ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8256 SENATE HEALTH EDUCATION & SOCIAL SERVICES

CATHOLIC SOCIAL SERVICES
225 CORDOVA STREET, BLDG. B
ANCHORAGE, ALASKA 99501
(907) 277-2554

TESTIMONY STATEMENT

TO: **SENATE HESS COMMITTEE**
Senators RIEGER, Sharp, Leman, Miller, Duncan, Ellis, Salo

FROM: **Jim Caldarola, Executive Director**
Catholic Social Services

RE: **Senate Bill 45**
By PHILLIPS, Halford, Kelly, MIller, Leman, Sharp

Catholic Social Services is a multi-service agency serving the homeless and hungry, troubled teens, the developmentally disabled, pregnant women and girls, immigrants and refugees, and just people in despair who need temporary help.

In responding to SB45, we cite Children in Crisis, A report on Runaway and Homeless Youth, that was published a year ago. To take a quote from the introductory letter, "It is clear that the time has come for improved service to these lost, but not forgotten children and their families." It is our opinion that SB45 does not provide for that improved service; rather its tendency is to put our youth and our communities in jeopardy.

A first important point of discomfort we have with this bill is that some of the issues--most pointedly immunity of liability while operating safe homes--are predicated on adoption of certain regulations by the Department of Health and Human Services. In fact, DHHS has failed to approve and implement the regulations which have been in existence since 1990. If the regulations were approved, safe homes would be legal and safe for youth in every community and most of this legislation would be unnecessary. The main issue of a safe homes bill is to keep volunteers immune from liability.

Other flaws with SB45 are:

1. the bill presents two separate issues neither of which help runaway or homeless youth:

   a. one that gives parents a right to "divorce" their child, an action that will not help runaways or resolve the family's problem, but only remove the parent's responsibility for the youth.

   b. secondly, this bill tries to set up a safe home system for runaway and homeless youth, without stating a purpose for the existence of safe homes, nor providing specific and important safe guards for the youth.

2. Our understanding is there is no fiscal note attached to this bill, but CSS feels it is unrealistic of the bill's sponsors to expect a safe homes program to cost nothing. Who will pay for the licensing, fingerprinting, background checks, and recordkeeping of safe homes, as denoted on Page 9, line 6? Who will pay for and provide supportive and counseling services to a youth in a safe home?

3. The possibility of endangering homeless youth with less than stringent safeguards is due to:

a. no definition of "properly qualified citizen". Pg. 1, line 9.

b. no specification of a youth or human services organization to approve safe homes but only allowing "interested non-profit corporations". (Pg. 1, line 12)

c. a person without a license or permit may not conduct, for more than 90 days a boarding home, foster home, etc. Pg. 8, line 16. Does this mean someone without a license could do so for 89 days or less?

Senators Rieger, Sharp, Leman, Miller, Duncan, Ellis and Salo, if we have misinterpreted any of the issues in SB45, we would be happy to sit down and discuss them with the bill's sponsor. However, we have never been contacted by Sen. Phillips office for input. I implore you to contact the DHHS Commissioner to ask the status of the runaway regulations, which, if adopted would be a vehicle under which safe homes could be operated in rural communities legally and safely.

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TELECOPY COVER SHEET

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TO: Senate HESS CMTE FAX: _____ PHONE: _____

FROM: FBX LIO PHONE: 2-4448

INSTRUCTIONS: _____

Written testimony for S. HESS tele.

3-5-93 1:30 pm on SB 45

RECEIVED: Date _____ Time _____

SENT: Date 3/5 Time 2:03 pm

DISPOSAL OF ORIGINAL: Discard ____ Hold for Pickup Y

NUMBER OF PAGES: 3 . (Not counting cover sheet)

SENT BY: Christi Shields

Alaska State Legislature

Please enter into the record my testimony to the Senate Health Education + Social Services
committee name

committee on SB 45 - laws for minors, dated 3-5-93
bill/subject

See attached (2 pages)

Signed: Patty Carter
Testifier

Representing (Optional)

516 Second Avenue Fairbanks, AK
Address

452-2125
Phone No.

I have struggled with my teen-ages, both as a single-parent as well as being re-married. In the last three years, after trying most parenting techniques and exhausting every resource available to a parent in two states - I am convinced that our greatest enemy to being effective with our kids is the direction the laws have taken. In an effort to be fair, we are putting the kids in the drivers' seats of our homes & schools by taking away adult authority and giving children too much freedom without responsibility. Yes, we need safe homes for kids in trouble & who are being abused. Yes, we need to free those who would volunteer their homes, from the fear of lawsuits & liability. Yes, we need to create viable alternatives to ~~paid~~ foster care with all the cuts we have in spending. But I would ask two things. Can We effectively monitor these new homes with our current shortage of personnel? Can we be absolutely certain that by creating new alternatives for children to run to that we are not actually encouraging them ~~to do so~~ TO run?

The Senate Bill No. 45 being proposed defines early emancipation and it defines who is willfully misleading a minor and what will happen to such a person. I think this is good.

I would like to see more legislation introduced to control a child who wants adult priveledges without its responsibility. As a survivor of domestic violence, I told my children that I was not in a position to protect them from the consequences of their behavior, or would not - that I would not play rescuer. But I would give them the tools to help themselves, if they were willing to try. ~~But when~~ friends and family fail the only thing we have left is the strong arm of the law. I seriously question

a system that penalizes a child for running away & missing more than ten days of school but will control him. My son ran several times. For three months I begged & police to pick him up. He was given a low priority even though he was sighted. A youngster with a yen for running will run unless FORCED to stop. Right now we cannot detain a child against his will for more than a few hours.

The Bible has alot to say about the heart of child, as well as the adults' authority. I really do feel two words are key words - authority & balance. (authority for the kids to respect us with guidelines to give the KIDS security).

We really need your help to create policies that will give teeth to back up our words to our kids. Even foster parents who, at times, stand in for us parents in crisis cannot control our kids. The case workers can only throw up their hands. The laws have no teeth. Please, please rewrite the hard wards permanency & strengthen the laws.

Also, if possible can we see a bill introduced to monitor separated & divorced parents from blue-ticketing children without prior knowledge & consent to each other. This can wreak havoc & heartbreak in everyone's lives, and be counterproductive for the child.

Thank you.

SB
51

Alaska State Legislature

Randy Phillips
State Senator
District L

Chair
Legislative Budget and Audit
Community and Regional Affairs
Vice-Chair
Transportation

Session
State Capitol
Juneau, AK 99801
(907) 465-4949

Interim
P.O. Box 142
Eagle River AK 99577
(907) 694-4949

Memorandum

TO: Senator Steve Rieger, Chair
Health, Education and Social Services Committee

FROM: Senator Randy Phillips RP

DATE: February 19, 1993

RE: Senate Bill No. 51
"An Act relating to the establishment of work camps for juveniles adjudicated delinquent, and extending to all cities and to nonprofit corporations authority to maintain facilities for juveniles."

A "work-camp" is a residential facility set aside for use only by minors. Those individuals placed in such an alternative facility may be required to labor on buildings and grounds or perform other activity, including education. Senate Bill 51 authorizes the Department of Health and Social Services to establish regulations for the operations of "work camps" and to place delinquent minors into work camps instead of another type of detention facility.

Further, Senate Bill 51 provides that a city or a non-profit corporation may maintain and operate a juvenile work camp under regulations to be adopted by the Department of Health and Social Services.

A work camp for juveniles is used successfully in Nevada. The Nevada system stresses academics, physical labor and structured discipline. The China Spring facility has been operated since 1981. Rather than being a punitive institution, the work camp is based on achievement and accountability. Clients in the camp are taught social and personal responsibility in a structured environment. They are able to earn privileges by showing responsibility.

Twenty-three (23) states have some form of "boot-camp" or "work-camp" alternative for young adult offenders. The environment of a boot camp or work camp promotes the values of our society and should help to rehabilitate young offenders and ultimately reduce corrections costs and juvenile crime.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 51

Revision Date:
Title: An act providing for establishment of work camps for juveniles adjudicated delinquent...
Sponsor: Senator R. Phillips
Requestor:

Dept. Affected: Health and Social Services
BRU: Family & Youth Services
Component: Central Office

COMPONENT SERIAL NO. 0259

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	7.3					
SUPPLIES	1.0					
EQUIPMENT	1.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.3	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9.3					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	9.3	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

SB 51 would allow the Department to establish juvenile work camps for youth adjudicated delinquent. This fiscal note is for the administrative costs associated with the adoption of standards and regulations for the design, construction, repair, maintenance, and operation of all juvenile work camps. This would include the adoption of formal regulations, the publication of standards for the accreditation of work camp programs, consistent with the accreditation requirements for other state youth corrections programs.

This fiscal note does not fund the operation of a work camp.

Prepared by: Deborah R. Wing, Director
Division: Department of Health & Social Services
Phone: 465-3191
Date: 01/25/93

Approved by Commissioner: Theodore A. Mala, MD, MPH
Agency: Department of Health & Social Services
Date: 1/26/93

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Alaska State Legislature

Randy Phillips
State Senator
District L

Session
State Capitol
Juneau, AK 99801
(907) 465-4949

Interim
P.O. Box 142
Eagle River AK 99577
(907) 694-4949

Chair
Legislative Budget and Audit
Community and Regional Affairs
Vice-Chair
Transportation

February 19, 1993

Sectional Analysis

SB 51

Section 1:
Amends AS 47.10.080(b) to allow the department of health and social services to place in a juvenile work camp a delinquent minor committed to the department by the court.

Section 2:
Amends AS 47.10.150 by adding juvenile work camps to the types of juvenile institutions over which the department has certain powers.

Section 3:
Amends AS 47.10.160(a) to include juvenile work camps in the list of specific duties the department must perform under the chapter governing juvenile institutions.

Section 4:
Amends AS 47.10.170 to allow a city or a non-profit corporation to maintain and operate a juvenile work camp; and, to allow a city or non-profit corporation to receive grants-in -aid for the operation of a camp.

Section 5:
Amends AS 47 10.80.180(a) to authorize the department to adopt regulations for the operation of juvenile work camps.

Section 6:
Amends AS 47.10.190 by applving to work camps the conditions governing the detention of juveniles.

Section 7:
Amends AS 47.10.990 by adding a definition of "juvenile work camp."

CHINA SPRING YOUTH CAMP
DOUGLAS COUNTY

(702) 782-9870
Post Office Box 218 • Minden, Nevada 89423

JAN 1 7 1992

January 13, 1992

Senator Virginia Collins
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

Dear Senator Collins:

Pursuant to your request, enclosed please find a brief history of China Spring. You may also wish to obtain a copy of Nevada Revised Statues 234.297 to 244.299 as amended in Chapter 31 of the 1960 Nevada State Legislature.

Please advise if we can be of further assistance.

Sincerely,

Michael J. Harper
Director

MJH:sc

CHINA SPRING YOUTH CAMP

LOCATION

2.5 miles south of Bodie Flat, in Douglas County, approximately nine miles from Minden and Gardnerville. The mailing address is Post Office Box 218, Minden, Nevada 89423.

HISTORY

In 1979 District Judge Howard McKibben, Chief Probation Officer James Estabrook and members of the local community perceived a need for a juvenile placement facility to serve as an alternative to the Nevada Youth Training Center at Elko. Jewel and Stoddard Jacobsen, of Gardnerville, donated forty acres of land for the project. China Spring Youth Camp obtained an energy conservation grant, service clubs assistance, and an additional community fund raising effort raised $80,000.00. During the summer of 1981, using a CETA Youth Work Project Grant and with the cooperation of local contractors, a road was cut into the property. In August of 1983, the Camp was opened and operated until July of 1985.

The Camp underwent major renovations from 1985 to 1987. It was reopened in June of 1987 with a 30 bed capacity and is presently a self-contained facility located in a wilderness setting. The facility utilizes solar energy, "state of the art" in energy conservation. The Camp consists of seven facilities: a dormitory, messhall, office/laundry, hatchery, school facility and administrative offices. The Camp has its own water system.

Since China Spring Youth Camp re-opened, the staff has continued to develop in-house programs designed to give the residents every opportunity to make meaningful and positive changes in their lives. Each day is filled with academics, physical training, work projects and counseling. Each resident learns self discipline and task completion.

The China Spring Youth Camp is currently capable of housing 30 mid-level juvenile offenders. We offer a staff secured facility that provides a structured environment that develops self discipline, confidence and improved academic standing. The Camp has accepted placement from all Nevada Judicial Districts.

MISSION

The China Spring Youth Camp is a regional training, residential facility for mid-level juvenile offenders. The Camp is established as a staff-secured facility whose purpose is to provide the structure and programs necessary for the resident youth to

overcome their delinquent and anti-social behaviors, and to facilitate a positive reintegration into the family and the community.

GOALS

1. To modify the behavior patterns of residents by providing an opportunity for achievement in a controlled and structured environment.

2. To work with the residents through the different programs to enable him to have the skill to function appropriately when he re-enters his home, school and community.

COMMITMENT CRITERIA/PROCEDURE

1. The child be adjudicated a delinquent child within the purview of Chapter 62 of the Nevada Revised Statutes.

2. Child to be committed to the care and custody and control of the Superintendent of the Nevada Youth Training Center at Elko.

3. That commitment be suspended and the child be placed on formal probation with the condition that he successfully complete the program.

The above procedure will allow for the sending county to maintain jurisdiction of the child upon the release from the Camp and his return to the community.

CAMP DISCIPLINE

The China Spring Youth Camp Program is based on accountability and achievement. The Camp is not a punitive institution. The clients of the Camp are taught social and personal responsibility in a structured environment in which privileges are earned. For every privilege granted to a client, an equal responsibility is assigned.

EDUCATION

Educational programming is provided by the Douglas County School District. General academic programs are offered. Additional instruction is available in the use of computers and vocational classes. Apprenticeships are implemented in welding, cooking and various agricultural activities.

Emphasis in the educational setting is on obtaining the basic skills that facilitate their integration into society and the work place. As most residents have had academic problems, additional emphasis is placed on making up any credits they may be deficient in for graduation.

COUNSELING

The youth at Camp need direction, guidance and the experience of taking personal responsibility for their actions. The Camp is committed to an intensive, dedicated, caring and professional approach. The staff work to enable the youth to take charge of their lives and develop the confidence and self esteem to satisfactorily adjust to the community.

Each resident is involved in private and individual counseling. The Camp has on staff, state certified alcohol and drug counselors, and a program administrator for alcohol and drugs.

Residents are involved in counseling that includes programs from the Bureau of Alcohol and Drug Abuse, reality therapy, behavior modification, personal hygiene, personal finance, ethics, the youth and the law, goal setting, job search skills and others in an ongoing process.

STAFF

The China Spring Youth Camp employs and trains a professional counseling staff. Staff members must possess skills that lend themselves to all areas of the program. The resident must have access to a skilled counselor on a 24 hour a day basis. China Spring Youth Camp staff does not perform straight supervision duties, with their skills they set the tone for an environment conducive to behavioral change.

TREATMENT

The residents shall have a treatment plan completed within the first thirty (30) days of residence. The plan will be prepared by staff counselors in cooperation with the resident. The plan shall include the following goals: behavioral, educational, psychological, family and community, and work.

WILDERNESS PROGRAM

The developmental concept of wilderness training is to provide an opportunity for achievement in a setting dissimilar from the settings of a juvenile offenders non-achievement. Any person's

ability to become proficient in the social skills necessary to become a contributory element of society is dependent on the individual's concept of self worth, his perception of his functional social abilities, and his degree of self discipline.

In an attempt to overcome a history of societal failure, a youth referred to the China Spring Wilderness Program is given an opportunity to achieve in a highly structured setting. The program functions by providing problem solving tasks set in a unique physical social environment which impels the learner to mastery of these tasks.

The participants are exposed to natural laws and their consequences. Unlike many of society's laws, the problems they present tend to be straightforward, but often, their solutions require flexibility and creativity. In the wilderness setting, the youth is no longer able to rationalize his failures as being the fault of another person or institution. The counselors provide the instruction and the expertise necessary for the youth to be successful; it is the youth's efforts, however, that will determine his success. Once a youth has learned that the degree of his success is limited, only by his efforts and knowledge, that lesson is transferred to the other elements of camp life and into a redevelopment of self awareness and self esteem, and this changes the direction of his problem solving behavior in the general society.

ADDITIONAL TRAINING

Residents are involved in daily activities that provide benefits to the Camp and develop new skills for the residents. These have included community projects of laying sod at schools and county facilities, landscaping of Camp grounds, care of chukar project, building maintenance, fence building, gardening, construction tasks and vocational training.

FOOD SERVICES

The Food Service Unit is responsible for providing nutritious, well balanced meals that will ensure the necessary daily dietary requirements for each resident. Meals will be in compliance with guidelines set by the United State Department of Health and Welfare in conjunction with the National School Lunch Program through the State Department of Education.

MEDICAL SERVICES

Medical services are available 24 hours a day.

AFTERCARE

The children who are released from China Spring Youth Camp will return to their original jurisdiction. The committing Probation Officer or Youth Parole Service retains custody of the child and is kept informed of the residents progress. Family counseling for the children who reside in outlying counties will be provided by Rural Clinics Community Mental Health Center of the State of Nevada.

FUTURE GOALS

As the Camp continues to grow many goals and projects still lie ahead. As the need arises, China Spring Youth Camp is prepared to expand to a capacity of 40 residents. Nevada has a rapidly growing population and consequently increasing need for residential juvenile facilities. The State of Nevada already faces continual over crowding at its training center. China Spring Youth Camp provides a viable low cost alternative to expansion of State facilities.

Future projects include the construction of a vocational arts building, completion of athletic fields, an additional water well and a reservoir for increased fire protection.

The OUTLOOK from the STATE CAPITALS

AN IMPARTIAL ANALYSIS OF STATE AND MUNICIPAL ACTION ACROSS THE COUNTRY

ISSN 0471-3475
December 2, 1991
Vol. 45 No. 34

States, counties opening boot camps for juveniles

and some private firms providing prison health care

In This Issue:

Eager to improve the effectiveness and reduce the cost of juvenile corrections, states and counties around the nation are experimenting with boot camps for youthful offenders. The camps, which stress hard physical labor and stern discipline, are designed to scare kids straight so they won't end up in adult prisons. It's unclear yet whether the camps are effective, but many officials, most recently in Massachusetts and Ohio, have said they have high hopes for them.

Another notable trend in state justice policy is driven by tight budgets. Numerous states are looking at hiring private firms to provide medical care to prison inmates. Prison medical costs are soaring, at least partially because many inmates entering prison suffer from serious health problems caused by their addictions to drugs or alcohol. Some states, too, have aging prison populations with expanded health care needs.

Privatizing prison health care is controversial, since it results in the loss of state jobs. Sometimes the private firm rehires the former state workers, but frequently at lower salaries than they were paid by the state. Privatizing also raises a key issue: Can private firms supply the same quality of care as state workers?

To keep current with both of these trends, read Public Safety & Justice Policies: From the STATE CAPITALS *each week.*

This is one of a series of From the STATE CAPITALS newsletters published by Wakeman/Walworth Inc., 300 North Washington Street, Alexandria VA 22314; Telephone 703-549-8606; FAX 703-549-1372 Keyes Walworth, Publisher

Boot Camps:

Ohio county to open experimental boot camp

Some juvenile offenders in Cuyahoga County, Ohio will be sentenced to a boot camp style of detention starting early next year to get a dose of discipline and self-confidence they may need.

The Justice Department's Office of Juvenile Justice and Delinquency Prevention has awarded Cuyahoga County Juvenile Court a grant worth $779,000 to fund a pilot boot camp program, which is to serve as a model for other such camps elsewhere. The county is a partner in the experiment with the Northeastern Family Institute of Boston, a private, nonprofit human services agency that will manage the 18-month program.

Cuyahoga County's program is one of three in the country to receive funding for a boot camp experiment. The others are social service programs in Mobile, Alabama, and Denver, Colorado. A Justice Department spokesman said the agency intends to expand research and evaluation of boot camps and other shock incarceration programs across the country.

Starting in April, 30 boys at a time will be sent for 90-day stays at the Cuyahoga County camp, at the county's Youth Development Center in Hudson Village. Youths will be sent there as an alternative to six- to nine-month stays at traditional juvenile detention homes such as the state-run Cuyahoga Hills Boys School.

While living at the camp, the youths will rise early and face a number of physical challenges, such as obstacle courses and wilderness survival training. The object is to teach physical conditioning and self-discipline.

"There's a high emphasis on rehabilitation, not punishment, so there's a better chance of changing their behavior so they don't repeat it," said Elsie Day, director of community services for the county's juvenile court. "It also builds self-esteem from doing physically challenging things. These kids often have poor self-esteem, which is why they get involved in negative activities."

She said the camp, though styled after military boot camps, would not be as militaristic or as strict as adult boot camps. The program will involve traditional aspects of juvenile detention, such as schooling and counseling, Day said. After completing the camp, youths will spend several more months in counseling and rehabilitation programs.

Massachusetts plans three juvenile boot camps

Massachusetts Gov. William F. Weld and Lt. Gov. Paul Cellucci have broken ground for the first of three military-style boot camps for youthful offenders.

The $6 million facility will house 256 inmates in four boot-camp-style buildings featuring open bunking. In all, seven buildings will be built on the 12-acre grounds at the Bridgewater Correctional Complex.

"Innovative programs such as boot camps help us utilize scarce secure prison beds for those truly needing traditional facilities," Weld said. At the same time, Cellucci said, the boot camp approach is an attempt to change the habits of young offenders before they become career criminals. The sites for the remaining two boot camps have not been announced yet.

Virginia boot camp is underused

Virginia Department of Corrections officials say the state's new boot camp is being underused and that the State Crime Commission should determine if more inmates can be included in the program.

Under the new program, judges can sentence first-time, non-violent offenders to the boot camp where they undergo a 90-day regimen of drilling, hard labor and education. If they complete the program, they are released under supervision for a year.

The program was designed to ease prison crowding and to return the prisoners to society with a better sense of self.

Currently, the program has 52 participants, though it has room for 96.

'Privatization:

Massachusetts hires private firm to provide health care

Massachusetts has hired a Florida company to provide health care at the state's prisons, a move that Gov. William Weld says will save the state from $8 million to $14 million a year.

The contract, to Emergency Medical Services Associates, was the first Weld administration move to privatize a state service. Weld said it would not be the last. Weld said almost 400 state employees could lose their jobs, but EMSA can hire those workers when the contract takes effect Jan. 1.

"This contract is an excellent example of the privatization approach we plan to employ throughout state government," he said. "It's not a matter of the private sector versus the public sector, it's a matter of monopoly versus competition."

EMSA, of Ft. Lauderdale, Florida, was the low bidder at $28.7 million, Public Safety Secretary Thomas Rapone said. Four national companies competed for the contract.

"The amount of savings reflects the fact that the state has been paying too much for prisoner medical services in the past," said Weld. "We pay something like $4,000 per inmate per year, and other comparable states spend closer to $2,000 per inmate per year, so that was a red flag that really led us to look in this area for privatization."

EMSA currently operates health care services for three prisons — a 2,000-bed prison in southern Florida, an 1,800-bed county jail in West Palm Beach, Florida, and a 5,000-bed prison in Virginia.

Alabama, Arkansas, New Mexico, Kansas, Maryland and Delaware contract prison health care services, according to Massachusetts officials. Thirteen other states contract out up to 80 percent of health services, and six others contract a little more than half their health services to private companies, the officials said.

Weld said EMSA would cut outside medical visits by inmates from the current average of about 500 a week to 500 a month, and would be penalized $100 for every outside trip above that limit. Rapone said the privatization also would alleviate medical malpractice suits filed against the state by inmates. He said there were "an inordinate amount" of such suits pending.

Previously, the state and a private firm, Goldberg Medical Associates, had provided medical care to prisoners. Goldberg Medical's $12 million contract expires Dec. 31. Weld said he next would look to privatize the prison system's food delivery services.

South Dakota wants to expand privatization

The South Dakota Corrections Department won't pick a company to provide health care for the whole prison system for several months, Secretary Lynne DeLano says.

The department is now doing a cost analysis of five proposals submitted over the summer, she said. It also is studying if the companies should submit bids.

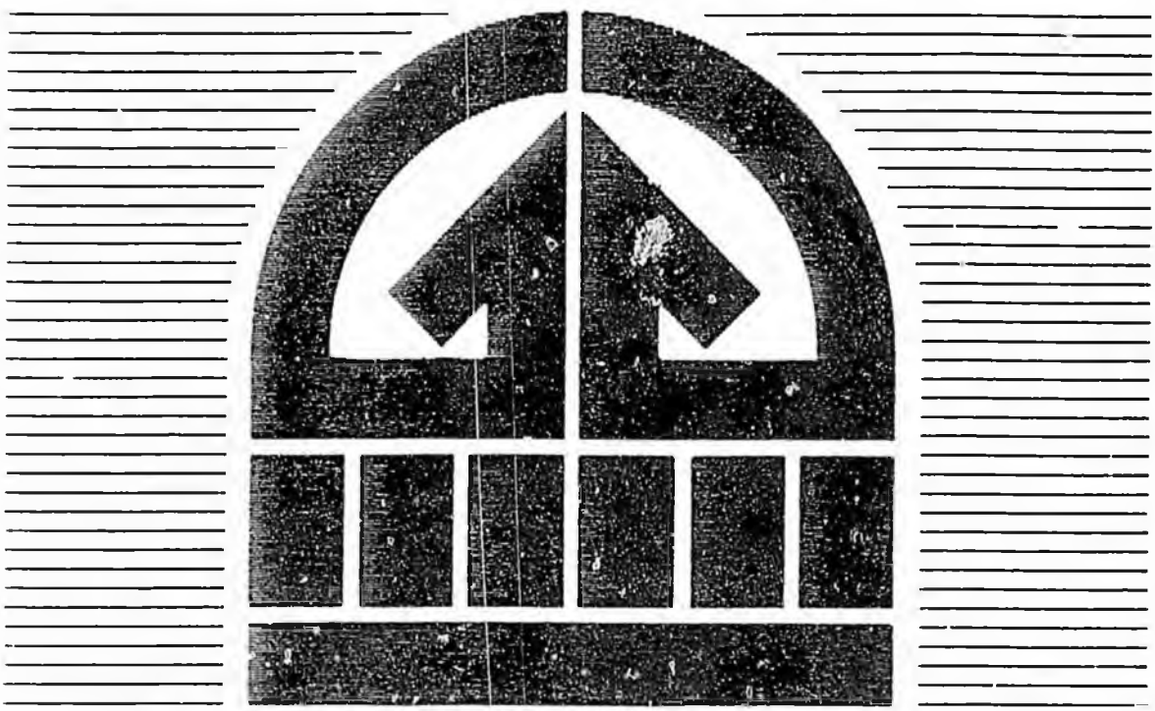
The prison system now has several contracts with individual health-care providers. Over the summer, it asked two Sioux Falls hospitals and three out-of-state companies that specialize in corrections health care for plans on providing every kind of medical service for all its facilities.

The services would include physicians, nurses, mental health care, and inmate and staff education. DeLano said the Corrections Department would save money by having one company provide all health care.

The department's director of finance, Richard Decker, said regular medical expenses at the State Penitentiary increased from $492,000 in 1989 to $638,000 in 1991. They're projected to hit $640,00 next year, he said.

Regular costs at the co-ed Springfield Correctional Facility

STATE LEGISLATIVE REPORT



PRISON BOOT CAMPS: POLICY CONSIDERATIONS AND OPTIONS

by

Kae M. Warnock
Staff Assistant
and
Donna Hunzeker
Senior Policy Specialist

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an Information Service of the National Conference of State Legislatures
dway, Suite 700, Denver, Colorado 80202. William T. Pound, Executive Director

INTRODUCTION

A new breed of correctional facility has evolved out of concerns over increased drug crime and prison overcrowding, and the belief that traditional prisons often fail to rehabilitate offenders. In addition, there has been growing public sentiment that offenders be held accountable for their crimes and that serious offenders serve longer sentences. This has added to prison crowding and motivated state policymakers to search for intermediate sanctions for less-serious offenders.

Boot camps--also known as shock incarceration, special alternative incarceration or regimented inmate discipline--are military-style facilities distinguished by reveille, close-order drills, marching and demanding physical requirements. Participants are usually young adult offenders with no prior incarceration who are serving time for their first non-violent felony conviction. Offenders attend a boot camp program for a shorter duration than a standard prison sentence, 60 to 180 days depending on the state program, and then ordinarily are released on parole for an additional year or more. Boot camps are politically popular because the public sees the programs as "tough on crime." Corrections officials often like the programs because the stringent rules and schedules provide a more controlled environment for offenders than standard incarceration.

LEGISLATIVE ACTIVITY

Boot camps for young adult offenders now operate in at least 23 states, and another seven states are in the process of setting up boot camp programs.

Oklahoma and Georgia opened the first boot camp programs in 1983. Most states with programs have added them just since 1987, and considerable legislative activity has occurred since 1989. Sixteen states enacted enabling legislation in the 1989 or 1990 sessions: Arkansas, Colorado, Connecticut, Illinois, Indiana, Kansas, Missouri, Nevada, New Hampshire, New Mexico, Ohio, Tennessee, Texas, Virginia, Wisconsin and Wyoming. Eight states--Alabama, Arizona, Florida, Georgia, Louisiana, Michigan, New York and South Carolina--enacted enabling legislation between 1983 and 1989. At least five states -- Idaho, Maryland, Mississippi, North Carolina and Oklahoma--operate boot camps under department of corrections regulatory authority. At least one county, Los Angeles, is operating a one-year pilot project.(Figure 1)

POLICY CONSIDERATIONS

Prison-bound or probation-bound offenders

Perhaps the central policy issue to be addressed in considering or expanding boot camp programs is whether the program will be used to divert prison-bound offenders or as a more intensive punitive form of probation.

In at least 19 states, statutes specify boot camps as an alternative for prison-bound offenders, with the intent of providing shorter more intensive terms in a boot camp for some offenders who would have served a longer prison term. In most states that statutorily divert prison-bound offenders to boot camp, the length of the original sentence is not specified by statute. In states that do designate original sentence length for program eligibility, the offender may be trading a sentence as short as three years for six months in a boot camp (New York) or a sentence as long as 15 years for 120 days in a boot camp (Alabama).(Appendix A)

In at least five states, probation-bound offenders are targeted by statute in order to provide boot camps as a sentencing option for offenders for whom straight probation was considered too lenient. Probation-bound offenders are diverted into the boot camp program by the sentencing judge. Both Connecticut and Georgia statutes allow the court to use boot camp as a condition of probation, and Arizona uses it as a condition of intensive probation.(Appendix A)

Tennessee is the only state found to have two separate statutes: one targets prison-bound offenders and the other targets probation-bound offenders. Theoretically, prison-bound and probation-bound offenders could serve side-by-side in the same boot camps. As yet, however, no probation-bound offenders have been sent to Tennessee s boot camp, according to the department of corrections.

Ten states give the court primary discretion to determine whether otherwise prison-bound or probation-bound offenders are sentenced to boot camps. Often, offenders sentenced to boot camps by a judge must also then be screened and accepted by the Department of Corrections (DOC).(Appendix A)

In about 12 states, the department of corrections has considerable discretion for diverting prison-sentenced inmates into boot camps. In six of these states, the DOC's discretion is somewhat diluted because the court maintains jurisdiction and continues to oversee and review the offender's case throughout the program.(Appendix A)

Target offenders

Most states specify that participants in boot camps be non-violent felony offenders who have never served time in a prison. A majority of the states target a specific age group either by statute or by DOC policy, the most common range being from 17 to 25 years of age. New Mexico and Wisconsin target certain drug offenders for the program. Several states statutorily exclude certain crimes such as murder, first degree rape, first degree kidnapping, first degree robbery, capital or life felonies, sex offenses, child abuse or child sexual abuse. Many state laws require that offenders be physically and mentally fit. At least five states have boot camps for women.

PROGRAM OBJECTIVES

The most frequently stated goals of boot camps are to reduce prison overcrowding, deter offenders from crime, rehabilitate young adult offenders and reduce corrections costs.

Reducing Prison Overcrowding

Several states have authorized boot camps, with reduction of prison overcrowding as a goal of the program. In Arkansas, offenders are evaluated according to a set of guidelines adopted by the Board of Correction, under statutory language which says the program is "designed to reduce inmate population by diverting eligible offenders from long-term incarceration." (Ark. Stat. Ann. 12-28-701 to 12-28-705 (1989)) The Florida law indicates that "Due to severe prison overcrowding, the Legislature declares the construction of a basic training program facility is necessary to aid in alleviating an emergency situation." (Fla. Stat. Ann. 958.04 (West 1990))

However, an analysis done by Abt Associates, Inc. for the National Institute of Justice (NIJ), of the U.S. Department of Justice in 1989 said that in comparing maximum annual capacity in boot camps in a number of states to total prison population, the potential effect of boot camps on prison overcrowding is small. Boot camp capacity as a percent of prison population ranged from 1.1 percent in Florida to 11.6 percent in Mississippi according to the NIJ analysis. Boot camps averaged about 4.7 percent of total prison populations in the states examined. Current selection criteria for participants would, therefore, limit the number of facilities needed to a relatively small number.(1,p.12)

Deterrence and Rehabilitation

Another commonly stated purpose of boot camps is to deter offenders from committing additional crimes by giving them a "taste" of prison. This may be particularly true where boot camps are used as a more punitive form of probation. Many boot camps operate within a conventional state prison, but participants are separated from the general population. This gives offenders a "close, sobering exposure to the realities of prison life, but without subjecting them to abuse, exploitation or corruption by hardened criminals," according to the NIJ study. (1,p.xi)

Physical exercise combined with drills and discipline is seen as having rehabilitative value by some policymakers and program managers. Shock incarceration, according to Donald J. Hengesh, director of Special Alternatives Incarceration in Michigan, teaches inmates "self-esteem, self-discipline, self-responsibility and how to work...more importantly [the program] push[es] these individuals to achieve at levels that they never knew they could achieve at before."(2,p.3)

Some programs have added confidence-building exercises, and several require participants to quit smoking. North Carolina includes a Ropes Challenge program, which works first on building group skills such as getting a team over a 12 foot wall, then on individual confidence building such as walking a balance beam suspended 30 feet in the air. In Louisiana, program participants in the Orleans Parish are able to run 12 miles upon completion of the program.(1,p.23)

Most programs do not rely solely on military drills for their rehabilitation, many also include drug and alcohol counseling, reality therapy, individual counseling, literacy training and other pre-release programs. In New York, offenders are placed in a therapeutic community emphasizing community living and socialization skills.(1,p.5) Education also is emphasized in the New York program, with offenders required to spend 12 hours per week in classes. A 1990 report of the New York State Department of Correctional Services, Division of Program Planning, Research and Evaluation, said the academic achievement of boot camp participants is somewhat less than inmates in comparison New York facilities, but boot camp inmates both start with more skill deficiencies and spend less time in the program.(4,pp.35-36) Although many states' boot camp programs offer education, at least two states offer no adult basic education because of the difficulty in doing so in any meaningful way in the short period of time offenders are in the boot camp program.(1,p.27)

At least 10 state statutes specify that offenders receive drug and alcohol education or treatment in boot camps. As mentioned earlier, in New Mexico and Wisconsin certain drug offenders are targeted for the program. In Tennessee, however, some drug offenders are statutorily excluded.

Some states provide considerable pre-release assistance and direction. For example, in Maryland, parole agents visit the offenders before they are released, examine their home environments and make arrangements for offenders to meet with job placement assistance counselors. In at least one state, DOC officials recommend to the sentencing judge that drug offenders be required to attend out-patient drug counseling upon release, and in a few other states the statute specifies that drug offenders be sent to drug treatment or educational programs upon release. Two states--Indiana and Wisconsin--statutorily require drug treatment upon release from boot camp.

Cost Issues

Many boot camps are set up on the grounds of existing correctional facilities and share kitchen, medical and administrative services, contributing to cost-efficient start-up. However, per diem costs may be as much or more than standard prison because of higher staff to inmate ratios.(1,p.16)

The 1989 NIJ study indicated that cost savings come primarily from the shorter terms participants serve. For states to save money, the researchers conclude, they must admit inmates who otherwise would have served longer prison terms. Florida data show that time served in boot camps is about 215 days shorter than what participants would have spent in prison, suggesting savings to the state.(3,p.22) In New York, a 1990 report by the Department of Correctional Services research division estimated that despite higher per diem costs than other prison facilities, a total savings of $55.6 million was realized for 1,158 boot camp participants. This includes an

estimated $36.6 million saved in capital construction and $19.0 million saved in care and custody costs, mostly because inmates were housed for a shorter time.(4,pp.33-34)

A 1990 report by the South Carolina State Reorganization Commission for the state legislature examined the criminal histories of the offenders in the boot camp program to determine how many offenders were actually being diverted from prison and whether any offenders were being diverted from probation. Of the 664 offenders who were placed in the boot camp program between July 1987 and January 1989, 244 were diverted from prison and 420 were diverted from probation. Still, the net cost savings of diverting 244 offenders from prison, after taking into account the costs added by placing 420 probation-bound offenders into boot camps, was determined to be $1.4 million.

None of the cost analyses known have attempted to compute the return-to-crime factor into costs. Perhaps eventually, fiscal studies will combine recidivism data with cost data and analysis of who is being diverted into boot camp programs.

EVALUATIONS AND OUTCOMES

Whether or not boot camps meet the intended objective of rehabilitation of the offender is also an important policy consideration. To date, however, most outcome analyses are either anecdotal, short-term or inconclusive.

Studies by the National Institute of Justice (NIJ) of the U.S. Department of Justice in 1989 and the U.S. Government Accounting Office (GAO) in 1988 concluded that available data are not sufficient to support the theory that boot camps reduce recidivism, overcrowding or prison costs.(1,p.35)(5,p.1)

The NIJ study looked at recidivism rates for graduates of boot camps in Georgia and Oklahoma and found them to be about the same as those of offenders released from prison. In fact, the Georgia DOC found that after a three year follow-up, 38.5 percent of the offenders who participated in boot camp returned to prison, compared to 38 percent recidivism of released prison inmates. Oklahoma found that almost half the boot camp graduates had returned to prison compared to 28 percent in a comparison group of prison inmates over a 29-month period.(1,p.4)

A few states also have tracked the return to crime or subsequent incarceration of boot camp participants. The Florida Department of Corrections released a study in 1989 of their program showing that boot camp graduates had a re-incarceration rate of 5.59 percent versus 7.75 percent for a comparison group; however, the study only contained data for a 13-month period.(3,p.ii)

A 1990 report of the South Carolina State Reorganization Commission showed that among 437 boot camp participants, 16 percent have had a subsequent conviction or had their probation revoked for a technical violation. Of these convictions and violations, 97 percent occurred during the first 12 months after completing boot camp. The most recent study, based on 1984 data, of recidivism for all people released (including all crimes and criminal histories) in that state showed a 16 percent recidivism rate for one year.(6,p.24)

The New York Department of Correctional Services research division report of 1990 on the state's Shock program said, "Despite being incarcerated for shorter periods of time, the Shock graduates appear to be returning at a rate similar to a selected comparable group of inmates...." But the report also notes that Shock graduates come back for offenses less serious than the comparison group, and more often for rule violations rather than for convictions on new crimes.(4,p.51-52) Georgia, Louisiana and New York are currently conducting studies and several other states have indicated they will be tracking recidivism rates as well.

Several states require the department of corrections (DOC) to report to the legislature on the progress of the boot camp programs. In Colorado, for example, the DOC is to provide a report that includes such information as: whether offenders are being diverted from probation or prison, whether bed space is being saved, and whether the recidivism rate for graduates of the program are equal to or lower than that of similar offenders committed to the DOC.

The National Institute of Justice currently is working on a multi-site survey to evaluate seven boot camp programs. The evaluation will address selection decisions, community supervision upon release, program characteristics and program location; however, the outcome of the study is not expected to be decisive. The study should be released by early next year.

The Bureau of Justice Assistance has offered funds to states for boot camp start-up and demonstration. New York and Texas have grants to implement and evaluate effectiveness of boot camps targeted for drug offenders.(7,p.47)

FEDERAL INTEREST AND INCENTIVES

Title XVIII of the federal Crime Control Act of 1990 authorizes $220 million for "correctional options," including, "four grants in each fiscal year, in various geographical areas throughout the United States, to public agencies for correctional options (including the cost of construction) that provide alternatives to traditional modes of incarceration and offenders release programs." Programs must provide appropriate intervention for young offenders; security and discipline; services such as counseling, drug treatment, education and job training; reduction in criminal recidivism; reduction in correctional costs; and development of industrial and service skills. Also available are grants to public agencies to "establish, operate, and support boot camp prisons."

Priority is given to applicants who show potential for developing or testing innovation alternatives, as well as those that demonstrate overall quality and programming in a boot camp program. States operating over capacity in correctional facilities are also given priority. The law also identifies military facilities that may be used as sites for correctional programs funded under this chapter.

As of January 1991, funds for these grants were not yet appropriated. The Federal Crime Control Act of 1990 also authorizes the Federal Bureau of Prisons to use shock incarceration (boot camp) programs. Title XXX specifies military-style regimented training, discipline and labor, and also requires that appropriate job training, education and drug and alcohol counseling be in place. As yet there are no boot camp facilities operating for federal offenders.(8)

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), in conjunction with the Bureau of Justice Assistance, will develop and test up to three boot camps for juvenile offenders, with awards to be made in April 1991 for 18-month test sites. In addition, the National Institute of Justice will fund an independent evaluation of the OJJDP programs, also to begin in 1991.

CONCLUSION

The lofty goals of reducing prison overcrowding, controlling corrections costs and providing for criminal deterrence and rehabilitation are only marginally achievable through boot camp prison programs.

By shortening the period of incarceration for prison-bound offenders, boot camps can have a minimal effect on prison overcrowding and costs. However, cost savings tend to be elusive in programs requiring special start-up and operational costs, yet which target less than 5 percent of the prison population. It is important to note that programs which target only probation-bound offenders are not likely to realize cost savings nor do they have any effect on prison populations.

Increased justice-system costs may in fact result from sending probation-bound offenders to boot camps.

Real savings, of course, can be realized if boot camp programs are successful in reducing subsequent criminal behavior in participants. As yet, however, long-term, comprehensive recidivism evaluations are absent from an evaluation of whether boot camps are good policy. Ultimately, an objective anaiysis of programs' rehabilitative value compared to or in combination with drug treatment, work and education programs, likely will be key to determining success or failure.

In current practice, boot camps do respond to the need for intermediate sanctions tougher than probation and which depart significantly from traditional prison by stressing offender accountability and change. A corrections leader has said boot camps are the "first sexy idea" corrections has had in almost two decades, and therefore should be given time to develop and be refined. Others have warned that military drills without attention to the social ills of illiteracy, unemployment and drug abuse are a wasted effort.

As with most state initiatives, considerable variation is seen in how states have designed and operated boot camp programs. Their experiences, as highlighted in this document, can begin to guide policymakers' decisions on future use of boot camps as a sentencing option.

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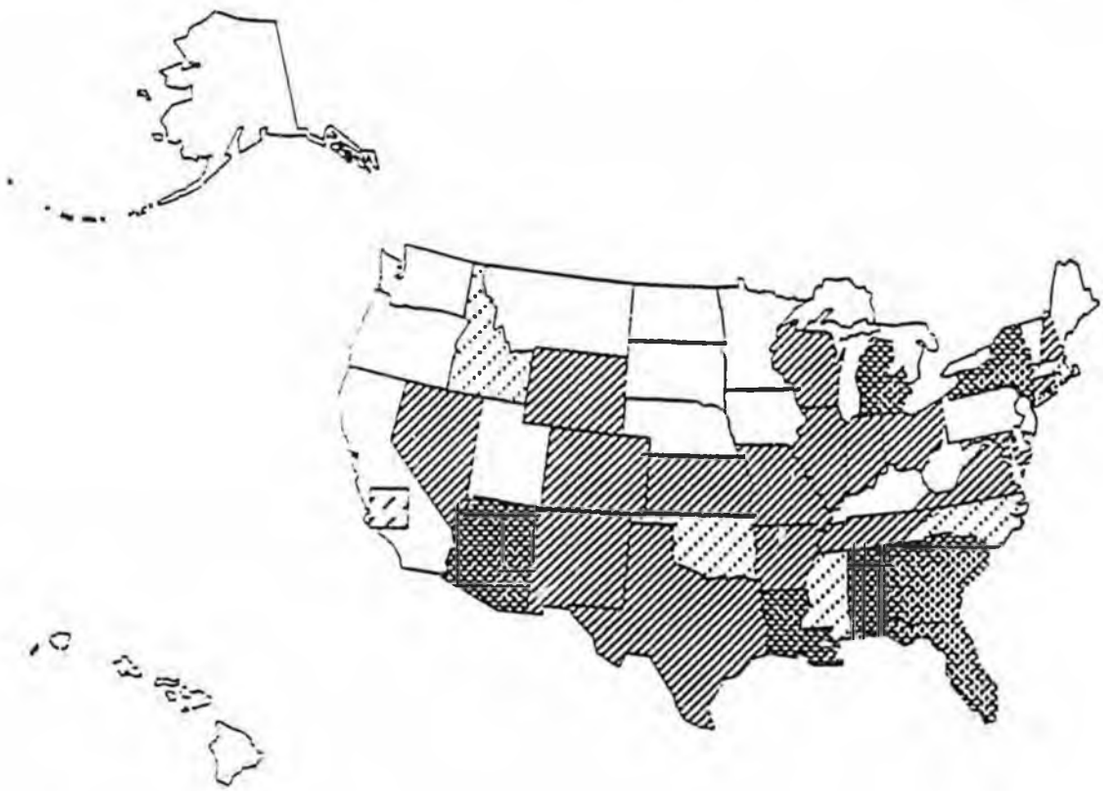
Figure 1.

Boot Camp/Shock Incarceration Facility Use in the States



Enacted enabling legislation in 1989 or 1990 session (6)

Enabling legislation prior to 1989 (8)

States operating facilities under executive branch authority (5)

County-level program

Not known to have boot camp programs

Source: *Shock Incarceration: An Overview of Existing Programs* (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, June 1988) NCSL Original Research

Appendix A
State Statute Specifications for Boot Camps

State	Amount of Legislative Direction	Offender Eligibility Requirements	Prison Alternative/ Enhanced Probation	Distinctive Program Features	Who Has Discretion to Select Candidates?
Alabama Ala. Code §15-18-8 (1989)	Moderate	Lists crimes not eligible, sentence of 15 years or less	PA	Unspecified	Court upon consultation with DOC, retained jurisdiction
Arizona Ariz. Rev. Stat. Ann. §13-915 (West 1989)	Moderate	Age, never been incarcerated as adult, no physical impairments, no contagious disease	EP	Academic education	Court - condition of intensive probation
Arkansas Ark. Stat. Ann. §12-28-701 to 705 (1989)	Minimal	Unspecified	PA	Unspecified	DOC
Colorado Colo. Rev. Stat. Art. 17.27.7 (1990)	Moderate	Age, nonviolent, no previous sentence in a correctional facility, free of physical & mental defects	PA	Educational & vocational assessment & training, job seeking skills, health education, drug/alcohol education & treatment.	Executive director returned to sentencing court upon completion for sentence reduction
Connecticut Conn. Gen. Stat. §18-101c (1989)	Moderate	Age, convicted of other than a class A felony, no physical or mental limitations	EP	Community work, job skills application & communication, separate from general inmate population, judge may require education, employment, restitution, approved residence upon release.	Court
Florida Fla. Stat. Ann. §958.04 (West 1990)	Moderate to Considerable	Age, crime is a felony if committed before 21st birthday, not previously classified under this statute, lists ineligible crimes, no physical limitations, not previously incarcerated.	PA	Training in decisionmaking, personal development, drug counseling, rehabilitation programs	Court commits to custody of DOC, DOC requests sentencing court approval.
Georgia Ga. Code Ann. §42-8-35.1 (1989)	Minimal	Age, no contagious disease, not physically or mentally handicapped	EP	Unspecified	Court - with DOC approval.
Illinois Ill. Ann. Stat. ch. 38, §1003A-1-1 to §1003A-1-6 §1005-6-3 to 3.4 (1990)	Moderate	Age, never imprisoned as adult for felony, lists crimes not eligible, sentenced to imprisonment of 5 years or less, no mental disorder or disability, written consent.	PA	Drug counseling, mandatory supervised release	Court - upon its independent assessment
Indiana Ind. Code Ann. §11-14 (1990)	Considerable	Age, male, committed to DOC to serve max. sentence of not more than eight years, suspendable sentence, no previous conviction or incarceration, not previously in a military or correctional boot camp, not mentally impaired.	PA	Separate from general inmate population, skills for living and rehabilitation, job skills, treatment for drug/ alcohol abuse & emotional or mental problems, education - remedial & GED, vocational assessment, transition program includes education, counseling, community service drug/alcohol treatment, assisted reintegration.	Committed to DOC, DOC reports to court, court may recommend offender but still must be approved by DOC, voluntary withdrawal.
Kansas Kan. Stat. Ann. §75-52,127 (1989)	Minimal	Unspecified	Unspecified	Unspecified	Court
Louisiana La. Rev. Stat. Ann. C.Cr.P. Art. 901.1 (West 1990)	Considerable	First offender, suspended sentence of seven years or less at hard labor, has probation revoked on technical violation, otherwise eligible for parole, 1st or 2nd felony, never served time in a state prison, voluntary.	PA	Intensive parole supervision upon release	Sentenced to Dept. of Public Safety & Corrections, court recommends or Div. of Probation & Parole refers to court.

State	Amount of Legislative Direction	Offender Eligibility Requirements	Prison Alternative/ Enhanced Probation	Distinctive Program Features	Who Has Discretion to Select Candidates?
Michigan Mich. Stat. Ann. §28.2356(3-5) & §28.1133(2) (Callaghan 1990)	Minimal to Moderate	Age, never served sentence of imprisonment, likely to be sentenced to imprisonment, not physically or mentally handicapped.	PA	Unspecified	Court - with consent of offender
Missouri Mo. Ann. Stat. §217.378 (Vernon 1991)	Minimal to Moderate	Age, on felony probation, violated probation, no prior felony conviction.	PA	Unspecified	Court
Nevada Nev. Rev. Stat. §209.356 (1989)	Moderate	Age, male, convicted of nonviolent felony, never incarcerated for more than 6 months, otherwise eligible for probation.	EP	Training in recognition & prevention of drug/alcohol abuse, stress management, prepare for & obtain job.	Court returned to court upon completion
New Hampshire N.H. Rev. Stat. Ann. §651 (1989)	Minimal	Unspecified	PA	Intensive community supervision	Court upon recommendation of DOC
New Mexico N.M. Stat. Ann. §31-18-22 §33-1-17 (1990)	Moderate to Considerable	Adult male & female offenders, lists ineligible crimes, DOC to adopt regulations for screening, voluntary	PA	Substance abuse counselling & treatment, GED prep, training in decisionmaking & personal development & pre-release skills.	Court upon recommendation of corrections department.
New York N.Y. Corr. Law §865-867 (McKinney 1990)	Minimal to Moderate	Age, within 3 years of parole, lists ineligible crimes, must volunteer	PA	6 months, rehabilitation therapy	Screening committee requests answer from court approving or disapproving, court must respond within 25 days or automatically approved.
Ohio 118th Gen'l Assembly §5120.031 (1990)	Considerable	Age, convicted of or pleaded guilty to 3rd or 4th degree felony, lists ineligible crimes, never sentenced to 30 days or more in reform or penal institution, nonviolent	PA	Substance abuse education, employment & social skills, psychological treatment, GED prep, 30-60 days in halfway house with self help & GED prep, intensive supervision parole for remainder of sentence.	Judge sentences to Dept. of Rehabilitation & Correction, progress reports to sentencing court.
South Carolina S.C. Code Ann. §24-21-475 (Law. Co-op 1986)	Minimal	Age, convicted of nonviolent offense for which a five years or more sentence can be imposed, not physically or mentally handicapped, no contagious diseases.	PA	Unspecified	Judge - as condition of probation
Tennessee Tenn. Code Ann. §40-20-201 to 207 §40-26-130 (1989)	Minimal	Age, not physically or mentally handicapped, prison or probation of 6 years or less, no contagious diseases, lists ineligible crimes.	PA & EP	Treatment programs	Judge - as condition of probation
Texas Tex. Code of Crim Proced. Ann. Art. 42.12 (Vernon 1990)	Minimal	Otherwise eligible for probation, age, not physically or mentally handicapped, never been incarcerated for felony.	PA	Unspecified	Court
Virginia Va. Code §19.2 - 316.1 & §53.1 - 67.1 (1990)	Considerable	Age, nonviolent felony, never been sentenced to incarceration as adult voluntary	PA	Counseling, remedial education, drug education, vocational assessment, upon release employment, vocational or other educational programs may be required, voluntary withdrawal.	Court orders commitment to DOC for evaluation, DOC recommends
Wisconsin Wis. Stat. Ann. §302.045 (West 1990)	Moderate	Must volunteer, age, already incarcerated, has substance abuse problem, no psychological, physical or mental limitations lists ineligible crimes	PA	Personal development counseling, substance abuse treatment & education, intensive supervision parole program for drug abusers.	DOC
Wyoming Wyo. Stat. §7-3-1003 (1989)	Minimal	Is serving sentence at state penitentiary, age, no previous incarceration, lists ineligible crimes.	PA	Separation from general inmate population	Board of Charities & Reform

Jane W. Johnson
P.O. Box 110333
Anchorage, Alaska 99511
February 23, 1993

Senator Randy Phillips
State Capitol-Room 103
Juneau, Alaska 99801-1182

Dear Senator Phillips,

My purpose in this letter support your senate bill establishing a work camp for delinquent teenagers in Alaska. A similar bill was introduced last year by Senator Virginia Collins.

As a member of the Toughlove group in Anchorage, and the current coordinator of Toughlove, I have had an opportunity over the past three years to observe the lack of services available for delinquent teenagers. The national statistics on runaways indicate that approximately 55% leave home because of abuse. The remaining 45% are typically the teenagers that we deal with in Toughlove. We call them "run to's", kids that aren't interested in following the family rules, and are running to an alternative lifestyle: criminal activity, drugs, alcohol, and sexual promiscuity. Generally, these kids fall into familiar categories: learning disabled, emotionally disturbed, attention deficit/hyperactive disorder, or adopted and displaying signs of fetal alchohol effect. They are high-risk for drug abuse, pregnancy, sexually transmitted diseases, and delinquent behavior.

Current estimates of the runaway population in the state indicates that at any given time there are one thousand kids on the streeet. In Anchorage, if a teen is arrested on a misdemeanor charge, he/she is given a choice by the police to return home, or be taken to Covenant House. Time and time again, the teen returns to the streets within several hours or days, and their parents begin once more the futile search for their child.

Parents are frustrated and tapped out financially and emotionally dealing with these kids. We have parents in Toughlove praying that their child will caught commiting a more serious offense so that they will be able to get their child into McLaughlin for treatment. Unfortunately, McLaughlin is actively turning away more and more youthful offenders leaving parents no options.

I believe that early intervention is the key to turning youthful offenders around. It would appear that such an approach, based on the experience of other states that have work camp facilities, would in fact reduce the adult prison population over time. Please know that you have a great deal of support in the community for establishing a work camp for the treatment and lock-up of delinquent teenagers.

Sincerely yours,

Jane W. Johnson

SB

53

Alaska State Legislature

State Capitol
Room 516
Juneau, Alaska 99801
(907) 465-3762

Senate Committee on
Health, Education and Social Services

1/22/93

Sponsor Statement on:

SB 53 "An act annulling changes made by certain regulations adopted by the Department of Health and Social Services relating to funding of abortion services under the general relief medical program; and providing for an effective date."

Senate Bill 53 annuls the changes made by the Department of Health and Social Services to the General Relief Medical regulations related to funding for abortions. The regulations would read as they did in December 1992.

Medicaid funds, by federal law, are used only to abort pregnancies which threaten the life of the mother if the pregnancy were carried to term. Senate Bill 53 would allow the state to continue to pay for abortions through the General Relief Medical program for all other qualifying low-income pregnant women.

Enclosed are the affected regulations; Fiscal Notes and a position paper from the Department of Health and Social Services; a memorandum from Terri Lauterbach, Division of Legal Services dated 7/22/92; and a packet of information that was distributed by the Department of Law regarding the regulations.

Alaska State Legislature

Senator Steve Rieger, Chair
Senator Bert Sharp, Vice Chair
Senator Loren Leman
Senator Mike Miller
Senator Jim Duncan
Senator Johnny Ellis
Senator Judith Salo

State Capitol
Room 516
Juneau, Alaska 99801
(907) 465-3762

Senate Committee on
Health, Education and Social Services

The following changes would occur with the passage of SB 53:

7 AAC 47.170(b) An applicant under 18 years of age may apply on his or her own behalf if the applicant is living apart from parents or guardian and is managing his or her own personal financial affairs. [A female] **An** applicant under 18 years of age living at home with her parents or guardian may apply without regard to her parents' or guardian's income if she is **a female** seeking a [therapeutic abortion] **pregnancy-related service**.

7 AAC 47.200 GENERAL RELIEF MEDICAL COVERAGE. The General Relief Medical program provides payment on behalf of needy persons who are eligible under the provisions of this chapter for any of the following services:

- - -

(4) physician services if

(A) related to major medical care provided in a hospital on an inpatient basis;

(B) provided in a hospital emergency room the same day on which the recipient is admitted for major medical care;

(C) provided to a recipient residing in a nursing home;

(D) provided in either an outpatient or an inpatient setting to a recipient with a diagnosis described in 7 AAC 47.271(b); **or**

(E) [provided in determining eligibility for a therapeutic abortion; or] **provided for pregnancy-related services**;

[(F) provided for a therapeutic abortion;]

(5) outpatient laboratory and x-ray services provided in conjunction with [a therapeutic abortion] **pregnancy-related services** or nursing home care;

(6) medical transportation related to major medical care, nursing home care, or [a therapeutic abortion] **pregnancy-related services**;

(7) outpatient surgical center services provided in conjunction with [a therapeutic abortion] **pregnancy-related services** or nursing home care;

- - -

7 AAC 47.210. EXCLUSIONS FROM GENERAL RELIEF MEDICAL PROGRAM. Notwithstanding any other provisions contained in this chapter or 7 AAC 43, a payment may not be made under the General Relief Medical program for any expense

- - -

(7) for an elective procedure [,including an elective abortion] **other than a pregnancy-related service as defined in 7 AAC 47.290**;

7 AAC 47.290. DEFINITIONS. In 7 AAC 47.010 -- 7 AAC 47.290

- - -

(3) "elective procedure" means a procedure that is subject to the choice or decision of the patient or physician regarding medical services that are advantageous to the patient but not necessary to prevent the death or disability of the patient; [,and includes an elective abortion;]

(5) [is repealed:] **"pregnancy-related service" or "pregnancy-related services" means a service or services reasonably necessary for an abortion;**

7 AAC 47.290(7) and (8) are added definitions which would be annulled.

POSITION PAPER

STATE OF ALASKA ★ DEPARTMENT OF HEALTH & SOCIAL SERVICES

Position Paper
SB NO. 53

SB 53 would annul changes in regulations intended to limit use of government funding to pay for abortions that are not therapeutic. Specifically, the bill annuls changes in the regulations that specify that General Relief Medical is only available to women seeking "therapeutic abortions" and related services, annuls references to "elective abortions" under 7 AAC 47.210 and 7 AAC 47.290 including subsections defining "elective abortions" and "therapeutic abortions".

The bill does not bar the administration from readopting the same regulations. Similarly, the bill's intent language is not binding. The statement of intent calls for abortions to be eligible for funding under regulations in force in December of 1992.

Position:
The Department of Health and Social Services opposes SB 53. The bill is a needless action which, if adopted, would place abortions in a special, single service category paid for without a determination as to medical necessity. The present regulations reflect extensive hearing testimony reviewed at all levels of government and with considerable public involvement. Existing regulations make Alaska's policy on abortion consistent with the majority of other states.

Recommended by: _____
Kimberly B. Busch
Director
Div. of Medical Assistance

Date: _____

Approved by: _____
Theodore A. Mala, MD, MPH
Commissioner

Date: Jan 27, 1993

H:\POLICY\HSSPLAN\SB53.PP

PP-93-02

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date:
Title: Annulling changes made by certain regu-lations...relating to funding of abortion services...
Sponsor: Senate HESS Committee
Requestor:

Dept. Affected: Health and Social Services
BRU: Assistance Payments
Component: AFDC
COMPONENT SERIAL NO. 00220

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(297.3)	(321.5)	(347.7)	(376.1)	(406.7)	(439.9)
MISCELLANEOUS						
TOTAL OPERATING	(297.3)	(321.5)	(347.7)	(376.1)	(406.7)	(439.9)
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	(148.7)	(160.8)	(173.9)	(188.0)	(203.4)	(219.9)
1003 GF Match	(148.6)	(160.7)	(173.8)	(188.1)	(203.3)	(220.0)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(297.3)	(321.5)	(347.7)	(376.1)	(406.7)	(439.9)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)
The fiscal analysis above is based upon the "savings" to the AFDC program resulting from abortions paid for by the General Relief Medical program. Additional information is attached.

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that budget components may be decreased if the legislation passes. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: Jan Hansen
Division: Jan Hansen, Director, Division of Public Assistance
Phone: 465-3347
Date: 1/27/93

Approved by Commissioner: Theodore A. Mala, MD, MPH
Agency: Department of Health & Social Services
Date: 1/27/93

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ANALYSIS (Cont.)
Aid to Families with Dependent Children

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs.

Of the 181 eligible for public assistance, it is assumed that 60%, or 109 would receive Aid to Families with Dependent Children (AFDC) for an average of 6 months during a year; 65 of these children would be new additions to existing cases, at a cost of $118 per month, and 44 would be first children that bring their parent into AFDC as new assistance cases with and average cost of $952 per case per month. The FY 94 costs associated with these children are as follows:

65 children X $118 per month X 6 months =	$ 46,020
44 children X $952 per month X 6 months =	$251,328
Total AFDC costs:	$297,348

Revenue sources:

50% GF Match:	$148,674
50% Federal Receipts:	$148,674

For subsequent years it is assumed that the average annual increase in AFDC caseload will be 5% per year and that there will be an adjustment each year of 3% for increases in the cost of living.

H:\POLICY\HSSPLAN3\AFDC.FN

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date:
Title: Annulling changes made by certain regu-lations...relating to funding of abortion services...
Sponsor: Senate HESS Committee
Requestor:

Dept. Affected: Health and Social Services
BRU: Medical Assistance
Component: Medicaid Facilities
COMPONENT SERIAL NO. 00230

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(454.0)	(526.7)	(610.9)	(708.7)	(822.1)	(953.6)
MISCELLANEOUS						
TOTAL OPERATING	(454.0)	(526.7)	(610.9)	(708.7)	(822.1)	(953.6)
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	(227.0)	(263.3)	(305.5)	(354.3)	(411.0)	(476.8)
1003 GF Match	(227.0)	(263.3)	(305.4)	(354.4)	(411.1)	(476.8)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(454.0)	(526.7)	(610.9)	(708.7)	(822.1)	(953.6)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "savings" to the Medicaid Facilities component resulting from abortions paid for by the General Relief Medical program. Additional information is attached.

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: Kathleen Black
Division: Medical Assistance, DHSS
Phone: 465-3355
Date: 1-26-93

Approved by Commissioner: (R) Theodore A. Mala, M.D. M.P.H.
Agency: Department of Health & Social Services
Date: 1/27/93

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ANALYSIS (Cont.)
Medical Assistance
Medicaid Facility Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the affected women would otherwise continue full-term pregnancies and would be eligible for certain state funded public assistance services as a result. Consequently, this fiscal note relates to the number of women who would not continue their preganancies and the resultant reduction in utilization of certain state funded services those women would likely have used. It is assumed that the effect of this bill would be to reduce the number of pregant women who would otherwise be eligible for medical assistance in proportion to the number of abortions performed.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 women would have been eligible for medical assistance programs for the pregnancy.

The cost of providing birthing and related services on an inpatient basis to pregnant women are estimated at $2,508 per pregnancy. For the estimated 181 eligible births these costs total $454,000 in FY 94.

For subsequent years utilization is anticipated to grow at 11% and inflation is calculated as 5%.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date:
Title: Annulling changes made by certain regu-
lations...relating to funding of abortion services...
Sponsor: Senate HESS Committee
Requestor:

Dept. Affected: Health and Social Services
BRU: Medical Assistance
Component: Medical Non-Facility

COMPONENT SERIAL NO. 00229

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(694.4)	(805.5)	(934.4)	(1,083.9)	(1,257.3)	(1,458.5)
MISCELLANEOUS						
TOTAL OPERATING	(694.4)	(805.5)	(934.4)	(1,083.9)	(1,257.3)	(1,458.5)
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	(347.2)	(402.8)	(467.2)	(541.9)	(628.7)	(729.2)
1003 GF Match	(347.2)	(402.7)	(467.2)	(542.0)	(628.6)	(729.3)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(694.4)	(805.5)	(934.4)	(1,083.9)	(1,257.3)	(1,458.5)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "savings" to the Medicaid Non-Facilities component resulting from abortions paid for by the General Relief Medical program. Additional information is attached.

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: [signature]
Division: Medical Assistance, DHSS
Phone: 465-3355
Date: 1-26-93

Approved by Commissioner: Theodore A. Mala, MD, MPH [signature]
Agency: Department of Health & Social Services
Date: 1/27/93

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ANALYSIS (Cont.)
Medical Assistance Administration, BRU
Medicaid Non-Facility Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs after childbirth as would the pregnant mothers previous to childbirth.

The cost of providing prenatal, postpartum, and other medical services to pregnant women and newborns and their parent are estimated at $3,836 per pregnancy. For the estimated 181 eligible births these costs total $694,400 in FY 94.

For subsequent years there is an assumed 11% utilization increase and a 5% inflation cost.

H:\POLICY\HSSPLAN3\NON-FAC.FN

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date:
Title: Annulling changes made by certain regu-
lations...relating to funding of abortion services...
Sponsor: Senate HESS Committee
Requestor:

Dept. Affected: Health and Social Services
BRU: Medical Assistance
Component: General Relief Medical

COMPONENT SERIAL NO. 00232

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	288.7	334.9	388.5	450.6	522.7	606.3
MISCELLANEOUS						
TOTAL OPERATING	288.7	334.9	388.5	450.6	522.7	606.3
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	288.7	334.9	388.5	450.6	522.7	606.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	288.7	334.9	388.5	450.6	522.7	606.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "costs" to the General Relief Medical program resulting from abortions paid for through GRM. Additional information is attached.

This fiscal note is provided to show the estimated cost increase associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost increases. No assumption should be made that any actual "new costs" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no c

Prepared by: Kimberly S. Bence
Division: Medical Assistance, DHSS
Phone: 465-3355
Date: 1-26-93

Approved by Commissioner: Theodore A. Mala, MD, MPH
Agency: Department of Health & Social Services
Date: 1/27/93

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ANALYSIS (Cont.)
Medical Assistance Administration, BRU
General Relief Medical, Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs.

The associated costs with each abortion are estimated to be $880. For the estimated 329 abortions the total cost is estimated to be $288,700.

For subsequent years there is an assumed 11% utilization increase and a 5% inflation cost.

H:\POLICY\HSSPLAN3\GRM.FN

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date:
Title: Annulling changes made by certain regulations...relating to funding of abortion services...
Sponsor: Senate HESS Committee
Requestor:

Dept. Affected: Health and Social Services
BRU: Medical Assistance Administration
Component: Claims Processing
COMPONENT SERIAL NO. 00243

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	(74.2)	(86.1)	(99.8)	(115.8)	(134.3)	(155.8)
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(74.2)	(86.1)	(99.8)	(115.8)	(134.3)	(155.8)
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	(55.6)	(64.6)	(74.8)	(86.8)	(100.7)	(116.8)
1003 GF Match	(18.6)	(21.5)	(25.0)	(29.0)	(33.6)	(39.0)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(74.2)	(86.1)	(99.8)	(115.8)	(134.3)	(155.8)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based on avoidance of the projected costs for processing new claims for newborns and mothers who will utilize the Medicaid program should this bill pass. Additional information is attached.

This fiscal note is provided to show the estimated cost reductions associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: [signature]
Division: Medical Assistance, DHSS
Phone: 465-3355
Date: 1-26-93

Approved by Commissioner: Theodore A. Mala, MD, MPH [signature]
Agency: Department of Health & Social Services
Date: 1/27/93

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ANALYSIS (Cont.)
Medical Assistance Administration, BRU
Claims Processing, Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs.

The processing costs associated with each claim are estimated to be $6.23. For the 181 births it is assumed that there will be approximately 65 claims per birth for prenatal care, childbirth, and postpartum care.

For subsequent years there is an assumed 11% utilization increase and a 5% inflation cost.

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DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM July 22, 1992

SUBJECT: DHSS Abortion Funding Regulations (Work Order No. 8-LS0049)

TO: Senator Arliss Sturgulewski

FROM: Terri Lauterbach
Legislative Counsel

You have asked us to review the legality of the Medicaid and General Relief Medical (GRM) abortion funding regulations proposed by the Department of Health and Social Services on July 8, 1992.

There are a number of areas where the proposed regulations are not clear. However, in our opinion, a court probably would find that the proposed changes to the Medicaid regulations are legally valid and consistent with legislative intent because they reflect federal Medicaid requirements, a result intended by the legislature. But, a court is less likely to find the proposed changes to the GRM regulations to be consistent with legislative intent because the court may view them as arbitrary changes and because they probably result in unconstitutional administration of the state's medical assistance programs.

A finding of arbitrariness could be made because the proposed regulations change a longstanding DHSS interpretation of the GRM statutes without any intervening legislative directive to do so and without any demonstrable change in the medical needs of Alaskan women. A finding of unconstitutionality could be made because the proposed regulations infringe privacy rights and the right to equal protection of the laws by treating indigent pregnant women who choose to continue their pregnancies differently from indigent pregnant women who choose not to.

In order to answer your question, this memorandum will discuss the following topics:

(1) Content of the proposed regulations.
(2) Effect of the proposed regulations.
(3) Consistency of the proposed regulations with legislative intent.
(4) Constitutionality of the proposed regulations - privacy.
(5) Constitutionality of the proposed regulations - equal protection.

(2) where termination of a pregnancy is certified by a physician as medically necessary "to prevent the death or disability of the woman"; and (3) where termination of a pregnancy is certified by a physician as medically necessary "to ameliorate a condition harmful to the woman's physical or psychological health." See proposed 7 AAC 47.290(8).[4/]

"Elective abortion" is defined to mean a procedure, other than a therapeutic abortion, to terminate a pregnancy.[5/] See proposed 7 AAC 47.290(7).

(2) Effect of the proposed regulations.

The effect of the proposed changes in the Medicaid regulations would be to bring the state program into compliance with current federal abortion funding restrictions.[6/]

[3/](...continued)
In cases alleging incest or sexual abuse of a minor, will DHSS simply accept the pregnant woman's statement of the occurrence, or will DHSS somehow investigate or require corroboration of the age and identity of the alleged perpetrator?

7 AAC 47.290(8)(B) should be clarified on this point. In its present form, it invites arbitrary action and leaves open the possibility of extreme invasion of privacy.

[4/] 7 AAC 47.290(8) does not distinguish between previability and postviability abortions.

[5/] "Elective procedure" is also defined in the proposed regulations as

> a procedure that is subject to the choice or decision of the patient or physician regarding medical services that are advantageous to the patient but **not necessary to prevent the death or disability of the patient, and includes an elective abortion**. (See 7 AAC 47.290(3).) (Underlined language is proposed as new language in the regulation. Bold face indicates emphasis added for the purposes of this memo.)

As with 7 AAC 140(a) and 7 AAC 47.290(8)(B), discussed in preceding footnotes, this proposed regulation needs clarifying.

It is obvious from the definition of "therapeutic abortion" and "elective abortion" that GRM funding will be provided for an abortion that is "not necessary to prevent the death or disability of the patient." Therefore, the definition of "elective procedure" should be rewritten to be consistent with the definition of "elective abortion." One way to achieve consistency would be to move the new language currently proposed to be appended at the end of 7 AAC 47.290(3) to the beginning of that definition instead so that it would read as follows:

> "Elective procedure" means (A) an elective abortion or (B) a procedure that is subject to the choice of the patient...but not necessary to prevent the death or disability of the patient.

[6/] Medicaid is a joint federal-state program. The state cannot use Medicaid money for a purpose prohibited by federal law or regulation.

CORRECTION

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STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM July 22, 1992

SUBJECT: DHSS Abortion Funding Regulations (Work Order No. 8-LS0049)

TO: Senator Arliss Sturgulewski

FROM: Terri Lauterbach
Legislative Counsel

You have asked us to review the legality of the Medicaid and General Relief Medical (GRM) abortion funding regulations proposed by the Department of Health and Social Services on July 8, 1992.

There are a number of areas where the proposed regulations are not clear. However, in our opinion, a court probably would find that the proposed changes to the Medicaid regulations are legally valid and consistent with legislative intent because they reflect federal Medicaid requirements, a result intended by the legislature. But, a court is less likely to find the proposed changes to the GRM regulations to be consistent with legislative intent because the court may view them as arbitrary changes and because they probably result in unconstitutional administration of the state's medical assistance programs.

A finding of arbitrariness could be made because the proposed regulations change a longstanding DHSS interpretation of the GRM statutes without any intervening legislative directive to do so and without any demonstrable change in the medical needs of Alaskan women. A finding of unconstitutionality could be made because the proposed regulations infringe privacy rights and the right to equal protection of the laws by treating indigent pregnant women who choose to continue their pregnancies differently from indigent pregnant women who choose not to.

In order to answer your question, this memorandum will discuss the following topics:

(1) Content of the proposed regulations.
(2) Effect of the proposed regulations.
(3) Consistency of the proposed regulations with legislative intent.
(4) Constitutionality of the proposed regulations - privacy.
(5) Constitutionality of the proposed regulations - equal protection.

A "Conclusion" section appears after the following "Discussion" section.

DISCUSSION

(1) Content of the proposed regulations.

The proposed regulations make changes in two different DHSS programs that provide medical care for indigent women: Medicaid and General Relief Medical (GRM).

The proposed changes in the Medicaid regulations provide that payment for an abortion will "in the department's discretion" be covered if the billing invoice is accompanied by certification that "the life of the mother would be endangered if the pregnancy were carried to term."[1] See proposed 7 AAC 43.140(a).

The proposed changes in the GRM regulations would restrict funding to "therapeutic abortions" and eliminate funding for "elective abortions." See proposed 7 AAC 47.200 and 7 AAC 47.210.

"Therapeutic abortion" is defined in the proposed GRM regulations to include three types of pregnancy terminations[2]: (1) where the pregnancy resulted from "actions that would constitute a crime of" sexual assault, sexual abuse of a minor, or incest;[3]

---

[1] It is not clear what the proposed regulations mean by "in the department's discretion." Will the DHSS second-guess the physician's certification?

According to the Anchorage Daily News, the commissioner intends to leave "the final call" to "doctors, not bureaucrats." However, that comment was, according to the ADN, made in reference to the definitions of "elective" and "therapeutic" in the GRM regulations, not the use of "in the department's discretion" in the Medicaid regulations. See ADN, Thursday, July 9, 1992, at Page A10, Col. 5.

The proposed Medicaid regulations should be clarified in regard to this language about DHSS's "discretion."

[2] In using the phrase "termination of pregnancy," the regulations make no attempt to distinguish procedures like induced labor or Caesarian sections. Most likely, these would be covered under Medicaid as childbirth procedures, so they need not be covered under the GRM regulations.

[3] The regulations do not state who will determine whether actions leading to the pregnancy "would constitute" the specified crimes. Short of a conviction (which would usually take so long as to moot the question of abortion), who is in a position of determining that any of the specified crimes has occurred?

In cases alleging sexual assault, for instance, the lack of consent of the victim is often at issue. Will DHSS personnel, after questioning a pregnant woman, determine whether or not there was consent?

(continued...)

(2) where termination of a pregnancy is certified by a physician as medically necessary "to prevent the death or disability of the woman"; and (3) where termination of a pregnancy is certified by a physician as medically necessary "to ameliorate a condition harmful to the woman's physical or psychological health." See proposed 7 AAC 47.290(8).[4/]

"Elective abortion" is defined to mean a procedure, other than a therapeutic abortion, to terminate a pregnancy.[5/] See proposed 7 AAC 47.290(7).

(2) Effect of the proposed regulations.

The effect of the proposed changes in the Medicaid regulations would be to bring the state program into compliance with current federal abortion funding restrictions.[6/]

[3/](...continued)
In cases alleging incest or sexual abuse of a minor, will DHSS simply accept the pregnant woman's statement of the occurrence, or will DHSS somehow investigate or require corroboration of the age and identity of the alleged perpetrator?

7 AAC 47.290(8)(B) should be clarified on this point. In its present form, it invites arbitrary action and leaves open the possibility of extreme invasion of privacy.

[4/] 7 AAC 47.290(8) does not distinguish between previability and postviability abortions.

[5/] "Elective procedure" is also defined in the proposed regulations as

> a procedure that is subject to the choice or decision of the patient or physician regarding medical services that are advantageous to the patient but **not necessary to prevent the death or disability of the patient, and includes an elective abortion.** (See 7 AAC 47.290(3).) (Underlined language is proposed as new language in the regulation. Bold face indicates emphasis added for the purposes of this memo.)

As with 7 AAC 140(a) and 7 AAC 47.290(8)(B), discussed in preceding footnotes, this proposed regulation needs clarifying.

It is obvious from the definition of "therapeutic abortion" and "elective abortion" that GPM funding will be provided for an abortion that is "not necessary to prevent the death or disability of the patient." Therefore, the definition of "elective procedure" should be rewritten to be consistent with the definition of "elective abortion." One way to achieve consistency would be to move the new language currently proposed to be appended at the end of 7 AAC 47.290(3) to the beginning of that definition instead so that it would read as follows:

> "Elective procedure" means (A) an elective abortion or (B) a procedure that is subject to the choice of the patient...but not necessary to prevent the death or disability of the patient.

[6/] Medicaid is a joint federal-state program. The state cannot use Medicaid money for a purpose prohibited by federal law or regulation.

Although federal restrictions have varied from time to time, current federal restrictions prohibit Medicaid payments for an abortion unless the life of the pregnant woman would be endangered by a completed pregnancy.

Because of the proposed definitions of "therapeutic abortion" and "elective abortion," the effect of the proposed changes in the GRM regulations is less clear. How many abortions will be considered "elective," if any, and therefore not be funded? And what kind of physician statement will be considered sufficient by DHSS to satisfy the requirement that a physician certify the abortion as medically necessary?[7/]

It is possible that the definitions, by including situations involving the woman's "physical or psychological health," would permit any abortion to be funded as long as the woman could find a physician willing to provide the appropriate certification.[8/] After an initial dip in abortion funding caused by confusion on the part of both patients and their physicians about coverage, the department could well discover that the requirement of physician certification will become a pro forma bit of paperwork with no actual effect of restricting funding.

However, for the sake of analyzing the regulations from the perspective of whether they are consistent with legislative intent, this memorandum will assume that the fiscal note accompanying the proposed regulations is basically accurate. The fiscal note predicts increased costs to the state and federal government of over $1,000,000 in fiscal year 1993 and almost $2,000,000 by fiscal year 1997.[9/] According to DHSS spokesperson Ed Wicher, the prediction of increased costs is based on an anticipated decrease in abortions and a concomitant increase in live births of indigent children

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[7/] These questions are crucial not just as matters of clarity but as matters of constitutionality. If, in practice, all types of abortions will wind up being funded without significant procedural obstacles for different types, the proposed regulations would probably not be construed to violate either privacy rights or the right to equal protection of the law.

[8/] See, for instance, the statement attributed to Thomas Moffatt, executive director of Alaska Right to Life Inc., in the Anchorage Daily News, July 9, 1992, page A1, Col. 5:

> [The definition of "therapeutic abortion"] opens the barn door. In my opinion that definition would permit any abortion. I would imagine any one of a dozen abortionists could certify anyone who walked through their doors.

Whether one ascribes good faith to "abortionists" or not, we agree with Mr. Moffatt that the definition of "therapeutic abortion" could encompass all abortions since an unwanted pregnancy probably always has, at a minimum, adverse psychological effects on a woman.

[9/] See page 2 of the "NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES" that accompanied the actual language changes proposed for 7 AAC 43 and 7 AAC 47, issued 7/8/92.

who, with their indigent mothers, will be eligible for public medical and financial benefits.[10]

(3) Consistency of the proposed regulations with legislative intent.

Given the content and the assumed effect[11] of the proposed regulations, one aspect of our analysis is whether DHSS's decision to distinguish among types of abortions, funding some and not others, is consistent with legislative intent.

According to Alaska case law, the intention of the legislature must be determined from the words used in the statute being implemented by the agency, construed with reference to the purpose of the program of which the statute is a part.[12] If an administrative regulation is consistent with a statute's purposes and reasonably necessary to carry them out, the Alaska Supreme Court will not overturn it, provided it is reasonable and not arbitrary.[13] Since a regulation is presumptively valid, the burden of proving the invalidity of a regulation is on the party challenging it.[14] Furthermore, since these proposed regulations involve policy-making and the particularized expertise and experience of administrative personnel, a court will be inclined to defer to the administrative decision expressed in the regulation, and will inquire only whether it has a reasonable basis.[15]

In light of these standards that the court has developed for its review of administrative regulations, it is clear that the proposed changes to the Medicaid regulations would be upheld if challenged. It is much less clear whether the proposed changes to the GRM regulations would be upheld.

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[10] It is not clear exactly what percentage of abortions currently funded will be considered "elective" (and unfunded) under the new regulations. However, the fiscal note is substantial, indicating that DHSS believes a significant percentage of abortions will no longer qualify for public funding and will not be covered by nonpublic funds either. An "educated guess," based on the fiscal note, would be that 35 - 40 percent of abortions currently funded under Medicaid and GRM will no longer be funded under those programs nor by private means.

[11] For a discussion of the "assumed effect" see the preceding three paragraphs of this memorandum.

[12] State v. City of Anchorage, 513 P.2d 1004 (Alaska 1973).

[13] Kalmakoff v. State, Commercial Fisheries Entry Com'n, 693 P.2d 844 (Alaska 1985).

[14] State v. Alyeska Pipeline Service Co., 723 P.2d 76 (Alaska 1986).

[15] Hood v. State, 574 P.2d 811 (Alaska 1978). However, this deference may be more applicable to new regulations than to changes in old regulations.

With respect to the proposed Medicaid regulations, the court would no doubt look at the legislative intent expressed in AS 47.07.040, where the legislature gave DHSS the authority to

> make those arrangements or regulatory changes, not inconsistent with law, as may be required under federal law to obtain and retain approval of the United States Department of Health and Human Services to secure for the state the optimum federal payment under the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act, Medical Assistance). (Emphasis added.)

In order to retain the approval of the federal government for the state's Medicaid program, the state must not use Medicaid money for an abortion unless the pregnant woman's life would be endangered by carrying the pregnancy to term. DHSS's proposed changes in the Medicaid regulations would simply insert that federal restriction into the state's program.[16/] Therefore, we have no doubt that a court would uphold the new state Medicaid restriction as consistent with legislative intent because it is necessary to keep the state program in compliance with federal requirements, a result clearly intended by the legislature.

We have more doubt about whether the GRM restrictions would be upheld. Most of our doubt stems from issues that the proposed regulations raise under the state constitution.[17/] However, there is also some room for doubt about the validity of the proposed regulations because of issues raised about their consistency with the legislative intent involving the GRM statutes.

To determine legislative intent under the GRM program, a court would look at AS 47.25.120 and 47.25.130 and the definition of "assistance" in AS 47.25.300. These statutes indicate that the legislature intended to leave implementation of the GRM program largely within the discretion of DHSS. The three statutes read as follows:

> Sec. 47.25.120. ELIGIBILITY FOR ASSISTANCE. Financial assistance may be given under AS 47.25.120 - 47.25.300, so far as practicable under the conditions in this state, to a needy person who is eligible under the regulations of the department. (Emphasis added.)

16/ It would also make the regulations match reality. It is my understanding from DHSS that the federal Medicaid restriction (life endangerment) already has been implemented on the state level for over a decade, even though 7 AAC 43.140(a) has continued to list two other situations (health effects, and rape/incest) as being covered by Medicaid during that time. These other two situations have been covered under GRM, instead of Medicaid, during the last decade.

17/ See the next two sections of this memo.

> Sec. 47.25.130. AMOUNT AND TYPE OF ASSISTANCE. (a) The amount of assistance for a needy person shall be **determined by the department** with regard to the resources and needs of the person and the conditions existing in each case. Where possible, assistance shall be sufficient to provide the applicant with reasonable subsistence **according to standards of assistance established by the department.** However, the amount of assistance for subsistence needs may not exceed $120 a person a calendar month. (Emphasis added.)
>
> Sec. 47.25.300. DEFINITIONS. In AS 47.25.120 - 47.25.300
>
> (1) "assistance" means financial assistance to or on behalf of a needy person, including subsistence (food, shelter, fuel, clothing, and utilities) and transportation, **medical needs (including, but not limited to, hospitalization, nursing, and convalescent care)**, burial, and other determined needs;

These statutes give broad discretion to DHSS. After a person is determined to be "eligible under regulations of the department," the amount of assistance must be "determined by the department" with regard to the "needs" of the person and "the conditions existing in each case." Assistance must be reasonable "according to standards of assistance established by the department." While assistance is supposed to include "medical needs," the legislature has not defined that term except to say that it includes a minimum of "hospitalization, nursing, and convalescent care." In essence, the proposed regulations are an exercise of DHSS's authority to interpret the term "medical needs."

As a general matter, we think that the GRM statutes give very wide discretion to DHSS to interpret the term "medical needs." "Need" is an ambiguous term according to the dictionary, meaning both "necessary or required" and "useful or desired."[18] Considering the legislature's limitation of general relief **financial** assistance to $120 a month, we doubt that a court would have considered it unreasonable for DHSS to limit general relief **medical** assistance to procedures necessary to prevent the death or disability of the patient when initially implementing the GRM program. This would have restricted the medical aspect of the program to a very basic level of assistance like the legislature restricted the financial aspect of the program.

However, the proposed regulations are not the initial regulations to implement the GRM program. Rather, the proposed regulations would change implementation of a program that is almost 40 years old[19] and that has probably covered all abor-

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[18] Webster's New World Dictionary.

[19] The general relief program was enacted by ch. 110, SLA 1953.

tions not covered under Medicaid for most, if not all, of those 40 years.[20] When determining whether the proposed GRM regulations are reasonable, a court might evaluate whether there is a reasonable basis for the change, not whether the regulations would have been reasonable initially.

When evaluating the reasonableness of the changes made by the regulations, a court might note, first of all, that there have been no legislative changes in the definition of "assistance" or "medical needs" since 1953. Furthermore, the court would probably note that DHSS itself has had a longstanding interpretation that GRM "medical needs" include all types of abortions.[21] And, the court would probably note that, despite the longstanding DHSS policy of covering abortions under GRM, there has never been a legislative change indicating disapproval of that policy.[22] Finally, the agency will probably be unable to demonstrate to the court that the medical needs of Alaskan women have changed with respect to pregnancy options. Therefore, DHSS probably cannot point to any legislative or medical reason for interpreting "medical needs" differently now than they have been determined over the past few decades. Thus a court could, in our opinion, find the proposed GRM changes to be arbitrary, with no reasonable basis.

We are not alone in this opinion. The question of whether the GRM regulations could be changed to prohibit funding for "elective" abortions was put to Attorney General Wilson Condon in 1981 by then Governor Jay Hammond.

Condon acknowledged that a "strong argument" could be made that DHSS has absolute discretion to change its definition of "medical needs" in the GRM regulations, but explained at length that there definitely would be "legal difficulties" with this approach. He wrote

> AS 47.25 gives the agency broad discretion to determine whether there is a need for specific types of medical treatment [for persons who are eligible for general relief]. . . By [previously] adopting regulations

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[20] We base this latter conclusion on written evidence from the mid-1970's and oral anecdotal evidence dating back to the 1960's.

[21] We do not know if the court will grant "deference" to DHSS's longstanding interpretation or to DHSS's current desire to change the interpretation.

[22] Abortions were singled out by DHSS for continued coverage under GRM regulations in the summer of 1986 when the legislature cut the GRM appropriation by 50 percent for fiscal year 1987. Before that time, they had been covered along with other "physician services." Contemporaneously with the GRM funding cut, the legislature enacted a priority system for eliminating GRM services when appropriations were insufficient to cover them all. Thus, there has been fairly recent legislation about services under GRM, but no indication that different types of abortions should be treated differently.

> providing for the coverage of abortion expenses the agency implicitly made a finding that there is a general need for that type of medical treatment, i.e., that abortions are "medical needs" under the terms of the statute. It could be argued that before the regulations could be amended to exclude elective abortions, there would have to be a finding that conditions within Alaska had changed to such an extent that there is no longer a need for that type of medical treatment. Without such a finding, the change [in the regulations] might be considered an arbitrary agency action. It should also be noted that the legislature has not taken action to change the original agency determination.
>
> Such a finding would be most difficult to make in this case. Neither the Hyde Amendment nor the United States Supreme Court decision in Harris alter[s] "medical needs." Nor has any other event occurred in the state which suggests a change in medical needs. Absent changed circumstances, we believe a court might not permit the deletion of elective abortions from the list of medical needs covered by the General Relief Medical Assistance program.[23]

We agree with Attorney General Condon's opinion that changes in the GRM regulations without a change in either the underlying statute or in the medical circumstances of indigent women in the state would likely be viewed as unlawful arbitrary action by the agency. Such arbitrariness would be inconsistent with legislative intent. In addition, the regulations would be inconsistent with legislative intent if they resulted in unconstitutional administration of the state's medical assistance programs. This memo will now discuss the constitutional issues raised by the proposed regulations.

(4) Constitutionality of the proposed regulations - privacy.

Given the content and the assumed effect[24] of the proposed regulations, it is clear that the privacy clause of the state's constitution[25] could be the basis of a challenge to the constitutionality of the regulations.[26]

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[23] Op. Att'y Gen., January 12, 1981, File No. J-66-413-81, at pages 5 - 6.

[24] For a discussion of the "assumed effect" see footnotes 6 - 10 and accompanying text.

[25] Article 1, sec. 22, Constitution of the State of Alaska.

[26] It cannot reasonably be argued that a woman's decision about whether to continue a pregnancy fails to involve a privacy right.

(continued...)

Under the state constitution, a regulation impinging on the right to privacy may be upheld only if it is necessary to further a compelling state interest.[27]

A challenge based on the state's privacy clause would contend that the proposed regulations interfere with an indigent woman's right to privately determine whether to continue her pregnancy. Challengers would probably say that the regulations force a state-sponsored inquiry into the woman's reasons for her choice (if the choice is abortion) and place a substantial obstacle (by denying funding) in the way of implementing the woman's choice (if the choice is abortion and for a reason not supported by the state).

Defenders of the proposed regulations would probably use arguments like those made in federal decisions that have upheld Medicaid abortion funding restrictions. They would argue that it will be a woman's poverty, not the state, that will stand in the way of an "elective" abortion under the proposed regulations. They would also point out that the right to privacy is not absolute[28] and can be outweighed by the state's "important and legitimate interest in potential life."[29] Defenders would probably claim that by not funding "elective" abortions, the state would simply be expressing its legitimate preference to financially support childbirth. The woman's right of privacy would not be violated because, according to the regulations' defenders, she can still get an abortion, just not at state expense.

In rebuttal, the regulations' challengers would probably note that the state itself has acknowledged that lack of state funding will be more than an obstacle in the path of many indigent pregnant women; it will be an absolute bar. DHSS's own fiscal note projects that a significant number of indigent women who cannot get publicly-funded

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[26](...continued)

As long ago as 1942 and as recently as June 1992, federal decisions have recognized that the federal "[c]onstitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood," including "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear...a child." See, Casey v. Planned Parenthood of Southeastern Pennsylvania, ___ U.S. ___ (1992), 1992 WestLaw 142546, page 11, which cites a string of cases extending back to 1942.

And, while the contours of Alaska's right to privacy are not yet firmly established, it is clear that the right to privacy guaranteed to Alaskans is broader in scope than that guaranteed in the federal constitution. State v. Glass, 538 P.2d 872 (Alaska 1978).

[27] Grav v. State, 525 P.2d 524 (Alaska 1974).

[28] Grav v. State, supra; Ravin v. State, 537 P.2d 494 (Alaska 1975); and State v. Erickson, 574 P.2d 1 (1978).

[29] Casey, supra, at page 24.

abortions under the new restrictions will, in effect, be forced to carry their pregnancies to term. Challengers would probably contend that this is not only the effect, but also the purpose of the new regulations. The challengers can point to the governor's own press release that says the purpose of the new restrictions is "to save lives." They would probably say that the intent of the restrictions clearly goes beyond promoting childbirth, which could be achieved by less intrusive means like educational outreach, and, instead, strikes at the heart of the right to privacy itself, by using the power of the state to impose an "undue burden" on the right of an indigent woman to freely decide how to manage her pregnancy.[30/]

The Alaska Supreme Court's resolution of these arguments is as likely to be affected by its view of reality as by case law, and it may well be determined by the strength of the record before it at the time it makes its decision.[31/] If the court views the Medicaid and GRM changes separately, from the point of view of the programs themselves, the court could uphold the Medicaid regulations as requirements of federal law and uphold the GRM changes as treating all "elective" procedures the same.[32/] However, if the court views the programs from the point of view of an indigent pregnant woman, the court could find that the two programs, in the way that they operate together to support a pregnant woman's choice to give birth but not, in all cases, her choice to have an abortion, impermissibly interfere with her fundamental right of reproductive choice. While acknowledging that protection of potential life

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[30/] "Undue burden" appears to be the test developing under the federal constitution for testing the validity of a state's abortion restrictions. While the test under the state constitution will probably be even more stringent, requiring a compelling state interest, it is instructive to note the following language from the most recent abortion decision based on the federal constitution:

> A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it. And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of the woman's choice cannot be considered a permissible means of serving its legitimate ends. (Casey, supra, at page 27) (Emphasis added.)

[31/] See, Casey, supra, where the U.S. Supreme Court acknowledges that the strength of the record before the court on spousal and child abuse convinced it to strike down the "husband-notice" provision of Pennsylvania's abortion restrictions.

[32/] Of course, to do this, the court would have to overlook the fact that "therapeutic abortion" includes an abortion that would be an "elective procedure" if it were not an abortion. That is, a "therapeutic abortion" includes abortions that are not necessary to prevent the death or disability of the patient, which is the determining factor for other "elective" procedures. So, actually, the regulations do not treat all "elective" procedures the same.

is a legitimate governmental goal, the court could point out that it is not a compelling interest until viability. And, since a compelling interest is needed to override a fundamental privacy right, the court could strike down the regulations with respect to abortions performed before viability.

We believe it is more likely that the Alaska Supreme Court will adopt the challengers' view of reality and the applicable law rather than the defenders' view. We doubt that the court will find the regulations to be neutral, in reality, on the issue of reproductive choice when it is faced with the fiscal note and the acknowledged antipathy of the Administration toward abortion, as exemplified in the Governor's press release. More likely, the court will see a reality where an indigent woman has no real choice concerning her pregnancy if her eligibility for medical care is conditioned on the result desired by the state - childbirth.[33/] As to the applicable case law to form the legal underpinnings of its decision, the Alaska court need only point to the explicit (and stronger) privacy right granted under the state constitution and the lack of a compelling governmental interest to override that right before viability.

(5) Constitutionality of the proposed regulations - equal protection.

The proposed regulations also implicate the equal protection clause of the state constitution[34/] because the regulations treat some indigent pregnant women differently from other indigent pregnant women. Otherwise eligible pregnant women who choose childbirth will receive state assistance with medical procedures while some otherwise eligible pregnant women who choose abortion will not.

Whether the different treatment of pregnant women under the regulations is constitutional under the state's equal protection clause will be determined by the following test: the court will assess the legitimacy of the state purpose purportedly furthered by the different treatment and the extent to which the relationship between the asserted purpose and the different treatment is fair and substantial; then the court will determine the nature and the extent of the infringement of individual rights allegedly caused by the disparate treatment.[35/] Depending on the importance of

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[33/] The court will probably make clear that its decision would be the same if the state were seeking to encourage population control by funding abortions and not childbirth. The constitutional question before the court will not involve the weighing of the value of abortion as against childbirth, but instead will concern the protection of either procreative choice from discriminatory governmental treatment. See, Doe v. Director of the Michigan Dept. of Social Services, 468 N.W.2d 862 (Ct.App. Mich. 1991), appeal granted at 472 N.W.2d 638 (MI 1991).

[34/] Article I, sec. 1, Constitution of the State of Alaska.

[35/] Williams v. Zobel, 619 P.2d 448 (Alaska 1980), rev'd on other grounds, 457 U.S. 55 (1982).

the individual interest involved, a greater or lesser burden will be placed on the state to show this fair and substantial relationship.[36]

In light of this equal protection test, challengers of the regulations would probably contend, first of all, that the individual interest being affected by the disparate treatment is a fundamental interest, the right of reproductive choice.[37] Secondly, given the importance of the individual right affected, the challengers would probably contend that the state's purpose in treating the classes of pregnant women differently (based on whether they choose childbirth or abortion) needs to be not only legitimate but must approach being a compelling interest that is virtually unachievable by means that would have less impact on the affected right. The challengers would no doubt point out that the state's interest in potential life is not compelling until viability, and argue that the effect of the regulations on reproductive choice before viability cannot be justified.

Defenders of the regulations would probably counter that the regulations will result not in disparate treatment, but in equal treatment. Instead of funding some "elective" procedures (i.e., "elective" abortions) under the GRM program and not other elective procedures, as was the past practice, the state will be treating all "elective" procedures the same. Alternatively, the regulations' defenders may argue that equal protection analysis should not apply because women who need a "therapeutic abortion" are not similarly situated to those who merely want an "elective abortion." Therefore, the regulations can validly treat them differently. Defenders would probably also contend that the right to reproductive choice remains with the woman because she can seek an abortion without state funds. Therefore, according to potential defenders, since there is no fundamental right being affected, the government's purpose in treating the women differently need only be legitimate, not compelling. And that legitimate right is the right to protect potential life.

As with the arguments based on the state constitution's privacy clause, a state court's resolution of the differing arguments about equal protection will depend as much on the strength of the record before it and the court's view of reality as on case law. The court could uphold the GRM regulations as validly treating "elective abortions" differently from "therapeutic abortions." Alternatively, the court could strike down the GRM regulations because they work in conjunction with the Medicaid regulations to treat pregnant women differently based on whether they choose to exercise their

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[36] Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983).

[37] Since the fundamental nature of the interest rests, at least in part, on the state constitution's privacy clause, the privacy right arguments described in the previous section of this memo and the equal protection arguments described in this section stem from some of the same reasoning. However, the legal analysis is a bit different, and either or both could be used by an Alaska court to strike down the regulations, so this memo treats them separately.

fundamental right of reproductive choice. The court could find that the women affected by the regulations are similarly situated because they are pregnant and that the state may not interfere with a woman's choice on how to treat that pregnancy by reserving to itself the power to define that some abortions are "elective" while childbirth is not. The court could find the protection of potential life to be a legitimate state interest, but not compelling enough before fetal viability to override a woman's right of reproductive choice. As a legal underpinning for resolving the equal protection arguments differently from similar cases decided under the federal constitution, an Alaska court would point to the more stringent standard developed under the state constitution for testing the constitutionality of classifications made by government actions.

CONCLUSION

The regulations making changes in the Medicaid program clearly comply with the legislative intent that Alaska participate in the federal Medicaid program. However, the regulations that propose restrictions on funding "elective" abortions under the GRM program may be viewed by a court as unlawful arbitrary changes because they change a long history of contrary agency interpretation without apparent statutory or medical justification. The GRM regulations also raise substantial issues under the state constitution's privacy clause and equal protection clause.[38/]

Whether a court would find the GRM changes to be arbitrary will probably depend on whether the court analyzes the new regulations apart from the history of the GRM program or as changes to a longstanding interpretation by the agency. Viewed in isolation, the proposed regulations appear to fall within the broad discretion granted to DHSS by the legislature. However, viewed as changes to a longstanding agency policy, the changes may be viewed as somewhat arbitrary.

How a state court would resolve the constitutional issues and whether the restrictions would be upheld under the constitution will depend not only on purely legal arguments but on the view of social and economic reality demonstrated in the record before the court and adopted by the court as the reality it is willing to recognize. To the extent that the court is convinced that an indigent pregnant woman's privacy right or right to equal protection is actually interfered with by the regulations (and not merely by her own poverty or by her election of a "nonmedically necessary" procedure), the court has legal precedents available to it to support a decision striking down the regulations. If the court is convinced, despite the Governor's press release and the DHSS fiscal note, that the regulations are neutral with regard to privacy rights and do not treat similar medical conditions differently, the court also has legal precedents available to it to support a decision upholding the regulations.

[38/] They also raise issues involving clarity. See footnotes 1, 3, 5, and 7.

In our opinion, the issue of the regulations' arbitrariness is a toss-up, but we think the Alaska Supreme Court is likely to be convinced that the regulations are not neutral with regard to privacy (in either their effect or purpose), do impermissibly treat the choice of childbearing differently from the choice of not bearing a child, and are not justified by a sufficient governmental interest with respect to previability abortions. Therefore, we think there is a substantial probability that the court will find the regulations to be unconstitutional with regard to previability abortions, but constitutional with regard to postviability abortions.[39/]

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[39/] We are not alone in our view that Alaska courts will probably take a different view than the federal courts have on the constitutionality of restricting public funding of abortions for indigent women. Opinions and memoranda from the Alaska Attorney General's Office under three different Administrations over the last 14 years have consistently indicated that the Alaska Supreme Court is likely to share the view of the dissenters in the federal cases that have upheld restrictions on public funding of abortions. See Op. Att'y Gen., March 31, 1978, Op. No. 15, pages 2 - 3; Op. Att'y Gen., Jan. 12, 1981, File No. J-66-413-81, pages 6 - 7; Op. Atty Gen., April 17, 1981, page 6; and Memorandum of Assistant Attorney General Elizabeth Shaw to Representative Mark Boyer, January 19, 1990, page 1.

Moreover, state courts in at least six other states have refused to follow federal precedent in this area and have struck down various abortion funding restrictions under their state constitutions, citing state privacy clauses, state due process clauses, or state equal protection clauses. See, Moe v. Secretary of Administration and Finance, 417 N.E.2d 387 (Mass. 1981); Committee to Defend Reproductive Rights v. Myers, 625 P.2d 779 (CA 1981); Right to Choose v. Byrne, 450 A.2d 925 (NJ 1982); Planned Parenthood Association v. Department of Human Resources of the State of Oregon, 663 P.2d 1247 (Or. App. 1983), affirmed at 687 P.2d 785 (OR 1984); Doe v. Maher, 515 A.2d 134 (Conn. Super. 1986); and Hope v. Perales, 571 N.Y.S.2d 972 (Sup. 1991).

For a more complete discussion of these A.G. opinions and other states' cases, refer to our memorandum to you dated July 7, 1992.

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE: SENATE HESS

DATE: January 27, 1993

Subject of meeting: SB 53 - ANNULLING ABORTION FUNDING REGULATIONS

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY ?
Perry Marston	[illegible]	465-[illegible]	[illegible]	Yes
Ida Barnack	8292 [illegible] Juneau AK 99801	789-9622	AK For Life	yes
Tod Dants	Box 47 [illegible]	[illegible]		Yes
Laura [illegible]	9622 [illegible] St	79[illegible]-7211	SELF	✓
Phillip S. Gray	4410 N. [illegible] Way Juneau	586-[illegible]	myself	YES
Robert Heard	PO Box [illegible] Juneau 99802	463-[illegible]	SELF	YES
SID HEIDERSDORF	Box 020655, Juneau	789-9858	SELF	YES
Cathy [illegible]	2520 [illegible] Pl Anchorage	272-2880	self	
Robert E Stevens	P.O. Box 33[illegible] [illegible]	789-2855	Self	YES
John Lindback	4467 Mountainside Dr. J	780-6337	Juneau Coalition For Pro Choice	yes

(3)

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Sari Monagle	BO Box 210527 Auke Bay	789-5910	me	—
PAT DENNY	526 SEWARD, JUNEAU	586-3925	just a citizen	yes
M J MIELKE	800 F ST M-4 Juneau	586 9080	myself	no
A. Ruska	1834 Stanford Anch, AK	272-1554	self	yes
BEVERLY FLETCHER	P.O. BOX 21791 JUNEAU	586 4210	SELF	✓
Diana Rhoades	Box 104199 Anch. AK 99510	463-3659	AK Young Democrats	Yes
Merrill Sanford	736 W. 12th Juneau 99801	463-1575	Myself	Testimony Written
Deborah Lupes	1317 Crescent Dr. Anchorage, AK 99508	563-6488	myself	yes testimony

Official Business

COMMITTEE:

DATE:

SIGN-IN

Subject of meeting:

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Joan Henderson	PO Box 020658 Juneau AK	789-8857	self	yes
Kathy Polk	PO Box 020196 Juneau AK 99802	789-0948	Self	yes
Kathy Means	PO Box 533 Juneau, AK 99802	463-5546	Self	Yes.
Carole M. Hoover	8922 TRIC Juneau, AK 99801	789-7656	Self	Yes
Debra O'Monagle	PO Box 210527 Auke Bay, AK 99821	789-5910	Self	yes
Not to testify Cathy Lodge	300 W 11th 99801	465-8523	Self	No
THERESE GAUL	P.O. Box 32456 Juneau, AK 99802	463-6344	The Alaska Women's Lobby	YES
JAY Jay Livey	DHSS	465-3030	DHSS	

state funding for abortions

DHHS –
27 Jan. 1993

I would like to state my objections to the hour at which this hearing was held. All of those with jobs, find it very difficult to attend hearings in the middle of the day – especially women – who in fact, are the most affected by the bill you were discussing today.

Thanks for your consideration.

Barbara Ulm
Abortion Rights Project
PO Box 240667
Anchorage AK 99524

STATE OF ALASKA

LEGISLATIVE AFFAIRS AGENCY

DIVISION OF PUBLIC SERVICES

DATE: January 27, 1993

Please accept the enclosed original(s) of written testimony for the Senate Hess cmte teleconference hearing that was scheduled on 1-27-92.

A copy of this testimony was transmitted to your committee via fax on 1-27-92.

Thank you,

Christi Shields
Box 110

I am Ruth Ewig, reading this for Director John Harbaugh, Assistant Director Jonathan Ewig, Treasurer David Stack, myself as Secretary of Citizens for Excellence in Education (NACE/CEE) and 1500 concerned citizens in the Tanana Valley which include Fairbanks, North Pole, Fox, Two Rivers, Salcha, Esther, and the rest of the valley. We are alarmed at the legislators who have acted to create SB53, SB55 and HB9 which further enlist the state of Alaska as an accomplice in the torture and killing of pre-born babies by abortion.

Statistically 97-98% of pre-born babies have been killed for reasons of birth control. By changing our education system to character development curriculum which is in use in different parts of the country and which has reduced teen pregnancies to zero in California you, as legislators, could serve this state well by using our limited financial resources most profitably and investing in true ABSTINENCE education with the advantages emphasized leading to responsible planning that does not butcher babies. Excellent abstinence programs through education are encouraging responsible living and ARE working to improve our nation.

The argument of "wantedness" is an unstable marker not to be trusted to decide whether we kill our babies or not, anymore than it should decide for our elderly. The Netherlands has now graduated from voluntary to involuntary disposal of preborn babies as well as elderly.

Cultural elitists such as doctors and lawyers having been seduced by a lifestyle are not taking a stand against the slaughter of our babies. Will you as legislators be trapped in the same way or be willing to restore our state to a standard to match that of our Founding Fathers?

Since the lie of *Roe v. Wade* 28,000,000 babies have been butchered. "The 1960s gave birth to a feminist movement that imbued women with new ideas of personal 'freedom' and 'power'. Abortion advocates found natural allies in the feminist camp, for they promised women sexual freedom through abortion and the power of 'self determination'. Little mention was made that women were also being given power over whether their own children would live or die."(FAMILY VOICE, Jan. 1993, pg. 5)

It is acknowledged that there are a few difficult situations that media hyp and popular culture enlarge on, but pulling a baby apart does not justify crime and leads to twice the trauma.

The question really is life vs. lifestyle. Once the baby is born no woman can be, has been or will ever be compelled to raise a child she brings to full term. We identify two sets of rights: 1) the rights of the preborn babies and they ARE alive, or 2) the rights of the woman in a crisis pregnancy, to tear apart the baby relieving the burden, that is, destroying a life, saving a lifestyle.

Education is the key. News media and entertainment media have educated by creating an imaginary aura around abortion. An educational film shown to students shows how an abortion is done over a lunch hour in a record 1 minute, 50 seconds with the lady having a friendly chat with another. The baby is demolished into the consistency of tomato sauce by suctioning her out of her mother and spreading her around on a counter to show the camera audience that there really is no baby there...Because of our marvelous photography and technology we now can see that there is a complete baby living

inside even earlier than six weeks old. There is not one of us who would have even considered abortion as a possibility if we had any idea or had access to this information about our preborn babies as living, heartbeating, breathing, feeling little precious, delicate children-to-be.

What the movie that is shown to students does not admit is that the instruction text for abortion doctors cautions them to be sure that a heart monitor is put on the preborn baby being careful not to show the mother a beating heart that then stops. This measurement is solely for the abortionist to insure that the baby is killed <u>before</u> being pulled out. Also, the abortion doctor is told not to let the mother watch a visual, TV-type screen during the pulling out of the lifeless body.

Other lies not revealed in this so-called "educational" film are lies behind the original case of Roe vs. Wade, behind the bogus statistics used to manipulate the people of this state and this country, the concealment of the frequency of botched legal abortions, the fact that the abortion procedure itself is more scary and complicated, the withholding of cases of hemorrhaging in women from abortions, withholding the frequency of breast cancer resulting from abortions, withholding the cases of increased child abuse in our country while the very meaning of life is threatened, "at-risk", and the lack of acknowledgement and education about the long-term suffering of emotional pain for those who are accomplices to and affected by the holocaust of abortion including roughly 7,200,000 women in America <u>afflicted with post-abortion syndrome (PAS)</u>.

In conclusion, I quote from Congressman Pat Swindal:

> "The integrity of our constitutional republic rests ultimately on how we resolve the life-and-death issues of abortion...If we are unable to preserve the most fundamental rights of which our Constitution speaks, life and liberty, our government has failed to satisfy its most basic responsibility. Such a government not only forfeits the respect of the people, but eventually its right and ability to govern as well."(A HOUSE DIVIDED, pg. 61)

Will you and your vote stand for the life, liberty and pursuit of happiness of these unborn children?

Alaska State Legislature

Please enter into the record my testimony to the Senate Health, Education & Social Services Committee
committee name

committee on SB 53 , dated 1-27-93 .
bill/subject

Signed: Ruth Lewis
Testifier

NACHE/NEE
Representing (Optional)

2325 30th Ave Juneau, AK 99701
Address

452-5538
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53 . dated 1/27/93 .
bill/subject

I support SB 53, but I think it does not go far enough to protect the current rights of all women to choose regardless of their ~~the~~ income. To only annul Governor Hickel's regulations is to invite the administration to try again to submit other regulations to limit state funding for abortions.

Women who qualify for Medicaid are those without the financial resources to pay for a medically safe abortion and are therefore more likely to seek unsafe means to end their pregnancies.

Signed: Mim Dixon (Mim Dixon)
Testifier

Representing (Optional)

PO Box 81585, Fbks, AK 99708
Address

479-3459
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the HESS committee name

committee on SB53 bill/subject, dated 1/27/93.

I Support SB53.

I BELIEVE ALL REPRODUCTIVE CHOICES SHOULD BE VIEWED AS THE HEALTH ISSUE THAT THEY ARE, AND SHOULD BE AVAILABLE TO ALL WOMEN IN THE STATE.

I THINK IT'S TIME TO STOP USING REGULATIONS OR LEGISLATION TO DISCRIMINATE.

IT IS TIME TO RECOGNIZE WOMENS' FULL PERSONHOOD, RIGHTS AND VALUE AS EQUAL TO THAT OF MEN, AND NOT LESS THAN THE UNBORN.

Signed: EVELYN R. FRISK Evelyn R. Frisk
Testifier

Representing (Optional)

P.O. BOX 10465, FBKS AK 99710
Address

907-457-2552
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on HB-53 , dated 1/27/93 .
bill/subject

I STRONGLY SUPPORT THIS BILL – IT IS CRITICAL THAT THE REGULATIONS, RESTRICTING FUNDING FOR ABORTIONS FOR POORER WOMEN, BE REPEALED. WITHOUT ACCESS TO THIS IMPORTANT HEALTH CARE, A POOR WOMAN IS FACED WITH THE APPALLING "CHOICE" OF SEEKING AN UNSAFE + ILLEGAL ABORTION, OR FACING A CRISIS PREGNANCY, WHICH COULD HAVE SERIOUS HEALTH CONSEQUENSES AND EFFECTIVELY ELIMINATE HER ABILITY TO HAVE CONTROL OVER HER LIFE. WOMEN'S LIVES ARE AT STAKE, AND ITS VITAL THAT THEY HAVE THIS OPTION, REGARDLESS OF SOCIAL STATUS, OR WEALTH

PLEASE PASS HB-53 AND CONTINUE TO FUND ABORTIONS AND PROTECT WOMEN'S RIGHT TO PRIVACY.

Signed: Lisa Dumas Lisa M. Dumas
Testifier

Representing (Optional)

PO Box 60652, Fbks, AK 99706-0652
Address

(907) 457-1458
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the H/ESS
committee name

committee on HB-53 . dated JAN, 27 1993 .
bill/subject

I strongly support this bill. Any woman who wants an abortion - for whatever reason - should be able to obtain one. You may take my tax dollars NOW, rather than many thousands of my tax dollars later to provide services for unwanted, mistreated or pre-natally neglected children. Do people honestly believe that because a poor woman is denied an abortion that she will ~~treat~~ treat her unborn child as if she truly wanted it? I speak as a 5-months pregnant mother of one.

Signed: Kathleen Hudson
Testifier

Representing (Optional)

850 Balsam Dr. FBKS, AK 99712
Address

457-1614
Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53, dated 1-[illegible]-93.
bill/subject

Back-up to verbal testimony:

I am a nurse practitioner for 27 years - 10 in womens health and [illegible] public health. I present options to women who have unintended pregnancies. I have seen abortions, accept the death of a fetus when chosen by the mother. I know the realities of terminating a pregnancy and the realities of lives of children born into unloving homes. All options must be available to all women regardless of income. Keep State funding available to eligible women for abortion. It is time for busy-body people to stay out of the lives of other citizens. Pregnancy decisions are private.

Signed: Anne [illegible]
Testifier

Self
Representing (Optional)

[illegible] Prairie Creek Rd. Fbk. 99709
Address

479-[illegible]
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53 (bill/subject), dated 1-27-93.

I am opposed to SB 53. I concur with most pro-life statements that have already been entered into record; and further believe that the monies which would "normally" be used for the elective, non-therapeutic, or any type abortion would be better used in education of women & men in abstinance and contraceptives; in general the responsibility of not choosing to use a contraceptive. How about providing tube ties (which can be reversed with less problems than an abortion) or other reversible contraceptive action. Abortion is not reversible. If any physical, mental or emotional problems happen from an abortion, it is too late. It is non-reversible. Thank you to those legislators who are putting value on ALL human life.

Signed: Frances Hallgren
Testifier

Representing (Optional)

Box 1203 Sitka Ak 99835
Address

747-6909 or 747-5076
Phone No.

9/86 Legislative Information Office

have obligation to practice birth control, not abortion.

P.S. I am very much in favor of providing easier adoption. And I think if women want to be "in charge" of their bodies, then they