

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

3293 HJUD HB 140 - HB 141

69

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF ADMINISTRATION

DIVISION OF TELECOMMUNICATIONS SERVICES

POUCH C  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2041

March 18, 1985

Honorable Mike Miller  
Chairman, House Judiciary Committee  
Capitol 122  
Pouch V  
Juneau, AK 99811

Re: HB 140 - The "Teleconferencing Bill"

Dear Mr. Chairman *Mike*

For your information, listed below are some points to consider about HB 140, an Act related to teleconferencing under the Administrative Procedures Act, better known as the "Teleconferencing Bill".

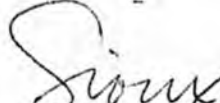
1. What will HB 140 bill do?
  - ° Amend sections of the Administrative Procedures Act (AS 44.62) to permit the use of teleconferencing for the conduct of State business.
  - ° Clear up the legal issues about teleconference use; specifically permitting the use of teleconferencing for quorum counting, voting and taking public testimony.
  - ° Direct that procedures be developed for adequate public notice, availability of materials at teleconference sites, and identification of voting members.
2. Who will be affected?
  - ° State agencies, boards and commissions
  - ° The general public through increased opportunities to participate in government decision making from local locations.
3. How will they be affected?
  - ° Groups presently using teleconferencing will have the opportunity to continue and to expand the types of business conducted by teleconference.
  - ° New users will know that use of teleconferencing is "OK" from a legal standpoint.

March 18, 1985

4. What other benefits will this bill bring?
- Increased participation by State agencies in that more people will be able to participate without the associated high cost of travel.
  - Increased participation by Alaskans throughout the State in public hearings and decision making.
  - Potential cost savings for State agencies in using teleconferencing in lieu of travel at appropriate times.
  - Cost savings to members of the public who will be able to provide input without traveling great distances to do so.
  - State agency business can be conducted more quickly and efficiently.
5. Will this bill result in teleconferencing completely replace travel?
- NO! It is intended to permit teleconference use. The amount of use of this technology will remain at the discretion of the using groups.
6. How much will HB 140 cost?
- No operating or capital funds will be needed.
  - Cost savings can result with passage in that teleconferencing is cheaper than travelling.

I hope this information will be helpful to you and the Judiciary Committee. Please don't hesitate to call if we can be of any further assistance.

Sincerely,

  
Sioux Plummer, Director

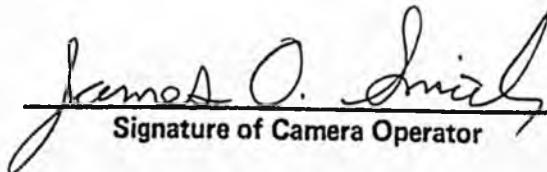
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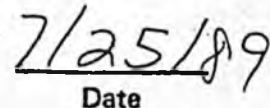


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Signature of Camera Operator

  
Date

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# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-455-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary jt Mtg with Hess	2/21/86	1:30pm
" " " " " "	2/22/86	1:30pm
" " " " " "	2/25/86	1:30pm
" " " " " "	2/26/86	1PM
" " " " " "	2/27/85	1:30pm
" " " " " "	2/28/85	1:30pm
" " " " " "	3/1/85	1:30pm
House Judiciary	3/20/85	3:30pm
" "	3/30/85	9Am
" "	4/1/85	1:30Am
" "	4/3/85	1:30pm

COMMITTEE REPORT

HOUSE

4/3

Rules

(7)

FURTHER:

3/13/85

Date: 4-1-85

The Committee on JUDICIARY has had HB 141

"An Act relating to the parole of offenders; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 141 (JUD) [ ] same title [X] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation [ ] Zero Fiscal Note Attached

[ ] referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING DO PASS

Handwritten signatures: Mr. Miller, G. G. G., [Signature], [Signature]

MEMBERS HAVING OTHER RECOMMENDATIONS:

Handwritten signature: [Signature]

Handwritten signature: W. H. Miller  
CHAIRMAN

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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

### LETTER OF INTENT

HB 141

In considering CSHB 141 (Jud), the Judiciary Committee of the House of Representatives intends the provisions of AS 33.16.010 relating to Parole to offer a system of discretionary and mandatory parole consistent with the holding in Braham v. Beirne, 675 P.2d 1297 (Alaska 1984), whereby both systems are the same except as to how the offender is placed on parole.

The Committee further intends that the provisions of AS 33.16.090(b) is to have prospective application. Under this section prisoners sentenced to presumptive sentences are eligible for discretionary parole during any period of enhancement imposed for an aggravated offense, or during any period of a subsequent presumptive term imposed simultaneous with and consecutive to a non-eligible presumptive term. However, in that some sentencing courts believed they previously had the ability to make an offender eligible during these periods, and the courts ordered discretionary parole eligibility, the orders of the courts will be recognized. Furthermore, in those situations where the sentencing courts did not consider discretionary parole during such a period, the committee intends that an offender be allowed to petition for post conviction relief under Criminal Rule 35 so that the sentencing court may, in its discretion, order discretionary parole eligibility for that period.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 141 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA/

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the parole of offenders; amend'ng  
7 the sunset date for the parole board; and providing  
8 for an effective date."

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

10 \* Section 1. AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.115. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT  
12 SENTENCING. The court may, as part of a sentence of imprisonment,  
13 further restrict the eligibility of a prisoner for discretionary  
14 parole for a term greater than that required under AS 33.16.100.

15 \* Sec. 2. AS 33 is amended by adding a new chapter to read:

16 CHAPTER 16. PAROLE ADMINISTRATION.

17 Sec. 33.16.010. PAROLE. (a) A prisoner who is serving a term  
18 or terms of at least 181 days is eligible for either discretionary or  
19 mandatory parole.

20 (b) A prisoner who is eligible under AS 33.16.090 may be granted  
21 discretionary parole by the board of parole.

22 (c) A prisoner who is not eligible for discretionary parole, or  
23 who is not released on discretionary parole, shall be released on  
24 mandatory parole for the term of good time deductions credited under  
25 AS 33.20, if the term or terms of imprisonment exceed 180 days.

26 (d) A prisoner released on discretionary or mandatory parole is  
27 subject to the conditions of parole imposed under AS 33.16.150.  
28 Parole may be revoked under AS 33.16.220.

29 Sec. 33.16.020. BOARD OF PAROLE. (a) There is in the

1 Department of Corrections a board of parole consisting of five members  
2 appointed by the governor, subject to confirmation by a majority of  
3 members of the legislature in joint session.

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

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

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

11 (e) The governor shall appoint at least one member who resides  
12 in the First Judicial District, one member who resides in the Third  
13 Judicial District, and one member who resides in either the Second or  
14 Fourth Judicial District.

15 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The  
16 governor shall appoint board members on the basis of their qualifi-  
17 cations to make decisions that are compatible with the welfare of the  
18 community and of individual offenders. The governor shall appoint  
19 members who are able to consider the character and background of  
20 offenders and the circumstances under which offenses were committed.

21 (b) At least one person appointed to the board must have ex-  
22 perience in the field of criminal justice.

23 (c) Officers or employees of the state may not be appointed to  
24 the board.

25 Sec. 33.16.040. COMPENSATION AND EXPENSES. A board member is  
26 entitled to compensation at an amount to be set by the governor for  
27 each day the member is participating in business of the board, and is  
28 also entitled to the per diem and travel allowances provided under  
29 AS 39.20.180.

1           Sec. 33.16.050. MEETINGS OF THE BOARD. (a) The board may meet  
2 as often as it considers necessary to carry out its responsibilities,  
3 but shall meet at least four times a year.

4           (b) Three members of the board constitute a quorum for the  
5 conduct of business.

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

8           (d) The board may conduct meetings by the use of teleconferenc-  
9 ing facilities.

10          Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

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

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

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

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

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

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

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

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

28           (9) execute other responsibilities prescribed by law.

29          (b) The board shall adopt regulations under the Administrative

1 Procedure Act (AS 44.62)

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

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

6 (3) governing procedures of the board.

7 Sec. 33.16.070. PROCESS. The board or a member of the board may  
8 issue subpoenas and subpoenas duces tecum in the performance of board  
9 duties under AS 33.16.060(a). Subpoenas issued under this section are  
10 enforceable in Superior Court.

11 Sec. 33.16.080. EXECUTIVE DIRECTOR. The board shall hire an  
12 executive director to serve the board in the discharge of its duties.  
13 The executive director must have had training and experience in the  
14 field of criminal justice. The executive director may employ addi-  
15 tional staff to assist the board.

16 Sec. 33.16.090. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A  
17 prisoner who is serving a term of at least 181 days, and who is not  
18 otherwise ineligible under (b) of this section, may, in the discretion  
19 of the board, be released on discretionary parole subject to AS 12.-  
20 55.086(b), 12.55.115, and AS 33.16.100(c) and (d).

21 (b) A prisoner is not eligible for discretionary parole during  
22 the term of a presumptive sentence; however, a prisoner is eligible  
23 for discretionary parole during a term of sentence enhancement imposed  
24 under AS 12.55.155(a) or during the term of a consecutive or partially  
25 consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

26 (c) In determining the eligibility of a prisoner for discretion-  
27 ary parole, the board may rely on the verbatim written transcript of  
28 the judge's sentencing remarks under AS 12.55.025(a)(1), and any other  
29 portion of the sentencing proceeding, as well as the judgment entered

1 by the court.

2 Sec. 33.16.100. GRANTING OF DISCRETIONARY PAROLE. (a) The  
3 board may authorize the release of a prisoner on discretionary parole  
4 if it determines a reasonable probability exists that

5 (1) the prisoner will live and remain at liberty without  
6 violating any laws or conditions imposed by the board;

7 (2) the prisoner's rehabilitation and reintegration into  
8 society will be furthered by release on parole;

9 (3) the prisoner will not pose a threat of harm to the  
10 public if released on parole; and

11 (4) release of the prisoner on parole would not diminish  
12 the seriousness of the crime.

13 (b) If the board finds a change in circumstances in a prisoner's  
14 parole release plan submitted under AS 33.16.130(a), or discovers new  
15 information concerning a prisoner who has been granted a parole re-  
16 lease date, the board may rescind or revise the previously granted  
17 parole release date. In reconsidering the release date, the proce-  
18 dures set out in AS 33.16.130(b) and (c) shall be followed.

19 (c) Except as provided in (d) of this section, a prisoner may  
20 not be released on discretionary parole until the prisoner has served  
21 at least one-fourth of the period of confinement imposed, or any  
22 minimum term set under AS 12.55.115 at sentencing, whichever is great-  
23 er.

24 (d) A prisoner who is sentenced for a term under AS 12.55.125(a)  
25 or (b) may not be released on discretionary parole until the prisoner  
26 has served the mandatory minimum term under AS 12.55.125(a) or (b), at  
27 least one-third of the period of confinement imposed, or any minimum  
28 term set under AS 12.55.115 at sentencing, whichever is greater.

29 Sec. 33.16.110. PREPAROLE REPORT. (a) In determining whether a

1 prisoner is suitable for discretionary parole, the board shall con-  
2 sider the preparole reports including,

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

4 (2) the recommendations made by the sentencing court, by  
5 the prosecuting attorney, and by the defense attorney, and any state-  
6 ments made by the victim or the prisoner at sentencing;

7 (3) the prisoner's institutional conduct history while  
8 incarcerated;

9 (4) recommendations made by the staff of the correctional  
10 facilities in which the prisoner was incarcerated;

11 (5) reports of prior crimes, juvenile histories, and previ-  
12 ous experiences of the prisoner on parole or probation;

13 (6) physical, mental, and psychiatric examinations of the  
14 prisoner;

15 (7) information submitted by the prisoner, the sentencing  
16 court, the victim of the crime, the prosecutor, or other persons  
17 having knowledge of the prisoner or the crime.

18 (8) information concerning an unjustified disparity in the  
19 sentence imposed on a prisoner in relation to other sentences imposed  
20 under similar circumstances; and

21 (9) other relevant information that may be reasonably  
22 available.

23 (b) The board shall provide information available under (a)(3)  
24 and (a)(6) of this section when requesting comments on the discre-  
25 tionary parole of a prisoner from the sentencing court.

26 Sec. 33.16.120. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISON-  
27 ER. (a) Upon request of the victim, notice of a hearing to review or  
28 consider discretionary parole for a state prisoner who is convicted of  
29 a crime against a person shall be sent to the victim of the crime at

1 least 30 days before the scheduled hearing.

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

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

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

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

20 (f) Upon request of the victim, if a prisoner is released under  
21 AS 33.16.010(c), the board shall make every reasonable effort to  
22 notify the victim before the prisoner's release date. Notification  
23 under this subsection must include the expected date of the prisoner's  
24 release, the geographic area in which the prisoner is required to  
25 reside, and other pertinent information concerning the prisoner's  
26 conditions of parole that may affect the victim.

27 Sec. 33.16.130. APPLICATION FOR DISCRETIONARY PAROLE. (a) A  
28 prisoner eligible for discretionary parole may apply to the board for  
29 discretionary parole. As part of the application for parole, the

1 prisoner shall submit to the board a parole release plan that includes  
2 the prisoner's plan for employment, residence, and other information  
3 concerning the prisoner's rehabilitative plans if released on parole.

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

12 (c) The board shall issue its decision in writing and provide  
13 the basis for a denial of discretionary parole. A copy of the deci-  
14 sion shall be provided to the prisoner.

15 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole issued by  
16 the board, setting out the conditions imposed under AS 33.16.150(a)  
17 and AS 33.16.150(b), and the date parole custody ends, shall be fur-  
18 nished to each prisoner released on discretionary or mandatory parole.

19 Sec. 33.16.150. CONDITIONS OF PAROLE. (a) As a condition of  
20 parole, a prisoner released on discretionary or mandatory parole shall  
21 refrain from conduct punishable by imprisonment under state or federal  
22 law or municipal ordinance.

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

- 25 (1) meet family obligations;
- 26 (2) pursue employment, education, counseling, or training;
- 27 (3) remain within stated geographic limits unless written  
28 permission to depart from the stated limits is granted the parolee;
- 29 (4) report upon release to the parole officer assigned to

1 the parolee;

2 (5) report as required to the parole officer assigned to  
3 the parolee;

4 (6) reside at a stated place and notify the board of any  
5 change in place of residence;

6 (7) not possess or control firearms or other dangerous  
7 weapons;

8 (8) refrain from possessing or consuming alcoholic bever-  
9 ages;

10 (9) submit to reasonable searches and seizures by a parole  
11 officer, or a peace officer acting under the direction of a parole  
12 officer;

13 (10) submit to appropriate medical, mental health, or con-  
14 trolled substance or alcohol examination, treatment, or counseling;

15 (11) submit to periodic examinations designed to detect the  
16 use of alcohol or controlled substances;

17 (12) make restitution ordered by the court to a victim of  
18 the prisoner's crime, according to a schedule established by the  
19 board;

20 (13) refrain from opening, maintaining, or using a checking  
21 account or charge account;

22 (14) refrain from entering into a contract other than a  
23 prenuptial contract or a marriage contract;

24 (15) refrain from operating a motor vehicle;

25 (16) refrain from entering an establishment where alcoholic  
26 beverages are served, sold, or otherwise dispensed;

27 (17) refrain from participating in any other activity or  
28 associating with any other person that the board determines is rea-  
29 sonably likely to diminish the rehabilitative goals of parole, or that

1 may endanger the public.

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

6 (d) The board may require a prisoner released on parole to  
7 comply with special conditions imposed under (b) of this section for  
8 any period up to the maximum term under which the prisoner is subject  
9 to the custody and jurisdiction of the board.

10 Sec. 33.16.160. CHANGE IN PAROLE CONDITIONS. (a) Upon appli-  
11 cation of the state or the parolee, the board may change a condition  
12 of parole previously imposed under AS 33.16.150(b).

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

18 (c) Notwithstanding (a) and (b) of this section, when a parole  
19 officer determines that an emergency situation requires an immediate  
20 change in a condition of parole, or the imposition of a new condition,  
21 the parole officer may impose the change or new condition immediately,  
22 without a hearing. The parole officer shall immediately notify the  
23 board of the imposition of the emergency change or new condition and  
24 shall provide a written report setting out the basis for the change or  
25 new condition and the nature of the emergency. The effective period  
26 of a change in condition or imposition of a new condition under this  
27 subsection may not exceed 15 working days.

28 (d) A condition of parole may be changed, a new condition of  
29 parole may be imposed, or a new or changed condition imposed under (c)

1 of this section may be extended by a member of the board or the  
2 board's designee if, after a preliminary hearing, an emergency situa-  
3 tion is found that requires a change in condition. The effective  
4 period of a change in condition under this subsection, the imposition  
5 of a new condition under this subsection, or the extension under this  
6 subsection of a new or changed condition imposed under (c) of this  
7 section may not exceed 90 days.

8 Sec. 33.16.170. CONFIDENTIALITY OF RECORDS AND INFORMATION. (a)  
9 Except as provided in (b) of this section, the parole reports  
10 listed in AS 33.16.110, and other information obtained and used by the  
11 board under this chapter, are confidential and may not be disclosed to  
12 anyone other than the board, the sentencing judge, the prosecuting and  
13 defense attorneys, the prisoner, the prisoner's attorney, the attorney  
14 for the board, the staff of the board, or others granted access to  
15 this information under this chapter..

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

19 (1) diagnostic opinions that, if made known to the eligible  
20 prisoner, could lead to serious disruption of the prisoner's institu-  
21 tional program;

22 (2) portions of a document that reveal sources of informa-  
23 tion obtained upon a promise of confidentiality; or

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

26 (c) When the board withholds information from a prisoner or the  
27 prisoner's attorney under (b) of this section, the board shall provide  
28 the prisoner with an excised copy of the material or summary of the  
29 material withheld containing as much specificity as the circumstances

1 allow.

2 Sec. 33.16.180. DUTIES OF THE COMMISSIONER. The commissioner  
3 shall

4 (1) conduct investigations of prisoners eligible for dis-  
5 cretionary parole, as requested by the board;

6 (2) supervise the conduct of parolees;

7 (3) appoint and assign parole officers and personnel;

8 (4) provide the board, within 30 days after sentencing,  
9 information on a sentenced prisoner who may be eligible for discre-  
10 tionary parole under AS 33.16.090;

11 (5) notify the board and provide information on a prisoner  
12 120 days before the prisoner's mandatory release date, if the prisoner  
13 is to be released to mandatory parole; and

14 (6) maintain records, files, and accounts as requested by  
15 the board.

16 Sec. 33.16.190. PAROLE AND PROBATION OFFICERS. An officer ap-  
17 pointed by the commissioner under AS 33.05.020(a) or under AS 33.16.-  
18 180, may discharge duties under AS 33.05 or AS 33.16.

19 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in  
20 AS 33.16.210, the board retains custody of discretionary and mandatory  
21 parolees until the expiration of the maximum term or terms of impris-  
22 onment to which the parolee is sentenced.

23 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-  
24 tionally discharge a parolee from the jurisdiction and custody of the  
25 board after the parolee has completed two years of parole, if the  
26 sentence of the parolee does not include a residual period of pro-  
27 bation. A parolee with a residual period of probation may, after two  
28 years of parole, be discharged by the board to immediately begin  
29 serving the residual period of probation.

1           Sec. 33.16.220. REVOCATION OF PAROLE. (a) The board may revoke  
2 parole for conduct in violation of AS 33.16.150(a) or (b).

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

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

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

18                   (2) the seriousness of the alleged violation;

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

20 and

21                   (4) whether the parolee is likely to further violate con-  
22 ditions of parole.

23           (d) If the parole violator is released pending a final revoca-  
24 tion hearing, the board or its designee may impose additional con-  
25 ditions necessary to ensure the parolee's appearance at the final  
26 revocation hearing, and to prevent further violation of conditions of  
27 parole.

28           (e) A preliminary hearing under (b) of this section is not re-  
29 quired if the board holds a final revocation hearing within 20 working

1 days after the parolee's arrest and incarceration.

2 (f) The board shall hold a final revocation hearing no later  
3 than 120 days after a parolee's arrest, subject to restrictions aris-  
4 ing under AS 33.10.010 and (g) of this section.

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

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

16 (i) If, after the final revocation hearing, the board finds that  
17 the parolee has violated a condition of parole imposed under AS 33.-  
18 16.150(b), or a law or ordinance, the board may revoke all or a por-  
19 tion of the parole, or change any condition of parole.

20 Sec. 33.16.230. WAIVER OF HEARING. A prisoner or parolee may  
21 waive the right to a hearing provided under AS 33.16.120, 33.16.160,  
22 or 33.16.220 by submitting a written waiver to the board.

23 Sec. 33.16.240. ARREST OF A PAROLE VIOLATOR. (a) A parolee may  
24 be arrested, with or without a warrant, for a violation of parole.

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

28 (c) A parole officer may, without a warrant, arrest a parolee  
29 for a violation of parole only if there is danger to the public, if

1 there is a likelihood that the parolee will flee, or if the parolee  
2 committed a crime in the presence of the parole officer.

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

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

11 (f) Time spent in custody pending revocation proceedings shall  
12 be credited toward the unexpired term of imprisonment of the parolee;  
13 however, the time the parolee was at liberty on parole does not alter  
14 the time the parolee was sentenced to serve.

15 Sec. 33.16.250. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)  
16 A parole officer, or a peace officer acting at the request of a parole  
17 officer, shall execute a warrant issued under AS 33.16.240 by ar-  
18 resting the parolee and confining the parolee in a correctional facil-  
19 ity designated by the commissioner.

20 (b) The parole officer or peace officer shall immediately notify  
21 the board or a member of the board of an arrest under (a) of this  
22 section.

23 Sec. 33.16.260. DEFINITIONS. In this chapter

24 (1) "board" means the board of parole;  
25 (2) "commissioner" means the commissioner of corrections;  
26 (3) "controlled substance" means a drug, substance, or  
27 immediate precursor included in the schedules set out in AS 11.71.-  
28 140 - 11.71.190;

29 (4) "crime against a person" has the meaning given in

1 AS 33.30.900;

2 (5) "department" means the Department of Corrections;

3 (6) "discretionary parole" means the release of a prisoner  
4 by the board before the expiration of a term, subject to conditions  
5 imposed by the board and subject to its custody and jurisdiction;

6 (7) "mandatory parole" means the release of a prisoner who  
7 was sentenced to one or more terms of imprisonment exceeding 180 days,  
8 for the period of good time credited under AS 33.20, subject to con-  
9 ditions imposed by the board and subject to its custody and jurisdic-  
10 tion;

11 (8) "parolee" means a prisoner, sentenced to one or more  
12 terms of imprisonment exceeding 180 days, released by the board or by  
13 operation of law before the expiration of the term, subject to the  
14 custody and jurisdiction of the board;

15 (9) "prisoner" means an offender confined for a violation  
16 of state law, but does not include a person confined under AS 47;

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

18 \* Sec. 3. AS 33.20.040(a) is repealed and reenacted to read:

19 Sec. 33.20.040. RELEASED PRISONER. (a) A prisoner released  
20 under AS 33.20.030 shall be released on mandatory parole to the  
21 custody and jurisdiction of the parole board under AS 33.16, until the  
22 expiration of the maximum term to which the prisoner was sentenced, if  
23 the term or terms of imprisonment exceeded 180 days. However, a  
24 prisoner released on mandatory parole may be discharged under AS 33.-  
25 16.210 before the expiration of the term. A prisoner who was sen-  
26 tenced to an imprisonment of 180 days or less shall be unconditionally  
27 discharged, except as provided in (c) of this section.

28 \* Sec. 4. AS 33.20.040 is amended by adding a new subsection to read:

29 (c) If a prisoner's sentence includes a residual period of

1 probation, a prisoner released under AS 33.20.030 shall immediately  
2 begin serving the residual probationary period, except that if manda-  
3 tory parole is required under (a) of this section, serving the proba-  
4 tionary period shall immediately follow discharge from parole.

5 \* Sec. 5. AS 39.50.200(b)(20) is amended to read:

6 (20) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010]);

7 \* Sec. 6. AS 44.66.010(a)(3) is amended to read:

8 (3) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010])

9 -- June 30, 1989 [1985];

10 \* Sec. 7. AS 33.15 is repealed.

11 \* Sec. 8. Current members of the board of parole appointed under  
12 AS 33.15.010, repealed in sec. 7 of this Act, retain their membership on  
13 the board of parole under AS 33.16.020. To accomplish the purpose of  
14 AS 33.16.020, the governor shall designate one member whose term expires on  
15 January 1, 1987; one member whose term expires on January 1, 1988; one  
16 member whose term expires on January 1, 1989; one member whose term expires  
17 on January 1, 1990; and one member whose term expires on January 1, 1991.

18 \* Sec. 9. APPLICABILITY. AS 33.16.090(b), enacted in sec. 2 of this  
19 Act, shall be applied prospectively, except that prisoners sentenced before  
20 the effective date of this Act are eligible for discretionary parole during  
21 a term of sentence enhancement imposed under AS 12.55.155(a) or during the  
22 term of a consecutive or partially consecutive presumptive sentence imposed  
23 under AS 12.55.025(e) or (g) if the sentencing court orders discretionary  
24 parole eligibility for that period.

25 \* Sec. 10. This Act takes effect January 1, 1986.

*concededly amendments*

AMENDMENT *II*

Sec. 8. Current members of the board of parole appointed under AS 33.15.010, repealed in sec. 7 of this Act, retain their membership on the board of parole under AS 33.16.020. To accomplish the purpose of AS 33.16.020, the governor shall designate one member whose term expires on January 1, 1987; one member whose term expires on January 1, 1988; one member whose term expires on January 1, 1989; one member whose term expires on January 1, 1990; and one member whose term expires on January 1, 1991.

Amendment #2

p.11, line 9, after "INFORMATION." add "(a). Except as provided in (b) of this section,"

p.11, line 16, add new subsections to read:

(b) Notwithstanding (a) of this section and AS 33.16.-130(b), the board may not disclose to the prisoner or the prisoner's attorney

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

2) any documents which reveal sources of information obtained upon a promise of confidentiality; or

3) any other information which, if disclosed, may result in harm, physical or otherwise, to any other person.

(c) When the board withholds information from a prisoner or the prisoner's attorney under (b) of this section, the board shall provide the prisoner with a summary of the material withheld containing as much specificity as the circumstances allow.

Amendment 3

P.4, lines 20 through 28 delete and insert:

(b) A prisoner is not eligible for discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a), or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

*+  
application clause Retrospective  
P.C.R.*

Amendment

4

p.5, line 7 after "determines" insert "with reasonable probability"

PAT2:eja:45

Amendment

*not adopted*

(c) A prisoner may not be released on discretionary parole until the prisoner has served at least one-third of the period of confinement imposed, at least the mandatory minimum term if the prisoner is sentenced under AS 12.55.125(a) or (b), or any minimum term set under AS 12.55.115 at sentencing, whichever is greater.

AMENDMENT #

Sec. 8. Current members of the board of parole appointed under AS 33.15.010, repealed in sec. 7 of this Act, retain their membership on the board of parole under AS 33.16.020 [for the remainder of the terms of appointment]. The governor shall designate under AS 33.16.020 one member's initial term expires on January 1, 1987; one member's initial term expires on January 1, 1988; one member's initial term expires on January 1, 1989; one member's initial term expires on January 1, 1990; and one member's initial term expires on January 1, 1991.

AMENDMENT #

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STATE OF ALASKA  
THE LEGISLATURE

POUCHET STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1985

SUBJECT: Comments on CSHB 141 (Judiciary)

TO: Representative M. Mike Miller  
House Judiciary

FROM: George W. Edwards *GWE*  
Legislative Counsel

This memo accompanies a final draft of CSHB 141(Jud) as requested. I want to point out three significant changes of language for your approval.

Sec. 33.16.150(a) did not seem to make clear whether a parolee must refrain from violating only laws punishable by imprisonment or any state or federal law and those municipal laws punishable by imprisonment. I understand from discussing this with Pat Conheady that the first interpretation is correct. The section has been reworded to clarify this intention.

Section 33.16.220(a) refers to the same conduct addressed in AS 33.16.150(a) but does not reflect the requirement that the conduct be punishable by imprisonment. My change in language here is intended to create a complete reference to the conditions established in AS 33.16.150(a) and (b).

Section 9 of the bill does not seem to restate the purpose of Sec. 33.16.090(b) as completely as it could. Since I understand from my discussion with Pat that the intention is that persons serving consecutive presumptive terms also be eligible for court sanctioned discretionary parole, I have adopted language that makes this clear by more closely following AS 33.16.090(b).

GWE:csh  
c3/080

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION PRETRIAL DIVERSION PROGRAM

April 1, 1985

**BILL SHEFFIELD, GOVERNOR**

REPLY TO:

- POUCH KT  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3678
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FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-7713

The Honorable Mike M. Miller  
Chairman, Judiciary Committee  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

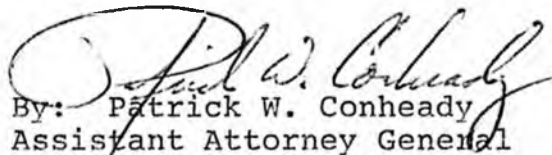
Dear Representative Miller:

Enclosed for your consideration is the commentary and sectional analysis for CSHB 141 (Jud). The commentary and sectional analysis reflects the version of this bill under consideration in your committee, including changes made by the committee during the meeting of March 30, 1985.

Sincerely yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

  
By: Patrick W. Conheady  
Assistant Attorney General

PWC:eja

Enclosure:

## Sectional Analysis and Commentary - CSHB 141 (Jud)

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

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

### Section 1

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

## Section 2

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

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

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

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

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

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

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

judicially imposed minimum sentence.

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

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

AS 35.16.100(a) sets out the broad general standards that the board should follow when deciding on a grant of discretionary parole. These standards reflect the Chaney criteria and the purposes of sentencing in AS 12.55.005, particularly those concerned with rehabilitation, protection of the public and seriousness of the crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AS 33.16.210 allows the board to unconditionally discharge a parolee from parole after two years. The discharge authority would be employed when a parolee has demonstrated rehabilitation and there is no further need for supervision. There is no similar provision currently in law. Alaska is believed to be the only state where the parole board does not possess this authority.

AS 33.16.220 sets out the mechanism for revoking parole. Subsection (a) gives the board the authority to revoke parole if the parolee violates a condition of release. This mirrors current law.

Subsection (b) sets out minimal due process requirements for holding a preliminary revocation hearing. In order to avoid duplicitous proceedings, the board may rely on a judicial determination of probable cause rather than hold a separate preliminary hearing.

In subsection (c), after finding probable cause of a violation, the board then must conduct the dispositive phase, i.e., deciding whether the parolee is to be incarcerated or released pending a final revocation proceeding. If the board decides to release the parolee, additional conditions may be imposed under subsection (d).

Subsections (e) and (f) set out time frames for holding final revocation proceedings. These provisions codify case law to ensure speedy disposition of parole revocation proceedings.

Subsection (g) addresses the situation where a parolee's alleged violation is also a pending criminal charge. Before deciding to proceed to a final revocation proceeding, the board must consider any prejudice that may result to either the parolee or the state. If a decision to hold the revocation proceeding is made, the board then must consult with the Attorney General's office so that immunity issues may be resolved. This provision attempts to balance seemingly inconsistent court decisions.

Subsection (h) establishes the burden of proof necessary to show a violation. This is a codification of case law.

Subsection (i) vests the board with broad discretionary power to fashion a remedy appropriate to the violator and the violation. Numerous options are made available under this subsection. The board may revoke all of the violator's parole, returning the parolee to jail for the full term of the parole; the

board may revoke a part of the violator's parole, returning the parolee to jail for a part of the parole term and extending the period the parolee is under the jurisdiction of the board a commensurate amount. The board may return the parolee to jail for part of the parole term and not extend the parole term. the board may also change a condition of parole to ensure that the rehabilitative goals are met. The board currently holds this power; this subsection merely restates and clarifies this power.

AS 33.16.230 allows a parolee to waive any hearing which is required under due process standards.

AS 33.16.240 sets out the procedure for arresting a parole violator. Subsection (e) precludes bail for a person arrested as a parole violator. The dispositive phase of a preliminary revocation proceeding, under AS 33.16.220(c), addresses a parole violator's release.

Subsection (f) gives credit to a parolee for time in custody toward the unexpired term of the sentence, but denies a parolee credit for street time. This provision is in current law.

AS 33.16.250 sets out how an arrest warrant for a parole violator is executed.

Section 3 amends existing good time release provisions to conform with the concept of a mandatory parole.

Section 4 provides for those situations when a mandatory parolee has a residual period of probation.

Section 5 is a technical, conforming amendment.

Section 6 provides a new sunset date for the parole board.

Section 7 repeals the existing Parole Administration Act.

Section 8 addresses the reappointment of current board members and allows for readjustment of their terms of appointment to achieve staggered terms.

Section 9 is a special application section for AS 33.16.090(b), discretionary parole eligibility during the period of an enhanced or consecutive presumptive sentence. In that some prisoners have previously been ordered to be

discretionary parole eligible during these periods, these court orders are approved in this section. For other prisoners sentenced before the effective date of this Act who have enhanced or consecutive presumptive sentences, and where the court has not made a determination on discretionary parole eligibility, it is intended that those prisoners may petition the court under Criminal Rule 35 for this determination. Absent such a determination, AS 33.16.090(b) is to be applied prospectively.

Section 10 provides for an effective date.

#### Due Process Considerations

Generally, in determining the procedural safeguards that due process requires in parole proceedings, it is first necessary to distinguish the type of proceeding involved. The decision making functions in parole can be broadly designated as either granting parole or revoking parole, each of which necessitates differing level of safeguards. The question of the necessary levels of safeguards that must be provided is correlative to the liberty interest being considered or acted upon. The greater the liberty interest involved, the higher the level of safeguards mandated. In Alaska, which employs a scheme of both discretionary and mandatory parole, further distinguishment in the safeguards results from the type of parole under consideration.

Clearly, if the procedures under consideration pertain to a revocation function, safeguards are universally applicable, whether parole is mandatory or discretionary. For although parolees have forfeited their right to the full liberty enjoyed by ordinary citizens by virtue of a criminal conviction, they do possess greater freedom than persons incarcerated. This conditional liberty interest possessed by both mandatory and discretionary parolees has been recognized by the United States Supreme Court:

We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a "grievous loss" on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege." By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment.

Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

On the other hand, the procedures which apply during the granting phase are not applicable to both classes of parolees, because mandatory parolees are released by operation of law while discretionary parolees are subject to the discretionary decision making function of the parole board. The procedures required under the parole granting function likewise differ from those required in the revocation function, as there is no recognized liberty interest, conditional or otherwise, in discretionary parole. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979).

#### A. Parole Granting Function

Due process safeguards in the parole granting function are only required if there is a deprivation of a protected interest held by the prospective parolee. Under the United States Constitution, states do not have a legal obligation to establish a parole system, and there is no federal constitutional or inherent right to parole. However, Greenholtz does recognize that a state may, by constitution or by statute, create such a right, and if the right is created, certain due process safeguards must be afforded the prospective parolee.

Procedural safeguards in the discretionary parole granting process would be required if the Alaska Constitution or statutes created a sufficient expectation of parole to constitute a protected liberty interest, as the establishment of a liberty interest is a condition precedent to the applicability of due process. Sharp v. Leonard, 611 F.2d 136 (6th Cir. 1979).

Article III, Section 21 of the Alaska Constitution provides

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

This section directs the creation of a parole system by the legislature; it does not constitutionally guarantee parole, nor does it mandate the type of system of parole that could be created. Rather, it leaves to the discretion of the legislature the type of parole system, and that discretion necessarily includes determining the types of individuals eligible for parole.

Within the context of finding a liberty interest created by statute, courts will focus on the certainty of parole release. If the board has unlimited discretion to grant or deny parole, no liberty interest is present. Conversely, if the statute requires the board to parole a particular person at a certain time, that person has an expectation of release which is a protected liberty interest. As a general rule, the more the board's discretion is limited, the more likely it is that a liberty interest will be found. If there is a presumption that a prisoner will be paroled, courts will tend to find a liberty interest. U.S. ex rel Scott v. Illinois Parole and Pardon board, 669 F.2d 1186 (7th Cir. 1982). This distinction is apparent in comparing AS 33.16.010(b) with AS 33.16.010(c), in that the certainty of parole release under the latter statute is limited only by the amount of good time the prisoner has accumulated under AS 33.-20.030, while the board's discretion governs parole under the former.

Careful analysis of discretionary parole under AS 33.16 is necessary to determine whether there is a sufficient expectation of parole to find a liberty interest. AS 33.16.090(a), which discusses the eligibility of a prisoner for discretionary parole vests the board with wide discretion ("... may, in the discretion of the board, be released on discretionary parole ..."). Less certitude in a prisoner's release on discretionary parole is found in AS 33.16.100(a) ("The board may authorize the release of a prisoner on discretionary parole if ..."). This statutory language is intentionally discretionary, and does not create a liberty interest in the Alaska statutory scheme of discretionary parole.

The incertitude of a grant of discretionary parole has also been recognized by the Alaska Supreme Court, albeit in dicta. For although a prisoner must serve a minimum period before becoming eligible for discretionary parole "... it does not follow from this that there is any certainty that a prisoner ... would actually be paroled at that time." 1/

Only in those situations where state legislatures have limited the parole authority's release discretion have courts found any liberty interest. This was the case in Greenholtz where the Nebraska statutes declared that the parole board

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1/ Huff v. State, 568 P.2d 1014, 1019 (Alaska 1977). See also Hansen v. State, 502 P.2d 1041, 1047 n. 12 (Alaska 1978).

"shall" grant release "unless" one of four designated reasons for not doing so existed. 2/ See also, Williams v. Missouri board of Probation and Parole, 661 F.2d 697 (8th Cir. 1981). However, such mandatory language is a rarity among states, and doesn't exist in Alaska law.

A liberty interest in the parole granting process may also be found in the practices of the board or in administrative rule or regulation adopted under the statute. For example, if the board adopts standards which include guidelines specifying an approximate parole release date for prisoners whose crimes and personal histories fit predetermined categories then a conditional liberty interest might be found to exist. This predictive judgment process will then require procedural safeguards to reduce the risk of error in determining the factual elements and making the subject appraisals. This is the situation intended for the Alaska parole system.

By requiring the adoption of regulations which "establish standards under which the suitability of discretionary parole is determined," a minimal liberty interest is created in the parole granting process. The Parole Administration Act, AS 33.16, therefore grants certain procedural safeguards to prisoners eligible for discretionary parole. This statutory grant of procedural safeguards is intended to give prisoners the assurance of a fair proceeding.

#### Procedural Safeguards

After applying for parole, the eligible prisoner is entitled to notice and a hearing on the parole application. The prisoner is given access to most material which the board will consider in reaching its decision, and the prisoner is granted the opportunity to respond in writing to the material and present evidence to the board. AS 33.16.130(b). Absent exigent circumstances, the evidence presented by the prisoner should not include the testimonial evidence of third parties, as such evidence can be submitted by means of an affidavit.

Only if the board denies the application for discretionary parole must the basis for the decision be put in writing. A copy of this writing is provided to the prisoner AS 33.16.-130(c). If the denial of the application is a "set off",

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2/ Neb. Rev. Stat. § 83-1, 114

allowing for reconsideration of parole at some future date, the written basis for denial may indicate those areas in the prisoner's proposed release plans which need to be addressed, giving the prisoner adequate notice and direction for the subsequent reconsideration.

Although a prisoner is provided the basis for a denial of parole, this action of the board is not reviewable unless there is a denial of a constitutional right. The judicial review procedures of the Administrative Procedures Act, AS 44.62.330, 560 and 570, do not apply to parole board actions.

When the board has granted an application for parole and set a release date for the prisoner, it may rescind that action before the release date, or even revise the release date. This would occur if a change in circumstances in the prisoner's parole release plan occurred or if new information concerning the prisoner came to light. AS 33.16.100(b).

Having granted a future parole release date, the expectation of parole is sufficient to find a conditional liberty interest. Therefore, certain minimal procedural safeguards are warranted. The same statutorily mandated procedures employed at the parole granting phase are required to rescind parole, as they are sufficient to satisfy constitutional due process requirements.

#### B. Imposing Conditions of Parole

When imposing conditions of release on a parolee, whether the parole is discretionary or mandatory, the board is limited to imposing conditions which are both consistent with the goals of rehabilitation and protection of the public, and necessary for the proper functioning of the parole system. Morrissey, at 483; Roman v. State, 570 P.2d 1235, 1242 (Alaska 1977). To this end, all prisoners released on parole are required to lead law abiding lives as a condition of release. AS 33.16.150(a). Additionally, the board is empowered to impose special conditions designed for the individual rehabilitative program of each paroled offender. AS 33.16.150(b). Because some of these special conditions are severe limitations on the parolee's conditional liberty interest, imposition must be rationally related to the underlying offense or the parolee's history. Roman, at 1242. Specifically, special conditions that are in the nature of a search, AS 33.16.150(b)(9) & (11), may only be imposed if warranted by the nature or the circumstances surrounding the parolee's crime or social history. For this reason, these conditions may only be imposed by the board. AS 33.16.150(c).

Imposition of two additional conditions are likewise limited, not because they impinge upon the conditional liberty interest, but rather due to the nature of the condition. Precluding a parolee from possessing or controlling a firearms is limited to misdemeanor offenders, as felons are precluded by state law (AS 11.61.200) as well as federal law (Pub. L. 90-618 § 922(h)) from doing so. Imposing this condition upon a parolee would also necessitate a relationship to the crime, e.g. assault or extreme game violations. Finally, restitution as a condition of parole may only occur if restitution was ordered by the sentencing court. Brezenoff v. State, 658 P.2d 1359 (Alaska App. 1983).

After the initial imposition of the conditions of release upon the parolee, a need may arise to change or impose additional conditions, procedural safeguards may then be required. If the parolee is determined to be at liberty on a certain conditional level, a more restrictive level of conditional liberty may be a deprivation of the current conditional liberty status; thus imposition of new conditions may only be accomplished if the parolee is provided notice of the proposed change and the opportunity to be heard on it. Whether procedural safeguards need to be employed when there is a new or changed condition depends on an analysis of whether the new or changed condition is a further infringement of the liberty interest and also whether the change is significant or insignificant. Clearly, if the new condition required the parolee to enroll in a residential treatment program for substance abuse, the current level of conditional liberty enjoyed by the parolee is being curtailed; thus procedural safeguards are warranted. Conversely, if the new condition was a requirement of the parolee to pay child support or not to open a charge account, there is no further curtailment of the current conditional liberty interest, and procedural safeguards are not necessary. Moreover, if the parole officer required the parolee to report twice a month, rather than once a month, such a change is so insignificant as to not require any due process protections.

Situations may also occur which require the immediate imposition of a new or changed condition. Specific procedures are set out which balance the state's interests in rehabilitation and protection of the public with the parolee's conditional liberty interest. AS 33.16.160(c) & (d).

### C. Parole Revocation

In Morrissey, after recognizing the conditional liberty interest possessed by parolees, the United States Supreme Court

mandated the employment of procedural guarantees in parole revocation proceedings.

The procedures required could be informal in nature, but must include as a minimum

- 1) a preliminary revocation hearing at or reasonably near the place of the alleged violation and as promptly as convenient after the arrest,
- 2) a final revocation hearing with
  - a) written notice of the claimed violation;
  - b) disclosure of evidence to be used against the violator;
  - c) opportunity to be heard in person and to present witnesses and documentary evidence;
  - d) a limited right to confront and cross-examine adverse witnesses;
  - e) a neutral and detached hearing body; and
  - f) a written statement by the fact finders as to the evidence relied on and the reasons for revocation.

Morrissey, at 486, 489.

In essence, Morrissey requires "an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." Morrissey, at 485.

Clearly the court did not require the full range of rights normally accorded in a criminal proceeding. Subsequent decisions have held that the revocation proceeding is not part of a criminal proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), therefore those guarantees normally applicable in the criminal proceeding do not apply in a revocation. State v. Sears, 553 P.2d 907 (Alaska 1976) (exclusionary rule for illegally seized evidence does not apply); Martin v. State, 517 P.2d 1389 (Alaska 1974) (right to bail under Alaska Constitution does not apply); Paul v. State, 560 P.2d 754 (Alaska 1977) (Alaska speedy trial rule does not apply); Roman v. State, 570 P.2d 1235 (Alaska 1977) (warrantless searches are permissible); Davenport v. State, 568 P.2d 939 (Alaska 1977) (different requirements for parole violation arrest warrant); Avery v. State, 616 P.2d 872 (Alaska 1980) (preponderance of evidence standard of proof sufficient for revocation).

#### 1. Preliminary Revocation Hearing

The Morrissey case set the broad standards for the

preliminary revocation hearing in order "to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole." 3/ The hearing needs to be conducted by an independent decision maker, i.e., some person other than one initially dealing with the case.

The finding of probable cause or reasonable grounds may be based on a finding in another forum, as the parolee would be collaterally estopped from relitigating issues previously determined. A criminal conviction, 4/ with the higher "beyond a reasonable doubt" standard of proof, or a finding of probable cause after a preliminary hearing in a pending criminal case, would both constitute conclusive proof of a parole violation. AS 33.16.220(b).

Although there is case law intimating a grand jury indictment may be used in a like manner, 5/ the due process requirement of Morrissey, which grants the parolee the opportunity to refute or explain the alleged violation, would tend to negate use in this way. However, given the standard for a grand jury indictment in Alaska (the evidence presented, if unexplained or uncontradicted, would warrant a trier of fact to find beyond a reasonable doubt that the accused committed the crime charged), the requirements of the prosecutor to disclose exculpatory evidence to the grand jury, 6/ and safeguards of Criminal Rule 6(q), a grand jury indictment does constitute prima facie evidence of a violation. In this situation, the burden is shifted to the alleged violator to disprove the charges in the indictment.

When probable cause or reasonable grounds for a violation are found, the preliminary revocation hearing becomes a

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3/ Morrissey, at 486.

4/ Moody v. Daggett, 429 U.S. 78, 86 n.7 (1976)

5/ See Inmates Councilmatic Voice v. Rogers, 541 F.2d 633 (6th Cir. 1976); Hall v. State, 535 F.Supp. 1121 (S.D. Ohio 1982).

6/ See Tookak v. State, 648 P.2d 1018 (Alaska App. 1982); Frink v. State, 597 P.2d 154 (Alaska 1979).

bifurcated process. Just as in the final revocation process there is an adjudicatory phase (to determine probable cause) and a dispositive phase (where the hearing officer must then determine whether the violator should be released pending a final revocation hearing). The hearing officer is required to consider four factors in making this determination. AS 33.16.220(c). As there is no constitutional right to bail in a parole revocation proceeding, Martin v. State, 517 P.2d 1389 (Alaska 1974), release pending the final revocation hearing may only occur under this subsection. (Bail release is also statutorily denied. AS 33.-16.240(e)). The hearing officer, in determining that release is appropriate, may also impose additional conditions on the violator. AS 33.16.220(d). Necessary, procedural safeguards, if the additional conditions are more restrictive of the parolee's liberty, are satisfied in the two phases of the bifurcated preliminary revocation hearing process.

## 2. Final Revocation Hearing

As previously noted, Morrissey set out six specific requirements for a final revocation hearing necessary to meet minimal due process safeguards. These minimal procedures have not been significantly expanded, either in subsequent case law, or by statute. The burden on whether to have a final revocation hearing has been shifted from the parolee: Morrissey implies the parolee must request a final revocation hearing (although the parolee must be notified of the right to such a hearing); by statute, a final revocation will be held unless specifically waived in writing by the parolee. AS 33.16.230. Additionally, the "within a reasonable time" requirement for holding a final revocation proceeding has been established by statute -- within 20 working days after a parolee's arrest and incarceration if no preliminary revocation hearing is held, 7/ or within 120 days after the arrest if a preliminary revocation hearing has been held. 8/ Special safeguards for both the parolee and the state are available in the event the alleged violation is based on a pending criminal charge. AS 33.16.220(g).

If a violation is found, the board is granted significant discretion in fashioning an appropriate remedy. Additional conditions of parole may be imposed upon the violator, who is

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7/ AS 33.16.220(e)

8/ AS 33.16.220(f)

then re-released on parole; the violator may also have the parole revoked in full, or in part, AS 33.16.220(i). A parolee is not given credit towards the original sentence, for time spent on parole, AS 33.16.240(f), so that a revocation may result in reincarceration for the amount of the prisoner's original term not previously served in jail. A partial revocation would result when the board decided the seriousness of the violation did not warrant reincarceration for the remainder of the term, but that some reincarceration was necessary.

### Other Considerations

#### A. Arrest of Parole Violators

Alleged parole violators may be arrested with or without a warrant. A warrant may be issued by the board or a member of the board based upon a probable cause standard. Unlike the standards applicable to arrest warrants in criminal cases, a parole violator warrant does not need to be supported by a written affidavit or complaint. Davenport v. State, 568 P.2d 939 (Alaska 1977). However, to avoid unnecessary litigation on the issue of whether the warrant is supported by probable cause, the warrant is intended to be supported either by a written or recorded statement of the parole officer. Davenport, at 948, n.21.

Likewise, exigent circumstances may exist requiring the immediate arrest of a parolee. However, rather than leaving these exigent circumstances to subsequent court interpretation, the circumstances are enumerated in statute AS 33.16.240(c). If a warrantless arrest occurs, strict reporting requirements on the circumstances of the arrest are mandated. AS 33.16.240(d).

#### B. Confidential Information

##### 1. Public Disclosure

During the decision making aspects of its duties, the board will be relying upon information derived from a variety of sources. Although some of this information may be public information if it is derived from the original source under AS 09.25.110, other portions of this information are confidential, e.g., presentence reports. In order to relieve the board of the responsibility to determine whether this information is otherwise confidential under law, all the information compiled by the board is made confidential. AS 33.16.170(a). This provision therefore exempts that information from the provisions of AS 09.25.110 and AS 09.25.120; however, if the information is otherwise public information, this section does not preclude public inspection and

copying of that material at its original source.

## 2. Disclosure to the Parolee

In the main, information which is used by the board must be disclosed to the parolee. The due process requirements which attach to the liberty interests held by parolees or potential parolees, dictate that the parolee be given not only notice of a proposed action, but also the opportunity to be heard. To be meaningful, the opportunity to be heard requirement should afford the parolee or prisoner the ability to refute or explain adverse information as well as to ensure that the board considers information which the parolee or prisoner believes is relevant to the decision making function under consideration by the board. As succinctly stated in Morrissey, at 485, the procedural safeguards should be designed to ensure "that the exercise of discretion will be by an accurate knowledge of the parolee's behavior." There are, however, instances and situations wherein full disclosure of all information under consideration is neither appropriate nor required.

The first type of information where disclosure is neither appropriate nor required is the address of a victim who has commented upon a pending discretionary parole under AS 33.16.120. In this instance, the state has undertaken a duty to protect the victim from harm or harassment. AS 12.61.010(a)(3). By not disclosing the victim's residence or location, the state is taking one small measure to protect that victim in the event the prisoner, or any of the prisoner's relatives or associates decides to act in vengeance if the victim has commented adversely on a prospective parole. Furthermore, there is no reason, under due process requirements or otherwise, for the prisoner to have access to that piece of information. Therefore, this information is not disclosed to the parolee. AS 33.16.120(b).

The second type of information that is not appropriate to disclose is previously undisclosed diagnostic reports, confidential informant reports and any other information which, if disclosed, may result in harm to any person. AS 33.16.170(b). The state's interest in the rehabilitation of the prisoner, whether discretionary parole is granted or not, is of paramount importance. In some instances a psychiatric evaluation of the prisoner, if it has not been previously disclosed, may severely undermine the institutional therapy program in which the prisoner is currently enrolled. Although it is rare that such a diagnosis has occurred and has not been subsequently disclosed to the prisoner, a few instances of subsequent disclosure by the board and an attendant disruption of the prisoner's therapeutic program

would lead to the board either not being given access to that information, or to that type of information not being generated. Either alternative would negatively impact the rehabilitative goals of the state.

Furthermore, disclosure of confidential information or any other information which may result in harm to any other person is contrary to the state's duties to properly administer prisons and to protect society.

Although non-disclosure of these types of information, is permitted, due process does mandate the opportunity for the prisoner or parolee to contradict or explain adverse information. In balancing this interest with the state's interest in protecting other members of society from harm and ensuring rehabilitation, the board is therefore required to summarize the information which it does not disclose. This summary will vary with the types of information being considered by the board, but it nonetheless must be capable of conveying to the prisoner or parolee, as completely and as accurately as possible, the content of the information. This will enable the prisoner or parolee to adequately respond. AS 33.16.170(c).

### C. Remedial Actions

Numerous duties are required of the board during the parole process. The Parole Administration Act does not set out specific remedies that may result if the board fails to discharge those duties.

#### 1. Parole/Prisoner Remedies

Absent the denial of a constitutional right, the actions of the parole board when it is exercising its discretionary functions are not reviewable in court. Therefore, when in its predictive judgment, the board decides a prisoner is not suitable for discretionary parole, an aggrieved prisoner may not have that decision reviewed. However, in that the Parole Administration Act, and its requirement for the adoption of regulations establishing standards for the determination of the suitability for discretionary parole, grant a perspective parolee a limited liberty interest, review of the board's action for a denial of due process safeguards is more readily available than is apparent. Similarly, revocation of parole which is a recognized liberty interest may give rise to judicial review of the procedures employed to ensure the necessary level of due process procedural safeguards.

If a prisoner or parolee challenges the procedure of the board as a violation of due process safeguards (usually through an action under Criminal Rule 35) the remedy that is nearly universally applied is for the board to redo the proceeding, ensuring that the parolee's or prisoner's due process rights are recognized. Newell v. State, 620 P.2d 680 (Alaska 1980). The courts have recognized that they possess "only limited power to review Parole Board decisions, and cannot usurp the authority of the Board." <sup>9/</sup> This remedy is generally appropriate if the board has violated one of the procedural guarantees set out in Morrissey, at 486, 489, whether it occurs at the preliminary or final revocation stage. See Ford v. Wainwright, F.2d 981 (5th Cir. 1977); Hahn v. Burke, 430 F.2d 100 (7th Cir. 198-70); Petition of Haverty, 618 P.2d 1011 (Wash. 1980). Similarly, a denial of procedural safeguards during the parole granting phase should be entitled to no more severe remedy than an order to redo the faulty hearing.

If the procedural safeguard denied a parolee in a revocation proceeding is the untimeliness of the hearing, the exceptional remedy applied is the reinstatement of the parolee to parole. See State v. Chavez, 607 P.2d 640 (N. Mex. App. Ct. 1979). By statute, Alaska has set specific time limits in which to hold a preliminary revocation hearing, within 15 working days after a parolee's arrest and incarceration for the violation; <sup>10/</sup> in which to hold a final revocation hearing, 20 days if the parolee is arrested, incarcerated and no preliminary revocation hearing on the violation is held; <sup>11/</sup> and in which to hold a final revocation proceeding, 120 days after the parolee's arrest, subject to recognized exceptions. <sup>12/</sup>

If the board was to deny a timely hearing under the statute, the resultant remedy should be proportionate to the violation. The purpose underlying the requirement for a timely

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<sup>9/</sup> Newell, at 683.

<sup>10/</sup> AS 33.16.220(b). A preliminary revocation hearing is not necessary for a parolee charged with a violation who is not arrested and incarcerated if there is no additional deprivation of the parolee's conditional liberty interest.

<sup>11/</sup> AS 33.16.220(e).

<sup>12/</sup> AS 33.16.220(f).

hearing is to enable the alleged violator to respond to the alleged violation while contrary evidence may still be available and the issue is fresh in everyone's mind. A short delay in the revocation proceeding would result in little prejudice to the parolee, so release from incarceration pending the hearing is an appropriate remedy. However, where the delay is significant and prejudice to the parolee is shown, reinstatement to parole status may be appropriate. This is the exceptional situation. Naturally, in that the prejudice to the parolee is the availability of evidence and the freshness of the incident, even a significant delay of a final revocation hearing pending resolution of pending criminal charges is not prejudicial.

The extraordinary remedy of unconditional release would only result if there was a due process violation and the term of the parolee's sentence would have expired had not the due process violations occurred. See U.S. ex rel. Hahn v. Review, 520 F.2d 632 (7th Cir. 1975); Lawrence v. Smith, 451 F. Supp. 1979 (W.D.N.Y. 1978).

## 2. Third Party Remedies

If the board fails to notify a victim of its consideration of discretionary parole and the right of the victim to comment on the proceeding under AS 33.16.120(a) this does not invalidate any parole decision. The purpose of this section is to give victims a voice in (as opposed to a veto power over) the parole process, and to provide the board with additional information in considering discretionary parole and special conditions if parole is granted. Therefore any remedy for the victim would have to lie in a tort action.

PWC:eja:Sectional

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

FILED IN THE TRIAL COURTS  
STATE OF ALASKA, FIRST DISTRICT  
AT JUNEAU

STATE OF ALASKA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICHAEL H. RADNER, )  
 )  
Defendant. )  
(C) )

MAY 9 1984

Clerk of Court

By RB Deputy

No. 1JU-78-316 CR

ORDER

The court has reviewed the reply memorandum in support of Motion to Set Aside the Conviction and to Expunge the Record in light of the letter of May 1, 1984 to the court of counsel for defendant. Without indicating any disagreement with the policy arguments contained in the reply memorandum, this court must conclude that it is without authority to order expungement of records as the defendant requests. AS 12.55.085(e) provides that a court may issue a certificate setting a conviction aside upon discharge of the defendant by the court without imposition of sentence. It does not give the court the power to order that records be expunged. Lacking that power, the court cannot enter such an order. While defendant's arguments may have merit, they would be better directed to the legislature which establishes the law rather than to the court which is bound to follow the law.

For the reasons set out above, the Certificate Setting Aside Conviction, issued by this court on April 19, 1984, will stand.

DONE at Juneau this 9th day of May, 1984.

Walter L. Carpeneti  
WALTER L. CARPENETI  
Superior Court Judge

Received  
5-16-84  
JCP

Offered: 4/1/85  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY  
COMMITTEE

2 CS HOUSE BILL NO. 141 (Jud)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the parole of offenders; amending  
7 the sunset date for the parole board; and providing  
8 for an effective date."

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

10 \* Section 1. AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.115. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT  
12 SENTENCING. The court may, as part of a sentence of imprisonment,  
13 further restrict the eligibility of a prisoner for discretionary  
14 parole for a term greater than that required under AS 33.16.100.

15 \* Sec. 2. AS 33 is amended by adding a new chapter to read:

16 CHAPTER 16. PAROLE ADMINISTRATION.

17 Sec. 33.16.010. PAROLE. (a) A prisoner who is serving a term  
18 or terms of at least 181 days is eligible for either discretionary or  
19 mandatory parole.

20 (b) A prisoner who is eligible under AS 33.16.090 may be granted  
21 discretionary parole by the board of parole.

22 (c) A prisoner who is not eligible for discretionary parole, or  
23 who is not released on discretionary parole, must be released on  
24 mandatory parole for the term of good time deductions credited under  
25 AS 33.20, if the term or terms of imprisonment exceed 180 days.

26 (d) A prisoner released on discretionary or mandatory parole is  
27 subject to the conditions of parole imposed under AS 33.16.150.  
28 Parole may be revoked under AS 33.16.220.

29 Sec. 33.16.020. BOARD OF PAROLE. (a) There is in the

1 Department of Corrections a board of parole consisting of five members  
2 appointed by the governor, subject to confirmation by a majority of  
3 members of the legislature in joint session.

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

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

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

11 (e) The governor shall appoint at least one member living in the  
12 First Judicial District, one member living in the Third Judicial  
13 District, and one member living in either the Second or Fourth Judi-  
14 cial District.

15 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The  
16 governor shall appoint board members on the basis of their qualifi-  
17 cations to make decisions that are compatible with the welfare of the  
18 community and of individual offenders. The governor shall appoint  
19 members who are able to consider the character and background of  
20 offenders and the circumstances under which offenses were committed.

21 (b) At least one person appointed to the board must have ex-  
22 perience in the field of criminal justice.

23 (c) Officers or employees of the state may not be appointed to  
24 the board.

25 Sec. 33.16.040. COMPENSATION AND EXPENSES. A board member is  
26 entitled to compensation at an amount to be set by the governor for  
27 each day the member is participating in business of the board, and is  
28 also entitled to the per diem and travel allowances provided under  
29 AS 39.20.180.

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28 also entitled to the per diem and travel allowances provided under  
29 AS 39.20.180.

1           Sec. 33.16.050. MEETINGS OF THE BOARD. (a) The board may meet  
2 as often as it considers necessary to carry out its responsibilities,  
3 but shall meet at least four times a year.

4           (b) Three members of the board constitute a quorum for the  
5 conduct of business.

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

8           (d) The board may conduct meetings by the use of teleconferenc-  
9 ing facilities.

10          Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

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

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

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

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

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

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

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

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

28           (9) execute other responsibilities prescribed by law.

29          (b) The board shall adopt regulations under the Administrative

1 Procedure Act (AS 44.62)

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

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

6 (3) governing procedures of the board.

7 Sec. 33.16.070. PROCESS. The board or a member of the board may  
8 issue subpoenas and subpoenas duces tecum in the performance of board  
9 duties under AS 33.16.060(a). Subpoenas issued under this section are  
10 enforceable in Superior Court.

11 Sec. 33.16.080. EXECUTIVE DIRECTOR. The board shall hire an  
12 executive director to serve the board in the discharge of its duties.  
13 The executive director must have had training and experience in the  
14 field of criminal justice. The executive director may employ addi-  
15 tional staff to assist the board.

16 Sec. 33.16.090. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A  
17 prisoner who is serving a term of at least 181 days, and who is not  
18 otherwise ineligible under (b) of this section, may, in the discretion  
19 of the board, be released on discretionary parole subject to AS 12.-  
20 55.086(b), 12.55.115, and AS 33.16.100(c) and (d).

21 (b) A prisoner is not eligible for discretionary parole during  
22 the term of a presumptive sentence; however, a prisoner is eligible for  
23 discretionary parole during a term of sentence enhancement imposed  
24 under AS 12.55.155 (a), or during the term of a consecutive or  
25 partially consecutive presumptive sentence imposed under AS 12.55.025  
26 (e) or (g).

27 (c) In determining the eligibility of a prisoner for discre-  
28 tionary parole, the board may rely upon the verbatim written tran-  
29 script of the judge's sentencing remarks under AS 12.55.025(a)(1), and

1 any other portion of the sentencing proceeding, as well as the judg-  
2 ment entered by the court.

3 Sec. 33.16.100. GRANTING OF DISCRETIONARY PAROLE. (a) The  
4 board may authorize the release of a prisoner on discretionary parole  
5 if it determines with reasonable probability that

6 (1) the prisoner will live and remain at liberty without  
7 violating any laws or conditions imposed by the board;

8 (2) the prisoner's rehabilitation and reintegration into  
9 society will be furthered by release on parole;

10 (3) the prisoner will not pose a threat of harm to the  
11 public if released on parole; and

12 (4) release of the prisoner on parole would not diminish  
13 the seriousness of the crime.

14 (b) If the board finds a change in circumstances in a prisoner's  
15 parole release plan submitted under AS 33.16.130(a), or discovers new  
16 information concerning a prisoner who has been granted a parole re-  
17 lease date, the board may rescind or revise the previously granted  
18 parole release date. In reconsidering the release date, the proce-  
19 dures set out in AS 33.16.130(b) and (c) must be followed.

20 (c) Except as provided in (d) of this section, a prisoner may  
21 not be released on discretionary parole until the prisoner has served  
22 at least one-fourth of the period of confinement imposed, or any  
23 minimum term set under AS 12.55.115 at sentencing, whichever is great-  
24 er.

25 (d) A prisoner who is sentenced for a term under AS 12.55.125(a)  
26 or (b) may not be released on discretionary parole until the prisoner  
27 has served the mandatory minimum term under AS 12.55.125(a) or (b), at  
28 least one-third of the period of confinement imposed, or any minimum  
29 term set under AS 12.55.115 at sentencing, whichever is greater.

1           Sec. 33.16.110. PREPAROLE REPORT. (a) In determining whether a  
2 prisoner is suitable for discretionary parole, the board shall consid-  
3 er the preparole reports including,

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

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

8           (3) the prisoner's institutional conduct history while  
9 incarcerated;

10          (4) recommendations made by the staff of the correctional  
11 facilities in which the prisoner was incarcerated;

12          (5) reports of prior crimes, juvenile histories, and previ-  
13 ous experiences of the prisoner on parole or probation;

14          (6) physical, mental, and psychiatric examinations of the  
15 prisoner;

16          (7) information submitted by the prisoner, the sentencing  
17 court, the victim of the crime, the prosecutor, or other persons  
18 having knowledge of the prisoner or the crime;

19          (8) information concerning an unjustified disparity in the  
20 sentence imposed on a prisoner in relation to other sentences imposed  
21 under similar circumstances; and

22          (9) other relevant information that may be reasonably  
23 available.

24          (b) The board shall provide information available under (a)(3)  
25 and (6) of this section when requesting comments on the discretionary  
26 parole of a prisoner from the sentencing court.

27           Sec. 33.16.120. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISON-  
28 ER. (a) Upon request of the victim, notice of a hearing to review or  
29 consider discretionary parole for a state prisoner who is convicted of

1 a crime against a person must be sent to the victim of the crime at  
2 least 30 days before the scheduled hearing.

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

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

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

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

21 (f) Upon request of the victim, if a prisoner is released under  
22 AS 33.16.010(c), the board shall make every reasonable effort to  
23 notify the victim before the prisoner's release date. Notification  
24 under this subsection must include the expected date of the prisoner's  
25 release, the geographic area in which the prisoner is required to  
26 reside, and other pertinent information concerning the prisoner's  
27 conditions of parole that may affect the victim.

28 Sec. 33.16.130. APPLICATION FOR DISCRETIONARY PAROLE. (a) A  
29 prisoner eligible for discretionary parole may apply to the board for

1 discretionary parole. As part of the application for parole, the  
2 prisoner must submit to the board a parole release plan which includes  
3 the prisoner's plan for employment, residence, and other information  
4 concerning the prisoner's rehabilitative plans if released on parole.

5 (b) Before the board determines a prisoner's suitability for  
6 discretionary parole, the prisoner is entitled to a hearing before the  
7 board. The prisoner must be furnished a copy of the preparole reports  
8 listed in AS 33.16.110, and permitted access to all records that will  
9 be considered by the board in making its decision except those that  
10 are made confidential by law. The prisoner may also respond in writ-  
11 ing to all materials considered by the board, be present at the hear-  
12 ing, and present evidence to the board.

13 (c) The board shall issue its decision in writing and provide  
14 the basis for a denial of discretionary parole. A copy of the deci-  
15 sion must be provided to the prisoner.

16 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole issued by  
17 the board, setting out the conditions imposed under AS 33.16.150(a)  
18 and AS 33.16.150(b), and the date parole custody ends, must be fur-  
19 nished to each prisoner released on discretionary or mandatory parole.

20 Sec. 33.16.150. CONDITIONS OF PAROLE. (a) As a condition of  
21 parole, a prisoner released on discretionary or mandatory parole shall  
22 refrain from violation of state or federal law or municipal ordinance,  
23 which is punishable by imprisonment.

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

- 26 (1) meet family obligations;  
27 (2) pursue employment, education, counseling, or training;  
28 (3) remain within stated geographic limits unless written  
29 permission to depart from the stated limits is granted the parolee;

1 (4) report upon release to the parole officer assigned to  
2 the parolee;

3 (5) report as required to the parole officer assigned to  
4 the parolee;

5 (6) reside at a stated place and notify the board of any  
6 change in place of residence;

7 (7) not possess or control firearms or other dangerous  
8 weapons;

9 (8) refrain from possessing or consuming alcoholic beverages;  
10

11 (9) submit to reasonable searches and seizures by a parole  
12 officer, or a peace officer acting under the direction of a parole  
13 officer;

14 (10) submit to appropriate medical, mental health, or controlled  
15 substance or alcohol examination, treatment, or counseling;

16 (11) submit to periodic examinations designed to detect the  
17 use of alcohol or controlled substances;

18 (12) make restitution ordered by the court to a victim of  
19 the prisoner's crime, according to a schedule established by the  
20 board;

21 (13) refrain from opening, maintaining, or using a checking  
22 account or charge account;

23 (14) refrain from entering into a contract other than a  
24 prenuptial contract or a marriage contract;

25 (15) refrain from operating a motor vehicle;

26 (16) refrain from entering an establishment where alcoholic  
27 beverages are served, sold, or otherwise dispensed;

28 (17) refrain from participating in any other activity or  
29 associating with any other person that the board determines is

1 reasonably likely to diminish the rehabilitative goals of parole, or  
2 which may endanger the public.

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

7 (d) The board may require a prisoner released on parole to  
8 comply with special conditions imposed under (b) of this section for  
9 any period up to the maximum term under which the prisoner is subject  
10 to the custody and jurisdiction of the board.

11 Sec. 33.16.160. CHANGE IN PAROLE CONDITIONS. (a) Upon appli-  
12 cation of the state or the parolee, the board may change a condition  
13 of parole previously imposed under AS 33.16.150 (b).

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

19 (c) Notwithstanding (a) and (b) of this section, when a parole  
20 officer determines that an emergency situation requires an immediate  
21 change in a condition of parole, or the imposition of a new condition,  
22 the parole officer may impose the change or new condition immediately,  
23 without a hearing. The parole officer shall immediately notify the  
24 board of the imposition of the emergency change or new condition and  
25 shall provide a written report setting out the basis for the change or  
26 new condition and the nature of the emergency. The effective period  
27 of a change in condition or imposition of a new condition under this  
28 subsection may not exceed 15 working days.

29 (d) A condition of parole may be changed, a new condition of

1 parole may be imposed, or a new or changed condition imposed under (c)  
2 of this section may be extended by a member of the board or the  
3 board's designee if, after a preliminary hearing, an emergency situa-  
4 tion is found which requires a change in condition. The effective  
5 period of a change in condition under this subsection, the imposition  
6 of a new condition under this subsection, or the extension under this  
7 subsection of a new or changed condition imposed under (c) of this  
8 section may not exceed 90 days.

9 Sec. 33.16.170. CONFIDENTIALITY OF RECORDS AND INFORMATION. (a)  
10 Except as provided in (b) of this section," The preparole reports  
11 listed in AS 33.16.110, and other information obtained and used by the  
12 board under this chapter, are confidential and may not be disclosed to  
13 anyone other than the board, the sentencing judge, the prosecuting and  
14 defense attorneys, the prisoner, the prisoner's attorney, the attorney  
15 for the board, the staff of the board, or others granted access to  
16 this information under this chapter.

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

20 (1) diagnostic opinions which, if made known to the eligi-  
21 ble prisoner, could lead to serious disruption of the prisoner's  
22 institutional program;

23 (2) any portions of any documents which reveal sources of  
24 information obtained upon a promise of confidentiality; or

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

27 (c) When the board withholds information from a prisoner or the  
28 prisoner's attorney under (b) of this section, the board shall provide  
29 the prisoner with an excised copy of the material or summary of the

1 material withheld containing as much specificity as the circumstances  
2 allow.

3 Sec. 33.16.180. DUTIES OF THE COMMISSIONER. The commissioner  
4 shall

5 (1) conduct investigations of prisoners eligible for dis-  
6 cretionary parole, as requested by the board;

7 (2) supervise the conduct of parolees;

8 (3) appoint and assign parole officers and personnel;

9 (4) provide the board, within 30 days after sentencing,  
10 information on a sentenced prisoner who may be eligible for discre-  
11 tionary parole under AS 33.16.090;

12 (5) notify the board and provide information on a prisoner  
13 120 days before the prisoner's mandatory release date, if the prisoner  
14 is to be released to mandatory parole; and

15 (6) maintain records, files, and accounts as requested by  
16 the board.

17 Sec. 33.16.190. PAROLE AND PROBATION OFFICERS. An officer ap-  
18 pointed by the commissioner under AS 33.05.020(a) or under AS 33.16.-  
19 180, may discharge duties under AS 33.05 or AS 33.16.

20 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in  
21 AS 33.16.210, the board retains custody of discretionary and mandatory  
22 parolees until the expiration of the maximum term or terms of impris-  
23 onment to which the parolee is sentenced.

24 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-  
25 tionally discharge a parolee from the jurisdiction and custody of the  
26 board after the parolee has completed two years of parole, if the  
27 sentence of the parolee does not include any residual period of pro-  
28 bation. A parolee with a residual period of probation may, after two  
29 years of parole, be discharged by the board to immediately begin

1 serving the residual period of probation.

2 Sec. 33.16.220. REVOCATION OF PAROLE. (a) The board may revoke  
3 parole for violation of a state or federal law, a municipal ordinance,  
4 or a condition imposed under AS 33.16.150 (b).

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

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

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

20 (2) the seriousness of the alleged violation;

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

22 and

23 (4) whether the parolee is likely to further violate con-  
24 ditions of parole.

25 (d) If the parole violator is released pending a final revoca-  
26 tion hearing, the board or its designee may impose additional con-  
27 ditions necessary to ensure the parolee's appearance at the final  
28 revocation hearing, and to prevent further violation of conditions of  
29 parole.

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

4 (f) The board shall hold a final revocation hearing no later  
5 than 120 days after a parolee's arrest, subject to restrictions aris-  
6 ing under AS 33.10.010 and (g) of this section.

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

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

18 (i) If, after the final revocation hearing, the board finds that  
19 the parolee has violated a condition of parole imposed under AS 33.-  
20 16.150(b), or a law or ordinance, the board may revoke all or a por-  
21 tion of the parole, or change any condition of parole.

22 Sec. 33.16.230. WAIVER OF HEARING. A prisoner or parolee may  
23 waive the right to a hearing provided under AS 33.16.120, 33.16.160,  
24 or 33.16.220 by submitting a written waiver to the board.

25 Sec. 33.16.240. ARREST OF A PAROLE VIOLATOR. (a) A parolee may  
26 be arrested, with or without a warrant, for a violation of parole.

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

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

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

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

13 (f) Time spent in custody pending revocation proceedings must be  
14 credited toward the unexpired term of imprisonment of the parolee;  
15 however, the time the parolee was at liberty on parole does not alter  
16 the time the parolee was sentenced to serve.

17 Sec. 33.16.250. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)  
18 A parole officer, or a peace officer acting at the request of a parole  
19 officer, shall execute a warrant issued under AS 33.16.240 by ar-  
20 resting the parolee and confining the parolee in a correctional facil-  
21 ity designated by the commissioner.

22 (b) The parole officer or peace officer shall immediately notify  
23 the board or a member of the board of an arrest under (a) of this  
24 section.

25 Sec. 33.16.260. DEFINITIONS. In this chapter

- 26 (1) "board" means the board of parole;  
27 (2) "commissioner" means the commissioner of corrections;  
28 (3) "controlled substance" means a drug, substance, or  
29 immediate precursor included in the schedules set out in

1 AS 11.71.140 -- 11.71.190;

2 (4) "crime against a person" has the meaning given in  
3 AS 33.30.900;

4 (5) "department" means the Department of Corrections;

5 (6) "discretionary parole" means the release of a prisoner  
6 by the board before the expiration of a term, subject to conditions  
7 imposed by the board and subject to its custody and jurisdiction;

8 (7) "mandatory parole" means the release of a prisoner who  
9 was sentenced to one or more terms of imprisonment exceeding 180 days,  
10 for the period of good time credited under AS 33.20, subject to con-  
11 ditions imposed by the board and subject to its custody and jurisdic-  
12 tion;

13 (8) "parolee" means a prisoner, sentenced to one or more  
14 terms of imprisonment exceeding 180 days, released by the board or by  
15 operation of law before the expiration of the term, subject to the  
16 custody and jurisdiction of the board;

17 (9) "prisoner" means an offender confined for a violation  
18 of state law, but does not include a person confined under AS 47;

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

20 \* Sec. 3. AS 33.20.040(a) is repealed and reenacted to read:

21 Sec. 33.20.040. RELEASED PRISONER. (a) A prisoner released  
22 under AS 33.20.030 must be released on mandatory parole to the custody  
23 and jurisdiction of the parole board under AS 33.16, until the expir-  
24 ation of the maximum time to which the prisoner was sentenced, if the  
25 term or terms of imprisonment exceeded 180 days. However, a prisoner  
26 released on mandatory parole may be discharged under AS 33.16.210  
27 before the expiration of the term. A prisoner who was sentenced to an  
28 imprisonment of 180 days or less must be unconditionally discharged,  
29 except as provided in (c) of this section.

1 \* Sec. 4. AS 33.20.040 is amended by adding a new subsection to read:

2 (c) If a prisoner's sentence includes a residual period of  
3 probation, a prisoner released under AS 33.20.030 must immediately  
4 begin serving the residual probationary period, except that if manda-  
5 tory parole is required under (a) of this section, serving the proba-  
6 tionary period must immediately follow discharge from parole.

7 \* Sec. 5. AS 39.50.200(b)(20) is amended to read:

8 (20) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010]);

9 \* Sec. 6. AS 44.66.010(a)(3) is amended to read:

10 (3) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010])

11 -- June 30, 1989 [1985];

12 \* Sec. 7. AS 33.15 is repealed.

13 \* Sec. 8. Current members of the board of parole appointed under AS  
14 33.15.010, repealed in sec. 7 of this Act, retain their membership on the  
15 board of parole under AS 33.16.020. To accomplish the purpose of AS  
16 33.16.020, the governor shall designate one member whose term expires on  
17 January 1, 1987; one member whose term expires on January 1, 1988; one  
18 member whose term expires on January 1, 1989; one member whose term expires  
19 on January 1, 1990; and one member whose term expires on January 1, 1991.

20 \* Sec. 9. Applicability. AS 33.16.090(b), enacted in Section 2 of this  
21 Act, is intended to be applied prospectively, except that prisoners who  
22 have been sentenced before the effective date of this Act are eligible for  
23 discretionary parole during a term in excess of the presumptive terms set  
24 out in AS 12.55.125 if the sentencing court orders discretionary parole  
25 eligibility for that period.

26 \* Sec. 10. This Act takes effect January 1, 1986.  
27  
28  
29

Sectional Analysis and Commentary - HB 141

For the fourth consecutive legislature, legislation has been introduced to rewrite the Alaska Parole Administration Act. The original Parole Administration Act, AS 33.15, was adopted in 1960. In the ensuing 25 years the criminal justice system in Alaska has undergone radical change, yet the Parole Administration Act has remained virtually static. As noted in the 1984 Legislative Audit on the Parole Board, "[e]xisting statutes relating to the Parole Board are vague, lack specific direction in some areas and are inconsistent in other areas." The vagueness and ambiguities contained in existing law are leading to an ever increasing amount of litigation. This proposed legislation attempts to clarify these ambiguities, while also providing clear direction for parole administration in light of the evolutionary changes in the criminal justice system which have resulted from recent statutory law and case decisions.

Article III, Section 21 of the Alaska Constitution requires that "A parole system shall be provided by law." As an integral part of the criminal justice system, parole can be an invaluable tool in rehabilitating offenders by ensuring that they are reintegrated back into society with maximum assistance and direction. The dictates of Article III, Section 21 necessitate legislative action to provide clear and predictable direction to the Parole Board in order to fulfill these rehabilitative goals.

## Section 1

This provision vests a sentencing court with the power to further restrict eligibility for discretionary parole. Similar provisions have always existed in Alaska law, and constitute an appropriate sentencing tool in cases where parole is not foreclosed by presumptive sentencing. In that a court's sentencing authority is derived from statute, there must be affirmative authorization for a sentencing order. Bovne v. State, 586 P.2d 1250 (Alaska 1978).

## Section 2

AS 33.16.010. This section sets forth the two distinct types of parole which exist in current law, discretionary parole and mandatory parole. Consistent with current law, all state prisoners sentenced to a term of imprisonment of at least 181 days are parole eligible. Presumptively sentenced prisoners are ineligible for discretionary parole under AS 33.16.090, however they are eligible for mandatory parole under this section. Under either type of parole, the released prisoner is subject to the imposition of conditions and the supervision of the parole board.

Mandatory parole is currently called mandatory release

supervision and it is authorized under present AS 33.20.040. See Braham v. Beirne, 675 P.2d 1297, (Alaska 1984). This bill thus places all provisions related to parole (with the exception of the Interstate Compact on Probation and Parole, AS 33.10) in a single chapter. This section makes it clear that mandatory parole supervision, whereby prisoners are helped to reintegrate into society, is also applicable to presumptively sentenced prisoners who would otherwise have no period of supervised release. Whether mandatory release supervision is authorized for presumptively sentenced prisoners released with less than 180 days remaining in their terms is presently under consideration by the Court of Appeals in State v. Frazier, No. A0415.

AS 33.16.020 - .040 establishes the Parole Board, sets out guidelines for the appointment of Board members, and establishes rates of compensation for the Board. It is suggested that proposed AS 33.16.030 be amended to codify the current practice of appointing members from different geographic areas. The text of the proposed amendment is:

(d) The governor shall appoint at least one member living in the First Judicial District, one member living in the Third Judicial District, and one member living in

either the Second or Fourth Judicial Districts.

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

AS 33.16 sets out the duties of the Board. One major change is the requirement to adopt regulations under the Administrative Procedures Act, AS 44.62. Currently the Board is exempt from the APA, yet their standards and procedures have a wide ranging impact on the residents of the State. By requiring adherence to the APA when adopting regulations, the process will be subject to a greater degree of public scrutiny and input.

AS 33.16.070 authorizes the board to issue subpoenas.

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

AS 33.16.090 establishes eligibility for discretionary parole. A state prisoner must be sentenced to a term of over 180

days and must not be presumptively sentenced to be eligible. This section also defines presumptive sentence periods during which a prisoner is ineligible for parole to include any period of a sentence enhancement resulting from an aggravated sentence or consecutive presumptive sentences

Currently the law is ambiguous as to certain presumptively sentenced prisoners and their eligibility for discretionary parole. While current AS 33.15.180(a) precludes eligibility for prisoners sentenced under AS 12.55.125, the issue has become unclear when a presumptive sentence is aggravated or when presumptive sentences are consecutively imposed. This clarifies those situations.

This section also codifies case law to allow the board to rely on more than just the judgment of the court in determining if the prisoner is presumptively sentenced. Currently a substantial portion of the judgments entered by courts do not indicate whether a prisoner is presumptively sentenced. The wording of this proposed subsection should be amended to read:

(c) In determining the eligibility of a prisoner for discretionary parole, the board may rely upon the verbatim written transcript of the judge's sentencing remarks

under AS 12.55.025(a)(1), and any other portion of the sentencing proceeding requested by the board, as well as the judgment entered by the court.

AS 33.16.100(a) sets out the broad general standards that the board should follow when deciding on a grant of discretionary parole. These standards mirror the principles of sentencing and particularly rehabilitation.

Subsection (b) authorizes the board to rescind or revise a grant of parole when new circumstances come to light. Currently the Board reviews and approves parole release plans months prior to a prisoner's release date. Subsequently new information on that prisoner may come to the board's attention, for example, a prospective employment plan may no longer be possible, or the prisoner is unable to immediately enter a residential treatment program upon release. With this provision the board can now change conditions or decide that the prisoner is not appropriate for discretionary parole and rescind its previous action. Due process safeguards are built in to protect the prisoner's liberty interest.

Subsections (c) and (d) set out the minimum amount of a sentence a prisoner must serve before being eligible for

discretionary parole. For otherwise eligible prisoners, the minimum term is decreased from one-third of the sentence under current law to one-fourth of the sentence, except for an individual convicted of first or second degree murder, kidnapping, or misconduct involving a controlled substance in the first degree. With this latter group, the minimum term remains one-third or the mandatory minimum, whichever is greater. The sentencing court may further restrict parole eligibility under AS 12.55.115.

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

AS 33.16.120 was recently enacted as a portion of the Victim's Rights Legislation and gives a victim the right to comment in writing on a pending discretionary parole decision, and requires the board to consider those comments. The board has a duty to notify a victim if a prisoner is released on either discretionary or mandatory parole. Line 19 should be amended to read "state prisoner who is convicted of a crime against a", as the current wording could preclude the victim from commenting on state prisoners currently incarcerated in the Federal Bureau of Prisons.