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HB 983 (FILE NO. 3)

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HB

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#3

(parole board)

Interim file

KILA, Inc.

Fairbanks Drug Treatment
Center
(907) 458-5715

Fairbanks Drug Education
Center
(907) 452-1841

Locally Controlled
Integrated and Coordinated
Human Services
3098 Airport Way
Fairbanks, Alaska 99701
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December 5, 1979

Samuel H. Trivette
Executive Director
Alaska Board of Parole
Pouch H-01E
Juneau, Alaska 99811

Dear Sam,

First and foremost, I want to apologize for the fact that you apparently did not receive the list of individuals who received carbon copies of the letter we sent to your office regarding DONALD HEFLIN. There was no attempt to "blind carbon" anyone without your knowledge; the list was apparently left out of your copy. Please accept my apologies.

With regard to your letter of 14 November 1979: It is evident that we have a difference of opinion on this case! Our primary concern is that Donny not be left in the Fairbanks Correctional Center for any great length of time; it simply makes our job that much more difficult. Furthermore, the degree of mutual misunderstanding is overwhelming and hopefully this letter will clarify.

The initial letter was not written with the intention of putting "...the members of the Board in a poor light." The integrity of the individual Board members was not questioned; we were only registering serious objections to a specific decision made by the Board as a whole. While we have not always agreed with Board decisions in the past, we have never before registered a complaint until this relatively unusual case became an issue. It did not occur to us--and certainly was not our intention--to perceive our written complaint as something personally insulting either to yourself or the Board members.

You appear to be questioning our professionalism and our objectivity--particularly in the area of confidentiality. Perhaps the statement in our earlier letter was poorly worded, but we can only release almost all patient information if a signed consent is on file. It is not correct to state that we cannot release negative information; we simply cannot release information without a signed consent. It is not a matter of interpretation as the enclosed copy of the Federal Regulations clearly

indicates. While it may be true that other programs have a different attitude about the regulations, it is also true (according to the Drug Enforcement Administration) that at least one Alaskan program may be prosecuted for confidentiality violations in a matter involving a criminal justice client.

There are situations when this extraordinary right to confidentiality may actually work against a client, and we have discussed this with Mr. Allen and his colleagues on many occasions. While we encourage clients to sign releases and open doors for communication, we cannot and will not force them to do so. Much of the basis for your questioning our objectivity may stem from the fact that you are rarely--if ever--informed when the FDTC staff finds a client inappropriate for treatment. This happens more frequently than you may realize. (We are rarely involved in cases where repeated violence is documented or where the individual is unable to perform significant sorts of commitment activities.) Needless to say, under such circumstances, we are not given permission to testify about a client's failure to perform; we are simply absent from any hearing.

Again, based on misunderstandings regarding confidentiality, Board comment and your letter indicate that the FDTC was unaware of Mr. Heflin's situation until after contact with Mr. Allen. That is simply not correct. The FDTC counselor was aware of the difficulty from the beginning, but was not at liberty to discuss it with anyone except Mr. Heflin. We thought we made this clear at the hearing.

Mr. Heflin was in contact with his counselor regularly, requesting additional support and service and guidance. It is true that Mr. Heflin did not tell his Parole Officer the specifics until some time later--and this fact was never disputed. Such a situation is one that has been discussed with Mr. Allen frequently; he is in a somewhat different role than most counselors, if for no other reason than that he has the power to arrest persons on probation or parole. Don has acknowledged the problems this creates in the area of trust development, and we are still trying to develop procedures that will allow open communication. But as he and the FDTC staff know only too well, most criminal justice clients have a long-standing and deeply ingrained suspicion of anyone in enforcement. We are not defending this attitude, but merely acknowledging it as one of the realities we must deal with almost every day.

We are well aware of the fact that Mr. Heflin's original offense was armed robbery, and that it is his only felony conviction. But we are also well aware of the fact that Mr. Heflin does not have a long history of violent crime, a fact that we feel offers additional support to our position. The FDTC does understand and appreciate the responsibility the Board has to protect this community; we feel a responsibility in this area

also. If we had reason to believe that Mr. Heflin presented a danger to the Fairbanks community, we would not have appeared for him at the Board meeting--nor would we be objecting to his current incarceration.


You note that Mr. Heflin was comfortable with the frequent number of urine specimens he was providing following the preliminary hearing. We are well aware of that fact, and it is one of the reasons why they were being taken. Every person in treatment has an individual "treatment plan" and each is somewhat different than any other. Mr. Heflin's urinalysis schedule was initially a sporadic one because the staff and Mr. Heflin agreed that his relationship with the FDTC was such that should any problems occur, he would notify us before such problems became evident in laboratory reports. This proved to be correct!

Mr. Heflin's treatment plan has been tightened considerably since his difficulties and was, in fact, modified long before the October hearing.

The purpose of the FDTC is therapeutic intervention, not supervision. Client participation is the essential ingredient in successful treatment programs and thus plans must reflect the client's goals and abilities. These plans change as the client and his/her situation change--not as a result of a major program policy changes (at least, in most all cases).

We hope this letter, as well as the preceding correspondence, helps all of us to better understand the differing opinions. We do not believe that differences in opinion should result in the termination of professional relationships. Rather, we hope that meaningful dialogues will help us resolve the difficulties.

Sincerely,


Frank J. Gold, EdD
Programs Director

cc: Donald Heflin
Governor Jay Hammond
Commissioner Helen Beirne
Charles Campbell, DOC
Re Charles Parr
Panel Board Members

treatment is actually carried on after the enactment of the applicable statute, then all the records should be covered irrespective of when the treatment was begun, because such records clearly are being maintained after the enactment of the legislation.

Section 2.12(d) has been included to make explicit one of the legislative purposes of the authorizing legislation, and is in terms descriptive of the records which are to be confidential. The responsibility of the recordkeeper on whom a duty is thus imposed. The result is that, for example, where a State agency maintains an individual client record which contains identifying information about a client (i.e., patient) receiving treatment or rehabilitation services for drug abuse, such a record is clearly covered and maintained in connection with the above prevention function, and is subject to the provisions of this part. The fact that the record may also be required by statute or regulations pertaining to eligibility for Federal Financial Participation would in no way exempt the record from the prohibitions and requirements of this part. Thus, it would be unlawful and a violation of these regulations for such a record to be made available to a law enforcement agency or to anyone without the prior written consent of the client or publicly for other welfare purposes or for any other administrative or investigative purposes which could involve or lead to an identification of the client as a third party.

2.13 General rules regarding confidentiality.—Rules.

(a) In general. Records to which this part applies shall be confidential and shall be disclosed only as authorized by this part, and may not otherwise be disclosed in any civil, criminal, administrative or punitive proceeding conducted by any Federal, State, or local authority, whether such proceeding is commenced before or after the effective date of this part.

(b) Unconditional compliance required. The prohibition upon unauthorized disclosure applies irrespective of whether the person seeking disclosure actually has or information sought, has or has not obtained a subpoena, or whether any other justification or basis for disclosure is not expressly authorized under this part.

(c) Information covered by prohibition. The prohibition on unauthorized disclosure applies to all information about the patient, including their attendance or absence, whereabouts, or status, whether or not recorded, in the course of program personnel, except as provided in paragraph (d) of this section.

(d) Information on program premises or personnel. Where a patient or threatens to commit a crime on the premises of the program, or in the presence of the program personnel, the risk involved or pre-

venting such crime to a law enforcement agency, but such report shall not identify the suspect as a patient. In any such situation, immediate consideration should be given to request in order under Subpart E of this part to permit the disclosure of such limited information about the patient as may be necessary under the circumstances.

(e) Implicit and explicit disclosures prohibited. The disclosure that a person was or is attending or had been attending to a particular department, clinic, or other institution is not or has not been attending a program, whether over a period of time or on a particular occasion, is fully as much subject to the prohibitions and conditions of this part as a disclosure that such a person is or has been attending such a program. Any improper or unauthorized request for any disclosure of records or information subject to this part must be met by a non-committal response.

(f) In-patients and residents. The presence of any in-patient in a medical facility or resident in a residential facility for the treatment of drug or alcohol abuse may be acknowledged to callers and visitors with his written consent. Without such consent, the presence of any in-patient or resident in a facility for the treatment of a variety of afflictions may be acknowledged to callers in such a way as not to indicate that the patient is being treated for drug or alcohol abuse.

2.13-1 General rules regarding confidentiality.—Basis and purpose.

(a) Section 2.13(a) contains the general principle of the statutory provisions, and is unchanged from 41 CFR 101.23 of the previous regulations.

(b) Sections 2.13(b) and 2.13(c) have been added on the basis of written comments on the draft regulations published August 22, 1954, in which there was a documented report that counsel for a program had advised the program that it could furnish information to the FBI about patients without their written consent and without completing a full judicial proceeding in accordance with Subpart E of this part. Sections 2.13(b) and 2.13(c) should clarify the original intent of the statutes and regulations to the extent of precluding such errors in the future.

(c) In the situation described in § 2.13(d), the desirability of the general prophylactic rule prohibiting disclosures by program personnel about patients regardless of whether such disclosures are from a written record must yield to the practical necessity to permit protection from and prompt reporting of a criminal act. In the preamble to the final set of regulations issued under 21 CFR 1.175, it was emphasized that the operation of that section in no way creates a presumption of criminality. (47 FR 21466, November 17, 1982). Section 2.13(d) is consistent with that concept, and is added to identify the circumstances.

(d) Section 2.13(e) is unchanged from 41 CFR 101.23, except for the word "part". The change that was made was to use the word "part" to refer to the entire part.

been deleted on the basis of comments that correctly pointed out that such a citation, if given by an institution or program maintaining some records covered by this part and some not, would serve to identify the records inquired about as pertaining to treatment covered by this part.

Section 2.13(f) merely clarifies the effect of the preceding paragraphs in the special situations to which paragraph (f) relates.

2.14 Penalty for violations.—Rules.

(a) Penalty provided by law. Any person who violates any provision of the authorizing legislation or any provision of this part shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

(b) Application to subsequent offenses. Where a defendant has committed one offense under either section authorizing this part or any provision of this part authorized by that section, any offense thereafter committed under the same section or any provision of this part authorized under that section shall be treated as a subsequent offense.

2.14-1 Penalty for violations.—Basis and purpose.

(a) Section 2.14 states the criminal penalties provided for in subsection (f) of the sections authorizing this part. It is included in this part for convenience and completeness. Some of the comments received on this section when originally proposed suggested that criminal penalties for violation should include imprisonment, but such a change would have to be made by legislation rather than rulemaking.

(b) Section 2.14(b) clarifies the intention that the "subsequent offense" need not be identical to the first offense, as long as it is committed with respect to the same statutory section. For example, a person whose first offense had consisted of improperly releasing the name of a patient in an alcoholic treatment program would be punishable for a "subsequent offense" if he later gives out information from the diagnostic work-up of an alcoholic patient.

2.15 Minor patients.—Rules.

(a) Definition of minor. The term "minor" means a person who has not attained the age of 18 years or, in a State where a different age is expressly provided by State law as the age at which a person ceases to be a minor, the age prescribed by the law of such State.

(b) Consent to disclosure in general. Except as provided in paragraph (c), where consent is required for any disclosure under this part, such consent in the case of a minor must be given by both the minor and his parent, guardian, or other person authorized under State law to act in his behalf, but any disclosure made after the patient has ceased to be a minor may be consented to only by the patient.

(c) State when State law authorizes treatment without parental consent. Where a patient, acting alone, has the

(2) To any other program which is not more than 200 miles distant and which is not a member of any central registry of which the inquiring program is a member.

(3) *Procedure in case of apparent consent.* When an individual pursuant to paragraph (2) is made of another treatment program and the response is affirmative, the two programs may engage in such further communication as may be necessary to establish whether an error has been made, and if none, the programs should proceed in accordance with sound clinical practice and any applicable regulations pertaining to the type of treatment involved.

(4) *Registry procedure in case of apparent consent enrollment.* When an inquiry pursuant to paragraph (1) is made of a permissible central registry and its response is affirmative, it may advise the inquiring program of the name, address, and telephone number of the program, or it may advise the other program of the identity of the patient and the name, address, and telephone number of the inquiring program, or it may do both, and in any case the two programs may then communicate as provided in paragraph (1) above.

(5) *Advice to patient.* When the policies and procedures of any program require any disclosures pursuant to this section before any patient is accepted into or continued in treatment, the program shall inform the patient in writing, in accordance with § 2.31, of the nature and address of any program of which disclosures will be made. Notwithstanding the requirement of § 2.31, the patient's consent shall be deemed to have been given if the program discloses to any other such program after it has been established within 200 miles of the program serving such program, and shall be deemed to have been given if the patient remains enrolled in the program to which disclosure is given.

(6) *Prevention of certain multiple disclosures.—Basis and purpose.*

Section 2.34 is based upon § 1401.23 of the previous regulations. It was omitted from the August 22, 1974 draft, but comment on the omission made it clear that the various areas of the country, central registries, and a functional component of the health care system, and that regulations to police their operations are needed.

(7) *Legal counsel for patient.—Rules.*

When a bona fide attorney-client relationship exists between an attorney and a patient, the patient's release may be given by the attorney upon the written consent of the patient endorsed by the attorney. Information so disclosed may not be further disclosed by the attorney.

(8) *Legal counsel for patient.—Basis and purpose.*

Section 2.35 simplifies and broadens the scope of the policy contained in

§ 1401.25 of the previous regulations. Its purpose is to assure the availability to the attorney, with his client's consent, of information needed as a basis for advice and counsel. The purpose of the prohibition on further disclosure by the attorney is to guard against the possibility that the attorney might be forced to serve as a conduit for otherwise prohibited disclosures to third parties. Ordinarily the attorney-client privilege would suffice, but that privilege is subject to waiver by the client, whereas this prohibition is not. Where there is a need for disclosure to a third party of any given information about any patient, this prohibition in no way affects the availability of other sections of this part to authorize such disclosure by the program.

(9) *Patient's family and others.—Rule.*

When consent is given in accordance with § 2.31, information evaluating his current or past status in a treatment program may be furnished to any person with whom the patient has a personal relationship unless, in the judgment of the person responsible for the patient's treatment, the disclosure of such information would be harmful to the patient.

(10) *Patient's family and others.—Basis and purpose.*

Section 2.36, which was proposed by the Department in § 1401.24 of the previous regulations, was omitted to reflect the expanded authority for consent of the patient under the proposed regulations.

(11) *Third-party payers and funding sources.—Rules.*

(1) *Transition of information.* Disclosure of treatment information to third-party payers or funding sources may be made only with the written consent of the patient given in accordance with § 2.31 and any such disclosure must be limited to that information which is reasonably necessary for the discharge of the legal or contractual obligations of the third-party payer or funding source.

(2) *Prohibition on disclosure.* Where a funding source or third-party payer maintains records of the identity of recipients of treatment or rehabilitation services for alcohol or drug abuse such records are, under the authorizing legislation, maintained in connection with the performance of an alcohol or drug abuse prevention function and are subject to the restrictions upon disclosure set forth in this part.

(3) *Third-party payers and funding sources.—Basis and purpose.*

Section 2.37 is based upon the general authority to prescribe regulations to carry out the purposes of the authorizing legislation. The great diversity of contractual arrangements and legal requirements under which the obligations of third-party payers and funding sources are carried on preclude the prescription of detailed provisions regarding insurance contracts, these regulations, even if that were otherwise desirable. The general principle set forth in § 2.37, however, is intended to give the program the maximum

and where coverage exists, provide a standard which will minimize the likelihood of violations. See also § 2.12-1(p).

(12) *Employers and employment agencies.—Rules.*

(a) *Disclosure permitted.* Where consent is given in accordance with § 2.31, a program may make disclosures in accordance with this section.

(b) *Eligible recipients.* A program may make disclosures under this section to public or private employment agencies, employment services, or employers.

(c) *Scope of disclosure.* Ordinarily, disclosures pursuant to this section should be limited to a verification of the patient's status in treatment or a general evaluation of progress in treatment. More specific information may be furnished where there is a bona fide need for such information to evaluate hazards which the employment may pose to the patient or others, or where such information is otherwise directly relevant to the employment situation.

(d) *Criteria for approval.* A disclosure under this section may be made if, in the judgment of the program director or his authorized representative appointed as provided in § 2.17(b), the following criteria are met:

(1) The program has reason to believe, on the basis of past experience or other credible information (which may in appropriate cases consist of a written statement by the employer), that such information will be used for the purpose of assisting in the rehabilitation of the patient and not for the purpose of identifying the individual as a patient in order to deny him employment or advancement because of his history of drug or alcohol abuse.

(2) The information sought appears to be reasonably necessary in view of the type of employment involved.

(13) *Employers and employment agencies.—Basis and purpose.*

Section 2.38 is based on the rulemaking power conferred by subsection (b) (1) of the authorizing legislation, and is adapted from § 1401.26 of the previous regulations. Its purpose is to allow disclosures reasonably necessary and appropriate to facilitate the employment of patients and former patients, while protecting patients against unnecessary or excessively broad disclosures. It was urged in a comment received on the August 22, 1974 draft that disclosures to employers be flatly prohibited on the ground that the employer's sole legitimate concern is with on-the-job performance. While we are not unsympathetic to this view, a countervailing consideration is that in the case of an employee or applicant who is known by the employer to have a problem with drugs or alcohol, knowledge by the employer of a genuine effort by the employee to deal with it can make the difference between a job and no job.

(14) *Criminal justice system referrals.—Rules.*

(a) *Consent authorized.* Where participation by an individual in a treatment program is made a condition of such in-

individual's release from confinement, the disposition or status of any criminal proceedings against him or the execution or suspension of any sentence imposed upon him, such individual may consent to unrestricted communication between him and any person to whom he is assigned or to whom he is assigned in fulfillment of such condition and (2) the court granting probation, or other post-arrest or pretrial conditional release (2) to a parole board or other authority having parole, or (3) probation or parole officers responsible for his supervision.

(b) *Duration of consent.* Where consent is given for disclosures described in paragraph (a) of this section, such consent shall expire sixty days after it is given or when there is a substantial change in such person's status, whichever is later. For the purposes of this section, a substantial change occurs in the status of a person who, at the time the consent is given, has been—

(1) Arrested, when such person is actually charged or unconditionally released from arrest;

(2) Formally charged when the person has been dismissed with prejudice or the trial of such person has been terminated;

(3) Granted a trial which has concluded, when such person has been acquitted or discharged;

(4) Executed when the sentence has actually expired.

(c) *Revocation of consent.* An individual whose release from confinement, probation or parole is conditioned upon participation in a treatment program shall revoke a consent given by him in accordance with paragraph (a) of this section if there has been a formal revocation or termination or revocation of release from confinement, probation or parole.

(d) *Restrictions on redisclosure.* Any person who directly or indirectly re-discloses information pursuant to this section may be held liable for the disclosure thereof only in connection with their official duties with respect to the particular individual with respect to whom it was acquired. Such persons may not make such information available to general investigative agencies or other persons who use it in unrelated matters or make it available for dissemination.

(e) *Criminal Justice system referral—basis and purpose.*

The basis of extensive written reports and oral communications regarding the subject matter of § 2.40 is contained in the May 9, 1975 notice published at § 2.40 in that notice, we indicated that the HUD, as a result of the committee imposed a § 2.39 as a protective measure necessary and proper for the purposes of the authorization.

Under the best standpoint, it would be difficult to determine a standard for probation or parole, the Department has taken a lead down in formulating a standard. 48 U.S.C. 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

treatment program to the effect that a patient's status or progress in treatment was unsatisfactory. Thus, if such an evaluation were all that could be communicated by a program about a particular patient's conduct during the period he was in treatment, a condition requiring satisfactory participation in a treatment program would be all intents and purposes become unenforceable. Moreover, if it were held to be enforceable, the operative decision on the revocation issue would then be made by the program, arguably exacerbating rather than alleviating its role-conflict problem. It may thus be the part of wisdom to confess that some degree of role-conflict is inherent in the situation of any program which accepts criminal justice referrals. If so, the issue then becomes that of finding the most constructive way to handle the conflict, rather than a sterile and futile effort to avoid it altogether.

(c) We are persuaded that in many instances a prohibition on free communication between probation officers and data abuse program clients themselves would have profoundly deleterious effects on the rehabilitative process. Many programs are struggling to deal with a high degree of training professional and non-professional staff. They are looking for solutions that they are dealing with a high staff turnover which will never stabilize or reduce, and if they have the information necessary to intervene at an early stage of such an episode, their intervention can often make the difference between success and failure for the client.

(d) There is, however, nothing in these regulations which precludes treatment programs from entering into agreements or arrangements with agencies or institutions of the criminal justice system to regulate or restrict the subject matter or form of communications of information about patients. For example, such an arrangement might provide for free oral communication between counselors and probation officers, while restricting formal written reports by the program to specified types of so-called hard data such as a attendance and urinalysis results. In view of widely differing conditions and attitudes in various parts of the country, substantial variations in such arrangements are not only expectable but desirable.

(e) As to the aspect of this matter which was not adequately considered or dealt with in the May 9 proposal, it is the impact which the rules laid down in § 2.40 have on the parole system. There is a high correlation between the disposition of the parole board and the parole officer's decision which may be made on a case-by-case basis. The current law limits the parole board to those who receive treatment and supervision, as opposed to those who simply receive the parole board's recommendation, leaving a great deal of discretion against restrictions which would tend to be set by the criminal justice system which may involve judges and grand juries.

(f) It can be envisioned that § 2.40 in any way restricts the necessity to obtain written consent from patients, whether

or not referred by the criminal justice system, before disclosures for the purposes here involved can be made by programs. We have been urged to make an exception from the requirement of § 2.40 in the case of paroles and probationers, but such an exception would be wholly unsupported by the authorizing legislation. In fashioning these regulations, it is not our privilege to adorn a tabula rasa according to our own predilections; rather, it is our duty to interpret the statute with fidelity to its spirit, its terms, and its purposes.

§ 2.40 Situations not otherwise provided for—Rules.

(a) *Criteria for approval.* In any situation not otherwise specifically provided for in this subpart, where consent is given in accordance with § 2.31, a program may make a disclosure for the benefit of a patient from the records of that patient if, in the judgment of the program director or his authorized representative approved as provided for in § 2.17, all of the following criteria are met:

(1) There is no suggestion in the written consent or the circumstances surrounding it as known to the program, that the consent was not given freely, voluntarily, and without coercion.

(2) Granting the request for disclosure will not cause substantial harm to the relationship between the patient and the program or to the program's capacity to provide services in general.

(3) Granting the request for disclosure will not be harmful to the patient.

(4) *Circumstances deemed beneficial.* For the purposes of this section, the circumstances under which disclosure may be deemed to be beneficial to a patient include, but are not limited to, those in which the disclosure may assist the patient in connection with any public or private claim, right, privilege, gratuity, benefit or other interest accruing to, or for the benefit of, the patient or the patient's immediate family. Examples of the foregoing include welfare, Medicare, unemployment, workmen's compensation, accident or medical insurance, public or private pension or other retirement benefits, and any claim or defense asserted or which is an issue in any civil, criminal, administrative or other proceeding in which the patient is a party or is affected.

§ 2.40-1 Situations not otherwise provided for—Basis and purpose.

(a) Section 2.40 is based upon § 1401.33 of the previous regulations, amended to reflect the expansion made by the change in the law with respect to the permissible scope of consensual disclosures.

(b) A strong case can be made for the proposition that § 2.40 should, in effect if not expressly, require a program to make any disclosure requested by a patient. The discretion vested in the program, it can be argued, is at best an expression of overprotective paternalism, and at worst, an invitation to programs to cover up material potentially embarrassing to themselves. Bearing in



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

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State Capitol
Juneau, Alaska 99811

March 11, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

In compliance with AS 44.66.010 - 060 and referral by the Speaker of the House on January 15, 1980, the House Judiciary Committee has conducted a review of the State Board of Parole.

By letter of July 31, the Speaker had notified the Committee of the forthcoming referral, thereby permitting advance work to be done during the interim between legislative sessions.

Committee staff conducted the necessary research. Also available to the Committee were the Executive Summary, Alaska Corrections Master Plan, 1979, and A Performance Review of the Alaska State Board of Parole, Division of Legislative Audit, May 9, 1979.

In addition to receiving testimony during interim hearings, the Committee held three hearings in Juneau. Also, two teleconference hearings were held to receive testimony from Anchorage, Fairbanks, Ketchikan, Dillingham, Kenai, Nome and Bethel.

A total of about 35 witnesses testified, including the Director, Division of Corrections; the present Chairman, a former Chairman, and the Executive Director of the Board. One other member of the Board attended a hearing but did not testify.

Art. III, Sec. 21, of the Alaska Constitution requires that "a parole system shall be provided by law". The Committee received an opinion from the Legislative Affairs Agency to the effect that the Constitution does

not mandate a parole board. One option which was considered would have done away with the Parole Board and had the sentencing judge retain jurisdiction over the parolee. Once this option was rejected, the choices narrowed to a parole board in some form.

Testimony indicated that the workload of the present Board is heavy. The Chairman estimated that the average member spends 60 days a year on Board duties. The Committee considered the possibility of a full-time, paid board, but rejected it. (The new criminal code which prohibits parole for those convicted of second and succeeding felonies may result in a reduced workload after a few years.)

Also considered was the possibility of establishing a second board and dividing the work between the two. Prisoner reclassification and transfer could, however, result in both boards being involved with the same parolee or potential parolee. This seems undesirable.

Testimony indicates that Parole Board members may rely too heavily on "gut reactions" in deciding whether or not to grant parole. Although no human being can be perfectly objective, and a completely mechanical system would probably be unacceptable, there is need for a proper balance. The Board has recognized this need and is considering objective criteria which have shown a high correlation with successful parole.

A matter of concern to the Committee was the recidivism rate among parolees. Although only about 4% were reincarcerated because they committed a new felony, about 20% went back to prison for technical violations (violating conditions set by the Board at the time parole was granted). Examples of such conditions are (1) that the prisoner have an assured job as part of his parole plan, which may be impossible in a village situation, and (2) that the parolee not associate with other felons, although these may be in some cases his only friends or close acquaintances. In effect, about a fourth of all parolees are returned to prison, a disturbing statistic in view of the present and expected overcrowding in Alaska's correctional institutions. The Judiciary Committee, therefore, spent a significant amount of time considering the parole conditions now being set.

Findings required by AS 44.66.050(d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding: There is a need to avoid unnecessary incarceration.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding: The Parole Board is intended to provide for mitigation of sentence while simultaneously protecting the general public.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding: There are no similar or conflicting programs.

(4) an assessment of alternative methods of achieving the purposes of the program;

Finding: The program could be handled by the judicial branch but this would remove the element of judgment by one's peers.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

Finding: The program is constitutional and cannot be eliminated. Funding it at a lower level would make it very ineffective.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

Finding: The program is necessary and no other agency performs similar functions.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

Finding: Other information will be contained in legislation to be introduced or in other portions of this report.

The Judiciary Committee finds that:

- (1) The Alaska State Board of Parole is necessary and should be continued.
- (2) Statutory changes are needed to improve the functioning of the Board. The Committee will propose a bill incorporating these changes.
- (3) The chances that parole will be successful, from the standpoints of both society and the parolee, are to some extent dependent on the prisoner's willingness and ability to change while in prison. Educational, alcohol treatment, psychiatric counseling and work programs are generally unavailable or inadequate. The Judiciary Committee recommends approval of additional funds and personnel spaces for the Division of Corrections for programs which can be shown to reduce recidivism.

Charles H. Parr, Chairman

Nels A. Anderson, Jr.

Ramona L. Barnes

Fred E. Brown

Theima Buchholdt

Hugh Malone

Terry Martin

Patrick M. O'Connell

Randy Phillips

file copy - H. Judiciary

PAROLE GUIDELINES FOR ALASKA



ALASKA BOARD OF PAROLE

DECEMBER 1979

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

BOARD OF PAROLE

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

November 30, 1979

Dear Colleague:

Attached is the final draft of the consultant's report prepared to assist us in developing parole guidelines in Alaska. Although this is the consultant's final report, the Board's work in developing and implementing guidelines is far from complete. Several issues developed during the work of the grant which the Board felt needed immediate attention. One of these was the issue of race or ethnic background and how this might relate to the parole process. As a result, several additional tables have been included in the final draft of the consultant's report. We also asked the contractor to pull together information from our files regarding ethnic background and how parolees of each race did on parole. This information was compiled after the report was written and therefore is included on the last page of this letter.

The next phase of the development of parole guidelines is to establish a "time served" axis that gives the ranges of times normally served for a given crime. This information was collected regarding those persons paroled, but a significant number of errors turned up in the coding, and the contractor nor the Board members felt comfortable with attempting to use these figures as the basis for establishing the "time served" matrix. In order to get an adequate picture of the amount of time the Board requires offenders to serve for a given crime, it appears necessary that we look at how much time offenders serve before they are paroled, and how much time those offenders must serve in custody when the Parole Board denies them parole. Only by viewing both of these variables will we have a complete picture of the history of the Board's behavior.

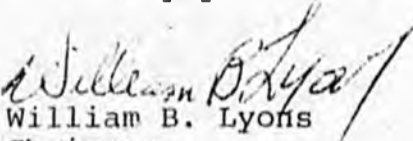
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November 30, 1979

The current grant does not allow us to look at both of these factors and hopefully additional funding will be made available in the near future so that we can continue with the development of our guidelines. Some jurisdictions, including Oregon, have opted to develop a time served matrix without first looking at the history of the paroling authorities decisions. The Alaska Parole Board members have rejected this approach, and wish to review the historical data before adopting the time served matrix. This was also the recommendation of our consultant.

The concept of guidelines has been broadened since its inception to include utilization in many other areas than parole. The Alaska Division of Corrections has been working closely with the Parole Board throughout the Board's guidelines project and hopes to use the guidelines concept for custody classification, program selection, disciplinary hearings, and possibly in other similar areas.

A necessary component to the successful utilization of guidelines in any system is the continuous updating of the "risk table". This is an absolute necessity since experience in other jurisdictions has shown the risk factors that are significant in predicting success or failure today may not be predictive a year or two from now. It is the expectation of the Board that the State of Alaska will provide the necessary resources in the near future to allow the Board to set up and continue the research that would enable us to successfully utilize guidelines here in Alaska. We will keep you and your co-workers advised of our progress in this area.

Sincerely yours,


William B. Lyons
Chairman

Sincerely yours,


Samuel H. Trivette
Executive Director

Attachment: Race & Parole
Performance Table

RACE & PAROLE PERFORMANCE TABLE

RACE	Continued on Parole		Absconder		Technical Violator		Substantive Violator*		Total
	#	%	#	%	#	%	#	%	#
WHITE	302	79%	8	2%	52	14%	19	5%	381
BLACK	70	64%	2	2%	24	22%	14	13%	110
NATIVE	106	70%	2	1%	35	23%	9	6%	152
OTHER	15								15
TOTAL	493	75%	12	2%	111	17%	42	6%	658 100%
WHITE	302	79%	8	2%	52	14%	19	5%	381
ALL OTHERS	191	69%	4	1%	59	21%	23	8%	277

* New Felony Conviction

This report was prepared by Bay Area Research Design Associates under contract with the Alaska Board of Parole. The research was supported by the National Institute of Corrections grant number AI8. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the National Institute of Corrections or the Alaska Board of Parole.

SUMMARY

In its endeavor to search out new ideas and develop research that would improve the parole process in Alaska, the Alaska Board of Parole in 1978 secured a grant from the National Institute of Corrections and contracted with Bay Area Research Design to provide parole guidelines familiarity and "salient factor" research. The assumption has been that current parole guidelines technology can aid in predicting parole risk using a small set of background factors such as age, sex, prior offending, race, marital status, and employment history. The use of guidelines does not entirely eliminate the Board's discretion but provides the Board with structure, control, and numerical values in the exercise of its discretion. There are seven major parole decisions and recommendations that are amenable to help from guidelines.

They are:

Grant Parole	Program/Planning
Deny Parole	Program Review
Continuation	Revocation
Discharge	

Although various parole release decision models exist, many paroling authorities have developed a matrix model that eliminates much of the uncertainty of parole. The matrix model immediately settles the question of the time period to be served using the "salient risk factors." As an example of how guidelines work, this study looks closely at the

Minnesota Parole Guidelines system adopted in May, 1976.

The Minnesota system provides each inmate with an upper and lower release date as the result of research data on the treatment of similar cases. The inmate can then participate in programs as outlined by the Board and be released at the lower release date or do as he chooses and be released at the upper date. This method provides the institution with release dates shortly after commitment to prison for program planning purposes and eliminates some parole game playing. The key is obviously to provide as much equity as possible to offenders convicted of similar crimes with similar backgrounds. The development of guidelines in Oregon proceeded very differently from Minnesota in that it is not based on any empirical data of its own but used the U.S. Parole Commission's matrix model. Oregon also has developed a matrix for parole revocation and for institutional custody/supervision level assignments. As an additional example, Michigan's guidelines are significant because they are based on only three risk factors:

1. Is the crime Rape, Robbery or Homicide.
2. Has the parole applicant been found guilty of major institutional misconduct.
3. Was the parole applicant arrested prior to his 15th birthday.

The data analyzed in this study in Alaska comprised 665 cases paroled by the Alaska Board of Parole from 1971 through

early 1979. The research uncovered 22 statistically significant factors that correspond to the assessment of risk out of a possible 50 factors considered. These 22 significant factors were compared with the empirical base rate of 75% non-failures on parole and 25% failures and were reduced to 19 items grouped on a risk evaluation score sheet. These 19 items now represent the factors the Alaska Board of Parole has chosen to evaluate risk of parole violation. This process will result in a matrix with risk graduated on one side and terms of imprisonment on the other. In order for the Board to complete its matrix it must now assign terms of imprisonment to various levels of crimes that are compatible with the new criminal code which will become effective January 1, 1980.

Bay Area Research has also evaluated the parole denial letters written by the Board between 1975 and early 1979. These findings indicate that "seriousness of the offense" was most often used as a reason for denial with "prior record" second, and "treatment consideration" ranking third. Two or more reasons were provided in 97% of cases and the Board listed as many as eight reasons for not granting parole in some cases.

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BAY AREA
Research Design
ASSOCIATES

ALASKA
AND PAROLE GUIDELINES

M. G. Neithercutt
BARDA

November 1979

Box 3890 San Francisco, California 94119

Introduction

From its initiation in the United States in about 1870¹ until the late 1960's parole went largely unremarked. Its first 100 years were fitful but *Hyser v. Reed*², in 1963, was the first clear notice of what scrutiny was coming shortly.

Paroling authorities were sensitive to their problems, nonetheless; they were not lulled by their relative anonymity. In 1964 a group of representatives from the Association of Paroling Authorities met to discuss their needs for data³ and in 1966 parole became the only corrections segment of the criminal justice system operating a national data system.⁴

The U. S. Parole Commission (then Board) approached Uniform Parole Reports staff in 1969, noting their assessment of the quality work of that system, and asked this staff to put together a cooperative venture, deriving from extant data and expertise, that would enable them to understand more clearly how their decisions were being made and plan rational evolution of their decision processes.

Mindful of the patent sentencing disparities they and their fellow boards faced daily and concerned for the importance of their work, they asked assistance with two basic dilemmas. How does one make optimal:

1. individual case decisions and
2. general policy elections?

They were unable to undertake their own research and felt the need of independent, experienced personnel to operationalize

their concerns. In 1970 the National Institute of Law Enforcement and Criminal Justice provided the funding and the initial parole guidelines research/demonstration program got underway.⁵ Almost from the project's first day it was obvious that this innovative enterprise was the eye of a storm. Those who basically supported parole as an institution feared the consequences of sharing daily operations data and observations with "those researchers" and some who accepted these dangers were critical of the Board and research unit used, the funding source, and of particular facets of the research plan. Though forming an advisory group was simple, finding a way to meld disparate views was something else.

For example, there were acid (and accurate) critiques of the "wasteful" inclusion of "on line" capabilities. The federal board was thought unrepresentative of parole practices nationally; the research group was described as unable/unwilling/unlikely to draw objective conclusions.

By 1973 most could see that the plan had "worked";⁶ the U. S. Board was in a position to regionalize and begin making decisions using the "salient factors" pinpointed.⁷ The detractors were much in evidence yet and several court challenges faced use of the decision tool. There were scathing testimony, articles, and books in evidence.⁸ Paroling authorities in nearly every state were anxious to learn all they could about the subject. In short, the current environment of support versus discontent had become familiar.

One thing was certain; the idea was spreading: the U. S. Board would not be the last to work with guidelines. At this point in time at least 10 boards have actively worked on guidelines and 35 have expressed interest in doing so.⁹ The parole boards in every state in the Union have participated in meetings where their usage was a focal agenda item.¹⁰

The items of concern surrounding these approaches are such that no guidelines user is apt to be in a position to take the "large view" necessary to their exposition. That is, one cannot hope in an operating agency to even master one's own complex tasks, much less move beyond those, in an objective posture, to evaluate a set of complicated activities. Thus, Bay Area Research Design Associates (BARDA) has undertaken this collaboration with the Alaska Board of Parole to enhance guidelines familiarity and utility.

Prediction

The issues surrounding prediction of behavior take us far beyond the reach of parole and the scope of the law. Throughout recorded history mankind has relished the power resident in the capacity to foresee the acts of others.

The criminal law's mandates rest to a considerable extent on this potential. This is particularly true in the less intrusive sentence modalities--and parole is among the least intrusive of these.

As is true of many topics in this inquiry, the prediction literature is almost totally non-specific to corrections though

most of the central work has been developed on parole.

The literature on prediction is so vast that it is better simply to refer the interested reader to summaries of it, as found in Mannheim and Wilkins,¹¹ Neithercutt,¹² and Simon.¹³

The essence of the literature seems to be that one can predict future offending to an efficiency level of accounting for 15 - 20% of the variance in new criminality using a fairly small set of background factors. Those which prove most useful usually are:

- | | |
|-----------------|--------------------|
| prior offending | offense |
| age | marital status |
| sex | employment history |
| | race |

Such elements as institutional adjustment or other "treatment" considerations have not proved very useful in prediction equations, with some scattered (though heartening) exceptions.

Thus, as a stark proposition, the answer to the question "Can parole reasonably expect to excel in behavior (future criminality) prediction?" probably is "No". That, however, is not the real issue. The fundamental issue is whether or not contemporary prediction technology offers potential assistance to parole. The response to that query properly is that extant technology has a great deal to lend us.

Parole's tasks can be defined as requiring prediction for purposes of aiding release decisions and averting violations during supervision periods. The emerging parole guidelines technology promises aid in both these arenas.

"Decision Goals"

If we assume that some discretion in decision making is essential, a central issue is how to use this discretion within existing legal and ethical constraints.¹⁴ The task becomes one of structuring and controlling discretion, not eliminating it. The notion of "equity" implies that similar decisions will be applied to similar situations.

The basic emphasis in the federal guidelines has been placed on selected characteristics of the offense (called "seriousness") and certain attributes of the offender (the "risk" dimension). The risk factor reflects the board's concerns about recidivism.

As we consider this topic further we will see that there are many dimensions on which decisions can be made, there are many ways to describe and use each of these dimensions, and there are several points from which to originate in using each tool.

Perhaps the basic decision guidelines question has to do with goals. Since there are several settings in which parole authorities make decisions, it is helpful to look at a number of these to give us focus.

There are 7 major settings in parole decisions/recommendations that are amenable to help from guidelines. These frameworks are:

grant parole	program planning/setting
deny parole	program review
continuation	revocation
discharge	

Each of these orientations has a somewhat different flavor and so it is worthwhile to look at them individually.

Grant Parole. In the grant mode the essential question is whether to parole the client. This can take some special twists, as where the client is psychotic or demonstrably dangerous. Essentially, though, if the decision is favorable to the inmate we have a grant decision and the other questions are "When?" and "On what conditions?"

Each of these, from the "yes - no" grant/deny choice through date and conditions set, is a decision that can be aided by decision rules. And, of course, guidelines can be viewed as nothing but unusually clearly formulated decision rules or policy statements.

Deny Parole. A second side to the grant option is its opposite, the decision to deny. In its baldest form it means a permanent removal from parole jurisdiction; the client will not be considered again and s/he will release from his sentence by operation of law, taking into account good time, program time, and/or any of those other considerations that are pertinent in the various jurisdictions. The fundamental unknowns here are "Whether?" to deny, and if so, "What to recommend instead?" If the answer to the first question is that parole is not to be granted on this sentence, the second question is the focus.

Continuation. The grant/deny decision may become a continuation decision when it is first faced. Those decisions which are most important--and most troublesome--to authorities usually involve the continuation decision--sometimes, repeatedly. Here you have decided either not to decide or that you probably will

parole, but not now; that you probably will not outright deny, but possibly later. Thus, the grant/deny questions have been tentatively answered pending further input. The two new questions set for yourself, then, are "How long?" and "What else do we need to know?" The continuation decision is in fact a denial decision if no reconsideration date is ever set. Unless the new hearing date is fixed with some notions about what will be pertinent to the choices at that time, the continuation may verge on simple procrastination. Certainly here extensive use of guidelines is possible.

Program Planning/Setting. The next consideration takes us into considerable difference of opinion. Regardless of one's view of the role of parole authorities in programming, it is the rare board that makes no input to this area. In fact, probably there is none in the country that has no impact on program. There are several questions here. They include "Offender needs?", "Institutional/community resources?", and "Milestones or criteria?" After the parole grant they still include these questions, but the "Institutional resources?" query takes a second seat to "Community resources?" as the parole officer attempts reintegration and his other objectives.

Some boards are very active in programming. Where this is the case, the fact that guidelines can assist with such decisions is important to them. Others avoid or ignore these considerations, preferring to assess options at fixed points in time or when violations occur. How relevant the use of guidelines at each of

ese junctures is to your special interests is an exploration that develops differently in each board.

Program Review. The program review function is closely tied to program planning/setting considerations, of course. In a jurisdiction where a highly developed program is hammered out with the parole board as a major participant, this can be a central concern. For example, if a board uses an approach such as Mutual Agreement Programming, where a detailed, written agreement that is much like a contract is controlling, that board can be heavily involved throughout the parole phases of the offender's history. In any situation where a continuation is granted subject to some performance by the client, there is an element of program review. Thus, the questions here are "When to review?", "On what criteria?", and "With what results?"

Revocation. Once the client becomes a parolee the focus of the parole authority changes radically. Since virtually every parole has revocation implications, this is a big piece of the action in each jurisdiction. Here, again, one's philosophy of corrections has much to do with how this function is operationalized. In any case, though, there are some basic salient factors. The questions here are "On what conditions?", "On what showings?", and "With what sanctions?"

That guidelines can be developed to aid in this area is clear from the work of the Pennsylvania Board of Parole. The revocation question includes elements of all prior decisions. It is the point at which we decide whether to recycle the client or

not. If we decide another response loop is necessary then we will replay each decision point already passed through. If not, the possibility looms that it is only a matter of time until we have to elect revocation action anyway, and that, in the interim, there may be a cost to the community we would rather avoid.

Discharge. The corollary to the revocation decision is that related to discharge. In many jurisdictions the parole authority has the statutory duty to consider persons who have responded to supervision without known incident for discharge either at specified times or as otherwise provided. (Occasionally the law puts the burden of initiating this review on the client.) Whatever the statutes say, every board has "de facto" discharge power through its omission of supervision. This can be exercised by allowing another agency to "carry the ball" in cases of duplicate supervision or by just not requiring contact with a client who has been around a long time or is being forgotten for some other reason.

Because these decisions have little of the urgency about them that attends many other problems, they tend to be relegated to a back seat. The questions relevant here, though, are "Whether to discharge?", "When to discharge?", and "Whether to discharge fully?"

7 MAJOR PAROLING AUTHORITY DECISIONS:

GRANT RELEASE
DENY RELEASE
CONTINUATION

PROGRAM PLANNING/SETTING
PROGRAM REVIEW
REVOCATION

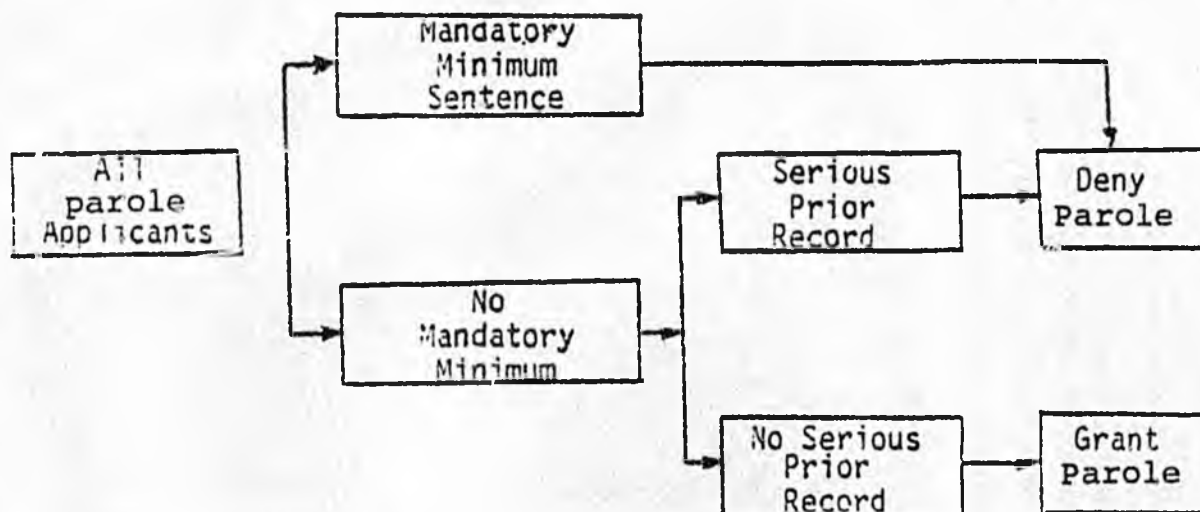
DISCHARGE

There may be some other decision points that interest you particularly. These could include:

Expungement recommendations
Bail grants to parolees awaiting new trials and violation hearings
and some more exotic in flavor.

There are two basic types of decision orientations that are used in the parole setting. We can call these "Sequential Model" and "Matrix Model" decisions. They both rest on the same primary technology but they can serve different purposes. Their essential characteristics are seen in the following drawings:

DECISIONS Sequential Model



DECISIONS
Matrix Model

Risk of New Offenses

		Low			High
Seriousness of Offense	Least	0-6 months			
	↓				
	↓				
	Most				48-60 months

Expected Months to be Served in Prison

The sequential model has direct application in the choice between continuing prison and opting for parole. Thus, one might use a sequential approach to make this "first cut". The model shows a way we do that now; we do not parole if the subject offense carries a mandatory minimum term. The technology begins to be of use to us at the second juncture in the model, for here the issue of what defines a "serious prior record" is settled empirically. That is, those prior records that lead us to expect future offending are (from a community protection stance) called "serious". However, the criteria can be changed to reflect whatever orientation one wishes to serve. Also, the branching can be carried through several steps, rather than just the two pictured.

The matrix model can be used in conjunction with, or apart from, the sequential approach. For example, one can move through the sequential application only so far as necessary to encounter the "deny parole" option and then input the "salient factors" (here, "risk" and "seriousness")--which, too, can be derived

empirically--to determine how long or within what range of months (shown here) the sentence appropriately lies. Both the salient factors and the time periods can take on vastly different characteristics given the setting in which they are employed.

U. S. Parole Commission

Some of the previous examples come from U. S. Parole Commission research. That experience is widely known and extensively documented. Suffice it to provide specific examples of federal decision tables and give more detail about a less well-known development, that in Minnesota.

Minnesota Guidelines¹⁵

Sample Application of the Guidelines

When an inmate is admitted to prison, the caseworker completes the risk of failure worksheet, using the pre-sentence investigation report and existing departmental records, if any. A copy is given to the inmate and if the accuracy of any information is challenged, the caseworker verifies it.

The initial hearing normally is held within 60 days of admission. Ten days before the hearing the MCB (Minnesota Corrections Board) receives copies of the risk of failure worksheet and the institutional case summary. At the initial hearing the MCB determines the guideline time indicated by the *risk of failure* score and severity level of the *offense*. The MCB considers all additional information to determine if significant aggravating or mitigating factors are present.

If such factors are found, the MCB departs from the guidelines

**United States Parole Commission Adult Guidelines
for Decision Making: Customary Total Time (In Months)
Served before Release (Including Jail Time)**

<i>Offender Characteristics - Severity of Offense Behavior (examples)</i>	<i>Offender Characteristics - Parole Prognosis (salient factor score)</i>			
	<i>Very Good (11-9)</i>	<i>Good (8-6)</i>	<i>Fair (5-4)</i>	<i>Poor (3-0)</i>
Low	6-10	8-12	10-14	12-16
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than \$1,000)				
Walkaway				
Low moderate	8-12	12-16	16-20	20-25
Alcohol law violations				
Counterfeit currency (passing/possession less than \$1,000)				
Firearms Act, possession/purchase/sale— single weapon— not altered or machine gun				
Forgery/fraud (less than \$1,000)				
Drugs:				
Marijuana, possession (less than \$500)				
Selective Service Act violations				
Theft from mail				
Moderate	12-16	16-20	20-24	24-30
Bribery of public officials				
Counterfeit currency (passing/possession \$1,000-\$2,000)				
Drugs:				
"Hard Narcotics," possession by addict (less than \$5,000)				
Marijuana, possession (\$500 or over)				
Marijuana, sale (less than \$5,000)				
"Soft Drugs," possession (less than \$5,000)				
"Soft Drugs," sale (less than \$500)				
Embezzlement (less than \$20,000)				
Explosives, possession/transportation				
Firearms Act, possession/purchase/ sale—altered weapon(s), machine gun(s), or multiple weapons				
Income tax evasion				

Adult Guidelines for Decision Making (con't.)

Offense Characteristics - Severity of Offense Behavior (examples)	Offender Characteristics - Parole Prognosis (salient factor score)			
	Very Good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Interstate transportation of stolen/ forged securities (less than \$20,000)				
Mailing threatening communications				
Mann Act (no force—commercial purposes)				
Misprision of felony				
Receiving stolen property with intent to resell (less than \$20,000)				
Smuggling of aliens				
Theft, forgery/fraud (\$1,000-\$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High	16-20	20-26	26-32	32-38
Burglary (bank or post office)				
Counterfeit currency (passing/possession of more than \$20,000)				
Counterfeiting (manufacturing)				
Drugs:				
"Heavy Narcotics," possession by addict (\$500 or more)				
"Heavy Narcotics," sale to support own habit				
Marijuana, sale (\$5,000 or more)				
"Soft Drugs," possession (\$5,000 or more)				
"Soft Drugs," sale (\$500-\$5,000)				
Embezzlement (\$20,000-\$100,000)				
Interstate transportation of stolen/ forged securities (\$20,000 or over)				
Organized vehicle theft				
Receiving stolen property (\$20,000 or over)				
Robbery (no weapon or injury)				
Theft, forgery/fraud (\$20,000-\$100,000)				
Very high	26-36	36-45	45-55	55-65
Armed robbery				
Drugs:				
"Heavy Narcotics," possession by nonaddict				
"Heavy Narcotics," sale for profit (no prior conviction for sale of heavy narcotics)				
"Soft Drugs," sale (more than \$5,000)				

Adult Guidelines for Decision Making (con't.)

Offense Characteristics – Severity of Offense Behavior (examples)	Offender Characteristics – Parole Prognosis (salient factor score)			
	Vary Good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Extortion Mann Act (force) Sexual Act (force) Greatest	(Specific ranges are not given because of the limited number of cases and the extreme variations in severity possible within the category)			
Aggravated felony (e.g., armed robbery, sexual assault) – weapons fired or serious injury Aircraft hijacking Drugs: “Heavy Narcotics,” sale for profit (prior conviction[s] for sale of heavy narcotics) Espionage Kidnapping Willful homicide				

NOTE: If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with that of similar offenses listed.

If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

If an offense behavior involved multiple separate offenses, the severity level may be increased.

If a continuance is to be recommended, allow 30 days (1 month) for release program provision. These guidelines are predicated upon good institutional conduct and program performance.

Source: Travis, L. F. III and V. O'Leary, *Changes in Sentencing and Parole Decision Making: 1976-78*. New York: National Parole Institutes, 1979, pp. 13 - 15.

and assigns a release date deemed appropriate and consistent with past treatment of similar cases. They also give the inmate a written statement specifying why they departed. If reasons for departure are not present, the MCB assigns a release date based on guideline time.

Where the guidelines provide a time range, the "upper limit" release date is a guaranteed parole date so long as the inmate:

- a. is not convicted of a "major" disciplinary code violation and
- b. presents a satisfactory reentry plan.

Major disciplinary violations include those behaviors in the institution which would be felonies or assaultive misdemeanors in the free community. The inmate is told that if such major disciplinary convictions occur the assigned release date is in jeopardy.

Inmates eligible for and wanting a MAP contract are assigned a "lower limit" release date, which is a guaranteed parole date

REASONS FOR SELECTING A TWO YEAR FOLLOW-UP PERIOD:

1. MOST PAROLE FAILURES--HOWEVER DEFINED-- OCCUR WITHIN THE FIRST SIX MONTHS OF RELEASE
2. MOST PAROLEES ARE DISCHARGED AFTER TWO YEARS OF SUCCESSFUL ADJUSTMENT
3. "GENERATING" AND "VALIDATING" GROUPS MUST BE COMPARABLE; LONGER FOLLOW-UPS REDUCE COMPARABILITY
4. TWO YEARS MAY BE A REASONABLE PERIOD OF ACCOUNTABILITY TO THE PUBLIC FOR PAROLE

PAROLE RELEASE DATE MATRIX (effective 11-15-76)

Severity Level	Offenses	Number "Yes" Responses on Worksheet	0	1-2	3-4	5	6
		Predicted Group Failure Rate	11%	28%	35%	49%	63%
		Risk of Failure Level	I.	II.	III.	IV.	V.
I.	UUMV Possession of a Controlled Substance Forgery, Aggravated Forgery, Uttering a Forged Instrument		4-12	5-12	6-12	11-17	18-28
II.	Aggravated Criminal Damage to Property—no weapon Burglary—no weapon—not in dwelling Receiving Stolen Property Simple Arson Theft—\$100 to \$2,500; Theft by Check Terroristic Threats Defeating Security on Personality Damage to Public Property		5-12	6-12	11-17	18-24	25-36
III.	Theft—more than \$2,500 Burglary—weapon—not in dwelling Burglary—no weapon—dwelling Escape from Custody Aggravated Criminal Damage to Property—weapon* Indecent Liberties—no injury* Criminal Sexual Conduct—Fourth Degree* Possession of Controlled Substance with intent to Sell* Dangerous Weapon—Machine Gun		6-12	11-17	18-24	25-32	33-45
IV.	Burglary—weapon—dwelling** Simple Robbery Aggravated Arson Aggravated Assault Indecent Liberties—injury Kidnapping—no injury Criminal Sexual Conduct—Third Degree Attempted Murder—Second Degree; Third Degree Incest Sexual Intercourse with Child—over age 16 Confining own Child; False Imprisonment Burglary with Tool Theft from Person Sale of a Controlled Substance		17	24	32	40	53
V.	Aggravated Robbery Manslaughter—Second Degree Criminal Negligence Attempted Murder—First Degree Conspiracy to Commit Murder—First Degree Sexual Intercourse with Child—age 14 to 16		24	32	45	60	76
VI.	Manslaughter—First Degree Criminal Sexual Conduct—First Degree; Second Degree Kidnapping—injury Sodomy; Sodomy with Child Sexual Intercourse with Child—age 10 and under, and age 11 to 13		42	50	60	75	92
VII.	Murder—Third Degree		72	86	109	135	170
VIII.	Murder—Second Degree		86	108	145	194	240
IX.	Murder—First Degree		204	241	301	385	life

ELIGIBLE FOR MAP
(Except where noted)

NOT ELIGIBLE FOR MAP
(Except where noted)

*Not Eligible for MAP Contract

**Eligible for MAP Contract

upon prior completion of a MAP contract, absence of major misconduct convictions, and a satisfactory reentry plan. The MCB outlines its general expectations for the MAP contract (for example, complete a vocational program, compile a good work record in prison, etc.) and refers the inmate to staff for contract development. Within 2 months a contract ratification hearing is held. Failure to complete a MAP contract cancels the lower limit date assigned. Thus, inmates have nothing to lose by initiating a MAP contract.

The guidelines do not restrict inmate eligibility for medical paroles, special reviews or temporary paroles during their incarceration.

Two months before the release date, the MCB holds a reentry hearing and approves or rejects a general reentry plan, specifying residence, employer, etc. The MCB reviews the specific plan 10 days before the release date and, if consistent with the general reentry plan, grants parole effective on the release date. If not consistent, the MCB gives written reasons and continues the case until the inconsistencies are removed.

Benefits of the Guidelines

Certainty of Release Date

After 2 months the inmate has a certain release date and knows the extent to which that date can be reduced, and what it will take to reduce it. The inmate can decide if the reduction is worth the effort and, if it is not, can reject MAP participation without affecting the upper limit release date. Thus, coerced

programming or treatment have not been eliminated but the degree of coercion--that is, the reduction for MAP completion--has been limited and specified and the inmate is given information on which to assess his or her options and to make a more rational decision.

Increased Effectiveness of Institutional Planning

Certain release dates facilitate inmate and staff planning for the use of institutional programs and resources. If an inmate has an 18 month lower limit release date and a MAP contract calling for completion of a 10 month welding program at another institution, all parties know well in advance that the inmate must be transferred by the eighth month of incarceration.

In addition, the guidelines facilitate reentry planning. Under the previous system, caseworkers prepared a reentry plan--including specific job placements and living arrangements--every time the institutional classification team recommended parole to the MCB. Frequently the MCB would not grant parole, resulting in a waste of caseworker time and an unnecessary "drain" on community resources. This, in turn, reduced staff morale, which affected the quality of reentry plans developed and further increased probability of parole denial. Under the guidelines, a single specific reentry plan is developed.

Reduced "Game Playing"

Inmates know that regardless of their behavior they will not be paroled before the lower limit release date. Thus, there

CATEGORIES OF PREDICTOR VARIABLES
MINNESOTA

JUVENILE RECORD

ADULT CRIMINAL RECORD

CURRENT COMMITTING OFFENSE(S)

INSTITUTIONAL DISCIPLINARY RECORD

SOCIAL HISTORY

- a. marital status
- b. employment stability
- c. family criminality
- d. education
- e. drug and alcohol use

DEMOGRAPHIC VARIABLES

- a. age
- b. race
- c. sex

should be less "game playing" by inmates seeking to "con" the MCB into an early parole.

Equity of Treatment

Inmates with similar risk and severity profiles will be assigned the same period of incarceration. Any differences in actual time served before parole will be the result of institutional conduct and accomplishments--factors over which the inmate has control. For departure cases, the MCB applies similar extensions or reductions when similar reasons for departure exist.

Increased Certainty for other CJS Elements

For the first time criminal justice officials have a clear idea of the effect of their discretionary decisions on the length of incarceration for those imprisoned. Since the impact of plea bargaining on time served will be clear to judges, prosecutors, defenders, and defendant, plea bargaining may be exercised in a more enlightened and responsible manner. (Project staff frequently receive telephone calls from prosecutors, defenders or probation agents asking the effect of various plea bargaining or sentencing options on time served under the guidelines for specific cases before them.)

Guidelines Experience to Date

The guidelines went into operation on May 1, 1976 at the State Reformatory and the following month at the State Prison.

Parole Rates & Institutional Populations

Since January 1, 1974--when the MCB became operational--institutional populations have varied directly with the rate of

"YES" OR "NO"

MINNESOTA RISK ITEMS

1. PRIOR CONVICTION OF SAME OFFENSE?
2. 19 OR YOUNGER AT FIRST FELONY CONVICTION?
3. TOTAL OF 3 OR MORE FELONY CONVICTIONS,
INCLUDING CURRENT SENTENCE(S)?
4. ONE OR MORE PRIOR ADULT COMMITMENTS
TO STATE CORRECTIONAL INSTITUTIONS?
5. 2 OR MORE PRIOR PROBATION/PAROLE FAILURES
AS AN ADULT?
6. CURRENT SENTENCE INCLUDES BURGLARY
CONVICTION(S)?

release on parole, with institutional commitments remaining fairly constant. During 1974, the MCB released 909 parolees and adult institutional populations reached a low average daily population of 1,220 in October. During 1975, 606 inmates were paroled, a reduction of 33%, and average daily adult population reached 1,649 by December. When the guidelines went into effect in May 1976 average daily population was 1,690.

It was expected that the MCB guidelines would increase the rate of release on parole by reducing the variance in time served. Thus, anyone in the institutional population who had served more than his guideline time (or who would have served more than the guideline time by his next annual review) was eligible for a special review for release when he had served

his guideline time.

There was a marked increase in the rate after implementation of the guidelines. During the 12 months preceding implementation the MCB paroled an average of 51 inmates per month. Since, paroles have averaged 75 per month, a 47% increase.

In 1976 the MCB released 774 inmates, an increase of 27% over 1975 levels. If the guidelines had been in effect for the entire year the MCB would have paroled about 900 inmates in 1976, only slightly below the actual number of 1974 paroles granted.

The guidelines have slowed the rate of population increase. The average increase in average daily population during the 12 months preceding implementation was 15.4 inmates per month. Since initiation the average increase has been 1.7 inmates monthly. In December 1976 the average daily population was 1,702, only 12 above the average daily population at implementation. This suggests that the rate of release under the guidelines is very close to the rate of commitment.

The MCB has been criticized for their variation in release rate from 1974 to 1975. Critics have charged that the Board--influenced by a "get tough" public opinion--had become increasingly conservative in releasing practices, demonstrating that parole decision-making was "political", in the broad sense of the word. While it is too early for conclusive statements, it appears that the guidelines have tended to stabilize rates of release, and thus remove the grounds for such criticisms.

Rates of Departure under the Guidelines

How often should parole boards depart from their guidelines? Clearly there is no "right" answer to this question. If exceptions are frequent, it could be argued that the guidelines are a sham, providing a "front" behind which the parole board continues to engage in arbitrary and capricious decision making. If the board seldom departs they could be accused of being "mechanistic", failing to inject "humanity" into the process through their clinical judgment.

During the guidelines operation so far the Board has departed from them in about 17% of the cases, a figure comparable to the experience of the U. S. Parole Commission.

Every 3 months an analysis of departures is conducted.

Three factors are examined:

1. rate of departures
2. reasons for and directions and amounts of departures
3. risk and severity levels of departure cases.

These analyses are presented to the Board, and, if appropriate, changes in the guidelines are suggested. For example, if a particular reason for departure is used frequently, it might be desirable to amend the guidelines to deal with that situation.

If certain "cells" in the matrix account for a disproportionate number of departures, it indicates that the guideline time in that cell may be inappropriate. After 3 months of operation, they found that low-risk aggravated robbers were often given less time than indicated by the guidelines. They checked 1974 and 1975 MCB releasing practices and found that the guideline times were about 6 months too high for this type offender.

Accordingly, the MCB reduced the guideline time and applied the reduction retroactively to low-risk aggravated robbers previously assigned release dates. Appendix B gives substantial current detail about Minnesota practice.

Other Specialties

There are perhaps no human services disciplines that fail to employ behavior predictions at some level--no matter how unsophisticated--and our lives rest on predictions of all types. The current flap over the unsafe conditions of our nation's bridges is a case in point. It has been estimated that about 110,000 bridges in the United States are "dangerous to use"; the limits of these predictions vary greatly, of course. Used long enough, a bridge predicted as in danger of collapse will accommodate the prognosticator, just as a scattered few correctional clients continue to recidivate even after they have led lives free of known crimes for several years. At the outer bound, though, all bridges will fail eventually; not all correctional clients will reenter the system.

Medicine is usually referenced as that human services field which epitomizes advanced diagnostic/predictive technology. As it happens, though some sophisticated technology is used in medical research, many of the basic leaps medicine has made have been through diligent observation alone. Medical practitioners labor under comparable constraints to those on correctional functionaries. Thus, there have been no strict experimental-control, human subject

studies done on basic medical phenomena like tetanus vaccine results because ethical implications preclude them--just as they forestall random sentencing experiments. However, the same technology that underlies the decision models we just enumerated underpins the observations a physician makes in his examining cubicle and the tests his laboratory performs.

Oregon Guidelines

The development of guidelines in Oregon has proceeded quite differently from that in the federal system and in Minnesota. In Oregon, the parole board apprized itself of the work particularly of the U. S. Parole Commission and, accompanied by statutory alterations, initiated guidelines (see Appendix C). Their plan now is to test and adjust the guides as they are used.

The Oregon board also has administratively constructed a violation matrix. On the vertical axis are types of violations ranging from least to most serious. On the horizontal axis are indices to parole performance to the time of violation. These

Oregon Parole Violation Matrix

<u>Violations</u>	<u>Parole Performance</u>		
	<u>7 thru 5</u>	<u>4 thru 2</u>	<u>1 and 0</u>
Documented Technical	Record	Record	Reprimand or 0 - 4 mos.
Major Technical/ Misdemeanor Conviction	Reprimand or 0 - 4 mos.	4 - 6 mos.	6 - 8 mos.
Felony Finding	6 - 10 mos.	8 - 12 mos.	10 - 14 mos.
Felony Conviction		Recalculate	Matrix

are, of course, quite similar to offense seriousness and risk measures described in prior pages. The matrix takes the form just presented currently.

If a parolee who has an otherwise good or fair parole adjustment receives a documented technical violation the matter is simply recorded; if that parolee has a poor parole adjustment s/he may be reprimanded or returned to an institution for 4 to 6 months. The ranges of violation responses run to a maximum 10 - 14 month reinstitutionalization for a felony finding by the Board on a parolee whose adjustment has been poor. If a parolee sustains a new felony conviction the process is begun over by entry into the original guidelines matrix.

Neither the parole guidelines nor the reconviction matrix has been validated. The Oregon Department of Corrections is to participate in this effort by doing the original case scoring and by monitoring case outcomes. They have added a matrix for use in classification and custody/supervision level assignments. They are using matrices on good time forfeiture considerations, DOC recommendations to the parole board, and length of time in segregation unit. Appendix C affords considerable detail in that regard. Note, however, that none of the final decision factors in these matrices has been derived empirically.

Wisconsin

The state of Wisconsin uses guidelines for assignment of cases for supervision purposes. There, in contrast to Oregon, the background study employed has been extensive, particularly

as an effort is made to assess and meet client needs (see Appendix D).

Though that work is not directly pertinent to the concerns of this paper, it is salient to note that similar approaches can be used to direct intervention in field settings as an adjunct to board decision making. Wisconsin also provides an example of the variety of longitudinal follow-up necessary to make guidelines systems contemporary and viable.

Michigan*

The Michigan Department of Corrections began monitoring risk factors in 1976. In early 1978 they initiated a prisoner classification and parole granting sequence utilizing them. They isolated their factors by computer analysis of 2,000 male parole records for the year 1971.

Inmates with these characteristics are considered high violence risks:

1. currently serving time for robbery, sexual assault or homicide
2. found guilty of major institutional misconduct or involuntarily placed in administrative segregation by the prison's security classification committee
3. first arrested or petitioned for criminal activity before 15th birthday

If an offender has all 3 factors he is counted a "very high risk of violence"; "high risks" are those without factor 3 present. "Very low risks of violence" are serving time for non-assaultive

* These comments rely heavily on "Michigan Spots New 'Risk' Factors", *California Correctional News* 32: 25, 34 (February 1978).

felonies and were married before their current offense.

The Michigan population looks something like this, the last column indicating percentage of those rearrested for a violent crime within 2 years after prison release:

<u>Risk of</u>	<u>nt Crime</u>	<u>Releasees in Category</u>	<u>New Arrests</u>
Very High		5%	40.0%
High		7%	20.5%
Middle		45%	10.5%
Low		24%	6.5%
Very Low		19%	2.5%

A prisoner with all the following characteristics is deemed likely to commit a property crime on parole:

1. has a reported juvenile history
2. is guilty of serious institutional misconduct
3. was first arrested before age 15.

Very high risk property offenders constitute 24% of all prison releases and have a 40% probability of rearrest for property crimes within 2 years.

Pennsylvania

The Pennsylvania Parole Board has not used its guidelines yet but is worthy of note because it has developed revocation instrumentation. This process is detailed in Appendix E.

Risk Assessment

The concept of "risk" can be formulated and applied in numerous ways. In the context of parole guidelines it most

often is an empirically derived assessment of likelihood of reoffending. In the data analyzed in this study, 665 cases paroled by the Alaska Board of Parole from 1971 through early 1979 have been tallied to yield a picture of success and violation on parole as these relate to offender characteristics and environmental factors.

The basic criterion, "Parole Performance", was categorized 4 ways:

Outcome code: Continued on Parole
 Absconder
 Technical Violation
 New Felony Conviction.*

This afforded the following configuration.

* * * * *

Table R-1
 Parole Performance

<u>Category</u>	<u>#</u>	<u>%</u>
Continued on Parole	496	75%
Absconder	13	2%
Technical Violation	111	17%
New Felony Conviction	42	6%
Unknown	<u>3</u>	<u>-</u>
Total	665	100%

* * * * *

As Table R-1 tells 75% of the cases were categorized as

* See Appendix G for a sample Code Sheet.

non-failures at the time of coding and 25% had breached parole by absconding, committing rules violations or sustaining a new felony conviction. Note that this does not translate to a 75% "success rate" because cases were not followed a set period of time; some had been on parole for years and some had served only a few months. With only 3 cases with unknown outcomes (less than $\frac{1}{4}$ of 1% of the 665 target parolees), though, confidence in the specification of the criterion variable appears warranted.

With this basic 75-25 population bifurcation one can proceed to assess the relation of various corresponding data elements to this criterion, aiming at identifying those which will help in assessing likelihood of parole violation (our empirical definition of risk). (See the appended code sheet for the 50 data items collected and their categories.) This presents 49 comparisons for assessment.

Risk Variables

Nearly half--22 (44%)--of the comparisons gave a statistically significant indication of correspondence between Parole Performance and the assessment variable. We begin by looking at those items which give us information about likelihood of parole violation.

On the assumption that parole violations are what parole decision-makers want to avoid by employing risk measures, and because there are too few violators in certain categories to yield stable findings, each significant item is taken in turn,

beginning with whether the parolee was on probation or parole at the time s/he committed the offense leading to the current parole. The possibilities are limited, of course; either the offender was or was not an active probationer or parolee at the time of the current offense. Table R-2 tells that 78% of those paroled who were not on probation/parole when they committed their current crimes had no coded violation while only 69% of those who were in these supervision statuses avoided known violations. Thus, this item differentiates the population significantly on parole performance, as the x^2 (Chi-square) value ending the table shows. Any Chi-square greater than 3.84 for this table would be considered significant.

* * * * *

Table R-2

Probation/Parole Status at Offense

<u>Status</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Not on Probation/Parole	359	78%
On Probation/Parole	123	69%
Unknown	27	4%
Total	665 cases	
$x^2 = 6.29$	df = 1	P less than .02

* * * * *

Whether the parolee had a juvenile probation/parole record gives a similar result. As seen in Table R-3, parolees without such known backgrounds were coded as without violations 82% of the time whereas those with juvenile records had such designations

Table R-3
Juvenile Probation/Parole Record

<u>Code</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
None	206	82%
One or More	97	73%
Unknown	280	42%
Total	665 cases	

$$x^2 = 4.03$$

$$df = 1$$

P less than .05

* * * * *

73% of the time. Note, however, that 42% (280) of the cases have "Unknown" codes, suggesting this may be a less useful indicator than the supervision status item discussed in the preceding paragraph.

Similar findings occur for juvenile institutional record holders, though this item and the preceding one overlap imperfectly. Those coded as having juvenile institutional records avoided violation codes 67% of the time; their colleagues who

* * * * *

Table R-4
Juvenile Institutional Record

<u>Code</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
None	229	83%
One or More	62	67%
Unknown	296	45%
Total	665 cases	

$$x^2 = 9.67$$

$$df = 1$$

P less than .01

were not in juvenile institutions had 83% "success rates".

Again there are ample missing cases.

Table R-4 also introduces a new caveat. While the difference between performance ratios in the two juvenile institutional record categories is substantial, relatively few persons (92 or 14% of the 665 cases) were coded as having been in juvenile penal institutions. From the vantage point of selecting likely failures, this item lends little information.

Those parolees who located out of state tended to perform better on supervision than those remaining in Alaska. The bulk, of course, stayed inside the state so, again, we see a variable which lends information on a relatively small segment of the population. Note, though, that, for all practical purposes, this item was coded on all parolees so it has potential as an encompassing indicator.

* * * * *

Table R-5
Release Residence

<u>Code</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Out of State	110	85%
In-state	381	73%
Unknown	12	2%
Total	665 cases	
$x^2 = 8.76$	df= 1	P less than .01

Table R-6
Sentence Length

<u>Months</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
0 - 12	75	90%
13 - 24	104	83%
25 - 36	114	76%
37 - 60	118	74%
Over 60	81	58%
Unknown	7	1%
Total	665 cases	

$$x^2 = 36.84$$

$$df = 4$$

P less than .001

* * * * *

Sentence Length also is an item that correlates strongly with parole performance. Those whose sentences are 12 months or less have a 90% violation-free rate, compared to 83% for those sentenced to 13 - 24 months, 76% for 25 - 36 months, 74% for 37 - 60 months, and 58% for over 60 months.

* * * * *

Table R-7

Race

<u>Race</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
White	302	79%
Black	70	64%
Native	106	70%
Other	15	100%
Unknown	7	1%
Total	665 cases	

$$x^2 = 18.48$$

$$df = 3$$

P less than .001

Race also relates strongly to parole performance in this population, as seen in Table R-7. Blacks have the lowest "success" rate at 64% and "Others" have the highest at 100%. There are, of course, only 15 cases in the "Other" group.

There are numerous ways to categorize the sentencing judge variable. However, it is clear, regardless of how the 50 judges in this study are arrayed, that clients sentenced by some judges

* * * * *

Table R-8
Sentencing Judge

<u>Judge</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
4	70	89%
6	39	66%
All Others	383	74%
Unknown	8	1%
Total	665 cases	

$$x^2 = 10.66$$

df= 2

p less than .01

* * * * *

Table R-9
Marital Status at Offense

<u>Status</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>%</u>	<u>#</u>
Single/Separated/Divorced	319	73%
Married/Cohabiting/Widowed	164	80%
Unknown	21	3%
Total	665 cases	

$$x^2 = 4.63$$

df= 1

P less than .05

do far better on parole than others. For our purposes at this juncture it suffices to designate some of these by number in Table R-8. This table is open to considerable speculation. Do particular judges send people to prison who do not need to come and thus garner high success rates? Are some judges unusually effective in sentencing? Do some magistrates have an uncanny knack for sending people who will be harmed by prisons to them? The queries go on.

Marital Status at Time of Offense relates to outcome. This may be seen by aggregating those who are coded Married, Cohabiting or Widowed and those who are Single, Separated or Divorced.

Similarly, Marital Status at the Time of the Release Hearing is predictive of parole outcome. Those who are married do significantly better than their peers; the few coded "separated" present a worse risk.

* * * * *

Table R-10
Marital Status at Release Hearing

<u>Status</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Single	245	72%
Widowed	15	79%
Separated	18	69%
Cohabitation	0	0
Married	124	83%
Divorced	87	72%
Unknown	11	2%
Total	665 cases	

$$x^2 = 7.02$$

$$df = 4$$

P greater than .05

One of the strongest relationships in the data set surrounds Sentence Credit. This may reflect the earlier described importance of sentence length, since in Alaska time credited to sentence is a statutory matter--though the details of this remain unexplained.

* * * * *

Table R-11
Sentence Credit

<u>Days Credited</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Under 10	137	85%
10 - 100	192	74%
101 - 300	133	67%
Over 300	14	67%
Unknown	30	5%
Total	665 cases	
$\chi^2 = 21.09$	df = 3	P less than .001

* * * * *

The number of parole hearings a person receives before parole on the current offense also relates to outcome, possibly mirroring the Board's ability to recognize good risks and release them forthwith while deferring less likely performers.

Generally, whether or not a weapon was used in the offense is not salient to parole performance. The exception to that regards employing a knife or razor, though few cases are affected.

Table R-12
Parole Hearings

<u>Number</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
First	152	80%
Second	172	77%
Third	45	58%
Fourth or More	36	67%
Unknown	120	18%
Total	665 cases	
$x^2 = 15.75$	df= 3	P less than .01

* * * * *

Table R-13
Weapons

<u>Weapon</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Knife/Razor	25	63%
Other/None	455	76%
Unknown	29	4%
Total	665 cases	
$x^2 = 3.88$	df= 1	P less than .05

Additional to the elements of juvenile prior record that relate to parole performance (discussed in preceding pages), certain measures of adult criminal history relate to supervision outcome. Number of prior felonies is one of these, the relation being clear and direct: as extensiveness of felonies history enlarges, likelihood of parole violation increases, too.

* * * * *

Table R-14
Prior Felony Convictions

<u>Number</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
0	294	82%
1	90	75%
2	42	70%
3	21	54%
4+	28	47%
Unknown	29	4%
Total	665 cases	
$\chi^2 = 45.68$	df = 4	P less than .001

* * * * *

A similar, though not so distinct, picture relates to misdemeanor history; Table R-15 pictures this.

Whether there is a history of adult probation failure is relevant, too. Why those with 1 failure do worse than the other groupings is not discernible from the data (see Table R-16).

Table R-15
Prior Misdemeanor Convictions

<u>Number</u>	<u>Outcome</u>		
	<u>No Violation</u>		<u>Violation</u>
	<u>#</u>	<u>%</u>	<u>#</u>
0	161	84%	31
1	71	82%	16
2	51	73%	19
3	36	71%	15
4+	160	68%	76
Unknown	29	4%	
Total	665 cases		
	$\chi^2 = 17.40$	df= 4	P less than .01

* * * * *

Table R-16
Adult Probation History

<u>Probation Failures</u>	<u>Outcome</u>		
	<u>No Violation</u>		<u>Violation</u>
	<u>#</u>	<u>%</u>	<u>#</u>
0	354	80%	86
1	92	65%	50
2+	22	73%	8
Unknown	53	8%	
Total	665 cases		
	$\chi^2 = 14.82$	df= 2	P less than .001

Table R-17
Adult Parole History

<u>Parole Failures</u>	<u>Outcome</u>	
	<u>No Violation</u> #	<u>Violation</u> #
0	421	116
1	47	24
2+	8	10
Unknown	39	6%
Total	665 cases	

$$\chi^2 = 15.28$$

$$df = 2$$

$$P \text{ less than } .001$$

* * * * *

In the same vein, a history of adult parole failure indicates risk potential. Those who have failed once--and, particularly, more than once--are worse risks than the general population. Note that the incidence of known parole failure history is rather small in this population. This suggests the "worst" failures are those coming to light.

Crime victim type relates to risk, though only those coded "Other" and "No Victim" depart from the mainstream substantially on Parole Performance (Table R-18).

Drug History is relevant here. Those coded as Consistent Users did far less well on parole than their colleagues, though their numbers are small. When Consistent Users are contrasted with all others the difference is significant. Whether more nearly complete information on this item would enhance or detract

Table R-18
Crime Victim

<u>Victim Type</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Friend/Acquaintance	120	77%
Stranger	185	70%
Firm/Organization	80	73%
Other	2	100%
No Victim	93	87%
Unknown	27	4%
Total	665 cases	
$x^2 = 13.03$	df = 4	P less than .02

* * * * *

Table R-19
Drug History

<u>Category</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
None	80	74%
Experimentation	109	78%
Habit/Addiction	37	73%
Consistent Usage	22	56%
Unknown	327	49%
Total	665 cases	
$x^2 = 7.23$	df = 3	P greater than .05

from its usefulness cannot be determined at this point.

Alcohol History presents similar results. When "Problem Drinker/Alcoholic" is set against the other codes the difference is significant.

* * * * *

Table R-20
Alcohol History

<u>Category</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
None	14	78%
Occasional Use	181	75%
Problem Drinker/Alcoholic	92	65%
Unknown	263	40%
Total	665 cases	
	$\chi^2 = 4.76$	df= 2
		P greater than .05

* * * * *

In those few instances where the client had a full time live in treatment program specified as a condition of parole, performance was much below par. If one lumps treatment programs specified versus programs unspecified the parole performance contrast is statistically significant.

If the parolee was released to live with his/her spouse (Table R-22) prognosis was highly favorable; if the residence was "Alone", "Not Specified" or "NA" prognosis was poor.

We end this section by noting that one other variable--

Table R-21
Parole Treatment Program

<u>Parole Program</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Specified	81	70%
Not Specified	378	77%
Full Time Live In	34	67%
Unknown	8	1%
Total	665 cases	
$x^2 = 4.75$	df = 2	P greater than .05

* * * * *

Table R-22
Parole Living Arrangements

<u>Living with:</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
Parents	104	79%
Spouse	96	85%
Relatives	54	74%
Roommate/Halfway House	69	76%
Alone/Not Specified/NA	169	68%
Unknown	9	1%
Total	665 cases	
$x^2 = 12.76$	df = 4	P less than .02

Months on Parole--also relates highly to Parole Outcome. Since this item value is not known when release is being considered, it is not useful in the releasing decision. However, were one to construct revocation guidelines it might well come into play. Those persons serving longer parole terms had progressively higher "success" rates.

Data on the other half of the variables scrutinized in this study appear in Appendix A. None of those yielded results useful to the central concern here, though some might be reformulated to lend aid in the release decision.

* * * * *

Table R-23
Months on Parole

<u>Months</u>	<u>Outcome</u>	
	<u>No Violation</u>	<u>Violation</u>
	<u>#</u>	<u>%</u>
- 6	117	59%
6 - 12	121	73%
13 - 24	90	80%
25 - 60	87	88%
60+	19	95%
Unknown	68	10%
Total	665 cases	
$x^2 = 40.13$	df = 4	P less than .001

Risk Assessment Usage

There are several ways to conceive of uses for risk items that relate significantly to performance criteria. One of the simplest of these is called the "Burgess Method" and assigns points to each variable according to an individual's score on each predictor.

We can create such a risk evaluation sheet for each potential parolee by taking the significant items and scoring them according to their relation to the criterion variable. We can give a potential parolee a point for each favorable factor and deduct a point for each unfavorable factor s/he exhibits. Adopting the requirement that only factors over 5 percentage points above or below the "base rate" are scored results in the following tabulation.

Example

Risk Evaluation Tally

1. Was the subject on probation/parole at the time the current offense(s) occurred?	No	Yes -1
2. Has s/he a juvenile probation or parole record?	No +1	Yes
3. Has s/he a juvenile institutional history?	No +1	Yes -1
4. Is this person to release out of state?	Yes +1	No
5. Is the current sentence under 25 months?	Yes +1	No
Is the current sentence over 60 months?	No	Yes -1
6. Is s/he black?	No	Yes -1
Is s/he other than black, white or native	Yes +1	No
7. Was the sentencing judge "4"?	Yes +1	No
Was the sentencing judge "6"?	No	Yes -1
8. At the time of the offense:		
was the subject married?	Yes +1	No
was s/he cohabiting?	Yes +1	No
9. At the time of the release hearing:		
is the client married and not separated?	Yes +1	No
is the client separated?	No	Yes -1

10. Were less than 10 days credited on the current sentence?	Yes +1	No
Were more than 100 days credited?	No	Yes -1
11. Is this the inmate's 3rd or subsequent parole hearing on this incarceration?	No	Yes -1
12. Was a knife or razor used in the offense?	No	Yes -1
13. Is there no prior felony record?	Yes +1	No
Has s/he 3 or more prior felonies?	No	Yes -1
14. Has the client less than 2 misdemeanors?	Yes +1	No
Has the client over 3 misdemeanor convictions?	No	Yes -1
15. Has the subject one (only) adult probation failure?	No	Yes -1
16. Does the client have a recorded prior adult parole failure (1 or more)?	No	Yes -1
17. Was there a crime victim?	No +1	Yes
18. Has the subject a history of consistent drug usage?	No	Yes -1
19. Is there a Problem Drinker/Alcoholism history?	No	Yes -1
20. Does the parole plan specify a full time live in program?	No	Yes -1
21. Will this individual release to live with his/her spouse?	Yes +1	No
Will s/he live in an alone/not specified/NA situation?	No	Yes -1

A person can accumulate 13 points if all positive factors are present and can lose 17 points, if all negative points apply. Scores ranging over 31 points (from +13 through -17) could be encountered. The lower one's score the less favorable is one's expected parole performance, though this expectation would need empirical observation and documentation.

A Release Matrix

As preceding pages tell, parole guidelines approaches often interface some notion of crime seriousness and some assessment of risk. Usually the crime seriousness measure is a result of experienced judgment; crimes are listed according to their believed "seriousness". Risk is assessed empirically, as the foregoing pages have done for Alaska data. The 2 are then put together in the form presented earlier and the cells are filled in with spans of months which reflect current time-served practice.

Alaska presents a unique circumstance, though, in that as guidelines are being considered a new criminal code is being activated. Despite that fact, this study was designed to yield the historical time served record typical of matrix development. However, when the data were dissected it became obvious that available records would not support such an activity. Thus, it is suggested that the risk dimension be defined using empirical data, that the seriousness dimension follow the new

criminal code, and that the months-served-by-category be determined as a policy matter.

The Alaska parole guidelines matrix thus would look something like this:

Example

Time to be Served before First Parole

<u>Seriousness</u>	<u>Risk</u>			
	<u>15 - 8 Points</u>	<u>7 - 0 Points</u>	<u>-1 - -9 Points</u>	<u>-10 - -17 Points</u>
"A" Felony	30% - 35% of sentence	40% - 45%	50% - 55%	60% - 70%
"B" Felony	25% - 30% of sentence	35% - 40%	45% - 50%	55% - 65%
"C" Felony	20% - 25% of sentence	25% - 30%	30% - 35%	40% - 50%
Misdemeanor		50% - 60% of sentence	70% - 80%	90% - 100%

The time served cells herein could depend on the sentence passed, based on the finding (previously presented) that sentence length relates to parole outcome. The terms

Example

Time to be Served before First Parole

<u>Seriousness</u>	<u>Risk</u>			
	<u>15 - 8 Points</u>	<u>7 - 0 Points</u>	<u>-1 - -9 Points</u>	<u>-10 - -17 Points</u>
"A" Felony	18 - 24 months	25 - 30 months	31 - 60 months	61 - 120 months
"B" Felony	14 - 16 months	17 - 20 months	21 - 35 months	36 - 60 months
"C" Felony	12 - 14 months	15 - 18 months	19 - 25 months	26 - 36 months
Misdemeanor			8 - 10 months	10 - 12 months

assigned would be subject to good time, of course, and the Board could exempt any case from the guidelines by justifying that action as the result of exceptional positive or negative circumstances.

The matrix also could take the same form but assign terms to be served explicitly (second example). This application would emphasize Board concern for smoothing sentence disparity among judges, setting an administrative standard for terms which is less subject to input from the judiciary.

The next 39 pages supply definitions and terms to underlie the matrices. Note that information on drug crimes is omitted; the law apparently is yet to be addressed from this perspective.

CONVERSION TABLE

PRIOR CRIMINAL CODE

NEW CRIMINAL CODE

Accepting bribe
AS 11.30.050

Receiving a bribe
AS 11.56.110

Act of officer
having custody;
Act of person not officer
AS 11.30.250;260

Tampering with
public records
AS 11.56.820(a)(2)

Aggravated assault
AS 11.15.225

Assault in the first degree
AS 11.41.200(a)(2)

Arson in the first degree;
Arson in the second degree
AS 11.20.010;020

Arson in the first degree
AS 11.46.400
(If risk of serious
physical injury)

- or -

Arson in the second degree
AS 11.46.410
(If building damaged)

Arson in the third degree
AS 11.20.030

Arson in the first degree
AS 11.46.400
(If risk of serious
physical injury)

- or -

Criminal mischief in the
first, second, third
or fourth degree
AS 11.46.480-486
(Classification depends
on type of property
damaged and value
of property)

PRIOR CRIMINAL CODE

NEW CRIMINAL CODE

Arson in the fourth degree
AS 11.20.050

Attempted arson in
the second degree
AS 11.31.100(d) (3)

Assault and assault and battery
AS 11.15.230

Assault in the third degree
AS 11.41.230(a) (1)
(If defendant causes
physical injury)

- or -

Assault in the third degree
AS 11.41.230(a) (3)
(If victim placed in
fear of physical injury)

- or -

Harassment

AS 11.61.120(a) (5)
(If victim is subjected
to offensive physical
contact; primarily for
slaps, kicks and sexual
touchings that do not
qualify as sexual
assaults)

Assault while armed
AS 11.15.190

Assault in the first degree
AS 11.41.200(a) (1)
(If defendant causes
physical injury by means
of dangerous instrument)

- or -

Assault in the second degree
AS 11.41.210(a) (2)
(If victim is placed
in fear of imminent
serious physical injury
by means of dangerous
instrument)

- or -

Assault in the third degree
AS 11.41.230
(If victim placed in fear
of imminent physical
injury)

Assault with a dangerous weapon
AS 11.15.220

Assault in the first degree
AS 11.41.200(a)(1)
(If defendant causes
physical injury by
means of dangerous
instrument)

- or -

Assault in the second degree
AS 11.41.210(a)(2)
(If victim is placed in
fear of imminent serious
physical injury by
means of a dangerous
instrument)

- or -

Assault in the third degree
AS 11.41.230
(If victim placed
in fear of imminent
physical injury)

Assault with intent to kill
or commit rape or robbery
AS 11.15.160

Attempted murder in the
first degree
AS 11.31.100(d)(1)
(If intent is to
cause death)

- or -

Sexual assault in
the first degree
AS 11.41.410
(If victim suffers serious

physical injury during
attempted sexual pene-
tration without consent)

- or -

Attempted sexual assault
in the first degree
under AS 11.41.410(a)(1)
AS 11.31.100(d)(2)
(If attempt to engage
in sexual penetration
without consent)

- or -

Robbery in the first degree
AS 11.41.500(a)(3)

Attaching or detaining
dead body for debt
AS 11.40.450

Misconduct involving
a corpse
AS 11.61.130(a)(3)

Attempt
AS 11.05.020

Attempt
AS 11.31.100

Blackmail
AS 11.15.300

Coercion
AS 11.41.530

Bribery
AS 11.30.040

Bribery
AS 11.56.100

Burglary in dwelling house
AS 11.20.080

Burglary in the first degree
AS 11.46.300(a)(1)

Burglary not in
dwelling house
AS 11.20.100

Burglary in the
first degree
AS 11.46.300(a)(2)
(If defendant armed with
firearm, causes or
attempts to cause
physical injury, or
uses or threatens to use
a dangerous instrument)

- or -

Burglary in the
second degree
AS 11.46.310

Burning to defraud insurer
AS 11.20.070

Arson in the first degree
AS 11.46.400
(If person placed in
danger of serious
physical injury)

- or -

Arson in the
second degree
AS 11.46.410
(Note limited affirm-
ative defense in
subsection (b))

Buying, receiving or con-
cealing stolen property
AS 11.20.350

Theft in the first, second,
third or fourth degree
AS 11.46.120-150
(Classification depends
on value of property
or services involved.
See AS 11.46.100, Theft
defined; AS 11.46.110,
Consolidation of
theft offenses: plead-
ing and proof; AS 11.-
46.190, theft by
receiving)

Careless use of firearms
AS 11.15.200

Assault in the
second degree
AS 11.41.210(a)(2)
(If defendant recklessly
caused serious physical
injury by means of
dangerous instrument)

- or -

Assault in the
third degree
AS 11.41.210(a)(2)
(If through criminal
negligence defendant
caused physical injury
by means of dangerous
instrument)

- or -

Misconduct involving
weapons in the
second degree
AS 11.61.210(a)(2)
(If defendant discharged
firearm with reckless
disregard for risk of
damage to property or
physical injury)

Carrying a concealed weapon
AS 11.55.010

Misconduct involving
weapons in the
third degree
AS 11.61.220(a)(1)

Child stealing
AS 11.15.290

Kidnapping
AS 11.41.300
(If not by relative)

- or -