

**HB**

**334**

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

FISCAL NOTE

L NO.: CSHB 334 (FIN)

Revision Date:	April 15, 1994	Dept. Affected:	Corrections
Title:	Three Strikes	BRU:	All
Sponsor:	Rep. Bunde	Component:	All
Requestor:	House Finance	Component Serial #:	694-1884

Expenditures/Revenues (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
OPERATING EXP.						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXP	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost \$ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Please see the attached explanation. Fiscal impact will be delayed beyond the years measured in this fiscal note.

Prepared by: Diane Schenker, Special Assis  
 Division: Office of the Commissioner  
 Approved by: J. Frank Prewitt, Jr., Commiss  
 Agency: Department of Corrections

FISCAL NOTES

Phone: 465-4643/786-2147  
 Date: 4/15/94  
 Date: 4/15/94  
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The bill would mandate a definite term of imprisonment of 30 to 99 years, for an offender convicted of an unclassified or Class A felony if the offender has been previously convicted of two or more separate "most serious" felonies, subject to prosecutorial discretion. A "most serious felony" is any unclassified or Class A felony (or attempt, conspiracy or solicitation regarding an unclassified or Class A felony). Offenders sentenced to mandatory 99-year sentences or definite terms of imprisonment for a "third strike" would not be eligible to earn statutory good time. Prisoners sentenced under the provisions of the bill would be ineligible for discretionary parole or other forms of early or graduated release, but could apply for a modification or reduction of sentence after serving half of the definite sentence (15 to 49.5 years.)

#### Assumptions

1. This version of the bill narrows the pool of offenders subject to this form of sentencing by limiting the definition of "most serious felony" to only unclassified and class A felonies. Since the department estimated approximately 10% of unclassified and class A felons to have two separate priors under the earlier version of the bill, it is assumed that fewer than 10% of these offenders would fall under the bill in its current version.
2. The average lengths of incarceration for unclassified and class A felonies range from 12 years to life, and would range from 15 years to 49.5 years under this bill. It is assumed that third-time offenders are currently being sentenced to longer periods of incarceration than the average unclassified or class A felon, so it is possible that there will be little or no increase in lengths of incarceration for most of these offenders.
3. The department concludes that the impact of this version of the bill will be less than the impact predicted in the prior fiscal note. However, the department does not have the resources to research all of these factors within the time limits required to submit this fiscal note. (Research on the prior version of the bill required several weeks of staff time, as well as numerous hours of research with other agencies.) The department cannot predict how often prosecutors will seek this type of sentencing, the length of sentences courts will impose within the range provided, how often sentences will be successfully modified, nor the length of such sentence modifications.

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334(FIN)

Revision Date: \_\_\_\_\_  
 Title: An Act relating to criminal sentencing; and  
relating to mandatory life imprisonment, parole. . . .  
 Sponsor: Representatives Bunde, Olberg  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	83.1	83.1	83.1	83.1	83.1	83.1
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	83.4	83.4	83.4	83.4	83.4	83.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	3.6	3.6	3.6	3.6	3.6	3.6
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	181.1	181.1	181.1	181.1	181.1	181.1

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	181.1	181.1	181.1	181.1	181.1	181.1
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	181.1	181.1	181.1	181.1	181.1	181.1

Estimate of any current year (FY 94) cost: \$ None

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Brant McGee, Public Advocate  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Userra  
 Agency: Administration

Date: 4/15/94

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334(FIN)

### ANALYSIS: (continued)

The revisions in CSHB 334(FIN), including the elimination of several B felonies as predicate felonies and the reduction of the potential prison term, would theoretically reduce the fiscal impact on this agency. However, we believe there will be no significant reductions in either the number or seriousness of cases brought under the statute--a view that is clearly shared by the Department of Law in its revised fiscal note.

The Alaska Judicial Council, which provided the statistical analysis related to the original HB 334, has not provided additional statistics regarding the potential impact of the new bill on criminal justice agencies. However, the assumptions regarding the initial fiscal notes remain valid. While the numbers of cases will undoubtedly be reduced by the modifications contained in the committee substitute, there is no question that litigation surrounding 'Three Strikes' cases will be lengthy and costly. Costs will be dictated by the high stakes of each case, the necessity for collateral attacks on prior convictions both in State and Federal courts, and the certainty that each of these cases will go to trial.

Because of the necessity of attacking underlying convictions and the treatment of each case as most serious because of the severity of the sanction, litigation will require the filing of numerous motions, not only on the current charge, but in each prior case which resulted in convictions. This will require the review of voluminous records associated with each of the prior felony cases and the initiation of new litigation in each case. If that prior conviction occurred in a different state, it would be necessary to retain out-of-state counsel to launch the collateral attacks upon these convictions. Further, expert testimony regarding the adequacy of prior counsel would probably need to be prepared in many of the cases.

While it is not possible to estimate the indirect impact of such legislation on client decision-making in first and second felony cases, there is little question that some clients will be influenced to go to trial rather than plead guilty when they know that this conviction will make them eligible for life in prison if they commit another felony. More trials mean higher costs for each criminal justice agency.

It should also be noted that these cases will give rise to many conflicts of interest which will necessitate withdrawal of the Public Defender Agency and the assignment of OPA to provide representation. These conflicts of interest will arise because the Public Defender will have provided representation in the earlier cases which resulted in convictions, and which would be subject to collateral attack during the litigation of each 'Three Strikes' case.

Because OPA criminal lawyers are currently at maximum caseload capacity, and because of the loss of one such attorney in FY93, it will be necessary to add an additional experienced attorney to provide representation in these cases throughout the state.

Further, because at least one of these cases each year will require the appointment of conflict counsel, at an estimated cost of \$60,000 per case, contractual costs will also be high.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		22.1		
Premium Pay				
Other				
Total Personal Services		0.0		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		91.1		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.P. Match 1003				
General Fund 1004		91.1		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has three attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside of the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these three attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

8/leg94/13/cslb334r.kp3

# Request For New Position

AGENCY ADMINISTRATION  
 BRU OFFICE OF PUBLIC ADVOCACY  
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: \_\_\_\_\_

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (Fin)

Revision Date: \_\_\_\_\_  
 Title: An "Act relating to criminal sentencing. . . ."  
 Sponsor: Reps. Bunde, Olberg  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	171.8	177.0	182.3	187.8	193.4	199.2
TRAVEL	3.0	3.1	3.2	3.3	3.4	3.5
CONTRACTUAL	25.0	25.8	26.6	27.4	28.2	29.0
SUPPLIES	3.0	3.1	3.2	3.3	3.4	3.5
EQUIPMENT	4.5	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	207.3	209.0	215.3	221.8	228.4	235.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match	207.3	209.0	215.3	221.8	228.4	235.2
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	207.3	209.0	215.3	221.8	228.4	235.2

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: John B. Salemi, Director  
 Division: Public Defender Agency

Phone: 264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera  
 Agency: Department of Administration

Date: 4/15/94

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (Fin)

ANALYSIS: (continued)

### INTRODUCTION

This proposal requires that certain repeat felony offenders receive prison terms that are the equivalent of life without parole. This is similar to proposals that have either been enacted or are being considered in other states. It is noteworthy that this punishment is harsher than that for 1st degree Murder.

Obviously a response to a heightened public awareness of a perceived crime problem, this bill will, over time, significantly expand the most expensive category of the prison population--those who will live out their life and die in an Alaskan correctional facility. It will require that significant monies be spent on geriatric care for aged prisoners.

As for other components of the criminal justice system, the actual expense is somewhat speculative, in that it is difficult to get a statistical "handle" on how many cases will be subject to "three strikes" punishment. For purposes of this fiscal analysis, the Public Defender Agency will rely on what are believed to be rather conservative estimates generated by the Alaska Judicial Council, which in turn were used by the Department of Law for its fiscal note.

Using those estimates, the P.D. expects it will handle between 10 and 15 cases per year where the client will be facing a 99 year term, without parole release potential. Just as homicide cases are currently the most expensive, challenging and labor-intensive prosecutions to defend, these "3 strikes" cases will be similarly treated because of the grave consequences attached to a conviction. Trials will be the rule, not the exception. Only the most experienced staff attorneys will be involved in these cases, adding to personal services costs. It is likely the litigation of these matters will involve significant investigation, extensive pre-trial motion work, and long and difficult trials. As a result the court system and prosecutor's office will be affected.

As part of its investigation and pre-trial workup, the defense will have to consider mounting what are called in the law "collateral attacks" of the prior convictions which trigger the "3 strikes" penalty. Put another way, attorneys will be ethically obligated to explore the possibility of knocking out one or more of the prior convictions to avoid the 99-year penalty. This effort will involve considerable effort on the part of support staff, hence the request for paralegal assistants in this fiscal note. It will also necessitate contracting with attorneys in other states to "collaterally attack" out-of-state felony convictions which serve to trigger the 99-year penalty. For example, if a client has a felony conviction in Idaho or California, a determination will have to be made as to whether 1) the conviction qualifies as felony level conduct in Alaska, 2) the conviction was based on a knowing and voluntary plea, 3) the defendant was represented by competent counsel, 4) the conviction was susceptible to some set-aside or expungement procedure which wasn't exercised but could have been. This is only a partial list of issues which will arise in the context of out-of-state convictions, and which may require the assistance of lower 48 lawyers paid on contract. These lawyers will have to go into courts in their state and file post-conviction petitions moving to set aside convictions if a legal basis is found to support such a filing.

These collateral attacks, which the Department of Law acknowledges in its fiscal analysis will be part of the "3 strikes" litigation landscape, is expensive and time consuming. It will also potentially involve some out-of-state travel on the part of investigators, paralegals and lawyers. It is for these reasons that additional contractual and travel funds are required.

### FISCAL IMPACT

In order to absorb the impact of these cases, the Public Defender will require additional resources. Like the Department of Law, this will necessarily mean more staff lawyers. Because the lawyers will need support for the collateral attacks aforementioned along with the standard investigation and pre-trial preparation, paralegal assistants and a secretarial position are also required.

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1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (Fin)

One attorney IV position will be placed in the Anchorage office and one in Fairbanks. Anchorage will also receive one paralegal assistant and a secretary. Fairbanks will add one paralegal position. These lawyers and support staff will also be responsible for responding to "3 strikes" prosecutions arising in rural locations, either by handling the case, or by providing support for the rural P.D. offices where the cases are sited. (It should be noted that the attorney positions will also absorb any additional appellate work which will generate post-conviction as concerns these cases).

CONCLUSION

It is the opinion of the Public Defender that this proposal will result in protracted, expensive litigation, which will have a reverberating impact on the entire justice system. It is suggested that, given the strict presumptive sentencing structure already in place in Alaska, this proposal be given very close scrutiny. The crime problem in Alaska, as in other states, will not go away by merely increasing punishments and building more prisons.

BUDGET ANALYSIS

100: Anchorage -	Attorney IV	83.1
	Paralegal Asst. II	51.8
	Legal Secretary I	<u>36.9</u>
		171.8
200: Travel		3.0
300: Contractual		25.0
400: Supplies		3.0
500: Equipment (one time)		<u>4.5</u>
	TOTAL	207.3

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX						
Time Status PFT	Staff Months 12.0	Location EBA		Election District 50						
TYPE OF EXPENDITURE		AMOUNT								
Salary		61,008								
Benefits		22,051								
Premium Pay										
Other										
Total Personal Services		83,059								
Travel		3,000								
Contractual		25,000								
Commodities		1,000								
Equipment		1,500								
Other										
Total Cost		113,559								
FUNDING SOURCE FOR TOTAL COST										
Federal Receipts	1002									
G.F. Match	1003									
General Fund	1004	113,559								
I-A Receipts	1007									
CIP Receipts	1061									
Other										
<p>Justification</p> <p>The "Three Strikes" legislation will create a category of serious felony cases which will be litigated as intensely as homicide cases. Because of the effort involved, and because this will have statewide impact on this 13-office agency, additional staff will be required. The litigation effort will necessarily include collateral attacks on prior felony convictions, and other pretrial investigation and motion work. Some travel (both in and out of state) will be required. Contractual funds will be required in those instances where collateral attacks will involve challenging prior convictions which are sited in other states.</p> <p>The positions described below will work in the Anchorage office but will also provide litigation support to the other 12 offices whenever a "Three Strikes" case is assigned to the agency:</p> <p>Anchorage:</p> <table border="0"> <tr> <td>Attorney IV</td> <td>83.1</td> </tr> <tr> <td>Paralegal Assistant II</td> <td>51.8</td> </tr> <tr> <td>Legal Secretary I</td> <td>36.9</td> </tr> </table>					Attorney IV	83.1	Paralegal Assistant II	51.8	Legal Secretary I	36.9
Attorney IV	83.1									
Paralegal Assistant II	51.8									
Legal Secretary I	36.9									

8/LEG94/17/CSHB334.KP1

# Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 95

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Revised Date: \_\_\_\_\_



Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GGU
Time Status PFT	Staff Months 12.0	Location EBA		Election District 50
TYPE OF EXPENDITURE		AMOUNT		
Salary		24,756		
Benefits		12,110		
Premium Pay				
Other				
Total Personal Services		36,866		
Travel		-0-		
Contractual		-0-		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		39,366		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	39,366		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
<p>Justification</p> <p>The "Three Strikes" legislation will create a category of serious felony cases which will be litigated as intensely as homicide cases. Because of the effort involved, and because this will have statewide impact on this 13-office agency, additional staff will be required. The litigation effort will necessarily include collateral attacks on prior felony convictions, and other pretrial investigation and motion work. Some travel (both in and out of state) will be required. Contractual funds will be required in those instances where collateral attacks will involve challenging prior convictions which are sited in other states.</p> <p>The positions described below will work in the Anchorage office but will also provide litigation support to the other 12 offices whenever a "Three Strikes" case is assigned to the agency:</p> <p>Anchorage: Attorney IV 83.1 Paralegal Assistant II 51.8 Legal Secretary I 36.9</p>				

8/LEG94/17/CSHB334N.KP3

Request For  
New Position

AGENCY ADMINISTRATION  
BRU Public Defender Agency  
COMPONENT Public Defender Agency

FY 95

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Revised Date:



House of Representatives  
SPONSOR STATEMENT  
CSHB 334(FIN)am  
"THREE STRIKES YOU'RE OUT"

"An Act relating to criminal sentencing; relating to the availability for good time credit for offenders convicted of certain first degree murders; relating to definite 30 to 90 year terms of imprisonment for offenders convicted of an unclassified or class A felony that is a homicide, assault, kidnapping, sexual offense, or robbery and who have at least two prior most serious felony convictions; relating to terms of imprisonment, parole, good time credit, pardon, commutation of sentence, modification or reduction of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three most serious felony convictions; defining 'most serious felony' as an unclassified or class A felony offense that is a homicide, assault, kidnapping, sexual offense, or robbery or an attempt or conspiracy to commit, or criminal solicitation of, an unclassified or class A felony that is a homicide, assault, kidnapping, sexual offense, or robbery; and amending Alaska Rule of Criminal Procedure 35."

HB 334 provides a definite term of imprisonment of 30 to 99 years, for a specific group of offenders who have two separate "most serious" felony convictions. A most serious felony is defined as any unclassified or Class A felony.

There is a notification requirement in HB 334. Offenders who have two "most serious" felony convictions must be informed in writing of future sentencing requirements if a third felony conviction for an unclassified or Class A felony is obtained.

Under this proposed legislation parole is not available to an offender who has been given a 99 year sentence or a definite term of imprisonment for a "third strike". HB 334 allows those with a 30 to 99 year sentence to ask the court for a reduction in sentence after they have served half of their sentence (15 to 49.5 years). This provision is similar to what is allowed when a murderer is convicted and given a 99 year sentence. However, a person with a 99 year sentence or a definite term of imprisonment under this legislation is not eligible for a good time sentence reduction.

This proposed legislation allows for prosecutorial discretion when deciding if a 99 year sentence or a definite term of imprisonment of 30-99 years should be pursued. This will avoid unjust results in certain cases where the evidence may be weak. This provision will also allow the prosecutor some flexibility to proceed with the normal presumptive sentencing provisions when necessary.

The cost of keeping a person incarcerated for 99 years is high. However, when cost is considered, the true cost and benefits must be enumerated before concluding that this legislation is too expensive. First, strong punishments can shape behavior and deter crime by scaring some offenders away. Second, many studies have shown that the recidivism rates for three time offenders let back into society are between 65-76%. These offenders are taking up costly time in our judicial system by committing the same crimes again and again. Third, this legislation has been narrowly focused to include only specific felony offenses. The intention is to keep the state cost to a minimum.

This proposed legislation will make our state a safer place. I urge your positive consideration of this legislation.