

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7804 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

1 goes to the very heart of our constitutional history. The right  
2 of privacy and to "be let alone" is at issue. Protection from the  
3 government's unlawful search and seizure is at stake. Our  
4 discussion is not a "waste of time" (see, State Opposition, p.1).  
5 The values and rights in question are basic to our governmental  
6 structure.

7 Constitutional rights become simply words without content  
8 unless there is a meaningful consequence for their violation. The  
9 judiciary fails to support and defend the constitution (as we are  
10 sworn to do) if we permit official lawlessness.

11 In the instant case, Mr. Sabon was not only unlawfully  
12 arrested without a warrant, but also he was incarcerated and his  
13 pockets were searched. The indignity resulting from the arrest of  
14 Mr. Sabon was compounded by his subsequent incarceration and  
15 search. The government's action was an affront both to Mr. Sabon  
16 and the constitution. The aggravated nature of this lawless police  
17 conduct in violation of fundamental statutory and constitutional  
18 rights mandates a remedial response. Mr. Sabon's right to be let  
19 alone was violated. Further, the State's conduct amounted to a  
20 illegal search and seizure of Mr. Sabon. It is the opinion of this  
21 court in the interest: (1) of deterring such police conduct in the  
22 future, (2) of preserving the integrity of the judiciary, (3) of  
23 protecting fundamental constitutional rights, and (4) of furthering  
24 justice, that the present action is subject to the exclusionary  
25 rule and also to dismissal.

1 In summary, Mr. Sabon was arrested without a warrant for the  
2 misdemeanor offense of minor consuming. The arresting officer did  
3 not observe Mr. Sabon consume or possess alcohol. Mr. Sabon's  
4 arrest was not in accord with AS 12.25.030 and violated Alaska  
5 Constitution, art. I, section 14. The exclusionary rule leads to  
6 the suppression of evidence obtained following Mr. Sabon's arrest.  
7 The interests of police deterrence, judicial integrity,  
8 constitutional rights and furtherance of justice together with  
9 insufficient evidence, as a matter of law, call for dismissal of  
10 the present charges.

11 IV. CONCLUSION

12 Therefore, based on all of the above, and for good cause  
13 having been shown,

14 It Is Hereby Ordered, Adjudged, and Decreed:

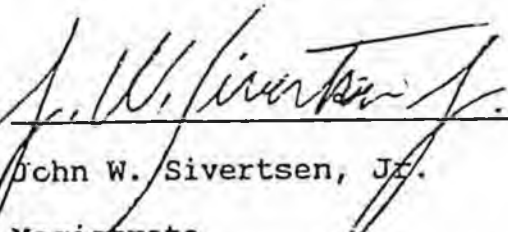
15 That any and all evidence seized following Mr. Sabon's arrest  
16 shall be suppressed;

17 That Defendant's Motion To Dismiss is Granted; and

18 That the present case is Dismissed with prejudice.

19 Dated this 2 March 1992.

20 In The District Court At Juneau

21   
22 \_\_\_\_\_  
23 John W. Sivertsen, Jr.  
24 Magistrate

25 **CERTIFICATION**

The undersigned certifies that on the 2 day of  
March, 1992, a true copy of this  
document was served on the following attorneys:  
Don Dutcher, Esq. & David Boy  
Donna McCready, Esq. & David Boy  
By X. W. Sivertsen, Magistrate

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

JUL 09 1992

FIRST JUDICIAL DISTRICT AT JUNEAU

Clark of Court

By Jan \_\_\_\_\_ De

STATE OF ALASKA,  
Petitioner,

vs:

JOSEPH JIM,  
Respondent.

Case No. 1JU-92-50SCR

MEMORANDUM AND ORDER

The petition for review is denied

The defendant in this case was charged with Minor Consuming Alcohol and moved in the district court to dismiss as the arrest for the offense took place after the offense was completed and the offense did not take place in the officer's presence. The State opposed dismissal and urged that suppression was all that should occur. The District court denied the motion to dismiss but suppressed evidence that was collected after the arrest.

The State petitions for review and the defendant opposes.

The State fails to address the critical issue in the District Court's order with respect to AS 12.25.030. The State's reading of AS 01.10.050 does not, ipso facto repeal the requirement that an arrest for a misdemeanor take place in the officer's presence.<sup>1</sup>

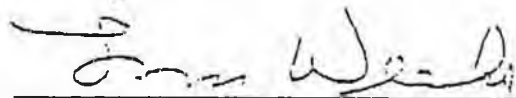
While there may be some issue as to whether an officer may

<sup>1</sup> Except for noted amendments pertaining to domestic violence and driving while intoxicated.

1 "seize" a person to preserve evidence of consumption, without a  
 2 warrant in exigent circumstances, that seizure, under Alaska law,  
 3 may not be for arrest to bring charges but only for obtaining  
 4 evidence. Neither the State nor the defendant raised the issue and  
 5 this court does not decide it.

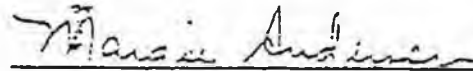
6 Officers, of course, may be under a legal obligation to take  
 7 an alcohol-incapacitated minor into protective custody if the minor  
 8 is unable to care for his or her self.<sup>2</sup> The officer may also issue  
 9 a citation.<sup>3</sup>

10 Dated July 6, 1992

11 

12 Larry Weeks  
 Superior Court Judge

13 I certify that I served J. Ron Sutcliffe and David Seid the above  
 14 pleading on this 7<sup>th</sup> day of July 1992 by placing it in their  
 15 court box.

16 

17 Margie Anderson  
 Secretary to Judge Weeks

18  
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 25 <sup>2</sup> Bussell v. Anchorage, 741 P.2d 250 (Alaska 1987)

<sup>3</sup> AS 12.25.180

1 IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 STATE OF ALASKA,

4 Plaintiff,

5 v.

6 JOSEPH RANDALL JIM,

7 Defendant.

RECEIVED

FILED IN THE TRIAL COURTS  
STATE OF ALASKA, FIRST DISTRICT  
AT JUNEAU

Jun 26 1992

JUN 26 1992

DEFENDER,  
JUNEAU

By \_\_\_\_\_ Secur

8  
9 No. 1JU-92-609 CR

10 MEMORANDUM AND ORDER

11 This matter is before the court on defendant's motion to  
12 dismiss. Defendant filed no reply to the State's opposition and  
13 neither party has requested oral argument.

14 Defendant was arrested at 10:25 p.m. on June 2, 1992, for  
15 the offense of minor consuming alcohol, a misdemeanor. The factual  
16 record concerning the circumstances of the arrest is somewhat vague,  
17 but it is undisputed that the defendant was not consuming alcohol  
18 in the presence of the officer. At most, he had consumed it some  
19 time before he was contacted by the officer.

20 Whether or not one construes AS 04.16.050 to cover both the  
21 past and present tense or not and whether or not one engages in the  
22 "exercise in sophistry" (see State v. Hornaday, 713 P.2d 71  
23 (Washington 1986), Brachtenbach, J. dissenting) necessary to hold  
24 that one who has consumed is not in possession, it is clear that the  
25 act of consuming charged in the complaint was complete before


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defendant was arrested, and not in the presence of the arresting officer. AS 12.25.030 requires that the misdemeanor be committed in the officer's presence before he or she can arrest without a warrant.

Having determined that the arrest is illegal, the court must still deny the motion to dismiss. No persuasive argument is advanced by defendant in support of his request to dismiss, and the court is aware of none. The arrest clearly was not outrageous conduct. The officer had probable cause and, indeed, may have taken defendant to the Lemon Creek Jail at defendant's request. ~~Any event, suppression of any evidence seized as a result of the illegal arrest appears to be both the remedy supported by precedent and quite an adequate remedy in the circumstances of this case.~~

IT IS SO ORDERED.

Dated at Ketchikan, Alaska, this 23rd day of June, 1992.

  
Thomas E. Schulz  
Superior Court Judge

CERTIFICATION

The undersigned certifies that on the 26<sup>th</sup> day of June, 19 92, a true copy of this document was served on the following attorneys:  
J. Ron Sutcliffe; DONNA MC CREADY.

W. J. [Signature]

H B

3 4 9



# Alaska State Legislature

## House of Representatives

COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

DATE: 17 FEB 94

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 \* HB 323 RELEASE OF CERTAIN DEATH CERTIFICATE INFORMATION  
 \* HB 349 CIVIL COMMITMENT OF SEXUAL PREDATORS  
 BILLS FROM PREVIOUS CALENDARS MAY BE HEARD  
 (# INDICATES FIRST PUBLIC HEARING)

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ JAYNE ANDREEN	COVSA		99811		465-4356	(Y) N	HB 349
✓ Caren Robinson	AK Network on D.O+SA				586-1107	(Y) N	HB 349
✓ JAMES McLAUGHLIN	self				452-4454	(Y) N	HB 349
✓ Leonard Abel	DHSS					(Y) N	
✓ Jens Saakvitne	Life Alaska	P.O. 230785 Anch	99523		5625423	(Y) N	<del>HB 349</del>
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

H/HESS ROLL CALL FORM

BILL 349

DATE 2/7/94

TAPE 94-09

NUMBER 452

SUBJECT OF VOTE NOTED TO MOVE HB 349 OUT OF  
COMMITTEE (ADD OUT TO JUDICIARY)

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>7</u>	<u>2</u>	<u>  </u>

+++++

BILL \_\_\_\_\_

DATE \_\_\_\_\_

TAPE 94- \_\_\_\_\_

NUMBER \_\_\_\_\_

SUBJECT OF VOTE \_\_\_\_\_

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	___	___	___
Rep. Gary Davis	___	___	___
Rep. Al Vezey	___	___	___
Rep. Pete Kott	___	___	___
Rep. Harley Olberg	___	___	___
Rep. Bettye Davis	___	___	___
Rep. Irene Nicholia	___	___	___
Rep. Tom Brice	___	___	___
Rep. Cynthia Toohey	___	___	___
TOTAL	___	___	___

# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 2/7/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 349

HOUSE BILL NO. 349

CIVIL COMMITMENT OF SEXUAL PREDATORS

"An Act providing for the civil commitment of sexually violent predators."

RECOMMENDATIONS: CS HB 349 (HESS)  the same title  
be replaced with \_\_\_\_\_  a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact H+SS, Law, Admin

fiscal note(s) \_\_\_\_\_

zero fiscal note Admin

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Pete Voth</i>	<input checked="" type="checkbox"/>				
<i>Don Breahe</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>Betty Davis</i>	<input checked="" type="checkbox"/>	<i>Harley Olberg</i>		<input checked="" type="checkbox"/>	
<i>Tom Briel</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	

*Don Breahe*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

BILL NO. HB 349

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: 'An Act providing for the civil commitment of sexually violent predators.'  
Sponsor: Pamell, Toohy  
Requestor: House HESS

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	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	96.0	111.0	126.0	141.0	156.0	171.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
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	96.0	111.0	126.0	141.0	156.0	171.0

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	96.0	111.0	126.0	141.0	156.0	171.0
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	96.0	111.0	126.0	141.0	156.0	171.0

Estimate of any current year (FY 94) cost: \$ 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: (Attach a separate page if necessary.)  
See Attached.

Prepared by: Brant Moseley / Public Advocate  
Division: Office of Public Advocacy

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

Approved by Commissioner: Nancy Bear Usery  
Agency: Administration

Date: 2/1/94

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HR 349

### ANALYSIS: (continued)

This bill mandates the appointment of Office of Public Advocacy to represent sexually violent predators in civil commitment proceedings. The Department of Law estimates that it will present at least two to three such cases each year. Each year annual reviews will be conducted to determine whether the individual should be discharged.

These cases would be both factually and legally complex. The State would present all evidence relating to the person's sexually violent history, which could include numerous cases over a long period of time. Defendants would undoubtedly contest both the facts of these cases and the diagnosis which lead to their classification by the state. Each case would involve extensive expert testing, evaluation and testimony. Finally, each case would involve constitutional challenges not only to the entirety of the statute but to specific sections of the proposed law.

Because the Office of Public Advocacy currently represent, as guardian ad litem, many, if not most child victims of sexual offenders, it is likely that most of these cases would have to be conducted by conflict counsel. Major cases typically cost \$25,000 in attorney fees. The estimate of \$7,000 for expert analysis and testimony tracks that of the Department of Law.

Annual litigation in each case is inevitable. It is anticipated that such costs will average \$5,000 inclusive of both attorney and expert witness fees.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 349

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act providing for civil commitment of BRU: Public Defender  
sexually violent predators." Component: Public Defender  
 Sponsor: Rep. Pamell  
 Requestor: (H) Hes COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

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: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender  
 Division: Public Defender Agency  
 Approved by Commissioner: Nancy Bear Usara  
 Agency: Administration

Phone: 264-4400  
 Date: \_\_\_\_\_  
 Date: 2/7/94

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*Admin - Public Defender - Fiscal Note*

FISCAL NOTE

BILL NO. HB 349

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: February 4, 1994  
Title: "An Act providing for the civil commitment of sexually violent predators."  
Sponsor: Representative Parnell  
Requestor: Representative Parnell

Department Affected: Department of Law  
BRU: Prosecution  
Component: Criminal Justice Litigation  
COMPONENT SERIAL NO. 0089

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL					81.7	81.7
TRAVEL					5.0	5.0
CONTRACTUAL	10.0	20.0	30.0	40.0	54.2	64.2
SUPPLIES					3.3	3.3
EQUIPMENT					6.5	
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	20.0	30.0	40.0	150.7	154.2

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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	10.0	20.0	30.0	40.0	150.7	154.2
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	10.0	20.0	30.0	40.0	150.7	154.2

POSITIONS:

FULL-TIME					1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: February 4, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Date: February 4, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 349

ANALYSIS CONTINUATION:

This bill amends AS 47.30 to provide for the indefinite, long-term civil commitment of sexually violent predators to the custody of the Department of Health and Social Services. The bill is intended to protect the public from what the bill finds is a small but extremely dangerous group of sexually violent predators who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment procedure, under AS 47.30.700 - 47.30.815, which is intended to be a short-term treatment to individuals with serious mental disorders and then return them to the community.

The bill further finds that in contrast to persons appropriate for commitment under the existing law, sexually violent predators generally have antisocial personalty features that are not amendable to existing mental illness treatment methods, and those features render them likely to engage in sexually violent behavior. The bill also finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high, and the bill further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment methods for this population are very different than the traditional treatment methods for people appropriate for commitment under the existing involuntary treatment procedures.

The bill requires that when it appears that a person may meet the criteria for a sexually violent predator, the agency with jurisdiction shall give written notice to the attorney general three months before:

- (1) the anticipated release from total confinement of a person who has been convicted of a sexually violent offense.
- (2) the anticipated release from total confinement of a person found to have committed a sexually violent offense as juvenile;
- (3) the release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial under AS 12.47.100; or
- (4) the release of a person who has been found not guilty by reason of insanity of a sexually violent offense under AS 12.47.040.

The bill defines sexually violent offenses to include sexual assault in the first and second degrees, sexual abuse of a minor in the first, second and third degrees, incest, murder in the first and second degrees, assault in the first and second degrees, kidnapping, and burglary in the first degree.

Upon notification from the appropriate agency, the attorney general would be empowered to file a petition with the court alleging that a person is a sexually violent predator and stating sufficient facts to support the allegation when it appears that the person may be a sexually violent predator and it appears that the person will be or has been released from the jurisdiction of an agency. Upon the filing of a petition, the judge would determine whether probable cause exists to believe that the person is a sexually violent predator. If probable cause is found, the judge would direct that the person be taken into custody and the person be transferred to an appropriate facility for an evaluation as to whether a person is a sexually violent predator.

Within 45 days after the petition is filed, the court would be required to conduct a trial to determine whether the person is a sexually violent predator. A person would be entitled to assistance of counsel and the person would be entitled to retain experts or professionals to perform an examination on the person's behalf. Upon motion of the person or the attorney general, or the court's own motion, the trial would be held before a jury. If no motion is made, the trial would be before the court.

The court or jury would then determine, beyond a reasonable doubt, whether the person is a sexually violent predator. If the state alleged in the petition a prior sexual offense for which a finding of sexual motivation is necessary

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 349

ANALYSIS CONTINUATION:

to classify the offense as a sexually violent offense, the state would have to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated. Upon a determination that the person was a sexually violent predator, the person would be committed to the custody of the commissioner of health and social services for control, care, and treatment until the person's mental abnormality or personality disorder had so changed that the person would be safe to be at-large. If the court or jury was not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court would direct the person's release from custody.

In the event of commitment, the person would be confined in a secure mental health facility operated by the Department of Health and Social Services. Thereafter, the department would be required to provide an examination of a person committed under the bill's provisions at least once each year. A person would be permitted to retain a qualified expert or professional to examine the person. If the department determines that the person's mental abnormality or personality disorder had so changed that the person is safe to be at-large and is not likely to commit a sexually violent predatory offense, the department would be required to authorize the person to petition the court for release. The court would then be required to order a hearing within 45 days. The state would have the right to have the petitioner examined by an expert or professional person of its choice. The hearing would be before a jury if demanded by either the petitioner or the state. The burden of proof would be on the state to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at-large and that, if discharged, the person is likely to commit a sexually violent predatory offense.

A person would not be prohibited from petitioning the court for discharge without the commissioner of health and social services approval, and the commissioner would be required to provide the committed person with an annual written notice of the person's right to petition the court for release over the commissioner's objection. If a person does not affirmatively waive the right to petition, the court would hold a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed the person is safe to be at-large and is not likely to commit a sexually violent predatory offense if discharged. The person would have the right to have an attorney represent the person at the show cause hearing. The committed person would not be entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person is safe to be at-large and is not likely to commit a sexually violent predatory offense if discharged, the court would set a hearing on the issue. This subsequent hearing would be conducted under the same terms as described above for hearing a petition authorized by the commissioner of health and social services.

As we understand it, this bill is modeled on an existing Washington State law. Experience in Washington state, where their law has been in effect since July 1, 1990, shows that an average of five persons are committed in that state each year. Washington's population is about eight times larger than Alaska's population. However, in view of Alaska's high incidence of abusive behavior, we believe that as many as two or three persons might be committed annually if the bill is approved.

Because of the low number of commitments, the bill would not be an immediate fiscal impact for the Department of Law, except for expert witnesses at commitment hearings and expert witnesses for hearings on committed persons petitions for release. The state's average cost for these witnesses is about \$7,000 each. Witnesses may not be required for every hearing so we are showing an annual cost of \$10,000 for the first year, and an annual increase of \$10,000 as the number of persons committed increases and the number of annual petitions for release increases. By the fifth year of implementation, it will be necessary to add a full-time attorney to handle commitments and annual release petitions, when the number of annual hearings reaches 10 to 15. It is important to point out that there will be a fiscal impact for the Department of Health and Social Services, and there will be fiscal impact for the Office of Public Advocacy, which will provide representation for indigent persons committed under the bill.

Finally, we also note that the bill may have due process problems when reviewed by Alaska courts. Moreover, Washington's Supreme Court has added a requirement to that state's law providing the "least restrictive alternatives" short of total confinement be used or requiring a showing that confinement is the least restrict alternative under the

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 349

ANALYSIS CONTINUATION:

circumstances. Department of Law staff is available to assist the sponsor address these problems.

02/03/94

13:48:11.8

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT  
DEPARTMENT OF LAW  
SCENARIO: 2  
CRIMINAL JUSTICE LITIGATION  
DRU NAME: PROSECUTION

PAGE: 1

COMPONENT #: 6501020500 NAME: CRIMINAL JUSTICE LITIGATION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	D U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#011		ATTORNEY IV	F	JUNEAU	A	XE	AA	24A	12	61008	0	20660	81668.60	

\*\*\*\* JUSTIFICATION:  
Attorney IV-CDCO

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	0.00
SUPPLIES COSTS	0.00
EQUIPMENT COSTS	0.00
OTHER COSTS	0.00
<b>TOTAL COSTS</b>	<b>81668.60</b>

*** FUNDING DETAIL:	
1004 GENERAL FUND RECEIPTS	81668.60
<b>TOTAL FUNDING</b>	<b>81668.60</b>

03#047		ATTORNEY IV	F	JUNEAU	A	XE	AA	24A	12	61008	0	20660	81668.60	
--------	--	-------------	---	--------	---	----	----	-----	----	-------	---	-------	----------	--

\*\*\*\* JUSTIFICATION:

This position will be needed when the number of sexually violent predators committed reaches 12 or so, due to the numbers of annual show cause hearings to determine whether a person should be discharged or remain in the custody of the Department of Health & Social Services. These hearings could involve jury trials and voluminous expert testimony. Full-time Attorney legal services would therefore be required.

TRAVEL COSTS	5000.00
CONTRACTUAL COSTS	14200.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00
<b>TOTAL COSTS</b>	<b>110668.60</b>

*** FUNDING DETAIL:	
1004 GENERAL FUND RECEIPTS	81668.60
<b>TOTAL FUNDING</b>	<b>81668.60</b>

\*\*\*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS	2
PART TIME/SEASONAL NEW POSITIONS	0
NON PERMANENT NEW POSITIONS	0
OTHER.....	0
<b>====</b>	<b>2</b>

TOTAL PERSONAL SERVICES	163337.20
TOTAL COSTS INC. ASSOC COSTS	192337.20

NUMBER OF NEW POSITIONS IN COMPONENT: 2

FUNDING DATA: G.F. & G.F. MATCH:	163337.20
OTHER FUNDS:	0.00
<b>TOTAL FUNDING:</b>	<b>163337.20</b>

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB349

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act providing for the commitment of BRU: Community Mental Health Grants  
sexually violent predators Component: General Mental Health Grants  
 Sponsor: Parnell, Toohey  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	1,200.0	2,460.0	2,580.0	2,709.0	2,844.0	2,986.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,200.0</b>	<b>2,460.0</b>	<b>2,580.0</b>	<b>2,709.0</b>	<b>2,844.0</b>	<b>2,986.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>25.0</b>	<b>30.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>
-----------------------------	-------------	-------------	-------------	-------------	-------------	-------------

<b>CHANGES IN REVENUES</b>						
----------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	1,225.0	2,490.0	2,590.0	2,719.0	2,854.0	2,996.0
Other						
<b>TOTAL</b>	<b>1,225.0</b>	<b>2,490.0</b>	<b>2,590.0</b>	<b>2,719.0</b>	<b>2,854.0</b>	<b>2,996.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) cost \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary)

If the effective date of HB349 were July 1, 1994, there would be no FY94 fiscal impact.

In FY95, there would be an increased operating cost of \$1,200.0, providing grant funds for the rental and operation of the first 10-bed facility. There would also be some capital costs, in the amount of \$25.0, to provide for needed building renovation.

In FY96, the operating cost would increase to \$2,460.0, to provide for 5% inflation at the first facility and the opening of the second facility. Capital costs would rise to \$30.0, to provide for repairs or other capital expenditures at the first facility, and to do the initial renovations on the second facility.

Prepared by: Leonard Abel, Ph.D. Phone: 465-3370  
 Division: Mental Health and Developmental Disabilities Date: 02/04/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. Date: 2-4-94  
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

For FY97 through FY00, the increase in operating costs reflect inflation. The capital costs would be \$10.0 per year for repairs and maintenance.



Official Business

# Alaska State Legislature

State Capitol  
Juneau, AK 99801-1182

**SPONSOR STATEMENT**  
**House Bill 349**  
**Civil Commitment of Sexual Predators**

This bill provides the State with a mechanism to deal with dangerous sexual predators who are about to be released from the correctional system. It is aimed at only those offenders whose disposition, history and low amenability to conventional treatment warrant pursuing civil commitment.

House Bill 349 authorizes the Attorney General to petition the Courts for a civil commitment hearing when someone who has been convicted of a sexually violent offense is about to be released from Corrections. This bill provides for a hearing to determine beyond a reasonable doubt that a person is a sexually violent predator. If this is successfully demonstrated by the State, the person would be civilly committed by Health and Social Services until the person is treated and cured.

*Sponsor Statement*

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

January 11, 1994

SUBJECT: Sectional Summary of HB 349 (Work Order No. 1-8LS1449\E)

TO: Representative Sean Parnell  
Attn: Michael

FROM: Jerry Luckhaupt *JL*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill adds a new article 8A to AS 47.30 and adds these new sections:

AS 47.30.816 provides findings;

AS 47.30.817 provides for notice to the attorney general whenever a person who has been convicted of, found to have committed as a juvenile, charged with and found incompetent to stand trial for, or found not guilty by reason of insanity of, a sexually violent offense is about to be released;

AS 47.30.818 provides the attorney general with the authority to file a petition alleging that a person is a sexually violent predator; if probable cause is shown by the attorney general that a person is a sexually violent predator, permits a court to order the person to be taken into custody and to be examined;

AS 47.30.819 provides for a trial to determine if beyond a reasonable doubt a person is sexually violent predator; the burden of proof shall be on the state; the trial shall be a jury trial if requested by the person, the attorney general, or the court, otherwise the trial shall be before the court; the person has the right to the assistance of counsel and to the retention of experts at state expense; if the person is found to be a sexually violent predator then the person shall be committed to the department of health and social services until the person's mental abnormality or personality disorder has so changed that the person is safe to be at large; if the person was not convicted of a sexually violent offense due to having been found incompetent to stand

Sectional Analysis

trial the court shall first hold a hearing to determine beyond a reasonable doubt if the person did commit the crime;

AS 47.30.820 provides for annual examinations for anyone committed as a sexually violent predator;

AS 47.30.821 provides that the commissioner of corrections shall seek the release of a person committed as a sexually violent predator if the person's mental abnormality or personality disorder has so changed that the person is no longer likely to commit a sexually violent offense and is safe to be at large; allows the person to seek release even if the commissioner declines and provides procedures;

AS 47.30.822 provides that the department of health and social services is responsible for all costs relating to the evaluation and treatment of persons committed to its custody under this bill; allows the department to seek reimbursement of costs; provides for immunity to the state and its employees for good faith actions undertaken under this bill;

AS 47.30.823 allows the release of information that is necessary to protect the public concerning any sexually violent predator committed under this bill;

AS 47.30.824 provides definitions.

Section 2 of the bill provides an applicability section.

GPL:gc  
94-019.glc

# Child molester charged again with rape

By SHEILA TOOMEY  
Daily News reporter

A convicted Alaska child molester, whose sentence was reduced as too harsh, has been charged in Montana with raping a 5-year-old girl after kidnapping her as she biked along a rural road.

Kenneth Whitlow, 41, is being held on \$100,000 bond in Hamilton, Mont., charged with aggravated kidnapping and sexual intercourse without consent, said Ravalli

County Sheriff Jay Printz.

The child was on her way home on July 8 from a candy trip to the local grocery store in Pinesdale, Mont., when she disappeared, Printz said. Pinesdale is a community of about 650 people. The store is about a quarter-mile from the girl's home. Searchers found her bicycle and candy bars by the side of the road.

About two hours later, Whitlow delivered the child, bleeding, to a local hospital and

said he found her wandering in the woods several miles from where her bike was found. Whitlow said he had been fishing and had fishing gear with him, according to Printz.

Investigators believe the girl was raped by digital penetration, the sheriff said.

Whitlow lives in Darby, Mont., about 25 miles south of Pinesdale, and was not

Please see Page B-3, MOLESTER

## MOLESTER: Arrested again

Continued from Page B-1

known to the victim's family, Printz said. The small towns of Ravalli County are located in a wooded valley of the Bitterroot Mountains, hard up against the border between Montana and Idaho.

In 1985, Whitlow was convicted in Alaska of molesting his 12-year-old daughter, then hiding her so she couldn't testify at his trial. At the time, he was charged with attempted sexual assault and two counts of sexual abuse.

Whitlow's maneuver succeeded in delaying the trial, but he eventually pleaded no contest to a single count of second-degree sexual abuse and one count of witness tampering.

His girlfriend, Helen Oehler, who still lives with him, was convicted of helping him hide the girl.

Among his defenses, Whitlow claimed his daughter was lying about the abuse, that she looked 19 despite being only 12, that she was psychologically damaged by previous abuse in her mother's home in Georgia and had repeatedly attempted suicide.

Superior Court Judge Victor Carlson sentenced Whitlow to 12 years. "There's no question about the fact that she was badly damaged when she arrived here and then you continued to damage her," Carlson said

as he handed down what proved to be an illegally harsh term.

"I also, when I listen to you, think that you're about 90 degrees off base from what reality is with regard to understanding things like the rest of us understand things. Therefore, I hold out little hope that you're going to become rehabilitated ever, and certainly not soon."

The Alaska Court of Appeals cut the 12 years to six and Whitlow was released April 29, 1989, having served the mandatory four years, according to Department of Corrections records. While in prison, he failed to complete the Hilland Mountain sex offender treatment program. His probation ended in 1990 and he returned to his home state of Montana.

Last year, Montana child welfare officials removed Oehler's two teen-age daughters from the Whitlow home after investigating allegations that he had sexually molested them, Printz said. No criminal charges were filed.

Whitlow is being held in lieu of \$100,000 bond and is not due in court again until Aug. 4. Oehler did not respond to a message left on her answering machine.

If convicted, Whitlow's sentence could range anywhere from two to 100 years, Printz said.

News  
Clippings



## In Our Opinion . . .

### Lessons learned from sex offender

Several lessons can be learned from Langley's recent experience with convicted sex offender William Lange. Lange, of course, is the man who was given refuge by a Langley family after he served his time in prison for first degree rape. He registered as a sex offender, and police warned neighbors and the community that they still considered him dangerous. Meanwhile, Lange was telling his new family and everyone else who would listen that he was a changed man, "born again" in fact, who was no threat to anyone. As events unfolded, Lange fled town when a woman became concerned that he might be stalking her. A few days later, police in Alaska reported that he had been arrested there on suspicion of another heinous sex crime.

One important reminder from all this is that the police can tell the good guys from the bad guys. The Langley Police Department and Island County Sheriff's Office did the right thing in warning the community about Lange's presence. A community should know when a predator is in its midst, and it's largely thanks to local police that Lange did not strike here.

Another lesson is that sex offenders are consummate liars, able to look someone in the eye and tell them time after time, in all apparent sincerity, that they've changed their ways. You don't have to be particularly gullible to believe that line if you are not familiar with sex offenders.

A final lesson is that Washington's sex offender registration law is working and well worth keeping. Without it, Lange would have been like a wolf among ignorant sheep. The fact that he went to Alaska to apparently strike again shows that our law is working, and that Alaska and other states without a registration law should adopt one as quickly as possible for the protection of their own citizens.

# Suspect in 2 rapes arrested

Truck driver cruised bar area, police say

By LIZ RUSKIN  
Daily News reporter

A tow-truck driver who police believe cruises a Fourth Avenue bar for women to rape was arrested Tuesday on charges he kidnaped and sexually assaulted two women on separate occasions this summer.

Police say Henry G. Buchholz also is suspected in the rapes of two other women. One, Mary Sophie Wilson, was found dead in a ditch near Far North Bicentennial Park in April. Wilson's death was attributed to a combination of alcohol and hypothermia. Troopers suspected foul play because some of her clothes were missing, and it appeared she had been raped.

Buchholz, 32, told a District Court judge Wednesday that he is self-employed, but police say they believe he worked for Spenard Wreckers.

Anchorage Police Sgt.

Please see Back Page, RAPE

## RAPE: Anchorage tow-truck driver a suspect in several sexual assaults

Continued from Page A-1

S.J. Bjornstrom said Wednesday that all four rapes have several things in common: The victims were Alaska Natives who had been drinking at the Hub Bar, they were tied or handcuffed, and they were sexually raped.

The charges against Buchholz allege he picked up a 38-year-old victim from the Hub Bar on July 15. The woman said she'd seen him in the bar several times and figured he would be a safe ride. But instead of taking her to the Brother Francis Shelter as she requested, he drove his red tow truck to a mobile home. He handcuffed her hands and ankles, bound her elbow behind her and blindfolded her.

She described him and the tow truck to police. The next day, a police officer stopped a red tow truck near Russian Jack Park. The driver, Buchholz, was interviewed briefly and allowed to go on his way. The woman could not pick his 1991 photo from a

lineup. A Hub worker, however, called police Aug. 10 and said a man he knows as "Buck" drives a red tow truck and frequents the Hub at closing time. He gave them Buchholz's license plate number. The next day, police again stopped Buchholz's tow truck. This time, they photographed Buchholz so they could show the woman a more recent picture. But again she failed to pick him out of a lineup, and Buchholz was not arrested.

Ten days after he was stopped by police the second time, Buchholz raped again, according to the charges against him. The 34-year-old woman told police she left the Hub shortly after midnight Aug. 21 and was walking near Ninth Avenue and Ingraham Street when a white man grabbed and shoved her into a maroon sedan. He drove south on the Seward Highway and dragged her into a building near a junkyard. He handcuffed her to a



Henry G. Buchholz

hook on the ceiling and raped her.

The suspect told her to stop fighting because he had already killed someone before, police detective Linda Branchflower wrote in a charging document.

The woman said the rapist took her identification

card during the attack.

She described her assailant and took Branchflower to the neighborhood of the attack, a Seward Highway frontage road between 66th and 68th avenues. With that, and information about the other three rapes, police got a search warrant for Buchholz's trailer, which is on the frontage road. There they found two sets of handcuffs, ropes, magazines depicting bondage and a toy hook they believe may have been used in the Aug. 21 attack. They also found the woman's identification card.

Troopers say they are still investigating two earlier rapes in which Buchholz is a suspect and plan to send information to the District Attorney's office for possible charges.

The earliest occurred Nov. 12. That victim told troopers she was walking in front of the Hub Bar when a white man driving a red pickup stopped and offered her a ride. Instead of taking her

where she was going, he drove her to Stuckagait Heights and bound her ankles and arms with duct tape. He also taped her mouth and eyes.

After the assault, she walked to a house nearby and called the troopers. She led officers to the scene of the rape, where they found ropes and tape. They also found a trailer-hitch ball that was apparently used in driving-license violations in the past decade. He also has a 1981 burglary conviction from New Mexico.

He was charged in March with stealing a \$500 watch from a friend's house. He confessed to taking the watch and was sentenced to 30 days in jail.

Authorities also believe Buchholz raped Mary Sophie Wilson, 37. Her body was found near Abbott Road and Main Tree Drive, not far from Stuckagait Heights. During the autopsy, paper wadding was found in her vagina. Lipstick marks on

her left wrist indicated she had been bound. District Attorney Ed McFally was careful not to call Wilson's death a murder. Its legal status hasn't been determined, he said.

Buchholz has a lengthy criminal record, but his convictions are for nonviolent offenses. Court records show he has been convicted four times each of shoplifting and driving-license violations in the past decade. He also has a 1981 burglary conviction from New Mexico.

He was charged in March with stealing a \$500 watch from a friend's house. He confessed to taking the watch and was sentenced to 30 days in jail.

Authorities also believe Buchholz raped Mary Sophie Wilson, 37. Her body was found near Abbott Road and Main Tree Drive, not far from Stuckagait Heights. During the autopsy, paper wadding was found in her vagina. Lipstick marks on

# Southeast towns on alert for fugitive

By DIANE RAAB

THE JUNEAU EMPIRE

A fugitive wanted in connection with a brutal rape in Massachusetts may be at large in Southeast Alaska, according to Alaska State Troopers and the Federal Bureau of Investigation.

Scott A. Burgess, 30, is wanted for a 1992 rape and kidnapping in Watertown, Mass., said Jeff Glover, FBI special agent in Juneau.

Burgess had worked at a cannery in Petersburg last summer, and state troopers and the FBI believe he may be somewhere in Alaska.

Authorities say Burgess is 5-foot-11, 170 pounds, with blue eyes and brown or blonde hair, usually worn in a ponytail.

Joe Deignan, a detective for the Watertown Police Department, said Burgess has tattoos all over his upper torso and a Tweety Bird tattoo on one of his forearms. His left thumb and wrist is tattooed with a distinctive KKK.

Glover said a person matching that description had been seen in mid-January in Craig, a community of 1,535 residents on Prince of Wales Island. In February, another Craig resident reported seeing a man matching Burgess' description.

"We can't say it's confirmed, but pretty strongly believe it is him because of the uniqueness of



SCOTT A. BURGESS

the tattoo," Glover said.

The FBI does not know if Burgess is still in the area. Glover said he has not been seen since February.

Juneau police have been notified. State ferry terminals and Southeast airports also have been notified, Glover said.

Burgess, who also uses the name Scott Lee, is known to have

lived in Montana, Alaska, New Mexico, Washington, Florida, Arizona and Massachusetts, Deignan said.

Burgess is wanted by Massachusetts authorities for allegedly kidnapping, beating and raping a woman Dec. 12, 1992. Burgess abandoned her in a Boston suburb, Glover said.

On Nov. 27, 1991, Burgess was arrested for assault, threats and intimidation toward a woman in Lake Havasu City, Ariz., Glover said.

In late June 1992, Burgess was held in protective custody in Petersburg for an incident involving alcohol. Burgess allegedly tried to get into a woman's dormitory, and was subsequently fired from his cannery job, Glover said.

Petersburg Police Chief Marvin Ronimus said residents are concerned that Burgess might return to Petersburg.

After the most recent sighting in Craig, the community's police chief said he has received at least

100 calls. "People are thinking children shouldn't walk to and from school, (but) this is not a serial rapist or serial murderer ... it's more of a common criminal," Police Chief Jim Ser said.

"We have no proof that he is here. I have arrested several people on this island with KKK tattoos in various places," he said.

"It's not like the general population is at risk. Yes, he committed a crime, but it's not like everybody's children are at risk. This guy picked a woman up in a bar, that type of thing. The general population is not at risk."

# Rapist gets 15 more years

Paroled man assaulted relative

By LIZ RUSKIN  
Daily News reporter

A few hours after he was released from a two-year prison term for sexual assault, Timothy Seton went downtown and raped the first woman who showed him an ounce of kindness.

The woman, a relative of Seton's, told police she ran into Seton at a Fourth Avenue bar one afternoon last summer. She was glad to see him and they drank together. Later, they took a cab to a Fairview liquor store, bought more alcohol and began walking through the neighborhood. Without warning, he struck her in the face and dragged her into a wooded area. He wrapped his belt around her neck to keep her from screaming during the assault.

His denim jacket was found near the scene, his parole papers and a bottle of Canadian Club whiskey still in the pockets.

"It's bad enough to commit this crime against a total stranger," Superior Court



JIM LAVRAKAS / Anchorage Daily News

Timothy Seton apologizes to the victim during his sentencing hearing Tuesday.

Please see Page B-3, **RAPIST**

## PIST: Man sentenced to 15 years

Continued from Page B-1

Judge Rene Gonzalez said at Seton's sentencing hearing Tuesday. "Here's your own flesh and blood."

Gonzalez sentenced Seton, who confessed to the rape but pleaded no contest to the lesser charge of attempted rape, to 15 more years in jail. He also imposed three years that were suspended from a 1991 attempted-rape conviction.

That charge stemmed from Seton's attack on a stranger, a 60-year-old Hooper Bay woman. Seton was released on mandatory parole from Hiland Mountain Correctional Center on Aug. 11, the day he raped his relative, a woman in her 20s.

"This man has hurt me in thousands of ways and in lots of ways I can't explain," she said, sobbing. "He may be related to me but I don't see it that way anymore."

She said the attack has undermined her self-respect and caused some family members to turn against her.

Seton, 28, buried his face in his hands as she spoke.

Assistant District Attorney Suzanne Lombardi said Seton has a long history of assaults on women.

In 1981, she said, Seton tried to sexually assault his teacher. He sneaked into the teacher's house and crawled into bed with her, Lombardi said. A few months later, he

went into an 18-year-old girl's bedroom and tried to remove her clothes. In 1982, he approached a young girl, asked her for alcohol, then hit her in the face and tried to pull her pants down.

Lombardi said Seton has been diagnosed as having low intelligence. She quoted from a presentence report in which an older sister said Seton's problems began in infancy.

"Timothy is like a little baby. He's not like the rest of us," the sister said. "He died when he was a little baby and he hasn't been the same since."

Defense attorney Andrew Lambert said Seton has brain damage and "should be treated with kid gloves." Previous attempts at rehabilitation did not take his limited intelligence into account, Lambert said.

The judge said Seton needed to be isolated from society but said the last prison stay had obviously not helped.

"When you got out of prison you were basically no better off to deal with the world than when you went in," Gonzalez said.

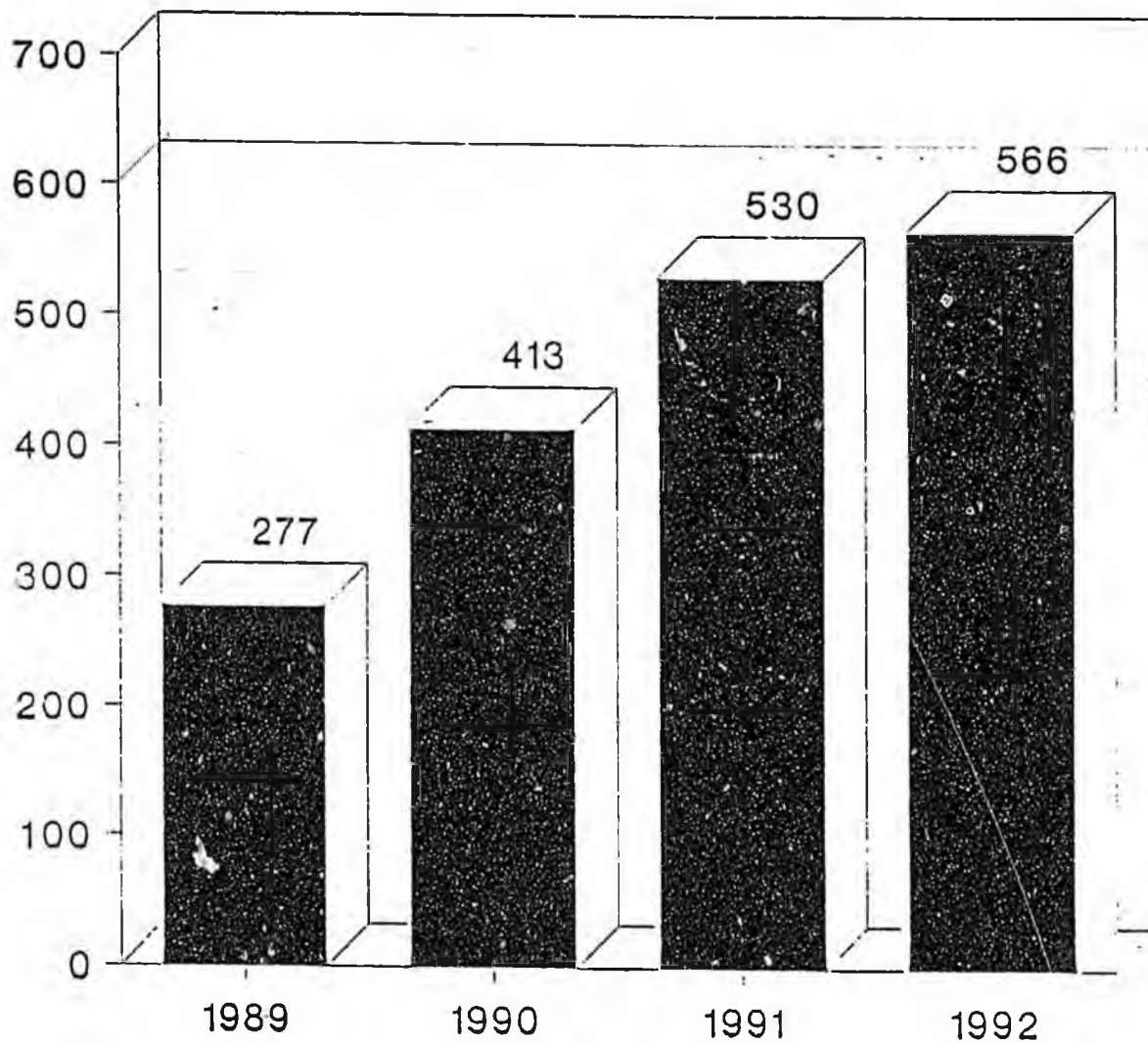
He recommended that Seton undergo sex-offender treatment before he is released from prison again.

When it was his turn to speak, Seton wept and apologized to his family.

"It's nobody's fault," he said. "It's only my fault."

# Rape in Alaska

## Numbers of Reported Rapes



Uniform Crime Report

Source: Dept. Public Safety UCR  
Provided by Alaska Network on  
Domestic Violence & Sexual Assault

H B

3 5 4

# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3/31/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 354

HOUSE BILL NO. 354

I.D. REQUIRED TO ENROLL CHILD IN SCHOOL

"An Act relating to identification required upon enrollment in a public school."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CS HB 354 (HSS)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note H+SS, Public Safety

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Car Beudo</i>	<input checked="" type="checkbox"/>	<i>Rep. Coet</i>		<input checked="" type="checkbox"/>	
<i>Bob Wes</i>	<input checked="" type="checkbox"/>	<i>Rep. Vigney</i>		<input checked="" type="checkbox"/>	
		<i>Longman</i>		<input checked="" type="checkbox"/>	

*Car Beudo*  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 354

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Identification required to enroll in school BRU: State Health Services  
 Component: Bureau of Vital Statistics  
 Sponsor: House HES  
 Requestor: House HES COMPONENT SERIAL NO. #961

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) cost \$ NONE

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: Peter M. Nakamura, MD, MPH  
 Division: Public Health

Phone: (907) 465-3090  
 Date: 01/13/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S.  
 Agency: Department of Health & Social Services

Date: 1-14-94

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS

DEPARTMENT H&SS	DIVISION Public Health	BILL NUMBER HB 354	SPONSOR House HESS Committee
SHORT TITLE OF BILL An Act relating to identification required upon enrollment in a public school			
DEPARTMENT POSITION The Department supports this bill			
PREPARED BY Peter M. Nakamura, MD, MPH	DATE 1/13/94	COMMISSIONER'S SIGNATURE <i>M. Lowe</i>	DATE 1-14-94

SUMMARY

OTHER AGENCIES AFFECTED BY BILL DFYS, DOE, School Districts	CONSTITUENT GROUP(S) AFFECTED BY BILL Parents
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT  
Stolen children are a national problem. This bill will help in those cases where the child is enrolled in school. However, this bill will have little or no impact on children stolen by a parent shown on the birth certificate. The Department supports this bill.

ANALYSIS OF BILL/PROGRAM EFFECTS  
This bill will have no impact on Department programs.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO: HB 354

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to identification required upon enrollment in a public school" BRU: Statewide Support  
 Component: Administrative Services  
 Sponsor: H. HESS  
 Requestor: H. HESS COMPONENT SERIAL NO. 525

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>						
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

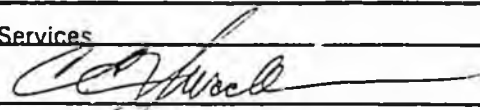
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MF/TIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**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: (Attach a separate page if necessary.)**  
 No significant fiscal impact is anticipated.

Prepared By: Ken Bischoff Phone: 465-4336  
 Division: Administrative Services Date: 2/2/94  
 Approved by Commissioner:  Date: 2/2/94  
 Agency: Richard J. Burton, Dept. of Public Safety

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# Alaska State Legislature

House of Representatives  
 COMMITTEE ON HEALTH, EDUCATION  
 AND SOCIAL SERVICES

DATE: 3/31/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 SB 225: INSURANCE TAX CREDIT: GIFTS TO COLLEGES  
 HB 210: HIRING OF CHIEF SCHOOL ADMINISTRATOR  
 HB 351: ID REQUIRED TO ENROLL CHILD IN SCHOOL

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Al Alvarez	AK Pacific University	401 University Dr Anchorage	99508	345-2464	564-8347	(Y) N	SB 225
Larry Meyers	D.O.R.			2320		Y (N)	SB 225
Steve Mophetres	ACSA	3200 4th St. #104	99501	6-9702		(Y) N	HB 210
Stone, Jeffrey	SELF	2601 Monmouth	99500	W/A	-	Y (N)	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

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03/31/94

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01  
08:48:05

CONFERENCE ID: 40604 DATE & TIME: 03/31/94 15:00 TO 17:00 STATUS:7 STATS. IN

CONFERENCE CHAIRS

CONFERENCE CHAIRS: EDUCATION, LOCATION AND SOCIAL SERVI CHAIRS: TOOHEY  
LEGISLATIVE RUMDE  
TEL#: (907)455-6825  
CAPITOL CAPITOL

CONFERENCE CHAIRS: 99 MINUTE LIMIT  
CONFERENCE IS TAKEN ON 15:05. HB 210 IS LISTEN ONLY.  
CONFERENCE IS TAKEN ON 15:05. HB 210 IS LISTEN ONLY.  
CONFERENCE IS TAKEN ON 15:05. HB 210 IS LISTEN ONLY.

CONFERENCE AGENDA

- 1. HB 210 - CHILD TAX CREDIT: GIFTS TO COLLEGES
- 2. HB 211 - RIGHTS OF CHIEF SCHOOL ADMINISTRATOR
- 3. HB 214 - CHILD REQUIRED TO ENROLL CHILD IN SCHOOL

CONFERENCE PARTICIPANTS

NAME BILL BOGAN FACILITATOR BLDG LOCATION STAFF  
JOHN JOBEAU CAPITOL CAPITOL LOCATION STAFF

CONFERENCE PARTICIPANTS LISTED

NAME	PHONE	LOCATION	PHONE
JEFFREY	478-7582	FAIRBANKS	WENDY REDMAN (907)474-7582
JEFFREY	269-5757	SHEENBAGE	LT. CASANOVAS (907)269-5757
JEFFREY	366-7208	TANANA	RON DELAY (907)366-7208

CONFERENCE PARTICIPANTS LISTED

NAME	PHONE	LOCATION	PHONE
JEFFREY	5213	DLG	DLG CITY SCHOOLS ISFY, HB 210
JEFFREY	5213	BILLINGHAM	AK 99576 (907)842-5213

CONFERENCE PARTICIPANTS LISTED

NAME	PHONE	LOCATION	PHONE
JEFFREY	0000	TECH	TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	DAVIS	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	KOTT	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	VEZET	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	BUNDE	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	BARTIN	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	BOPHETERS	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	CARROL	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	STAFF TO PENTULA	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	BECKERSON	AK TSFY, ALL ITEMS (907)000-0000
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02  
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CONFERENCE ID: 40604 DATE & TIME: 03/31/94 15:00 TO 17:00 STATUS:7 STATS. IN

CONFERENCE PARTICIPANTS

NAME	PHONE	LOCATION	PHONE
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS
JEFFREY	0000	OBSERVE	AK OBSV, ALL ITEMS

BILL HB 354

DATE 3/31/91

TAPE 94-63B

NUMBER 643

SUBJECT OF VOTE TO PASS HB 354 OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS AND ACCOMPANYING FISCAL NOTE.

MEMBER	YEA	NAY	ABS
Rep. Gary Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Cynthia Toohey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>4</u>	<u>1</u>	<u>—</u>

+++++

BILL \_\_\_\_\_

DATE \_\_\_\_\_

TAPE 94- \_\_\_\_\_

NUMBER \_\_\_\_\_

SUBJECT OF VOTE \_\_\_\_\_

MEMBER	YEA	NAY	ABS
Rep. Al Vezey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Cynthia Toohey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8-LS1385E ✓  
Ford  
3/29/94

CS FOR HOUSE BILL NO. 354(HES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to identification required upon enrollment in a public school."

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

3 \* Section 1. AS 14.30.710 is amended by adding new subsections to read:

4 (b) A person who enrolls a child in a public school shall, not more than 30  
5 days after enrollment, provide to the public school a copy of the child's birth  
6 certificate or other proof of the child's identity, if the child has not previously been  
7 enrolled in a public school.

8 (c) If a person enrolls a child under a name other than the name as indicated  
9 on at least one of the child's identifying documents, the school shall notify the missing  
10 persons information clearinghouse of the child's name as shown on the identifying  
11 document and the child's name under which the child is enrolled. The information in  
12 the notice is confidential and may only be released to the missing persons information  
13 clearinghouse or to a law enforcement agency. If a person fails to comply with (b) of  
14 this section, the school shall notify the nearest law enforcement agency of the failure

1 to comply with this section and request a determination of whether the child has been  
2 reported as missing.

3 (d) When accepting a child for enrollment under (a) or (b) of this section, the  
4 school shall use a form that contains a written notice informing the person enrolling  
5 the child that enrolling the child under a false name is a criminal offense under  
6 AS 11.56.210 and that failure to comply with (b) of this section is a violation.

7 (e) A person who knowingly fails to comply with (b) of this section is guilty  
8 of a violation. In this paragraph, "knowingly" has the meaning given in AS 11.81.900.

# HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES



STATE CAPITOL, JUNEAU 99801  
(907) 465-3759

HB 354

An Act relating to identification required upon enrollment in a public school.

This bill adds a new section to AS 14.30 to require a person who enrolls a child in a public school to provide a copy of the child's birth certificate or other proof of the child's identity and a copy of the child's school records from the school the child most recently attended (if the child was previously enrolled in school) to the school not more than 30 days after enrollment.

If a child is enrolled under a name other than the name indicated on the child's identifying documents, the school will notify the missing persons information clearinghouse of the child's name as shown on the identifying document and the child's name under which the child is enrolled. The information in the notice will be confidential, and can only be released to the missing persons information clearinghouse or to a law enforcement agency. If a person fails to comply with the law requiring proof of identity and school records, the school will notify the nearest law enforcement agency and request a determination of whether the child has been reported as missing.

When accepting a child for enrollment, the school will use a form that contains a written notice informing the person enrolling the child that enrolling the child under a false name is a criminal offense and that failure to comply is a violation.

I urge your favorable consideration of this legislation.

July 1, 1989, added the language beginning "however, a teacher or administrative person at the university" to the end of subparagraph (4)(C).

The 1990 amendment, effective July 1, 1990, added subparagraph (4)(D) and made related stylistic changes.

The 1992 amendment, effective August 23, 1992, inserted "contracted or" in paragraph (8).

**Opinions of attorney general.** — Amounts paid by the Anchorage School District to the Anchorage Education Association for dues for the association's representation of teachers in the district should not be included in base salary either for payment of contributions or for computation of benefits. July 25, 1989 Op. Att'y Gen.

NOTES TO DECISIONS

"Membership years" in AS 14.25.130(a). — Teachers' Retirement Board erred when it interpreted the term "membership years" in AS 14.25.130(a) as being the equivalent of "years of service" as defined in this section. *Casperson v.*

*Alaska Teachers' Retirement Bd.*, 664 P.2d 583 (Alaska 1983).

Quoted in *Flisock v. State*, 818 P.2d 640 (Alaska 1991).

Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987).

Chapter 30. Pupils and Educational Programs for Pupils.

Article

1. Compulsory Education (§§ 14.30.010 — 14.30.047)
2. Physical Examinations and Screening Examinations (§§ 14.30.065 -- 14.30.127)
3. Education for Exceptional Children (§§ 14.30.180 — 14.30.350)
4. Health and Safety Education (§§ 14.30.360, 14.30.370)
5. Environmental Education (§ 14.30.380)
6. Bilingual-Bicultural Education (§§ 14.30.400, 14.30.410)
7. Adventure-Based Education (§§ 14.30.500)
8. Alaska Student Leadership Development Fund (§ 14.30.510)
9. Special Education Service Agency (§§ 14.30.600 — 14.30.660)
10. Records of Certain Missing or Transferred Children (§§ 14.30.700 — 14.30.720)
11. Alaska School Counseling Program Grant Fund (§ 14.30.750)

Article 1. Compulsory Education.

Section

10. When attendance compulsory
20. Violations
30. Report of violations and procedures
45. Grounds for suspension or denial of admission

Section

47. Admission or readmission, when cause no longer exists

**Collateral references.** — 68 Am. Jur. 2d Schools, §§ 219-233.

79 C.J.S. Schools and School Districts, §§ 463-470.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils. 7 ALR 791; 52 ALR 249.

Free textbooks and other school supplies for individual use of pupils. 17 ALR 299; 67 ALR 1196.

Teacher's civil liability for administering corporal punishment. 43 ALR2d 469.

Regulations as to fraternities and similar associations connected with educational institution. 10 ALR3d 389.

Student organization registration statement, filed with public school or state university or college, as open to inspection by public. 37 ALR3d 1311.

What constitutes a private, parochial, or denominational school within statute

making attendant at such school a compliance with compulsory school attendance law. 65 ALR3d 1222.

Student's right to compel school officials to issue degree, diploma, or the like. 11 ALR4th 1182.

Sec. 14.30.010. When attendance compulsory. (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section.

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; or

(C) attendance at an educational program operated in compliance with AS 14.45.100 — 14.45.200 by a religious or other private school;

(2) attends a school operated by the federal government;

(3) has a physical or mental condition that a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or denied admittance according to AS 14.30.045;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this subsection does not apply if the child resides within two miles of a federal or private school that the child is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade;

(10) is enrolled in

(A) the state boarding school established under AS 14.16; or

(B) a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite

an absence from school, the request for excuse is made in writing by the child's parents or guardian, and approved by the principal or administrator of the school that the child attends. (§ 37-7-1 ACLA 1949; am § 36 ch 98 SLA 1966; am § 5 ch 71 SLA 1972; am § 5 ch 190 SLA 1975; am § 1 ch 30 SLA 1976; am § 1 ch 10 SLA 1977; am § 4 ch 126 SLA 1978; am § 3 ch 11 SLA 1984; am § 1 ch 78 SLA 1987; am § 4 ch 73 SLA 1988)

Effect of amendments. — The 1988 amendment, in subsection (b)(10), divided the formerly undivided language into an introductory paragraph and subparagraph (B), and inserted subparagraph (A).

#### NOTES TO DECISIONS

Quoted in *L.A.M. v. State*, 547 P.2d 827 (Alaska 1976).

Stated in *In re S.D.*, 549 P.2d 1190 (Alaska 1976).

Cited in *Matthews v. Quinton*, 362 P.2d 932 (Alaska 1961); *D.R.C. v. State*, 646 P.2d 252 (Alaska Ct. App. 1982).

Collateral references. — Extent of legislative power with respect to attendance and curriculum. 39 ALR 477; 53 ALR 832.

Inmates of charitable institutions as residents entitled to school privileges. 48 ALR 1098.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 ALR 499; 113 ALR 177.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory attendance law. 3 ALR2d 1401.

Applicability of compulsory attenda. e

law covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR2d 874.

Power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority. 78 ALR2d 1021.

Residence for purpose of admission to public school. 33 ALR2d 497; 56 ALR3d 641.

What constitutes a private, parochial, or denominational school within statute making attendance at such school a compliance with compulsory school attendance law. 65 ALR3d 1222.

**Sec. 14.30.020. Violations.** A person who knowingly fails to comply with AS 14.30.010 is guilty of a violation. Each five days of unlawful absence under AS 14.30.010 is a separate violation. (§ 37-7-2 ACLA 1949; am § 37 ch 98 SLA 1966; am § 2 ch 78 SLA 1987)

Cross references. — For fines for violations, see AS 12.55.035.

**Sec. 14.30.030. Report of violations and procedures.** The chief administrative officer of a district school or regional educational attendance area shall report all apparent violations of AS 14.30.010 to the governing body of the district. The governing body shall, on receiving the report or on the complaint of any person, provide for a full and impartial investigation of all charges of violation. In private or federal schools, the chief administrative officer shall make a full and

impartial investigation of all apparent violations. If it reasonably appears upon investigation that a person has violated AS 14.30.010, the governing body of a district school or regional educational attendance area, or the chief administrative officer of a private or federal school, shall make and file with the district court a complaint against the person, charging the violation. (§ 37-7-3 ACLA 1949; am § 1 ch 32 SLA 1949; am § 38 ch 98 SLA 1966; am § 55 ch 6 SLA 1984; am § 23 ch 85 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective June 2, 1988, deleted the former last sentence, which read "The judge or magistrate may issue a warrant for the arrest of the person and may act upon the complaint."

**Legislative history reports.** — For an analysis of the amendment of this section

by § 23, ch. 85, SLA 1988 (HCS CSSB 413 (Jud)), see 1988 House & Senate Joint Journal Supplement No. 18, May 10, 1988, p. 5.

**Collateral references.** — Privilege in reports or statements about school pupils. 12 ALR 147.

*Sec. 14.30.040. Extension of provisions to United States public schools for aborigines. [Repealed, § 59 ch 98 SLA 1966.]*

**Sec. 14.30.045. Grounds for suspension or denial of admission.** A school age child may be suspended from or denied admission to the public school that the child is otherwise entitled to attend only for the following causes:

(1) continued wilful disobedience or open and persistent defiance of reasonable school authority;

(2) behavior that is inimicable to the welfare, safety, or morals of other pupils;

(3) a physical or mental condition that in the opinion of a competent medical authority will render the child unable to reasonably benefit from the programs available;

(4) a physical or mental condition that in the opinion of a competent medical authority will cause the attendance of the child to be inimicable to the welfare of other pupils;

(5) conviction of a felony that the governing body of the district determines will cause the attendance of the child to be inimicable to the welfare or education of other pupils. (§ 39 ch 98 SLA 1966)

#### NOTES TO DECISIONS

Quoted in *Breese v. Smith*, 501 P.2d 159 (Alaska 1972).

**Collateral references.** — Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342; 48 ALR 659.

Smoking as ground for expulsion or sus-

pension of pupil. 33 ALR 1180.

Personal liability of school authorities for dismissal or suspension of pupil. 42 ALR 763.

Expulsion or suspension from private

school or college. 50 ALR 1497.

Marriage or other domestic relations as ground for exclusion of pupil from school. 63 ALR 1164.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him from roll of public educational institution. 36 ALR 484.

Validity, construction, and application of statutes or regulations concerning recreational or social activities of pupils of public schools. 134 ALR 1274.

Right of student to hearing on charges before suspension or expulsion from educational institution. 58 ALR2d 903.

Regulations as to fraternities and similar associations connected with educational institution. 10 ALR3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 ALR3d 996.

Validity of regulation by public school

authorities as to clothes or personal appearance of pupils. 14 ALR3d 1201.

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. 32 ALR3d 551.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 ALR3d 864.

Right to discipline pupil for conduct away from school grounds or not immediately connected with school activities. 53 ALR3d 1124.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 ALR4th 1212.

Admissibility of hearsay evidence at disciplinary proceedings. 23 ALR4th 935.

**Sec. 14.30.047. Admission or readmission, when cause no longer exists.** (a) A child who has been suspended from or denied admittance to a school under AS 14.30.045(3) or (4) shall be permitted to attend school when the child is obviously recovered or presents to the governing body a statement in writing from a competent medical authority that the child is no longer afflicted with, or suffering from, the physical or mental condition to the extent that it is a cause for suspension or denial of admission under AS 14.30.045(3) or (4).

(b) A child who has been suspended from or denied admittance to a school for any other cause provided by AS 14.30.045 shall be permitted to attend school when it reasonably appears that the cause has been remedied. (§ 40 ch 98 SLA 1966)

*Sec. 14.30.050. Truant officers. [Repealed, § 3 ch 78 SLA 1987.]*

## Article 2. Physical Examinations and Screening Examinations.

### Section

- 65. Supervision
- 70. Physical examination required
- 120. Certificate of physical examination

### Section

- 125. Immunization
- 127. Vision and hearing screening examinations

**Collateral references.** — 68 Am. Jur. 2d Schools, §§ 275-280.

79 C.J.S. Schools and School Districts, §§ 452-454.

Power of municipal or school authorities to prescribe vaccination or other health measure as a condition of school attendance. 93 ALR 1413.

## Article 10. Records of Certain Missing or Transferred Children.

Section  
700. Records of missing children  
710. Required records upon transfer

Section  
720. Definitions

**Sec. 14.30.700. Records of missing children.** Upon notification by the Department of Public Safety of a child's disappearance, a school or school district in which the child is currently or was previously enrolled shall flag the school record of that child in a manner that, when a copy or information regarding the record is requested, the school or school district shall be alerted to the fact that the record is that of a missing child. The school or school district shall immediately report to the Department of Public Safety a request regarding flagged records, including any knowledge as to the whereabouts of the child. Upon notification by the Department of Public Safety that the person who was listed as a missing child has been found, the school or school district shall remove the flag from the person's record. (§ 1 ch 202 SLA 1990)

**Sec. 14.30.710. Required records upon transfer.** Within 14 days after enrolling a child as a transfer student from this or another state in an elementary or secondary school, the school or school district shall request directly from the child's previous school a certified copy of the child's record. An elementary or secondary school or a school district in this state requested to forward a copy of a transferring child's record to another school shall comply with the request within 10 days after receiving the request unless the record has been flagged under AS 14.30.700. Upon receipt of a request for a record that has been flagged, the school or school district shall immediately notify the Department of Public Safety. Unless directed to do so by the Department of Public Safety, a school or a school district may not forward a copy of a flagged record. (§ 1 ch 202 SLA 1990)

**Sec. 14.30.720. Definitions.** In AS 14.30.700 — 14.30.720,  
(1) "child" means a person under 18 years of age;  
(2) "school district" means a municipal school district or a regional educational attendance area. (§ 1 ch 202 SLA 1990)

**Sec. 11.56.210. Unsworn falsification.** (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

(1) in an application for a benefit; or

(2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

**Sec. 11.56.220. Proof of guilt.** In a prosecution for perjury or unsworn falsification it is not necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence. (§ 6 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Editor's notes.** — The case cited in the notes below was decided under former AS 11.30.010.

**Required proof.** — To be guilty of perjury, it was necessary under former law to prove that a person under oath willfully and falsely swore. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

One could not be convicted of perjury on the uncorroborated testimony of one witness under former law. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

Testimony of perjury had to be corroborated by other evidence, either di-

rect or circumstantial. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

The purpose of such a rule was to prevent ill-founded retaliatory attacks by perjury prosecution upon a witness based on no more than the contrary oath of another. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

**What was corroborative evidence.** — In order to be corroborative, evidence had to induce a rational belief that what the witness said was true. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

**Sufficiency of evidence.** — See *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

**Sec. 11.81.620. Effect of ignorance or mistake upon liability.**

**NOTES TO DECISIONS**

Applied in *Russell v. State*, 793 P.2d 1085 (Alaska Ct. App. 1990).

Quoted in *De Nardo v. State*, 819 P.2d 903 (Alaska Ct. App. 1991).

**Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630.**

**NOTES TO DECISIONS**

Cited in *Cole v. State*, 928 P.2d 175 (Alaska Ct. App. 1992).

**Article 6. Definitions.**

**Section  
900. Definitions**

**Sec. 11.81.900. Definitions.** (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly "with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable

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# Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

February 26, 1992

## MEMORANDUM

TO: Senator Paul Fischer

FROM: Carol R. Vandor, J.P.  
Legislative Analyst

RE: Identification for School Enrollment  
Research Request 92.049

You asked whether any states require birth certificates as identification for school enrollment. You also wanted to know about the criteria in Alaska and other states for obtaining copies of birth certificates.

Alaska does not have a statute which requires proof of identification upon enrollment in a school. Following is a description from a random sample of seven states' laws (copies attached) which require identification upon enrollment. The states are Arkansas, Kansas, Kentucky, Nevada, North Dakota, South Dakota and Texas. Also included is a description of the procedures associated with obtaining a certificated copy of a record, the fees that must accompany the application for a record, the penalties for falsifying a record, and the procedures for handling the records of a missing child.

### Alaska

Alaska does not have a statute which requires proof of identification upon enrollment in a school.

Under A.S. 18.50.310, to protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system, it is unlawful for a person to permit inspection of or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of a record, except as authorized.

Under A.S. 18.50.320, the bureau of vital statistics will, upon request, issue a certified copy of a certificate or record. Attached with Alaska's statutes is a Vital Record Order Form. This form must be completed prior to obtaining a certified copy of a record. A \$7.00 fee must accompany this application.

Under A.S. 18.50.900, a person who, with the intention to deceive willfully, uses or attempts to use a certificate of birth or certified copy of a record of birth knowing that the certificate was issued upon a record that is false or that the record relates to the birth of another person, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, by imprisonment for not more than one year, or by both. A person who

Senator Fischer  
February 26, 1992  
Page 3

Arkansas Statute 20-18-301 et. seq., addresses disclosure of information and issuance of copies of birth certificates. To protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it is unlawful for any person to permit inspection of or to disclose information contained in vital records, or to copy or issue a copy of all or part of any record, except as authorized.

The state registrar will, upon receipt of written application, issue a certified copy of a vital record to any applicant having a direct and tangible interest in the vital record. The fee for obtaining a copy of a record is \$5.00 and is paid by the applicant.

### Kansas

Under §72-53,106, when a child enrolls, the school board of the school in which the child is enrolling will require proof of identity of the child. If proof of identity of the child is not presented to the school board within 30 days after enrollment, the school board must immediately give written notice to a law enforcement agency. Upon receipt of the written notice, the law enforcement agency must conduct an investigation to determine the identity of the child. No person or persons claiming custody of the child will be informed of the investigation while it is being conducted. Schools and law enforcement agencies will cooperate with each other in attempting to identify the child.

In the case of a child enrolling in kindergarten or first grade, proof of identity means a certified copy of the birth certificate of the child. In the case of a child enrolling in any of the grades two through twelve, proof of identity means a certified transcript or other similar pupil records or data. Other documentary evidence may be deemed satisfactory by the school board as proof of identity.

Under §65-2422, it is unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized, and it is unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized.

The state registrar may not permit inspection of the records or issue a certified copy of a certificate or part thereof unless the state registrar is satisfied the applicant has a direct interest in the matter recorded, and the information contained in the record is necessary for the determination of personal or property rights. The secretary of health and environment will permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them will be made.

Under §65-2418, the secretary will fix and charge the fees, if any, to be paid for certified copies of certificates. Under §65-2434, any person who willfully makes or alters any certificate or certified copy will be fined not more than \$1,000, be imprisoned for no more than six months, or both.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# Alaska State Legislature

Legislative Research Agency



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Under A.S. 18.50.900, a person who, with the intention to deceive willfully, uses or attempts to use a certificate of birth or certified copy of a record of birth knowing that the certificate was issued upon a record that is false or that the record relates to the birth of another person, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, by imprisonment for not more than one year, or by both. A person who

willfully and knowingly makes a false statement in a report or certificate of birth required to be filed, or in an application for amendment of it; in an affidavit or paper submitted in support of such a certificate or application, with intent to induce or secure registration of a birth; or accepts a certificate of birth as evidence of the date and place of birth, identity, or citizenship for a purpose of deception is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$300, by imprisonment for not more than three months, or by both, except when a more severe penalty is provided. A person who refuses to provide information, or who knowingly furnishes false information is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$100, except when a different penalty is provided.

Under A.S. 18.50.315, upon receiving notification by the Department of Public Safety or another law enforcement agency that a child born in Alaska is missing, the bureau will flag the birth certificate record of the missing child in a manner that alerts the bureau to the fact that the record is that of a missing child when a copy of the birth certificate or information regarding the birth certificate is requested. Upon notification by the department that the person who was listed as a missing child has been found, the bureau will remove the flag from the person's birth certificate record.

The bureau may not provide a copy of a birth certificate or information concerning the birth record of a person whose record is flagged, except as authorized. When a copy of a flagged birth certificate is requested, the bureau must immediately notify the Department of Public Safety. If a flagged record is requested in person, the bureau must record the name, address, and telephone number of the person making the request. The bureau may only provide a copy of the requested birth certificate by mail.

#### Arkansas

Under §6-18-208, no child will be admitted to any public school until the responsible person presents to the proper school authorities an official copy of the child's birth certificate and provides the child's social security number. However, if the responsible person objects to providing the child's social security number, the requirement may be waived. School authorities may provisionally admit a child for whom an official birth certificate has not been provided if other proof of the child's date of birth is submitted along with a completed and postage-paid application for an official birth certificate. Payment must accompany the application.

Request for a birth certificate of a missing child is addressed under §12-12-802. When the Division of Vital Records receives a request for the birth certificate of a child which has been reported missing, the division must, within five business days after receipt of the inquiry, notify and furnish law enforcement officials the name, address and telephone number, if known, of the person making the inquiry.

Arkansas Statute 20-18-301 et. seq., addresses disclosure of information and issuance of copies of birth certificates. To protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it is unlawful for any person to permit inspection of or to disclose information contained in vital records, or to copy or issue a copy, of all or part of any record, except as authorized.

The state registrar will, upon receipt of written application, issue a certified copy of a vital record to any applicant having a direct and tangible interest in the vital record. The fee for obtaining a copy of a record is \$5.00 and is paid by the applicant.

### Kansas

Under §72-53,106, when a child enrolls, the school board of the school in which the child is enrolling will require proof of identity of the child. If proof of identity of the child is not presented to the school board within 30 days after enrollment, the school board must immediately give written notice to a law enforcement agency. Upon receipt of the written notice, the law enforcement agency must conduct an investigation to determine the identity of the child. No person or persons claiming custody of the child will be informed of the investigation while it is being conducted. Schools and law enforcement agencies will cooperate with each other in attempting to identify the child.

In the case of a child enrolling in kindergarten or first grade, proof of identity means a certified copy of the birth certificate of the child. In the case of a child enrolling in any of the grades two through twelve, proof of identity means a certified transcript or other similar pupil records or data. Other documentary evidence may be deemed satisfactory by the school board as proof of identity.

Under §65-2422, it is unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized, and it is unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized.

The state registrar may not permit inspection of the records or issue a certified copy of a certificate or part thereof unless the state registrar is satisfied the applicant has a direct interest in the matter recorded, and the information contained in the record is necessary for the determination of personal or property rights. The secretary of health and environment will permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them will be made.

Under §65-2418, the secretary will fix and charge the fees, if any, to be paid for certified copies of certificates. Under §65-2434, any person who willfully makes or alters any certificate or certified copy will be fined not more than \$1,000, be imprisoned for no more than six months, or both.

### Kentucky

Kentucky has established a program to identify and locate missing children enrolled in schools. Under §156.495, the Department of Education must provide, by administrative regulation, for a program to identify and locate missing school children who are enrolled in public and private schools in kindergarten through grade 12. Under this program, the department must notify the appropriate law enforcement authorities as soon as any additional information is obtained or contact is made with respect to a missing school child.

Under §213.061, upon notification that a child is missing, the state registrar of vital statistics will flag the birth certificate record of the child in such a manner that whenever a copy of the birth certificate or information regarding the birth record is requested, the state registrar will be alerted to the fact that the certificate is that of a missing child.

In response to any inquiry for a copy of a flagged birth certificate of a missing child, the state registrar will not provide a copy of the birth certificate unless it has been approved by the appropriate law enforcement agency. When a copy of a flagged birth certificate is requested in person, the state registrar or the designee accepting the request will inform the person making the request that a copy of a certificate will be mailed to the requester. The state registrar will, upon the departure of the requesting person, immediately notify the appropriate law enforcement agency. When a copy of a flagged birth certificate is requested in writing, the state registrar will immediately notify the appropriate law enforcement agency as to the request and will provide a copy of the written request.

Under §213.136, the state registrar will, upon receipt of an application, issue a certified copy of a vital record in the registrar's custody, or a part thereof, to any applicant. All forms and procedures used in the issuance of certified copies of vital records will be provided or approved by the state registrar. Under §213.141, a fee, not to exceed \$5.00, will be charged for a copy of a certified record.

### Nevada

Under §392.165, the board of trustees of a school district will not allow a child to be permanently enrolled in any school until the parent or guardian of the child furnishes a birth certificate or other document suitable as proof of the child's identity and, if applicable, a copy of the child's records from the school he or she most recently attended.

A child must be enrolled in a school under his or her name as it appears in the identifying document or records, unless the parent or guardian furnishes a court order authorizing a change of name. If the parent or guardian fails to furnish the identifying document or records required within 30 days after the child is conditionally enrolled, the principal or superintendent will notify the local law enforcement agency and request a determination as to whether the child has been reported as missing.

Under §440.170, it is unlawful for any employee of the state to disclose data contained in vital statistics, except as authorized. Data contained in vital statistics records may be used for research purposes, but without identifying the persons to whom the records relate.

Under §440.327, the state registrar will not, without a court order, issue to any person or governmental entity an original or copy of the certificate of birth of a child who is listed as missing. The state registrar will inform the attorney general or the investigation division of the department of motor vehicles and public safety of the name and identifying information, dates and circumstances of any person or governmental entity requesting the certificate of birth of such a child without a court order and any other information which might be helpful.

Under §440.650, upon request, the state registrar will furnish any applicant a certified copy of the record of any birth registered. The state registrar will not issue a certified copy of a certificate unless he is satisfied that the applicant has a direct and tangible interest in the matter recorded. Under §440.700, the fee for a certified copy of a record of birth is \$11.00. However, upon the request of any parent or guardian, the state registrar will supply, without the payment of a fee, a certificate limited to a statement as to the date of birth of any child as disclosed by the record of such birth when the certificate is necessary for admission to school or for securing employment.

Under §440.760, any person who willfully alters any certificate of birth, or the copy of any certificate, is guilty of a misdemeanor. Under §44.765, it is unlawful for any person to obtain or possess the birth certificate of another for the purpose of establishing a false identity. Every person who has in his or her possession the birth certificate of another person without lawful reason or who uses the birth certificate of another in the commission of a misdemeanor, is guilty of a misdemeanor. Every person who has in his possession two or more birth certificates of other persons without lawful reason or who uses the birth certificate of another person in the commission of a gross misdemeanor is guilty of a gross misdemeanor. Every person who uses the birth certificate of another person to aid in the commission of a felony will be punished by imprisonment for not less than one year nor more than six years, by a fine of not more than \$5,000, or by both.

#### North Dakota

Under §54-23.2-04.2, when a child enrolls in a school for the first time, the school will require proof of identity and request the appropriate school records for the child from the previous school attended. Proof of identity means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any other documentary evidence the school considers appropriate.

If proof of identity is not presented by the parent within 40 days of enrollment, or school records are not received within 60 days of enrollment, the school will notify the missing person information program and a law

enforcement authority. When a school receives a notice that a child who is or has been enrolled in a school has been reported as a missing child, the school will flag the child's records. The school will notify the missing person information program and a law enforcement authority if a request for school records is received from any source. If it is necessary for law enforcement authorities to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

When the division of vital records of the state department of health receives a notice from a law enforcement authority that a person is reported as missing, the division will flag the records of the individual and notify the appropriate authority if a request for records is received from any source.

Under §23-02.1-27, to protect the integrity of vital records, to ensure their proper use, and to ensure efficient and proper administration of the system of vital records registration, it is unlawful for any person to permit inspection of or to disclose information contained in vital records, or to copy or issue a copy of all or part of any such record, except as authorized.

Under §23-02.1-28, the state registrar will, upon request, issue a certified copy of any certificate or record in his or her custody. Under §23-02.1-29, the state department of health will prescribe the fees, if any, not to exceed \$5.00, to be paid for each certified copy of a certificate or record. The department will charge an additional fee in the amount of \$2.00 for the issuance of each certified copy of a birth certificate.

#### South Dakota

Under §13-27-3.1 et. seq., any person who is required to enroll a child in school will, either at the time of enrollment or within 30 days of initial enrollment, provide the school with a certified copy of the child's birth certificate or an affidavit in lieu of a birth certificate as issued by the department of health in such cases where the original birth certificate is deemed unattainable. A person commits a class 2 misdemeanor if he or she violates this section.

Any copy of any certified birth certificate becomes a part of the child's permanent school record. The superintendent of any public or nonpublic school will regularly report to the state's attorney the name and address of any child for whom the school does not have a copy of a certified birth certificate.

Under §34-25-52 et. seq., the department of health will, upon request, supply to any applicant a certified copy of a record. The fee is based upon administrative cost as established by the department and is paid by the applicant. There is an additional fee of \$2.00 for a copy of a birth certificate.

Senator Fischer  
February 26, 1992  
Page 7

## Texas

Under §21.0313 of the Education Code, no later than 30 days after a parent enrolls a child in school, the parent, or other person of the school district in which the child most recently attended school, must furnish the child's birth certificate or another document suitable as proof of the child's identity and a copy of the child's records from the child's previous school. If the information is not furnished within 30 days, the district must notify the appropriate law enforcement agency and request a determination of whether the child has been reported as missing.

If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district must notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.

Under §191.0045 and §191.0046 of the Health and Safety Code, the bureau of vital statistics may collect a fee for copies of vital statistics records. An additional fee of \$2.00 is charged for issuing a certified copy of a certificate of birth. However, on the request of a child's parent, the state registrar must issue without fee a certificate necessary for admission to school or to secure employment. The certificate is limited to a statement of the child's date of birth.

Under §191.052, subject to rules controlling the accessibility of vital records, the state registrar must supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth registered. Under §195.003, a person commits a felony in the third degree if he or she intentionally or knowingly makes a false statement in a certificate, record, or an application for a certified copy of a vital record. A person also commits a felony in the third degree if he or she intentionally or knowingly fraudulently identifies himself or herself to obtain or return registration forms, certificates, or any other forms.

I hope this information is useful to you. If we may be of further assistance, please contact this office.

Attachments

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# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 10, 1994

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3/14/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 356

HOUSE BILL NO. 356

LIVING WILLS AND DNR ORDERS

"An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact H+SS

fiscal note(s) \_\_\_\_\_

zero fiscal note Commerce + Econ Devel

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
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*[Signature]*  
 CHAIRMAN'S SIGNATURE



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

DATE: 3/14/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 CONFIRMATION HEARING: MARGARET LOWE  
 COMMISSIONER OF HEALTH & SOCIAL SERVICES  
 \* HB 412: COMMUNITY CARE FACILITIES  
 - BILLS HELD OVER -  
 HB 356: LIVING WILLS & MEDICAL CARE ORDERS  
 \* INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
<del>Pat Quigley</del>						Y	N	
Jody Engelman	Juneau Youth Service	P.O. Box 32939 Juneau	99803		789-7610	Y	N	HB 412
Pat Quigley	"	"	"		789-7610	Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. HB 356**

Revision Date: 3/2/94  
 Title: An Act relating to living wills and do not resuscitate orders;...  
 Sponsor: House HES  
 Requestor: House HES

Department: Commerce and Economic Dev.  
 BRU: Occupational Licensing  
 Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	

CAPITAL EXPENDITURES						
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 General Fund							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	

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

POSITIONS		FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME		0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME		0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY		0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary)  
 HB 356 mandates the Department of Health and Social Services to establish regulations to adopt a do not resuscitate protocol...for withholding of cardiopulmonary resuscitation by physicians and other health care providers; specifying that regulations may not be adopted unless approved by the State Medical Board. The board should be able to review draft regulations during their regularly scheduled meetings, without requiring additional meetings for this purpose. Therefore, new funds are not required.

Prepared by: Jennifer Strickler, Administrative Officer  
 Division: Occupational Licensing  
 Approved by Commissioner: Paul Fuhs  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 3/2/94  
 Date: 3/3/94

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 356

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: "An Act relating to living wills and do not resuscitate orders..." BRU: State Health Services  
 Component: EMS Training and Licensing  
 Sponsor: House HESS  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 297

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL	5.0	2.0				
CONTRACTUAL	5.0	2.0				
SUPPLIES	2.0	3.0	3.0	3.0	3.0	3.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>12.0</b>	<b>7.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGES IN REVENUES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	12.0	7.0	3.0	3.0	3.0	3.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>12.0</b>	<b>7.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>

**POSITIONS:**

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

Estimate of current year (FY94) cost \$ 1.0

**ANALYSIS:** (Attach a separate page if necessary)

There will be some costs to the department for advertising, holding public hearings on proposed regulations, for developing, printing and distribution of protocols, identifications, training materials, and for travel to provide education and training to implement the system.

Prepared by: Peter M. Nakamura, MD, MPH  
 Division: Public Health  
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S.  
 Agency: Department of Health & Social Services

Phone: (907) 465-3090  
 Date: 1/19/94  
 Date: 2/3/94

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**ANALYSIS (cont.):**

**Line 200 Travel**

Travel will consist of:

Administrative travel for EMS Section staff to attend meetings of the Alaska State Medical Board and planning sessions;

Travel for the contractor to participate in planning meetings in Juneau;

Travel for a speaker at the Annual EMS Symposium to present a session on the Legislation; and

Travel for a speaker to attend the 1995 Southeast Symposium to address medicolegal and DNR issues.

**Line 300 Contractual**

A contractor will coordinate the protocol development, implementation, and evaluation processes. The contractor will be responsible for staffing planning meetings, developing and distributing working drafts of the protocols, compiling comments, and providing recommendations to the department. The contractor will also be responsible for coordinating the efforts of the department and the Alaska State Medical Board.

The department will attempt to contract with an individual as soon as the legislation is passed. As a result, some funds are requested for FY '94.

**Line 400 Supplies**

This line includes the printing of protocols, training materials, and brochures regarding the program. Also included in this line is the cost of identification materials, such as the "standardized designs for DNR identification cards, forms, necklaces, and bracelets," proposed in the bill.

These responsibilities are expected to remain throughout the life of the project.



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

DATE: 3/3/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 \* HB 506: STUDENT LOAN PROGRAM  
 \* HB 356: LIVING WILLS AND MEDICAL CARE DECISIONS  
 \* HB 357: DRUG FREE RECREATION AND YOUTH CENTERS  
 \* HB 52: INCREASE IN FEDERAL MEDICAID FUNDED  
 BILLS HELD OVER FROM PREVIOUS CALENDARS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
MARK JOHNSON	ANSS, EMS	P.O. BOX 110616 Juneau	99811-0616	463-5807	465-3027	(Y) N	HB 356
Verna Hall	AARP	23590 61st Ave. Anchorage	99581	480-4089	780-4089	(Y) N	HB 356
Rupe Andrews	AARP	9416 Long Road, Seward	99801		789-7722	Y (N)	HB 356
Kim Burch	DHSS				465-3331	(Y) N	HB 52
<del>Stacie Han</del>						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

LTN:100-R01  
03/11/94

LEGISLATIVE TELECONFERENCE NETWORK

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11:45:58

TCN: 40411 DATE & TIME: 03/03/94 15:00 TO 17:00 STATUS:7 STATE: IN

\*\*\* ORDER SUMMARY \*\*\*

SPONSOR: HHS HOUSE HEALTH, EDUCATION AND SOCIAL SERVI CHAIRS: TOOHEY  
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE BUNDE  
CONTACT: LYNNE SMITH TEL#: (907)465-6825  
CHAIRING SITE: JUNEAU CAPITOL CAP106

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 5 MINUTE LIMIT  
HB 356 WILL NOT BE THE FIRST BILL ON THE CALENDAR.  
TESTIMONY WILL BE TAKEN WITH A 5 MINUTE LIMIT.  
TCN REQUESTED ON 03/03/94 AND HAS 7 UPDATES

\*\*\* AGENDA \*\*\*

- 1 HB 356 LIVING WILLS AND MEDICAL CARE ORDERS
- 2 HB 506 STUDENT LOAN PROGRAM

\*\*\* PARTICIPATING LIOS \*\*\*

COR CORDOVA	705 2ND STREET	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
HOM HOMER LTC	126 W PIONEER #4	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP106	LOCATION STAFF
MAT MATSU	165 E PARKS HWY.	LOCATION STAFF
PSG PETERSBURG	101 GJOA STREET	LOCATION STAFF
SEW SEWARD	2001 SEWARD HWY	LOCATION STAFF
SIT SITKA	210 LAKE STREET	LOCATION STAFF
SOL KEN/SOL	34824 KALIFONSKY	LOCATION STAFF

\*\*\* VOLUNTEER & OFFNET SITES \*\*\*

222 OF1 OFFNET 1 FAIRBANKS CRAIG LEWIS (907)456-3978

PARTICIPANTS IN:FAIRBANKS

FBX

- 1 MR. BRIAN BRUBAKER COAL.STUD.LEADER TSFY. HB 506  
PO BOX 84791 FAIRBANKS AK 99708 (907)474-9652
- 2 MR. NICHOLAS ABRAMCZYK ASUAF TSFY. HB 506  
PO BOX 99775 FAIRBANKS AK 99775 (907)474-5156

PARTICIPANTS IN:HOMER LTC

HOM

- 1 MRS. MILDRED MARTIN OBSV. HB 356  
PO BOX 2652 HOMER AK 99603 (907)235-6652
- 2 MS. BRENDA STEENBLOCK SENIOR CITIZENS OBSV. HB 356  
3935 SVEDLUND ST HOMER AK 99603 (907)235-7675

PARTICIPANTS IN:JUNEAU

JNU

- 1 TO OBSERVE OBSV. ALL ITEMS
- 2 TO OBSERVE OBSV. ALL ITEMS
- 3 TO OBSERVE OBSV. ALL ITEMS
- 4 TO OBSERVE OBSV. ALL ITEMS
- 5 TO OBSERVE OBSV. ALL ITEMS
- 6 TO OBSERVE OBSV. ALL ITEMS
- 7 TO OBSERVE OBSV. ALL ITEMS
- 8 TO OBSERVE OBSV. ALL ITEMS
- 9 TO TESTIFY TSFY. ALL ITEMS
- 10 TO TESTIFY TSFY. ALL ITEMS
- 11 TO TESTIFY TSFY. ALL ITEMS

LTH100-R01  
03/11/94

LEGISLATIVE TELECONFERENCE NETWORK

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11:45:58

ICN: 40411 DATE & TIME: 03/03/94 15:00 TO 17:00 STATUS: 7 STATE: IN

PARTICIPANTS IN: JUNEAU

JNJ

13	TO	TESTIFY	TSFY, ALL ITEMS
14	TO	TESTIFY	TSFY, ALL ITEMS
15	TO	TESTIFY	TSFY, ALL ITEMS
16	TO	TESTIFY	TSFY, ALL ITEMS
17	TO	TESTIFY	TSFY, ALL ITEMS
18	TO	TESTIFY	TSFY, ALL ITEMS
19	TO	TESTIFY	TSFY, ALL ITEMS
20	TO	TESTIFY	TSFY, ALL ITEMS
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25	TO	TESTIFY	TSFY, ALL ITEMS
26	TO	TESTIFY	TSFY, ALL ITEMS
27	TO	TESTIFY	TSFY, ALL ITEMS
28	TO	TESTIFY	TSFY, ALL ITEMS

PARTICIPANTS IN: MALSU

MAT

1 MR	ERNEST	LINE	TSFY, HB 356
	2654 WHISPERING WOODS DR	MASILLA	AK 99645 (907)376-6709

PARTICIPANTS IN: PETERSBURG

PSG

1 MS	SANDY	TACKETT	PSG GEN HOSPITAL	TSFY, HB 356
	P.O. BOX 589		PETERSBURG	AK 99833 (907)772-4294
2 MRS.	FLORENCE	LEROY		OBSV, HB 356
	P.O. BOX 313		PETERSBURG	AK 99833 (907)772-3200

PARTICIPANTS IN: SEWARD

SEW

1 MS.	JULIE	RENWICK	WESLEY REHAB	TSFY, HB 356
	PO BOX 1066		SEWARD	AK 99664 (907)224-5241
2 MS.	BARBARA	BLACKWELL	R.N. WESLEY REHAB	OBSV, HB 356
	PO BOX 1541		SEWARD	AK 99664 (907)224-8613
3 MS.	JOAN	CLEMENS	R.N. WESLEY REHAB	OBSV, HB 356
	PO BOX 1345		SEWARD	AK 99664 (907)224-3674
4	MARJORIE	MCLEOD	DOWNNEY R.N. SEWARD HOSPITAL	OBSV, HB 356
	PO BOX 365		SEWARD	AK 99664 (907)224-5205
5	DOREEN	BOOTH	SEWARD HOSPITAL	OBSV, HB 356
	PO BOX 365		SEWARD	AK 99664 (907)224-5205
6	LINDA	SWENSON	RN SEWARD HOSPITAL	TSFY, HB 356
	PO BOX 365		SEWARD	AK 99664 (907)224-5205
7 MS.	ELLEN	O'BRIEN	SEWARD HOSPITAL	OBSV, HB 356
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8 MS.	DITA	DEBOER	RBHC	OBSV, HB 356
	PO BOX 1526		SEWARD	AK 99664 (907)224-3181
9 MR.	RICHARD	JONES	(DIRECTOR) SGH RBHC WR&CC	TSFY, HB 356
	PO BOX 361		SEWARD	AK 99664 (907)224-5241
10	DOROTHY	LOCKE	SPRING CREEK CC	OBSV, HB 356
	BOX 2109		SEWARD	AK 99664 (907)224-8200
11	ANN	WHITMORE-PAINTER	WRCC	OBSV, HB 356
	PO BOX 516		MOOSE PASS	AK 99631 (907)288-3143

PARTICIPANTS IN: SITKA

SIT

1	NANDY	DIETER	SEARHC	TSFY, HB 356
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LTN:100-R01  
05/11/94

LEGISLATIVE TELECONFERENCE NETWORK

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TECH: 40411 DATE & TIME: 05/03/94 15:00 TO 17:00 STATUS:7 STAGE: IN

PARTICIPANTS IN: SITKA

SIT

2 222 TONGASS SITKA AK 99835 (907)966-8413  
ANDREA PAIGH ADAMS UAS/SITKA TSY. HB 506  
4-B LIFESAVER DRIVE SITKA AK 99835 (907)966-2244

PARTICIPANTS IN: KEN/SOL

SOL

1 MS. LINDA KRISTENSEN CPC-FORGETMENOT OBSV. HB 356  
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PARTICIPANTS IN: OFFNET 1

ZZZ OF:

1 CRAIG LEWIS FAIRBANKS AK TSY. HB 356  
(907)456-3470

# HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

STATE CAPITOL, JUNEAU 99801  
(907) 465-3759



HB 356

**An Act relating to living wills and do not resuscitate orders; and providing for an effective date.**

HB 356 complements current statutes on the rights of the terminally ill by adding specific recognition of do not resuscitate (DNR) orders to the existing legislation on the rights of the terminally ill to make a declaration relating to the use of life-sustaining procedures.

A new section (19.12.035) allows attending physicians to issue do not resuscitate orders, requires the Department of Health and Social Services, with the approval of the State Medical Board, to issue regulations adopting a standardized protocol governing the withholding of CPR by physicians and other health care providers, and establishes the requirements under which health care providers other than physicians must comply with do not resuscitate orders.

Section 18.12.037 requires the Department of Health and Social Services to develop standardized designs for DNR identification cards, forms, necklaces, and bracelets to indicate that the possessor has executed a living will or that a DNR order has been issued by a physician. Other provisions of the bill amend existing statutory provisions by including DNRs along with living wills in areas such as immunities for health care providers acting under the provisions of living wills and DNR orders, penalties, etc.

Do not resuscitate orders are issued only in the case of terminal illness. Under existing practice, emergency response providers (EMTs and paramedics) are required to institute CPR on site even if the sick person has a living will. A properly executed DNR order and procedural protocol recognized by all concerned parties would help to avoid futile and unwanted interventions. Similarly, within health care institutions, DNR orders are necessary in the absence of a living will when attempts at resuscitation serve only to prolong the process of dying.

I urge your favorable consideration of this important legislation.

National Association of State Emergency  
Medical Services Directors

(NASEMSD) POSITION STATEMENT

ON

EMS DO NOT RESUSCITATE ORDERS  
(Approved October 27, 1993)

GUIDELINES FOR STATEWIDE IMPLEMENTATION OF EMS "DO NOT RESUSCITATE" (DNR)  
PROGRAMS

PURPOSE

With the growth of hospice and home health care, more patients with terminal illness are electing to avoid hospitalization until perhaps the final stages of illness. Many of these patients, as well as others with advanced chronic illnesses, have decided, with the help and support of their attending physicians, that they do not wish to be resuscitated in the event of cardiac or respiratory arrest. However, as death draws near, well-meaning family or friends, or perhaps the patient, may call emergency medical services personnel to transport the dying patient to the hospital; the prehospital providers who respond to these calls may be the last medical persons to attend terminal patients at home or in nursing homes. In many cases these calls to EMS personnel are intended only to obtain transportation or comfort measures for the loved one. However, unless the state provides statutory authority for EMS personnel to honor a "do not resuscitate" order, there may be a requirement for such personnel to attempt resuscitation, regardless of the patient's wishes and the physician's directive.

Over the last ten or so years, there has been increasing attention paid to issues such as "living wills", "advance directives", durable powers of attorney, and "do not resuscitate" Orders, with most of the focus being on care provided or withheld in an inpatient setting. The federal Patient Self-Determination Act<sup>1</sup>, effective December, 1, 1991, has been the most comprehensive directive on this issue to date.

More recently, the EMS community has focused on the appropriateness and applicability of "do not resuscitate" orders in the prehospital or inter-facility setting. "Guidelines For "Do Not Resuscitate" Orders in the Prehospital Setting" were published by the American College of Emergency Physicians in October, 1988.<sup>2</sup> This was the first comprehensive discussion of important provisions for EMS DNR legislation and related EMS DNR order Forms. These guidelines were most helpful to states as they began to formally address this issue.

Another important step was taken in addressing the sensitive issues related to "do not resuscitate" orders in the field when the Emergency Cardiac Care Committee of the American Heart Association published the current "Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care", Part VIII Ethical Considerations for Resuscitation.<sup>3</sup> These guidelines include a provision for discontinuing CPR when a valid no-CPR order is presented to the rescuers.

Over the last five years there has been significant activity among the states to develop and implement EMS DNR programs, including legislative changes, where necessary. The most recent review of current status of state policies in this regard can be found in original research by James G. Adams, M.D., "Prehospital Do-Not-Resuscitate Orders: A Survey of State Policies in the United States", published in Prehospital and Disaster Medicine.<sup>4</sup> As reported by Dr. Adams, as of 1992, eleven states had specific legislation authorizing the implementation of EMS DNR orders, six had legal opinions or policies allowing implementation of EMS DNR orders, and fourteen states had working groups and/or legislation pending to address the issue.

## NASEMSD Position Paper

It is the intent of this document to collect some of the best features of the statewide EMS DNR legislation and programs that have been implemented across the country to date and to suggest key points that should be considered in designing state legislation and developing and implementing EMS DNR programs and protocols. It is further hoped that these guidelines might encourage more standardization of certain features of the various statewide programs, such as the information on DNR orders and bracelets, to foster reciprocal recognition and honoring of such orders across state lines. It is recognized that this may not be immediately possible, but it was felt that a proper foundation could be established to build on in the future.

### GUIDELINES FOR STATEWIDE IMPLEMENTATION OF EMS-DNR PROGRAMS

A comprehensive EMS "do not resuscitate" policy should be supported by both the state medical society and the state EMS lead agency. Wherever possible, it should have statewide applicability to reduce confusion for the public and to facilitate appropriate response, regardless of local jurisdictional boundaries. In most states it will be necessary, or at least desirable, to provide for legislative authority for such programs. Following is a review of recommended elements for consideration in developing EMS DNR legislation.

#### EMS-DNR Legislation should:

1. Define the conditions under which an EMS DNR order can be considered;
2. Define what patients are eligible to be considered for an EMS DNR order; It is recommended that eligibility be limited to patients with terminal conditions and other patients for whom a physician has issued a DNR order. This assures a medical determination of the appropriateness of such orders.
3. Define which patient is competent to agree to such an order and define a mechanism for determining a surrogate decision-maker in the event the patient is not competent to do so;
4. Provide for this to be an informed decision made by the patient's physician, in consultation with the patient or surrogate.
5. Establish clear authorization for physicians to issue DNR orders;
6. Authorize EMS personnel to follow EMS DNR orders, on scene and inter-facility;
7. Provide a clear definition of procedures to be withheld or withdrawn or define the authority to develop such procedures.
8. Define the information that should be included in an EMS "do not resuscitate" order and other EMS DNR identification items (if applicable) and the authority for designing such forms, etc. These items should be standardized on a statewide basis.
9. Establish periodic review of EMS DNR orders by a physician to assure ongoing medical accountability. It is recommended that review be done annually.
10. Define revocation process for EMS DNR orders at the scene of a medical emergency.

## NASEMSD Position Paper

11. Provide immunity from liability for those who do or do not carry out an EMS DNR order, in good faith.
12. Provide that neither an EMS DNR order nor the failure of a person to have one executed shall affect, impair or modify any contract of life or health insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life or health insurance or any increase of premium therefore.

Legislation to allow for prehospital application of "do not resuscitate" orders should be incorporated with related legislation, such as a health care decisions act or similarly titled sections that deal with advanced directives, etc. In some cases, there are more general provisions for "do not resuscitate" orders that may be honored by a full range of health care providers, including EMS personnel. A good example of this is the Montana "Comfort One" Program.

A coalition to assist in the legislative initiative might include the state medical society, hospital association, bar association, hospice association, nursing home association, ACEP chapter, ACS chapter, ENA chapter, Fire & EMS organizations, specialty medical societies, and the state AARP.

### EMS "Do Not Resuscitate" Order - Authorization Forms

A single standardized statewide EMS DNR Order form that is easily identifiable should be available for review by EMS personnel when they are called to the scene of a "do not resuscitate" patient. At a minimum, such form should include the following information:

- A statement by the patient's attending physician acknowledging that the patient is in a terminal condition or is suffering from another medical condition, such as an advanced chronic condition, from which recovery is not expected;
- A certification by the attending physician that (1) the patient is capable of making an informed decision about providing, withholding or withdrawing a specific medical treatment, or (2) the patient has a written advance directive which directs life-prolonging procedures to be withheld under such circumstances, or (3) the patient has executed an advance directive appointing an agent to make health care decisions on his behalf, or (4) the patient has not appointed such an agent by advance directive, but there is an authorized decision-maker;
- An expression of the patient's wish that in the event of cardiac or respiratory arrest that no resuscitation efforts be undertaken;
- Signature and emergency telephone number of the responsible physician;
- Signature of the patient or the patient's authorized decision-maker;
- An issuance date and an expiration date. It is recommended that renewal be required at least annually to allow for review of the patient's medical prognosis and the decision to withhold resuscitation.

Distribution of EMS DNR forms should be limited to health care providers and the execution of such forms should be limited to the patient's attending physician. It is recommended that the original of the form be distinguishable from copies and that only the original be honored for purposes of withholding resuscitation.

## NASEMSD Position Paper

### Other EMS-DNR Identification Items

Some other unique forms of identification of DNR status, such as wallet cards, bracelets or necklaces, may be used in addition to the official EMS DNR Order to facilitate recognition of a DNR candidate. This is especially helpful when there is no one at the scene who knows the location of the EMS DNR form.

There are several types of bracelets or wrist bands in use across the country for this purpose. For example, Montana uses a "Comfort One" bracelet, which is actual jewelry with the unique "Comfort One" symbol. California has adopted the "Medic Alert" bracelet, with special DNR instructions. Virginia and several other states use a white hospital-type wrist band with the "Star of Life" and "EMS-DNR" printed in blue. As of this writing, the use of the Star of Life for this purpose is still under consideration by the National Highway Traffic Safety Administration (NHTSA).

It is recommended that any such bracelet or similar identification item include (1) information which identifies the patient, (2) the physician's name and phone number, if possible, and (3) the expiration date of the order. There should be a long-range goal of achieving as much standardization of EMS DNR forms and bracelets as possible among the states to facilitate movement of patients across state lines.

### Statewide EMS "Do Not Resuscitate" Protocols

Standardized statewide protocols should be developed to guide EMS response to this special category of patients. Such protocols should, at a minimum, address the following aspects of response:

- Initial Assessment and Intervention
- Verification of Patient ID for DNR
- Resuscitative Measures to be Withheld or Withdrawn
- Comfort Care or Palliative Care Measures
- Documentation
- Special Considerations

The medical treatments to be withheld or withdrawn should be clearly articulated. A "do not resuscitate" order should indicate that in the event of cardiac or respiratory arrest cardiac resuscitation measures should not be initiated, or, if they have been initiated by another person, such measures should be withdrawn. Measures to be withheld might include cardiac compression, endotracheal intubation or other advanced airway maneuvers, defibrillation, cardiac resuscitation medications, and artificial ventilation.

Other medical therapies that might be medically indicated should not be withheld. Likewise, comfort care measures that might be undertaken to ease the patient's suffering should be addressed. These comfort care measures might include oxygen, suction, positioning for comfort, pain medications, and control of bleeding. It should be emphasized that an authorized EMS DNR order does not mean do not treat the patient or do not care. It indicates that there is a more appropriate and compassionate way to aid this patient than the traditional approach.

Special considerations should include discussion of under what conditions an EMS provider should not execute a "do not resuscitate" order. If there is a major confrontation with family members or others present, it may be best to perform normal resuscitative measures. Any difficult or confusing situations could be aided by contacting the EMS Medical Director. It should be clear that if there is any doubt about the identity of the patient or the validity of the DNR order, providers should always err on the side of attempting resuscitation.

## NASEMSD Position Paper

### Comprehensive Education Program

Any new program of this consequence certainly needs to be thoroughly explained to all concerned. Initial planning should include provisions for a comprehensive education program for at least the following people and organizations:

- All EMS providers, EMS instructors, and EMS medical directors
- Physicians, including component and specialty medical societies
- Other health care providers and institutions, including hospitals, nursing homes, hospices, home health care agencies
- Attorneys (especially those involved in elder law) and clergy
- General public

A clear and concise video tape presentation can be very helpful for EMS agencies and their personnel. Your state medical society probably has a periodic journal or newsletter that could be used to communicate with physicians. A press conference and corresponding video news release is an excellent way to introduce such a program to the general public. In addition to the above, individual physicians should thoroughly discuss with any patients for whom a DNR order is being considered, or their family members, the implications of the order and how the EMS system could be expected to respond.

### References

1. Amendments to 42 U.S.C.1395 and 42 U.S.C.1396, December 1, 1991.
2. American College of Emergency Physicians: Guidelines for do not resuscitate orders in the prehospital setting. Annals of Emergency Medicine 1988;17:1106-1108.
3. Emergency Cardiac Care Committees and Subcommittees, American Heart Association. Guidelines for cardiopulmonary resuscitation and emergency cardiac care, VIII: ethical considerations in resuscitation. JAMA. 1992;268:2282-2288.
4. Adams, James G.: Prehospital do-not-resuscitate orders: A survey of state policies in the united states. Prehospital and Disaster Medicine 1993;8(4):317-322.

**Cross references.** — For transitional measures as to local governments, see Alaska Const., art. XV, § 3.

**Sec. 18.10.050. Commissioner of department to supervise local health boards.** Each local board of health whether inside or outside incorporated cities, and each representative of the Alaska Native Service acting in the capacity of health officer is responsible to and under the supervision of the commissioner. (§ 3 ch 118 SLA 1949)

*Secs. 18.10.060 — 18.10.250. Consolidated Health Districts. [Repealed, § 39 ch 69 SLA 1970.]*

**Sec. 18.10.260. Definitions.** In this chapter,

(1) "commissioner" means the commissioner of health and social services;

(2) "department" means the Department of Health and Social Services. (§ 1 ch 163 SLA 1955; am § 39 ch 69 SLA 1970; am § 6 ch 104 SLA 1971; am § 18 ch 21 SLA 1991)

**Effect of amendments.** — The 1991 amendment, effective June 11, 1991, rewrote the section.

## Chapter 12. Rights of Terminally Ill.

Section	Section
10. Declaration relating to use of life-sustaining procedures	50. Transfer of patients
20. Revocation of declaration	60. Immunities
30. Recording determination of terminal condition and contents of declaration	70. Penalties
40. Treatment of qualified patients	80. General provisions
	90. Recognition of declarations executed in other states
	100. Definitions

**Sec. 18.12.010. Declaration relating to use of life-sustaining procedures.** (a) A competent person who is at least 18 years old may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn from that person; but the declaration is given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions. The declaration shall be signed by the declarant, or another at the declarant's direction, and in either case shall be witnessed by two persons or a person qualified to take acknowledgements under AS 09.63.010. The witnesses must be at least 18 years old and may not be related to the declarant by blood or marriage. A person may not charge a fee for preparing a declaration.

(b) It is the responsibility of the declarant to provide a copy of the declaration to the declarant's physician. A physician or other health

care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(c) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures.

If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain.

I [ ] do [ ] do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature \_\_\_\_\_

Place \_\_\_\_\_

The declarant is known to me and voluntarily signed or voluntarily directed another to sign this document in my presence.

Witness \_\_\_\_\_

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

State of \_\_\_\_\_

\_\_\_\_\_ Judicial District

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

\_\_\_\_\_  
Signature of Person Taking  
Acknowledgement

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, if any

THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER AS 09.63.010.

(d) A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid. (§ 1 ch 144 SLA 1986)