

**CS FOR HOUSE BILL NO. 214(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 5/3/99**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES MULDER, Rokeberg**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to litigation involving correctional facilities; and amending Rules**  
**2 59(f), 60(b), 62, and 65, Alaska Rules of Civil Procedure."**

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

**4 \* Section 1. FINDINGS AND INTENT. (a) The legislature finds that**

**5 (1) state and municipal executive branch agencies that operate correctional**  
**6 facilities need the widest latitude, consistent with constitutional and legal requirements, to**  
**7 manage those facilities and carry out the several constitutional goals of corrections**  
**8 administration;**

**9 (2) the legislature has the exclusive right to appropriate under the Constitution**  
**10 of the State of Alaska, and consent decrees and court orders that require certain levels of**  
**11 funding or services conflict with the legislature's exclusive appropriation power;**

**12 (3) the legislature carefully scrutinizes the correctional system each year, and**  
**13 annual budget appropriations have been and will continue to be based on the legislature's**  
**14 assessment of how to appropriately meet the needs of Alaska prisoners and the public as a**

1 whole; because state revenues vary greatly from year to year, the legislature needs the widest  
 2 latitude to exercise its constitutional and statutory budget authority for the good of all  
 3 Alaskans; and

4 (4) the Alaska Supreme Court has held that administration of the state  
 5 corrections system is an executive concern involving many day-to-day decisions that  
 6 necessitate that court interference be kept to a minimum; see *McGinnis v. Stevens*, 543 P.2d  
 7 1221, 1237 (Alaska 1975); the Alaska Supreme Court has also held that the exercise of  
 8 executive branch discretion within constitutional bounds is not subject to the control or review  
 9 of the courts; see *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950 (Alaska  
 10 1975).

11 (b) Based on the findings set out in (a) of this section, the legislature intends in this  
 12 Act to provide a statutory framework for setting limits on the extent to which future  
 13 legislatures and future executive branch administrations are limited by court orders or consent  
 14 decrees of indefinite duration that govern correctional facility operations in ways that are not  
 15 constitutionally or statutorily required.

16 \* **Sec. 2.** AS 09.19 is amended by adding a new section to read:

17 **Sec. 09.19.200. Correctional facility litigation.** (a) Except as provided in

18 (b) and (e) of this section, a court may not order prospective relief in a civil action  
 19 with respect to correctional facility conditions unless the court finds that (1) the  
 20 plaintiff has proven a violation of a state or federal right, (2) the prospective relief is  
 21 narrowly drawn and extends no further than is necessary to correct the violation of the  
 22 right, (3) the prospective relief is the least intrusive means necessary to correct the  
 23 violation of the right, and (4) the prisoner exhausted all administrative remedies  
 24 available to the prisoner before filing the civil action. When a court finds multiple  
 25 violations of a state or federal right, when multiple remedies are ordered by the  
 26 prospective relief, or when prospective relief applies to multiple correctional facilities,  
 27 the findings required by this subsection shall be made as to each violation, each  
 28 remedy, and each facility, as appropriate. In a civil action with respect to correctional  
 29 facility conditions that has been certified as a class action, prospective relief applicable  
 30 to the class may only be ordered after the court makes the findings required by this  
 31 subsection and finds that the violation of a state or federal right is applicable to the

1 entire class. In making the findings required under this subsection, the court shall give  
2 substantial weight to any adverse effect on public safety or the operation of a criminal  
3 justice system caused by the prospective relief.

4 (b) In a civil action with respect to correctional facility conditions, to the  
5 extent otherwise authorized by law, the court may enter a temporary restraining order  
6 or an order for preliminary injunctive relief only if the court finds that the relief is (1)  
7 narrowly drawn and extends no further than is necessary to correct the harm that  
8 requires preliminary relief, and (2) the least intrusive means necessary to correct that  
9 harm. In making the findings required under this subsection, the court shall give  
10 substantial weight to any adverse effect on public safety or the operation of a criminal  
11 justice system caused by the preliminary relief. Preliminary injunctive relief shall  
12 automatically expire 90 days after the entry of the order unless the court orders final  
13 relief in the civil action before the expiration of the 90-day period.

14 (c) Prospective relief ordered in a civil action with respect to correctional  
15 facility conditions, including prospective relief ordered under a consent decree,  
16 regardless of whether that civil action was filed or the relief ordered before or after the  
17 effective date of this Act, shall be terminated upon the motion of the defendant unless  
18 the court finds that there exists a current violation of a state or federal right and makes  
19 the findings required by (a) of this section as to each current violation and as to each  
20 remedy and facility, as appropriate. A civil action that has been certified as a class  
21 action shall be terminated upon the motion of the defendant unless the court makes the  
22 findings required by this subsection and finds that the current violation of a state or  
23 federal right is applicable to the entire class. Prospective relief must be modified upon  
24 the motion of a party whenever, and to the extent, the findings required by this section  
25 no longer apply to one or more provisions of the prospective relief then in effect. This  
26 subsection and the time limits provided in (d) of this section do not prevent a party  
27 from seeking modification or termination before the relief is otherwise terminable  
28 under this section to the extent that modification or termination would otherwise be  
29 legally permissible.

30 (d) A defendant may not file a motion to modify or terminate under (c) of this  
31 section until

1 (1) two years after the date the court ordered the prospective relief if  
2 the order occurred after the effective date of this Act;

3 (2) one year after the date the court entered an order denying  
4 modification or termination of prospective relief made under (1) or (3) of this  
5 subsection; or

6 (3) in the case of an order issued on or before the effective date of this  
7 Act, one year after the effective date of this Act.

8 (e) Notwithstanding (a) of this section, in a civil action with respect to  
9 correctional facility conditions, a court may order prospective relief as provided in a  
10 consent decree without complying with (a) of this section, provided the prospective  
11 relief does not continue for a period of more than two years unless the court finds and  
12 orders that the continuation of the relief is appropriate under the standards in (c) of this  
13 section. In addition, parties may enter into private settlement agreements that do not  
14 comply with the limitations of relief set out in (a) of this section if the terms of the  
15 agreements are not subject to court enforcement other than the reinstatement of the  
16 civil proceedings that the agreements settled.

17 (f) The court shall promptly rule on a motion to modify or terminate  
18 prospective relief in a civil action with respect to correctional facility conditions. A  
19 motion to modify or terminate prospective relief made under this section stays the  
20 order for prospective relief beginning on the 90th day after the motion is filed, and the  
21 stay ends on the date the court enters a final order ruling on the motion. An automatic  
22 stay under this subsection may be postponed by the court for not more than 30 days  
23 for good cause.

24 (g) In this section,

25 (1) "civil action with respect to correctional facility conditions" means  
26 a civil proceeding arising under state or federal law with respect to the conditions of  
27 confinement or the effects of actions by government officials on the lives of persons  
28 confined in correctional facilities;

29 (2) "consent decree" means a court order that is based on the agreement  
30 of the parties; the term "consent decree" does not include a private settlement  
31 agreement;

1 (3) "prisoner"

2 (A) means a person held in a state correctional facility or under  
3 authority of state or municipal law in official detention as defined in  
4 AS 11.81.900(b);

5 (B) includes a minor committed to the custody of the  
6 commissioner when,

7 (i) under AS 47.12.030, 47.12.065, or 47.12.100, the  
8 minor has been charged, prosecuted, or convicted as an adult; or

9 (ii) under AS 47.12.160(e), the minor has been ordered  
10 transferred to the custody of the commissioner of corrections or a  
11 municipality;

12 (4) "private settlement agreement" means an agreement entered into  
13 among the parties that is not subject to judicial enforcement other than the  
14 reinstatement of the civil proceeding that the agreement settled;

15 (5) "prospective relief" means all relief other than compensatory  
16 monetary damages;

17 (6) "relief" means any legal or equitable remedy in any form that may  
18 be ordered by the court, and includes a consent decree but does not include a private  
19 settlement agreement;

20 (7) "state or federal right" means a right arising from the United States  
21 Constitution, the Constitution of the State of Alaska, or a federal or state statute.

22 \* **Sec. 3.** Section 2 of this Act has the effect of amending Rules 59(f), 60(b), 62, and 65,  
23 Alaska Rules of Civil Procedure, by altering the remedies available and the procedure to be  
24 used in litigation involving correctional facilities.

25 \* **Sec. 4.** This Act takes effect only if sec. 3 of this Act receives the two-thirds majority  
26 vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

27 \* **Sec. 5.** This Act applies to any civil action with respect to correctional facility conditions  
28 that is filed, or in which prospective relief is ordered, before, on, or after the effective date  
29 of this Act. In this section, "civil action with respect to correctional facility conditions" and  
30 "prospective relief" have the meanings given in AS 09.19.200, added by sec. 2 of this Act.