

SJR

2

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 1/26/99

FURTHER: _____

2/18/99

DATE TURNED
IN TO OFFICE: _____

2/18/99

Finance Committee considered

SENATE JOINT RESOLUTION NO. 2

Proposing an amendment to the Constitution of the State of Alaska relating to the rights of prisoners under the criminal administration section.

and recommends:

- be replaced with _____ CS SJR 2 (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill: same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul E. [Signature]</i>	✓	<i>Oil Adams</i>		✓	
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>Daniel [Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<div style="border: 1px solid black; padding: 5px; width: fit-content; margin-bottom: 5px;"> forthcoming f/g from Gov. amt 1.5 to match FIN CS. </div> <div style="position: absolute; top: -20px; left: 50%; transform: translate(-50%, -50%); font-size: 2em;">X</div>				
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PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Gov/Elections	2/9/99			1.5

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

1-LS0257G

Luckhaupt

1/25/99

moved by Sen.
Donley, w/o
objection, ADOPTED

CS FOR SENATE JOINT RESOLUTION NO. 2()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Tim Kelly, Leman, Taylor

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 the rights of prisoners under the criminal administration section.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

5 Section 12. Criminal Administration. (a) Excessive bail shall not be
6 required, nor excessive fines imposed.

7 (b) Cruel [, NOR CRUEL] and unusual punishments shall not be inflicted.
8 Criminal administration shall be based upon the following: the need for protecting the
9 public, community condemnation of the offender, the rights of victims of crimes,
10 restitution from the offender, and the principle of reformation. Protections and rights
11 provided under this subsection to prisoners convicted of crimes shall be limited
12 to those rights and protections and the extent of those rights and protections
13 afforded under the Constitution of the United States to prisoners convicted of
14 crimes.

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

1 State of Alaska, and the election laws of the state.

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SJR 2
Amendment	CS
Motion	Adopt CS
<u>Motion by</u>	Donley
<u>Objection</u>	J
<u>Objection by</u>	Torgerson
<u>Removed</u>	J yes
<u>Second Objection by</u>	J
<u>Committee Member</u>	<u>Vote</u>
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	Adopt CS

w/out object



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sponsor Statement For Senate Joint Resolution 2

LIMITING PRISONER RIGHTS REGARDING CRIMINAL ADMINISTRATION OF THE ALASKA CONSTITUTION TO THE REQUIREMENTS OF THE UNITED STATES CONSTITUTION

Senate Joint Resolution 2 would limit the rights conveyed to convicted prisoners in Alaska under Section 12 of the Alaska Constitution to those requirements afforded under the United States Constitution. Since the Alaska Constitution is quite different from the U.S. Constitution regarding criminal administration, SJR 2 adopts a single standard - the Federal standard - for determining these rights.

Last year a different version of SJR 2 passed the legislature and was to be considered by voters on the General Election Ballot. Last year's version (Ballot Measure 1) created a new section of the Alaska Constitution which would have limited all rights conveyed to convicted prisoners in Alaska to those rights required by the U.S. Constitution.

A statewide Dittman research poll indicated 76% of Alaskans supported Ballot Measure #1.

However the Alaska Supreme Court, in Bess v. Ulmer, removed Ballot Measure #1 from the General Election Ballot. In its decision the court created new constitutional law in Alaska by deciding that Ballot Measure #1 was not an "amendment" but rather a "revision" because it would affect more than one section of the constitution and such a change should only be done at a constitutional convention.

In contrast to last year's version, Senate Joint Resolution 2 **only** applies to those rights conferred on convicted prisoners by any and all language of Article 1, Section 12 of the Alaska's Constitution. SJR 2 also returns 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 principle of reformation", contained in Article 1, Section 12 of the Alaska's Constitution, to a guiding principle of criminal administration. In doing this, SJR 2 makes it clear that Article 1, Section 12 does not create an individual right of prisoners to rehabilitation.

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June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

Vice-Chair, Senate Finance Committee • Chairman, Capitol Budget Subcommittee •
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Senate Joint Resolution 2
Sponsor Statement
Page 2

Under the United States Constitution, courts have not articulated a right of prisoners to participate in particular programs or to receive rehabilitative treatment. However, the Alaska Supreme Court has found that prisoners have an individual special right of access to rehabilitation programs under the Alaska Constitution.

Most recently the Alaska Supreme Court held that visitation is part of the right to rehabilitation guaranteed inmates under Article 1, Section 12 of the Alaska Constitution. This decision requires the Department of Corrections to give substantial deference to Alaska inmates' desire to be incarcerated near family and friends thus 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.

These decisions have created difficulties with prison administration in Alaska and have encouraged lawsuits by prisoners under the Alaska Constitution. Imprisoned convicted criminals should not be entitled to the same special individual rights law-abiding citizens enjoy.

The Cleary consent decree has also hampered prison administration in Alaska. The Cleary consent decree does not distinguish between Federal and State Constitutional standards. But this decree does require greater prisoners' rights in Alaska than are required by the U.S. Constitution. SJR 2 cannot directly overrule Cleary since it was a consent decree. SJR 2 can, however, assure that the U.S. Constitution, and not a more protective state constitutional standard, will be the standard for criminal administration in Alaska.

Additionally, the state may be able to modify or overturn the Cleary consent decree in which case the new single standard for criminal administration adopted by SJR 2 could be applied. Passage of SJR 2 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 2 may be small, but will prevent state courts from any future expansion of prisoners' rights regarding criminal administration based on the Alaska State Constitution.

The framers of Alaska's Constitution gave Alaskans many highly desirable individual rights and liberties not found in the United States Constitution. Unfortunately, the Alaska Supreme Court has wrongly decided these additional constitutional rights not only protect law-abiding citizens but also give special rights to imprisoned convicted criminals. Passage of SJR 2 would correct this mistake.

DD/jja



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SJR 2 - FEDERAL CONSTITUTIONAL RIGHTS VS. STATE CONSTITUTIONAL RIGHTS REGARDING CRIMINAL ADMINISTRATION

1) 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)

2) 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.

3) 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 prisoners' cells or limits on dormitory style housing.

DD/jja

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Vice-Chair, Senate Finance Committee • Chairman, Capitol Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Cou

ADDITIONAL
INFORMATION FOR

SENATE FINANCE COMMITTEE

SIGN-IN

SJR 2-CONST. AM: PRISONER'S RIGHTS

NAME: Margot Knuth Sub./Bill No: SJR 2
Co./Dept./Title: Corrections Phone: 4338
Address: _____ Zip: _____

Do you wish to testify? ___ Yes ___ No Respond to Questions

NAME: _____ Sub./Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? ___ Yes ___ No ___ Respond to Questions

NAME: _____ Sub./Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? ___ Yes ___ No ___ Respond to Questions

NAME: _____ Sub./Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? ___ Yes ___ No ___ Respond to Questions