

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

A publication by the Robina Institute of Criminal Law and Criminal Justice

ALASKA



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Alaska

By

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The authors wish to thank Lonzo Henderson, Chair, Alaska Parole Board, Jeffrey B. Edwards, Director, Alaska Parole Board, Kelcey E. Wallender, Parole Administrator, Alaska Parole Board, and Edward G. Webster, Criminal Justice Planner, Alaska Department of Corrections.

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Suggested citation: Alexis Lee Watts, Kevin R. Reitz & Brendan Gleason, Robina Inst. of Crim. Law & Crim. Just., Profiles in *Parole Release and Revocation: Examining the Legal Framework in the United States: Alaska* (2017).

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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Alexis Lee Watts, Kevin R. Reitz, and Michael McBride

1. Background; Sentencing System

a. Sentencing Framework

Alaska has had statutory sentencing guidelines in place since 1980, which have since been supplemented by appellate court decisions.¹ Alaska briefly created a sentencing commission in 1990; it produced a final report in 1992 before its legislative mandate expired in 1993.² Alaska felony defendants are sentenced to definite terms of imprisonment.³

Alaska's Constitution provides for a parole board; the statute that the current Board operates under was originally enacted in 1985.⁴ Alaska law provides both discretionary parole for some inmates and mandatory parole for most inmates serving a sentence of more than two years.⁵

b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the Alaska Parole Board.⁶

<http://www.correct.state.ak.us/parole-board>

c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Alaska Department of Corrections' Division of Probation and Parole.⁷

<http://www.correct.state.ak.us/probation-parole>

d. Which Agency Has Authority Over Parole Revocation?

The Alaska Parole Board.⁸

2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

General rules of release eligibility. Inmates must apply for discretionary parole; however, this will change in July 2017 when legislation that makes parole consideration automatic goes into effect.⁹ In general, any inmate sentenced to a term of imprisonment of at least 181 days will eventually be eligible for parole.¹⁰ However, there are exceptions to this general rule.

- A court may "further restrict the eligibility of a prisoner for discretionary parole," at sentencing, essentially increasing the minimum term that must be served or eliminating eligibility for discretionary parole altogether.¹¹
- An inmate serving a split sentence (i.e. a term of incarceration and a term of probation) may not be eligible for parole unless the actual term of imprisonment is longer than one year.¹²
- For many different crimes, a three-judge sentencing panel considering an exceptional sentence must allow discretionary parole eligibility; otherwise, there is no discretionary parole release available.¹³ As of July 2017, this provision will only apply to inmates who are convicted of certain sex crimes and not to the other crimes currently listed.¹⁴

Most prisoners may be released on discretionary parole after they have served 1/4 of the active term of imprisonment, the mandatory minimum sentence, or any portion of the sentence set by the judge, whichever is greatest.¹⁵ However, if an inmate is serving a single enhanced sentence, they must serve the amount of time (less good time) that is equal to the upper end of the presumptive range plus 1/4 the amount of time above the presumptive range; or must serve any portion of the sentence set by the judge, as outlined above.

If an inmate has been sentenced to concurrent sentences, they must serve the greatest of:

- Any mandatory minimum sentence or sentences imposed by law;
- Any portion of a term set by a judge; or
- The amount of time required to be served under the above rules for the primary crime.¹⁶

If an inmate has been sentenced to consecutive sentences, they must serve the greatest of:

- The composite total of any mandatory minimum sentence or sentences imposed by law;
- Any portion of a term set by a judge; or
- The amount of time required to be served under the above rules for the primary crime, plus 1/4 of the composite total of the active term of imprisonment imposed as consecutive or partially consecutive sentences imposed for all crimes other than the primary crime.¹⁷

Parole for inmates over 60. As of July 2017, inmates over the age of 60 who have served at least 10 years of a sentence for one or more crimes in a single judgment and have not been convicted of an unclassified or sexual felony will be eligible for discretionary parole consideration despite the other exceptions to parole eligibility listed above.¹⁸

Mandatory parole. If a prisoner is serving a term of two years or more, they must be eligible for release on mandatory parole when their sentence, minus good time deductions, has been served.¹⁹

Administrative parole. Beginning in July 2017, a statute goes into effect that will release some non-sex offender misdemeanants and class B or C felons who are not prior felons onto administrative parole without a hearing. Prisoners who qualify will have served the greater of 1/4 of the mandatory term of imprisonment, their mandatory minimum sentence, or their term of imprisonment set by a judge. They must not be excluded from eligibility for parole by court order, must have met the criteria for their case plan, and must be willing to sign a parole agreement. A hearing will still be required if a victim makes a request to be heard.²⁰

Sex offenders. Those convicted of Class A or unclassified sex offenses are ineligible for parole unless they have received an exceptional sentence from a three-judge panel. All sex offenders are ineligible for parole until they serve 1/2 of their term of imprisonment less a deduction for

good time.²¹ Sex offenders are also ineligible for administrative parole and for medical release.

Life sentences. Some offenders may be sentenced to a mandatory 99-year term for certain types of first-degree murder. Offenders may be given an up to 99-year sentence for first-degree murder, murder of an unborn child, or for an unclassified or class A felony offense after having been previously been convicted of two or more serious felonies. These offenders are ineligible for parole.²² Other sentences of up to 99 years may be imposed (for example, for second degree murder) but do not have these parole eligibility restrictions; offenders with these sentences become parole eligible when they have served a fraction of their sentence, their mandatory minimum sentence, or the term required by the sentencing judge.²³

Recurring eligibility after denial of release. If the Board denies parole, it may schedule a subsequent parole hearing at the time of denial or:

- For the first parole denial, within two years after the first parole eligibility date;
- For the second or subsequent denials, within two years after the most recent parole hearing.²⁴

b. Good Time, Earned Time, and Other Discounts

Most prisoners serving a term longer than three days are entitled to a deduction of one-third of the term of imprisonment if they follow the rules of the correctional facility in which they are confined.²⁵ A prisoner must be released at the expiration of the term of the sentence less the time deducted for good time; good time affects release eligibility rather than the length of the total sentence.²⁶ All or part of good time may be forfeited if a prisoner violates the rules of the correctional facility; it may be restored if the prisoner demonstrates progress in observing the rules.²⁷

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. The Board may authorize the release of a prisoner on discretionary parole if it determines a reasonable probability exists that:

- (1) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the Board;
- (2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole;

- (3) the prisoner will not pose a threat of harm to the public if released on parole; and
- (4) release of the prisoner on parole would not diminish the seriousness of the crime.²⁸

Statutory factors the Board must consider. The Board must consider many factors, including the recommendations of the sentencing court, victim statements, the prisoner's institutional conduct while incarcerated, and "other relevant information that may be reasonably available." A complete list of the information that the Board should consider is in § 3b of this report.²⁹

Special standard for sex offenders. Class A or unclassified sex offenders require a determination by a three-judge panel to be eligible for parole release. If they are allowed discretionary release, they are subject to additional standards:

- The prisoner must have successfully completed all rehabilitation programs ordered by the panel; and
- The prisoner would not constitute a danger to the public if released on parole.³⁰

d. Parole Release Guidelines

Parole release guidelines. It does not appear that Alaska employs parole release guidelines.

e. Risk and Needs Assessment Tools

Statutory mandate. In 2016, the Alaska legislature enacted a law that requires the Department of Corrections to administer a risk and needs assessment before a prisoner's release on parole, furlough, or electronic monitoring.³¹ However, this law does not require the risk assessment to be considered during parole release.

Risk instruments utilized. While there is no statutory requirement to consider a risk assessment prior to parole release, the Board requires one in all cases.³² Most offenders are administered the LSI-R.³³

Sex offenders. The Department of Corrections administers the Static and STABLE risk assessments for sex offenders.³⁴

Transparency. While there is very little information on this subject available online, the Board is forthcoming with details about their assessment method. As of this writing, the state is engaging in the process of having the LSI-R, the STATIC-02 and the STABLE risk assessments validated on their population.³⁵

f. Medical or Compassionate Release

Special medical parole is available to certain prisoners who are severely medically or cognitively disabled.³⁶ The Board must determine that a reasonable probability exists that the prisoner will live and remain at liberty without violating any laws or conditions imposed by the Board; that because of the prisoner's severe medical or cognitive disability, the prisoner will not pose a threat of harm to the public if released on parole; and that release of the prisoner on parole would not diminish the seriousness of the crime. The Board must also determine that the prisoner was either not suffering from the disability at the time they were incarcerated or that the disabling condition has progressed since the time the offense was committed "so that the likelihood of the prisoner's committing the same or a similar offense is low." The Board must further determine that the care and supervision that the prisoner requires can be provided in a more appropriate and cost effective manner, that the prisoner is incapacitated to an extent that incarceration does not impose significant additional restrictions, that it is likely that the condition will not improve or that the parolee will die, and that an appropriate discharge plan exists. If a change in circumstances occurs, the Board may rescind or revise the release date.³⁷

g. Executive Clemency Power

The governor may grant pardons, commutations, and reprieves and may suspend and remit fines and forfeitures.³⁸ The Board plays an investigatory role in the pardons process; and clemency applicants must submit their information to the Board first. The Board is also required to notify victims and the Department of Law that the application is being considered.³⁹

h. Emergency Release for Prison Crowding

There is no release based on prison crowding. If prison overcrowding occurs, the Commissioner of the Department of Corrections can form contracts with public or private agencies in Alaska or public agencies in other states to house the additional prisoners.⁴⁰

3. Parole Release Hearing Process

a. Format of Release Hearings

An inmate who is eligible for a parole release hearing must fill out a parole application. The application process includes written documentation of a parole plan, including employment, training, education, treatment, and housing information.⁴¹

During the hearing, the applicant is interviewed by a quorum of the Board. The applicant “must be prepared to discuss any topic that could reasonably relate to the applicant’s possible success or failure on parole. These topics include present offense, prior criminal or antisocial behavior, family situation, possible emotional problems, employment, training or treatment plans, medical treatment plans, institutional record, alcohol and drug use, relationships with other people, financial solvency, and release plans.” The applicant should also be prepared to discuss possible conditions of parole and mandatory parole conditions “if discretionary parole is denied and the applicant is subject to mandatory parole.”⁴²

The parties that may attend hearings are:

- The members and staff of the Board
- The prisoner or parolee
- Attorneys for the prisoner or parolee and for the state
- Department employees responsible for the case
- The victim of a crime
- Security staff considered necessary by the Board

The Board will permit “other government employees or other persons having a legitimate interest in a board hearing” to attend and observe upon written request. However, during deliberation, only members and staff of the Board may be present.⁴³

b. Information Before the Board; Factors the Board May Consider

The Department of Corrections provides to the Board “a comprehensive parole progress report on the prisoner at least two weeks before the week of the scheduled hearing.” The inmate also receives a copy of this report. The department cannot disclose this report “to anyone other than the prisoner, prisoner’s attorney, prosecuting attorney, state’s attorney, and the sentencing court.” At the parole release hearing, the applicant’s entire file is available to the Board.⁴⁴

In determining whether a prisoner is suitable for discretionary parole, the Board shall consider the preparole reports including:

- (1) the presentence report made to the sentencing court;
- (2) the recommendations made by the sentencing court, by the prosecuting attorney, and by the defense attorney, and any statements made by the victim or the prisoner at sentencing;
- (3) the prisoner’s institutional conduct history while incarcerated;
- (4) recommendations made by the staff of the correctional facilities in which the prisoner was incarcerated;
- (5) reports of prior crimes, juvenile histories, and previous experiences of the prisoner on parole or probation;
- (6) physical, mental, and psychiatric examinations of the prisoner;
- (7) information submitted by the prisoner, the sentencing court, the victim of the crime, the prosecutor, or other persons having knowledge of the prisoner or the crime;
- (8) information concerning an unjustified disparity in the sentence imposed on a prisoner in relation to other sentences imposed under similar circumstances; and
- (9) other relevant information that may be reasonably available.”

The board shall provide information available under (a) (3) and (a)(6) of this section when requesting comments on the discretionary parole of a prisoner from the sentencing court.⁴⁵

Board regulations allow consideration of many factors, including:

- (1) the applicant’s readiness and willingness to face obligations in the community and to undertake normal responsibilities;
- (2) the current circumstances of the applicant’s family, how the family views the applicant, its interest and readiness to accept the applicant back as part of the family, and its supportiveness of the applicant’s release;
- (3) the circumstances regarding the proposed residence, including the home, neighborhood, and community in which the applicant will reside;

- (4) the applicant's employment history and vocational and academic skills in determining the applicant's employability;
- (5) the availability of family and other community resources to assist the applicant if released on parole;
- (6) other factors regarding the applicant's parole plan;
- (7) the institutional conduct of the applicant such as behavioral adjustment, involvement in institutional programs, benefits of treatment, relationship to the staff, and how these might relate to the applicant's adjustment in the community;
- (8) information about the applicant's use or abuse of any drugs or of alcoholic beverages, the extent of the use or abuse, and relationship to the applicant's behavior, criminal behavior, and current offense;
- (9) previous involvement in any treatment programs and the applicant's subsequent behavior after exposure to such treatment;
- (10) relevant information from the sentencing judge, the prosecutor, the defense attorney, and the victim;
- (11) previous probation or parole experiences, behavior when out of custody on bail, bond or own recognizance release, pretrial diversion, deferred prosecutions, furlough, and the recency of these experiences;
- (12) the applicant's willingness to discuss information the board considers relevant, the applicant's willingness to accept responsibility for his or her criminal activity, remorse expressed, and the applicant's truthfulness with the board;
- (13) noticeable changes in the applicant, the applicant's behavior, self concept, attitude toward the offense, perceived thinking errors, understanding of causal factors, and understanding of the need for change;
- (14) information regarding the applicant's lifestyle, productivity, and previous assaultive behavior or other antisocial behavior in the community;
- (15) the physical and emotional condition of the applicant including reports from medical personnel, mental health personnel, or treatment personnel;
- (16) the applicant's attitudes, including concern for other people;
- (17) letters, petitions, or other information from persons, groups, or agencies recommending that the applicant be or not be paroled, and the basis for these recommendations;
- (18) the applicant's perceived willingness and ability to abide by any standard or supplemental conditions of parole;
- (19) the relationship between the applicant's crime, length of sentence, background, and the board's handling of similarly-situated prisoners in the past;
- (20) whether the applicant's release at this time is compatible with the welfare of society and whether it would depreciate the seriousness of the offense, considering the amount of time served by the applicant and the applicant's background;
- (21) any information the board considers reliable regarding the facts of the crime;
- (22) the board's perception of the applicant's risk to the community if released on parole; and
- (23) any other factors that the board determines to be relevant in considering the prisoner's application."⁴⁶

c. Prisoners' Procedural Rights

Discretionary parole release hearings are non-adversary hearings—the applicant cannot present witnesses, but may present “any relevant written information from any interested person, group, or agency.” The inmate participates in the hearing by discussing “any topic that could reasonably relate to the applicant's possible success or failure on parole.” The applicant may be represented by an attorney, but the applicant is responsible for obtaining and paying for the attorney and no attorney will be appointed.⁴⁷ As noted above, the inmate has access to their parole file and to input given by others.

d. Victims and Other Participants

The Department of Corrections must inform victims of an inmate's application for discretionary parole. The victim will be provided a copy of the prisoner's parole application (with certain personal information redacted), and advised of:

- The victim's right to personally appear at the hearing and to submit written comment to the Board regarding the impact of the crime on the victim or the victim's family, the applicant's suitability for parole, and the conditions of parole;
- Board regulations regarding appearance at a discretionary parole release or parole rescission hearing and of the victim's responsibilities under statute if the victim wishes to appear at the hearing;
- Victim's right to receive information, if applicable, once the Board makes the decision to grant parole, continue the applicant's case to a future date, or deny the application for parole for the remainder of the sentence.

In addition, under the new administrative parole law, feedback from a victim will trigger a parole hearing where otherwise release would be based on file review.

Upon receiving an inmate's application for discretionary parole, the department of corrections also solicits comments regarding the application from the prosecuting attorney, the defense attorney, and the sentencing court. The department provides these comments to both the Board and the inmate.⁴⁸

Though parole hearings are closed to the public, any person or group may submit written information to the Board for consideration in the hearing process.⁴⁹

e. Burden of Proof or Standards of Persuasion

There is no formal evidentiary burden of proof in parole release proceedings. However, as noted above, the Board must find a "reasonable probability" that the inmate will satisfy the criteria for release.⁵⁰

f. Possible Outcomes at Parole Release Hearings; Form of Decisions

The Board may grant parole, may continue the applicant's case for review at a subsequent meeting, may deny the application for discretionary parole and require the inmate to serve the remainder of the sentence without further review, or may defer the action.⁵¹

Within 10 working days after a Board decision to release, the Department of Corrections must receive both copies of the parole order and the parole progress report so that a field officer can investigate a parole release plan.⁵² In addition, the Board must provide a notice within 10 days informing the inmate of their earliest possible release date.⁵³ If an inmate is not granted parole, the Board must also provide notice of their decision within 10 days as well as a "written notice, informing the applicant in summary of the reasons why parole was not granted, within 31 days of the Board's decision."⁵⁴

g. Administrative or Judicial Review of Parole Denial

Request for reconsideration. A request for reconsideration of the parole denial must be mailed to the Board's office, on a form made available to the prisoner by the department, within 30 days after the date of the written notice denying parole. If the Board has made a decision denying an application for discretionary parole release, it will reconsider that decision only for the following reasons:

- The decision by the Board was not supported by the reasons or facts stated by the Board, and clarification or correction would, in the opinion of the Board, likely lead to a different decision;

- The decision was based upon incorrect or faulty information and the correction would, in the opinion of the Board, likely lead to a different decision;
- The Board did not follow its prescribed procedures in making its decision and following the prescribed procedures would, in the opinion of the Board, likely lead to a different decision; or
- There was significant information not available to the applicant at the time of the hearing through no fault of the applicant and that information would, in the opinion of the Board, likely lead to a different decision.⁵⁵

The burden of proof in a parole denial reconsideration rests solely with the applicant. The request is considered by a quorum of the Board, based on a file review rather than another interview of the inmate. If the Board grants a reconsideration, it "will make a decision based on the material contained in the case file or conduct a new hearing at the next regularly scheduled board hearing at the facility where the prisoner is incarcerated, unless the board specifies another date." The Board will rule within 60 days of reconsideration.⁵⁶

Special review. The Board may also rehear a request for parole if vital information or substantial mitigating circumstances arise after the original decision; the information was not available at the time of the original decision; and the Board's awareness of the information would, in the opinion of the Board, likely lead to a different decision. The special review request must be received no later than eight weeks before the next regularly scheduled Board meeting that occurs in the facility where the inmate is held. The Board must base its decision on the same criteria used to evaluate other parole release decisions.⁵⁷

Judicial review. It appears that inmates can file a petition for post-conviction relief in some cases if denied parole.⁵⁸ A petition can be filed on the basis that a person is unlawfully held in custody or that the sentence is subject to collateral attack "upon any ground or alleged error."⁵⁹ With some exceptions, a petition may not be filed more than one year after the final administrative decision of the Board that is being collaterally attacked.⁶⁰

h. Rescission of Parole Release Dates

The Board may rescind or revise a previously granted parole release date if it finds a "change in circumstances in a prisoner's parole release plan" or "discovers new information concerning a prisoner who has been granted a parole release date."⁶¹

4. Supervision Practices

Parole supervision rate. In 2014, there were 402 parolees per 100,000 adults in the state of Alaska. This is higher than the 50-state average of 305 parolees per 100,000 adults. In the same year, there were 948 prisoners per 100,000 adults in the state of Alaska, which is much higher than the 50-state average of 551 parolees per 100,000 adults.⁶²

a. Purposes of Supervision

The Probation and Parole Division of the Department of Corrections states many different goals of parole, including to “provide supervision to offenders to assist them in dealing with the problems that may have led to their arrests and convictions.”⁶³

b. Are All or Only Some Releasees Placed on Supervision?

Supervision is a standard condition for both discretionary and mandatory parole. One of the main purposes of the conditions of parole is to “protect the public by helping the parole officer monitor the parolee’s activities in the community.”⁶⁴

c. Length of Supervision Term

Maximum supervision terms. If placed on mandatory parole, the maximum term is the balance of the sentence of incarceration, which is the same as the amount of good time they earned in prison.⁶⁵ If placed on discretionary parole, the maximum term is also the balance of the sentence of incarceration.

Early termination. By statute, the Board may unconditionally discharge a parolee after two years of parole are complete.⁶⁶ A parolee, a supervising parole officer, or the Board may request that a parolee be discharged from parole. As part of the process, the parole officer must submit a chronological description of the parolee’s behavior and adjustment since released on parole.⁶⁷

Extension of supervision term. The supervision term cannot extend beyond the term of the original sentence.

Incentives; “goal parole.” It does not appear that there are incentives involving discharge from parole or parole supervision.

d. Conditions of Supervision

Standard conditions of parole include that the parolee must:

- Report in person immediately upon release to the parole officer and receive further reporting instructions. Reside at the address approved upon release.
- Make diligent effort to maintain steady employment and support legal dependents. Do not voluntarily change employment without receiving permission from the parole officer to do so. If discharged or if employment is terminated (temporarily or permanently) for any reason, notify the parole officer the next working day. If involved in an education, counseling, training, or treatment program, continue active involvement in the program unless you receive permission of the parole officer to quit. If released or removed from the program for any reason, notify the parole officer the next working day.
- Report to the parole officer at least monthly in the manner prescribed by the parole officer. Fill out any supervision report forms truthfully and completely. Answer any questions asked by the parole officer. Follow any other reporting instructions established by the parole officer.
- Obey all state, federal, and local laws, court orders, and ordinances.
- Obtain permission from the parole officer before changing residence. Remaining away from the approved residence for 24 hours or more constitutes a change in residence for the purpose of this condition. Remaining away from the approved residence overnight constitutes a change in residence for the purpose of this condition.
- Obtain the prior written permission of the parole officer, in the form of an interstate travel agreement, before leaving the State of Alaska. Abide by the conditions of the travel agreement.
- Not own, possess, have in the parolee’s custody, handle, purchase, or transport any firearm, ammunition, or explosive. Do not carry any deadly weapon on parolee’s person except a pocket knife with a three-inch or shorter blade. Carrying any other weapon such as a hunting knife, axe, club, etc., is a violation of parole. Contact the Alaska Board of Parole if parolee has any questions about the use of firearms, ammunition, or weapons.
- Not use, possess, handle, purchase, give, or administer any narcotic, hallucinogenic (including marijuana/THC), stimulant, depressant, amphetamine, barbiturate, prescription drug not specifically prescribed by a licensed medical person, or other controlled substance.

- Report to the parole officer, no later than the next working day, any contact with a law enforcement officer.
- Not enter into any agreement or other arrangement with any law enforcement agency which will place the parolee in the position of violating any law or parole condition. Under this paragraph and Department of Corrections policy, a parolee may not work as an informant.
- Not telephone, correspond with, or visit any person confined in a prison, penitentiary, correctional institution or camp, jail, halfway house, work release center, community residential center, restitution center, juvenile correctional center, or similar facility without permission from the parole officer. Contact with a felon during the course of employment or during corrections-related treatment is not prohibited if approved by the parole officer. Any other knowing contact with a felon is prohibited unless approved by the parole officer. Notify the parole officer the next working day if you have any contact with a felon.
- Get permission from the parole officer before leaving the area of the state to which the parolee's case is assigned. The parole officer will advise the parolee in writing of the limits of the area in which the parolee may travel.
- Obey any special instructions, rules, or orders given by the board or by the parole officer. Follow any special conditions imposed by the board or the parole officer.
- Waive extradition from any state or territory of the United States and do not contest efforts to return the parolee to Alaska.
- Provide a blood sample, an oral sample, or both upon request of the state, if the parolee is being released after a conviction of an offense requiring the state to collect the samples for the deoxyribonucleic acid (DNA) identification system."⁶⁸

In addition to the above conditions, the Board may impose any supplemental condition that is reasonably related to the parolee's offense, prior record, prior behavior, medical condition, current circumstances, or perceived risk to the community. Absent an emergency situation, the Board will not impose supplemental conditions until the prisoner or parolee has had an opportunity to comment upon the proposed supplemental conditions.⁶⁹ A parole officer may impose further conditions of parole, but any permanent condition must be written and submitted to the Board and is subject to parole modification hearing procedures.⁷⁰

Sex offenders. Sex offenders must submit to regular periodic polygraph examinations in addition to following the conditions listed above.⁷¹

Modification of conditions. The Board may modify the conditions of parole on application of the state or the parolee. If the change will be more restrictive of the parolee's liberty, the parolee is entitled to notice of the proposed change, reasons for the change, a hearing before the Board, and an opportunity to respond to the proposed change and to present evidence.⁷²

Incentives; lighter conditions. Under new legislation, the Department of Corrections will be required to establish an administrative incentive program for parolees that includes a decision-making process for determining the most suitable response to positive behavior and a list of incentives for compliance with conditions and positive behavior that exceeds these conditions. This system must be implemented in January 2017.⁷³

e. Fees and Other Financial Sanctions

Parole supervision fees. As of this writing, supervision fees are not imposed as a condition of parole.

Payments for drug and alcohol testing and treatment. Drug and alcohol testing fees are not imposed as a condition of parole.

Restitution. The Board may require court ordered restitution to be paid as a condition of parole.⁷⁴ Courts may not consider the defendant's ability to pay restitution in setting a restitution amount; however, it may allow restitution to be made in payments or to be made within a specified period of time.

Child support. Parolees are required to "make a diligent effort" to support dependents.⁷⁵

Other financial obligations. Supplemental conditions of discretionary parole may include payment of fines or other financial restrictions. For example, a condition of parole may be that a parolee receives permission before entering into contracts, opening or utilizing bank accounts, borrowing money or taking on debt, applying for credit cards, or applying for a charge account. Parolees may also be required to agree not to have any checks or debit cards.⁷⁶

Incentives; reduction of economic sanctions. It does not appear that there are any incentives related to economic sanctions.

5. Parole Revocation

Parole revocation proceedings. In 2015, the Board held 382 revocation hearings. It is difficult to ascertain how many hearings resulted in revocation.⁷⁷

Absconders. There is no data available on the rate of absconders in this state.

a. Principles and Criteria of “When to Revoke”

Policy considerations. In 2015, the state released a justice reinvestment report that showed that the number of offenders in prison for violations of supervision conditions has risen by 15% over the last decade. The report noted that while Alaska has experimented with a pilot program to impose graduated sanctions on offenders who violate probation, there is no “system-wide framework of swift, certain, and proportionate sanctions.” The report also recommended incorporating rewards and incentives into the parole supervision system.⁷⁸ This report resulted in 2016 legislation that will add to the duties of the commissioner, making them responsible for creating an administrative sanction and incentive program for parolees. This program must aid in supervisory decision making and incorporate appropriate due process protections for parolees.⁷⁹

Legal predicates. Parole may be revoked based on violation of any condition of parole, including a technical violation.⁸⁰ However, note that as of January 2017, the length of revocation for technical violations is limited by statute.⁸¹

Statutorily enumerated factors. Apart from the distinction between technical violations of parole and new crimes, there are few additional statutorily enumerated factors in parole revocation.⁸²

b. Revocation Guidelines

There are statutory revocation guidelines for technical violations of parole. For the purposes of these guidelines, technical violations do not include absconding, failure to complete sex offender treatment, or failure to complete an intervention program for batterers. The guidelines limit what jail or prison term can result from a technical parole revocation. The Board may impose a term of not more than:

- Three days for a first parole revocation;
- Five days for a second parole revocation;
- 10 days for a third parole revocation;
- The remainder of the sentence for a fourth or subsequent revocation;
- 30 days for absconding from parole.⁸³

c. Risk and Needs Assessment Tools

The Department of Corrections is required to utilize a risk assessment and the results are considered at the revocation phase in hearings before the full Board.⁸⁴

d. Preliminary and Final Revocation Procedures

Arrest or summons. A parolee can be arrested for any violation of parole. A parole officer can arrest a parolee without a warrant if there is a danger to the public, if there is a likelihood that the parolee will flee, or if the parolee committed a crime in the presence of the parole officer. A parole officer can also arrest a parolee if they violate certain enumerated conditions of parole.⁸⁵ A parole violation warrant may be issued by the Board or a member of the Board based on probable cause that a violation has occurred.⁸⁶ The Board may instead issue a summons for the parolee to appear.⁸⁷

After January 1, 2017, a parolee arrested for a technical violation must be released once the parolee has served the maximum number of days that could be served for that violation under the statute in place for technical parole violations.⁸⁸

Preliminary hearing. A preliminary hearing must be held within 15 days of arrest, but is not required if the Board holds a final revocation hearing within 20 days. After January 1, 2017, preliminary hearings will also not be required for technical violations; these violators will proceed directly to a final revocation hearing.⁸⁹

At a preliminary hearing, the Board or its designee (i.e. a hearing officer) must determine if there is probable cause to believe that the parolee violated the conditions of parole and whether they should be released pending a final revocation hearing. The Board may impose additional conditions of release to ensure reappearances and limit further potential violations. In considering release pending the final hearing, the Board must consider:

- the likelihood of the parolee’s appearance at a final revocation hearing;
- the seriousness of the alleged violation;
- whether the parolee presents a danger to the community;
- whether the parolee is likely to further violate conditions of parole; and
- whether the parolee is on parole for a crime involving domestic violence; if the violation of the condition of parole involved an act of domestic violence, the parolee may not be released pending the final revocation hearing.⁹⁰

Final hearing. The Board must hold a final revocation hearing no later than 120 days after the parolee's arrest.⁹¹ However, as of January 1, 2017, the final revocation hearing for a technical violator may occur no later than 15 days after arrest.⁹² The purpose of a final revocation hearing is for the Board to determine whether the parolee has violated any parole condition, and if so, to decide whether or not to revoke parole on that basis.⁹³ At its discretion, the Board may find a parolee guilty of a parole violation that would constitute a violation of law, even if there is no new conviction.⁹⁴

e. Offenders' Procedural Rights

At any revocation hearing, a parolee has the right to present testimony, documents, and other relevant evidence relating to a violation. The parolee has a right to call witnesses who might have relevant information about the violation, but not individuals who are solely character witnesses. The parolee may also cross-examine adverse witnesses unless the Board or hearing officer determines that a witness might be subject to risk of harm if the witness' identity is disclosed.⁹⁵

A parolee must be given a copy of the parole violation report and other adverse material provided to the Board. However, the parolee may not receive certain diagnostic reports, portions of a document that reveal sources of information obtained upon a promise of confidentiality or other information that, if disclosed, may result in physical harm to another person. The Board must provide an excised copy of the material or a summary of the material not disclosed.⁹⁶

A parolee has the right to an attorney at a preliminary or final revocation hearing. If a parolee qualifies, they may be eligible for appointed counsel.⁹⁷

f. Victims and Other Participants

Victims of crime are notified of parole revocation hearings; they may testify at the revocation phase.⁹⁸ Board hearings are generally closed to the public.⁹⁹

g. Burden of Proof or Standards of Persuasion

At a final revocation hearing, a violation of a condition of parole must be established by a preponderance of the evidence.¹⁰⁰

h. Revocation and Other Sanctions

As of January 1, 2017, if the Board finds that a parolee has committed a technical violation, the Board may reinstate the term of parole with appropriate conditions or may revoke parole and impose a short term of imprisonment as follows:¹⁰¹

Revocations	Sanction
First revocation	Up to 3 days incarceration
Second revocation	Up to 5 days incarceration
Third revocation	Up to 10 days incarceration
Fourth or subsequent revocation	Up to the remainder of the sentence
Absconding	Up to 30 days incarceration

In other parole revocation proceedings, the Board has the option of revoking all or a portion of parole or modifying the conditions of parole.¹⁰² In all parole revocation proceedings, the Board also has the option of finding that the parolee has violated conditions of parole and returning the parolee to supervision with a warning.¹⁰³

i. Issuing Parole Revocation Decisions

If parole is revoked at a final revocation hearing, the Board must provide the parolee with a copy of the order revoking parole within 30 days. In the order, the Board must summarize the evidence used as the basis for the determination of the violation.¹⁰⁴

j. Administrative or Judicial Review of Parole Revocation Decisions

An appeal of a Board revocation decision can be made by submitting a letter to the Board that sets forth the basis for an appeal.¹⁰⁵

It appears that parole revocation decisions can be reviewed by the courts through a petition for post-conviction relief,¹⁰⁶ or through a direct appeal to the courts after an appeal to the Board is either rejected or affirms the Board's decision.¹⁰⁷

k. Re-Release Following Revocation

The effect of revocation of discretionary parole may be that the offender is required to serve the remainder of their imposed sentence. With discretionary parole, the Board can choose to revoke parole and deny further parole consideration for the remainder of the sentence. However, the Board can also immediately reparole an offender or continue the parolee's case for consideration of release at a later time.¹⁰⁸

The effect of revocation of mandatory parole is that the offender is required to serve a term equal to the difference of the date of release on mandatory parole and the maximum release date, unless the Board revokes only a portion of parole as reflected in the Board's order.¹⁰⁹ Until January 1, 2017, the Board could impose mandatory re-parole after the term ended and essentially extend the sentence's term. However, this is no longer possible.¹¹⁰

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board was created by statute; it has authority over parole release and revocation.¹¹¹

b. Location in Government

The Board is located within the Department of Corrections.¹¹²

c. Purpose (Vision/Principles/Rationale)

The motto of the Board is "preparing offenders for success."¹¹³

d. Appointment and Qualifications of Board Members

There are five total members appointed by the governor subject to confirmation by a majority of members of the legislature. The governor also chooses a presiding officer.¹¹⁴

Qualifications. The governor must appoint board members "on the basis of their qualifications to make decisions that are compatible with the welfare of the community and of individual offenders. Members must be able to "consider the character and background of offenders and the circumstances under which the offenses were committed." At least one person appointed to the Board must have criminal justice experience. Finally, officers or employees of the state may not be appointed the Board.¹¹⁵

Apart from these criteria, the governor must appoint the Board with "due regard for representation of the ethnic, racial, sexual, and cultural populations of the state." The governor must also meet geographical requirements, appointing at least one member from the First and Third Judicial Districts, and one member from either the Second or Fourth Judicial District.¹¹⁶

e. Tenure of Board Members, Ease of Removal

Board members serve a staggered term of five years and until their successors are appointed.¹¹⁷ The governor may remove members as provided by law; for example, as per the Alaska Executive Branch Ethics Act.¹¹⁸

f. Training and Continuing Education

There is no requirement for training or continuing education. However, board members and staff conduct in-house training along with a weeklong National Institute of Corrections training for new board members.¹¹⁹

g. Workload

In 2015, the Board held 191 discretionary parole hearings. In 66% of the hearings, release was granted. In 9% of the hearings, the matter was continued. In 25% of hearings, parole was denied.¹²⁰ In 2015, the Board also held 382 parole revocation hearings for people released on either discretionary or mandatory parole.¹²¹ Finally, the Board discharged 415 people who completed their parole term in 2015.¹²²

h. Reporting and Accountability of Parole Board

The Board conducts a general meeting at least once a calendar year, which is open to the public and includes time set aside to take oral and written public comment.¹²³

Board records are available only to the Board, executive director, and Board staff, and personnel and agents of the Division of Probation and Parole.¹²⁴ A parolee, attorney, or anyone else may make a written request for access to records, but the Board will not release:¹²⁵

- (1) the voting records of individual board members;
- (2) the identity of an informant or information given in confidence;
- (3) Alaska Public Safety Information Network (APSIN) records or documents;
- (4) reports, memoranda, or other documents prepared specifically for transmittal to the Department of Law or an attorney retained by the state in anticipation of or during the course of litigation, or otherwise treated as confidential under the attorney-client privilege;
- (5) except as provided in (f) of this section, any statement in the case record of the victim's residence address, mailing address, electronic mail address, or telephone number, or any other information that could disclose the location of the victim of a crime;
- (6) a record that is confidential under applicable law; or
- (7) a record that the Board or executive director determines to contain confidential information.

Further, the Board will not release to a prisoner:¹²⁶

- (1) presentence reports, if the court has specifically found that access by the prisoner would be detrimental to the rehabilitation of the prisoner or safety of the public; or
- (2) a document or report containing medical, psychiatric, or psychological records concerning the parolee, including treatment records, if the clinical provider determines in writing that the release of the report to the prisoner will be detrimental to the rehabilitation of the prisoner or safety of the public.

END NOTES

- ¹ Robina Inst. of Criminal Law & Criminal Just., *Sentencing Guidelines Resource Center*, sentencing.umn.edu.
- ² See Alaska Sentencing Comm'n, 1992 *Annual Report to the Governor and the Alaska Legislature* (Dec. 1992), <http://www.ajc.state.ak.us/reports/sent92.pdf>.
- ³ Alaska Stat. § 12.55.125.
- ⁴ Alaska Const. art. 3, § 21; 1985 Alaska Laws ch. 88, §2.
- ⁵ Alaska Stat. § 33.16.010.
- ⁶ Alaska Stat. § 33.16.060; Alaska Dep't of Corr., *Parole Board*, <http://www.correct.state.ak.us/parole-board> (last visited Jun. 12, 2017).
- ⁷ Alaska Dep't of Corr., *Probation and Parole*, <http://www.correct.state.ak.us/probation-parole> (last visited Jun. 12, 2017).
- ⁸ Alaska Stat. § 33.16.220.
- ⁹ Alaska Stat. § 33.16.060(2).
- ¹⁰ Alaska Stat. § 33.16.090(a).
- ¹¹ Alaska Stat. § 33.16.090(a)(2); see also Alaska Stat. § 12.55.125(a).
- ¹² Alaska Stat. § 33.16.090(a)(3).
- ¹³ *Id.* This provision applies to all Class A felons, Class B felons who are second-time felons, have committed criminally negligent homicide against a victim under 16, or have committed certain crimes involving manufacturing methamphetamine in the presence of children. Class C felons may also face this provision for third-time felony convictions, violations of certain hunting laws by licensed big game guides, or convictions for many different sex crimes (sex assault in the first- or second-degree, sex abuse of a minor in the first- or second- degree, sex trafficking in the first- or second- degree, unlawful exploitation of a minor, distribution of child porn, sex assault in the third degree, incest, indecent exposure in the first degree, child porn possession, etc.).
- ¹⁴ Alaska Stat. § 33.16.090(b)(3).
- ¹⁵ Alaska Stat. § 33.16.090(b)(4), (5).
- ¹⁶ Alaska Stat. § 33.16.090(b)(6).
- ¹⁷ Alaska Stat. § 33.16.090(b)(7).
- ¹⁸ Alaska Stat. § 33.16.090(a)(2).
- ¹⁹ Alaska Stat. § 33.16.010(c).
- ²⁰ Alaska Stat. § 33.16.089.
- ²¹ Alaska Stat. § 33.16.090(c)(8). Note that aggravated sex offenders and sex offenders serving multiple sentences are generally ineligible for parole.
- ²² Alaska Stat. § 33.16.090(a)(1).
- ²³ Alaska Stat. § 12.55.125(a), (b).
- ²⁴ Alaska Stat. § 33.16.130(c).
- ²⁵ Alaska Stat. § 33.20.010(a). Those ineligible for good time include those sentenced to a mandatory 99-year term of imprisonment; those serving a definite term as a recidivist class-A felon, and those convicted of unclassified class A sexual felonies or have multiple convictions for sexual felonies.
- ²⁶ Alaska Stat. § 33.20.030.
- ²⁷ Alaska Stat. §§ 33.20.050, 33.20.060.
- ²⁸ Alaska Stat. § 33.16.100(a).
- ²⁹ Alaska Stat. § 33.16.110.
- ³⁰ Alaska Stat. § 33.16.090(b)(3).
- ³¹ 2016 Alaska Laws ch. 36 (S.B. 91).
- ³² Correspondence with Jeff Edwards, Exec. Director, Alaska Parole Bd. (Feb. 23, 2017).
- ³³ Correspondence with Kelcey Wallender, Parole Administrator, Alaska Parole Bd. (May 9, 2017).
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ Alaska Stat. § 33.16.085. Prisoners convicted of various sex crimes are not eligible for this type of parole.
- ³⁷ *Id.*
- ³⁸ Alaska Const. art. 3 § 21. This power does not extend to impeachment proceedings.
- ³⁹ Alaska Stat. § 33.20.080.
- ⁴⁰ Alaska Stat. § 33.30.031.
- ⁴¹ Alaska Admin. Code tit. 22, § 20.150.
- ⁴² *Id.* at (d)-(f), (j).
- ⁴³ Alaska Admin. Code tit. 22, § 20.095.
- ⁴⁴ Alaska Admin. Code tit. 22, § 20.160.
- ⁴⁵ Alaska Stat. § 33.16.110(a)-(b).
- ⁴⁶ Alaska Admin. Code tit. 22, § 20.165(c).
- ⁴⁷ Alaska Admin. Code tit. 22, § 20.150.
- ⁴⁸ Alaska Admin. Code tit. 22, § 20.160(b).
- ⁴⁹ Alaska Admin. Code tit. 22, § 20.095(a).
- ⁵⁰ Alaska Stat. § 33.16.100(a).
- ⁵¹ Alaska Admin. Code tit. 22, § 20.145. A deferral may be triggered if the Board believes information to be incorrect or incomplete, there is a pending criminal charge, or there are not enough board members to vote in a case.
- ⁵² Alaska Admin. Code tit. 22, § 20.160. The Board may wait up to 30 days to do this if the parole release date is more than three months after the decision.
- ⁵³ Alaska Admin. Code tit. 22, § 20.165(d).
- ⁵⁴ Alaska Admin. Code tit. 22, § 20.165(e).
- ⁵⁵ Alaska Admin. Code tit. 22, § 20.175(a), (b).
- ⁵⁶ Alaska Admin. Code tit. 22, § 20.175(c); 22 AAC 20.180(a)-(c).
- ⁵⁷ Alaska Admin. Code tit. 22, § 20.185, 20.190. New information that can trigger special review may include, for example, a change in medical condition, education or training, a meritorious act, outstanding institutional performance, a family tragedy, or "any other circumstances that the board finds is of such magnitude to warrant the granting of a special review of the case."
- ⁵⁸ See, e.g., *Frank v. State*, 97 P.3d 86 (Alaska Ct. App. 2004).
- ⁵⁹ Alaska Stat. § 12.72.010.
- ⁶⁰ Alaska Stat. § 12.72.020.
- ⁶¹ Alaska Stat. § 33.16.100(b).
- ⁶² Mariel E. Alper, Robina Inst., *By the Numbers: Parole Release and Revocation Across 50 States*, at 203 (2016).
- ⁶³ Alaska Dep't of Corr., *Probation and Parole Goals and Objectives*, <http://www.correct.state.ak.us/probation-parole/goals-objectives> (last visited Oct. 4, 2016).
- ⁶⁴ Alaska Admin. Code tit. 22, § 20.195, 20.200.
- ⁶⁵ Alaska Stat. § 33.16.010(c).
- ⁶⁶ Alaska Stat. § 33.16.210.
- ⁶⁷ Alaska Admin. Code tit. 22, § 20.280.
- ⁶⁸ Alaska Admin. Code tit. 22, § 20.200; see also Alaska Stat. § 33.16.150(a).
- ⁶⁹ Alaska Admin. Code tit. 22, § 20.205.
- ⁷⁰ Alaska Admin. Code tit. 22, § 20.210.
- ⁷¹ Alaska Stat. § 33.16.150(a)(13).
- ⁷² Alaska Stat. § 33.16.160. However, a parole officer may impose a condition in an emergency as long as the officer immediately communicates that condition to the Board in writing and the duration is not more than 15 days.
- ⁷³ Alaska Stat. § 33.16.180(9).
- ⁷⁴ Alaska Stat. § 33.16.150(b)(6).
- ⁷⁵ Alaska Admin. Code tit. 22, § 20.200; see also Alaska Stat. § 33.16.150(a).
- ⁷⁶ Alaska Dep't of Corr., *Parole Handbook* (2001), <http://www.correct.state.ak.us/Parole/pdf/handbook.pdf>.
- ⁷⁷ Alaska Dep't of Corr., *Parole Revocations 2015*, <http://www.correct.state.ak.us/Parole/documents/parole-revocations-2015.pdf>.
- ⁷⁸ Alaska Criminal Justice Comm'n, *Justice Reinvestment Report* at 8, 22-23 (Dec. 2015), http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf.
- ⁷⁹ Alaska Stat. § 33.16.180.
- ⁸⁰ Alaska Stat. §§ 33.16.215, 33.16.220.
- ⁸¹ Alaska Stat. § 33.16.215.
- ⁸² Alaska Stat. § 33.16.220.
- ⁸³ *Id.* at (a), (b).
- ⁸⁴ Correspondence with Jeff Edwards, *supra* note 32.

END NOTES

- ⁸⁵ Alaska Stat. § 33.05.070. These conditions include violations on geographic limitations on movement, possessing or consuming controlled substances, possessing firearms, possessing or consuming alcoholic beverages or being in a place where they are sold; operating or driving a motor vehicle; or other conduct that creates an imminent public danger or threatens serious harm to persons or property.
- ⁸⁶ Alaska Stat. § 33.16.240.
- ⁸⁷ See, e.g., Alaska Admin. Code tit. 22, § 20.365.
- ⁸⁸ Alaska Stat. § 33.16.240(h).
- ⁸⁹ Alaska Stat. § 33.16.220; 2016 Alaska Laws Ch. 36 §146 (S.B. 91).
- ⁹⁰ Alaska Stat. § 33.16.220(c), (d). See also Alaska Admin. Code tit. 22, § 20.405.
- ⁹¹ Alaska Stat. § 33.16.220(f).
- ⁹² Alaska Stat. § 33.16.220(j).
- ⁹³ Alaska Admin. Code tit. 22, § 20.485.
- ⁹⁴ Alaska Admin. Code tit. 22, § 20.505(b).
- ⁹⁵ Alaska Admin. Code tit. 22, § 20.460, 20.465.
- ⁹⁶ Alaska Stat. § 33.16.170; Alaska Admin. Code tit. 22, § 20.470.
- ⁹⁷ Alaska Admin. Code tit. 22, § 20.435.
- ⁹⁸ Alaska Admin. Code tit. 22, § 20.105; Correspondence with Jeff Edwards, *supra* note 32.
- ⁹⁹ Alaska Admin. Code tit. 22, § 20.095.
- ¹⁰⁰ Alaska Stat. § 33.16.220(h).
- ¹⁰¹ Alaska Stat. § 33.16.215.
- ¹⁰² Alaska Stat. § 33.16.220(i).
- ¹⁰³ Alaska Admin. Code tit. 22, § 20.510.
- ¹⁰⁴ Alaska Admin. Code tit. 22, § 20.515.
- ¹⁰⁵ See Parole Handbook, *supra* note 76 at 9.
- ¹⁰⁶ See, e.g., *Newell v. State*, 620 P.2d 680 (Alaska 1980).
- ¹⁰⁷ See, e.g., *Bailey v. Dep't. of Corr.*, 224 P.3d 111 (Alaska 2010).
- ¹⁰⁸ Alaska Admin. Code tit. 22, § 20.510.
- ¹⁰⁹ Alaska Admin. Code tit. 22, § 20.275.
- ¹¹⁰ Correspondence with Jeff Edwards, *supra* note 32.
- ¹¹¹ Alaska Stat. § 33.16.060(a).
- ¹¹² Alaska Stat. § 33.16.020.
- ¹¹³ Alaska Dep't of Corr., *Parole Board*, <http://www.correct.state.ak.us/parole-board> (last visited June 12, 2017).
- ¹¹⁴ Alaska Stat. § 33.16.020.
- ¹¹⁵ Alaska Stat. § 33.16.030.
- ¹¹⁶ Alaska Stat. § 33.16.020.
- ¹¹⁷ *Id.*
- ¹¹⁸ Alaska Const. Art. 3, § 26; See 39.52.010 *et seq.*
- ¹¹⁹ Correspondence with Jeff Edwards, *supra* note 32.
- ¹²⁰ Alaska Department of Corrections, *Discretionary Hearings 2015*, at 1-2, <http://www.correct.state.ak.us/Parole/documents/discretionary-decisions-2015.pdf>.
- ¹²¹ Alaska Dep't of Corr., *Parole Revocations 2015*, <http://www.correct.state.ak.us/Parole/documents/parole-revocations-2015.pdf>.
- ¹²² Alaska Dep't of Corr., *Completed Parole 2015*, <http://www.correct.state.ak.us/Parole/documents/completed-parole-2015.pdf>.
- ¹²³ Alaska Admin. Code tit. 22, § 20.950.
- ¹²⁴ Alaska Admin. Code tit. 22, § 20.910(a).
- ¹²⁵ Alaska Admin. Code tit. 22, § 20.910 (c)-(d).
- ¹²⁶ Alaska Admin. Code tit. 22, § 20.910(e).