

SJR

3

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 21, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-21-98

The JUDICIARY 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 HC SCSS.JR 3 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) 1-21-98 Gov fiscal note(s) _____

 zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Don Brund</i>	✓			
<i>John A. ...</i>		✓		
<i>Donna L. James</i>	✓			
<i>Wendell ...</i>	✓			
<i>Brian P. Porter</i>	✓			
<i>Wm ...</i>		✓		
<i>...</i>	✓			

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

No. 1
 Bill Version: STR 3
 (S) Publish Date: 2/27/97

STATE OF ALASKA
 1 97 LEGISLATIVE SESSION

Revision Date: _____
 Title: "Proposing an amendment to the Constitution limiting the rights of prisoners..."
 Sponsor: Senator Donloy
 Requestor: (S) Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The resolution places before the voters of Alaska an amendment limiting the rights and protections of Alaskan prisoners against infliction of cruel and unusual punishment to those rights and protections required under the federal constitution.

There is no fiscal impact on the Public Defender Agency.

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Alison M. Slay
 Date: 2/5/97

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10/14/97

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

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 Section 12 of this article,
8 the rights and protections, including the principle of reformation, and the extent of
9 those rights and protections, afforded by this constitution to prisoners convicted of
10 crimes shall be limited to those rights and protections, and the extent of those rights
11 and protections, afforded under the Constitution of the United States to prisoners
12 convicted of crimes.

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

**Letter of Intent
by Senator Donley
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 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)

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."

DD/jja



SENATOR DAVE DONLEY

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

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) LAW LIBRARIES AND ACCESS TO COURTS

The United States Supreme Court held that the right of access to the courts is such a fundamental right that prison officials are under an affirmative duty to ensure that it is maintained. To ensure that it is maintained, prison officials are required to either provide law libraries in prisons or any alternative means that guarantee prisoners their right of access to the courts. Bounds v. Smith (1977)

In Alaska the Cleary settlement does not allow any alternatives to providing expensive law libraries at each institution.

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The 9th Circuit Court of Appeals recently held that in Alaska case a prisoner has a constitutional right to a photocopier. *Hiser v. Franklin* (1996)

4) **SQUARE FOOTAGE REQUIREMENTS ON CELL SIZES**

The Department of Corrections is required, under the Cleary 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.

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

DD/jja

**PUBLIC SAFETY EMPLOYEES ASSOCIATION
"REPRESENTING ALASKA'S FINEST"**

4300 Boniface Parkway, #116
Anchorage, AK 99504-4387
(907)337-1979 FAX (907)337-1753

Senator Dave Donley
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

April 15, 1997

Dear Senator Donley:

On behalf of the Public Safety Employees Association, I would like to thank you for introducing Senate Joint Resolution 3 proposing a State Constitutional amendment limiting the rights of prisoners to what the U.S. Constitution will allow. PSEA wholeheartedly supports this resolution.

The criminal justice system is suppose to aid society in the protection of its citizens. To this end, prisons should protect society from convicted criminals doing their time without unnecessary frills, benefits or privileges being given to them. This resolution is a very positive step towards changing the system to meet this end.

We encourage you to call on us when there are hearings in the House on this bill, so that we may testify in favor of this legislation.

Sincerely,



Keith Perrin
PSEA President

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HCS CSSJR 3(), ("H" Version, Draft, Dated 10/14/97)

- 1 Page 1, lines 1 - 2:
- 2 Delete **"the rights and protections of prisoners"**
- 3 Insert **"rights and protections"**

- 4 Page 1, line 7:
- 5 Delete **"Rights of Prisoners."**
- 6 Insert **"Limitations of Rights."**

- 7 Page 1, lines 9 - 10:
- 8 Delete **"to prisoners convicted of crimes"**

- 9 Page 1, lines 11 - 12:
- 10 Delete **"to prisoners convicted of crimes"**

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HCS CSSJR 3(), ("H" Version, Draft, Dated 10/14/97)

1 Page 1, lines 1 - 3:

2 Delete all material.

3 Insert **"Proposing an amendment to the Constitution of the State of Alaska**
4 **providing that a certain class of persons have no enforceable rights under the**
5 **Constitution of the State of Alaska."**

6 Page 1, lines 7 - 12:

7 Delete all material and insert:

8 **"Section 25. Prisoners. Prisoners convicted of crimes shall have no enforceable**
9 **rights under this constitution."**

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Distribution of Senator Donley's Letter of Intent for Inclusion in Committee Member Packets.

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✓

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*House Judiciary Standing Committee
10/16/97, 9:10am, Anchorage, Ak.*