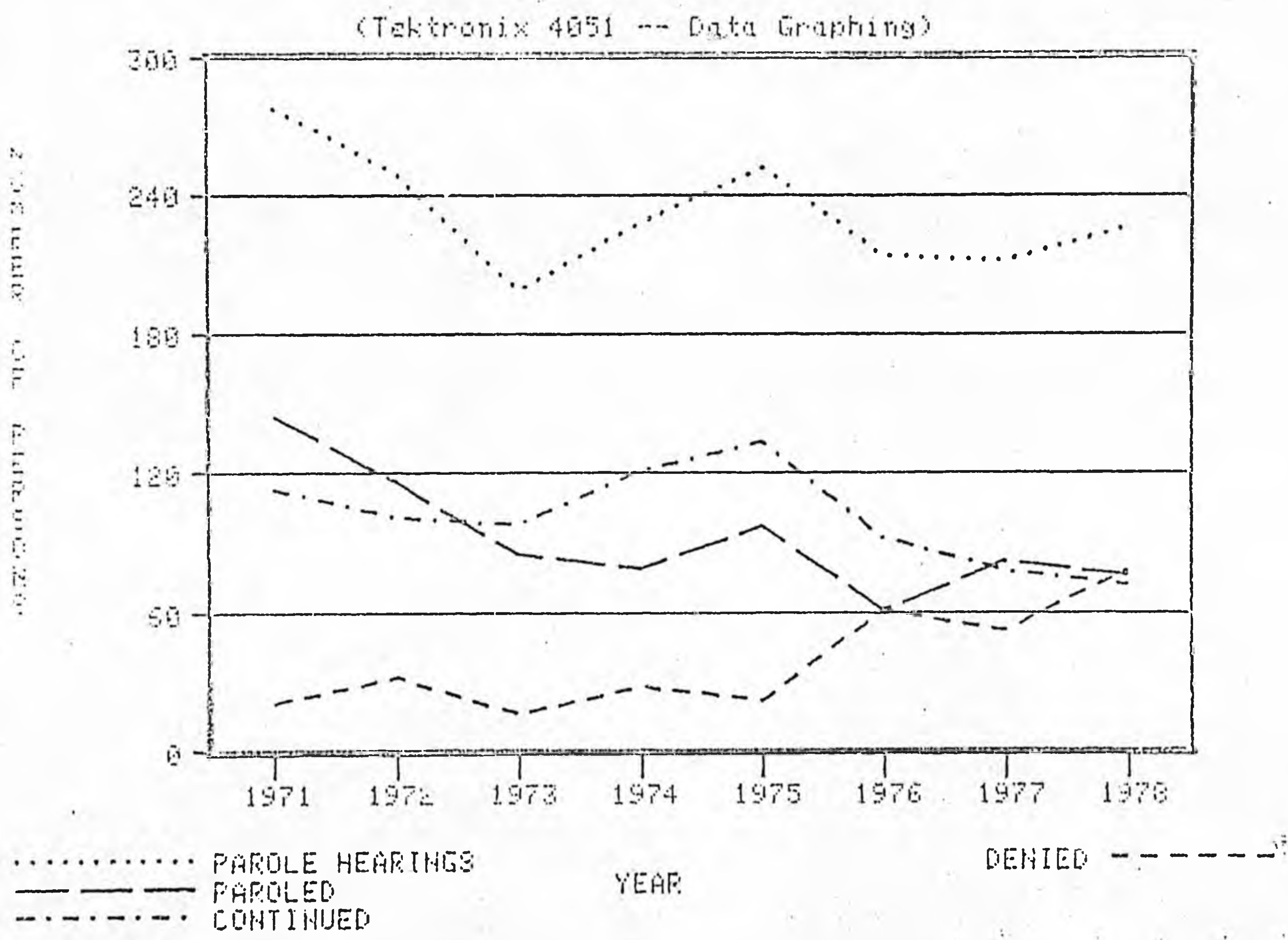
1978
PAROLE HEARINGS
PAROLED
CONTINUED
YEAR
DENIED

PAROLE BOARD ACTIVITY

(Tektronix 4051 -- Data Graphing)



PARLOE STATISTICS

1979 (½ year)

PAROLE HEARINGS	91	
PAROLED	34	37%
CONTINUED	30	33%
DENIED	27	30%

PAROLE STATISTICS

1978

PAROLE HEARINGS	221	
PAROLED	64	29%
CONTINUED	72	33%
DENIED	78	35%
PAROLED (NOT RELEASED)	7	3%

*REVOCATIONS:

	Technical Violations Misdemeanors		Felonies	
1-3 Months	3		(1) 1	
4-6 Months	8			
7-12 Months	1			
13-18 Months				
19-24 Months				
25 of More				
TOTAL	12	19%	1	1%

(1) Rape committed in Juneau.

*As of May 1, 1979, short, inconclusive, Follow up.

PAROLE STATITICS

1977

PAROLE HEARINGS	210	
PAROLED	73	35%
CONTINUED	78	37%
DENIED	52	25%
PAROLED (NOT RELEASED)	7	3%

*REVOCATIONS:

	Technical Violations Midemeanors		Felonies	
1-3 Months	5			
4-6 Months	6		(1)(2) 2	
7-12 Months	4			
13-18 Months	4		(3) 1	
19-24 Months				
25 or More			(4) 1	
TOTAL 31%	19	25%	4	5%

(1) Armed Robbery Committed in Anchcrage.

(2) Burglary (Interstate) Committed in Washington.

(3) Burglary (Interstate) Committed in Texas.

(4) Assault (Interstate) Committed in Louisiana.

*As of May 1, 1979, 6 months to 18 months Follow up.

PARAROLE STATISTICS

1976

PAROLE HEARINGS	219	
PAROLE	49	22%
CONTINUED	92	42%
DENIED	61	28%
PAROLED (NOT RELEASED)	17	8%

*REVOCATIONS:		Technical Violations Misdemeanors		Felonies	
1-3 Months		5		(1) 1	
4-6 Months		6			
7-12 Months		4		(2)(3) 2	
13-18 Months					
19-24 Months					
25 or More		1			
TOTAL	39%	16	33%	3	6%

(1) Possession of Stolen Property (Interstate) Committed in New York.

(2) Armed Robbery, Committed in Anchorage.

(3) Robbery, (Interstate) committed in New Mexico.

*As of May 1, 1979, 18 months to 30 months Follow up.

News-Miner Sat Feb 2, 1980

House panel plans sunset review for parole board

News-Miner Bureau

JUNEAU-Alaska's Parole Board will be reviewed by the House Judiciary Committee Wednesday and Thursday as part of sunset review.

The five-member board, which meets four times a year, hears and decides appeals from prisoners eligible for parole, those who have violated parole, and those who are on mandatory release from jail.

Although legislative auditors in a performance review of the board recommend that it be continued, they suggest a number of changes and procedures for the board.

Board representatives are expected to challenge some of the information contained in the audit report, based on written responses to audit findings.

Samuel Trivette, parole board executive director, said that the auditors were not familiar with criminal justice records, and for that reason some of the audit statistics are inaccurately reported.

Fairbanks area residents wishing to testify before the committee may do so on Wednesday, beginning at 5:30 p.m. local time, at the Legislative Information Office.

Written testimony on the board and its performance should be mailed to the committee in care of Pouch V, Juneau, 99801.

Parole board members are appointed by the governor, and do not receive salaries. Serving on the board are Conrad Miller, North Pole; Bill Lyons and Don Kosoff, Anchorage; Beverly Dunham, Seward and Al Widmark, Juneau.

Trivette said that a comprehensive report on "Parole Guidelines for Alaska" has just been published and made available to the judiciary committee. The 140-page report was funded by a federal grant.

Chief among auditors' recommendations are that the board should establish specific objectives, maintain better records to ensure effective management, prepare and submit required state audit reports, encourage public participation in parole-related matters, and put its regulations in a form easily understood and available to the public and inmates.

NOTICE TO THE PUBLIC

The Alaska Legislature is required by State law to periodically review activities and accomplishments of various State boards. In accordance with this requirement, the House Judiciary Committee will be holding "sunset review" hearings on the Parole Board on February 6 and 7, 1980. Public testimony may be submitted to the Committee in writing, via select stations on the State Teleconference Network, or in person.

Persons wishing to submit written testimony should send a copy of their comments to the House Judiciary Committee, Pouch V, Juneau, Alaska 98111. Persons in Anchorage, Fairbanks, Nome, Ketchikan, Barrow, Bethel, Kenai and Dillingham wishing to testify via the Teleconference Network should contact their community legislative office for assigned local times. The Teleconference Network will be available for testimony on the Parole Board only on Wednesday, February 6.

Anyone may offer testimony in person before the Judiciary Committee in Room 124 of the Capitol Building beginning at 3:00 p.m., Thursday, February 7, 1980. Further information may be obtained by calling the Committee at 465-3882.

ka State Legislature

ELECONFERENCE HEARINGS

DATE 1/10/80

CONFIRMATION OF TELECONFERENCE

TO Sandra Stringer/House Judiciary

FROM Sioux Plummer

SCHEDULED DATE OF TELECONFERENCE 2/6/80 AND 2/18-19/80

LOCATIONS (Site, Room, etc.) ALL SITES UNLESS OTHERWISE NOTIFIED. ADDRESSES and LOCATIONS of teleconference Centers on list in "Teleconference Users Guidebook".

TIME 2-6 : 3 PM/dinner break/reconvene at 7pm.
2-18/19 : 3 PM til ?

SUBJECT 2-6 – SUNSET REVIEW – PAROLE BOARD
2-18/19 – " " – BAR ASSN

CHAIRMAN Rep. Chas. Parr

NOTES Please provide 1 copy each of back-up material such as related bills, PSA to media, letter to committee to me as soon as possible.

Thanks!

If any of the above information is incorrect or has changed since our last contact with you, please call the Juneau Teleconference Office ASAP.

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811

Phone: 465-4980

Alaska Statutes

Title 33. Probation, Prisons, and Prisoners.

Chapter
05. Probation Administration Act (§§ 33.05.010—33.05.090)
10. Interstate Compact on Probation and Parole (§§ 33.10.010—33.10.020)
15. Parole Administration Act (§§ 33.15.010—33.15.270)
20. Pardons and Paroles (§§ 33.20.010—33.20.080)
25. Western Interstate Corrections Compact (§§ 33.25.010—33.25.050)
30. Prison Facilities (§§ 33.30.010—33.30.260)

Chapter 05. Probation Administration Act.

Section
10. Powers of commissioner
20. Duties of commissioner
30. Probation officers as officers of court
40. Duties of probation officers
50. Report of probation officer
60. Transfer of jurisdiction over probationer
70. Arrest of probationer
80. Definitions
90. Short title

Sec. 33.05.010. Powers of commissioner. The commissioner shall administer a probation system and enforce the probation laws in the superior court. (§ 2 ch 105 SLA 1960)

Am. Jur. and C.J.S. references. — 15 Am. Jur., Criminal Law, § 498 et seq.; 39 Am. Jur., Pardon, Reprieve and Amnesty, §§ 81 to 95. 24 C.J.S. Criminal Law §§ 1571, 1618; 67 C.J.S. Pardons § 1 et seq.

Sec. 33.05.020. Duties of commissioner. (a) The commissioner shall appoint and make available to the superior court, where necessary, qualified probation officers and assistants.

(b) The commissioner shall fix probation officers' and assistants' salaries, assign them to the various judicial districts, and shall provide for their necessary expenses including clerical services and travel. He may assign to all probation officers and personnel any duties concerning the administration of the parole system as provided in the Parole Administration Act. (§ 2 ch 105 SLA 1960)

Sec. 33.05.030. Probation officers as officers of court. (a) All probation officers made available to the courts under this chapter shall be officers of the superior court and subject to the authority of the superior court.

(b) The appointment of a probation officer shall be entered on the journal of the court in the judicial district where the probation officer

shall be assigned, and one copy of the journal entry sent to the administrative director of courts. (§ 3 ch 105 SLA 1960)

Sec. 33.05.040. Duties of probation officers. A probation officer shall

(1) furnish to each probationer under his supervision a written statement of the conditions of probation and shall instruct him regarding the same;

(2) keep informed concerning the conduct and condition of each probationer under his supervision and shall report on him to the court placing such person on probation;

(3) use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition;

(4) keep records of his work, keep accurate and complete accounts of all money collected from persons under his supervision, give receipts for money collected and make at least monthly returns of it, make the reports to the court and the commissioner required by them, and perform other duties the court may direct;

(5) perform such duties with respect to persons on parole as the commissioner shall request, and in such service shall be termed a parole officer. (§ 4 ch 105 SLA 1960)

Sec. 33.05.050. Report of probation officer. When directed by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may then discharge the probationer from further supervision and may terminate the proceedings against him, or may extend the probation, as shall seem advisable. (§ 5 ch 105 SLA 1960)

Sec. 33.05.060. Transfer of jurisdiction over probationer. Whenever during the period of his probation, a probationer goes from the judicial district in which he is being supervised to another judicial district, jurisdiction over him may be transferred, in the discretion of the court, from the court for the district from which he goes to the court for the other district, with the concurrence of the latter court. Thereupon the court for the district to which jurisdiction is transferred shall have all power with respect to the probationer that was previously possessed by the court for the district from which the transfer is made, except that the period of probation shall not be changed without the consent of the sentencing court. This process under the same conditions may be repeated whenever during the period of his probation the probationer goes from the district in which he is being supervised to another district. (§ 5 ch 105 SLA 1960)

Sec. 33.05.070. Arrest of probationer. (a) At any time within the probation period, the probation officer may for cause arrest the

probationer whenever found, without a warrant. At any time within the probation period, or within the maximum probation period permitted by AS 12.55.080 and 12.55.090, the court for the district in which the probationer is being supervised or, if he is no longer under supervision, the court for the district in which he was last under supervision may issue a warrant for his arrest for violation of probation occurring during the probation period. Such warrant may be executed in any district by the probation officer or any peace officer in the district in which the warrant was issued or of any district in which the probationer is found. If the probationer shall be arrested in any district other than that in which he was last supervised, he shall be returned to the district in which the warrant was issued, unless jurisdiction over him is transferred as above provided to the district in which he is found, and in that case he shall be detained pending further proceedings in that district.

(b) As speedily as possible after arrest the probationer shall be taken before the court for the district having jurisdiction over him. Thereupon the court may revoke the probation and require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. (§ 5 ch 105 SLA 1960)

Sec. 33.05.080. Definitions. When used in this chapter, unless the context otherwise requires,

(1) "probation" is a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the superior court subject to conditions imposed by the court and subject to the supervision of the probation service as hereinafter provided;

(2) "commissioner" means the commissioner of the Department of Health and Social Services or his designee. (§ 1 ch 105 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in paragraph (2).

Quoted in Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975).

Sec. 33.05.090. Short title. This act may be cited as the Probation Administration Act. (§ 7 ch 105 SLA 1960)

Chapter 10. Interstate Compact on Probation and Parole.

Section
Authorizing governor to execute interstate compact

Section
20. Definition

Sec. 33.10.010. Authorizing governor to execute interstate compact. The governor of Alaska is hereby authorized and directed to

execute a compact on behalf of the state with any of the United States legally joining in it in the form substantially as follows:

A COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An act granting the consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes." (Public Law 970, 84th Congress, Second Session)

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if:

(a) Such person is in fact a resident of or his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year before his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state. Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should

be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto.

(8) Whenever the duly constituted judicial and administrative authorities in a sending state shall determine that incarceration of a probationer or reincarceration of a parolee is necessary or desirable, said officials may direct that the incarceration or reincarceration be in a prison or other correctional institution within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(9) As used in this amendment, the term "receiving state" shall be construed to mean any state, other than the sending state, in which a parolee or probationer may be found, provided that said state is a party to this amendment.

(10) Every state which adopts this amendment shall designate at least one of its correctional institutions as a "Compact Institution" and shall incarcerate persons therein as provided in subsection (8) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's prisoners as may be confined in the institution.

X

(11) Persons confined in "Compact Institutions" under the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to a prison or other correctional institution within the sending state, for return to probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state.

(12) All persons who may be confined in a "Compact Institution" under the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of incarceration or reincarceration in a receiving state shall not deprive any person so incarcerated or reincarcerated of any rights which said person would have had if incarcerated or reincarcerated in an appropriate institution of the sending state; nor shall any agreement to submit to incarceration or reincarceration under the terms of this amendment be construed as a waiver of any rights which the prisoner would have had if he had been incarcerated or reincarcerated in any appropriate institution of the sending state, except that the hearing or hearings, if any, to which a parolee or probationer may be entitled (before incarceration or reincarceration) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(13) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves. (§ 2 ch 138 SLA 1957; am § 1 ch 106 SLA 1960)

ALR reference. — Validity of probation on condition of leaving state of locality, 70 ALR 100.

Sec. 33.10.020. Definition. As used in this chapter the term "state" means the several states and the Commonwealth of Puerto Rico, the Virgin Islands and the District of Columbia. (§ 1 ch 138 SLA 1957)

Chapter 15. Parole Administration Act.

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10. State board of parole
15. Executive director
20. Compensation and expenses
30. Governor to advise of duties and call board meeting
40. Payment of board expenses
50. Duty of board to consider those eligible for parole

Section
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Sec. 33.15.010. State board of parole. There is in the department a board of parole consisting of five members to be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. One of the members, who shall be chairman of the board, shall be a person with training or experience in the field of probation and parole, and he may be an official or employee of the department but may not be an official or employee of the division of corrections. The term of each of the other four members of the board is four years and until his successor is appointed and qualifies. Successors are appointed in the same manner as provided for the board members first appointed. A vacancy shall be filled for the unexpired term. (§ 2 ch 81 SLA 1960; am § 1 ch 5 SLA 1964; am § 1 ch 106 SLA 1968; am § 3 ch 107 SLA 1969; am § 48 ch 32 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "division of corrections" for "youth and adult authority" in the second sentence.

Legislative committee reports. — For legislative committee report on ch. 106, SLA 1968 (CSHB 465), see 1968 House Journal, p. 515. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

Am. Jur., ALR and C.J.S. references. — 15 Am. Jur., Criminal Law, §§ 443, 4[illegible]9, 498, 499, 520; 39 Am. Jur., Pardon, Reprieve and Amnesty, §§ 81 to 95.

Statute conferring power upon administrative body in respect to parole of prisoners or discharge of parolees, as unconstitutional infringement of power of executive, 143 ALR 1488.

24 C.J.S. Criminal Law §§ 1571, 1582, 1618; 67 C.J.S. Pardon § 1 et seq.

Sec. 33.15.015. Executive director. The board shall hire an executive director who has training and experience in the field of probation and parole. The executive director shall serve as the executive officer for the board in the accomplishment of its functions. He shall serve the board at the pleasure of the governor. (§ 1 ch 30 SLA 1972)

Sec. 33.15.020. Compensation and expenses. The members of the board, other than the chairman, shall not receive salaries but are entitled to compensation per day at an amount to be set by the governor for every day they are in session, and a per diem and travel allowance as provided by law. The chairman is not entitled to a salary or compensation for days he attends a session of the board, but is

The trial court is not required to advise of parole minimums, or of its authority to fix parole eligibility, under the terms of Criminal Rule 11. Morgan v. State, Sup. Ct. Op. No. 1663 (File No. 2894), P.2d (1978).

But it is preferable for court to so inform defendant. — While it is not necessary for the court to inform the defendant of the possibilities with reference to parole, it is preferable for a court to so inform the defendant, particularly if the court is imposing more than the minimum of one-third of the term required to be served for eligibility for parole. Morgan v. State, Sup. Ct. Op. No. 1663 (File No. 2894), P.2d (1978).

Applied in Thomas v. State, Sup. Ct. Op. No. 1445 (File No. 2723), 566 P.2d 630 (1977); Post v. State, Sup. Ct. Op. No. 1642 (File No. 2851), 580 P.2d 304 (1978).

Quoted in State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976).

Stated in Creed v. State, Sup. Ct. Op. No. 1553 (File No. 3638), 573 P.2d 1379 (1978).

Sec. 33.15.080. Granting of parole [Effective January 1, 1980]. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced. (§ 3 ch 81 SLA 1960; am § 1 ch 110 SLA 1974; am § 14 ch 166 SLA 1978)

Effect of amendment.
The 1978 amendment, effective January 1, 1980, deleted "or in the case of a life sentence, has not served at least 15 years" from the end of the section.

...ution. (§ 3 ch 81 SLA 1960)

Sec. 33.15.070. Order for parole. An order for parole shall contain the conditions imposed, including the fixing of the parolee's residence, which may be changed in the discretion of the board. (§ 3 ch 81 SLA 1960)

Sec. 33.15.080. Granting of parole. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced, or in the case of a life sentence, has not served at least 15 years. (§ 3 ch 81 SLA 1960; am § 1 ch 110 SLA 1974)

Effect of amendment. — The 1974 amendment added the second sentence.

Sec. 33.15.090. Revocation of parole. The board may revoke the parole granted to a prisoner for violation of a law or ordinance, or condition imposed by the board. (§ 3 ch 81 SLA 1960)

Sec. 33.15.100. Adoption of rules and holding of meetings. The board shall adopt rules which it considers necessary or proper with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions of release to be imposed on parolees. The

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board shall meet as often as it finds necessary, but it shall meet at least twice each year. Three members constitute a quorum for the conduct of business. (§ 3 ch 81 SLA 1960; am § 2 ch 5 SLA 1964)

No rules promulgated by the parole board regarding eligibility of prisoners for parole have been brought to the attention of the supreme court. Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971).

Rules should be adopted as soon as practicable. — Concerning sentencing, sentence appeals, and parole matters in general, the supreme court believes it would be of benefit to all concerned if, as soon as practicable, the parole board, in conformity with this section, adopted rules regarding eligibility of prisoners for parole, the conduct of parole hearings, and conditions of release to be imposed on parolees. Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971).

The question of when a prisoner is elegible for parole when consecutive sentences are imposed is of considerable significance not only to the prisoner and the state, but also to the supreme court in carrying out its sentence review functions. If, under present practices and policies of the parole board, the accused is ineligible for parole until he has served all of an initial seven-year sentence and some portion of a consecutive sentence, then the supreme court would view the consecutive sentence as excessive and contradictory of the goal of rehabilitation in the administration of our system of criminal justice. Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971).

Sec. 33.15.110. Authority of board to issue process. The board may issue subpoenas and subpoenas duces tecum, and may issue warrants to retake a parole violator. (§ 3 ch 81 SLA 1960)

Sec. 33.15.120. Board may release prisoners to answer process. If a court of this state, another state, or the United States, or other authority issues a warrant charging a prisoner with a crime, the board may release the prisoner on parole to answer the warrant. (§ 3 ch 81 SLA 1960)

Sec. 33.15.130. Orders, records, and annual report. (a) If three members of the board are present at a meeting, all decisions of the board shall receive not less than two affirmative votes. If more than three members are present at the meeting, all decisions shall receive not less than three affirmative votes.

(b) The board shall keep a record of its acts and shall notify the commissioner of its decisions relating to prisoners considered for parole. At the close of each fiscal year the board shall submit to the governor, the commissioner, and the attorney general, a report containing statistical and other data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a computation and analysis of dispositions in criminal matters by the courts in the state. (§ 4 ch 81 SLA 1960; am § 3 ch 5 SLA 1964)

Sec. 33.15.140. Protection of records. The pre-parole reports submitted to the board are privileged and shall not be disclosed to anyone other than the board, the sentencing judge, the prosecuting attorney, or others entitled under this chapter to receive the information. However, the board or court may permit a prisoner, his

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Sec. 33.15.180. Persons eligible for parole [Effective January 1, 1980]. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in §§ 80 and 230(a)(1) of this chapter.

(b) A state prisoner who has been imprisoned in accordance with AS 12.55.125(a) or (b) may not be released on parole until he has served at least the prescribed minimum term of imprisonment.

(c) A state prisoner imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) who is released under AS 33.20.030 shall be placed on parole for the period specified in the certificate of deduction, subject to written rules and conditions imposed by the board or his parole officer. (§ 7 ch 81 SLA 1960; am § 34 ch 43 SLA 1964; am § 9 ch 68 SLA 1965; am § 2 ch 110 SLA 1974; am §§ 15, 16 ch 166 SLA 1978)

Effect of amendment.

The 1978 amendment, effective January 1, 1980, inserted "and who is not imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2)" in present subsection (a) and added subsections (b) and (c).

Editor's note. — Section 23, ch. 166, SLA 1978, effective January 1, 1980, provides, in subsection (d): "AS 33.15.180, as amended in secs. 15 and 16 of this Act, applies only to persons imprisoned for crimes committed on or after the effective date of this Act."

attorney, or other person having a proper interest in it to inspect the report or a part of it when the best interest or welfare of the prisoner makes it desirable or necessary. (§ 5 ch 81 SLA 1960)

Sec. 33.15.150. Duties of the commissioner. The commissioner is charged with the administrative duties and responsibilities necessary to

(1) conduct investigations of prisoners eligible for parole as the board requests;

(2) supervise the conduct of parolees and institute programs for reform and rehabilitation of parolees as the board requests;

(3) appoint and assign parole officers and personnel to the judicial districts in the state and to train and supervise parole officers and personnel;

(4) keep records, files and accounts as the board requests. (§ 6 ch 81 SLA 1960)

Sec. 33.15.160. Delegation of duties to executive director. The commissioner may delegate all or part of the administrative duties and responsibilities specified in § 150 of this chapter to the executive director of the board. (§ 6 ch 81 SLA 1960; am § 2 ch 30 SLA 1972)

Effect of amendment. — The 1972 amendment substituted "executive director" for "chairman."

Sec. 33.15.170. Commissioner may assign duties of probation officers to parole officers. The commissioner may assign the duties of probation officers as provided in the Probation Administration Act to personnel appointed under § 150 (3) of this chapter. (§ 6 ch 81 SLA 1960)

Sec. 33.15.180. Persons eligible for parole. A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in §§ 80 and 230 (a) (1) of this chapter. (§ 7 ch 81 SLA 1960; am § 34 ch 43 SLA 1964; am § 9 ch 68 SLA 1965; am § 2 ch 110 SLA 1974)

Effect of amendment. — The 1974 amendment added "subject to limitation prescribed in §§ 80 and 230 (a) (1) of this chapter" to the end of the section.

Chapter 43, SLA 1964, inapplicable to offense committed before October 1, 1964. — See 1964 Op. Att'y Gen., No. 8.

Quoted in Faulkner v. State, Sup. Ct. Op. No. 506 (File No. 885), 445 P.2d 815 (1968); Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971).

Sec. 33.15.190. Release and terms and conditions of release. The board may permit a parolee to return to his home if it is in the state, or to go elsewhere in the state, upon such terms and conditions, including personal reports from the paroled person as the board prescribes. The board may permit the parolee to go into another state upon terms and

conditions as the board prescribes, and subject to the provisions of any compact executed under the authority of ch. 10 of this title and amendments to it. A prisoner released on parole remains in the legal custody of the board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law. While in the custody of the board, a person is subject to the disabilities imposed by AS 11.05.070. (§ 8 ch 81 SLA 1960)

Section held unconstitutional. — This section, insofar as it suspends, in conjunction with AS 11.05.070, the access of parolees to civil courts, violates the due process clauses of the Alaska and United States constitutions. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

AS 11.05.070 and this section combine to deny a parolee the right to initiate civil suit; but such denial of access to the civil courts is a violation of due process and equal protection provisions of the Alaska and United States constitutions. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

A parolee denied access to the judicial process by reason of his custodial status is thereby condemned to suffer a grievous loss of property rights protected by the due process clause of the 14th amendment of the United States Constitution. The supreme court would reach an identical result in interpreting the due process provisions of the Alaska Constitution alone. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The state, by this section and 11.05.070, denies parolees the right of access to the civil courts possessed by other persons. The state interest in denying parolees this right satisfies neither the "compelling state interest" test applied when a "fundamental right" is at stake, nor the traditional, more lenient "rational basis" test otherwise applicable. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Since there is neither a "compelling state interest" nor a "rational basis" for the state's denial to parolees of the right to initiate civil actions, this section denies parolees the "equal protection of the laws," in violation of the Alaska and United States constitutions. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Although the state has a legitimate interest in restricting some activities of parolees, prohibiting a parolee from initiating civil actions has no logical connection with such an interest. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The administration of a parole system differs so substantially from the administration of a prison that the reasons for denying convicts while imprisoned access to civil courts cannot logically support the "civil death" of parolees. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The only pertinent interest is preventing behavior which is detrimental to the restoration of a parolee into normal society. Since the parolee is no longer incarcerated, there is no justification based on the furthering of smooth penal administration. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The parolee's ability to avail himself of the civil judicial process in order to vindicate his rights and protect his property interests in fact furthers, rather than restricts, the parolee's constructive development and restoration into normal society. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Since this section and AS 11.05.070 deny parolees right to initiate civil suit. — In light of the absence of indications of legislative intent to distinguish the use of "the civil rights" in AS 11.05.070 from "all civil rights," and the strong common law authority holding that convicts are denied civil access to the courts, the supreme court held that AS 11.05.070 and this section combine to deny parolees the right to initiate civil suit. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

AS 11.05.070 and this section when read together clearly indicate that a parolee's civil rights, similar to those of a prisoner, remain suspended during the time he is in the custody of the parole board. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

This section expressly states that a parolee is subject to the disabilities imposed by AS 11.05.070. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

The right to initiate civil suit is a right suspended by AS 11.05.070, and under this section, parolees—similar to convicts—are subject to this disability. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

The bar to access to the civil courts is absolute and no ameliorative device exists. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Property rights impaired by depriving parolee access to courts. — See Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Supreme court not impeded by narrower United States supreme court holding. — Finding that "civil death" of parolees violates the spirit and intention of the Alaska Constitution, the supreme court would not be impeded in its constitutional progress by a narrower holding of the United States supreme court. Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Holding in Bush v. Reid to be applied prospectively. — The holding in Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), is to be applied prospectively, not retroactively. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

After December 14, 1973, the date of the opinion in Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), time spent on parole shall not toll the statute of limitations, provided however, that any person on parole as of that date shall, in any event, have one year from that date within which to bring an action. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

If the supreme court were to give retroactive effect to its holding in Bush v. Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), the statute of limitations would have begun to run upon a parolee's release on parole in 1969, but under the wording of the statutes then in effect, a parolee had no right to bring suit during the time he was on parole. Thus, a parolee might totally lose his right to bring a civil suit, rather than having that right merely suspended during time of sentence. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

For example, if the time of parole was longer than two years, the statute of limitations would bar any action; and the combination of AS 11.05.070 and this section would have prevented filing at any point before release from parole. Such a result would be inconsistent with the legislative intent to suspend, not abolish, the exercise of civil rights while imprisoned or on parole, and would result in violation of due process. State v. McCracken, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

Sec. 33.15.200. Retaking of parole violator. A warrant for the retaking of a state prisoner who violates his parole may be issued only by the board or a member of it and the warrant shall issue within the maximum term or terms to which the parolee was sentenced. A parole violator may be retaken with or without a warrant for violation of a term of parole. The unexpired term of imprisonment of the parolee shall be served and begins to run from the date he is returned to the custody of the commissioner under the warrant, and the time the prisoner was at liberty on parole does not diminish the time he was sentenced to serve. (§ 9 ch 81 SLA 1960)

ALR references. — Parole as suspending running of sentence, 28 ALR 947.

Right to notice and hearing before revocation of parole or conditional pardon, 54 ALR 1474; 132 ALR 1254; 29 ALR2d 1074.

Extradition of paroled convict, 73 ALR 422.

Sentence for new offense committed while accused was at large on parole or conditional release, as concurrent or consecutive, 116 ALR 811.

Sec. 33.15.210. Execution of warrant to retake parole violator. A parole officer or an officer of a state prison facility, or a prison facility made available to the state under contract, or a peace officer

authorized to serve criminal process in the state shall execute the warrant by taking the prisoner and confining him in a prison facility designated by the commissioner. A parolee who violates his parole may be retaken by a parole officer without a warrant and returned to the prison facility designated by him. (§ 10 ch 81 SLA 1960)

Sec. 33.15.220. Revocation upon retaking parolee. (a) Upon the retaking of a parolee, a peace officer making the arrest shall notify the parole officer. The parole officer upon making the arrest, or being notified by a peace officer of an arrest, shall immediately notify the board, or a member of the board. If the retaking is without a warrant, the parole officer shall submit to the board, or a member of it, a report in writing indicating in what manner the parolee violated the terms and conditions of his parole. The board shall have the parolee brought before it without unreasonable delay for a hearing on the violation charged, under such rules as the board adopts. If the violation is established, the board may then, or at any time within its discretion, revoke the order of parole and terminate the parole or change the terms and conditions of parole, or impose additional conditions. The parolee may waive the hearing provided for in this section.

(b) If parole is revoked and terminated, the prisoner is subject to serve the remainder of the term to which he was sentenced as provided in § 200 of this chapter. The board may require the prisoner to serve only a part of the term to which he was sentenced. If the board does not terminate all or part of the parole, the parolee shall be released from confinement and continue on parole under the terms and conditions the board prescribes. (§ 11 ch 81 SLA 1960)

Sec. 33.15.230. Fixing eligibility for parole at time of sentencing. (a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may

(1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner is eligible for parole, which term shall be at least one-third of the maximum sentence imposed by the court; or

(2) fix the maximum sentence of imprisonment to be served, in which case the court may specify that the prisoner is eligible for parole at the time the board determines.

(b) Upon commitment of a prisoner sentenced to imprisonment under (a) of this section, the commissioner, under such regulations as the board prescribes, shall have a complete study made of the prisoner and shall furnish to the board a summary report together with any recommendations which, in his opinion, would be helpful in determining the suitability of the prisoner for parole. This report may include, but shall not be limited to, data regarding the prisoner's

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previous delinquency or criminal experience, circumstances of his social background, his capabilities, his mental and physical health, and such other factors considered pertinent. The board may make such other investigation as it considers necessary.

(c) Parole officers and government bureaus and agencies shall furnish the board information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

(d) The board may adopt rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners. (§ 12 ch 81 SLA 1960; § 35 ch 43 SLA 1964; § 10 ch 68 SLA 1965; am § 3 ch 110 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "shall be at least" for "may be less than, but snall not be more than" in paragraph (1) of subsection (a).

Editor's note. — Former AS 33.15.230 was repealed by ch. 43, § 35, SLA 1964. Present AS 33.15.230 was added by ch. 68, § 10, SLA 1965 and contains the identical language of the original section.

Denial of eligibility for parole is illegal under this section. Sonnier v. State, Sup. Ct. Op. No. 685 (File No. 1332), 483 P.2d 1003 (1971).

Sentence providing for eligibility for parole only after one-third of 10-year sentence served. — Where the trial judge imposed a sentence of 10 years in prison for rape with the provision that defendant would not be eligible for parole until he had served a full one-third of that sentence, and the transcript revealed that the judge imposed the sentence he did for the purposes of reaffirmation, deterrence, and protection, but not for rehabilitation, the supreme court concluded on the basis of the judge's comments that proper factors were considered and that the judge had a reasoned basis for the sentence imposed. Gordon v. State, Sup. Ct. Op. No. 831 (File No. 1535), 501 P.2d 772 (1972).

Applied in Gullard v. State, Sup. Ct. Op. No. 794 (File No. 1606), 497 P.2d 93 (1972); Newsom v. State, Sup. Ct. Op. No. 909 (File No. 1726), 512 P.2d 557 (1973).

Quoted in Faulkner v. State, Sup. Ct. Op. No. 506 (File No. 885), 445 P.2d 815 (1968); Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971).

Sec. 33.15.240. Applicability to persons on parole or incarcerated. This chapter applies to all persons convicted and sentenced in the superior court and the district courts of this state, and to all persons convicted of a crime punishable under laws enacted by the Alaska Territorial Legislature who were convicted and sentenced before Alaska became a state or before the Alaska state court system was in operation. (§ 13 ch 81 SLA 1960; am § 1 ch 38 SLA 1961; am § 3 ch 24 SLA 1966)

The state parole board has no jurisdiction to hear parole hearings of prisoners convicted under territorial law prior to statehood who are confined in federal penitentiaries. Moody v. State, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963). See also Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964).

Nor has supreme court jurisdiction to hear petition for writ of habeas corpus. — Until some federal court determines that federal authorities are unlawfully exercising their parole authority over a prisoner convicted under Alaska territorial law prior to statehood, whose case has been finally determined, or until such time as the federal authorities relinquish jurisdiction over him, the supreme court has no jurisdiction to hear or consider such prisoner's petition for a writ of habeas corpus. Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also Moody v. State, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

As such prisoners are subject to sole jurisdiction of United States parole board. — A federal prisoner is subject to the sole jurisdiction of the United States

parole board, and therefore not entitled to a parole hearing before the Alaska parole board. Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also Moody v. State, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

State courts generally have no power to require a federal jailer to produce a federal prisoner, and federal authorities would or should honor a writ directed to it or any of its officials only if the petitioner is not exclusively a federal prisoner. Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also Moody v. State, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

There is no law enacted by Congress, nor has the federal government entered into an agreement with the state, transferring jurisdiction over prisoners convicted, whose cases, under territorial statute, were finally determined prior to statehood, to the state parole board. Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also Moody v. State, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

In the absence of some directive from the legislature of the territory of Alaska imposing a duty upon the parole board to assume jurisdiction over applications for parole of prisoners convicted under territorial law prior to statehood whose cases had been finally determined, the supreme court has no jurisdiction, since the Statehood Act, §§ 13, 14, 15, 16, 17, and 18, apply only to the judicial branch of the government and not to the executive, and the parole board is, without question, a branch of the executive department of the government. Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also Moody v. State, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

Sec. 33.15.250. Administrative Procedure Act inapplicable. The Administrative Procedure Act (AS 44.62) does not apply to this chapter. (§ 14 ch 81 SLA 1960)

Sec. 33.15.260. Definitions. In this chapter

(1) "board" means the Board of Parole;

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

(3) "parole" means the release of a prisoner to the community by the parole board before the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(4) "department" means the Department of Health and Social Services. (§ 1 ch 81 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in paragraphs (2) and (4).

Sec. 33.15.270. Short title. This chapter may be cited as the Parole Administration Act. (§ 15 ch 81 SLA 1960)

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

Chapter 20. Pardons and Paroles.

Article

1. Remission of Sentences (§§ 33.20.010—33.20.060)
2. Power of Governor to Grant Pardons, Commutations and Reprieves (§§ 33.20.070—33.20.080)

Sec. 33.20.010. Computation of good time [Effective January 1, 1980]. Notwithstanding AS 12.55.125(f)(3) and (g)(3), each prisoner convicted of an offense against the state and sentenced to imprisonment, whose record of conduct shows that he has faithfully observed the rules of the institution in which he is confined, is entitled to a deduction from his term of imprisonment of one day for every three days of good conduct served. (§ 1 ch 107 SLA 1960; am § 17 ch 166 SLA 1978)

Effect of amendment. — The 1978 amendment, effective January 1, 1980, rewrote this section.

Editor's note. — Section 23, ch. 166, SLA 1978, effective January 1, 1980, in subsection (e), provides: "AS 33.20.010, as re-enacted in sec. 17 of this Act, applies to all persons serving terms of imprisonment in state correctional institutions on or after the effective date of this Act, but is not retroactive in application."

Sec. 33.20.020. Good time.

Repealed by § 21 ch 166 SLA 1978, effective January 1, 1980.

Cross reference. — As to computation of good time, see AS 33.20.010.

Editor's note. — The repealed section derived from § 2, ch. 107, SLA 1960; § 6, ch. 104, SLA 1971.

Cited in McGinnis v. Stevens, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

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Article 1. Remission of Sentences.

Section
10. Computation generally
20. Good time
30. Discharge
40. Released prisoner as parolee
50. Forfeiture for offense
60. Restoration of lost good time

Sec. 33.20.010. Computation generally. (a) Each prisoner convicted of an offense against the state and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subject to punishment, is entitled to a deduction from the term of his sentence beginning with the day on which the sentence starts to run, as follows:

(1) five days for each month, if the sentence is not less than six months and not more than one year;

(2) six days for each month, if the sentence is more than one year and less than three years;

(3) seven days for each month, if the sentence is not less than three years and less than five years;

(4) eight days for each month, if the sentence is not less than five years and less than ten years;

(5) ten days for each month, if the sentence is ten years or more.

(b) When two or more consecutive sentences are served, the basis upon which the deduction is computed is the aggregate of the several sentences. (§ 1 ch 107 SLA 1960)

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

Am. Jur., ALR and C.J.S. references. — 15 Am. Jur., Criminal Law, §§ 443, 459, 520; 39 Am. Jur., Pardon, Reprieve and Amnesty, §§ 81 to 95.

Parole as suspending running of sentence, 27 ALR [illegible].

Withdrawal, modification or denial of good time allowance to prisoner, 127 ALR 1203.

24 C.J.S. Criminal Law § 1582.

Sec. 33.20.020. Good time. (a) A prisoner may, in the discretion of the commissioner of health and social services or his designee, be allowed a deduction from his sentence of not to exceed three days for each month of actual employment in a prison or camp project or activity for the first year or any part of it, and not to exceed five days for each month of any succeeding year or part of it.

(b) In the discretion of the commissioner the same allowance may also be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

(c) The allowance is in addition to commutation of time for good conduct, and under the same terms and conditions and without regard to length of sentence. (§ 2 ch 107 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "commissioner of health and social services" for "commissioner of health and welfare" in subsection (a).

Use of prisoners on public works projects. — A program authorizing the use of state prisoners on a voluntary basis on governmental public works projects is proper under the statutes. 1960 Op. Att'y Gen., No. 22.

Sec. 33.20.030. Discharge. A prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of deduction shall be entered on the commitment by the warden, keeper, or the commissioner. (§ 3 ch 107 SLA 1960)

Sec. 33.20.040. Released prisoner as parolee. (a) A prisoner serving the term or terms for which he was sentenced less good time deductions shall be released unconditionally if there remains less than 180 days to serve under his sentence. If there remains more than 180 days to serve under his sentence a prisoner, upon release, shall be considered as if released on parole until the expiration of the maximum term or terms for which he was sentenced less 180 days.

(b) This section does not prevent delivery of a prisoner to the authorities of a state or the United States entitled to his custody. (§ 4 ch 107 SLA 1960)

Sec. 33.20.050. Forfeiture for offense. If during the term of imprisonment a prisoner commits an offense or violates the rules of the institution, all or any part of his earned good time may be forfeited. (§ 5 ch 107 SLA 1960)

ALR and C.J.S. references. — Withdrawal, modification or denial of good time allowance to prisoner, 127 ALR 1203.

72 C.J.S. Prisons § 21.

Sec. 33.20.060. Restoration of lost good time. The commissioner may restore forfeited or lost good time or such portion of it which he considers proper upon recommendation of the keeper or person in charge of the penal or correctional institution in which the prisoner is incarcerated. (§ 6 ch 107 SLA 1960)

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

ALR and C.J.S. references. — Right to credit for time served under erroneous or void sentence or invalid judgment of conviction necessitating new trial, 35 ALR2d 1283.

72 C.J.S. Prisons § 21.

Article 2. Power of Governor to Grant Pardons, Commutations and Reprieves.

Section
70. Governor may grant pardons, commutations and reprieves
80. Board of parole to investigate applications for executive clemency

Sec. 33.20.070. Governor may grant pardons, commutations and reprieves. The governor may grant pardons, commutations of sentence, and reprieves, and suspend and remit fines and forfeitures in whole or part for offenses against the laws of the State of Alaska or the Territory of Alaska. (§ 1 ch 16 SLA 1961)

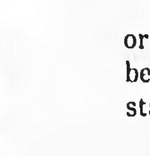
Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 813), 439 P.2d 432 (1968).

ALR references. — Power of executive to pardon one committed for contempt, 23 ALR 524; 26 ALR 21; 38 ALR 171; 63 ALR 226.

Statute conferring on court power as to suspension of sentence as infringement of

power ot executive to grant reprieve and pardon, 26 ALR 400; 101 ALR 1402.
Recovery of fine or penalty after pardon, 26 ALR 1536.
Judicial investigation of pardon by governor, 30 ALR 238; 65 ALR 1471.
Formal requisites of pardon, 34 ALR 212.
Pardon as restoring license or other special privilege forfeited by conviction, 47 ALR 542.
Consent of convict as essential to a pardon, commutation or reprieve, 52 ALR 835.
Validity of and power to grant conditional pardon, 60 ALR 1411, 1413.
Change in sentence after commitment as infringement of pardoning power of executive, 168 ALR 711.
Offenses and convictions covered by pardon, 35 ALR2d 1261.

Sec. 33.20.080. Board of parole to investigate applications for executive clemency. The governor may refer applications for executive clemency to the board of parole. The board shall investigate each case and submit to the governor a report of the investigation, together with all other information the board has regarding the applicant. (§ 2 ch 16 SLA 1961)



Chapter 25. Western Interstate Corrections Compact.

Section
10. Compact enacted
20. Commitment or transfer of inmates under compact
30. Enforcement of compact
40. Board of parole to hold hearings under compact
50. Implementation of compact

Sec. 33.25.010. Compact enacted. The Western Interstate Corrections Compact as contained in this section is enacted into law and entered into on behalf of the State of Alaska with any and all other states legally joining in it in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

ARTICLE I

PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (§ 1 ch 18 SLA 1961)

Sec. 33.25.020. Commitment or transfer of inmates under compact. An agency or officer of the State of Alaska having power to commit or transfer an inmate (as defined in art. II(d) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer the inmate to an institution within or without the State of Alaska if the State of Alaska has entered into a contract or contracts for the confinement of inmates in the institution under art. III of the Western Interstate Corrections Compact. (§ 2 ch 18 SLA 1961)

Sec. 33.25.030. Enforcement of compact. The courts, departments, agencies and officers of the State of Alaska and its subdivisions shall enforce this compact and shall do all things appropriate to carry out its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of reports required by the compact. (§ 3 ch 18 SLA 1961)

Sec. 33.25.040. Board of parole to hold hearings under compact. The Alaska board of parole shall hold such hearings as may be requested by another party state under art. IV (f) of the Western Interstate Corrections Compact. (§ 4 ch 18 SLA 1961)

Sec. 33.25.050. Implementation of compact. The commissioner of health and social services may enter into such contracts on behalf of the State of Alaska as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact under art. III of the compact. No contract is of any force or effect until approved by the commissioner of administration. (§ 5 ch 18 SLA 1961; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "commissioner of health and social services" for "commissioner of health and welfare" in the first sentence.

Chapter 30. Prison Facilities.

Article

1. Establishment, Control and Management (§§ 33.30.010—33.30.080)
2. Commitments (§§ 33.30.090—33.30.190)
3. General Provisions (§§ 33.30.200—33.30.260)

(Effective January 1, 1980)

(3) instigates, promotes, attends, or has a pecuniary interest in an exhibition of fighting animals.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) As used in this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

For construction of former AS 11.40.510, relating to use of live birds as targets, see 1964 Op. Att'y Gen., No. 9.

Am. Jur. and ALR references. — 2 Am. Jur., Animals, § 162 et seq.

Cruelty in trapping animals, 79 ALR 1308.

Sec. 11.61.150. Obstruction of highways. (a) A person commits the crime of obstruction of highways if he knowingly

(1) places, drops, or permits to drop on a highway any substance that creates a substantial risk of physical injury to others using the highway; or

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard.

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the substance from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Article 2. Weapons and Explosives.

Section
200. Misconduct involving weapons in the first degree
210. Misconduct involving weapons in the second degree
220. Misconduct involving weapons in the third degree
230. Possession of burglary tools
240. Criminal possession of explosives
250. Unlawful furnishing of explosives

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if he

(Effective January 1, 1980)

(1) knowingly possesses a firearm capable of being concealed on his person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to a person whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into his body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a) (1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under the National Firearms Act (26 U.S.C. sec. 5801 et. seq.).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of his employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(Effective January 1, 1980)

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

Editor's note. — The cases cited in the note below were decided under former AS 11.55.030 and 11.55.040.

Constitutionality of former statute prohibiting possession by a convict. — See United States v. Farwell, 11 Alas. 507, 76 F. Supp. 35 (D. Alas. 1948).

Legislative intent. — In former AS 11.55.030, the legislature was trying to prevent an individual who had previously shown himself capable of a crime of violence from being in possession of a concealed weapon. 1962 Op. Att'y Gen., No. 19.

The purpose of the felon in possession statute was to prevent the concealment and use of firearms in violent crime. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Former section limited to crimes of violence or potential violence. — See 1962 Op. Att'y Gen., No. 19.

Former section included crime committed in another state. — See United States v. Farwell, 11 Alas. 507, 76 F. Supp. 35 (D. Alas. 1948).

The term "concealed" means that the weapon is not discernible through ordinary observation by persons coming into proximity with the person carrying it, as persons do in the ordinary and usual associations of life. McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

A weapon is concealed if it is hidden from ordinary observation. It need not be absolutely invisible to other persons. McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Actual possession was not required under former statute. — See Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); Gordon v. State, Sup. Ct. Op. No. 1126 (File No. 2204), 533 P.2d 25 (1975).

A revolver need not be fully assembled or immediately capable of firing in order to qualify as a weapon. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

And it is immaterial whether the gun is loaded and ready for immediate use. — See Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Furnishing ammunition included under former statute. — See In re Robson, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

It was necessary to show a prior conviction in order to prove one essential element of the crime of possession of a firearm by a person previously convicted of a felony. Mead v. State, Sup. Ct. Op. No. 602 (File No. 804), 445 P.2d 229 (1968), cert. denied, 396 U.S. 855, 90 S. Ct. 117, 24 L. Ed. 2d 104 (1969).

Conviction may be based on circumstantial evidence. — Conviction of "felon in possession" may be based on circumstantial evidence of possession. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

It was error to refuse to give an instruction defining the term "concealed." McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Sentence for possession by convict upheld. — See Deveroux v. State, Sup. Ct. Op. No. 1259 (File No. 2636), 548 P.2d 1296 (1976).

(Effective January 1, 1980)

Sec. 11.61.210. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if he

(1) possesses on his person a firearm while his physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into his body;

(2) discharges a firearm from, on, or across a highway; or

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person.

(b) Misconduct involving weapons in the second degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

For cases construing former statute prohibiting careless use of firearms, see Giles v. United States, 10 Alas. 455, 144 F.2d 860 (9th Cir. 1944); Burke v. United States, 282 F.2d 763 (9th Cir. 1960).

For case construing former statute prohibiting flourishing, pointing or discharging firearm in a public place, see Wacek v. State, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

Am. Jur. and ALR references. — 56 Am. Jur., Weapons and Firearms, § 7.

Use of the firearm without intent to inflict injury, 5 ALR 603; 23 ALR 1554.

Death from discharge of firearms, 55 ALR 921.

Sec. 11.61.220. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if he

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on his person;

(2) knowingly possesses a loaded firearm on his person in any place where intoxicating liquor is sold for consumption on the premises; or

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of his parent or guardian.

(b) In a prosecution under (a)(1) of this section, it is an affirmative defense that the defendant, at the time of his possession, was

(1) in his dwelling or on property appurtenant to his dwelling; or

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(c) The provisions of (a)(1) and (2) of this section do not apply to a peace officer acting within the scope and authority of his employment.

(d) In a prosecution under (a)(2) of this section, it is a defense that the defendant, at the time of his possession, was

(1) on business premises owned by or leased to him; or

(2) on business premises in the course of his employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it.

(Effective January 1, 1980)

(f) For purposes of (a)(2) of this section, a firearm is loaded if the firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge.

(g) Misconduct involving weapons in the third degree is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Am. Jur., ALR and C.J.S. references. — 56 Am. Jur., Weapons and Firearms, § 1 et seq.

Exception in statute forbidding carrying of weapons, as to person on his own premises, 31 ALR 1128.

Offense of carrying weapon on person as affected by place where defendant was at the time, 73 ALR 839.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment, 43 ALR2d 492.

94 C.J.S., Weapons, § 1 et seq.

Sec. 11.61.230. Possession of burglary tools. (a) A person commits the crime of possession of burglary tools if he possesses a burglary tool with intent to use or permit use of the tool in the commission of

(1) burglary in any degree;

(2) a crime referred to in AS 11.46.130(a)(3); or

(3) theft of services.

(b) As used in this section, "burglary tools" means

(1) nitroglycerine, dynamite, or any other tool, instrument, or device adapted or designed for use in committing a crime referred to in (1) - (3) of (a) of this section; or

(2) any acetylene torch, electric arc, burning bar, thermal lance, oxygen lance, or other similar device capable of burning through steel, concrete, or other solid material.

(c) Possession of burglary tools is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Sec. 11.61.240. Criminal possession of explosives. (a) A person commits the crime of criminal possession of explosives if he possesses or manufactures an explosive substance or device and intends to use that substance or device to commit a crime.

(b) Criminal possession of explosives is a

(1) class A felony if the crime intended is murder in any degree or kidnapping;

(2) class B felony if the crime intended is a class A felony;

(3) class C felony if the crime intended is a class B felony;

(4) class A misdemeanor if the crime intended is a class C felony;

(5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1978)

Sec. 11.61.250. Unlawful furnishing of explosives. (a) A person commits the crime of unlawful furnishing of explosives if he furnishes an explosive substance or device to another knowing that the person intends to use the substance or device to commit a crime.

Sandra

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

BOARD OF PAROLE

ALASKA BOARD OF PAROLE
POUCH H-01E
JUNEAU, ALASKA 99811
PHONE: (907) 465-3384

January 31, 1980

Honorable Charles H. Parr
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch Y
Juneau, Alaska 99811

Dear Chairman Parr:

Enclosed with this letter are the ten (10) copies of the Alaska Parole Guidelines report you requested on November 30, 1979. I apologize for not getting them to you at an earlier date, but we are just beginning to get a few copies from central duplicating. I guess all of the other printing work of the State has a higher priority.

I invite you and your committee and staff members to review the text of the report which consists of about the first 140 pages, and I will be happy to try to answer any questions any of you might have at the hearings next week or at your convenience before or after that time. Although the report does not give us all of the data we would like to have, it is at least a start in the right direction.

Feel free to contact me if you have any specific questions before the hearings next week.

Sincerely yours,

Samuel H. Trivette
Executive Director

SHT/vh
cc: Allen Korhonen
Deputy Commissioner

06-F36LH

TO: Charlie Parr, Chairman, and Members of the House Judiciary Committee

FROM: Margaret W. Berck, Staff

DATE: March 5, 1980

RE: Possession of a firearm by a person who has been convicted of a felony--State and Federal law.

I. STATE LAW.

State law under the new criminal code (see statutes attached) prohibits the possession of a firearm capable of being concealed by a person after having been convicted of a felony. This offense constitutes a class C felony (five years). An affirmative defense to this crime is that five years have lapsed since the unconditional discharge from the prior conviction.

Hence, existing state law would not prohibit the Committee from permitting certain parolees the right to possess a rifle for subsistence purposes.

II. FEDERAL LAW.

Federal law, 18 App.1201, et.seq., and 18 USCA 922, prohibit the possession of a firearm which affects interstate commerce by a person who has been convicted of a felony. The courts have interpreted "affecting interstate commerce very broadly. An exemption is provided for both of these statuory provisions in 18 USCA 925. Exemptions will not be provided for a person who had commited a felony involving the use of a firearm or other weapon. (see copies of statutes attached).

19. Sentence

Where defendant, who had been convicted on six counts of making false and fictitious statements in connection with acquisition of firearms, one count of receipt by a convicted felon of a firearm transported in interstate commerce and five counts of possession by convicted felon of firearms transported in interstate commerce, received the same concurrent sentence on each count and convictions on the six counts involving false statements were valid, validity of convictions on counts charging receipt and possession of firearms would not be considered under concurrent sentence doctrine. U. S. v. Andrino, C.A.Ariz.1974, 497 F.2d 1103, certiorari denied 95 S.Ct. 021, 419 U.S. 1048, 42 L.Ed.2d 642.

Although petitioner, who was convicted of two counts of concealing and storing stolen firearms moving in interstate commerce when in fact only one offense had been committed, received a sentence of three years on one count and two years on other count and thus total penalty was within maximum five-year range permitted by this section, in view of fact that it was possible that sentencing judge was influenced by his belief that two offenses rather than one had been committed, case would be remanded with directions to resentence defendant. McFarland v. Pickett, C.A.Ind.1972, 469 F.2d 1277.

Limitations placed on concurrent sentences and suspended sentences by subsec. (c) of this section providing that person, who uses firearms to commit felony for which he may be prosecuted in United States court or carries firearm unlawfully during commission of felony for which he may be prosecuted in such court, shall be sentenced to term of imprisonment in addition to punishment provided for commission of such felony refers only to second and subsequent offenses under this section. U. S. v. Sudduth, C.A.Colo.1972, 457 F.2d 1198.

Where Congress does not fix punishment for federal offense clearly, principle of lenity must be applied and all doubt resolved against turning a single transaction into multiple offenses. U. S. v. Melville, D.C.N.Y.1970, 309 F.Supp. 774.

20. Harmless or prejudicial error

In prosecution for currency counterfeiting offenses and for unlawfully carrying a firearm during commission of federal felony, claimed errors, including the profanities on tapes, remarks of prosecutor and remarks of trial judge did not rise to level of reversible error, even when considered on a cumulative basis. U. S. v. Howard, C.A.Ark.1974, 504 F.2d 1281.

Although it was error to admit hearsay statement of customs agent that when he and a fellow officer arrested defendant the fellow officer, who did not testify, handed agent a pistol and told agent that officer had removed it from the person of defendant, error was harmless in light of defendant's later admission from the stand that an officer who did not testify got the pistol out of his belt when he arrested him. U. S. v. Rodriguez, C.A.Tex.1974, 495 F.2d 302.

§ 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter shall not apply with respect to the transportation, shipment, receipt, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active

duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Secretary of the Treasury to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Secretary to be consistent with the provisions of this chapter and other applicable Federal and State laws and published ordinances, the Secretary may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraphs (3) and (4) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on an application for relief filed

pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Secretary may authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary may permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

Added Pub.L. 90–351, Title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub.L. 90–618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1224.

Historical Note

References in Text. The National Firearms Act, referred to in subsec. (c), is classified to section 5801 et seq. of Title 26, Internal Revenue Code.

Section 5845(b) of the Internal Revenue Code of 1954, referred to in subsec. (d) (2), is classified to section 5845(b) of Title 26.

Section 5845(a) of the Internal Revenue Code of 1954, referred to in subsec. (d) (3), is classified to section 5845(a) of Title 26.

1968 Amendment. Subsec. (a). Pub.L. 90-618 redesignated existing provisions as par. (1), and, as so redesignated, made minor changes in phraseology, and added pars. (2) to (5).

Subsec. (b). Pub.L. 90-618 added licensed collectors to the enumerated list of licensees.

Subsec. (c). Pub.L. 90-618 substituted "imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and" for "under this chapter", "to act in a manner dangerous to public safety" for "to conduct his operations in an unlawful manner," and "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" for "licensee".

Subsec. (d). Pub.L. 90-618 made minor changes in phraseology, subjected ammunition to the authority of the Secretary in the material preceding par. (1), substituted "section 5845(b)" for "section

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.

(h) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to prop-

APPENDIX

UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

Pub.L. 90-351, Title VII, §§ 1201-1203, June 19, 1968, 82 Stat. 236

§ 1201. Congressional findings and declaration

The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

(1) a burden on commerce or threat affecting the free flow of commerce,

(2) a threat to the safety of the President of the United States and Vice President of the United States,

(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

As amended Pub.L. 90-618, Title III, § 301(a)(1), Oct. 22, 1968, 82 Stat. 1236.

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1. Constitutionality

Section 1202 of this Appendix prohibiting convicted felons from receiving or possessing firearms did not violate defendant's right under U.S.C.A.Const. Amend. 2 to bear arms. U. S. v. Wiley, D.C.Minn.1970, 309 F.Supp. 141, affirmed 438 F.2d 773.

2. Generally

Main objective of this Appendix was to restrict the "possession" of firearms by certain groups of people. U. S. v. Falletta, C.A.Ala.1975, 523 F.2d 1198, rehearing denied 525 F.2d 1407.

Finding by Congress that possession of guns by those dishonorably discharged from the armed services is hazardous was rational, and application of prohibition to one who had been discharged under less than honorable circumstances over 25 years previously was not unreasonable. U. S. v. Day, C.A.Ky.1973, 476 F.2d 562.

Legislative history of this section, and sections 1202 and 1203 of this Appendix banning possession of firearms by persons deemed unfit, and language of congressional declaration of intent in enacting this section, and sections 1202 and 1203 of this Appendix established that the policies were to prevent crime and menaces to society caused by crime and that Congress intended that these policies be considered before previously convicted felons are allowed to possess firearms. U. S. v. Castellana, D.C.Fla.1977 433 F. Supp. 1309.

It was irrelevant in determining constitutionality of section 1202 of this Appendix prohibiting possession of firearms by convicted felons that fewer than a majority of persons within the prohibited class would use weapon in manner in or affecting commerce. U. S. v. Wiley, D.C. Minn.1970 309 F.Supp. 141, affirmed 438 F.2d 773.

Rational basis existed for congressional finding that possession of firearms by convicted felons affected commerce, and classification created as means to eliminate that evil was appropriate. Id.

3. Definition

Under section 1202 of this Appendix prescribing punishment for convicted felon who receives, possesses or transports in commerce or affecting commerce any firearm, phrase "in commerce or affecting commerce" is mere surplusage and is not essential element of receiving and possessing and in any event phrase modifies only word "transports", and phrase need not appear in indictment charging receiving and possessing firearm. U. S. v. Wiley, D.C.Minn.1970, 309 F.Supp. 141, affirmed 438 F.2d 773.

§ 1202. Receipt, possession, or transportation of firearms—Persons liable; penalties for violations

(a) Any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two yea. . . both.

Employment; persons liable; penalties for violations

(b) Any individual who to his knowledge and while being employed by any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States, and who, in the course of such employment, receives, possesses, r transports in commerce or affecting commerce, after the date of the enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

Definitions

(c) As used in this title—

(1) "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

(2) "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less;

(3) "firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

(4) "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

(5) "handgun" means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

(6) "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and de-

signed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

As amended Pub.L. 90–618, Title III, § 301(a)(2), (b), Oct. 22, 1968, 82 Stat. 1236.

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½. Historical

This section prohibiting possession of firearms by one who has been dishonorably discharged from the armed services, which was adopted after considerable debate on the floor of the Senate, was not fatally tainted on theory that in absence of hearings or committee reports there was no support for legislative findings that such possession constitutes a burden on commerce and is an impediment or threat to the exercise of free speech. U. S. v. Day, C.A.Ky.1973, 476 F.2d 562.

Legislative history of this section prohibiting possession of firearm by one who has been convicted of felony reflects intent of Congress to make it federal crime for person previously convicted of felony to possess firearm under all circumstances even in his own home, except when granted that right in pardon. Stevens v. U. S, C.A.Ky.1971, 440 F.2d 144.

¾. Construction

Degree to which this section incorporates or refers to state law is question of federal statutory construction. U. S. v. Pricepaul, C.A.Cal.1976, 540 F.2d 417.

Question whether final conviction is required to bring into play prohibition against possession of a weapon by one convicted of a felony is a question of construction; classification may lawfully be based upon a mere indictment. U. S v. Samson, C.A.Me.1976, 533 F.2d 721, certiorari denied 97 S.Ct. 126, 429 U.S. 845, 50 L.Ed.2d 116.

Section 2(a) of this title, relating to aiding and abetting, applies with full force to one who furnishes a firearm to a person prohibited by subsection (a) of this section from receiving it, to wit, a convicted felon, a person dishonorably discharged from the armed forces, one who has been adjudged mentally incompetent, one who has renounced his United States citizenship, or an alien who is illegally or unlawfully in the United States. U. S. v. Falletta, C.A.Ala.1975, 523 F.2d 1198, rehearing denied 525 F.2d 1407.

Statutory language, legislative history, and statutory scheme may be looked to in construction. U. S. v. Kinsley, C.A. Iowa 1975, 518 F.2d 665.

⅞. —— With other laws

By prohibiting possession of a firearm by a convicted felon, Congress intended to punish as one offense all of the acts of dominion which demonstrate a continuing possessory interest in a firearm. U. S. v. Jones, C.A.Ky.1976, 533 F.2d 1387. Certiorari denied 97 S.Ct. 2919, 431 U.S. 964, 53 L.Ed.2d 1059.

Simultaneous enactment of this section relating to receipt and possession of firearms after having been convicted of a felony and that provision of Gun Control Act of 1968, section 922 of this title, prohibiting receipt of firearms by a felon disclosed that government was free to charge defendant, a person who had been convicted of a felony and who was accused of receiving and possessing firearms, under either statute. U. S. v. Phillips, C.A.Mo.1975, 522 F.2d 388.

15/16. Purpose

Receiving provision of this section prohibiting certain persons from receiving, possessing or transporting firearms encompasses mere acquisition by felon of firearm, since section is designed for purpose of preventing felons from acquiring firearms, and it is not synonymous with possession charge, since receiving requires more than proof of possession but also proof of time of receipt and venue. U. S. v. Winer, C.A.Ark.1975, 519 F.2d 256.

convicted of a felony constituted only one offense under this section and, consequently, he could only be sentenced as if he had only committed one offense. Id.

A convicted felon's receipt of separate firearms on separate occasions does not constitute only one offense simply because the weapons are kept in a single possession and are ultimately seized at the same time and on the same premises; if a convicted felon receives a firearm on one occasion and later receives another firearm on another occasion, he is guilty of two offenses, assuming that prior to the respective receipts the two guns had moved in interstate commerce. U. S. v. Steeves, C.A.Minn.1975, 525 F.2d 33.

20. Pre-emption

Where a state, pursuant to its police powers, has enacted legislation expressly permitting possession of firearms by convicted felons under very limited circumstances, Congress did not, by enacting this section, intend to nullify effect of such legislation except in case of an irreconcilable conflict between federal and state law. Hyland v. Fukuda, D.C.Hawaii 1975, 402 F.Supp. 84.

21. Venue

In prosecution for unlawful receipt of revolver that had been stolen in Arkansas and thereafter transported into Eastern District of Missouri, assuming that Government could not prove venue, as such, merely by showing that defendant admitted purchasing gun in St. Louis, defendant's statement was adequately corroborated, since there was nothing unusual or inherently untrustworthy in statement, it was made voluntarily, it was exculpatory at time it was made, it provided reasonable explanation of defendant's acquisition of weapon, defendant was resident of St. Louis and weapon was found in his home. U. S. v. Wolf, C.A.Mo.1976, 535 F.2d 476, certiorari denied 97 S.Ct. 315, 429 U.S. 920, 50 L.Ed.2d 287.

Where it was charged that defendant had unlawfully received revolver that had been stolen in Arkansas and transported into Eastern District of Missouri, corpus delicti of offense was unlawful receipt of weapon by defendant and place at which he received gun was relevant only to question of venue and, while Government was required to prove venue, it was not required to do so by independent evidence beyond reasonable doubt and it could rely on circumstantial evidence together with defendant's declaration that he had purchased the gun in St. Louis. Id.

22. Limitations

Evidence showing that pistol in defendant's possession was stolen more than five years before indictment was filed charging willfully and knowingly receiving a firearm was insufficient to show that defendant received the pistol within a period of time not barred by the statute of limitations. U. S. v. Wolf, D.C.Mo.1975, 405 F.Supp. 731, affirmed 535 F.2d 476, certiorari 97 S.Ct. 315, 429 U.S. 920, 50 L.Ed.2d 287.

Where revolver alleged to be in defendant's possession on or about March 16, 1975 was stolen in Arkansas on March 10, 1973, prosecution was not barred by five-year statute of limitations. Id.

23. Stipulations

Where there has been a stipulation as to material facts those facts are deemed conclusively established. U. S. v. Houston, C.A.Cal.1976, 547 F.2d 104.

Where defendant, in prosecution under this section stipulated that he had been convicted of a felony in 1972, stipulation related to an essential element of the crime and was to be regarded by the jury as a fact conclusively proved, and therefore, stipulation was properly submitted to jury. Id.

24. Questions for jury

In prosecution under this section, whether rifle which defendant received had previously traveled in interstate commerce was a question of fact for the jury. U. S. v. Houston, C.A.Cal.1975, 547 F.2d 104.

25. Intent

Where principal defense was that not defendant but codefendant alone bought stolen weapons and ammunition and codefendant so testified, court did not err in admitting evidence of other quite similar illegal transactions between three burglars and three coconspirators in disposition of firearms and ammunitions, since evidence tended to establish defendant's intentions to engage widely and repeatedly in business of dealing in stolen goods, including firearms and ammunition, and evidence was clearly relevant to defense of lack of criminal intent. U. S. v. Dudek, C.A.Ohio 1977, 560 F.2d 1288, certiorari denied 98 S.Ct. 774, 434 U.S. 1037, 54 L.Ed.2d 786, rehearing denied 98 S.Ct. 1288, 434 U.S. 1089, 55 L.Ed.2d 790.

Specific intent is not required to sustain conviction under this section. U. S. v. Houston, C.A.1976, 547 F.2d 104

§ 1203. Exemptions

This title shall not apply to—

(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

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1. Persons within section

Provisions of section 1201 et seq. of this appendix prohibiting the person who has been convicted of a felony from receiving or possessing a firearm in commerce would preclude convicted felon who had served his prison term from carrying a firearm as an adult corrections officer employed by state, despite exemption therein with respect to firearms carried by prison trusties, and despite fact that HRS § 134-11(3) expressly exempted state employees from the state's prohibition against possession of firearms by certain felons. Hyland v. Fukuda, C.A.Hawaii 1978, 580 F.2d 977.

(Effective January 1, 1980)

(3) instigates, promotes, attends, or has a pecuniary interest in an exhibition of fighting animals.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) As used in this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

For construction of former AS 11.40.510, relating to use of live birds as targets, see 1964 Op. Att'y Gen., No. 9.

Am. Jur. and ALR references. — 2 Am. Jur., Animals, § 162 et seq.

Cruelty in trapping animals, 79 ALR 1308.

Sec. 11.61.150. Obstruction of highways. (a) A person commits the crime of obstruction of highways if he knowingly

(1) places, drops, or permits to drop on a highway any substance that creates a substantial risk of physical injury to others using the highway; or

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard.

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the substance from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Article 2. Weapons and Explosives.

Section
200. Misconduct involving weapons in the first degree
210. Misconduct involving weapons in the second degree
220. Misconduct involving weapons in the third degree
Section
230. Possession of burglary tools
240. Criminal possession of explosives
250. Unlawful furnishing of explosives

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if he

(1) knowingly possesses a firearm capable of being concealed on his person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to a person whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into his body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a) (1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under the National Firearms Act (26 U.S.C. sec. 5801 et. seq.).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of his employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

Editor's note. — The cases cited in the note below were decided under former AS 11.55.030 and 11.55.040.

Constitutionality of former statute prohibiting possession by a convict. — See United States v. Farwell, 11 Alas. 507, 76 F. Supp. 35 (D. Alas. 1948).

Legislative intent. — In former AS 11.55.030, the legislature was trying to prevent an individual who had previously shown himself capable of a crime of violence from being in possession of a concealed weapon. 1962 Op. Att'y Gen., No. 19.

The purpose of the felon in possession statute was to prevent the concealment and use of firearms in violent crime. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Former section limited to crimes of violence or potential violence. — See 1962 Op. Att'y Gen., No. 19.

Former section included crime committed in another state. — See United States v. Farwell, 11 Alas. 507, 76 F. Supp. 35 (D. Alas. 1948).

The term "concealed" means that the weapon is not discernible through ordinary observation by persons coming into proximity with the person carrying it, as persons do in the ordinary and usual associations of life. McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

A weapon is concealed if it is hidden from ordinary observation. It need not be absolutely invisible to other persons. McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Actual possession was not required under former statute. — See Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); Gordon v. State, Sup. Ct. Op. No. 1126 (File No. 2204), 53? P.2d 25 (1975).

A revolver need not be fully assembled or immediately capable of firing in order to qualify as a weapon. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

And it is immaterial whether the gun is loaded and ready for immediate use. — See Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Furnishing ammunition included under former statute. — See In re Robson, Sup. Ct. Op. No. 1578 (File No. 3448), 575 P.2d 771 (1978).

It was necessary to show a prior conviction in order to prove one essential element of the crime of possession of a firearm by a person previously convicted of a felony. Mead v. State, Sup. Ct. Op. No. 502 (File No. 804), 445 P.2d 229 (1968), cert. denied, 396 U.S. 855, 90 S. Ct. 117, 24 L. Ed. 2d 104 (1969).

Conviction may be based on circumstantial evidence. — Conviction of "felon in possession" may be based on circumstantial evidence of possession. Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

It was error to refuse to give an instruction defining the term "concealed." McKee v. State, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Sentence for possession by convict upheld. — See Deveroux v. State, Sup. Ct. Op. No. 1259 (File No. 2636), 548 P.2d 1296 (1976).

(Effective January 1, 1980)

Sec. 11.61.210. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if he

(1) possesses on his person a firearm while his physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into his body;

(2) discharges a firearm from, on, or across a highway; or

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person.

(b) Misconduct involving weapons in the second degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

For cases construing former statute prohibiting careless use of firearms, see Giles v. United States, 10 Alas. 455, 144 F.2d 860 (9th Cir. 1944); Burke v. United States, 282 F.2d 763 (9th Cir. 1960).

For case construing former statute prohibiting flourishing, pointing or discharging firearm in a public place, see Wacek v. State, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

Am. Jur. and ALR references. — 56 Am. Jur., Weapons and Firearms, § 7.

Use of the firearm without intent to inflict injury, 5 ALR 603; 23 ALR 1554.

Death from discharge of firearms, 55 ALR 921.

Sec. 11.61.220. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if he

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on his person;

(2) knowingly possesses a loaded firearm on his person in any place where intoxicating liquor is sold for consumption on the premises; or

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of his parent or guardian.

(b) In a prosecution under (a)(1) of this section, it is an affirmative defense that the defendant, at the time of his possession, was

(1) in his dwelling or on property appurtenant to his dwelling; or

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(c) The provisions of (a)(1) and (2) of this section do not apply to a peace officer acting within the scope and authority of his employment.

(d) In a prosecution under (a)(2) of this section, it is a defense that the defendant, at the time of his possession, was

(1) on business premises owned by or leased to him; or

(2) on business premises in the course of his employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it.

(Effective January 1, 1980)

(f) For purposes of (a)(2) of this section, a firearm is loaded if the firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge.

(g) Misconduct involving weapons in the third degree is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Am. Jur., ALR and C.J.S. references. — 56 Am. Jur., Weapons and Firearms, § 1 et seq.

Exception in statute forbidding carrying of weapons, as to person on his own premises, 31 ALR 1128.

Offense of carrying weapon on person as affected by place where defendant was at the time, 73 ALR 839.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment, 43 ALR2d 492.

94 C.J.S., Weapons, § 1 et seq.

Sec. 11.61.230. Possession of burglary tools. (a) A person commits the crime of possession of burglary tools if he possesses a burglary tool with intent to use or permit use of the tool in the commission of

(1) burglary in any degree;

(2) a crime referred to in AS 11.46.130(a)(3); or

(3) theft of services.

(b) As used in this section, "burglary tools" means

(1) nitroglycerine, dynamite, or any other tool, instrument, or device adapted or designed for use in committing a crime referred to in (1) - (3) of (a) of this section; or

(2) any acetylene torch, electric arc, burning bar, thermal lance, oxygen lance, or other similar device capable of burning through steel, concrete, or other solid material.

(c) Possession of burglary tools is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Sec. 11.61.240. Criminal possession of explosives. (a) A person commits the crime of criminal possession of explosives if he possesses or manufactures an explosive substance or device and intends to use that substance or device to commit a crime.

(b) Criminal possession of explosives is a

(1) class A felony if the crime intended is murder in any degree or kidnapping;

(2) class B felony if the crime intended is a class A felony;

(3) class C felony if the crime intended is a class B felony;

(4) class A misdemeanor if the crime intended is a class C felony;

(5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1978)

Sec. 11.61.250. Unlawful furnishing of explosives. (a) A person commits the crime of unlawful furnishing of explosives if he furnishes an explosive substance or device to another knowing that the person intends to use the substance or device to commit a crime.

Mr. Allan J. Hoth
1752 Cottenwood
Fairbanks, Alaska 99701

Phone 456-7021

Mr. [illegible],

It was very interesting to read that four members of the House Judiciary Committee are attempting to examine the workings of the state parole board and the system.

Having spent approximately 15 years in various prisons, including Marion, Illinois, the most maximum in the U.S., I have since 1969 made a fairly successful adjustment to a free society. This is in spite of, not because of the parole system. As I was once ruled not rehabilitatable this I suppose could be considered

an accomplishment.

I do have very strong feelings about Alaska's present system. I do feel that there is need for a change, and also; feel I could offer you some usefull information that may help you in your present review of the parole system.

If your review is still not over by the next time you are in fairbanks I would be more than happy to talk with you concerning this matter.

Respectfully

Allan J. Holth

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM   March 11, 1980

SUBJECT: Bradley opinion on parole board appointments

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

I have read the opinion on this prepared by Richard A. Bradley of this office and agree with the reasoning and conclusions he reached.

BGB:jdn

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M   March 11, 1980

SUBJECT: Executive appointments and the Separation of Powers Doctrine (Work Order No. 8303)

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Margaret Berck by her memorandum of March 6, 1980 has sought our opinion on the following question.

The House Judiciary Committee wishes to propose amendments to the existing laws relating to parole of offenders. Under a proposal in the draft to achieve these amendments, a "panel of individuals" would propose three names for the consideration of the governor for each vacancy on the parole board. The governor would be limited in making his appointment to the individuals nominated by the "panel." While we are advised that the composition of the panel is not firmly determined by the judiciary committee, the committee appears to be considering both ex officio public officers and officers of private organizations for the panel at this time.

Given this statutory framework, we have been asked whether such a concept would violate the separation of powers doctrine.

In our opinion, it would.

We start with the premise that the function of the parole board is unarguably an "executive function," which under Article III, sec. 1 of the Alaska Constitution is allocated to the executive branch. The status of the parole board as a quasi-judicial agency does not alter this premise; such agencies form a part of the executive branch. See Article III, secs. 22 and 26.

We believe that the rece opinions of the Supreme Court of Alaska and of the Supreme Court of the United States force our conclusion on the separation of powers question.

The recent case of Bradner v. Hammond, 553 P.2d 1 (1976) contains perhaps the most useful view of the Alaska Supreme Court on the separation of powers doctrine. Because it is so significant for your question, we have quoted from it extensively.

> "In Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975), we observed that '[t]hose who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative, and the judicial.' Analyzing this tripartite form of government provided for Alaska, this court concluded, in Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975), that . . . it can be fairly implied that this state does recognize the separation of powers doctrine.
>
> * * *
>
> "A problem inherent in applying the doctrine of "separation of powers" stems from the fact that the doctrine is descriptive of only one facet of American government. The complementary doctrine of checks and balances must of necessity be considered in determining the scope of the doctrine of the separation of powers.
>
> * * *
>
> "In the instant appeal, the parties, in recognition of the controlling nature of the issue, dispute the meaning of the doctrine of separation of powers, and its implication for the determination as to whether Chapter 82 is violative of Alaska's constitution. In our view, the doctrine is of importance to the resolution of the merits of this appeal, for if the doctrine clearly precludes legislative intervention (by confirmation) in the appointment of executive officials, or requires 'strict departmentalization,' then Chapter 82, which purports to authorize legislative 'meddling' in the exercise of an executive power, is unconstitutional because it would be violative of separation of powers requirements.

"In determining if Chapter 82 violates the doctrine of separation of powers, which is implicit in Alaska's constitution, it is necessary to answer whether the appointment of executive officers is a legislative or executive function.

* * *

"Appellee [Hammond] contends that the appointment of executive officers is an executive function. We find appellee's contention most pursuasive. In addition to vesting the executive power of the state in the governor, Section 16 of Article III provides that '[t]he governor shall be responsible for the faithful execution of the laws.' In view of the responsibilities imposed by Section 16, and the authority granted by Section 1, the governor is necessarily clothed with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska. Thus we conclude that the appointment of executive officers is an executive function; for without such a power, the responsiblity for executing executive duties would be diffused and the goal of separation of branches of government, avoiding too great a concentration of power in one branch, would be defeated.

* * *

"[I]t is then necessary to determine the nature of the legislature's confirmation powers. Here we are in agreement with appellee's analysis that under Alaska's constitution confirmation is a specific attribute of the appointment power of the executive. Other courts which have been called on to resolve this issue have been unanimous in their holdings that confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which in turn has been delegated in some specific instances by constitution to the legislative branch of government.

"In light of the nature of the legislature's power of confirmation, the question whether Sections 25 and 26 of Article III describe the outer limits of the legislature's confirmation authority, or whether the legislature may by statute require confirmation of other high-level, policy making officials within the executive branch, admits of but one resolution. As to this

> issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. Thus we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.
>
> "The lack of ambiguity in Sections 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision." (Emphasis and bracketed material added, footnotes omitted).

While the Bradner case did not address the question whether the executive power of appointment could be limited to nominations by a panel, it did address the question whether the legislature retained any inherent power to participate in the executive power of appointment. In our view, its statement that the "express provisions" of Article III state the "maximum parameters" of the legislature's "checks" on the governor's power to appoint subordinate executive officers constitutes a clear statement on the power of the legislature to narrow the executive power to appoint by the use of a nominating panel or the use of any other device not contained in the executive or the legislative articles.

An opinion of the U. S. Supreme Court issued about the same time is consistent. See, Buckley v. Valeo, 424 U.S. 1 (1976).

The Buckley case, as you know, concerned the regulations and the constitutional status of the Federal Election Campaign Act's regulation of Federal election campaigns. At the time the Supreme Court decision was issued, it was said to be the longest opinion in U. S. Supreme Court history: it covered a lot of points.

Among these was the constitutionality of the appointment of the members of the Federal Election Commission. It was composed of six members, four of whom were appointed by

Congress. The appointments were challenged under the separation of powers doctrine: "Congress is precluded under [that] principle . . . from vesting in itself the authority to appoint those who will exercise such . . . wide-ranging rule-making and enforcement powers with respect to the substantive provisions of the Act. . . ."

The Appointments Clause of the U. S. Constitution [Article II, sec. 2, cl. 2] grants the President the power to make appointments of the "Officers of the United States." It was argued that this provision is the exclusive method by which those charged with executing the laws of the United States may be chosen.

> "If the legislature [Congress] wishes the Commission to exercise all of the conferred powers, then its members are in fact 'Officers of the United States' and must be appointed under the Appointments Clause. But if Congress insists upon retaining the power to appoint, then the members of the Commission may not discharge those many functions of the Commission which may be performed only by 'Officers of the United States,' as that term must be construed within the doctrine of the separation of powers."

The Supreme Court also addressed the argument that because the Congress has been given the explicit authority to legislate in a particular area, it must have the power to appoint those who will administer the regulatory statute. The Court rejected the argument as "both novel and contrary to the language of the Appointments Clause."

> "Unless their selection is elsewhere provided for, <u>all</u> officers of the United States are to be appointed in accordance with the Clause. Principal officers are selected by the President with the advice and consent of the Senate. Inferior officers Congress may allow to be appointed by the President alone, by the heads of departments, or by the judiciary. No class or type of officer is excluded because of its special functions. The President appoints judicial as well as executive officers. Neither has it been disputed -- and is apparently not now disputed -- that the Clause controls the appointment of the members of a typical administrative agency even though its functions, as this Court recognized in <u>Humphrey's Executor v. United States</u>, 295 U.S. 602, 624 (1935), may be 'predominantly quasi-judicial and quasi-legislative' rather than executive. The Court in

> that case carefully emphasized that although the members of such agencies were to be independent of the executive in their day-to-day operations, the executive was not excluded from selecting them."

Finally, the Court quoted from Myers v. United States, 272 U.S. 52 (1926). In that case the Court upheld the authority of the President to remove an officer he was initially authorized to appoint. The Court said:

> "The vesting of the executive power in the President was essentially a grant of power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them under a system of subordinates. . . . As he is charged specifically to take care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of laws.

The logic of the Myers case and, of course, the Buckley case is directly applicable to your question regarding the parole board. While the Alaska Constitution has no explicit "Appointments Clause," the U. S. Supreme Court considers that provision merely an expression of the concept of the separation of powers doctrine and the Alaska Supreme Court has found that doctrine to be a significant part of the Alaska constitutional framework in the Bradner v. Hammond case.

Accordingly, we must conclude that the power of appointment of an executive officer resides exclusively in the Governor in the Alaska state government. The legislative power over an appointment extends no further than the power to confirm and therefore to reject the appointment of such an officer. Necessarily, therefore, we believe that the draft proposal that you forwarded to us would not be viewed as constitutional by the Alaska Supreme Court if the Governor declined to make appointments consistently with it, as he did in the Bradner case.

On the other hand, we consider that there is precedent in Alaska for the legislative establishment of qualifications of executive officers. See, for example, AS 42.05.040, regarding the qualifications of members of the Public Utilities Commission.

If we may assist further, please advise.

RAB:ljb

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 28, 1980

M E M O R A N D U M

TO: Charlie Parr, Chairman and Members of the House Judiciary Committee

FROM: Margaret W. Berck, Staff

SUBJECT: Recodification of the Alaska Statutes regarding the Administration of Parole

*Section 1

CHAPTER 15. PAROLE ADMINISTRATION ACT

Sec. 33.15.010. STATE BOARD OF PAROLE. A state board of parole in the Department of Health and Social Services shall administer the state parole system. The board shall consist of five members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. Members of the state board of parole shall be nominated by a panel composed of the chief justice of the Alaska Supreme Court, the chairmen of the Senate and House Judiciary Committees of the Alaska State Legislature, the President of the Alaska Federation of Natives, and the President of the Alaska Chapter of the National Association for the Advancement of Colored People. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairman or as a member, for

each vacancy. The governor shall designate one of the members as chairman of the board. The member shall remain chairman until the expiration of his term as a board member. The term of each of the five members of the board is five years. Terms of all members shall be staggered to expire at one-year intervals. Successors are appointed in the same manner as provided for board members first appointed. A vacancy shall be filled for the unexpired term.

Sec. 33.15.020. CRITERIA FOR NOMINEES. Members of the board shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed. At least one of the members shall be a person with training in the field of criminal justice, psychology, or human relations. The members may not be officials or employees of the department.

Sec. 33.15.030. REMOVAL OF MEMBERS. The governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before such removal he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten days thereafter. Upon removal the governor shall file

in the office of the lieutenant governor a complete statement of all charges made against the membe. and the findings thereupon, with a record of the proceedings.

Sec. AS 33.15.040. EXECUTIVE DIRECTOR. The board shall hire an executive director who has training and experience in the field of probation and parole. The executive director shall serve as the executive officer for the board in the accomplishment of its functions. He shall serve [THE BOARD] at the pleasure of the [GOVERNOR] board.

staff

Sec. 33.15.050. COMPENSATION AND EXPENSES. The members of the board, [OTHER THAN THE CHAIRMAN, SHALL NOT RECEIVE SALARIES BUT] are entitled to compensation per day at an amount [TO BE SET BY THE GOVERNOR FOR EVERY DAY THEY ARE IN SESSION,] commensurate with the salary of the executive director on an hourly basis during the time they are actually conducting board business, and a per diem and travel allowance as provided by law. [THE CHAIRMAN IS NOT ENTITLED TO A SALARY OR COMPENSATION FOR DAYS HE ATTENDS A SESSION OF THE BOARD, BUT IS ENTITLED TO A PER DIEM ALLOWANCE AND TRAVEL COSTS AS PROVIDED BY LAW.]

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Sec. 33.15.060 RESPONSIBILITIES AND DUTIES OF THE BOARD. (a) In addition to any other responsibility or duty prescribed by law for the state board of parole, the state board of parole shall:

(1) Serve as the central paroling authority for the state;

(2) Consider all prisoners serving sentences who may be eligible for parole, unless the prisoner waives consideration for parole;

(3) Discharge an individual from parole when supervision is no longer needed;

(4) Keep and maintain a record of all meetings and proceedings;

(5) Adopt regulations pursuant to the Administrative Procedure Act, AS 44.62, which it considers necessary or proper with respect to the suitablility of prisoners for parole; the conduct of parole hearings; the conditions of parole; and the supervision and recommitment of parolees;

(6) Provide the persons in charge of state correctional facilities or correctional facilities made available to the state under contract with a copy of the board's regulations and any amendments thereto;

(7) Notify the commissioner of its decisions relating to prisoners considered for parole. At the close of each ~~fiscal~~ calendar year the board shall submit to the governor, the Chairmen of the Senate and House Judiciary Committees, the commissioner, the attorney general and publish publically a report containing statistical and other data of its work, including research studies which it may make of probation, sentencing, parole or related functions;

(8) Interpret the parole system to the public in order to develop a broad base of public understanding and support; and

(9) Recommend to the legislature sound parole legislation and recommend to the governor sound parole administration.

Sec. 33.15.070. PAYMENT OF BOARD EXPENSES. The expenses of the board shall be paid by an appropriation made to the department.

Sec. 33.15.080. DATA TO BE CONSIDERED IN DETERMINING SUITABILITY FOR PAROLE.

The board shall not deny parole on the basis that the prisoner did not obtain de irable or necessary treatment while confined if such treatment was not available to the prisoner at the correctional facility to which he was designated to be confined by the Division of Corrections.

In considering whether a prisoner is suitable for parole, the board shall consider:

(1) the presentence report made to the sentencing court;

(2) the recommendations by the sentencing court, prosecuting attorney and defense attorney;

(3) a report of the prisoner's institutional history prepared by a proper officer of the institution where the prisoner is incarcerated, relating to his personality, social history and adjustment to authority, and including any recommendations which the insitutional officer may make;

(4) all official reports of his prior criminal record, including reports and records of earlier probation and parole experiences;

(5) the reports of any physic.., mental and psychiatric examinations of the prisoner;

(6) any relevant information which may be submitted by the prisoner, his attorney, the victim of his crime, or other persons;

(7) the prisoner's parole plan; and

(8) such other relevant information concerning the prisoner as may be reasonably available.

Sec. 33.15.090 ORDER FOR PAROLE. An order for parole shall be furnished by the board to each person released under its supervision. An order for parole shall contain the conditions imposed and the parole expiration date. The order does not take effect until signed by the parolee. The conditions of parole may be changed in the discretion of the board after the parolee is afforded an opportunity for a hearing.

Sec. 33.15.100 GRANTING OF PAROLE.

Granting of parole [Effective January 1, 1980]. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced. (§ 3 ch 81 SLA 1960; am § 1 ch 110 SLA 1974; am § 14 ch 166 SLA 1978)

Sec. 33.15.110. HEARING ON APPLICATION FOR PAROLE OR CHANGE IN PAROLE CONDITIONS; WAIVER. (a)A hearing shall be held for the purpose of reviewing a prisoner's parole suitability, or for the setting, posting, or rescinding of parole dates. Reasonable notice of the hearing shall be provided to the prisoner. At least 30 days prior to the hearing by the board, the prisoner shall be permitted to review all data which will be examined by the board and shall have an opportunity to enter prior to the hearing written responses to any material contained in the data. At the hearing the prisoner has the right to be present, to present evidence on his behalf, to cross-examine witnesses who testify against him, and to remain silent. All decisions made by the board shall be issued in writing and provide the reasons therefor. A copy of such decisions shall be sent to the prisoner.

(b) A parolee subject to a change in a parole condition or to an imposition of an additional parole condition is entitled to hearing. The parolee is entitled to reasonable notice of the proposed modification and the reasons therefor. Prior to the hearing, the parolee is entitled to view and copy all documents, reports, and names of witnesses that will be considered by the board. At the hearing the parolee is entitled to the same rights as a prisoner in subsection (a). Decisions shall be issued in writing and provide the reasons therefor. A copy of the decision shall be sent to the parolee.

(c) A prisoner or a parolee may waive his right to a hearing as provided in (a) or (b) by submitting to the board a written waiver of such hearing.

Sec. 33.15.120 HOLDING OF MEETINGS; ORDERS. (a) The board shall meet as often as it finds necessary, but shall meet at least four times each year. Three members of the board constitute a quorum for the conduct of business.
(b) All orders or decisions of the board shall be made by a majority of those members present.

Sec. 33.15.130 AUTHORITY OF THE BOARD TO ISSUE PROCESS.

Authority of board to issue process. The board may issue subpoenas and subpoenas duces tecum, and may issue warrants to retake a parole violator. (§ 3 ch 81 SLA 1960)

Sec. 33.15.140 BOARD MAY RELEASE PRISONERS TO ANSWER PROCESS.

Board may release prisoners to answer process. If a court of this state, another state, or the United States, or other authority issues a warrant charging a prisoner with a crime, the board may release the prisoner on parole to answer the warrant. (§ 3 ch 81 SLA 1960)

Sec. 33.15.150 CONFIDENTIALLITY OF RECORDS. The pre-parole reports submitted to the board are priviledged and shall not be disclosed to anyone other than the board, the sentencing judge, the prosecuting and defense attorneys, the prisoner, the prisoner's attorney, or others entitled under this chapter to receive the information.

Sec. 33.15.160 DUTIES OF THE COMMISSIONER.

Duties of the commissioner. The commissioner is charged with the administrative duties and responsibilities necessary to

(1) conduct investigations of prisoners eligible for parole as the board requests;

(2) supervise the conduct of parolees and institute programs for reform and rehabilitation of parolees as the board requests;

(3) appoint and assign parole officers and personnel to the judicial districts in the state and to train and supervise parole officers and personnel;

(4) keep records, files and accounts as the board requests. (§ 6 ch 81

(5) maintain a copy of statutes and regulations regarding the state board of parole at all state correctional facilities and at correctional facilities made available to the state under contract so that all prisoners have access to such law and regulations.

Sec. 33.15.170. DELEGATION OF DUTIES TO EXECUTIVE DIRECTOR.

Delegation of duties to executive director. The commissioner may delegate all or part of the administrative duties and responsibilities specified in § ~~150~~ of this chapter to the executive director of the board. (§ 6 ch 81 SLA 1960; am § 2 ch 30 SLA 1972)

Sec. 33.15.180. COMMISSIONER MAY ASSIGN DUTIES OF PROBATION OFFICERS TO PAROLE OFFICERS.

Commissioner may assign duties of probation officers to parole officers. The commissioner may assign the duties of probation officers as provided in the Probation Administration Act to personnel appointed under § ~~150~~(3) of this chapter. (§ 6 ch 81 SLA 1960)

Sec. AS 33.15.190. PERSONS ELIGIBLE FOR PAROLE.

Persons eligible for parole [Effective January 1, 1980]. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in §§ ~~80~~ and ~~230(a)(1)~~ of this chapter. §§100 §270(a)(1)

(b) A state prisoner who has been imprisoned in accordance with AS 12.55.125(a) or (b) may not be released on parole until he has served at least the prescribed minimum term of imprisonment.

(c) A state prisoner imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) who is released under AS 33.20.030 shall be placed on parole for the period specified in the certificate of deduction, subject to written rules and conditions imposed by the board or his parole officer. (§ 7 ch 81 SLA 1960; am § 34 ch 43 SLA 1964; am § 9 ch 68 SLA 1965; am § 2 ch 110 SLA 1974; am §§ 15, 16 ch 166 SLA 1978)

Sec. AS 33.15.200. CONDITIONS OF PAROLE. When a prisoner is released on parole, the Board shall require as a condition of parole that he refrain from engaging in criminal conduct. Depending upon the nature of the crime for which the prisoner was convicted, the board may also require at the time of release on parole or at any time and from time to time while he remains on parole, that he conform to any of the following conditions of parole:

(a) meet his family obligations;

(b) apply himself to employment, education, training, or subsistence;

(c) remain within the geographic limits fixed in his order of parole, unless granted written permission to leave such limits;

(d) report, as directed, in person and within 48 hours of his release to his parole officer;

(e) report, as directed, to his parole officer at least once a month or at such regular intervals as may be required by the parole officer;

(f) reside at the place fixed in his order of parole and notify his parole officer of any change in his address;

(g) have in his possession no dangerous firearm or other dangerous weapon unless granted written permission;

(h) sudmit himself to necessary available medical, psychiatric, alcohol, or other treatment;

(i) refrain from consuming alcoholic beverages;

(j) refrain from consuming illegal drugs;

(k) submit to reasonably conducted searches and seizures by correctional authorities or peace officers acting under their direction ; and

(l) refrain from entering into any agreement or other arrangement with any law enforcement agency which will place him in the position of violating any state or federal law or any conditions of his parole.

Sec.33.15.210. RELEASE AND FINAL DISCHARGE. (a) A parolee remains in legal custody of the board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law. While in the custody of the board, a parolee is subject to the disabilities imposed by AS 11.05.080, but this section shall not deny a parolee access to the civil courts.

(b) However the board in its discretion may discharge a parolee from supervision and from further liability under his sentence after he has completed at least two years on parole. Any parolee who has been on parole for at least five years shall be brought before the board for purposes of consideration for final discharge. In the event that the parolee is not granted final discharge, the parolee shall be brought before the board for the aforementioned purposes annually thereafter.

Sec. 33.15.220 REVOCATION OF PAROLE.

state or federal law

Revocation of parole. The board may revoke the parole granted to a prisoner for violation of a ~~law or ordinance~~, or condition imposed by the board. (§ 3 ch 81 SLA 1960)

Sec. 33.15.230. ARREST OF A PAROLE VIOLATOR. A warrant for the arrest of a parolee who violates his parole may be issued only by the board or a member of the board based upon a written complaint showing that there is probable cause to believe that a violation of law or ordinance or a violation of a parole condition has occured. A parole violator may be arrested without a warrant for a violation of law or ordinance or for a violation of a parole condition only under exigent circumstances which require immediate arrest.

Sec. 33.15.240. EXECUTION OF WARRANT TO ARREST A PAROLE VIOLATOR. A parole officer or an officer of a state correctional facility or a correctional facility made available to the state under contract, shall execute the warrant by arresting the parolee and confining him in a correctional facility designated by the commissioner. A peace officer acting under the direction of a parole officer, or an officer of a state correctional facility or a correctional facility made available to the state under contract,may execute the warrant by arresting the parolee and confining him in a correctional facility designated by the commissioner.

Sec. 33.15.250. REVOCATION UPON ARREST OF PAROLE VIOLATOR; HEARING; CONFINEMENT.

(a) Upon the arrest of a parolee, a peace officer making the arrest shall notify the parole officer. The parole officer making the arrest, or being notified by a peace officer of an arrest, shall immediately the board, or a member of the board. If the arrest is without a warrant, the parole officer shall submit to the board, or a member of the board, a report in writing indicating in what manner the parolee violated the state or federal law or a condition of his parole.

(b) The parolee shall be entitled without unreasonable delay to a hearing on the violation charged. The parolee is entitled to reasonable notice of the hearing and to view and copy in advance of the hearing all documents, reports, and names of witnesses, which will be considered by the board. At the hearing the parolee has the right to be present, to present evidence on his behalf, to cross-examine witnesses who testify against him, and to remain silent. If a violation is established, the board may revoke and terminate all or any portion of parole, or change the conditions of parole, or impose additional conditions of parole, or eliminate all or any portion of the good time earned on parole. If the board does not terminate all or any portion of parole, the parolee shall be released from confinement and continued on parole under the terms and conditions the board prescribes.

(c) If parole is revoked on the basis of a violation of a state or federal law, the parolee is subject to serve the remainder of the term to which he was sentenced or any portion thereof. In fixing the remainder of the sentence term, consideration shall be given to any good time earned while on parole. If parole is revoked solely on the basis of a violation of a parole condition, confinement shall not exceed 6 months.

(d) All decisions of the board in a revocation proceeding shall be issued by the board in writing and provide the reasons therefor. A copy of the decision shall be sent to the parolee.

Sec. 33.15. 260. APPEALS FROM DECISIONS AND ORDERS OF THE PAROLE BOARD. A prisoner or parolee may appeal, pursuant to Rule 35(b) of the Criminal Rules of Court, any decision or order of the parole board on grounds of arbitrainess or abuse of discretion, to the Superior Court.

Sec. 33.15.270. FIXING ELIGIBILITY FOR PAROLE AT THE TIME OF SENTENCING.

Fixing eligibility for parole at time of sentencing. (a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may

(1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner is eligible for parole, which term shall be at least one-third of the maximum sentence imposed by the court; or

(2) fix the maximum sentence of imprisonment to be served, in which case the court may specify that the prisoner is eligible for parole at the time the board determines.

Sec. 33.15.280. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED.

Applicability to persons on parole or incarcerated. This chapter applies to all persons convicted and sentenced in the superior court and the district courts of this state, and to all persons convicted of a crime punishable under laws enacted by the Alaska Territorial Legislature who were convicted and sentenced before Alaska became a state or before the Alaska state court system was in operation. (§ 12 ch 81 SLA 1960; am § 1 ch 38 SLA 1961; am § 3 ch 24 SLA 1966)

Sec. 33.15.290. DEFINITIONS.

(1) "board" means the Board of Parole;

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

(3) "parole" means the release of a prisoner to the community by the parole board before the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(4) "department" means the Department of Health and Social Services.

(5) <u>"parolee" means any prisoner released to the community by the board, or any prisoner released to the community by operation of law as if on parole</u>.

Sec. 33.15.300. COMPUTATION OF GOOD TIME WHILE ON PAROLE. A person released from confinement pursuant to AS 33.15.100 or a person released from confinement pursuant to AS 33.20.040 as if on parole is entitled to a deduction from his term of parole of one day for every three days of good conduct served while on parole. Good conduct on parole may be subject to forfeiture by the board if a violation of a state or federal law or a violation of a condition of parole is established.

Sec. 33.15.310 SHORT TITLE. This chapter may be cited as the Parole Administration Act.

*Section 2. This act shall apply retroactively to all persons currently on parole or released as if on parole or currently being considered by the board for parole.

*Section 3. This act has an immediate effective date.

Alaska State Legislature

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WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
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To Rep. Malone
FYI
Nels

Rep. Nels Anderson
rm. 216

SENATOR
John C. Sackett
CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
BUDGET & AUDIT COMMITTEE

Senate

MEMORANDUM

TO: Senator John Sackett

FROM: Alephe Morris

SUBJECT: Native Culture Group - Juneau Correctional Center
Saturday, January 26, 1980

Present: Representative Nels Anderson
Alephe Morris

The meeting was called to order by the newly elected president, Byron Charles. The main topics of discussion were indiscriminate transfering of prisoners without due process, good time being held over their heads like a whip, discrimination at disciplinary hearings and horrible food.

TRANSFER:

In October, 1979, Michael Clary and former president of the Native Group, Anakak Buell were transfered to Fairbanks without due process. Recently, Larry Uptagraft, David Meeks and former president Ross Shakley were transfered to Fairbanks without due process. It was inadvertantly discovered in their "jackets" a charge of inciting a riot which is a criminal offense. This could go against them in a parole hearing, work-release, and they could be charged with it. There was no hearing at the sending institution.

Please note the DOC classifies Fairbanks Medium Custody even though it is the exact floor plan as the Juneau facility, other than Fairbanks has a gym and Juneau a GUN TOWER. They have men, women and children, both sentenced and unsentenced offenders. One man transfered was starting a 10 year sentence and the other 27 years. It was mentioned the person with 27 was kept behind because of some action on his case.

EDUCATION:

The group voiced their concern about CETA funding that is going to be discontinued, as the educational classes at the institution are funded fully by CETA. They are asking legislation insure their funding. Please note enclosed letter from the Native Group requesting classroom furniture. There are 48 students involved in education and the equipment earmarked for various institutions didn't get there. I had the same complaint at Ridgeview when I visited there in December.

PROGRAMS:

There are no programs, including an alcohol program. One of the men stated he was answering a questionaire in preparation for parole. One question asked was when he last drank alcohol. In stating 4 years, he was asked why he wanted to come to the program. This is not uncommon. I am personally aware of a men that had to go through detoxification and remain there several weeks in order to go through the program. He had not had alcohol for several months. The group commented they heard the facility was called "Hammond's Warehouse", and "Huston's Hell Hole".

FOOD:

The complaint on the food was it was not fit for human consumption. The eggs were watery and the food rotten. It seems the main interest of the cook, and incidently when guards don't make it as guards they say they return as cooks, is to cut down the budget and this makes Huston happy. The cab driver that drove me out there Saturday night, unsolicited, mentioned the food out there was food the stores couldn't sell. I said that was usually donated food, and he said he knew that. That would cut the budget.

DISCIPLINARY HEARINGS:

The group stated the "write-ups" were prejudicial. They are being busted for minor infractions, thrown in the "hole" and their "good time" taken from them. When another is involved, they are busted and the other goes free. We were shown some of the write-up sheets with the charges and the outcome for verification. Their "good time" is held over their heads, and for this they are seeking legislative relief. They would like something in the administrative code to insure their good time earned would not be tampered with indiscriminately, or At All.

PAROLE:

Representative Anderson asked, "What do you think about a paid parole board"? They thought something should definately be done. The consensus of opinion was that native's never get paroled. Enclosed is a copy of an article, Corrections Unfair to Natives, by John Deacon, for your persual.

CIVIL DEATH:

Another form of arbitrary decisions being made; theoretically, an inmate cannot enter into contract, yet they are allowed to enter into contract for commisary, educational payments from B.I.A. to pay for tuition. When the inmates ask for various other types of contracts they are denied. This discussion did come up in the latter part of the meeting, and perhaps the topic could be pursued. They feel it is important.

It is my impression the discussion with this group barely skimms the surface of the underlying problems within the institution as well as others. Senator Ferguson received a letter from the 6th avenue jail in which a person stated a man handcuffed in the next cell was whipped. It is also my feeling that there may be near-riot circumstances in Juneau. I do not believe its paranoia, it comes from experience.

cc: Representative Nels Anderson

AM/lh

JAN 15 1980

Native Culture Group
box, 309
Juneau, Ak, 99802

Senator John C. Sackett
Pouch "V"
Juneau, Alaska 99811

January 13, 1980

Dear Senator Sackett:

I write you this letter at the request of the Native Culture Group. At a meeting of the group, the discussion was the needs of the institution and how the group could help to better our situation. The decision was that the institution needs to have chairs and reading tables for the library, and also for the classroom. The library is in need of two reading tables, and about six chairs. The classroom now has six tables that go in a circle but need replacing. Chairs for the classroom are now carried from the dining room to the classroom and back. Twelve chairs for the classroom would be very effective for the time being. Also neededare two electric typewriters for the law library. The two electric typewriters now in the law library are just about useless; they have been around this institution for about four years. They came to this institution as secondhand typewriters.

Rather than appropriate money to the budget for this equipment, it would be appreciated if you could find a way to get this equipment to us for this school semester. There are 48 students participating in classes; 41 in college, and 7 students in Adult Basic Education classes. Should this information arouse your interest and you believe you should have more information, you would be greeted warmly by our group: The Native Culture Group. We are patiently waiting to hear what your reply will be.

Thank You

Ross T. Sheakley

Native Culture President

reply received 1/29/80

Corrections Unfair to Natives

By John Deacon

The Alaska Parole Board system is unfair to Native Alaskans. That is the assertion of all Native inmates. You, the reader may ask, "Why is the Alaska Parole Board unfair to the natives?"

The parole board is comprized of five members. There are three Whites, one Native, and one Black. The Governor personally appoints the members to the board, it is entirely at his discretion.

It is the opinion of the Native inmates here at the Juneau correctional facility that two or more Natives or of Native lineage be appointed to the parole board, for the following reasons. 50% or more of the inmate population are Native. Statistics reveal that the Alaska Native receives longer sentences than Whites, furthermore the Native has the lowest percentage of being released on parole. Therefore it should be of top priority of business for the Bush Caucus to resolve this problem. Without some form of revision, the parole board will continue to be bias to the Native inmates.

The Parole Board has certain stipulations an inmate must meet even to be considered as a possible parolee. The stipulation of having a job is the Native's greatest drawback. It is common knowledge to everyone in the bush areas, that jobs are virtually nonexistant. Statistics will also verify this statement.

The majority of the Native inmates are from small bush communities. They do not have college degrees or any tectnical training. All they know is fishing, hunting, and trapping. So why not parole them back to their respective villages, as subsistence lifestylers.

There is a considerable amount of controversy on the definition of the subsistence way of life. In my opinion, subsistence is living in a small bush community, without a regular job; hunting, fishing, and trapping for a livelihood. Carving and making artifacts could also fit this category. There should be a wide generalization in the categorization of the subsistence way of lifedue to the wide geographical differences.

An example is comparing Kaltag with Point Hope. Both communities are predominantly Native and can be categorized as maintining a subsistence lifestyle. However, there the similarity ends. The Point Hope area is situated on the northwest coast of Alaska. The surrounding area is completely devoid of trees. The people's main source of livelihood is derived from marine mammals, such as seals, wulrus, and whales. Whereas, the inhabitants of Kaltag depend cheifly on moose, bear, and beaver to supply their major food supplements. Kaltag is also situated in a wooded region.

My purpose is not to discuss the pros and cons of living in either community. It is merely a hypothectical illustation to show the wide differences in the subsistence lifestyles due to geographical locations.

There are communities where fishing is the major source of income. Can inhabitants of such communities be classified on a subsistence basis. It is possible for these people to catch $10,000, $20,000, or even $30,000 with fish in a season. At some point there must be a distiction between being a component of the fishing industry and the subsistence person. However a fishermen's income is highly inconsistant, depending on the fish spawn.

Can an ivory carver claim to be a subsistence person when he is carving up to five or six thousand dollars of artifacts, yearly. This figure may be a bit high or low, depending on the quantity and quality of the individual's work. At what dollar amount dose the carver cease being a subsistence individual and become a sole proprietor of a small business enterprize.

This breif backgroud on life in the bush may seem immaterial to the parole of Native inmates. Nothing could be futther from the truth, based on the following reasons. (1) Jobs are virtually nonexistant in the bush areas; (2) many Native inmates have very little or no formal education or tectnical skills to secure jobs in the metropolitan areas like Anchorage or Fairbanks.

For these reasons among others, once again, I argue that the Native inmate should be granted parole to his respective village.

While the law will argue against this issue for the following reason; that one law or stipulation imposed on one citizen should pertain to all. For all practical purpose I would be inclined to agree, however here lies a very unique situation.

The Federal Government has always introduced special legislation in the past to deal with Indian problems. They recognized the various differences and dealt with them accordingly. For this very purpose the Bureau of Indian Affairs was established. I beleive the State Government can follow similar guide lines in setting down policies to insure the Native inmate an equal opportunity on the issue of parole.

I will state again, it is my firm conviction that the Department of Corrections should lift the stipulation of having a job, a requisite to the Native seeking parole. Simply for the reason there are no jobs in the bush communities.

It should be no great problem for the state government to establish a network of acting parole officers within the villages. The village councils could be given implied or expressed powers in determining if they would be willing to accept the parolee. They would also have the power to revoke should the occasion arise. Without a doubt, the Department of Corrections and its componet the Alaska Parole Board in conjunction with the village councils can implement a feasible program that is long overdue.

In conclusion, I will say, it is the task of the Native leaders to fight for these reforms. It is now time for the Bush Caukis to stand in unison and shout, we demand equal treatment for our people.

(THE UNDERSIGNED ARE IN FULL ACCORD WITH THIS ARTICLE)

(1) Timothy Afcan Sr.
(2) Phillip Coppock
(3) Thomas Wood
(4) Fred Sookiamaw
(5) [illegible]
(6) Vernon Black
(7) Robert Mark
(8) Edward Andrews
(9) Harold A. Joe
(10) Don Stephens
(11) Solomon Roberts
(12) Roy Walters
(13) Peter Curtis
(14) Lawrence V. Gregory
(15) [illegible]
(16) [illegible]
(17) [illegible]
(18) [illegible]
(19) [illegible]
(20) [illegible]
(21) Benon E. Charles
(22) Peter M. Church Jr.
(23) Edward G. Stanish
(24) [illegible]
(25) [illegible]
(26) Raymond F. Jacobs
(27) Larry O. Larson
(28) Condrat Krukoff
(29) Emil Krasnikoff
(30) [illegible]
31. Chester Ferreira
32. Robert O Penn