

HOUSE CS FOR CS FOR SENATE BILL NO. 1(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/24/97

Referred: Finance

Sponsor(s): SENATORS DONLEY, Halford, Pearce, Green, Leman, Taylor, Kelly, Mackie, Phillips

REPRESENTATIVES Mulder, Cowdery, Green, Bunde, Croft, Ryan, James, Ogan

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living and working conditions of prisoners in correctional
2 facilities operated by the state, and authorizing the commissioner of corrections
3 to negotiate with providers of detention and confinement services under contract
4 to apply those conditions and limitations on services to persons held under
5 authority of state law at facilities operated under contract or agreement; relating
6 to services provided to prisoners; amending the definition of 'severely medically
7 disabled' applicable to prisoners seeking special medical parole; amending
8 provisions of the correctional industries program; and extending the termination
9 date of the Correctional Industries Commission and the program."

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 * **Section 1.** Sections 4 - 6 of this Act may be known as the "Alaska No Frills Prison Act."

12 * **Sec. 2. INTENT.** It is the intent of secs. 4 - 6 of this Act that conditions in facilities for

1 prisoners within the Department of Corrections not be substantially more favorable than
 2 required by the constitutions of this state and the United States unless the commissioner of
 3 corrections has reasonable grounds to believe such conditions are consistent with fostering
 4 rehabilitative programs or rewarding good behavior within state prisons.

5 * **Sec. 3.** AS 33.16.900(11) is amended to read:

6 (11) "severely medically disabled" means that a person has a medical
 7 condition that substantially eliminates the physical ability to commit an offense
 8 similar to the offense for which the person was convicted or to commit an offense
 9 in violation of AS 11.41 that is punishable as a felony, [REQUIRES THE PERSON
 10 SUFFERING FROM THE CONDITION TO BE CONFINED TO BED] and the person
 11 is likely to

12 (A) remain subject to the medical condition [BE CONFINED
 13 TO BED] throughout the entire period of parole; or

14 (B) die from the medical condition;

15 * **Sec. 4.** AS 33.30.011 is amended to read:

16 **Sec. 33.30.011. Duties of commissioner.** The commissioner shall

17 (1) establish, maintain, operate, and control correctional facilities
 18 suitable for the custody, care, and discipline of persons charged or convicted of
 19 offenses against the state or held under authority of state law; each correctional
 20 facility operated by the state shall be established, maintained, operated, and
 21 controlled in a manner that is consistent with AS 33.30.015;

22 (2) classify prisoners;

23 (3) for persons committed to the custody of the commissioner, establish
 24 programs, including furlough programs that are reasonably calculated to

25 (A) protect the public and the victims of crimes committed
 26 by prisoners;

27 (B) maintain health;

28 (C) create or improve occupational skills;

29 (D) enhance educational qualifications;

30 (E) support court-ordered restitution; and

31 (F) otherwise provide for the rehabilitation and reformation of

1 prisoners, facilitating their reintegration into society;

2 (4) provide necessary

3 (A) medical services for prisoners in correctional facilities or
4 who are committed by a court to the custody of the commissioner, including
5 examinations for communicable and infectious diseases;

6 (B) psychological or psychiatric treatment if a physician or
7 other health care provider, exercising ordinary skill and care at the time of
8 observation, concludes that

9 (i) a prisoner exhibits symptoms of a serious disease or
10 injury that is curable or may be substantially alleviated; and

11 (ii) the potential for harm to the prisoner by reason of
12 delay or denial of care is substantial;

13 (5) establish minimum standards for sex offender treatment programs
14 offered to persons who are committed to the custody of the commissioner; and

15 (6) provide for fingerprinting in correctional facilities in accordance
16 with AS 12.80.060.

17 * **Sec. 5.** AS 33.30 is amended by adding new sections to read:

18 **Sec. 33.30.015. Living conditions for prisoners.** (a) On and after the date that
19 is two years after the effective date of this Act, the commissioner may not

20 (1) make per capita expenditures for food for prisoners in a state
21 correctional facility operated by the state that exceed 90 percent of per capita
22 expenditures for food that is available to enlisted personnel in the United States Army
23 stationed in the state;

24 (2) provide in a state correctional facility operated by the state

25 (A) living quarters for a prisoner into which the view is
26 obstructed; however, the commissioner is not required to renovate a facility
27 to comply with this subparagraph if the facility is being used as a correctional
28 facility on the effective date of this Act, or if the facility was already built
29 before being acquired by the department;

30 (B) equipment or facilities for publishing or broadcasting
31 material the content of which is not subject to prior approval by the department
32 as consistent with keeping order in the institution and prisoner discipline;

(C) cable television service other than a level of basic cable television service that is available as a substitute for services that are broadcast to the public in the community in which a correctional facility is located;

(3) allow a prisoner held in a state correctional facility operated by the state to

(A) possess in the prisoner's cell a cassette tape player or recorder, a video cassette recorder (VCR), or a computer or modem of any kind;

(B) view movies rated "R," "X," or "NC-17";

(C) possess printed or photographic material that

(i) is obscene as defined by the commissioner in regulation;

(ii) could reasonably be expected to incite racial, ethnic, or religious hatred that is detrimental to the security, good order, or discipline of the institution or violence;

(iii) could reasonably be expected to aid in an escape or in the theft or destruction of property;

(iv) describes procedures for brewing alcoholic beverages or for manufacturing controlled substances, weapons, or explosives; or

(v) could reasonably be expected to facilitate criminal activity or a violation of institution rules;

(D) receive instruction in person, or by broadcast medium, or engage in boxing, wrestling, judo, karate, or other martial art or in any activity that, in the commissioner's discretion, would facilitate violent behavior;

(E) possess or have access to equipment for use in the activities listed in (D) of this paragraph;

(F) possess or have access to free weights;

(G) possess in the prisoner's cell a coffee pot, hot plate, appliance or heating element for food preparation, or more than three electrical appliances of any kind;

(H) possess or appear in a state of dress, hygiene, grooming, or

1 appearance other than as permitted as uniform or standard in the correctional
2 facility;

3 (I) use a computer other than those approved by the correctional
4 facility; the use of a computer under this subparagraph may be approved only as
5 part of the prisoner's employment, education, or vocational training and may not
6 be used for any other purpose;

7 (J) smoke or use tobacco products of any kind.

8 (b) The commissioner may determine whether the provisions of (a) of this
9 section shall apply to correctional facilities that are not operated by the state and may
10 negotiate with a provider of services for the detention and confinement of persons held
11 under authority of state law under contract or agreement whether the living conditions
12 set out in (a) of this section shall apply to persons held under authority of state law at
13 a facility operated under contract or agreement.

14 (c) On and after January 1, 1998, the commissioner may not allow a prisoner to
15 possess a television in the prisoner's cell if the prisoner is classified as maximum custody
16 under AS 33.30.011(2).

17 (d) The commissioner may allow a prisoner who, under AS 33.30.011(2), has
18 been classified as other than maximum custody to possess a television in the prisoner's
19 cell only if the prisoner

20 (1) either is incapable of obtaining or has attained a high school diploma
21 or general education development diploma or the equivalent;

22 (2) is actively engaged in an educational, vocational training, or
23 employment program;

24 (3) has satisfied or is on a regular and current payment schedule for all
25 restitution orders entered by the court as part of the prisoner's sentence and, if
26 applicable, is actively engaged in a treatment plan or counseling, psychiatric, or
27 rehabilitation program ordered by the court or the department as part of the prisoner's
28 sentence; and

29 (4) pays for the expense of providing the television and, in addition to
30 the utility service fee required by AS 33.30.017, pays for the expense of providing any
31 cable television service.

32 (e) The commissioner shall use

1 (1) appropriate technology to screen programs received by prisoners
2 under (d) of this section;

3 (2) Alaska farm products and salmon to the greatest extent practicable
4 for food for prisoners in a state correctional facility operated by the state.

5 **Sec. 33.30.017. Fees for utilities services for prisoners.** (a) The commissioner
6 shall establish a reasonable utility fee for electrical utilities that are used by prisoners
7 who are confined in a state correctional facility.

8 (b) The commissioner shall

9 (1) charge each prisoner who possesses at least one major electrical
10 appliance the utility fee established in (a) of this section; the commissioner may deduct
11 the utility fee monthly from the account established for a prisoner into which money due
12 the prisoner for labor is paid; if a prisoner is indigent, the commissioner shall make the
13 deduction from any amount credited to the indigent inmate's account;

14 (2) if available from legislative appropriation, expend money deducted
15 and collected under (1) of this subsection to offset the cost of the department's utility
16 expenses; the commissioner shall annually report on the amounts that are collected and
17 expended under this paragraph.

18 (c) The provisions of (b) of this section do not apply to prisoners

19 (1) who are

20 (A) developmentally disabled; or

21 (B) severely medically disabled, as that term is defined in

22 AS 33.16.900;

23 (2) who are housed in a mental health unit or psychiatric unit of a state
24 correctional facility; or

25 (3) while placed in a state correctional facility awaiting classification
26 under classification procedures for the purpose of making the appropriate assignment of
27 the prisoner.

28 * **Sec. 6.** AS 33.30.071(c) is amended to read:

29 (c) Medical services for a prisoner who is unconscious or in immediate need of
30 medical attention before admission to a correctional facility or commitment by a court
31 to the custody of the commissioner of corrections shall be provided by the law
32 enforcement agency having custody of the prisoner. The law enforcement agency may

require the prisoner to compensate the agency for the cost **or for a portion of the cost** of medical services provided for **any** [A] preexisting medical condition [NOT ARISING OUT OF THE PRISONER'S ARREST].

* **Sec. 7.** AS 33.30.191(a) is amended to read:

(a) It is the policy of the state that prisoners be productively employed for as many hours each day as feasible [, NOT TO EXCEED 40 HOURS A WEEK UNLESS OVERTIME HAS BEEN SPECIFICALLY APPROVED BY THE COMMISSIONER].

* **Sec. 8.** AS 33.30 is amended by adding a new section to read:

Sec. 33.30.193. Standard applicable to allowing prisoners access to and use of legal reference materials and legal assistance. If the commissioner imposes a restriction on access to and use of legal reference materials by or legal assistance of a prisoner in a state correctional facility, a court may not enter an order giving relief to the prisoner unless the court first finds, by a preponderance of the evidence, that enforcement or application of the restriction hinders the prisoner from having access to and use of the legal reference materials or legal assistance

(1) in order to gain meaningful access to a court for the purpose of challenging

(A) the prisoner's conviction or sentence; or

(B) the conditions of the prisoner's confinement; or

(2) in circumstances in which a state court has specifically determined that a provision of the state constitution necessarily requires a prisoner to have access to and use of the legal reference materials or legal assistance.

* **Sec. 9.** AS 33.30.231(c) is amended to read:

(c) Notwithstanding AS 42.20.300 and 42.20.310, in order to preserve the security and orderly administration of the correctional facility and to protect the public, the commissioner **shall monitor or record the** [MAY AUTHORIZE THE USE OF MONITORING OR RECORDING EQUIPMENT TO LISTEN TO A] telephone **conversations** [CONVERSATION] of **prisoners.** **The commissioner shall post** a [PRISONER INCARCERATED FOLLOWING CONVICTION OF A CRIME, IF A] warning [IS POSTED] by **each** [THE] telephone informing **prisoners** [THE PRISONER] that **calls** [A CALL] may be monitored or recorded. **The monitoring or recording may be conducted on all calls or selectively or in some other limited**

manner as determined by the commissioner to be appropriate. A recording of a telephone call made under this subsection shall be kept confidential, and access to the recording and its contents is limited to persons who are acting within the scope of their official duties and whose access to specific recordings has been authorized by the facility superintendent. A telephone call between an attorney and a prisoner or between the office of the ombudsman and a prisoner may not be monitored or recorded except when authorized by a court.

* **Sec. 10.** AS 33.32.010 is amended to read:

Sec. 33.32.010. Purpose of chapter. It is the purpose of this chapter to [:]

(1) develop and operate agricultural, industrial, and service enterprises employing prisoners under the jurisdiction of the commissioner of corrections;

(2) provide realistic work experience **and vocational training** for prisoners under conditions as much like those that prevail in private industry as possible, consistent with proper penal administration, and to direct their efforts toward financial responsibility, acquiring or improving effective work habits and occupational skills, and increasing the probability of opportunities for employment after release; and

(3) operate a work program for prisoners that will be as nearly self-supporting as possible by generating a sufficient amount of money from the sale of products and services to pay all or most of the expenses of the program.

* **Sec. 11.** AS 33.32.015(b) is amended to read:

(b) The commissioner of corrections may

(1) subject to AS 36.30 (State Procurement Code), use, purchase, lease, equip, and maintain buildings, machinery, and other equipment, and may purchase materials and enter into contracts **that** [, WHICH] may be necessary for the correctional industries program;

(2) provide for prisoners to be employed in rendering services and producing articles, materials, and supplies needed by a state agency, a political subdivision of the state, an agency of the federal government, other states or their political subdivisions, or for use by nonprofit organizations;

(3) if the Correctional Industries Commission established in AS 33.32.070 approves, employ prisoners to provide services or products as needed by private industry if the services or products have potential for contributing to the economy of the state and

will have minimal negative impact on an existing private industry or labor force in the state;

(4) authorize a prisoner to engage in vocational training or in productive employment within or outside a correctional facility, or enter into a contract under AS 33.30.191 for the employment of a prisoner if the Correctional Industries Commission determines that the employment will have minimal negative impact on an existing private industry or labor force in the state; and

(5) subject to the provisions of AS 36.30 (State Procurement Code), enter into joint cooperative ventures with private industry for the establishment and operation of "Free Venture" industries under AS 33.32.017 [,] if the Correctional Industries Commission determines at the time of inception that the "Free Venture" industry will not compete with an existing private industry or labor force in the state.

* **Sec. 12.** AS 33.32.015 is amended by adding a new subsection to read:

(c) This section does not require the commissioner of corrections to establish and administer a vocational training program under the correctional industries program.

* **Sec. 13.** AS 33.32.050(c) is amended to read:

(c) The commissioner of corrections shall disburse a prisoner's [PRISONERS'] payments in amounts determined to be appropriate under procedures adopted by the commissioner based on the following order of priority:

(1) for support of the prisoner's [PRISONERS'] dependents, if any;

(2) to reimburse the state for compensation awarded under AS 18.67 resulting from the prisoner's criminal conduct;

(3) to pay a civil judgment resulting from the prisoner's criminal conduct;

(4) for the payment of fees for the prisoner's utilities services under AS 33.30.017;

(5) for the purchase of clothing and commissary items for the prisoner's personal use;

(6) [(5)] to pay a restitution or fine of the prisoner ordered by a sentencing court.

* **Sec. 14.** Section 7, ch. 53, SLA 1982, as amended by sec. 1, ch. 25, SLA 1987, by sec. 4, ch. 77, SLA 1991, and by sec. 10, ch. 93, SLA 1995, is amended to read:

Sec. 7. AS 33.32 is repealed July 1, 2005 [1999].