

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9575 SENATE JUDICIARY

272

CSHB 375 "B" (SHES)	CSHB 375 "E" (wkdrft)	HB 375 "A" (Gov)	Subject	Statutes
39	39	34	Commitment	AS 47.10.080(c)
40	40	35		AS 47.10.080(f)
41	41	36	Appeal CINA	AS 47.10.080(i)
42	42	37	Permanency Hearing	AS 47.10.080(l)
43	43	38	CINA if Incarcerated	AS 47.10.080(o)
44	44	none	Visitation	AS 47.10.080
45	45	39	Best Interests of the Child	AS 47.10.082
46	46			
47	47	40	Reasonable Efforts / Termination	AS 47.10
48	48	41	Confidential / Privileged Information	AS 47.10.092(a)
49	49	42	Information Disclosure	AS 47.10.093(b)
50	50	43		AS 47.10.141(f)
51	51	none	Habitually Absent	AS 47.10.141(g)
52	52	45	Emergency Custody	AS 47.10.142(a)
53	53	46	Custdy of Child Runaway	AS 47.10.142(c)
54	54	none	Plan Review	AS 47.10.142(h)
55	55	53	Duty of Care	AS 47.10.960
56	56	47	Definition- Care	AS 47.10.990(1)
57	57	none	Definition-CINA	AS 47.10.990(2)
58	58	48	Definitions	AS 47.10.990
59	59	49	Information Disclosure	AS 47.12.310(b)
60	60	none	Foster Home Arrangements	AS 47.14.100(a)
61	61	none	Foster Care-DFYS	AS 47.14.100(d)
62	62	none	Foster Care-Relatives	AS 47.14.100(e)
63	63	none	Out of Home Care	AS 47.14.100
64	64	none	Review Panel-Review	AS 47.14.240(d)
65	65	none	Review Panel-Court	AS 47.14.240(h)
66	66	52	Multidisciplinary Child Protection Team	AS 47.14.300
67	67	54	Definition-CINA	AS 47.14.990(2)
68	68	55	Report of Harm	AS 47.17.020(a)
69	69	none	Reporting Requirements	AS 47.17.020
70	70	none		AS 47.17.030(d)
71	71	56	Investigation	AS 47.17.033
72	72	none	DV Appropriate Steps	AS 47.17.035(b)
73	73	57	Maltreatment	AS 47.17.290-8
74	74	58	Application Requirements	AS 47.35.017(b)
75	75	59	Foster Care Placement	AS 47.35.022
76	76	60	Placement / Emergency	AS 47.35.023(b)

CSHB 375 "B" (SHES)	CSHB 375 "E" (wkdrft)	HB 375 "A" (Gov)	Subject	Statutes
77	77	61	Notification	AS 47.35.047(b)
78	78	62	Definitions	AS 47.35.900
79	79	63	Repealed Statutes	AS 47.10.080(k) AS 47.10.990(7)
80-83	80-83	64-80	Court Rule Amendments Effective Date	various

SB

274

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 274 | _____

Revision Date (Note if correction) _____ Dept. Affected Corrections
 Title An Act relating to fees for probation and parole BRU Administration and Operations
 Component ALL
 Sponsor Senator Ward
 Requester Senate Judiciary Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY98) cost: ****

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Please see attached.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date 2/18/98
 Approved by Commissioner Margaret M. Pugh Date 2/18/98
 Agency Department of Corrections

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The Dept. of Corrections is providing an indeterminate fiscal for SB 274 at this time. However, the Dept. will provide a revised fiscal note when we are able to get more definitive information that will help in determining the actual costs and revenues.

While it is clear that people who are unable to pay will not be penalized, it is unclear how many these individuals there will be. The Dept. believes that the it will be a significant number.

The probationers and parolees who can afford to pay but either refuse or don't keep current will be subject to penalty of incarceration. All probationers will be subject to a hearing before the court to show cause why the defendant should not be imprisoned for non-payment. If they are found in violation and no good cause is found, they can be imprisoned for one day for each \$50 owed in fees.

Parolees will be subject to a hearing before the Board of Parole for non-payment of fees. The parolee will have to show by a preponderance of the evidence that he/she was unable to pay despite having made a good faith efforts. If the parolee is found to be in default, the board is required to revoke parole. This could be a substantial amount of time and could result in significant costs.

It is difficult to determine how many probationers and parolees will fall under the circumstances mentioned above. The Dept. is currently in the process of trying to calculate these numbers in order to determine how much the incarceration costs will be and what revenues will be generated. While it is true that some of the money will be able to be attached through the PFD language contained in the bill, the Dept. will be eighth in line to attach the PFD and it is unclear how much, if any, will be left.

The Dept of Corrections hopes to provide the revised fiscal note by the beginning of next week.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 274

Revision Date: _____
Title: "An Act relating to fees for probation and parole"
Sponsor: Senator Ward
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

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

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require a court or the parole board to impose a fee on probationers and parolees. Payment of the fees could be a condition of probation or parole. There would undoubtedly be a fiscal impact on the Public Defender Agency (PDA) as a result of this bill. Probationers and parolees would have to pay a minimum of \$3.30 per day, or about \$100 per month. Probationers and parolees facing revocation for non-payment would have a right to court-appointed counsel. It is expected that a lot of probationers and parolees, especially those newly released from jail, would have difficulty making these payments. However, it is difficult to determine the fiscal impact without an estimate of the number of new probation or parole revocation cases anticipated.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Alison M. Elgee
Date: 2/17/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

There may also be an additional impact resulting from litigation on this bill. In State v. Albert, 899 P.2d 103 (Alaska Supreme Ct. 1995), the court said that fees to recoup the cost of court-appointed attorneys were constitutional. One of the main factors that persuaded the court was that payment of attorneys' fees could not be a condition of probation. Thus, jail was not an enforcement mechanism for non-payment. It may be that probationers or parolees jailed for non-payment would challenge the bill based on the Albert case, and the Public Defender Agency would have the expense of representing them.

Another aspect of the bill that may cause difficulties is that it is not restricted to felony probation. Probation is routinely imposed in misdemeanor cases, but misdemeanor probation is unsupervised in the vast majority of cases. There are few, if any, costs associated with unsupervised misdemeanor probation. Therefore, a fee of about \$100 per month would be difficult to justify.

Alaska State Legislature

Senate

JERRY WARD

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Sponsor Statement SB 274

"An Act relating to inmates paying for Probation and Parole"

With correctional costs skyrocketing in recent years, the notion that offenders should contribute to their own supervision has gained widespread political and public support. By 1988 as many as 48 states collected some type of correctional fees. While the numbers of states, which charge fees, is on the increase the idea is not new. In 1846 Michigan enacted the first correctional fee law in the country. Unlike financial obligations imposed to inflict punishment (e.g., fines, restoration of victim's losses or other civil obligations), correctional fees are imposed to generate revenues for correctional programs.

SB 274 requires the Department of Corrections to charge inmates under their supervision on probation or parole. In FY 97, probation and parole costs the state \$8.53 million. This legislation calls for each inmate on probation or parole to pay three dollars and thirty cents (\$3.30) per day to defer the cost of their supervision. With over 4600 inmates on probation or parole this legislation could generate over \$5.5 million dollars.

SB 274 would also allow for the garnishment of permanent fund dividend checks as a method of collecting probation and parole fees. The \$3.30 per day fee is roughly \$100 per month or approximately 45 minutes of work per day at minimum wage to reimburse the state for criminal supervision. For those who are able to pay and chose not to, this legislation calls for the revocation of parole. Alaska's correctional professionals are not and should not be "Collectors". That is why this legislation calls for a third party collection of probation and parole fees.

Twenty-three other states now charge fees for probation and parole. One example is Texas which funds over half of its \$90.6 million dollars probation and parole program through fees.

The citizens of Alaska can not be asked to "foot the bill" for criminals while things like medical care for the elderly and education go underfunded. It is time that criminals literally pay their "debt to society."

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/4/98

FURTHER: Finance

Date of 5-Day Notice: 2-12-98
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2-19-98

Judiciary Committee considered

SENATE BILL NO. 274

"An Act relating to fees for probation and parole."

Fol

and recommends:

- be replaced with _____ CS FOR SB 274 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>J. Green</i>	<input checked="" type="checkbox"/>		
<i>Deane</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>John L. Pyle</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

B&CS

<i>ADMIN. DIV. DEF. AGENCY</i>	<i>2/17/98</i>		<i>*FCS</i>

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CSB 274 (JUD)
(S) Publish Date: 2-19-98

Revision Date: _____
Title: "An Act relating to fees for probation and parole"
Sponsor: Senator Ward
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require a court or the parole board to impose a fee on probationers and parolees. Payment of the fees could be a condition of probation or parole. There would undoubtedly be a fiscal impact on the Public Defender Agency (PDA) as a result of this bill. Probationers and parolees would have to pay a minimum of \$3.30 per day, or about \$100 per month. Probationers and parolees facing revocation for non-payment would have a right to court-appointed counsel. It is expected that a lot of probationers and parolees, especially those newly released from jail, would have difficulty making these payments. However, it is difficult to determine the fiscal impact without an estimate of the number of new probation or parole revocation cases anticipated.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 2/17/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

There may also be an additional impact resulting from litigation on this bill. In State v. Albert, 899 P.2d 103 (Alaska Supreme Ct. 1995), the court said that fees to recoup the cost of court-appointed attorneys were constitutional. One of the main factors that persuaded the court was that payment of attorneys' fees could not be a condition of probation. Thus, jail was not an enforcement mechanism for non-payment. It may be that probationers or parolees jailed for non-payment would challenge the bill based on the Albert case, and the Public Defender Agency would have the expense of representing them.

Another aspect of the bill that may cause difficulties is that it is not restricted to felony probation. Probation is routinely imposed in misdemeanor cases, but misdemeanor probation is unsupervised in the vast majority of cases. There are few, if any, costs associated with unsupervised misdemeanor probation. Therefore, a fee of about \$100 per month would be difficult to justify.

CS FOR SENATE BILL NO. 274(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Original:
Referred:

Sponsor(s): SENATORS WARD, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fees for probation and parole."

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

3 * Section 1. AS 12.55.051(a) is amended to read:

4 (a) If the defendant defaults in the payment of a fine or any installment, f a
5 probation fee or any installment, or of restitution or any installment, the court may
6 order the defendant to show cause why the defendant should not be sentenced to
7 imprisonment for nonpayment and, if the payment was made a condition of the
8 defendant's probation, may revoke the probation of the defendant. In a contempt or
9 probation revocation proceeding brought as a result of failure to pay a fine, fee, or
10 restitution, it is an affirmative defense that the defendant was unable to pay despite
11 having made continuing good faith efforts to pay the fine, fee, or restitution. If the
12 court finds that the defendant was unable to pay despite having made continuing good
13 faith efforts, the defendant may not be imprisoned solely because of the inability to
14 pay. If the court does not find that the default was attributable to the defendant's
15 inability to pay despite having made continuing good faith efforts to pay the fine, fee,

1 or restitution, the court may order the defendant imprisoned until the order of the court
 2 is satisfied. A term of imprisonment imposed under this section may not exceed one
 3 day for each \$50 of the unpaid portion of the fine, fee, or restitution or one year,
 4 whichever is shorter. Credit shall be given toward satisfaction of the order of the court
 5 for every day a person is incarcerated for nonpayment of a fine, fee, or restitution.

6 * Sec. 2. AS 12.55.051(d) is amended to read:

7 (d) The state may enforce payment of a fine or fee and the restitution recipient
 8 may enforce payment of a restitution order against a defendant under AS 09.35 as if
 9 the order were a civil judgment enforceable by execution. This subsection does not
 10 limit the authority of the court to enforce fines or fees and orders of restitution to
 11 victims.

12 * Sec. 3. AS 12.55.100(a) is amended to read:

13 (a) While on probation and among the conditions of probation, the defendant
 14 may be required

15 (1) to pay a fine in one or several sums;

16 (2) to make restitution or reparation to aggrieved parties for actual
 17 damages or loss caused by the crime for which conviction was had;

18 (3) to provide for the support of any persons for whose support the
 19 defendant is legally responsible;

20 (4) to perform community work in accordance with AS 12.55.055;

21 (5) to participate in or comply with the treatment plan of an inpatient
 22 or outpatient rehabilitation program specified by either the court or the defendant's
 23 probation officer that is related to the defendant's offense or to the defendant's
 24 rehabilitation; [AND]

25 (6) to satisfy the screening, evaluation, referral, and program
 26 requirements of an agency authorized by the court to make referrals for rehabilitative
 27 treatment or to provide rehabilitative treatment; and

28 (7) to pay a periodic probation fee as provided in AS 12.55.104.

29 * Sec. 4. AS 12.55 is amended by adding a new section to read:

30 **Sec. 12.55.104. Probation fee.** (a) A court granting probation shall require
 31 a periodic probation fee to be paid to the Department of Corrections as a condition of

1 probation. The fee amount shall be established by regulation by the Department of
2 Corrections but may not be less than \$3.30 a day.

3 (b) A probationer shall assign the probationer's permanent fund dividend to
4 make probation fee payments under this section. The Department of Corrections shall
5 provide an assignment form to the probationer. The Department of Corrections shall
6 attach the permanent fund dividend of a probationer who is in arrears on the probation
7 fee and who has failed or refused to execute the assignment. If the permanent fund
8 dividend exceeds the total of the probation fee payments owed by the probationer, the
9 Department of Corrections shall refund the difference to the probationer.

10 * Sec. 5. AS 33.16.150(a) is amended to read:

11 (a) As a condition of parole, a prisoner released on special medical,
12 discretionary, or mandatory parole

13 (1) shall obey all state, federal, or local laws or ordinances, and any
14 court orders applicable to the parolee;

15 (2) shall make diligent efforts to maintain steady employment or meet
16 family obligations;

17 (3) shall, if involved in education, counseling, training, or treatment,
18 continue in the program unless granted permission from the parole officer assigned to
19 the parolee to discontinue the program;

20 (4) shall report

21 (A) upon release to the parole officer assigned to the parolee;

22 (B) at other times, and in the manner, prescribed by the board
23 or the parole officer assigned to the parolee;

24 (5) shall reside at a stated place and not change that residence without
25 notifying, and receiving permission from, the parole officer assigned to the parolee;

26 (6) shall remain within stated geographic limits unless written
27 permission to depart from the stated limits is granted the parolee;

28 (7) may not use, possess, handle, purchase, give, distribute, or
29 administer a controlled substance as defined in AS 11.71.900 or under federal law or
30 a drug for which a prescription is required under state or federal law without a
31 prescription from a licensed medical professional to the parolee;

1 (8) may not possess or control a firearm; in this paragraph, "firearm"
2 has the meaning given in AS 11.81.900;

3 (9) may not enter into an agreement or other arrangement with a law
4 enforcement agency or officer that will place the parolee in the position of violating
5 a law or parole condition without the prior approval of the board;

6 (10) may not contact or correspond with anyone confined in a
7 correctional facility of any type serving any term of imprisonment or a felon without
8 the permission of the parole officer assigned to the [A] parolee;

9 (11) shall agree to waive extradition from any state or territory of the
10 United States and to not contest efforts to return the parolee to the state;

11 (12) shall pay a periodic parole fee as provided in AS 33.16.155.

12 * Sec. 6. AS 33.16 is amended by adding a new section to read:

13 **Sec. 33.16.155. Parole fee.** (a) The board shall require a periodic parole fee
14 to be paid to the department as a condition of special medical, discretionary, or
15 mandatory parole. The fee amount shall be established by regulation by the
16 department but may not be less than \$3.30 a day.

17 (b) A parolee shall assign the parolee's permanent fund dividend to make
18 parole fee payments under this section. The department shall provide an assignment
19 form to the parolee. The department shall attach the permanent fund dividend of a
20 parolee who is in arrears on the parole fee and who has failed or refused to make the
21 assignment. If the permanent fund dividend exceeds the total of the parole fee
22 payments owed by a parolee, the department shall refund the difference to the parolee.

23 * Sec. 7. AS 33.16.220 is amended by adding a new subsection to read:

24 (j) The board shall revoke the parole of a parolee who defaults in the payment
25 of the parole fee imposed under AS 33.16.155 or any installment unless the parolee
26 shows by a preponderance of the evidence that the parolee was unable to pay despite
27 having made continuing good faith efforts to pay the fee. If the board finds that the
28 parolee was unable to pay despite having made continuing good faith efforts, the
29 parole may not be revoked solely because of the inability to pay. If the board does
30 not find that the default was attributable to the parolee's inability to pay despite having
31 made continuing good faith efforts to pay the fee, the board shall revoke the parole.

1 * Sec. 8. AS 43.23.065(b) is amended to read:

2 (b) An exemption is not available under this section for permanent fund
3 dividends taken to satisfy

4 (1) child support obligations required by court order or decision of the
5 child support enforcement agency under AS 25.27.140 - 25.27.220;

6 (2) court ordered restitution under AS 12.55.045 - 12.55.051, 12.55.100,
7 or AS 47.12.120(b)(4);

8 (3) claims on defaulted scholarship loans under AS 43.23.067;

9 (4) court ordered fines;

10 (5) writs of execution under AS 09.35 of a judgment that is entered

11 (A) against a minor in a civil action to recover damages and
12 court costs;

13 (B) under AS 34.50.020 against the parent, parents, or legal
14 guardian of an unemancipated minor;

15 (6) a debt owed by an eligible individual to an agency of the state,
16 unless the debt is contested and an appeal is pending, or the time limit for filing an
17 appeal has not expired, except for probation fees under sec. (8) below;

18 (7) a debt owed to a person for a program for the rehabilitation of
19 perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15),
20 AS 25.20.061(3), or AS 33.16.150(f)(2);

21 (8) probation fee ordered by a court under AS 12.55.104 or a
22 parole fee required by the Board of Parole under AS 33.16.155.

23 * Sec. 9. AS 44.28 is amended by adding a new section to read:

24 Sec. 44.28.040. Contract for collection of probation and parole fees. The
25 Department of Corrections shall contract with a collection agency or other person for
26 the administration and collection of probation fees imposed under AS 12.55.104 and
27 parole fees imposed under AS 33.16.155.

SB

291

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



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Senator Robin L. Taylor
Senate Majority Leader

SPONSOR STATEMENT

SENATE BILL 291

Senate Bill 291 is a major revision to Alaska Statute title 18, Chapter 12, "Rights of the Terminally Ill". It is intended to offer Alaskans some assurance that their wishes will be carried out with regard to medical treatment and life-sustaining procedures.

Last year the Legislature added provisions to the Living Will form suggested in Alaska law to add the option of organ and tissue donation. In the course of hearing that bill it became clear that our law as currently written offers little assurance that an incapacitated persons wishes will be carried out.

AS 18.12.010 states that a living will is operative "only if the declarant's condition is determined to be terminal". That is a call many doctors seem reluctant to make. The result is that heroic measures are often taken against the will of the patient.

A 1995 study published in the Journal of the American Medical Association found that doctors often misunderstand or ignore a patient's request with the result that large numbers of people still die alone, in pain and tethered to mechanical ventilators in intensive-care units.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Sponsor Statement

Sponsor Statement - SB 291

Page Two

The law is explicit. Every competent adult has the right to make fundamental decisions regarding his or her medical treatment. This includes the right to accept or refuse treatment and to prepare an advance directive.

SB 291 states that an advance directive or living will is given operative effect only if it has been medically determined that the declarant is in a serious medical condition.

It defines "medically determined" as requiring a determination from two physicians, one of whom must be the attending physician, who have personally examined the person.

Serious medical condition is defined as A) a terminal condition; B) a permanently unconscious condition; C) a condition in which the administration of life-sustaining procedures would not benefit the patient's medical condition and would cause permanent and severe pain; and D) a progressive illness that will be fatal and is in an advanced stage; the person is consistently and permanently unable to communicate by any means, to swallow food and water safely, to care for the person's self, and to recognize the person's family and other people; and it is very unlikely that the person's condition will substantially improve.

Sponsor Statement - SB 291

Page Three

We used Oregon law as the model for SB 291. It allows an individual to decide for themselves what they want done or not done in each of these situations. Oregon law was cited in that JAMA study as respecting the wishes of the patient.

Section eight of the bill sets out the conditions under which life sustaining procedures can be withheld or withdrawn when an individual does not have an advance directive.

Section seven makes it clear that nothing in this chapter is intended to condone, authorize or approve mercy killing or assisted suicide.

SB 291 will take Alaska into the 21st century with a law that allows individuals to make decisions regarding health care with more assurance that those wishes will be carried out in the event they are unable to speak for themselves.

FAX/Memorandum (Page 1 of 1)

To: Ralph - Senator Taylor's Office

From: Matt Anderson, EMS Unit Manager

Date: 2/24/98 4:03 PM

Subject: Clarification: "Serious Medical Condition" vs. "Qualifying Medical Condition"

SB 291 would extend most activities which previously were limited to patients with a "terminal condition" to those who are in a "serious medical condition." The latter phrase seen as adequately defined.

We believe that the phrase "serious medical condition" is used so frequently, and in so many different contexts, that most readers of the statute will not feel the need to look for its definition and will, instead, make assumptions about eligibility for enrollment in the state's do-not-resuscitate program.

In contrast, the phrase "qualifying medical condition" is equally specific in meaning and encourages the reader to look for the definition.

Since the intent of bill includes extending some of its provisions to those included in the proposed definition of "serious medical condition," it is imperative that the reader be directed to the definition. We believe the change in phrases to "qualifying medical condition" does that without modifying the intent of the legislation.

Please give me a call if you have any questions about this issue.

Post-It® Fax Note	7671	Date	2/24/98	# of pages	1
To	Ralph	From	TERRY B.		
Co./Dept	Sen. Taylor	Co.	LAA LEGAL		
Phone #		Phone #			
Fax #		Fax #			

Phone: 465-3141
FAX: 465-4101

e-mail: mara@health.state.ak.us
web: http://www.hsa.state.ak.us/dph/ems/emr_home.htm

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

MEMORANDUM

February 23, 1998

SUBJECT: Sectional Summary of SB 291 (Work Order 20-LS1194\F)

TO: Senator Robin Taylor
Attn: Joe Ambrose

FROM: 
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Makes amendments conforming AS 13.26.344(1) to the bill's new provisions in AS 18.12.

Section 2. Enlarges the scope of a declaration to include directions regarding artificially administered nutrition and hydration. Changes the test for when a declaration is given operative effect.

Section 3. Rewrites the recommended contents of a declaration.

Section 4. Indicates how long a declaration is effective.

Section 5. Directs the attending physician to record the condition of the declarant and the contents of the declarant's declaration in the declarant's medical record when the physician has determined that the declarant is in a serious medical condition.

Section 6. Directs certain persons to provide certain specified care to patients from whom life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn.

Section 7. States that the chapter does not condone, authorize, or approve mercy killing or permit certain acts or omissions to end life. States that the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition and hydration under the chapter does not constitute a suicide, assisting a suicide, mercy killing, or assisted suicide.

Section 8. AS 18.12.093 establishes the conditions for withholding or withdrawing life-sustaining procedures from incapable persons who do not have declarations. AS 18.12.095

Senator Robin Taylor
February 23, 1998
Page 2

establishes a presumption that certain persons have consented to artificially administered nutrition and hydration, establishes exceptions to that presumption, and establishes the conditions for withholding or withdrawing artificially administered nutrition and hydration.

Section 9. Amends the definition of "life-sustaining procedure."

Section 10. Amends the definition of "qualified patient."

Section 11. Amends the definition of "terminal condition."

Section 12. Adds definitions to AS 18.12.

Section 13. Repeals a subsection that sec. 7 of the bill now addresses.

If I may be of further assistance, please advise.

TLB:jdr
98-101.jdr

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 291

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to living wills, do not resuscitate BRU Civil Division
orders, anatomical gifts, and the care and treatment of persons ... Component Human Services
 Sponsor Senator Taylor
 Requester Senate Judiciary Committee Component Serial No. 2208

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 291 amends Title 18, Chapter 12, relating to living wills and do not resuscitate orders. The Department of Law's Human Services attorneys are often called upon by the Division of Senior Services and the Long Term Care Ombudsman to provide advice regarding these issues. SB 291 is not anticipated to increase this workload, and will have no fiscal impact on the department.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 2/17/98
 Date 2/17/98

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THE CHASE REVIEW

potent. The existence of a proxy suggests the author's seriousness of purpose and ensures that the court is not being asked to make a life-or-death decision based upon casual remarks." *In re O'Connor*, 72 N.Y.2d at 531, 531 N.E.2d at 613.

Among the typical reasons for choosing a health care proxy rather than a Living Will is the flexibility of the proxy. For example, a proxy provides a mechanism for making many types of health care decisions at the time when a decision must be made. A Living Will, to be effective, must set forth the maker of the Will's decisions with respect to medical treatment prior to his or her incompetency and before decisions need to be made. In addition, a proxy allows for decisions about all aspects of health care. A proxy is not limited to decisions regarding life sustaining treatment and may encompass many other kinds of care the individual may need.

Nevertheless, a Living Will can be extremely important in several respects. First, it does provide a mechanism which allows the patient to specify with clarity his or her wishes regarding life sustaining medical treatment rather than relying upon the decisions of a health care agent. Second, the Living Will provides evidence of the patient's wishes regarding the refusal of medical treatment, which evidence should meet even the strict "clear and convincing" standard adopted by some states. Therefore it should be respected by other jurisdictions as well as the one under whose laws it was executed. As indicated, it is not clear whether a health care agent has the power to act in a jurisdiction which has not enacted a health care proxy statute. Even if it has such a statute it is not certain what the effect may be if the other jurisdiction prescribes a form, a method of execution or a time limit for using the proxy which is different from that specified by the law governing the form actually executed by the patient. For instance, some states limit the agent's authority. See, e.g., Cal. Civ. Code § 2435 (prohibiting, among other acts, consent to psychosurgery and abortion). Nonetheless, it could well be that a patient's direction on these matters would be binding.

Most important, health care proxies and Living Wills are not incompatible. Indeed, it may be possible to incorporate both in the same document. See the Appendix for a sample form of instrument (not effective in all jurisdictions) which includes both a Living Will and a health care proxy.

those areas of health care about which the individual has made definite decisions as to whether he or she wishes, or does not wish, to refuse the treatment.⁶ Moreover, the individual should decide whether any desired treatment is to be tried only for a limited period of time and then discontinued if significant improvement is not made after that period of time.

The American Medical Association has prepared a Medical Directive⁷ which sets forth in simple chart form common treatments and procedures (from blood transfusions to the use of pain medications) on which an individual records whether he or she definitely wants a particular medical treatment, does not want it, is undecided about it, or wants the treatment tried (at least for a time). The Medical Directive also suggests that these "common" decisions be made based upon various "scenarios", from a persistent vegetative state to one in which the individual suffers from some brain damage which impairs the ability to recognize people and to communicate understandably, but does not have a terminal illness. Many practitioners will find reviewing the "Medical Directive" helpful in counseling clients as to the types of decisions which they should consider expressing in a Living Will.

There are three areas in which it seems to be of particular importance that the individual state a preference as to whether he or she wishes the treatment to be commenced and continued (at all costs), whether it should be tried, but continued only if there is significant improvement or not administered at all. These are: (1) providing artificial nutrition and hydration (the termination of which will end life in a relatively short time); (2) administering pain medications even though they may hasten death and/or retard consciousness; and (3) use of other means of prolonging life (such as mechanical breathing machines, kidney dialysis, and organ transplants) especially those which can be extremely expensive. In some jurisdictions, such as New York, a health care agent may make a decision about artificial nutrition and hydration only if the patient's wishes in that regard are reasonably known or can be reasonably ascertained with diligence. N.Y. Pub. Health Law § 2982(2)(B). In fact, New York encourages an individual to state in the proxy his or her wishes regarding artificial nutrition and hydration and other specific areas of health care. N.Y. Pub. Health Law § 2981(5)(D).

These statements should be as specific as is practicable under the circumstances. Even if the decision is to attempt to prolong life for as long as possible, that should be stated explicitly in the Living Will. If the indi-

CONTENTS OF THE LIVING WILL

The Living Will should state completely and explicitly

THE CHASE REVIEW

vidual is unsure of his or her wishes in a particular area, that lack of assurance should be expressly stated so that other language in the Living Will or other evidence is not used to "construe" what the individual wished.

For many people these decisions are extremely difficult to make. Certain clients will prefer that others make them when they are no longer able to do so. Further, the Living Will cannot cover every conceivable circumstance which may arise. Therefore, individuals should also consider executing a health care proxy.

Although the Supreme Court indicated in the *Cruzan* case that a person could designate someone to make health care determinations, such as the termination of artificial hydration and nutrition, it did not state whether the designee could be empowered to make less "drastic" decisions, such as placing the individual in a permanent health care facility (e.g., a nursing home) when the individual is not terminally ill but has lost the capacity to make such decisions. State law often does not expressly provide whether a medical attorney-in-fact may make such decisions. Unless proscribed by state law, it may be appropriate to consider adding to the document an express provision covering the authority of the surrogate decisionmaker in this (or similar) situations. Where it is not certain that this can be done, it is appropriate, as it generally is in the proxy, to ensure that a "severability" clause is added.

In addition to discussing an individual's wishes regarding health care, the Living Will should state explicitly that the document is intended to constitute a statement which is an expression of the wishes and directions of the individual as to his or her health care in the event that he or she is unable to make those decisions. It should specify that it is intended to be binding upon all persons, including the individual's physician, other health care providers and family. Furthermore, whether or not the Living Will is contained in the same document as the health care proxy, it should state explicitly whether the wishes and directions contained in the Living Will are, or are not, binding upon any health care agent or whether the health care agent is to have the authority to override the Living Will in some or all circumstances. The Living Will also should state whether or not the individual intends the document to expire and, if so, when.

If state law provides how a Living Will is to be executed, that method should be followed precisely. If

state law does not set forth the formalities for execution, it is recommended that the instrument be dated, signed at the end by the individual, witnessed by at least two persons, who, as in the case of a Last Will and Testament, set forth their addresses, and that it contain an attestation or acknowledgment provision which is completed by a notary public. The instrument should also contain a statement immediately before the witnesses' signatures that they personally know the individual, that he or she appears to be over the age specified by state law to execute such an instrument (18 years in almost all jurisdictions in the United States) and of sound mind, and that the person has executed the document willingly and free of duress.

Unless prohibited by state law, the Living Will should also contain a "severability" clause.

CONTENTS OF THE HEALTH CARE PROXY

Some states, such as California, have extraordinarily complex and "strict" rules governing the contents of a health care proxy. For example, in California, any printed form of durable power of attorney for health care intended for use by someone who is not receiving the advice of a lawyer, must contain a warning, prescribed in the statute, printed in ten point boldface type. Cal. Civ. Code § 2433. Although, as indicated above, it would appear that a majority of the Supreme Court at the time it decided the *Cruzan* case would have held that there was a constitutional right to appoint a surrogate decisionmaker for health care purposes, it is uncertain whether the Court would hold that a state statute which prescribed strict procedural requirements regarding the form, contents, method of execution and duration of a health care proxy was forbidden by the Constitution. However, since the Supreme Court in *Cruzan* allowed a state to prescribe a standard of evidence for a direction as to health care decisions that is "higher" than that usually applied in civil cases, it is probable that the Court would also uphold a state's right to prescribe a certain form, etc. for a health care proxy. Accordingly, it seems prudent for practitioners to attempt to use a form which complies exactly with the statutory rules of the jurisdiction. Nevertheless, as will be discussed below, it is unclear whether a health care proxy executed in accordance with the formalities of one jurisdiction will be respected in another.

Although the laws of some states (such as California) offer the alternative of witnessing or "notarizing" the health care proxy or durable power of attorney for health care, it seems best, where practicable, that the document be both witnessed and notarized.

Death with dignity remains an illusion

■ A national study finds that many doctors aren't following patients' requests to let them die

By SUSAN GILBERT

New York Times News Service

After 25 years of public outcry about the right to die with dignity, doctors still are ignoring patients' last wishes, according to a new study of terminally ill patients.

The study, reported in the current issue of *The Journal of the American Medical Association*, has found that doctors often misunderstand or ignore the patients' requests, with the result that large numbers of people still die alone, in pain and tethered to mechanical ventilators in intensive-care units.

Twenty-five years since the living will movement began, the study's authors say they have discovered that the wills, which are supposed to give terminally ill patients legal safeguards against unwanted medical treatment, offer virtually no protection.

The study also found that increasing communication between doctors and patients did not help. "People think advance directives are solving the problem," said Dr. William Knaus, one of the researchers who directed the study.

"We have very good information that they aren't, that nothing has changed — the amount of pain at the end of life, the number of people dying alone attached to machines."

The \$28 million study, financed by the Robert Wood Johnson Foundation, took place at six medical centers around the

Please turn to

NATION

THE OREGONIAN, WEDNESDAY, NOVEMBER 22, 1995

Death: 50 percent spend last days in pain, study says

■ Continued from Page One

country. It was divided into two parts, each one lasting two years and involving similar groups of terminally ill patients.

During the first phase, the researchers gathered base-line information, including the percentage of patients who did not want aggressive medical treatment such as cardiopulmonary resuscitation and mechanical ventilation, the percentage of doctors who knew their patients' wishes, how often aggressive treatment was used and how much pain patients were in before they died.

Thirty-one percent of patients said they did not want cardiopulmonary resuscitation, but 80 percent of the doctors misunderstood or ignored their patients' wishes.

Forty-nine percent of the patients who wanted to avoid cardiopulmonary resuscitation by having their doctors write a do-not-resuscitate order did not get their wish.

Half the patients spent eight or more days in what the researchers defined as an undesirable state — comatose or receiving mechanical ventilation in an intensive-care unit. Half of all patients were also in moderate to severe pain during their last three days of life.

The second phase of the study tested a system called Support, designed to help patients avoid pain and unwanted treatments by fostering better communication between

them and their doctors.

After phase two, there was no overall change in the percentage of do-not-resuscitate requests that were written, the amount of time it took for doctors to write them, the number of days that dying patients spent in undesirable states and the percentage of patients who died in pain.

"The findings were startling to us," said Knaus, who is chairman of the department of health evaluation sciences at the University of Virginia in Charlottesville.

Dr. Susan W. Tolle, director of the Center for Ethics in Health Care at Oregon Health Sciences University, said the end-of-life picture is not nearly as gloomy in Oregon.

Tolle said 90 percent of the adults who die at University Hospital have made arrangements for physicians not to resuscitate them. Tolle said the figure indicates that advance planning is the rule among Oregonians rather than the exception.

Tolle said special training programs encourage Oregon doctors to find out what kind of care their patients want as they reach the end of their lives. Oregon has progressive laws requiring physicians to administer as many drugs as necessary to ease a patient's pain. Also, she said, public debate over a physician-assisted suicide measure has heightened people's awareness about the rights of terminally ill patients.

The Boston Globe

THE BOSTON GLOBE • THURSDAY, JUNE 28, 1990

The high-tech twilight zone

ELLEN GOODMAN

If you are headed for Missouri — a layover in St. Louis, a weekend in Kansas City — let me suggest that you pack a little something extra in your baggage. A Living Will, for example.

Better yet, a signed and notarized Durable Power of Attorney. Or perhaps a checklist of 30 life-sustaining treatments and your personal attitudes toward them.

You might be wise to send copies of these to a lawyer and to a member of your family. And be sure to tell them that if get sick or have an accident in Missouri, they'd better get your body out of the state as quickly as possible.

This traveler's advisory comes to you courtesy of the Supreme Court. On Monday, the court ruled that people do have the right to stop medical treatment, but only if they are conscious and competent or have left "clear and convincing evidence" of what they want. Otherwise, you may have no more rights than a museum exhibit, a comatose testimony to some state's definition of "life."

If you are like Nancy Cruzan, for example, 25 years old at the time of a car crash, you could end up in a permanent vegetative state for 10, 20, 30 years with no way out. If you are struck down without leaving behind a full record of your attitudes about the major bioethics questions of the day, you could become, as Justice Brennan put it in his eloquent dissent, "a passive prisoner of medical technology."

This is the bottom line in the case of Joe

and Joyce Cruzan's daughter. She has spent the seven unconscious years in a Missouri hospital being fed what the nurses call "supper" through a feeding tube. It's the case as well for Christine Busalacchi, a 20-year-old patient in the same hospital, who is wheeled in the same unconscious state to "music therapy" where they play gospel to the former fan of heavy metal.

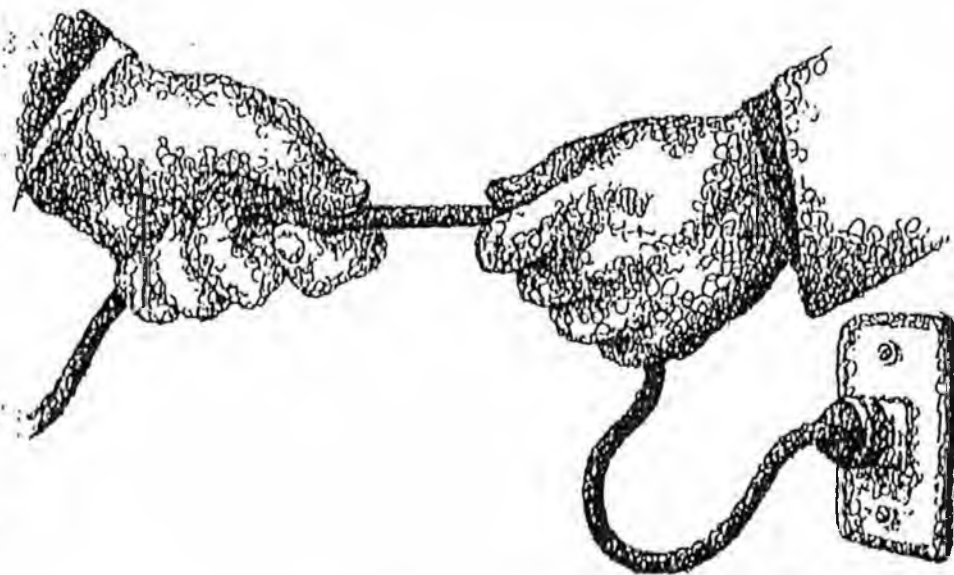
The court ruled that Nancy had not made her wishes known clearly enough. She had only talked about life and death the way most of us do, conversationally, casually. She "wouldn't want to live that way." She "didn't want to live as a vegetable."

Without more certainty, the majority ruled that Missouri's right to protect "life" was greater than the family's right to defend her "liberty" from medical treatment. In a striking passage, Justice Rehnquist said that there is "no automatic assurance that the view of close family members will necessarily be the same as the patient's."

In short, the state was more trustworthy than the family. Especially the state of Missouri, which has set itself on the extreme end of the pro-life spectrum.

"Once you become incompetent, you're out of it, and your family's out of it" says Boston University bioethicist George Annas. "The view of the court is that Nancy Cruzan should exist to protect the state's unqualified interest in life. That it's always better to be alive than dead. You can treat someone without her consent, but you can't stop treating her without consent."

This decision cannot help but raise the anxiety of Americans who have come to regard



GEOFFREY MOSS ILLUSTRATION

the end of life, the high-tech "twilight zone," with fear and loathing. For the overwhelming majority of Americans, some 70 to 80 percent, death comes after a series of decisions between patients, families and doctors about treatments to begin, try, end. For each American in a Cruzan-like condition, there are many more who are or will become incompetent before they die.

"I think it is important for people to know they will not lose control at the end," says Susan Wolf, an ethicist at the Hastings Center. "That knowledge allows people to keep going."

Indeed, without that assurance, we may see more preemptive suicides by people like Janet Adkins, who sought out the so-called suicide machine before she would lose her mind to Alzheimer's. We will also, surely, see doc-

tors who hesitate to try experimental treatments out of fear they can't be ended.

Missouri is so far the most intrusive state but the court gives the green light to others. In the meantime, the Cruzans' only hope for an end to the intrusive treatment is to move their daughter, perhaps down the road to Arkansas.

Once, in the '70s, there were families that took a brain-dead child from one state to another that recognized this death. In the 1990s, we may have to shop again for a state that will allow patients and families to end treatment without a suitcase full of documents.

For now, however, a recommendation. The Living Will. Don't leave home without it.

Ellen Goodman is a Globe columnist.

News 7/27/95

Living wills not always binding

□ Dear Ann Landers: Last year, I buried my 91-year-old father. After recurring bouts of cancer, he suffered a stroke. To see this once-vital man reduced to such a condition was heart-breaking.

The doctor insisted on inserting a permanent feeding tube. I explained that my father had made provisions for his care in such an event and did not want to continue his life that way. The doctor's reply was "Do you want your father to starve to death?"

The shock of being the sole caretaker for my 85-year-old mother, and now a dying father, was too much for me. I let the feeding tube be inserted. My father died in the ambulance on the way to the nursing home.

Ann, please tell your readers that the person making the medical decisions for an ill person must be very strong. And just as important as a living will is a medical power of attorney. Without it, a living will doesn't always hold much weight. — Virginia in Farmington, Mich.

Dear Virginia: I received a great deal of mail after my column on the Medical Directive appeared. Many readers made a point of saying that living wills are not binding in every state and, even when they are honored, the laws often change.

One woman let me know that her grandmother had made specific provisions in her living will for pain killers, but when the time came, her doctor refused her request. Another reader sent alarming information about how unrelated people can file suit in court to prevent a person from terminating medical treatment, even though they have no personal involvement in the situation.

The next letter might provide some help:

□ Dear Ann Landers: Your informed and compassionate



**ANN
LANDERS**

you can order the Medical Directive (two for \$6; five for \$11) by writing to The Medical Directive, P.O. Box 6100, Holliston, Mass. 01746-6100.

column about living wills and the Medical Directive gave millions of Americans invaluable information about the medical choices available to them at the end of their lives.

The Medical Directive is quite comprehensive and includes a power-of-attorney form, an organ-donor form and a place for a physician's signature. However, some states have their own requirements that may not be covered in the Medical Directive. For this reason, we recommend that people attach a state-specific form to their Medical Directive.

State-specific advance directives are available free of charge from state health departments, local hospitals and state bar associations. Choice in Dying will also provide a copy of a state-specific advance directive to anyone who writes us at Choice in Dying, 200 Varick St., New York, N.Y. 10014 or calls our toll-free number: 1-800-989-WILL.

Thank you, Ann, for getting the word out. — Karen Orloff Kaplan, executive director, Choice in Dying

Dear Karen Kaplan: Thank you for your fine suggestion. For my readers who may have missed it the last time,



For five years 22-year-old Christine Busalacchi has lain in a Missouri medical facility in what her doctors call a "persistent vegetative state."

Eventually the case wound up in court. The doctors petitioned to withdraw nonbeneficial medical care; the court declined to intervene. Six months later, still comatose but receiving aggressive treatment, Helga died. Her treatment cost in excess of \$700,000, paid for by her insurance and Medicare.

"If we have the right to keep a comatose woman on a respirator for over a year, then how does that justify the lack of health care for so many others?" Dr. Miles asks.

No Easy Answers

It's true that the financial toll of maintaining a terminally ill patient has become mind-boggling. Life-support costs range widely, up to or even exceeding \$2,000 a day, and these patients take up needed space in intensive-care units.

The emotional cost to families is also immeasurable. Many have likened it to "living in a funeral home, waiting for the funeral."

As serious as these problems are, even worse ones could result from legalized euthanasia. In the Netherlands—where mercy killing is technically illegal but openly practiced—some people are worried. The guidelines for "justified euthanasia," spelled out by the Dutch courts, say the patient must request death and that his condition must be irreversible. Frits Wester, a spokesman for The Netherlands Christian Democrats party and a leading voice against euthanasia, says: "We get a lot of letters from old people who are afraid to go in hospital because they're afraid somebody will kill them."

Other critics point to a possible slide from "voluntary" death toward coerced death, instigated either by medical personnel who deem a patient too costly to maintain, or by family members who may want to speed up inheritance.

In this country more than a million deaths occur in institutions annually; 70 percent of them are the result of a noncontroversial decision not to medicate, operate or resuscitate. Although only about 12 to 20 cases a year actually end up in court, those that do can alter state and Federal laws, as occurred in the now-historic Cruzan case. Nancy Cruzan had lain for eight years in a Missouri Rehabilitation Center (the same one now housing Christine Busalacchi), while her family fought the state all the way to the U.S. Supreme Court for permission to remove her feeding tube in accordance with her own previously stated wishes. They won, and the ruling became a major catalyst for the Patient Self-Determination Act (*see below*).

Who Plays God?

Even so, the controversy continues to rage. At one end of the debate are people who believe the Hippocratic oath compels physicians *always* to prolong life—never to assist, even passively, in cutting it short. At the other extreme—Derek Humphry and his suicide manual, *Final Exit*; Dr. Jack Kevorkian and his "suicide machine"—are those who believe assisted suicide is an act of mercy. In the middle are people who feel that withholding life support in accordance with a patient's instructions is acceptable, while actively helping someone to die is not.

Opinions may be shifting. In a recent Washington State referendum a proposition calling for physician-assisted euthanasia was defeated by only a narrow margin. Like it or not, Americans are being brought face to face with the issue of dying. Although no one can choose *whether* to die, more and more we are being given a choice of *how* (or how not) to die. Signing a living will and naming a medical proxy can help insure that our wishes will be carried out. ■

"Advance Directives" Advice

If you check into a hospital, expect to be asked about your "advance directives." This query is required by the 1990 Federal Patient Self-Determination Act. You don't have to sign a living will, but you must be informed of that choice.

Here's how to prepare advance directives on your own:

- **Assign a health-care proxy and an alternate.** To do this, make out a health-care proxy form (*see below*). You don't need a lawyer, just two adult witnesses. Be sure that the people you name know your wishes and are willing to make life-and-death decisions for you.
- **Sign a living will.** Include what you *do* want as well as what you *don't*. For example: Don't say "no medication" if you would want painkillers. Instead, specify "comfort care." Update your living will and health-care proxy every year or so and alert your doctor to their existence. You can cancel your advance directives at any time.
- **Send for free living-will and health-care proxy forms.** Write to Choice in Dying, Box FC, 200 Varick St., New York, NY 10014. (For appropriate forms, specify your state.) □

Kruven Ahnrodt

Information for Patients About Healthcare Decisions

Including Advance Directive Form

By Federal law we are required to provide you the following information about your healthcare rights under Oregon law.

Every competent adult has the right to make fundamental decisions regarding his or her medical treatment. This includes the right to accept or refuse treatment and to prepare an advance directive.

This pamphlet describes the advance directive document available in Oregon. We encourage you to discuss this information with your physician, family members, friends and anyone else who may be involved if you become ill.

In some cases an illness or injury may prevent you from expressing your wishes regarding the medical care you would like to receive.

Oregon law allows you to use a legal document so you can retain control over the medical care you receive when you are unable to express your wishes. That document is called an Advance Directive.

Although the Advance Directive is a legal document, you do not need a lawyer to prepare it. This document, which accompanies this pamphlet, as the last six pages, has instructions that will aid you in completing it. Once you complete it, tear it out of this pamphlet and put it in a safe place. Give copies to family, friends and healthcare providers that are interested in your healthcare.

You are not required to complete this form and no healthcare facility will refuse to care for you or otherwise discriminate against you based on whether or not you have completed an Advance Directive. Regardless of your decision, it is important that you discuss your wishes with your relatives, close friends, spiritual advisor, attorney, physician and other caregivers. Open communication with people who care about you will greatly improve your chances of receiving the healthcare you want if you become unable to express your desires directly.



Health System

Legacy Health System Statement

Legacy Health System is an organization of healthcare providers dedicated to caring, compassion and excellence.

We are committed as a healthcare system to enhance the quality of life by improving the health status of the communities we serve.

We are further committed to serving all in need within our resources. Our purpose is to provide and manage comprehensive, accessible, integrated healthcare services that emphasize clinical excellence, value and human sensitivity.

We respect the right of

individuals to make healthcare decisions, including the right to accept or refuse medical or surgical treatment.

We are committed to serving all patients in need whether or not the patient has executed an Advance Directive.

While we are unable to witness the Advance Directive, you may contact the following departments if you have any questions:

Bishop Morris Care Center	Social Services	227-3791
Emanuel Hospital & Health Center	Social Services Patient Relations Pastoral Services	280-4103 280-4042 280-4151
Good Samaritan Hospital & Medical Center	Pastoral Services Social Services Patient Relations	229-7057 229-7629 229-2408
Legacy Visiting Nurse Association	Social Services	220-1000
Meridian Park Hospital	Admitting	692-2283
Mount Hood Medical Center	Community Health	661-9287

You should also make sure you speak with the following people about your Advance Directive:

- Family
- Close Friends
- Spiritual Advisor
- Physician
- Attorney

Your Right to Make Health Care Decisions in Oregon

Do I have to accept all medical treatment that is available? No. You have a right to accept or refuse any proposed medical tests or treatment.

How will I know how to decide? Your doctor will tell you what treatment or testing he or she recommends. Your doctor will also tell you that there may be alternatives and risks. If you want to know more, your doctor will tell you about the treatment or test, the available alternatives and the material risks. When you have enough information, you decide whether to have the test or treatment.

How can I plan ahead for a time when I may be unable to make decisions? Oregon has an official form you can sign to cover future situations where you are unable to decide. The form is called an Advance Directive. It has two main parts, one called "Health Care Instructions" and the other called "Appointment of Health Care Representative."

How can I control what health care I get if I become unable to make health care decisions? By completing the "Health Care Instructions" on the Advance Directive form. This lets you control the medical treatment you get and under what circumstances you will get it.

How do I appoint someone else to act for me? By making the "Appointment of Health Care

Representative" on the Advance Directive form. This lets you select another adult as your representative. That person should be someone you trust to decide about your health care when you cannot do so yourself. Your representative cannot act for you unless you become unable to make your own decisions. You may also appoint an alternative representative. The representative and any alternate must sign the form agreeing to serve. The Advance Directive form lets you say what decisions those persons may make for you. It is a good idea to discuss your wishes with the person(s) you appoint.

How does an advance directive take effect? If you are an adult able to make your own decisions, you can sign an Advance Directive at any time. You do not have to fill out and sign the form if you do not want to. But if you do, your doctor must follow it or allow you to be transferred to a doctor who will. Signing the form will not affect your insurance.

How do I obtain and sign my advance directive? Health care facilities and some stationery stores have the official form. Lawyers and doctors may have one or help you obtain one. In Oregon, the only reliable way to be sure your wishes are followed is to use the official form. Read and follow the "Important Information" at the beginning of the form. If the printed form does not express your wishes, you may cross words out or write your own words in. Do not add anything about money or

property. The form must be signed by you and two witnesses who must satisfy special requirements. Send a copy to your doctor and to the person you choose as a representative. Keep the original where it can be easily found.

How long does an advance directive remain in effect? You may write in an expiration date. If you do not, the form will be good until you revoke it. You may revoke it at any time and in any manner, but the best way is by notifying those who have your form. Unless you say otherwise on the form, a new Advance Directive takes priority over an older one. Your representative can withdraw at any time by notifying you or your doctor. Divorce revokes appointment of a spouse but you can reaffirm appointment by signing a new directive.

Are there any decisions my representative can make? Yes. Your representative may not decide about mental health treatment, sterilization, abortion, psychosurgery, shock treatment or mercy killing. You can make advance decisions about mental health treatment using an official form called a "Declaration for Mental Health Treatment," available from some stationery stores or your local mental health agency.

How will my representative make decisions for me? Your representative must act in the way you specify on an Advance Directive form. He or she must also

follow your known wishes. If your representative does not know what you want, he or she must act in your best interest. Your representative does not have to pay your medical bills.

Can my representative prevent or stop life support?

Yes, if your Advance Directive form says so. If you have not given specific instructions, the law specifies four critical medical conditions in which your representative may decide about life support for you:

- Life support would not benefit you and would cause you permanent and severe pain;
- You are close to death and life support would only postpone the moment of your death;
- You are permanently unconscious; or
- You are in an advanced stage of a progressive, fatal illness.

The law also allows your representative to decide about life support in other circumstances you designate on the form. But you must get routine care for your cleanliness and comfort. Life support will not be prevented or stopped if your form says you would want it continued.

Can my representative order or stop food or water by tube? Yes, if your Advance Directive form says so. In addition, your representative may prevent or stop tube feeding if you have clearly said that you would refuse

it. Otherwise, you must get tube feeding that would prolong your life, unless you have one of the four critical medical conditions that the law specifies. Your representative cannot refuse food or water you can take in a normal way.

How are decisions made for me if I do not have an official form?

If you have one of the four critical medical conditions that the law specifies, an Oregon statute allows close relatives and friends to decide about life support for you. Otherwise, the law does not clearly identify the decisions that relatives or friends may make for you. Relatives, friends or others may seek clear authority from a court by being appointed your guardian.

Is an advance directive I signed under another state's law good in Oregon?

Yes, if you did not live in Oregon when you signed it. Oregon residents may only use an Oregon form.

Are Oregon's earlier official forms still good?

Yes. If you signed a "Power of Attorney for Health Care" or a "Directive to Physicians" before November 4, 1993 you can still use it. Even though the old forms are similar to the Advance Directive, there are some big differences:

- A Directive to Physicians says that you do not want life support which would only postpone your death when you are close to death. It does not cover any other situation.

- A Power of Attorney for health care allows your representative to stop life support if you checked the line on the form referring to "life sustaining procedures." It allows your representative to prevent or stop food and water by tube if you checked the line on the form referring to "artificially administered nutrition and hydration." Otherwise, the form allows your representative to forego tube feeding for you only if you have one of the four critical medical conditions that the law specifies.

- Unless you sign an Advance Directive, the directive to physicians remains in effect unless or until you revoke it. The Power of Attorney for health care expires after seven years unless you are already incapable when it expires.

How can I find out more?

By calling Oregon Health Decisions, a private nonprofit corporation (241-0744 or toll free 1-800-422-4805), or by consulting an attorney.

NOTE: This statement reflects Oregon law effective November 4, 1993. It is a general summary of the rights of competent adults in Oregon. It does not contain all the technical details of the law. Also, it does not deal with decisions for minors, for those who are now mentally incapable, or about treatment outside Oregon.

Advance Directive

You do not have to fill out and sign this form

PART A

Important Information About This Advance Directive

This is an important legal document. It can control critical decisions about your healthcare. Before signing, consider these important facts:

Facts About Part B (Appointing a Healthcare Representative). You have the right to name a person to direct your healthcare when you cannot do so. This person is called your "healthcare representative." You can do this by using Part B of this form. Your representative must accept on Part E of this form.

You can write in this document any restrictions you want on how your healthcare representative will make decisions for you. Your healthcare representative must follow your desires as stated in this document or otherwise made known. If your desires are unknown, your healthcare representative must try to act in your best interest. Your healthcare representative can resign at any time.

Facts About Part C (Giving Healthcare Instructions). You also have the right to give instructions for healthcare providers to follow if you become unable to direct your care. You can do this by using Part C of this form.

Facts About Completing this Form. This form is valid only if you sign it voluntarily and when you are of sound mind. If you do not want an Advance Directive, you do not have to sign this form.

Unless you have limited the duration of this Advance Directive, it will not expire. If you have set an expiration date and you become unable to direct your healthcare before that date, this Advance Directive will not expire until you are able to make those decisions again.

You may revoke this document at any time. To do so, notify your healthcare representative and your healthcare provider of the revocation.

Despite this document you have the right to decide your own healthcare as long as you are able to do so.

If there is anything in this document that you do not understand, ask a lawyer to explain it to you.

You may sign Part B, Part C or both parts. You may cross out words that do not express your wishes or add words that better express your wishes. Witnesses must sign Part D.

PRINT YOUR NAME, BIRTH DATE AND ADDRESS HERE:

Name

Birth Date

Address

UNLESS REVOKED OR SUSPENDED, THIS ADVANCE DIRECTIVE WILL CONTINUE FOR:

Initial One:

___ My Entire Life

___ Other Period (___ Years)

PART B

Appointment of Healthcare Representative

I appoint _____ as my healthcare representative. My healthcare representative's address is _____ and my healthcare representative's telephone number is _____.

I appoint _____ as my alternate healthcare representative. My alternate healthcare representative's address is _____ and my alternative healthcare representative's telephone number is _____.

I authorize my healthcare representative (or alternate) to direct my healthcare when I cannot do so.

Note: You may not appoint your doctor, an employee of your doctor or an owner, operator or employee of your healthcare facility unless that person is related to you by blood, marriage or adoption or that person was appointed before your admission into the healthcare facility.

1. **Limits.** Special conditions or instructions:

Initial if this applies:

_____ I have executed a Healthcare Instruction or Directive to Physicians. My healthcare representative is to honor it.

2. **Life Support.** "Life support" refers to any medical means for maintaining life, including procedures, devices and medications. If you refuse life support, you will still get routine measures to keep you clean and comfortable.

Initial if this applies:

_____ My healthcare representative **MAY** decide about life support for me. (If you do not initial this space, then your healthcare representative **MAY NOT** decide about life support.)

3. **Tube Feeding.** One sort of life support is food and water supplied artificially by medical device, known as tube feeding.

Initial if this applies:

_____ My healthcare representative **MAY** decide about tube feeding for me. (If you do not initial this space, then your healthcare representative **MAY NOT** decide about tube feeding.)

SIGN HERE TO APPOINT A HEALTHCARE REPRESENTATIVE

Signature of Person Making Appointment

Date

PART C

Healthcare Instructions

Note: In filling out these instructions, keep the following in mind:

1. The term "as my physician recommends" means that you want your physician to try life support if your physician believes it could be helpful and then discontinue it if it is not helping your health condition or symptoms.
2. "Life support" and "tube feeding" are defined in Part B above.
3. If you refuse tube feeding, you should understand that malnutrition, dehydration and death will probably result.
4. You will get care for your comfort and cleanliness no matter what choices you make.
5. You may either give specific instructions by filling out Items 1 to 4 below or you may use the general instruction provided by Item 5.

Here are my desires about my healthcare if my doctor and another knowledgeable doctor confirm that I am in a medical condition described below:

1. **Close to Death.** If I am close to death and life support would only postpone the moment of my death:

A. Initial One

- I want to receive tube feeding.
- I want tube feeding only as my physician recommends.
- I DO NOT WANT tube feeding.

B. Initial One

- I want any other life support that may apply.
- I want life support only as my physician recommends.
- I want NO life support.

2. **Permanently Unconscious.** If I am unconscious and it is very unlikely that I will ever become conscious again:

A. Initial One

- I want to receive tube feeding.
- I want tube feeding only as my physician recommends.
- I DO NOT WANT tube feeding.

B. Initial One

- I want any other life support that may apply.
- I want life support only as my physician recommends.
- I want NO life support.

3. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an advanced stage and I am consistently and permanently unable to communicate for any means, swallow food and water safely, care for myself and recognize my family and other people, and it is very unlikely that my condition will substantially improve:

A. Initial One

- I want to receive tube feeding.
- I want tube feeding only as my physician recommends.
- I DO NOT WANT tube feeding.

B. Initial One

- I want any other life support that may apply.
- I want life support only as my physician recommends.
- I want NO life support.

4. Extraordinary Suffering. If life support would not help my medical condition and would make me suffer permanent and severe pain:

A. Initial One

- I want to receive tube feeding.
- I want tube feeding only as my physician recommends.
- I DO NOT WANT tube feeding.

B. Initial One

- I want any other life support that may apply.
- I want life support only as my physician recommends.
- I want NO life support.

5. General Instruction.

Initial if this applies:

I do not want life to be prolonged by life support. I also do not want tube feeding as life support. I want my doctors to allow me to die naturally if my doctor and another knowledgeable doctor confirm I am in any of the medical conditions listed in Items 1 to 4 above.

6. Additional Conditions or Instructions.

Insert Description of What You Want Done

7. Other Documents. A "healthcare power of attorney" is any document you may have signed to appoint a representative to make healthcare decisions for you.

Initial one:

I have previously signed a healthcare power of attorney. I want it to remain in effect unless I appoint a healthcare representative after signing the healthcare power of attorney.

I have a healthcare power of attorney and, I REVOKE IT.
 I DO NOT have a healthcare power of attorney.

Date

SIGN HERE TO GIVE INSTRUCTIONS

Signature

PART D

Declaration of Witnesses

We declare that the person signing this Advance Directive:

1. Is personally known to us or has provided proof of identity;
2. Signed or acknowledged that person's signature on this Advance Directive in our presence;
3. Appears to be of sound mind and not under duress, fraud or undue influence;
4. Has not appointed either of us as healthcare representative or alternative representative; and
5. Is not a patient for whom either of us is attending physician.

WITNESSED BY:

Signature of Witness

Date

Printed Name of Witness

Signature of Witness

Date

Printed Name of Witness

Note: One witness must not be a relative (by blood, marriage or adoption) of the person signing this Advance Directive. That witness must also not be entitled to any portion of the person's estate upon death. That witness must also not own, operate or be employed at a healthcare facility where the person is a patient or resident.

PART E

Acceptance by Healthcare Representative

I accept this appointment and agree to serve as healthcare representative. I understand I must act consistently with the desires of the person I represent, as expressed in this Advance Directive or otherwise make known to me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document allows me to decide about that person's healthcare only while that person cannot do so. I understand that the person who appointed me may revoke this appointment. If I learn that this document has been suspended or revoked, I will inform the person's current healthcare provider if known to me.

Signature of
Healthcare Representative

Date

Printed Name of Healthcare Representative

Signature of
Alternative Healthcare Representative

Date

Printed Name of Alternate Healthcare
Representative

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/11/98

FURTHER: HESS

Date of 5-Day Notice: 2-19-98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2-26-98

Judiciary Committee considered

SENATE BILL NO. 291

"An Act relating to living wills, do not resuscitate orders, anatomical gifts, and the care and treatment of persons with serious medical conditions."

and recommends:

- be replaced with _____ CS FOR SB 291 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>J. Ellis</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>	<input checked="" type="checkbox"/>		
<i>A. Franco</i>	<input checked="" type="checkbox"/>	<i>Spantannell</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Robin K. Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Miss/EMS</i>	<i>2-20-98</i>	<i>-</i>	
<i>LAW/CIVIC</i>	<i>2-17-98</i>	<i>✓</i>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
BILL Bill Version: CS SB 291 (TUD)
(S) Publish Date: 2/26/98

Revision Date: _____
Title: An act related to living wills...
Sponsor: Senator Taylor
Requestor: Senate (JUD)

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Community Health/EMS Services
COMPONENT SERIAL NO. 2078
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Section of Community Health will absorb the costs of revising and distributing the forms, training materials, regulations, and brochure to implement changes in the Alaska Comfort One Program which would be necessitated by passage of the bill.

2/20/98
Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3090
Date: 02/20/98
Date: 2/24/98

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For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

No. 2

Bill Version: CS SB 291 (TJD)

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. (S) Publish Date: 2/26/98

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>An Act relating to living wills, do not resuscitate orders, anatomical gifts, and the care and treatment of persons ...</u>	BRU <u>Civil Division</u>
Sponsor <u>Senator Taylor</u>	Component <u>Human Services</u>
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2208</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 291 amends Title 18, Chapter 12, relating to living wills and do not resuscitate orders. The Department of Law's Human Services attorneys are often called upon by the Division of Senior Services and the Long Term Care Ombudsman to provide advice regarding these issues. SB 291 is not anticipated to increase this workload, and will have no fiscal impact on the department.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 2/17/98
 Date 2/17/98

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FISCAL NOTE

No. 2

Bill Version: CS SB 291 (TUD)

BILL NO. (S) Publish Date: 2/26/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to living wills, do not resuscitate BRU Civil Division
orders, anatomical gifts, and the care and treatment of persons ... Component Human Services
 Sponsor Senator Taylor
 Requester Senate Judiciary Committee Component Serial No. 2208

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 291 amends Title 18, Chapter 12, relating to living wills and do not resuscitate orders. The Department of Law's Human Services attorneys are often called upon by the Division of Senior Services and the Long Term Care Ombudsman to provide advice regarding these issues. SB 291 is not anticipated to increase this workload, and will have no fiscal impact on the department.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 2/17/98
 Date 2/17/98

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CS FOR SENATE BILL NO. 291(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living wills, do not resuscitate orders, anatomical gifts, and
2 the care and treatment of persons with serious medical conditions."

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

4 * Section 1. AS 13.26.344(l) is amended to read:

5 (l) In the statutory form power of attorney, the language conferring general
6 authority with respect to health care services shall be construed to mean that, as to the
7 health care of the principal, whether to be provided in the state or elsewhere, the
8 principal authorizes the agent to

9 (1) have access to and disclose to others medical and related
10 information and records;

11 (2) consent or refuse to consent to medical care, including the
12 withholding or withdrawal under AS 18.12.093(b) of life-sustaining procedures,
13 or relief for the principal from pain [, BUT THE AGENT MAY NOT AUTHORIZE
14 THE TERMINATION OF LIFE-SUSTAINING PROCEDURES];

1 (3) take all steps necessary to enforce a properly executed declaration
2 under AS 18.12;

3 (4) take all steps necessary to enforce a properly executed declaration
4 under AS 47.30.950 - 47.30.980 unless the principal has provided that an attorney-in-
5 fact appointed under AS 47.30.950 - 47.30.980 shall have exclusive authority with
6 regard to mental health treatment and the attorney-in-fact appointed under
7 AS 47.30.950 - 47.30.980 has not withdrawn;

8 (5) consent or refuse to consent to the principal's psychiatric care, but
9 the consent does not authorize a voluntary commitment or placement in a mental
10 health treatment facility, electroconvulsive or electric-shock therapy, psychosurgery,
11 sterilization, or an abortion except that, if the principal has properly executed a
12 declaration under AS 47.30.950 - 47.30.980, the agent may consent to voluntary
13 commitment or placement in a mental health treatment facility and electroconvulsive
14 or electric-shock therapy if that consent is consistent with the wishes expressed in the
15 declaration under AS 47.30.950 - 47.30.980 and if the principal has not designated
16 another attorney-in-fact to have exclusive authority to make decisions regarding mental
17 health treatment;

18 (6) arrange for care or lodging of the principal in a hospital, nursing
19 home, or hospice;

20 (7) grant releases to health care professionals or health care institutions;

21 (8) hire, discharge, or compensate an attorney, accountant, expert
22 witness, or assistant when the agent considers the action to be desirable for the proper
23 execution of the powers described in this subsection; and

24 (9) do any other act or acts that the principal can do through an agent
25 and that the agent considers desirable or necessary to provide for the principal's
26 physical or mental well-being.

27 * Sec. 2. AS 18.12.010(a) is amended to read:

28 (a) A competent person who is at least 18 years of age [OLD] may execute
29 a declaration at any time directing that life-sustaining procedures or artificially
30 administered nutrition and hydration be withheld or withdrawn from that person.
31 The declaration is given operative effect only if it has been medically determined

1 that the declarant is in a serious medical condition [THE DECLARANT'S
 2 CONDITION IS DETERMINED TO BE TERMINAL] and that the declarant is not
 3 able to make treatment decisions, except that, if the declaration contains an anatomical
 4 gift under AS 13.50, the gift takes effect on [UPON] the death of the person. The
 5 declaration shall be signed by the declarant, or another person at the declarant's
 6 direction. If signed by another person at the declarant's direction, the signer shall sign
 7 in the presence of two persons or a person who is qualified to take acknowledgments
 8 under AS 09.63.010. A person may not charge a fee for preparing a declaration.

9 * Sec. 3. AS 18.12.010(c) is repealed and reenacted to read:

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

11 LIVING WILL DECLARATION

12 YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM

13 Part A. Important Information About This Declaration.

14 This is an important legal document. It can control critical decisions
 15 about your health care. Before signing, consider the following facts:

16 (1) You have the right to name a person to direct your health
 17 care when you cannot do so. This person is called your "agent." You can do
 18 this by executing a health care power of attorney as defined in Part B, Item (G)
 19 of this document.

20 (2) This form is valid only if you sign it voluntarily. If you do
 21 not want a declaration, you do not have to sign this form.

22 (3) Unless you have limited the duration of this declaration, it
 23 will not expire. If you have set an expiration date and you become unable to
 24 direct your health care before that date, this declaration will not expire until
 25 you are able to make those decisions again.

26 (4) You may revoke this document at any time. Notify your
 27 agent and your health care provider of the revocation.

28 (5) Despite this document, you have the right to decide your
 29 own health care as long as you are able to do so. If there is anything in this
 30 document that you do not understand, ask a lawyer to explain it to you.

31 (6) You may cross out words that do not express your wishes

1 or add words that better express your wishes. Witnesses or a person qualified
2 to take acknowledgments under AS 09.63.010 must sign where indicated.

3 Print your name, birth date, and address here:

4 Name _____

5 Birth date _____

6 Address _____

7 Unless revoked or suspended, this declaration will continue for

8 INITIAL ONE:

9 _____ My entire life;

10 _____ Other period (_____ years).

11 Part B. Health Care Instructions.

12 NOTE: In filling out these instructions, keep the following in mind:

13 (1) the term "as my physician recommends" means that you
14 want your physician to try life support if your physician believes it could be
15 helpful and then discontinue it if it is not helping your health condition or
16 symptoms;

17 (2) "life support" and "tube feeding" are defined as follows:

18 (A) "life support" refers to any medical means for
19 maintaining life, including procedures, devices, and medications; if you
20 refuse life support, you will still get routine measures to keep you clean
21 and comfortable;

22 (B) "tube feeding" is food and water supplied artificially
23 by medical device; if you refuse tube feeding, you should understand
24 that malnutrition, dehydration, and death will result;

25 (3) you will get care for your comfort and cleanliness no matter
26 what choices you make;

27 (4) you may either give specific instructions by filling out Items
28 (A) - (D) below, or you may use the general instructions provided by Item (E).

29 Here are my desires about my health care if my doctor and another
30 knowledgeable doctor determine that I am in a medical condition described
31 below:

1 (A) Close to Death. If I am close to death and life
 2 support would only postpone the moment of my death

3 INITIAL ONE:

4 _____ I want to receive tube feeding;

5 _____ I want tube feeding only as my physician recommends;

6 _____ I DO NOT WANT tube feeding.

7 INITIAL ONE:

8 _____ I want any other life support that may apply;

9 _____ I want life support only as my physician recommends;

10 _____ I WANT NO life support.

11 (B) Permanently Unconscious. If I am unconscious and
 12 it is very unlikely that I will ever become conscious again

13 INITIAL ONE:

14 _____ I want to receive tube feeding;

15 _____ I want tube feeding only as my physician recommends;

16 _____ I DO NOT WANT tube feeding.

17 INITIAL ONE:

18 _____ I want any other life support that may apply;

19 _____ I want life support only as my physician recommends;

20 _____ I WANT NO life support.

21 (C) Advanced Progressive Illness. If I have a
 22 progressive illness that will be fatal and the illness is in an advanced
 23 stage and I am consistently and permanently unable to communicate by
 24 any means, to swallow food and water safely, to care for myself, and
 25 to recognize my family and other people, and if it is very unlikely that
 26 my condition will substantially improve

27 INITIAL ONE:

28 _____ I want to receive tube feeding;

29 _____ I want tube feeding only as my physician recommends;

30 _____ I DO NOT WANT tube feeding.

31 INITIAL ONE:

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- I want any other life support that may apply;
- I want life support only as my physician recommends;
- I WANT NO life support.

(D) Extraordinary Suffering. If life support would not help my medical condition and would make me suffer permanent and severe pain,

INITIAL ONE:

- I want to receive tube feeding;
- I want tube feeding only as my physician recommends;
- I DO NOT WANT tube feeding

INITIAL ONE:

- I want any other life support that may apply;
- I want life support only as my physician recommends;
- I WANT NO life support.

(E) General Instructions.

INITIAL IF THIS APPLIES:

I do not want my life to be prolonged by life support.

I also do not want tube feeding as life support. I want my doctors to allow me to die naturally if my doctor and another knowledgeable doctor determine I am in any of the medical conditions listed in Items (A) - (D) above.

(F) Additional Conditions or Instructions.

(G) Other Documents. A "health care power of attorney" is any document you may have signed under the power of attorney laws of Alaska to appoint an agent to make health care decisions for you.

INITIAL ONE:

I have previously signed a health care power of attorney; I want it to remain in effect unless I appoint another agent

L

1 after signing the health care power of attorney.

2 _____ I have a health care power of attorney and I REVOKE
3 IT;

4 _____ I DO NOT have a health care power of attorney.

5 (H) Organ Donations. Notwithstanding the other
6 provisions of this declaration, if I have donated an organ under this
7 declaration or by another method, and if I am in a hospital when a do
8 not resuscitate order is to be implemented for me, I do not want the do
9 not resuscitate order to take effect until the donated organ can be
10 evaluated to determine if the organ is suitable for donation.

11 OPTIONAL: In the event of my death, I donate the following
12 part(s) of my body for the purposes identified in AS 13.50.020:

13 _____ Any needed organ or tissue

14 Tissue:

15 _____ Eyes

16 _____ Bone and connective tissue

17 _____ Skin

18 _____ Heart

19 _____ Other: _____

20 Limitations: _____

21 Organ:

22 _____ Heart

23 _____ Kidney(s)

24 _____ Liver

25 _____ Lung(s)

26 _____ Pancreas

27 _____ Other: _____

28 Signed this _____ day of _____

29 Signature _____

30 Place _____

31 If another person is to sign for the declarant at the declarant's

direction, the person signing for the declarant must sign in the presence of two persons or a person who is qualified to take acknowledgments under AS 09.63.010. The witness form below may be used for the two witnesses. The acknowledgment form below may be used for the person qualified to take acknowledgments.

WITNESS FORM

Witness _____

Address _____

Witness _____

Address _____

ACKNOWLEDGMENT FORM

State of _____

_____ Judicial District

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

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any.

* Sec. 4. AS 18.12.010 is amended by adding new subsections to read:

(e) Unless the period of time that a declaration is to be effective is limited by the terms of the declaration, the declaration continues in effect until the declarant dies or the declaration is revoked under AS 13.50.050 or AS 18.12.020, whichever event occurs first.

(f) Notwithstanding (e) of this section, if the declarant is an incapable person at the expiration of the term of the declaration, the declaration continues in effect until the declarant is no longer an incapable person or the declarant dies.

* Sec. 5. AS 18.12.030 is amended to read:

1 **Sec. 18.12.030. Recording determination of [TERMINAL] condition and**
2 **contents of declaration.** When an attending physician who has been provided a copy
3 of a declaration determines that the declarant is in a serious medical [TERMINAL]
4 condition, the physician shall record that determination and the contents of the
5 declaration in the declarant's medical record.

6 * **Sec. 6.** AS 18.12.040(b) is repealed and reenacted to read:

7 (b) Persons caring for a patient from whom life-sustaining procedures or
8 artificially administered nutrition and hydration are withheld or withdrawn shall
9 provide care to ensure the patient's comfort and cleanliness, including

10 (1) body hygiene, including oral hygiene;

11 (2) reasonable efforts to offer food and fluids orally;

12 (3) medication, positioning, warmth, appropriate lighting, and other
13 measures to relieve pain and suffering; and

14 (4) privacy and respect for the dignity and humanity of the patient.

15 * **Sec. 7.** AS 18.12.080(a) is repealed and reenacted to read:

16 (a) Nothing in this chapter is intended to condone, authorize, or approve mercy
17 killing or to permit an affirmative or deliberate act or omission to end life, other than
18 to allow the natural process of dying. The withholding or withdrawing of a life-
19 sustaining procedure or of artificially administered nutrition and hydration under this
20 chapter does not, for any purpose, constitute a suicide, assisting a suicide, mercy
21 killing, or assisted homicide.

22 * **Sec. 8.** AS 18.12 is amended by adding new sections to read:

23 **Sec. 18.12.093. Withholding or withdrawal of life-sustaining procedures**
24 **from incapable persons.** (a) Life-sustaining procedures that would otherwise be
25 applied to an incapable person who does not have an applicable valid declaration may
26 be withheld or withdrawn under (b) - (f) of this section if the incapable person is
27 medically determined to be in a serious medical condition.

28 (b) An appointed agent of an incapable person who does not have an
29 applicable valid declaration, or a health care agent of the incapable person if the
30 incapable person does not have an appointed agent, may decide whether to withhold
31 or withdraw life-sustaining procedures from the incapable person.

1 (c) If an incapable person does not have an appointed agent or a health care
2 agent, life-sustaining procedures may be withheld or withdrawn upon the direction and
3 under the supervision of the person's attending physician, but only after the physician
4 has consulted with concerned family and close friends of the person.

5 (d) Upon the direction and under the supervision of the attending physician,
6 life-sustaining procedures may be withheld or withdrawn under (b) of this section from
7 an incapable person by the person's appointed agent or health care agent only after the
8 family and close friends of the incapable person have been consulted.

9 (e) Before withholding or withdrawing life-sustaining procedures from a person
10 under this section, the person's attending physician must determine that the conditions
11 of this section have been met.

12 (f) In this section,

13 (1) "appointed agent" means a person appointed an attorney in fact
14 under a health care power of attorney;

15 (2) "health care agent" means the first of the following persons, in the
16 following order, who can be located by reasonable effort of the health care provider
17 and who is willing to serve as the health care agent for the incapable person:

18 (A) the incapable person's guardian if the guardian is authorized
19 to make health care decisions for the incapable person;

20 (B) the spouse of the incapable person;

21 (C) an adult designated by the persons listed in (A), (B), and
22 (D) - (G) of this paragraph who can be located by reasonable effort of the
23 health care provider unless one of the other persons listed in this paragraph
24 objects to the designation; in this subparagraph, "persons listed" means, for the
25 purposes of (D) and (F) of this paragraph, the majority required by (D) and
26 (F) of this paragraph;

27 (D) a majority of the incapable person's children who are adults
28 and who can be located by reasonable effort of the health care provider;

29 (E) a parent of the incapable person;

30 (F) a majority of the incapable person's siblings who are adults
31 and who can be located by reasonable effort of the health care provider; or

1 (G) an adult relative or adult friend of the incapable person.

2 Sec. 18.12.095. Consent to artificially administered nutrition and
3 hydration. (a) If a person does not have a declaration that clearly states whether or
4 not the person wants artificially administered nutrition and hydration, it is presumed
5 that, if the person is temporarily or permanently an incapable person, the person has
6 consented to artificially administered nutrition and hydration, except for hyper
7 alimentation, necessary to sustain life, unless

8 (1) while a capable adult, the person clearly and specifically stated that
9 the person would have refused artificially administered nutrition and hydration in a
10 similar situation;

11 (2) administration of the nutrition and hydration is not medically
12 feasible or would itself cause severe, intractable, or long-lasting pain;

13 (3) the person is in a state of permanent unconsciousness;

14 (4) the person has a terminal condition; or

15 (5) the person has a progressive illness that will be fatal and is in an
16 advanced stage, the person is consistently and permanently unable to communicate by
17 any means, to swallow food and water safely, to care for the person's self, and to
18 recognize the person's family and other people, and it is very unlikely that the person's
19 condition will substantially improve.

20 (b) If a person has a declaration that clearly states that the person does not
21 want artificially administered nutrition and hydration or if the presumption established
22 by (a) of this section has been overcome under (a)(1) - (5) of this section, artificially
23 administered nutrition and hydration may be withheld or withdrawn.

24 (c) Before withholding or withdrawing artificially administered nutrition and
25 hydration from a person under this section, the person's attending physician must
26 determine that the conditions of this section have been met.

27 (d) The medical circumstances described in (a)(2) - (5) of this section must be
28 medically determined to overcome the presumption established by this section.

29 * Sec. 9. AS 18.12.100(9) is amended to read:

30 (9) "life-sustaining procedure" means a medical procedure, a
31 pharmaceutical, a medical device, or an intervention that maintains life by

1 sustaining, restoring, or supplanting a vital function, but does not include routine
2 care necessary to sustain patient cleanliness and comfort or artificially
3 administered nutrition and hydration [, WHEN ADMINISTERED TO A
4 QUALIFIED PATIENT, WILL SERVE ONLY TO PROLONG THE DYING
5 PROCESS];

6 * Sec. 10. AS 18.12.100(11) is amended to read:

7 (11) "qualified patient" means a patient who has executed a declaration
8 in accordance with this chapter and who has been medically determined [BY THE
9 ATTENDING PHYSICIAN] to be in a serious medical [TERMINAL] condition;

10 * Sec. 11. AS 18.12.100(12) is repealed and reenacted to read:

11 (12) "terminal condition" means a health condition in which death is
12 imminent regardless of treatment, and where the application of life-sustaining
13 procedures or the artificially administered nutrition and hydration serves only to
14 postpone the moment of death of the patient.

15 * Sec. 12. AS 18.12.100 is amended by adding new paragraphs to read:

16 (13) "artificially administered nutrition and hydration" means a medical
17 intervention providing food and water by tube, mechanical device, or other medically
18 assisted method, but does not include the usual and typical methods of providing
19 nutrition and hydration, such as the provision of nutrition and hydration by cup, hand,
20 bottle, drinking straw, or eating utensil;

21 (14) "health care power of attorney" means a power of attorney under
22 AS 13.26.332 that includes authority regarding health care services;

23 (15) "incapable" means lacking the ability to make and communicate
24 health care decisions to health care providers, including communication through
25 persons familiar with the patient's manner of communication if those persons are
26 available;

27 (16) "medically determined" means determined by two physicians, one
28 of whom must be the attending physician, who have personally examined the person;

29 (17) "permanently unconscious" means a condition where a person
30 completely lacks an awareness of self and external environment, without a reasonable
31 possibility of a return to a conscious state, and the condition has been confirmed by

1 a neurological specialist who is an expert in the examination of unresponsive persons;

2 (18) "serious medical condition" means

3 (A) a terminal condition;

4 (B) a permanently unconscious condition;

5 (C) a condition in which administration of life-sustaining
6 procedures would not benefit the patient's medical condition and would cause
7 permanent and severe pain; or

8 (D) a progressive illness that will be fatal and is in an advanced
9 stage; the person is consistently and permanently unable to communicate by
10 any means, to swallow food and water safely, to care for the person's self, and
11 to recognize the person's family and other people; and it is very unlikely that
12 the person's condition will substantially improve.

13 * Sec. 13. AS 18.12.080(f) is repealed.

SB

295

Alaska State Legislature

SENATE DISTRICT 1

Bayshore	Abbott Loop
Campbell	Bear Valley
Dimond	Bird Creek/Indian
Independence Park	Girdwood
Klatt	Glen Alps
Old Seward	Hillside
Southport	Huffman/O'Malley
Taku	Portage
	Rabbit Creek



SENATOR SEAN PARNELL

716 WEST 4TH AVENUE, SUITE 530
ANCHORAGE, ALASKA 99501
(907) 258-8194

While in Session:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2995 1-800-365-2995

SPONSOR STATEMENT

Senate Bill 295

The purpose of this legislation is two-fold: to provide law enforcement with an additional avenue for pursuit of those who prey on children and to codify in statute the role of law enforcement and the Division of Family and Youth Services during child protection investigations which may result in criminal charges.

Section one of the bill makes it a crime to lure or entice a child under the age of 12 into a building, dwelling, or vehicle for an unlawful purpose.

The second section of the bill would clarify the roles of law enforcement and DFYS during criminal investigations of reports of harm to children. The Department of Health and Social Services would enter into formal agreements with either local police departments or the state troopers allowing enforcement to assume the lead role during these criminal investigations.

While protocols exist informally between some law enforcement agencies and DFYS, this legislation provides a blueprint furthering this effort statewide. DFYS will continue to be the point of contact for all reports of abuse and neglect as well as performing initial investigations of those reports.

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. SB 295 | _____

Revision Date (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>An Act relating to children and crimes involving</u>	BRU	Criminal Division
children.	Component	1st-4th Judicial Districts
Sponsor <u>Senator Pamell</u>		OSPA
Requester <u>Senate Judiciary Committee</u>	Component Serial No.	<u>2198/99/2261/79/01/03</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

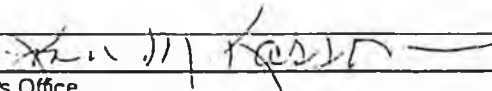
POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 295 creates a new crime of luring or enticing a child if the person lures or entices a child under 12 years of age into a building, dwelling, or vehicle for an unlawful purpose. The bill further changes the way that child protective investigations would be managed when occurring in conjunction with a criminal investigation.

The Department of Law anticipates that if enacted, luring or enticing charges filed under the law will be in conjunction with other charges, such as physical abuse and/or sexual assault. As these crimes would be prosecuted under current law, the department does not expect any increased costs from creation of the new crime. The proposed change in how child protective investigations are managed will also have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson 
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 3/20/98
 Date 3/20/98

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SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/12/98

FURTHER: Finance

Date of 5-Day Notice: 3/19/98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/26/98

Judiciary Committee considered

SENATE BILL NO. 295

"An Act relating to children and crimes involving children."

and recommends:

- be replaced with _____ CS SB 295 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Grinnell</i>	✓				
<i>Mike Miller</i>	X				
<i>Keane</i>	✓				
CHAIR: <i>John L. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

#1	DOA	3/25/98		***
#2	DOLaw	3/20/98	0	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 2
 Bill Version: CSSB295(Jud)
 (S) Publish Date: 3/26/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>An Act relating to children and crimes involving</u>	BRU <u>Criminal Division</u>
<u>children.</u>	Component <u>1st-4th Judicial Districts</u>
Sponsor <u>Senator Parnell</u>	<u>OSPA</u>
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2198/99/2261/79/01/03</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 295 creates a new crime of luring or enticing a child if the person lures or entices a child under 12 years of age into a building, dwelling, or vehicle for an unlawful purpose. The bill further changes the way that child protective investigations would be managed when occurring in conjunction with a criminal investigation.

The Department of Law anticipates that if enacted, luring or enticing charges filed under the law will be in conjunction with other charges, such as physical abuse and/or sexual assault. As these crimes would be prosecuted under current law, the department does not expect any increased costs from creation of the new crime. The proposed change in how child protective investigations are managed will also have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson
 Division Attorney General's Office

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

Phone 465-5370
 Date 3/20/98

Date 3/20/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CS SB 295(jud)
(S) Publish Date: 3/26/98

Revision Date: _____
Title: "An Act relating to children and crimes involving children"
Sponsor: Senator Parnell
Requestor: (S)JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 3/25/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 295

#1

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

The bill creates a new class B felony crime of luring or enticing a child under 12 years of age into a building or vehicle for an unlawful purpose. Any such act without the consent of parent or guardian is prima facie evidence of an "unlawful purpose", which is not otherwise defined.

There are affirmative defenses if the action was necessary to prevent the child from being seriously injured, was for a lawful purpose, or the person acted reasonably under the circumstances and did not intend to harm the health, safety or welfare of the child.

The Department of Law is unable to predict how many additional felony cases may be prosecuted under this section. For each additional felony case there is an increased cost to the Public Defender Agency. Without accurate predictions as to numbers, impact is certain, but unquantifiable.

SB

297

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/12/98

FURTHER: Finance

Date of 5-Day Notice: 3/16/98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-2-98

Judiciary Committee considered SENATE BILL NO. 297

"An Act relating to breast-feeding."

and recommends:

- be replaced with _____ CS FOR SB 297 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
 - same title
 - new title
- House Bill:
 - same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John Sellers</i>	<input checked="" type="checkbox"/>				
<i>Heard Parnell</i>	<input checked="" type="checkbox"/>				
<i>Mike Duller</i>	<input checked="" type="checkbox"/>				
<i>Deance</i>	<input checked="" type="checkbox"/>				
<i>CHAIR: Judith Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

LAW-CRIM. DIV. OSPA	3-27-98	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1
 Bill Version: SB 297
 (S) Publish Date: 4-2-98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to breast-feeding. BRU Criminal Division
 Component 1st-4th Judicial Districts
 Sponsor Senator Ellis OSPA _____
 Requester Senate Judiciary Committee Component Serial No. 2198/99/2261/79/01/02

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 SB 297, to be known as the Breast-feeding Promotion and Protection Act of 1998, would insure that breast-feeding is not illegal under state laws or local ordinances. In addition, the bill would create a new class B misdemeanor for interference with the right to breast-feed.

 The Department of Law does not anticipate a caseload increase sufficient to warrant fiscal note costs.

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date 3/27/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 3/27/98
 Agency Department of Law

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CS FOR SENATE BILL NO. 297(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR ELLIS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to breast-feeding."

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

3 * Section 1. This Act may be known as the Breast-feeding Promotion and Protection Act
4 of 1998.

5 * Sec. 2. LEGISLATIVE FINDINGS. The legislature finds that

6 (1) the medical profession in the United States recommends that children from
7 birth to the age of one year should be breast-fed unless, under particular circumstances, it is
8 medically inadvisable;

9 (2) despite the recommendation of the medical profession, statistics reveal a
10 declining percentage of mothers who are choosing to breast-feed their babies;

11 (3) many new mothers are now choosing to use formula rather than to breast-
12 feed even before they leave the hospital, and only a small percentage of all mothers are still
13 breast-feeding when their babies are six months old;

14 (4) in addition to the benefit of improving bonding between mothers and their
15 babies, breast-feeding offers better nutrition, digestion, and immunity for babies than does

1 formula-feeding, and it may increase the intelligence quotient of a child;

2 (5) babies who are breast-fed have lower rates of death, meningitis, childhood
3 leukemia and other cancers, diabetes, respiratory illnesses, bacterial and viral infections,
4 diarrheal diseases, otitis media, allergies, obesity, and developmental delays;

5 (6) breast-feeding also provides significant benefits to the health of the mother,
6 including protection against breast cancer and other cancers, osteoporosis, and infections of
7 the urinary tract;

8 (7) the incidence of breast cancer in the United States might be reduced by 25
9 percent if every woman breast-fed all her children until they reached the age of two years;

10 (8) the World Health Organization and the United Nations Children's Fund
11 have established as one of their major goals for the decade the encouragement of breast-
12 feeding;

13 (9) the social constraints of modern society weigh against the choice of breast-
14 feeding and lead new mothers with demanding time schedules to choose formula-feeding to
15 avoid embarrassment, social ostracism, or criminal prosecution; and

16 (10) any promotion of family values should encourage public acceptance of
17 this most basic act of nurture between a mother and her baby, and a mother should not be
18 made to feel incriminated or socially ostracized for breast-feeding her child.

19 * Sec. 3. AS 01.10.060(b) is amended by adding a new subsection to read:

20 (b) In the laws of the state, "lewd conduct," "lewd touching," "immoral
21 conduct," "indecent conduct," and similar terms do not include the act of a woman
22 breast-feeding a child in a public or private location where the woman and child are
23 otherwise authorized to be, irrespective of whether the nipple of the woman's breast
24 is uncovered during or incidental to the breast feeding. Nothing in this subsection may
25 be construed to authorize an act that is an offense under AS 11.61.123.

26 * Sec. 4. AS 11.76 is amended by adding a new section to read:

27 **Sec. 11.76.150. Interference with the right to breast-feed.** (a) A person
28 commits the offense of interference with the right of a woman to breast-feed a child
29 if the person intentionally prevents or restricts a woman from breast-feeding a child
30 in a common carrier, place of public accommodation, or other place to which the
31 general public is invited and where the woman and child are otherwise authorized to

1 be present, irrespective of whether the nipple of the woman's breast is uncovered
2 during or incidental to the breast feeding.

3 (b) Interference with the right of a woman to breast-feed a child is a violation.

4 * Sec. 5. AS 29.10.200 is amended to read:

5 **Sec. 29.10.200. Limitation of home rule powers.** Only the following
6 provisions of this title apply to home rule municipalities as prohibitions on acting
7 otherwise than as provided. These provisions supersede existing and prohibit future
8 home rule enactments that provide otherwise:

- 9 (1) AS 29.05.140 (transition);
- 10 (2) AS 29.06.010 (change of municipal name);
- 11 (3) AS 29.06.040 - 29.06.060 (annexation and detachment);
- 12 (4) AS 29.06.090 - 29.06.170 (merger and consolidation);
- 13 (5) AS 29.06.190 - 29.06.420 (unification of municipalities);
- 14 (6) AS 29.06.450 - 29.06.530 (dissolution);
- 15 (7) AS 29.10.100 (charter amendment);
- 16 (8) AS 29.20.010 (conflict of interest);
- 17 (9) AS 29.20.020 (meetings public);
- 18 (10) AS 29.20.050 (legislative power);
- 19 (11) AS 29.20.060 - 29.20.120 (assembly composition and
20 apportionment);
- 21 (12) AS 29.20.140 (qualifications of members of governing bodies);
- 22 (13) AS 29.20.150 (term of office);
- 23 (14) AS 29.20.220 (executive power);
- 24 (15) AS 29.20.270(e) (ordinance veto by mayor);
- 25 (16) AS 29.20.630 (prohibited discrimination);
- 26 (17) AS 29.20.640 (reports);
- 27 (18) AS 29.25.010(a)(10) (municipal exemption on contractor bond
28 requirements);
- 29 (19) AS 29.25.050 (codification);
- 30 (20) AS 29.25.060 (resolutions);
- 31 (21) AS 29.25.080 (breast-feeding);

- 1 (22) AS 29.26.030 (notice of elections);
- 2 (23) [(22)] AS 29.26.050 (voter qualification);
- 3 (24) [(23)] AS 29.26.250 - 29.26.360 (recall);
- 4 (25) [(24)] AS 29.35.020 (extraterritorial jurisdiction);
- 5 (26) [(25)] AS 29.35.030 (eminent domain);
- 6 (27) [(26)] AS 29.35.050 (garbage and solid waste services);
- 7 (28) [(27)] AS 29.35.055 (local air quality control program);
- 8 (29) [(28)] AS 29.35.060 (franchises and permits);
- 9 (30) [(29)] AS 29.35.070 (public utilities);
- 10 (31) [(30)] AS 29.35.080 (alcoholic beverages);
- 11 (32) [(31)] AS 29.35.120 (post audit);
- 12 (33) [(32)] AS 29.35.131 (enhanced 911 system);
- 13 (34) [(33)] AS 29.35.145 (regulation of firearms);
- 14 (35) [(34)] AS 29.35.160 (education);
- 15 (36) [(35)] AS 29.35.170(b) (assessment and collection of taxes);
- 16 (37) [(36)] AS 29.35.180(b) (land use regulation);
- 17 (38) [(37)] AS 29.35.250 (cities inside boroughs);
- 18 (39) [(38)] AS 29.35.260 (cities outside boroughs);
- 19 (40) [(39)] AS 29.35.340 (acquisition of areawide power);
- 20 (41) [(40)] AS 29.35.500 - 29.35.590 (hazardous materials and wastes);
- 21 (42) [(41)] AS 29.40.160(a) - (c) (title to vacated areas);
- 22 (43) [(42)] AS 29.40.200 (subdivisions of state land);
- 23 (44) [(43)] AS 29.45.010 - 29.45.570 (property taxes);
- 24 (45) [(44)] AS 29.45.650(c), (d), (e), and (f) (sales and use tax);
- 25 (46) [(45)] AS 29.45.700(d) (sales and use tax);
- 26 (47) [(46)] AS 29.47.200(b) (security for bonds);
- 27 (48) [(47)] AS 29.47.260 (construction);
- 28 (49) [(48)] AS 29.47.470 (air carriers);
- 29 (50) [(49)] AS 29.60.050(a) (limitation on computation and use of
- 30 payment);
- 31 (51) [(50)] AS 29.60.120(a) and (c) (priority revenue sharing for health

1 facilities and hospitals);

2 ~~(52)~~ [(51)] AS 29.65 (general grant land);

3 ~~(53)~~ [(52)] AS 29.71.040 (procurement preference for state agricultural
4 and fisheries products);

5 ~~(54)~~ [(53)] AS 29.71.050 (procurement preference for recycled Alaska
6 products).

7 * Sec. 6. AS 29.25 is amended by adding a new section to read:

8 **Sec. 29.25.080. Breast-feeding.** A municipality may not enact an ordinance
9 that prohibits or restricts a woman breast-feeding a child in a public or private location
10 where the woman and child are otherwise authorized to be. In a municipal ordinance,
11 "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar
12 terms do not include the act of a woman breast-feeding a child in a public or private
13 location where the woman and child are otherwise authorized to be, irrespective of
14 whether the nipple of the woman's breast is uncovered during or incidental to the
15 breast feeding. Nothing in this section may be construed to authorize an act that is an
16 offense under a municipal ordinance that establishes an offense with elements
17 substantially equivalent to the elements of an offense under AS 11.61.123. This
18 section is applicable to home rule and general law municipalities.

19 * Sec. 7. AS 44.83.990(4) is amended to read:

20 (4) "person" includes a public agency in addition to the entities set out
21 in AS 01.10.060(a)(8) [AS 01.10.060(8)];

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 297

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>An Act relating to breast-feeding.</u>	BRU <u>Criminal Division</u>
Sponsor <u>Senator Ellis</u>	Component <u>1st-4th Judicial Districts</u>
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2198/99/2261/79/01/02</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 297, to be known as the Breast-feeding Promotion and Protection Act of 1998, would insure that breast-feeding is not illegal under state laws or local ordinances. In addition, the bill would create a new class B misdemeanor for interference with the right to breast-feed.

The Department of Law does not anticipate a caseload increase sufficient to warrant fiscal note costs.

Prepared by	Joan M. Kasson <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division	Attorney General's Office	Date <u>3/27/98</u>
Approved by Commissioner	Bruce M. Botelho, Attorney General	Date <u>3/27/98</u>
Agency	Department of Law	

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SENATOR JOHNNY ELLIS

Sponsor Statement For Senate Bill 297

"The Breast-feeding Promotion and Protection Act"

Breast-feeding is the most basic act of nurturing between a mother and her baby. Alaska law must be clear that mothers who breast-feed their babies in public will not be prosecuted under indecent exposure and lewd conduct laws. Senate Bill 297, "The Breast-feeding Promotion and Protection Act", shields these women and ensures the rights of moms to nourish their babies in public and private businesses.

Twelve states have recently passed progressive breast-feeding legislation. The surge of breast-feeding promotion and protection policies comes in the wake of new research indicating that babies who are breast-fed are smarter. Research also reveals that breast-fed infants have lower rates of premature death, meningitis, childhood leukemia and other cancers, diabetes, respiratory disease, and allergies. Scientists have found that moms are healthier, too. Mothers who breast-fed their children show lower incidents of breast cancer, osteoporosis, and urinary infections.

Regardless of the tremendous benefits of breast-feeding, more mothers are choosing to formula-feed their babies. New moms generally choose not to breast-feed due to demanding work schedules. Many moms are apprehensive to breast-feed merely because they want to avoid public embarrassment. "The Breast-feeding Promotion and Protection Act" is a significant step towards reducing barriers for moms who want to breast-feed their infants.

In a move to encourage businesses to become "mother-friendly", I am introducing a resolution to accompany the Breast-feeding Act. Senate Concurrent Resolution 24 urges businesses to take a proactive role in their community. Businesses can have a huge impact on public health simply by establishing "mother-friendly" policies for their employees and customers.

I urge your support and prompt passage of "The Breast-feeding Promotion and Protection Act".

Anchorage, Ak

POSITION STATEMENT: Supported SB 319

ACTION NARRATIVE

TAPE 98-26, SIDE A

Number 001

CHAIRMAN ROBIN TAYLOR called the Judiciary Committee meeting to order at 1:40 and brought up SB 297 as the first order of business. CHAIRMAN TAYLOR said he scheduled the bill because he believes it is important, supports SENATOR ELLIS in his efforts and he wants to move it from committee.

#SB 297

SB 297 - BREAST-FEEDING IN PUBLIC PLACE

SENATOR ELLIS thanked CHAIRMAN TAYLOR for his support and offered amendment #1 which reduces the penalty for ejecting a woman for breast-feeding in public from a class B misdemeanor to a violation, so as not to incur the costs that accompany a misdemeanor. SENATOR ELLIS moved the amendment and without objection, it was adopted.

SENATOR ELLIS noted the bill has received an outpouring of support. SENATOR ELLIS explained the bill ensures a woman's right to breast-feed in a public place under state law and city ordinances, and makes interfering with this right a violation. SENATOR ELLIS indicated breast-feeding is beneficial to both the mother and the child for numerous reasons.

SENATOR PARNELL asked about the necessity of the findings section of SB 297; SENATOR ELLIS remarked they had only been included for the edification for the public and CHAIRMAN TAYLOR commented they could possibly be removed later.

MS. KAREN PEARSON, representing the Division of Public Health, indicated that breast-feeding is good for the mother, the child and

the economy of the family and SB 297 sends a positive message to society that breast-feeding is a normal, natural function. Her division appreciates the help in spreading this message.

Number 120

MS. NANCY RODY, Director of the Women, Infants and Children program (WIC), explained there is a barrier to breast-feeding based in the fear of what other people might think. She has heard many reports of women being harassed while breast-feeding in public. MS. Rody said young women and poor women are more sensitive to public pressure about breast-feeding and this bill would send a good message about the benefits of breast-feeding.

MS. ANN KNOBBE testified via teleconference from Mat-Su. As a nurse and lactation consultant for the WIC program in Mat-Su, she asked the committee to pass this bill and send a good message to the public.

MS. ROBERTA GILLOTT testified via teleconference from Dillingham and expressed her support, as a new mother who has experienced discrimination, for SB 297.

Number 187

MS. FAITH CHALIFOUR-KROUS, an accredited breast-feeding counselor from La Leche League International, testified via teleconference from Anchorage about the importance of encouraging young mothers to breast-feed. She said breast-feeding is a natural healthy way to bond with and feed your baby.

MS. EDNA ABBOT thanked the committee for the legislation, saying it will increase the percentage of mothers who breast-feed their children longer. She showed a picture of her child and expressed her appreciation to the committee. SENATOR ELLIS noted that MS. ABBOT helped prepare this legislation and he applauded her efforts.

Number 232

MS. SHARON GLICK testified to the fact that mothers need to get out of the house to retain their sanity. MS. GLICK said babies get breast-fed on demand and that means mothers never know where they may need to feed their baby. She said this bill is really about the rights of the baby to be able to nurse whenever and wherever they need to.

MS. SUSAN POLLARD said this bill is a step toward making breast-feeding the cultural norm. She thanked CHAIRMAN TAYLOR and the committee for allowing the bills passage on behalf of every mother and baby who can now nurse more comfortably.

CHAIRMAN TAYLOR remarked that the bill is about a cultural shift; saying it harkens back to 250-300 years of puritanical concerns about viewing the body. CHAIRMAN TAYLOR said personally, nothing makes him feel more comfortable and warms his heart more than a nursing mother with her baby.

MS. HEATHER BARBER, a Mat-Su mom, added her support to the bill.

Number 285

MR. STEVEN JAQUIER, who described himself as the "token male"

expressed his personal belief that breast fed babies do better than bottle fed babies and thanked the committee for the piece of legislation.

MS. MONICA GROSS, a pediatrician and mother of three, supported the bill and said it sends a message to the rest of the nation that the people of Alaska support its children.

Ms. CAREN ROBINSON, representing the Alaska Women's Lobby, expressed strong support for the bill and spoke of her personal experience nursing her son, saying it was an incredible bonding experience she will never forget.

MS. MARGIE HAMBURGER spoke in favor of the bill, saying that employers should also be educated and encouraged to support breast-feeding mothers.

Ms. PAM CURE commented that in a culture that pervasively depicts women as sex objects, the nurturing role of a breast-feeding mom is even more important and should be encouraged. MS. CURE said a mother should be free to enjoy society and this bill allows for the protection of that freedom. She wholeheartedly supports the bill.

Number 363

MS. GRACE ELLIOT said she was thrilled to see the bill. She recalled a campaign to promote breast-feeding she encountered in Canada which employed huge billboards saying, "Fast food - Two convenient locations" and "Sometimes it's ok to suck up to the boss."

MS. ANNE CARPENETI, representing the Department of Law, explained that her interpretation of section 3 of the bill, about "indecent viewing," is that it prohibits someone from secretly photographing a woman who is breast-feeding. In response to a question from SENATOR PARNELL, she said it is not intended to apply to anything else. MS. CARPENETI said the Department supports the bill.

MS. CARPENETI said, in order to correspond with SENATOR ELLIS's amendment, she believes the word "crime" should be changed to "offense" on page 2, line 28. CHAIRMAN TAYLOR moved this change as amendment #2. Without objection, the amendment was adopted.

SENATOR ELLIS moved the bill out of committee with individual recommendations. Without objection, it was so ordered.

#

#SB 319

SB 319 - ARBITRATION

MR. JERRY BURNETT, staff to Senator Randy Phillips, presented the bill as a means to clear up some confusion surrounding arbitration. SB 319 requires any agreement to arbitration must clearly state that engaging in arbitration may limit or waive other rights to action. SB 319 also limits the amount of an arbitration to \$7,500 to correspond with the limit of small claims court. MR. BURNETT said the bill was drafted in response to a constituent complaint, and is modeled after the Montana code.

MR. BILL MCNALL, an Anchorage attorney specializing in real estate law, testified that there is a misconception that arbitration is