

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 139 thru HB 140 276 276

43

139

(11)

Date referred: 3/11/87

FURTHER REFERRALS:

DATE: 3/26/87

The Finance Committee has considered HB 139

"An Act relating to the jurisdiction of the superior and district courts, judicial disqualification and impeachment, the procedure for judicial retirement due to incapacity or disability, and proceedings before magistrates."

RECOMMENDS:

- replace with CS HB 139 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published 3/11/87
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

ADAMS Al Adams

POURCHOT Pat Pourchot

BOYER Max Boyer

WALLIS F. Key Wallis

SIGNING OTHER RECOMMENDATIONS:

LARSON Ronald Larson No Rec

SWACK-HAMMER Clay Swack-Hammer No Rec

RIEBER Ellen Rieber No Recommendation

FRANK Donna Frank No Rec.

BROWN Fay Brown No Rec.

DAVIS Mike Davis No Rec

GOLL Steve Goll No Rec

Al Adams

REQUEST: _____

Bill Version: CSHB 139(Jud)

Publish Date: HOUSE 3/11/87

Revision Date:
Title: Jurisdiction of superior and district courts, qualifications...
Sponsor: Gruenberg, Sund, Pettyjohn...
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	••••	••••	••••	••••	••••	••••
Travel	••••	••••	••••	••••	••••	••••
Contractual	••••	••••	••••	••••	••••	••••
Supplies	••••	••••	••••	••••	••••	••••
Equipment	••••	••••	••••	••••	••••	••••
Land & Structures	••••	••••	••••	••••	••••	••••
Grants & Claims	••••	••••	••••	••••	••••	••••
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	••••	••••	••••	••••	••••	••••
REVENUE	••••	••••	••••	••••	••••	••••

FUNDING: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	••••	••••	••••	••••	••••	••••
Other	••••	••••	••••	••••	••••	••••
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time	••••	••••	••••	••••	••••	••••
Part-time	••••	••••	••••	••••	••••	••••
Temporary	••••	••••	••••	••••	••••	••••

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 2-19-87

Approved by: *Stephanie J. Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 2-19-87

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

Original sponsors: Gruenberg, Sund,
Pettyjohn, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 139 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the jurisdiction of the superior
7 and district courts; judicial disqualification,
8 disciplinary actions, and impeachment; the procedure
9 for judicial retirement due to incapacity or disabil-
10 ity; proceedings before magistrates; and amending
11 Rule 16(a), Alaska District Court Rules of Civil
12 Procedure."

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

14 * Section 1. AS 09.30.200 is amended to read:

15 Sec. 09.30.200. FILING AND STATUS OF FOREIGN JUDGMENTS. A copy
16 of a foreign judgment authenticated in accordance with the Act of
17 Congress or the laws of this state may be filed in the office of the
18 clerk of the [SUPERIOR] court with jurisdiction in [OF] this state.
19 The clerk shall treat the foreign judgment in the same manner as a
20 domestic judgment [OF THE SUPERIOR COURT]. A judgment so filed has
21 the same effect and is subject to the same procedures, defenses, and
22 proceedings for reopening, vacating, or staying as a domestic judgment
23 [OF THE SUPERIOR COURT] and may be enforced or satisfied in like
24 manner.

25 * Sec. 2. AS 09.30.220 is amended to read:

26 Sec. 09.30.220. STAY. (a) If the judgment debtor shows the
27 [SUPERIOR] court that an appeal from the foreign judgment is pending
28 or will be taken, or that a stay of execution has been granted, the
29 court shall stay enforcement of the foreign judgment until the appeal

1 is concluded, the time for appeal expires, or the stay of execution
2 expires or is vacated, upon proof that the judgment debtor has fur-
3 nished the security for the satisfaction of the judgment required by
4 the state in which it was rendered.

5 (b) If the judgment debtor shows the [SUPERIOR] court any ground
6 upon which enforcement of a judgment of the [SUPERIOR] court of this
7 state would be stayed, the court shall stay enforcement of the foreign
8 judgment for an appropriate period, upon requiring the same security
9 for satisfaction of the judgment that [WHICH] is required in this
10 state.

11 * Sec. 3. AS 09.30.230 is amended to read:

12 Sec. 09.30.230. FEES. A person filing a foreign judgment shall
13 pay to the clerk of court the fee prescribed for the filing of an
14 action. Fees for docketing, transcription, or other enforcement
15 proceedings shall be as provided for domestic judgments [OF THE SUPE-
16 RIOR COURT OF THIS STATE].

17 * Sec. 4. AS 09.43.170 is amended to read:

18 Sec. 09.43.170. COURT, JURISDICTION. In AS 09.43.010 - 09.43.-
19 180, the term "court" means the [SUPERIOR] court with jurisdiction in
20 [OF] this state. The making of an agreement described in AS 09.43.010
21 providing for arbitration in this state confers jurisdiction on the
22 [SUPERIOR] court to enforce the agreement under AS 09.43.010 - 09.43.-
23 180 and to enter judgment on an award under the agreement.

24 * Sec. 5. AS 15.58.050 is amended to read:

25 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
26 OFFICERS. No later than August 7 of the year in which the state
27 general election will be held, the judicial council shall file with
28 the lieutenant governor a statement including information about each
29 supreme court justice, court of appeals judge, superior court judge,

1 and district court judge who will be subject to a retention election.
2 The statement shall reflect the evaluation of each justice or judge
3 conducted by the judicial council according to law and shall contain a
4 brief statement describing each public reprimand, public censure, or
5 suspension received by the judge under AS 22.30.011(d)(3) or (4)
6 during the period covered in the evaluation. A statement may not
7 exceed 600 words.

8 * Sec. 6. AS 22.07 is amended by adding a new section to read:

9 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
10 subject to impeachment by the legislature for malfeasance or mis-
11 feasance in the performance of official duties. Impeachment must
12 originate in the senate and must be approved by two-thirds vote of its
13 members. The motion for impeachment must list fully the basis for the
14 proceeding. Trial on impeachment shall be conducted by the house of
15 representatives. A supreme court justice designated by the court
16 shall preside at the trial. Concurrence of two-thirds of the members
17 of the house is required for a judgment of impeachment. The judgment
18 may not extend beyond removal from office, but does not prevent pro-
19 ceedings in a court on the same or related charges.

20 * Sec. 7. AS 22.15.030(a) is amended to read:

21 (a) The district court has jurisdiction of civil cases, includ-
22 ing foreign judgments filed under AS 09.30.200 and arbitration pro-
23 ceedings under AS 09.43.170, as follows:

24 (1) for the recovery of money or damages when the amount
25 claimed exclusive of costs, interest, and attorney fees does not
26 exceed \$35,000 [\$25,000];

27 (2) for the recovery of specific personal property, when
28 the value of the property claimed and the damages for the detention do
29 not exceed \$35,000 [\$25,000];

1 (3) for the recovery of a penalty or forfeiture, whether
2 given by statute or arising out of contract, not exceeding \$35,000
3 [\$25,000];

4 (4) to give judgment without action upon the confession of
5 the defendant for any of the cases specified in this section, except
6 for a penalty or forfeiture imposed by statute;

7 (5) for establishing the fact of death of any person in the
8 manner prescribed in AS 09.55.020 - 09.55.060;

9 (6) for the recovery of the possession of premises in the
10 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
11 PROPERTY OR] of the arrears and damage to the property does not exceed
12 \$35,000 [\$25,000];

13 (7) for the foreclosure of a lien when the amount in con-
14 troversy does not exceed \$35,000 [\$25,000];

15 (8) for the recovery of money or damages in motor vehicle
16 tort cases when the amount claimed exclusive of costs, interest and
17 attorney fees does not exceed \$35,000 [\$25,000];

18 (9) over civil actions for taking utility service and for
19 damages to or interference with a utility line filed under AS 42.20.-
20 030;

21 (10) over cases involving injunctive relief for domestic
22 violence under AS 25.35.010 and 25.35.020.

23 * Sec. 8. AS 22.15.120 is amended to read:

24 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
25 HEAR. A magistrate shall preside only in cases and proceedings under
26 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

27 (1) for the recovery of money or damages only when the
28 amount claimed, exclusive of costs, interest, and attorney fees, does
29 not exceed \$5,000;

1 (2) for the recovery of specific personal property when the
2 value of the property claimed and the damages for the detention do not
3 exceed \$5,000;

4 (3) for the recovery of a penalty or forfeiture, whether
5 given by statute or arising out of contract, not exceeding \$5,000;

6 (4) to give judgment without action upon the confession of
7 the defendant for any of the cases specified in this section, except
8 for a penalty or forfeiture imposed by statute;

9 (5) to give judgment of conviction upon a plea of guilty by
10 the defendant in a criminal proceeding within the jurisdiction of the
11 district court;

12 (6) to hear, try, and enter judgments in all cases involv-
13 ing misdemeanors, if the defendant consents in writing that the magis-
14 trate may try the case;

15 (7) to hear, try and enter judgments in all cases involving
16 infractions under AS 28, violations under AS 11, and violations of
17 ordinances of political subdivisions;

18 (8) for the extradition of fugitives as authorized under
19 AS 12.70.

20 * Sec. 9. AS 22.15 is amended by adding a new section to read:

21 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
22 impeachment by the legislature for malfeasance or misfeasance in the
23 performance of official duties. Impeachment must originate in the
24 senate and must be approved by two-thirds vote of its members. The
25 motion for impeachment must list fully the basis for the proceeding.
26 Trial on impeachment shall be conducted by the house of representa-
27 tives. A supreme court justice designated by the court shall preside
28 at the trial. Concurrence of two-thirds of the members of the house
29 is required for a judgment of impeachment. The judgment may not

1 extend beyond removal from office, but does not prevent proceedings in
2 the courts on the same or related charges.

3 * Sec. 10. AS 22.20.020(a) is repealed and reenacted to read:

4 (a) A judicial officer may not act in a matter in which

5 (1) the judicial officer is a party;

6 (2) the judicial officer is related to a party or a party's
7 attorney by consanguinity or affinity within the third degree;

8 (3) the judicial officer is a material witness;

9 (4) the judicial officer or the spouse of the judicial
10 officer, individually or as a fiduciary, or a child of the judicial
11 officer has a direct financial interest in the matter;

12 (5) a party, except the state or a municipality of the
13 state, has retained or been professionally counseled by the judicial
14 officer as its attorney within two years preceding the assignment of
15 the judicial officer to the matter;

16 (6) the judicial officer has represented a person as attor-
17 ney for the person against a party, except the state or a municipality
18 of the state, in a matter within two years preceding the assignment of
19 the judicial officer to the matter;

20 (7) an attorney for a party has represented the judicial
21 officer or a person against the judicial officer, either in the judi-
22 cial officer's public or private capacity, in a matter within two
23 years preceding the filing of the action;

24 (8) the law firm with which the judicial officer was asso-
25 ciated in the practice of law within the two years preceding the
26 filing of the action has been retained or has professionally counseled
27 either party with respect to the matter;

28 (9) the judicial officer feels that, for any reason, a fair
29 and impartial decision cannot be given.

1 * Sec. 11. AS 22.20.020(b) is repealed and reenacted to read:

2 (b) The disqualifications specified in (a)(2), (a)(5), (a)(6),
3 (a)(7), and (a)(8) of this section may be waived by the parties and
4 are waived unless a party raises an objection.

5 * Sec. 12. AS 22.25.010(b) is amended to read:

6 (b) A justice or judge may be retired for incapacity as provided
7 in this section [BY LAW]. A justice or judge is eligible for retire-
8 ment pay with two or more years of service at the time of retirement
9 for incapacity. The effective date of retirement under this subsec-
10 tion is the first day of the month coinciding with or after the date
11 that [UPON WHICH] the governor [WITH RESPECT TO A JUSTICE, OR THE
12 SUPREME COURT WITH RESPECT TO A JUDGE] files written notice with the
13 commissioner of administration [A WRITTEN DECLARATION TO THE EFFECT]
14 that a designated justice or judge was retired for incapacity. A
15 duplicate copy of the notice [DECLARATION] shall be filed with the
16 Judicial Council.

17 * Sec. 13. AS 22.30.011 is amended by adding a new subsection to read:

18 (h) If a judge has been publicly reprimanded, suspended, or
19 publicly censured under this section and the judge has filed a decla-
20 ration of candidacy for retention in office, the commission shall
21 report to the Judicial Council for inclusion in the statement filed by
22 the judicial council under AS 15.58.050 each public reprimand, sus-
23 pension, or public censure received by the judge

24 (1) since appointment; or

25 (2) if the judge has been retained by election, since the
26 last retention election of the judge.

27 * Sec. 14. AS 22.30.070(c) is amended to read:

28 (c) On recommendation of the commission or after an appeal under
29 AS 22.30.011(e), the supreme court may (1) retire a judge for

1 disability that seriously interferes with the performance of duties
2 and that is or may become permanent, and (2) publicly or privately
3 censure or remove a judge for action occurring not more than six years
4 before the commencement of the judge's current term which constitutes
5 wilful misconduct in the office, wilful and persistent failure to
6 perform duties, habitual intemperance, conduct prejudicial to the
7 administration of justice, or conduct that brings the judicial office
8 into disrepute. The effective date of retirement under (1) of this
9 subsection is the first day of the month coinciding with or after the
10 date that the supreme court files written notice with the commissioner
11 of administration that the judge was retired for disability. A dupli-
12 cate copy of the notice shall be filed with the Judicial Council.

13 * Sec. 15. Rule 16(a) of the Alaska District Court Rules of Civil
14 Procedure is amended to read:

15 (a) All small claims actions shall be tried by the court without
16 a jury. A judge may [NOT] be peremptorily challenged either under
17 Civil Rule 42(c) or AS 22.20.022.

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



Lowman

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

DATE: March 6, 1987

TO: Representative Al Adams
Chair
House Finance Committee

FROM: Max F. Gruenberg, Jr. *MFG*

RE: HB 139, "An Act relating to jurisdiction of the superior and district courts, judicial disqualification and impeachment, the procedure for judicial retirement due to incapacity or disability and proceedings before magistrates."

I would appreciate it if you would schedule a hearing on HB 139 as soon as it is possible.

HB 139 has a zero fiscal note from the court system. I do not believe any other branches of state government would be financially impacted by this bill.

HB 139 is based on a bill that passed the House unanimously last session as HB 516, which provided a procedure for the impeachment of court of appeals judges and district court judges and the disqualification of judges for cause.

HB 139 incorporates HB 516, with some technical changes suggested by legal counsel. At the request of the judiciary, I have also added a number of other provisions, which increase the jurisdiction of district courts, give magistrates explicit authority to handle violations, and clarify the law regarding judicial retirement.

MEMORANDUM

DATE: March 18, 1987

TO: House Finance Committee

FROM: Max F. Gruenberg, Jr.

RE: Sectional analysis of the Judiciary Committee
Substitute for the Impeachment of Judges Bill, C.S.
for HB139 (Judiciary)

Secs. 1,2 and 3

AS 09.30.200, .220 and .230 Foreign judgments are now enforceable only in superior court. The bill allows foreign judgments up to \$35,000 to be enforceable in district court.

Sec. 4

AS 09.43.170 The Uniform Arbitration Act is now only enforceable in superior court. The bill allows arbitrations up to \$35,000 to be enforceable in district court.

Sec. 5

AS 15.58.050 Requires that the judicial council include all public reprimands, public censures and suspensions in its report on a judge or justice who is up for a retention election.

Sec. 6

AS 22.07.075 Provides for the impeachment of court of appeals judges. It uses the identical language of AS 22.05.120 and AS 22.10.170, which now provide for the impeachment of supreme court justices and superior court judges. This was part of HB 516, which passed the House last year.

Sec. 7

AS 22.15.030(a) Raises district court jurisdiction from \$25,000.00 to \$35,000.00 and clarifies the requirements for district court jurisdiction over evictions. The \$35,000 limit was passed as part of the tort reform bill, SB 377, which passed the House last year, but did not survive the conference committee.

Sec. 8

AS 22.15.120 Brings criminal violations within the jurisdiction of magistrate courts.

Sec. 9

As 22.15.205 Provides for the impeachment of district court judges. See section 6 above. This was part of the bill last year.

Secs. 10 & 11

AS 22.20.020(a) and (b) Revises and updates the statute for disqualifying a judge for cause. This was part of HB 516 last year.

Sec. 12

AS 22.25.010(b) and 22.30.070(c) Clarifies the procedure for judicial retirement for incapacity.

Sec. 13

AS 22.30.011 Provides that the Commission on Judicial Qualifications shall report public reprimands, public censures and suspensions to the judicial council so that the council can comply with AS 15.58.050, Sec. 5 above.

Sec. 14

AS 22.30.070(c) Clarifies the procedure for judicial retirement for disability.

Sec. 15

Alaska District Court Civil Rule 16(a). Allows a person in small claims court to change judges by filing one preemptory challenge against the assigned judge. All other litigants presently have this right.

1 IN THE HOUSE

BY GRUENBERG, SUND, PETTYJOHN,
DONLEY, NAVARRE, PHILLIPS,
TAYLOR, ULMER AND MARTIN

2

HOUSE BILL NO. 139

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the jurisdiction of the superior
7 and district courts, judicial disqualification and
8 impeachment, the procedure for judicial retirement
9 due to incapacity or disability, and proceedings
10 before magistrates."

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

12 * Section 1. AS 09.30.200 is amended to read:

13 Sec. 09.30.200. FILING AND STATUS OF FOREIGN JUDGMENTS. A copy
14 of a foreign judgment authenticated in accordance with the Act of
15 Congress or the laws of this state may be filed in the office of the
16 clerk of the [SUPERIOR] court with jurisdiction in [OF] this state.
17 The clerk shall treat the foreign judgment in the same manner as a
18 domestic judgment [OF THE SUPERIOR COURT]. A judgment so filed has
19 the same effect and is subject to the same procedures, defenses, and
20 proceedings for reopening, vacating, or staying as a domestic judgment
21 [OF THE SUPERIOR COURT] and may be enforced or satisfied in like
22 manner.

23 * Sec. 2. AS 09.30.220 is amended to read:

24 Sec. 09.30.220. STAY. (a) If the judgment debtor shows the
25 [SUPERIOR] court that an appeal from the foreign judgment is pending
26 or will be taken, or that a stay of execution has been granted, the
27 court shall stay enforcement of the foreign judgment until the appeal
28 is concluded, the time for appeal expires, or the stay of execution
29 expires or is vacated, upon proof that the judgment debtor has

1 furnished the security for the satisfaction of the judgment required
2 by the state in which it was rendered.

3 (b) If the judgment debtor shows the [SUPERIOR] court any ground
4 upon which enforcement of a judgment of the [SUPERIOR] court of this
5 state would be stayed, the court shall stay enforcement of the foreign
6 judgment for an appropriate period, upon requiring the same security
7 for satisfaction of the judgment that [WHICH] is required in this
8 state.

9 * Sec. 3. AS 09.30.230 is amended to read:

10 Sec. 09.30.230. FEES. A person filing a foreign judgment shall
11 pay to the clerk of court the fee prescribed for the filing of an
12 action. Fees for docketing, transcription, or other enforcement
13 proceedings shall be as provided for domestic judgments [OF THE SUPE-
14 RIOR COURT OF THIS STATE].

15 * Sec. 4. AS 09.43.170 is amended to read:

16 Sec. 09.43.170. COURT, JURISDICTION. In AS 09.43.010 - 09.43.-
17 180, the term "court" means the [SUPERIOR] court with jurisdiction in
18 [OF] this state. The making of an agreement described in AS 09.43.010
19 providing for arbitration in this state confers jurisdiction on the
20 [SUPERIOR] court to enforce the agreement under AS 09.43.010 - 09.43.-
21 180 and to enter judgment on an award under the agreement.

22 * Sec. 5. AS 22.07 is amended by adding a new section to read:

23 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
24 subject to impeachment by the legislature for malfeasance or mis-
25 feasance in the performance of official duties. Impeachment must
26 originate in the senate and must be approved by two-thirds vote of its
27 members. The motion for impeachment must list fully the basis for the
28 proceeding. Trial on impeachment shall be conducted by the house of
29 representatives. A supreme court justice designated by the court

1 shall preside at the trial. Concurrence of two-thirds of the members
2 of the house is required for a judgment of impeachment. The judgment
3 may not extend beyond removal from office, but does not prevent pro-
4 ceedings in a court on the same or related charges.

5 * Sec. 6. AS 22.15.030(a) is amended to read:

6 (a) The district court has jurisdiction of civil cases, includ-
7 ing foreign judgments filed under AS 09.30.200 and arbitration pro-
8 ceedings under AS 09.43.170, as follows:

9 (1) for the recovery of money or damages when the amount
10 claimed exclusive of costs, interest, and attorney fees does not
11 exceed \$35,000 [\$25,000];

12 (2) for the recovery of specific personal property, when
13 the value of the property claimed and the damages for the detention do
14 not exceed \$35,000 [\$25,000];

15 (3) for the recovery of a penalty or forfeiture, whether
16 given by statute or arising out of contract, not exceeding \$35,000
17 [\$25,000];

18 (4) to give judgment without action upon the confession of
19 the defendant for any of the cases specified in this section, except
20 for a penalty or forfeiture imposed by statute;

21 (5) for establishing the fact of death of any person in the
22 manner prescribed in AS 09.55.020 - 09.55.060;

23 (6) for the recovery of the possession of premises in the
24 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
25 PROPERTY OR] of the arrears and damage to the property does not exceed
26 \$35,000 [\$25,000];

27 (7) for the foreclosure of a lien when the amount in con-
28 troversy does not exceed \$35,000 [\$25,000];

29 (8) for the recovery of money or damages in motor vehicle

1 tort cases when the amount claimed exclusive of costs, interest and
2 attorney fees does not exceed \$35,000 [\$25,000];

3 (9) over civil actions for taking utility service and for
4 damages to or interference with a utility line filed under AS 42.20.-
5 030;

6 (10) over cases involving injunctive relief for domestic
7 violence under AS 25.35.010 and 25.35.020.

8 * Sec. 7. AS 22.15.120 is amended to read:

9 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
10 HEAR. A magistrate shall preside only in cases and proceedings under
11 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

12 (1) for the recovery of money or damages only when the
13 amount claimed, exclusive of costs, interest, and attorney fees, does
14 not exceed \$5,000;

15 (2) for the recovery of specific personal property when the
16 value of the property claimed and the damages for the detention do not
17 exceed \$5,000;

18 (3) for the recovery of a penalty or forfeiture, whether
19 given by statute or arising out of contract, not exceeding \$5,000;

20 (4) to give judgment without action upon the confession of
21 the defendant for any of the cases specified in this section, except
22 for a penalty or forfeiture imposed by statute;

23 (5) to give judgment of conviction upon a plea of guilty by
24 the defendant in a criminal proceeding within the jurisdiction of the
25 district court;

26 (6) to hear, try, and enter judgments in all cases involv-
27 ing misdemeanors, if the defendant consents in writing that the magis-
28 trate may try the case;

29 (7) to hear, try and enter judgments in all cases involving

1 infractions under AS 28, violations under AS 11, and violations of
2 ordinances of political subdivisions;

3 (8) for the extradition of fugitives as authorized under
4 AS 12.70.

5 * Sec. 8. AS 22.15 is amended by adding a new section to read:

6 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
7 impeachment by the legislature for malfeasance or misfeasance in the
8 performance of official duties. Impeachment must originate in the
9 senate and must be approved by two-thirds vote of its members. The
10 motion for impeachment must list fully the basis for the proceeding.
11 Trial on impeachment shall be conducted by the house of representa-
12 tives. A supreme court justice designated by the court shall preside
13 at the trial. Concurrence of two-thirds of the members of the house
14 is required for a judgment of impeachment. The judgment may not
15 extend beyond removal from office, but does not prevent proceedings in
16 the courts on the same or related charges.

17 * Sec. 9. AS 22.20.020(a) is repealed and reenacted to read:

18 (a) A judicial officer may not act in a matter in which

19 (1) the judicial officer is a party;

20 (2) the judicial officer is related to a party or a party's
21 attorney by consanguinity or affinity within the third degree;

22 (3) the judicial officer is a material witness;

23 (4) the judicial officer or the spouse of the judicial
24 officer, individually or as a fiduciary, or a child of the judicial
25 officer has a direct financial interest in the matter;

26 (5) a party, except the state or a municipality of the
27 state, has retained or been professionally counseled by the judicial
28 officer as its attorney within two years preceding the assignment of
29 the judicial officer to the matter;

1 (6) the judicial officer has represented a person as attorney
2 for the person against a party, except the state or a municipality
3 of the state, in a matter within two years preceding the assignment of
4 the judicial officer to the matter;

5 (7) an attorney for a party has represented the judicial
6 officer or a person against the judicial officer, either in the judicial
7 officer's public or private capacity, in a matter within two
8 years preceding the filing of the action;

9 (8) the law firm with which the judicial officer was associated
10 in the practice of law within the two years preceding the
11 filing of the action has been retained or has professionally counseled
12 either party with respect to the matter;

13 (9) the judicial officer feels that, for any reason, a fair
14 and impartial decision cannot be given.

15 * Sec. 10. AS 22.20.020(b) is repealed and reenacted to read:

16 (b) The disqualifications specified in (a)(2), (a)(5), (a)(6),
17 (a)(7), and (a)(8) of this section may be waived by the parties and
18 are waived unless a party raises an objection.

19 * Sec. 11. AS 22.25.010(b) is amended to read:

20 (b) A justice or judge may be retired for incapacity as provided
21 in this section [BY LAW]. A justice or judge is eligible for retirement
22 pay with two or more years of service at the time of retirement
23 for incapacity. The effective date of retirement under this subsection
24 is the first day of the month coinciding with or after the date
25 that [UPON WHICH] the governor [WITH RESPECT TO A JUSTICE, OR THE
26 SUPREME COURT WITH RESPECT TO A JUDGE] files written notice with the
27 commissioner of administration [A WRITTEN DECLARATION TO THE EFFECT]
28 that a designated justice or judge was retired for incapacity. A
29 duplicate copy of the notice [DECLARATION] shall be filed with the

1 Judicial Council.

2 * Sec. 12. AS 22.30.070(c) is amended to read:

3 (c) On recommendation of the commission or after an appeal under
4 AS 22.30.011(e), the supreme court may (1) retire a judge for dis-
5 ability that seriously interferes with the performance of duties and
6 that is or may become permanent, and (2) publicly or privately censure
7 or remove a judge for action occurring not more than six years before
8 the commencement of the judge's current term which constitutes wilful
9 misconduct in the office, wilful and persistent failure to perform
10 duties, habitual intemperance, conduct prejudicial to the adminis-
11 tration of justice, or conduct that brings the judicial office into
12 disrepute. The effective date of retirement under (1) of this sub-
13 section is the first day of the month coinciding with or after the
14 date that the supreme court files written notice with the commissioner
15 of administration that the judge was retired for disability. A dupli-
16 cate copy of the notice shall be filed with the Judicial Council.

CSHB

139

SENATE COMMITTEE REPORT

FURTHER:

4/24/87

DATE TURNED INTO OFFICE 5/14/87

Mr. President:

FINANCE Committee considered CSHB 139(Jud) am

jurisdiction of the superior and district courts; judicial disqualification, disciplinary actions, and impeachment; the procedure for judicial retirement due to incapacity or disability; proceedings before magistrates; and amending Rule 16(a), Alaska District Court Rules of Civil Procedure.

and recommended:

replace with CS FOR _____) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

Rich Lee
W. Kennedy

OTHER RECOMMENDATIONS

Paul O. Shantz (Noted)
Paul Shantz (Noted)
Jim Duncan (Noted)

John B... No RSC.
Chairman signature and recommendation

Committee Backup Attached

Bill Version: CSHB 139(Jud)
Publish Date: HOUSE 3/11/87

REQUEST: _____

Revision Date:
Title: Jurisdiction of superior and district courts, qualifications...
Sponsor: Gruenberg, Sund, Pettyjohn...
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Approved by: *Stephanie J. Cole* Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Phone: 264-8228
Date: 2-19-87
Date: 2-19-87

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

Original sponsors: Gruenberg, Sund,
Pettyjohn, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 139 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to the jurisdiction of the superior
7 and district courts; judicial disqualification,
8 disciplinary actions, and impeachment; the procedure
9 for judicial retirement due to incapacity or disabili-
10 ty; proceedings before magistrates; and amending
11 Rule 16(a), Alaska District Court Rules of Civil
12 Procedure."

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

14 * Section 1. AS 09.30.200 is amended to read:

15 Sec. 09.30.200. FILING AND STATUS OF FOREIGN JUDGMENTS. A copy
16 of a foreign judgment authenticated in accordance with the Act of
17 Congress or the laws of this state may be filed in the office of the
18 clerk of the [SUPERIOR] court with jurisdiction in [OF] this state.
19 The clerk shall treat the foreign judgment in the same manner as a
20 domestic judgment [OF THE SUPERIOR COURT]. A judgment so filed has
21 the same effect and is subject to the same procedures, defenses, and
22 proceedings for reopening, vacating, or staying as a domestic judgment
23 [OF THE SUPERIOR COURT] and may be enforced or satisfied in like
24 manner.

25 * Sec. 2. AS 09.30.220 is amended to read:

26 Sec. 09.30.220. STAY. (a) If the judgment debtor shows the
27 [SUPERIOR] court that an appeal from the foreign judgment is pending
28 or will be taken, or that a stay of execution has been granted, the
29 court shall stay enforcement of the foreign judgment until the appeal

1 is concluded, the time for appeal expires, or the stay of execution
2 expires or is vacated, upon proof that the judgment debtor has fur-
3 nished the security for the satisfaction of the judgment required by
4 the state in which it was rendered.

5 (b) If the judgment debtor shows the [SUPERIOR] court any ground
6 upon which enforcement of a judgment of the [SUPERIOR] court of this
7 state would be stayed, the court shall stay enforcement of the foreign
8 judgment for an appropriate period, upon requiring the same security
9 for satisfaction of the judgment that [WHICH] is required in this
10 state.

11 * Sec. 3. AS 09.30.230 is amended to read:

12 Sec. 09.30.230. FEES. A person filing a foreign judgment shall
13 pay to the clerk of court the fee prescribed for the filing of an
14 action. Fees for docketing, transcription, or other enforcement
15 proceedings shall be as provided for domestic judgments [OF THE SUPE-
16 RIOR COURT OF THIS STATE].

17 * Sec. 4. AS 09.43.170 is amended to read:

18 Sec. 09.43.170. COURT, JURISDICTION. In AS 09.43.010 - 09.43.-
19 180, the term "court" means the [SUPERIOR] court with jurisdiction in
20 [OF] this state. The making of an agreement described in AS 09.43.010
21 providing for arbitration in this state confers jurisdiction on the
22 [SUPERIOR] court to enforce the agreement under AS 09.43.010 - 09.43.-
23 180 and to enter judgment on an award under the agreement.

24 * Sec. 5. AS 15.58.050 is amended to read:

25 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
26 OFFICERS. No later than August 7 of the year in which the state
27 general election will be held, the judicial council shall file with
28 the lieutenant governor a statement including information about each
29 supreme court justice, court of appeals judge, superior court judge,

1 and district court judge who will be subject to a retention election.
2 The statement shall reflect the evaluation of each justice or judge
3 conducted by the judicial council according to law and shall contain a
4 brief statement describing each public reprimand, public censure, or
5 suspension received by the judge under AS 22.30.011(d)(3) or (4)
6 during the period covered in the evaluation. A statement may not
7 exceed 600 words.

8 * Sec. 6. AS 22.07 is amended by adding a new section to read:

9 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
10 subject to impeachment by the legislature for malfeasance or mis-
11 feasance in the performance of official duties. Impeachment must
12 originate in the senate and must be approved by two-thirds vote of its
13 members. The motion for impeachment must list fully the basis for the
14 proceeding. Trial on impeachment shall be conducted by the house of
15 representatives. A supreme court justice designated by the court
16 shall preside at the trial. Concurrence of two-thirds of the members
17 of the house is required for a judgment of impeachment. The judgment
18 may not extend beyond removal from office, but does not prevent pro-
19 ceedings in a court on the same or related charges.

20 * Sec. 7. AS 22.15.030(a) is amended to read:

21 (a) The district court has jurisdiction of civil cases, includ-
22 ing foreign judgments filed under AS 09.30.200 and arbitration pro-
23 ceedings under AS 09.43.170, as follows:

24 (1) for the recovery of money or damages when the amount
25 claimed exclusive of costs, interest, and attorney fees does not
26 exceed \$35,000 [\$25,000];

27 (2) for the recovery of specific personal property, when
28 the value of the property claimed and the damages for the detention do
29 not exceed \$35,000 [\$25,000];

1 (3) for the recovery of a penalty or forfeiture, whether
2 given by statute or arising out of contract, not exceeding \$35,000
3 [\$25,000];

4 (4) to give judgment without action upon the confession of
5 the defendant for any of the cases specified in this section, except
6 for a penalty or forfeiture imposed by statute;

7 (5) for establishing the fact of death of any person in the
8 manner prescribed in AS 09.55.020 - 09.55.060;

9 (6) for the recovery of the possession of premises in the
10 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
11 PROPERTY OR] of the arrears and damage to the property does not exceed
12 \$35,000 [\$25,000];

13 (7) for the foreclosure of a lien when the amount in con-
14 troversy does not exceed \$35,000 [\$25,000];

15 (8) for the recovery of money or damages in motor vehicle
16 tort cases when the amount claimed exclusive of costs, interest and
17 attorney fees does not exceed \$35,000 [\$25,000];

18 (9) over civil actions for taking utility service and for
19 damages to or interference with a utility line filed under AS 42.20.-
20 030;

21 (10) over cases involving injunctive relief for domestic
22 violence under AS 25.35.010 and 25.35.020.

23 * Sec. 8. AS 22.15.120 is amended to read:

24 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
25 HEAR. A magistrate shall preside only in cases and proceedings under
26 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

27 (1) for the recovery of money or damages only when the
28 amount claimed, exclusive of costs, interest, and attorney fees, does
29 not exceed \$5,000;

1 (2) for the recovery of specific personal property when the
2 value of the property claimed and the damages for the detention do not
3 exceed \$5,000;

4 (3) for the recovery of a penalty or forfeiture, whether
5 given by statute or arising out of contract, not exceeding \$5,000;

6 (4) to give judgment without action upon the confession of
7 the defendant for any of the cases specified in this section, except
8 for a penalty or forfeiture imposed by statute;

9 (5) to give judgment of conviction upon a plea of guilty by
10 the defendant in a criminal proceeding within the jurisdiction of the
11 district court;

12 (6) to hear, try, and enter judgments in all cases involv-
13 ing misdemeanors, if the defendant consents in writing that the magis-
14 trate may try the case;

15 (7) to hear, try and enter judgments in all cases involving
16 infractions under AS 28, violations under AS 11, and violations of
17 ordinances of political subdivisions;

18 (8) for the extradition of fugitives as authorized under
19 AS 12.70.

20 * Sec. 9. AS 22.15 is amended by adding a new section to read:

21 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
22 impeachment by the legislature for malfeasance or misfeasance in the
23 performance of official duties. Impeachment must originate in the
24 senate and must be approved by two-thirds vote of its members. The
25 motion for impeachment must list fully the basis for the proceeding.
26 Trial on impeachment shall be conducted by the house of representa-
27 tives. A supreme court justice designated by the court shall preside
28 at the trial. Concurrence of two-thirds of the members of the house
29 is required for a judgment of impeachment. The judgment may not

1 extend beyond removal from office, but does not prevent proceedings in
2 the courts on the same or related charges.

3 * Sec. 10. AS 22.20.020(a) is repealed and reenacted to read:

4 (a) A judicial officer may not act in a matter in which

5 (1) the judicial officer is a party;

6 (2) the judicial officer is related to a party or a party's
7 attorney by consanguinity or affinity within the third degree;

8 (3) the judicial officer is a material witness;

9 (4) the judicial officer or the spouse of the judicial
10 officer, individually or as a fiduciary, or a child of the judicial
11 officer has a direct financial interest in the matter;

12 (5) a party, except the state or a municipality of the
13 state, has retained or been professionally counseled by the judicial
14 officer as its attorney within two years preceding the assignment of
15 the judicial officer to the matter;

16 (6) the judicial officer has represented a person as attor-
17 ney for the person against a party, except the state or a municipality
18 of the state, in a matter within two years preceding the assignment of
19 the judicial officer to the matter;

20 (7) an attorney for a party has represented the judicial
21 officer or a person against the judicial officer, either in the judi-
22 cial officer's public or private capacity, in a matter within two
23 years preceding the filing of the action;

24 (8) the law firm with which the judicial officer was asso-
25 ciated in the practice of law within the two years preceding the
26 filing of the action has been retained or has professionally counseled
27 either party with respect to the matter;

28 (9) the judicial officer feels that, for any reason, a fair
29 and impartial decision cannot be given.

1 * Sec. 11. AS 22.20.020(b) is repealed and reenacted to read:

2 (b) A judicial officer shall disclose, on the record, a reason
3 for disqualification specified in (a) of this section at the commence-
4 ment of a matter in which the judicial officer participates. The
5 disqualifications specified in (a)(2), (a)(5), (a)(6), (a)(7), and
6 (a)(8) of this section may be waived by the parties and are waived
7 unless a party raises an objection.

8 * Sec. 12. AS 22.25.010(b) is amended to read:

9 (b) A justice or judge may be retired for incapacity as provided
10 in this section [BY LAW]. A justice or judge is eligible for retire-
11 ment pay with two or more years of service at the time of retirement
12 for incapacity. The effective date of retirement under this subsec-
13 tion is the first day of the month coinciding with or after the date
14 that [UPON WHICH] the governor [WITH RESPECT TO A JUSTICE, OR THE
15 SUPREME COURT WITH RESPECT TO A JUDGE] files written notice with the
16 commissioner of administration [A WRITTEN DECLARATION TO THE EFFECT]
17 that a designated justice or judge was retired for incapacity. A
18 duplicate copy of the notice [DECLARATION] shall be filed with the
19 Judicial Council.

20 * Sec. 13. AS 22.30.011 is amended by adding a new subsection to read:

21 (h) If a judge has been publicly reprimanded, suspended, or
22 publicly censured under this section and the judge has filed a decla-
23 ration of candidacy for retention in office, the commission shall
24 report to the Judicial Council for inclusion in the statement filed by
25 the judicial council under AS 15.58.050 each public reprimand, sus-
26 pension, or public censure received by the judge

27 (1) since appointment; or

28 (2) if the judge has been retained by election, since the
29 last retention election of the judge.

1 * Sec. 14. AS 22.30.070(c) is amended to read:

2 (c) On recommendation of the commission or after an appeal under
3 AS 22.30.011(e), the supreme court may (1) retire a judge for dis-
4 ability that seriously interferes with the performance of duties and
5 that is or may become permanent, and (2) publicly or privately censure
6 or remove a judge for action occurring not more than six years before
7 the commencement of the judge's current term which constitutes wilful
8 misconduct in the office, wilful and persistent failure to perform
9 duties, habitual intemperance, conduct prejudicial to the adminis-
10 tration of justice, or conduct that brings the judicial office into
11 disrepute. The effective date of retirement under (1) of this sub-
12 section is the first day of the month coinciding with or after the
13 date that the supreme court files written notice with the commissioner
14 of administration that the judge was retired for disability. A dupli-
15 cate copy of the notice shall be filed with the Judicial Council.

16 * Sec. 15. Rule 16(a) of the Alaska District Court Rules of Civil
17 Procedure is amended to read:

18 (a) All small claims actions shall be tried by the court without
19 a jury. A judge may [NOT] be peremptorily challenged either under
20 Civil Rule 42(c) or AS 22.20.022.

MEMORANDUM

DATE: March 18, 1987

TO: House Finance Committee

FROM: Max F. Gruenberg, Jr.

RE: Sectional analysis of the Judiciary Committee
Substitute for the Impeachment of Judges Bill, C.S.
for HB139 (Judiciary)

Secs. 1,2 and 3

AS 09.30.200, .220 and .230 Foreign judgments are now enforceable only in superior court. The bill allows foreign judgments up to \$35,000 to be enforceable in district court.

Sec. 4

AS 09.43.170 The Uniform Arbitration Act is now only enforceable in superior court. The bill allows arbitrations up to \$35,000 to be enforceable in district court.

Sec. 5

AS 15.58.050 Requires that the judicial council include all public reprimands, public censures and suspensions in its report on a judge or justice who is up for a retention election.

Sec. 6

AS 22.07.075 Provides for the impeachment of court of appeals judges. It uses the identical language of AS 22.05.120 and AS 22.10.170, which now provide for the impeachment of supreme court justices and superior court judges. This was part of HB 516, which passed the House last year.

Sec. 7

AS 22.15.030(a) Raises district court jurisdiction from \$25,000.00 to \$35,000.00 and clarifies the requirements for district court jurisdiction over evictions. The \$35,000 limit was passed as part of the tort reform bill, SB 377, which passed the House last year, but did not survive the conference committee.

Sec. 8

AS 22.15.120 Brings criminal violations within the jurisdiction of magistrate courts.

Sec. 9

AS 22.15.205 Provides for the impeachment of district court judges. See section 6 above. This was part of the bill last year.

Secs. 10 & 11

AS 22.20.020(a) and (b) Revises and updates the statute for disqualifying a judge for cause. This was part of HB 516 last year.

Sec. 12

AS 22.25.010(b) and 22.30.070(c) Clarifies the procedure for judicial retirement for incapacity.

Sec. 13

AS 22.30.011 Provides that the Commission on Judicial Qualifications shall report public reprimands, public censures and suspensions to the judicial council so that the council can comply with AS 15.58.050, Sec. 5 above.

Sec. 14

AS 22.30.070(c) Clarifies the procedure for judicial retirement for disability.

Sec. 15

Alaska District Court Civil Rule 16(a). Allows a person in small claims court to change judges by filing one preemptory challenge against the assigned judge. All other litigants presently have this right.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/2/87

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY

Committee considered _____

CSHB 139(Jud) am

jurisdiction of the superior and district courts; judicial disqualification, disciplinary actions, and impeachment; the procedure for judicial retirement due to incapacity or disability; proceedings before magistrates; and amending Rule 16(a), Alaska District Court Rules of Civil Procedure.

and recommended:

replace with CS _____ same title

attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
passed zero previous fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rick Halford

Artis Fungulinski

Joe P. Joseph

Patrick Kadey

Kadey do pass
Chairman signature and recommendation

Committee Backup Attached

HB

1440

(11)

Date referred: 3/27/87

FURTHER REFERRALS:

DATE: 4/7/87

The Finance Committee has considered HB 140

"An Act relating to parole."

RECOMMENDS:

- Replace with CS HB 140 (Jud.) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous/^{two}zero fiscal notes published 3/11/87
- zero with analysis

SIGNING DO PASS:

POURCHOT Pat Pourchot

LARSON Ronald J Larson

BROWN Tan Brown

DAVIS Mike Davis

SWACK-HAMMER Bob Swack-Hammer

RIGER Al Riger

BYER Mark Byer

GAL Ted Gal

FRANK John Frank

SIGNING OTHER RECOMMENDATIONS:

WALLIS Kay Wallis

JD

Pat Pourchot Vice-Chair
Chairman's signature

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

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 140 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 2

REQUEST: _____

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

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

Agency Affected: Department of Corrections
BRU: _____

Sponsor: Rep. Swackhammer, Gruenberg
Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached pages.

Susan Knight

Prepared by: Susan Knighton, Research Analyst IV
Division: Administrative Services

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

Approved by Commissioner: Susan Humphrey-Barnett
Agency: Department of Corrections

Date: 3/11/87

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140(Hess)

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

Sections 1 and 2:

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

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

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

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

Section 3:

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

Sections 4 and 5:

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB.140(Hess)

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

Sections 6 - 8:

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

Section 9:

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

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

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

REQUEST
Revision Date: _____
Title: "An Act relating to parole."
Sponsor: Rep. Swackhammer
Requestor: House HESS

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers Date: 2/23/87
 Approved by Commissioner: William R. Nix *(Signature)* Date: 2/23/87
 Agency: Public Safety

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

BILL NO: HB 140 (1220)

DATE: March 3, 1987

TITLE: "An Act relating to parole."

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

POSTAL INFORMATION
DEPARTMENT OF
PUBLIC SAFETY

This bill does not impact the Department of Public Safety.



William R. Nix
Acting Commissioner

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

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 140 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to mandatory and discretionary
7 parole and residual probation."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 33.16.010(a) is amended to read:
10 (a) A prisoner who is serving a term or terms of two years or
11 more [AT LEAST 181 DAYS] is eligible for [EITHER DISCRETIONARY OR]
12 mandatory parole.
13 * Sec. 2. AS 33.16.010 (c) is amended to read:
14 (c) A prisoner who is not eligible for discretionary parole, or
15 who is not released on discretionary parole, shall be released on
16 mandatory parole for the term of good time deductions credited under
17 AS 33.20, if the term or terms of imprisonment are two years or more
18 [EXCEED 180 DAYS].
19 * Sec. 3. AS 33.16.100(d) is amended to read:
20 (d) A prisoner who is sentenced for a term under AS 12.55.-
21 125(a), [OR] (b), (c), or (i) may not be released on discretionary
22 parole until the prisoner has served the mandatory minimum term under
23 AS 12.55.125(a), [OR] (b), (c), or (i), at least one-third of the
24 period of confinement imposed, or any minimum term set under AS 12.-
25 55.115 at sentencing, whichever is greater.
26 * Sec. 4. AS 33.16.210 is amended to read:
27 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-
28 tionally discharge a parolee from the jurisdiction and custody of the
29 board after the parolee has completed two years of parole [, IF THE

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

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

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

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

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

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

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

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

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

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

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

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

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

1 IN THE HOUSE BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 140 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 IN THE HOUSE

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

2

HOUSE BILL NO. 140

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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

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

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

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

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

19 (d) A prisoner who is sentenced for a term under AS 12.55.-
20 125(a), [OR] (b), or (c) may not be released on discretionary parole
21 until the prisoner has served the mandatory minimum term under AS 12.-
22 55.125(a), [OR] (b), or (c), at least one-third of the period of
23 confinement imposed, or any minimum term set under AS 12.55.115 at
24 sentencing, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF MANDATORY PAROLE BILL

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

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

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

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

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

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

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

Bill Version: CSHB 140 (JUD)

Publish Date: 03-26-87

REQUEST: _____

Revision Date: _____

Title: "An act relating to Parole."

Agency Affected: Department of Corrections

BRU: _____

Sponsor: Rep. Swackhammer, Gruenberg

Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached pages.

Susan Knighton

Prepared by: Susan Knighton, Research Analyst IV

Phone: 465-3376

Division: Administrative Services

Date: 3/6/87

Approved by Commissioner: *William W. Lindsey for*
Susan Humphrey-Barnett

Date: 3/6/87

Agency: Department of Corrections

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140 (JUD)

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

Sections 1 and 2:

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

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

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

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

Section 3:

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

Sections 4 and 5:

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 140 (JUD)

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

Sections 6 - 8:

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

Section 9:

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

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 140 (JUD)

Publish Date: 03-26-87

Agency Affected: Public Safety

BRU: Alaska State Troopers

REQUEST

Revision Date: _____

Title: "An Act relating to parole."

Sponsor: Rep. Swackhammer

Requestor: House HESS

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *F.C.A.*
Division: Alaska State Troopers

Phone: 269-5691

Date: 2/23/87

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

Date: 2/23/87

Distribution (by preparer):

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

JAR
2/25/87

BILL NO: CSHB 140 (JUD)

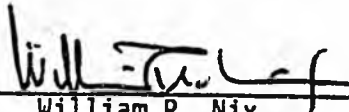
DATE: March 3, 1987

TITLE: "An Act relating to parole."

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

POSTION NUMBER / DEPARTMENT OF PUBLIC SAFETY

This bill does not impact the Department of Public Safety.



William R. Nix
Acting Commissioner

POSITION PAPER
DEPARTMENT OF CORRECTIONS

BILL: H.B. 140

DATE: March 9, 1987

TITLE: "An Act relating to Parole"

CONTACT: Samuel H. Trivette
Executive Director
Parole Board

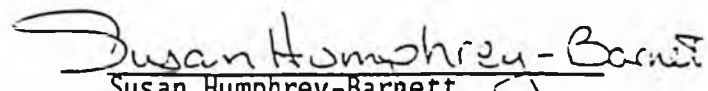
This Administration supports House Bill #140. The primary purpose of the bill is to adjust the parole statutes to eliminate duplication and ensure the supervision of more serious prisoners upon release from jail.

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

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

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

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


Susan Humphrey-Barnett
Commissioner

POSITION PAPER

HB 140

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

Fiscal impact: X None See attached fiscal note _____
Program impact: X None See analysis below _____
Constitutional impact: X None See analysis below _____
Other: Legislative request See analysis below X

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

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

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

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

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

Dana Fabe
Dana Fabe, Director
Public Defender Agency

3/13/87
Date

Brant McGee
Brant McGee, Director
Office of Public Advocacy

3/13/87
Date

Garrey Peska
Commissioner Garrey Peska
Department of Administration

3/18/87
Date

SELECT - QUERY
00001 ALL SECTION EQ 33.16.010

AS33.16.010 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.010
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.

CITATION SEC. 33.16.010.

CATCH LINE

PAROLE.

TEXT

(A) A PRISONER WHO IS SERVING A TERM OR TERMS OF AT LEAST 181 DAYS IS ELIGIBLE FOR EITHER DISCRETIONARY OR MANDATORY PAROLE.

(B) A PRISONER WHO IS ELIGIBLE UNDER AS 33.16.090 MAY BE GRANTED DISCRETIONARY PAROLE BY THE BOARD OF PAROLE.

(C) A PRISONER WHO IS NOT ELIGIBLE FOR DISCRETIONARY PAROLE, OR WHO IS NOT RELEASED ON DISCRETIONARY PAROLE, SHALL BE RELEASED ON MANDATORY PAROLE FOR THE TERM OF GOOD TIME DEDUCTIONS CREDITED UNDER AS 33.20, IF THE TERM OR TERMS OF IMPRISONMENT EXCEED 180 DAYS.

(D) A PRISONER RELEASED ON DISCRETIONARY OR MANDATORY PAROLE IS SUBJECT TO THE CONDITIONS OF PAROLE IMPOSED UNDER AS 33.16.150. PAROLE MAY BE REVOKED UNDER AS 33.16.220.

HISTORY (SEC. 2 CH 88 SLA 1985)

ANNOTATIONS

LEGISLATIVE HISTORY REPORTS. - FOR HOUSE LETTER OF INTENT RELATED TO THIS SECTION, SEE 1985 HOUSE JOURNAL, P. 821.

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

SELECT - QUERY
00009 ALL SECTION EQ 33.16.100

AS33.16.100 DOCUMENT# 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.100
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.
CITATION SEC. 33.16.100.
CATCH LINE

TEXT GRANTING OF DISCRETIONARY PAROLE.
(A) THE BOARD MAY AUTHORIZE THE RELEASE OF A PRISONER ON DISCRETIONARY PAROLE IF IT DETERMINES A REASONABLE PROBABILITY EXISTS THAT
(1) THE PRISONER WILL LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING ANY LAWS OR CONDITIONS IMPOSED BY THE BOARD;
(2) THE PRISONER'S REHABILITATION AND REINTEGRATION INTO SOCIETY WILL BE FURTHERED BY RELEASE ON PAROLE;
(3) THE PRISONER WILL NOT POSE A THREAT OF HARM TO THE PUBLIC IF RELEASED ON PAROLE; AND
(4) RELEASE OF THE PRISONER ON PAROLE WOULD NOT DIMINISH THE SERIOUSNESS OF THE CRIME.
(B) IF THE BOARD FINDS A CHANGE IN CIRCUMSTANCES IN A PRISONER'S PAROLE RELEASE PLAN SUBMITTED UNDER AS 33.16.130(A), OR DISCOVERS NEW INFORMATION CONCERNING A PRISONER WHO HAS BEEN GRANTED A PAROLE RELEASE DATE, THE BOARD MAY RESCIND OR REVISE THE PREVIOUSLY GRANTED PAROLE RELEASE DATE. IN RECONSIDERING THE RELEASE DATE, THE PROCEDURES SET OUT IN AS 33.16.130(B) AND (C) SHALL BE FOLLOWED.
(C) EXCEPT AS PROVIDED IN (D) OF THIS SECTION, A PRISONER MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED AT LEAST ONE-FOURTH OF THE PERIOD OF CONFINEMENT IMPOSED, ONE-FOURTH OF AN ENHANCED PERIOD OF CONFINEMENT IMPOSED UNDER AS 12.55.155(A), OR ANY MINIMUM TERM SET UNDER AS 12.55.115 AT SENTENCING, WHICHEVER IS GREATER.
(D) A PRISONER WHO IS SENTENCED FOR A TERM UNDER AS 12.55.125(A) OR (B) MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED THE MANDATORY MINIMUM TERM UNDER AS 12.55.125(A) OR (B), AT LEAST ONE-THIRD OF THE PERIOD OF CONFINEMENT IMPOSED, OR ANY MINIMUM TERM SET UNDER AS 12.55.115 AT SENTENCING, WHICHEVER IS GREATER.
HISTORY (SEC. 2 CH 88 SLA 1985)
DECISIONS NOTES TO DECISIONS THE TRIAL COURT IS NOT REQUIRED TO ADVISE OF PAROLE MINIMUMS, OR OF ITS AUTHORITY TO FIX PAROLE ELIGIBILITY, UNDER THE TERMS OF CR. R. 11; BUT IT IS PREFERABLE FOR THE COURT TO INFORM THE DEFENDANT. MORGAN V. STATE, SUP. CT. OP. NO. 1663 (FILE NO. 2894), 582 P.2D 1017 (1978), DECIDED UNDER FORMER AS 33.15.080. AN INCREASE IN THE MINIMUM PERIOD OF INCARCERATION REQUIRED BEFORE BECOMING ELIGIBLE FOR PAROLE IS AN INCREASE IN THE SENTENCE. NELSON V. STATE, SUP. CT. OP. NO. 2260 (FILE NO. 4098), 617 P.2D 502 (1981), DECIDED UNDER FORMER AS 33.15.080.

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

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

SELECT - QUERY
00001 ALL SECTION EQ 33.16.210

AS33.16.210 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.210
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.

CITATION SEC. 33.16.210.

CATCH LINE

DISCHARGE OF PAROLEE.

TEXT THE BOARD MAY UNCONDITIONALLY DISCHARGE A PAROLEE FROM THE JURISDICTION AND CUSTODY OF THE BOARD AFTER THE PAROLEE HAS COMPLETED TWO YEARS OF PAROLE, IF THE SENTENCE OF THE PAROLEE DOES NOT INCLUDE A RESIDUAL PERIOD OF PROBATION. A PAROLEE WITH A RESIDUAL PERIOD OF PROBATION MAY, AFTER TWO YEARS OF PAROLE, BE DISCHARGED BY THE BOARD TO IMMEDIATELY BEGIN SERVING THE RESIDUAL PERIOD OF PROBATION.

HISTORY (SEC. 2 CH 88 SLA 1985)

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

SELECT - QUERY
00011 ALL SECTION EQ 33.16.900

AS33.16.900 DOCUMENT= 1 OF 1

CHAPTER = 33.16
SECTION = 33.16.900
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 16.
PAROLE ADMINISTRATION.
CITATION SEC. 33.16.900.
CATCH LINE

TEXT DEFINITIONS.
IN THIS CHAPTER

- (1) "BOARD" MEANS THE BOARD OF PAROLE;
- (2) "COMMISSIONER" MEANS THE COMMISSIONER OF CORRECTIONS;
- (3) "CONTROLLED SUBSTANCE" MEANS A DRUG, SUBSTANCE, OR IMMEDIATE PRECURSOR INCLUDED IN THE SCHEDULES SET OUT IN AS 11.71.140 - 11.71.190;
- (4) "CRIME AGAINST A PERSON" HAS THE MEANING GIVEN IN AS 33.30.900;
- (5) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS;
- (6) "DISCRETIONARY PAROLE" MEANS THE RELEASE OF A PRISONER BY THE BOARD BEFORE THE EXPIRATION OF A TERM, SUBJECT TO CONDITIONS IMPOSED BY THE BOARD AND SUBJECT TO ITS CUSTODY AND JURISDICTION;
- (7) "MANDATORY PAROLE" MEANS THE RELEASE OF A PRISONER WHO WAS SENTENCED TO ONE OR MORE TERMS OF IMPRISONMENT EXCEEDING 180 DAYS, FOR THE PERIOD OF GOOD TIME CREDITED UNDER AS 33.20, SUBJECT TO CONDITIONS IMPOSED BY THE BOARD AND SUBJECT TO ITS CUSTODY AND JURISDICTION;
- (8) "PAROLEE" MEANS A PRISONER, SENTENCE TO ONE OR MORE TERMS OF IMPRISONMENT EXCEEDING 180 DAYS, RELEASED BY THE BOARD OR BY OPERATION OF LAW BEFORE THE EXPIRATION OF THE TERM, SUBJECT TO THE CUSTODY AND JURISDICTION OF THE BOARD;
- (9) "PRISONER" MEANS AN OFFENDER CONFINED FOR A VIOLATION OF STATE LAW, BUT DOES NOT INCLUDE A PERSON CONFINED UNDER AS 47;
- (10) "VICTIM" HAS THE MEANING GIVEN IN AS 12.55.185.

HISTORY (SEC. 2 CH 88 SLA 1985)
ANNOTATIONS

REVISOR'S NOTES FORMERLY AS 33.16.260. RENUMBERED IN 1986.

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

SELECT - QUERY
00012 ALL SECTION EQ 33.20.040

AS33.20.040 DOCUMENT= 1 OF 1

CHAPTER = 33.20
SECTION = 33.20.040
TITLE = 33
HEADINGS TITLE 33.
PROBATION, PRISONS, AND PRISONERS.
CHAPTER 20.
REMISSION OF SENTENCES AND EXECUTIVE PARDONS AND CLEMENCY.
ARTICLE 1.
REMISSION OF SENTENCES.
CITATION SEC. 33.20.040.
CATCH LINE

RELEASED PRISONER.
TEXT (A) A PRISONER RELEASED UNDER AS 33.20.030 SHALL BE RELEASED ON MANDATORY PAROLE TO THE CUSTODY AND JURISDICTION OF THE PAROLE BOARD UNDER AS 33.16, UNTIL THE EXPIRATION OF THE MAXIMUM TERM TO WHICH THE PRISONER WAS SENTENCED, IF THE TERM OR TERMS OF IMPRISONMENT EXCEEDED 180 DAYS. HOWEVER, A PRISONER RELEASED ON MANDATORY PAROLE MAY BE DISCHARGED UNDER AS 33.16.210 BEFORE THE EXPIRATION OF THE TERM. A PRISONER WHO WAS SENTENCED TO AN IMPRISONMENT OF 180 DAYS OR LESS SHALL BE UNCONDITIONALLY DISCHARGED, EXCEPT AS PROVIDED IN (C) OF THIS SECTION.

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

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

HISTORY (SEC. 4 CH 107 SLA 1960; AM SECS. 3, 4 CH 88 SLA 1985)
AMENDMENT NOTES

EFFECT OF AMENDMENTS THE 1985 AMENDMENT REWROTE SUBSECTION (A) AND ADDED SUBSECTION (C).

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

MEMORANDUM

State of Alaska

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


DATE: March 9, 1987

FILE NO.:

THRU:

TELEPHONE NO.: 907-465-3384

SUBJECT: Mandatory Parole

FROM: Samuel H. Trivette
Executive Director
Parole Board 

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

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

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

ALASKA PAROLE BOARD
MANDATORY PAROLE INFORMATION

1985 - 1986

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

HOUSE JOURNAL SUPPLEMENT

April 4, 1985

No. 42

Alaska State Legislature



House of Representatives
House Judiciary Committee
CSHB 141(Jud)

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

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

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

~~H.H. Miller, Chairman~~
House Judiciary Committee

P. 4

April 4, 1985

HOUSE JOURNAL
SUPPLEMENT

No. 42

HB
141

Section 2

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

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

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

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

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

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

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

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HOUSE JOURNAL SUPPLEMENT

April 4, 1985

No. 42

Alaska State Legislature



House of Representatives
House Judiciary Committee
CSHB 141(Jud)

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

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

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

~~H.H. Miller, Chairman~~
House Judiciary Committee

P. 4

Sectional Analysis and Commentary - CSHB 141 (Jud)

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

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

Section 1

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

April 4, 1985

HOUSE JOURNAL
SUPPLEMENT

No. 42

HB
141

Section 2

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

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

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

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

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

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

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

judicially imposed minimum sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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