



# LAWS OF ALASKA

1998

**Source**

SCS CSHB 53(FIN) am S

**Chapter No.**

15

**AN ACT**

Expressing legislative intent without the force of law concerning correctional facility space and the Cleary v. Smith case; adding, as a general power of municipalities, the power to provide for, and enter into agreements concerning the confinement and care of prisoners; relating to authorizing the Department of Corrections to enter into agreements to lease facilities for the confinement and care of prisoners with the City of Delta Junction and with the Municipality of Anchorage; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** April 24, 1998

**Actual Effective Date:** April 25, 1998

AN ACT

1 Expressing legislative intent without the force of law concerning correctional facility space  
2 and the Cleary v. Smith case; adding, as a general power of municipalities, the power to  
3 provide for, and enter into agreements concerning the confinement and care of prisoners;  
4 relating to authorizing the Department of Corrections to enter into agreements to lease  
5 facilities for the confinement and care of prisoners with the City of Delta Junction and with  
6 the Municipality of Anchorage; and providing for an effective date.

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8 \* **Section 1.** LEGISLATIVE INTENT. (a) It is the intent of the legislature to work with  
9 the Department of Corrections to reduce the population in state prisons.

10 (b) The legislature recognizes the February 5, 1998, order by the superior court in  
11 Cleary v. Smith, 3AN-S81-5274 Civ.

12 (c) The legislature appreciates and understands the court's analysis of the Department

## Chapter 15

1 of Corrections' submission of December 19, 1997.

2 (d) The legislature expects the governor to direct the attorney general to undertake all  
3 available means to dissolve or modify the settlement agreements, orders, and decisions in  
4 *Cleary v. Smith*, 3AN-S81-5274 Civ.

5 (e) The legislature intends to support the commissioner of corrections' actions to  
6 secure additional capacity for the confinement and care of persons held under authority of  
7 state law by

8 (1) acquiring additional capacity at reasonably priced community residential  
9 centers;

10 (2) acquiring additional capacity in reasonably priced out-of-state facilities  
11 under the authority granted in AS 33.30.031;

12 (3) using community jails more extensively as a temporary relief of  
13 overcrowding of state institutions;

14 (4) using other reasonable and cost effective alternatives to confinement  
15 reviewed and approved by the legislature.

16 \* Sec. 2. AS 29.35.010 is amended by adding a new paragraph to read:

17 (15) provide facilities or services for the confinement and care of  
18 prisoners and enter into agreements with the state, another municipality, or any person  
19 relating to the confinement and care of prisoners.

20 \* Sec. 3. AS 29.35.020(a) is amended to read:

21 (a) To the extent a municipality is otherwise authorized by law to exercise the  
22 power necessary to provide the facility or service, the municipality may provide  
23 **facilities for the confinement and care of prisoners**, parks, playgrounds, cemeteries,  
24 emergency medical services, solid and septic waste disposal, utility services, airports,  
25 streets (including ice roads), trails, transportation facilities, wharves, harbors and other  
26 marine facilities outside its boundaries and may regulate their use and operation to the  
27 extent that the jurisdiction in which they are located does not regulate them. A  
28 regulation adopted under this section must state that it applies outside the municipality.

29 \* Sec. 4. AUTHORIZATION TO LEASE CORRECTIONAL FACILITY SPACE WITH  
30 THIRD-PARTY CONTRACTOR OPERATION. (a) To take advantage of the unique  
31 opportunity to use surplus military facilities on the road system that are becoming available

1 through the United States Army's realignment of Fort Greely's mission, to prevent and  
2 ameliorate economic hardship in the Delta region occasioned by that realignment and the  
3 consequent reduction in forces and civilian employment at Fort Greely, and to relieve  
4 overcrowding of existing correctional facilities within the state and the extensive use of out-of-  
5 state correctional facilities to house Alaska inmates, the Department of Corrections may enter  
6 into an agreement with the City of Delta Junction to lease space within a correctional facility  
7 in buildings currently located on the realigned Fort Greely military reservation that will house  
8 persons who are committed to the custody of the commissioner of corrections. The agreement  
9 must provide that the state agrees to lease the space for a minimum of 20 years.

10 (b) The agreement to lease entered into under this section is predicated on and must  
11 provide for an agreement between the City of Delta Junction and a private third-party  
12 contractor under which the private third-party contractor operates the facility by providing for  
13 custody, care, and discipline services for persons held by the commissioner of corrections  
14 under authority of state law. The commissioner of corrections shall require in the agreement  
15 with the City of Delta Junction that the City of Delta Junction procure the private third-party  
16 operator through a process similar to the procedures established in AS 36.30 (State  
17 Procurement Code).

18 (c) The authorization given by (a) of this section is subject to the following  
19 conditions:

20 (1) the lease must provide a minimum of 800 prison beds;

21 (2) the agreement to lease must contain terms providing that the commissioner  
22 of corrections may terminate for cause a contract with a private third-party contractor  
23 operating the facility in accordance with the provisions of (b) of this section;

24 (3) the commissioner may not enter into an agreement with an agency unable  
25 to provide or cause to be provided a degree of custody, care, and discipline similar to that  
26 required by the laws of this state.

27 \* Sec. 5. AUTHORIZATION TO LEASE CORRECTIONAL FACILITY SPACE WITH  
28 MUNICIPALITY OF ANCHORAGE. (a) To relieve overcrowding of existing correctional  
29 facilities in the state, the extensive use of out-of-state correctional facilities, and the specific  
30 overcrowding of Anchorage pretrial facilities, the Department of Corrections may enter into  
31 a lease agreement with the Municipality of Anchorage for a new Anchorage jail facility.

## Chapter 15

1 (b) The authorization given by (a) of this section is subject to the following  
2 conditions:

3 (1) the lease may provide for a maximum of 400 beds;

4 (2) the capital cost may not exceed \$146,000 per bed and a total of  
5 \$56,000,000;

6 (3) the annual lease payment may not exceed \$16,700 per bed and a total of  
7 \$6,400,000, with a total lease payment over the 20-year lease not to exceed \$128,000,000;

8 (4) the initial additional annual operating cost of the facility may not increase  
9 more than \$6,000,000 as a result of replacement;

10 (5) the agreement to lease must contain terms providing that the commissioner  
11 of corrections may terminate for cause any contract for operating the facility;

12 (6) to limit costs for transporting prisoners from Anchorage, the location  
13 selected for the replacement jail facility must be located within one mile of the courthouse in  
14 Anchorage or within one mile of the Cook Inlet Pretrial Facility.

15 \* Sec. 6. APPLICABILITY. The provisions of AS 33.30.031(a) do not apply to an  
16 agreement to lease a correctional facility in accordance with the provisions of sec. 4 of this  
17 Act.

18 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).