

HOUSE BILL NO. 74

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE OGAN

Introduced: 1/16/97

Referred: Judiciary, Finance

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 3 - 6 of this Act may be known as the "Alaska No Frills Prison Act."

12 * **Sec. 2.** AS 33.16.900(11) is amended to read:

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

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

9 (B) die from the **medical** condition;

10 * **Sec. 3.** AS 33.30.011 is amended to read:

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

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

17 (2) classify prisoners;

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

20 (A) protect the public **and the victims of crimes committed**
 21 **by prisoners;**

22 (B) maintain health;

23 (C) create or improve occupational skills;

24 (D) enhance educational qualifications;

25 (E) support court-ordered restitution; and

26 (F) otherwise provide for the rehabilitation and reformation of
 27 prisoners, facilitating their reintegration into society;

28 (4) **subject to AS 33.30.028,** provide necessary

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

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

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

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

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

10 (6) provide for fingerprinting in correctional facilities in accordance
 11 with AS 12.80.060.

12 * **Sec. 4.** AS 33.30 is amended by adding new sections to read:

13 **Sec. 33.30.015. Living conditions for prisoners.** (a) In implementing this
 14 chapter, the commissioner may not

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

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

20 (A) living conditions and recreational opportunities to prisoners
 21 within a correctional facility that substantially exceed the conditions that may be
 22 required of the state by the Constitution of the United States or the constitution
 23 of the state;

24 (B) living quarters for a prisoner into which the view is
 25 obstructed; however, the commissioner may not be required to renovate the cells
 26 of a correctional facility that, on the effective date of this Act, confines prisoners
 27 in cells equipped with doors that do not have bars or windows;

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

31 (D) cable television service other than a level of basic cable
 32 television service that is available as a substitute for services that are broadcast

1 to the public in the community in which a correctional facility is located;

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

4 (A) make unmonitored telephone calls, except for calls between
5 the prisoner and the prisoner's legal counsel;

6 (B) possess in the prisoner's cell a compact disc player, a video
7 cassette recorder (VCR), or a computer or modem of any kind;

8 (C) view movies rated "R," "X," or "NC-17," or that do not have
9 a rating;

10 (D) possess printed material that visually depicts a person's
11 genitals, anus, or female breast;

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

16 (F) possess or have access to free weights or other equipment for
17 use in the activities listed in (E) of this paragraph;

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

21 (H) possess or appear in a state of dress, hygiene, grooming, or
22 appearance other than as permitted as uniform or standard in the correctional
23 facility;

24 (I) use a computer other than those approved by the correctional
25 facility; the use of a computer under this subparagraph may be approved only as
26 part of the prisoner's employment or vocational training and may not be used for
27 any other purpose;

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

29 (b) The commissioner may determine whether the provisions of (a) of this
30 section shall apply to correctional facilities that are not operated by the state and may
31 negotiate with a provider of services for the detention and confinement of persons held
32 under authority of state law under contract or agreement whether the living conditions

1 set out in (a) of this section shall apply to persons held under authority of state law at
2 a facility operated under contract or agreement.

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

6 (d) Subject to (e) of this section, on and after January 1, 1999, the commissioner
7 may allow a prisoner who, under AS 33.30.011(2), has been classified as other than
8 maximum custody to possess a television in the prisoner's cell only if the prisoner

9 (1) has attained a high school diploma or general education development
10 diploma or the equivalent;

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

13 (3) has satisfied all restitution orders entered by the court as part of the
14 prisoner's sentence and, if applicable, is actively engaged in a treatment plan or
15 counseling or rehabilitation program ordered by the court as part of the prisoner's
16 sentence; and

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

20 (e) The commissioner shall use appropriate technology to screen programs
21 received by prisoners under (d) of this section.

22 **Sec. 33.30.017. Fees for utilities services for prisoners.** (a) The commissioner
23 shall establish a reasonable utility fee for electrical utilities that are used by prisoners
24 who are confined in a state correctional facility. The fee may not exceed \$2 a month.

25 (b) The commissioner shall

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

31 (2) if available from legislative appropriation, expend money deducted
32 and collected under (1) of this subsection to offset the cost of the department's utility

1 expenses; the commissioner shall annually report on the amounts that are collected and
2 expended under this paragraph.

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

4 (1) who are

5 (A) developmentally disabled; or

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

7 AS 33.16;

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

10 (3) while placed in a state correctional facility awaiting classification
11 under classification procedures for the purpose of making the appropriate assignment of
12 the prisoner.

13 * **Sec. 5.** AS 33.30.028(b) is amended to read:

14 (b) The commissioner shall require

15 **(1) every prisoner committed to the custody of the commissioner to**
16 **pay a fee of \$2 for each visit initiated by the prisoner to the medical unit of the**
17 **state correctional facility when the prisoner's visit is an initial visit for a specific**
18 **complaint or condition; and**

19 **(2) a prisoner** [PRISONERS] who **is** [ARE] without resources under (a)
20 of this section to pay the costs of medical, psychological, and psychiatric care provided
21 to **the prisoner** [THEM] by the department; **at** [. AT] a minimum, the prisoner shall
22 be required to pay a portion of the costs **when payment is required by this paragraph**
23 based upon the prisoner's ability to pay.

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

25 (c) Medical services for a prisoner who is unconscious or in immediate need of
26 medical attention before admission to a correctional facility or commitment by a court
27 to the custody of the commissioner of corrections shall be provided by the law
28 enforcement agency having custody of the prisoner. The law enforcement agency may
29 require the prisoner to compensate the agency for the cost **or for a portion of the cost**
30 of medical services provided for **any** [A] preexisting medical condition [NOT ARISING
31 OUT OF THE PRISONER'S ARREST].

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

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

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

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

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

14 (A) the prisoner's sentence; or

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

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

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

20 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to preserve the
 21 security and orderly administration of the correctional facility and to protect the public,
 22 the commissioner **shall monitor or record the** [MAY AUTHORIZE THE USE OF
 23 MONITORING OR RECORDING EQUIPMENT TO LISTEN TO A] telephone
 24 **conversations** [CONVERSATION] of **prisoners.** **The commissioner shall post** a
 25 [PRISONER INCARCERATED FOLLOWING CONVICTION OF A CRIME, IF A]
 26 warning [IS POSTED] by **each** [THE] telephone informing **prisoners** [THE
 27 PRISONER] that **calls** [A CALL] may be monitored or recorded. **The monitoring or**
 28 **recording may be conducted on all calls or selectively or in some other limited**
 29 **manner as determined by the commissioner to be appropriate.** A recording of a
 30 telephone call made under this subsection shall be kept confidential, and access to the
 31 recording and its contents is limited to persons who are acting within the scope of their

1 official duties and whose access to specific recordings has been authorized by the
 2 facility superintendent. A telephone call between an attorney and a prisoner or
 3 between the office of the ombudsman and a prisoner may not be monitored or recorded
 4 except when authorized by a court. **A person may not bring a civil action for**
 5 **damages for the failure to monitor or record a telephone conversation or for the**
 6 **failure to take action based upon a telephone conversation that was monitored or**
 7 **recorded.**

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

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

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

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

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

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

21 (b) The commissioner of corrections may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **(6)** [(5)] to pay a restitution or fine of the prisoner ordered by a
29 sentencing court.

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

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