

# Report from the Field

## Alaska Public Health Law Reform

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**Abstract** The Turning Point Model State Public Health Act (Turning Point Act), published in September 2003, provides a comprehensive template for states seeking public health law modernization. This case study examines the political and policy efforts undertaken in Alaska following the development of the Turning Point Act. It is the first in a series of case studies to assess states' consideration of the Turning Point Act for the purpose of public health law reform. Through a comparative analysis of these case studies and ongoing legislative tracking in all fifty states, researchers can assess (1) how states codify the Turning Point Act into state law and (2) how these modernized state laws influence or change public health practice, leading to improved health outcomes.

For years, policy makers, scholars, and public health officials have argued for state-based public health law reforms (e.g., National Association of Attorneys General [NAAG] 2003; Institute of Medicine 2002; Gostin 2000). Responding to this call for action, the Turning Point National Excellence Collaborative on Public Health Statute Modernization (Turning Point Collaborative) brought together representatives from five core states (Alaska, Colorado, Nebraska, Oregon, and Wisconsin) and other public health partners in 2000 to strengthen the legal framework of state public health systems through model public health legislation. Following three years of public meetings, drafting, consultation, and discussion,

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the Turning Point Collaborative released the Turning Point Model State Public Health Act (Turning Point Act) in September 2003 (Turning Point Public Health Statute Modernization National Excellence Collaborative 2003). Proposed as a model set of legislative provisions for state public health law modernization, the Turning Point Act serves as a resource for states, tribal governments, and local municipalities seeking public health law reform.

This report summarizes the first in a series of case studies of states that have considered reforming their public health laws subsequent to the Turning Point Act (Columbia Center for Health Policy 2007). In this case study, we describe and assess how Alaskans employed the Turning Point Act to modernize their state public health law in two consecutive sessions of the Alaska legislature, analyzing the divergent underlying conditions associated with the success or failure of these modernization efforts. Our goal is to provide the public health practice community with information that can facilitate successful modernization of public health statutes and inform scholarship on the role of law and policy in building enhanced public health infrastructure.

## **Background**

With many of Alaska's regulations predating statehood (Alaska Stat. § 18.05.010 [1949]), Alaskan public health officials have long advocated for legal modernization in accordance with contemporary understandings of disease prevention and health promotion (Gostin and Hodge 2000; Erickson et al. 2002). The Alaska Department of Health and Social Services (DHSS) first targeted Alaska's public health laws for reform in its 1993 *Health Alaska 2000* plan. The need for reform was subsequently reinforced in a 1999 report, *Reforming Alaska Public Health Law*, in which outside consultants suggested that "law reform in Alaska should express a clear vision for public health, promoting the best theories and practices in public health" (Gostin and Hodge 2000: 83, citing Gostin and Hodge 1999). Alaska joined the Turning Point Collaborative in 2000 to facilitate the development of a model that could serve as the basis for many of its needed reforms (Erickson 2002; Hodge et al. 2006).

## **Research Methods**

Our research began with the broad hypothesis that the Turning Point Act is a catalyst for state public health law reform, but that its consideration

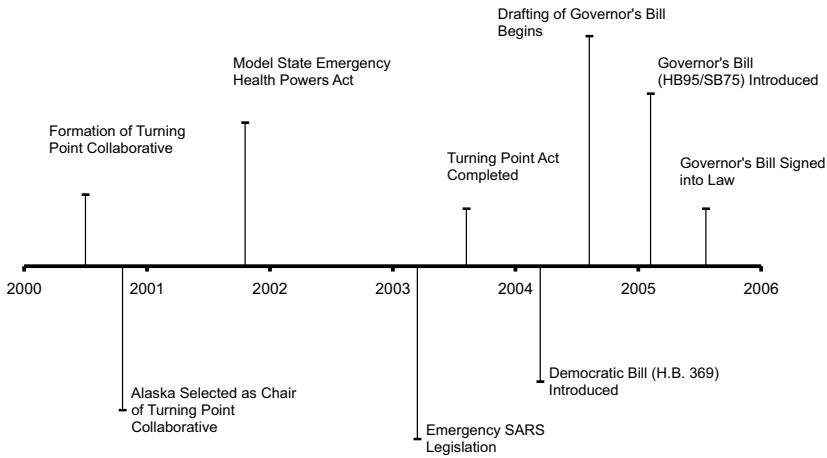
leads to different reform initiatives and responses in different states. This case study began with an assessment of Alaska public health law and any legislative or other proposals for reform. We then used process tracing to examine the chain of events and decision-making processes by which the enactment or failure of a proposed bill is dictated by yet unknown independent variables. Eleven semistructured qualitative interviews were conducted with Alaskan actors from the public health bureaucracies at the state and local level, public health advocacy groups, key legislative offices, and the governor's office. These semiconfidential interviews covered a variety of subjects and issues, including (1) the role of the informant in the legal/regulatory changes; (2) public health problems addressed by the changes; (3) obstacles to changes in state law and strategies used to overcome these obstacles; (4) subsequent changes in public health regulations or programs based on legal reforms; and (5) expected changes in public health outcomes. From transcripts of these interviews and additional documentary evidence, we drafted a narrative description of the legislative process and identified themes for analysis. This analysis presents a causal chain of actions that led or failed to lead to the enactment of modern state public health laws based on the Turning Point Act, identifying major themes generalizable to other states.

### **Transforming the Turning Point Act into Alaska Public Health Law Reform**

Attempts to reform Alaska public health law were made in two consecutive sessions of the Alaska legislature (see figure 1), with only the latter leading to statutory reform.

#### **HB369/SB304—An Act Related to Public Health**

Following the conclusion of the Turning Point Collaborative process in September 2003, Alaska public health advocates felt they had the momentum to seek sweeping reform of Alaska's public health laws. Events in the spring of 2003 had reinforced the immediacy of the need for public health legislative reform. As state public health actors attempted to respond to the burgeoning global threat of Severe Acute Respiratory Syndrome (SARS), it became clear that Alaska lacked sufficient quarantine authority to address cases of SARS in the state (see Alaska Stat. § 18.15.120 [1995]), forcing the Division of Public Health of the Alaska DHSS to go to the legislature to enact special emergency legislation (SARS Control Program Authorization, Alaska Stat. § 18.15.350 [2003]).



**Figure 1** Timeline of Alaska Public Health Law Reform

Given the necessity of this emergency stopgap measure for SARS, minority legislators, building on Alaska's rapid implementation of elements of the Model State Emergency Health Powers Act (MSEHPA) in 2001 (Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities 2001), believed that circumstances were ripe for the introduction of comprehensive public health law reform. On January 12, 2004, Democratic legislators introduced An Act Related to Public Health (HB369 in the House and SB304 in the Senate), which reproduced the entirety of the newly released Turning Point Act. With Republican control of the governor's office and legislature limiting minority legislative initiatives, Democratic legislators introduced these bills largely to draw attention to the necessity of public health statutory reform, with advocates doing little to lobby for these bills after their introduction. Neither bill received a committee hearing, and both bills expired without any action at the end of the legislative session. Because DHSS was separately preparing its own public health law reform initiative, DHSS actors worked with majority legislators to scuttle these bills, fearing that debate on an "unpassable" Democratic bill would stymie support for future public health modernization efforts.

## HB95/SB75—An Act Relating to the Duties of the DHSS

Alaska's public health representatives on the Turning Point Collaborative felt, like their public health advocacy counterparts, that the SARS epidemic provided the momentum from which Alaska could launch public health statutory modernization. Guided by the Turning Point Act, DHSS sought to present the legislature with an expedited bill for public health law reform that was based on a comprehensive review of existing legal needs in Alaska. To this end, the Division of Public Health turned to the Alaska attorney general's office for a formal "gap analysis," a legal review of Alaska public health law in comparison with the Turning Point Act.

Following the completion of this analysis, the executive director for the Division of Public Health, his deputy director (who had chaired the Turning Point Collaborative), and an assistant attorney general worked in the summer of 2004 to incorporate parts of the Turning Point Act into a bill commensurate with the public health needs of Alaska. Consistent with tradition that bills introduced by the administration are confidential until introduced, these three individuals worked with minimal input and no publicity to use the language of the act to codify essential public health services and thereby draft—for the first time in Alaska—a legislative framework that laid out the regulatory scope of public health.

The drafters completed their work in November 2004, with the Alaska Commissioner of Health and Social Services announcing the bill on November 29, 2004, at the beginning of the annual Alaska Health Summit (see, e.g., Gilbertson and Mandsager 2004). On January 21, 2005, the governor introduced HB95 in the House and SB75 in the Senate (collectively, the Governor's Bill) (H.R. 95, 24th Leg., 1st Sess. [Alaska 2005]; S. 75, 24th Leg., 1st Sess. [Alaska 2005]).

The Governor's Bill incorporated (or created functionally equivalent provisions of) many of the major facets of the Turning Point Act. To clarify and expand the public health authority of the state, the Governor's Bill incorporated much of Articles 1 (definitions) and 2 (scope of authority) of the Turning Point Act, enumerating the roles and responsibilities of the state for its public health function, and derived language from or related to three of the remaining six substantive articles of the Turning Point Act. Table 1 provides a summary of how the provisions of the Turning Point Act were translated into the Governor's Bill.

Despite these similarities, the drafters deviated from the Turning Point Act where it was thought to be either (a) inapplicable to the public health

**Table 1** Comparison of Select Provisions of the Governor's Bill with the Turning Point Act

| Subject                          | HB95 (Governor's Bill)   | Turning Point Act  |
|----------------------------------|--|--|
| Surveillance                     | Section 18.15.360 "Data Collection"<br>The department may "collect, analyze and maintain databases of information related to (1) risk factors for specific conditions of public health importance, (2) morbidity and mortality rates for conditions of public health importance, (3) community indicators relevant to conditions of public health importance." | Section 5-102 "Surveillance Activities – Sources of Information"<br>The state or local agency may "collect, analyze, and maintain databases of identifiable or non-identifiable information related to (1) risk factors for specific conditions of public health importance, (2) morbidity and mortality rates for conditions of public health importance, (3) community indicators relevant to conditions of public health importance." |
| Reporting                        | Section 18.15.370 "Reportable Disease List"<br>The department "shall maintain a list of reportable diseases or other conditions of public health importance that must be reported to the department."  | Section 5-103 "Reporting"<br>"The state public health agency shall establish a list of reportable diseases or other conditions of public health importance."   |
| Mandatory testing or examination | Section 18.15.375 "Epidemiological Investigation"<br>(c)(2) Pursuant to an epidemiological investigation, the department may "require testing, examination, or screening of a nonconsenting individual . . . only upon a finding that the individual has or may have been exposed to a contagious disease that poses a significant risk to the public health." | Section 5-106 "Mandatory Testing and Examination"<br>[c] "The state or local public health agency may require testing or medical examination of any individual who has or may have been exposed to a contagious disease that poses a significant risk of danger to others or the public's health."   |

**Table 1** (continued)

| Subject                  | HB95 (Governor's Bill)   | Turning Point Act   |
|--------------------------|--|---|
| Medical treatment        | Section 18.15.380 "Medical Treatment"<br>"A health care practitioner or public health agent who examines or treats an individual who has or may have been exposed to a contagious disease shall instruct the individual about the measures for preventing transmission of the disease and the need for treatment." | Section 5-107 "Compulsory Medical Treatment"<br>"Any health care provider or public health agent who examines or treats an individual who has a contagious disease shall instruct the individual about (1) measures for preventing reinfection and spread of the disease; and (2) the need for treatment until the individual is no longer infected." |
| Quarantine and isolation | Section 18.15.385 "Isolation and Quarantine"<br>"The department may isolate or quarantine an individual or group of individuals if isolation or quarantine is the least restrictive alternative necessary to prevent the spread of a contagious or possibly contagious disease to others."                         | Section 5-108 "Quarantine and Isolation"<br>[b](1) "Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include . . . confinement to private homes or other public premises."  |

needs of Alaska or (b) unpassable given the legislature's resistance to government programs. For example, given heightened privacy protections in the Alaska Constitution, several monitoring and surveillance sections of the Turning Point Act were amended or avoided entirely in the Governor's Bill.

Hearings on the Governor's Bill proceeded through committees in the Alaska House and Senate (H.R. 24–12, 1st Sess., at 125–26 [Alaska January 21, 2005]; S. 24–12, 1st Sess., at 115–17 [Alaska January 21, 2005]). The executive director of the Division of Public Health served as the administration's spokesperson in committee hearings, discussing the need for public health statutory reform, making the case for comprehensive public health law modernization, and detailing the major tenets of the Governor's Bill. In drawing on legislators' fears of infectious disease

outbreaks, public health administrators and activists focused on the SARS legislation of the previous session to decry Alaska's antiquated public health authority (Alaska House of Representatives 2005: 869–870). Having been consulted immediately following the release of the Governor's Bill, several advocacy groups—notably the Alaska Hospital Association, the Alaska Nurses Association, the Alaska Medical Association, and the City of Anchorage Department of Health and Human Services—mobilized their membership to support the bill through testimony and direct lobbying of individual legislators. Representatives of these advocacy groups argued that the Governor's Bill adequately addressed the needs of public health practitioners, providing legislators with an understanding of public health principles and why those principles should take precedence over any potential concerns expressed by opponents of the bill.

Opposition was far less vociferous than anticipated by DHSS officials, and, through early negotiation on the legislative language, led the Governor's Bill to passage sooner than was originally envisioned. Only two major groups—Christian Scientists and the Alaska Civil Liberties Union—testified in opposition to the public health police powers in the Governor's Bill. Continual consultation between the executive director of the Division of Public Health and these groups, however, established goodwill and led opponents to feel that many of their concerns were addressed, even if not fully accommodated, in the debate of the Governor's Bill. In addition, although the drafters of the Governor's Bill expected that the majority Republican legislature would object stringently to any expansion of the state's public health powers, frequent meetings with legislators helped to stem opposition, assuaging concerns on issues of quarantine, isolation, and surveillance through ongoing dialogue and compromise on issues of remuneration for intentional or grossly negligent quarantine or isolation and criminal penalties for intentional disclosure of identifiable health information.

An Act Relating to the Duties of the DHSS, largely identical to the original Governor's Bill, passed unanimously in both legislative houses on May 8, 2005, and was signed into law on June 23, 2005, providing the current legal foundation for Alaska's public health preparedness.

### **Analysis: Lessons Learned from Alaska Public Health Law Reform**

The Governor's Bill has been a story of success in transforming the Turning Point Act into state legislation, with informants universally comment-



**Stage I: The Emergence and Utilization of the Turning Point Act**

*Dominant Actors*

Turning Point Collaboration  
Division of Public Health

*Key Forces*

Agenda Setting

*Result*

Model Developed for Discussion of Issue

**Stage II: The Development of Draft Law**

*Dominant Actors*

Division of Public Health  
Office of the Attorney General

*Key Forces*

Necessities of Public Health  
Political Considerations

*Result*

Law Developed to Pursuant to Turning Point Act but  
Specific to State Needs and Political Circumstances

**Stage III: Legislative Action**

*Dominant Actors*

Legislators  
Division of Public Health  
Executive Branch  
Advocacy Groups

*Key Forces*

The Turning Point Experience  
Politicization of Public Health  
Executive Prerogative

*Result*

Reformed State Public Health Law

**Figure 2** A Process Model of State Public Health Law Reform\*

\*Adapted from Gebbie 1997: 213

ing on the unexpected ease and speed of this public health modernization effort. While no specific causal linchpin can be identified based upon this single case, it is clear from the themes of informant interviews that the variables outlined in figure 2 and discussed below predisposed the Alaska effort to success.

### The Turning Point Experience

Alaska's statutory reform process was greatly buttressed by public health officials' long-standing commitment to public health law modernization and participation in the Turning Point Collaborative. Through the Turning Point Collaborative and public health law scholarship, Alaskan public health officials familiarized themselves over several years with the need

for and process of public health law modernization. As a state of limited bureaucratic capacity to draft detailed legislation in an area as specialized as public health, Alaska's DHSS used the Turning Point Act to provide carefully considered and tested statutory language acceptable to public health officials from many states, limiting the specific language of the act only where necessary to meet Alaska's needs and assure passage. Once the governor introduced HB95, the Turning Point Act provided legitimacy to the administration's efforts to reform public health law, with the Governor's Bill viewed as representing the nation's "best practices" in creating a broad legislative imprimatur for public health.

### Politicization of Public Health

Many political actors found public health reform to be less contentious than other medicolegal issues. Even opponents agreed that the legislative status quo was not adequate to respond to modern public health threats in Alaska. With the necessity of some type of public health law reform a political truth, actors characterized the Governor's Bill as simply good "public health housekeeping" as a way of routinizing the process, minimizing any contentiousness surrounding the issues, and avoiding media attention (Rendon 2005; Inklebarger 2005). Where there were instances of political disagreement in the scope of the state's public health authority, the sustained efforts of DHSS officials helped to align legislative perceptions of that public health authority with the reality of the legislative mandate. In overcoming political resistance and gaining universal support for an initially unpopular initiative, supporters of public health modernization mobilized a politics of fear—employing the specific threat of SARS, emerging infectious diseases, and bioterrorism—to stoke legislative fears of an unknown, foreign threat to Alaska's survival and thereby generate support for comprehensive public health law reform.

### Bottom-Up versus Top-Down Approaches to Public Health Law Reform

In many respects, the initially unsuccessful and later successful efforts to reform public health law in Alaska are distinguished on the basis of the sponsors of the respective bills. The Democratic bills failed because they were unsupported proposals introduced by minority legislators. While supported by many public health advocates, these proposals lacked the support of those with the trusted expertise necessary to provide legislative

testimony and the political capital necessary to advance these ideas into law. DHSS essentially blocked the Democratic bills from receiving any legislative hearings, fearing these bills “could have killed our efforts . . . because [they] could have brought up a bunch of red flags around the issues that we wouldn’t have been able to overcome with a better bill but also that it . . . might have been perceived as a Democrat issue” (informant interview 2006).

Through the Governor’s Bill, the drafters were able to develop proposed legislative language within the administration but outside of the political process. Through this focused deliberation, the drafters found the freedom necessary to move quickly in drafting a final bill for introduction, knowing that the governor’s support would obviate the need to enlist legislative support through collaboration prior to introduction. The governor’s introduction gave the bill instantaneous credibility and momentum and changed the legislative calculus in supporting public health modernization. Because the bill was introduced and supported by the governor, administration resources could be brought to bear on its passage, with the governor’s legislative liaison for health issues meeting with legislators to schedule committee hearings and votes, the DHSS commissioner acting behind the scenes to assure reluctant legislators that public health reform was necessary and not adverse to their interests, and the executive director of the Division of Public Health shepherding the bill through legislative committees. With a Republican governor and the Republican Party in the majority in both legislative houses, the Governor’s Bill commanded committee hearings and received preferential treatment, stymieing any individual legislator’s attempt to blunt legislative action through committee scheduling. Although the majority party would unanimously support the Governor’s Bill, no Republican legislator had previously expressed any interest in public health reform. With many actors feeling that this was a “Democratic bill” introduced by a Republican governor, there was little reason or opportunity for either Democratic or Republican legislators to oppose it.

## **Conclusion**

The Governor’s Bill was the culmination of over a decade’s effort by Alaskan public health actors, who—working with academics, the Turning Point Collaborative, and state government—changed perceptions of the need to modernize Alaska’s public health statutes in codifying key provisions of the Turning Point Act into state law. Additional case studies

from states with different experiences may allow expansion of these lessons into a more detailed, generalizable process for law reform. Because these reforms are still in their infancy, further research will be necessary to assess the long-term effect of public health law modernization on public health indicators.

## References

- Alaska House of Representatives. 2005. *House Journal*. April 5. [www.legis.state.ak.us/basis/get\\_single\\_journal.asp?session=24&date=20050405&beg\\_page=0857&end\\_page=0878&chamber=H&jrn=0877](http://www.legis.state.ak.us/basis/get_single_journal.asp?session=24&date=20050405&beg_page=0857&end_page=0878&chamber=H&jrn=0877).
- Columbia Center for Health Policy. 2000. [cumc.columbia.edu/dept/nursing/chphsr/projects/law/public\\_health.html](http://cumc.columbia.edu/dept/nursing/chphsr/projects/law/public_health.html) (accessed August 17, 2007).
- Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. 2001. The Model State Emergency Health Powers Act: A Draft for Discussion. December 21. [www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf](http://www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf).
- Erickson, D. L. 2002. The Public Health Statute Modernization National Collaborative: Developing a Model State Public Health Law. *Journal of Public Health Management and Practice* 8 (1): 39–46.
- Erickson, D. L., L. O. Gostin, J. Street, S. P. Mills. 2002. The Power to Act: Two Model State Statutes. *Journal of Law, Medicine, and Ethics* 30 (suppl. 3): 57–62.
- Gebbie, K. M. 1997. Washington State Reorganization: More of the Story. *Journal of Public Health Policy* 18:188–218.
- Gilbertson, J., and R. Mandsager. 2004. Commentary: Alaska Ready to Fight Bioterrorism. *Anchorage Daily News*, December 28.
- Gostin, L. O. 2000. *Public Health Law: Power, Duty, Restraint*. Berkeley: University of California Press.
- Gostin, L. O., and J. G. Hodge Jr. 1999. Reforming Alaska Public Health Law. Report for Alaska's Public Health Improvement Process (APHIP). [www.publichealthlaw.net/Resources/ResourcesPDFs/Alaska.pdf](http://www.publichealthlaw.net/Resources/ResourcesPDFs/Alaska.pdf) (accessed October 31, 2007).
- . 2000. The Public Health Improvement Process in Alaska: Toward a Model Public Health Law. *Alaska Law Review* 17:77–125.
- Hodge, J. G. Jr., L. O. Gostin, K. Gebbie, and D. L. Erickson. 2006. Transforming Public Health Law: The Turning Point Model State Public Health Act. *Journal of Law, Ethics, and Medicine* 34:77–84.
- Inklebarger, T. 2005. Governor Wants to Legislate Quarantine Power. *Anchorage Daily News*, April 5.
- Institute of Medicine. 2002. *The Future of the Public's Health in the Twenty-First Century*. Washington, DC: National Academies Press.
- National Association of Attorneys General (NAAG). 2003. *Resolution Urging States to Review Their Public Health Laws*. Resolution adopted, NAAG Winter Meeting, Williamsburg, VA, December 2–6.

Rendon, M. 2005. Quarantine Quandary: Experts Try to Balance Privacy and Safety. *Anchorage Daily News*, March 15.

Turning Point Public Health Statute Modernization National Excellence Collaborative. 2003. Model State Public Health Act. September. [www.hss.state.ak.us/dph/improving/turningpoint/PDFs/MSPHAweb.pdf](http://www.hss.state.ak.us/dph/improving/turningpoint/PDFs/MSPHAweb.pdf).

