

SJR

2



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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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.

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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.

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