

H B

140

STATE OF ALASKA THE LEGISLATURE

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JUNEAU, ALASKA 99811
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-26-87	1:30 p.m.
H. JUD.	3-25-87	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/11/87

FURTHER REFERRALS: Finance

DATE: 3-26-87

The Judiciary Committee has considered HB 140

"An Act relating to parole."

RECOMMENDS:

- replace with CS HB 140 (Judiciary) [] the same title
- attached amendment(s) [] a new title
- 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 [] same as previous fiscal note published _____
- zero fiscal note [] same as previous zero fiscal note published 3/11/87
- zero with analysis

SIGNING DO PASS:

[Signature]

Prash Umer

W. Keith Taylor

Tamara R. Barnes

Mike Swann

Don Costello

W. J. [Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

Adopted

5-0584L
Lev
3/26/87

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 140 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

20 (d) A prisoner who is sentenced for a term under AS 12.55.-
21 125(a), [OR] (b), (c), or (i) may not be released on discretionary
22 parole until the prisoner has served the mandatory minimum term under
23 AS 12.55.125(a), [OR] (b), (c), or (i), at least one-third of the
24 period of confinement imposed, or any minimum term set under AS 12.-
25 55.115 at sentencing, whichever is greater.

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

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

1 SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF PRO-
2 BATION]. A discretionary parolee with a residual period of probation
3 may, after two years of parole, be discharged by the board to immedi-
4 ately begin serving the residual period of probation.

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

6 (b) Notwithstanding (a) of this section, the board may uncondi-
7 tionally discharge a mandatory parolee before the parolee has com-
8 pleted two years of parole if the parolee is serving a concurrent
9 period of residual probation under AS 33.20.040(c), and the period of
10 residual probation and the period of suspended imprisonment each equal
11 or exceed the period of mandatory parole.

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

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

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

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

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

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

1 [EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole
2 may be discharged under AS 33.16.210 before the expiration of the
3 term. A prisoner who was sentenced to a term or terms of [AN] impris-
4 onment of less than two years [180 DAYS OR LESS] shall be uncondition-
5 ally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF
6 THIS SECTION].

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

8 (c) If a prisoner's sentence includes a residual period of
9 probation, the probationary period shall run concurrently with a
10 period of mandatory parole for that sentence and the prisoner shall be
11 under the concurrent jurisdiction of the court and the parole board.
12 Nothing in this section precludes both the court and the parole board
13 from revoking the prisoner's probation and mandatory parole for the
14 same conduct. A period of imprisonment resulting from the revocation
15 of probation or mandatory parole may be imposed consecutively in the
16 discretion of the court or the parole board [A PRISONER RELEASED UNDER
17 AS 33.20.030 SHALL IMMEDIATELY BEGIN SERVING THE RESIDUAL PROBATIONARY
18 PERIOD, EXCEPT THAT IF MANDATORY PAROLE IS REQUIRED UNDER (a) OF THIS
19 SECTION, SERVING THE PROBATIONARY PERIOD SHALL IMMEDIATELY FOLLOW
20 DISCHARGE FROM PAROLE].
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Proposed Amendment to CS for HB 140 (HESS)

Page 2 line 9: after "probation" and before "is", add the following language, "and any period of suspended imprisonment"

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

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 140 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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17 [EXCEED 180 DAYS].

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21 parole until the prisoner has served the mandatory minimum term under
22 AS 12.55.125(a), [OR] (b), (c), or (i), at least one-third of the
23 period of confinement imposed, or any minimum term set under AS 12.-
24 55.115 at sentencing, whichever is greater.

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

Class A
Policy
issue
minimal
impact

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

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

5 (b) Notwithstanding (a) of this section, the board may uncondi-
6 tionally, discharge a mandatory parolee before the parolee has com-
7 pleted two years of parole if the parolee is serving a concurrent
8 period of residual probation under AS 33.20.040(c), and the period of
9 residual probation is equal to or exceeds the period of mandatory
10 parole.

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21 leased by the board or by operation of law before the expiration of
22 the term, subject to the custody and jurisdiction of the board;

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

1 may be discharged under AS 33.1b.210 before the expiration of the
2 term. A prisoner who was sentenced to a term or terms of [AN] impris-
3 onment of less than two years [180 DAYS OR LESS] shall be uncondition-
4 ally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF
5 THIS SECTION].

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

Adopted

Mike Stark

3428

Proposed Amendment to CS for HB 140 (HESS)

#1

Page 2 line 9: after "probation" and before "is", add the following language, "and ~~any~~ the period of suspended imprisonment" ~~the~~

~~Pg 2, L 9 after "probation" and before "is"~~

~~L9 change "is" to "are"~~

~~L9 "the" to "excise"~~

POSITION PAPER
DEPARTMENT OF CORRECTIONS

BILL: H.B. 140

DATE: March 9, 1987

TITLE: "An Act relating to Parole"

CONTACT: Samuel H. Trivette
Executive Director
Parole Board

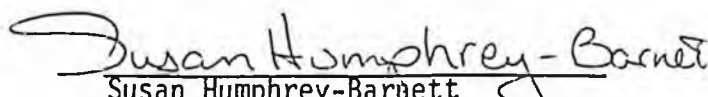
This Administration supports House Bill #140. The primary purpose of the bill is to adjust the parole statutes to eliminate duplication and ensure the supervision of more serious prisoners upon release from jail.

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
Commissioner

POSITION PAPER

HR 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

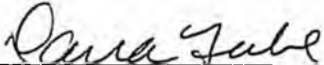
This bill will streamline the current system of mandatory parole, particularly by clarifying that a probationary period may run concurrently with a period of mandatory parole. Judges often set precise conditions of probation which they expect an offender to follow once he or she is released from prison. 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.

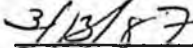
Section 3 of this bill adds Class A offenses to the list of crimes requiring service of at least one third of the sentence prior to discretionary parole rather than one fourth. Although persons convicted of Class A felonies are normally not eligible for discretionary parole due to the requirement that 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.

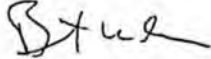
Based on the above reasons, the Public Defender Agency and Office of Public Advocacy support all provisions of this bill except Section 3. The Public Defender Agency and Office of Public Advocacy oppose Section 3 of this bill.



Dana Fabe, Director
Public Defender Agency



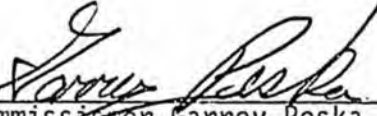
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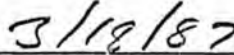
Brant McGee, Director
Office of Public Advocacy



Date



Commissioner Garrey Peska
Department of Administration



Date

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, District Superior
DEPARTMENT OF CORRECTIONS
Probation/Parole
Bethel, Alaska

DWH:gp

C.E. Swackhammer

March 17, 1987

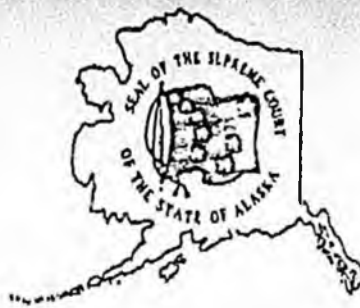
Page 2

cc: Susan Humphrey-Barnett, Commissioner

Art Schmidt, Deputy Commissioner

Ken Brown, Regional Director

File



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(807) 264-8228

March 9, 1987

Representative John Sund
Chair, House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

On February 27, 1987, I wrote to you providing background information about the Alaska Court System's request for legislation requiring municipalities to process uncontested traffic citations issued by their enforcement officers (copy of letter attached). Since that time, the court system has refined its proposal. The court system asks that the committee review the attached draft and sectional analysis and consider introducing this proposed legislation.

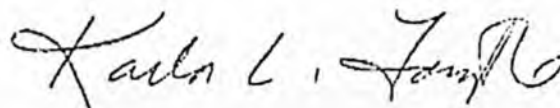
The attached draft incorporates two changes from the previous draft, both intended to benefit municipalities. First, language in the attached draft gives municipalities clear authority to establish fine schedules, rather than leaving this authority with the supreme court. This change would give municipalities the ability to control both enforcement and revenue attributable to these offenses, and to change the fine amounts to meet local conditions without having to seek approval from the judicial branch of state government. Also, this draft incorporates language authorizing municipalities to establish fine schedules for all minor offenses, which would include such offenses as littering and animal control ordinance violations as well as traffic offenses. This change would result in consistent treatment for all minor municipal offenses.

It could be argued that these changes would permit municipalities to establish fines for minor offenses solely as a revenue-generating mechanism. There are two factors which counteract this possibility. First, if a municipality sets a fine at an excessively high level, persons cited will come to court to contest the citation, which will require enforcement officers to spend time in court rather than on the streets. A modest fine is more likely to promote a plea of no contest and a mail-in fine payment, with minimal impact on enforcement resources. Also, the public can raise concerns about excessive fines directly with the legislative body which established them, which is the appropriate forum to resolve such concerns.

Representative John Sund
March 9, 1987
Page Two

Thank you for considering the court system's request. I will be glad to supply any additional information or answer any questions from you or your staff.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

Att.

cc: Arthur H. Snowden, II, Administrative Director
Robert G. Fisher, Fiscal Officer
Sandy Ganong, Traffic Division
Susan Miller, Manager, Special Projects
Area Court Administrators



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(607) 284-0220

February 27, 1987

Representative John Sund
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

I am writing to provide background about a request from the Alaska Court System for legislation requiring municipalities to process uncontested traffic citations issued by their enforcement officers.

In most court locations, citations issued by both state enforcement officials and also by municipal enforcement officials are filed with courts. Many of these citations are resolved by a bail forfeiture and plea of no contest. Processing consists of accepting payment from a defendant, either in person or by mail. If a defendant wishes to plead not guilty, a court trial is scheduled. If a defendant does not respond to the citation, a bench warrant or an order to show cause must be issued. However, the vast majority of these matters are resolved by the forfeited payment, without a court appearance.

If an offense is cited under provisions of state law, the resulting fine or forfeiture is paid to the general fund of the State of Alaska. However, under AS 22.15.270, forfeitures resulting from violations of ordinances of municipalities are returned to the political subdivision.

As a practical consequence, this means that court staff, who are funded by the state, perform what is essentially an accounting function for municipalities. The court system proposes that municipalities take over the responsibility for processing these uncontested citation payments. This procedure is currently in place in Juneau, based on a voluntary agreement between the Juneau court and Juneau enforcement officials, and works quite effectively.

This procedure would benefit the courts, because resources now devoted to processing these payments could be focused on other functions which would benefit both the state and localities, such as pre-trial screening to determine which defendants are able to bear the costs of counsel appointed at public expense. Streamlined efforts by the court to screen these defendants would result in decreased costs to municipalities because of the decreased burden of paying for costs of defense.

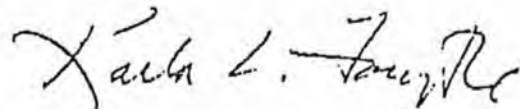
Representative John Sund
February 27, 1987
Page Two

Municipalities would also benefit by assuming direct control over this process. Along these lines, the supreme court would not object to legislation authorizing municipalities to enact mail-in fine schedules, which would give municipalities the ability to determine appropriate fine payments in conjunction with specific enforcement goals, instead of relying on the supreme court to adopt ball forfeiture schedules.

Some smaller political subdivisions may not have the capability to process these citations. If a municipality can demonstrate that the system as a whole will benefit from retaining this function within the court system, the court system would continue to process these citations for that municipality. It is anticipated that this exemption would apply primarily to outlying communities which issue very few traffic citations.

I hope this information is helpful to the committee. Please let me know if I can provide additional background.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Arthur H. Snowden, II, Administrative Director
Stephane J. Cole, Deputy Administrative Director
Robert G. Fisher, Fiscal Officer
Sandy Ganong, Traffic Division
Area Court Administrators

SECTIONAL ANALYSIS: AN ACT RELATING TO CITATIONS FOR
VEHICLE AND TRAFFIC OFFENSES

Section 1. Paragraph a. This section provides that citations for offenses under municipal ordinances for which a fine schedule has been established shall be deposited with the municipality for processing rather than with the court. However, if the supreme court by rule exempts a municipality from this provision, citations may still be filed with the court. It is anticipated that outlying communities which do not have the resources to process these citations would still be permitted to deposit citations with the court.

Paragraph b. This paragraph sets forth the procedure for responding to a citation under a municipal ordinance for which a fine schedule has been established. The person to whom the citation is issued will have five days to either pay the fine to the municipality or to plead not guilty. This paragraph also sets forth provisions which must appear on the citations in order to protect a person's due process rights. The paragraph provides that if a person fails to respond to the citation, the citation is considered a summons, which will provide the basis for the court to issue a bench warrant. Finally, this paragraph provides that if a person requests a trial and appears in court and is ultimately found guilty, the person may be sentenced to pay no more than the amount of the fine established under ordinance.

Paragraphs c-f. These provisions are contained in existing law, and are re-lettered in the proposed draft. These paragraphs relate to disposition of the citation and retention of copies.

Section 2. This section amends the current bail forfeiture statute for vehicle and traffic violations to provide that the state supreme court will issue a bail forfeiture schedule only for those offenses under state law which are amenable to disposition without court appearance, and that municipalities will establish fine schedules for municipal traffic offenses amenable to disposition without court appearance. This section also clarifies that if a person cited for an offense for which a fine or bail amount has been established appears in court and is found guilty, the penalty imposed may not exceed the fine or bail amount, so that the person's constitutional right to request a trial will not be infringed.

Section 3. Current law requires the court to notify the Department of Public Safety of convictions. This section inserts new language requiring a municipality to similarly notify the department if a fine payment has been accepted for a violation of a municipal ordinance relating to driving vehicles.

Section 4. This section amends Title 29, and is intended to give municipalities clear authority to determine that some minor offenses are amenable to disposition without court appearance and to establish a schedule of fine amounts for these offenses. Under existing law revenue generated by this procedure would be returned to the municipalities.

Section 5. This section sets an effective date of January 1, 1988, in order to give sufficient lead time for municipalities to review their ordinances and adopt fine schedules.

NOTES TO DECISIONS

Authority to impose period of incarceration as condition of probation prior to enactment of AS 12.55.080. See *Boyne v. State*, Sup. Ct. Op. No. 1766 (File No. 3678), 586 P.2d 1250 (1978).
Applied in *Jackson v. State*, Sup. Ct.

Op. No. 1194 (File No. 2422), 541 P.2d 23 (1975).
Quoted in *Newsom v. State*, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975).

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

Chapter 10. Interstate Compact on Probation and Parole.

[Renumbered as AS 33.36.110 – 33.36.120.]

Chapter 15. Parole Administration Act.

[Repealed, § 7 ch 88 SLA 1985.]

Chapter 16. Parole Administration.

Section

- 10. Parole
- 20. Board of parole
- 30. Selection criteria for board members
- 40. Compensation and expenses
- 50. Meetings of the board
- 60. Duties of the board
- 70. Process
- 80. Executive director
- 90. Eligibility for discretionary parole
- 100. Granting of discretionary parole
- 110. Preparole report
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Section

- 150. Conditions of parole
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- 200. Custody of parolee
- 210. Discharge of parolee
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- 230. Waiver of hearing
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- 250. Execution of warrant for arrest of parolee
- 900. Definitions

Collateral references. — 59 Am. Jur. 2d, Pardon and Parole, § 1 et seq.

67A C.J.S., Pardon and Parole. § 1 et seq.

Sec. 33.16.010. Parole. (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. (§ 2 ch 88 SLA 1985)

Legislative history reports. — For House letter of intent related to this section, see 1985 House Journal, p. 821.

Sec. 33.16.020. Board of parole. (a) There is in the Department of Corrections a board of parole consisting of five members appointed by the governor, subject to confirmation by a majority of members of the legislature in joint session.

(b) Members of the board serve for staggered terms of five years and until their successors are appointed.

(c) The governor shall choose the presiding officer of the board from among the membership.

(d) The governor shall make appointments to the board with due regard for representation on the board of the ethnic, racial, sexual, and cultural populations of the state.

(e) The governor shall appoint at least one member who resides in the First Judicial District, one member who resides in the Third Judicial District, and one member who resides in either the Second or Fourth Judicial District. (§ 2 ch 88 SLA 1985)

Cross references. — For transitional provisions relating to board members, see § 8, ch 88, SLA 1985 in the Temporary and Special Acts.

NOTES TO DECISIONS

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of

government. Davenport v. State, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975); Szeratics v. State, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977), decided under former AS 33.15.010.

Collateral references. — Statute conferring power upon administrative body in respect to parole of prisoners or dis-

charge of parolees, as unconstitutional infringement of power of executive. 143 ALR 148S.

Sec. 33.16.030. Selection criteria for board members. (a) The governor shall appoint board members on the basis of their qualifications to make decisions that are compatible with the welfare of the community and of individual offenders. The governor shall appoint members who are able to consider the character and background of offenders and the circumstances under which offenses were committed.

(b) At least one person appointed to the board must have experience in the field of criminal justice.

(c) Officers or employees of the state may not be appointed to the board. (§ 2 ch 88 SLA 1985)

Sec. 33.16.040. Compensation and expenses. A board member is entitled to compensation at an amount to be set by the governor for each day the member is participating in business of the board, and is also entitled to the per diem and travel allowances provided under AS 39.20.180. (§ 2 ch 88 SLA 1985)

Sec. 33.16.050. Meetings of the board. (a) The board may meet as often as it considers necessary to carry out its responsibilities, but shall meet at least four times a year.

(b) Three members of the board constituted a quorum for the conduct of business.

(c) Decisions and orders of the board require the affirmative votes of a majority of the members present.

(d) The board may conduct meetings by the use of teleconferencing facilities. (§ 2 ch 88 SLA 1985)

Sec. 33.16.060. Duties of the board. (a) The board shall

(1) serve as the parole authority for the state;

(2) upon receipt of an application, consider the suitability for parole of a prisoner who is eligible for discretionary parole;

(3) impose parole conditions on all prisoners released under discretionary or mandatory parole;

(4) under AS 33.16.210, discharge a person from parole when custody is no longer required;

(5) maintain records of the meetings and proceedings of the board;

(6) recommend to the governor and the legislature changes in the law administered by the board;

(7) recommend to the governor or the commissioner changes in the practices of the department and of other departments of the executive branch necessary to facilitate the purposes and practices of parole;

(8) upon request of the governor, review and recommend applicants for executive clemency; and

(9) execute other responsibilities prescribed by law.

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(b) The board shall adopt regulations under the Administrative Procedure Act (AS 44.62)

(1) establishing standards under which the suitability of a prisoner for discretionary parole shall be determined;

(2) providing for the supervision of parolees and for recommitment of parolees; and

(3) governing procedures of the board. (§ 2 ch 88 SLA 1985)

NOTES TO DECISIONS

No rules promulgated by the parole board regarding eligibility of prisoners for parole have been brought to the attention of the supreme court. Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971), decided under former AS 33.15.100.

Rules should be adopted as soon as practicable. — Concerning sentencing, sentence appeals, and parole matters in general, the supreme court believed it would be of benefit to all concerned if, as soon as practicable, the parole board, in conformity with former AS 33.15.100, adopted rules regarding eligibility of prisoners for parole, the conduct of parole hearings, and conditions of release to be imposed on parolees. Robinson v. State, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 686 (1971).

Parole board urged to prescribe specific rules to govern situations where searches of parolees are permissible. — See Roman v. State, Sup. Ct. Op. No. 1521 (File No. 2856), 570 P.2d 1235 (1977), decided under former AS 33.15.100.

Due process requirements. — There is no difference between parole and probation revocations as regards due process requirements. Avery v. State, Sup. Ct. Op. No. 2175 (File No. 4440), 616 P.2d 872 (1980), decided under former AS 33.15.100.

It was not error for a parole board to apply the preponderance of the evidence standard in a parole revocation hearing. Avery v. State, Sup. Ct. Op. No. 2175 (File No. 4440), 616 P.2d 872 (1980), decided under former AS 33.15.100.

Sec. 33.16.070. Process. The board or a member of the board may issue subpoenas and subpoenas duces tecum in the performance of board duties under AS 33.16.060(a). Subpoenas issued under this section are enforceable in Superior Court. (§ 2 ch 88 SLA 1985)

Sec. 33.16.080. Executive director. The board shall hire an executive director to serve the board in the discharge of its duties. The executive director must have had training and experience in the field of criminal justice. The executive director may employ additional staff to assist the board. (§ 2 ch 88 SLA 1985)

Sec. 33.16.090. Eligibility for discretionary parole. (a) A prisoner who is serving a term of at least 181 days, and who is not otherwise ineligible under (b) of this section, may, in the discretion of the board, be released on discretionary parole subject to AS 12.55.086(b), 12.55.115, and AS 33.16.100(c) and (d).

(b) A prisoner is not eligible for discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary parole during a term of sentence enhancement imposed

under AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

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

(d) In determining the eligibility of a prisoner for discretionary parole, the board may rely on the verbatim written transcript of the judge's sentencing remarks under AS 12.55.025(a)(1), and any other portion of the sentencing proceeding, as well as the judgment entered by the court. (§ 2 ch 88 SLA 1985)

Editor's notes. — Section 9, ch. 88, SLA 1985 provides that (b) of this section "shall be applied prospectively, except that prisoners sentenced before January 1, 1986 are eligible for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term of a consecutive or par-

tially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g) if the sentencing court orders discretionary parole eligibility for that period."

Legislative history reports. — For House letter of intent related to (b) of this section, the 1985 House Journal, p. 821.

NOTES TO DECISIONS

Wording of order. — The wording, "an order suspending the imposition of sentence for a given length of time, and requiring, as a special condition of probation, a definite term of imprisonment to be served periodically," is necessary to ensure that a prisoner given periodic time receives appropriate "good time" credit, and so that his parole eligibility is properly computed. *Whittlesey v. State*, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980), decided under former AS 33.15.180.

Release of presumptively sentenced prisoner. — A presumptively sentenced prisoner who is mandatorily released with 180 days or less remaining on his sen-

tence 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), decided under former AS 33.15.180.

Jurisdiction to decide challenges and constitutionality. — District court lacked jurisdiction to decide challenges to the state parole board's interpretation of this section and to the constitutionality of AS 33.15.180 as interpreted. Such challenges had to be brought in the superior court. *Bishop v. Municipality of Anchorage*, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 133 (1984), decided under former AS 33.15.180.

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Sec. 33.16.100. Granting of discretionary parole. (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. (§ 2 ch 88 SLA 1985)

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.

Sec. 33.16.110. Preparole report. (a) In determining whether a prisoner is suitable for discretionary parole, the board shall consider the parole reports including

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

(2) the recommendations made by the sentencing court, by the prosecuting attorney, and by the defense attorney, and any statements made by the victim or the prisoner at sentencing;

- (3) the prisoner's institutional conduct history while incarcerated;
 - (4) recommendations made by the staff of the correctional facilities in which the prisoner was incarcerated;
 - (5) reports of prior crimes, juvenile histories, and previous experiences of the prisoner on parole or probation;
 - (6) physical, mental, and psychiatric examinations of the prisoner;
 - (7) information submitted by the prisoner, the sentencing court, the victim of the crime, the prosecutor, or other persons having knowledge of the prisoner or the crime;
 - (8) information concerning an unjustified disparity in the sentence imposed on a prisoner in relation to other sentences imposed under similar circumstances; and
 - (9) other relevant information that may be reasonably available.
- (b) The board shall provide information available under (a)(3) and (a)(6) of this section when requesting comments on the discretionary parole of a prisoner from the sentencing court. (§ 2 ch 88 SLA 1985)

Sec. 33.16.120. Right of victim to comment on parole of prisoner. (a) Upon request of the victim, notice of a hearing to review or consider discretionary parole for a state prisoner who is convicted of a crime against a person shall be sent to the victim of the crime at least 30 days before the scheduled hearing.

(b) It is the responsibility of the victim to keep the board apprised of the victim's most current mailing address. The board shall send the notice required under (a) of this section to the last known address of the victim. The address of the victim may not be disclosed to the prisoner or the prisoner's attorney.

(c) The victim has a right to comment in writing on the proposed action of the board. Copies of the comments shall be provided to the prisoner and the prisoner's attorney before action by the board.

(d) The board shall consider the comments presented under (c) of this section in deciding whether to release the prisoner on parole.

(e) Upon request of the victim, if the board decides to release on parole a prisoner who is convicted of a crime against a person, the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and other pertinent information concerning the prisoner's conditions of parole that may affect the victim.

(f) Upon request of the victim, if a prisoner is released under AS 33.16.010(c), the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and

other pertinent information concerning the prisoner's conditions of parole that may affect the victim. (§ 2 ch 88 SLA 1985)

Cross references. — For rights of victims generally, see AS 12.61.

Sec. 33.16.130. Application for discretionary parole. (a) A prisoner eligible for discretionary parole may apply to the board for discretionary parole. As part of the application for parole, the prisoner shall submit to the board a parole release plan that includes the prisoner's plan for employment, residence, and other information concerning the prisoner's rehabilitative plans if released on parole.

(b) Before the board determines a prisoner's suitability for discretionary parole, the prisoner is entitled to a hearing before the board. The prisoner shall be furnished a copy of the preparole reports listed in AS 33.16.110, and permitted access to all records that will be considered by the board in making its decision except those that are made confidential by law. The prisoner may also respond in writing to all materials considered by the board, be present at the hearing, and present evidence to the board.

(c) The board shall issue its decision in writing and provide the basis for a denial of discretionary parole. A copy of the decision shall be provided to the prisoner. (§ 2 ch 88 SLA 1985)

Sec. 33.16.140. Order for parole. An order for parole issued by the board, setting out the conditions imposed under AS 33.16.150(a) and (b), and the date parole custody ends, shall be furnished to each prisoner released on discretionary or mandatory parole. (§ 2 ch 88 SLA 1985)

Sec. 33.16.150. Conditions of parole. (a) As a condition of parole, a prisoner released on discretionary or mandatory parole shall refrain from conduct punishable by imprisonment under state or federal law or municipal ordinance.

(b) The board may require as a condition of discretionary or mandatory parole that a prisoner released on parole

- (1) meet family obligations;
- (2) pursue employment, education, counseling, or training;
- (3) remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;
- (4) report upon release to the parole officer assigned to the parolee;
- (5) report as required to the parole officer assigned to the parolee;
- (6) reside at a stated place and notify the board of any change in place of residence;
- (7) not possess or control firearms or other dangerous weapons;

- (8) refrain from possessing or consuming alcoholic beverages;
- (9) submit to reasonable searches and seizures by a parole officer, or a peace officer acting under the direction of a parole officer;
- (10) submit to appropriate medical, mental health, or controlled substance or alcohol examination, treatment, or counseling;
- (11) submit to periodic examinations designed to detect the use of alcohol or controlled substances;
- (12) make restitution ordered by the court to a victim of the prisoner's crime, according to a schedule established by the board;
- (13) refrain from opening, maintaining, or using a checking account or charge account;
- (14) refrain from entering into a contract other than a prenuptial contract or a marriage contract;
- (15) refrain from operating a motor vehicle;
- (16) refrain from entering an establishment where alcoholic beverages are served, sold, or otherwise dispensed;
- (17) refrain from participating in any other activity or associating with any other person that the board determines is reasonably likely to diminish the rehabilitative goals of parole, or that may endanger the public.

(c) Except for a condition imposed under (b)(4), (7), (9), (11) or (12) of this section, the board may generally delegate imposition of special conditions under (b) of this section to the discretion of the parole officer.

(d) The board may require a prisoner released on parole to comply with special conditions imposed under (b) of this section for any period up to the maximum term under which the prisoner is subject to the custody and jurisdiction of the board. (§ 2 ch 88 SLA 1985)

Sec. 33.16.160. Change in parole conditions. (a) Upon application of the state or the parolee, the board may change a condition of parole previously imposed under AS 33.16.150(b).

(b) If the proposed change in conditions of parole is more restrictive of a parolee's liberty, the parolee is entitled to notice of the proposed change, the reasons for the proposed change, a hearing before the board, and an opportunity to respond to the proposed change and to present evidence.

(c) Notwithstanding (a) and (b) of this section, when a parole officer determines that an emergency situation requires an immediate change in a condition of parole, or the imposition of a new condition, the parole officer may impose the change or new condition immediately, without a hearing. The parole officer shall immediately notify the board of the imposition of the emergency change or new condition and shall provide a written report setting out the basis for the change or new condition and the nature of the emergency. The effective period

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(d) A condition of parole may be changed, a new condition of parole may be imposed, or a new or changed condition imposed under (c) of this section may be extended by a member of the board or the board's designee if, after a preliminary hearing, an emergency situation is found that requires a change in condition. The effective period of a change in condition under this subsection, the imposition of a new condition under this subsection, or the extension under this subsection of a new or changed condition imposed under (c) of this section may not exceed 90 days. (§ 2 ch 88 SLA 1985)

Sec. 33.16.170. Confidentiality of records and information. (a) Except as provided in (b) of this section, the preparole reports listed in AS 33.16.110, and other information obtained and used by the board under this chapter, are confidential and may not be disclosed to anyone other than the board, the sentencing judge, the prosecuting and defense attorneys, the prisoner, the prisoner's attorney, the attorney for the board, the staff of the board, or others granted access to this information under this chapter.

(b) Notwithstanding (a) of this section and AS 33.16.130(b), in a preparole proceeding under AS 33.16.130 the board may not disclose to the prisoner or the prisoner's attorney

(1) diagnostic opinions that, if made known to the eligible prisoner, could lead to serious disruption of the prisoner's institutional program;

(2) portions of a document that reveal sources of information obtained upon a promise of confidentiality; or

(3) other information that, if disclosed, may result in physical harm to any other person.

(c) When the board withholds information from a prisoner or the prisoner's attorney under (b) of this section, the board shall provide the prisoner with an excised copy of the material or summary of the material withheld containing as much specificity as the circumstances allow. (§ 2 ch 88 SLA 1985)

Sec. 33.16.180. Duties of the commissioner. The commissioner shall

(1) conduct investigations of prisoners eligible for discretionary parole, as requested by the board;

(2) supervise the conduct of parolees;

(3) appoint and assign parole officers and personnel;

(4) provide the board, within 30 days after sentencing, information on a sentenced prisoner who may be eligible for discretionary parole under AS 33.16.090;

(5) notify the board and provide information on a prisoner 120 days before the prisoner's mandatory release date, if the prisoner is to be released to mandatory parole; and

(6) maintain records, files, and accounts as requested by the board.
(§ 2 ch 88 SLA 1985)

Sec. 33.16.190. Parole and probation officers. An officer appointed by the commissioner under AS 33.05.020(a) or under this chapter, may discharge duties under AS 33.05 or this chapter. (§ 2 ch 88 SLA 1985)

Sec. 33.16.200. Custody of parolee. Except as provided in AS 33.16.210, the board retains custody of discretionary and mandatory parolees until the expiration of the maximum term or terms of imprisonment to which the parolee is sentenced. (§ 2 ch 88 SLA 1985)

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 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. (§ 2 ch 88 SLA 1985)

Sec. 33.16.220. Revocation of parole. (a) The board may revoke parole for conduct in violation of AS 33.16.150(a) or (b).

(b) Except as provided in (e) of this section, within 15 working days after the arrest and incarceration of a parolee for violation of a condition of parole, the board or its designee shall hold a preliminary hearing. At the preliminary hearing, the board or its designee shall determine if there is probable cause to believe that the parolee violated the conditions of parole and, when probable cause exists, whether the parolee should be released pending a final revocation hearing. A finding of probable cause at a preliminary hearing in a criminal case is conclusive proof of probable cause that a parole violation occurred.

(c) In determining whether a parole violator should be released pending a final revocation hearing, the board or its designee shall consider

(1) the likelihood of the parolee's appearance at a final revocation hearing;

(2) the seriousness of the alleged violation;

(3) whether the parolee presents a danger to the community; and

(4) whether the parolee is likely to further violate conditions of parole.

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(d) If the parole violator is released pending a final revocation hearing, the board or its designee may impose additional conditions necessary to ensure the parolee's appearance at the final revocation hearing, and to prevent further violation of conditions of parole.

(e) A preliminary hearing under (b) of this section is not required if the board holds a final revocation hearing within 20 working days after the parolee's arrest and incarceration.

(f) The board shall hold a final revocation hearing no later than 120 days after a parolee's arrest, subject to restrictions arising under AS 33.36.110 and (g) of this section.

(g) When the basis for the revocation proceeding is a criminal charge, the parolee may request, or the board upon its own motion may propose that further proceedings on the revocation be delayed. In making the determination to delay further proceedings, the board shall consider prejudice that may result to the parolee's and the state's interests in the pending criminal case and the parolee's decision to delay final revocation proceedings. If good cause to proceed is found, the board shall consult with the attorney general before continuing the final revocation proceeding.

(h) At a final revocation hearing, a violation of a condition of parole must be established by a preponderance of the evidence.

(i) If, after the final revocation hearing, the board finds that the parolee has violated a condition of parole imposed under AS 33.16.150(b), or a law or ordinance, the board may revoke all or a portion of the parole, or change any condition of parole. (§ 2 ch 88 SLA 1985)

NOTES TO DECISIONS

Right to impartial fact finder in proceedings. — Due process includes the right to an impartial fact finder in parole revocation proceedings. *Newell v. State*, Sup. Ct. Op. No. 2241 (File No. 4453), 620 P.2d 680 (1980), decided under former AS 33.15.090.

When a person sitting in on deliberations in a parole revocation hearing was the person who initially recommended revocation and whose reports and testimony form the bulk of the evidence supporting revocation, such a person was part of the prosecution, and his presence violated the

parolee's due process rights to an impartial fact finder. *Newell v. State*, Sup. Ct. Op. No. 2241 (File No. 4453), 620 P.2d 680 (1980), decided under former AS 33.15.090.

Use of illegally obtained evidence in revocation proceeding. — Ordinarily, neither the Alaska Constitution nor its criminal rules bar the use of illegally obtained evidence in parole revocation proceedings. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Collateral references. — Right to notice and hearing before revocation of suspension of sentence, parole, conditional

pardon, or probation. 29 ALR2d 1074; 44 ALR3d 306.

Right to assistance of counsel at pro-

ceedings to revoke probation. 44 ALR3d 306. including revocation of parole on same charge. 76 ALR3d 578.

Acquittal in criminal proceeding as pre-

Sec. 33.16.230. Waiver of hearing. A prisoner or parolee may waive the right to a hearing provided under AS 33.16.120, 33.16.160, or 33.16.220 by submitting a written waiver to the board. (§ 2 ch 88 SLA 1985)

Sec. 33.16.240. Arrest of parole violator. (a) A parolee may be arrested, with or without a warrant, for a violation of parole.

(b) A warrant for the arrest of a parolee who is charged with a violation of parole may be issued by the board, or a member of the board, based on probable cause that a violation has occurred.

(c) A parole officer may, without a warrant, arrest a parolee for a violation of parole only if there is danger to the public, if there is a likelihood that the parolee will flee, or if the parolee committed a crime in the presence of the parole officer.

(d) If a parolee is arrested without a warrant, the parole officer shall notify the board no later than the working day immediately following the arrest. The parole officer shall, within five working days after the arrest, provide the board with a written report setting out the alleged violation and circumstances that required immediate arrest of the parolee.

(e) A parolee arrested for violation of parole is not entitled to bail.

(f) Time spent in custody pending revocation proceedings shall be credited toward the unexpired term of imprisonment of the parolee; however, the time the parolee was at liberty on parole does not alter the time the parolee was sentenced to serve. (§ 2 ch 88 SLA 1985)

NOTES TO DECISIONS

A parolee's liberty should be afforded all protections consistent with his status as one convicted of a crime and under supervision and restrictions, although released from incarceration. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Warrant ordinarily required. — This section requires that absent exigent circumstances a parole officer must secure a warrant from the parole board or board member. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Warrant issued only upon probable cause. — In order for the warrant requirement of this section to be meaningful, the warrant should be issued only

upon probable cause of a violation of the conditions of parole being presented to the parole board or a member thereof. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Written statement of probable cause required. — To avoid unnecessary appeals from warrants issued on oral statements, the contents of which may be subject to argument, in the future a written statement indicating probable cause shall be required to be filed with the parole board or member as justification for issuance of a warrant. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33. 5.200.

Parolee subject to arrest for a wide variety of causes which do not apply

parole on same

parolee may
120, 33.16.160,
ord. (§ 2 ch 88

parolee may be
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parole officer
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entitled to bail.
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88 SLA 1985)

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Op. No. 1479 (File
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5.200.

of probable cause
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sued on oral state-
which may be sub-
e future a written
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stification for issu-
avenport v. State,
File No. 2885), 568
d under former AS

arrest for a wide
ich do not apply

to others. Davenport v. State, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Usual arrest requirements not imposed as regards arrest of parolee. — To impose the same requirements on the arrest of a parolee as are otherwise mandated for an arrest, including an affidavit or sworn complaint, would constitute meaningless additional time and effort on the part of parole officers. Davenport v. State, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

For a discussion of cases decided in state and federal courts addressing the subject of parole arrest warrants, see Davenport v. State, Sup. Ct. Op. No.

1479 (File No. 2885), 568 P.2d 939 (1977), decided under former AS 33.15.200.

Credit for time served since arrest for subsequent offenses. — Where defendant's sentences were to be served consecutively to a sentence then being served for a parole revocation on an earlier offense, the trial court order that the defendant receive no credit for time served since his arrest was proper in view of the court's action in making the sentences consecutive to the time to be served on the parole revocation, for the time served from defendant's arrest should properly have been credited toward the parole revocation sentence. Reynolds v. State, Sup. Ct. Op. No. 1849 (File No. 4024), 595 P.2d 21 (1979), decided under former AS 33.15.200.

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

Extradition of paroled convict. 78 ALR 422.

Sentence for new offense committed while accused was at large on parole or

conditional release, as concurrent or consecutive. 116 ALR 811.

When is a person in custody of governmental authorities for purpose of exercise of state remedy of habeas corpus — modern cases. 26 ALR4th 455.

Sec. 33.16.250. Execution of warrant for arrest of parolee. (a) A parole officer, or a peace officer acting at the request of a parole officer, shall execute a warrant issued under AS 33.16.240 by arresting the parolee and confining the parolee in a correctional facility designated by the commissioner.

(b) The parole officer or peace officer shall immediately notify the board or a member of the board of an arrest under (a) of this section. (§ 2 ch 88 SLA 1985)

Sec. 33.16.900. Definitions. 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. (§ 2 ch 88 SLA 1985)

Revisor's notes. — Formerly AS 33.16.260. Renumbered in 1986.

Chapter 20. Remission of Sentences and Executive Pardons and Clemency.

Article

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

Article 1. Remission of Sentences.

Section

- 10. Computation of good time
- 30. Discharge
- 40. Released prisoner

Section

- 50. Forfeiture for offense
- 60. Restoration of forfeited good time

NOTES TO DECISIONS

Derivation. — Alaska's mandatory release scheme is derived from 18 U.S.C. 4161-66. Morton v. Hammond, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Sec. 33.20.010. Computation of good time. (a) Except as provided in (b) of this section and notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the state or a political subdivision of the state and sentenced to a term of imprisonment that exceeds three days is entitled to a deduction of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined.

(b) A prisoner sentenced to a term of imprisonment of more than one year before April 9, 1986 who was entitled to a deduction of less

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature



House of Representatives

SOLDOTNA
P.O. BOX 417
SOLDOTNA, ALASKA 99889
(907) 282-7663
JUNEAU
BOX V
JUNEAU, ALASKA 99811
(907) 485-2889

M E M O R A N D U M

TO: All Members
House of Representatives

FROM: Rep. Swackhammer *Swack*

DATE: April 9, 1987

SUBJ: CS HB 140 (Jud)

CS HB 140 (Jud) will be before the House on Friday, April 10. This bill is an effort to make our current mandatory parole statutes more efficient. The bill lessens the workload of an already overburdened parole/probation staff, and allows them to spend more time with offenders who have committed the more serious crimes. Included is a sectional summary of this bill.

I would appreciate your support in the passage of this bill.

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 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.

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

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 140 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

20 (d) A prisoner who is sentenced for a term under AS 12.55.-
21 125(a), [OR] (b), (c), or (i) may not be released on discretionary
22 parole until the prisoner has served the mandatory minimum term under
23 AS 12.55.125(a), [OR] (b), (c), or (i), at least one-third of the
24 period of confinement imposed, or any minimum term set under AS 12.-
25 55.115 at sentencing, whichever is greater.

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

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

1 [EXCEEDED 180 DAYS]. However, a prisoner released on mandatory parole
2 may be discharged under AS 33.16.210 before the expiration of the
3 term. A prisoner who was sentenced to a term or terms of [AN] impris-
4 onment of less than two years [180 DAYS OR LESS] shall be uncondition-
5 ally discharged from mandatory parole [, EXCEPT AS PROVIDED IN (c) OF
6 THIS SECTION].

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

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

SUMMARY OF MANDATORY PAROLE BILL

Mandatory parole is the supervision time a misdemeanant 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 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 misdemeanant offender was not intended to be supervised by the parole board, as is currently the case.

Section 3 of the current statute allows a Class A felon discretionary parole after serving only 1/4 of the sentence. Under the proposed bill, a Class A felon is 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 is equal to or exceeds 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**

REQUEST: _____

Bill Version: HB140
Publish Date: _____

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
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REVENUE	0	0	0	0	0	0
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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
Division: Administrative Services

Phone: 465-3376
Date: 3/6/87

Approved by Commissioner: *William L. Harding for* Susan Humphrey-Barnett
Agency: Department of Corrections

Date: 3/6/87

- 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. HB140

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. HBI40

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: HB 140

Publish Date: _____

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.*

Division: Alaska State Troopers

Phone: 269-5691

Date: 2/23/87

Approved by Commissioner: William R. Nix *(Signature)*

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

page ____ of ____

JM
2/25/87

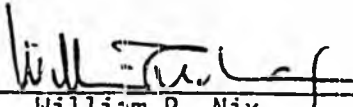
BILL NO: HB 140

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
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EXAMPLE

- a) Defendant Sentenced to 7yrs.
- b) Judge Suspends 1 year
- c) Requires Def. serve 6yrs.
- d) Places Def. on 5yrs. Probation upon release.
(6yrs jail, 1 yr. Suspended, 5 yrs. probation)
- e) ∴ Def. on Mandatory Parole (good time) for 2yrs. ($\frac{1}{3}$ of 6yrs.)

7yr. Sentence
6yrs. jail
1 yr. Suspended
5 yrs. Probation

A. Section 5, lines 8-10 before amended:

Since probation period (5yrs.) exceeds Mand. Parole period, Parole Board could discharge def. to probation.
However, if Def. then violated probation, Judge could only impose 1 yr. of jail, the suspended time

B. Section 5, lines 8-10 AS AMENDED:

Since the Suspended time is not at least as long as the Mand. Parole period, then Board could not discharge def. to probation.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/18/87

FURTHER REFERRALS: Judiciary
Finance

The Health, Education and Social Services Committee has considered DATE: _____
HB 140

"An Act relating to parole."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- 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 same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Roll & Ford
Alvin L. Karpman
Bill Hunt
Mr. [unclear]
Alvin L. Karpman
[unclear]

SIGNING OTHER RECOMMENDATIONS:

David Douley - NO REC: needs
further consideration of victims
rights regarding certainty
in sentencing and judicial
options for extended probation

Alvin L. Karpman
 Co-Chairman's signature
John Ellis

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 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 a Class A felon discretionary parole after serving only 1/4 of the sentence. Under the proposed bill, a Class A felon is 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 is equal to or exceeds 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.

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**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : HB140
Publish Date : _____

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 Knight

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

Approved by Commissioner: *William W. Leasing for* Susan W. 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. HB140

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. HB140

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 \$1,858/year, \$2,372,500 over three years or \$790,800 per year. These estimates are based on an average field supervisory 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: HB 140

Publish Date: _____

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.*
Division: Alaska State Troopers

Phone: 269-5691

Date: 2/23/87

Approved by Commissioner: William R. Nix *(Signature)*

Date: 2/25/87

Agency: Public Safety

Distribution (by preparer):

Legislative Finance
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Senate Secretary

JMK
2/25/87

BILL NO: HB 140

DATE: March 3, 1987

TITLE: "An Act relating to parole."

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

DEPARTMENT OF
PUBLIC SAFETY

POSTAGE PAID /

This bill does not impact the Department of Public Safety.



William R. Nix
Acting Commissioner

ALASKA PAROLE BOARD
MANDATORY PAROLE INFORMATION

1985 - 1986

<u>Supplemental Conditions Set</u>		<u>Mandatory Parole Revocation Hearings</u>
1985	179 Cases	25
1986	373 Cases	57

April 4, 1985

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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.

A handwritten signature in black ink, appearing to read "H.M. Miller".

H.M. 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 where 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. Rovne v. State, 586 P.2d 1250 (Alaska 1978).

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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 authorized 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 duplicitious 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

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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

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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 interest 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.

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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

^{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",

^{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

^{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

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 it 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 Morrissev, 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 is 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 Morrissev, 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. 1980); 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

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 as 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 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.

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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:

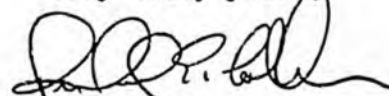
I strongly support passage of H.B. #140. As you are aware this legislation will return our Parole Supervision caseloads to a level comparable to 1985, before the comprehensive Revision of the Parole Laws effective January 1, 1986.

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 than two year sentence category are often subject to a residual 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

February 27, 1987

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

re: House Bill 140

Dear Representative Swackhammer:

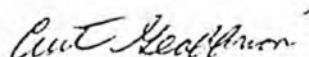
Thank you for your letter of 02-20-87, reference House Bill 140. I support the bill 100%, as I believe all probation officers do.

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
Probation/Parole Officer III

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.