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## State Policymakers

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**Issue 9:** During its first year of consideration (2010 legislative session), 21 states aligned state with Federal policies regarding the disposition of military members who die on active duty.

## Comport State Laws with DoD Rules on Disposition

**Issue:** State laws on the disposition of human remains do not currently provide for the accommodation of the expressed, written wishes of service members through execution of the federally prescribed "Record of Emergency Data"

According to [Section 564 of Public Law 109-163](#), effective January 2006, service members [as defined in [Title 10, United States Code, Section 1481\(a\)\(1\) - \(8\)](#)] must designate a person authorized to direct disposition of human remains (PADD). The law, [Title 10, United States Code, Section 1482\(c\)](#), specifies a list of possible designees, but does not stipulate any specific order.

States may not recognize the PADD as the legal designee because the state does not recognize the [DD Form 93 \(Record of Emergency Data\)](#) completed by service members to designate a PADD. The DD Form 93 restricts a services member to designating his or her "surviving spouse, blood relative of legal age, or adoptive relatives of the decedent. If neither of these three can be found, a person in loco parentis may be named."

Without a recognized agent, state statutes normally have a prescribed order of who is recognized as the next-of-kin designated to direct disposition, starting with a spouse, followed by adult children and parents. Because some state laws do not currently recognize the federal form as an acceptable one for service members, there have been several instances of civil actions between family members over the ultimate disposition of a fallen service member's remains.

**Desired Outcome:** Eliminate potential conflict with federal law, which may reduce the potential for family conflict at a time of bereavement, by states amending their laws on disposition of human remains to recognize the DD Form 93 as the authoritative written instrument for service members.

**Progress:** Ten states currently recognizes the DD 93 as the authoritative document for use by service members; however, we estimate nine states have statutes with sufficient latitude to allow for its use. The remaining states either do not provide for the designation of an agent, require use of a state specific form, or require a certain type of witnessing that might preclude the recognition of the DD Form 93. In order to add clarity for both family members and funeral directors, we believe statutes in all 50 states should include a statement recognizing the authority of the DD Form 93. The map below provides our current estimation of state flexibility for considering designations made on the DD Form 93.

- [DD Form 93 \(Record of Emergency Data\)](#)
- [Public Law 109-163 Sec. 564](#)
- [Title 10 USC, Sec. 1481\(a\)\(1-8\)](#)
- [Title 10 USC, Sec. 1482\(c\)](#)

### Best Practice Examples:

The following are bills that were enacted in 2010 that provide for recognition of the DD Form 93:

[Arizona HB 2400](#)

[Mississippi SB 2418](#)

[Maryland SB 408](#)