

The Honorable Lloyd Rupp
Commissioner
Department of Corrections

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Furlough to a
private residence

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You have requested our opinion whether AS 33.30.111 authorizes you to place a prisoner on furlough if the prisoner will reside in a private residence under the intensive supervision of a probation officer not stationed on the premises.

In our opinion, a reasonable interpretation of the Alaska Statutes, and of the legislature's intent in adopting AS 33.30.111 and related statutes, authorizes you to furlough a prisoner to an appropriately adapted private residence, when coupled with appropriate restrictions and levels of supervision.

Although we believe the short answer to your question is yes, the language and legislative history of AS 33.30.111 do not explicitly address your request. You may, therefore, consider whether to ask the legislature to amend AS 33.30.111(b) to specifically provide you this type of furlough authority.

DISCUSSION

A. Applicable Statutes

AS 33.30.111 was adopted by the legislature in 1986 as part of a comprehensive revision of Alaska's statutes on corrections, and a number of statutes in AS 33.30 are relevant to your request for advice. See ch. 88, SLA 1986.

AS 33.30.011(3) requires the commissioner of corrections to establish programs for prisoners, including furlough programs, that are reasonably calculated to protect the public and provide for the rehabilitation and reformation of prisoners, and to facilitate their reintegration into society. AS 33.30.901(8) defines a "furlough" as "an authorized leave of absence from actual confinement for a designated purpose and period of time."

AS 33.30.061 is also relevant, by authorizing the commissioner to designate the facility at which a prisoner is to

serve a term of imprisonment, without regard to whether it is maintained by the state.

AS 33.30.101 specifically addresses the purposes for which a furlough may be granted,¹ which include securing a residence or making other preparation for release from custody, and any other rehabilitative purpose the commissioner determines to be in the interests of the prisoner and the public. AS 33.30.101(a)(5) and (8).

Although the commissioner has broad authority to operate a prison system and provide for offender rehabilitation, AS 33.30.111(b) and (c) set out limitations on furlough facilities. Those subsections provide (emphasis added):

(b) A facility that is specifically adapted to provide a residence outside prison, including a halfway house, group home, or other placement that provides varying levels of restriction and supervision, may be used for a prisoner on a prerelease furlough.

(c) The restrictions and supervision required for a prerelease furlough shall provide safeguards that minimize risk to the public and include, as a minimum,

(1) frequent contact with the prisoner by persons supervising the prisoner;

(2) knowledge by supervisory staff of the location of the prisoner;

(3) periodic reports by supervisory staff to the commissioner on the performance of the prisoner while on furlough; and

(4) a residential setting in which persons supervising a prisoner are obliged to immediately report to the commissioner any violation of a condition set for the prisoner's conduct.

¹ AS 33.30.101(a) requires the commissioner to adopt regulations governing the granting of furloughs to prisoners for a number of purposes. This requirement has been met through the adoption of 22 AAC 05.316, which incorporates the purposes of a furlough set out in AS 33.30.101(a).

B. Interpretation of the Statutes

The statutes set out in Part A of this memorandum establish a furlough system which gives the commissioner broad discretion to furlough prisoners from an incarcerative setting for a wide range of rehabilitative objectives.² The statutes include discretionary authority to determine an appropriate facility for prisoners released on furlough.

AS 33.30.901(4) defines "facility" as "a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners." Although we believe it to be a close question, in our opinion, at least for purposes of furlough facilities, the term "custody, care, and discipline" means appropriate supervision.

A private residence thus fits the statutory definition of "facility" if it has been designated by the commissioner as a place where prisoners will reside under supervisory conditions designed to protect the public and enhance rehabilitation. Such a residence may be used as a place for a furlough under AS 33.30.111(b) if it has been "specifically adapted to provide a residence outside prison" and "provides varying levels of restriction and supervision" meeting at least the minimum requirements set out in AS 33.30.111(c). As discussed later, the specific program envisioned by your department for these private-residence furloughs meets the statutory requirements of specific adaption and restriction and supervision.

As mentioned above, it remains a close question whether "custody, care, and discipline" in AS 33.30.901(4) is truly synonymous with appropriate supervision. In normal prison facilities, the term "custody, care and discipline" encompasses a broader range of prisoner restrictions, and involves much greater government responsibility for necessities of life such as food, clothing, heat, light, safety, and medical care. However, because furlough programs do not involve such a high level of responsibility for a prisoner's welfare, reasonable supervision is all that is necessary in the context of a furlough placement.

Moreover, this focus on appropriate supervision is consistent with the legislative history surrounding these statutes. In his transmittal letter,³ former Governor Sheffield

² See AS 33.30.111(d) and 22 AAC 05.321 for the criteria a prisoner must meet to be eligible for a prerelease furlough.

³ "Interpretation of a statute begins with an examination of its language in light of its purpose." Beck v. State, 837 P.2d 105, 117-18 (Alaska 1992). A review of the legislative history

described the bill's provisions on furloughs as follows:

It also revises and restructures existing law on furlough programs for prisoners by establishing certain eligibility requirements, setting out when furloughs may be granted, for what purpose, and the quality of supervision that is required for prisoners on furlough.

1985 House J. at 141 (emphasis added).

Further emphasis on the quality of furlough supervision can be found in a letter of intent by the House Health Education and Social Services Committee. In describing its intent behind AS 33.30.111(b) and (c), the committee stated:

Under subsection (b), a prisoner on a pre-release furlough will reside in a facility with varying levels of restriction and supervision depending upon the needs of the prisoner and the risks to the public. This may range from a secure halfway house to furlough in a remote location in the state. Subsection (c) sets out minimum levels of restriction and supervision for all prisoners on a pre-release furlough to monitor the prisoner's performance and adequately protect the public.

1985 House J. Supp. No. 39, at 14 (Apr.1) (emphasis added) .⁴

Thus, the House HESS Committee envisioned a continuum of possible residential settings for a prisoner on furlough ranging from a secure halfway house to a remote location in the state. We believe that a private residence can fall within this continuum if it is "specifically adapted" and if your department

(..continued)

of a statute can often assist in this examination. Cf. State v. Alex, 646 P.2d 203, 208-09 n.4 (Alaska 1982). Transmittal letters from the governor to the legislature, which accompany governor's bills, may be helpful in determining intent. See, e.g., State v. First National Bank, 660 P.2d 406, 412 n.9 (Alaska 1982); Wein Air Alaska v. Dep't of Revenue, 647 P.2d 1087, 1091 (Alaska 1982); State v. Fowler, 611 P.2d 58, 60 and n.5 (Alaska 1980), where the court cited with approval C. Sands, Sutherland Statutory Construction • 48.05, at 201 (4th ed. 1973).

⁴ Courts have frequently relied upon legislative committee reports on a bill in interpreting the intent of subsequently enacted legislation. E.g., Alaska Public Employees Assn v. State, 525 P.2d 12, 14-18 (Alaska 1974).

provides the appropriate level of supervision.

In our opinion, your intention to utilize "electronic monitoring" for each prisoner furloughed to a private residence, which entails an inspection of the residence and an adaptation of the telephone lines, is sufficient to comply with the requirement of specific adaptation. "Electronic monitoring" is a system whereby the prisoner is required to wear a device that sends a signal to a central control station whenever the prisoner moves a very limited distance (usually about 100 feet) from another device located in the prisoner's residence.

In addition, in our opinion the other required statutory elements of supervision are met by the intensive probation officer supervision program discussed below.⁵

C. Level of Required Supervision

Given our conclusion that a reasonable interpretation of AS 33.30.111 provides you with the authority to furlough a prisoner to a private residence, the question remains whether the "intensive supervision" of a probation officer meets the supervision requirements of AS 33.30.111(c).

You have informed us that the phrase "intensive supervision," as utilized by the Department of Corrections, is a specific program presently utilized for certain parolees who require a high level of oversight.⁶ We understand that this program includes four phases, the first two of which require at least 20 contacts per month between a parolee and parole officer (with a combination of face-to-face, home, and telephone contacts), a curfew with random checks, employment and/or rehabilitative program participation with random verification, random drug and alcohol testing, and a requirement of several hours per month of community work service.⁷

⁵ This opinion is consistent with informal advice previously provided to your department regarding placement of prisoners serving sentences of imprisonment for misdemeanors.

⁶ We understand that you also intend to utilize this program as part of a new pilot project involving a day reporting center for pretrial detainees that would otherwise not be released from custody.

⁷ Additionally, we understand that a probation/parole officer working in the intensive supervision unit carries a caseload no greater than 15 clients due to the high level of contact and supervision required by this program.

When combined with the numerous conditions that you require of all furloughees, the first two phases of the intensive supervision program appear to satisfy the requirements of AS 33.30.111(c), particularly in conjunction with electronic monitoring as a supplement to direct supervision.⁸

Unlike the first two phases of the intensive supervision program, the latter two phases involve a reduced level of supervision. These levels of supervision may be appropriate for some furloughed prisoners, but certainly not for others. At this time, and with only a hypothetical program for us to review, it is impossible for us to determine whether these reduced supervision levels would satisfy the requirements of AS 33.30.111(c). Consequently, we recommend that as an initial matter, and until the department gains substantial experience with the program, the supervision of a prisoner furloughed to a private residence be restricted to the first two phases of intensive supervision.

D. Related Issues

While not directly raised in your request for advice, we believe the issue of good time for furloughed prisoners requires attention. The Department of Corrections has always awarded statutory good time to prisoners on furlough pursuant to AS 33.20.010. Concomitantly the department has forfeited good time for furloughed prisoners when deemed appropriate as a sanction for rule infractions. AS 33.20.050.

AS 33.20.050 requires the commissioner to adopt regulations governing discipline of prisoners and the forfeiture of good time. These regulations have been in effect for a number of years, and specifically apply to furloughed prisoners residing in a contract facility such as a community residential center. 22 AAC 05.300(g). However, the department's regulations do not address the applicability of the disciplinary process to prisoners furloughed to a private residence.

⁸ It is becoming increasingly more common for advances in technology, that were not even contemplated by the legislature when it adopted a statute, to satisfy the requirements of the statute. The use of electronic monitoring, in its current stage of development, to assist in the supervision of prisoners furloughed to the community is a good example of this. No doubt new technology will become available in the future which will improve the cost-effective supervision of prisoners in the community.

Given the requirement in AS 33.20.050 that good time may only be forfeited pursuant to regulations adopted by the commissioner, the department may be faced with the anomalous situation of awarding good time to a furloughed prisoner while being unable to forfeit this good time upon commission of a serious rule infraction.⁹ Consequently, we recommend that you consider amending 22 AAC 05 to provide the specific authority to discipline and, where appropriate, forfeit the good time of a prisoner furloughed to a setting outside a state or contract facility.

CONCLUSION

A reasonable interpretation of Alaska's statutory framework relating to furloughs, and in particular AS 33.30.111, authorizes you to furlough a prisoner to a private residence under electronic monitoring and the intensive supervision of a probation officer, as long as the level of supervision is no less than that required in the first two phases of the department's intensive supervision program.

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⁹ Of course, the department has the authority to revoke a furlough for violation of the conditions of the furlough. AS 33.30.141.