

HB

214

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1-LS0562M
Luckhaupt
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CS FOR HOUSE BILL NO. 214(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to litigation involving correctional facilities; and amending Rules
2 59(f), 60(b), 62, and 65, Alaska Rules of Civil Procedure."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. FINDINGS AND INTENT.** (a) The legislature finds that
5 (1) state and municipal executive branch agencies that operate correctional
6 facilities need the widest latitude, consistent with constitutional and legal requirements, to
7 manage those facilities and carry out the several constitutional goals of corrections
8 administration;
9 (2) the legislature has the exclusive right to appropriate under the Constitution
10 of the State of Alaska, and consent decrees and court orders that require certain levels of
11 funding or services conflict with the legislature's exclusive appropriation power;
12 (3) the legislature carefully scrutinizes the correctional system each year, and
13 annual budget appropriations have been and will continue to be based on the legislature's
14 assessment of how to appropriately meet the needs of Alaska prisoners and the public as a

1 whole; because state revenues vary greatly from year to year, the legislature needs the widest
2 latitude to exercise its constitutional and statutory budget authority for the good of all
3 Alaskans; and

4 (4) the Alaska Supreme Court has held that administration of the state
5 corrections system is an executive concern involving many day-to-day decisions that
6 necessitate that court interference be kept to a minimum; see *McGinnis v. Stevens*, 543 P.2d
7 1221, 1237 (Alaska 1975); the Alaska Supreme Court has also held that the exercise of
8 executive branch discretion within constitutional bounds is not subject to the control or review
9 of the courts; see *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950 (Alaska
10 1975).

11 (b) Based on the findings set out in (a) of this section, the legislature intends in this
12 Act to provide a statutory framework for setting limits on the extent to which future
13 legislatures and future executive branch administrations are limited by court orders or consent
14 decrees of indefinite duration that govern correctional facility operations in ways that are not
15 constitutionally or statutorily required.

16 * **Sec. 2.** AS 09.19 is amended by adding a new section to read:

17 **Sec. 09.19.200. Correctional facility litigation.** (a) Except as provided in
18 (b) and (e) of this section, a court may not order prospective relief in a civil action
19 with respect to correctional facility conditions unless the court finds that (1) the
20 plaintiff has proven a violation of a state or federal right, (2) the prospective relief is
21 narrowly drawn and extends no further than is necessary to correct the violation of the
22 right, (3) the prospective relief is the least intrusive means necessary to correct the
23 violation of the right, and (4) the prisoner exhausted all administrative remedies
24 available to the prisoner before filing the civil action. When a court finds multiple
25 violations of a state or federal right, when multiple remedies are ordered by the
26 prospective relief, or when prospective relief applies to multiple correctional facilities,
27 the findings required by this subsection shall be made as to each violation, each
28 remedy, and each facility, as appropriate. In a civil action with respect to correctional
29 facility conditions that has been certified as a class action, prospective relief applicable
30 to the class may only be ordered after the court makes the findings required by this
31 subsection and finds that the violation of a state or federal right is applicable to the

1 entire class. In making the findings required under this subsection, the court shall give
2 substantial weight to any adverse effect on public safety or the operation of a criminal
3 justice system caused by the prospective relief.

4 (b) In a civil action with respect to correctional facility conditions, to the
5 extent otherwise authorized by law, the court may enter a temporary restraining order
6 or an order for preliminary injunctive relief only if the court finds that the relief is (1)
7 narrowly drawn and extends no further than is necessary to correct the harm that
8 requires preliminary relief, and (2) the least intrusive means necessary to correct that
9 harm. In making the findings required under this subsection, the court shall give
10 substantial weight to any adverse effect on public safety or the operation of a criminal
11 justice system caused by the preliminary relief. Preliminary injunctive relief shall
12 automatically expire 90 days after the entry of the order unless the court orders final
13 relief in the civil action before the expiration of the 90-day period.

14 (c) Prospective relief ordered in a civil action with respect to correctional
15 facility conditions, including prospective relief ordered under a consent decree,
16 regardless of whether that civil action was filed or the relief ordered before or after the
17 effective date of this Act, shall be terminated upon the motion of the defendant unless
18 the court finds that there exists a current violation of a state or federal right and makes
19 the findings required by (a) of this section as to each current violation and as to each
20 remedy and facility, as appropriate. A civil action that has been certified as a class
21 action shall be terminated upon the motion of the defendant unless the court makes the
22 findings required by this subsection and finds that the current violation of a state or
23 federal right is applicable to the entire class. Prospective relief must be modified upon
24 the motion of a party whenever, and to the extent, the findings required by this section
25 no longer apply to one or more provisions of the prospective relief then in effect. This
26 subsection and the time limits provided in (d) of this section do not prevent a party
27 from seeking modification or termination before the relief is otherwise terminable
28 under this section to the extent that modification or termination would otherwise be
29 legally permissible.

30 (d) A defendant may not file a motion to modify or terminate under (c) of this
31 section until

1 (1) two years after the date the court ordered the prospective relief if
2 the order occurred after the effective date of this Act;

3 (2) one year after the date the court entered an order denying
4 modification or termination of prospective relief made under (1) or (3) of this
5 subsection; or

6 (3) in the case of an order issued on or before the effective date of this
7 Act, one year after the effective date of this Act.

8 (e) Notwithstanding (a) of this section, in a civil action with respect to
9 correctional facility conditions, a court may order prospective relief as provided in a
10 consent decree without complying with (a) of this section, provided the prospective
11 relief does not continue for a period of more than two years. In addition, parties may
12 enter into private settlement agreements that do not comply with the limitations of
13 relief set out in (a) of this section if the terms of the agreements are not subject to
14 court enforcement other than the reinstatement of the civil proceedings that the
15 agreements settled.

16 (f) The court shall promptly rule on a motion to modify or terminate
17 prospective relief in a civil action with respect to correctional facility conditions. A
18 motion to modify or terminate prospective relief made under this section stays the
19 order for prospective relief beginning on the 90th day after the motion is filed, and the
20 stay ends on the date the court enters a final order ruling on the motion. An automatic
21 stay under this subsection may be postponed by the court for not more than 30 days
22 for good cause.

23 (g) In this section,

24 (1) "civil action with respect to correctional facility conditions" means
25 a civil proceeding arising under state or federal law with respect to the conditions of
26 confinement or the effects of actions by government officials on the lives of persons
27 confined in correctional facilities;

28 (2) "consent decree" means a court order that is based on the agreement
29 of the parties; the term "consent decree" does not include a private settlement
30 agreement;

31 (3) "prisoner"

1 (A) means a person held in a state correctional facility or under
2 authority of state or municipal law in official detention as defined in
3 AS 11.81.900(b);

4 (B) includes a minor committed to the custody of the
5 commissioner when,

6 (i) under AS 47.12.030, 47.12.065, or 47.12.100, the
7 minor has been charged, prosecuted, or convicted as an adult; or

8 (ii) under AS 47.12.160(e), the minor has been ordered
9 transferred to the custody of the commissioner of corrections or a
10 municipality;

11 (4) "private settlement agreement" means an agreement entered into
12 among the parties that is not subject to judicial enforcement other than the
13 reinstatement of the civil proceeding that the agreement settled;

14 (5) "prospective relief" means all relief other than compensatory
15 monetary damages;

16 (6) "relief" means any legal or equitable remedy in any form that may
17 be ordered by the court, and includes a consent decree but does not include a private
18 settlement agreement;

19 (7) "state or federal right" means a right arising from the United States
20 Constitution, the Constitution of the State of Alaska, or a federal or state statute.

21 * Sec. 3. Section 2 of this Act has the effect of amending Rules 59(f), 60(b), 62, and 65,
22 Alaska Rules of Civil Procedure, by altering the remedies available and the procedure to be
23 used in litigation involving correctional facilities.

24 * Sec. 4. This Act takes effect only if sec. 3 of this Act receives the two-thirds majority
25 vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

26 * Sec. 5. This Act applies to any civil action with respect to correctional facility conditions
27 that is filed, or in which prospective relief is ordered, before, on, or after the effective date
28 of this Act. In this section, "civil action with respect to correctional facility conditions" and
29 "prospective relief" have the meanings given in AS 09.19.200, added by sec. 2 of this Act.

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Proposed Amendment To HB 214 - No. 3

1. Page 2, line 15: Insert "and (e)" after "(b)"
2. Page 4, line 3: Insert the following at the beginning of this subsection:
"Notwithstanding (a) of this section, in a civil action with respect to prison conditions, a court may order prospective relief as provided in a consent decree without complying with (a) of this section. In addition,"
3. Page 4, line 3: change the P in "Parties" to a lower case p.

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Proposed Amendment To HB 214 - No. 2

Page 4, line 18: replace the word "prison" with "correctional facilities"

*adopted as part
of concept
amend.*

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adopted

Proposed Amendment To HB 214 - No. 1

1. Page 3, lines 20-22: Replace the sentence beginning with "Prospective relief ..." with the following: "Prospective relief must be modified upon the motion of a party whenever, and to the extent, the findings required by this section no longer apply to one or more provisions of the prospective relief then in effect."

2. Page 3, line 26: Insert the words "modify or" between "to" and "terminate."

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 214

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to litigation involving correctional BRU Administration and Operations
facilities; and amending rules 59(f), 60(b), 62, and 65, Alaska.. Component All
 Sponsor Representative Mulder
 Requester House Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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 (Specify Type)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Dept. of Corrections is submitting an indeterminate fiscal note for this legislation because the Department is unable to ascertain its economic impact. Under the terms of this bill, the Department will be able to seek closure of the Cleary class action lawsuit one year following the effective date of the legislation. It is unknown, however, whether the court will act favorably on the Department's motion. Furthermore, even if it is assumed that the court does act favorably on the motion, the Department cannot readily determine the fiscal impact of such a ruling. On the "savings" side, the Department is currently paying for a court-appointed compliance monitor in the Cleary lawsuit. Presumably, these costs will no longer be incurred following termination of the lawsuit. Though not anticipated, it is possible that new litigation could be filed requiring comparable monitoring.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 4/29/99 8:48 AM
 Approved by Comm. Margaret M. Pugh *Margaret M. Pugh* Date 4/29/99
 Agency Department of Corrections

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