HCR

28

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCR 28

Revision Date:
Title: Get Cleary orders dissolved or changed
Sponsor: Rep. Barnes, Phillips, Williams, Toohey...
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

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Date: 02/03/94

Approved by: Arthur H. Snowden, II, Administrative Director by
Agency: Alaska Court System
Date: 02/03/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Rev 8/93

Alaska State Legislature

Speaker of the House of Representatives

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Official Business

POSITION PAPER

HCR 28

In the early 1980s, several inmates incarcerated in Alaska's correctional institutions sued the state alleging that some if not all of the conditions of their confinement were unconsitutional. Although the superior court found **no** conditions of confinement at that time to be unconstitutional, it did find that the conditions **might** become unconstitutional at some future unspecified date. Despite the fact that the plaintiffs failed to present any proof of unconsitutional conditions of confinement, the court decided, and in some cases the state agreed, to allow the court to dictate the conditions of confinement either through the settlement agreements or the court's orders and decisions. This agreement required the department to hire and pay for monitors (at no small cost) to ensure that the conditions were being met.

Since the time the lawsuit was first filed, any potential unconstitutional conditions have been rectified and continued court intervention is unnecessary. With the state's declining revenue picture, we can no longer continue to provide more than is consitutionally required.

HCR 28 urges the Governor to direct the Attorney General to take whatever steps are necessary to dissolve or modify the Cleary partial settlement agreements, court orders, and decisions in this case.

List of possible items in the Cleary Final Settlement Agreement and Order which might be eliminated should the agreement be vacated or modified.

1. Gate Money $150. per prisoner.
2. Mental Health Forensic Unit (Mike Mod.)
3. Post-secondary program administrative costs.
4. Vocational Training programs at each sentenced facility .
5. Population caps on each institution.
6. Eyeglasses.
7. Telephones for prisoners.
8. Cleary court monitor.
9. Central Compliance Administrator and Grievance Coordinator position.
10. Mentally ill halfway house.
11. Non-legal mail costs.
12. Plaintiffs' attorney fees.

when he reluctantly gave handwriting samples to police after they refused his request to consult his lawyer.

Section 12. Excessive Punishment

> **Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.**

The first sentence of this section is drawn verbatim from Article VIII of the U.S. Bill of Rights. There has been little litigation over the constitutionality of fines and bail at either the federal or state level. The provision is understood to mean that bail may not be set higher than the amount necessary to assure the defendant's presence at trial (*John Doe v. State*, 487 P.2d 47, 1971). Thus, a judge may not seek to keep a person incarcerated by setting an unreasonably high bail.

While a definition of "cruel and unusual punishment" clearly includes torture and other forms of barbarous treatment, it has been expanded over the years to encompass punishments that are grossly disproportionate to the seriousness of the crime and to the denial of needed medical treatment (including psychiatric care) to prisoners. Indeed, some state constitutions contain, in addition to or instead of a prohibition against cruel and unusual punishment, an explicit requirement that penalties be scaled to the offense.

In Alaska, a traditional Eskimo convicted of murder claimed that his imprisonment in any facility other than the Bethel jail amounted to cruel and unusual punishment because he spoke Yupik and virtually no English, ate a Native diet which was unavailable in other prisons, and had no experience outside the traditional life of Natives in southwest Alaska. The court was unsympathetic to his claim (*Abraham v. State*, 585 P.2d 526, 1978), as it was to the claim by another prisoner that the denial of conjugal visits was a form of cruel and unusual punishment (*McGinnis v. Stevens,* 543 P.2d 1221, 1975).

The second sentence of this section, requiring that penal administration be based on the principle of reformation and the need to protect the public, has no counterpart in the U.S. Constitution, as it expresses a progressive ideal of prison reform that became popular in the late 1800s. Alaska is one of several states with a constitutional commitment to

humane and rehabilitative treatment of prisoners (for example, Oregon's constitution, Article I, Section 15, states: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice").

The record is clear that in embracing the principle of reformation, delegates to Alaska's constitutional convention did not intend to abolish capital punishment (by means of the argument, in the words of Delegate George McLaughlin, "that you cannot reform a dead man"). Delegate James Doogan stated that the reformation language "was more or less advisory or instructive to the penal institutions." Nonetheless, the Alaska Supreme Court has interpreted it to mean that state prisoners in Alaska have a constitutional right to rehabilitation services (*Rust v. State*, 584 P.2d 38, 1978). This right was clarified in the *Abraham* case: the Eskimo who failed to convince the court that his incarceration outside of the Bethel area was unconstitutional, did convince the court that he had a constitutional right while in prison to rehabilitative treatment for his alcoholism, as such treatment was the key to reforming his criminal behavior (*Abraham v. State*, 585 P.2d 526, 1978).

Alaska's supreme court has enunciated specific sentencing goals that are inherent in the twin constitutional principles of prisoner reformation and public protection. Known as the "Chaney criteria," these are the "rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves" (*State v. Chaney*, 477 P.2d 441, 1970). It has declared that the last of these sentencing goals, reaffirmation of societal norms, may not be used as a guise for retribution, which has no place in Alaska's constitutional scheme (*Smothers v. State*, 579 P.2d 1062, 1978).

The high court has upheld presumptive sentences adopted by the legislature (AS 12.55.125 - 175) against challenges that they conflict with this section of the constitution and that they unconstitutionally infringe on the power of the judiciary (*Nell v. State*, 642 P.2d 1361, 1982).

Penal administration in Alaska has been greatly affected in recent years by a longstanding class action suit brought by prisoners against the state alleging that overcrowding and

other substandard prison conditions violated state statutes and regulations as well as federal and state constitutional provisions, including this section. Originally filed in 1981, the suit followed the pattern of such suits in many other states. It spawned an enormous amount of litigation and negotiation that was not entirely settled a decade later. The court orders and negotiated agreements that have emerged from this so-called *Cleary* case (*Michael Cleary, et al. v. Robert Smith, et al.*, Superior Court, Third Judicial District, No. 3AN-81-5274), have, among other things, clarified and expanded the role of rehabilitation programs in Alaska's prison system.

Section 13. Habeas Corpus

> **The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.**

A writ of habeas corpus is a means by which a person in jail may have the legality of his detention reviewed by a court. It is not a device to determine guilt or innocence; rather, it is intended to determine whether due process was observed when a person was jailed. This is perhaps the oldest and most famous safeguard of personal liberty in the Anglo-American judicial tradition. Protection from the suspension of the writ of habeas corpus is found in the U.S. Constitution (Article I, Section 9) and the other state constitutions. This version differs from conventional statements of the right by the addition of "actual or imminent" before invasion, to account for the conditions of modern warfare.

Section 14. Searches and Seizures

> **The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.**

Here is the search-and-seizure article of the U.S. Bill of Rights (Article IV), with the addition of the words "and other property" and altered punctuation. Although this