

ALASKA LEGISLATURE COMMITTEE FILES 1981 - 1982 8672

1345 HHESS HB 210 (#3) - HB 225 (#1) 34

479-
6762

1850 Roberts Road
Fairbanks, Alaska 99701
May 21, 1981

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Ref: House Bill 210, Joint Custody for Children

Dear Representative Rogers:

The enclosed sheets are an analysis of letters and memorandums from the legal arena which are presently on file in your office. Some of these letters are lengthy and present insightful information.

One interesting pattern emerges however. If a marriage has to be dissolved, and if there are children involved, the judicial districts that the parties would want to live in, from most beneficial to least beneficial with respect to obtaining a mutually agreeable solution to a difficult problem are as follows:

First, the first judicial district. Three judges (Schulz, Stewart, Taylor) are, at least, not opposed to joint custody for children;

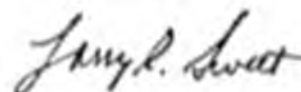
Second, the third judicial district. While all testimony from the legal arena is in opposition to HB 210, Anchorage has had for some dozen years or so a domestic relations system that at least attempts to reach an agreeable solution. Private communication from Mr. Francis Stevens, Custody Investigator in Anchorage, states that this has resulted in 96% settlement of contested cases, i.e. only 4% of contested situations went on into litigation;

Third, the fourth judicial district. While only one judge has gone on record (opposed to HB 210) there does not exist any mechanism in Fairbanks for mediation within the legal system. There are a dozen or so joint custody parents in Fairbanks who can state that their own experiences in attempting to obtain a joint custody resolution from the court system was difficult, trying, or, in some cases, unsuccessful, even though both parents were in agreement.

There is insufficient information, and, perhaps, population density, from the second judicial district to make a statement.

It may be coincidental, but the attitudes, practices, and services regarding joint custody for children follow a direct line from south to north.

Sincerely,



Larry R. Sweet

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITIONS

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
THOMAS E. SCHULZ	SUPERIOR COURT JUDGE	1	X			REF: MAY 9, 1981 LETTER TO CLOKESIN, ROGERS, GARDNER
THOMAS B STEWART	SUPERIOR COURT JUDGE	1	X ?			REF: MAY 9, 1981 LETTER FROM JUDGE SCHULZ, TO CLOKESIN, ROGERS, GARDNER, P 3
ROBIN L. TAYLOR	JUDGE	1	X ?			REF: APRIL 7, 1981 LETTER FROM JUDGE JUSTIN RIPLEY TO WILLIAM FRANT CALLOW, II, ESQ, GENERAL COUNSEL TO ADMINISTRATIVE DIRECTOR

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
CHARLES TUNLEY	SUPERIOR COURT JUDGE	2		X		REF: APRIL 28, 1981, LETTER FROM FRANCIS STEVENS TO CLOCKSIW

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
RALPH E. MOODY	PRESIDING JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN. APRIL 9, 1981 LETTER TO WILLIAM CALLUM
VICTOR D. CARLSON	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 TO CLOCKSIN
BUCKELEW	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN
J. JUSTIN RIPLEY	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 LETTER TO JUDGE RALPH E. MOODY
WILLIAM D. HITCHCOCK	MASTER, TRIAL COURTS	3		X		REF: MARCH 9, 1981, LETTER TO GRANT CALLUM, STAFF COUNSEL. MARCH 25, 1981 LETTER TO CLOCKSIN

JOINT CUSTODY FOR CHILDRENLEGAL ARENA POSITIONS

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
WILSON L. CONDON by LINDA SCOCCIA ASST. ATTORNEY GENERAL	ATTORNEY GENERAL	—		X		REF: MARCH 26, 1991 LETTER TO CLOCKSIN
FRANCIS M. STEVENS	CUSTODY INVESTIGATOR	3		X		REF: APRIL 28, 1981 LETTER TO REPRESENTATIVE CLOCKSIN MARCH 10, 1981 LETTER TO WILLIAM HINTERCOCK, STAN- MASTER

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
JAMES R. BLAIR	SUPERIOR COURT JUDGE	4		X		REF: April 20, 190. LETTER FROM FRANCIS M. STEVENS TO REPRESENTATIVE CLUCKIN

Box 381
Kenai, Alaska 99611
22 Feb. 1982

HB 210

Members of the HESS Committee

Dear Sirs,

I am the non-custodial parent of a beautiful eight-year old girl, Rachel. For the past three to four years, I have been shooting for joint custody at best, for shared custody outside the law at least. The process of reconciliation and building of a mutual trust has been painfully slow. We are not there yet, but we are now closer than we have ever been. We have just taken a giant step toward full understanding and cooperation with the developments over the past month.

Rachel came to visit us for four weeks following Christmas. Three weeks into the visitation, we decided to see if we could keep Rachel for the remainder of this school year. A number of factors went into making this decision; academic performance in the school here compared with performance in Washington, amount of supervision we were giving Rachel compared with the amount her mother was able to provide, and other factors as well. One very important factor was that Rachel definitely wanted to stay.

Initially, Rachel's mother's response was 'no', accompanied with no concrete reasons. She was simply afraid that she would not get her back, and that she might somehow compromise her position as the custodial parent. There was never any reference to what was the best for Rachel. I accepted her decision.

The night before Rachel was due to return to Washington, while packing her suitcases, Rachel broke down crying. She said that she did not want to go back. Attempts at reassurance did not alter her position. I decided to try convincing her Mother again. After an hour on the phone, I got a commitment from her mother that she would give this much more sincere consideration.

At this point, I contacted Rudy Johnson of Equal Rights for Fathers of Alaska. I told him that I was planning to have Rachel stay up with me and accept the consequences. Through his council, I realized that this course of action would not be the best for Rachel. Keeping in mind Rachel's best interests, Mr. Johnson counceled patience, nothing but positive involvement with Rachel's mother in the future, and further positive involvement with Rachel. He suggested ideas, such as, when parents feel good about themselves and their relationship with each other, kids feel good.

This last statement is what I feel is at the heart of HB-210. HB-210 will provide the mechanism whereby separated and divorced parents will no longer be made into legally sponsored adversaries. Instead, parents will be encouraged

to cooperate, to find grounds for agreement over what is the most important thing to each of them, the well-being of their children.

Through talking with Mr. Johnson at length, I know that he represents very closely what my philosophy is pertaining to this issue. Please listen very closely to what he has to say and know that he is a representative of more people than those belonging to his organization. There are a lot of children out there who are needlessly struggling through the kinds of tug-o-wars that this bill is going to eliminate.

Sincerely,



Dana W. Hallett

P.S.

Rachel's mother has consented to letting her stay through the remainder of the school year. Perhaps Mr. Johnson's advice had somehow tempered my attitudes and provided me with incentive to state my case in a more convincing, calm manner. Without his advice, this situation could have set back the painstaking progress to the beginning.

February 14, 1985

SUBJECT: Saturday duty
TO: Legal Services Staff
FROM: Lynn Barnes *Lynn*

Staff on duty this Saturday, February 16, will be:

George Edwards

Lynn Barnes

1850 Roberts Road
Fairbanks, Alaska 99701
October 10, 1981

Representative Bette Cato
P. O. Box 775
Valdez, Alaska 99680

Ref: House Bill 210--Joint Custody for Children

Dear Mrs. Cato,

At the teleconference hearing April 22, 1981 regarding House Bill 210 you asked questions of many of the people who testified about what they considered to be an age at which a child could reasonably state which parent they chose to live with. We have discussed this subsequently and I still have strong feelings that this can put many children in an impossible situation which can give them psychological problems in the future.

House Bill 210 starts with a positive approach by presuming that a child has two loving and responsible parents (most do) and that each parent wants to maintain "an open and loving frequent relationship between the child and his other parent." (1). The second step in the preference of award in HB 210 would be to give custody to the parent who would "allow the child to have frequent and continuing contact with the parent not granted custody."

I have a situation in which the children have 50% time with each of their parents. This is a situation I have found that many other fathers would like to have because it is equal. I asked my sons, individually, what they think of the present arrangement. They both responded in the affirmative, and stated that they could not think of a better or more equitable arrangement and said, "besides, we get twice as many birthdays and Christmases and have two homes".

I know other children in similar circumstances and they like it, whether or not their parents live in the same town.

The following statement made by Ms. Karen DeCrow, Past President of the National Organization for Women (1975-77) on August 28, 1980, sums things up:

"(Joint custody is) definitely the custody arrangement of the future.

The practice of nearly always awarding custody of children to the mother reflects negatively on women who aren't awarded custody; the public automatically thinks they are unfit to care for the children."

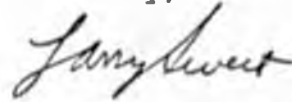
Representative Bette Cato

Page 2

October 10, 1981

Mrs. Cato, I have deeply appreciated our open discussions and I hope you can support HB 210 this next session.

Sincerely,



Larry Sweet

→ Representative Mike Bierne, Chairman, HESS
Senator Charlie Parr
Representative Brian Rogers

(1) Alaska Code of Civil Procedure, Sec 09.55.205 JUDGEMENT FOR CUSTODY,
paragraph (6).

ELLIS & WHITTAKER, INC.

1285 TONGASS AVENUE KETCHIKAN ALASKA 99901

1577 C STREET - SUITE 218 ANCHORAGE, ALASKA 99501

907-225-9661 - KETCHIKAN

907-272-9632 - ANCHORAGE

PETER R. ELLIS

RICHARD WHITTAKER

DENNIS L. McCARTY

DREW H. PETERSON

5 May 1981

MARY ANN VANDECASTLE*

BRUCE O. DAVIES*

*Not Admitted in Alaska

Alaska State Legislature
Health & Social Services Committee
Juneau, Alaska 99811

Dear Committee Member:

In many respects child custody continues to be in the dark ages in Alaska. By the time the matter gets to Court (the parents, being distressed to the point of having to hire lawyers), matters are so out of focus that the Courts can only approximate and hope they are able to find for the best interests of the children.

What we really need is an Alaska change of policy such as is suggested by House Bill 210. Joint custody and mediation work well elsewhere and need to be a firm policy of the State of Alaska. Somehow parents need to be aware of alternatives to all-out warfare prior to the time when relationships have become polarized between themselves.

I am aware there are many people who will probably never be able to respond to reasonableness, still I am astounded, every month, by the general lack of knowledge on the part of fathers and mothers as to what their rights are or what makes sense if there comes a time when dissolution of marriage is indicated.

I would recommend that the Legislature pay considerable attention to the emerging possibilities of mediation and the importance of training mediators toward a successful conclusion of the problems of the parties.

I strongly recommend to the Legislature that it consider House Bill 210 as a step forward in human relations.

Yours truly,

Richard Whittaker

RW:mh

Copy: Rep. Terry Gardiner
Pouch V
State Capitol
Juneau, Alaska 99801

LM27-J-D 12



FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

**P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509**

**RUDY JOHNSON, PRESIDENT
(907) 333-6493
"ALASKANS FOR CHILDRENS RIGHTS"**

June 3, 1981

**FAIRBANKS - BCX 73255
KETCHIKAN - BCX 717c
SITKA - BCX**

Judge Robin Taylor
State of Alaska
District Court
First Judicial District
P.O. Box 869
Wrangell, Alaska 99929

Dear Judge Taylor:

I would presume you have seen the enclosed letter from Judge Ripley, but on the other hand it did not indicate it was sent to you so maybe you have not.

As I have worked in my lobbying efforts in support of HB 210, Joint Custody, I was puzzled as to why Representative Clocksin would not respond to any of my telephone calls, letters or telegrams. After seeing Judge Ripley's letter all the pieces fit. In spite of their opposition we are making good progress and I think the bill will fly next year.

I wanted to apologize to you, personally, for the embarrassment Judge Ripley's letter might have caused you. I have always admired you for your willingness to tell the bureaucrats the truth about the system as it relates to divorce and child custody matters. I would never have sent your letter to the HESS committee if I had thought it was going to be released, I assumed that file was confidential. Apparently, I was wrong and the damage is done. All I can do at this point is say I am sorry and I sincerely mean it. I have been very careful with your letter since you wrote it and it has gone a long way (outside the state) in helping to get more fair and equitable legislation passed.

Judge Taylor

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June 3, 1981

I suspect you probably know Judge Schultz has been very supportive of this bill and has written the legislature. Also, several out of state judges have expressed their strong support. I am a little dismayed at the way the Anchorage Bar is responding, they seem to see the bill as a grave threat to their power. Many judges and attorneys are supportive though and they are slowly coming out of the woodwork to voice that support.

If there is anything I could do beyond the response I have made to balance any damage to yourself please let me know and it will be done. Organizations outside have been made aware of the challenge Judge Ripley has made in his letter and I suspect that challenge will be accepted.

Sincerely,

RUDY JOHNSON

Enclosure(s)

We concur and offer the support of Equal Rights For Fathers of Alaska.

James Bradley
Chairman, Board
of Directors

ELLIS LAW OFFICES, INC.

1285 Tongass Avenue
2518 E. Tudor Road

Ketchikan, Alaska 99901
Anchorage, Alaska 99507

907-225-9661
907-272-9632

Peter R. Ellis
Draw H. Peterson
Bruce O. Davies
Christopher M. Keyes

February 4, 1982

Alaska State Legislature
House of Representatives
Health, Education and
Social Services Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 210

Dear Committee Member:

This is the written supplemental testimony which I promised I would provide during my brief oral testimony to your Committee by teleconference on January 29, 1982. You were running late that day and I promised to be brief but to follow up with this letter thereafter.

As was apparently true of many of the witnesses during the teleconference hearing, I first saw the Committee Substitute for House Bill 210 upon arriving at the teleconference hearing room. Thus my remarks were initially tailored to the earlier version of H. B. 210, although I have now obviously had a chance to review the Committee Substitute as well. I am an attorney in private practice in Anchorage and have been in the active practice of law for approximately nine and one half years. A substantial amount of my practice during that time has been in the area of family law. I have resided in and practiced law in Alaska since July of 1976. I am also married, and have two children, ages one and one half and seven.

My initial reaction after reading the original H.B. 210, and my intent in testifying, was that I was substantially in favor of the bill, and the concepts contained therein, but troubled by some of the language which I thought needed work. Upon now reviewing the Committee Substitute, I find that much of the language which previously troubled me has been cleaned up, but at the same time that much of the heart of the original bill has been removed from the Committee Substitute to its detriment.

The primary difference in the bills, of course, is the removal of the rebuttable presumption in favor of joint custody. I am in favor of such a rebuttable presumption, although I would like to see the concept better defined than was the case in the original H. B. 210.

I do not necessarily agree with some of the other witnesses who testified at the hearing that the Committee Substitute totally guts the bill and is worse than having no bill at all. The Committee Substitute if enacted would, in my opinion, be a step in the right direction. I believe that the crux of the matter is that joint custody is a very useful and helpful concept, of substantial benefit in a large number of cases in resolving bitterly acrimonious disputes, by means which are frequently mostly semantic and with little practical difference from traditional custodial awards except that joint custody is considered more satisfactory to a parent who does not have primary custody of children after a divorce or a dissolution is granted. Joint custody is an extremely useful tool which should be encouraged for use in future custody disputes. It is my further belief that the present state of the law in Alaska actually discourages the use of joint custody, benignly if not actively, and that any step towards the more frequent use of joint custody by the courts is a step in the right direction. The Committee Substitute is in fact such a step in the right direction, although it is not nearly as strong a step as I would like to see because it has little substantive effect beyond its mere rhetoric. The adoption of a rebuttable presumption, such as that contained in the original H.B. 210 would be a much stronger step in the right direction.

The largest single difficulty with past joint custody arrangements which I have observed has been when the joint custody concept has been inadequately defined and structured. Thus I would like to see a bill enacted which would create a rebuttable presumption of joint custody but further require that such arrangements be tightly defined in the vast majority of cases. The use of mediation as authorized under both versions of H.B. 210 would be a significant help in arriving at such definition. I believe that all joint custody agreements should be required to include with specificity provisions for the actual physical custody of the children, together with the time to be spent with the children with the non-physical custodian, except in those unusual cases

where such specificity is not required for good reasons which are stated by the Court on the record. Such a requirement of specificity in joint custody awards would, I believe, resolve the major concerns of those persons who have opposed the rebuttable presumption concept. Such an approach also comports with my own experience in dealing with joint custody, which is that carefully defined joint custody arrangements seem to work very satisfactory, whereas loosely defined joint custody arrangements can frequently create more problems than they solve.

Just as there may be rare cases where a loosely defined joint custody arrangement may be appropriate, and should I believe be authorized if good reasons are stated on the record, it is certainly even more true that there are many cases where joint custody is not appropriate. I do not see that as being in any way inconsistent, however, with the rebuttable presumption. My experience has been that such cases are relatively obvious and the presumption can easily be rebutted and thereby disappear. One thing not addressed directly in either of the bills, although at least an attempt was made in the original H.B. 210, would be to provide some additional teeth to the laws and encouragement to the Courts to actively prosecute and stop the sort of outrageous conduct, harassment, manipulating of children and the like which occurs in the all too large minority of cases. While not essential to H.B. 210, such problems are, I believe, worthy of consideration.

I would also like to speak briefly to the mediation provisions of the bill. I am in complete agreement with the comments of Superior Court Judge Tom Schulz in his letter to your Committee dated May 4, 1981, which I found to be an excellent and thought provoking letter and would commend once again to your attention. I firmly believe, as does Judge Schulz, that mediation should be required in all but the most exceptional of cases, and further that doing so would work a tremendous improvement in the resolution of custody disputes, and thereby pay for itself almost immediately in terms of time savings from the crowded Court dockets. Mediation is already authorized by Alaska statute, but virtually never ordered by the Courts, and anything which your Committee can do to change that situation could, I believe, be of substantial benefit to the entire domestic relations field in the State of Alaska. Again, H.B. 210 is a step in the right direction but does not go far enough.

Alaska State Legislature
February 4, 1982
Page 4

One final note. Concerning the comments of myself and other witnesses at the hearing as to language problems with the bill, I feel that such problems do exist with both versions of H.B. 210. I have been involved in legislative drafting in the past, however, and am well aware of the difficulties involved in drafting good statutory language. I have always believed that critics in that regards should be willing to invest some of their own time in attempting to resolve problems which they note, in effect put their time where their mouth is. Should the Committee be interested in my suggestions, you should feel willing to call on me and I will be available to attempt to help draft legislative language along the lines which I have recommended herein.

Thank you for your consideration.

Yours very truly,

ELLIS LAW OFFICES, INC.

By 

Drew Peterson

DP/jb

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 6 3603

March 26, 1981

Donald E. Clocksin, Chairman
House HESS Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill 210

Dear Mr. Clocksin:

You have asked us to comment on HB 210, "an Act relating to child custody." Although this bill has no direct impact on our department, we do have some concerns over the policy expressed in the bill.

The intent of the bill is laudable. It addresses concerns that have been surfacing with increasing regularity around the country. The bill, in promoting shared custody, embodies the notion that it is in the child's interest to perpetuate his or her relationship with both parents. Shared custody also appears to be, in some cases, more equitable with regard to the parents, giving legal recognition to the rights of both parents to participate in decisions which significantly affect the child's life. Although judges probably have inherent power to make shared custody awards in appropriate cases, statutory recognition and authority for such awards may ensure that shared custody is given serious consideration as an alternative in custody disputes. Additionally, statutory authority for a shared custody award may help in surmounting the sexual stereotypes that often operate in custody disputes.

However, conferring upon the notion that shared custody is in the best interests of the child the status of a rebuttable presumption, and requiring that first preference in making an award be given to shared custody, regardless of whether, in either case, the parents actually agree on shared custody, may be going overboard.

By its nature, shared custody requires extensive cooperation between the parents. Without question, there are many instances in which such an arrangement is simply not feasible due to the existence of extreme antagonism between the parents, or perhaps due to other factors (this is implicitly recognized by the listing of the factors to be considered in making an award, § 25.20.120). Many states have recently authorized shared or joint custody awards, and several have accorded it the presumption that it is in the best interests of the child where the parents can agree on an arrangement, but we are aware of none which give shared custody the blanket presumption provided by this bill.

We would suggest the requirement that parents agree on a shared custody award, at least before the presumption and first preference come into operation. Additionally, it may be advisable to require the parents to submit to the court a proposal setting out guidelines for resolution of disputes, and a workable plan if shared physical custody is contemplated, rather than to leave it in the court's discretion.

Section 2, amending AS 09.55.205, is also problematic. Subsection (d) of that statute would prohibit consideration of several factors in making an award of custody -- the conduct, marital status, income, social and cultural environment, and life style of either parent, unless those factors are shown to have caused or to potentially cause emotional or physical injury to the child. While the intent here may be to dispose of many of the conventional but perhaps unfounded presumptions regarding what is and is not a proper and suitable environment for children, this section seems to leave little that can be considered. We wonder, for example, how an assessment of each parent's capability to meet the physical, emotional, mental, religious, and social needs of the child, as required by subsection (c)(2), can be made if there is an exclusion of all reference to the parent's social and cultural environment and life style unless it is shown to be detrimental. We believe that this section is overly broad.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: *Linda Scoccia*
Linda Scoccia
Assistant Attorney General

cc: Art Peterson

LS:ml



Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

SECTIONAL ANALYSIS

HOUSE BILL 210: An Act relating to child custody.

Section 1 PURPOSE

Bill seeks to assure children "frequent and continuing contact with both parents after the parents have separated..." . Amends child custody laws in A.S. 9.55.205 and 25.20.060. Intent is to grant to both parents equal opportunity to guide and nurture the children of the marriage. In addition, out-of-court child care agreements are encouraged.

Section 2 Amends present section of A.S. 9.55.205 specifying that the court shall determine custody in accordance with the best interest of the child under A.S. 25.20.060-25.20.180 (new sections added by the bill-to follow below). Adds that the court shall consider the child's preference if the child is of sufficient capacity to form a preference. The court shall consider the "desirability of offering the child a variety of life experience". Also, the court may not consider lifestyle, income, marital status, social or cultural environment of either parent unless detriment of such factor towards the child can be shown.

Section 3 Custody of the Child. Bill expands on existing section relating to child custody (AS 25.20.060) by adding several new sections to AS 25.20 relating to custody disputes and awards. New sections added are set out in the following section.

Section 4

--Sec. 25.20.070 "Shared Custody". When a question involving custody is before the court, there is a rebuttable presumption that shared custody is in the best interest of the child.

--Sec. 25.20.080 "Mediation". Allows court considering child custody case to request the parties to participate in pre-trial mediation.

--Sec. 25.20.100 "Award of Custody". Outlines conditions for award of shared custody (by application and agreement). Also provides that court shall enter reason for denying shared custody when it declines such.

--Sec. 25.20.100 "Modification or Termination of Custody" Court may modify or terminate custody award if in child's best interest.



Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

SECTIONAL ANALYSIS (cont'd) HB 210

--Sec. 25.20.110 "Preference of the Child" If the child is of sufficient age and capacity to form an intelligent preference, such preference shall be considered by the court.

--Sec. 25.20.120 "Factors for Consideration by the Court". Outlines factors to be considered by the court in an award of shared custody.

--Sec. 25.20.130 "Preferences on Award". Sets forth the order of preference by which custody should be awarded "according to the best interests of the child".

--Sec. 25.20.140 "Temporary Custody". Unless harm is shown, child shall have equal access to both parents while custody is determined.

--Sec. 25.20.150 "Award of Custody to Nonparent". No custody shall be awarded to a nonparent unless it is demonstrated that award of custody to a parent is detrimental to the best interests of the child.

--Sec. 25.20.160 "Pleadings" An allegation that custody award to the parent would be detrimental may only appear in the pleadings by a general allegation to that effect.

--Sec. 25.20.170 "Access to Records of the Child" A parent not granted custody may have access to medical, school, and other records of the child.

--Sec. 25.20.180 "Definition" Shared Custody is defined as "an award of custody of the child to both parents and includes an award of physical custody which assures the child of frequent and continuing contact with each parent".

H B
2/8

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 218
 Title Formula Funding for Community Colleges
 Requested by House HESS Date 3/31/81

II. FISCAL DETAIL

Agency Affected Education
 Program Category Affected Commission on Postsecondary Education
 BRU, Program, or Subprogram(s) Affected Commission Administration

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL	N.A.	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	N.A.	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact, existing staff and resources would be used for this project.

IV. DATE March 31, 1981 PREPARED BY Kerry D. Rosenberg
 AGENCY Alaska Commission on Postsecondary Education
 Original: Legislative Finance PHONE 465-2355
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

424
22

EDUCATIONAL

(907) 272-2731

MANAGEMENT

ASSOCIATES, INC.

P.O. BOX 3411, ANCHORAGE, ALASKA 99510

January 27, 1981

Lee Hayes
Department of Education
Pouch F
Juneau, Alaska 99811

Dear Lee:

Enclosed are budgets for the Delta/Greely School District Chapter 50/80 projects. As you will note, the project budgets, based on professional cost estimates, do not match the appropriations except in the case of the Vocational Center.

In order to expedite as many projects as possible, we propose to bid all except the Sprinkler System within the next two to three weeks. We are, therefore, requesting that the balance of \$64,000 in the Fort Greely Library plus the balance of \$52,500 in the Fort Greely Classrooms be transferred to cover the deficit of \$116,500 in the Administration Building. Thus, an overall Chapter 50/80 deficit of \$90,500 will remain, which is the amount necessary to complete the Sprinkler System. The District proposes to postpone bidding on this latter project and to seek an additional appropriation sufficient to accomplish the work.

Because of the tight timeline we are facing, we should appreciate a prompt reaction to this request. By copy of this letter to Richard Pryor, DOT/PF Grant Administrator, we are seeking a response from his agency as well.

Very sincerely,



B. A. Weinberg, Facilities Coordinator

DELTA/GREELY SCHOOL DISTRICT

(EDUCATIONAL MANAGEMENT ASSOCIATES, INC./
DLC CONTRACT SERVICE CORP., J. V.)

Enclosures

cc: Jerry Story
Richard Pryor

509 WEST THIRD AVE. SUITE 116

STATE OF ALASKA

DEPT. OF TRANSPORTATION & PUBLIC FACILITIES

Central Division, Facilities Planning

Jay S. Hammond, Governor

4111 Aviation Avenue
Anchorage, Ak. 99502 / Mail Pouch 6900
(907) 266-1675 / (Telex 25-185)

February 4, 1981

Educational Management Associates, Inc.
B. A. Weinberg
PO Box 3411
Anchorage, AK 99510

Dear Mr. Weinberg:

I am returning the grant project budgets for the following projects:

Delta Sprinkler System	15-104
Delta/Greely Admin. Building	15-106
Ft. Greely Classrooms	15-103
Ft. Greely Library	15-105
Delta/Greely Vocational Center	15-102

None of the budgets were initialed as approved by an authorized school district representative.

As your letter states, the project budgets, with the exception of the Vocational Center, do not match the appropriation. Unfortunately these project appropriations were specific site and use appropriations. Funds cannot be transferred between these appropriations. Funds from another source must be cited to cover shortfall on the Administration Building project.

Sincerely,


Dick Pryor
Grant Administrator

DP/lmm

cc: Jerry Story, Superintendent, Delta/Greely REAA

C310

DEPARTMENT OF EDUCATION

DIVISION OF MANAGEMENT AND FINANCE

POUCH F - STATE OFFICE BUILDING
JUNEAU, ALASKA 99811

February 4, 1981

Glen Chowning, Superintendent
Delta/Greely Schools
P.O. Box 527
Delta Junction, Alaska 99737

RE: Administration Building
H-79100

Dear Glen:

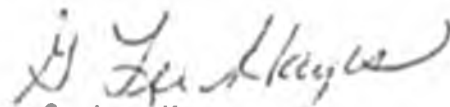
The budget and plans for the Administration building cannot be approved as the budget exceeds the amount appropriated.

Before the funding can be changed between projects as proposed the approval of the Legislature and the Governor's office must be obtained.

I recommend that the Administration building be redesigned to bring the budget to within the funding provided.

The Department of Transportation & Public Facilities can request a revised program to change the funding as suggested, however, it will take at least 30 days to accomplish this change.

Sincerely,



G. Lee Hayes
Facilities Coordinator

cc: Jerry Story
Al Weinberg
Dick Pryor

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ORIGINAL.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

DELTA GREEN VOCATIONAL CENTER

PROJECT NO. H-79099

PROJECT NO. H-79099	1,000,000	AVC	Total Available	Approved by:
AVC				
AVC				
AVC				
TOTAL BUDGET:	1,000,000			

FUNCTIONAL ORGANIZATION	ACTY CODES	ACTY CODES	ACTY CODES	ACTY CODES	ACTY CODES	ACTY CODES
ADMINISTRATION	Total	0				
Administration	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	1,500				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
OTHER SERVICES	Total	8,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	68,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
ADMINISTRATION	Total	14,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	12,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	30,500				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	96,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	740,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	30,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					
STUDENT SERVICES	Total	970,000				
Administrative	37A					
Legal Expense	37B					
Payroll	37C					
Travel	37D					
Contingency	37E					

PROJECT TOTAL: 970,000 30,000 1,000,000

Open 1,000 CONTRACTS & COMPLETION (Prep. Comp.)

Legend: Page _____
 Line _____
 Date _____

PROJECT: Fort Greely Library

PROJECT NO: N-79098

MODE: <u>Chester 50/90</u>	300,000	NC:	
		NC:	
		NC:	
TOTAL BUDGET:	300,000		

Facility Use: Library

FUNCTIONAL DESCRIPTION	EST. NO.	EST. AMOUNT	PERCENT	EST. TOTAL	PERCENT
TOTAL		0			
1-RESEARCH					
-RESEARCH	174				
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PROJECT: DELTA GREELEY ADMIN. BLDG

PLAN NO: H-79100

AMOUNT	200,000	AC:	
AREA		AC:	
		AC:	
EST. NUMBER	200,000	AC:	

Facility: Administration Building

FUNCTIONAL DESCRIPTION	ACTY. CODE	AMOUNT	PERCENT	PERIOD	REMARKS
1. GENERAL		0			
ACQUISITION					
Legal Expense					
Payroll					
Travel					
2. SITE DEVELOPMENT		1,000			
Site Survey					
Payroll					
Inspection					
Travel					
Water Survey					
3. MAIN BUILDING		3,000			
Architectural Fees					
Design					
Permit					
Construction					
Travel					
Water Survey					
4. OTHER SERVICES		23,500			
Professional Services					
Sub-Contractors					
Food					
Office Expense					
Payroll - Office Exp.					
Maintenance Expense					
Travel - Office Exp.					
Social Services					
5. OFFICE SUPPLIES		3,500			
Office Supplies					
Office Expense					
Payroll					
Other					
6. OTHER STATION		3,000			
Office Expense					
Payroll					
Travel					
7. OTHER		8,000			
Office Expense					
Payroll					
Travel					
8. TOTAL		37,000			
9. TOTAL BUDGET		200,000			

NOTE: \$17,000 over budget --- transfer balances:
 \$64,000 (Grant #15-105)
 \$82,000 (Grant #15-103)

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YUKON FLATS SCHOOL DISTRICT

P. O. Box 359
Fort Yukon, Alaska 99740
Phone: (907) 662-2515



March 16, 1981

ARCTIC VILLAGE
99722

BIRCH CREEK
99740

CHALKYITSIK
99788

CIRCLE
99733

FORT YUKON
99740

JOV

RAMPART
99787

STEVENS VILLAGE
99774

VENETIE
99781

TO: Ms. Hali Denton
Rep. Moss' Office
Pouch V
Juneau, Alaska 99811

REF: House Bill No. 60
Venetie Generators, \$50,000.00

Dear Ms. Denton:

This letter will memorialize our conversations by telephone on 10, 11, and 16 March, 1981.

The School Board has advised that the referenced appropriation would best serve the interest of the Yukon Flats School District if it can be repealed and reappropriated for general use as a non-site specific funding source.

This modification to House Bill #60 is necessitated by the fact that new generators were included in the Venetie High School contract and additional generators are not needed at that site at this time.

Please keep us advised and thank you for your assistance with this matter.

Very Truly Yours,

A handwritten signature in cursive script that reads "Don Johnson".

Don W. Johnson

DWJ/kw
cc: J. Whitt, Superintendent

H B
2 2 5
1/2

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

March 4, 1981

Honorable Fred Brown, Chairman
Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Chairman Brown:

Although I have been out of the State due to a family emergency and therefore unable to attend recent hearings regarding the Parole Board, I wish these comments to be made available to each of the Committee members to perhaps clarify some of the testimony regarding the Parole Board presented at the hearing on February 26, 1981. I also would like the opportunity to come to Juneau and personally speak to the Committee about Parole Board legislation. If you will give me some notice when the Committee will be holding additional hearings, I will arrange to travel to Juneau. You can contact me through the Board staff office in Juneau at 465-3385.

Much of the testimony of the Department of Law stated conclusions about the Board and other segments of the criminal justice system that need very careful scrutiny. Accepting them as fact without supportive information could result in you drastically altering the system based upon "one liners", innuendo, or misinformation. Comments made by the Law representative stated or implied the following:

- (1) Presumptive sentencing greatly restricts all discretion.
- (2) Presumptive sentencing eliminates most unjustified disparity at sentencing.
- (3) Presumptive sentencing mandates certain sentences in specific cases no matter what the judge, district attorney or defense attorney does.
- (4) The system knows what impact presumptive sentencing has had on the system and that effect has been positive.
- (5) Disparity in sentencing would be minimized by the elimination of the Parole Board.

- (6) The Department of Law's bill would eliminate unjustified disparity in the system.
- (7) "Split sentences" (a period of jail time with probation to follow) don't make sense and therefore the potential for parole release should be eliminated to "solve the problem".
- (8) Elimination of the Parole Board would necessarily give more "finality" at the time of sentencing than if the Board remained (with its policy of seeing inmates within six months after the date of sentencing).
- (9) "Gameplaying" by offenders is unique to Parole Board hearings and all gaming would be eliminated in all other segments of the criminal justice decision making points (bail, pre-trial diversion, trials, sentencings, sentence modification hearings, all Corrections disciplinary hearings, all contacts with defense and prosecuting attorneys, etc.).
- (10) Sentencing is based primarily upon what the offender did and that most Parole Board decisions are based on predicting what the offender will do when he is released (and that risk should not be considered by the Board).
- (11) Offenders sentenced presumptively know their actual date of release once they are sentenced.
- (12) Under Department of Law's bill, offender's would know shortly after sentencing when they would be released on furloughs by the Division of Corrections.
- (13) A system of replacing parole release with good time and furloughs would result in more just and equitable treatment of offenders.
- (14) Three or four other states have abolished parole boards and all related parole board functions without causing problems in the criminal justice system and without just changing the name of the board or without giving other responsibilities to the Board.
- (15) The court handles probation revocations very differently than does the Board and the court conditions of probation are significantly different and less restrictive than the Board's.

- (16) The Division of Corrections standards for the handling of good time and furloughs are more specific, fair and just than the Boards' for the parole of offenders.
- (17) The current law makes most offenders ineligible for furloughs now and that is why only a few people are on furloughs and why a new furlough law is necessary.
- (18) Parole Board hearings are not open to the public because it doesn't want the public to see what it is doing.
- (19) The Board does not allow attorneys at either parole release or parole revocation hearings.
- (20) The State had been moving toward abolishing the Parole Board for many years and the Department of Law's bill is the next logical step in this goal supported by everyone in the system after fully understanding all current information about the Board.
- (21) The Parole Board is the only segment of the system that allows offender programming or offender non-involvement in program to be a consideration, and this factor would disappear as a consideration at pre-trial diversion hearings, classification hearings (at which furloughs are considered), disciplinary (good time) hearings, and probation violation hearings.

I would suggest that most of these statements--not facts--are incorrect, very incomplete, or at best, misleading. I would strongly urge you to get the facts and require data to support the "conclusions" or supposed "facts" before arriving at your own conclusions. Permit me to give you an example how you could be easily misled by incomplete information. You heard testimony at the Feb. 26 hearing that the State had essentially been moving toward abolishing parole for a decade. Mr. Stern cited the fact that the Legislature had given the judges authority to limit or even deny parole eligibility to specific offenders when they were sentenced. The presumptive sentencing scheme was given as yet another example of the Criminal Code Commission's and the Legislature's intent to phase out the Parole Board in Alaska. I disagree with Mr. Stern's perception and let me explain by giving some additional background on the Criminal Code Commission's handling of the parole issue.

Honorable Fred Brown, Chairman
Judiciary Committee
March 4, 1981

The Criminal Code Commission did originally recommend the abolition of parole in Alaska in January 1976. The record does not clearly reflect what led the members of the Commission to this conclusion, but one or more reference books discussing parole appear to have been the primary basis for the decision. It is known no data on the operation of the Alaska Parole Board was requested by the Commission members and no one from Corrections nor the Parole Board was contacted for input. (The primary staff person for the Commission was on record as saying he felt parole decisions should be made by judges.) That preliminary report was not to stand and the parole issues continued to be discussed by Commission members along with sentencing and related issues.

One of the Commission members requested the Parole Board present input on parole and sentencing issues, the Board and the visiting Chairman of the Oregon Parole Board did testify before the Commission in November 1977. Although the staff of the Commission (including Mr. Stern and the other staff person I mentioned in the above paragraph) had drafted a proposal abolishing parole, the Commission rejected this approach. Instead they approved a concept that would tightly structure the judicial sentencing discretion, but would allow for parole release withing certain specified guidelines. This approach was supported by a great majority of the Commission members after developing a thorough understanding over the years as Commission members of the importance of how DISCRETION works in the criminal justice system. Without thorough understanding of how discretion works, rational decisions about effective changes in the system will not follow. Let me explain the concept of discretion in the criminal justice system that is supported by experienced and well-respected criminal justice professionals around the country, such as Professors Andrew Von Hirsch and Vincent O'Leary.

There is a given amount of discretion in any criminal justice system. All components of the system have some, but there is only so much no matter who has it. You can move around the discretion, you can increase or decrease the amount any segment has, but discretion is not eliminated, only transferred from one component to another. Here are some examples of some discretion various segments of the system have now.

	<u>WHO</u>	<u>WHAT</u>
POLICE:	(a)	Charge as crime or handle informally.
	(b)	Arrest or not arrest - issue summons.
	(c)	Initially charge as most serious to least serious crime.
	(d)	Initially charge all possible crimes, a few, or only one.
	(e)	Initially recommend high bail, low bail, O.R. release.

DISTRICT

ATTORNEY:

- (a) Dismiss one or all charges.
- (b) Allow to handle as deferred prosecution.
- (c) Charge most serious to least serious charge (this will determine the possible range of sentences the judge will have available at sentencing).
- (d) Charge all possible crimes, a few, or only one (this also will determine whether or not the judge may sentence to consecutive terms, concurrent, and also the sentencing range).
- (e) Change all counts of an offense, a few, or one (same effect as above).
- (f) Recommend bail to court.
- (g) Charge no aggravating factors, charge one, charge many factors (judge cannot sentence above presumptive term, if applicable, unless D.A. charges an aggravating factor and judge rules the factor exists).
- (h) Charge or not charge a prior felony (presumptive sentencing is triggered only if the D.A. charges and substantiates a prior felony in the required seven year period. If not charged, defendant not sentenced presumptively).
- (i) Charge or not charge the use of a gun during the commission of the crime (same effect as above - if D.A. doesn't charge the use of the gun, not subject to presumptive sentencing).
- (j) Charge or not charge the fact defendant caused serious physical injury during the commission of the crime (same effect as previous example).
- (k) The D.A. can make any recommendation he wishes to the sentencing court about disposition, including sending the case to the three-judge panel but none of these recommendations have the effect of changing the judge's discretion.

- JUDGE: (a) Sentence a "first A felony" offender to a jail term of 0-20 years, a fine of \$50,000, restitution, community work, probation etc.
- (b) Sentence a "first A felony" offender to a term of 3-20 years if D.A. charges and judge finds gun used or serious physical injury.
- (c) Sentence a "first B felony" offender to a jail term of 0-10 years, or other sentences listed in (a).
- (d) Sentence a "first C felony" to a jail term of 0-5 years.
- (e) Sentence a "second A felony" to a jail term of 5-20 years if the D.A. charges and the Judge any aggravating or mitigating factors, and other sentences listed in (a).
- (f) Sentence a "second B felony" to a jail term of 0-10 years and other sentences listed in (a).
- (g) Sentence a "second C felony" to a jail term of 0-5 years and other sentences listed in (a).
- (h) Sentence a "third A felony" to a jail term of 7-1/2 years to 20 years and other sentences listed in (a).
- (i) Sentence a "third B felony" to a jail term of 3-10 years and other sentences listed in (a).
- (j) Sentence a "third C felony" to a jail term of 0-5 years and other sentences listed in (a).
- (k) Sentence an offender convicted of 1st degree murder to a jail term of 20-99 years and other sentences listed under (a) and a fine up to \$75,000.
- (l) Sentence an offender convicted of second degree murder or kidnapping to a jail term of 5-99 years, and other sentences listed in (a) and a fine up to \$75,000.
- (m) Send the case of any "presumptive offender" to a three-judge panel for sentencing if the first judge thinks the term of imprisonment would result in "manifest injustice".

- (n) Place most offenders on probation under any reasonable condition for up to five years.
- (o) Revoke all or part of an offender's probation for violation of any condition of probation or a violation of a law, at any time during the sentence.
- (p) Terminate or extend probation at any time in the sentence.
- (q) Make any offender serve more time than one-third up to the maximum sentence before becoming eligible for parole.

CORRECTIONS: (a)

- (a) Make recommendation for sentencing in the presentence report.
- (b) File petitions to have the judge consider probation revocations or request the D.A. file such petitions, depending upon the judicial district.
- (c) Grant good time credits amounting to 25% of an offender's sentence for good institutional adjustment. Take away part or all good time for one or more infractions of jail rules, requiring prisoner to serve up to 25% more time.
- (d) Make recommendations on Parole Board release decisions.
- (e) File Petitions to revoke parole with Parole Board and make recommendations to Board.
- (f) Grant various kinds of furloughs to almost any sentenced offender serving a jail sentence.

PAROLE
BOARD:

- (a) Consider offenders for parole once they have served one-third of their sentences, and make a decision to parole or not parole the offender before he is released from jail after serving 66%-75% of his sentence with good time (the Board has control over 33%-42% of the offender's sentence) This assumes the judge has not made the offender ineligible for parole or more than 1/3 of his sentence or for all of his sentence.

- (b) Set conditions of release on all those paroled and on those subject to "mandatory release" or "legislative parole", based upon guidelines set in regulation and in current case law.
- (c) Revoke the release of offenders that parole officers bring to the Board's attention if the Board determines the offender cannot follow the laws.
- (d) Change a parolee's conditions of parole when good cause justifies it.
- (e) Carry out executive clemency investigations and make recommendations to the Governor's Executive Clemency Advisory Committee.

DISCUSSION OF DISCRETION

As you can see from the tables above, there is a lot of discretion in the system. Let's examine this discretion in light of the comments made at the recent House Judiciary Committee, understanding that only a few areas I mentioned earlier in my letter will be discussed here but that the committee members should be aware generally of the magnitude of discretion available to various segments.

Statements made at the hearing implied that presumptive sentencing has taken most or all discretion out of sentencing and that it will get rid of disparity in sentencing. The new criminal code did classify most crimes into categories and set maximum lengths of jail terms but did not do away with discretion. It in fact sharply increased the influence of the prosecutor while limiting somewhat the power of the judiciary. Except in a small percentage of cases, the new sentencing law does not mandate specific or mandatory sentences. But the prosecutor is the person that frequently holds the key to whether most of these presumptive or mandatory sentences will apply to a given case. (Examples are difficult to follow without having the chart of the presumptive sentences handy to refer to, and I or my staff would be more than happy to give you some additional examples before the entire Committee with the aid of the chart.)

Example: Mr. Smith has been arrested on an assault charge. He had a prior felony conviction five years ago which you would assume would automatically make Smith subject to presumptive sentencing. Not so. If the prosecutor does not charge the prior felony and prove it in court, Smith is considered a "first felony offender".

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The facts of his case indicate he could be charged as either a first degree assault or a second degree assault. Assuming the prosecutor charged the prior felony, he knows Smith would have a presumptive term of 10 years if charged as first degree assault and if any mitigating and aggravating factors were charged, the judge could sentence Smith to 5-20 years. Smith would have to be sentenced to the presumptive sentence of 10 years only if the prosecuting and defense attorneys did not charge any mitigating or aggravating factors to the court (both tell us it will be unusual not to charge at least some mitigating and aggravating factors). The prosecutor knows if Smith is charged with assault in the second degree, the presumptive term would be 4 years, but could be mitigated down to 0 years or aggravated up to 10 years. Thus he can effectively decide what range the judge will have available a sentencing (5 to 20 years or 0 to 10 years) by what Smith is charged with. Of course if the prosecutor doesn't charge the prior felony, the judge discretion is 0-20 years for the assault one and 0-10 years for the assault two charge. Obviously the prosecutor isn't lacking discretion under the new code.

We are told judicial discretion is removed or severely limited by presumptive sentencing. It is limited somewhat but certainly not removed entirely. For example two different judges with Mr. Smith's case could sentence him to widely varying sentences on the same circumstances of the crime and background, (assuming an assault II conviction) as long as at least one factor in mitigation and one factor in aggravation was proven, by giving different weights to those factors. For example, Judge A could give strong weight to the mitigating factors and sentence Smith to no jail time or certainly less than four years. Then Judge B could sentence Smith to ten years by giving primary weight to the aggravating factor. The point is either judge could sentence Smith to 0-10 years, with Judge A usually handing out a sentence of one year to most offenders while Judge B usually sentences offenders to six years for similar crimes and backgrounds, and still be within the constraints of the presumptive sentencing scheme.

These or other examples are not meant to impugn the integrity of either prosecutors or judges around the State of Alaska, but only show that even with presumptive sentencing, disparity in the handling of cases by the criminal justice system is far from being eliminated. Obviously there is a need to develop some specific guidelines about who should go to jail and who should not, before we can seriously tackle the problem how long should offenders stay in jail if we decide they should go to jail. (At least the Parole Board does have specific, concrete, written guidelines for determining how long offenders serve if they are sent to jail but those guidelines don't help with the more basic decision of who should or should not go to jail at all.)

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Before placing stock on what anyone says the new presumptive sentencing has had on the criminal justice system, I would urge you to get a hold of specific data about the impact of the code. My guess is you will find not much information is yet available unless things have changed a lot since the Parole Board tried to get some information on the impact of the system late last summer. The best information we have now is that approximately 18 offenders have actually been sentenced to presumptive terms since January 1, 1980 out of over 600 sentenced felons in jail now. Even if we has sufficient data on all these presumptive cases it would probably be difficult to identify any trends, or positive or negative influences on the system. Possibly the Judiciary Committee can insure that careful attention is given to keeping a close watch on the system and providing some indepth information to the public and the Legislature so we can assess the impact of presumptive sentencing down the line.

Let me concentrate on some of the misconceptions that may have been alluded to about the Parole Board. First it was implied that there is no "certainty" when an offender would, if ever be granted parole. That is not true. The Board has adopted regulations (available to judges, D.A.'s offenders, the public, etc.) that outlines the specific time ranges an offender can expect to serve if the criminal justice decides to send him to jail. These ranges are fairly narrowly drawn (16 to 21 months for a class B felony with little or no prior record, etc.; 21 to 28 months for a more extensive prior record, abuse of alcohol/drugs, etc.). The work was completed on these parole guidelines last summer, they were given a trial run for six months last fall and they were put into use beginning January 1, 1981. Any offender can sit down with his institutional counselor when he is sentenced, have a score sheet filled out based upon his case file information, and he will know with about 85% certainty when he is going to be released--without ever appearing before the Board.

The Board has been working on the development of these guidelines since 1978. During the time the Board was working on the guidelines, the members also felt it would be to everyone's benefit to begin seeing offenders (who did not have real long sentences) within the first six months of their sentences. There would be many good reasons for this change in policy. The Board currently sees offenders when they are within three months of being eligible for parole release. Some of the goals of this policy change would be:

- (a) Set presumptive release dates on most offenders with shorter sentences so everyone would know when offenders could expect to be released and the whole system could plan accordingly.

- (b) Allow the Board members to discuss problem areas/goals with offenders so the offender could make the best use of time before they are due to be released.
- (c) Board would review the offender shortly before his presumptive release date to discuss his release plan and conditions of parole with him and see that he had conducted himself in a reasonable manner in the institution.
- (d) Insure that the offender's release plan provided him with sufficient support to optimize his chances of a successful parole adjustment.

Why hasn't the Board implemented this policy change? This change would necessitate the Board receiving specific information in a timely manner from the Department of Health and Social Services about all sentenced offenders who might be eligible for parole. This information was not available to the Board so the Parole Board staff began requesting it informally through Departmental channels in 1978. These requests were made to both the Commissioner's office and the Department's office of information services. After approximately one year had passed with no information, I requested the information from the Commissioner in February, 1979. In the summer of 1980 the information began to trickle in and with considerable effort by the Board staff and the staff of the Division of Corrections, we have recently developed a fairly accurate list of offenders. The problem is that the institutional population has increased so rapidly since our initial request the Board would probably need some additional time to see every offender, say with sentences of 5 years or less, immediately. (The Board will not be able to even see those that are currently eligible for parole between now and July 1981 unless supplemental funding is made available to the Board for the upcoming Board hearing.) However, the Board did adopt this policy of hearing offenders early in their sentences and the members reiterated their desire to begin the process as soon as possible for everyone's benefit. So as you can see, the Board members themselves have been working on eliminating the "uncertainties" of parole release dates long before the Department of Law testified before your committee last week. Given sufficient resources, we expect we can probably achieve our goal with the offenders with shorter sentences before the end of the year.

The Board was chastised by the Department of Law for considering an offender's "risk" when making parole decisions. The Board does consider the risk factor when making parole decisions because it is required to by Alaska Statute (AS 33.15.080). We believe this law clearly mandates the Board's consideration of risk at the present time. However, I should point out that most of the "risk factors"

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utilized by the Board in its guidelines are what Mr. Stern referred to as "what the offender did" items, such as prior felony convictions, prior misdemeanor convictions, juvenile probation record, juvenile institutional record, adult probation/parole record, alcohol abuse/drug abuse record, etc. They are used more precisely and consistently in parole hearings. So even if the Legislature were to change the statute listed above, it probably would have little effect on the guidelines because most of the risk factors are related to "what the offender did". Of course, the most important factor in any case considered by the Board are the facts of the present offense(s), or "what the offender did" (see our 1979 study for documentation).

Mr. Stern told you Parole Board hearings are not open to the public. He is correct. They are closed pursuant to Alaska Statute 44.62.310. This means that the door to hearings are not open for anyone to walk in. However, he failed to inform you the Board has always, to the best of my knowledge, since I have been a member of the Board, allowed any responsible person to sit in on Board hearings once they received a short briefing on how hearings were conducted, the purpose of the information and procedures, and that information presented at hearings was confidential by law (AS 33.15.140) and must not be communicated to anyone outside the hearing. The Parole Board has had State legislators, prosecutors, defense attorneys, staff of all various State governmental agencies, newspaper reporters, T.V. staff, university students, and ordinary citizens from the community sit in on hearings. All hearings are taped and you are welcome to listen to the tapes of any hearing if the offender signs the appropriate waiver. Furthermore, in spite of what Mr. Stern said, attorneys are allowed at any Parole Board hearing and we strongly encourage their attendance at all parole revocation hearings where there might be a dispute of facts. Come over and listen to our tapes or sit in on some hearings if you have any questions.

The Department of Law has suggested the Parole Board be eliminated and be replaced with more furloughs and more good time. I know that almost all sentenced prisoners are not prohibited by law from being placed on furloughs now - it is the regulations and practices of the Division of Corrections that have severely limited the use of furloughs. It might be beneficial to consolidate and update these laws but the low utilization of furloughs cannot be blamed on the Legislature. I know these furlough policies are changing but I am not sure furloughs would be appropriate for the extended periods of time we have offenders on parole. All the experts have told us that six months maximum is all the time you want an offender on most community based programs, except probation or parole supervision in an offender's own home. I would strongly urge you very carefully and skeptically review this as an alternative to parole release. Do not certainly not do so when all the various kinds of potential furloughs are just in the "talking stage". I would strongly urge you discuss this with Mr. Trivette and Mr. Campbell, both whom have a lot of experience with halfway houses and community based programs. You should also carefully consider whether or not this might introduce more disparity in the handling of offenders. Instead of the Parole

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Board releasing offenders subject to the specific guidelines adopted, you would have nine classification committees and superintendents in Alaska and another 25-30 classification committees and wardens in contract facilities making furlough decisions based upon few standards. Disparity in the handling of offenders is almost certain to be increased with the large number of persons involved in the process and institution concerns will prevail as an overriding factor in many cases. Again, this is no reflection on the staff of Corrections - just a byproduct of spreading decision making out to 156 persons with all their individual personalities.

Good time in Alaska has been a "can of worms" for a decade. I would respectfully defer to Mr. Trivette on this subject who is very knowledgeable on this topic. From my limited knowledge on the subject, I would strongly urge you not consider changing the good time laws without Mr. Trivette explaining some of the numerous problems with good time previously and currently providing you with some background on the purposes of good time.

Let me take a moment of your time to tell you something of Mr. Trivette's background, experience and standing in the criminal justice community in Alaska and around the country. He is considered knowledgeable and an expert in many of the specialized areas of corrections work, such as classification committees, good time, parole laws, report-writing, systems operations, parole guidelines and other "risk assessment scales", community-based corrections, etc. He is constantly called upon by various corrections personnel, attorneys, judges and other criminal justice employees to serve in a problem solving capacity. He has been a leader in some national corrections groups and is currently in the Commission on Accreditation for Corrections "pool" to serve on committees to review parole boards for possible accreditation based upon strict national standards. He has been a very active participant and sometimes chairman of various groups working on improving the criminal justice system in Alaska. He has conducted training sessions, seminars and presented papers at various state and national correctional meetings. Because of the deep respect he has gained from the wide spectrum of criminal justice employees, I would hope you would carefully question him about any proposed changes you expect to make in the system and specifically about the statements made by the Department of Law. You will get nothing but "straight talk" from him.

Although I have been supportive in the past of the concept of the abolition of parole and replacing it with "presumptive", "flat-time", or "determinate" sentencing, I have become more skeptical each year about the ability of a system to really deal more consistently, more equitably and more fairly deal with offenders without a parole board. I am beginning to believe that a small collegial body, operating under specific guidelines, hearing all cases around the state, using the same interpretation of the guidelines, will be almost impossible to improve upon if given the tools to do the job.

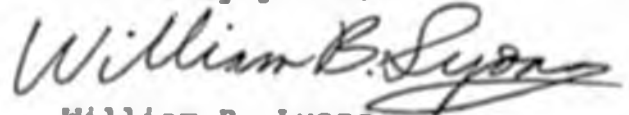
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Let me suggest you carefully consider Professor Von Hirsch's study, "Abolish Parole". The Alaska Parole Board has never been given those cools nor the support it needs to properly carry out its responsibilities - why don't you give us a chance for a couple of years with this support and see what materializes. I don't think you will be disappointed. After all, we are relatively cheap!!

Thank you for taking the time to consider the contents of this letter.

Sincerely yours,



William B. Lyons
Chairman

WBL

P.S. Why should the Board be given the opportunity to "prove" itself over the next few years? Recent Parole Board research indicates the Board is doing an outstanding job of fairly and equitably dealing with those offenders that apply for parole, even though those applicants come from various racial backgrounds. The fact that 3/5ths of the Board members come from minority or "protected classes" probably is a factor - the Board is one of the few segments of the criminal justice system that has much minority representation and certainly few if any have this high percentage of minority representation.

Again, I would defer to Mr. Trivette's expertise in explaining why I feel the Board has done such an exceptional job in fairly and equitably dealing with those offenders sentenced to jail, even before we had our parole guidelines to reply upon. Once you have seen the supportive documentation, I think you will be pleasantly surprised what a segment of the system can do with very little money.

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY CONVICTION	SECOND FELONY CONVICTION	THIRD FELONY CONVICTION
"A" Felony	0-20 3-[6]*-20	5-[10]-20	7 1/2-[15]-20
"B" Felony	0-10	0-[4]-10	3-[6]-10
"C" Felony	0-5	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder or kidnapping - \$75,000
 A, B, or C Felony - \$50,000
 A misdemeanor - \$ 5,000
 B misdemeanor - \$ 1,000
 Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or
 3 X pecuniary gain
 - whichever is greater

KEY

Number in bracket is presumptive sentence.
 Number to left is lowest mitigated
 sentence. Number to right is highest
 aggravated sentence.

• Six year presumptive term applies if first
 A felony conviction, other than manslaughter,
 and defendant used or possessed a firearm
 during the offense or caused serious physical
 injury.

MAXIMUM TERMS OF IMPRISONMENT
 FOR MISDEMEANORS

A misdemeanor - 1 year
 B misdemeanor - 90 days

PAROLE BOARD OUTLINE

1. The Parole Board is extremely inexpensive to operate in relationship to other sectors of the Alaska Criminal Justice system. The overall costs of the operation of the Board just exceeds \$225,000 for the upcoming fiscal year. Most of the money spent goes for salaries of staff, some compensation for Board members, and travel funds to allow the members to hold hearings throughout the state and in contract facilities housing Alaskan inmates. Although we do not have the actual cost of operating the court system or other segments of the criminal justice system in Alaska, they certainly exceed the cost of operation of the Board by far.
2. The Parole Board has very specific written guidelines for making its decisions, which make it available for very close public scrutiny. Any time a prisoner is not granted parole, he is sent an individual letter advising him of the reasons for the decision. Whenever a parolee has his parole revoked, he receives an individualized letter explaining the specific reasons why he has been returned to custody. Any time the Board deviates from their written guidelines in any given case, they must document the specific reasons in the file why such a decision was made. These letters are available for public scrutiny. (Refer to articles on guidelines for more specific examples).
3. The new parole guidelines research has allowed the Board to develop very concrete guidelines with numerical weights given to statistically valid factors that allows the Board to closely compare similar cases and will result in equal treatment of similarly-situated inmates.
4. The Board members are representative of the major ethnic and minority groups of the state. The Board has had Alaskan natives and black membership since 1971, and a women on the Board since early 1976. Each of these members have a wide variety of experience in dealing with and relating to minority persons. They are familiar with the diverge cultures of the citizens of the State of Alaska. No other segment of the system has or is likely to have in the near future, this broad representation.

5. In spite of the problems with the disparity in sentencing in Alaska, the inmates handled by the Board are treated very similarly, no matter what their ethnic background is. Current Parole Board research indicates that within the parameters with the law which requires all inmates to serve one-third of their sentence to which they are sentenced before being eligible for parole, the Parole Board does treat individuals similarly as much as is reasonable.
6. The Board members are not employees of the State, but are citizens from various communities around the state that retain their ties there and are familiar with the wishes of the communities from which they come. They are concerned with the community foremost rather than the needs of any department of the state government, and their decisions reflect their community and individual person orientation. The Legislature established a separate Parole Board office in 1972 specifically for the purpose of allowing the Board members to not be controlled or too heavily influenced by the other full time employees of the criminal justice system. This appears to be working very effectively.
7. The Board members make consistent decisions statewide. Although there is known to be wide disparity in sentencing between different areas of the state, this small group of Parole Board members maintains consistency in its decision-making throughout the State of Alaska. No matter how closely regulations and guidelines are written, such consistency is unlikely to occur throughout the state with the number of judges, district attorneys, and defense attorneys involved in the other segments of the criminal justice system.
8. Social science research has shown that group decisions in making parole and related kinds of decisions produce more consistent and equitable than those made by individuals.
9. The State constitution requires a parole system. Although the parole function could be handled by the courts or another agency of the State, or by other state employees, or some other group, the current make-up of the Board is the most cost effective while offering fair, consistent and reviewable decisions. Unless and until the citizens of the state wish to amend the state constitution, or a more cost effective and equitable system can be shown to be available, the current procedure should be maintained.

- 10.. In the mid to late 70's, many criminal justice professionals, college professors, attorneys, and others, were recommending the abolition of parole throughout the country. A great majority of those making that recommendation have since changed direction and many are now supportive of the parole process. The concept of a "community release board" separate from the courts to determine the length of prison terms was supportive by the American Bar Association in a position paper in the fall of 1977. This was a reversal of the Association's previous recommendation that parole be abolished.
11. A "community release board" concept is now being supported by many criminal justice professionals that had previously supported the concepts of "determinate", "flat-time", or "presumptive" sentencing schemes where the prison terms were set in statute with little judicial discretion and no parole discretion.
12. Some persons would argue that all relevant factors are known at the time of sentencing and therefore there is no need for any other determination about a release date later on after the date of sentencing. The proponents of this kind of system and the "nothing works" idea have lost most of their support in recent years.
 - (a) Research in other jurisdictions shows that institutional behavior does have a significant relationship to the success or failure of parolees and therefore should be considered at a parole release hearing some time after sentencing.
 - (b) Research in other jurisdictions shows that institutional programming and programming after release have a significant relationship to the success or failure of parolees and therefore should be considered at parole release hearings. (One such program that enhances the change of success is T.A.S.C.).
 - (c) Research in Alaska shows that certain aspects of an inmate's release plan do have a significant relationship to the success or failure of the parolee and therefore should be considered at the parole release hearing some time after sentencing.

Although we certainly do not have all of the research necessary to prove all relationships that exist, it is very clear that relationships do exist that are relevant after a person is sentenced and incarcerated and are appropriate to consider at a hearing by a parole board or similar body.

PAROLE BOARD RESEARCH FINDINGS

1. 70% of the "mandatory releasees" had served two years or less in jail when released on mandatory release supervision. Only 1% of the mandatory releasees had sentences exceeding five years.

It is apparent that the Parole Board frequently does not parole people with relatively short sentences (two years or less), but does parole most inmates with longer sentences.

A casual check of files several years showed that only one inmate out of 13 with six month sentences that applied for parole was paroled in a given year. It appears that the Board is following its stated of purpose in dealing with inmates with longer sentences and paroling those with short sentences only when unusual circumstances warrant.

2. Percentage of Inmates Paroled v M.R.'d by Race.

Race	M.R.	Parole
White	35%	65%
Black	21%	79%
Native	44%	56%
Other	35%	65%

Blacks get paroled at the highest rate with others and whites next. Natives get paroled at the lowest rate. At first glance, it would appear that there is a great disparity in who gets paroled and who mandatory releasees if you do not look at the following tables. As it turns out, some of the other tables give us a much better picture of the habits of the Parole Board, and provide us with the background on the differing parole rates.

3. Mean Months Sentenced by Race of M.R.'s and Parolees.

Race	M.R.	Parole
White	26.6	54.2
Black	34.6	79.2
Native	30.3	59.6
Other	61.5	127.6

This table gives us the length of sentence of people that the Board paroled and those that were released on mandatory supervision by operation of law without parole. This figure tells us more about the sentencing patterns of the court system rather than the Parole Board's, except that the Board does not parole inmates as frequently with shorter sentences as those with longer sentences. This especially true with the longer sentences as inmates are required to serve at least one-third and sometimes more of their sentence before being eligible to apply for parole.

4. Mean Months Served by Race of M.R.'s and Parolees.

Race	M.R.	Parole
White	20.2	19.4
Black	23.0	25.7
Native	22.9	21.4
Other	43.8	24.1

This table gives us a good comparison of how much time the Parole Board actually has inmates serve before they are released from custody either by parole or mandatory releases. Please note that the parole time on whites and natives is only two months different. The parole time on blacks and others is somewhat higher, but realizing that amount of time served before an inmate is eligible for parole is a function of the length of sentence, and thus these differences are somewhat dependent on the length of the inmate's sentence.

The time served for whites, blacks, and natives who are mandatory releasees are very close, being less than three months difference. Although the "other" mandatory releasees time is quite high, there are only a few people in that category which artificially inflates the time served number.

Very interesting are the close similarities between the amount of time the Board requires a person to serve by each race category whether or not they are paroled or released on mandatory supervision. There is less than one month's difference between the white parolees and white mandatory releasees, less than three months time served between the black parolees and black mandatory releasees and one month difference between the native parolees and native mandatory releasees.

Remembering that "others" had the longest sentences, followed by blacks, and then whites, this table shows that there is a very close relationship to the amount of time served by parolees and mandatory releasees within each race category.

5. Mean Months Served as Proportion of Mean Sentence by Race.

Race	M.R.	Parole
White	76%	36%
Black	66%	32%
Native	76%	36%
Other	71%	19%

Interestingly, the Board required white and native parolees to serve an identical amount of their sentences before being released on parole. Blacks were required to serve four percent less of their sentences before being paroled, recalling that their sentences were somewhat longer than whites or natives. "Others" were required only to serve 19% of their sentences, but their sentences were extremely long in comparison to the other groups, and again there was a very small sample in this category which unduly influences the figures. It appears the Board is treating all races as similarly as is possible within the current statutory scheme.

Let's take a look at those released on mandatory supervision. Again, whites and native served an identical portion of their sentences before being released on mandatory release. Blacks served a little less time than whites or natives, proportionally which is probably a function of their longer sentences and the Board's attempt to treat all prisoners similarly. "Others" released on mandatory release served a little more time proportionally than did blacks, but less than whites or natives.

6. For a summary of release characteristics by race, please refer to the table on page 9 of the Supplemental Report Time Served Component of the Alaska Parole Guidelines Study (September, 1980). This sheet provides a quick overview of the release patterns of the Parole Board, the relative length of sentences imposed by the courts on those persons seen by the Parole Board, etc.

7. Only six percent of parolees released by the Board from 1970-1979 were convicted of a new felony at any time while on parole. This figure is less than half the national figure with a two year follow up. This figure alone does not necessarily mean anything by itself, but probably indicates the Board is fairly careful about its release decisions, and also would suggest that parolees are being adequately supervised by parole officers. We know for certain that only about two or three parolees a year on the average are convicted of new felonies, so they are not a strong factor in the increased crime rate in Alaska.

1) add in furlough + half way laws
under parole Board.

Sec. 1

- ~~2) Dis-sumptive sentences - 3?~~
- Sec. 33.16.010. Established 5 member parole board, presiding officer has a minimum of 2 year related work experience.
- Sec. 33.16.020. Provided for nomination by the Governor.
- Sec. 33.16.030. Sets out criteria for qualification of board members.
- Sec. 33.16.040. Provides procedures for removal by Governor of board members and appeal process.
- Sec. 33.16.050. Allows \$100/day compensation for Board members plus travel and per diem expenses.
- Sec. 33.16.060. Sets out minimum of 4 meetings per year of the board.
- Sec. 33.16.070. Authorizes board to issue subpoena.
- Sec. 33.16.080. Describes scope of responsibilities of board including records, standards, recommendations to legislature and commissioner and presentation of annual operating budget. The board shall adopt regulations under AS 44.62 which establish standards for parole eligibility to standards of supervision.
- Sec. 33.16.090. Provides for Executive Director and staff.
- Sec. 33.16.100. Establish eligibility guidelines for discretionary parole release of non-presumptively sentenced prisoners and provided that prisoners released with good time deductions be considered on parole until the end of the period of original sentence.
- Sec. 33.16.110. Provides for fixing eligibility for discretionary parole at the time of sentencing when period of imprisonment is over one year and at least 1/3 of term is served.
- Sec. 33.16.120. Sets out broad criteria for paroling prisoners.
- Sec. 33.16.130. Lists various sources of information for determining suitability, including: 1, presentence report, 2, sentencing recommendations, 3. history at facility, 4. correctional personnel recommendations, 5. criminal history, 6. physical and mental examination.
- Sec. 33.16.140. Established prisoner's right to interview with a member of board, materials in pre-parole report he is intitled to see, may waive right to interview and receive a written decision.

- Sec. 33.16.150. Provides for order of parole.
- Sec. 33.16.160. Sets out parameters for conditions imposed by parole board and right of parolee to request reconsideration.
- Sec. 33.16.170. Provides for waiver of hearing.
- Sec. 33.16.180. Establishes confidentiality of pre-parole reports.
- Sec. 33.16.190. Establishes right to appeal decisions of board to superior court.
- Sec. 33.16.200. Assigns commissioner responsibilities including investigations and records.
- Sec. 33.16.210. Commissioner may assign probation duties to parole officers.
- Sec. 33.16.220. Sets out authority of DOC over parolees. Provides for discharge of parole after 5 years unless the board feels this is contra-indicated.
- Sec. 33.16.230. Allows for discretionary release after 2 years of parole.
- Sec. 33.16.240. Warrants.
- Sec. 33.16.250. Revocation procedures.
- Sec. 33.16.260. Basis for arrest on parole violation--warrant exigent circumstances.
- Sec. 33.16.270. Allows parole officer to execute arrest.
- Sec. 33.16.280. Applicability.
- Sec. 33.16.290. Definitions.

Sec. 2 Amended language AS 44.66.010(a)(3)

Sec. 3. AS 33.20.040(a) Changed to say that persons released with certificates of deduction for good conduct will be on parole for that amount of time specified in the certificate.

Sec. 4. AS 33.15. repealed

Sec. 5. AS.33.16 enacted.

Sec. 6. Allows for replacement of board members

Sec. 7. 7/1/81 effective date.

Sectional Analysis of HB 225

Sec.1: The composition of the parole board is set at five members who serve for five-year, staggered terms. Eliminates members who have conflicts through state employment or political office. Changes the minimum meetings per year from two to four. Establishes a removal procedure for definite conduct and with time limits.

The parole board is assigned the responsibility for making recommendations to the legislature and Commissioner. They are also responsible for maintaining records, making operating rules and standards, reports, etc. Invokes the Administrative Procedure Act (44.62).

The scope of the parole board is extended to include that period of time designated in the certificate of deduction for good conduct. Criteria for assessing suitability for parole are delineated. Designates written reports and testimony to be used in determination of eligibility. Makes confidentiality of pre-parole report more stringent and excludes parolee from seeing evaluations made by mental health or corrections personnel.

States that the parole order specify that violations of state or federal laws constitute grounds for revocation. Provides that the parolee accept conditions imposed by the board and establishes parolee's right to a hearing on reconsideration of a condition.

The duties of Commissioner of DHSS remain the same except for the provision that information pertinent to eligibility determination must be provided in a timely manner.

In Sec. 16.220, limited access to civil process is restored to parolees in conjunction with Bush v. Reid, Sup. Ct. No. 973, and the due process clauses in Alaska and United States constitutions.

A significant change from existing statute is the provision for interviews with a single member of the parole board for the purpose of determining either eligibility for parole or probable cause for revocation. A preliminary hearing before a single member of the board to determine probable cause must be held within 14 days of arrest. The revocation must be taken up at the next meeting of the parole board. Unless otherwise specified, time spent on parole may not be credited against a prisoner's sentence.

Sec.2 Changes termination date from 6/30/80 to 6/30/84.

Sec.3 Changes AS 33.30.030 to reflect that time specified in the certificate of deduction is considered a release on parole and subject to imposition of conditions by the parole board. Suggested language change on page 12, line 11, would change "period" to "certificate".

Sec. 4-7 Repeals old law replaced by chapter 16, allows for its application on effective date of this Act., which is 7/1/81.

Sec.6 Provides that the Governor shall appoint a new board to an initial staggered term schedule of 5,4,3,2,1 years.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. House Bill No. 225
 Title "An Act relating to parole of offenders & continuing existence of the * Board of Parole."
 Requested by House HESS Committee Date February 4, 1982

II. FISCAL DETAILS
 Agency Affected Department of Health & Social Services
 Program Category Affected Offender Confinement, Reformation, and Supervision BRU, Program, Or Subprogram(s) Affected Adult Confinement Probation & Com. Prog.
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill essentially enables the Board of Parole to continue their existence and carry out their responsibilities in the same general manner as in the past. Therefore, there would be no fiscal impact on the Division of Adult Corrections.

IV. DATE February 4, 1982 PREPARED BY Roger C. Lange
 AGENCY Division of Adult Corrections
 Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

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THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 225
 Title An Act Relating to Parole of Offenders: Continuing the Existence of the Board
 Requested by Representative Martin Date February 25, 1981

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Justice
 BRU, Program, or Subprogram(s) Affected Parole Board
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	5.5	5.9	6.4	6.9	7.5
300 CONTRACTUAL	-0-	2.4	-0-	2.8	-0-	3.2
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 COMPENSATION	-0-	23.8	23.8	23.8	23.8	23.8
TOTAL	-0-	31.7	29.7	33.0	30.7	34.5

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	-0-	31.7	29.7	33.0	30.7	34.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE March 5, 1981 PREPARED BY Samuel H. Trivette
 AGENCY Parole Board
 PHONE 465-3384
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) M&B Approval Date 3/4/81

A. Section .020 & .030, Nomination/Selection of Members

Budget one trip to Anchorage, Fairbanks, Bethel, Nome, Kenai, Ketchikan, and Sitka to meet with organizations to recruit for Board members and to administer member assessment. One additional day trip to one location to do final interviews and train on member responsibilities.

Travel 3.8

B. Section .050, Compensation

- a) Reading reports - assume 225 cases/year X 3/4 hours per file =
23 "member days"
Guess 23 X 5 members X \$100 = 11.5
- b) Phone log shows average of 30 calls/quarter to the office X 4 quarters =
120 calls/year for handling appeals, requests for special hearings,
setting mandatory release conditions, etc.
120 calls X \$120 = 12.0

Compensation Total 23.5

C. Section .080, Responsibilities

- a) Costs to rent meeting rooms, advertise, professional recording of hearings, to establish regulations in the Alaska Administrative Code.

Contractual 2.4

- b) Travel costs for Executive Director and Chairman to conduct 1 day hearings in Anchorage, Fairbanks, and Juneau.

Travel 1.7

- c) Compensation for Chairman 3 days at \$100.

.3

Section .080 Total 4.4

Assumptions

1. Travel will increase at a rate of 8% per year.
2. Contractual will increase at a rate of 8% per year, but hearings to modify regulations will be held only once every two years.

(2) "commissioner" means the commissioner of the Department of Health and Social Services or his designee. § 1 ch 105 SLA 1960; am § 6 ch 104 SLA 1971; am § 4 ch 32 SLA 1979

Cross reference. — For provisions allowing imprisonment as a special condition of probation, see AS 12.55.086 added by ch. 32, SLA 1979.

Effect of amendment.
The 1979 amendment, in paragraph (1), inserted "except as authorized under AS 12.55.086" and substituted "provided in this chapter" for "hereinafter provided."

Authority to impose period of incarceration as condition of probation prior to enactment of AS 12.55.086. See *Boyne v. State*, Sup. Ct. Op. No. 1766 (File No. 3678), 586 P.2d 125 (1978).

Applied in *Jackson v. State*, Sup. Ct. Op. No. 1194 (File No. 2422), 541 P.2d 23 (1975).

Chapter 10. Interstate Compact on Probation and Parole.

Sec. 33.10.010. Authorizing governor to execute interstate compact.

Cited in *Gonzales v. State*, Sup. Ct. Op. No. 1787 (File No. 3397), 546 P.2d 178 (1978).

Sec. 33.10.020. Definition.

Cited in *Gonzales v. State*, Sup. Ct. Op. No. 1787 (File No. 3397), 546 P.2d 178 (1978).

Chapter 15. Parole Administration Act.

Section

- 60. Granting of parole
- 180. Persons eligible for parole

Sec. 33.15.010. State board of parole.

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

government: *Davenport v. State*, Sup. Ct. Op. No. 1216 (File No. 2202), 543 P.2d 1204 (1975); *Serrano v. State*, Sup. Ct. Op. No. 1835 (File No. 3390), 572 P.2d 63 (1977).

Sec. 33.15.080. Considerations in determining eligibility for parole.

Cited in *Kross v. State*, Sup. Ct. Op. No. 1889 (File No. 4489), 604 P.2d 12 (1979).

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Sec. 33.15.070. Order for parole.

Cited in *Kraus v. State*, Sup. Ct. Op. No. 1989 (File No. 4649), 604 P.2d 12 (1979).

Sec. 33.15.080. Granting of parole. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced. (§ 3 ch 81 SLA 1960; am I 1 ch 110 SLA 1974; am § 14 ch 166 SLA 1978)

Effect of amendment.

The 1978 amendment deleted "or in the case of a life sentence, has not served at least 18 years" from the end of the section.

When prisoners may be paroled. — In the absence of a court order to the contrary, this section allows the parole board to parole a prisoner after one-third of his sentence has been served. *Shaghigh v. State*, Sup. Ct. Op. No. 1688 (File No. 3300), 567 P.2d 1034 (1978).

The trial court is not required to advise of parole minimums, or of its authority to fix parole eligibility, under the terms of Criminal Rule 11. *Morgan v. State*, Sup. Ct. Op. No. 1063 (File No. 2894), 562 P.2d 1017 (1978).

But it is preferable for court to so inform defendant. — While it is not necessary for the court to inform the defendant of the prohibition with reference to parole, it is preferable for a court to so inform the defendant, particularly if the court is imposing more

than the minimum of one-third of the term required to be served for eligibility for parole. *Morgan v. State*, Sup. Ct. Op. No. 1063 (File No. 2894), 562 P.2d 1017 (1978).

Applied to *Thomas v. State*, Sup. Ct. Op. No. 1448 (File No. 2723), 566 P.2d 630 (1977); *Past v. State*, Sup. Ct. Op. No. 1642 (File No. 3661), 560 P.2d 304 (1978); *Hansen v. State*, Sup. Ct. Op. No. 1689 (File No. 3412), 562 P.2d 1041 (1978); *Mills v. State*, Sup. Ct. Op. No. 1628 (File No. 3984), 562 P.2d 1247 (1979); *Williams v. State*, Sup. Ct. Op. No. 1942 (File No. 4789), 600 P.2d 1082 (1979).

Quoted in *State v. Lancaster*, Sup. Ct. Op. No. 1247 (File No. 2371), 560 P.2d 122 (1976); *Leharbers v. State*, Sup. Ct. Op. No. 1802 (File No. 3445), 569 P.2d 947 (1979).

Stated in *Crowd v. State*, Sup. Ct. Op. No. 1563 (File No. 2838), 573 P.2d 1379 (1974); *Kraus v. State*, Sup. Ct. Op. No. 1989 (File No. 4649), 604 P.2d 12 (1979).

Sec. 33.15.090. Revocation of parole.

This section may be given effect independently of whether a released prisoner is under the custody of the parole

board. *Martin v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Sec. 33.15.100. Adoption of rules and holding of meetings.

Parole Board urged to promulgate specific rules to govern situations where searches of parolees are

permissible. — See *Roman v. State*, Sup. Ct. Op. No. 1821 (File No. 2834), 570 P.2d 1213 (1977).

Sec. 33.15.180. Persons eligible for parole. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in AS 33.15.080 and 33.15.230(a)(1).

(b) A state prisoner who has been imprisoned in accordance with AS 12.55.125(a) or (b) may not be released on parole until he has served at least the prescribed minimum term of imprisonment.

(c) A state prisoner imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) who is released under AS 33.20.030 shall be placed on parole for the period specified in the certificate of deduction, subject to written rules and conditions imposed by the board or his parole officer. (§ 7 ch 81 SLA 1960; am § 34 ch 43 SLA 1964; am § 9 ch 68 SLA 1965; am § 2 ch 110 SLA 1974; am §§ 15, 16 ch 166 SLA 1978)

Effect of amendment.

The 1978 amendment, inserted "and who is not imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2)" in present subsection (a) and added subsections (b) and (c).

Editor's note. — Section 23, ch 166,

SLA 1978, provides, in subsection (d): "AS 33.15.180, as amended in sec. 15 and 16 of this Act, applies only to persons imprisoned for crimes committed on or after the effective date of this Act."

Cited in *Stone v. State*, Sup. Ct. Op. No. 1882 (File No. 4120), 604 P.2d 72 (1979).

Sec. 33.15.190. Release and terms and conditions of release.

This section and AS 33.20.040 in part **repealed.** — This section and AS 33.20.040 were enacted at the same time and concern the same subject, and are therefore in part **repealed.** *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

And may be rescinded. — Although this section and AS 33.20.040 are in conflict since under this section, when the prisoner's term less good time has expired, he no longer remains in the legal custody of the board, yet under AS 33.20.040, he is to be considered as if released on parole

until the expiration of his maximum term less 180 days, these provisions may be rescinded if, during the period of release, after the term less good time has expired but prior to the time that the maximum term for which he was sentenced less 180 days has terminated, the released prisoner is not in the legal custody of the parole board, but is nevertheless considered as if on parole so as to be subject to reincarceration upon violation of a statutory condition of parole. *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Sec. 33.15.200. Retaking of parole violator.

A parolee's liberty should be afforded all protections consistent with his status as one convicted of a crime and under supervision and restrictions,

although released from incarceration. *Davenport v. State*, Sup. Ct. Op. No. 1679 (File No. 3885), 588 P.2d 939 (1977).

Warrant section requires circumstances a warrant for member. Da No. 1479 (1977).

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Sec. 33.15.230

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

Warrant issued only upon probable cause. — In order for the warrant requirement of this section to be meaningful, the warrant should be issued only upon probable cause of a violation of the conditions of parole being presented to the parole board or a member thereof. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977).

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

Parolee subject to arrest for a wide variety of causes which do not apply to others. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977).

Usual arrest requirements not imposed as regards arrest of parolee. — To impose the same requirements on the arrest of a parolee as are otherwise

mandated for an arrest, including an affidavit or sworn complaint, would constitute meaningless additional time and effort on the part of parole officers. *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977).

For a discussion of cases decided in state and federal courts addressing the subject of parole arrest warrants, see *Davenport v. State*, Sup. Ct. Op. No. 1479 (File No. 2885), 568 P.2d 939 (1977).

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

Credit for time served since arrest for subsequent offenses. — Where defendant's sentences were to be served consecutively to a sentence then being served for a parole revocation on an earlier offense, the trial court order that the defendant receive no credit for time served since his arrest was proper. A view of the court's action in making the sentences consecutive to the time to be served on the parole revocation, for the time served from defendant's arrest should properly have been credited toward the parole revocation sentence. *Reynolds v. State*, Sup. Ct. Op. No. 1649 (File No. 4024), 585 P.2d 31 (1979).

Sec. 33.15.230. Fixing eligibility for parole at time of sentencing.

Alternatives available to courts concerning parole eligibility. — Sentencing courts may either recommend or order a limitation on parole eligibility at the time of sentencing, or they may say nothing about the matter. A sentence embodying a recommendation that the division of corrections not grant parole until a specific portion of the sentence is served is not binding on the parole board, although it may be considered relevant by the board. An order, however, must be followed by the parole board in its determination of a prisoner's eligibility for parole. *Shaglock v. State*, Sup. Ct. Op. No. 1688 (File No. 3300), 582 P.2d 1034 (1978).

Recommendation may not be later amended to order. — Since either a recommendation or an order as to parole eligibility was logically possible and no

obvious mistakes were committed by the court's use of the term "recommendation" in the judgment, the court's recommendation may not be later amended to an order. *Shaglock v. State*, Sup. Ct. Op. No. 1688 (File No. 3300), 582 P.2d 1034 (1978).

Defendant's parole eligibility was governed by subsection (a)(1) of this section as it existed at the time he committed the offense for which he was ultimately sentenced. *Eliard v. State*, Sup. Ct. Op. No. 1912 (File No. 4272), 599 P.2d 137 (1979).

Use of 1974 version to determine eligibility unconstitutional. — Where subsection (a)(1) in 1973 provided that the term a prisoner had to serve before becoming eligible for parole could "not be more than one-third of the maximum

sentence imposed by the court" and in 1974 the statute was amended to provide that any term thus designated "shall be at least one-third of the maximum sentence imposed by the court," use of the amended version to determine parole eligibility for a crime committed in 1973 was sufficiently akin to the enforcement of an ex post facto law to amount to a denial of defendant's right to due process of law under Alaska Const., art. I, § 7. *Elted v. State*, Sup. Ct. Op. No. 1913 (File No. 4272), 599 P.2d 137 (1979).

"Maximum sentence" means aggregate of sentences. — "Maximum sentence" does not mean the maximum given on an individual count, rather than the aggregate of any consecutive sentences imposed by the court on any number of counts. *Thomas v. State*, Sup. Ct. Op. No. 1445 (File No. 2723), 566 P.2d 630 (1977).

The phrase "maximum sentence imposed," as employed in this section, is intended to authorize the sentencing court to fix eligibility for parole based on the entire length of imprisonment the particular sentence requires. *Thomas v. State*, Sup. Ct. Op. No. 1445 (File No. 2723), 566 P.2d 630 (1977).

It is significant that subsection (a) does not read "the maximum sanction provided for the commission of the particular crime." *Thomas v. State*, Sup. Ct. Op. No. 1445 (File No. 2723), 566 P.2d 630 (1977).

When subsection (a)(1) formerly provided that the minimum imposed by the judge not exceed one-third of the maximum sentence he imposed, this meant one-third of the total number of years. *Davis v. State*, Sup. Ct. Op. No. 1453 (File No. 2698), 566 P.2d 640 (1977).

Where defendant was convicted on five counts of selling heroin and one count of possessing heroin and was sentenced to ten years, the maximum term, on each count, with one of the sentences to run consecutively to the others, and the other five to run concurrently with each other, for a total of 20 years imprisonment, defendant was to be ineligible for parole until he had served five years, and all the sentences were made consecutive to two sentences he had not yet finished serving, the imposition of consecutive sentences did not violate Alas. Const., art. I, § 9 and 13 and the minimum of five years before parole did not violate subsection (a) of this section. *Davis v. State*, Sup. Ct. Op. No. 1453 (File No. 2698), 566 P.2d 640 (1977).

Eligibility for parole does not guarantee parole. — It does not follow from subsection (a)(1) of this section that there is any certainty that a prisoner will actually be paroled after serving one-third of the maximum sentence imposed. *Huff v. State*, Sup. Ct. Op. No. 1493 (File No. 3201), 566 P.2d 1014 (1977).

Imposing maximum sentence with provision for parole after at least one-half sentence served. — The trial court was not clearly mistaken in imposing the statutory maximum sentence of three years imprisonment, with a provision that defendant not be eligible for parole until at least one-half of his sentence was completed. *Horton v. State*, Sup. Ct. Op. No. 1616 (File No. 3359), 570 P.2d 462 (1977).

Informing defendant of possibilities with reference to parole. — While it is not necessary for the court to inform the defendant of the possibilities with reference to parole, it is preferable for a court to so inform the defendant, particularly if the court is imposing more than the minimum of one-third of the term required to be served for eligibility for parole. *Morgan v. State*, Sup. Ct. Op. No. 1663 (File No. 2894), 582 P.2d 1017 (1978).

In Alaska the trial court is not required to advise of parole minimums, or of its authority to fix parole eligibility, under the terms of Criminal Rule 11. *Morgan v. State*, Sup. Ct. Op. No. 1663 (File No. 2894), 582 P.2d 1017 (1978).

Sentence of less than one year. — It is beyond the authority of trial courts to determine parole eligibility where the sentence is for less than one year. *State v. Tucker*, Sup. Ct. Op. No. 1666 (File No. 2997), 581 P.2d 223 (1978).

Applied in *Hansen v. State*, Sup. Ct. Op. No. 1669 (File No. 3412), 582 P.2d 1041 (1978).

Quoted in *Kram v. State*, Sup. Ct. Op. No. 1809 (File No. 4669), 604 P.2d 12 (1979); *Charles v. State*, Sup. Ct. Op. No. 2017 (File No. 4482), 606 P.2d 390 (1980).

Stated in *Davis v. State*, Sup. Ct. Op. No. 1809 (File No. 3640), 677 P.2d 690 (1979); *Williams v. State*, Sup. Ct. Op. No. 1942 (File No. 4189), 600 P.2d 1682 (1979).

Cited in *Drehan v. State*, Sup. Ct. Op. No. 1279 (File No. 3428), 569 P.2d 389 (1978); *Morris v. State*, Sup. Ct. Op. No. 1577 (File No. 2799), 575 P.2d 1289 (1978).

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Chapter 20. Pardons and Paroles.

Article 1. Remission of Sentences.

Derivation. — Alaska's mandatory release scheme is derived from 18 U.S.C. § 4181-86, *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Section

10. Computation of good time
20. [Repealed]

Sec. 33.20.010. Computation generally.

Cited in *McGinnis v. Stevens*, Sup. Ct. Op. No. 1907 (File Nos. 2255, 2312), 543 P.2d 1221 (1976); *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Sec. 33.20.010. Computation of good time. Notwithstanding AS 12.55.125(f)(3) and (g)(3), each prisoner convicted of an offense against the state and sentenced to imprisonment, whose record of conduct shows that he has faithfully observed the rules of the institution in which he is confined, is entitled to a deduction from his term of imprisonment of one day for every three days of good conduct served. (§ 1 ch 107 SLA 1960; am § 17 ch 166 SLA 1978)

Effect of amendment. — The 1978 amendment rewrote this section.

Editor's note. — Section 23, ch. 166, SLA 1978, in subsection (a), provides "AS 33.20.010, as re-enacted in sec. 17 of this

Art. applies to all persons serving terms of imprisonment in state correctional institutions on or after the effective date of this Art. but is not retroactive in application."

Sec. 33.20.020 Good time.

Repealed by § 21 ch 166 SLA 1978.

Cross reference. — As to computation of good time, see AS 33.20.010

Editor's note. — The repealed section

derived from § 2, ch. 107, SLA 1960; § 6, ch. 104, SLA 1960.

Sec. 33.20.030. Discharge.

Applied in *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

Sec. 33.20.040. Released prisoner as parolee.

The wording of 18 U.S.C. § 4164 is very close to that of subsection (a). *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

This section and AS 33.15.190 in pari materia. — Alaska Statute 33.15.190 and this section were enacted at the same time and concern the same subject, and are therefore in pari materia. *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

And may be reconciled. — Although AS 33.15.190 and this section are in conflict since under AS 33.15.190, when the prisoner's term less good time has expired, he no longer remains in the legal

custody of the board, yet under this section, he is to be considered as if released on parole until the expiration of his maximum term less 180 days, these provisions may be reconciled if, during the period of release, after the term less good time has expired but prior to the time that the maximum term for which he was sentenced less 180 days has terminated, the released prisoner is not in the legal custody of the parole board, but is nevertheless considered as if on parole so as to be subject to reincarceration upon violation of a statutory condition of parole. *Morton v. Hammond*, Sup. Ct. Op. No. 1982 (File No. 4882), 604 P.2d 1 (1979).

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

Sec. 33.20.070. Governor may grant pardons, commutations and reprieves.

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

government. *Davenport v. State*, Sup. Ct. Op. No. 1216 (File No. 2302), 543 P.2d 1204 (1975); *Saeretics v. State*, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

Chapter 30. Prison Facilities.

Article

3. General Provisions (§§ 33.30.200 — 33.30.320)

Article 1. Establishment, Control and Management.

Section

65 (Repealed)

Sec. 33.30.010. Commissioner to control and manage state prison facilities.

Duty to promulgate regulations. — The commissioner is under a legislative mandate and has the concomitant duty to promulgate appropriate regulations concerning prison facilities and the numerous other matters coming within the ambit of AS 33.30.010 — 33.30.200. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1517 (File No. 3094), 570 P.2d 735 (1977).

Commissioner's control of prison system. — There are strong indications of a legislative intent to leave the

establishment, control, and management of the prison system in the hands of the Commissioner of the Department of Health and Welfare whenever practical under the state constitution. *Rust v. State*, Sup. Ct. Op. No. 1666 (File No. 3172), 563 P.2d 134, on rehearing modified on other grounds, 564 P.2d 38 (1978).

Administration must be neither arbitrary nor vindictive. — An extension of the state, the Division of

Corrections prisons in arbitrary no Sup. Ct. Op. P.2d 134, on grounds, 564

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(11) Persons confined in "Compact Institutions" under the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to a prison or other correctional institution within the sending state, for return to probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state.

(12) All persons who may be confined in a "Compact Institution" under the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of incarceration or reincarceration in a receiving state shall not deprive any person so incarcerated or reincarcerated of any rights which said person would have had if incarcerated or reincarcerated in an appropriate institution of the sending state; nor shall any agreement to submit to incarceration or reincarceration under the terms of this amendment be construed as a waiver of any rights which the prisoner would have had if he had been incarcerated or reincarcerated in any appropriate institution of the sending state, except that the hearing or hearings, if any, to which a parolee or probationer may be entitled (before incarceration or reincarceration) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(13) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves. (§ 2 ch 138 SLA 1957; am § 1 ch 106 SLA 1960)

ALR reference. — Validity of probation as condition of leaving state of locality. 70 ALR 100.

Sec. 33.10.020. Definition. As used in this chapter the term "state" means the several states and the Commonwealth of Puerto Rico, the Virgin Islands and the District of Columbia. (§ 1 ch 138 SLA 1957)

Chapter 15. Parole Administration Act.

Section

- 10 State board of parole
- 15 Executive director
- 20 Compensation and expenses
- 25 Governor to advise of duties and call board meeting
- 40 Payment of board expenses
- 50 Duty of board to consider those eligible for parole

Section

- 60 Considerations in determining eligibility for parole
- 70 Order for parole
- 80 Granting of parole
- 90 Revocation of parole
- 100 Adoption of rules and holding of meetings
- 110 Authority of board to issue process

Section

- 120. Board
- 130. Orders, answers
- 140. Protection
- 150. Duties of
- 160. Delegation of director
- 170. Commission of probate
- 180. Persons
- 190. Release of release

Sec. 33.

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Effect of amendment "corrections authority" in Legislative SLA 1961 Journal, p. 1971; HB 111 p. 120.

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Section

- 201 Board may release prisoners to answer process
- 210 Orders, records, and annual report
- 220 Protection of records
- 230 Duties of the commissioner
- 240 Delegation of duties to executive director
- 250 Commissioner may assign duties of probation officers to parole officers
- 260 Persons eligible for parole
- 270 Release and terms and conditions of release

Section

- 280 Retaking of parole violator
- 210 Execution of warrant to retake parole violator
- 220 Revocation upon retaking parolee
- 230 Fixing eligibility for parole at time of sentencing
- 240 Applicability to persons on parole or incarcerated
- 250 Administrative Procedure Act inapplicable
- 260 Definition
- 270 Short title

Sec. 33.15.010. State board of parole. There is in the department a board of parole consisting of five members to be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. One of the members, who shall be chairman of the board, shall be a person with training or experience in the field of probation and parole, and he may be an official or employee of the department but may not be an official or employee of the division of corrections. The term of each of the other four members of the board is four years and until his successor is appointed and qualifies. Successors are appointed in the same manner as provided for the board members first appointed. A vacancy shall be filled for the unexpired term. (1) 2 ch 81 SLA 1960, am § 1 ch 3 SLA 1964, am § 1 ch 106 SLA 1968, am § 3 ch 107 SLA 1969, am § 48 ch 32 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "division of corrections" for "youth and adult authority" in the second sentence.

Legislative committee reports. — For legislative committee report on ch 106, SLA 1968 (CHRB 663), see 1969 House Journal, p 315. For report on ch 22, SLA 1971 (HR 11) am, see 1971 House Journal, p 139.

Cited in Hearings. State Sup Ct Op No 674 File No 9131, 630 P 2d 622 (1980).

Am. Jur., ALR and C.J.S. references. — 15 Am Jur. Criminal Law, § 442, 439, 499, 499, 529, 20 Am Jur., Pardon, Reprieve and Amnesty, § 81 to 83.

Statute conferring power upon administrative body in respect to parole of prisoners or discharge of parolees, as unconstitutional infringement of power of executive. 143 ALR 142.

24 C.J.S. Criminal Law, § 1871, 1262, 1418, 67 C.J.S. Pardon § 1 or seq.

Sec. 33.15.015. Executive director. The board shall hire an executive director who has training and experience in the field of probation and parole. The executive director shall serve as the executive officer for the board in the accomplishment of its functions. He shall serve the board at the pleasure of the governor. (1) 1 ch 20 SLA 1972)

Sec. 33.15.020. Compensation and expenses. The members of the board, other than the chairman, shall not receive salaries but are entitled to compensation per day at an amount to be set by the governor for every day they are in session, and a per diem and travel allowance as provided by law. The chairman is not entitled to a salary or compensation for days he attends a session of the board, but is

entitled to a per diem allowance and travel costs as provided by law. (§ 2 ch 51 SLA 1960)

Sec. 33.15.030. Governor to advise of duties and call board meeting. Upon appointment, the governor shall advise those appointed of their duties under this chapter and shall, as soon as practicable, call the first meeting of the members of the board. (§ 2 ch 81 SLA 1960)

Sec. 33.15.040. Payment of board expenses. The necessary expenses of the board shall be paid by appropriation made to the department. (§ 2 ch 81 SLA 1960)

Sec. 33.15.050. Duty of board to consider those eligible for parole. The board shall consider all prisoners serving sentences who may be eligible for parole. (§ 3 ch 81 SLA 1960)

Sec. 33.15.060. Considerations in determining eligibility for parole. In considering a prisoner, the board shall consider the presentence report made to the sentencing court, the recommendations by the sentencing court and the prosecuting attorney, the report from the proper officers of the institution where the prisoner is incarcerated, the record of the prisoner and all pertinent information that will enable the board to make a determination. (§ 3 ch 81 SLA 1960)

Sec. 33.15.070. Order for parole. An order for parole shall contain the conditions imposed, including the fixing of the parolee's residence, which may be changed in the discretion of the board. (§ 3 ch 81 SLA 1960)

Sec. 33.15.080. Granting of parole. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced, or in the case of a life sentence, has not served at least 15 years. (§ 3 ch 81 SLA 1960, am § 1 ch 110 SLA 1974)

Effect of amendment. — The 1974 amendment added the second sentence.

Sec. 33.15.090. Revocation of parole. The board may revoke the parole granted to a prisoner for violation of a law or ordinance, or condition imposed by the board. (§ 3 ch 81 SLA 1960)

Sec. 33.15.100. Adoption of rules and holding of meetings. The board shall adopt rules which it considers necessary or proper with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions of release to be imposed on parolees. The

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board shall meet as often as it finds necessary, but it shall meet at least twice each year. Three members constitute a quorum for the conduct of business. (§ 3 ch 81 SLA 1960; am § 2 ch 5 SLA 1964)

No rules promulgated by the parole board regarding eligibility of prisoners for parole have been brought to the attention of the supreme court. *Robinson v. State*, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 626 (1971).

Rules should be adopted as soon as practicable. — Concerning sentencing, sentence appeals, and parole matters in general, the supreme court believes it would be of benefit to all concerned if, as soon as practicable, the parole board, in conformity with this section, adopted rules regarding eligibility of prisoners for parole, the conduct of parole hearings, and conditions of release to be imposed on parolees. *Robinson v. State*, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 626 (1971).

The question of when a prisoner is eligible for parole when consecutive sentences are imposed is of considerable significance not only to the prisoner and the state, but also to the supreme court in carrying out its sentence review functions. If, under present practices and policies of the parole board, the accused is ineligible for parole until he has served all of an initial seven-year sentence and some portion of a consecutive sentence, then the supreme court would view the consecutive sentence as excessive and contradictory of the goal of rehabilitation in the administration of our system of criminal justice. *Robinson v. State*, Sup. Ct. Op. No. 691 (File No. 1344), 484 P.2d 626 (1971).

Sec. 33.15.110. Authority of board to issue process. The board may issue subpoenas and subpoenas duces tecum, and may issue warrants to retake a parole violator. (§ 3 ch 81 SLA 1960)

Sec. 33.15.120. Board may release prisoners to answer process. If a court of this state, another state, or the United States, or other authority issues a warrant charging a prisoner with a crime, the board may release the prisoner on parole to answer the warrant. (§ 3 ch 81 SLA 1960)

Sec. 33.15.130. Orders, records, and annual report. (a) If three members of the board are present at a meeting, all decisions of the board shall receive not less than two affirmative votes. If more than three members are present at the meeting, all decisions shall receive not less than three affirmative votes.

(b) The board shall keep a record of its acts and shall notify the commissioner of its decisions relating to prisoners considered for parole. At the close of each fiscal year the board shall submit to the governor, the commissioner, and the attorney general a report containing statistical and other data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a computation and analysis of dispositions in criminal matters by the courts in the state. (§ 3 ch 81 SLA 1960; am § 3 ch 5 SLA 1964)

Sec. 33.15.140. Protection of records. The pre-parole reports submitted to the board are privileged and shall not be disclosed to anyone other than the board, the sentencing judge, the prosecuting attorney, or others entitled under this chapter to receive the information. However, the board or court may permit a prisoner, his

attorney, or other person having a proper interest in it to inspect the report or a part of it when the best interest or welfare of the prisoner makes it desirable or necessary. (§ 5 ch 81 SLA 1960)

Sec. 33.15.150. Duties of the commissioner. The commissioner is charged with the administrative duties and responsibilities necessary to

- (1) conduct investigations of prisoners eligible for parole as the board requests;
- (2) supervise the conduct of parolees and institute programs for reform and rehabilitation of parolees as the board requests;
- (3) appoint and assign parole officers and personnel to the judicial districts in the state and to train and supervise parole officers and personnel;
- (4) keep records, files and accounts as the board requests. (§ 6 ch 81 SLA 1960)

Sec. 33.15.160. Delegation of duties to executive director. The commissioner may delegate all or part of the administrative duties and responsibilities specified in § 150 of this chapter to the executive director of the board. (§ 6 ch 81 SLA 1960; am § 2 ch 30 SLA 1972)

Effect of amendment. — The 1972 amendment substituted "executive director" for "chairman."

Sec. 33.15.170. Commissioner may assign duties of probation officers to parole officers. The commissioner may assign the duties of probation officers as provided in the Probation Administration Act to personnel appointed under § 150 (3) of this chapter. (§ 6 ch 81 SLA 1960)

Sec. 33.15.180. Persons eligible for parole. A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in §§ 80 and 231 (a) (1) of this chapter. (§ 7 ch 81 SLA 1960; am § 34 ch 43 SLA 1964; am § 9 ch 68 SLA 1965; am § 2 ch 110 SLA 1974)

Effect of amendment. — The 1974 amendment added "subject to limitations prescribed in §§ 80 and 230 (a) (1) of this chapter" to the end of the section.

Chapter 43, SLA 1964, inapplicable to offense committed before October 1, 1964. — See 1964 Op. Att'y Gen., No. 8.

Quoted in Faulkner v. State, Sup. Ct. Op. No. 300, (File No. 885), 165 P.2d 815 (1946); Robinson v. State, Sup. Ct. Op. No. 601 (File No. 1316), 284 P.2d 626 (1971).

Sec. 33.15.190. Release and terms and conditions of release. The board may permit a parolee to return to his home if it is in the state, or to go elsewhere in the state, upon such terms and conditions, including personal reports from the paroled person as the board prescribes. The board may permit the parolee to go into another state upon terms and

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conditions as the board prescribes, and subject to the provisions of any compact executed under the authority of ch. 10 of this title and amendments to it. A prisoner released on parole remains in the legal custody of the board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law. While in the custody of the board, a person is subject to the disabilities imposed by AS 11.05.070. (§ 8 ch 81 SLA 1960)

Section held unconstitutional. — This section, insofar as it suspends, in conjunction with AS 11.05.070, the access of parolees to civil courts, violates the due process clauses of the Alaska and United States constitutions. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

AS 11.05.070 and this section combine to deny a parolee the right to initiate civil suit, but such denial of access to the civil courts is a violation of due process and equal protection provisions of the Alaska and United States constitutions. *State v. McCracken*, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

A parolee denied access to the judicial process by reason of his custodial status is thereby condemned to suffer a grievous loss of property rights protected by the due process clause of the 14th amendment of the United States Constitution. The supreme court would reach an identical result in interpreting the due process provisions of the Alaska Constitution alone. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The state, by this section and 11.05.070, denies parolees the right of access to the civil courts possessed by other persons. The state interest in denying parolees this right satisfies neither the "compelling state interest" test applied when a "fundamental right" is at stake, nor the traditional, more lenient "rational basis" test otherwise applicable. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Since there is neither a "compelling state interest" nor a "rational basis" for the state's denial to parolees of the right to initiate civil actions, this section denies parolees the "equal protection of the laws," in violation of the Alaska and United States constitutions. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Although the state has a legitimate interest in restricting some activities of parolees prohibiting a parolee from initiating civil actions has no logical connection with such an interest. *Bush v.*

Reid, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The administration of a parole system differs so substantially from the administration of a prison that the reasons for denying convicts while imprisoned access to civil courts cannot logically support the "civil death" of parolees. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The only pertinent interest is preventing behavior which is detrimental to the restoration of a parolee into normal society. Since the parolee is no longer incarcerated, there is no justification based on the furthering of smooth penal administration. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The parolee's ability to avail himself of the civil judicial process in order to vindicate his rights and protect his property interests in fact furthers, rather than restricts, the parolee's constructive development and restoration into normal society. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Since this section and AS 11.05.070 deny parolees right to initiate civil suit, — in light of the absence of indications of legislative intent to distinguish the use of "the civil rights" in AS 11.05.070 from "all civil rights," and the strong common law authority holding that convicts are denied civil access to the courts, the supreme court held that AS 11.05.070 and this section combine to deny parolees the right to initiate civil suit. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

AS 11.05.070 and this section when read together clearly indicate that a parolee's civil rights, similar to those of a prisoner, remain suspended during the time he is in the custody of the parole board. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

This section expressly states that a parolee is subject to the disabilities imposed by AS 11.05.070. *State v. McCracken*, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

The right to initiate civil suit is a right suspended by AS 11.05.070, and under this section, parolees—similar to convicts—are subject to this disability. *State v. McCracken*, Sup. Ct. Op. No. 973 (File No. 1781), 520 P.2d 787 (1973).

The bar to access to the civil courts is absolute and no ameliorative device exists. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Property rights impaired by depriving parolee access to courts. — See *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Supreme court not impeded by narrower United States supreme court holding. — Finding that "civil death" of parolees violates the spirit and intention of the Alaska Constitution, the supreme court would not be impeded in its constitutional progress by a narrower holding of the United States supreme court. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

Holding in *Bush v. Reid* to be applied prospectively. — The holding in *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), is to be applied prospectively, not retroactively. *State v. McCracken*, Sup. Ct. Op. No. 973 (File No. 1781), 520 P.2d 787 (1973).

After December 16, 1973, the date of the opinion in *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), time spent on parole shall not toll the

statute of limitations, provided however, that any person on parole as of that date shall, in any event, have one year from that date within which to bring an action. *State v. McCracken*, Sup. Ct. Op. No. 973 (File No. 1781), 520 P.2d 787 (1973).

If the supreme court were to give retroactive effect to its holding in *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), the statute of limitations would have begun to run upon a parolee's release on parole in 1969, but under the wording of the statutes then in effect, a parolee had no right to bring suit during the time he was on parole. Thus, a parolee might totally lose his right to bring a civil suit, rather than having that right merely suspended during time of sentence. *State v. McCracken*, Sup. Ct. Op. No. 973 (File No. 1781), 520 P.2d 787 (1973).

For example, if the time of parole was longer than two years, the statute of limitations would bar any action, and the combination of AS 11.05.070 and this section would have prevented filing at any point before release from parole. Such a result would be inconsistent with the legislative intent to suspend, not abolish, the exercise of civil rights while imprisoned or on parole, and would result in violation of due process. *State v. McCracken*, Sup. Ct. Op. No. 973 (File No. 1781), 520 P.2d 787 (1973).

Sec. 33.15.200. Retaking of parole violator. A warrant for the retaking of a state prisoner who violates his parole may be issued only by the board or a member of it and the warrant shall issue within the maximum term or terms to which the parolee was sentenced. A parole violator may be retaken with or without a warrant for violation of a term of parole. The unexpired term of imprisonment of the parolee shall be served and begins to run from the date he is returned to the custody of the commissioner under the warrant, and the time the prisoner was at liberty on parole does not diminish the time he was sentenced to serve. (19 ch 81 SLA 1960)

ALR references. — Parole on suspending running of sentence, 29 ALR 947

Right to notice and hearing before revocation of parole or conditional pardon, 34 ALR 1074, 132 ALR 1234, 29 ALJ 224 1074

Extradition of paroled convict, 29 ALR 422

Sentence for new offense committed while accused was at large on parole or conditional release, as concurrent or consecutive, 116 ALR 811

Sec. 33.15.210. Execution of warrant to retake parole violator. A parole officer or an officer of a state prison facility, or a prison facility made available to the state under contract, or a peace officer

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authorized to serve criminal process in the state shall execute the warrant by taking the prisoner and confining him in a prison facility designated by the commissioner. A parolee who violates his parole may be retaken by a parole officer without a warrant and returned to the prison facility designated by him. (3 10 ch 81 SLA 1960)

Sec. 33.15.220. Revocation upon retaking parolee. (a) Upon the retaking of a parolee, a peace officer making the arrest shall not by the parole officer. The parole officer upon making the arrest, or being notified by a peace officer of an arrest, shall immediately notify the board, or a member of the board. If the retaking is without a warrant, the parole officer shall submit to the board, or a member of it, a report in writing indicating in what manner the parolee violated the terms and conditions of his parole. The board shall have the parolee brought before it without unreasonable delay for a hearing on the violation charged, under such rules as the board adopts. If the violation is established, the board may then, or at any time within its discretion, revoke the order of parole and terminate the parole or change the terms and conditions of parole, or impose additional conditions. The parolee may waive the hearing provided for in this section.

(b) If parole is revoked and terminated, the prisoner is subject to serve the remainder of the term to which he was sentenced as provided in § 214 of this chapter. The board may require the prisoner to serve only a part of the term to which he was sentenced. If the board does not terminate all or part of the parole, the parolee shall be released from confinement and continue on parole under the terms and conditions the board prescribes. (3 11 ch 81 SLA 1960)

Sec. 33.15.230. Fixing eligibility for parole at time of sentencing. (a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may

(1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner is eligible for parole, which term shall be at least one-third of the maximum sentence imposed by the court, or

(2) fix the maximum sentence of imprisonment to be served, in which case the court may specify that the prisoner is eligible for parole at the time the board determines.

(b) Upon commitment of a prisoner sentenced to imprisonment under (a) of this section, the commissioner, under such regulations as the board prescribes, shall have a complete study made of the prisoner and shall furnish to the board a summary report together with any recommendations which, in his opinion, would be helpful in determining the suitability of the prisoner for parole. This report may include, but shall not be limited to, data regarding the prisoner's

previous delinquency or criminal experience, circumstances of his social background, his capabilities, his mental and physical health, and such other factors considered pertinent. The board may make such other investigation as it considers necessary.

(c) Parole officers and government bureaus and agencies shall furnish the board information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

(d) The board may adopt rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners. (§ 12 ch 81 SLA 1960; § 35 ch 43 SLA 1964; § 10 ch. 68 SLA 1965; am § 3 ch 110 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "shall be at least" for "may be less than, but shall not be more than" in paragraph (d) of subsection (a).

Editor's note. — Former AS 33.15.230 was repealed by ch 43, § 35, SLA 1964. Present AS 33.15.230 was added by ch 78, § 10, SLA 1965 and contains the identical language of the original section.

Denial of eligibility for parole is illegal under this section. *Sonnier v. State*, Sup Ct Op No. 685 (File No. 1323, 483 P 2d 1000 (1971)).

Sentence providing for eligibility for parole only after one-third of 10-year sentence served. — Where the trial judge imposed a sentence of 10 years in prison for rape with the provision that defendant would not be eligible for parole until he

had served a full one-third of that sentence, and the transcript revealed that the judge imposed the sentence he did for the purposes of reaffirmation, deterrence, and protection, but not for rehabilitation, the supreme court concluded on the basis of the judge's comments that proper factors were considered and that the judge had a reasoned basis for the sentence imposed. *Gardner v. State*, Sup Ct Op No. 831 (File No. 1325, 501 P 2d 772 (1972)).

Applied in: *Gulard v. State*, Sup Ct Op No. 791 (File No. 1006, 497 P 2d 93 (1972); *Newman v. State*, Sup Ct Op No. 909 (File No. 1726, 512 P 2d 857 (1973)).

Quoted in: *Faulkner v. State*, Sup Ct Op No. 598 (File No. 885, 445 P 2d 815 (1969); *Rohlfing v. State*, Sup Ct Op No. 491 (File No. 1314, 484 P 2d 686 (1971)).

Sec. 33.15.240. Applicability to persons on parole or incarcerated. This chapter applies to all persons convicted and sentenced in the superior court and the district courts of this state, and to all persons convicted of a crime punishable under laws enacted by the Alaska Territorial Legislature who were convicted and sentenced before Alaska became a state or before the Alaska state court system was in operation. (§ 13 ch 81 SLA 1960; am § 1 ch 38 SLA 1961, am § 3 ch 24 SLA 1966)

The state parole board has no jurisdiction to hear parole hearings of prisoners convicted under territorial law prior to statehood who are confined in federal penitentiaries. *Moody v. State*, 1 Ala. L.J. No. 12, p. 7 (Dec. 1963). See also *Moody v. State*, Sup Ct Op No. 221 (File No. 811, 202 P 2d 466 (1964)).

Nor has supreme court jurisdiction to hear petition for writ of habeas corpus.

— Until some federal court determines that federal authorities are unlawfully exercising their parole authority over a prisoner convicted under Alaska territorial

law prior to statehood, whose case has been finally determined, or until such time as the federal authorities relinquish jurisdiction over him, the supreme court has no jurisdiction to hear or consider such prisoner's petition for a writ of habeas corpus. *Moody v. State*, Sup Ct Op No. 221 (File No. 811, 202 P 2d 466 (1964)). See also *Moody v. State*, 1 Ala. L.J. No. 12, p. 7 (Dec. 1963).

All such prisoners are subject to sole jurisdiction of United States parole board. — A federal prisoner is subject to the sole jurisdiction of the United States

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parole board, and therefore not entitled to a parole hearing before the Alaska parole board. *Moody v. State*, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also *Moody v. State*, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

State courts generally have no power to require a federal jailer to produce a federal prisoner, and federal authorities would or should honor a writ directed to it or any of its officials only if the petitioner is not exclusively a federal prisoner. *Moody v. State*, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also *Moody v. State*, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

There is no law enacted by Congress, nor has the federal government entered into an agreement with the state, transferring jurisdiction over prisoners convicted, whose cases, under territorial statute, were finally determined prior to

statehood, to the state parole board. *Moody v. State*, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also *Moody v. State*, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

In the absence of some directive from the legislature of the territory of Alaska imposing a duty upon the parole board to assume jurisdiction over applications for parole of prisoners convicted under territorial law prior to statehood whose cases had been finally determined, the supreme court has no jurisdiction, since the Statehood Act, §§ 13, 14, 15, 16, 17, and 19, apply only to the judicial branch of the government and not to the executive, and the parole board is, without question, a branch of the executive department of the government. *Moody v. State*, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964). See also *Moody v. State*, 1 Alas. L.J. No. 12, p. 7 (Dec., 1963).

Sec. 33.15.250. Administrative Procedure Act inapplicable. The Administrative Procedure Act (AS 4452) does not apply to this chapter. (S 14 ch 81 SLA 1960)

Sec. 33.15.260. Definitions. In this chapter

- (1) "board" means the Board of Parole;
- (2) "commissioner" means the commissioner of the Department of Health and Social Services or his designee;
- (3) "parole" means the release of a prisoner to the community by the parole board before the expiration of his term, subject to conditions imposed by the board and subject to its supervision;
- (4) "department" means the Department of Health and Social Services. (S 1 ch 81 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 "Department of Health and Welfare" in amendment substituted "Department of Health and Social Services" for paragraphs (2) and (4).

Sec. 33.15.270. Short title. This chapter may be cited as the Parole Administration Act. (S 15 ch 81 SLA 1960)

Cited in Bear v. State, Sup. Ct. Op. No. 470 (File No. 812), 425 P.2d 122 (1968)

Chapter 20. Pardons and Paroles.

Article

1. Remission of Sentences (S 23 20 010—23 20 020)
2. Power of Governor to Grant Pardons, Commutations and Reprieves (S 23 20 070—23 20 080)

Article I. Remission of Sentences.

Section

- 10. Computation generally
- 20. Good time
- 30. Discharge

Section

- 40. Released prisoner as parolee
- 50. Forfeiture for offense
- 60. Restoration of lost good time

Sec. 33.20.010. Computation generally. (a) Each prisoner convicted of an offense against the state and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subject to punishment, is entitled to a deduction from the term of his sentence beginning with the day on which the sentence starts to run, as follows:

- (1) five days for each month, if the sentence is not less than six months and not more than one year;
- (2) six days for each month, if the sentence is more than one year and less than three years;
- (3) seven days for each month, if the sentence is not less than three years and less than five years;
- (4) eight days for each month, if the sentence is not less than five years and less than ten years;
- (5) ten days for each month, if the sentence is ten years or more.

(b) When two or more consecutive sentences are served, the basis upon which the deduction is computed is the aggregate of the several sentences. (§ 1 ch 107 SLA 1960)

Cited in Bear v. State Sup Ct Op No 470-File No 813, 430 1 2d 432 (1960).
Am. Jur., A. R. and C.J.S. references.
— 15 Am. Cr. Criminal Law, ¶ 443, 439, 389, 390; Jur., Pardon, Reprive and (amts), ¶ 81 to 96

Parole as suspending running of sentence, 27 ALR 947.
Withdrawal, modification or denial of good time allowance to prisoner, 127 ALR 1203
24 C.J.S. Criminal Law § 1562

Sec. 33.20.020. Good time. (a) A prisoner may, in the discretion of the commissioner of health and social services or his designee, be allowed a deduction from his sentence of not to exceed three days for each month of actual employment in a prison or camp project or activity for the first year or any part of it, and not to exceed five days for each month of any succeeding year or part of it.

(b) In the discretion of the commissioner the same allowance may also be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

(c) The allowance is in addition to commutation of time for good conduct, and under the same terms and conditions and without regard to length of sentence. (§ 2 ch 107 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "commissioner of health and social services" for "commissioner of health and welfare" in subsection (a).

Use of prisoners on public works

projects. — A program authorizing the use of state prisoners on a voluntary basis on governmental public works projects is proper under the statutes 1960 Op Att' Gen. No 22

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