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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

March 10, 1987

MEMORANDUM

TO: Representative Randy Phillips
ATTN: Janet Seitz
FROM: Mary Jennings *mg*
Legislative Analyst
RE: Prisoners' Rights to State Programs (Update 85.122)
Research Request 87.171

You requested an update of the information contained in House Research memorandum 85.122, with particular attention paid to the use of prisoners' Permanent Fund Dividends (PFDs) for victim restitution. You also requested that we determine the amount of 1986 Permanent Fund Dividends that was used to compensate victims of crime.

Prisoners' Civil Rights

During 1986, legislation (CSHB 114) amended many of the provisions of Title 33, which concerns probation, prisons and prisoners. The act clarified which civil rights were affected by a criminal conviction. Under the act, two specific rights are suspended as a result of conviction for a crime. Until the prisoner's unconditional discharge, a person who is convicted of a felony involving moral turpitude may not vote; a person convicted of any crime may not serve on a jury (AS 33.30.241).

Under the act, prisoners' right of access to the courts is no longer precluded (AS 33.30.191). According to the letter of intent, the amendment does not mean that prisoners have the right to personally appear in court, particularly in a court action which is unrelated to the prisoner's confinement. The letter of intent states that 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.

Representative Phillips
March 10, 1987
Page 2

The 1986 legislation also included amendments concerning confiscation of contraband, personal property disposal, and pay to prison inmates. I have attached the letter of intent, which provides an analysis of all the amendments to Title 33.

Prisoners' Rights to State Programs

Although the legislation passed during 1986 restored many civil rights of prisoners, persons confined in a penal or correctional institution are still excluded, by law, from participating in the following State programs: Longevity Bonus; unemployment compensation; workers' compensation and State employee benefits (if employed by the Department of Corrections while incarcerated); and Adult Public Assistance.¹

Permanent Fund Dividends

Persons confined to penal or correctional institutions are eligible to receive PFDs, although these dividends are regularly used to compensate crime victims. **Alaska law allows 100 percent of the PFDs' to be attached for court-ordered restitution.** Under the PFDs attachment process, court-ordered restitution is second in collection priority only to child support obligations. The amount of court-ordered restitution from PFDs was not available.

Under the second method of restitution from PFDs, the entire amount or a portion of the dividend may be voluntarily assigned by the criminal to his/her victim. **During 1986, approximately \$30,000 was collected by crime victims through PFD assignments.** According to Patrick Conheady of the Department of Law, House Bill 35, which proposes to limit the assignment process, is detrimental to victim restitution. Mr. Conheady stated that as the bill is now worded, it would disallow criminals from assigning their PFDs to their victims.

I hope you find this information useful. Please contact me if you have any questions.

Attachments

¹The Department of Labor (DOL) has determined that persons confined to correctional institutions which allow the person to obtain outside employment may be eligible for unemployment compensation. The Commission on Postsecondary Education has determined that persons confined to correctional institutions which allow the person to attend an educational facility full-time may be eligible for student loans.

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH EDUCATION
AND SOCIAL SERVICES

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MEMORANDUM

TO: IRENE CASHEN, CHIEF CLERK
FROM: MAX GRUENBER, CO-CHAIR
NIILO KOPONEN, CO-CHAIR
HOUSE HESS COMMITTEE
DATE: APRIL 1, 1985
RE: REVISED LETTER OF INTENT FOR CSHB 114(HESS)

ATTACHED, PLEASE FIND A REVISED LETTER OF INTENT FOR CSHB 114(HESS), (EXTENSIVE REVISION OF CORRECTIONS LAWS), WHICH WAS ADOPTED BY THE HESS COMMITTEE AND REPLACES THE ONE PREVIOUSLY PRINTED IN HOUSE JOURNAL SUPPLEMENT NO. 35.

HOUSE JOURNAL SUPPLEMENT

April 1, 1985

No. 39

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 36 (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 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,

3AN-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 prescriptions 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 P.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.