

SJR

3



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

MEMORANDUM

To: Senator Tim Kelly
Chair, Senate Rules Committee

From: Senator Dave Donley *DD*

Re: Calendar Request for SJR 3 - "Prisoner Rights"

Date: April 1, 1997

I request that you calendar Senate Joint Resolution 3, relating to the rights of prisoners, for floor action.

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.

Thank you in advance for your consideration of this request. If you have any questions, please contact myself or James Armstrong of my staff at 465-3892.

DD/jja

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



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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

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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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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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Produced in House

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

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

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

Revision Date: _____
Title: "Proposing an amendment to the Constitution limiting the rights of prisoners..."
Sponsor: Senator Donlev
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 Boyer
Agency: Department of Administration

Alison M. Selig
Date: 2/5/97

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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

Senate Rules Committee 3/7/97 10:47 am