HB

140

(11)

COMMITTEE REPORT

Date referred: 3/27/87

FURTHER REFERRALS:

DATE: 4/7/87

The Finance Committee has considered HB 140

"An Act relating to parole."

RECOMMENDS:

[X] replace with CS HB 140 (Jud.) [ ] the same title [X] a new title

[ ] attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[X] same as previous two zero fiscal notes published 3/11/87

SIGNING DO PASS:

POURCHOT Pat Pourchot

LARSON Ronald D Larson

BROWN Tay Brown

DAVIS Mike Davis

SWACK-HAMMOR

RIGGS

BYER Mark Boyer

GAL

FRANK

SIGNING OTHER RECOMMENDATIONS:

WALLIS Ken Wallis

Pat Pourchot Vice-Chair

Chairman's signature

Offered: 3/27/87
Referred: Finance

5-0584L

Original sponsors: Swackhammer, Gruenberg, Navarre, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 140 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mandatory and discretionary parole and residual probation."

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

* Section 1. AS 33.16.010(a) is amended to read:

(a) A prisoner who is serving a term or terms of <u>two years or more</u> [AT LEAST 181 DAYS] is eligible for [EITHER DISCRETIONARY OR] mandatory parole.

* Sec. 2. AS 33.16.010 (c) is amended to read:

(c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment <u>are two years or more</u> [EXCEED 180 DAYS].

* Sec. 3. AS 33.16.100(d) is amended to read:

(d) A prisoner who is sentenced for a term under AS 12.55.-125(a)<u>,</u> [OR] (b)<u>, (c), or (i)</u> may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a)<u>,</u> [OR] (b), <u>(c), or (i),</u> at least one-third of the period of confinement imposed, or any minimum term set under AS 12.-55.115 at sentencing, whichever is greater.

* Sec. 4. AS 33.16.210 is amended to read:

Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole [, IF THE

SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF PROBATION]. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

* Sec. 5. AS 33.16.210 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation and the period of suspended imprisonment each equal or exceed the period of mandatory parole.

* Sec. 6. AS 33.16.900(7) is amended to read:

(7) "mandatory parole" means the release of a prisoner who was sentenced to one or more terms of imprisonment of two years or more [EXCEEDING 180 DAYS], for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

* Sec. 7. AS 33.16.900(8) is amended to read:

(8) "parolee" means a prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

* Sec. 8. AS 33.20.040(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more

[EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of [AN] imprisonment of less than two years [180 DAYS OR LESS] shall be unconditionally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 9. AS 33.20.040(c) is amended to read:

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory parole may be imposed consecutively in the discretion of the court or the parole board [A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE].

No. 2

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: CSHB 140(Hess)
Publish Date: HOUSE 3/11/87

Revision Date:
Title: "An act relating to Parole."

Agency Affected: Department of Corrections
BRU:

Sponsor: Rep. Swackhammer, Gruenberg
Requestor:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached pages.

Susan Knighton

Prepared by: Susan Knighton, Research Analyst IV
Phone: 465-3376
Division: Administrative Services
Date: 3/6/87

Approved by Commissioner: William L. Kissling for Susan Humphrey-Barnett
Date: 3/6/87
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140(Hess)

The statute changes included in House Bill 140 will have no fiscal impact on the Department of Corrections but will increase the level of service provided to those offenders supervised by the Parole Board. Changes that were made to the Parole Board law during 1985 have extended supervision requirements to include many misdemeanants and minor non-violent felony offenders. With the limited resources of the Parole Board, it would be better to concentrate on the more serious offenders.

Sections 1 and 2:

The effect of the amendments to AS 33.16.010(a) and AS 33.16.010(c) will be to eliminate mandatory parole for persons sentenced to terms of imprisonment of 181 days to 2 years. Mandatory parole places an offender under the supervision of the Parole Board for the amount of good time earned while incarcerated.

Anyone sentenced to 2 years or more of imprisonment will continue to serve a term of mandatory parole under the supervision of the Parole Board.

At any one time, there are around 140 offenders who were sentenced to terms of imprisonment of 181 to 2 years and are on mandatory parole. This represents one-third of the Parole Board's total caseload.

They are offenders convicted of misdemeanors or minor felony offenses. The state will be better served by allowing the Parole Board to concentrate its limited resources on the more serious offenders.

Section 3:

Under its current policies, the Parole Board is not releasing Class A felons until they have served at least one-third of the period of confinement imposed. This amendment will not increase the amount of time currently being served by Class A felons, but will bring the law into line with current practice.

Sections 4 and 5:

These sections amend the methods that the Parole Board may use to release an offender to the jurisdiction of the field Probation/Parole staff. These methods may be used when a parolee had demonstrated good behavior and adjusted to supervision.

For a discretionary parolee, the Parole Board will have the authority to release an offender to a period of probation after the successful completion of two years of parole. If the discretionary parolee has no court imposed probation to follow, he will remain under the supervision of the Parole Board for the full term of his sentence.

For a mandatory parolee, the Parole Board will have the authority to release the offender to the term of probation imposed by the courts as long as this term of probation is equal to or exceeds the period of mandatory parole.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140(Hess)

These changes will allow for more flexible treatment of offenders who are doing well on parole by enabling transfer to field probation supervision. They will allow the Parole Board to concentrate on more serious, at-risk offenders.

Sections 6 - 8:

These sections amend the definitions in AS 33 to agree with the changes made in Sections 1 through 5.

Section 9:

This amendment will allow mandatory parolees with probation sentences to follow to serve the mandatory parole and probation time concurrently.

The current population is serving an average of 6 months on mandatory parole followed by 3 years on probation supervision. This change in the statutes will reduce the period of supervision from a total of 3.5 years to 3.0 years. The savings are estimated at: 2,500 clients x .5 years x $1,898/year, $2,372,500 over three years or $790,800 per year. These estimates are based on an average field supervision cost of $5.20 per day. The savings in staff time will allow the field probation staff to concentrate on clients needing supervision and newly assigned cases.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 140(JUD)(Hess)
Publish Date: HOUSE 3/11/87

REQUEST
Revision Date:
Title: "An Act relating to parole."

Agency Affected: Public Safety
BRU: Alaska State Troopers

Sponsor: Rep. Swackhammer ....
Requestor: House HESS

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 2/23/87

JM 2/25/87

Approved by Commissioner: William R. Nix (for) Date: 2/23/87
Agency: Public Safety

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

BILL NO: HB 140 (H-CSC)

DATE: March 3, 1987

TITLE: "An Act relating to parole."

CONTACT: Maj. Walter J. Gilmour
Acting Director
Alaska State Troopers

FISCAL NOTE / DEPARTMENT OF PUBLIC SAFETY

This bill does not impact the Department of Public Safety.

William R. Nix
Acting Commissioner

Offered: 3/27/87
Referred: Finance

5-0584L

Original sponsors: Swackhammer, Gruenberg, Navarre, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 140 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mandatory and discretionary parole and residual probation."

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

* Section 1. AS 33.16.010(a) is amended to read:

(a) A prisoner who is serving a term or terms of <u>two years or more</u> [AT LEAST 181 DAYS] is eligible for [EITHER DISCRETIONARY OR] mandatory parole.

* Sec. 2. AS 33.16.010 (c) is amended to read:

(c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment <u>are two years or more</u> [EXCEED 180 DAYS].

* Sec. 3. AS 33.16.100(d) is amended to read:

(d) A prisoner who is sentenced for a term under AS 12.55.-125(a), [OR] (b), <u>(c), or (i)</u> may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a), [OR] (b), <u>(c), or (i),</u> at least one-third of the period of confinement imposed, or any minimum term set under AS 12.-55.115 at sentencing, whichever is greater.

* Sec. 4. AS 33.16.210 is amended to read:

Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole [, IF THE

SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF PROBATION]. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

* Sec. 5. AS 33.16.210 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation and the period of suspended imprisonment each equal or exceed the period of mandatory parole.

* Sec. 6. AS 33.16.900(7) is amended to read:

(7) "mandatory parole" means the release of a prisoner who was sentenced to one or more terms of imprisonment of two years or more [EXCEEDING 180 DAYS], for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

* Sec. 7. AS 33.16.900(8) is amended to read:

(8) "parolee" means a prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

* Sec. 8. AS 33.20.040(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more

[EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of [AN] imprisonment of less than two years [180 DAYS OR LESS] shall be unconditionally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 9. AS 33.20.040(c) is amended to read:

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory parole may be imposed consecutively in the discretion of the court or the parole board [A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE].

Offered: 3/11/87
Referred: Judiciary and Finance

5-0584B

Original sponsors: Swackhammer, Gruenberg, Navarre, et al.

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 140 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to parole."

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

* Section 1. AS 33.16.010(a) is amended to read:

(a) A prisoner who is serving a term or terms of <u>two years or more</u> [AT LEAST 181 DAYS] is eligible for [EITHER DISCRETIONARY OR] mandatory parole.

* Sec. 2. AS 33.16.010 (c) is amended to read:

(c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment <u>are two years or more</u> [EXCEED 180 DAYS].

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(d) A prisoner who is sentenced for a term under AS 12.55.-125(a)<u>,</u> [OR] (b)<u>, (c), or (i)</u> may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a)<u>,</u> [OR] (b), <u>(c), or (i),</u> at least one-third of the period of confinement imposed, or any minimum term set under AS 12.-55.115 at sentencing, whichever is greater.

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PROBATION]. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

* Sec. 5. AS 33.16.210 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation is equal to or exceeds the period of mandatory parole.

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(7) "mandatory parole" means the release of a prisoner who was sentenced to one or more terms of imprisonment of two years or more [EXCEEDING 180 DAYS], for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

* Sec. 7. AS 33.16.900(8) is amended to read:

(8) "parolee" means a prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

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(a) Except as provided in (c) of this section, a [A] prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more [EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole

may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of [AN] imprisonment of less than two years [180 DAYS OR LESS] shall be unconditionally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 9. AS 33.20.040(c) is amended to read:

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory parole may be imposed consecutively in the discretion of the court or the parole board [A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE].

Introduced: 2/18/87
Referred: Health, Education & Social Services, Judiciary and Finance

5-0584A

BY SWACKHAMMER, GRUENBERG, NAVARRE HANLEY, KOPONEN, LARSON, PETTYJOHN, BROWN, HUDSON AND RIEGER

IN THE HOUSE

HOUSE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to parole."

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

* Section 1. AS 33.16.010(a) is amended to read:

(a) A prisoner who is serving a term or terms of <u>two years or more</u> [AT LEAST 181 DAYS] is eligible for [EITHER DISCRETIONARY OR] mandatory parole.

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(c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment <u>are two years or more</u> [EXCEED 180 DAYS].

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(d) A prisoner who is sentenced for a term under AS 12.55.-125(a)<u>,</u> [OR] (b)<u>, or (c)</u> may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.-55.125(a)<u>,</u> [OR] (b), <u>or (c),</u> at least one-third of the period of confinement imposed, or any minimum term set under AS 12.55.115 at sentencing, whichever is greater.

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Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole [, IF THE SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF

PROBATION]. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

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(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation is equal to or exceeds the period of mandatory parole.

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(7) "mandatory parole" means the release of a prisoner who was sentenced to one or more terms of imprisonment of two years or more [EXCEEDING 180 DAYS], for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

* Sec. 7. AS 33.16.900(8) is amended to read:

(8) "parolee" means a prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

* Sec. 8. AS 33.20.040(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more [EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole

may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of [AN] imprisonment of less than two years [180 DAYS OR LESS] shall be unconditionally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 9. AS 33.20.040(c) is amended to read:

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory parole may be imposed consecutively in the discretion of the court or the parole board [A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE].

SUMMARY OF MANDATORY PAROLE BILL

Mandatory parole is the supervision time a misdemeanor or felony offender must complete immediately after being released from incarceration. The supervised time is determined by the amount of good time an inmate earns during incarceration.

181 days is the current minimum for mandatory parole eligibility. Under the new bill being submitted, this eligibility would be increased to a minimum of two years as outlined in Sections 1 and 2. This would decrease the parole work load by an an estimated 130 cases at the current time. This in turn allows the probation/parole officer to devote more time to the long term offender who, as statistics show, require more supervision. The majority of short term offenders falls under probation guidelines, therefore, there is no need for double supervision as there is under current statute. It should also be pointed out that the misdemeanor offender was not intended to be supervised by the parole board, as is currently the case.

Section 3 of the current statute allows certain Class A felons discretionary parole after serving only 1/4 of the sentence. Under the proposed bill, those particular Class A felons are eligible after 1/3 of the sentence. This was the parole board's original intent and the intent of the 1985 legislature as noted on page 4 of the House Journal Supplement which is found in the miscellaneous section of this packet.

Sections 4 and 5 amend the methods that the Parole Board may use to release a parolee to probation. In the event an offender is released to discretionary parole, the Parole Board may release the offender to serve court ordered probation time after successful completion of two years of parole. A mandatory parolee may be released to serve probation as long as the term of probation and the period of suspended imprisonment each equal or exceed the mandatory parole period.

In the proposed bill, Section 6 defines mandatory parole and Section 7 defines parolee. Section 8 amends the definitions to comply with the changes made in sections 1 through 5.

In the event both mandatory parole supervision and probationary supervision are required upon release, section 9 allows for the mandatory parole time and the probation time to be served concurrently.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 140 (JUD)
Publish Date: 03-26-87

REQUEST:

Revision Date:
Title: "An act relating to Parole."

Agency Affected: Department of Corrections
BRU:

Sponsor: Rep. Swackhammer, Gruenberg
Requestor:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a seperate page if necessary)

See attached pages.

Susan Knighton

Prepared by: Susan Knighton, Research Analyst IV
Phone: 465-3376
Division: Administrative Services
Date: 3/6/87

Approved by Commissioner: William W. Kissing for Susan Humphrey-Barnett
Date: 3/6/87
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140 (JUD)

The statute changes included in House Bill 140 will have no fiscal impact on the Department of Corrections but will increase the level of service provided to those offenders supervised by the Parole Board. Changes that were made to the Parole Board law during 1985 have extended supervision requirements to include many misdemeanants and minor non-violent felony offenders. With the limited resources of the Parole Board, it would be better to concentrate on the more serious offenders.

Sections 1 and 2:

The effect of the amendments to AS 33.16.010(a) and AS 33.16.010(c) will be to eliminate mandatory parole for persons sentenced to terms of imprisonment of 181 days to 2 years. Mandatory parole places an offender under the supervision of the Parole Board for the amount of good time earned while incarcerated.

Anyone sentenced to 2 years or more of imprisonment will continue to serve a term of mandatory parole under the supervision of the Parole Board.

At any one time, there are around 140 offenders who were sentenced to terms of imprisonment of 181 to 2 years and are on mandatory parole. This represents one-third of the Parole Board's total caseload.

They are offenders convicted of misdemeanors or minor felony offenses. The state will be better served by allowing the Parole Board to concentrate its limited resources on the more serious offenders.

Section 3:

Under its current policies, the Parole Board is not releasing Class A felons until they have served at least one-third of the period of confinement imposed. This amendment will not increase the amount of time currently being served by Class A felons, but will bring the law into line with current practice.

Sections 4 and 5:

These sections amend the methods that the Parole Board may use to release an offender to the jurisdiction of the field Probation/Parole staff. These methods may be used when a parolee had demonstrated good behavior and adjusted to supervision.

For a discretionary parolee, the Parole Board will have the authority to release an offender to a period of probation after the successful completion of two years of parole. If the discretionary parolee has no court imposed probation to follow, he will remain under the supervision of the Parole Board for the full term of his sentence.

For a mandatory parolee, the Parole Board will have the authority to release the offender to the term of probation imposed by the courts as long as this term of probation is equal to or exceeds the period of mandatory parole.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140 (JUD)

These changes will allow for more flexible treatment of offenders who are doing well on parole by enabling transfer to field probation supervision. They will allow the Parole Board to concentrate on more serious, at-risk offenders.

Sections 6 - 8:

These sections amend the definitions in AS 33 to agree with the changes made in Sections 1 through 5.

Section 9:

This amendment will allow mandatory parolees with probation sentences to follow to serve the mandatory parole and probation time concurrently.

The current population is serving an average of 6 months on mandatory parole followed by 3 years on probation supervision. This change in the statutes will reduce the period of supervision from a total of 3.5 years to 3.0 years. The savings are estimated at: 2,500 clients x .5 years x $1,898/year, $2,372,500 over three years or $790,800 per year. These estimates are based on an average field supervision cost of $5.20 per day. The savings in staff time will allow the field probation staff to concentrate on clients needing supervision and newly assigned cases.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 140 (JUD)

REQUEST
Revision Date:
Title: - "An Act relating to parole."

Publish Date: 03-26-87
Agency Affected: Public Safety
BRU: Alaska State Troopers

Sponsor: Rep. Swackhammer ....
Requestor: House HESS

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 2/23/87

JM 2/25/87

Approved by Commissioner: William R. Nix Date: 2/25/87
Agency: Public Safety

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

BILL NO: CSHB 140 (JUD) DATE: March 3, 1987

TITLE: "An Act relating to parole." CONTACT: Maj. Walter J. Gilmour
Acting Director
Alaska State Troopers

This bill does not impact the Department of Public Safety.

William R. Nix
Acting Commissioner

DEPARTMENT OF PUBLIC SAFETY / OFFICE OF THE COMMISSIONER /

POSITION PAPER

DPARTMENT OF CORRECTIONS

BILL: H.B. 140

DATE: March 9, 1987

TITLE: "An Act relating to Parole"

CONTACT: Samuel H. Trivette
Executive Director
Parole Board

This Administration supports House Bill #140. The primary purpose of the bill is to adjust the parole statutes to eliminate duplication and ensure the supervision of more serious prisoners upon release from jail.

Since statehood, prisoners sentenced to serve two years or longer have been placed on mandatory parole supervision. The prisoners must follow standard and special parole conditions the same as prisoners released on parole by the Parole Board. Rehabilitative and other counseling services are made available and behavior is monitored by parole officers. Most other states and the federal government have mandatory parole laws similar to this law.

This bill would eliminate supervision only on misdemeanants and short-term felony offenders. A great majority of these short-term felony offenders will be on probation supervision. This allows the Parole Board and parole officers to concentrate resources on the more serious offenders. Therefore, this bill will result in very few prisoners being release without supervision. Most would be misdemeanants. And clearly 99% of the presumptively-sentenced offenders would be on mandatory parole supervsion, taking care of the more serious cases.

The bill allows the merging of mandatory parole and probation cases when the probation period exceeds the mandatory parole period. Again, the purpose is to minimize the duplication of Parole Board and Correction's staff time spent on supervising the same offender for the court system and Parole Board.

Finally, the bill clarifies parole eligibility on class A felons. When House Bill 141 passed in 1985, the commentary at page four was contradictory on whether eligibility would be at one-third or one-fourth of the sentence. The testimony in committee and on the House floor was eligibility would be one-fourth only for class B felony, class C felony and misdemeanants. This bill conforms to that intent.

Susan Humphrey-Barnett

Susan Humphrey-Barnett
Commissioner

POSITION PAPER

HB 140

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: __X__ None See attached fiscal note _____

Program impact: __X__ None See analysis below _____

Constitutional impact: __X__ None See analysis below _____

Other: Legislative request See analysis below __X__

This bill will streamline the current system of mandatory parole, particularly by clarifying that a probationary period may run concurrently with a period of mandatory parole. Judges often set precise conditions of probation which they expect an offender to follow once he or she is released from prison. Under current law, most prisoners serve a period of mandatory release parole prior to starting their probationary term, thus creating the potential for a "limbo" period prior to the commencement of formal court probation and its attendant conditions. This bill further limits the necessity of mandatory parole to those prisoners who have sentences of more than two years, thus obviating the need for expensive supervision for the least serious offenders. All of these changes will streamline the mandatory parole system and free the time of overburdened parole officers to supervise the more serious offenders.

Section 3, which deals with discretionary parole, is somewhat problematical. Currently, those persons who are convicted of unclassified felonies may not be eligible for discretionary parole until they have served one third of their sentence. This provision ensures that a person serving a lengthy sentence for First or Second Degree Murder will not be released prior to serving at least one third of their term of imprisonment. All other offenses allow parole eligibility at the discretion of the parole board after service of one fourth of a sentence.

Section 3 of this bill adds Class A offenses to the list of crimes requiring service of at least one third of the sentence prior to discretionary parole rather than one fourth. Although persons convicted of Class A felonies are normally not eligible for discretionary parole due to the requirement that they receive a presumptive sentence even on a first offense, a discrete group of persons convicted of Class A felonies have received the right to discretionary parole eligibility

from the three judge sentencing panel due to unusual mitigating circumstances in their cases. Since Class A felony prisoners are not normally eligible for discretionary parole, the legislature may not wish to deprive those persons with extraordinarily mitigating circumstances from consideration after one quarter of their term. It should be noted that if the parole board does not wish to grant discretionary parole after one quarter of a sentence due to the circumstances of the offense, nothing in this bill will deprive the parole board of its discretion to deny parole application.

Based on the above reasons, the Public Defender Agency and Office of Public Advocacy support all provisions of this bill except Section 3. The Public Defender Agency and Office of Public Advocacy oppose Section 3 of this bill.

Dana Fabe, Director
Public Defender Agency

3/13/87
Date

Brant McGee, Director
Office of Public Advocacy

3/13/87
Date

Commissioner Garrey Peska
Department of Administration

3/18/87
Date

SELECT - QUERY
00001 ALL SECTION EQ 33.16.010

AS33.16.010 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.010
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.
CITATION SEC. 33.16.010.
CATCH LINE
PAROLE.
TEXT (A) A PRISONER WHO IS SERVING A TERM OR TERMS OF AT LEAST 181 DAYS IS ELIGIBLE FOR EITHER DISCRETIONARY OR MANDATORY PAROLE.
(B) A PRISONER WHO IS ELIGIBLE UNDER AS 33.16.090 MAY BE GRANTED DISCRETIONARY PAROLE BY THE BOARD OF PAROLE.
(C) A PRISONER WHO IS NOT ELIGIBLE FOR DISCRETIONARY PAROLE, OR WHO IS NOT RELEASED ON DISCRETIONARY PAROLE, SHALL BE RELEASED ON MANDATORY PAROLE FOR THE TERM OF GOOD TIME DEDUCTIONS CREDITED UNDER AS 33.20, IF THE TERM OR TERMS OF IMPRISONMENT EXCEED 180 DAYS.
(D) A PRISONER RELEASED ON DISCRETIONARY OR MANDATORY PAROLE IS SUBJECT TO THE CONDITIONS OF PAROLE IMPOSED UNDER AS 33.16.150. PAROLE MAY BE REVOKED UNDER AS 33.16.220.
HISTORY (SEC. 2 CH 88 SLA 1985)
ANNOTATIONS
LEGISLATIVE HISTORY REPORTS. - FOR HOUSE LETTER OF INTENT RELATED TO THIS SECTION, SEE 1985 HOUSE JOURNAL, P. 821.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SELECT - QUERY
00009 ALL SECTION EQ 33.16.100

AS33.16.100 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.100
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.
CITATION SEC. 33.16.100.
CATCH LINE
GRANTING OF DISCRETIONARY PAROLE.
TEXT (A) THE BOARD MAY AUTHORIZE THE RELEASE OF A PRISONER ON DISCRETIONARY PAROLE IF IT DETERMINES A REASONABLE PROBABILITY EXISTS THAT

(1) THE PRISONER WILL LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING ANY LAWS OR CONDITIONS IMPOSED BY THE BOARD;

(2) THE PRISONER'S REHABILITATION AND REINTEGRATION INTO SOCIETY WILL BE FURTHERED BY RELEASE ON PAROLE;

(3) THE PRISONER WILL NOT POSE A THREAT OF HARM TO THE PUBLIC IF RELEASED ON PAROLE; AND

(4) RELEASE OF THE PRISONER ON PAROLE WOULD NOT DIMINISH THE SERIOUSNESS OF THE CRIME.

(B) IF THE BOARD FINDS A CHANGE IN CIRCUMSTANCES IN A PRISONER'S PAROLE RELEASE PLAN SUBMITTED UNDER AS 33.16.130(A), OR DISCOVERS NEW INFORMATION CONCERNING A PRISONER WHO HAS BEEN GRANTED A PAROLE RELEASE DATE, THE BOARD MAY RESCIND OR REVISE THE PREVIOUSLY GRANTED PAROLE RELEASE DATE. IN RECONSIDERING THE RELEASE DATE, THE PROCEDURES SET OUT IN AS 33.16.130(B) AND (C) SHALL BE FOLLOWED.

(C) EXCEPT AS PROVIDED IN (D) OF THIS SECTION, A PRISONER MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED AT LEAST ONE-FOURTH OF THE PERIOD OF CONFINEMENT IMPOSED, ONE-FOURTH OF AN ENHANCED PERIOD OF CONFINEMENT IMPOSED UNDER AS 12.55.155(A), OR ANY MINIMUM TERM SET UNDER AS 12.55.115 AT SENTENCING, WHICHEVER IS GREATER.

(D) A PRISONER WHO IS SENTENCED FOR A TERM UNDER AS 12.55.125(A) OR (B) MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED THE MANDATORY MINIMUM TERM UNDER AS 12.55.125(A) OR (B), AT LEAST ONE-THIRD OF THE PERIOD OF CONFINEMENT IMPOSED, OR ANY MINIMUM TERM SET UNDER AS 12.55.115 AT SENTENCING, WHICHEVER IS GREATER.

HISTORY (SEC. 2 CH 88 SLA 1985)
DECISIONS NOTES TO DECISIONS THE TRIAL COURT IS NOT REQUIRED TO ADVISE OF PAROLE MINIMUMS, OR OF ITS AUTHORITY TO FIX PAROLE ELIGIBILITY, UNDER THE TERMS OF CR. R. 11; BUT IT IS PREFERABLE FOR THE COURT TO INFORM THE DEFENDANT. MORGAN V. STATE, SUP. CT. OP. NO. 1663 (FILE NO. 2894), 582 P.2D 1017 (1978), DECIDED UNDER FORMER AS 33.15.080. AN INCREASE IN THE MINIMUM PERIOD OF INCARCERATION REQUIRED BEFORE BECOMING ELIGIBLE FOR PAROLE IS AN INCREASE IN THE SENTENCE. NELSON V. STATE, SUP. CT. OP. NO. 2260 (FILE NO. 4098), 617 P.2D 502 (1981), DECIDED UNDER FORMER AS 33.15.080.

MANDATORILY RELEASED WITH 180 DAYS OR LESS REMAINING ON HIS SENTENCE CANNOT BE RELEASED UNCONDITIONALLY. STATE V. FRAZIER, SUP. CT. OP. NO. 3061 (FILE NO. S-972), 719 P.2D 261 (1986), REVERSING CT. APP. OP. NO. 460 (FILE NO. A-415), 698 P.2D 1212 (1985). CITED IN GANT V. STATE, CT. APP. OP. NO. 171 (FILE NO. 6161), 654 P.2D 1325 (1982). IN NUKAPIGAK V. STATE, CT. APP. OP. NO. 90 (FILE NO. 5820), 645 P.2D 215 (1982).

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SELECT - QUERY
00001 ALL SECTION EQ 33.16.210

AS33.16.210 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.210
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.
CITATION SEC. 33.16.210.
CATCH LINE
DISCHARGE OF PAROLEE.
TEXT THE BOARD MAY UNCONDITIONALLY DISCHARGE A PAROLEE FROM THE JURISDICTION AND CUSTODY OF THE BOARD AFTER THE PAROLEE HAS COMPLETED TWO YEARS OF PAROLE, IF THE SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF PROBATION. A PAROLEE WITH A RESIDUAL PERIOD OF PROBATION MAY, AFTER TWO YEARS OF PAROLE, BE DISCHARGED BY THE BOARD TO IMMEDIATELY BEGIN SERVING THE RESIDUAL PERIOD OF PROBATION.
HISTORY (SEC. 2 CH 88 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SELECT - QUERY
00011 ALL SECTION EQ 33.16.900

AS33.16.900 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.900
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.
CITATION SEC. 33.16.900.
CATCH LINE
DEFINITIONS.
TEXT IN THIS CHAPTER
(1) "BOARD" MEANS THE BOARD OF PAROLE;
(2) "COMMISSIONER" MEANS THE COMMISSIONER OF CORRECTIONS;
(3) "CONTROLLED SUBSTANCE" MEANS A DRUG, SUBSTANCE, OR IMMEDIATE PRECURSOR INCLUDED IN THE SCHEDULES SET OUT IN AS 11.71.140 - 11.71.190;
(4) "CRIME AGAINST A PERSON" HAS THE MEANING GIVEN IN AS 33.30.900;
(5) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS;
(6) "DISCRETIONARY PAROLE" MEANS THE RELEASE OF A PRISONER BY THE BOARD BEFORE THE EXPIRATION OF A TERM, SUBJECT TO CONDITIONS IMPOSED BY THE BOARD AND SUBJECT TO ITS CUSTODY AND JURISDICTION;
(7) "MANDATORY PAROLE" MEANS THE RELEASE OF A PRISONER WHO WAS SENTENCED TO ONE OR MORE TERMS OF IMPRISONMENT EXCEEDING 180 DAYS, FOR THE PERIOD OF GOOD TIME CREDITED UNDER AS 33.20, SUBJECT TO CONDITIONS IMPOSED BY THE BOARD AND SUBJECT TO ITS CUSTODY AND JURISDICTION;
(8) "PAROLEE" MEANS A PRISONER, SENTENCE TO ONE OR MORE TERMS OF IMPRISONMENT EXCEEDING 180 DAYS, RELEASED BY THE BOARD OR BY OPERATION OF LAW BEFORE THE EXPIRATION OF THE TERM, SUBJECT TO THE CUSTODY AND JURISDICTION OF THE BOARD;
(9) "PRISONER" MEANS AN OFFENDER CONFINED FOR A VIOLATION OF STATE LAW, BUT DOES NOT INCLUDE A PERSON CONFINED UNDER AS 47;
(10) "VICTIM" HAS THE MEANING GIVEN IN AS 12.55.185.
HISTORY (SEC. 2 CH 88 SLA 1985)
ANNOTATIONS
REVISOR'S NOTES FORMERLY AS 33.16.260. RENUMBERED IN 1996.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SELECT - QUERY
00012 ALL SECTION EQ 33.20.040

AS33.20.040 DOCUMENT= 1 OF 1

CHAPTER = 33.20
SECTION = 33.20.040
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 20.
REMISSION OF SENTENCES AND EXECUTIVE PARDONS AND CLEMENCY.
ARTICLE 1.
REMISSION OF SENTENCES.
CITATION SEC. 33.20.040.
CATCH LINE
RELEASED PRISONER.
TEXT (A) A PRISONER RELEASED UNDER AS 33.20.030 SHALL BE RELEASED ON MANDATORY PAROLE TO THE CUSTODY AND JURISDICTION OF THE PAROLE BOARD UNDER AS 33.16, UNTIL THE EXPIRATION OF THE MAXIMUM TERM TO WHICH THE PRISONER WAS SENTENCED, IF THE TERM OR TERMS OF IMPRISONMENT EXCEEDED 180 DAYS. HOWEVER, A PRISONER RELEASED ON MANDATORY PAROLE MAY BE DISCHARGED UNDER AS 33.16.210 BEFORE THE EXPIRATION OF THE TERM. A PRISONER WHO WAS SENTENCED TO AN IMPRISONMENT OF 180 DAYS OR LESS SHALL BE UNCONDITIONALLY DISCHARGED, EXCEPT AS PROVIDED IN (C) OF THIS SECTION.

(B) THIS SECTION DOES NOT PREVENT DELIVERY OF A PRISONER TO THE AUTHORITIES OF A STATE OR THE UNITED STATES ENTITLED TO THE CUSTODY OF THE PRISONER.

(C) IF A PRISONER'S SENTENCE INCLUDES A RESIDUAL PERIOD OF PROBATION, A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (A) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE.

HISTORY (SEC. 4 CH 107 SLA 1960; AM SECS. 3, 4 CH 88 SLA 1985)
AMENDMENT NOTES
EFFECT OF AMENDMENTS THE 1985 AMENDMENT REWROTE SUBSECTION (A) AND ADDED SUBSECTION (C).
DECISIONS NOTES TO DECISIONS THE WORDING OF 18 U.S.C. &SEC 4164 IS VERY CLOSE TO THAT OF SUBSECTION (A). MORTON V. HAMMOND, SUP. CT. OP. NO. 1982 (FILE NO. 4882), 604 P.2D 1 (1979), DECIDED PRIOR TO 1985 AMENDMENT. PAROLE BOARD AUTHORITY. - PRISONERS WHO ARE RELEASED MANDATORILY UNDER THE PROVISIONS OF SUBSECTION (A) WITH GREATER THAN 180 DAYS TO SERVE UNDER THEIR SENTENCES ARE RELEASED AS IF RELEASED ON PAROLE, WHICH MEANS THAT THE PAROLE BOARD HAS THE AUTHORITY TO SET SPECIAL CONDITIONS OF RELEASE ON PAROLE WHICH ARE THE SAME AS THE SPECIAL CONDITIONS WHICH THE PAROLE BOARD SETS FOR PRISONERS WHICH IT RELEASES BY EXERCISING ITS DISCRETION, AND THE PAROLE BOARD CAN REVOKE THE PAROLE OF A PERSON ON MANDATORY RELEASE WHO VIOLATES THESE SPECIAL CONDITIONS, EVEN THOUGH THE VIOLATIONS ARE NOT VIOLATIONS OF STATUTORY CONDITIONS OF PAROLE. BRAHAM V. BIERNE, CT. APP. OP. NO. 337 (FILE NO. 7739), 675 P.2D 1297 (1984), DECIDED PRIOR TO 1985 AMENDMENT. RELEASE OF PRESUMPTIVELY SENTENCED PRISONER. - A PRESUMPTIVELY SENTENCED PRISON WHO IS

MEMORANDUM State of Alaska

TO: Tom Wright
Legislation Aide
Rep. Swackhammer's Office

DATE: March 9, 1987

FILE NO.:

THRU:

TELEPHONE NO.: 907-465-3384

SUBJECT: Mandatory Parole

FROM: Samuel H. Trivette
Executive Director
Parole Board

Per your request of March 7, 1987, I researched out files and also contacted the National Institute of Corrections Information Center to obtain additional information on mandatory parole in other jurisdictions. Unfortunately no national data is being gathered on mandatory parole. However, I did discuss this issue at length with Brian Bemus at the Information Center. He has extensive knowledge in this area. He only knows of two states that have abolished mandatory parole supervision. Some other states require the Parole Board to parole prisoners prior to "flat-time" dates but don't call it mandatory parole.

Mr. Bemus stated that most states have a system similar to ours. That is, prisoners with only longer sentences go on supervision subject to conditions set by the Parole Board. At least one state has the supervision lengths tied to the seriousness of the crime. So he agrees House Bill 140 is fairly typical of mandatory parole laws.

Another point I think is important. Alaska is fairly unique in having "split sentences", that is a prison sentence with probation to follow. In most states a judge can impose only a short county jail sentence as a condition of probation. Otherwise the judge sends the offender to prison, and there is no probation to follow. I checked two of our larger correctional facilities today and over 95% of the felons sentenced for classified felony crimes have split sentences, i.e.; have jail time and probation to follow. The importance is most felons will be supervised on probation without mandatory parole, so the public will be protected.

ALASKA PAROLE BOARD

MANDATORY PAROLE INFORMATION

1985 - 1986

	Supplemental Conditions Set	Mandatory Parole Revocation Hearings
1985	179 Cases	25
1986	373 Cases	57

HOUSE JOURNAL SUPPLEMENT

April 4, 1985 No. 42

Alaska State Legislature

House of Representatives

House Judiciary Committee

CSHB 141(Jud)

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

The following is a commentary and sectional analysis prepared by the Department of Law for CSHB 141(Jud) "An Act relating to the parole of offenders; and amending the sunset date for the parole board; and providing for an effective date." It was used by the House Judiciary Committee in its consideration of the bill.

H.H. Miller, Chairman
House Judiciary Committee

P. 4

Sectional Analysis and Commentary - CSHB 141 (Jud)

For the fourth consecutive legislature, legislation has been introduced to rewrite the Alaska Parole Administration Act. The original Parole Administration Act, AS 33.15, was adopted in 1960. In the ensuing 25 years the criminal justice system in Alaska has undergone radical change, yet the Parole Administration Act has only been amended on a piecemeal basis without the benefit of comprehensive research and careful analysis. Although the current operations of the board meet or exceed most nationally accepted correctional standards and court decisions, existing law does not reflect this. As noted in the 1984 Legislative Audit on the Parole Board, "[e]xisting statutes relating to the Parole Board are vague, lack specific direction in some areas and are inconsistent in other areas." The vagueness and ambiguities contained in existing law are leading to an ever increasing amount of litigation. CSHB 141 clarifies these ambiguities, while providing clear direction for parole administration in light of the evolutionary changes in the criminal justice system which have resulted from recent case decisions. The bill also embodies many professional standards of the corrections/parole field while setting parameters for the operation of a parole system in Alaska.

Article III, Section 21 of the Alaska Constitution requires that "A parole system shall be provided by law." As an integral part of the criminal justice system, parole can be an invaluable tool in rehabilitating offenders by ensuring that they are reintegrated back into society with assistance and direction. Parole can also enhance public protection by establishing and enforcing conditions of release designed to reduce risk to the public. Finally, parole can be a positive factor in reducing prison overcrowding by releasing low-risk offenders from incarceration under realistic conditions. The dictates of Article III, Section 21 necessitate legislative action to provide clear and predictable direction to the Parole Board in order to fulfill these rehabilitative and protective goals.

Section 1

This provision vests a sentencing court with the power to further restrict eligibility for discretionary parole beyond that which is provided by operation of law. Eligibility for discretionary parole may be restricted in this section up to the maximum term of imprisonment. Similar provisions have always existed in Alaska law, and constitute an appropriate sentencing tool in cases were parole is not foreclosed by presumptive sentencing. In that a court's sentencing authority is derived from statute, there must be affirmative authorization for such a sentencing order. Bovne v. State, 586 P.2d 1250 (Alaska 1978).

Section 2

AS 33.16.010. This section sets forth the two distinct types of parole which exist in current law -- discretionary parole and mandatory parole. Consistent with current law, all state prisoners sentenced to a term of imprisonment of at least 181 days are parole eligible. Presumptively sentenced prisoners are ineligible for discretionary parole under AS 33.16.090, however they are subject to mandatory parole under this section. Under either type of parole, the released prisoner is subject to the imposition of conditions and the supervision of the parole board. Mandatory parole is currently authorised under present AS 33.20.040. See Braham v. Beirne, 675 P.2d 1297, (Alaska 1984). This section provides for uniform supervision for all parolees, whether mandatory or discretionary.

AS 33.16.020 - .040 establishes the parole board in the department of corrections, sets out guidelines and criteria for the selection and appointment of board members, and allows the rates of compensation for board members.

AS 33.16.050 codifies existing practice by setting out requirements for the frequency of board meetings, and quorum and voting requirements necessary to take official action. This section also permits the board to conduct meetings via teleconference facilities. However, this power is limited to situations where no due process considerations, such as the right to confrontation, are in issue.

AS 33.16.060 sets out the duties of the board. The primary change in existing law is the requirement to adopt regulations under the Administrative Procedures Act, AS 44.62. Currently the Board is exempt from this Act. By requiring adherence to the Administrative Procedures Act when adopting regulations, the board will be subject to a greater degree of public scrutiny and input, and information regarding board operations will be more accessible.

AS 33.16.070 authorizes the board to issue subpoenas and specifies those subpoenas as enforceable in superior court.

AS 33.16.080 enables the board to hire an executive director and sets minimum qualifications for this position.

AS 33.16.090 establishes eligibility for discretionary parole. A state prisoner must be sentenced to a term or terms over 180 days, and may not be presumptively sentenced to be eligible. The prisoner must also have served any statutory or

judicially imposed minimum sentence.

Further, this section resolves a major ambiguity present in current law. With the passage of the new criminal code in 1978 and the enactment of Alaska's presumptive sentencing scheme, offenders who were presumptively sentenced were decreed to be ineligible for discretionary parole. However, within this scheme, no statutory provision or legislative intent has defined "presumptive sentence" for the purpose of discretionary parole eligibility. A few sentencing courts have concluded that the law is ambiguous and have declared that after an offender serves one presumptive term, he is thereafter eligible for discretionary parole during subsequent consecutive presumptive terms. In addition some presumptively sentenced offenders have been made eligible for discretionary parole during the period of enhancement when the presumptive sentence was increased because the crime was an aggravated one. The same rationale employed by the courts in these instances could also be used to make a presumptively sentenced prisoner eligible for parole if the presumptive sentence was mitigated. The practice of granting discretionary parole eligibility to subsequent presumptive terms in a consecutive sentence, and to those portions of presumptive terms which are sentence enhancements because the crime was aggravated, is clearly allowed in this section. In order for an offender to be considered ineligible for discretionary parole during any term in excess of the presumptive term, the sentencing court must restrict that parole eligibility under AS 12.55.115.

Finally, this section also codifies case law to allow the board to rely on more than just the judgment of the court in determining if the prisoner is presumptively sentenced. Currently a substantial portion of the judgments entered by courts do not indicate whether a prisoner is presumptively sentenced, therefore it is necessary to review the sentencing record to determine discretionary parole eligibility.

AS 33.16.100(a) sets out the broad general standards that the board should follow when deciding on a grant of discretionary parole. These standards reflect the Chaney criteria and the purposes of sentencing in AS 12.55.005, particularly those concerned with rehabilitation, protection of the public and seriousness of the crime.

Subsection (b) authorizes the board to rescind or revise a grant of parole when new circumstances come to light. Currently the board reviews and approves parole release plans months prior to a prisoner's release date. Subsequently new

information on that prisoner may come to the board's attention. For example, a prospective employment plan may no longer be possible, or the prisoner is unable to immediately enter a residential treatment program upon release, or the prisoner is subsequently involved in a major disciplinary action. With this provision the board can change conditions or decide that the prisoner is not appropriate for discretionary parole, and rescind its previous action or merely delay the prisoner's release date. Due process safeguards are built in to protect the prisoner's liberty interest.

Subsections (c) and (d) set out the minimum amount of a sentence a prisoner must serve before being eligible for discretionary parole. For discretionary parole eligible prisoners, the minimum term is decreased from one-third of the sentence under current law to one-fourth of the sentence, except for an individual convicted of first or second degree murder, kidnapping, or misconduct involving a controlled substance in the first degree. With this latter group, the minimum term remains one-third or the mandatory minimum, whichever is greater. The sentencing court may further restrict parole eligibility under AS 12.55.115. Parole eligibility is reduced by this bill only for first-time non-presumptive Class B or C felony offenders and for misdemeanants.

AS 33.16.110 codifies existing practice by setting out the information which the board must consider when determining a prisoner's suitability for discretionary parole.

AS 33.16.120 was enacted in 1984 as a portion of the Victim's Rights Legislation and gives a victim the right to comment in writing on a pending discretionary parole decision. The board is required to consider those comments. The board also has a duty to notify a victim if a prisoner is released on either discretionary or mandatory parole.

AS 33.16.130 places the responsibility for requesting discretionary parole on the prisoner rather than making the board responsible for reviewing all potentially eligible prisoners. Working with institutional staff, the prisoner would prepare a parole release plan, including the prisoner's plans for employment, treatment, residence and other relevant material, for presentation to the board. A hearing on the granting of parole is required. If the board denies an application for discretionary parole, a written decision must be issued and provided to the prisoner. This section mirrors current practice, but the procedural safeguards are made more specific.

AS 33.16.140 requires the board to issue a written order of parole for any discretionary or mandatory parolee, setting forth all terms and conditions of release including the parole expiration date. This clarifies existing law by providing more specificity.

AS 33.16.150 codifies existing practice by setting out the terms and conditions which the board may impose on a discretionary or mandatory parolee. The prohibition against violating any law is a required condition for all parolees. Subsection (b) lists numerous other conditions that the board may impose in order to fashion an appropriate rehabilitative release plan and supervision for the parolee. Subparagraph (b)(7) would apply only to misdemeanants, because a convicted felon is already precluded from possessing or controlling a firearm under both state and federal law. Conditions may also be imposed by parole officers, except for certain very restrictive conditions listed in subparagraph (c), which may only be imposed by the board.

The board is also empowered under subsection (d) to set a specific time limit on any discretionary condition it imposes.

AS 33.16.160 sets out the mechanism whereby changes in a condition of parole may be accomplished. This provision sets out due process safeguards for the parolee when the condition is more restrictive, and also delineates the methods by which a condition may be changed or imposed in an emergency situation.

AS 33.16.170(a) makes records and information obtained or used by the board confidential under state law. Subsection (b) allows the board to withhold certain potentially harmful information from the parolee. When this type of information is withheld, subsection (c) requires the board to provide to the prisoner or parolee a summary of the material withheld.

AS 33.16.180 sets out the duties of the commissioner of corrections in assisting the parole board.

AS 33.16.190 reflects current law, under which the positions of parole officer and probation officer are interchangeable.

AS 33.16.200 clearly sets out that the board retains jurisdiction over a parolee until the end of the parolee's sentence and results in all parolees being equally treated. This section consolidates current law which sets out three different schemes for determining the board's jurisdiction over a parolee.

AS 33.16.210 allows the board to unconditionally discharge a parolee from parole after two years. The discharge authority would be employed when a parolee has demonstrated rehabilitation and there is no further need for supervision. There is no similar provision currently in law. Alaska is believed to be the only state where the parole board does not possess this authority.

AS 33.16.220 sets out the mechanism for revoking parole. Subsection (a) gives the board the authority to revoke parole if the parolee violates a condition of release. This mirrors current law.

Subsection (b) sets out minimal due process requirements for holding a preliminary revocation hearing. In order to avoid duplicitous proceedings, the board may rely on a judicial determination of probable cause rather than hold a separate preliminary hearing.

In subsection (c), after finding probable cause of a violation, the board then must conduct the dispositive phase, i.e., deciding whether the parolee is to be incarcerated or released pending a final revocation proceeding. If the board decides to release the parolee, additional conditions may be imposed under subsection (d).

Subsections (e) and (f) set out time frames for holding final revocation proceedings. These provisions codify case law to ensure speedy disposition of parole revocation proceedings.

Subsection (g) addresses the situation where a parolee's alleged violation is also a pending criminal charge. Before deciding to proceed to a final revocation proceeding, the board must consider any prejudice that may result to either the parolee or the state. If a decision to hold the revocation proceeding is made, the board then must consult with the Attorney General's office so that immunity issues may be resolved. This provision attempts to balance seemingly inconsistent court decisions.

Subsection (h) establishes the burden of proof necessary to show a violation. This is a codification of case law.

Subsection (i) vests the board with broad discretionary power to fashion a remedy appropriate to the violator and the violation. Numerous options are made available under this subsection. The board may revoke all of the violator's parole, returning the parolee to jail for the full term of the parole; the

board may revoke a part of the violator's parole, returning the parolee to jail for a part of the parole term and extending the period the parolee is under the jurisdiction of the board a commensurate amount. The board may return the parolee to jail for part of the parole term and not extend the parole term. the board may also change a condition of parole to ensure that the rehabilitative goals are met. The board currently holds this power; this subsection merely restates and clarifies this power.

AS 33.16.230 allows a parolee to waive any hearing which is required under due process standards.

AS 33.16.240 sets out the procedure for arresting a parole violator. Subsection (e) precludes bail for a person arrested as a parole violator. The dispositive phase of a preliminary revocation proceeding, under AS 33.16.220(c), addresses a parole violator's release.

Subsection (f) gives credit to a parolee for time in custody toward the unexpired term of the sentence, but denies a parolee credit for street time. This provision is in current law.

AS 33.16.250 sets out how an arrest warrant for a parole violator is executed.

Section 3 amends existing good time release provisions to conform with the concept of a mandatory parole.

Section 4 provides for those situations when a mandatory parolee has a residual period of probation.

Section 5 is a technical, conforming amendment.

Section 6 provides a new sunset date for the parole board.

Section 7 repeals the existing Parole Administration Act.

Section 8 addresses the reappointment of current board members and allows for readjustment of their terms of appointment to achieve staggered terms.

Section 9 is a special application section for AS 33.16.090(b), discretionary parole eligibility during the period of an enhanced or consecutive presumptive sentence. In that some prisoners have previously been ordered to be

discretionary parole eligible during these periods, these court orders are approved in this section. For other prisoners sentenced before the effective date of this Act who have enhanced or consecutive presumptive sentences, and where the court has not made a determination on discretionary parole eligibility, it is intended that those prisoners may petition the court under Criminal Rule 35 for this determination. Absent such a determination, AS 33.16.090(b) is to be applied prospectively.

Section 10 provides for an effective date.

Due Process Considerations

Generally, in determining the procedural safeguards that due process requires in parole proceedings, it is first necessary to distinguish the type of proceeding involved. The decision making functions in parole can be broadly designated as either granting parole or revoking parole, each of which necessitates differing level of safeguards. The question of the necessary levels of safeguards that must be provided is correlative to the liberty interest being considered or acted upon. The greater the liberty interest involved, the higher the level of safeguards mandated. In Alaska, which employs a scheme of both discretionary and mandatory parole, further distinguishment in the safeguards results from the type of parole under consideration.

Clearly, if the procedures under consideration pertain to a revocation function, safeguards are universally applicable, whether parole is mandatory or discretionary. For although parolees have forfeited their right to the full liberty enjoyed by ordinary citizens by virtue of a criminal conviction, they do possess greater freedom than persons incarcerated. This conditional liberty interest possessed by both mandatory and discretionary parolees has been recognized by the United States Supreme Court:

> We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a "grievous loss" on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege." By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment.

Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

On the other hand, the procedures which apply during the granting phase are not applicable to both classes of parolees, because mandatory parolees are released by operation of law while discretionary parolees are subject to the discretionary decision making function of the parole board. The procedures required under the parole granting function likewise differ from those required in the revocation function, as there is no recognized liberty interest, conditional or otherwise, in discretionary parole. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979).

A. Parole Granting Function

Due process safeguards in the parole granting function are only required if there is a deprivation of a protected interested held by the prospective parolee. Under the United States Constitution, states do not have a legal obligation to establish a parole system, and there is no federal constitutional or inherent right to parole. However, Greenholtz does recognize that a state may, by constitution or by statute, create such a right, and if the right is created, certain due process safeguards must be afforded the prospective parolee.

Procedural safeguards in the discretionary parole granting process would be required if the Alaska Constitution or statutes created a sufficient expectation of parole to constitute a protected liberty interest, as the establishment of a liberty interest is a condition precedent to the applicability of due process. Sharp v. Leonard, 611 F.2d 136 (6th Cir. 1979).

Article III, Section 21 of the Alaska Constitution provides

> Section 21. Executive Clemency. Subject to procedures prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

This section directs the creation of a parole system by the legislature; it does not constitutionally guarantee parole, nor does it mandate the type of system of parole that could be created. Rather, it leaves to the discretion of the legislature the type of parole system, and that discretion necessarily includes determining the types of individuals eligible for parole.

Within the context of finding a liberty interest created by statute, courts will focus on the certainty of parole release. If the board has unlimited discretion to grant or deny parole, no liberty interest is present. Conversely, if the statute requires the board to parole a particular person at a certain time, that person has an expectation of release which is a protected liberty interest. As a general rule, the more the board's discretion is limited, the more likely it is that a liberty interest will be found. If there is a presumption that a prisoner will be paroled, courts will tend to find a liberty interest. U.S. ex rel Scott v. Illinois Parole and Pardon board, 669 F.2d 1186 (7th Cir. 1982). This distinction is apparent in comparing AS 33.16.010(b) with AS 33.16.010(c), in that the certainty of parole release under the latter statute is limited only by the amount of good time the prisoner has accumulated under AS 33.-20.030, while the board's discretion governs parole under the former.

Careful analysis of discretionary parole under AS 33.16 is necessary to determine whether there is a sufficient expectation of parole to find a liberty interest. AS 33.16.090(a), which discusses the eligibility of a prisoner for discretionary parole vests the board with wide discretion ("... may, in the discretion of the board, be released on discretionary parole ..."). Less certitude in a prisoner's release on discretionary parole is found in AS 33.16.100(a) ("The board may authorize the release of a prisoner on discretionary parole if ..."). This statutory language is intentionally discretionary, and does not create a liberty interest in the Alaska statutory scheme of discretionary parole.

The incertitude of a grant of discretionary parole has also been recognized by the Alaska Supreme Court, albeit in dicta. For although a prisoner must serve a minimum period before becoming eligible for discretionary parole "... it does not follow from this that there is any certainty that a prisoner ... would actually be paroled at that time." 1/

Only in those situations where state legislatures have limited the parole authority's release discretion have courts found any liberty interest. This was the case in Greenholtz where the Nebraska statutes declared that the parole board

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1/ Huff v. State, 568 P.2d 1014, 1019 (Alaska 1977). See also Hansen v. State, 582 P.2d 1041, 1047 n. 12 (Alaska 1978).

"shall" grant release "unless" one of four designated reasons for not doing so existed. 2/ See also, Williams v. Missouri board of Probation and Parole, 661 F.2d 697 (8th Cir. 1981). However, such mandatory language is a rarity among states, and doesn't exist in Alaska law.

A liberty interest in the parole granting process may also be found in the practices of the board or in administrative rule or regulation adopted under the statute. For example, if the board adopts standards which include guidelines specifying an approximate parole release date for prisoners whose crimes and personal histories fit predetermined categories then a conditional liberty interest might be found to exist. This predictive judgment process will then require procedural safeguards to reduce the risk of error in determining the factual elements and making the subject appraisals. This is the situation intended for the Alaska parole system.

By requiring the adoption of regulations which "establish standards under which the suitability of discretionary parole is determined," a minimal liberty interest is created in the parole granting process. The Parole Administration Act, AS 33.16, therefore grants certain procedural safeguards to prisoners eligible for discretionary parole. This statutory grant of procedural safeguards is intended to give prisoners the assurance of a fair proceeding.

Procedural Safeguards

After applying for parole, the eligible prisoner is entitled to notice and a hearing on the parole application. The prisoner is given access to most material which the board will consider in reaching its decision, and the prisoner is granted the opportunity to respond in writing to the material and present evidence to the board. AS 33.16.130(b). Absent exigent circumstances, the evidence presented by the prisoner should not include the testimonial evidence of third parties, as such evidence can be submitted by means of an affidavit.

Only if the board denies the application for discretionary parole must the basis for the decision be put in writing. A copy of this writing is provided to the prisoner AS 33.16.-130(c). If the denial of the application is a "set off",

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2/ Neb. Rev. Stat. § 83-1, 114

allowing for reconsideration of parole at some future date, the written basis for denial may indicate those areas in the prisoner's proposed release plans which need to be addressed, giving the prisoner adequate notice and direction for the subsequent reconsideration.

Although a prisoner is provided the basis for a denial of parole, this action of the board is not reviewable unless there is a denial of a constitutional right. The judicial review procedures of the Administrative Procedures Act, AS 44.62.330, 560 and 570, do not apply to parole board actions.

When the board has granted an application for parole and set a release date for the prisoner, it may rescind that action before the release date, or even revise the release date. This would occur if a change in circumstances in the prisoner's parole release plan occurred or if new information concerning the prisoner came to light. AS 33.16.100(b).

Having granted a future parole release date, the expectation of parole is sufficient to find a conditional liberty interest. Therefore, certain minimal procedural safeguards are warranted. The same statutorily mandated procedures employed at the parole granting phase are required to rescind parole, as they are sufficient to satisfy constitutional due process requirements.

B. Imposing Conditions of Parole

When imposing conditions of release on a parolee, whether the parole is discretionary or mandatory, the board is limited to imposing conditions which are both consistent with the goals of rehabilitation and protection of the public, and necessary for the proper functioning of the parole system. Morrissey, at 483; Roman v. State, 570 P.2d 1235, 1242 (Alaska 1977). To this end, all prisoners released on parole are required to lead law abiding lives as a condition of release. AS 33.16.-150(a). Additionally, the board is empowered to impose special conditions designed for the individual rehabilitative program of each paroled offender. AS 33.16.150(b). Because some of these special conditions are severe limitations on the parolee's conditional liberty interest, imposition must be rationally related to the underlying offense or the parolee's history. Roman, at 1242. Specifically, special conditions that are in the nature of a search, AS 33.16.150(b)(9) & (11), may only be imposed if warranted by the nature or the circumstances surrounding the parolee's crime or social history. For this reason, these conditions may only be imposed by the board. AS 33.16.150(c).

Imposition of two additional conditions are likewise limited, not because they impinge upon the conditional liberty interest, but rather due to the nature of the condition. Precluding a parolee from possessing or controlling a firearms is limited to misdemeanor offenders, as felons are precluded by state law (AS 11.61.200) as well as federal law (Pub. L. 90-618 § 922(h)) from doing so. Imposing this condition upon a parolee would also necessitate a relationship to the crime, e.g. assault or extreme game violations. Finally, restitution as a condition of parole may only occur if restitution was ordered by the sentencing court. Brezenoff v. State, 658 P.2d 1359 (Alaska App. 1983).

After the initial imposition of the conditions of release upon the parolee, a need may arise to change or impose additional conditions, procedural safeguards may then be required. If the parolee is determined to be at liberty on a certain conditional level, a more restrictive level of conditional liberty may be a deprivation of the current conditional liberty status; thus imposition of new conditions may only be accomplished if the parolee is provided notice of the proposed change and the opportunity to be heard on it. Whether procedural safeguards need to be employed when there is a new or changed condition depends on an analysis of whether the new or changed condition is a further infringement of the liberty interest and also whether the change is significant or insignificant. Clearly, if the new condition required the parolee to enroll in a residential treatment program for substance abuse, the current level of conditional liberty enjoyed by the parolee is being curtailed; thus procedural safeguards are warranted. Conversely, if the new condition was a requirement of the parolee to pay child support or not to open a charge account, there is no further curtailment of the current conditional liberty interest, and procedural safeguards are not necessary. Moreover, if the parole officer required the parolee to report twice a month, rather than once a month, such a change is so insignificant as to not require any due process protections.

Situations may also occur which require the immediate imposition of a new or changed condition. Specific procedures are set out which balance the state's interests in rehabilitation and protection of the public with the parolee's conditional liberty interest. AS 33.16.160(c) & (d).

C. Parole Revocation

In Morrissey, after recognizing the conditional liberty interest possessed by parolees, the United States Supreme Court

mandated the employment of procedural guarantees in parole revocation proceedings.

The procedures required could be informal in nature, but must include as a minimum

1) a preliminary revocation hearing at or reasonably near the place of the alleged violation and as promptly as convenient after the arrest;

2) a final revocation hearing with

a) written notice of the claimed violation;

b) disclosure of evidence to be used against the violator;

c) opportunity to be heard in person and to present witnesses and documentary evidence;

d) a limited right to confront and cross-examine adverse witnesses;

e) a neutral and detached hearing body; and

f) a written statement by the fact finders as to the evidence relied on and the reasons for revocation.

Morrissey, at 486, 489.

In essence, Morrissey requires "an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." Morrissey, at 485.

Clearly the court did not require the full range of rights normally accorded in a criminal proceeding. Subsequent decisions have held that the revocation proceeding is not part of a criminal proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), therefore those guarantees normally applicable in the criminal proceeding do not apply in a revocation. State v. Sears, 553 P.2d 907 (Alaska 1976) (exclusionary rule for illegally seized evidence does not apply); Martin v. State, 517 P.2d 1389 (Alaska 1974) (right to bail under Alaska Constitution does not apply); Paul v. State, 560 P.2d 754 (Alaska 1977) (Alaska speedy trial rule does not apply); Roman v. State, 570 P.2d 1235 (Alaska 1977) (warrantless searches are permissible); Davenport v. State, 568 P.2d 939 (Alaska 1977) (different requirements for parole violation arrest warrant); Avery v. State, 616 P.2d 872 (Alaska 1980) (preponderance of evidence standard of proof sufficient for revocation).

1. Preliminary Revocation Hearing

The Morrissey case set the broad standards for the

preliminary revocation hearing in order "to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole." 3/ The hearing needs to be conducted by an independent decision maker, i.e., some person other than one initially dealing with the case.

The finding of probable cause or reasonable grounds may be based on a finding in another forum, as the parolee would be collaterally estopped from relitigating issues previously determined. A criminal conviction, 4/ with the higher "beyond a reasonable doubt" standard of proof, or a finding of probable cause after a preliminary hearing in a pending criminal case, would both constitute conclusive proof of a parole violation. AS 33.16.220(b).

Although there is case law intimating a grand jury indictment may be used in a like manner, 5/ the due process requirement of Morrissey, which grants the parolee the opportunity to refute or explain the alleged violation, would tend to negate use in this way. However, given the standard for a grand jury indictment in Alaska (the evidence presented, if unexplained or uncontradicted, would warrant a trier of fact to find beyond a reasonable doubt that the accused committed the crime charged), the requirements of the prosecutor to disclose exculpatory evidence to the grand jury, 6/ and safeguards of Criminal Rule 6(q), a grand jury indictment does constitute prima facie evidence of a violation. In this situation, the burden is shifted to the alleged violator to disprove the charges in the indictment.

When probable cause or reasonable grounds for a violation are found, the preliminary revocation hearing becomes a

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3/ Morrissey, at 486.

4/ Moody v. Daggett, 429 U.S. 78, 86 n.7 (1976)

5/ See Inmates Councilmatic Voice v. Rogers, 541 F.2d 633 (6th Cir. 1976); Hall v. State, 535 F.Supp. 1121 (S.D. Ohio 1982).

6/ See Tookak v. State, 648 P.2d 1018 (Alaska App. 1982); Frink v. State, 597 P.2d 154 (Alaska 1979).

bifurcated process. Just as in the final revocation process there is an adjudicatory phase (to determine probable cause) and a dispositive phase (where the hearing officer must then determine whether the violator should be released pending a final revocation hearing). The hearing officer is required to consider four factors in making this determination. AS 33.16.220(c). As there is no constitutional right to bail in a parole revocation proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), release pending the final revocation hearing may only occur under this subsection. (Bail release is also statutorily denied. AS 33.-16.240(e)). The hearing officer, in determining that release is appropriate, may also impose additional conditions on the violator. AS 33.16.220(d). Necessary procedural safeguards, if the additional conditions are more restrictive of the parolee's liberty, are satisfied in the two phases of the bifurcated preliminary revocation hearing process.

2. Final Revocation Hearing

As previously noted, Morrissey set out six specific requirements for a final revocation hearing necessary to meet minimal due process safeguards. These minimal procedures have not been significantly expanded, either in subsequent case law, or by statute. The burden on whether to have a final revocation hearing has been shifted from the parolee: Morrissey implies the parolee must request a final revocation hearing (although the parolee must be notified of the right to such a hearing); by statute, a final revocation will be held unless specifically waived in writing by the parolee. AS 33.16.230. Additionally, the "within a reasonable time" requirement for holding a final revocation proceeding has been established by statute -- within 20 working days after a parolee's arrest and incarceration if no preliminary revocation hearing is held, 7/ or within 120 days after the arrest if a preliminary revocation hearing has been held. 8/ Special safeguards for both the parolee and the state are available in the event the alleged violation is based on a pending criminal charge. AS 33.16.220(g).

If a violation is found, the board is granted significant discretion in fashioning an appropriate remedy. Additional conditions of parole may be imposed upon the violator, who is

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7/ AS 33.16.220(e)

8/ AS 33.16.220(f)

then re-released on parole; the violator may also have the parole revoked in full, or in part, AS 33.16.220(i). A parolee is not given credit towards the original sentence, for time spent on parole, AS 33.16.240(f), so that a revocation may result in reincarceration for the amount of the prisoner's original term not previously served in jail. A partial revocation would result when the board decided the seriousness of the violation did not warrant reincarceration for the remainder of the term, but that some reincarceration was necessary.

Other Considerations

A. Arrest of Parole Violators

Alleged parole violators may be arrested with or without a warrant. A warrant may be issued by the board or a member of the board based upon a probable cause standard. Unlike the standards applicable to arrest warrants in criminal cases, a parole violator warrant does not need to be supported by a written affidavit or complaint. Davenport v. State, 568 P.2d 939 (Alaska 1977). However, to avoid unnecessary litigation on the issue of whether the warrant is supported by probable cause, the warrant is intended to be supported either by a written or recorded statement of the parole officer. Davenport, at 948, n.21.

Likewise, exigent circumstances may exist requiring the immediate arrest of a parolee. However, rather than leaving these exigent circumstances to subsequent court interpretation, the circumstances are enumerated in statute AS 33.16.240(c). If a warrantless arrest occurs, strict reporting requirements on the circumstances of the arrest are mandated. AS 33.16.240(d).

B. Confidential Information

1. Public Disclosure

During the decision making aspects of its duties, the board will be relying upon information derived from a variety of sources. Although some of this information may be public information if is derived from the original source under AS 09.25.110, other portions of this information are confidential, e.g., presentence reports. In order to relieve the board of the responsibility to determine whether this information is otherwise confidential under law, all the information compiled by the board is made confidential. AS 33.16.170(a). This provision therefore exempts that information from the provisions of AS 09.25.110 and AS 09.25.120; however, if the information is otherwise public information, this section does not preclude public inspection and

copying of that material at its original source.

2. Disclosure to the Parolee

In the main, information which is used by the board must be disclosed to the parolee. The due process requirements which attach to the liberty interests held by parolees or potential parolees, dictate that the parolee be given not only notice of a proposed action, but also the opportunity to be heard. To be meaningful, the opportunity to be heard requirement should afford the parolee or prisoner the ability to refute or explain adverse information as well as to ensure that the board considers information which the parolee or prisoner believes is relevant to the decision making function under consideration by the board. As succinctly stated in Morrissey, at 485, the procedural safeguards should be designed to ensure "that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." There are, however, instances and situations wherein full disclosure of all information under consideration is neither appropriate nor required.

The first type of information where disclosure is neither appropriate nor required is the address of a victim who has commented upon a pending discretionary parole under AS 33.16.120. In this instance, the state has undertaken a duty to protect the victim from harm or harassment. AS 12.61.010(a)(3). By not disclosing the victim's residence or location, the state is taking one small measure to protect that victim in the event the prisoner, or any of the prisoner's relatives or associates decides to act in vengeance if the victim has commented adversely on a prospective parole. Furthermore, there is no reason, under due process requirements or otherwise, for the prisoner to have access to that piece of information. Therefore, this information is not disclosed to the parolee. AS 33.16.120(b).

The second type of information that is not appropriate to disclose is previously undisclosed diagnostic reports, confidential informant reports and any other information which, if disclosed, may result in harm to any person. AS 33.16.170(b). The state's interest in the rehabilitation of the prisoner, whether discretionary parole is granted or not, is of paramount importance. In some instances a psychiatric evaluation of the prisoner, if it has not been previously disclosed, may severely undermine the institutional therapy program in which the prisoner is currently enrolled. Although it is rare that such a diagnosis has occurred and has not been subsequently disclosed to the prisoner, a few instances of subsequent disclosure by the board and an attendant disruption of the prisoner's therapeutic program

would lead to the board either not being given access to that information, or to that type of information not being generated. Either alternative would negatively impact the rehabilitative goals of the state.

Furthermore, disclosure of confidential information or any other information which may result in harm to any other person is contrary to the state's duties to properly administer prisons and to protect society.

Although non-disclosure of these types of information, is permitted, due process does mandate the opportunity for the prisoner or parolee to contradict or explain adverse information. In balancing this interest with the state's interest in protecting other members of society from harm and ensuring rehabilitation, the board is therefore required to summarize the information which it does not disclose. This summary will vary with the types of information being considered by the board, but it nonetheless must be capable of conveying to the prisoner or parolee, as completely and as accurately as possible, the content of the information. This will enable the prisoner or parolee to adequately respond. AS 33.16.170(c).

C. Remedial Actions

Numerous duties are required of the board during the parole process. The Parole Administration Act does not set out specific remedies that may result if the board fails to discharge those duties.

1. Parole/Prisoner Remedies

Absent the denial of a constitutional right, the actions of the parole board when it in exercising its discretionary functions are not reviewable in court. Therefore, when in its predictive judgment, the board decides a prisoner is not suitable for discretionary parole, an aggrieved prisoner may not have that decision reviewed. However, in that the Parole Administration Act, and its requirement for the adoption of regulations establishing standards for the determination of the suitability for discretionary parole, grant a perspective parolee a limited liberty interest, review of the board's action for a denial of due process safeguards is more readily available than is apparent. Similarly, revocation of parole which is a recognized liberty interest may give rise to judicial review of the procedures employed to ensure the necessary level of due process procedural safeguards.

If a prisoner or parolee challenges the procedure of the board as a violation of due process safeguards (usually through an action under Criminal Rule 35) the remedy that is nearly universally applied is for the board to redo the proceeding, ensuring that the parolee's or prisoner's due process rights are recognized. Newell v. State, 620 P.2d 680 (Alaska 1980). The courts have recognized that they possess "only limited power to review Parole Board decisions, and cannot usurp the authority of the Board." 9/ This remedy is generally appropriate if the board has violated one of the procedural guarantees set out in Morrissey, at 486, 489, whether it occurs at the preliminary or final revocation stage. See Ford v. Wainwright, F.2d 981 (5th Cir. 1977); Hahn v. Burke, 430 F.2d 100 (7th Cir. 198-70); Petition of Haverty, 618 P.2d 1011 (Wash. 1980). Similarly, a denial of procedural safeguards during the parole granting phase should be entitled to no more severe remedy than an order to redo the faulty hearing.

If the procedural safeguard denied a parolee in a revocation proceeding is the untimeliness of the hearing, the exceptional remedy applied is the reinstatement of the parolee to parole. See State v. Chavez, 607 P.2d 640 (N. Mex. App. Ct. 1979). By statute, Alaska has set specific time limits in which to hold a preliminary revocation hearing, within 15 working days after a parolee's arrest and incarceration for the violation; 10/ in which to hold a final revocation hearing, 20 days if the parolee is arrested, incarcerated and no preliminary revocation hearing on the violation is held; 11/ and in which to hold a final revocation proceeding, 120 days after the parolee's arrest, subject to recognized exceptions. 12/

If the board was to deny a timely hearing under the statute, the resultant remedy should be proportionate to the violation. The purpose underlying the requirement for a timely

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9/ Newell, at 683.

10/ AS 33.16.220(b). A preliminary revocation hearing is not necessary for a parolee charged with a violation who is not arrested and incarcerated if there is no additional deprivation of the parolee's conditional liberty interest.

11/ AS 33.16.220(e).

12/ AS 33.16.220(f).

hearing is to enable the alleged violator to respond to the alleged violation while contrary evidence may still be available and the issue is fresh in everyone's mind. A short delay in the revocation proceeding would result in little prejudice to the parolee, so release from incarceration pending the hearing is an appropriate remedy. However, where the delay is significant and prejudice to the parolee is shown, reinstatement to parole status may be appropriate. This is the exceptional situation. Naturally, in that the prejudice to the parolee is the availability of evidence and the freshness of the incident, even a significant delay of a final revocation hearing pending resolution of pending criminal charges is not prejudicial.

The extraordinary remedy of unconditional release would only result if there was a due process violation and the term of the parolee's sentence would have expired had not the due process violations occurred. See U.S. ex rel. Hahn v. Review, 520 F.2d 632 (7th Cir. 1975); Lawrence v. Smith, 451 F. Supp. 1979 (W.D.N.Y. 1978).

2. Third Party Remedies

If the board fails to notify a victim of its consideration of discretionary parole and the right of the victim to comment on the proceeding under AS 33.16.120(a) this does not invalidate any parole decision. The purpose of this section is to give victims a voice in (as opposed to a veto power over) the parole process, and to provide the board with additional information in considering discretionary parole and special conditions if parole is granted. Therefore any remedy for the victim would have to lie in a tort action.

PWC:eja:Sectional

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF CORRECTIONS

NORTHERN REGION

March 17, 1987

C.E. Swackhammer
State Representative
Box V
Juneau, Alaska 99811

Dear Representative Swackhammer:

I am responding to your letter dated 02-20-87. I am sorry for the late response, however, I have just returned from the lower 48, due to a death in my family.

Regarding H.B. 140, I conferred with Ken Brown, Regional Director, and was informed that the Department of Corrections is extremely supportive of your bill.

If passed, your bill would have a positive effect on my district caseload. My district is 100,000 square miles (approximately the size of the state of Oregon). The district caseload has been as high as 175 offenders this year, and is covered by myself and two other probation officers. A total of 18% of our caseload is located in Bethel, the other 82% is located in 50 plus villages in the Yukon-Kuskokwim Region.

I am sure with your law enforcement background, you can see we are spread about as thin as we can be, and still provide protection to the public.

If there is anything that I may do to assist the passing of H.B. 140, please feel free to contact me.

Yours, for a better Alaska,

Daniel W. Hicklin

Daniel W. Hicklin, District Superior
DEPARTMENT OF CORRECTIONS
Probation/Parole
Bethel, Alaska

DWH:gp

cc: Susan Humphrey-Barnett, Commissioner
Art Schmidt, Deputy Commissioner
Ken Brown, Regional Director
File

February 27, 1987

Representative C.E. Swackhammer
P.O. Box 417
Soldotna, Alaska 99669

re: House Bill 140

Dear Representative Swackhammer:

Thank you for your letter of 02-20-87, reference House Bill 140. I support the bill 100%, as I believe all probation officers do.

I will not attempt to explain each and every detail, nor offer examples as to why I disagree with present statutes. Simply stated, probation officers are wasting their time supervising clients with six months supervision or less. Precious resources such as time, man power and money are being wasted by requiring probation officers to supervise short term felons and misdemeanants. We must be allowed to concentrate our efforts where they are needed. At the present time, probation officers are over-loaded with burdensome paperwork, high caseloads and needless supervision of clients. House Bill 140 would assist in allowing probation officers to focus their attention where it belongs i.e., with individuals convicted of serious offenses and who received sentences of two years or more.

Legislators should scrutinize the role of probation officers within the state of Alaska. Careful review will demonstrate the cost effective nature of releasing inmates to probation/parole supervision. This includes intensive supervision which offers a tremendous savings and alleviates over-crowding as well. House Bill 140 would allow probation officers to supervise the more serious offender. It would also incorporate concurrent supervision of probationers/parolees which would assist probation officers in the course of their duties.

In conclusion, legislators should request testimony from individuals such as Sam Trivette, if they desire a comprehensive over-view of the nature of this bill. Additionally, myself and others will be willing to offer our assistance as requested, in an effort to secure passage.

Sincerely,

Curt Geoffrion

Curt Geoffrion
Probation/Parole Officer III

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

BOARD OF PAROLE

STEVE COWPER, GOVERNOR

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

March 6, 1987

Representative Swackhammer
Rm. 106
Capital Building
Juneau, AK

Re: House Bill #140

Dear Rep. Swackhammer:

I strongly support passage of H.B. #140. As you are aware this legislation will return our Parole Supervision caseloads to a level comparable to 1985, before the comprehensive Revision of the Parole Laws effective January 1, 1986.

From an administration point of view it is very difficult to supervise misdemeanants because the periods of supervision are very short and the individual has very little to lose for non-compliance. Their attitude is that they have earned the Good Time and it shouldn't be subject to be taken away. The felons that fall into this less then two year sentence category are often subject to a risidual period of probation to follow release anyway, certainly the ones the Judge thought were in need of supervision have probation to follow. We could better utilize our resources and manpower by concentrating on supervising serious felons. I believe that closer supervision of this higher risk group would provide better public protection.

The second section of this bill changes Parole Eligibility back to one-third for Class A felons. They were subject to this minimum from 1974 to 1985 and I believe it was changed in 1986 only due to a misunderstanding or a drafting error. However, to my knowledge, no one has been paroled by the Board, even since the Law was changed to one-quarter, before they completed at least one-third of their term. So a statutory change now will not have a fiscal impact but would be good public policy in my opinion.

Thank you for your efforts on this legislation and I appreciate the opportunity to provide you with my comments.

Very truly yours,

Richard E. Collum
Parole Board Officer

REC:rs

20-08LH

SEARCH - QUERY
00002 HB ADJ 140

HES069AM DOCUMENT= 1 OF 2

CHAMBER = H
DATE = 031087
SOURCE = HHES
TIME = 0830
YEAR = 87
DOC ID HHES 0310870830

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE
MARCH 10, 1987
8:30 A.M.

MEMBERS PRESENT

REP. NIILO KOPONEN, CO-CHAIR
REP. JOHNNY ELLIS, CO-CHAIR
REP. DAVE DONLEY
REP. MAX GRUENBERG
REP. ALYCE HANLEY
REP. BILL HUDSON
REP. RANDY PHILLIPS

COMMITTEE CALENDAR

SSHB 13: "AN ACT RELATING TO MEDICAL EXPENSES OF PRISONERS."

HB 129: "AN ACT RELATING TO CRIMINAL FINES."

HB 140: "AN ACT RELATING TO PAROLE."

WITNESS REGISTER

MICHAEL STARK
DEPT. OF LAW
P.O. BOX KC
JUNEAU, AK 99811
465-3428
POSITION: GAVE INFORMATION ON HB 140.

SAM TRIVETTE
DEPT. OF CORRECTIONS
P.O BOX T
JUNEAU, AK 99811
465-3384
POSITION: GAVE INFORMATION ON HB 140.

SUSAN KNIGHTON
DEPT. OF CORRECTIONS

P.O BOX T
JUNEAU, AK 99811
465-3376
POSITION: GAVE INFORMATION ON HB 13 AND HB 129.
LARRY BUSSONE
AIDE TO REP. LARSON
P.O. BOX V
JUNEAU, AK 99811
465-3727
POSITION: FAVORED HB 13 AND HB 129.

ERVIN JONES
DEPT. OF REVENUE
P.O. BOX S
JUNEAU, AK 99811
465-2313
POSITION: GAVE INFORMATION ON HB 13 AND HB 129.

KARLA FORSYTHE
COURT SYSTEM
303 "K" STREET
ANCHORAGE, AK 99501
264-8228
POSITION: GAVE INFORMATION ON HB 13 AND HB 129.

REP. C.E. SWACKHAMMER
P.O. BOX V
JUNEAU, AK 99811
465-2869
POSITION: FAVORED HB 140.

PREVIOUS ACTION

SSHB 13:	DATE		PAGE	ACTION
	01/12/87	(H)		PREFILE RELEASED
	01/19/87	(H)	21	READ THE FIRST TIME WITH REFERRAL(S)
	01/19/87	(H)	21	HESS, JUDICIARY, FINANCE
	02/20/87	(H)	278	SPONSOR SUBSTITUTE INTRODUCED
	02/20/87	(H)	278	HESS, JUDICIARY, FINANCE

HB 129:	DATE		PAGE	ACTION
	02/13/87	(H)	220	READ THE FIRST TIME WITH REFERRAL(S)
	02/13/87	(H)	220	HESS, JUDICIARY, FINANCE

HB 140:	DATE		PAGE	ACTION
	02/18/87	(H)	262	READ THE FIRST TIME WITH REFERRAL(S)
	02/18/87	(H)	263	HESS, JUDICIARY, FINANCE

ACTION NARRATIVE
TAPE ONE SIDE ONE
NUMBER 000

THE MEETING OF THE HOUSE HEALTH, EDUCATION, AND SOCIAL SERVICES COMMITTEE WAS CALLED TO ORDER AT 8:35 A.M. BY REP. ELLIS. MEMBERS PRESENT WERE REPRESENTATIVES KOPONEN, ELLIS, DONLEY AND PHILLIPS.

REP. ELLIS ASKS THE COMMITTEE MEMBERS TO SIGN THE LETTER REGARDING APPOINTMENTS TO BOARDS AND COMMISSIONS.

HB 140
HHES, 03/10/87
REP. ELLIS REQUESTS REP. SWACKHAMMER TO PRESENT HIS BILL, HB 140.

NUMBER 018

REP. SWACKHAMMER STATES THAT THE PURPOSE OF HB 140 IS TO REDUCE THE NUMBER OF PAROLE/PROBATION SUPERVISED OFFENDERS BY DELETING THOSE MISDEMEANOR OR SHORT TERM FELONY OFFENDERS FROM MANDATORY PAROLE SUPERVISION. AT THE CURRENT COUNT, HB 140 WOULD REDUCE THE NUMBER OF PAROLE SUPERVISED OFFENDERS BY 139, 56 OF WHICH COMMITTED MISDEMEANOR OFFENSES. REP. SWACKHAMMER NOTES THAT BY REDUCING THE NUMBER OF MANDATORY PAROLEES, CLOSER SUPERVISION CAN BE PROVIDED FOR THOSE OFFENDERS WHO REQUIRE CLOSER SUPERVISION.

REP. SWACKHAMMER STATES THAT HB 140 WOULD ALSO MAKE A CLASS A OFFENDER ELIGIBLE FOR DISCRETIONARY PAROLE AFTER SERVING ONE-THIRD OF THE IMPOSED SENTENCE RATHER THAN SERVING ONE-QUARTER AS IS NOW THE CASE. FURTHERMORE, HB 140 WOULD ALLOW AN OFFENDER, WHO HAS BOTH MANDATORY PAROLE TIME AND PROBATION SUPERVISION, TO SERVE BOTH CONCURRENTLY RATHER THAN CONSECUTIVELY. IT ALLOWS OFFENDERS TO GO TO PROBATION FROM PAROLE MORE QUICKLY UNDER CERTAIN CIRCUMSTANCES.

REP. SWACKHAMMER CONCLUDES THAT THE DEPT. OF CORRECTIONS HAS ESTIMATED THAT HB 140 WILL SAVE THEM $780,000 A YEAR IN TERMS OF TIME. ALASKA'S RECIDIVISM IS CURRENTLY 4% OR LESS COMPARED TO A NATIONAL AVERAGE OF 12% WHICH SPEAKS WELL FOR OUR SYSTEM, AND HB 140 WILL ALLOW THAT TO CONTINUE BECAUSE THE SYSTEM WILL NOT GET OVERBURDENED.

NUMBER 083

MR. MICHAEL STARK ADDRESSES TWO POINTS IN THE BILL THAT THE COMMITTEE MIGHT WANT TO CHANGE. THE FIRST IS IN SECTION 3. SECTION 3 ADDS IN ANOTHER CLASS OF FELON WHO MUST SERVE AT LEAST ONE THIRD OF THE ENHANCED OR AGGRAVATED TERM BEFORE BEING RELEASED ON DISCRETIONARY PAROLE. MR. STARK SUGGESTS THAT SUBSECTION (I) IN AS 12.55.125 SHOULD BE ADDED TO SUBSECTION 3 IN ORDER TO BE CONSISTENT AS TO THE TYPES OF FELONIES BEING AFFECTED. THIS WAS INADVERTENTLY LEFT OUT WHEN THE BILL WAS BEING DRAFTED.

NUMBER 129

REP. HUDSON ASKS REP. SWACKHAMMER TO RESPOND TO MR. STARK'S SUGGESTION. REP. SWACKHAMMER CONCURS WITH THE SUGGESTION.

NUMBER 152

REP. PHILLIPS MOVES THAT ON PAGE 1, LINES 20 AND 22, THE FIRST "OR" IS DELETED AND AFTER THE (C) ADD "OR (I)." SEEING NO OBJECTION, REP. ELLIS STATES THAT THE TECHNICAL AMENDMENT IS ADOPTED.

NUMBER 160

MR. STARK THEN ADDRESSES THE SECOND ISSUE WHICH IS ON PAGE 2, SECTION 5. MR. STARK NOTES THAT PRESENTLY A PAROLE BOARD MAY TERMINATE SUPERVISION OF A MANDATORY PAROLEE AFTER THE PRISONER HAS BEEN ON SUPERVISION FOR TWO YEARS. IN SECTION 5, IF THE PROBATIONARY PERIOD WAS EQUAL TO OR GREATER THAN THE MANDATORY SUPERVISION PERIOD THEN THE TWO COULD BE SERVED CONCURRENTLY. THE PERIOD OF TIME UNDER SUPERVISION WOULD BE REDUCED, BUT WOULD STILL BE SUBSTANTIAL. MR. STARK SUGGESTS THAT ANY PERIOD OF SUSPENDED IMPRISONMENT AND THE PERIOD OF RESIDUAL PROBATION HAS TO BE EQUAL TO OR EXCEEDS THE PERIOD OF MANDATORY PAROLE.

NUMBER 242

REP. DONLEY ASKS IF THERE IS A LIMIT ON THE NUMBER OF YEARS OF PROBATION. MR. STARK REPLIES THAT THERE IS A FIVE YEAR MAXIMUM ON PROBATION. REP. DONLEY THEN QUERIES IF MR. STARK'S SUGGESTION WOULD TAKE SENTENCING DISCRETION AWAY FROM THE JUDGES. MR. STARK RESPONDS THAT HE DOES NOT THINK HIS SUGGESTION TAKES AWAY ANYTHING FROM THE JUDGE, IT MERELY REDUCES THE TIME A PRISONER IS UNDER SUPERVISION. REP. DONLEY COMMENTS THAT FROM THE VIEW POINT OF THE VICTIM IT DOES REMOVE OPTIONS FROM THE JUDGE BECAUSE IT REDUCES THE AMOUNT OF TIME OF STATE SUPERVISION OVER THE PRISONER WHICH REMOVES CERTAINTY FROM THE VICTIM WHEN SENTENCING. REP. DONLEY DOES NOT WANT TO REDUCE ANY CERTAINTY FOR THE VICTIMS ABOUT THE AMOUNT OF TIME THEY WILL BE PROTECTED. REP DONLEY AND MR. STARK DISCUSS THIS POINT AND CONCLUDE THAT THE AMOUNT OF TIME A PRISONER IS UNDER STATE SUPERVISION WILL BE LESSENED BY THE BILL BUT THAT THE TIME WILL BE A DEFINITE, CERTAIN PERIOD.

NUMBER 417

REP. ELLIS NOTES FOR THE RECORD THAT REPRESENTATIVES HUDSON AND HANLEY HAVE JOINED THE COMMITTEE.

NUMBER 419

REP. KOPONEN ASKS IF MR. STARK'S SUGGESTION WOULD RESULT IN A SIGNIFICANT DIFFERENCE IN TIME SERVED. MR. STARK REPLIES THAT THE BILL WOULD MOST BENEFIT THE PAROLE BOARD AND THEIR

RESOURCES AND THE USE OF PAROLE OFFICERS.

NUMBER 506

REP. ELLIS NOTES THAT HE HAS NEGLECTED TO SAY THAT REP. GRUENBERG HAS JOINED THE COMMITTEE AND HAS BEEN PRESENT FOR SOME TIME.

NUMBER 511

REP. GRUENBERG ASKS ABOUT THE FIRST TECHNICAL AMENDMENT IN THAT IT WOULD REDUCE THE PRESUMPTIVE SENTENCE AND NOT MAKE THE OFFENDER ELIGIBLE FOR DISCRETIONARY PAROLE. MR. STARK EXPLAINS THAT SECTION 3 DEALS ONLY WITH ENHANCED OR CONSECUTIVE SENTENCES AND MAKES THE PERIOD LONGER BEFORE DISCRETIONARY PAROLE CAN BE GIVEN. REP. GRUENBERG ASKS IF THAT WOULD MAKE FOR A LARGER FISCAL NOTE. MR. STARK REPLIES THAT HE DOES NOT BELIEVE SO, BUT THAT THE DEPT. OF CORRECTIONS CAN ANSWER THAT BETTER.

NUMBER 589

REP. GRUENBERG ASKS SINCE SECTION 9 RELATES TO PROBATION IF THE TITLE SHOULD BE CHANGED TO INCLUDE BOTH PAROLE AND PROBATION. REP. ELLIS ASKS REP. SWACKHAMMER IF HE HAS EXPLORED THAT, AND REP. SWACKHAMMER ANSWERS NO BUT IF A TITLE CHANGE WOULD HELP THE BILL OUT OF COMMITTEE TO GO AHEAD. REP. ELLIS ASKS COMMITTEE STAFF TO FIND OUT IF THE TITLE NEEDS TO BE CHANGED.

NUMBER 625

MR. SAM TREVITT RESPONDS TO SEVERAL PREVIOUS CONCERNS. HE REITERATES MR. STARK'S STATEMENT THAT THE BILL WILL NOT CHANGE THE CERTAINTY OF SENTENCING. HE ALSO STATES THAT THERE WOULD BE MINIMAL FISCAL IMPACT FOR ADDING THE COMMITTEE'S TECHNICAL AMENDMENT TO THE BILL.

TAPE ONE SIDE TWO
NUMBER 000

MR. TREVITT STATES THAT 15-18% OF THE CASES ARE REVOCATIONS.

NUMBER 050

REP. ELLIS STATES THAT TAMARA COOK FROM LEGAL SERVICES IS LOOKING INTO THE TITLE QUESTION. HE ASKS REP. GRUENBERG IF HE WANTS A NEW FISCAL NOTE, AND REP. GRUENBERG REPLIES NO.

NUMBER 057

REP. GRUENBERG ASKS AGAIN ABOUT THE TECHNICAL AMENDMENT. HE STATES THAT BOTH MR. STARK AND MR. TREVITT HAVE STATED THAT THE SECTION ONLY AFFECTS AN ENHANCED SENTENCE, BUT THAT IS NOT HOW HE READS IT. MR. STARK RESPONDS THAT THE

SECTION IN THE BILL MUST BE READ IN CONJUNCTION WITH THE EXISTING STATUTE WHICH MAKES CLEAR THAT IT IS DEALING WITH ENHANCED SENTENCES.

NUMBER 092

REP. ELLIS REPORTS THAT TAM COOK'S OPINION ABOUT THE BILL'S TITLE IS THAT THE TITLE IS OKAY UNLESS THE DESIRE IS TO KEEP SECTION 9 OR ANY OTHER SECTION DEALING WITH PROBATION. THUS ADDING PROBATION WOULD TIGHTEN UP THE TITLE. REP. KOPONEN MOVES THAT THE TITLE READS "AN ACT RELATING TO PAROLE AND PROBATION." REP. PHILLIPS CLARIFIES TAM COOK'S STATEMENT THAT ADDING PROBATION WOULD TIGHTEN UP THE BILL; AND THEN DISAGREES. HE SAYS ADDING IT WOULD BE AN INVITATION TO THE SENATE TO ADD THINGS TO THE BILL. REP. GRUENBERG STATES THAT PROBATION IS DIFFERENT FROM PAROLE AND THAT SECTION 9 DEALS WITH PROBATION. REP. KOPONEN WITHDRAWS THE MOTION TO CHANGE THE TITLE SINCE THE NEXT COMMITTEE OF REFERRAL IS JUDICIARY. REP. KOPONEN THEN MOVES THAT THE COMMITTEE SUBSTITUTE FOR HB 140 BE PASSED WITH INDIVIDUAL RECOMMENDATIONS. SEEING NO OBJECTIONS, REP. ELLIS SO ORDERS.

NUMBER 154

HB 13

HB 129
HHES, 03/10/87
REP. ELLIS BRINGS HB 13 AND HB 129 BEFORE THE COMMITTEE. HE ASKS LARRY BUSSONE FROM REP. LARSON'S OFFICE TO GIVE HIS PRESENTATION.

MR. BUSSONE STATES THAT THE SPONSOR SUBSTITUTE FOR HB 13 DOES THREE THINGS. FIRST IT ALLOWS THE STATE TO GARNISH THE PERMANENT FUND DIVIDEND CHECK OF AN INMATE FOR THE MEDICAL COST INCURRED. SECONDLY, IT ALLOWS THE DEPT. OF CORRECTIONS TO APPLY ON BEHALF OF THE INMATE WHO IS ELIGIBLE FOR THE DIVIDEND CHECK BUT CHOOSES NOT TO APPLY. MR. BUSSONE EXPLAINS THAT THIS WAS THE PRIMARY ADDITION TO THE SPONSOR SUBSTITUTE. THIRDLY, HB 13 MANDATES THAT PERMANENT FUND DIVIDENDS CLAIMED BY THE STATE MUST BE DEPOSITED INTO THE GENERAL FUND. MR. BUSSONE FURTHER EXPLAINS THAT THE BILL'S INTENTIONS ARE TWOFOLD. ONE, TO SAVE THE STATE MONEY IN THE AREA OF MEDICAL COSTS FOR INMATES, AND TWO, TO ENCOURAGE INMATES NOT TO OVERUSE OR ABUSE THE MEDICAL SERVICES THAT ARE PROVIDED. MR. BUSSONE REPORTS THAT THE DEPT. OF CORRECTIONS ESTIMATES THAT THE AVERAGE DAILY MEDICAL COST FOR AN INMATE IS $6, OR $2,190 PER YEAR. THIS ADDS UP TO FIVE AND HALF MILLION DOLLARS A YEAR FOR ALL THE INMATES. HB 13 WOULD PROVIDE THE DEPT. OF CORRECTIONS A TOOL TO RECOUP SOME OF THAT $5 1/2 MILLION.

NUMBER 193

SEARCH - QUERY
00002 HB ADJ 140

JUD084PM DOCUMENT= 2 OF 2

CHAMBER = H
DATE = 032587
SOURCE = HJUD
TIME = 1330
YEAR = 87
DOC ID HJUD 0325871330

HOUSE JUDICIARY COMMITTEE
MARCH 25, 1987
1:30 P.M.

MEMBERS PRESENT

REPRESENTATIVE JOHN SUND
REPRESENTATIVE FRAN ULMER
REPRESENTATIVE SAM COTTEN
REPRESENTATIVE MIKE NAVARRE
REPRESENTATIVE ROBIN TAYLOR
REPRESENTATIVE RAMONA BARNES
REPRESENTATIVE MAX GRUENBERG

COMMITTEE CALENDAR

HB 140 AN ACT RELATING TO PAROLE.

WITNESS REGISTER

REPRESENTATIVE C. E. SWACKHAMMER
ALASKA STATE LEGISLATURE
P.O. BOX V
JUNEAU, ALASKA 99811
POSITION: SPONSOR OF HB 140

SAM TRIVETTE
EXECUTIVE DIRECTOR, PAROLE BOARD
DEPARTMENT OF CORRECTIONS
P.O. BOX T
JUNEAU, ALASKA 99811
PHONE: 465-3384
POSITION: SUPPORTS HB 140

SUSAN KNIGHTON
RESEARCH ANALYST
DEPARTMENT OF CORRECTIONS
P.O. BOX T
JUNEAU, ALASKA 99811
PHONE: 465-3376
POSITION: SUPPORTS HB 140

MICHAEL STARK

DEPARTMENT OF LAW
P.O. BOX K
JUNEAU, ALASKA 99811
PHONE: 465-3460

PREVIOUS ACTION

HB 140 DATE		PAGE	ACTION
02/18/87	(H)	262	READ THE FIRST TIME - REFERRALS HESS, JUDICIARY, FINANCE
03/11/87		463	HES RPT CS(HESS) 6DP 1NR
			ZERO FISCAL NOTE PUBLISHED
			ZERO FISCAL NOTE/ANALYSIS

COMMITTEE ACTION: HB 140 FIRST HEARD BEFORE JUDICIARY TODAY.

ACTION NARRATIVE

HB 140
HJUD, 3/25/87
TAPE 35 SIDE 1

NUMBER 000
CHAIRMAN SUND CALLED THE MEETING OF THE HOUSE JUDICIARY COMMITTEE TO ORDER AT 1:38 P.M. AND CALLED ROLL, WITH ALL MEMBERS PRESENT.

HE ANNOUNCED HB 140 WOULD BE HEARD TODAY AND INVITED THE SPONSOR TO TESTIFY.

NUMBER 022

REPRESENTATIVE SWACKHAMMER DISCUSSED THE PURPOSE OF HB 140. HE SAID IT WOULD HELP STREAMLINE THE CRIMINAL JUSTICE SYSTEM WHILE MAINTAINING PUBLIC SAFETY. HE SAID IT WOULD REDUCE THE NUMBER OF PAROLE/PROBATION SUPERVISED OFFENDERS BY DELETING THE MISDEMEANOR OR SHORT-TERM OFFENDERS FROM MANDATORY PAROLE SUPERVISION. HE EXPLAINED THAT THE BILL INCREASES THE CURRENT MINIMUM PAROLE OF 180 DAYS TO TWO YEARS TO ALLOW FOR CLOSER SUPERVISION OF MORE SERIOUS PAROLEES. HE SAID THE TWO YEAR TERM IS DERIVED FROM THE SHORTEST PRESUMPTIVE SENTENCE WHICH IS THE SAME, SO THAT ALL PRESUMPTIVELY SENTENCED FELONS AS WELL AS OTHER OFFENDERS WHO HAVE LONGER SENTENCES WOULD STILL RECEIVE NEEDED SUPERVISION. HE SAID HB 140 WOULD REDUCE PAROLE SUPERVISED OFFENDERS BY 139. HE SAID 56 OF THOSE COMMITTED MISDEMEANOR OFFENSES, AND THE REMAINDER ARE SHORT-TERM FELONS WHO USUALLY FALL UNDER COURT-ORDERED PROBATION SUPERVISION. HE NOTED THAT BY REDUCING THE NUMBER OF MANDATORY PAROLEES, CLOSER SUPERVISION CAN BE PROVIDED FOR THOSE WHO REQUIRE IT. HB 140 ALSO MAKES A CLASS A OFFENDER ELIGIBLE FOR DISCRETIONARY PAROLE AFTER SERVING ONE-THIRD OF THE IMPOSED SENTENCE RATHER THAN SERVING ONE-QUARTER AS IN CURRENT LAW. HE NOTED THE INTENT OF THE LEGISLATURE WHEN PASSING THE CURRENT PAROLE REGULATIONS IN 1985, WAS TO REDUCE PAROLE ELIGIBILITY FROM ONE-THIRD TO ONE-FOURTH FOR FIRST-TIME, NONPRESUMPTIVE CLASS B AND CLASS C OFFENDERS. HE SAID HB 140 WOULD ALLOW OFFENDERS WHO HAVE BOTH MANDATORY PAROLE TIME AND PROBATION SUPERVISION TO SERVE BOTH CONCURRENTLY RATHER THAN THE CURRENT CONSECUTIVE FORMAT. HE SAID

THE PAROLE BOARD CAN RELEASE A PERSON TO MANDATORY PAROLE/PROBATION IF THE OFFENDER EXHIBITS GOOD BEHAVIOR AND IF THE TERM OF PROBATION IS EQUAL TO OR EXCEEDS THE MANDATORY PAROLE TERM. AN OFFENDER WHO HAS RECEIVED DISCRETIONARY PAROLE AND HAS A PROBATION TERM, MAY BE RELEASED TO PROBATION AFTER SERVING TWO YEARS OF PAROLE. THE BILL REDUCES THE WORKLOAD OF THE OVERBURDENED PROBATION AND PAROLE SYSTEM AND ALLOWS FOR BETTER UTILIZATION OF RESOURCES AND TIME FOR THOSE OFFENDERS WHICH NEED CLOSER SUPERVISION TO MAKE IT ON THE OUTSIDE. HE NOTED THAT SAM TRIVETTE, OF THE PAROLE BOARD, WAS PRESENT TO DISCUSS IMPLEMENTATION.

REPRESENTATIVE ULMER ARRIVED AT 1:40 P.M.

NUMBER 123

REPRESENTATIVE TAYLOR ASKED IF INCREASING THE TERM FROM ONE-FOURTH TO ONE-THIRD WOULD INCREASE THE COSTS FOR CORRECTIONS.

REPRESENTATIVE SWACKHAMMER SAID THE PAROLE BOARD HAS NOT RELEASED ANYONE ON A CLASS A FELONY WHEN THEY'VE SERVED ONLY A QUARTER OF THEIR TERM. HE SAID THE SYSTEM IS BEING CLOGGED BY LETTING PEOPLE APPLY FOR PAROLE.

REPRESENTATIVE BARNES ARRIVED AT 1:45 P.M.

NUMBER 148

CHAIRMAN SUND, IN ORDER TO CLARIFY, STATED THAT STATUTORILY THERE IS A ONE-QUARTER MANDATORY TERM AND THE PAROLE BOARD MAY NOT BE FOLLOWING THE LAW AND ARE MAKING THEIR OWN JUDGMENTS.

REPRESENTATIVE SWACKHAMMER RESPONDED THAT IT WAS AN OVERSIGHT AND NOT THE INTENT OF THE LEGISLATURE TO MAKE CLASS A FELONS ELIGIBLE AFTER ONE-QUARTER OF THEIR SENTENCE. CHAIRMAN SUND ASKED IF EVERYONE WAS ON ONE-QUARTER TIME. REPRESENTATIVE SWACKHAMMER SAID THAT UNCLASSIFIED FELONS ARE NOT. HE NOTED THAT CLASS A WAS EXCLUDED FROM THE LANGUAGE OF PAST LEGISLATION. IN DISCUSSING THE SECOND PORTION OF THE BILL, HE SAID THE SITUATION NOW IS WHERE THERE IS MANDATORY PAROLE TIME AND PROBATION BEING SERVED CONCURRENTLY AND CAUSES DUAL SUPERVISION.

NUMBER 200

SAM TRIVETTE, OF THE PAROLE BOARD, IN RESPONSE TO REPRESENTATIVE TAYLOR'S EARLIER QUESTION, POINTED OUT THAT THE REASON RAISING THE TERM TO ONE-THIRD WILL HAVE MINIMAL FISCAL IMPACT IS THAT THE ONLY CLASS A FELONS WHICH ARE ELIGIBLE FOR PAROLE ANYWAY ARE JUST A HANDFUL OF PEOPLE, WHICH HAVE EITHER AN AGGRAVATED PRESUMPTIVE SENTENCE, CONSECUTIVE PRESUMPTIVE SENTENCES, OR HAVE BEEN SENTENCED BY A THREE JUDGE PANEL. HE STATED IT WAS A POLICY ISSUE AND THE REASON THE PAROLE BOARD SUPPORTS IT IS BECAUSE THEY FELT THE LEGISLATURE'S INTENT WAS TO LEAVE IT AT ONE-THIRD FOR CLASS A'S AND UNCLASSIFIEDS. MR. TRIVETTE SAID THE OTHER ISSUE IS THAT THERE ARE MANY PEOPLE ON DUAL SUPERVISION AND MANY SHORT-TERMERS THAT HAVE TO GO UNDER PROBATION WHEN THEY GET OUT. HE EXPLAINED THAT PAROLE IS UNDER THE EXECUTIVE BRANCH AND PROBATION IS UNDER THE COURT SYSTEM.

HE SAID THE INTENT IS TO ELIMINATE DUPLICATION BECAUSE MANY WILL BE ON BOTH PROBATION AND MANDATORY PAROLE.

NUMBER 269

CHAIRMAN SUND ASKED FOR AN EXAMPLE OF HOW A CASE MAY WORK. MR. TRIVETTE USED THAT OF FIRST DEGREE BURGLARY, FIRST OFFENSE, A NONPRESUMPTIVE CASE, WHICH WOULD TYPICALLY GET A ONE YEAR JAIL TERM. UNDER THE CURRENT LAW, THE INDIVIDUAL WOULD SERVE EIGHT MONTHS IN JAIL, FOUR MONTHS OF MANDATORY PAROLE, AND FIVE YEARS OF PROBATION. UNDER HB 140, THE INDIVIDUAL WOULD SERVE EIGHT MONTHS IN JAIL AND GO DIRECTLY ON TO FIVE YEARS PROBATION, SO THE FOUR MONTHS OF MANDATORY PAROLE WOULD BE ELIMINATED.

NUMBER 286

REPRESENTATIVE TAYLOR INQUIRED IF THE FOUR MONTH PAROLE WAS MORE DIRECTLY SUPERVISED AND MORE CONTACT WAS MADE THAN DURING THE PROBATION PERIOD. MR. TRIVETTE SAID THAT BASICALLY THE FIRST SIX MONTHS OF PROBATION OR PAROLE IS MORE CLOSELY SUPERVISED.

REPRESENTATIVE TAYLOR ASKED HOW HB 140 WOULD FREE UP THE PERSONNEL. MR. TRIVETTE SAID IF THE PERSON IN THE EXAMPLE IS ON PAROLE AS WELL AS PROBATION AND GETS IN TROUBLE, THE PROBATION OFFICER HAS TO INFORM BOTH THE COURT AND THE PAROLE BOARD, BECAUSE IN MOST CASES THE PROBATION AND MANDATORY PAROLE TIME ARE CONCURRENT BY COURT ORDER, SO EFFORTS ARE DUPLICATED BY THE PROBATION OFFICER. HB 140 WOULD FREE UP THE PROBATION OFFICER TO WORK WITH THE MORE LONG-TERM CASES. HE SAID ANYONE SERVING TWO YEARS OR LONGER WOULD HAVE MANDATORY PAROLE.

NUMBER 327

REPRESENTATIVE BARNES ASKED WHAT THE RECIDIVISM RATES ARE FOR PEOPLE ON PROBATION. MR. TRIVETTE REPLIED THAT THEY DO NOT HAVE RECIDIVISM INFORMATION FOR THOSE ON PROBATION AS THAT IS NOT THEIR RESPONSIBILITY, AND THEY DON'T HAVE ANY INFORMATION ON MANDATORY PAROLEES BECAUSE THEY DON'T HAVE STAFF TO DO IT. THEY DO HAVE RATES ON PEOPLE THEY RELEASE AT A HEARING AS THEY DO A ONE YEAR FOLLOW-UP. HE SAID OF THOSE, IN 1985 IT WAS ONE PERCENT FOR FELONY BEHAVIOR, FIVE PERCENT FOR ABSCOND RATES, AND ZERO FOR NEW MISDEMEANOR OFFENSES. HE NOTED THERE WAS FREQUENTLY CONFUSION BETWEEN PAROLEES, MANDATORY PAROLEES, AND DISCRETIONARY PAROLEES. REPRESENTATIVE BARNES ASKED FOR INFORMATION ON THE DIFFERENT CATEGORIES. MR. TRIVETTE INDICATED THAT SUSAN KNIGHTON, OF THE DEPARTMENT OF CORRECTIONS, COULD PROVIDE IT.

NUMBER 383

MR. TRIVETTE POINTED OUT THAT THE PAROLE BOARD SUBMITTED TO THE COMMITTEE A POSITION PAPER AND ZERO FISCAL NOTE, WHICH DENOTED COSTS SAVINGS. REPRESENTATIVE COTTEN ASKED HOW LONG MR. TRIVETTE HAD BEEN EXECUTIVE DIRECTOR OF THE PAROLE BOARD. MR. TRIVETTE SAID HE WAS GOING ON THIRTEEN YEARS. REPRESENTATIVE SWACKHAMMER STATED THE APPROXIMATE SAVINGS WOULD BE $790,000 PER YEAR. REPRESENTATIVE TAYLOR SAID THAT WOULD NOT BE ACTUAL DOLLAR SAVINGS, BUT RESOURCE

SAVINGS. MR. TRIVETTE VERIFIED THAT.

NUMBER 413

CHAIRMAN SUND ASKED IF THERE HAS BEEN ANY PREVIOUS TESTIMONY FROM THE OTHER SIDE AND REFERRED TO TIM STERNS, AN ATTORNEY INVOLVED WITH THE CLEARY CASE. REPRESENTATIVE GRUENBERG SAID NO TESTIMONY HAD BEEN HEARD AS SUCH IN THE HESS COMMITTEE. REPRESENTATIVE ULMER ASKED ABOUT THE SIGNIFICANCE OF THE CLEARY CASE TO HB 140. CHAIRMAN SUND SAID IT WAS A MATTER OF CURIOSITY, AS THE ATTORNEYS IN THE CASE DISPUTED SEVERAL ISSUES OF THE PREVIOUS REWRITE OF THIS AREA OF LAW.

NUMBER 443

REPRESENTATIVE GRUENBERG POINTED OUT THE COMBINED POSITION PAPER FROM THE PUBLIC DEFENDERS AND THE OFFICE OF PUBLIC ADVOCACY IN THE COMMITTEE PACKETS, WHICH INDICATES A VIEW FROM THE OTHER SIDE.

MR. TRIVETTE, FOR CLARIFICATION, STATED THE CLEARY LAWSUIT DID NOT DEAL WITH PROBATION/PAROLE MATTERS, BUT WERE INVOLVED IN HB 141 AND HB 85, AND THE GOOD TIME ISSUE OF LAST YEAR. HE WENT ON TO SAY THE PAROLE BOARD SUPPORTS HB 140 AND ASSISTED IN DRAFTING.

NUMBER 487

REPRESENTATIVE GRUENBERG BROUGHT UP THE ISSUE RAISED BY THE PUBLIC DEFENDERS REGARDING SECTION 3 (C) AND (I), FROM AS 12.55.125. HE ASKED IF (C) RELATED TO UNCLASSIFIEDS AND (I) RELATED TO CLASS A'S. MR. TRIVETTE SAID IT WAS THE OTHER WAY AROUND. REPRESENTATIVE GRUENBERG CLARIFIED THAT THEY HAD A PROBLEM WITH INCLUDING (C) IN THAT SECTION. AND WHAT THEY ARE SAYING IS THAT THERE IS GENERALLY NO ELIGIBILITY IN CLASS A'S FOR ANY DISCRETIONARY PAROLE, BUT MAY DESIRE TO ALLOW CLASS A'S ELIGIBLE AFTER ONE-QUARTER, SO THEY WOULDN'T WANT TO USE (C), BECAUSE IT WOULD MAKE THEM ELIGIBLE AFTER ONE-THIRD. HE ASKED IF THEY WERE WILLING TO GO WITH ONE-THIRD FOR UNCLASSIFIEDS, WHY WOULD THEY WANT TO GO ALL THE WAY FROM ZERO TO ONE-QUARTER WITH RESPECT TO CLASS A'S. HE SAID IT SEEMED THAT THE ONE-THIRD LANGUAGE WAS A COMPROMISE POSITION. MR. TRIVETTE SAID TYPICALLY CLASS A'S ARE INELIGIBLE FOR PAROLE PERIOD, AND THE ONLY ONES EVER ELIGIBLE ARE AGGRAVATED PRESUMPTIVES, CONSECUTIVE PRESUMPTIVES, OR THREE-JUDGE PANELS, AND THIS WOULD CHANGE THE ELIGIBILITY FOR THOSE PEOPLE.

NUMBER 540

REPRESENTATIVE TAYLOR SAID THEY ARE TALKING ABOUT A VERY SMALL NUMBER OF PEOPLE AND THE PUBLIC DEFENDER IS ONLY SAYING THAT IF THE PAROLE BOARD DOES NOT WISH TO GRANT DISCRETIONARY PAROLE AFTER ONE-QUARTER OF A SENTENCE, NOTHING IN THE BILL WOULD DEPRIVE THE PAROLE BOARD OF THEIR DISCRETION TO DENY PAROLE APPLICATION. HE POINTED OUT THE TESTIMONY WHICH SAID THEY HAD NEVER GRANTED ONE, AND IT IS UNLIKELY THAT THEY WILL. HE NOTED THE PUBLIC DEFENDER SUPPORTS THE BILL OTHER THAN THAT AND IT IS A MINOR POINT. REPRESENTATIVE SWACKHAMMER NOTED THAT CURRENTLY PEOPLE CAN APPLY, AND IT TAKES TIME TO PREPARE THE CASES TO BE PRESENTED TO THE

PAROLE BOARD AND THAT IS WHERE THE IMPACT MAY LIE. MR. TRIVETTE NOTED THAT THERE WERE ABOUT TWO TO FIVE CASES PER YEAR. REPRESENTATIVE ULMER AGREED WITH REPRESENTATIVE TAYLOR THAT IT IS A VERY MINOR ISSUE AND SHOULD BE OVERLOOKED.

NUMBER 574

REPRESENTATIVE GRUENBERG ASKED IF THE ONLY CHANGE MADE IN THE HESS COMMITTEE WAS THE ADDITION OF SUBSECTION (I) IN SECTION 3. MR. TRIVETTE CONFIRMED.

NUMBER 590

MIKE STARK, OF THE DEPARTMENT OF LAW, PRESENTED A PROPOSED AMENDMENT TO THE COMMITTEE. HE SAID IT WOULD NOT CHANGE THE INTENT OF HB 140, BUT WOULD AVOID A LOOPHOLE. HE SAID EXISTING LAW PERMITS THE PAROLE BOARD TO DISCHARGE SOMEONE WHO IS ON MANDATORY PAROLE AFTER THEY HAVE BEEN ON FOR TWO YEARS. HE SAID SOMEONE MAY ACTUALLY HAVE FOUR OR FIVE YEARS OF GOOD TIME GENERATED IN A LONG SENTENCE, AND AFTER THEY HAVE BEEN OUT TWO YEARS ON MANDATORY PAROLE, THE PAROLE BOARD CAN DISCHARGE THEM. THE NEW SUBSECTION IN SECTION 5, ON PAGE 2, LINES 4-10, WOULD ALLOW THE PAROLE BOARD TO DO IT EVEN SOONER IF THE PERSON HAS A RESIDUAL PERIOD OF PROBATION WHICH WOULD BE MADE CONCURRENT UNDER HB 140, AS LONG AS THE PERIOD OF PROBATION IS EQUAL TO OR EXCEEDS THE PERIOD OF MANDATORY PAROLE. HE SAID IT WASN'T ANTICIPATED WHEN HB 140 WAS DRAFTED THAT THE PERIOD OF MANDATORY PAROLE, WHATEVER THE LENGTH, WAS THE EXACT SAME PERIOD THAT CAN BE REVOKED BY THE PAROLE BOARD, SO IF SOMEONE HAS FIVE YEARS MANDATORY PAROLE, AND THEY MESS UP, THE PAROLE BOARD CAN REVOKE ALL FIVE YEARS. HE SAID COURTS WILL OFTEN PLACE SOMEONE ON PROBATION FOR UP TO A MAXIMUM FIVE YEARS, BUT WILL ONLY SUSPEND A LESSER PORTION OF IMPRISONMENT. FOR EXAMPLE, SOMEONE COULD HAVE A FOUR YEAR SENTENCE WITH ONE YEAR SUSPENDED AND BE PLACED ON PROBATION FOR FIVE YEARS, SO THEY WOULD ONLY HAVE ONE YEAR HANGING OVER THEIR HEAD AND BE PLACED ON PROBATION FOR FIVE YEARS. HE SAID THE SECTION WOULD ALLOW SOMEONE WITH FIVE-YEAR PROBATION ALSO TO HAVE FOUR-YEAR MANDATORY PAROLE; WITH ONLY ONE YEAR HANGING OVER THEIR HEAD, IT WOULD ALLOW THE PAROLE BOARD TO DISCHARGE THEM. SUBSEQUENTLY, IF THE PERSON VIOLATED IT, ONLY THE SUSPENDED PORTION OF TIME WOULD BE HANGING OVER THEIR HEAD, NOT THE PERIOD OF PROBATION. HE SAID THAT WAS THE DIFFERENCE BETWEEN PROBATION AND MANDATORY PAROLE.

NUMBER 657

CHAIRMAN SUND ASKED MR. STARK TO EXPLAIN THE AMENDMENT FURTHER USING AN EXAMPLE. MR. STARK USED A SENTENCING EXAMPLE OF SEVEN YEARS, WITH ONE YEAR SUSPENDED AND IS PLACED ON PROBATION FOR FIVE YEARS, AFTER SERVING SIX YEARS. HE SAID OF THE SIX YEAR SENTENCE, THE PRISONER WILL GET ONE-THIRD OFF FOR GOOD TIME WHICH WOULD BE TWO YEARS, THEREFORE THE PRISONER WOULD HAVE TWO YEARS OF MANDATORY PAROLE SUPERVISION FOLLOWING HIS RELEASE. UNDER THE BILL, SECTION 9 WOULD PROVIDE THAT BOTH THE FIVE YEAR PERIOD OF PROBATION AND THE TWO YEAR PERIOD OF MANDATORY PAROLE WOULD BECOME CONCURRENT INSTEAD OF CONSECUTIVE. HE SAID IF DURING THE FIRST TWO YEARS OF THAT TIME PERIOD, THE PRISONER VIOLATES THE CONDITIONS, THE PAROLE BOARD CAN

REVOKE THE ENTIRE PERIOD OF TWO YEARS OF MANDATORY PAROLE AND MAKE THE PRISONER SERVE THE TIME IN JAIL.

CHAIRMAN SUND ASKED IF THE PRISONER WOULD GET ANY GOOD TIME ON HIS SERVICE IF HE SERVED THE TWO YEARS MANDATORY PAROLE, AND IF SO COULD HE CONCEIVABLY NOT SERVE THE FULL TWO YEARS. MR. STARK SAID THAT WAS POSSIBLE. HE SAID UNDER THE FIVE YEARS PROBATION, WHICH UNDER HB 140 WOULD BE CONCURRENT, IF AT ANY TIME DURING THE FIVE YEAR PERIOD, THE PRISONER VIOLATES THE CONDITIONS, HE ONLY HAS ONE YEAR HANGING OVER HIS HEAD, SO THAT THE MOST THE COURT COULD DO IS TO JAIL HIM FOR UP TO ONE YEAR. HE SAID UNDER SECTION 5, IT SAYS FOR A PERSON WHO HAS A RESIDUAL PERIOD OF PROBATION THAT IS EQUAL TO OR EXCEEDS THE PERIOD OF MANDATORY PAROLE, THE PAROLE BOARD CAN DISCHARGE HIM BEFORE THE TWO YEARS. HE SAID, "IN THIS SCENARIO, THE PAROLE BOARD MAY SAY IF HE HAS FIVE YEARS PROBATION,'WHY BOTHER WITH THE PAROLE,' AND DISCHARGE HIM AS THE COURT WILL HANDLE HIM FOR FIVE YEARS. BY DOING THAT, THEY LOSE THE HAMMER THEY HAVE OVER THE PRISONER, BECAUSE THE PAROLE BOARD HAS A HAMMER OVER HIM OF TWO YEARS, WHILE THE COURT ONLY HAS A HAMMER OF ONE YEAR. THE AMENDMENT IS SUGGESTING THAT NOT ONLY THE PERIOD OF PROBATION BE EQUAL TO OR EXCEED THE PERIOD OF MANDATORY PAROLE, BUT ANY PERIOD OF SUSPENDED IMPRISONMENT ALSO BE EQUAL TO OR EXCEED IT. SO IF IN THIS EXAMPLE, IT WERE TWO YEARS SUSPENDED TIME, EVEN THOUGH IT IS FIVE YEARS PROBATION, THERE IS NO PROBLEM WITH THE PAROLE BOARD DISCHARGING THE PERSON BECAUSE THERE IS THE SAME TWO YEARS WITH THE COURT.

"THERE CAN BE NO PROBATION UNLESS THERE IS SUSPENDED JAIL TIME, AND THE PERIOD OF TIME THAT'S SUSPENDED TIME IS THE KEY TIME, NOT THE PERIOD OF PROBATION, BECAUSE IN MANDATORY PAROLE THE PERIOD OF PAROLE IS ALWAYS THE EXACT AMOUNT OF TIME THAT'S HANGING OVER THE PRISONER'S HEAD, IT IS NOT THE SAME AS PROBATION. SO YOU HAVE TO NOT ONLY LOOK AT THE PERIOD OF PROBATION, BUT ALSO THE AMOUNT OF SUSPENDED TIME HANGING OVER THE PRISONER'S HEAD. I AM SUGGESTING WHAT WAS INTENDED, THAT THERE NOT BE ANY LESS SUPERVISION TIME IF A PERSON VIOLATES THE CONDITIONS. THEY WANT TO BE ABLE TO HAVE THE SAME HAMMER AS UNDER MANDATORY PAROLE TIME IN EXISTING LAW. THE SAME PEOPLE ARE SUPERVISING THE PRISONER, BUT IT IS A QUESTION OF WHO TAKES ACTION IF HE VIOLATES CONDITIONS, AND IF THE PAROLE BOARD DISCHARGES HIM, THE ONLY BODY THAT CAN TAKE ACTION AGAINST HIM IS THE COURT."

NUMBER 710

CHAIRMAN SUND ASKED WHERE THE SAVINGS CAME IN. MR. STARK REPLIED THAT IT IS IN THE FACT THAT THE TIME BECOMES CONCURRENT INSTEAD OF CONSECUTIVE. REPRESENTATIVE GRUENBERG ASKED IF MR. STARK'S AMENDMENT ACTUALLY CURES THE PROBLEM. HE READ THE LANGUAGE IN THE AMENDMENT AND WANTED TO BE SURE THE CONDITION AS PHRASED IS PRECISELY WHAT IS NEEDED. REPRESENTATIVE GRUENBERG POINTED OUT THE AMENDMENT LANGUAGE IN QUESTION WAS "EQUAL TO OR EXCEEDS THE PERIOD OF MANDATORY PAROLE." HE SAID HE HAD NO PROBLEM WITH THE INTENT BUT WANTED TO MAKE SURE THE LANGUAGE WAS CORRECT. MR. TRIVETTE SAID THE INTENT WAS CLEAR, BUT HE WANTED TO MAKE SURE IT WAS CORRECT. REPRESENTATIVE GRUENBERG SUGGESTED THAT STAFF AND LEGAL COUNSEL WORK ON THE AMENDMENT. HE SUGGESTED THE BILL TITLE SHOULD ALSO BE TIGHTENED. MR. STARK NOTED THAT THE AMENDMENT PROPOSES WHAT WAS

INTENDED IN SECTION 5, BUT THERE WAS A LOOPHOLE THAT WASN'T ANTICIPATED.

NUMBER 758

CHAIRMAN SUND CLARIFIED HIS UNDERSTANDING OF THE AMENDMENT OFFERED BY MR. STARK. HE SAID, "THERE IS A SITUATION OF A GUY ON MANDATORY PAROLE BECAUSE OF THE GOOD TIME HE ACCUMULATED, AND UNDER CURRENT LAW THAT RUNS BACK-TO-BACK WITH THE PROBATIONARY PERIOD WHEN HE GETS OUT, UNLESS THE JUDGE ORDERS THE PROBATION TO BE CONCURRENT WITH THE MANDATORY PAROLE, AND MR. STARK WANTS TO MAKE SURE THAT IS THE CASE AT ALL TIMES. IT IS PHYSICALLY THE SAME PEOPLE THAT ARE SUPERVISING."

MR. STARK AFFIRMED THAT THE PROBATION/PAROLE OFFICERS ARE THE SAME PEOPLE, BUT WHO THEY GO TO WHEN A PERSON VIOLATES THE CONDITIONS DIFFERS. PAROLEES ARE REPORTED TO THE PAROLE BOARD, PROBATIONERS ARE REPORTED TO THE COURT; IF A PERSON IS ON BOTH, THE OFFICER CAN GO TO EITHER OR BOTH, DEPENDING ON THE VIOLATION. IF IT IS SERIOUS, THEY MAY WANT THE PERSON TO SERVE THE REMAINDER OF THEIR SENTENCE AND HAVE WHATEVER SUSPENDED TIME WAS IMPOSED ADDITIONALLY IMPOSED. HE SAID THE COURT WOULD IMPOSE THE ADDITIONAL TIME AND THE PAROLE BOARD WOULD IMPOSE THE GOOD TIME THAT THE PERSON HAD EARNED PREVIOUSLY.

CHAIRMAN SUND SUMMARIZED THAT THIS WOULD RELIEVE THE TIME OF THE PAROLE BOARD. MR. TRIVETTE POINTED OUT THAT IN THE COMMITTEE PACKETS WAS A SUMMARY SHEET WHICH SHOWED THE NUMBER OF CASES THAT THEY SET SUPPLEMENTAL MANDATORY PAROLE CONDITIONS ON IN 1985 AND 1986. HE SAID IT WENT FROM AROUND 100 TO OVER 300 AND EVERY TIME THE PAROLE BOARD HAS TO SET CONDITIONS, THE BOARD HAS TO REVIEW THE ENTIRE FILE AND DISCUSS IT. HE SAID IF THEY HAD THE SHORT-TERMERS AND ESPECIALLY THE MISDEMEANORS THAT WERE GOING TO BE ON PROBATION ANYWAY, IT IS WASTEFUL FOR THE PAROLE BOARD TO SPEND THEIR TIME WHEN THE COURT HAS ALREADY DONE IT, IT'S A DUPLICATION OF EFFORTS.

NUMBER 789

MR. TRIVETTE SAID THE LEGAL ISSUE OF NOT SETTING THE CONDITIONS, IS THAT WHEN THEY ARE VIOLATED, THE STATE WILL BE LIABLE BECAUSE OF THE CURRENT LAW. HB 140 WOULD ALLOW THEM, IF THERE IS BOTH MANDATORY PAROLE AND PROBATION, TO DEFER TO THE COURT AS LONG AS THE PROBATION TIME IS AT LEAST AS GREAT AS THE PAROLE TIME. CHAIRMAN SUND SAID IT WOULD ALLOW THE PAROLE BOARD TO DISCHARGE THEIR RESPONSIBILITY TO SET MANDATORY PAROLE CONDITIONS IF PROBATION IS AT LEAST AS LONG. CHAIRMAN SUND SAID THAT HE DID NOT SEE WHERE THE LIABILITY TO STATE ARGUMENT AROSE. MR. TRIVETTE SAID THAT IF THEY DID DISCHARGE THEM, AND IT WAS AN INCORRECT DECISION, THERE WOULD BE A LIABILITY. HE SAID THAT CURRENTLY THEY HAVE A LEGAL OBLIGATION TO SET THEM OUT.

NUMBER 813

REPRESENTATIVE GRUENBERG REITERATED HIS REQUEST TO HAVE THE INVOLVED PARTIES WORK TOGETHER ON SECTION 5 AS WELL AS NARROWING

THE TITLE, AND BRING IT BACK BEFORE THE COMMITTEE TOMORROW.

NUMBER 825

REPRESENTATIVE ULMER DISCUSSED THE AMENDMENT LANGUAGE REGARDING "ANY PERIOD OF SUSPENDED IMPRISONMENT" AND ASKED FOR CLARIFICATION IF MR. STARK WAS SAYING THAT IT MAY BE LONGER THAN THE RESIDUAL PROBATION PERIOD. MR. STARK SAID THAT THE PERIOD OF SUSPENDED IMPRISONMENT COULD BE LONGER, THAT THERE IS NO REQUIREMENT THAT THE SUSPENDED TIME BE SHORTER THAN OR LONGER THAN THE PERIOD OF PROBATION. "THERE COULD BE FIVE YEARS HANGING OVER SOMEONE'S HEAD AND THEY COULD ONLY BE ON PROBATION FOR SIX MONTHS, AND ONCE PAST THE SIX MONTH PERIOD, THAT TIME CAN NEVER BE IMPOSED ON THE PERSON."

CHAIRMAN SUND POINTED OUT THAT IT WOULD BE A RARE OCCURRENCE. MR. STARK SAID TYPICALLY THE PERIOD OF PROBATION WOULD BE EQUAL TO OR LONGER THAN THE PERIOD OF SUSPENDED IMPRISONMENT. REPRESENTATIVE ULMER SAID THAT SHE WAS TRYING TO UNDERSTAND HOW THE PERIOD OF SUSPENDED IMPRISONMENT WAS DIFFERENT FROM WHAT WAS COVERED ON LINE 9, EITHER THE RESIDUAL PROBATION OR THE PERIOD OF MANDATORY PAROLE, BECAUSE SHE ASSUMED THAT IF SOMEONE WAS WITHIN THEIR PERIOD OF SUSPENDED IMPRISONMENT, THEY WOULD BE ON PROBATION OR PAROLE.

MR. STARK SAID THAT NORMALLY THAT WOULD BE THE CASE. HE GAVE AN EXAMPLE OF A PERSON WITH FOUR YEARS MANDATORY PAROLE UNDER THIS SECTION, WHO WAS ON PROBATION FOR FIVE YEARS. HE STATED THAT THE PAROLE BOARD COULD DISCHARGE HIM AT ANY TIME, BUT IF HE ONLY HAD TWO YEARS OF SUSPENDED TIME HANGING OVER HIS HEAD AND HE COMMITTED A SERIOUS VIOLATION, THE ONLY RECOURSE WOULD BE TO PUT HIM BACK IN JAIL FOR TWO YEARS, WHERE IF HE HAD DONE IT UNDER THE FOUR YEARS MANDATORY PAROLE BEFORE HE WAS DISCHARGED BY THE PAROLE BOARD, THEN FOUR YEARS COULD BE IMPOSED. HE EMPHASIZED THAT THE IDEA WAS NOT TO ALLOW THE INCENTIVE TO BEHAVE BE LESSENED BY THIS LAW, BUT TO KEEP IT THE SAME.

NUMBER 855

REPRESENTATIVE TAYLOR MOVED THE AMENDMENT WITH THE UNDERSTANDING THAT IT WOULD COME BACK WITH AN OPINION. CHAIRMAN SUND SAID A MOTION WAS NOT NECESSARY AT THIS TIME AS THEY WOULD WORK ON THE LANGUAGE AND BRING IT BACK TOMORROW AS A COMMITTEE SUBSTITUTE.

TAPE 35 SIDE 2

NUMBER 000

CHAIRMAN SUND ANNOUNCED TO THE COMMITTEE THAT A PROPOSED BILL DRAFT SPONSORED BY THE COMMITTEE WAS BEFORE THEM FOR REVIEW. THE BILL WAS REQUESTED BY THE COURT SYSTEM AND WILL BE REDRAFTED BEFORE INTRODUCTION. HE ADJOURNED THE MEETING AT 2:27 P.M.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Offered: 3/11/87
Referred: Judiciary and Finance

5-0584B

Original sponsors: Swackhammer, Gruenberg, Navarre, et al.

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 140 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to parole."

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

* Section 1. AS 33.16.010(a) is amended to read:

(a) A prisoner who is serving a term or terms of <u>two years or more</u> [AT LEAST 181 DAYS] is eligible for [EITHER DISCRETIONARY OR] mandatory parole.

* Sec. 2. AS 33.16.010 (c) is amended to read:

(c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment <u>are two years or more</u> [EXCEED 180 DAYS].

* Sec. 3. AS 33.16.100(d) is amended to read:

(d) A prisoner who is sentenced for a term under AS 12.55.-125(a), [OR] (b)<u>, (c), or (i)</u> may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a), [OR] (b), <u>(c), or (i),</u> at least one-third of the period of confinement imposed, or any minimum term set under AS 12.-55.115 at sentencing, whichever is greater.

* Sec. 4. AS 33.16.210 is amended to read:

Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole [, IF THE SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF

PROBATION]. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

* Sec. 5. AS 33.16.210 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation is equal to or exceeds the period of mandatory parole.

* Sec. 6. AS 33.16.900(7) is amended to read:

(7) "mandatory parole" means the release of a prisoner who was sentenced to one or more terms of imprisonment of two years or more [EXCEEDING 180 DAYS], for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

* Sec. 7. AS 33.16.900(8) is amended to read:

(8) "parolee" means a prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

* Sec. 8. AS 33.20.040(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more [EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole

may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of [AN] imprisonment of less than two years [180 DAYS OR LESS] shall be unconditionally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 9. AS 33.20.040(c) is amended to read:

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory parole may be imposed consecutively in the discretion of the court or the parole board [A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE].

Introduced: 2/18/87
Referred: Health, Education & Social Services, Judiciary and Finance

5-0584A

BY SWACKHAMMER, GRUENBERG, NAVARRE HANLEY, KOPONEN, LARSON, PETTYJOHN, BROWN, HUDSON AND RIEGER

IN THE HOUSE

HOUSE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

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PROBATION]. A discretionary parolee with a residual period of probation may, after two years of parole, be discharged by the board to immediately begin serving the residual period of probation.

* Sec. 5. AS 33.16.210 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed two years of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation is equal to or exceeds the period of mandatory parole.

* Sec. 6. AS 33.16.900(7) is amended to read:

(7) "mandatory parole" means the release of a prisoner who was sentenced to one or more terms of imprisonment of two years or more [EXCEEDING 180 DAYS], for the period of good time credited under AS 33.20, subject to conditions imposed by the board and subject to its custody and jurisdiction;

* Sec. 7. AS 33.16.900(8) is amended to read:

(8) "parolee" means a prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole, released by the board or by operation of law before the expiration of the term, subject to the custody and jurisdiction of the board;

* Sec. 8. AS 33.20.040(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] prisoner released under AS 33.20.030 shall be released on mandatory parole to the custody and jurisdiction of the parole board under AS 33.16, until the expiration of the maximum term to which the prisoner was sentenced, if the term or terms of imprisonment are two years or more [EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole

may be discharged under AS 33.16.210 before the expiration of the term. A prisoner who was sentenced to a term or terms of [AN] imprisonment of less than two years [180 DAYS OR LESS] shall be unconditionally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 9. AS 33.20.040(c) is amended to read:

(c) If a prisoner's sentence includes a residual period of probation, the probationary period shall run concurrently with a period of mandatory parole for that sentence and the prisoner shall be under the concurrent jurisdiction of the court and the parole board. Nothing in this section precludes both the court and the parole board from revoking the prisoner's probation and mandatory parole for the same conduct. A period of imprisonment resulting from the revocation of probation or mandatory parole may be imposed consecutively in the discretion of the court or the parole board [A PRISONER RELEASED UNDER AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW DISCHARGE FROM PAROLE].