

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

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HJUD

HB 114

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is amended to conform with the suspension of the right to serve on a jury provided for in this section.

The right to commence a civil action in a court (i.e., access to the courts) is a civil right which some courts have ruled is suspended as a result of conviction for a crime. See, e.g., Tabor v. Hardwick, 224 F.2d 526 (5th Cir. 1955). However, suspending this right raises substantial constitutional questions as reflected in the Alaska Supreme Court's decision in Bush v. Reid, supra, and Johnson v. Rockefeller, supra at 48. Under this section, access to the courts is no longer limited.

Making clear that a prisoner has the same right to commence a legal action as a normal citizen does not mean that the prisoner has the same right to personally appear in court, particularly in a court action which is unrelated to the prisoner's confinement. While the right of a prisoner to personally appear in court is ultimately up to the judge before whom the matter is pending, it is important to note that courts and legislatures have recognized the legitimate security interests of corrections and law enforcement officials in not having to transport prisoners to court, particularly in matters unrelated to their confinement. See, e.g., Hubbard v. Montgomery, 372 So.2d 315, 317 (Ala. 1979); Johnson v. Rockefeller, supra at 48. See, also, New York Civil Rights Law §§ 79 and 79-a. This

is a recognition that, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 285 (1948). Appearance through an attorney or by deposition will adequately safeguard a prisoner's interest in most cases. See, e.g., Alaska R. Civ. . 27, 30.

Section 33.30.201. Disposal of Abandoned Personal Property.

This is a new section which addresses the practical problems of lack of space to store abandoned prisoner property and lack of a mechanism to dispose of the property.

Under this section, a prisoner's property remaining at a correctional facility which is not disposed of by the prisoner within 90 days of release or transfer is deemed abandoned, and will be delivered to the Department of Administration for disposal as if it were surplus state property. When a prisoner is transferred from one correctional facility to another, the commissioner is responsible for shipping a reasonable amount of the prisoner's personal property. The abandonment provisions only apply to property remaining after the shipment.

Section 33.30.211. Confiscation of Contraband.

This is a new section which authorizes the commissioner to impose disciplinary sanctions upon a prisoner who is found in possession of money in an amount greater than that permitted by the commissioner. If after a hearing, which satisfies minimum due process requirements, a prisoner is found to have possessed money in an amount greater than that permitted, the excess money is declared contraband and must be forfeited and deposited into the general fund.

The purpose of this section is to respond to the problem of prisoners who possess excess amounts of money which creates risks both to the personal safety of the prisoner in possession of the money as well as to the security of the institution. Similar statutes have been upheld as reasonable efforts to provide for the safety of prisoners and the security of correctional facilities. See, e.g., Harris v. Forsyth, 735 F.2d 1235 (11th Cir. 1984).

Prior to the adoption of this section, no statute existed authorizing the confiscation and forfeiture of excess money. Upon discovery it was placed in the prisoner's account.

This section will deter such illegal activities as gambling and the sale of drugs, which although often cannot be proven, are believed to frequently be the reason that prisoners are discovered in possession of large amounts of money.

Section 33.30.221. Forfeiture of Property.

This section reenacts the portion of former AS 33.-30.290 which makes clear that unless a statute expressly provides for a forfeiture of property as a result of a conviction of a criminal offense, there may be no forfeiture of a prisoner's property.

Section 33.30.231. Crime Against Sentenced Prisoner.

This section is substantially similar to former AS 33.30.300, and makes clear that a crime committed against a sentenced prisoner is to be treated the same as a crime against any person.

Section 33.30.301. Definitions.

This section defines the terms used in AS 33.30.

Sections 6-7. AS 33.32.015(b), AS 33.32.017, "Free Venture" Correctional Industries.

Section 6 amends AS 33.32.015 dealing with prisoner employment and correctional industries. AS 33.32.015(b)(4) permits the commissioner to authorize a prisoner to engage in productive employment within or outside a correctional facility

or to enter into a contract with a private agency or individual for the employment of a prisoner if the employment will have minimal negative impact on an existing private industry or labor force in the state, as determined by the Correctional Industries Commission.

AS 33.32.015(b) (5) permits the commissioner to enter into a joint cooperative venture with private industry for the employment of prisoners in correctional industries. Such a joint venture is subject to competitive bidding laws, thus providing an equal opportunity for all interested parties in the private sector. A further safeguard is provided by permitting such a joint cooperative venture only if the Correctional Industries Commission determines that it will have a minimal negative impact on an existing private industry or labor force.

Section 7 is a new section which permits the commissioner, upon the recommendation of the Correctional Industries Commission, to establish a "Free Venture" correctional industries. A "Free Venture" correctional industry is the form of joint venture referred to AS 33.32.015(b) (5) and in which a private industry operates and manages in total or in part a correctional industry within a correctional facility, and provides all machinery, tools, materials, training and marketing of a product in return for which the commissioner provides inmate workers for which the department is paid an hourly wage.

The department, of course, pays the prisoners for their labor under AS 33.32.050. The private industry must indemnify and hold the state harmless in the event of any liability arising from injury or damage related to the goods or services produced by the "Free Venture" industry.

"Free Venture" industries have been successfully implemented in a large number of states. The principal reason for adopting this section is the recognition of the high costs involved in getting the correctional industries program operating effectively. This greatly increases the potential for long term cost savings to the state both in resources generated by the industries program as well as in a hoped for decline in recidivism due to the rehabilitative benefits derived from the program.

Section 8. AS 33.32.030(f), Marketing of Correctional Industries Products.

This section amends AS 33.32.030 to exempt "Free Venture" industries from the requirements of this statute, which give preference to correctional industries products to state agencies, set prices for industries products, and limit the sale of industries products to a private industry to certain circumstances requiring the approval of the Correctional Industries Commission. It is a recognition of the fact that the

private industry in the "Free Venture" program will do its own marketing, and should have no priority in the marketing of its goods or services to state agencies.

Section 9. AS 39.35.360(e), Earlier Service.

This section is a housekeeping change relating to credited service for correctional employees.

Section 10. AS 44.65.050(d), Restriction on Construction Contracts.

This is a new section which permits the Department of Corrections and the Department of Transportation and Public Facilities to enter into agreements whereby DOTPF may delegate the responsibility for construction, renovation, repair, or alteration of a state correctional facility to the Department of Corrections up to an estimated cost of \$100,000 per project.

Since under present law DOTPF may do this amount of work itself, this section merely allows DOTPF to delegate the work to the Department of Corrections, if the department agrees. This will provide additional productive employment for prisoners (e.g. construction of a greenhouse, etc.) at a substantial cost savings to the state. A number of other departments are provided even greater authority under AS 44.65.050 to

perform construction work on projects related to their respective responsibilities. A limitation of \$100,000 is provided for here in recognition of the desire to minimize any impact on an existing labor force or construction industry.

Section 11. Repeal of various sections contained in AS 33.30.-
010--33.30.900.

This section repeals Alaska's existing statutory scheme pertaining to correctional facilities and management and control of prisoners.

Section 12. Regulations.

This section makes clear that regulations already in effect are not nullified because they were adopted under a statute which is amended or repealed by this Act unless they are inconsistent or are in conflict with a provision of this Act.

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 114(HESS)

Page 15, line 1, after "TELEPHONE" insert "ACCESS AND"

Page 15, line 2, after the title insert "(a)"

Page 15, after line 9, insert:

"(b) A prisoner charged in a criminal case shall be permitted reasonable access to a telephone for the purpose of case preparation."

COMMENTARY AND SECTIONAL ANALYSIS
FOR THE 1985 AMENDMENTS TO ALASKA'S LAWS ON
CORRECTIONAL FACILITIES AND THE IMPRISONMENT
AND REHABILITATION OF OFFENDERS
CS FOR HB 114 (HESS)

Introduction

This Act represents a comprehensive attempt to update Alaska's laws on correctional facilities and the imprisonment and rehabilitation of offenders. Many of these laws have not changed since Alaska became a state, while the legal and administrative problems confronted by Alaska's correctional system are dramatically different than they were 25 or even 10 years ago. This Act incorporates changes necessary to respond to both decisions by the courts and the practical necessities of administering the Alaska correctional system in the 1980's.

Section 1. AS 09.10.140, Disabilities for Minority and Incompetency.

This section repeals the provision in former AS 09.-10.140 which tolled the statute of limitations of the time period in which a prisoner could commence a court action which accrued during imprisonment. Because the right to access to the courts is no longer precluded for prisoners under AS 33.-30.191 of this Act, it would give a prisoner an unequal advantage over a normal citizen to retain the tolling of the statute

of limitations. This is more fully explained in the commentary to section 33.30.191.

Section 2. AS 09.20.020, Disqualification of Jurors.

This section amends one of the two statutory bases for which a person is disqualified from serving as a juror. Under this section, a person convicted of a crime is disqualified from serving as a juror until the person is unconditionally discharged from any supervision. Under former AS 09.20.-020, a person was disqualified from serving as a juror if the person was convicted of a felony and had not had his or her civil rights restored.

This amendment to AS 09.20.020 is necessary to conform with new AS 33.30.191, which provides, as one of the effects of a criminal conviction, disqualification from serving as a juror until the person's unconditional discharge. This amendment is supported by the Alaska Court System.

Sections 3-4. AS 11.56.340 and AS 11.56.350, Unlawful Evasion in the First and Second Degrees.

These sections repeal and reenact criminal statutes relating to unlawful evasion from custody to provide specific references to AS 33.30.101--33.30.131 pertaining to furlough of

prisoners. These sections make clear that failure of a prisoner on furlough to return to the place of confinement or residence within the time authorized by those having direct supervision over the prisoner constitutes the crime of unlawful evasion. The degree of the crime remains the same as provided for under existing law.

Section 5. AS 12.47.050(d), Disposition of Defendant Found Guilty But Mentally Ill.

Prior to amendment, AS 12.47.050(d) prohibited a prisoner found guilty but mentally ill who is receiving treatment from being released on furlough under AS 33.30.150, 33.30.250, or 33.30.260, or on parole. This section makes technical changes to reflect the new statutes pertaining to furlough of prisoners, AS 33.30.101--33.30.131. It also creates an exception to this general rule by permitting a guilty but mentally ill prisoner to be furloughed to a secure setting for purposes of treatment.

Under AS 33.30.101(a)(3) and AS 33.30.121(a)(2), a prisoner requiring medical or psychiatric treatment outside of a correctional facility may be furloughed for this purpose. Permitting a prisoner found guilty but mentally ill to be furloughed to a facility such as the Alaska Psychiatric Institute is consistent with the clear intent to protect the public and

at the same time to provide necessary treatment through a furlough to a secure setting.

Section 6. AS 33.30.011--33.30.301, Correctional Facilities and Programs.

This section adds new sections to provide an updated statutory scheme pertaining to correctional facilities and management and control of Alaska's prisoners. A brief analysis of each section and its intent follows:

ARTICLE 1. ESTABLISHMENT, CONTROL, AND MANAGEMENT.

Section 33.30.011. Duties of Commissioner.

This section sets out the duties of the commissioner of corrections. Subsection (1) combines the responsibilities set out in former AS 33.30.010 and 33.30.040 and makes clear that management and control of correctional facilities, as well as the responsibility for providing for the custody, care, and discipline of prisoners, rests with the commissioner.

Subsection (2) incorporates the responsibilities set out in former AS 33.30.020 (classifying prisoners and establishing programs for their rehabilitation). It expands those responsibilities by setting out specific goals which the

programs are reasonably calculated to achieve. In addition, it requires the commissioner to establish furlough programs which are addressed in sections 33.30.101--33.30.131.

Subsection (3) requires the commissioner to provide necessary medical services for prisoners, a responsibility provided for in former AS 33.30.050. Necessary medical services includes treatment for dental, visual and audio problems.

Subsection (4) requires the commissioner to provide necessary psychological or psychiatric treatment for prisoners under the standard articulated by the Alaska Supreme Court in Rust v. State, 582 P.2d 134, opinion on reh. 584 P.2d 38 (Alaska 1978). This subsection requires a physician or other health care provider to exercise professional judgment under the Rust standard in determining the need for psychological or psychiatric care. Health care provider is defined in the definition section, 33.30.301 so as to be consistent with professional standards of medical practice and Alaska's mental health statutes (AS 47.30.915).

Section 33.30.021. Regulations.

This section requires the commissioner to adopt regulations to implement this chapter and thus does not constitute a substantive change from former AS 33.30.030.

Section 33.30.031. Contract for Care and Confinement of Prisoners.

Subsections (a) and (b) authorize the commissioner to determine the availability of state correctional facilities for state prisoners, and to contract with public or private entities to provide necessary facilities when state facilities are not available. These subsections are based on former AS 33.30.060, but expand the commissioner's authority to contract with a private agency to confine prisoners convicted of a misdemeanor. Former AS 33.30.060 did not permit the commissioner to contract with private agencies for the confinement of prisoners. In essence, this will permit contracting with a privately operated jail for misdemeanants, but such a facility must provide a similar degree of care and discipline as that required in state facilities.

Subsection (b) also clarifies the authority of the commissioner to house prisoners (both felons and misdemeanants) who are on furlough in a privately operated facility (e.g. halfway house). Although this authority existed under a reasonable interpretation of a number of prior statutes, it was not expressly set out.

Subsection (c) makes clear that a prisoner on furlough, a probationer, or a parolee who is housed in a privately

operated correctional facility and who is working will be required to pay for all or part of the prisoner's living expenses, as well as contribute to court ordered fines and restitution, awards made to victims which arose out of the prisoner's criminal conduct, and to support the prisoner's dependents. A judgment, court order, or order of the child support enforcement agency to make child support payments has priority over other financial obligations as set out in AS 09.65.132. These requirements are fully set out in AS 33.30.131.

Subsection (d) permits the commissioner to enter into an agreement with other jurisdictions or another state agency in this state (e.g., juveniles in the custody of the commissioner of health and social services) to provide a correctional facility for persons in custody. This subsection incorporates the provisions of former AS 33.30.070 and various interstate compacts located in AS 33.36.

Section 33.30.041. Lease of Correctional Facility to Municipality.

This section is essentially a reenactment of former AS 33.30.080 and permits the commissioner to lease a state correctional facility to a municipality or to jointly operate such a facility with a municipality if determined to be in the best interest of the state.

ARTICLE 2. COMMITMENTS, PROGRAMS, AND FURLOUGHS.

Section 33.30.051. Commitment to Commissioner.

This section is essentially identical to former AS 33.30.090 and reflects that convicted prisoners are committed to the custody of the commissioner.

Section 33.30.061. Commissioner to Designate Facility.

This section is based primarily on former AS 33.30.-100 and 33.30.110 and makes clear that it is the commissioner who determines which facility a prisoner is to be sent to serve a term of imprisonment or period of temporary commitment. While it is not explicitly stated, the authority of the commissioner to designate a facility for a prisoner under subsection (a) is intended to include the authority to order a prisoner transferred from one facility to another (included in former AS 33.30.120).

Subsection (b) also makes clear that the courts have limited power to override the decision of the commissioner to designate a facility for a prisoner who has a pending appeal unless the prisoner would be denied the right to effective assistance of counsel. This subsection is consistent with the Alaska Supreme Court's decision in Padie v. State, 594 P.2d 50,

60-61 (1979), in which the court cautioned Alaska's correctional authorities to keep a convicted defendant at the place of trial a reasonable period of time before transferring him or her in order to consult with counsel regarding an appeal. It is noteworthy that the Department of Corrections entered into a court ordered settlement agreement in Cleary v. Smith, 3AN-81-5274, which precludes transfer of a prisoner who is appealing his or her conviction to a facility outside of Alaska until 30 days after the record on appeal is certified.

Similarly, the decision of the commissioner to designate a facility for a prisoner not appealing his or her conviction may not be halted by a court unless the prisoner can demonstrate an abuse of discretion by the commissioner. This envisions the prisoner exhausting his or her administrative remedies within the department of corrections, and only then demonstrating to a court that there was no reasonable basis supporting the commissioner's decision to designate a particular facility. This is consistent with decisions of the Alaska Supreme Court in Rust v. State, supra, and the Alaska Court of Appeals in Nell v. State, 642 P.2d 1361 (1982). The past few years have resulted in a number of prisoners securing court orders prohibiting their transfer for lengthy periods of time, when the prisoners' concerns could be adequately met at other institutions, and the orders prohibiting transfer impaired the department's ability to efficiently manage and

appropriately classify prisoners. This provision will further make clear the court's limited role in designating facilities for prisoners.

Section 33.30.071. Responsibility for Prisoners Pending Commitment.

This section is based primarily on former AS 33.30.-130 and describes who is responsible for a state prisoner pending initial court appearance and clarifies what agency is responsible for providing medical services for a prisoner.

Pending arraignment or commitment by a court to the custody of the commissioner of corrections, a state prisoner is the responsibility of the commissioner of public safety. However, medical care remains the responsibility of the commissioner of corrections unless a prisoner in police custody is in immediate need of medical care prior to admission into a correctional facility. Under these circumstances, the law enforcement agency having custody of the prisoner is responsible for providing necessary medical care. However, the law enforcement agency is not precluded from requiring the prisoner to compensate the agency for medical services provided for a medical condition which existed prior to and did not arise out of the arrest.

This section also clarifies what has been a gray area in the past. If an intoxicated person is taken into protective custody under AS 47.37.170, or taken into custody for an emergency mental evaluation under AS 47.30.705, the state is responsible for the cost of care only if the person is admitted into a state facility. If the person is admitted into a municipal facility, then the municipality must bear the cost. This is a just way to share the burden of a statewide problem.

Section 33.30.081. Transportation of Prisoners.

This section reenacts former AS 33.30.130(b) and AS 33.30.160 reflecting that the commissioner of public safety is primarily responsible for transporting state prisoners. It is recognized that the commissioner of corrections has been assuming an increasingly greater role in the transportation of non-high risk prisoners through an agreement with the commissioner of public safety. This section in no way disapproves of this practice. If the respective agencies and the legislature become satisfied that corrections personnel have received sufficient training to transport high risk prisoners while adequately protecting the public, it may well become an efficient and cost effective measure to statutorily transfer this responsibility to the commissioner of corrections in the future.

This section also codifies present practice whereby a state prisoner released from a state correctional facility is provided the fare for return transportation to the point of arrest by the commissioner of corrections. When the release is from a facility other than a state correctional facility, the fare for return transportation is provided by the commissioner of public safety.

Section 33.30.091. Designation of Programs.

This section sets out the criteria the commissioner should consider in assigning a prisoner to any program established for the treatment and care of prisoners. It also makes clear that assignment of a prisoner to a pre-release furlough program is governed by AS 33.30.111.

The Alaska Supreme Court has held that where a prisoner has a serious particular identifiable medically-related problem associated with the prisoner's criminal behavior (i.e., alcohol, psychological or drugs), then the prisoner must be provided access to some program reasonably related to addressing the causes of these problems. See, Good v. State, 590 P.2d 420 (Alaska 1979); Abraham v. State, 585 P.2d 526 (Alaska 1978); Rust v. State, supra.

However, the case law also strongly supports the proposition that the commissioner of corrections has the discretion to determine what particular programs will be made available to a prisoner, especially a prisoner who does not have a serious medically-related problem associated with his or her criminal behavior, and the appropriate time the programs will be made available.

As long as a decision as to what type of program and when that program is provided is neither arbitrary nor vindictive, these decisions are left solely to the discretion of the commissioner. La Barbera v. State, 598 P.2d 947, 949 (Alaska 1979); Good v. State, supra, Brandon v. State, 581 P.2d 1116, 1119 n.11 (Alaska 1978); McGinnis v. Stevens, 543 P.2d 1221, 1237 (Alaska 1975).

This section is consistent with these principles.

Section 33.30.101. Furloughs.

This section sets out the purposes for which a prisoner may be granted a furlough and the factors which must be considered before a furlough is granted. Former AS 33.30.150, 33.30.250 and 33.30.260 described available furlough programs. This section and AS 33.30.111--33.30.141 address furlough programs in a much more comprehensive fashion. The types of

furloughs available to prisoners and the particular requirements are addressed in AS 33.30.111 and AS 33.30.121 and the commentary to these sections.

Section 33.30.111. Pre-Release Furloughs.

This section describes pre-release furloughs which will be the principal type of furlough granted to a prisoner. A pre-release furlough is an authorized absence from actual confinement for any of the purposes set out in AS 33.30.101.

Under subsection (b), a prisoner on a pre-release furlough will reside in a facility with varying levels of restriction and supervision depending upon the needs of the prisoner and the risks to the public. This may range from a secure halfway house to furlough in a remote location in the state. Subsection (c) sets out minimum levels of restriction and supervision for all prisoners on a pre-release furlough to monitor the prisoner's performance and adequately protect the public.

Subsection (d) makes clear, in addition to other eligibility criteria established by the commissioner which must relate to risks to the public, that a prisoner is not eligible for a pre-release furlough until at least one third of the sentence has been served (similar to discretionary parole

eligibility) or where the sentence is longer than five years when the prisoner is within three years of release. These time requirements reflect the view that the reintegration of a prisoner into society requires a portion of the sentence being served before a prisoner may venture into the community.

Under subsection (e) a prisoner who is denied a furlough must be provided a written explanation of the reasons for the denial.

Lastly, subsection (f) incorporates the portion of the victim's rights bill passed by the Thirteenth Alaska Legislature which requires that a victim of a crime against a person be permitted to comment on the proposed furlough and, upon request, be notified of the furlough if it is granted.

Section 33.30.121. Short-Duration Furloughs.

This section describes the second type of furlough which may be granted a prisoner, a short-duration furlough. A short duration furlough is one in which a prisoner may be released for a period not to exceed 12 hours at any one time, except for a family visitation (identical to former AS 33.30.-150) or for medical treatment which may last only as long as the necessary treatment. A short-duration furlough may be granted to a prisoner at any time under regulations adopted by

the commissioner. This is consistent with former law and recognizes the rehabilitative value of family visitations for low risk prisoners as well as the occasional practical necessity of furloughing a prisoner to a location outside a correctional facility for medical treatment.

Section 33.30.131. Pre-Release Furlough Involving Employment.

This section authorizes the commissioner to collect the earnings of a prisoner who is working while on a pre-release furlough to pay for the room and board of the prisoner as well as for court ordered fines and restitution, awards made to victims which arose out of the prisoner's conduct, and to support the prisoner's dependents. The priority for child support payments established in AS 09.65.132 is recognized here.

The obligation of a prisoner on furlough to make payments for the purposes set out in this section is extended to probationers and parolees who are working and residing in a privately operated correctional facility under AS 33.30.031.

Section 33.30.141. Effect of Violation of Furlough Conditions or Failure to Return.

This section explains that the penalties for violating the conditions established for a prisoner's conduct while

on furlough may range from criminal prosecution for unlawful evasion to immediate return to actual confinement in a correctional facility and disciplinary proceedings.

ARTICLE 3. GENERAL PROVISIONS

Section 33.30.151. Employment of Prison Inmates.

This section reenacts prior law relating to the employment of prisoners (former AS 33.30.225) and expands these provisions in a number of ways. It expands the kind of work a prisoner may do to include renovation, repair or alteration of existing correctional facilities as permitted by AS 44.65.-050(d), a provision located in section 10 of this bill. This will provide gainful employment to prisoners thus helping to alleviate the problem of prisoner idleness, and also provide a substantial cost savings to the state.

Former AS 33.30.225(b), which is reenacted in subsection (b) of this section, permitted the commissioner to enter into a contract with a public agency for the employment of prisoners in conservation projects. Subsection (b) however, expands the commissioner's authority, clarifying an area which has limited the department's ability to involve prisoners in productive employment. This subsection permits the commissioner to enter into a contract with any individual or agency

for the employment of prisoners if the work to be performed will have minimal negative impact on an existing private industry or labor force in the state. This is not intended to result in the sole benefit of an individual who may see the opportunity for inexpensive labor. Rather, it is intended to expand the rehabilitative opportunities available to prisoners, increase their opportunity to have funds available upon release from custody, and minimize the dangers inherent in inmate idleness.

As in former AS 33.30.225, this section permits the commissioner to discipline prisoners who refuse to work.;

Section 33.30.156. Pay of Prison Inmates.

This section reenacts prior law regarding pay of prisoners who are working (former AS 33.30.227). In addition, this section makes clear that inmates who are paid by the department for working are not covered by workers' compensation. This is simply a clarification of policy previously established by the legislature when it enacted the correctional industries program (AS 33.32) in 1982.

Section 33.30.161. Transmission of Documents.

This section is substantially the same as former AS 33.30.185 and explains what documents must be delivered to the correctional facility where the prisoner will be confined. As in former AS 33.30.185, it requires the commissioner to adopt regulations providing for the security and confidentiality of delivered documents.

Section 33.30.171. Superintendent of Correctional Facility May Administer Oaths and Acknowledgments.

This section reenacts former AS 33.30.190 by authorizing a correctional superintendent or assistant superintendent to notarize a prisoner's legal papers at no charge to the prisoner.

Section 33.30.181. Telephone Monitoring Inside Correctional Institutions.

This is a new section which permits the commissioner to authorize the monitoring or recording of inmate telephone calls in order to preserve the security and orderly administration of a correctional facility and to protect the public. The prisoner must be informed of the monitoring capability. Prisoner telephone calls to attorneys may not be monitored except when authorized by a court. Despite a provision in the court ordered settlement agreement in Cleary v. Smith,

JAN-81-5274, which prohibits monitoring of telephone calls of pretrial detainees, this section is intended to extend to pretrial detainees as well as to convicted prisoners, as they often pose the greatest risk to the public or to the security and orderly administration of a correctional facility.

Section 33.30.191. Effect of Judgment of Conviction on Civil Rights.

This section clarifies a gray area that has existed for several years under former AS 33.30.310 and 33.30.320. AS 33.30.310 provided that the civil rights of a person who received a sentence of imprisonment for a term less than for life were suspended during the term of the sentence. AS 33.30.320 provided that a person who received a life sentence was thereafter considered civilly dead.

Former AS 33.30.310 and 33.30.320 are representative of the type of statute adopted at one time by nearly all states, but which have since been repealed or modified by legislative action or court decision in the great majority of jurisdictions due in large part to the recognition of their adverse impact on the rehabilitation of prisoners and the evolving standards of treatment due prisoners. By 1973, only 13 states retained civil death statutes. See, Johnson v. Rockefeller, 58 F.R.D. 42, 48-50, 49 n.10 (S.D.N.Y. 1973). The

number is considerably less today. A major problem with these statutes has been the almost universal failure to delineate what rights are civil rights. Even when courts have indicated that a right is a civil right, they have held that not all civil rights are suspended because of other superceding rights which derive from state or federal constitutions. See, e.g., Bush v. Reid, 516 P.2d 1215 (Alaska 1973), where the Alaska Supreme Court held that although a parolee fell within the proscriptions of AS 33.33.310, he nonetheless had the right to file a civil action in court, notwithstanding this clearly being a civil right. See, also, Salisbury v. List, 501 F. Supp. 105 (D. Nevada 1980) and Hudson v. Rhodes, 579 F.2d 46 (5th Cir. 1978), where these two courts disagreed on the right of an inmate to marry.

In recognition of the need to clarify which specific civil rights are affected by a criminal conviction, this section thus clearly delineates two specific rights which are suspended as a result of conviction for a crime until the prisoner's unconditional discharge. They are the right to vote for a person who is convicted of a felony involving moral turpitude (consistent with AS 15.05.030), and the right to serve on a jury for a person convicted of any crime. In section 2 of this bill, AS 09.20.020 is amended to conform with the suspension of the right to serve on a jury provided for in this section.

The right to commence a civil action in a court (i.e., access to the courts) is a civil right which some courts have ruled is suspended as a result of conviction for a crime. See, e.g., Tabor v. Hardwick, 224 F.2d 526 (5th Cir. 1955). However, suspending this right raises substantial constitutional questions as reflected in the Alaska Supreme Court's decision in Bush v. Reid, supra, and Johnson v. Rockefeller, supra at 48.

One reason courts have upheld suspending this civil right was that the statute of limitations of the period in which a prisoner could commence a court action was tolled for the duration of the prisoner's sentence. This tolling was provided for in AS 09.10.140. Thus, while a normal citizen may only have two years to file a tort action from the date the action accrues, a prisoner with a 30 year sentence would have 32 years to file the same action. Rather than continue the constitutionally questionable practice of suspending access of prisoners to the courts under former AS 33.30.310 (which not all courts have done) and correspondingly giving prisoners a much longer time than a normal citizen in which to file a court action, it is determined that the better policy is to allow prisoners the same right to commence a court action as any other citizen and to repeal the provision in AS 09.10.140 which tolled the statute of limitations for prisoners. This has been done by amending AS 09.10.140 in section 1 of this bill.

Making clear that a prisoner has the same right to commence a legal action as a normal citizen does not mean that the prisoner has the same right to personally appear in court, particularly in a court action which is unrelated to the prisoner's confinement. While the right of a prisoner to personally appear in court is ultimately up to the judge before whom the matter is pending, it is important to note that courts and legislatures have recognized the legitimate security interests of corrections and law enforcement officials in not having to transport prisoners to court, particularly in matters unrelated to their confinement. See, e.g., Hubbard v. Montgomery, 372 So.2d 315, 317 (Ala. 1979); Johnson v. Rockefeller, supra at 48. See, also, New York Civil Rights Law §§ 79 and 79-a. This is a recognition that, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 285 (1948). Appearance through an attorney or by deposition will adequately safeguard a prisoner's interest in most cases. See, e.g., Alaska R. Civ. Pro. 27, 30.

Section 33.30.201. Disposal of Abandoned Personal Property.

This is a new section which addresses the practical problems of lack of space to store abandoned prisoner property and lack of a mechanism to dispose of the property.

Under this section, a prisoner's property remaining at a correctional facility which is not disposed of by the prisoner within 90 days of release or transfer is deemed abandoned, and will be delivered to the Department of Administration for disposal as if it were surplus state property. When a prisoner is transferred from one correctional facility to another, the commissioner is responsible for shipping a reasonable amount of the prisoner's personal property. The abandonment provisions only apply to property remaining after the shipment.

Section 33.30.211. Confiscation of Contraband.

This is a new section which authorizes the commissioner to impose disciplinary sanctions upon a prisoner who is found in possession of money in an amount greater than that permitted by the commissioner. If after a hearing, which satisfies minimum due process requirements, a prisoner is found to have possessed money in an amount greater than that permitted, the excess money is declared contraband and must be forfeited and deposited into the general fund.

The purpose of this section is to respond to the problem of prisoners who possess excess amounts of money which creates risks both to the personal safety of the prisoner in possession of the money as well as to the security of the

institution. Similar statutes have been upheld as reasonable efforts to provide for the safety of prisoners and the security of correctional facilities. See, e.g., Harris v. Forsyth, 735 F.2d 1235 (11th Cir. 1984).

Prior to the adoption of this section, no statute existed authorizing the confiscation and forfeiture of excess money. Upon discovery it was placed in the prisoner's account.

This section will deter such illegal activities as gambling and the sale of drugs, which although often cannot be proven, are believed to frequently be the reason that prisoners are discovered in possession of large amounts of money.

Section 33.30.301. Definitions.

This section defines the terms used in AS 33.30.

Sections 7-8. AS 33.32.015(b), AS 33.32.017, "Free Venture" Correctional Industries.

Section 7 amends AS 33.32.015 dealing with correctional industries to permit the commissioner to enter into a joint cooperative venture with private industry for the employment of prisoners in correctional industries. Such a joint venture is subject to competitive bidding laws, thus providing

an equal opportunity for all interested parties in the private sector.

Section 8 is a new section which permits the commissioner, upon the recommendation of the Correctional Industries Commission, to establish "Free Venture" correctional industries. A "Free Venture" correctional industry is a form of joint venture in which a private industry operates and manages in total or in part a correctional industry within a correctional facility, and provides all machinery, tools, materials, training and marketing of a product in return for which the commissioner provides inmate workers for which the department is paid an hourly wage. The department, of course, pays the prisoners for their labor under AS 33.32.050. The private industry must indemnify and hold the state harmless in the event of any liability arising from injury or damage related to the goods or services produced by the "Free Venture" industry.

"Free Venture" industries have been successfully implemented in a large number of states. The principal reason for adopting this section is the recognition of the high costs involved in getting the correctional industries program operating effectively. This greatly increases the potential for long term cost savings to the state both in resources generated by the industries program as well as in a hoped for decline in

recidivism due to the rehabilitative benefits derived from the program.

Section 9. AS 33.32.030(f), Marketing of Correctional Industries Products.

This section amends AS 33.32.030 to exempt "Free Venture" industries from the requirements of this statute, which give preference to correctional industries products to state agencies, set prices for industries products, and limit the sale of industries products to a private industry to certain circumstances requiring the approval of the Correctional Industries Commission. It is a recognition of the fact that the private industry in the "Free Venture" program will do its own marketing, and should have no priority in the marketing of its goods or services to state agencies.

Section 10. AS 39.35.360(e), Earlier Service.

This section is a housekeeping change relating to credited service for correctional employees.

Section 11. AS 44.65.050(d), Restriction on Construction Contracts.

This is a new section which permits the Department of Corrections and the Department of Transportation and Public Facilities to enter into agreements whereby DOTPF may delegate the responsibility for construction, renovation, repair, or alteration of a state correctional facility to the Department of Corrections up to an estimated cost of \$100,000 per project.

Since under present law DOTPF may do this amount of work itself, this section merely allows DOTPF to delegate the work to the Department of Corrections, if the department agrees. This will provide additional productive employment for prisoners (e.g. construction of a greenhouse, etc.) at a substantial cost savings to the state. A number of other departments are provided even greater authority under AS 44.65.050 to perform construction work on projects related to their respective responsibilities. A limitation of \$100,000 is provided for here in recognition of the desire to minimize any impact on an existing labor force or construction industry.

Section 12. Repeal of various sections contained in AS 33.30.-010--33.30.900.

This section repeals Alaska's existing statutory scheme pertaining to correctional facilities and management and control of prisoners.

Section 13. Regulations.

This section makes clear that regulations already in effect are not nullified because they were adopted under a statute which is amended or repealed by this Act unless they are inconsistent or are in conflict with a provision of this Act.

Petty

Proposed Amendment to CS for HB 114 (HESS)

- (a) Page 15, line 1 -- change title by adding words "ACCESS AND" after "TELEPHONE" and before "MONITORING".
- (b) Page 15, lines 2-9 -- make this a subsection (b).
- (c) Page 15, line 2 -- add a new subsection (a) as follows:

(a) A prisoner who is classified maximum custody, is placed in segregation as punishment for a rule infraction, or is placed in segregation because the prisoner poses a threat to others or to the security of a correctional facility may not use a telephone except to communicate with an attorney or in an emergency as determined appropriate by the commissioner.

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: HB 114

Page 14, following line 23, insert a new subsection to read:

"(c) A person serving a sentence in a correctional facility may not receive state land available under AS 38.05 or AS 38.09 or a loan funded by the state or take any action preparatory to receiving land available under AS 38.05 or AS 38.09 or a loan funded by the state."

Reletter succeeding subsections accordingly.

A M E N D M E N T

Offered in the HOUSE

By Clocksin

TO: CSHB 114 (HESS)

Page 1, line 9, through page 2, line 23, delete all material.

Page 2, line 24, delete "* Sec. 5." and insert "* Section 1."

Renumber succeeding bill sections accordingly.

Page 3, line 8, delete "and," and insert "; (3)"

Renumber succeeding paragraphs accordingly.

Page 3, lines 25 - 26, delete "with reasonable medical certainty"

Page 4, line 2, delete "shall" and insert "may"

Page 4, line 11, after ".", insert:

"In accordance with the policy established under AS 33.36.010, the commissioner may not transfer a resident inmate outside of the state if the inmate's continued confinement in the state will better facilitate rehabilitation or treatment."

Page 4, line 20, delete "Earnings of a" and insert "A"

Page 4, line 22, delete "are" and insert "is"

Page 4, line 22, after "AS 33.30.131" insert "and 33.30.250(b)"

Page 5, line 17, delete "reasonable times" and insert "any time"

Page 5, line 29, delete "(a)"

Page 6, line 3, after "." delete all material through page 6, line 13.

Page 8, line 19, after "public" insert "and reformation of the prisoner"

Page 9, line 28, after "prisoner" insert "at all times"

Page 11, line 10, delete "six" and insert "four"

Page 11, line 19, delete "by the employer"

Page 12, line 18, after "ment" through line 20, delete all material and insert:

"and, after a hearing,

(1) confine the prisoner for a period not to exceed the balance of the term of imprisonment; and

(2) initiate disciplinary proceedings authorized by regulations adopted by the commissioner."

Page 13, lines 6 - 7, delete "commissioner" and insert "Department of Labor"

Page 15, lines 1 - 18, delete all material.

Page 16, line 5, after "property" insert "properly"

Page 18, line 10, after "state" insert "determined by the Department of Labor"

Page 18, lines 13 - 14, delete ", or as otherwise necessary to fulfill the purpose of this chapter"

Page 18, line 23, after "." insert "It shall have minimal negative affect on an existing private industry or labor force in the state."

Page 20, line 9:

Delete "and"

Page 20, line 9:

After "33.30.900", insert "and AS 37.05.230(9)"

Slack

Proposed Amendment to CS for HB 114 (HESS)

- (a) Page 7, lines 17-18 - delete "is responsible for furnishing" and in its place add "shall make available"
- (b) Page 7, lines 20-21 - delete "is responsible for furnishing" and in its place add "shall make available"

Proposed Amendment to CS for HB 114 (HESS)

Page 8, line 21 - after "of" and before "furloughs," add
"prerelease and short-duration"

Proposed Amendment to CS for HB 114 (HESS)

Page 9, line 5 - after "determines" and before "that," add
"with reasonable probability"

Proposed Amendment to CS for HB 114 (HESS)

Page 10, lines 27-28 - delete "The victim shall keep the commissioner apprised of the victim's current mailing address."

Proposed Amendment to CS for HB 114 (HESS)

Page 11, line 10 - change "six" to "four"

Proposed Amendment to CS for HB 114 (HESS)

- (a) Page 11, line 15 - change title by adding "OR SHORT-DURATION" after "PRERELEASE" and before "FURLOUGH"
- (b) Page 11, line 18 - after "a" and before "furlough," add "prerelease or short-duration"

Stark

Proposed Amendment to CS for HB 114 (HESS)

- (a) Page 15, line 1 -- change title by adding words "ACCESS AND" after "TELEPHONE" and before "MONITORING".
- (b) Page 15, lines 2-9 -- make this a subsection (b).
- (c) Page 15, line 2 -- add a new subsection (a) as follows:

(a) A prisoner who is classified maximum custody, is placed in segregation as punishment for a rule infraction, or is placed in segregation because the prisoner poses a threat to others or to the security of a correctional facility may not use a telephone except to communicate with an attorney or in an emergency as determined appropriate by the commissioner.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 28, 1985

Honorable M. Mike Miller
Honorable Max F. Gruenberg, Jr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representatives Miller and Gruenberg:

Enclosed for your information and review is a list of proposed changes to HB 114, An Act Relating to Correctional Facilities, and the Imprisonment and Rehabilitation of Offenders. These suggestions are now offered after careful study and consultation with you or members of your staff. It is our hope that you and the members of your committees will be receptive to these suggested changes.

In addition, we have enclosed an updated Proposed Draft Commentary and Sectional Analysis to HB 114 which incorporates the proposed changes. We emphasize the words "proposed draft", although the proposed language in the commentary is presented as if HB 114 has already been adopted.

We have not yet had the opportunity to incorporate the various restitution center bills into HB 114, so this material is not included in the enclosed documents. We hope to accomplish this in the next few days.

On behalf of both Commissioner Endell and Attorney General Gorsuch, thank you for your continuing support in our efforts to address the problems facing Alaska's correctional system.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

Enclosures

Proposed Changes To HB114

1. (a) Page 5 line 21: add "effective assistance of" between "to" and "counsel"
(b) Page 5 line 22: change "is" to "may"
(c) Page 5 line 23: substitute "be enjoined" for "subject to review"
2. Page 6 line 5: add "or AS 47.30.705" after "AS 47.37.170"
3. Page 11 line 12: change the period (.) to a comma (,) and after the comma add "including child support payments as required by AS 09.65.132"
4. (a) Page 14 lines 24-29: take out subsection (c)
(b) Page 15 line 1: change "(d)" to "(c)"
5. (a) Page 15 line 6: between "property" and "within", add the words "remaining at the correctional facility"
(b) Page 15 line 8: add a new subsection (b) to read "(b) Notwithstanding (a) of this section, when a prisoner is transferred from one correctional facility to another, the commissioner shall provide for the shipment of a reasonable amount of the prisoner's property as determined appropriate by the commissioner."
(c) Page 15 line 8: change "(b)" to "(c)"
(d) Page 15 line 12: change "(c)" to "(d)"
6. Add a new section to read "Sec. 33.30.211. Confiscation of Contraband." (see attached)
7. (a) Page 16 line 6: add a new definition to read "(7) health care provider" means (see attached definition)
(b) Change all numbering of definitions beginning with "municipality" by increasing the numbering by one.
8. Page 17 line 29: add a new subsection (e) to read "(e) The private industry or organization shall identify, save harmless, and defend the state, its agents, officers and employees from liability of any kind resulting from injuries or damages sustained by any person or property as a result of the use of any of the goods or services of the "Free Venture" industry."

9. Page 18 line 24: change the period (.) to a comma (,) and after the comma add the words: "except to the extent that a regulation is inconsistent or in conflict with a provision of this Act."
10. Add a new section amending AS 09.10.140 (see attached).
11. Add a new section amending AS 09.20.020 (see attached).

Sec. 33.30.211. CONFISCATION OF CONTRABAND. (a) A prisoner who possesses money in an amount greater than that permitted by the commissioner is subject to disciplinary sanctions under regulations adopted by the commissioner.

(b) Money in the possession of a prisoner in an amount greater than that permitted by the commissioner is contraband and must be seized and summarily forfeited to the state. Money forfeited under this section must be deposited into the general fund.

(7) "health care provider" means a physician's assistant or nurse practitioner licensed to practice in the state and working under the direct supervision of a licensed physician or psychiatrist, and a mental health professional as defined in AS 47.30 915;

* Sec. ____ . AS 09.10.140 is amended to read:

Sec. 09.10.140. DISABILITIES OF MINORITY AND [,] INCOMPETENCY [AND IMPRISONMENT]. If a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority [,] or (2) incompetent by reason of mental illness [, OR (3) IMPRISONED ON A CRIMINAL CHARGE, OR IN EXECUTION UNDER SENTENCE OF A COURT FOR A TERM LESS THAN THE PERSON'S NATURAL LIFE], the time of the disability is not a part of the time limited for the commencement of the action. But the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

* Sec. ____ AS 09.20.020 is amended to read:

Sec. 09.20.020. DISQUALIFICATION OF JURORS. A person is disqualified from serving [TO ACT] as a juror if the person

(1) has served as a juror in the state within one year of the time of examination for service; or

(2) has been convicted of a crime [FELONY AND THE CIVIL RIGHTS OF THE PERSON HAVE NOT BEEN RESTORED.] , until the person's unconditional discharge. Unconditional discharge has the meaning given in AS 12.55.185.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 27, 1985

REPLY TO:

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OFFICE OF SPECIAL PROSECUTIONS
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1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

Honorable Max F. Gruenberg
Chairman, Health, Education
and Social Services Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Letter of Intent (Commentary
and Sectional Analysis) to
CS for HB 114 (HESS)

Dear Chairman Gruenberg,

In reviewing CS for HB 114 (HESS), I noticed that legislative counsel moved what was previously section 6 of the bill to section 12, and sections 7-12, have now become sections 6-11. Unfortunately, the commentary and sectional analysis, which the House HESS Committee approved as a letter of intent for this bill and which appeared in the House Journal Supplement No. 35 on March 25, 1985, does not reflect this change.

Enclosed is a revised commentary and sectional analysis which does reflect this housekeeping change. I request that you please notify whomever publishes the House Journal of this change so it may be reflected in the Journal.

Thank you for your attention on this matter.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

MJS/ab-43

Enclosure

cc: ✓ Honorable Mike Miller (w/enclosure)
Chairman House Judiciary Committee

Roger Endell, Commissioner (w/enclosure)
Department of Corrections

LAW OFFICES OF
TIMOTHY H. STEARNS
415 L STREET
ANCHORAGE, ALASKA 99501
(907) 276-2828

April 16, 1985

Don Clocksin
Alaska State Legislature
Pouch W (MS 3100)
Juneau, AK 99811

Dear Don:

The following is a list proposed amendments to House Bill
114; Sec.1 AS09.10.140.

Subjected imprisoned on a misdemeanor charge.

2. Proposed Amendment

Imprisoned on a criminal charge serving a sentence of one
year or less.

3. Proposed Amendment

ADD "Provided that the person has access to attorney at
state expense" to the existing propose change.

4. Proposed Amendment

Add the above language and the following language; or has
\$5,000 or more in the inmates account"

5. Proposed Amendment

Sec.2

1. Proposed Amendment

Change to: been convicted of a crime involving moral
terpitude.

2. Proposed Amendment

Been convicted of a crime involving moral terpitude

Article 1, Sec. 33.30.011

1. Proposed amendment

ADD "Safety, subsistence, proper government, treatment,
rehabilitation and reformation".

33.30.011

2. Proposed Amendment

Classify prisoners based upon validated security-custody
criteria and guidelines and classify prisoners for treatment and
reformation using validated tests and guidelines.

3. Proposed Amendment

"Classify prisoners to maximize reformation opportunities
using validated tests and procedures consistent with the security of
the institution and to ensure that prisoners are housed in the least
restrictive setting necessary for the reformation of
the prisoner. (Remainder of this section was lost in printing).
protection of the public, and safety of the institution"

33.30.021

(first part of this lost in printing)

3. Proposed Amendment

Change to: "Provide necessary psychological or psychiatric treatment if a physician or other health care provider reasonably believes that such treatment may heed in the refrimation or rehabilitation of the prisoners"

AS33.30.031

Sub A, Line 10 after agency ADD "or person".

2. Proposed Amendment

On line 11, after last word, ADD, "accept the commissioner should not transfer a resident inmate outside of the State if that inmate's time in Alaska may better facilitate a rehabilitation or treatment period"

3. Proposed amendment

On line 13, after the care, ADD "Treatment, or rehabilitation, refrimation, safety".

AS33.0.031 B

1. Proposed Amendment

T The Commissioner should have the discretion of placing any appropriate prisoner in the program at some state of his/her confinement.

2. Proposed Amendment

Line 17, after the word misdemeanor, ADD "or Class A Felony"

AS33.30.031 C

1. Proposed Amendment

Prisoners confined in a privately operated correctional facility or a publicly operated correctional facility may not be used as strike breakers scab labor otherwise be permitted to work where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed."

MORE TO FOLLOW



Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

Contents - HB 114
March 29, 1985

CSHB 114

HB 114

3/27/85 Cover Letter from Mike Stark revision of commentary
revised Commentary and Sectional Analysis

2/25/85 Cover Letter from Mike Stark with proposed changes
Proposed Changes to HB 114

Proposed Draft Commentary and Sectional Analysis

1/23/85 Governor's letter with two fiscal notes:

0- Administration

0- Dept of Corrections

Sectional Analysis

2/8/85 Letter from Karla Forsythe re jury disqualification

1/4/85 Letter from Glennwood Center

Blurb from Anchorage Chamber of Commerce Crime Commission

3/1/85 letter from Bob Cochrane

Bob Cochran

SUBJECT: Recommendations for
House Bill 104 and
House Bill 114

HOUSE BILL 104

We are in favor of the overall language of House Bill (HB) 104. The only portion of this bill that we are not in agreement with is on page 1, line 20, where the word [EARNED] will be deleted. If this is allowed to happen, offenders will be granted their good time in a block allotment. We feel the block allotment is necessary for the administrative purpose of determining a release date for an offender. If disciplinary action is deemed necessary, Corrections will have the ability to absorb all or part of this block allotment, as the bill reads now. We feel the offender should only forfeit good time earned to date for a disciplinary action, and that the word [EARNED] should remain in its present context.

HOUSE BILL 114

From the onset of the reading of HB 114, we were confused as to whether this was a correctional bill or a criminal law bill. The bill starts out with a section dealing with AS 11.56.340 Unlawful Evasion in the First Degree. This extends from page 1, line 9 through page 2, line 3. We are in agreement with this revision in the Statutes.

Please note the following findings:

Page 2, line 4 - 8. Indicates language that would be needed is AS 33.30 was repealed and reenacted.

Page 2, line 9 -
Page 16, line 15 Indicates language of reenactment of AS 33.30.

The language of Alaska Statutes 33.30 has been defined and challenged many times in our high courts. Those challenges have refined the working ability of these sections of the statutes to allow Corrections to administer their day to day operations of their correctional facilities. This statute for the most part, is mandated by the Alaska Constitution, Article 1, Sec. 12, which reads in part "Penal administration shall be based on the principle of reformation and upon the need for protecting the public."

A recent court decision dealing with language of Article 1, Sec. 12, states "that prisoners should at some point during their incarceration, be allowed reformation".

The language of HB 114 limits or deletes most of the language that is mandated by the Constitution and that that has been defined by the recent court. We then turned to the economic standpoint of HB 114. Millions of dollars have been exhausted in the drafting, implementing, and litigating of the current statute. If we allow HB 114 to be introduced into law as it is written, the people of Alaska are subject once more to footing the bill of implementing and litigating the new statute to meet constitutional standards. HB 114 is not without merit. There is language within it that is badly needed to clarify some of the existing problems of the daily operation of our correctional facilities.

The following is a cross-section of HB 114 vs AS 33.30 as it appears in its present form. What we will try to establish is what will be encompassed into the statute and what will be deleted as to the section headings.

HB 114	AS 33.30
33.30.011 Duties of Commissioner	33.30.010 Commissioner to control and manage state prison facilities 33.30.020 Commissioner to establish and administer prison facilities 33.30.040 Duty of Commissioner to provide prison facilities 33.30.050 Commissioner to provide medical services
33.30.021 Regulations	33.30.030 Commissioner to adopt rules and regulations
33.30.031 Contract for confinement and care of prisoners	33.30.060 Commissioner may contract for confinement and care of prisoners 33.30.070 Commissioner may contract to furnish facilities to the United States or political subdivisions of this state
33.30.041 Lease of correctional facility to municipality	33.30.080 Commissioner may lease state prison facility to political subdivision
33.30.051 Commitment to Commissioner	33.30.090 Commitment to Commissioner
33.30.061 Commissioner to designate facility	33.30.100 Commissioner to designate facility

HB 114	AS 33.30
NONE	33.30.110 Commissioner may designate facility for service of temporary commitments or sentences of one year or less
NONE	33.30.120 Transfer of Prisoners
33.30.071 Responsibility of prisoners pending commitment	33.30.130 Duties of the Commissioner of Public Safety to provide for persons pending commitment
NONE	33.30.140 Place of service of sentence by prisoner
NONE (limited in part to 33.30.121(1))	33.30.150 Visitation privileges
33.30.081 Transportation of prisoners	33.30.160 Transportation of prisoners
NONE	33.30.170 Expenses of prisoners to be paid by the department
NONE (limited to 33.30.161(a))	33.30.180 Copy of commitment
NONE (limited to 33.30.161(b)(c))	33.30.185 Transmission of criminal records and data to place of imprisonment
33.30.091 Designation of programs	NONE
33.30.101 Furloughs	33.30.250 Work furloughs 33.30.260 Rehabilitation furloughs Note: These in part only
33.30.111 Pre-release furloughs	Same as above
33.30.121 Short duration furloughs	NONE (limited in part to 33.30.150)

HB 114	AS 33.30
33.30.131 Pre-release furloughs involving employment	33.30.250(d) Work furloughs
NONE	33.30.250 Work furloughs
NONE	33.30.260 Rehabilitation furloughs or (limited in part to 33.30.101)
33.30.141 Effect of violation of furlough conditions or failure to return	NONE
33.30.151 Employment of prison inmates	33.30.225 Employment of inmates
33.30.156 Pay of prison inmates	33.30.227 Pay of prison inmates
33.30.161 Transmission of documents	33.30.185 Transmission of criminal records and data to place of imprisonment
33.30.171 Superintendent of correctional facility may administer oath and acknowledgements	33.30.190 Keeper of prison facility may administer oaths and acknowledgements
33.30.181 Telephone monitoring inside correctional institutions	NONE
33.30.191 Effect of judgement of conviction on civil rights	NONE
NONE	33.30.290 Forfeiture of property upon conviction and lien for fine and costs
NONE	33.30.300 Crime against convict in penitentiary
NONE	33.30.310 Effect of judgement of imprisonment in penitentiary

HB 114	AS 33.30
NONE	33.30.320 Effect of sentence to life imprisonment
33.30.201 Disposal of abandoned personal property	NONE
33.30.301 Definitions	33.30.900 Definitions

As the cross-section has indicated, there are many sections of the current statute that would not be addressed in HB 114.

Therefore, it is the opinion of this committee not to endorse this portion of HB 114.

Page 16, line 16 -
page 18, line 3

The language of these portions deal with upgrading the correctional industrial program.

We are in favor of this language.

Page 10, line 4 -

We have no objections

Page 18, line 14-21

Sets limits as to agreement to be entered upon regarding construction, renovation, repair of state correctional facilities.

We are not in favor of this language. The estimated costs of \$100,000 per project is too high to allow corrections an open checkbook.

Page 18, line 22-24

Regulations

We do not agree with this language.

End of recommendations

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 114 (HESS)
 Title: "An Act relating to
 correctional facilities..."
 Sponsor: Rules Committee
 Requestor: House Judiciary
 Date of Request: 03/29/85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected:
 Administration of Justice
 BRU, Program or Subprogram(s) Affected:
 Alaska State Troopers and
 DPS Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		[99.4]				
200 TRAVEL		[37.1]				
300 CONTRACTUAL		[3,099.1]	210.0	220.5	231.5	243.1
400 SUPPLIES		[7.0]				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		3,242.6	210.0	220.5	231.5	243.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		[3,242.6]	210.0	220.5	231.5	243.1
FEDERAL FUNDS						
OTHER						
TOTAL		3,242.6	210.0	220.5	231.5	243.1

POSITIONS:

FULL-TIME		[2.0]				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie

Phone: 465-4349

Division: Administrative Services

Date: 03/29/85

Approved by Commissioner: Robert J. Sundberg

Date: _____

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

COST ANALYSIS

CSHB 114 (HESS)

I. Alaska State Troopers BRU

The Alaska State Troopers will be affected by the proposed Section 33.30.071(c). The law enforcement agency taking custody will be, by statute, responsible for all injuries or medical problems the subject may have incurred prior to our taking custody. This will have even greater impact on municipal police agencies than on this Department. Costs shown are for medical services. A 5% annual inflation factor is applied to FY 87 and beyond.

Increased costs to Public Safety:

	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Contractual Services	200.0	210.0	220.5	231.5	243.1

II. DPS Administration BRU

Under the proposed Section 33.30.031, the Department of Public Safety would no longer be responsible for local contract jail facilities in seventeen communities, and funding for these contracts would be transferred to the Department of Corrections. The Special Assistant to the Commissioner of Public Safety and a Clerk-Typist III would also be transferred to Corrections with corresponding associated costs.

The Special Assistant has expertise in the area of administration of small jail facilities and is responsible for contract negotiation and monitoring, including on-site inspections. The Special Assistant's other functions will be reassigned to other staff personnel within the Department of Public Safety. The Cleary decision (facility and program standards) could affect the Department of Corrections ability to contract with small rural jails. Present short-term confinement service must be maintained.

Funding transferred from Public Safety to Corrections:

Personal Services *	[99.4]
Travel	[37.1]
Contractual Services	[3,299.1]
Commodities	[7.0]
TOTAL	<u>[3,442.6]</u>

* 2 positions, Special Assistant to the Commissioner (PCN 12-0085) and Clerk-Typist III (PCN 12-4205)

III. Net Fiscal Impact on the Department of Public Safety:

	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Alaska State Troopers	200.0	210.0	220.5	231.5	243.1
DPS Administration	[3,442.6]				
TOTAL	[3,442.6]	210.0	220.5	231.5	243.1

TO: JUDICIARY COMMITTEE

MARCH 1, 1985

HESS COMMITTEE

FINANCE COMMITTEE

FROM: BOB COCHRANE
1211 Friendly Lane #3
Anchorage, Alaska 99504

RE: HOUSE BILL 114
By the Rules Committee by
Request of the Governor

The overall Bill is acceptable and much needed as a house cleaning measure in dealing with budgetary problems. There is some items within that need to be reviewed. They are as follows:

Page 3, lines 1-4 -- the word "necessary" in line 1, needs to be clarified.

Page 7, line 29 -- should read "that are consistent with protection of the public and reformation of the prisoner."

Page 9, lines 17-20 -- this entire section should be eliminated due to the conflict with placing prisoners with limited amounts of time to serve in pre-release or restitution centers, i.e. misdemeanor with a sentence of one year or less is not eligible for these programs if this portion is allowed to stand. It will defeat our whole intention of creating pre-release centers.

Page 9-10, lines 1 of Page 9, and lines 1-14 of Page 10. This whole section should be eliminated. While we recognize the rights of our victims, this portion of the Bill will allow the victim to have information to the whereabouts of the prisoner and may create a situation where a new crime can be committed by the victim, their relatives, or friends, or by the prisoner. I believe the intention of giving victims their proper rights is covered at the first portion of the Justice system. The prisoner has served his time to repay society for his deviant behavior. Our high courts have recognized that arbitrary, vindictive, or capricious attitudes are not acceptable, and this portion of the Bill is just that.

Page 10, line 18 -- should read 7 days and not "one week".

Page 10, lines 27-29 and page 11, line 1 -- It is hard enough for our felons to obtain employment without their employers being subjected to extra administrative duties concerning paychecks. Our release centers already have devised adequate policies in dealing with prisoners paychecks.

Page 11, lines 18-20 (c) -- This whole portion is not needed.

Page 13, line 13-14 -- It indicates that gratuities that made available for prisoners who work while incarcerated, is at the pleasure of the legislature. I feel that prisoners assist the State of Alaska in employment costs for those positions that they would otherwise have to go to the private sector for. This portion should be withdrawn from this section.

Page 14, line 8-16 -- This whole section is vague and should be rewritten to explain the exact authorization and who will administrate and oversee this type of monitoring.