

**SB**

**55**

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/16/07

FURTHER: Judiciary  
Finance

Date of 5-Day Notice: 01/18/07  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 1/23/07

State Affairs Committee considered SENATE BILL NO. 55

### SB 55 NOTIFY CRIME VICTIM OF EXECUTIVE CLEMENCY

"An Act relating to executive clemency."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

---

**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_


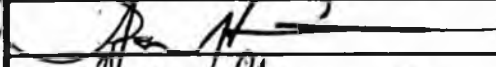

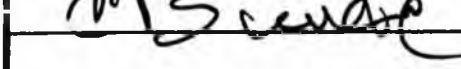

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
ADMN	01/22			✓	1
DOC	01/22			✓	2
COG	01/22			✓	3
LAW	01/22			✓	4

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	X			
	Stevens	X			
	Green	X			
	Bunde			✓	
CHAIR: 	McGuire	X			

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax

*Session:*  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-6600  
1-877-465-6601  
Fax (907) 465-3805  
[www.akrepublicans.org/green](http://www.akrepublicans.org/green)

**SENATOR LYDA GREEN**

## SPONSOR STATEMENT

Senate Bill 55

*"An Act Relating to Executive Clemency"*

Senate Bill 55 amends Alaska statutes to require that the governor refer applications for executive clemency to the Alaska Board of Parole no less than 60 days prior to taking action on an application for executive clemency. The parole board will be required to notify the Department of Law, the Office of Victims' Rights and the victim (in the case of a crime involving domestic violence, arson in the first degree or a crime against a person). A crime against a person includes homicide, assault, sexual offenses and all other crimes set out in AS 11.41.

The legislation requires that victims of crimes be notified of clemency applications, and provides enhanced statutory requirements to include victims in the process, if they so desire. By requiring notification to the victims in advance, all parties involved can provide information that may or may not impact the final decision to grant clemency.

It is critical that the victim of a crime be provided adequate notification and the opportunity to be part of the clemency application and consideration process. In addition, the parole board and the governor should be afforded all of the applicable information regarding the crime before preparing documentation and making recommendations; and most certainly prior to reaching a final decision on a clemency application.

I ask for your support of SB55.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 16, 2007

**SUBJECT:** Sectional Summary - HB 69 (Work Order No. 25-LS0317A)

**TO:** Representative Ralph Samuels

**FROM:** Gerald P. Luckhaupt  
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 33.20.080(a) by requiring the governor to refer applications for executive clemency to the Board of Parole and further provides that the governor may not act on an application until at least 60 days have passed since notice of the application is provided by the Board of Parole to the Department of Law and the Office of Victim's Rights and, if applicable, the crime victim.

Section 2 of the bill amends AS 33.20.080(b) by requiring the Board of Parole to send notice of applications for executive clemency to the Department of Law and the Office of Victim's Rights and further provides that the board must provide notice of any action taken on the application by the governor to the Department of Law and the Office of Victim's Rights and, if applicable, to the crime victim.

GPL:med  
07-0015.med

shall be responsible for the faithful execution or proceeding brought in pursuance of a constitutional or legislative mandate, power, duty, or right by any officer, employee, or subdivision. This authority shall not be exercised against the legislature.

interests common to all state citizens. *Council v. Knowles*, 988 P.2d 604 (Alaska 1999).

ment of executive officers is an executive power; for without such a power, the responsibility for executing executive duties would be defeated. The goal of separation of branches of government would be defeated. *Bradner v. State*, 553 P.2d 1 (Alaska 1976).

of the responsibilities imposed by this section, the authority granted by § 1 of this section to the governor is necessarily clothed with the power to appoint subordinate executive officers to aid in carrying out the laws of Alaska. *Bradner v. State*, 553 P.2d 1 (Alaska 1976).

issue in land-exchange controversy. The governor and the attorney general are charged with protecting the public interest, and in a controversy involving legislation involving a three-way exchange of land between the State, the United States government and a corporation of Alaska natives was clearly represented by plaintiff taxpayers, taxpayers were held to have standing to sue. *State v. ...*, 559 P.2d 630 (Alaska 1977), cert. denied, 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1985).

*Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1 (Alaska 1985).

*Alyeska Ski Corp. v. Holdsworth*, 426 P.2d 1 (Alaska 1967).

*Lebert v. Hammond*, 661 P.2d 635 (Alaska 1983).

*Lebert v. State*, 82 P.3d 787 (Alaska Ct. App. 2003).

the governor considers it in the interest of the State, the house, or the two houses in joint session.

ingly, he is entitled to absolute immunity from civil liability for this action. *Shultz v. Sundberg*, 577 F. Supp. 1491 (D. Alaska 1984), aff'd, 759 F.2d 714 (9th Cir. 1985).

Applied in *Karttula v. Abood*, 686 P.2d 1197 (Alaska 1984).

Cited in *Schultz v. Sundberg*, 759 F.2d 714 (9th Cir. 1985).

Collateral references. — 16 C.J.S., Constitutional Law, § 111 to 168.

**Section 18. Messages to Legislature.** The governor shall, at the beginning of each session, and may at other times, give the legislature information concerning the affairs of the State and recommend the measures he considers necessary.

**Section 19. Military Authority.** The governor is commander-in-chief of the armed forces of the State. He may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers.

NOTES TO DECISIONS

**Use of National Guard to execute search warrant.** — Under this section, the governor is authorized to use the National Guard to execute the laws, and there is no provision of Chapter 5 of Title 26 of the Alaska Statutes that prohibited the use of National Guard soldiers to execute search warrants. *Wallace v.*

*State*, 933 P.2d 1157 (Alaska Ct. App. 1997), cert. denied, 528 U.S. 987, 120 S. Ct. 447, 145 L. Ed. 2d 364 (1999).

Cited in *Abood v. Gorsuch*, 703 P.2d 1158 (Alaska 1985).

Collateral references. — 53 Am.Jur.2d, Military and Civil Defense, § 36.  
6 C.J.S., Armed Services, § 341 et seq.

**Section 20. Martial Law.** The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

NOTES TO DECISIONS

Cited in *Abood v. Gorsuch*, 703 P.2d 1158 (Alaska 1985).

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

NOTES TO DECISIONS

Forfeiture of good time authorized. — The Department of Corrections has the authority to forfeit good time for a prisoner's misbehavior engaged in before resentencing on the same offense. *Briggs v. Donnelly*, 828 P.2d 1207 (Alaska Ct. App. 1992).

Stated in *Hill v. State*, 22 P.3d 24 (Alaska Ct. App. 2001).

Cited in *Hill v. State*, 22 P.3d 24 (Alaska Ct. App. 2001).

Collateral references. — 72 C.J.S., Prisons, §§ 48, 144-146, 148, 154.

Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner. 95 ALR2d 1265

**Sec. 33.20.060. Restoration of forfeited good time.** The commissioner of corrections may restore all or a portion of a prisoner's forfeited good time, under regulations adopted by the commissioner, if the prisoner demonstrates progress in faithfully observing the rules of the correctional facility in which the prisoner is confined. The amount of forfeited good time restored by the commissioner shall be related to the severity of the offense or rule violation committed by the prisoner and the length of time of good conduct that followed the offense or rule violation. (§ 6 ch 107 SLA 1960; am § 3 ch 11 SLA 1986)

NOTES TO DECISIONS

Stated in *Hill v. State*, 22 P.3d 24 (Alaska Ct. App. 2001).

Cited in *Bear v. State*, 439 P.2d 432 (Alaska 1968).

Collateral references. — 72 C.J.S., Prisons, § 21. Right to credit for time served under erroneous or

void sentence or invalid judgment of conviction necessitating new trial. 35 ALR2d 1283.

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

Section

70. Governor may grant pardons, commutations and reprieves

Section

80. Board of parole to investigate applications for executive clemency

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

Cross references. — For the constitutional provision on this subject, see Alaska Const., art. III, § 21.

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*, 543 P.2d 1204 (Alaska 1975); *Szeratics v. State*, 572 P.2d 63 (Alaska 1977). Cited in *Bear v. State*, 439 P.2d 432 (Alaska 1968).

Collateral references. — Pardon as affecting impeachment by proof of conviction of crime. 30 ALR2d 893.

Habitual criminal statute, pardon as affecting consideration of earlier conviction in applying. 31 ALR2d 1186.

Procedure to be followed where jury requests infor-

mation as to possibility of pardon or parole from sentence imposed. 35 ALR2d 769.

Offenses and convictions covered by pardon. 35 ALR2d 1261.

Prejudicial effect of statement or instruction of court as to possibility of parole or pardon. 12 ALR2d 832.

Prejudicial effect  
possibility of parole  
Pardon as restorability  
therefor. 88 ALR2d 466  
Pardon as defense  
ALR2d 466  
Power of state

**Sec. 33.20.060. Clemency.**

(a) The board of parole shall investigate

When the request is made by the governor the

(b) If required by the board of parole, the

violence, or a crime, the board of parole may

(c) If the board of parole is satisfied that the

current, valid, and reliable information is

required under this section, the information shall

not be disclosed to the public.

(d) In this section, "crime" means:

(1) crime

(2) crime

(3) victim

ch 59 SLA 1986

Revisor's note: as (d)(3) renumbered (d)(2) was renumbered

Effect of amendment effective July 1, 1998

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

**Chapter 26**

Sec. ~~33.20.080~~. Board of parole to investigate applications for executive clemency.

(a) The governor may refer applications for executive clemency to the board of parole. The board shall investigate each case and submit to the governor a report of the investigation, together with all other information the board has regarding the applicant. When the report or investigation is submitted, the board shall also transmit to the governor the comments it has received under (b) of this section.

(b) If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree, the board shall send notice of an application for executive clemency submitted by the state prisoner who was convicted of that crime. The victim may comment in writing to the board on the application for executive clemency.

(c) If the victim desires notice under (b) of this section, the victim shall maintain a current, valid mailing address on file with the board. The board shall send the notice required under this section to the victim's last known address. The victim's address may not be disclosed to the applicant for executive clemency or the applicant's attorney.

(d) In this section,

(1) "crime against a person" has the meaning given in AS 33.30.901;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990.

(3) "victim" has the meaning given in AS 12.55.185.

Chapter 33.25. WESTERN INTERSTATE CORRECTIONS COMPACT

*[Renumbered as AS 33.36.060 - 33.36.100].*

Chapter 33.30. PRISON FACILITIES AND PRISONERS

Article 01. ESTABLISHMENT, CONTROL AND MANAGEMENT

*Sec. 33.30.010. Commissioner to control and manage state prison facilities. [Repealed, Sec. 12 ch 88 SLA 1986].*

Repealed or Renumbered

Sec. 33.30.011. Duties of commissioner.

The commissioner shall

(1) establish, maintain, operate, and control correctional facilities suitable for the custody, care, and discipline of persons charged or convicted of offenses against the state or held under authority of state law; each correctional facility operated by the state shall be established, maintained, operated, and controlled in a manner that is consistent with AS 33.30.015;

(2) classify prisoners;

(3) for persons committed to the custody of the commissioner, establish programs, including furlough programs that are reasonably calculated to

(A) protect the public and the victims of crimes committed by prisoners;

(B) maintain health;

(C) create or improve occupational skills;

(D) enhance educational qualifications;

(E) support court-ordered restitution; and

(F) otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society;

(4) provide necessary

(A) medical services for prisoners in correctional facilities or who are committed by a court to the custody of the commissioner, including examinations for communicable and infectious diseases;

(B) psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes that

(i) a prisoner exhibits symptoms of a serious disease or injury that is curable or may be substantially alleviated; and

(ii) the potential for harm to the prisoner by reason of delay or denial of care is substantial;

(5) establish minimum standards for sex offender treatment programs offered to persons who are committed to the custody of the commissioner; and

(6) provide for fingerprinting in correctional facilities in accordance with AS 12.80.060.

Sec. 33.30.012. Notice of release, parole, community placement, work release placement, furlough, or escape of sex offender or child kidnapper.

(a) Within 30 days before release of a sex offender or child kidnapper with a duty to register under AS 12.63, the commissioner shall complete the registration of the sex offender or child kidnapper if the offender or kidnapper has not previously registered. The commissioner shall take the sex offender's or child kidnapper's photograph, and determine if legible fingerprints of the sex offender or child kidnapper have been previously provided to the Department of Public Safety; if legible fingerprints for the sex offense or child kidnapping have not previously been provided to the Department of Public Safety, the commissioner shall obtain the sex offender's or child kidnapper's fingerprints in the manner required by the Department of Public Safety and shall immediately forward the fingerprints to the department. When completing the registration or taking the photograph under this subsection, the commissioner shall also send written notice of release, parole, community placement, work release placement, or furlough of a sex offender or child kidnapper to:

- (1) the chief of police of the community, if any, in which the inmate will reside;
- (2) the Alaska state trooper post located nearest to where the inmate will reside;
- (3) the village public safety officer of the rural community without a municipal police department or Alaska state trooper post in which the inmate will reside; and
- (4) the central registry of sex offenders and child kidnappers.

(b) If an inmate convicted of a sex offense or child kidnapping escapes from a correctional facility, the commissioner shall immediately notify the Department of Public Safety and the chief of police of the community and the Alaska state trooper post located closest to where the inmate resided immediately before the inmate's arrest and conviction.

Sec. 33.30.013. Commissioner to notify victims.

(a) The commissioner shall notify the victim if the offender escapes from custody or is released to the community on a furlough, on an early release program, or for any other reason.

(b) The commissioner is required to give notice of a change in the status of an offender under this section only if the victim has requested notice of the change, except that the commissioner is required to give notice, mailed to the last known address of the victim, in every case of a crime involving domestic violence.

(c) A victim who has requested notice under (b) of this section shall maintain a current, valid mailing address on file with the commissioner. The commissioner shall send the notice from the department required by this section to the victim's last known address. The victim's address may not be disclosed to the offender or the offender's attorney.

(d) The state may not be held liable in damages for the failure of the commissioner to comply with the requirements of this section.

(e) As part of the notice under this section, the commissioner shall send the victim a photograph of the offender if the victim has specifically requested in writing that a photograph be sent. The photograph must have been taken within three weeks of the offender's release or, if the offender escapes from custody, must be the most recent photograph in the commissioner's possession. The photograph is for the victim's personal use, and the victim may not make copies of the photograph for distribution to others. An offender who is released under (a) of this section shall be notified that a photograph has been sent to the victim under this subsection.

(f) The commissioner's duty under (a) - (c) of this section to notify a victim of a change in the status of an offender is satisfied by the notice provided by an automated victim notification system established under AS 12.61.050.

Sec. 33.30.015. Living conditions for prisoners.

(a) On and after August 27, 1999, the commissioner may not

(1) make per capita expenditures for food for prisoners in a state correctional facility operated by the state that exceed 90 percent of per capita expenditures for food that is available to enlisted personnel

in the United States Army stationed in the state;

(2) provide in a state correctional facility operated by the state

(A) living quarters for a prisoner into which the view is obstructed; however, the commissioner is not required to renovate a facility to comply with this subparagraph if the facility is being used as a correctional facility on August 27, 1997, or if the facility was already built before being acquired by the department;

(B) equipment or facilities for publishing or broadcasting material the content of which is not subject to prior approval by the department as consistent with keeping order in the institution and prisoner discipline;

(C) cable television service other than a level of basic cable television service that is available as a substitute for services that are broadcast to the public in the community in which a correctional facility is located;

(3) allow a prisoner held in a state correctional facility operated by the state to

(A) possess in the prisoner's cell a cassette tape player or recorder, a video cassette recorder (VCR), or a computer or modem of any kind;

(B) view movies rated "R," "X," or "NC-17";

(C) possess printed or photographic material that

(i) is obscene as defined by the commissioner in regulation;

(ii) could reasonably be expected to incite racial, ethnic, or religious hatred that is detrimental to the security, good order, or discipline of the institution or violence;

(iii) could reasonably be expected to aid in an escape or in the theft or destruction of property;

(iv) describes procedures for brewing alcoholic beverages or for manufacturing controlled substances, weapons, or explosives; or

(v) could reasonably be expected to facilitate criminal activity or a violation of institution rules;

(D) receive instruction in person, or by broadcast medium, or engage in boxing, wrestling, judo, karate, or other martial art or in any activity that, in the commissioner's discretion, would facilitate violent behavior;

(E) possess or have access to equipment for use in the activities listed in (D) of this paragraph;

(F) possess or have access to free weights;

(G) possess in the prisoner's cell a coffee pot, hot plate, appliance or heating element for food preparation, or more than three electrical appliances of any kind;

(H) possess or appear in a state of dress, hygiene, grooming, or appearance other than as permitted

as uniform or standard in the correctional facility;

(I) use a computer other than those approved by the correctional facility; the use of a computer under this subparagraph may be approved only as part of the prisoner's employment, education, or vocational training and may not be used for any other purpose;

(J) smoke or use tobacco products of any kind.

(b) The commissioner may determine whether the provisions of (a) of this section shall apply to correctional facilities that are not operated by the state and may negotiate with a provider of services for the detention and confinement of persons held under authority of state law under contract or agreement whether the living conditions set out in (a) of this section shall apply to persons held under authority of state law at a facility operated under contract or agreement.

(c) On and after January 1, 1998, the commissioner may not allow a prisoner to possess a television in the prisoner's cell if the prisoner is classified as maximum custody under AS 33.30.011 (2).

(d) The commissioner may allow a prisoner who, under AS 33.30.011 (2), has been classified as other than maximum custody to possess a television in the prisoner's cell only if the prisoner

(1) either is incapable of obtaining or has attained a high school diploma or general education development diploma or the equivalent;

(2) is actively engaged in an educational, vocational training, or employment program;

(3) has satisfied or is on a regular and current payment schedule for all restitution orders entered by the court as part of the prisoner's sentence and, if applicable, is actively engaged in a treatment plan or counseling, psychiatric, or rehabilitation program ordered by the court or the department as part of the prisoner's sentence; and

(4) pays for the expense of providing the television and, in addition to the utility service fee required by AS 33.30.017, pays for the expense of providing any cable television service.

(e) The commissioner shall use

(1) appropriate technology to screen programs received by prisoners under (d) of this section;

(2) Alaska farm products and salmon to the greatest extent practicable for food for prisoners in a state correctional facility operated by the state.

#### Sec. 33.30.017. Fees for utilities services for prisoners.

(a) The commissioner shall establish a reasonable utility fee for electrical utilities that are used by prisoners who are confined in a state correctional facility.

(b) The commissioner shall

(1) charge each prisoner who possesses at least one major electrical appliance the utility fee established in (a) of this section; the commissioner may deduct the utility fee monthly from the account established for a prisoner into which money due the prisoner for labor is paid; if a prisoner is indigent,



(3) United States Department of Veterans Affairs if the prisoner is eligible for veterans' benefits that entitle the prisoner to reimbursement for the medical care or medical services;

(4) United States Public Health Service, the Indian Health Service, or any affiliated group or agency if the prisoner is a Native American and is entitled to medical care from those agencies or groups; and

(5) parent or guardian of the prisoner if the prisoner is under the age of 18.

(b) The commissioner shall require prisoners who are without resources under (a) of this section to pay the costs of medical, psychological, and psychiatric care provided to them by the department. At a minimum, the prisoner shall be required to pay a portion of the costs based upon the prisoner's ability to pay.

*Sec. 33.30.030. Commissioner to adopt regulations. [Repealed, Sec. 12 ch 88 SLA 1986].*

Repealed or Renumbered

**Sec. 33.30.031. Contracts for confinement and care of prisoners.**

(a) The commissioner shall determine the availability of state correctional facilities suitable for the detention and confinement of persons held under authority of state law or under agreement entered into under (e) of this section. If the commissioner determines that suitable state correctional facilities are not available, the commissioner may enter into an agreement with a public or private agency to provide necessary facilities. Correctional facilities provided through agreement with a public agency for the detention and confinement of persons held under authority of state law may be in this state or in another state. Correctional facilities provided through agreement with a private agency must be located in this state unless the commissioner finds in writing that (1) there is no other reasonable alternative for detention in the state; and (2) the agreement is necessary because of health or security considerations involving a particular prisoner or class of prisoners, or because an emergency of prisoner overcrowding is imminent. The commissioner may not enter into an agreement with an agency unable to provide a degree of custody, care, and discipline similar to that required by the laws of this state.

(b) *[Repealed, Sec. 37 ch 2 FSSLA 1992].*

(c) Notwithstanding AS 36.30.300, an agreement with a private agency to provide necessary facilities under (a) of this section must be based on competitive bids.

(d) A person employed outside the facility while confined in a privately operated correctional facility established under (a) of this section is subject to the provisions of AS 33.30.131.

(e) The commissioner may enter into an agreement with the United States, another state, a municipality of this state, or another state agency, to provide a correctional facility for the custody, care, and discipline of a person held under authority of the law of that jurisdiction.

**Sec. 33.30.035. Notice to sex offenders or child kidnappers of registration and other requirements.**

The department shall provide written notice to a sex offender or child kidnapper of the registration, verification, and change of address requirements of AS 12.63.010 and shall obtain a written receipt of notice from the sex offender or child kidnapper (1) at the time of the sex offender's or child kidnapper's release from a state correctional facility; (2) immediately after taking supervision of a sex offender or

child kidnapper under the Interstate Corrections Compact or AS 33.36.110. The department shall forward the written receipt to the Department of Public Safety, along with a description of any identifying features of the offender or kidnapper, the anticipated address of the offender or kidnapper, and a statement concerning whether the offender or kidnapper has received treatment for the offender's or kidnapper's mental abnormality or personality disorder related to the sex offense or child kidnapping. In this section, "sex offense" and "child kidnapping" have the meanings given in AS 12.63.100.

*Sec. 33.30.040. Duty of commissioner to provide prison facilities. [Repealed, Sec. 12 ch 88 SLA 1986].*

Repealed or Renumbered

**Sec. 33.30.041. Lease of correctional facility to municipality.**

(a) If the commissioner determines that it would be in the best interest of the state, the commissioner may enter into an agreement with a municipality of the state for the lease of a state correctional facility or for the use and operation of a state correctional facility for the joint benefit of the municipality and the state.

(b) An agreement executed by the commissioner under (a) of this section must provide that

(1) the state has the right to detain or confine a prisoner held under authority of law in the correctional facility;

(2) the administrator of the correctional facility agrees to implement an order, concerning a prisoner, issued by a court of the state;

(3) the administrator of the correctional facility shall comply with the law, and regulations adopted by the commissioner, relating to the custody, care, and discipline of a prisoner detained or confined in the correctional facility; and

(4) the commissioner may inspect the correctional facility at any time to determine the conditions under which a prisoner is detained or confined.

(c) The agreement executed by the commissioner under (a) of this section may require the administrator of the correctional facility to comply with requirements that the commissioner considers necessary for the protection of the public or for the quality of care and programs for prisoners required by this chapter and regulations adopted by the commissioner.



Sec. 18.66.990. Definitions.

In this chapter,

(1) "council" means the Council on Domestic Violence and Sexual Assault;

(2) "crisis intervention and prevention program" means a community program that provides information, education, counseling, and referral services to individuals experiencing personal crisis related to domestic violence or sexual assault and to individuals in personal or professional transition, excluding correctional half-way houses, outpatient mental health programs, and drug or alcohol rehabilitation programs;

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

(A) a crime against the person under AS 11.41;

(B) burglary under AS 11.46.300 - 11.46.310;

(C) criminal trespass under AS 11.46.320 - 11.46.330;

(D) arson or criminally negligent burning under AS 11.46.400 - 11.46.430;

(E) criminal mischief under AS 11.46.475 - 11.46.486;

(F) terrorist threatening under AS 11.56.807 or 11.56.810;

(G) violating a protective order under AS 11.56.740 (a)(1); or

(H) harassment under AS 11.61.120 (a)(2) - (4);

(4) "domestic violence program" means a program that provides services to the victims of domestic violence, their families, or perpetrators of domestic violence;

(5) "household member" includes

(A) adults or minors who are current or former spouses;

(B) adults or minors who live together or who have lived together;

(C) adults or minors who are dating or who have dated;

(D) adults or minors who are engaged in or who have engaged in a sexual relationship;

(E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;

(F) adults or minors who are related or formerly related by marriage;

(G) persons who have a child of the relationship; and

(H) minor children of a person in a relationship that is described in (A) - (G) of this paragraph;

(6) "judicial day" means any Monday through Friday that is not a state holiday and on which the court clerk's offices are officially opened to receive legal documents for filing;

(7) "local community entity" means a city or borough or other political subdivision of the state, a nonprofit organization, or a combination of these;

(8) "petitioner" includes a person on whose behalf an emergency protective order has been requested under AS 18.66.110 (b);

(9) "sexual assault" means a crime specified in AS 11.41.410 - 11.41.450;

(10) "sexual assault program" means a program that provides services to the victims of sexual assault, their families, or perpetrators of sexual assault.

Sec. 33.30.901. Definitions.

In this chapter, unless the context requires otherwise,

- (1) "center" means a correctional restitution center;
- (2) "commissioner" means the commissioner of corrections;
- (3) "community service" means work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, parks, roads, highways, facilities, or education; community service may not confer a private benefit on a person except as may be incidental to the public benefit;
- (4) "correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; a "state correctional facility" means a correctional facility owned or run by the state;
- (5) "court" means the supreme court, the court of appeals, the superior court, the district or magistrate court, or a justice or judge of a court;
- (6) "crime against a person" means a crime as set out in AS 11.41, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41;
- (7) "crime involving domestic violence" has the meaning given in AS 18.66.990;
- (8) "department" means the Department of Corrections;
- (9) "furlough" means an authorized leave of absence from actual confinement for a designated purpose and period of time;
- (10) "health care provider" means
  - (A) a physician assistant or nurse practitioner licensed to practice in the state and working under the direct supervision of a licensed physician or psychiatrist; or
  - (B) a mental health professional as defined in AS 47.30.915 ;
- (11) "municipality" means a municipality authorized by law to establish a correctional facility;
- (12) "prisoner"
  - (A) means a person held under authority of state law in official detention as defined in AS 11.81.900 (b);

(B) includes a minor committed to the custody of the commissioner when,

(i) under AS 47.12.030, 47.12.065, or 47.12.100, the minor has been charged, prosecuted, or convicted as an adult; or

(ii) under AS 47.12.160 (e), the minor has been ordered transferred to the custody of the commissioner;

(13) "sex offender or child kidnapper," "sex offense," and "child kidnapping" have the meanings given in AS 12.63.100 ;

(14) "temporary commitment" means detention of a person for any period under authority of state law, but does not include confinement upon conviction and judgment of a court of this state;

(15) "victim" has the meaning given in AS 12.55.185.

**Sec. 11.46.400. Arson in the first degree.**

**(a) A person commits the crime of arson in the first degree if the person intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury. For purposes of this section, "another person" includes but is not limited to fire and police service personnel or other public employees who respond to emergencies, regardless of rank, functions, or duties being performed.**

**(b) Arson in the first degree is a class A felony.**

January 8, 2007

State of Alaska Legislature

To Whom It May Concern:

My name is Jessica Ridinger; I am the daughter of Howard Gariel Stone. My dad was killed on April 15<sup>th</sup>, 1999 in an avalanche. This took place in Cordova, Alaska. Whitewater engineering where rightfully charged with manslaughter, but they accepted lesser charge of criminal negligence. Recently, the governor of Alaska pardoned Whitewater Engineering of my dad's death.

I was home on a Monday evening making dinner for my family, and I received a phone call from a reporter from the Anchorage Daily News. Her words to me where: "Is this Jessica Ridinger?" I said "yes". She said, "Are you the daughter of Gary Stone?" I again said, "Yes". She then said, "Are you or your family aware that the Governor of Alaska has pardoned Whitewater Engineering for the death of your father?" At that moment I was in shock and disbelief. I could not believe I was hearing this for the first time, from a stranger and I was smart enough to know there is nothing I can do about this. But it felt like a stab through the heart. I instantly started crying. Just when our family is able to start the healing process once again... Something comes up that opens the wounds or even wounds more. Finding out this way and after the pardon had been made raises so many questions.

Why would the State of Alaska allow this the happen to the victims families? Why did we have no voice? Why we were not contacted in September 2006 (when the petition went in)? What does the Governor know about the negligence of Whitewater Engineering? And if he did, why would this pardon be granted? Why is it that my dad death means nothing, except to his devastated 5 children, his parents and his sister? Why did Whitewater get off so quickly after barely having a slap on the hand for their clear lack of regard for human life? Lack of regard for their employees? The small cloud that was over their head was there for a reason, because money and their business was put on a higher level than their employees lives. It just happened to be that it took my dad's life. Everyone else was at lunch, including my brother, Micah, thank God. Otherwise more families would be ruined. Why do I have to tell my brothers and sisters about this pardon (I had to tell my brother, Micah, who was in Cordova when it happened, worked with my dad and had just seen him 30 minutes before he died. He has just started getting on with his life; I had to tell him... How fair is that? Why do we once again have to have the small amount of peace or comfort pulled out from underneath us with out anyone in the State of Alaska having a single thought of the family of a very important human being, Gary Stone.

The way I found out about this was not even humane. I almost did not even take the time to right this; I feel that the State of Alaska let us down by not giving us the time of day in not giving us a chance to be notified of the request of pardon. Why should I give that State of Alaska the time of day? Because, I do not want this to happen to other families. I want to know that we have a voice as victims. When my dad knew that he was in danger, he voiced his opinion that he wanted them (Whitewater) to pay when they found him under that snow. Imagine going to work with the feeling that you may never leave... This is why we have our justice system. So we can hold people accountable for their actions. Through the consequences that were placed on Whitewater, I would hope that their business practice would be different, employees would always come first. But now that they have been cleared, I fear

for the families and the employees of Whitewater Engineering. A few year of punishment will be forgotten quickly.

I would like to know what kind of relations the governor of Alaska had with Whitewater Engineering. What did he know? Did he even care about the victim's families? Has he had to live a lifetime without a parent due to the negligence of someone else? Why would the state of Alaska waste the money on a criminal case to pardon so quickly? Does my father's life or death matter to the state of Alaska? Why did we have no voice? Why couldn't we be notified properly? Why do we matter that little?

Thank you for listening. Please make it so other families are notified before it is too late.

The daughter of Gary Stone,

Jessica Ridinger

To whom it may concern,

I have been struggling over this letter the last couple of weeks. It seems like I should write something official and straight forward, though I am not sure I can guarantee no feelings will get in the way.

All of this is such a shock. From the very day that my dad was buried in the avalanche. Than Thom Fischer gets let off of any personal accountability, and only his company has to pay for his lack of providing a safe environment for his employees, but still at least it is something.

Between the criminal case and the civil suite all of it lasted six years. The day that Megan Holland, a reporter from Anchorage Daily News, called my sister, Jessica, to see if she was aware of the pardon and wanted to make a statement, made those six years seem in vain. I felt like my dad had died all over again.

I thought how is this possible? How can a pardon be granted without even consulting us, the family, on what we think and feel about the situation. Than to be informed, after the damage has already been done, not by anyone at the governors office, but from a reporter. This leaves me with even less faith in the justice system than before.

Nothing can change what has been done. My dad is not going to come back, those six years are not going to disappear, and this pardon will not be undone. I have to remind myself of these things all the time. I would not wish any of this on anyone not even Thom Fischer or Frank Murkowski.

My request is that in the future before a governor grants a pardon the victims, or victims families are made aware of the pardon application (by the governors office) and are able to state opinion and/or protest.

Really all I am asking for is common decency, and it seems silly, but if there has to be a law for it so be it. I really want to have more hope and trust in how our justice system works, please help me with that.

Sincerely,  
Katie N Stone

To Whom it May Concern,

So I have brought this letter down to the deadline to write and have spent numerous hours trying to write it, wondering where do I start? How do I convey the pain I have felt, endured, dealt with, and finally had put behind me? So I thought. How do you tell of a family so tight and close knit that you were the envy of all friends and for that matter anyone touched by a member of the family! A Father who had raised his kids strictly in the ways of wrong and right, but in an incredibly loving way. It left no option but for us to admire him and he became my hero. He always strived to love us and have a more meaningful relationship with us than his parents had with him.

After my parents divorced I always lived with my dad, he was my rock and in a way I was his. Although my siblings lived away they constantly sought my dad's counsel in their every day life, their walk with God, whatever it might have been.

You may ask what does this have to do with the pardon of Whitewater? I tell you it has everything to do with it! How can you understand the pain of a pardon like this without understanding the history of our family and what our dad meant to us. He had his weak points and faults as we all do. I'm not trying to make him into a legend, but we understood most of the faults and the ones we didn't we accepted anyway.

Myself I battled through several years of college battling depression and denial that I was depressed or even hurt by the loss of my dad. This continued for several years after college always trying to find some kind of stability wondering where I belonged and not having my confidant to lean on or go to for advice. So I wandered drifted from this place to that, sometimes living in my car, never telling my family what was going on cause they already worried about me so much as it was. Over the last year I have finally found myself, come to grips with the pains of my dad's death and for the first time in 7 years not allowed my past to dictate my future.

Last month, December of 2006 my sister Jessica called me and said that when I got off work she needed to talk to me, it was a Monday not much unlike tonight where I also worked late and she told me that when I got off work she wanted me to come over, she had something to talk to me about. When I arrived she told me that a reporter from the ADN had called and asked her if she knew that Whitewater had been pardoned? At that time my heart sank and I had the same feeling of numbness that I had April 15th 1999 as I called my siblings to tell them that our dad was trapped in an avalanche.

What do I think could have been done in the case of this pardon? For one I think a family should definitely be notified of a pardon before it is executed and given a forum in which they can give their opinion or feelings on the matter. Maybe something should be looked at in the way of establishing criteria that a person or company asking for the pardon should have to meet before being considered for a pardon. I know it's too late for my own family, my only hope is that we can help prevent another family from being blindsided like we were. Situations like these are ones that make a person wonder if there really is such a thing as justice or is it just temporary until a person elected to their position of authority decides on a whim that the punishment doesn't fit the crime. Did the Governor really look into this case and the facts of negligence?

Thank you for the ear and opportunity to voice my opinion, hopefully it won't be in vain.

Sincerely

Micah A Stone

-----Original Message-----

From: Jeff and Pam Schmitz [mailto:jschmitz@alaska.net]  
Sent: Tuesday, January 16, 2007 5:58 PM  
To: Rep. Ralph Samuels; Sen. John Cowdery  
Cc: Tim Benintendi  
Subject: Pardon Legislation

Ralph, John,

I completely support amending Alaska Law regarding the pardon process. I was completely appalled, disgusted and saddened by Murky's last minute pardon of the Whitewater Corporation. Will we never hear the end of that guys' stupid pet tricks? I can only sympathize with the family of the backhoe operator that died in that avalanche.

I was employed as a State Microwave Tech at the time of the Cordova incident. We were working at an SOA microwave site above Cordova's Eyak Lake at about the 2500 - 3000 foot top of the mountain. The avalanche conditions were severe in the area. We received a request from the State Troopers to use our helicopter to access the site of the avalanche that had, as we later learned, caused the death of the backhoe operator. The troopers had apparently spotted the backhoe embedded in the avalanche and were pretty sure the operator was trapped inside and likely had not survived but wanted to make the confirmation to both be able to pass that information on to the family as well as put the possibility of any slim hopes of survival to rest. They considered the area far too unstable avalanche wise to send a ground party in and planned to have the helicopter remain at flight ready takeoff status while they did a fast check for the operator. A recovery of the victim was not contemplated.

We readily agreed. Our location at the top of the mountain was stable, we had adequate weather, shelter and were glad to be able to help even though the outcome was already likely known and not good. A few hours later our pilot returned and the worst was confirmed. The operator had not survived and was trapped underneath the remains of the backhoe. The report of the condition of the backhoe was totally sobering, the key item I recall being mentioned was the main rams that operated the boom were twisted like pretzels. The search party had to leave the body of the operator in place as conditions were as had been feared, too unstable to remain. And this was after one massive, deadly avalanche had come down.

Again, I support fixing this flaw that took someone like Murky to expose. We would hope that we never again have someone like that in the Governors office again but let's go ahead and fix it.

Best of Regards,

Jeff Schmitz  
Anchorage

**Sydney Morgan**

---

**From:** Rep. Ralph Samuels  
**Sent:** Tuesday, January 16, 2007 3:29 PM  
**To:** Sydney Morgan  
**Subject:** FW: re proposed victims bill

---

**From:** Mercedes Angerman [mailto:[mercedes@aptalaska.net](mailto:mercedes@aptalaska.net)]  
**Sent:** Tuesday, January 16, 2007 3:19 PM  
**To:** Rep. Ralph Samuels  
**Subject:** re proposed victims bill

We want you to know we are in full support of your proposed bill regarding pardons. Something has to be done as the pardoning of Whitewater was totally out of line and should never have happened.

Our son was also killed while working for Whitewater just a few short weeks after Gary Stone. We were horrified when we heard of the Murkowski pardon.

At least this bill will keep this sort of thing from happening in the future.

Fred Angerman  
Mercedes Angerman  
PO Box 1  
Wrangell, AK 99929  
907-874-3872

## Sydney Morgan

---

**From:** Rep. Ralph Samuels  
**Sent:** Tuesday, January 16, 2007 8:01 AM  
**To:** Sydney Morgan  
**Subject:** FW: Thank You !!!

-----Original Message-----

**From:** Lysa Maher [mailto:lysamarie@gci.net]  
**Sent:** Tuesday, January 16, 2007 7:16 AM  
**To:** Rep. Ralph Samuels  
**Subject:** Thank You !!!

For proposing The victims Bill !! The former Gov's gross abuse of authority in the Whitewater case was really the frosting on a corrupt cake, & so hard for many Alaskans to stomach, in part because it can't be changed . I can't help but to continue to ponder if Frank (flippin fired) Murkowski were to have taken a test to determine his level of brain loss due to demensia, ect, could his judgements be rendered null and void, like his consideration and compasssion for the common people of this State ?  
Thank You again  
Lysa Maher

**adn.com**

Anchorage Daily News

Print Page

Close Window

**For justice, for victims****Lawmakers should move quickly to prevent irresponsible pardons***(Published: January 17, 2007)*

Gov. Frank Murkowski succeeded at changing a lot of state laws, but he may soon be remembered for one more new law. Legislators and the public are so upset at the former governor's last-minute pardon of a company convicted in a worker's death -- a company that stiffed the state on a quarter-million-dollar fine and interest in the criminal case -- that lawmakers are likely to pass a bill blocking future governors from such a thoughtless and careless action ever again.

*(Peter Dunlap-Shohl)*

Passage of this bill can't come fast enough to reassure the public -- and the victim's family -- that the state of Alaska has learned from the irresponsible action of the former governor.

House Majority Leader Ralph Samuels' bill would require governors to submit pardon applications to the state Parole Board for review. The existing law makes that optional for governors. The former governor did not bother to ask the Parole Board for its opinion on the pardon that he issued just a few days before leaving office. Nor did Gov. Murkowski or his staff bother to ask whether Whitewater Engineering Corp. of Bellingham, Wash. had ever paid its fine to the state in the case. It hadn't paid a dime.

The company pleaded no contest in 2001 to criminally negligent homicide in the 1999 death of a backhoe operator on a Cordova hydroelectric power project job site. Gary Stone, 46, a father of five, was killed in an avalanche. State job safety officials had warned the company about avalanche dangers at the job site; prosecutors alleged the company did little to protect its workers.

The legislation also would require the state to notify victims of any pardon application in their case. It would require 60 days notice to victims, giving them time to tell the governor what they think of the pardon request.

No one from the Murkowski administration ever bothered to notify the family of the request for clemency or that the governor had pardoned Mr. Stone's former employer for the crime.

Rep. Samuels, an Anchorage Republican, is also thinking of amending his bill to ensure that a pardon would not wipe out any fines owed to the state or restitution owed to victims. Gov. Murkowski's pardon of Whitewater Engineering waived the company's debt to the state. The company had paid restitution to the victim's family.

The legislation would not interfere with a governor's constitutional prerogative to issue a pardon, but would shine a much brighter light on the process.

It's good that Rep. Samuels and his colleagues see the need for this legislation, which already has picked up bipartisan support. But it's sad that there is a need for this legislation.

**BOTTOM LINE:** It's too late to fix what's been done, but Alaska can do better next time.

---

### **Unfinished business**

Bob Durst didn't rate any media attention when he died 11 days ago. And that was probably how he would have wanted it. He wasn't one to boast about his contributions to Anchorage and Alaska over the past 30 years.

I knew him only through Anchorage West Little League, which he helped found a decade and a half ago. He was that rare parent who stays on long after his kids have moved through the program, helping run things for the future generations of players.

Besides being the institutional history of our league, besides being an astute adviser on organizational and political matters, besides being a lifetime student of the game of baseball and how to teach it, he gladly helped with the sweaty physical work that a man of his age and stature might have easily skipped.

Bob was a busy architect with millions of dollars of projects on his resume and one of the biggest houses in the neighborhood. He was low-key about his professional work, though. I had forgotten that he designed the science wing of our neighborhood high school, West High, to great acclaim. Not until he died did I realize how far his work reached, from a church on Lake Otis Parkway in Anchorage to a school in Buckland to a substance-abuse treatment center in Barrow. He designed buildings that complemented the beauty of Alaska and brought some of that natural splendor inside.

Bob was passionate about smart city planning and cast a sharp eye on many a municipal project at Turnagain Community Council meetings. After he died, I heard from Simonian Little League about how much he helped with its new complex on the lower Hillside.

Bob was a staunch believer in getting kids to play baseball, whatever it took. The game was about the kids, not a way for coaches or parents to satisfy their egos through the exploits of children.

I sometimes tire of the burdens of running a Little League, but Bob seemed to have limitless energy for helping his community. Given Bob's enthusiasm for grunt work at the Little League fields, I had no idea he had a weak heart, which gave out on him after shoveling snow. He was only 56.

To steal a thought from Abraham Lincoln, the world won't long remember what I or others say about Bob. It is for those of us he left behind to carry on his unfinished work and do what we can to build a better community.

-- Matt Zencey

Print Page

Close Window

## Last-minute pardon leads to victims bill

**SAMUELS: State legislator seeks clemency changes after a firm is cleared in homicide.**

By MEGAN HOLLAND  
Anchorage Daily News

(Published: January 16, 2007)

A lawmaker whose brother was murdered nearly 20 years ago is proposing legislation to tighten restrictions on the governor when granting pardons to convicted criminals.

Rep. Ralph Samuels, R-Anchorage, the incoming House majority leader, has filed legislation to be considered in the session that begins today calling for more people, including victims of the crime involved, to be notified of any clemency action.

"It's about setting policy and moving forward. What do we want a governor to do? And what do we want the rights of a victim to be?" Samuels said in a telephone interview last week.

The proposed bill would prevent last-minute pardons by a sitting governor by making applicants go through the official channels of the state parole board and require governors to notify victims of the crime 60 days before the pardon goes through.

The bill comes on the heels of former Gov. Frank Murkowski's pardon just days before he left office of Whitewater Engineering Corp. The action let Whitewater, a construction and engineering firm based in Bellingham, Wash., off the hook for a criminally negligent homicide conviction stemming from the avalanche death of an employee.

Company owner Thom Fischer had hired lawyer Bruce Weyhrauch, who was also a sitting Republican legislator from Juneau, to appeal directly to the governor for clemency and bypass the parole board. Fischer also called the governor's office and told Murkowski's staff that he was an acquaintance of Murkowski's and needed to talk to him regarding a pardon, according to e-mail correspondence among the governor's staff at the time.

The family of backhoe operator Gary Stone, a 46-year-old father of five, killed in the 1999 avalanche at Whitewater's hydroelectric project near Cordova, was not notified of the pardon until weeks after it was irrevocably granted. Their father died in what prosecutors later said were extremely dangerous working conditions created by multiple state safety requirement violations.

The pardon cleared the company of the conviction and wiped from the books its \$150,000 unpaid court fine, the Department of Law said Friday.

Samuels, when reached this week, said he is considering adding a component to the bill that would say any fines owed to the state or restitution owed to the victims would still be owed even after a pardon.



"(Governors) ought to have respect for the victims," said Rep. Ralph Samuels, R-Anchorage. ( )

Article 3, Section 21 of the Alaska Constitution gives the governor sole authority to grant executive clemency, but under rules and regulations prescribed by law. There have been no challenges to the governor's pardoning powers until now.

Former attorney general John Havelock, who is an Alaska Constitution expert, says he doesn't see any constitutional issues with the bill -- because the constitution specifies executive clemency is "subject to procedure prescribed by law."

Murkowski, who has been traveling much of the time since he left office in early December, has still not publicly given his reasons for granting the Whitewater pardon, other than a statement contained in a brief letter to Fischer declaring his company was being pardoned. In the letter, he said criminal penalties were excessive and that the death was "a tragic accident."

Murkowski's former chief of staff, Jim Clark, has said the former governor is currently on a cruise to Brazil and is not available.

Samuels said what happened with Whitewater highlighted problems with the current system. "I don't like pardons at the last waning hours of an administration. I would rather have people make their case," Samuels said.

And governors, he thinks, should ask victims their opinion. "They ought to have respect for the victims."

"With the 60 days notice, if someone is really upset, the governor will have to pass the red face test," Saumels said.

Stone's children have said if they knew Whitewater was being considered for a pardon, they would have opposed it. Several of them have already written letters to be shared with legislators in support of the proposed bill, according to the state Office of Victims' Rights, which worked with Samuels in drafting the legislation.

Samuels, who represents a section of South Anchorage in the state House, has long been a champion of victims' rights in the Legislature. He first entered politics because of the murder of his older brother, Duane, in 1989. Duane was a 29-year-old engineer who was shot three times by a 16-year-old who wanted his car.

Samuels sees this bill as an extension of existing victims' rights, which include the right to be informed about all court proceedings and the right to know when a prisoner's time in custody ends.

Samuels said the bill is a priority for him in the legislative session starting this week.

---

Daily News reporter Megan Holland can be reached at [mrholland@adn.com](mailto:mrholland@adn.com) or 257-4343.

Print Page

Close Window

**adn.com**

Anchorage Daily News

Print Page

Close Window

## Pardon erases debt

### Murkowski's decision saves company from court-ordered fine

*(Published: January 10, 2007)*

Gov. Frank Murkowski's Nov. 30 pardon of Whitewater Engineering Corp. for the criminally negligent death of an employee appears to have saved the company almost a quarter-million dollars in an unpaid court fine and interest.

Wiping out the fine did a lot more than simply "remove the cloud that we work under," as company president Thom Fischer said a few weeks after the governor signed the order. It was a last-minute financial gift from a lame-duck governor, issued just four days before he left office.

The Bellingham, Wash., company never mentioned the unpaid fine in its pardon request, nor did the governor raise the issue in granting the unconditional pardon.

The lawyer hired by the company to file its pardon request never mentioned the debt in his letter accompanying the petition for clemency. That lawyer was a sitting legislator, Republican Rep. Bruce Weyhrauch of Juneau.

Nor was the debt mentioned by another well-connected advocate of the pardon. Robin Taylor, a former state judge, former legislator and now a deputy commissioner at the Alaska Department of Transportation, e-mailed the governor with this misdirected plea for the pardon: "If ever compassion and common sense should prevail, this is such a case." Gov. Murkowski appointed Mr. Taylor to the department in 2003.

The administration's compassion did not extend to the family of backhoe operator Gary Stone, a 46-year-old father of five, killed in 1999 in an avalanche at a Cordova hydroelectric project. The governor never bothered to consult the family about the pardon and didn't even notify them of his decision. Nor did he consult the state Parole Board for advice, as recommended in state law, or review any of the legal issues with his attorney general.

In typical Frank Murkowski fashion, he simply made a decision, limited to the facts he thought he knew.

"The imposition of criminal penalties in this case seems to be excessive punishment," the governor said in his pardon letter, calling the death "a tragic accident."

That's not what the evidence showed. Mr. Fischer was warned repeatedly of avalanche danger in the area, and the company had no avalanche safety training or rescue plan in place, according to prosecutors. The company pleaded no contest to criminally negligent homicide after prosecutors agreed to drop a manslaughter charge against Mr. Fischer.

A state Superior Court judge ordered the company to make payments to Mr. Stone's family --



*(Peter Dunlap-Shohl)*

which it did -- and to pay a \$150,000 fine to the state -- which it did not. The court system four years later turned over the unpaid fine to the attorney general's office for collection. The attorney general's office reported no payments on the debt as of Tuesday, and Mr. Fischer did not return a phone call or e-mail about the unpaid fine.

With interest, the \$150,000 fine was close to \$250,000 when the governor pardoned the company, wiping out the debt.

The company, meanwhile, has been busy, actively supporting one of the governor's pet projects -- a road and power line punching through the mountains of the Southeast Alaska border with British Columbia, near Wrangell.

While stiffing the state for the court fine, Whitewater and its president were working state officials in support of \$3.2 million in legislative funding for further study of the governor's proposed Bradfield Canal transmission line intertie into British Columbia. Lawmakers approved the budget request this past year, giving the money to the Alaska Energy Authority. Mr. Fischer participated in an intertie planning meeting between state and municipal utility officials -- hoping for a financial stake in the project for his company -- as recently as two weeks before the governor signed the pardon.

The entire episode is shameful. It's too bad there is no provision in state law to revoke a pardon and require Whitewater to complete its sentence in the case.

**BOTTOM LINE:** The Whitewater pardon was an injustice worth a quarter-million dollars to a criminally negligent corporation.

---

## Fallen

### 13th Alaskan killed in Iraq

Before he was cut down in a Baghdad firefight last Thursday, Staff Sgt. Charles D. Allen of Wasilla was a fortunate man, even on a second tour of duty in Iraq. He had a wife, a son, a family that cared. He had a mission he believed in and the mettle to carry it out. He was a combat medic with the 296th Brigade Support Battalion, 3rd Brigade, 2nd Infantry Division.

The 28-year-old Colony High graduate was remembered as a fit and outgoing man who cared about his troops.

Once again, Alaska has occasion to offer its condolences and prayers to a soldier's family and friends. They go now to Kerensa Allen and 7-year-old Orion.

Staff Sgt. Allen died doing what he wanted to do, where he wanted to be, in the field with his mates. That's both consolation and a deepening of the loss, for the war in Iraq continues to claim some of the nation's best people.

President Bush is due to speak to Americans today about his new strategy for the war in Iraq. He's expected to order a temporary increase in the number of U.S. troops -- what's been called a surge.

What Alaskans have seen in recent months is a surge in casualties of Alaskans and our adopted soldiers in the Stryker Brigade and 4th Airborne Brigade Combat Team of the 25th Infantry Division out of Fort Richardson. Alaskans want to know what the president has in mind, where he intends to

# **EXECUTIVE CLEMENCY IN ALASKA**

**An Informational Booklet for Prospective Applicants**

**ALASKA BOARD OF PAROLE**

**OCTOBER 2006**

*Alaska Board of Parole  
4500 Diplomacy Drive, Ste. #109  
Anchorage, AK 99508*

# TABLE OF CONTENTS

<b>State Constitutional and Statutory Provisions</b> .....	
<b>I. Introduction</b> .....	
<b>II. Executive Clemency -- What It Is</b> .....	
A. Pardons	
B. Amnesty	
C. Commutation of Sentence	
D. Remission of Fine or Forfeiture	
<b>III. Eligibility for Clemency</b> .....	
<b>IV. Legal Effects of a Pardon in Alaska</b> .....	
A. Rights .....	
1) Serving on a Jury	
2) Voting Rights	
B. The Right to Own and Possess Firearms .....	
C. Effect Upon the Judgment and the Sentencing for Subsequent Offenses .....	
D. Occupational Licensing .....	
E. Summary of Legal Effects of a Pardon .....	
<b>V. The Application Process</b> .....	
Eligibility Determination	
Application completion and submission to Parole Board staff	
Executive Clemency Advisory Committee	
Factors Considered in Evaluating Applications	
<b>VI. Rules Governing Clemency Applications</b> .....	
1. Content of clemency application	
2. Restrictions regarding application	
3. Restrictions regarding application	
4. Restrictions regarding application	
5. Restrictions regarding DWI offenses	
6. Procedure regarding Grant of Clemency	
7. Resubmission of an application, if denied	
8. Clemency effective date	
9. Clemency order document	
10. Retention of criminal records	
<b>VII. Appendix (Definitions)</b> .....	

**STATE CONSTITUTIONAL PROVISIONS AND STATUTES**

**RELATING TO EXECUTIVE CLEMENCY**

*Article III, Section 21 of the Constitution of the State of Alaska provides:*

**EXECUTIVE CLEMENCY**

Subject to procedure 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.

*Alaska Statute 33.20.070 provides:*

**GOVERNOR MAY GRANT PARDONS, COMMUTATIONS, AND REPRIEVES**

The governor may grant pardons, commutations of sentence, and reprieves, and suspend and remit fines and forfeitures in whole or in part for offenses against the laws of the State of Alaska or the Territory of Alaska.

*Alaska Statute 33.20.080 provides:*

**BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR EXECUTIVE CLEMENCY**

(a) The governor may refer applications for executive clemency to the board of parole. The board shall investigate each case and submit to the governor a report of the investigation, together with all other information the board has regarding the applicant. When the report or investigation is submitted, the board shall also transmit to the governor the comments it has received under (b) of this section.

(b) If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree, the board shall send notice of an application for executive clemency submitted by the state prisoner who was convicted of that crime. The victim may comment in writing to the board on the application for executive clemency.

(c) If the victim desires notice under (b) of this section, the victim shall maintain a current, valid mailing address on file with the board. The board shall send the notice required under this section to the victim's last known address. The victim's address may not be disclosed to the applicant for executive clemency or the applicant's attorney.

(d) In this section,

- (1) "crime against a person" has the meaning given in AS 33.30.901;
- (2) "crime involving domestic violence" has the meaning given in AS 18.66.990.
- (3) "victim" has the meaning given in AS 12.55.185.

---

**NOTE:** Definition of "victim" as provided in AS 12.55.185(16):

"Victim" means:

- (A) a person against whom an offense has been perpetrated;
- (B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:
  - (i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or
  - (ii) a parent, adult child, guardian, or custodian of the person;
- (C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:
  - (i) a person living in a spousal relationship with the deceased before the deceased died;
  - (ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or
  - (iii) any other interested person, as may be designated by a person having authority in law to do so.

## I. INTRODUCTION

This booklet has been prepared by the Alaska Board of Parole with the assistance of the Department of Law to provide information to all persons interested in applying to the Governor of Alaska for Executive Clemency. It describes what Executive Clemency is, and what it is not -- for there are a number of misconceptions about clemency. While this booklet provides basic information on Executive Clemency in Alaska, it is not intended either to encourage or discourage prospective applicants. Applicants should be aware, however, that the power of Executive Clemency is historically a power of the Governor which is exercised only sparingly, and is rarely granted.

---

## II. EXECUTIVE CLEMENCY --- WHAT IT IS

Executive Clemency in the State of Alaska is a power granted to the Governor by the Alaska Constitution to grant pardons, commutations of sentence, amnesty, and the remission of fines and forfeitures. It is a power which is exercised only at the Governor's discretion.

### Pardons

A pardon is a form of Executive Clemency, which if full and unconditional, relieves an offender from further punishment and disabilities imposed by reason of a conviction of a criminal offense. It is an act of grace which represents forgiveness for the particular crime.

### Amnesty

Amnesty is a form of pardon which is extended to a class or group of persons, usually persons who have all committed the same crime, however, it is extended without regard to the special circumstances of individual cases. Traditionally amnesties have been granted to restore social peace after a period of political upheaval.

### Commutation of Sentence

A commutation of sentence is a reduction or lessening of the original sentence. Usually it takes the form of a reduction in the length of imprisonment. In some cases it may result in release from prison. A commutation may be granted conditionally.

### Remission of Fine or Forfeiture

A remission of a fine is the forgiveness, in whole or in part, of the fine; a remission of a forfeiture is the forgiveness and restoration of property or a property right forfeited by reason of conviction of the crime.

NOTE: Pardons, amnesties, commutations and remissions may be full and unconditional, or conditional. The Governor may impose any conditions and the time the conditions may be in effect may extend beyond the term of the original sentence or even for life.

---

## III. ELIGIBILITY FOR CLEMENCY

Any person who has committed a crime under the laws of the State of Alaska or the Territory of Alaska may apply to the Governor for clemency at any time. The power to grant clemency in Alaska does not extend to crimes committed under federal law, municipal law, or the laws of another state.

Certain conditions must be met in order for an application to be considered. No application for clemency will be considered prior to judgment and commitment, or during the course of an appeal from the conviction or sentence for which clemency is being sought. Similarly, no application for clemency will be considered while application is being made for any form of post-conviction relief, including a sentence reduction motion or federal habeas corpus motion.

Because a full and unconditional pardon is in most respects similar to a suspended imposition of sentence (SIS), absent exceptional circumstances, a pardon will not be granted to an offender who received such a disposition.

Likewise, a pardon will generally not be granted unless a significant period of time has passed since the applicant's final discharge under the sentence. During this period, the applicant is expected to demonstrate complete and total rehabilitation.

A commutation of sentence may be granted conditionally. Any conditions may be imposed. The time the conditions remain in effect may extend beyond the term of the original sentence or even for life.

Except for conditional commutations granted during a prisoner overcrowding emergency, an applicant must demonstrate extraordinary circumstances in order to receive a pardon, amnesty, commutation or remission.

---

**SEE NEXT PAGE FOR "REASONS FOR CLEMENCY INELIGIBILITY"**

## REASONS FOR CLEMENCY INELIGIBILITY

### *(Informal Checklist)*

- Application is not complete
- Applicant refuses to sign waiver for obtaining all personal/confidential documents
- Determination by Board staff or ECAC that "exceptional circumstances" do not exist
- Crime for which applicant seeks clemency is not a state crime (thus Governor has no clemency authority)-(federal offenses, municipal offenses, or infractions in a state other than Alaska are not eligible)
- Case for the applicant is pending appeal (at any level -- including post-conviction relief, sentence reduction, or federal habeus corpus motion)
- If is a felony crime, not considered if it is within 3 months of expiration of sentence (except in exceptional and meritorious circumstances)
- Applicant has not yet received final judgment and commitment for the offense
- Applicant has not yet served any portion of the sentence
- Applicant has not yet reached parole eligibility date and/or has not applied for and been denied parole
- Parole would satisfy the request of the applicant (therefore clemency not necessary as first consideration)
- Applicant is currently on parole/probation (applicant must be off parole/probation) (Unless a life sentence, then applicant must have been on parole for minimum of 2 years to apply.)
- Applicant must have significant period of time since final discharge and have shown firm rehabilitation progress
- Governor cannot reinstate driving privileges for DWI convictions
- Applicant has been discharged from custody, but it has not been 2 years since release from parole/probation (NOTE: In specific circumstances, 10 years may be required.)
- Applicant has already been considered by the current Governor in this four-year term
- Clemency will not provide the relief sought by the applicant
- May not be considered if currently serving a Suspended Imposition of Sentence (SIS) granted by the court
- For individuals who have a set-aside sentence, a minimum of two years must have passed since the set-aside sentencing action was taken by the court
- Federal gun laws are primary factor in allowance to possess a weapon; clemency by State of Alaska cannot change those restrictions relating to possession of firearms
- Commutation only: length of time already served is an important factor; Board staff or ECAC to determine if enough time has been served to give consideration at any given time for commutation

*Note: "ECAC" is the Executive Clemency Advisory Committee  
1/2003 - Alaska Board of Parole*

## IV. LEGAL EFFECTS OF A PARDON IN ALASKA

### A. Rights

One of the primary misconceptions about pardons in Alaska is that a pardon is the only manner by which one may have one's rights restored. In some states a pardon is the only manner by which a convicted felon may have his or her civil rights restored. However, in Alaska some rights are automatically restored upon unconditional discharge, which is the completion of one's sentence, including any period of probation, discretionary parole, or mandatory parole.

#### 1. Right to Serve on a Jury

A person is disqualified from serving as a juror if the person has been convicted of a felony for which the person has not been unconditionally discharged. AS 09.20.037(1)

Thus, in Alaska, a pardon is not necessary to restore one's eligibility to serve on a jury or to vote. The right to vote and the right to serve on a jury are automatically restored to felons upon unconditional discharge of the sentence.

#### 2. Voting Rights

Any person convicted of a felony involving moral turpitude under federal or state law may not vote in a federal, state or municipal election from the date of the conviction through the date of unconditional discharge. AS 15.05.030

Upon presenting proof that the person is unconditionally discharged from custody the person may register to vote [AS 15.07.135]. If you wish to participate in an election in Alaska after unconditional discharge of your sentence, contact your voting district's regional officer or contact:

State of Alaska  
Division of Elections  
P.O. Box 110017  
Juneau, AK 99811-0017

### B. The Right to Own and Possess Firearms

There is a very complex mix of state and federal law relating to the issue of firearm ownership and possession. Multiple state and federal statutes relate to this issue, and they are subject to frequent change by state and federal legislation. Both the federal and Alaska statutes are likely applicable to an applicant for executive clemency relating to these issues. These laws do vary with allowances and applicability.

As relates to this issue --- and any resolutions relating to firearm ownership and possession forthcoming from executive clemency should it be granted --- are not and will not be addressed by the Parole Board staff or the Office of the Governor in conduct of executive clemency investigations.

Should gun ownership or possession be of concern or critical to your anticipated relief by the granting of a pardon, you must explore and resolve any and all legal complexities (state and federal) through your own personal initiative and research. Due to the complexity of the issue, you should anticipate that this may well necessitate the retention of legal services.

***No promise, assurance, or indication of expectation on the issue of gun ownership or possession will be made or implied through the processing and potential granting of executive clemency.***

**C. Effect Upon the Judgment and Upon Sentencing for Subsequent Offenses**

Although many states take a different view, unless otherwise specified in the document granting a pardon in Alaska, a pardon sets aside the conviction. Thus, if a person who has received a pardon is later convicted of another offense, the earlier offense for which a pardon was received may not be considered as a prior conviction at sentencing. However, the facts giving rise to that conviction may be presented to the sentencing court.

A pardon does not eliminate or erase the conviction. The records of conviction continue to exist in both court and law enforcement files. The pardon is included in those files, and the purposes to which those files can be used are limited. In this sense then, to set aside the conviction means only that the individual is considered under the law not to have been previously convicted.

**D. Occupational Licensing**

Many occupations within the State of Alaska require special licenses which are issued by various licensing boards. Such occupations include barbering, welding, dentistry, law, real estate sales, nursing and guiding. Most of these occupational licensing laws contain provisions requiring that no person may be licensed unless they are of "good moral character." A few, such as the standards for becoming licensed as a guide, require a demonstration that the applicant "has not been convicted of a crime involving moral turpitude." Still others prevent licensing where an applicant has been convicted of a felony.

For example, a regional school board member who is convicted of a felony involving moral turpitude or an offense involving a violation of oath of office while serving as a school board member may not continue to serve. AS 14.08.045

A judge shall be removed from office upon final conviction of a "crime punishable as a felony under the state or federal law." AS 22.30.070(b)

A professional or occupational license may be denied, suspended or revoked because of a felony conviction.

Examples are:	Insurance Agent	AS 21.27.410(a)(7)
	Accountant	AS 08.04.450(5) & (6)
	Nurse	AS 08.68.270(2)
	Real Estate Broker	AS 08.88.171(a)

As discussed above, unless otherwise specified in the document granting a pardon, a pardon in Alaska sets aside the conviction. Therefore, if there is a requirement that the license applicant has not been convicted of a felony, the pardon would permit licensing. However, if the licensing standard is good moral character, the pardon does not erase the moral guilt associated with the commission of a criminal offense and the fact giving rise to that conviction may be considered in determining whether that person is of "good moral character."

**E. Summary of Legal Effects of a Pardon**

In summary, the primary legal effect of a pardon is that it sets aside a conviction for a crime committed under the laws of the State of Alaska or the Territory of Alaska. This serves to relieve the person to whom it is granted from all further punishment and other legal consequences imposed by reason of the conviction.

Finally, a conviction for which a pardon has been granted may not be considered at sentencing for the commission of a later offense, nor by any licensing board which issues licenses to practice certain occupations. However, the facts giving rise to that conviction may be considered by both a sentencing court and occupational licensing boards.

---

## **V. THE APPLICATION PROCESS**

1. ELIGIBILITY DETERMINATION
2. APPLICATION COMPLETION AND SUBMISSION
3. EXECUTIVE CLEMENCY ADVISORY COMMITTEE

An applicant begins the process by first completing and submitting an "Eligibility Determination" form to the Alaska Board of Parole Office (ATTN: Clemency Determination). Once eligibility is positively determined, an Application Form will then be provided to the potential applicant. Requests for Eligibility Determination forms should be submitted to:

Alaska Board of Parole  
ATTN: Clemency Determination  
4500 Diplomacy Drive, Ste. #109  
Anchorage, AK 99508

If an individual is determined to be eligible for executive clemency consideration, and once an application is provided to the applicant and received back in the Parole Board office: the application is investigated by staff of the Board of Parole and a summary is prepared and submitted to the Governor's Executive Clemency Advisory Committee (ECAC). Investigation and review of a clemency application can often take as long as one year.

The Executive Clemency Advisory Committee has historically been comprised of three persons: the Lieutenant Governor, the Attorney General or a representative from the Department of Law, and a public member. The committee meets as often as necessary to review pending applications. In recent years, ECAC meetings have averaged only once or twice a year, if needed.

Following consideration and review of applications, the Executive Clemency Advisory Committee prepares a summary and recommendation for each application and submits it to the Governor along with the complete file. The Governor then reviews each case, makes a decision and the applicant is notified of that decision. The entire process, from the time of submission of an application to the point of decision by the Governor can easily take one full year, but in some circumstances can take longer.

### **Some of the Factors Considered in Evaluating Applications for Clemency**

Applicants for Executive Clemency should be aware that virtually their entire history is considered in evaluating an application for clemency. Applicants are required to sign waivers permitting an investigation of their employment and personal history (and medical conditions if pertinent).

Of particular importance will be the facts surrounding the offense for which clemency is requested, the presentence report, the record of the sentencing, progress reports during incarceration and behavior since release from custody. Additional factors include the person's arrest and conviction record for other offenses, and at times, the health of the applicant. Compliance with orders and conditions established by the court are especially important.

The comments of the Sentencing Judge, the District Attorney involved in the case, and comments of the Victim(s) are solicited and considered by the Executive Clemency Advisory Committee and the Governor.

In applications for commutation of sentence, the length of time already served is of particular importance.

Finally, the most important factor is the exceptional or extraordinary circumstance of the applicant that would justify use of the Governor's clemency power. Clemency is rarely granted, and only under the most exceptional of circumstances.

---

## VI. RULES GOVERNING APPLICATIONS FOR EXECUTIVE CLEMENCY

### After a Determination of Eligibility has been made:

1. The clemency application must be typewritten or fully completed in ink, preferably printed, and be legible. No one, including the applicant, is entitled to attend the hearing. Each applicant must provide the date of conviction, crime of conviction, court case number and the sentence imposed for each conviction. This information can be obtained from the clerk of court. In addition to the clemency application, all applicants are required to complete and submit the Executive Clemency Application. Documents relating to the completion or compliance with orders of the court should also accompany the application. Application forms are available from the Board of Parole -- after the initial determination of positive eligibility by the staff of the Parole Board.
  2. All persons who have committed a crime under the laws of the State of Alaska or the Territory of Alaska may apply for Executive Clemency. Applications for pardon or commutation will not be considered for convictions of municipal laws, federal laws or convictions in other states. Applications will not be considered during pending appeals from judgments or conviction; nor, in felony cases, within three months before the expiration of sentence, except in unusually urgent and meritorious cases, or when circumstances surrounding the conviction indicate a violation of constitutional rights.
  3. Generally, applications for executive clemency will not be considered until after the person has served some portion of the sentence. Applications will not be considered until the person has reached his or her parole period (where applicable) or has been denied parole. Applications may be considered earlier only upon a substantial showing of innocence or some other exceptional circumstance arising since trial, which clearly justifies a possible extension of executive clemency. Every prisoner applying prior to his or her parole eligible date must state substantial facts showing why release on parole, when eligible, would not meet the situation in the prisoner's case.
  4. Applications for pardon or commutation will not be considered while parolees are on parole except in cases of prisoners serving life sentences and where the applicant has been on parole for more than two years.
  5. The Governor of Alaska will not circumvent AS 28.15.181(a)(5) which speaks to revocation of driver's licenses for operating a motor vehicle or aircraft while intoxicated.
  6. In the absence of exceptional circumstances, applications for pardon after completion of sentence will not be considered unless the applicant has been discharged from custody or from parole or probation for at least two years. A longer period may be required before favorable action is taken, dependent largely on the nature of the offense and the character of the applicant, both before and since the conviction. In cases of perjury, subornation of perjury or violation of a public trust involving personal dishonesty, or other crimes of a serious nature, the lapse of ten years after release is usually required.
  7. If the application is denied, the Governor will not accept resubmission of an application during the four-year term of office unless substantial new information is discovered.
  8. If clemency is granted, it does not become effective until it is delivered and accepted by the applicant. Once delivered, a conditional pardon or other forms of conditional clemency may be revoked by the Governor for violations of conditions imposed.
  9. If clemency is granted, the applicant, as well as appropriate officials will promptly receive an original signed and sealed document of the grant of clemency. A copy will also be sent to the sentencing court, and the Alaska Department of Public Safety (Records Section), to be retained in their files.
  10. Clemency "Will forgive, but not forget." All records regarding the conviction are retained by the appropriate agencies. In Alaska, there are no provisions for expungement of criminal records upon a grant of clemency.
-

## VII. APPENDIX

### DEFINITIONS

**AMNESTY** --- is a form of Executive Clemency which is extended to a class or group of persons, usually persons who have all committed the same crime. It is extended without regard to the special circumstances of individual cases. Traditionally amnesties have been granted to restore social peace after a period of political upheaval.

**APPLICATION FORM** --- After a Determination of Eligibility has been made: The application process for Executive Clemency is begun by completing an application form and submitting it to the Alaska Board of Parole. The clemency application must be fully completed in ink, and be legible or typewritten. Each applicant must provide the date of conviction, crime of conviction, court case number and the sentence imposed for each conviction. This information can be obtained from the clerk of court. In addition to the clemency application, all applicants are required to complete and submit the Executive Clemency Questionnaire Worksheet. Letters from individuals or organizations in support of the applicant should be attached to the clemency application. Authors of such letters should include a statement relating to their knowledge of the applicant, including his or her background and present circumstances, and the reason they feel the applicant should be granted clemency. Documents relating to completion or compliance with orders of the court should be attached to the application. Application forms are available from the Board of Parole after a Determination of Eligibility is made.

**BOARD OF PAROLE** --- is the Alaska Board of Parole. The Governor may refer applications for executive clemency to the Board of Parole. The Board through its staff investigates each case and submits to the Executive Clemency Advisory Committee and the Governor a report of the investigation, together with all other information the Board has regarding the applicant. When the report or investigation is completed, the Board also transmits to the Executive Clemency Advisory Committee and the Governor the comments it has received from the victim.

**COMMENTS REGARDING THE CLEMENCY APPLICATION** --- The comments of the Sentencing Judge, the District Attorney involved in the case, and the comments of the Victim(s) are solicited and considered by the Executive Clemency Advisory Committee and the Governor. Letters submitted by those in support of the applicant's clemency application are also considered.

**COMMUTATION OF SENTENCE** --- is a reduction or lessening of the original sentence. Usually it takes the form of a reduction in the length of imprisonment. A commutation may be granted conditionally.

**CONDITIONAL CLEMENCY** --- Pardons, amnesties, commutations of sentence and remissions may be conditional. The Governor may impose any conditions and the time the conditions may be in effect may extend beyond the term of the original sentence or even for life. It is necessary to comply with the conditions imposed for the pardon, amnesty, commutation of sentence or remission to be valid.

**CRIMES AGAINST PERSON** --- means a crime set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330; or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330.

**CRIMES OF MORAL TURPITUDE** --- includes those crimes which are immoral or wrong in and of themselves, such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft and forgery. See AS 15.60.010(8). Contact the Division of Elections if you wish to obtain a list of the crimes of moral turpitude relating to voting rights.

**EFFECTIVE DATE** --- If clemency is granted, it does not become effective until it is delivered to and accepted by the applicant.

**ELIGIBILITY** --- Any person who has committed a crime under the laws of the State of Alaska or the Territory of Alaska may apply to the Governor for executive clemency, if determined to be eligible. Applications will not be considered for convictions of municipal laws, federal laws, or convictions in other states. Applications for clemency will not be considered during pending appeals from judgment or conviction. No applications will be considered where a Suspended Imposition of Sentence (SIS) disposition has been granted by the court. See "Reasons for Clemency Ineligibility."

**EXECUTIVE CLEMENCY** --- in the State of Alaska is the power granted to the Governor by the Alaska Constitution to grant pardons, commutations of sentence, amnesty and the remission of fines and forfeitures. It is a power which is exercised solely at the Governor's discretion. It is a general term used to describe pardons, commutation, amnesty or remissions.

**EXECUTIVE CLEMENCY ADVISORY COMMITTEE** --- is historically comprised of three persons: the Lieutenant Governor, the Attorney General or a representative from the Department of Law, and a public member. The Committee reviews each case and makes a recommendation to the Governor. The Committee meets as often as necessary to review pending applications, usually only once or twice per year.

**EXECUTIVE PRIVILEGE** --- The records, documents and reports generated during the executive clemency process are prepared for the exclusive use of the Governor. These clemency documents are confidential and are not considered public information. The Governor's final decision in each case and the official orders signed by the Governor are public information.

**EFFECTIVE DATE** --- If clemency is granted, it does not become effective until it is delivered to and accepted by the applicant.

**FIREARM** --- defined by AS 11.81.900(b)(24) is a weapon including a pistol, revolver, rifle, or shotgun whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury.

**JURY SERVICE** -- A person is disqualified from serving as a juror if the person has been convicted of a felony for which the person has not been unconditionally discharged. AS 09.20.037

**LEGAL EFFECT OF CLEMENCY** -- The primary legal effect of a pardon is that it sets aside a conviction for a crime committed under the laws of the State of Alaska or the Territory of Alaska. This serves to relieve the person to whom it is granted from all further punishment and other legal consequences imposed by reason of the conviction. Upon a grant of clemency the records continue to exist in court and law enforcement files. A grant of clemency "*will forgive, but not forget.*"

**PARDON** -- is a form of Executive Clemency, which if full and unconditional, relieves an offender from further punishment and disabilities imposed by reason of a conviction of a criminal offense. It is an act of grace which represents forgiveness for the particular crime. The governor may grant pardons in whole or in part for offenses against the laws of the State of Alaska or the Territory of Alaska.

**CONDITIONAL PARDON** -- is a form of Executive Clemency to which a condition or conditions are attached. The pardon does not become effective until the person pardoned has performed or completed the requirements outlined by the condition or conditions. The conditional pardon can also become void if some specific act or event occurs.

**FULL PARDON** -- is a form of Executive Clemency which relieves the grantee of all legal consequences and without conditions.

**GENERAL PARDON** -- is a form of Executive Clemency usually granted to all the persons participating in a given criminal offense. [See definition of Amnesty above.]

**PARTIAL PARDON** -- is a form of Executive Clemency which relieves only a portion of punishment or absolves only a portion of the legal consequences of a crime.

**UNCONDITIONAL PARDON** -- is a form of Executive Clemency which relieves the grantee without any conditions whatsoever. It is the same as a full pardon.

**PAROLE** -- A prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole released by the Board or by operation of law before the expiration of the term, subject to custody and jurisdiction by the Board. Parole is a function of the Executive Branch of government.

**PRISONER** -- An offender confined for violation of state law, but does not include a person confined under AS Title 47.

**PROBATION** -- A court imposed sentence suspending incarceration and instead imposing a term of supervision in the community under the discretion of the probation officer. Probation is a function of the Judicial Branch of government.

**QUESTIONNAIRE WORKSHEET** -- All applicants are required to complete and submit the Executive Clemency Questionnaire Worksheet as an integral part of the Application Form. Questionnaire Worksheet forms are made available to you when the Application Form is sent.

**RECORDS RETENTION** -- A pardon does not eliminate or erase the conviction. The records of conviction are retained by the appropriate agencies and continue to exist in both court and law enforcement files. In Alaska there are no provisions for expungement of criminal records upon the granting of clemency.

**RELEASE OF INFORMATION** -- Each applicant must sign a release of information authorizing an investigation of the applicant's current and past record and character. This form is part of the clemency application.

**REMISSION OF FINE** -- is the forgiveness in whole or part, of a fine imposed by the court.

**REMISSION OF FORFEITURE** -- is the forgiveness and restoration of property or a property right forfeited by reason of conviction of the crime.

**REVOCAION** -- Once delivered: a conditional pardon, conditional commutation of sentence or other forms of conditional clemency may be revoked by the Governor for violations of the conditions imposed.

**UNCONDITIONAL DISCHARGE** -- A defendant is released from all disability arising under a sentence, including probation and parole. AS 15.60.010(33)

**VICTIM** -- as defined in AS 12.55.185(16), a "victim" means:

- (A) a person against whom an offense has been perpetrated;
- (B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:
  - (i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or
  - (ii) a parent, adult child, guardian, or custodian of the person;
- (C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:
  - (i) a person living in a spousal relationship with the deceased before the deceased died;
  - (ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or
  - (iii) any other interested person, as may be designated by a person having authority in law to do so.

**VICTIM COMMENTS** -- The victim may comment in writing to the Board on the application for executive clemency. See AS 33.20.080. The comments are forwarded to the Executive Clemency Advisory Committee and the Governor.

**VICTIM NOTIFICATION** -- If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree, the board shall send notice of an application for executive clemency submitted by the person who was convicted of that crime. The victim may comment in writing to the board on the application for executive clemency. If the victim desires notice, the victim shall maintain a current, valid mailing address on file with the Department of Corrections. The Board shall send the notice required under this section to the victim's last known address. The victim's address may not be disclosed to the clemency applicant or the applicant's attorney.

**VOTING RIGHTS** -- Any person convicted of a felony involving moral turpitude under state or federal law may not vote in a state, federal or municipal election from the date of the conviction through the date of unconditional discharge (AS 15.05.030). Upon presenting proof that the person is unconditionally discharged from custody the person may register to vote. If you wish to participate in an election in Alaska after unconditional discharge of your sentence or obtain a list of the crimes of moral turpitude, contact your voting district's regional office or: State of Alaska, Division of Elections, P.O. Box 110017, Juneau, AK 99811-0017 .

[10/2006 Clemency Handbook]