

**SJR**

**3**

**HFIN**

**FILE**

(11)

Date Referred to Committee: January 23, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/23/98

The FINANCE Committee considered:

CSSJR 3(JUD)

CS FOR SENATE JOINT RESOLUTION NO. 3(JUD) PRISONER RIGHTS LIMITED TO FEDERAL RIGHTS

Proposing an amendment to the Constitution of the State of Alaska limiting the rights and protections of prisoners to those required under the Constitution of the United States.

recommends it be replaced with the following committee substitute HCSSJR3(FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: HFC Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) \_\_\_\_\_

fiscal note(s) Office of Lt Gov 1/23/98

zero fiscal note(s) DOA

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<u>Gene Therriault</u>	Therriault	X			
<u>Mark Haaley</u>	Haaley	X			
<u>Alton Mulder</u>	Mulder	X			
<u>Larry Martin</u>	Martin	X			
<u>Vig Kohring</u>	Kohring	X			
<u>John David</u>	DAVID			X	
<u>Ben Gussendorf</u>	Gussendorf			X	
<u>Al Moses</u>	Moses	X			
<u>David Davis</u>	Davis	X			
<u>Valley</u>	Valley	X			
<u>Foster</u>	Foster	X			

CHAIR'S SIGNATURE

Gene Therriault

Mark Haaley

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HCS CSSJR3(FIN)

Revision Date ( 3/6/98	Dept. Affected	Office of the Governor
Title <u>Const. Amend: Limiting the Rights and</u>	BRU	<u>Elective Operations</u>
<u>Protection of Prisoners</u>	Component	<u>General and Primary</u>
Sponsor <u>Senator Donley</u>		
Requester <u>House Finance Committee</u>	Component Serial No.	<u>#22</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenumai</u> <i>Gail Fenumai</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>3/6/98</u>
Approved by C <u>Lt. Governor Fran Ulmer</u> <i>F. Ulmer</i>	Date <u>3/6/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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**FISCAL NOTE**

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. HCS CSSJR 3(JUD)**

Revision Date: (Note if correction)  
 Title: "Proposing an amendment to the Constitution of the State of Alaska limiting the rights and protections of prisoners....."  
 Sponsor: Senator Donley  
 Requestor: (H) FIN

Department Affected: Administration  
 BRU: Legal and Advocacy Services  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 98) cost: \$ none

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

There is no fiscal impact to The Public Defender Agency from this bill.

Prepared by: Barbara Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 3/27/98

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# FISCAL NOTE

No: 2

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Bill Version: HCS CSSJR 3 (JUD)  
(H) Publish Date: 1/23/98

Revision Data (Note if correction) _____	Dept Affected <u>Office of the Governor</u>
Title <u>Const. Amend Limiting the Rights and</u>	BRU <u>Elective Operations</u>
Protection of Prisoners _____	Component <u>Elections</u>
Sponsor <u>Senator Donley</u>	
Requester <u>House Judiciary Committee</u>	Component Serial No. <u>#21</u>

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$58.0.

Prepared by <u>Gail Fenumia</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>1/21/98</u>
Approved by <u>C Lt. Governor Fran Ulmer</u>	Date <u>1/21/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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**COMMITTEE COPY**



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

### *Committee on Finance*

Official Business

State Capitol  
Juneau, Alaska 99801-1182

House Finance Committee  
Letter of Intent  
for  
Senate Joint Resolution 3

"Senate Joint Resolution 3 is intended to limit the rights of convicted prisoners in the State of Alaska to only those rights required by the United States Constitution.

This limitation is intended to apply to all language contained in the Alaska State Constitution. This limitation is intended to apply to any rights conferred on convicted prisoners by any and all language of Article 1, Section 12 of the Alaska State Constitution. This limitation is intended to apply to language contained in the Alaska State Constitution that does not appear in the United States Constitution including, but not limited to, "the principle of reformation" and "the rights of victims".

This amendment would return the meaning of the phrase "principle of reformation" to the original intent of the framers of the Alaska Constitution by limiting the effect of the "the principle of reformation", contained in Article 1, Section 12 of the Alaska State Constitution, to a guiding principle of criminal administration and make clear that Article 1, Section 12 does not create an individual right of prisoners to rehabilitation.

Quoting Mr. Doogan from the minutes of the Alaska Constitutional Convention on January 5, 1956 explaining the meaning of the phrase "principle of reformation" in Article 1, Section 12 "this statement was more or less advisory or instructive to the penal institutions that they work on the basis of reformation and not go back to the bread and water stage.....".

Clearly the framers of the Alaska Constitution never intended the phrase "principle of reformation" to grant enforceable individual rights to convicted prisoners.

This amendment is intended to reverse any and all findings by the Alaska Supreme Court that give convicted prisoners in Alaska greater rights under the Alaska State Constitution than those provided under the United States Constitution. This specifically includes:

Abraham v. State, 585 P.2d 526, 530-33 (Alaska 1978)

McGinnis v. Stevens, 543 P.2d 1221, appeal after remand 570 P. 2d 735 (Alaska 1975)

Ferguson v. State, 816 P.2d 134 (Alaska 1991)

Brandon v. State, 938 P.2d 1029 (Alaska 1997)

This amendment is intended to authorize the State of Alaska to request court modification of the settlement in the Superior Court Case Cleary v. Smith, 3AN-81-5274 CIV to remove any settlement terms not required by the United States Constitution."

**HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 3(FIN)**

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

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATORS DONLEY, Halford, Pearce, Phillips, Sharp, Lemau, Green, Ward, Miller, Kelly**

**REPRESENTATIVES James, Porter, Martin, Barnes, Sanders, Kohring, Cowdery, Dyson, Masek, Austerman, Phillips, Mulder**

**A RESOLUTION**

1 **Proposing an amendment to the Constitution of the State of Alaska limiting the**  
2 **rights and protections of prisoners to those required under the Constitution of the**  
3 **United States.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** Article I, Constitution of the State of Alaska, is amended by adding a new  
6 section to read:

7 **Section 25. Rights of Prisoners.** Notwithstanding any other provision of this  
8 constitution, the rights and protections, and the extent of those rights and protections,  
9 afforded by this constitution to prisoners convicted of crimes shall be limited to those  
10 rights and protections, and the extent of those rights and protections, afforded under  
11 the Constitution of the United States to prisoners convicted of crimes.

12 \* **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of  
13 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
14 State of Alaska, and the election laws of the state.

*Adopted  
2/23/98*

0-LS0268L  
Luckhaupt  
2/13/98

**HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 3( )**

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

**TWENTIETH LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): **SENATORS DONLEY, Halford, Pearce, Phillips, Sharp, Leman, Green, Ward, Miller, Kelly**

**REPRESENTATIVES James, Porter, Martin, Barnes, Sanders, Kohring, Cowdery, Dyson, Masek, Austerman, Phillips, Mulder**

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# SENATOR DAVE DONLEY

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ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT SJR 3 (JUD) LIMITING PRISONER RIGHTS UNDER THE ALASKA CONSTITUTION TO THE REQUIREMENTS OF THE U.S. CONSTITUTION

Senate Joint Resolution 3 would limit the rights of convicted prisoners in the State of Alaska to the requirements of the U.S. Constitution.

The Alaska State Constitution provides Alaskans with individual rights and liberties that the United States Constitution does not. Unfortunately these additional constitutional rights protect not only law abiding Alaskans but also give special rights to convicted criminals currently incarcerated in Alaska. This creates difficulties with prison administration in Alaska and encourages law suits by prisoners under the Alaska constitution.

While such special State Constitutional rights are highly desirable for the general public, they are not appropriate for convicted imprisoned criminals. SJR 3 prevents this confusion and undesirable results by adopting a single constitutional standard - the Federal standard - for determining prisoner's rights.

Another related difficulty is the Cleary consent decree which has hamstrung the administration of prisons in Alaska. The Cleary consent decree did not distinguish between Federal and State constitutional standards. But this decree does require greater prisoner's rights in Alaska than are required by the U.S. Constitution. SJR 3 cannot directly overrule Cleary since it was a consent decree. SJR 3 can, however, assure that the U.S. Constitution, and not a more protective state constitutional standard, will be the standard for future decisions on prisoner's rights in Alaska.

Additionally, pursuant to recent legal developments, the state may be able to modify or overturn the Cleary consent decree in which case the new single standard adopted by SJR 3 could be applied. SJR 3 itself may give the state sufficient basis to request a court to re-open the Cleary settlement and at the least will add to any legal justification to do so. The immediate impact of passage of SJR 3 may be small, but as the Federal courts allow tougher Federal prisons and limit prisoner's rights the standard for Alaskan prisoners will get tougher also.

DD/jja

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MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House



# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

### Letter of Intent for SJR 3

"Senate Joint Resolution 3 is intended to limit the rights of convicted prisoners in the State of Alaska to only those rights required by the United States Constitution.

This limitation is intended to apply to all language contained in the Alaska State Constitution. This limitation is intended to apply to any rights conferred on convicted prisoners by any and all language of Article 1, Section 12 of the Alaska State Constitution. This limitation is intended to apply to language contained in the Alaska State Constitution that does not appear in the United States Constitution including, but not limited to, "the principle of reformation" and "the rights of victims".

This amendment is intended to limit the effect of the "the principle of reformation", contained in Article 1, Section 12 of the Alaska State Constitution, to a guiding principle of criminal administration and make clear, it does not create an individual right of prisoners.

This amendment is intended to reverse any and all findings by the Alaska Supreme Court that give convicted prisoners in Alaska greater rights under the Alaska State Constitution than those provided under the United States Constitution. This specifically includes:

McGinnis v. Stevens 543 P.2d 1221, appeal after remand 570 P. 2d 735 (Alaska 1975)  
Ferguson v. State, 816 P.2d 134 (Alaska 1991)  
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This amendment is intended to authorize the State of Alaska to request court modification of the settlement in the Superior Court Case Cleary v. Smith, 3AN-81-5274 CIV to remove any settlement terms not required by the United States Constitution."

DD/jja

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# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

### SJR 3 PRISONER'S RIGHTS FEDERAL CONSTITUTIONAL RIGHTS VS. STATE CONSTITUTIONAL RIGHTS

#### 1) DISCIPLINE & CLASSIFICATION

The United States Supreme Court held that prisoners facing loss of good time or solitary confinement are entitled to due process protections. Prisoners facing a mere loss of privileges are not entitled to these protections. Wolff v. McDonnell (1974).

The Alaska Supreme Court has expanded upon these protections for Alaska inmates facing disciplinary charges, finding greater protections under the Alaska Constitution. McGinnis v. Stevens (1975).

#### 2) PROGRAMS AND REHABILITATION

Under the United States Constitution courts have not articulated a right of prisoners to participate in particular programs or to receive rehabilitative treatment. Each circuit that has considered the issue has held that enforced idleness does not constitute cruel and unusual punishment. Toussaint v. McCarthy (1986)

The Alaska Supreme Court has found that prisoners have a right of access to rehabilitation programs under the Alaska Constitution. Ferguson v. State, Department of Corrections (1990)

#### 3) SQUARE FOOTAGE REQUIREMENTS ON CELL SIZES

The Department of Corrections is required, under the Clery consent decree, to provide a specific amount of square footage in inmate's cells. These square footage requirements vary on the number of inmates in a cell and the number of hours a prisoner is required to be in the cell. Additionally, there are specific requirements on the number of inmates that may occupy "dormitory" type cells. There are also different square footage requirements for any new facility built in Alaska.

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The Federal constitution does not make such square footage requirements for prisoner's cells or limits on dormitory style housing.

4) **LOCATION OF INCARCERATION**

The Alaska Supreme Court held visitation is part of the right to rehabilitation guaranteed inmates under Article 1, section 12 of the Alaska Constitution. Brandon v. Department of Corrections (1997)

This decision requires the Department of Corrections to give substantial deference to Alaska inmates' desire to be incarcerated near family and friends thereby hindering the department's ability to control prison population through inmate transfers.

Federal courts and appellate courts in the 49 other states have universally rejected the existence of this "right" as part of an inmates' rehabilitation.

DD/jja

AMENDMENT

# /

OFFERED IN THE HOUSE

BY REP. DAVIES

TO: HCS CSSJR 3 (JUD)

Page 1, line 8:

Delete “, including the principle of reformation,”

Adopted  
2/23/98



# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

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Produced in House



# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

### Letter of Intent for Senate Joint Resolution 3

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