

HB

3

Let us keep them with us. I urge you to stand by your good will and your first vote.

METCALF: I asked for a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll on the proposed amendment.

(The Chief Clerk called the roll with the following result:

Yeas: 10 - Hinckel, Johnson, Laws, Londborg, Metcalf, Nerland, Reader, R. Rivers, V. Rivers, Robertson.

Nays: 40 - Armstrong, Awes, Barr, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hurley, Kilcher, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Nolan, Nordale, Peratrovich, Poulsen, Rosswog, Smith, Sundborg, Sweeney, VanderLeest, Walsh, Wien, Mr. President.

Absent: 5 - Boswell, Riley, Stewart, Taylor, White.)

VANDERLEEST: Mr. President, I voted "yes" and I meant "no".

PRESIDENT EGAN: Mr. VanderLeest wishes to change his vote from "yes" to "no".

CHIEF CLERK: 10 yeas, 40 nays and 5 absent.

PRESIDENT EGAN: And so the proposed amendment has failed of adoption. Mr. Buckalew.

BUCKALEW: Mr. President, I have an amendment.

PRESIDENT EGAN: The Chief Clerk will please read Mr. Buckalew's proposed amendment.

CHIEF CLERK: "Section 3, lines 10 and 11, strike all language down through word 'mind' and insert the following: 'No person who is non compos mentis'."

PRESIDENT EGAN: What is your pleasure, Mr. Buckalew? Non compos mentis --

BUCKALEW: Did you accuse me of being non compos mentis?

PRESIDENT EGAN: The Chair was just wondering if that was the amendment?

BUCKALEW: That is the amendment. I move the adoption of the proposed amendment.

BARR: I object.

MCNEALY: I second the motion.

BUCKALEW: I want to direct the body's attention to Section 3. You will see that it provides for a restoration of a civil disability in the case of a convicted felon, and it makes no provision for a person who has been judicially determined to be of unsound mind. Now as I understand this provision, that is an absolute constitutional disability, and there is no provision for a person who has been adjudicated an insane person to take away this civil disability and the effect of my amendment, the test is that a man has to be of sound mind at the time he votes. Another objection I have, I think that probably ten years from now we probably won't even be using the judicial procedure to determine whether a person is sane or insane, and I think probably in ten years it will be meaningless. The effect of my provision is to require that when a person votes he be of a sound mind. This provision here would prevent any person, 20 years ago, if a commissioner at Klawock found him insane they could never vote again, and there is no provision for a restoration of that civil disability.

PRESIDENT EGAN: Does that give them the right later, Mr. Buckalew?

BUCKALEW: "Non compos mentis" means a present state of mental illness.

MCLAUGHLIN: Mr. Chairman, I have another expression. "Montes murientur mus nascetur -- The mountains are in labor, and a mouse is born." Mr. President, the substitution of a Latin phrase which has no specific and definite meaning would be unwise. I think this phraseology is the one that is normally used, and if we didn't use the expression "judicially determine" you might be subject to the interpretation right at the polls, that they decide whether or not the elector were an idiot or no. So the judicial determination would cover all types of commitment and certainly it was never intended and it would never be interpreted by any court that the judicial determination, that if at any one time you were found of unsound mind by judicial determination, that the fact is you could not vote thereafter. The obvious intent here is that while you are under the disability of being insane and so judicially determined you not vote. I don't feel that the amendment would add anything. It would hopelessly confuse the article.

DAVIS: I was going to ask Mr. Buckalew, Mr. President, if instead of using a Latin phrase he would accept "no person of

unsound mind".

BUCKALEW: I did not realize that this Latin phrase was going to cause a furor. It is a common expression and it has a meaning in the courts. I would certainly accept Mr. Davis's amendment. I would ask then with the consent of my second that we strike the "non compos mentis" and insert "unsound mind".

PRESIDENT EGAN: Then it would read "no person" -- delete "judicially".

CHIEF CLERK: He does not have that in now.

DAVIS: I just suggested "no person of unsound mind" to try to say the same thing he was saying.

PRESIDENT EGAN: And leave out the "judicially determined", is that right?

BUCKALEW: It would have to be "no person of unsound mind".

PRESIDENT EGAN: Is there objection to Mr. Buckalew's changing his motion to read that way? Mr. Hellenthal.

HELLENTHAL: Mr. President, if a man is to be adjudged of unsound mind somebody must make the adjudication. Now even I, like Mr. Buckalew, believe that the present method of incarcerating and proceeding criminally against insane people or, better still, persons mentally disturbed, I think that method is inhuman just as violently as Mr. Buckalew does. However, under no system that has yet been advocated by the most violent critics of the present method would a judicial determination of mental capacity be done away with. It would be an appalling thing if a board or if a group or a psychiatrist could determine one to be of unsound mind. There must be a standard. We have faith in our courts. In all civilized countries the courts or a judicial body makes the determination of whether you are capable of distinguishing between right and wrong, whether you are capable of voting, whether you are capable of taking care of your children and your home. Mr. Buckalew's amendment would throw this right up in the air, and it was for this reason that after careful thought the Committee felt that the language should read "no person judicially determined to be of unsound mind". That does not mean we have to preserve our inhuman method now of treatment of the insane, or the inhuman method of proceeding against them in a criminal proceedings. It doesn't mean that, but it means that before you can be stripped of your civil rights because of mental aberrations some court somewhere must pass on it, and that is the way our government was founded and that is the way it ought to be, and that is the reason that the words "judicially determined" were inserted in the article.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, I think we all have seen how binding rules are and I think the constitution once adopted and is in effect is going to be binding. The courts are going to make their interpretation, and a person coming under there for a question will not have any chance. Now as I read it, a person that is judicially determined to be of unsound mind loses thereafter their vote right according to the way this reads.

HELLENTHAL: No, Mr. Londborg, it is qualified by the language, "unless restored to his civil rights".

BUCKALEW: It is not in there. Read it.

HELLENTHAL: "No person judicially determined to be of unsound mind, unless restored to his civil rights, shall be qualified to vote in any state or local election."

LONDBORG: I would like to have that clear, because it says here, in referring to the person of unsound mind, and you have the words "pardoned and restored". I don't know of a person in an insane institution being pardoned. It says they are to be "pardoned and restored", as if they have done something criminally violent. I think that could be cleaned up a bit as far as the language. I think I see your intent and go along with your intent. May I have the floor, Mr. President?

PRESIDENT EGAN: Mr. Londborg, you have the floor.

LONDBORG: I see the intent and go along with your intent, but I do believe it could be cleared up a little bit so there would be specifically in our constitution that a person that has been in an insane institution, has been released, is of sound mind, can go to the polls. According to this it sounds that a person judicially determined to be of unsound mind loses his vote right unless they are "pardoned and restored", and I don't think pardoning has anything to do with it. There is something that needs to be straightened out.

PRESIDENT EGAN: Would you be acceptable to a two-or three-minute recess so you attorneys can get together on this?

HELLENTHAL: I think there is no question but that if we substitute the word "or" for "and" and I know I have the unanimous approval of the Committee for that, that the objection will be obviated.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I would like to point out that actually that would not remove a very valid objection raised by Mr. Londborg because even if it says, "unless restored to his civil rights",

nowhere does it say, even if that person is judicially determined to be of unsound mind, he is deprived of his civil rights. He is deprived of his voting rights but not of civil rights.

BARR: This does not say that "no person who has been or who has ever been judicially determined." It says "no person judicially determined to be of unsound mind", meaning at the present or at the time of the election. Therefore, if he has been discharged from an asylum, after of course going before a board of psychiatrists, which they always do, then he is of sound mind because they say so. It is a matter of record that he is sane. In fact, he has a great advantage over us. It is not a matter of record that any of us are sane. Therefore, he is judicially determined to be of unsound mind when he goes into the asylum, not at any other time.

PRESIDENT EGAN: If there is no objection the Chair will declare a two-or three-minute recess so the attorneys and others can get together and talk this over. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Sundborg.

SUNDBORG: Mr. President, during the recess I was informed by Mr. Buckalew that he would permit me to ask unanimous consent that his pending amendment be withdrawn and that the following amendment be submitted in its place.

BUCKALEW: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked by Mr. Sundborg that Mr. Buckalew's amendment be withdrawn. Is there objection? If there is no objection Mr. Buckalew's original amendment is ordered withdrawn. Mr. Sundborg.

SUNDBORG: I now move and ask unanimous consent for the adoption of the following amendment: "Section 3, strike all of lines 10, 11, 12, and 13 and insert in lieu thereof the following" 'Section 3. No person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, and no person judicially determined to be of unsound mind, until the disability is removed, shall be'."

DAVIS: Will you read the last line of that again?

SUNDBORG: Here is the insert: "Section 3. No person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, and no person judicially determined to be of unsound mind, until the disability is removed, shall be", and then it would pick up "qualified to vote in any state

or local election."

PRESIDENT EGAN: Mr. Sundborg moves --

V. RIVERS: You have "judicially determined" in that have you, Mr. Sundborg? I was fearful of that because in the future if somebody looked over some of the proceedings of this Convention that we might disenfranchise ourselves.

SUNDBORG: Yes, they are in there.

HERMANN: I wish to offer an amendment to the amendment. I had it as a major amendment that I meant to offer.

PRESIDENT EGAN: Mrs. Hermann, would you wait please until the Chief Clerk reads the proposed amendment once more.

CHIEF CLERK: "Section 3. Strike lines 10, 11, 12, and 13 and insert in lieu thereof the following: 'Section 3. No person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, and no person judicially determined to be of unsound mind, until the disability is removed, shall be'."

HERMANN: My amendment would be to strike after the word "felony", strike the three words "involving moral turpitude". I ask unanimous consent.

PRESIDENT EGAN: Mrs. Hermann moves an amendment to the amendment striking the words "involving moral turpitude". Mrs. Hermann asks unanimous consent.

SUNDBORG: I object.

HERMANN: I so move.

KILCHER: I second the motion.

SUNDBORG: I would like to ask Mrs. Hermann what the effect of her amendment would be and how it would change this in substance.

HERMANN: I don't think there is such a thing as a felony that does not involve moral turpitude, so I don't see the necessity of the three words. I say conviction of a felony is inclusive enough to cover the whole situation.

BUCKALEW: That is what a felony means so it is superfluous.

HELLENTHAL: The reason that the qualifying language was used was that not all felonies involve moral turpitude, not all. There are some felonies that do not and the term "moral turpitude" is a generally accepted word. Now we adopted this

language on the advice of the adviser who agreed with that contention and who felt that we should not require all persons convicted of any felony to have to go before the pardon board. Now that was the reason for the language. Other language that was rejected was "a felony of serious nature". Another suggestion was "convicted of an infamous crime". There was one group in the Committee who felt that any person who served his time should automatically be restored to his civil rights. The majority definitely felt, and later the unanimous opinion of the Committee was that construction would not be sound. But they felt that not all convicted felons should have to go before the pardon board but only those of the more serious felonies. Now, Alaska has a fairly good criminal code, but throughout the United States there are many many offenses which in Alaska are misdemeanors, are considered felonies, and vice versa, and that is why the moral connotation was added and only that.

PRESIDENT EGAN: Is there further discussion of the amendment to the amendment? Mr. Buckalew.

BUCKALEW: I would just like to ask Mr. Helleenthal a question through the Chair. Did this expert tell you what felonies did not involve moral turpitude?

HELLENTHAL: Yes, assault in some cases does not involve moral turpitude. It comes under the decisions of courts.

BUCKALEW: Assault is not a felony.

HELLENTHAL: Many assaults are felonies.

DAVIS: Mr. President, I might suggest that involuntary manslaughter is a case in point of a felony not involving moral turpitude.

PRESIDENT EGAN: Is there further discussion of the proposed amendment to the amendment as offered by Mrs. Hermann? Mr. Gray.

GRAY: Mr. Chairman, if there is a question of whether a felony involves moral turpitude or not, we should leave the phrase in. It seems to be the one point -- whether it does or does not. If we leave the three words in there it conclusively clears up any misunderstanding on that particular subject.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: On the other hand, I suggest we strike it because even if a felon has committed a crime involving the technicality of moral turpitude, I don't see why that should impair his voting capacity. As to a felon that has committed a crime equally serious but technically not involving moral turpitude,

take assault -- assault with a dangerous weapon -- I don't know whether that would be moral turpitude. Assuming it is, I don't see how a man can vote. I don't see that a man might be not smart, but not a coward.

PRESIDENT EGAN: Is there further discussion? The question is, "Shall Mrs. Hermann's proposed amendment to the amendment be adopted by the Convention?" All those in favor of the proposed amendment as offered by Mrs. Hermann will signify by saying "aye", all opposed "no". The "noes" have it and the amendment has failed. Mr. Kilcher.

KILCHER: Mr. President, I offer another amendment to this amendment, to strike "until the disability is removed". I don't think it makes any sense because it says "judicially determined to be" -- not "to have been". If the man is determined to be of unsound mind then the disability is not removed. At the time of voting the man has to be determined to be judicially of unsound mind.

PRESIDENT EGAN: Do you so move the adoption of such an amendment?

KILCHER: I move the adoption of the amendment to strike "until such disability is removed". There is no need for too much wordage in the constitution.

PRESIDENT EGAN: Is there a second to Mr. Kilcher's motion?

ROBERTSON: Can we have the motion read as it would read?

PRESIDENT EGAN: Mr. Kilcher has offered a motion; it has not been seconded yet.

LEE: I second the motion.

PRESIDENT EGAN: The motion is to strike the words in the proposed amendment. Would the Chief Clerk read those words please.

CHIEF CLERK: "Until the disability is removed".

PRESIDENT EGAN: How would that leave the proposed amendment reading then?

CHIEF CLERK: "No person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, and no person judicially determined to be of unsound mind shall be".

PRESIDENT EGAN: That is the way it would be if Mr. Kilcher's motion was adopted. Mr. Ralph Rivers.

R. RIVERS: Mr. President, I was in on some of the huddles

during the recess. It originally read "no person judicially determined to be of unsound mind". Now then Mr. Kilcher's amendment would put us exactly back where we started from. Mr. Buckalew wanted it made absolutely clear that after the disability was removed the person could then vote. So I think the only way to go along with Mr. Buckalew's amendment and to be positive on that point is to turn down Mr. Kilcher's amendment.

KILCHER: I hate to waste any more time about a few words, but the general tenor seems to have been that we are going to make this instrument as simple as possible. If we say in there, "any person determined to be of unsound mind cannot vote", he must be of sound mind to be permitted to vote, and if he has been of unsound mind that means he has been judicially declared to not to be any more whatsoever. Naturally the person that goes to the polls is as normal as any of us, presumably. As Mr. Barr says he may be more. He only may not vote if determined to be of unsound mind. The rest is unnecessary.

PRESIDENT EGAN: Is there further discussion of the proposed amendment to the amendment as offered by Mr. Kilcher? If not, the question is, "Shall Mr. Kilcher's proposed amendment to the amendment be adopted by the Convention?" All those in favor of the adoption of the proposed amendment to the amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment to the amendment has failed. Now we have the proposed amendment to Section 3 as offered by Mr. Sundborg. The Chief Clerk will please read that proposed amendment again.

CHIEF CLERK: "Section 3. Strike lines 10, 11, 12, and 13 and insert in lieu thereof the following: 'Section 3. No person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, and no person judicially determined to be of unsound mind, until the disability is removed, shall be'."

HINCKEL: Mr. President, point of information. It occurs to me that the pronoun "his" is superfluous. I will leave it to Style and Drafting and I withdraw my objection.

PRESIDENT EGAN: The question is, "Shall the proposed amendment to Section 3 as offered by Mr. Sundborg be adopted by the Convention?" All there in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments? Mr. Metcalf.

METCALF: I have one.

PRESIDENT EGAN: We have an amendment first by Mr. Metcalf.

up the authorities he had ascertained that unless the constitution did provide for absentee voting it is very questionable whether it can be legally done.

HELLENTHAL: That is correct, and Mr. Sundborg correctly stated the main reason for these insertions in Section 2.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Barr's proposed amendment be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". So the "noes" have it and the amendment has failed of adoption. Are there other amendments to Committee Proposal No. 1?

LONDBORG: Mr. President, I have one.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment by Mr. Londborg.

CHIEF CLERK: "Page 2, Section 3, strike 'judicially determined to be of unsound mind' and insert after 'person', 'found, in manner provided by law, to be of unsound mind.'"

LONDBORG: I move the adoption.

PRESIDENT EGAN: Is there a second?

BUCKALEW: I second the motion.

PRESIDENT EGAN: Is there discussion? Will the Chief Clerk please read the proposed amendment again.

CHIEF CLERK: "Page 2, Section 3, strike 'judicially determined to be of unsound mind' and insert after 'person', 'found, in manner provided by law, to be of unsound mind.'"

LONDBORG: I don't know if any discussion is needed. The reason for the amendment is to make it possible in case the legislature should want to set up some other method of determining insanity, such as a board or anything of that nature, they would be at liberty to do so and would take away the mandate that it should be judicially determined, which of course, the legislature can provide that method if they choose.

PRESIDENT EGAN: Is there further discussion? Mr. Gray.

GRAY: Mr. Chairman, I wonder if that is covered by the Bill of Rights? Do we not have something that no one shall be deprived of life, liberty without due process of law? Regardless of how a person is judged unsound it must be by due process of law, and I believe myself "judicially determined"

HOUSE JUDICIARY COMMITTEE MEETING MINUTES
February 1, 1979

CHAIRMAN PARR called the meeting to order with all members present at 3:10 p.m.

The SUBJECT was House Bill 3, a bill providing for the restoration of the right to vote for persons convicted of felonies once they have served their period of incarceration and any periods of probation and parole.

REPRESENTATIVE MIKE MILLER, prime sponsor of the bill testified to the fact that the statutes state that a person convicted of a felony can have his voting rights restored after serving his time and having his civil rights restored. There is no provision for restoring civil rights under present state law.

BARRY STERN appeared on behalf of the Department of Law. He suggested considering a 7 year between felony conviction criteria as it reads in the Criminal Code.

REPRESENTATIVE MALONE moves that staff research the questions with this legislation and obtain an opinion from the research attorneys.

CHAIR ADJOURNS, 4:25 p.m.

Judiciary Committee Meeting Minutes
Thursday, February 15, 1979

At 3:07 Chairman CHARLIE PARR called the meeting to order with all members present but Representative Brown.

The Subject of the meeting was HOUSE BILL 3, dealing with the restoration of the right to vote. PEGGY BERCK, staff counsel, explained that her research had led to the preparation of two alternative CS Drafts, one dealing only with the restoration of voting rights and the other with the restoration of civil rights and voting rights. She had requested an opinion from Dick Bradley and briefly reviewed that opinion with the Committee.

Representative HUGH MALONE moved that the committee adopt Alternative #2, dealing with the restoration of voting rights. There being NO OBJECTION the motion passed.

BARRY STERN of the Department of Law had the following testimony to offer on Alternative #2:
He suggested that on line 15, after "resored" all language be deleted and the words UPON THE PERSONS UNCONDITIONAL DISCHARGE be added, and that a definition provision for "unconditional discharge" be included. This is in keeping with the new Criminal Code also.

HUGH MALONE makes the motion and it PASSES unanimously.

MALONE moves that on lines 17 & 18 "released from imprisonment, parole, or probation" be replaced with UNCONDITIONALLY DISCHARGED and there being NO OBJECTION, the motion PASSES.

Representative RANDY PHILLIPS moves the committee report out CSHB 3 with the above amendments, and there being NO OBJECTION, the motion PASSED and the meeting ADJOURNED 4:10 p.m.

brooke kocsis

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 7, 1979

SUBJECT: HB 3 and Art.V, Sec.2 of the Constitution

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee

FROM: Richard A. Bradley, Legislative Counsel *B*

HB 3 was requested by its sponsor as the legislative solution to the problem created by Art.V, Sec.2 of the Constitution. The latter provision provides, in part:

No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. * * *

While "civil rights" may be "restored" by an executive pardon, Alaska law at this time appears to provide no other mechanism for the restoration of civil rights and, of course, the executive pardon authority is infrequently exercised.

During the Judiciary Committee's review of HB 3, the question arose whether HB 3 needed to restore "civil rights" broadly as opposed to its restoration only of the right to vote, that is, does the Constitution require that "civil rights" as opposed to the "right to vote" be restored.

I have reviewed the proceedings of the Constitutional Convention and I do not find it particularly useful. The Index of the Minutes to the Proceedings of the Alaska Constitutional Convention suggests that Art.V, Sec.2 was discussed at pp. 885-893 and 904-905. Copies of those pages are included for your information.

Representative Charles H. Parr
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The debates focussed entirely on the restoration of the right to vote subsequent to a judicial determination of unsound mind. The evolution of the language reflects indirectly a parallel attention to the procedures to be followed, to restore voting rights following a conviction for a felony involving moral turpitude -- but the debates themselves do not reflect this development.

Thus, a "pardon" would have been required as part of the procedure on the restoration of a convict's right to vote [p.888] and it disappears subsequently, without debate indicating a reason for its deletion [the deletion makes sense to the extent that a more mechanical procedure is desired; a "pardon" will involve executive discretion and, therefore, operate less evenly].

And to a certain extent, the analogy between the deprivation of the right to vote following a conviction or following a determination of unsound mind do not seem analogous.

A determination of unsound mind casts doubt on the objective wisdom and discretion of a citizen generally. As such, the right to vote is but one of the rights of adulthood on which the subject may not be trusted and which are therefore withdrawn.

A conviction, however, does not create quite the same conclusion. An individual convicted has the burden of the conviction but the right to vote is withdrawn as a matter of constitutional policy, not because the conviction casts doubt on the objective wisdom and discretion of the convict generally. A convict is not incompetent; rather, the policy of the law withdraws certain citizen-privileges as part of the sanctions imposed for the conviction.

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February 7, 1979

The Supreme Court in Bush v. Reid, 516 P.2d 1215 (1973) held that to the extent that AS 11.05.070 and AS 33.15.190 deny a parolee the right to sue, they are unconstitutional under due process concepts; the court withheld judgement on the right of a prisoner to sue. 516 P.2d at 1221, n.37. It is significant that Bush ignores Art.V, §2; the section is nowhere mentioned in the opinion. Thus, there is no suggestion in the opinion that individuals convicted of a felony involving moral turpitude [Bush's crime is not stated in the opinion] have lost their civil rights, including the right to sue, because those rights have not been restored. The opinion rather concludes that there is no compelling state interest in depriving parolees of access to the courts, and thus AS 11.05.070 and AS 33.15.190 are unconstitutional to the extent that they deny such access, even if the parolee's rights under Art.V, §2 have-or have not - been restored.

It would be entirely consistent with Bush for the legislature to restore "civil rights" generally on the release from prison. In view of Bush, it is unclear what rights remain to be restored.

I cannot conclude, however, that the use of the phrase "civil rights" in Art.V, §2 requires that the legislature deal with the issue broadly. In my view, §2 states that conviction suspends only the right to vote; if other rights are suspended, the result occurs in no way because of §2 and there is no mandate on the Constitution for that result.

Art.V moreover does not deal with civil rights but rather with Suffrage and Elections; there is no basis for concluding that having lost the right to vote, on conviction, a felon may not get it back unless all rights [or "civil rights"] are restored.

Representative Charles H. Parr
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February 7, 1979

One other point may be noted in passing. I have advised Representative Miller that my failure to use the phrase "Convicted of a felony involving moral turpitude" on line 11 of the bill was a drafting oversight. The constitutional debates, at page 890-892 make clear the knowledge of the convention that not all felonies involve moral turpitude and that the provision suspends the right to vote of only those that do involve moral turpitude. Since misdemeanors and felons convicted of crimes not involving moral turpitude may apparently vote, even while in prison, the thrust of HB 3 is too broad and I suggest that the phrase "involving moral turpitude" be added on line 11.

RAB:nem

Enclosures

cc: Representative Mike Miller



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Effects that Convictions Have on a Person's Civil Rights

Pursuant to Alaska law (AS 11.05.070), the civil rights of a person who is imprisoned in the penitentiary for a term of less than for life are suspended. This suspension of civil rights continues while the person is on parole (See AS 33.15.190).

Furthermore pursuant to Alaska law (AS 11.05.080) a person sentenced to imprisonment in the penitentiary for life is thereafter deemed civilly dead.

Since current Alaska law does not specifically define what is meant by "civil rights" this matter must be resolved by the courts on a case by case basis.

For example, in Bush v. Reid, the Alaska Supreme Court held that "civil rights" included the right to sue. Ultimately the Bush court concluded that because AS 11.05.070 and AS 33.15.190 combine to deny a parolee his right to sue those statutes are unconstitutional to that extent.

Although the Alaskan Supreme Court has not further defined "civil rights" other than that provided in Bush other jurisdictions have found civil rights to be any of the following rights:

- jury service
- disqualification from being a witness
- take, hold or dispose property

right of inheritance
make contracts
hold public office
perform any legal function
hold any office of honor, trust, or profit

CONCLUSION

Current Alaska law on this point raises serious due process and equal protection problems. For this reason, the committee may wish to consider modification of the present statutory scheme.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3850

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 30, 1979

SUBJECT: House Bill No.3

TO: Representative Mike Miller

FROM: Richard A. Bradley, Legislative Counsel

B

Under our Work Order No. 5709 we gave you a bill "relating to the restoration of the right to vote." In that bill we used the phrase "a person who has been convicted of a felony by the state courts of Alaska....."

The constitution at Article 5, Section 2, uses the phrase "No person may vote who has been convicted of a felony involving moral turpitude..."

I have reconsidered the bill that I gave you and I believe that the language in the bill should more properly track the constitutional provision. I suggest that the language in HB 3 at line 11 read instead:

"A person who has been convicted of a felony involving moral turpitude by the state court of Alaska..."

The reason for this analysis is that the constitutional provision itself only suspends the rights of a person who has been convicted of a felony involving moral turpitude. While most felonies do involve moral turpitude, there are a small number of felonies that do not, and it seems that the broader phrase that I had used in HB 3 had the result of suspending rights beyond those required by the constitution.

I have advised Peggy Berck of the House Judiciary Committee of my conclusions on this question; her inquiry on the reasons for the style of the bill had caused me to rethink the problem I have pointed out to you now. I can prepare a Judiciary Committee substitute or a floor amendment for you, [or the committee] as you wish.

RAB:nem

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 15, 1979

SUBJECT: Committee Substitutes for HB 3

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee

FROM: Richard A. Bradley, Legislative Counsel 

Peggy Berck has requested two alternate committee substitutes for your committee's review. They are enclosed; I believe them to be responsive to your request.

Some comments on the contents of the two bills:

1. Definition of "felony involving moral turpitude."
I did a computer run on the phrase moral turpitude. It occurs some 40 or more times in Alaska Statutes. Somewhat significantly, the only time the Legislature sought to define the term is in present AS 15.05.030. The closest I came to a definition in the encyclopedias that I view as useful and accurate was found at 22 C.J.S., Criminal Law, §8; there the suggestion was offered that the concept of crimes mala in se [immoral as wrong in itself as opposed to merely prohibited in law] was substantially identical to the concept of crimes involving moral turpitude.

A modification of that concept is found in the bills that are enclosed. See AS 15.05.035(d) in each bill. I found it useful to give some examples of the crimes found to involve moral turpitude. The list is obviously partial and expressed in common law concepts. If the committee is dissatisfied with that approach, the only significant improvement that I can offer would be an encyclopedic recital of the actual crimes viewed by the Legislature as constituting felonies involving moral turpitude.

If the committee does not find the definition offered adequate, then I will undertake a comprehensive listing.

2. The problem of out-of-state imprisonment. As I see this question, it has two aspects:

(a) Persons convicted of a crime in the state courts of Alaska. Whether they are imprisoned in Alaska or elsewhere, they remain during their entire imprisonment in the "custody of the commissioner of Health and Social Services." AS 33.30.090. As such, a direction to the commissioner as under draft secs. AS 11.05.075(c) and AS 15.05.035(c) seems a complete answer to the concern.

(b) Persons convicted in a court other than an Alaska state court. If the individual was not an Alaska resident before his conviction or if he had been but was convicted by a court other than an Alaska court, I see no mechanism for advising him that his rights have been restored. Obviously, of course, the election offices will have the correct information and on attempts to register or obtain information, they will provide it. That seems an adequate mechanism and, as it is implicit in the election code, no specific provision is suggested in the bills.

3. I believe that the phrase "position of private trust" has well established meanings. Black's Law Dictionary states that a trust it describes is:

"One established or created for the benefit of a certain designated individual or individuals, or a known person or class of persons, clearly identified or capable of identification by the terms of the instrument creating the trust, as distinguished from trusts for public institutions or charitable trusts."

As such it describes the role of trustee for a private trust [but not, I think, the role of the trustee or beneficiary].

Representative Charles H. Parr
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4. Problems arising out of convictions not including imprisonment. The law should not seek to address all the possible variations that a court may possibly fashion in establishing sentences for crimes covered in the bills. Rather, it seems that the concepts of "imprisonment, parole, and probation" are well understood. If on a conviction, one of these becomes the penalty for the crime, then the rights would be suspended during the pendency of that aspect of the sentence. If a conviction resulted with neither "imprisonment, parole, [nor] probation" then the rights are immediately restored.

RAB:nem

Enclosure

*Members files
HB3*

Tanana Valley Bar Association
Legislative Committee
C/O 604 Barnette Street, Rm. 329
Fairbanks, Alaska 99701
January 30, 1979

Dear Charlie,

The Legislative Committee of the Tanana Valley Bar Association desires to convey its position on the following bill pending before the Eleventh Legislature General Session.

HB 3 by Miller

"An Act relating to the restoration
of the right to vote."

Recommend:

Do Pass.

Reason: This bill will clear up an area of law which is difficult
for the typical layman to understand.

Cordially,


Hugh H. Connelly, Chairman
Tanana Valley Bar Association
Legislative Committee

Sec. 24.05.020. Composition. The legislature is composed of two houses: a senate consisting of 20 members and a house of representatives consisting of 40 members. (§ 2 ch 157 SLA 1959)

Sec. 24.05.030. Qualifications of members. A member of the legislature shall be a qualified voter who has been a resident of the state for at least three years and of the district from which elected for at least one year immediately preceding his filing for office. A senator shall be at least 25 years of age and a representative at least 21 years of age at the time he takes his oath of office. (§ 3 ch 157 SLA 1959)

Am. Jur. references. — 42 Am. Jur., Public Officers, § 38; 49 Am. Jur., States, Territories and Dependencies, § 34.

Sec. 24.05.040. Dual office. No member of the legislature may hold any other office or position of profit under the United States or the state. During the term for which elected and for one year thereafter, no legislator may be nominated, elected or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased while he was a member. This section does not prevent any person from seeking or holding the office of governor, lieutenant governor, or member of Congress. This section does not apply to employment by or election to a constitutional convention. A member may serve on or at the behest of an interim committee of the legislature. (§ 4 ch 157 SLA 1959; am § 1 ch 85 SLA 1965; am § 56 ch 69 SLA 1970)

Revisor's note (1971). — In this section "secretary of state" has been changed to "lieutenant governor" in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

Legislative committee report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Purpose of section. — The purpose of a prohibition such as contained in this section is to eliminate any hope in the mind of the legislator that an office created while he is a member of the legislature may be filled by himself, and to insure to the people independent judgment of their

representatives. *Kederick v. Heintzleman*, 15 Alaska 582, 132 F. Supp. 582 (D. Alas. 1955).

It is necessary to good government that legislators exercise their judgment free from selfish motives and, to this end, prohibitions such as contained in this section have been placed in constitutions and on statute books. *Kederick v. Heintzleman*, 15 Alaska 582, 132 F. Supp. 582 (D. Alas. 1955).

Former amendment unconstitutional. — The 1965 amendment to this section was inconsistent with Alaska Const., art. II, § 5, and thus unconstitutional. *Begich v. Jefferson*, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Sec. 24.05.050. Membership on boards and commissions. A member of the legislature may serve on a board or commission of the state government only if the membership of legislators on the board or commission is specifically authorized by law. (§ 1 ch 32 SLA 1951; am § 1 ch 126 SLA 1966)

Sec. 24.05.060. Membership under the public officers act. It may be in entering upon prescribed oath or affidavit of other office

Am. Jur. references. — Public Officers, Territories and Dependencies, § 34.

Sec. 24.05.060. Elected from established house is the may expelled (§ 6 ch 157 SLA 1959)

Cross references. — 15.40.320 —

Sec. 24.05.060. begins on year; how member represent One-half of SLA 1959 143 SLA

Effect of amendment. substituted Monday," added the however, for year" to the

Sec. 24.05.060. resignatio was elect the execu administr in the res whicheve (§ 2 ch 157 SLA 1959)

Sec. 11.05.070. Effect of judgment of imprisonment in penitentiary.

This section and AS 33.15.190 deny parolees right to initiate civil suit. — In light of the absence of indications of legislative intent to distinguish the use of "the civil rights" in this section from "all civil rights," and the strong common law authority holding that convicts are denied civil access to the courts, the supreme court held that this section and AS 33.15.190 combine to deny parolees the right to initiate civil suit. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

This section and AS 33.15.190 when read together clearly indicate that a parolee's civil rights, similar to those of a prisoner, remain suspended during the time he is in the custody of the parole board. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

AS 33.15.190 expressly states that a parolee is subject to the disabilities imposed by this section. *State v. McCracken*, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

This section and AS 33.15.190 combine to deny a parolee the right to initiate civil suit; but such denial of access to the civil courts is a violation of due process and equal

protection provisions of the Alaska and United States constitutions. *State v. McCracken*, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

Punishment under section not unconstitutional. — The supreme court did not find the punishment provided under this section to be so severe as to constitute "cruel and unusual punishment" nor the statute void for vagueness. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

But AS 33.15.190 held unconstitutional. — See *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

The administration of a parole system differs so substantially from the administration of a prison that the reasons for denying convicts while imprisoned access to civil courts cannot logically support the "civil death" of parolees. *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973).

As to statute of limitations problems affected by holding in *Bush v. Reid*, Sup. Ct. Op. No. 973 (File No. 1841), 516 P.2d 1215 (1973), see *State v. McCracken*, Sup. Ct. Op. No. 978 (File No. 1781), 520 P.2d 787 (1973).

Sec. 11.05.130. Forfeiture of property upon conviction and lien for fine and costs.

Applied in *One Cocktail Glass v. State*, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Sec. 11.05.140. Duty of court to determine and impose punishment.

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment on the matter, more than 60 days after it has imposed sentence. *Davenport v. State*, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975); *Szeratics v. State*, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

Test to be used in determining whether multiple offenses can be punished separately. — See *State v. Occhipinti*, Sup.

Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Separate sentences were called for where defendant's conduct in kidnapping and ransoming his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. *State v. Occhipinti*, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Cited in *Rust v. State*, Sup. Ct. Op. No. 1668 (File No. 3172), 532 P.2d 134 (1978).

or is concurrent with that of the superior court. Consecutive sentencing by the district court is permissible. *State v. Pete*, Sup. Ct. Op. No. 372 (File No. 673), 420 P.2d 338 (1966).

But sentences should be limited to one term of imprisonment where two offenses are part of one transaction. —Where two offenses were really

part of one general transaction involving the unlawful sale of liquor, the judgment of conviction should be modified so as to limit defendant's sentences to one term of imprisonment. *State v. Pete*, Sup. Ct. Op. No. 372 (File No. 673), 420 P.2d 338 (1966).

Sec. 11.05.060. Judgment of imprisonment. A judgment of imprisonment in the penitentiary need only specify the duration and place of confinement. The manner of the confinement and the treatment and employment of the person sentenced shall be regulated and governed by the law in force prescribing the discipline of the penitentiary in which he is confined and the treatment and employment of persons sentenced to confinement in it. (§ 65-2-8 ACLA 1949; am § 3 ch 43 SLA 1964; am § 1 ch 68 SLA 1965)

Effect of amendments.—The 1965 amendment rewrote this section to appear as it did prior to the 1964 amendment.

Discretion of court as to judgment. —See 1964 Op. Att'y Gen., No. 8. Am. Jur. reference. — 15 Am. Jur., Criminal Law, § 520.

Sec. 11.05.070. Effect of judgment of imprisonment in penitentiary. A judgment of imprisonment in the penitentiary for a term less than for life suspends the civil rights of the person sentenced, and forfeits all public offices and all private trusts, authority, or power during the term or duration of imprisonment. (§ 65-2-9 ACLA 1949)

Cross reference.—As to voter disqualification for felony conviction, see AS 15.05.030.

Suspension of civil rights does not suspend the running of a statute of limitation. *Grasser v. Jones*, 201 P. 1069 (Ore. 1921), construing the Oregon statute.

No removal suit is necessary to terminate official's term under this section. *Fehl v. Jackson County*, 161 P.2d 782 (Ore. 1945), construing the Oregon statute.

Effect of section on citizenship requirement for location of mineral lands. — See *Vedin v. McConnell*, 22 F.2d 753 (9th Cir. 1927).

Quoted in *United States v. Powers*, 1 Alas. 180 (1901).

Cited in *Williams v. Coughlan*, 17 Alas. 147, 244 F.2d 6 (9th Cir. 1957).

Am. Jur. reference. — 41 Am. Jur., Prisons and Prisoners, § 38 et seq.

Sec. 11.05.080. Effect of sentence to life imprisonment. A person sentenced to imprisonment in the penitentiary for life is thereafter considered civilly dead. (§ 65-2-10 ACLA 1949)

Cross reference.—As to voter disqualification for felony conviction, see AS 15.05.030.

Am. Jur. reference. — 16 Am. Jur., Death, § 2 et seq.

Sec. 11.05.090. Crime against convict in penitentiary. A convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person not authorized by law is punishable as if he was not convicted or sentenced. (§ 65-2-11 ACLA 1949)

(4) A person does not lose his residence if he leaves his home and goes to another country, state or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in any place to which he comes without the present intention to establish his permanent dwelling at that place.

(6) A person loses his residence in this state if he votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until he again qualifies under § 10 of this chapter.

(7) Repealed by § 38 ch 116 SLA 1972.

(8) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(9) Repealed by § 38 ch 116 SLA 1972.

(10) The address of a voter as it appears on his official voter registration card is presumptive evidence of the person's voting residence. If the person has changed his voting residence, this presumption is negated only by the voter executing an affidavit on a form prepared by the lieutenant governor setting out his new voting residence. (§ 1.02 ch 83 SLA 1960; am § 2 ch 125 SLA 1962; am §§ 2, 3 ch 136 SLA 1966; am § 1 ch 228 SLA 1968; am §§ 4, 38 ch 116 SLA 1972; am §§ 4, 5 ch 197 SLA 1975)

Cross reference. — For discussion of unconstitutionality of basing reapportionment on civilian population within each election district as reported by the census, see note to Alaska Const., art VI, § 3.

Effect of amendments. — The 1972 amendment added paragraph (10) and repealed paragraphs (7) and (9).

The 1975 amendment added the second and third sentences of paragraph (2) and substituted the language beginning "residence in any place" for "a residence in a place to which he comes for temporary purposes only" at the end of paragraph (5).

Paragraph (10) does not apply to municipal elections. *Miller v. North Pole City Council*, Sup. Ct. Op. No. 1129 (File No. 2170), 532 P.2d 1013 (1975).

Military personnel as a class cannot be deprived of the right to vote, and they cannot be arbitrarily eliminated in a population base used to design an apportionment scheme. *Egan v. Hammond*, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

Therefore, civilian-military distinction in Alaska Const., art VI, § 3 is unconstitutional. — See *Egan v. Hammond*, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

But some military may be excluded. — While the clause of Alaska Const., art VI, § 3 seeking to exclude military as a class is unconstitutional, that is not to say that some military cannot be excluded as a permissible device for limiting the impact of transients and nonresidents on legislative districting. *Egan v. Hammond*, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

Exclusive use of census requirement for determining civilian population is void. — The provision in Alaska Const., art VI, § 3, requiring exclusive use of the census in determining civilian population for reapportionment would not have been enacted independently of the void reference to "civilian population," and therefore also falls. *Egan v. Hammond*, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

Sec. 15.05.030. Voter disqualification for felony conviction. No person may vote who has been convicted either by the state courts of

Voting rights

Alaska, by the courts of another state or by the federal courts of a felony under Alaska law involving moral turpitude under Alaska law unless his civil rights have been restored by law or by the proper authority in the jurisdiction in which the person was convicted. Felonies involving moral turpitude include, but are not limited to, the crimes of murder, abortion, rape, robbery, kidnapping, burglary, incest, and other crimes which are punishable by imprisonment in the penitentiary under Alaska law and which involve conduct contrary to justice, honesty, modesty, or good morals. (§ 1.03 ch 83 SLA 1960)

Cross references. — As to effect of judgment of imprisonment in penitentiary, see AS 11.05.070. As to effect of sentence to life imprisonment, see AS 11.05.080. ALR and C.J.S. references. — What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime, 36 ALR2d 1238. 29 C.J.S. Elections § 130 et seq.

Sec. 15.05.040. Voter disqualification for unsound mind. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed. (§ 1.04 ch 83 SLA 1960)

ALR and C.J.S. references. — What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime, 36 ALR2d 1238. 29 C.J.S. Elections § 130 et seq.

Chapter 07. Registration of Voters.

Section	Section
10. Registration of voters	110. Expense of registration
20. Registration as a prerequisite	120. Custody of registers
30. Who may register	130. Elimination of excess names
40. Time for registration	140. General administrative supervision by lieutenant governor
50. Registration in person or by mail	150. Appeal to superior court for denial of registration
60. Required registration information	160. Unlawful action
65. Exchange of voter registration information	170. False statements
70. Procedure for registration	180. Fees prohibited
80. [Repealed]	190. Violations
81. Registration officials	200. Registration supervision
90. Re-registration	
100. Registration officials	

Sec. 15.07.010. Registration of voters. The precinct election judges at any election shall allow a person to vote whose name is registered and who is qualified under AS 15.05.010 in the precinct in which he intends to vote. (§ 2 ch 211 SLA 1968; am § 5 ch 116 SLA 1972)

Effect of amendment. — The 1972 amendment substituted "any" for "an" and inserted "and who is qualified under AS 15.05.010." Cited in Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

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Introduced: 1/24/79
Referred: Judiciary

1 IN THE HOUSE

BY MILLER

2 HOUSE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the restoration of the right to
7 vote."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 15.05 is amended by adding a new section to read:

10 Sec. 15.05.035. VOTER DISQUALIFICATION DURING IMPRISONMENT. A
11 person who has been convicted of a felony by the state courts of Alaska,
12 by the courts of another state, or by federal courts may not vote in
13 state or municipal elections during the period of imprisonment imposed
14 by the court. The rights withdrawn by this section are restored upon
15 completion of any ~~term~~ ^{involving moral turpitude} of imprisonment and ~~completion~~

16 * Sec. 2. AS 15.05.030 is repealed.

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any period of
probation or parole.

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24 civil rights
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