

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8339 SENATE JUDICIARY**



# ALASKA STATE LEGISLATURE

Representative Gail Phillips

**CSHB 319 (FINANCE) (RELATING TO THE TRAINING OF LAW ENFORCEMENT AND CORRECTIONS OFFICERS)**

**BILL WOULD DO THREE THINGS:**

- 1) **CREATE AN ALASKA POLICE STANDARDS TRAINING FUND WITHIN THE GENERAL FUND**
- 2) **PROVIDE A SOURCE OF "RECEIPTS" FOR THE TRAINING FUND PAID FOR BY THE VIOLATORS OF CERTAIN TRAFFIC OFFENSES - MOVING VIOLATIONS AND DRIVING WHILE INTOXICATED**

**THOSE UNABLE TO PAY WOULD BE ALLOWED TO PERFORM COMMUNITY WORK**

- 3) **ALLOWS THE LEGISLATURE TO APPROPRIATE EACH YEAR FOR THE TRAINING OF LAW ENFORCEMENT AND CORRECTION OFFICERS STATEWIDE - THROUGH THE ALASKA POLICE STANDARDS COUNCIL**

**(TRAINING FOR LAW ENFORCEMENT IS SORELY NEEDED AND IN TOO MANY INSTANCES IS NON-EXISTENT AS WAS LEARNED BY REPRESENTATIVE MACLEAN AND MYSELF WHILE SERVING LAST INTERIM AS MEMBERS OF THE GOVERNORS TASK FORCE ON THE CONTRACT JAILS PROGRAM)**

**PHRASEOLOGY "SURCHARGE" USED ONLY TO AVOID APPEARANCE OF DEDICATED FUND AND A WAY FOR MUNICIPALITIES AND/OR STATE COURT SYSTEM TO ACCOUNT FOR THE AMOUNT THAT WOULD BE TRANSMITTED TO THE STATE TREASURY ULTIMATELY FOR TRAINING.**

**\$10 AND \$25 INCREASE TO TRAFFIC FINES SHOULDN'T BE CONSTRUED AS A "TAX" - "SURCHARGE" - "USER FEE", ETC. SINCE LEGISLATURE DOES NOT SET FINE SCHEDULES - SUPREME COURT AND MUNICIPALITIES RAISE (ADJUST) BAIL FORFEITURE SCHEDULES AND COULD DO SO WITHOUT GIVING THE LEGISLATURE THE OPPORTUNITY TO DIRECT WHERE THE INCREASE COULD BE USED AND FOR WHAT PURPOSE.**

**ANTICIPATED RECEIPTS ON ONLY THE "COLLECTABLE" FINES AMOUNTS TO APPROXIMATELY \$700,000 ANNUALLY.**

**THESE ANTICIPATED RECEIPTS SHOULD NOT BE USED AS A COMPARISON TO CUTS MADE TO THE DEPARTMENT OF PUBLIC SAFETY'S OPERATING BUDGET. THE ALASKA POLICE STANDARDS COUNCIL NOW RESIDES UNDER THE DEPARTMENT OF PUBLIC SAFETY - HOWEVER - THE COUNCIL WAS FORMALLY UNDER THE GOVERNOR'S OFFICE.**

OVERVIEW

PAGE TWO

**CSHB 319 (FINANCE) (RELATING TO THE TRAINING OF LAW ENFORCEMENT AND  
CORRECTIONS OFFICERS)**

**THE MAIN REASON FOR THE DELAYED EFFECTIVE DATES IN THE FINANCE COMMITTEE  
SUBSTITUTE IS TO ALLOW THE COURT SYSTEM TO IMPLEMENT THEIR NEW ACCOUNTING  
SYSTEM AND TO AMEND THEIR BAIL FORFEITURE SCHEDULES TO REFLECT THIS  
PROPOSED INCREASE AND WOULD ALSO ALLOW THE MUNICIPALITIES ADEQUATE TIME  
TO PREPARE IN-HOUSE ACCOUNTING SYSTEMS AND THE ALASKA POLICE STANDARDS  
COUNCIL TIME TO ADOPT REGULATIONS AND POLICY AND PROCEDURES TO IMPLEMENT  
THIS LEGISLATION.**



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 4, 1994

**TO:** Brian Porter, Chair  
and Members,  
House Judiciary Committee

**FROM:** Kent E. Swisher, Executive Director

**RE:** HB 319 - Training of law enforcement and corrections officers

The Alaska Municipal League supports the intent of **HB 319**, to ensure that Alaska's public safety personnel have access to an efficient professional law enforcement training network.

The League's *1994 Policy Statement*, adopted by AML members in November 1993, includes the following statement in support of general training opportunities:

The League urges the legislature to assure, through state assistance, that local full-time and volunteer police, fire, emergency medical, and other emergency preparedness personnel throughout the state have access to adequate facilities and program resources for training. Further, the League endorses public fire education and arson education. (*1994 Policy Statement, Part III-Public Safety, B-Training*)

94LEGIS:HB319.2-4

# CITY/BOROUGH OF JUNEAU

## POLICE DEPARTMENT

210 ADMIRAL WAY • JUNEAU, ALASKA 99801



RICHARD W. GUMMOW  
CHIEF OF POLICE

*Alaska's Capital City*

BUSINESS 586-2780  
EMERGENCY 9-1-1

April 18, 1994

Senator Robin L. Taylor  
Alaska State Capitol  
Room 30  
Juneau, Alaska 99801-1182

Dear Senator Taylor:

As Juneau's new Chief of Police I have not yet had the opportunity and pleasure of meeting you, however I do need your assistance and ask for your support of HB 319, *The Alaska Police Standards Training Fund*, sponsored by Representative Gail H. Phillips.

The legislation sponsored by Representative Phillips is absolutely vital to Alaska law enforcement. Policing in the 1990's is much more demanding and complex than ever before. Pressing social issues including dysfunctional families, poverty, homelessness, drug addiction, gang warfare, and escalating crimes of violence have created an overwhelming burden for our peace officers. We have ever increasing expectations of the quality of service and levels of professionalism delivered by our peace officers. We demand more sensitivity, more productivity, and greater accountability, all with diminishing financial resources.

Police managers and elected officials from small and mid-sized cities throughout the United States have learned from experience that they seriously underestimated their communities' ability to remain free from the devastating influence of crime that has long plagued large urban cities. Until recently, Alaskans have been insulated from serious crime and its destructive effect on our communities. However, occurrences of gang violence, drive-by shootings, homicides, hate crimes, armed robberies, and other acts of senseless violence committed by Alaskans against Alaskans are reported in our newspapers with increasing regularity.

Alaska's peace officers now face an enormous challenge that will require a significant increase in the level of professional development, skills, and in-service training to meet the rigorous demands of contemporary policing.

The provisions of House Bill 319 will finally provide a long overdue stable funding source for Alaska Police Standards Council, without levying additional general tax increases. This Bill has the unqualified and enthusiastic support of all Southeast Alaska Chiefs. We are convinced that the professional standard and quality of Alaska law enforcement will improve dramatically with the passage of this Bill, as will the general safety of all Alaska residents.

I will schedule an appointment with you shortly to answer any questions you may have and to discuss the importance of in-service peace officer training and the positive impact HB 319 will have on the citizens of Alaska. Thank you in advance for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard W. Gummow".

Richard W. Gummow  
Chief of Police

cc: Laddie Shaw  
Alaska Police Standards Council



## HOONAH DEPARTMENT OF PUBLIC SAFETY

P.O. BOX 450

HOONAH, ALASKA 99829-0450

PHONE: (907) 945-3656 or 945-3655

FAX: (907) 945-3658

FEB 10 1994

MILTON J. HAKEN  
Chief of Police

February 07, 1994

Honorable Gail Phillips  
State of Alaska, House Representative  
Juneau, Alaska 99801-1182

Ref: ~~House Bill 319 - Training of Law Enforcement and Corrections Officers~~

Dear Representative Phillips,

This letter is presented for your consideration ***In favor of and support for*** House Bill 319, introduced by you. First off, let me thank you for initiating this bill! For over the past ten years, the Alaska Police Standards Council (APSC) has been unable to meet the increasing training demands for law enforcement and correctional officers in our state. The increasing demands are largely being driven by court decisions affecting the civil liability incurred by government bodies. A fact of life is: civil actions resulting from inadequate training are on the increase. Turnover and retirement in the ranks is another contributor.

Our society is changing, we all are seeing an increase in violence in our neighborhood. Drug abuse and the lack of jobs due to the economic conditions are facts of life. This department is small and has very limited resources for training. My officers have the bare bones basic training. Last year I solicited and received donations from businesses outside our community to raise money to send Officers to training outside the State of Alaska because the training was not available or slots for attendance were limited and filled by the larger agencies in the State. This training was in drug enforcement and investigation, Drug Abuse Resistance Education (D.A.R.E.) and Community Oriented Policing. There are several areas our department needs training in, but we just don't

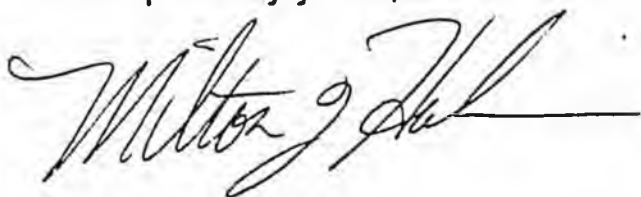
have the resources and/or the training isn't being offered or available in the State of Alaska.

This, I believe, is a sad commentary. Our neighboring State of Washington, is fast becoming recognized nationally as progressive and a leader in training it's law enforcement and corrections officers. Bill 319 is not an original idea, in most states in the lower forty-eight, laws similar to Bill 319 are already in place. Small law enforcement agencies in Alaska, like ours, need APSC to take a leadership role in delivering and meeting training needs, demands and opportunities. The costs of providing adequate training is a small fraction when equated to the price paid for associated costs of lawsuits and judgements.

Please support Bill 319. This Bill will put in place a "user fee assessment funding system" where the court imposes a fine or orders a bail forfeiture as a part of the penalty for an offense. This funding is in addition to the fine/bail system already in place. This source of funding can go a long way to enable APSC to provide professional training and education statewide.

Please feel free and do not hesitate to contact me if you have any questions. Thank you for your consideration in this matter.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Milton J. Haken". The signature is fluid and cursive, with a long horizontal stroke at the end.

Milton J. Haken  
Chief of Police

**HB**

**331**



## ANALYSIS (cont.):

HB 331 amends existing statutes to provide authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends. This legislation results in increased debt collection by the Division of Public Assistance

Food Stamp Program overpayment collections generate revenue to the State. Although food stamps are 100 percent federally funded, states are allowed to retain collection incentives of 10 percent of recoveries of overpayments caused by inadvertent household error and 25 percent of recoveries of payments caused by recipient fraud. These recovery incentives will increase to 25 and 50 percent respectively in October, 1995.

## Assumptions:

- All revenues are collected against prior years' costs
- Average state retention rate = 15 percent in FY95 and FY96
- Average state retention rate = 30 percent in FY97 through FY00
- State retentions are applied as GF receipts
- Balance after state retention is returned directly to the federal government
- State portion of recoveries is applied against prior years' costs for Public Assistance Administration
- Collections will rise in the first 3 years, then decline as backlog of existing claims is cleared

## Collections:

	FY95	FY96	FY97	FY98	FY99	FY00
Claims collections	90	90	125	100	100	90
Total Collected	22.5	27.0	37.5	30.0	30.0	27.0
Increased GF Receipts	3.4	4.1	11.3	9.0	9.0	8.1

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 331(PAM)

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act relating to claims on PFDs for BRU: Public Assistance Administration  
defaulted public assistance overpayments Component: AFDC  
 Sponsor: Toobey  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0220

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	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	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	16.5	24.7	27.5	22.0	22.0	20.6

FUNDING: (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

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) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Jan L. Hansen, Director  
 Division: Division of Public Assistance  
 Approved by Commissioner: Margaret R. Lowe  
 Agency: Department of Health & Social Services

Phone: 465-2680  
 Date: 1/25/94  
 Date: 1-25-94

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ANALYSIS (cont.):

HB 331 amends existing statutes to provide authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends. This legislation results in increased debt collection by the Division of Public Assistance.

AFDC benefits are 50 percent state/50 percent federally funded. When the State recovers AFDC overpayments, it returns the federal share to the federal government and retains the state share.

Assumptions:

- All revenues are collections against prior years' costs
- The state retains 50 percent of AFDC collections as General Fund receipts
- 50 percent of AFDC collections are returned directly to the federal government
- Average claim collection via PFD garnishment = \$550
- Collections will rise in the first 3 years, then decline as backlog of delinquent claims is cleared.

Calculations:

	FY95	FY96	FY97	FY98	FY99	FY00
Claims collections	60	90	100	80	80	75
Total collected	33.0	49.5	55.0	44.0	44.0	41.3
Increased GF Receipts	16.5	24.7	27.5	22.0	22.0	20.6

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 331

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Use PFD's to recover welfare overpayments BRU: Permanent Fund Dividend  
 Component: Permanent Fund Dividend  
 Sponsor: TOCHEY  
 Requestor: House Judiciary COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>REVENUE FUND SOURCE:</b>						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

**ANALYSIS:**

This Legislation would establish a procedure for serving attachments against dividends that is virtually identical to the process currently in place under AS 43.23.067 for the Alaska Commission on Postsecondary Education. Accordingly, the Division does not anticipate any significant additional costs to implement this legislation if enacted.

Prepared by: Thomas C. Williams *Thomas C. Williams* Phone: 465-2323  
 Division: Permanent Fund Dividend Date: 01/19/94  
 Approved by Commissioner: [Signature] Date: 1/21/94  
 Agency: Department of Revenue

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## Sectional Summary of House Bill 331 (am)

Section 1. The Alaska Exemptions Act (AS 09.38) does not apply to permanent fund dividends taken to satisfy the balance due on a defaulted public assistance overpayment claim. The provisions dealing with execution on claims do not apply and a method of executing on a dividend is set out.

Section 2. The permanent fund dividend of a former recipient of a public assistance program may be taken to satisfy the balance due on a defaulted overpayment claim.

POSITION PAPER

House Bill 331

"An Act relating to claims on permanent fund dividends for defaulted public assistance overpayments."

House Bill 331 provides authority for the Department of Health and Social Services to collect delinquent public assistance overpayment debts by administrative garnishment of Permanent Fund dividends.

Section 1 of the bill adds a new section 43.23.068 to the Permanent Fund dividend statutes to establish procedures for the execution of claims. Section 2 adds a new subsection to the public assistance statutes to provide the authority to make claims against dividend payments in order to recover public assistance overpayments that have fallen into default.

When an individual receives more food stamps or Aid to Families with Dependent Children than they are entitled to, the Division of Public Assistance establishes a claim to recover the debt. The majority of overpayment claims are due to non-fraudulent client errors. Some are due to fraud or agency mistakes. Most overpayments are recovered by reducing the household's monthly benefits by a fixed percentage until the debt is repaid. When a person goes off public assistance while still owing on a claim, debt collection often becomes difficult.

Claiming all or part of the Permanent Fund dividend is a cost-effective way to recover overpayments from persons who refuse to agree to a repayment plan, or fail to make scheduled payments. This is a proven collection method used successfully by other agencies to collect debts such as delinquent child support and student loan payments.

The ability to claim dividends on delinquent accounts will increase collections and generate revenue for the state, and gives DHSS a stronger hand in dealing with delinquent debt collection. Some individuals may choose to resume regular debt payment rather than lose their dividends. The bill assures ample protection of the rights of individuals whose dividends may be taken.

No additional DHSS staff will be needed to initiate claims on dividends. The process promises to be a simpler and cheaper debt collection method than small claims court or civil litigation. HB 331 gives the Department a simple and effective tool to improve welfare program accountability. It offers a better way to collect debts from former recipients who fail to repay the state for the benefits they received incorrectly.

Position Paper  
HS 331  
Page 2

The Department of Health and Social Services strongly supports House Bill No. 331.

*Jan L. Hansen*

\_\_\_\_\_  
Jan L. Hansen, Director  
Division of Public Assistance  
Department of Health and  
Social Services

*1/25/94*

\_\_\_\_\_  
Date

*Margaret R. Lowe*

\_\_\_\_\_  
Margaret R. Lowe, M.Ed., Ed.S.  
Commissioner  
Department of Health and  
Social Services

*1-25-94*

\_\_\_\_\_  
Date

**HB**

**333**

# FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB333(RES)

1994 LEGISLATIVE SESSION

Revision Date:	<u>14-Feb-94</u>	Dept Affected:	<u>Natural Resources</u>
Title:	<u>"An Act amending the Alaska Land Act to define</u>	BRU:	<u>Resource Development</u>
	<u>the term 'state selected land' for the purpose of recognizing mining..."</u>	Component:	<u>Land Development</u>
Sponsor:	<u>Representative Kott</u>		<u>Mining Development</u>
Requestor:	<u>Representative Kott</u>	Component Serial No.	<u>431/442</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	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

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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JND 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

Estimate of any 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)

There is no anticipated fiscal impact to DNR associated with this bill.

Prepared by:	<u>Jerry Gallagher, Legislative Liaison</u>	Phone:	<u>465-2400</u>
Division:	<u>Commissioner's Office</u>	Date:	<u>14-Feb-94</u>
Approved by Commissioner:	<u>Harry A. Noah</u>	Date:	<u>14-Feb-94</u>
Agency:	<u>Natural Resources</u>		

PREPARER TO PROVIDE ALL

FISCAL NOTE

LEGISLATIVE OFFICE

# Alaska State Legislature

## House of Representatives

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EAGLE RIVER, AK 99577  
PHONE (907) 694-8944  
FAX 694-8945

SESSION:  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE (907) 465-3777

Representative Pete Kott

### SPONSOR STATEMENT

#### HB 333 – MINING LOCATIONS ON STATE SELECTED LAND

Currently, state law provides that mining locations can be made on state land and on state selected land. The statutory definition of state land is found in AS 38.05.965(20). "State selected land" is not defined, and HB 333 is written to provide that definition. This is necessary to ensure that existing federal claims can be converted to state claims once the land is conveyed to the state.

The period during which the state could make selections under the Statehood Act as amended came to a close on January 3, 1994. Presently there are approximately 21 million acres in selected status. Because the state is allowed a 25% over-selection, only approximately 17 million acres will become state land, and there is no way of knowing with certainty which selected lands will actually become state land. Much of this land is potentially mineralized, and the state has an interest in ensuring there is a mechanism for miners to identify and lay claim to potential deposits.

It should be noted that claims filed on state selected land are "at risk" in the sense that they confer no rights unless and until the land is actually conveyed to the state of Alaska. At the time the state receives Tentative Approval to the land in question, the first person who staked an "at risk" claim while the land was in selected status would become a first-in-time locator and have the rights and privileges thereof under state law.

Alaska's mining industry provides an important part of the state's total employment. Alaska's interest in sound and appropriate development of Alaska resources will be well served by passage of House Bill 333.



SPONSOR STATEMENT



**CSHB 333(RES)  
SECTIONAL ANALYSIS**

**"An Act amending the Alaska Land Act to define the term 'state selected land' for the purpose of recognizing mining locations, and giving retrospective effect to the amendment; and providing for an effective date."**

Section 1.

Amends AS 38.05.275 by adding two new subsections.

Subsection (b) defines the term 'state selected land' as follows:

- (1) land for which the state has filed a selection application with the United States under the Alaska Statehood Act regardless of the validity or effect of the application, so long as the selection has not been rejected or relinquished;
- (2) except land for which a Native corporation organized under ANCSA has filed a selection application so long as the application has not been rejected or relinquished.

Subsection (c) clarifies that the definition supplied in subsection (b) does not limit the authority of the director of lands to select, accept and secure land to the state.

Section 2.

Provides that the exception in AS 38.05.275(b)(2) for lands selected by a Native corporation organized under ANCSA does not invalidate an 'at risk' claim filed on that land on or after April 14, 1966, and before the effective date of this Act.

Section 3.

Provides that the definition supplied in section 1 is retroactive to April 14, 1966, the effective date of the Act that established AS 38.05.275 in its current form.

Section 4.

Provides that the Act takes effect immediately under AS 01.10.070(c).

ALASKA MINERALS COMMISSION  
1994 Report to the Governor  
and Alaska State Legislature

FINDING: This recommended change to Title 38 will allow AS 38.05.275 to function as it was intended - to preserve some hope for a mineral claimant who makes a discovery on lands which happen to be unavailable under federal law due, in many cases, either wholly or partly to the existence of the state selection itself (because in most if not all cases the filing of a state selection segregates the land from federal location by virtue of either 43 CFR 2627.4(b) or the "notation rule", even if the state selection was invalid when made).

THE COMMISSION RECOMMENDS THAT:

10. The legislature should amend AS 38.05.275/965 as follows:

Section 38.05.965. Definitions.

(21) "state selected land" means land for which the state has filed a selection application with the United States, regardless of the validity or effect of such application.

## General Background on Need for Amendment of AS 38.05.275

prepared by  
Joseph J. Perkins, Jr.  
GUESS & RUDD  
Anchorage, Alaska

Defining "state selected land" for purposes of AS 38.05.275 in the manner requested will allow AS 38.05.275 to function as it was intended—to preserve some hope for a claimant who makes a discovery on lands which just happen to be unavailable under federal law but which might become available under state law in the future if the state acquires the lands. In many cases, the lands are unavailable under federal law either wholly or partly due to the existence of the state selection itself, because in most if not all cases the filing of a state selection segregates the land from federal location by virtue of either 43 CFR § 2627.4(b) or the "notation rule", even if the state selection was invalid when made or is simply a top-filing.

Claims located under AS 38.05.275 are commonly referred to as "at-risk locations". If "state selected land" is not defined in the manner requested, then crafty lawyers working for "second-in-time" at-risk locators will be able to argue that their clients should defeat first-in-time at-risk locators because the first-in-time locators initiated their at-risk locations too early (i.e., before the state selection became valid). This potential result conflicts with the underlying policy in the mining law that "first-in-time" should prevail.

Perhaps three examples of the problems at-risk claimants face will illustrate why the proposed definition should be adopted, or none at all.

### Example 1:

- 1974—lands closed to federal locations and to state selection
- 1977—invalid federal claims located
- 1978—invalid state selection filed (e.g., those filed on 11/14/78)
- 1978—at-risk state claims located after invalid state-selection
- 1979—lands made available for state selection under Statehood Act § 6(g) preference period (e.g., 1/79)
- 1979—valid reassertion of state selection filed (e.g., 2/79)

Who should win in a dispute between competing locators—the invalid federal locator or the potentially valid at-risk state locator? Clearly the at-risk state locator should win, and under the proposed definition he clearly will, without having to relocate his claims after the state makes a valid reassertion.

While one might think, at least initially, that the at-risk claimant in the foregoing situation should have to relocate his claims after a valid reassertion in order to be entitled to win, the following two examples show the difficulty with such a position.

### Example 2:

- 1968—lands included in federal locations, some of which may have valid "marketability" discoveries and some of which may not (this is the typical situation for virtually

- every large claim block held by any mining company); no one knows which is which, however
- 1978—invalid state selection filed (e.g., those filed on 11/14/78)
- 1979—lands made available for state selection under Statehood Act § 6(g) preference period (e.g., 1/79)
- 1979—reassertion of state selection filed (e.g., 2/79); this reassertion is valid as to those lands that were not included in valid federal claims and is invalid as to those lands that were included in valid federal claims; no one knows which is which, however
- 1980—ANILCA § 906(e) enacted
- 1981—ANILCA § 906(e) top-filing made; as was the case with respect to the 1979 reassertion, however, no one knows which lands are validly selected and which lands are only top-filed
- 1982—federal claimant, in the exercise of caution, locates state mining claims on top of his federal claims, to protect himself in case any of his federal claims are invalid

(NOTE: At-risk state claims usually are not co-extensive with the underlying federal claims, due to the cardinal direction location requirement for state claims. Also, the discovery requirement under state law is the prudent man test, whereas under federal law it is the marketability test. It is thus easier to establish a discovery under state law.)

Does the federal claimant now have valid at-risk claims? If so, as to which lands? Under the proposed definition of state selected lands, he has "valid" at-risk claims as to all lands. Under current law it may be argued that he has "valid" at-risk claims only as to lands within those of his unpatented federal claims that are then invalid. But no one knows which are which! This means that the federal claimant will be forced continually to relocate his at-risk claims in order to protect himself from potentially competing locators. Also, a federal claimant will be forced to relocate all of his at-risk claims upon any formal abandonment of the underlying federal claims, even though some or all of the underlying federal claims already may have been invalid (for lack of discovery or some other unnoticed paperwork deficiency) such that the state selection already may have attached to the land. This is a patently silly result.

With many claimants now considering abandoning their federal claims and relying on their at-risk claims on lands that have been selected by the state, these claimants need to know that their at-risk claims will be recognized without the need for relocation, so long as they located their at-risk claims after the state filed a selection application for the lands.

### Example 3:

- 1968—lands included in federal withdrawal
- 1980—ANILCA § 906(e) enacted
- 1981—ANILCA § 906(e) top-filing made
- 1991—owner of valid state claims on adjoining lands makes non-trespassory prudent man discovery on surface of lands in federal withdrawal and locates at-risk state claims;
- 1995—owner negotiates a federal/state/Native/borough/private land exchange to allow state to receive tentative approval to lands included in his at-risk claims

Should the at-risk claimant be placed in the position of not having his at-risk claims recognized because the state selection was a top-filing when he located his at-risk claims? No. Should he have to participate in a staking rush on the day the top-filing ripens into a valid state selection in order to make sure he is the first to locate valid at-risk claims? Of course not. The proposed changes makes clear that he would not need to do this. Under current law, the threat of a staking rush is so great that the claimant probably would not bother putting in the time and effort to bring about a land exchange—to the detriment of everyone.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

February 8, 1994

Honorable Pete Kott  
Alaska State Representative  
State Capitol  
Juneau, AK 99801

RE: HB-333, Definition of State Selected Land

Dear Representative Kott,

The Alaska Miners Association wishes to go on record in support of HB-333 and more precisely in support of the draft Committee Substitute of this bill. This is an important piece of legislation that will facilitate and simplify transfer of valuable mineral lands to ownership by the State of Alaska and add a measure of security and certainty for certain mining claim holders.

The need for this bill arises from the fact that some federal lands covered by federal mining claims have State selections over them and the federal claim holder would prefer to have the state as landowner so he(she) could have state mining claims rather than federal mining claims. The State wants the land and has selected it because of its mineral potential and the federal claim holder wants the State to have the land, provided he(she) can establish a state mining claim on the land.

The federal claim holder, however, needs the certainty that if he(she) relinquishes his(her) federal claim rights and the land actually becomes state property, he(she) will have the state mining claim(s) with the earliest date and the legal rights and obligations associated with that earliest date. Nothing can force the federal claim holder to relinquish the federal mining claims if this is not his(her) desire. However, if the claim holder prefers to operate under State law and have State mining claims, this bill will provide an added measure of certainty that will allow him(her) to relinquish the claim(s). Under this bill, the person with the earliest rights under federal law will be able to relinquish these rights knowing that he(she) will have the earliest rights under State law.

The draft Committee Substitute will also remove any ambiguities where valid ANCSA selections and State selections exist for the same area.

We support the draft Committee Substitute to HB-333 and see this bill as a case where the State of Alaska will be able to obtain title to lands it may otherwise not receive and at the same time add certainty for the claim holder. If there is anything we can do to assist in seeing this bill become law please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Commissioner Harry Noah

LETTER OF SUPPORT

**HB**

**334**

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

FISCAL NOTE

L NO.: CSHB 334 (FIN)

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

POSITIONS

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

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

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

FISCAL NOTES

Phone: 465-4643/786-2147  
 Date: 4/15/94  
 Date: 4/15/94  
 Page 1 of 2

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

#### Assumptions

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

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334(FIN)

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

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

Approved by Commissioner: Nancy Bear Userra  
 Agency: Administration

Date: 4/15/94

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334(FIN)

### ANALYSIS: (continued)

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

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

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

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

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

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

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

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

8/leg94/13/cslb334r.kp3

# Request For New Position

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

FY 95

Page 3 of 3  
 Revised Date: \_\_\_\_\_

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (Fin)

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUNDING SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

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

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

Date: 4/15/94

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (Fin)

ANALYSIS: (continued)

### INTRODUCTION

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

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

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

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

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

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

### FISCAL IMPACT

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

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (Fin)

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

CONCLUSION

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

BUDGET ANALYSIS

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

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

8/LEG94/17/CSHB334.KP1

# Request For New Position

AGENCY    ADMINISTRATION  
 BRU        Public Defender Agency  
 COMPONENT    Public Defender Agency

FY 95

Page    1    of    3  
 Revised Date: \_\_\_\_\_

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16/A	Barg. Unit CGU
Time Status PFT	Staff Months 12.0	Location EBA		Election District 50
TYPE OF EXPENDITURE		AMOUNT		
Salary		36,444		
Benefits		15,389		
Premium Pay				
Other				
Total Personal Services		51,833		
Travel		-0-		
Contractual		-0-		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		54,333		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	54,333		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

**Justification**  
 The "Three Strikes" legislation will create a category of serious felony cases which will be litigated as intensely as homicide cases. Because of the effort involved, and because this will have statewide impact on this 13-office agency, additional staff will be required. The litigation effort will necessarily include collateral attacks on prior felony convictions, and other pretrial investigation and motion work. Some travel (both in and out of state) will be required. Contractual funds will be required in those instances where collateral attacks will involve challenging prior convictions which are sited in other states.

The positions described below will work in the Anchorage office but will also provide litigation support to the other 12 offices whenever a "Three Strikes" case is assigned to the agency:

Anchorage:	Attorney IV	83.1
	Paralegal Assistant II	51.8
	Legal Secretary I	36.9

8/LEG94/17/CSHB334N.KP2

Request For  
New Position

AGENCY ADMINISTRATION  
 BRU Public Defender Agency  
 COMPONENT Public Defender Agency

FY 95

Page 2 of 3  
 Revised Date:

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

8/LEG94/17/CSHB334N.KP3

Request For  
New Position

AGENCY ADMINISTRATION  
BRU Public Defender Agency  
COMPONENT Public Defender Agency

FY 95

Page 3 of 3  
Revised Date: \_\_\_\_\_



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

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

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

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

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

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

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

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

**HB**

**337**

716 W. FOURTH AVE.  
ANCHORAGE, ALASKA 99501-2133  
258-8191

WHILE IN SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
465-4968

Alaska State Legislature  
House of Representatives



DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund

MEMORANDUM

**TO:** Senator Robin Taylor, Chairman  
Senate Judiciary Committee

**FROM:** Representative Jim Nordlund

**RE:** HB 337 - Drug Free Recreation and Youth Centers

**DATE:** April 29, 1994

\*\*\*\*\*

I would greatly appreciate it if you could schedule a Judiciary Committee hearing on House Bill 337 as soon as possible. HB 337 adds to the statutes regarding drug-free zones for schools by establishing recreation and youth centers as Drug-Free Zones. The legislation stiffens the penalties for people who possess drugs where children go to play. This includes buildings, structures, playgrounds and athletic playing fields.

Anchorage Police Chief Kevin O'Leary says the area around recreation and youth centers are fertile ground for those who promote and sell drugs to children. This legislation would give law enforcement officials an additional weapon in the war against drugs. This bill also has the support of Parks and Recreation officials from Petersburg to Kenai.

Roxanne Rohweder of my staff has prepared the enclosed back-up information. Please contact her if you need any additional material. Thank you for your consideration of this request.

716 W. FOURTH AVE.  
ANCHORAGE, ALASKA 99501-2133  
258-8191

WHILE IN SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
465-4968

Alaska State Legislature  
House of Representatives



DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL.

Representative Jim Nordlund

**SPONSOR STATEMENT**

House Bill 337 takes the idea of "Drug-Free School Zones" and expands it to include the areas around "recreation and youth centers." This includes buildings, structures, playgrounds and athletic playing fields. The legislation stiffens the penalties on people who possess drugs where children go to play.

Criminal justice, education and substance abuse prevention leaders agree that the best resolution to the current drug epidemic lies in reducing the demand for illegal drugs, particularly among youth. The reason we create neighborhood playgrounds and recreation centers is to provide healthy alternatives for our citizens. Children and adults should not be intimidated by people who push or possess illegal substances in these areas.

Under HB 337, if a person is caught with drugs within 500 feet of a recreation or youth center, they will be charged with either misconduct involving a controlled substance in the third degree or the fourth degree, depending on the nature of the drug. Both of these are felony charges. Current statutes provide for only misconduct involving a controlled substance in the fourth degree or fifth degree (a misdemeanor). The proposed penalties are the same as current statutes for "Drug-Free School Zones."

Anchorage Police Chief Kevin O'Leary says the area around recreation and youth centers are a fertile ground for those who promote and sell drugs to our children. Officer Patrick O'Brien, a police/school liaison officer, says the parking lot of the Fairview Recreation Center is the site of a huge drug trade. The director of Spenard Recreation Center says the local drug dealer lives across the street. We must give law enforcement officials additional weapons to stop this illegal activity.

716 W. FOURTH AVE.  
ANCHORAGE, ALASKA 99501-2133  
258-8191

WHILE IN SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
465-4968

Alaska State Legislatu  
House of Representatives



DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund

SECTIONAL ANALYSIS

CSHB 337 (H.E.S.S.)

- Section 1. Amends AS 11.71.030(a)(3) by providing that it is illegal to possess any amount of a schedule IA or IIA controlled substance at or within 500 feet of a recreation or youth center.
- Section 2. Amends AS 11.71.030(b) to provide that it is an affirmative defense to a prosecution for possessing a schedule IA or IIA controlled substance at or within 500 feet of a recreation or youth center that the possession occurred entirely within a private residence located within 500 feet of the recreation or youth center and that the possession did not involve distributing, dispensing, or possessing with the intent to sell.
- Section 3. Amends AS 11.71.040(a)(4) to make it illegal to possess a schedule IIIA, IVA, VA, VIA controlled substance at or within 500 feet of a recreation or youth center.
- Section 4. Amends AS 11.71.040(b) to make it an affirmative defense to a prosecution for possessing a schedule IIIA, IVA, VA, or VIA controlled substance at or within 500 feet of a recreation or youth center that the possession occurred entirely within a private residence located within 500 feet of the recreation or youth center.
- Section 5. Defines "recreation or youth center."
- Section 6. Amends AS 28.01.010(d) by providing a new paragraph that allows municipalities to post "drug-free recreation and youth center zone" signs.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO: CSHB 337(HES)

Revision Date: 03/09/94 Dept. Affected: Public Safety  
 Title: Drug Free Recreation and Youth Centers BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: BEP NORHLUND  
 Requestor: H. JUD COMPONENT SERIAL NO. 799

**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	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b> <small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

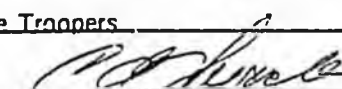
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)  
No fiscal impact anticipated.

Prepared By: Francis C. Allan Phone: (907) 269-5691  
 Division: Alaska State Troopers Date: 03/09/94  
 Approved by Commissioner:  Date: 03/09/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

Work Draft

BILL NO. CSHB 337 ( )

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Dated 1/25/94

Revision Date: January 27, 1994  
Title: "... relating to the possession of controlled substances within 500 feet of recreation and youth centers."  
Sponsor: Representative Nordlund  
Requestor: Representative Nordlund

Department Affected: Department of Law  
BRU: Prosecution  
Component: All  
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-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 I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Division Date: January 27, 1994  
Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law Date: January 27, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Work Draft  
BILL NO. CSHB 337 ( )  
Dated 1/25/94

ANALYSIS CONTINUATION:

The work draft CS for HB 337 adds a definition for "recreation or youth center" to mean a building, structure, athletic playing field, or playground operated by a municipality on the state to provide athletic, recreational, or leisure activities for minors. As previously stated, the bill amends AS 11.71 to increase the penalty for possession of a controlled substance within 500 feet of a recreation or youth center. This increased penalty provision is already the law for possession within 500 feet of school grounds. We do not believe the bill will have a fiscal impact because the number of cases involving possession of a controlled substance under current law is not significant and, extension of "Drug Free" zones to include recreation and youth centers, will not add any new significant workload.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 337

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to the possession BRU: All  
of controlled substances... Component: All  
 Sponsor: Rep Nordlund  
 Requestor: House HFSS COMPONENT SERIAL NO. 694-1884

**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</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUND SOURCE**

(Thousands of Dollars)

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

Estimate of any current year (FY94) cost: \$ 0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 465-4643/786-2147  
 Division: Office of the Commissioner Date: 2/8/94  
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 2/8/94  
 Agency: Department of Corrections

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The bill would increase the severity, and thus length of sentence, for certain drug crimes if committed in proximity to recreation and youth centers. A class C felony (MICS IV) would become a class B felony (MICS III), and a class A misdemeanor (MICS V) would become a class C felony (MICS IV) if certain controlled substances were possessed within 500 feet of a youth or recreational center.

Assumptions

1. It is assumed that the effect of this measure might be similar to the effect of increasing the severity of MICS offenses which are committed in the proximity of schools, as provided under current law. The department was unable to locate any meaningful data on the frequency with which these offenses occur or their impact on the incarcerated or probation/parole populations. Only data on the actual offense category is available, which does not include the specific elements of the offense, such as proximity to a school. Therefore, the department contacted several law enforcement agencies/personnel and one prosecutor and asked how frequently such offenses occur. A district attorney informed the department that one such case occurred in the two years he was in that position. Three police officers stated such offenses occur "almost never." One police agency reported an average of 5.5 arrests near schools within the past four years. The department does not have the research resources needed to find out how this would correlate with actual convictions and sentences, so no conclusion could be drawn. Based upon this small amount of information, the department assumes that the behaviors described in the bill will "almost never" result in raising the severity of an offense from one category to another, and thus will not impact incarcerated or probation/parole populations.
2. In a profile of the incarcerated population on June 30, 1993, there were 41 inmates incarcerated for MICS IV and 75 incarcerated for MICS III. There were 96 inmates actually sentenced for MICS IV during 1992, and 119 sentenced for MICS III. In the June profile, there were 211 offenders under probation or parole supervision for MICS IV and 346 offenders being supervised for MICS III. Any increase in sentence length, or movement from misdemeanor to felony level which might result from this bill would seriously impact the department, given the number of cases involved. (Misdemeanor cases are not supervised by the department when placed on probation.)
3. If the department obtains any information contradicting the "almost never" incidence rate assumed above, the fiscal note will be revised to reflect an increase in prisoner-days (\$113/day) and probation/parole-days (\$6/day), as well as any captital funds necessary to expand correctional bedspace, based upon the numbers of current MICS III and IV cases under the department's custody on June 30, 1993.



Tom Fink, Mayor

# ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99507-1599  
TELEPHONE (907) 786-8500



Service since 1921

1/18/94

Representative Jim Nordlund  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Nordlund:

I have received a copy of your proposed legislation, House Bill 337, which widens the scope of areas designated as drug-free zones. As you have already found through your meeting with Officer O'Brien, the areas around recreation and youth centers are indeed fertile ground for those who promote and sell drugs to our children. The fact that you have included buildings, playgrounds and athletic fields in the bill enhances the effectiveness of this important legislation.

The Anchorage Police Department, in cooperation with the School District, does its very best to protect our youth from drugs by education, counseling, and by vigilance in and near schools. However, it is time to attack the drug problem on as many fronts as possible. We enthusiastically support HB 337 and its goals to eradicate drugs from any area where children may be present, and to severely punish those who would possess, use, promote or sell controlled substances near our children.

Sincerely,

Kevin M. O'Leary  
Chief of Police



ALASKA COUNCIL ON

**PREVENTION**

OF ALCOHOL AND DRUG ABUSE, INC.

Founded 1982

February 14, 1994

Representative Jim Nordlund  
House of Representatives  
State Capitol, Room 426  
Juneau, AK 99801-1182

Dear Representative Nordlund:

This letter is in support of House Bill 337. It seems logical to me that any area where young people gather we have a responsibility as a community to protect them as much as possible. This bill sends that kind of message. It also gives the police the authority to take action if these violations occur. Substance use and abuse have been on the decline for the past few years, however when it comes to young people that's still the area where most problems are occurring. So anything that can continue to assist this problem from rising again we should support. These areas where young people gather are most vulnerable for this kind of activity. We have to let the young people know that we are working in their best interest. I am very grateful for this legislation it proves to me that you and your colleagues are very concerned about the teenagers of our communities. Prevention is the only hope we have for the future. Best of luck with this bill.

Sincerely,

Joseph DiMatteo  
Executive Director

/JDM



March 21, 1994

155 SOUTH SEWARD STREET  
JUNEAU, ALASKA 99801

Eighteenth Alaska State Legislature

Subject: House Bill No. 337

On March 12, 1994, the Juneau Parks and Recreation Advisory Committee moved to send this letter in support of HB337.

This bill will treat recreation and youth centers the same as drug free school zones, with respect to the possession of controlled substances within 500 feet of the facility or park.

The Parks and Recreation Advisory Committee has an ongoing commitment to the health and safety of Juneau's youth. Incorporating recreation and youth facilities within drug-free zones will, we believe, act as an additional deterrent to drug-related activities and provide an additional means of prosecution for offenders.

Thank you for your efforts on behalf of our youth.

Sincerely,

Randy Crewse, Chair  
Juneau Parks and Recreation Advisory Committee  
155 South Seward Street  
Juneau, AK 99801

*Alaska Recreation and Park Association*

PO. Box 102664  
Anchorage, Alaska 99510-2664

February 17, 1994

Representative Jim Nordlund  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Rep. Nordlund:

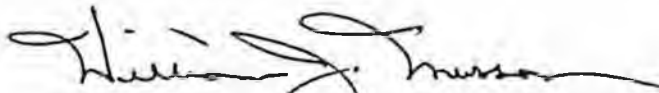
Thank you for your sponsorship of House Bill No. 337 and for sharing a copy of this proposed legislation with me. After studying the bill this week, asking for opinions from my membership and then sharing it with my own city Police Chief for his comment, I believe HB337 will greatly benefit communities throughout our state and will assist the goals of the Alaska Recreation and Park Association (ARPA).

Not only does HB337 clear up current law and make it more enforceable, but it extends stiffer penalties for possession of controlled substances to include zones where young people play and recreate, as well as where they attend school. It is an unfortunate fact of life that drugs are available and readily accessible throughout our state, but we should not tolerate this condition and should take steps like HB337 to "say no to drugs" and to drug dealers.

ARPA believes recreation and play should be a positive experience. We support HB337 and other efforts like it that would help say "NO!" to those who would enter our parks, play areas and recreation centers to ruin that positive experience and to potentially ruin the lives of those we serve.

Please feel free to contact me at any time regarding this issue or any other involving recreation and parks, and I thank you for your fine efforts.

Sincerely,



William J. Musson, President  
Alaska Recreation and Park Association

cc: ARPA Board of Directors

**Municipality  
of  
Anchorage**



**PARKS AND RECREATION**

P. BOX 196650  
ANCHORAGE, ALASKA 99519-6650

*TOM FINK*  
MAYOR

Representative Jim Nordlund  
Alaska State Capitol  
Juneau, AK 99801  
February 22, 1994

As a Recreational Specialist and youth coach of the Spenard Recreation Center, I am completely supportive of House Bill No. 337. Setting up such a zone for our center will create the safe haven needed within the area. Hopefully the zone will prevent any problems with controlled substances here in our community and communities across the state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheryl R. Cohen". The signature is written in dark ink and is positioned above the typed name.

Sheryl R. Cohen, Recreation Specialist/Coach  
Spenard Recreation Center

# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650

TOM FINK  
MAYOR

DEPARTMENT OF CULTURAL AND RECREATIONAL SERVICES

February 21, 1994

Representative Jim Nordlund  
Alaska State Legislature  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Nordlund:

I am writing to support the bill you have introduced which relates to the possession of controlled substances within 500 feet of recreation and youth centers. We agree with your move to add recreation and youth centers to the list of locations in which such activity will be considered a criminal offense.

As with schools and school buses, recreation centers are gathering places for our youth. We are concerned that the recreation centers operated by this department remain places that youth can use without fear of encountering drug use or sales. I am also aware that this legislation will cover other athletic fields and playgrounds under our supervision and I certainly support this inclusion as well.

I hope the legislation is successful and I applaud your efforts in bringing it forward.

Sincerely,

A handwritten signature in cursive script that reads "Connie Jones". The signature is written in dark ink and is positioned above the typed name.

Connie Jones, Director  
Cultural and Recreational Services

CRJ/csj

# Municipality of Anchorage



PARKS AND RECREATION

P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650

TOM FINK  
MAYOR

Representative Jim Nordlund  
Alaska State Capitol  
Juneau, AK 99801  
February 18, 1994

Letter of Support for House Bill No 337

As Director of the Spennard Community Recreation Center and speaking from a youth oriented perspective, I support House Bill No. 337. Having read the bill I believe that setting up drug free zones for youth and recreation centers will greatly benefit not only the Spennard Community Recreation Center, but similar areas across the state. The bill will benefit the youth of the community and hopefully prevent any problems with controlled substances.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Perrin". The signature is written in dark ink and is positioned above the typed name.

Sharon Perrin, Director  
Spennard Community Recreation Center

# ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION

4501 South Bragaw Street

Anchorage, Alaska 99507-1599

Representative Jim Nordlund  
Alaska State Legislature  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

February 3, 1994

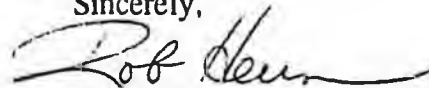
Dear Representative Nordlund:

The Anchorage Police Department Employees Association strongly endorses House Bill 337. The Association feels that youth and recreation centers should be drug free zones that offer families and children recreational opportunities free of infringements from street predators.

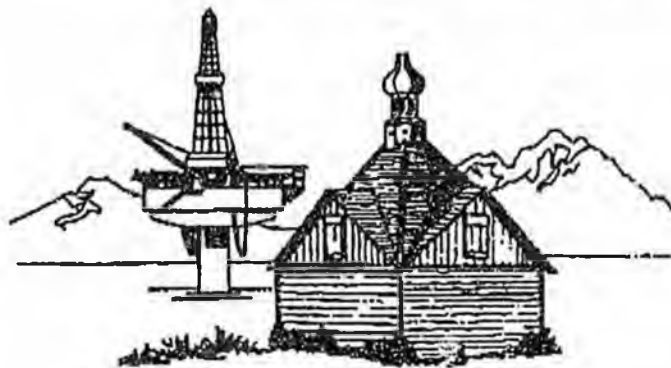
Recognizing that the expanded wording in this statute is the first step toward aggressive, proactive enforcement, the A.P.D.E.A. encourages all legislators to support HB 337. This will send a clear message throughout the state's criminal justice system that this legislature means business by targeting specific elements of the criminal community who have blantly and deviously infringed on areas which should be oases of childhood innocence and strongholds of wholesome family activities.

The represented employees of the A.P.D.E.A. stand firm in our support of HB 337 and commend your efforts pertaining to this issue.

Sincerely,



Sgt. Rob Heun  
President, A.P.D.E.A.



1791 - 1991  
**CITY OF KENAI**  
*"Oil Capital of Alaska"*

210 FIDALGO KENAI, ALASKA 99511  
 TELEPHONE 283-7635  
 FAX 907-283-3014

March 3rd, 1994

The Kenai Recreation Center and Teen Center are a location where a large number of adults and teens come together to participate in various recreational activities.

While inside the building individuals are carefully supervised by staff, but once outside of the building, and just off the grounds, supervision is much more difficult. It is this area, outside of the facility, where individuals possessing or selling drugs would most likely be found.

The Staff at the Kenai Recreational Center and Teen Center strongly support House Bill 337, because we feel that it will give our local Police Department added incentive to closely monitor the area outside of our facility. We also believe that the drug-free recreation and youth center zone signs will communicate our staff's commitment to providing a safe drug-free environment for all individuals who use our facility.

Sincerely,

*Julie Niederhauser*

Julie Niederhauser

Asst. Supervisor of Teen Center

*Kay M. Gilligan*  
 Director - Parks & Recreation

**POSITION PAPER - Department of Public Safety**

**BILL NO:** HB 337

**DATE:** January 24, 1994

**TITLE:** "An Act relating to the possession of controlled substance within 500 ft. of a recreation or youth center"


**CONTACT:** C.E. Swackhammer  
Deputy Commissioner  
465-4322

HB 337 includes recreation centers and youth center in the controlled substance statutes that currently outline violations of controlled substances when they take place within five hundred feet of a school grounds.

This bill adequately and logically places these locations, recreation centers and youth centers, within the same category as schools for being drug free zones.

This bill has low impact on the Alaska State Troopers as it is consistent with current enforcement policies and creates no additional work but does create potentially an additional charge for persons caught with controlled substances near these locations.

The Department of Public Safety supports this legislation as it is consistent with a strong enforcement attitude and the Division's goals of controlling distribution of controlled substances.


  
Richard L. Burton  
Commissioner

**HB**

**356**

Homer  
Volunteer  
Fire  
Department

604 East Pioneer Avenue  
Homer, Alaska 99603  
907.235-3155  
Fax 907.235-3157

Date: November 18, 1993  
To: Representative Gail Phillips  
Attention: Judy Jordan  
From: Bob Painter, EMS Asst. Chief   
Re: "Do Not Resuscitate"

Thank you for your interest in this important matter. Enclosed is all the information I have available regarding this issue of patient rights. As a pre-hospital care provider, I often encounter patients, and family members of patients with terminal illnesses who have no desire to see heroic efforts attempted in order to prolong inevitable death. As the Assistant Chief responsible for emergency medical services in Homer, I felt a strong need to develop and implement a policy to protect those last wishes of the terminally ill.

Based on available information from other states, and communities, I, in cooperation with the fire department Physician Sponsor, Dr. William Bell, developed a simple, and effective means to allow the responding firefighter, EMT, or police officer to readily know that the patient was suffering from a terminal disease, and that they, with the consent of their personal physician had made the conscious decision not to be resuscitated in the event of a cardiac or respiratory arrest. Since the policy was implemented, there has not been a single case of a patient with a Do Not Resuscitate, ("DNR") bracelet having to undergo the expense of a resuscitative effort.

My desires for a State law are simple. First, the policy and procedures must be simple to understand for the patient, physician, and public safety personnel. Secondly, the law should be flexible in that identification of "DNR" patients be made simple and quick. And finally, the law should offer some level of immunity from prosecution for a responders "good faith" attempt at resuscitation, even if the patient is identified as a "DNR".

Prior to the implementation of our local DNR policy, another system was in place that was non-functional. In fact, a man was resuscitated that was a DNR patient. Although this patient latter died without regaining consciousness, his family suffered the emotional and financial trauma of something that could have been prevented so easily. Even though I see this problem as a health care issue and not a legal one, I hope that the state will recognize the situation we are being placed in, and adequately

LETTER OF SUPPORT

HOMER VOLUNTEER FIRE DEPARTMENT

address the issue with input from the people it will most effect, the volunteers of local fire departments, rescue squads, ambulance services, and the health care agencies and providers that deal with the terminally ill on a regular basis. Again, thank you for your concern, and if there is anything I can assist you with, do not hesitate to contact me.

*Neil Phillips*

Homer  
Volunteer  
Fire  
Department

604 east pioneer avenue  
homer, alaska 99603  
907/235-3155  
fax 907/235-3157

HOMER VOLUNTEER FIRE DEPARTMENT  
"DO NOT RESUSCITATE" POLICY

It will be the policy of the Homer Volunteer Fire Department to honor each individuals request for non-intervention in cases of respiratory or cardiac arrest. In order for emergency responders to know that a person has a pre-existing terminal illness and does not desire resuscitation, those persons must be identified with a department approved and issued "DNR" bracelet. This bracelet must be worn on either arm, be unaltered in any way, and bear the patient's name, address, phone number, and physician's name.

If the bracelet must be removed for any reason, replacements may be requested from the fire department. The department emphasizes that if the bracelet is not on the patient, or has been altered in any way, full resuscitative measures must be undertaken by emergency responders.

If the patient changes their mind about resuscitation prior to a fatal attack, the following should be done:

1. Remove the bracelet.
2. Notify the Fire Department about the change.
3. Return the bracelet to the Fire Department for proper disposal. (a representative of the Fire Department will pick up the bracelet if necessary)

If during, or after a fatal attack a family member changes their mind about resuscitation of the patient, the following should be done prior to the arrival of emergency personnel:

1. Remove the bracelet.
2. Notify the 911 operator that the patient's "DNR" status has been revoked.
3. Request that emergency responders attempt resuscitation once they arrive.

If emergency responders arrive on scene and the bracelet is properly displayed on the patient, CPR will not be started even if ordered to do so by a family member. The desire of the patient not to be resuscitated supersedes any family member request to the contrary.

Although Homer Volunteer Fire Department personnel and Homer Police Department officers are familiar with this "DNR" Policy, neither department makes, nor implies any guarantee that resuscitative efforts will be not be attempted, especially by lay persons trained in CPR.

The presence of a "DNR" bracelet does not preclude emergency responders from providing other emergency medical care or patients

*This is only in Homer = ruled by the Homer Judge = We need a Statewide Policy*

*Fahrenkamp's legislation  
etc Dr. Raymond Paul 235-7000  
etc Judy Galhoun 2297-724  
etc. Dick Hains @ Fire Hall 225-1000*

from requesting specific interventions such as oxygen administration by mask or nasal prongs, or other non-invasive procedures to ease a patients distress. A "DNR" order only means that cardiopulmonary resuscitation, endotracheal intubation, drug therapy, or electrical defibrillation will not be performed.

Homer  
Volunteer  
Fire  
Department

604 east pioneer avenue  
homer, alaska 99603  
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STANDING ORDER FOR DO NOT RESUSCITATE

I, THE UNDERSIGNED PHYSICIAN, CERTIFY THAT THE BELOW LISTED PERSON IS A PATIENT UNDER MY CARE AND THAT THIS PERSON HAS A TERMINAL MEDICAL CONDITION.

PATIENTS NAME: \_\_\_\_\_

PATIENTS DATE OF BIRTH: \_\_\_\_\_

PATIENTS ADDRESS OR PHYSICAL LOCATION: \_\_\_\_\_

PATIENTS HEALTH STATUS/DIAGNOSIS: \_\_\_\_\_

PATIENT OR RESPONSIBLE PARTY'S PHONE: \_\_\_\_\_

I, THE UNDERSIGNED, HAVE READ AND UNDERSTAND THE POLICY OF THE HOMER VOLUNTEER FIRE DEPARTMENT AND AGREE TO ITS CONDITIONS. I UNDERSTAND THAT IF THE "DNR" BRACELET IS REMOVED, OR ALTERED IN ANY WAY, FULL RESUSCITATIVE MEASURES WILL BE TAKEN BY EMERGENCY RESPONDERS.

\_\_\_\_\_  
PATIENT OR RESPONSIBLE PARTY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PHYSICIAN'S SIGNATURE

\_\_\_\_\_  
DATE

# 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  
 Sponsor: House HESS Component: EMS Training and Licensing  
 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>	
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	
CHANGES IN REVENUES	0	0	0	0	0	0	

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 1993 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 through the life of the project.

# 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	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 Phone: 465-2144  
 Division: Occupational Licensing Date: 3/2/94  
 Approved by Commissioner: Paul Fuhs Date: 3/3/94  
 Agency: Commerce and Economic Development

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# 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 (18.12.035) 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.

HB 356 passed the House with 38 yea votes. I urge your favorable consideration of this important legislation.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3807 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

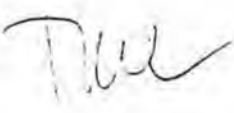
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

March 4, 1994

**SUBJECT:** Sectional Summary of HB 356. (An Act relating to living wills and do not resuscitate orders)

**TO:** Representative Cynthia Toohey, Co-Chair  
Representative Con Bunde, Co-Chair  
House Health, Education & Social Services Committee

**FROM:** Terri Lauterbach  
Legislative Counsel 

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

Since you have not asked any specific questions about the legal effect of this bill, this summary is short. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

#### Section 1.

Authorizes physicians to issue do not resuscitate (DNR) orders for their patients. Directs the Department of Health and Social Services, with the approval of the State Medical Board, to adopt protocols for withholding of cardiopulmonary resuscitation (CPR) by physicians and other health care providers. Requires that health care providers comply with the DNR protocols when presented with DNR identification, an oral order of a physician, or a written DNR order. Requires DHSS to develop designs for cards, necklaces, and bracelets that can be worn by persons for whom a DNR order has been issued.

#### Secs. 2 - 12.

Adds appropriate references to DNR orders and DNR identification throughout AS 18.12 so that they are treated the same way living wills are now treated under AS 18.12.

Representative Cynthia Toohy  
Representative Con Bunde  
March 4, 1994  
Page 2

Secs. 13 - 15.

Provides effective dates in a manner that authorizes the regulations process to start immediately and delays the effective date of the rest of the bill until the regulations take effect.

TML:pl  
94-183.plm

# 'Do-not-resuscitate' bill debated

By JEANINE POHL  
THE JUNEAU EMPIRE

11/9/94

A person suffering from a terminal illness whose heart has stopped would have the right — if they plan in advance — to refuse resuscitation under a bill introduced by a House committee.

If approved by lawmakers, terminally ill people could request that health-care professionals — doctors, nurses and paramedics — not resuscitate them.

Rep. Cynthia Toohey, R-Anchorage, said the Anchorage Fire Department already has a procedure accepting such "do-not-resuscitate orders," and she wants to

make similar orders available statewide.

Toohey, who has worked as an emergency room nurse, is co-chairwoman of the House Health, Education and Social Services Committee, which offered the legislation last week.

"Usually in hospital settings it's not a problem," she said today. "(But) if people dial 911 because they see someone fall on the street, there's no conduit or follow-through on it."

If passed, House Bill 356 would require the state Department of Health and Social Services to develop standardized design for

identification cards, forms, necklaces and bracelets to identify that a person has a do-not-resuscitate order. The law would clarify existing state law on the rights of the terminally ill.

The Juneau fire department also has a program in place, said Capital City Fire/Rescue emergency services Capt. Steve Iha.

"Essentially it targets a patient who has already been diagnosed with a terminal illness that when it's their time to pass away that they not be resuscitated," Iha said.

In Juneau, the fire department created a form that is kept on file

at the fire hall when a terminally ill patient has agreed with their doctor that they do not want to be resuscitated in case their heart has stopped.

The patient usually has a copy of the form with them at home or in the hospital or nursing home.

Iha said most of the time, the fire department gets a call after a patient has died, but having a do-not-resuscitate order "takes the pressure off the medics about having to make a decision."

The state coordinator of emergency medical services, Mark Johnson, said interest in do-not-resuscitate orders is growing.

## Don't...

Continued from Page 1  
resuscitate orders has grown in recent years. Emergency medical personnel — paramedics and fire departments — generally agree that such orders are a good idea, "assuming that they're handled appropriately."

Information from the National Association of State Emergency Medical Services Directors indicates that 11 states have do-not-resuscitate laws, six have policies or legal opinions allowing such orders and 14 states are considering legislation.

However, Sid Heidersdorf of Juneau, vice president of Alaskans for Life, has concerns over do-not-resuscitate orders, although his group doesn't have an official opinion on the bill.

"It's something that we need to look at carefully to see that we don't open the door to make these other things easier to accomplish," he said, referring to the increase in assisted suicides and the expanding scope of living wills.

Living wills are written instructions prepared in advance by people to guide their medical care if they are incapacitated.

Toohey's bill is generally sup-

ported by the Alaska State Medical Association, although Dr. Don Lehmann of Sitka said the group has yet to consider the bill specifically.

"We're looking at ways to make it easier to comply with patient's wishes," Lehmann said. "This is not euthanasia, this is not killing people, this is just not intervening futilely in life's processes."

Provisions in the bill would protect health-care professionals from liability when they do not try to resuscitate a patient who has a do-not-resuscitate order. The measure would hold them liable for failing to comply with a do-not-resuscitate order.

Please see Don't, back page

# Prehospital Do-Not-Resuscitate Orders: A Survey of State Policies in the United States

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The opinions expressed in this paper are  
solely those of the author and do not  
necessarily represent the opinions of the  
Department of Defense or the United  
States Air Force.

**Key Words:** emergency medical services  
(EMS); EMS directors; do-not-  
resuscitate (DNR); legislation; medical  
control; medical direction; policies;  
prehospital; protocols; resuscitation;  
terminally ill

**Abbreviations:** ACEP = American  
College of Emergency Physicians;  
DNR = do-not-resuscitate;  
EMS = emergency medical services

## Abstract

**Introduction:** Many states in the United States have developed policies that enable prehospital emergency medical services (EMS) providers to withhold cardiopulmonary resuscitation (CPR) in the terminally ill. Several states also have policies that enable the implementation of do-not-resuscitate (DNR) orders. **Objectives:** 1) assess which states have statutes governing DNR orders for the prehospital setting; 2) determine which states authorize DNR orders in ways other than by specific state statute; and 3) define those states that had regional protocols which address prehospital DNR orders.

**Methods:** Survey of the state EMS directors in each of the 50 U.S. states, the District of Columbia, and Puerto Rico.

**Results:** As of 1992, specific legislation authorizing the implementation of DNR orders was in place in 11 states. In addition, six others have a legal opinion or policy allowing the implementation of DNR orders. Fourteen additional states have either working groups or legislation pending that address prehospital DNR orders. In only five were there no existing regional protocols for implementation of DNR orders in the prehospital setting.

**Conclusions:** There exists great variation in legal authorization by states for implementation of DNR orders in the prehospital setting. Despite the existence of enabling legislation, many state, regional, or local EMS systems have implemented policies dealing with DNR orders. *Prehospital and Disaster Medicine*, 1993;8(4):317-322.

## Introduction

Over the past eight years, some states in the United States have developed policies that allow prehospital providers to honor requests to withhold resuscitation in terminally ill patients (i.e., do not resuscitate [DNR] orders). Such orders allow terminally ill patients to express their wishes regarding cardiopulmonary resuscitation at the time of their death.

By 1991, eight states had policies which enabled prehospital DNR orders and 23 states were addressing the issue.<sup>1-4</sup> To assist in the development of prehospital DNR orders, the American College of Emergency Physicians (ACEP) developed guidelines for DNR orders in the prehospital setting,<sup>5</sup> and the issue has been discussed in the prehospital literature.<sup>5-7</sup> Similarly, the issue has been addressed in the medical ethics literature<sup>8</sup> and in the medical news.<sup>9,10</sup> During this period, it appeared that there was an ongoing expansion in the number of states that authorize prehospital DNR orders on a statewide basis.<sup>10,11</sup> The objective of this study was to assess which of the states (and District of Columbia and Puerto Rico) have statutes that govern prehospital DNR orders. In addition, this study attempted to determine which states authorize DNR orders in ways other than by state statute. Further, emergency medical services (EMS) that had protocols that address prehospital DNR orders were noted, whether the protocols conformed to state law or not.

## Methods

A survey was mailed to the state EMS directors of the 50 states, the District of Columbia, and Puerto Rico. The survey asked if the state legislature had passed a bill to allow DNR orders in the prehospital setting.

Information regarding the content and date of the bill was requested. Further, the mechanisms by which prehospital providers could recognize DNR requests were assessed. The survey also asked whether there was legal immunity for prehospital providers who honor a DNR order in good faith. Finally, copies of the rules, regulations, and protocols were requested.

Information regarding local EMS policies for DNR orders was also col-

lected through this survey as well as through direct contact with state EMS directors and local EMS medical directors.

## Results

### *Mechanisms for DNR Orders*

Thirty responses were received from the initial mailing and an additional 19 responses were obtained from a second mailing. The three remaining regions were contacted by telephone. If the state EMS director was not available, information was obtained from an administrator or EMS physician knowledgeable in the area.

Eleven states have specific legislation which authorizes the implementation of prehospital DNR orders. Six additional states have a legal opinion or policy which allows implementation of prehospital DNR orders. Fifteen states have working groups or legislation pending to address the issue. In all but five of the 52 regions surveyed, some local protocol was identified that allows the use of prehospital DNR orders.

Table 1 provides a summary of the data. In the table, "CONSIDERED" means that some action has been taken: a working group has formed or legislation has been introduced. "State Law" means that the law is explicit in regards to the prehospital setting. Other

states, such as Texas and Oregon, interpret existing laws as applicable to the prehospital setting. Such cases are categorized as "permitting regional protocols." "Regional" means that there are local systems in the state which have policies that authorize prehospital DNR orders. Such policies may be present with explicitly stated permission or without explicit guidance.

Table 2 lists those states which have written into law that immunity is granted to the prehospital provider who honors a DNR request in good faith and according to the EMS protocol.

### *Examples of DNR Policies*

The states which have developed standardized prehospital DNR protocols (Connecticut, Montana, Virginia) or are in the process of developing a standardized approach (Colorado, Hawaii, Massachusetts, New Hampshire, Rhode Island, Tennessee) have implemented or are considering implementation of a wristband to identify the patient and a written, signed form to note the DNR order.

Other states rely on regional protocols (Alabama, California, District of Columbia, Florida, Idaho, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York,

	State Law	Local Protocols Exist		State Law	Local Protocols Exist
ALABAMA	N	Y	MONTANA	Y	Y
ALASKA	N	Y	NEBRASKA	N	Y
ARIZONA	Y	Y	NEVADA	N	Y
ARKANSAS	CONSIDERED	Y	NEW HAMPSHIRE	Y	Y
CALIFORNIA	CONSIDERED	Y	NEW JERSEY	CONSIDERED	Y
COLORADO	Y	Y	NEW MEXICO	CONSIDERED	Y
CONNECTICUT	Y	Y	NEW YORK	Y	Y
DELAWARE	N	Y	NORTH CAROLINA	Y	Y
DC	CONSIDERED	Y	NORTH DAKOTA	N	Y
FLORIDA	Y	Y	OHIO	N	Y
GEORGIA	CONSIDERED	Y	OKLAHOMA	N	Y
HAWAII	CONSIDERED		OREGON	N	Y
IDAHO	N	Y	PENNSYLVANIA	N	Y
ILLINOIS	Y	Y	PUERTO RICO	CONSIDERED	
INDIANA	N	Y	RHODE ISLAND	Y	Y
IOWA	N		SOUTH CAROLINA	N	
KANSAS	CONSIDERED	Y	SOUTH DAKOTA	N	Y
KENTUCKY	N	Y	TENNESSEE	CONSIDERED	
LOUISIANA	N		TEXAS	N	
MAINE	CONSIDERED	Y	UTAH	CONSIDERED	Y
MARYLAND	N	Y	VERMONT	N	Y
MASSACHUSETTS	N	Y	VIRGINIA	Y	Y
MICHIGAN	CONSIDERED	Y	WASHINGTON	Y	Y
MINNESOTA	N	Y	WEST VIRGINIA	CONSIDERED	Y
MISSISSIPPI	N	Y	WISCONSIN	N	Y
MISSOURI	N	Y	WYOMING	CONSIDERED	Y

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Table 1-- Status of Do-Not-Resuscitate (DNR) Legislation and Existence of DNR Protocols in the U.S. by States (1992). State Law Means some Action has been taken Specific to the Prehospital Setting. "Considered" Means some Action has been taken.

Colorado	New York
Connecticut	North Carolina
Florida	Rhode Island
Illinois	Virginia
Montana	Washington
New Hampshire	
Oregon and Texas apply existing laws to the prehospital setting and may offer immunity through this legislation, although it is not specific to the prehospital setting.	

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**Table 2—States [U.S.] with Laws Providing Specific Immunity for EMS Providers Who Honor DNR Requests in Good Faith in Accordance with Explicit Prehospital EMS Protocols**

North Carolina, Oklahoma, West Virginia). These protocols authorize nursing home or hospice orders, written physician orders, DNR requests signed by the patient, and in some cases, verbal requests by family.

The District of Columbia, Maryland, Maine, Massachusetts, and Wyoming have state EMS or Department of Health protocols that authorize DNR orders in the prehospital setting. Missouri enables prehospital DNR orders based upon the opinion of legal counsel. North Carolina allows prehospital DNR orders on the basis of the Attorney General's official authorization.

A brief statement regarding the approach by each state follows:

**Alabama:** No statute authorizes prehospital DNR orders. No bill is under consideration. Do not resuscitate orders which are signed by a physician can be accepted by prehospital providers and is governed by local or regional authority.

**Alaska:** No statute governs prehospital DNR orders, although individual EMS systems have developed regional protocols. There is some interest in developing a statewide approach and other states are being looked to as models.

**Arizona:** The state legislature passed a bill which became effective on 30 September 1992 which authorizes prehospital DNR orders. A statewide approach is planned using standardized forms, wallet card, and optional wristband. Immunity is granted for prehospital personnel who honor the order as well as for those who initiate resuscitation because of an unclear directive.

**Arkansas:** No specific prehospital DNR law exists. Arkansas does have Living Will legislation. Additional legislation is under development specifically to authorize DNR orders in the prehospital setting. There is no specific legislation which provides immunity to the prehospital provider who honors a DNR request. Currently, prehospital DNR orders are not accepted, although system-specific protocols may exist to address the issue.

**California:** Legislation regarding a DNR statute is cur-

rently under consideration. Specific emergency medical services have individual protocols to deal with DNR requests. In some systems, a signed DNR order in a patient's medical record or a completed, standardized DNR form can be honored.

**Colorado:** A state bill was passed in 1992 that specifically authorizes DNR orders in the prehospital setting. Specific mechanisms are under development to implement a statewide DNR mechanism. There is immunity for prehospital providers who honor such an order in good faith.

**Connecticut:** The 1991 Living Will Act authorizes DNR orders for terminally ill patients. The Connecticut Chapter of the American College of Emergency Physicians convened a multidisciplinary group to devise a mechanism for prehospital use. A written form in conjunction with a wristband has been developed to communicate the DNR order. There is general immunity for physicians in the state Living Will statute.

**Delaware:** No state legislation governs prehospital DNR orders. Currently, individual systems may have protocols which address the issue. Legislation is under development which addresses the issue.

**District of Columbia:** There is no bill that authorizes prehospital DNR orders, although such a bill is under consideration. Currently, hospice and nursing home orders can be accepted by prehospital personnel and immunity is recognized for those who honor such orders in good faith.

**Florida:** "Health Care Advance Directives" and the "EMS Medical Transportation Act" were passed by the legislature in 1992. These provide authority to honor prehospital DNR orders and provide EMS immunity. A standard, written form, signed by the personal physician and the patient or surrogate, is used to communicate the order.

**Georgia:** Current DNR legislation does not address the prehospital setting, so the applicability of the current legislation is not entirely clear. Additional legislation is under development with a group of interested parties, including the Medical Society of Georgia.

**Hawaii:** Draft legislation is expected to be submitted to the 1993 Hawaii legislature to expand authorization for DNR orders to the prehospital setting. Wristbands and standardized forms are being proposed to communicate the directive. A legal review is being conducted to determine whether immunity exists for prehospital personnel who honor a DNR order in:

**Idaho:** Do-not-resuscitate mechanisms are being discussed in conjunction with the state medical association. Currently, there is no state legislation which deals with prehospital DNR mechanisms. Likewise, there is no specific immunity for the prehospital provider who honors a DNR request. Currently, nursing home orders, family wishes, physician orders, and Living Wills are all used to guide care. A standardized DNR form is under development.

**Illinois:** The state administrative code authorizes systems to develop policies for DNR orders in the prehospital setting. No single approach is required, although

detailed guidelines are set forth in the code. Immunity is granted to prehospital personnel under the state EMS Act.

**Indiana:** While no legislation has been introduced regarding DNR orders, preliminary discussions have taken place. While there is Living Will legislation, no specific prehospital DNR provisions are included.

**Iowa:** No mechanism officially exists to honor prehospital DNR orders, the legislature has passed no bill authorizing them, and no immunity is specified for prehospital providers regarding DNR orders.

**Kansas:** No state legislation has been passed which authorizes prehospital DNR orders, although such legislation is under consideration. The legal authority for prehospital DNR orders is therefore uncertain. No specific immunity for EMS providers exists.

**Kentucky:** Currently there is no specific legal authority for DNR orders in the prehospital setting. At the present time, there is no bill under consideration. Some services recognize written or verbal DNR orders based on local protocols. There is no specific good-faith immunity.

**Louisiana:** No state legislation or direction guides prehospital DNR orders. Therefore, no legal immunity exists for the prehospital provider who honors a DNR order. No bill is under legislative consideration at this time.

**Maine:** No legislation or statewide protocol governs prehospital DNR orders, but the matter is of significant interest and a working group addressing the issue is in process. Currently, regional EMS systems may have protocols to address prehospital DNR orders.

**Maryland:** While there are no statutes that specifically address the prehospital setting, and there is no specific immunity for prehospital personnel who honor DNR requests, there is a palliative care/hospice program in place with general immunity for health care workers who honor the DNR request of terminally ill patients.

**Massachusetts:** No legislation has been passed which authorizes prehospital DNR orders. No immunity is specified for prehospital providers regarding DNR orders. A policy is being developed to honor advance directives using a standardized form and wristband, similar to Connecticut's.

**Michigan:** House Bill 5453 presently is under consideration to authorize prehospital DNR orders. There currently is no other specified authorization or immunity for prehospital DNR orders.

**Minnesota:** No legislation specifically authorizes prehospital DNR orders. Living Will legislation exists which is related to the issue. Mechanisms have been developed on a regional basis to honor DNR orders with physician signatures in the nursing home or personal residence. There is no specific legal immunity for prehospital providers who honor DNR orders.

**Mississippi:** No statute authorizes prehospital DNR orders. Standardized written orders that are signed by the patient or surrogate and attending physician can be honored. No specific immunity is granted to prehospital providers who honor the order and withhold

resuscitation attempts.

**Missouri:** No statute specifically authorizes prehospital DNR orders. Hospice orders can be accepted, but only with concurrence of on-line medical control. Although no immunity is granted specifically to prehospital providers who, in good faith, honor a DNR request, the Missouri Public Duty Doctrine does provide some protection for providers who are employed by the government.

**Montana:** The Living Will Act was revised in 1989 to authorize prehospital DNR orders and to grant immunity to prehospital providers who honor them. "Comfort One" is a statewide program to standardize prehospital DNR rules and protocols. A standardized form and bracelet will be used to communicate DNR orders. An educational video is used in both initial training and recertification of basic and advanced prehospital providers. The Montana Hospital Association primarily is responsible for administration of the system.

**Nebraska:** In February 1992, the "Rights of the Terminally Ill" Act was passed which authorized withholding life-sustaining treatment based on a terminally ill patient's directive. Implicitly included are prehospital providers, although no specific mention is made. There is immunity for health care providers who act in accordance with the Act. The exact implications for the prehospital setting is unclear, and no standardized mechanism is present for DNR orders in the prehospital setting.

**Nevada:** While there is no specific state legislation which authorizes DNR orders in the prehospital setting, DNR policies are authorized at a local level. Standardized written forms are used. Updated review and a physician signature is required. There is no specific statutory good-faith immunity for prehospital providers.

**New Hampshire:** A statute that took effect 1 January 1993 authorizes consideration of durable powers of attorney and Living Wills in the prehospital setting. No formal statewide mechanism is in place, although consideration is being given to a standardized form/bracelet system similar to Connecticut's.

**New Jersey:** No state legislation specifically authorizes DNR orders in the prehospital setting. Local protocol allows services associated with certain hospice, nursing homes to honor DNR orders. There is no specific law which governs this practice. There is no specific immunity for prehospital providers who honor such requests.

**New Mexico:** Consideration is being given to amending the EMS Act to authorize DNR orders in the prehospital setting. No standardized, statewide DNR mechanism is in effect, but some local systems have protocols to honor DNR requests. No specific immunity is granted to prehospital personnel, but immunity is granted to physicians, which may extend to prehospital personnel.

**New York:** The state Public Health Law, Section 2960-2977 sets forth guidelines and requirements for DNR orders in the prehospital setting and defines acceptable actions in the event of surrogate decision-makers.

nonhospital orders, patient transfers and other special circumstances. Immunity is granted to the provider who honors acceptable orders in good faith.

**North Carolina:** A standardized form was developed by a multidisciplinary committee under the auspices of the North Carolina Medical Society. An opinion by the state Attorney General authorized use of the form and stated that EMS personnel would be free from liability if the form was used appropriately.

**North Dakota:** While Living Will legislation exists, there is no specific authorization for prehospital DNR orders. No uniform or official policy exists to honor DNR requests in the prehospital setting.

**Ohio:** No legislation or standardized DNR mechanism is in place. Legislation authorizes Living Wills, but prehospital concerns are not addressed.

**Oklahoma:** Living Will legislation has been passed, but no specific prehospital provisions have been defined. No standardized prehospital DNR system is in place, and there is no specific legal immunity for the prehospital provider. Do-not-resuscitate requests can be honored according to local or regional protocols. A standardized mechanism is being considered based on the example of other states, such as Virginia.

**Oregon:** Given the current Living Will legislation, the current opinion is that additional legislation is unnecessary to specifically authorize DNR requests in the prehospital setting.

**Pennsylvania:** There is no statutory authority for DNR orders in the prehospital setting. Recent legislation has been adopted to govern advance directives, but does not address the special circumstances of the prehospital setting. No immunity exists for prehospital personnel who honor a DNR order.

**Puerto Rico:** While there is no current legislation that specifically authorizes DNR orders in the prehospital setting, there is a Uniform Rights of the Terminally Ill Act and Uniform Determination of Death Act. Initial consideration of the applicability of these acts to the prehospital setting and the need for additional legislation began in August 1992.

**Rhode Island:** A bill was passed which authorizes acceptance of DNR orders in the prehospital setting. It became effective on 1 January 1993. Development of a system to implement DNR orders is under development. A system utilizing written physician orders and wristband identification is being considered. Good-faith immunity for prehospital providers is part of the legislation.

**South Carolina:** No state law specifically authorizes prehospital DNR orders, but the state Medical Control Committee is planning a multidisciplinary committee to address the issue and develop a plan or legislation.

**South Dakota:** There is no legislative authorization or consideration regarding prehospital DNR orders. No standardized mechanism is in place or under consideration.

**Tennessee:** The state EMS Board has established a subcommittee to resolve issue of prehospital DNR orders. An amendment to the Living Will Act will be required.

Systems in place in Montana and Virginia are being considered as models for legislation, procedures, and materials. The amended legislation will provide immunity.

**Texas:** The Texas Natural Death Act authorizes Living Wills and advance directives. This has been interpreted to authorize prehospital DNR orders, although no specific mention is made of the prehospital setting. The Natural Death Act grants immunity to health care professionals who honor advance directives in good faith.

**Utah:** A bill is being planned for presentation to the 1993 legislative session. A committee currently is working on the bill.

**Vermont:** The Living Will and durable power of attorney statutes do not address the prehospital setting. Advance directives are accepted according to protocols developed by specific systems, or decisions are made to terminate resuscitative efforts in the emergency department.

**Virginia:** Effective 1 July 1992, legislation went into effect that authorizes prehospital DNR orders. A standardized EMS DNF form and wristband are used to identify patients. An extensive educational campaign has been undertaken regarding the system.

**Washington:** In March 1992, state legislation was passed that authorizes DNR orders in the prehospital setting. There is specific legal immunity for the prehospital provider who honors a DNR order. Currently, no statewide DNR mechanism is in place. A work group has been formed to create a standardized system.

**West Virginia:** No state legislation currently authorizes prehospital DNR orders. A bill is under development. Currently, only hospice and nursing home orders can be considered. There is no specific legal immunity for prehospital providers who honor DNR requests.

**Wisconsin:** There is no state legislation which governs prehospital DNR orders. Similarly, there is no immunity for the prehospital personnel who might honor a DNR request.

**Wyoming:** No statute authorizes DNR orders in the prehospital setting. No bill is under consideration which would authorize prehospital DNR orders.

## Discussion

Wide variation in the legal authorization of prehospital DNR requests are noted. Statewide systems commonly use wristbands and an authorized, written form. The success of having DNR patients acquire and wear wristbands has not been

these programs decrease ethical conflict. However, this system has been found to be acceptable both legally and operationally in a number of states. Ensuring that bracelets are distributed, obtained, and worn by DNR patients may present an administrative obstacle that is not faced when regional systems rely on a signed order and family, friend, or nurse identification. The benefit of assured identification by bracelet compared to identification by the person at the scene intuitively seems better and is an emerging trend. Wristbands are the most common mechanism in standardized state poli-

cies. Likewise, they are common, but not universal, in regional systems. Many local protocols allow a written DNR form alone to be honored.

Whether enabling legislation exists or not, whether there is a statute, legal opinion, or silence, many emergency medical services have developed mechanisms to honor DNR requests. The vast majority of states have emergency medical services that have developed DNR policies. Some specific state guidance must be offered to ensure that the mechanisms are sound legally. Further, the EMS medical director should seek experienced legal guidance. It is important that the medical director also assure that the system will be operationally effective and not so complicated that it is unwieldy. The medical director may have to work to publicize the system within the larger local medical community, and will be tasked to educate the EMTs regarding the DNR mechanism.

This survey did not analyze the relationship between Living Will legislation and prehospital DNR orders. Although legislation increasingly is addressing prehospital DNR orders, other advance directive legislation has been passed more rapidly. In 1991 alone, 24 states either passed new advance medical directive laws or amended existing statutes. In 1990, 18 states passed or amended advance directive laws. All 50 states now have some type of advance directive authorization in place.<sup>11</sup> The most common type is the Living Will. Living Wills allow patients to specify under what conditions they would want care withheld or withdrawn. Living Wills often are not applicable to the prehospital setting, since it generally is not possible to know if the directive is applicable or relevant. Such a directive does not guarantee that a terminal condition exists and might state only that "in the event of" a terminal illness, no life support should be instituted. Also, durable powers of attorney are being enacted by an increasing number of states. The applicability and operational effect of such directives were not explored

in this survey.

It is apparent that emergency medical services (EMS) are challenged to develop legally acceptable, operationally useful, medically and ethically sound mechanisms to honor DNR requests in the prehospital setting. The success and difficulties of the current variety of mechanisms must continue to be explored. The most recent Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care discussed the issue of "No-CPR" orders (i.e., DNR orders) in the prehospital setting.<sup>12</sup> It clearly is stated that EMS should have provisions to identify adults and children who have No-CPR orders. No specific mechanism is endorsed. Formal orders sheets, identification cards, or bracelets might be appropriate.

Any mechanism must be sound operationally, legally, and ethically. This is balanced with the administrative and practical difficulties of implementation for widespread use. The development of a policy for DNR orders (or No-CPR orders) is not complete once the legal and medical communities accept it. The real test is successful implementation for the benefit of prehospital patients. Patients must be given the opportunity to take advantage of the prehospital DNR system. Prehospital providers must be comfortable accepting the orders, and be sophisticated enough to recognize when attempts at resuscitation are warranted. Further, prehospital personnel must interact compassionately and sensitively with family members. When these challenges are met, the community will have a successful prehospital DNR mechanism.

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(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.

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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.

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### 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.

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### 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.

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