

May 20, 1999

The Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Re: CSHB 214(JUD) -- Relating to Litigation
Involving Correctional Facilities
A.G. file no: 883-99-0032

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed CSHB 214(JUD), relating to litigation involving correctional facilities litigation.

This bill, which was introduced by Representative Mulder, is similar to portions of the Prison Litigation Reform Act (PLRA) passed by Congress in 1996 to limit court involvement in prison litigation to cases in which violations of federal rights are current and ongoing.

Section 1 of the bill sets out the findings and intent of the legislature in passing this bill. Essentially, this section describes the difficulty faced by the legislature in appropriating resources to manage the correctional system and the difficulty faced by the executive branch in operating a correctional system in light of court orders that control the prison system, and which have no end date. Based on these concerns, sec. 1 explains that the purpose of this bill is to provide a statutory framework for limiting courts from imposing orders that govern correctional facility operations that are not constitutionally or statutorily required.

The principal provisions of the bill are located in sec. 2. Proposed AS 09.19.200(a) prohibits a court from ordering prospective relief (i.e., injunctions) in a civil action with respect to correctional facility conditions unless the court finds that (1) the plaintiff has proven a violation of a state or federal constitutional or statutory right, (2) the relief is narrowly drawn and extends no further than necessary to correct the violation, (3) the relief is the least intrusive means necessary to correct the violation, and (4) the prisoner exhausted all available administrative remedies before filing the action.

When multiple violations are found, multiple remedies are contemplated, or multiple correctional facilities may be affected by the prospective relief, this subsection requires that the requisite findings be made as to each violation, remedy, and facility, and that the violations affect the entire class of prisoners if it is a class action lawsuit.

Proposed AS 09.19.200(b) limits the authority of a court to enter a temporary restraining order or to order preliminary injunctive relief, and provides that preliminary relief expires 90 days after it is ordered unless the court orders final relief in the action.

Proposed AS 09.19.200(c) provides that, upon the motion of a defendant, the court shall terminate an order for prospective relief in a corrections case regardless of when the action was filed, unless the court finds that there exists a current violation of a state or federal right, and makes the findings required in subsection (a). Additionally, upon the motion of a party, a court must modify an order for prospective relief whenever, and to the extent, the required findings no longer apply to any aspect of the relief.

Proposed AS 09.19.200(d) sets out the time frames in which a motion to modify or terminate under subsection (c) may be made. Such a motion may be made two years after a court orders prospective relief, if the order occurred after the effective date of this Act; one year after a court orders prospective relief, if the order occurred on or before the effective date of the Act; or one year after a motion to modify or terminate under this subsection has been denied by a court. Proposed AS 09.19.200(e) provides that a court may approve a consent decree for prospective relief (a negotiated order agreed to by the parties) even if it does not meet the requirements of subsection (a). However, a consent decree may not last longer than two years unless the court makes the appropriate findings discussed above and orders the continuation of the relief. This provision was requested by the Department of Law so as to leave negotiated settlements as one of the state's options in litigating certain cases. Additionally, parties may enter into private settlement agreements that do not meet the required findings; however, such settlements are not enforceable by a court.

Proposed AS 09.19.200(f) requires a court to rule promptly on a motion to modify or terminate an order for prospective relief. Such a motion must be ruled on within 90 days of when it is filed or else the order for prospective relief is automatically stayed pending the court's ruling. One 30-day extension may be ordered for good cause before the automatic stay begins.

Proposed AS 09.19.200(g) is the definitions subsection of this bill, and makes clear that it applies to any prisoner held in a state correctional facility or under authority of state or municipal law. This includes prisoners from other jurisdictions held in state correctional facilities under contract, Alaskan prisoners incarcerated in other jurisdictions under contract, and prisoners held in community jails in the state.

Section 3 of the bill describes which court rules are changed by the enacting this bill into law. This section of the bill passed both the House and Senate by the required two-thirds majority vote. Section 3 states that the Act does not take effect if did not receive the required two-thirds majority. Section 4 of the bill reiterates that this Act applies to any civil action with respect

to correctional facility conditions, or to any order for prospective relief which is ordered , before, on, or after the effective date of the Act.

As stated above, this bill is similar to portions of the PLRA adopted by Congress in 1996 to limit court involvement in prison litigation to cases in which violations of federal rights are current and ongoing. The other principal purpose of the PLRA was to deter frivolous inmate litigation. Alaska addressed this concern in 1995 when the legislature passed a bill introduced at your request that required that filing fees be paid by prisoners in litigation against the state. *See* AS 09.19.010 – AS 09.19.100. Similar provisions were passed by Congress as part of the PLRA the following year. Alaska's filing fees provisions for prisoners were challenged on constitutional grounds in 1997, but were upheld by the Alaska Court of Appeals.

A number of provisions of the PLRA have been challenged in federal court as being violative of the separation of powers doctrine as well as other constitutional provisions. With some minor exceptions, the federal courts have upheld the PLRA against these challenges, and CSHB 214(JUD) has been drafted so as to minimize the likelihood that such a challenge would be successful in Alaska's courts.

The bill presents no obvious legal or constitutional problems.

Sincerely,

Bruce M. Botelho
Attorney General

BMB:MJS:gm