ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8296 SENATE JUDICIARY

MAR 8 RECD

Dear Senator

I am against SB 44. It is special-interest legislation and does not protect skiers. It is extremely broad.

If this bill passes, the safety of hundreds of people are at stake. For example, Aleyska Resort experienced a large avalanche February 14, 1993, in a large open area where hundreds of skiers ski. The avalanche covered two large pieces of equipment. Ski patrollers began to probe with their ski poles, which indicated they weren't even sure if anyone was buried. If this bill passes, Alyeska would not have been responsible for any deaths or injuries.

Perhaps a citizens' advisory committee should help work on this bill. Lobbyists for Seibu and the ski industry in Juneau spent thousands of dollars to let you know why you should pass this bill. But you never hear from the average Alaskan citizens because they don't have the time or money to come to Juneau to lobby against the bill. In fact, many people don't even know this bill is before you.

And finally, and perhaps most importantly, **Alaska already has an inherent risk of skiing law that treats both the skier and the ski area operator fairly**. The Supreme Court's opinion is that the present statute codifies the common law that ski areas are not liable for injuries by the inherent risk of skiing. The ski industry is now saying everything imaginable is an inherent risk of skiing.

This bill is a step backwards from safety exposing hundreds and hundreds of people to death and injury and for what? **We need more safety, not less.**

Please vote no on SB 44.

Signature	Address	
Ing Hiekel	18	I
Print Name	House District	Senate District

MAR 8 [illegible]

March 4, 1993

Senator Robin Taylor
SENATE
State Capitol
Room 30
Juneau, AK 99801-1182

Dear Senator Taylor:

I am only an occasional downhill skier, however I support legislation that protects ski areas and ski operators from costly litigation due to accidents associated with skiing. Skiing is a recreational sport, and there is a certain amount of risk associated with this type of sport. It's time for the individual to assume responsibility for his choice of sports and the risks associated with it. I would like to see your support for this legislation.

Please support Senate Bill 44.

Thank you very much for your time.

Sincerely,

Valerie Hennigan
PO Box 716
Girdwood, AK 99587

In December of 1991 the Alaska Supreme Court interpreted the statute as not preventing suits by injured skiers. Claiming an operator had failed to make the slopes "safe" for patrons. This ruling defeats the purpose of the statute and leaves operators and skiers in substantial danger that Alaska ski areas will not be able to obtain insurance at reasonable rates. Assuming that a ski area can still operate, ticket prices will have to increase substantially in order to cover the increased insurance premiums.

As a result of that Supreme Court decision the City of Valdez can no longer offer it's residents the recreation of downhill skiing. If this legislation does not pass perhaps other ski areas around the state will fall under the load of escalating premiums and frivolous law suits.

There is a segment of the community that believes that this legislation is proceeding only to protect a multinational corporation (Seibu) from liability. Most of the ski areas within the state are very small and most are products of the communities that they are located in. This legislation will affect all of them not just one of them and in most cases if insurance premiums rise as a result of poor legislative protection it will become cost prohibitive to operate. The ski areas are not trying to hide from their responsibilities to provide safety for the skiing public because we recognize that if we fail to do that soon we will be out of business.

Alaska has a lot to be proud of. Last year an Alaskan skier by the name of Hilary Lindh came home from the Olympics with a Silver Medal. I we fail to support this legislation where will the Hilary Lindh's of the future get a chance to practice and excel in this sport?

I urge you to please support this legislation!!

Sincerely,

Steven P. Remme
ASAA President

MAR 1 0 RECD

Alaska Ski Areas Association
7015 ABBOTT ROAD
ANCHORAGE, ALASKA 99516
(907) 346-1446

Alaska State Senate
Capitol Room 30
Juneau, Alaska 99801-1182
Attention: Senator Robin Taylor

3-1-93

Dear Senator Taylor :

I am writing in support of SB 44. I am the President of the Alaska Ski Areas Association and also the General Manager of Hilltop Ski Area here in Anchorage.

There are 13 downhill ski areas in Alaska: Cleary Summit, Ski Land, Ravenwood and Birch Hill all near Fairbanks. Black Rapids near Delta Junction. Hilltop, Hillberg, Arctic Valley and Alpenglow in Anchorage. Alyeska Resort in Girdwood. The Coast Guard Hill in Kodiak. Mt. Eyak in Cordova, and Eaglecrest near Juneau. In addition there are numerous organizations that prepare and operate Nordic trails: Chena Hot Springs Resort, Hatchers Pass Lodge and Anchorage Nordic Ski Club just to name a few.

There are many inherent risks in any sport. Skiing is no exception. Ski area operators sell access to a winter alpine or nordic environment not to a perfectly groomed danger free slope. This environment includes all manner of risks: weather, slopes, forest growth, snow conditions as well as some man made obstacles. All skiers should recognize that ski area operators and track setters can not modify even a small portion of this environment. There is no way to make skiing absolutely "safe". Individual skiers must bear some of the responsibility for their participation in the sport.

Since 1980 Alaska has had a statute relieving ski area operators of liability for injuries or property damage which arise from the inherent risks of skiing. The purpose of this statute was to recognize that a ski area operator could not eliminate these risks, and to ensure that a ski areas could obtain insurance and continue to provide skiers the opportunity to enjoy their favorite winter outdoor recreation. An effective law will continue to be important in providing the legal climate necessary to further development of winter tourism facilities in Alaska.

Paul D. Brooks
P.O. Box 111252
Anchorage, AK 99511

MAR 1 1 RECD March 8, 1993

Robin Taylor, Chairman
Senate Judiciary Committee
Alaska State Legislature

Dear Senator Taylor and Committee Members:

I am writing to express my support for Senate Bill No. 44, and encourage your enactment of this legislation. I have been an avid skier most of my life and have lived in Alaska since 1980. My wife, son, and I are members of the National Ski Patrol, and our daughter and two grandchildren are skiers, the latter being members of the Ski Jumping Team. I am on the volunteer Ski Patrol at Alyeska Ski Resort and my Wife and Son are Ski Patrollers at the Hilltop Ski Area. My Wife is the Patrol Director of the Hilltop Ski Area, and I am the Alaska Division Winter Emergency Care Supervisor for The National Ski Patrol.

Ski safety has always been a major emphasis for my wife and I, especially in raising our children and grandchildren. Skiing, like any other physical activity, has inherent risks, but these risks can be minimized with education and training. People must be accountable for their own actions and the choices they make. I believe this Bill goes a long way in clarifying the responsibilities of ski area operators and the skiing public participating in this sport.

Thank you for your interest and I encourage you to support this legislation when it comes up for a vote by the Senate.

Sincerely,

Paul D. Brooks

Paul D. Brooks

March 5, 1993

Robin Taylor, Chairman
Senate Judiciary Committee
Alaska State Legislature

Dear Chairman Taylor and Committee Members:

It is imperative that the legislature enact statutes which give recognition to the fact that people do have responsibility for their own actions and choices. The bill before you today - SB 44 - is one such measure. I encourage your speedy and favorable advancement of this type of legislation in general and this bill specifically. I also respectfully request your enthusiastic support and defense of this legislation when it reaches a vote of the body.

Sincerely:

Joe Wehrman

Joseph F. Wehrman III
3527 Vassar Dr.
Anchorage, Ak 99508

SB

49

[redacted]ENATE COMMITTEE REP[redacted]

DATE: 2/1/92

FURTHER: FINANCE

DATE TURNED INTO OFFICE: _____

JUDICIARY Committee considered SENATE BILL NO. 49

"An Act relating to preelection reports; closing the two-day reporting gap in those reports; settin the date of February 15 for filing year-end campaign finance reports; and requiring reporting of zer year-end reports."

and recommends:

[ ] replace with _____ CS _____(_____)

or [ ] adopt previous_____ CS _____(_____)

[ ] attaches amendment(s)

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[ ] adopts _____Letter of Intent

[ ] further referral to the Finance Committee

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
APOC (Admin)	1-25-93	✓	

[ ] Appropriation No Fiscal Note

DO PASS:

Rick Halford

Drue Pearce

5 Engrossed Adopted

OTHER RECOMMENDATIONS:

Suzanne R. Hutto no rec

Barbara Robinson

Chair: Signature and Recommendation

Alaska State Legislature

SENATOR TIM KELLY

Official Business

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Senator Tim Kelly TDK

DATE: January 29, 1993

RE: SB 49 - Relating to the filing of Campaign Finance Reports

---

I respectfully request that you schedule SB 49 for a hearing before the Senate Judiciary Committee at the earliest opportunity.

Attached you will find my position paper, which contains an analysis of the bill, and a zero fiscal note from the Department of Administration. This legislation is supported by the Alaska Public Offices Commission and the Department of Administration.

Thank you for your consideration.

Sponsor Summary

Alaska State Legislature

Official Business

SENATOR TIM KELLY

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT & ANALYSIS FOR SB 49:

"RELATING TO THE FILING OF CAMPAIGN FINANCE REPORTS"

This legislation makes some long needed adjustments to our campaign reporting laws, the major feature of which is closing the two-day reporting gap (Sec. 2, page 2, line 13).

The law, since its inception in 1974, has contained an inadvertent two-day gap which occurs between the seven day pre-election report and the 24 hour reports. The reporting period for the 7 day pre-election report ends three days prior to the report due date. The 24 hour reports for contributions which exceed $250 do not begin until 7 days prior to the election. Thus, contributions exceeding $250 received the 9th and 8th days before the election are not reported until the 10 day post election report. This has the effect of obscuring the public's right to know.

In addition, SB 49 would change the deadline for filing year-end campaign reports from December 31st to February 15th (Sec. 1, page 2, line 7). In recognition of the impracticality of the December 31st deadline, the Alaska Public Office Commission (APOC) has allowed year-end reports to be filed on January 15th, well after the statutory date, for several years. The February 15th deadline would allow candidates and groups the use of December bank statements, and provide a longer time period to prepare a year-end report.

This legislation was introduced in the 17th Legislature and, after passage in the House, passed the Senate Ethics Reform and Judiciary Committees. APOC had previously requested the following amendments which have been included in SB 49:

1) In Section 1, on page 1, lines 8-14, new language clarifies the scope of the year-end report. The year-end reporting period starts with the most recent report filed or with the beginning of the campaign, whichever is later. The reporting period ends with the previous calendar year, i.e. on December 31.

2) In Section 1, on page 2, lines 8-10, the filing of zero reports are made mandatory. This allows APOC to monitor report filing and notify filers if no report is received. More importantly, mandatory filing would help avoid the problem of discovering at a later date that a report should have been filed and that a significant fine has accrued.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 49

Revision Date:
Title: "An Act relating to preelection reports; closing the two-day reporting gap in those reports; setting the date of February . . ."
Sponsor: Senators Kelly, Donley
Requestor:

Department Affected: Administration
BRU: Alaska Public Offices Commission
Component: Alaska Public Offices Commission

COMPONENT SERIAL NO. 70

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0
FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0
POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Karen Boorman, Director
Division: Alaska Public Offices Commission
Phone: 276-4176
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 1/25/93

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SB 51

SENATE COMMITTEE REPORT

DATE: 3/8/93 FURTHER: FINANCE

DATE TURNED INTO OFFICE: 29 MARCH 1993

JUDICIARY Committee considered SENATE BILL NO. 51

"An Act providing for establishment of work camps for juveniles adjudicated delinquent, and extending to all cities and to nonprofit corporations authority to maintain facilities for juveniles."

and recommends:

[ ] replace with _____ CS _____ ___(___ ___)
or [ ] adopt previous ____ CS _____ ____(_____)
[ ] attaches amendment(s)

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[ ] adopts _____ Letter of Intent

[ ] further referral to the _____

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DHES	1/25		9.3

[ ] Appropriation No Fiscal Note

DO PASS.

George Mclaughlin

Rick Halford

OTHER RECOMMENDATIONS:

Suzanne K. Little NO REC

Robin L. Taylor DO Pass

Chair: Signature and Recommendation

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 Rep

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.

SPONSOR STATEMENT

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.

Alaska State Legislature

Randy Phillips
State Senator
District L

Chair
Legislative Budget and Audit
Community and Regional Affairs

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

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

NEWS RELEASE

JANUARY 19, 1993

SUBJECT: JUVENILE BOOTCAMP BILL

CONTACT: 465-4949
SENATOR RANDY PHILLIPS REP

As part of an effort to enhance Alaska's juvenile justice system, Republican Senator Randy Phillips of Eagle River, has introduced what is popularly termed a "boot camp bill" for delinquent juveniles.

Senator Phillips explains that Senate Bill 51 is virtually identical to legislation introduced during the previous Legislature to establish work camps for juvenile offenders. SB 51 would offer the option of placing a juvenile in a work camp instead of another institution. The so-called "boot camps" would be operated by either a city or a non-profit corporation.

* A so-called "boot camp" is considered 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.

SB 51 is patterned after a program used successfully in Nevada. The Nevada system and the system offered in SB 51 stresses academics, physical labor and structured discipline.

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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ZERO FISCAL NOTE - HESS

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

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 applying 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."

SECTIONAL ANALYSIS

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 chuka 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

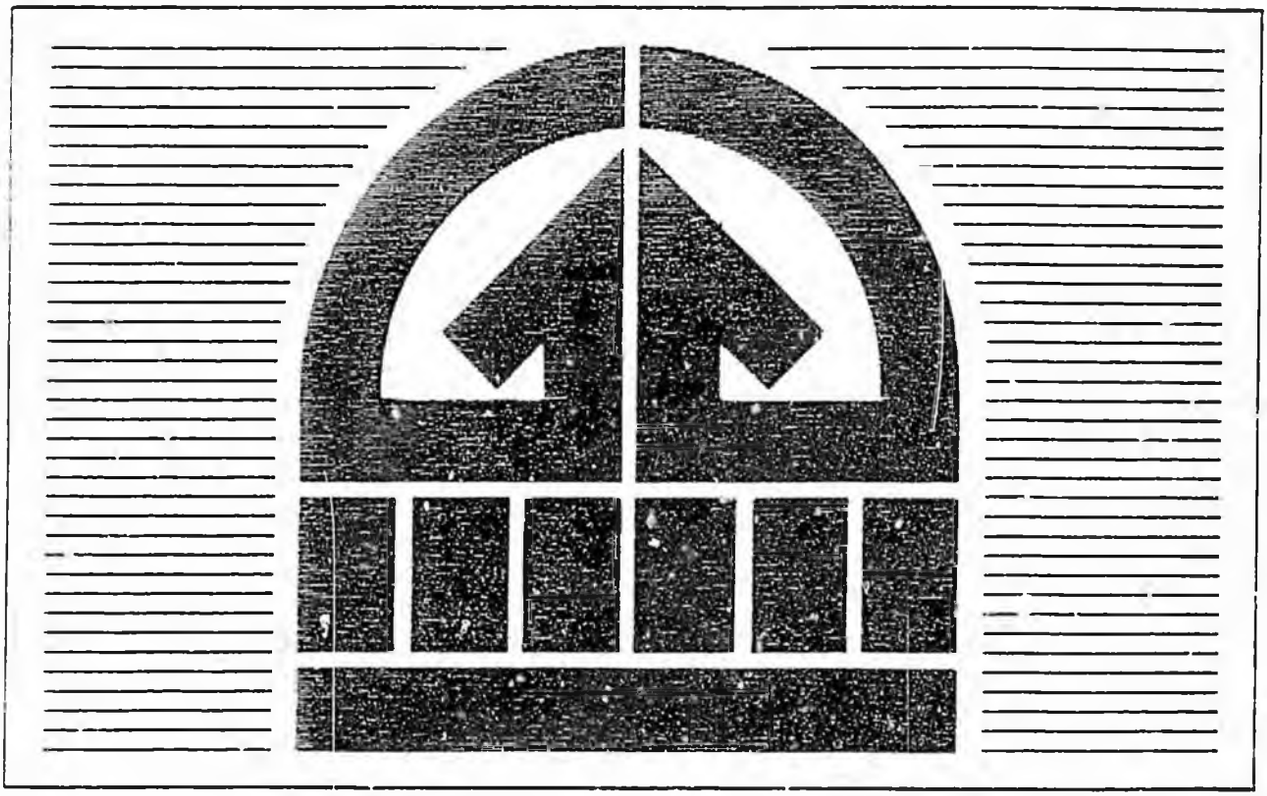
The children who are released from China Spring Youth Camp will return to their original jurisdiction. The committing Probation Officer or Youth Parole Service retains custody of the child and is kept informed of the residents progress. Family counseling for the children who reside in outlying counties 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.

STATE LEGISLATIVE REPORT



PRISON BOOT CAMPS: POLICY CONSIDERATIONS AND OPTIONS

by

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

Vol. 16, No. 1 March 1991

GOVERNMENT
6731

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

STATE LEGISLATIVE REPORT:
"PRISON BOOT CAMPS:"

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 selected according to a set of guidelines adopted by the Board of Correction, under statutory language that 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 analysis 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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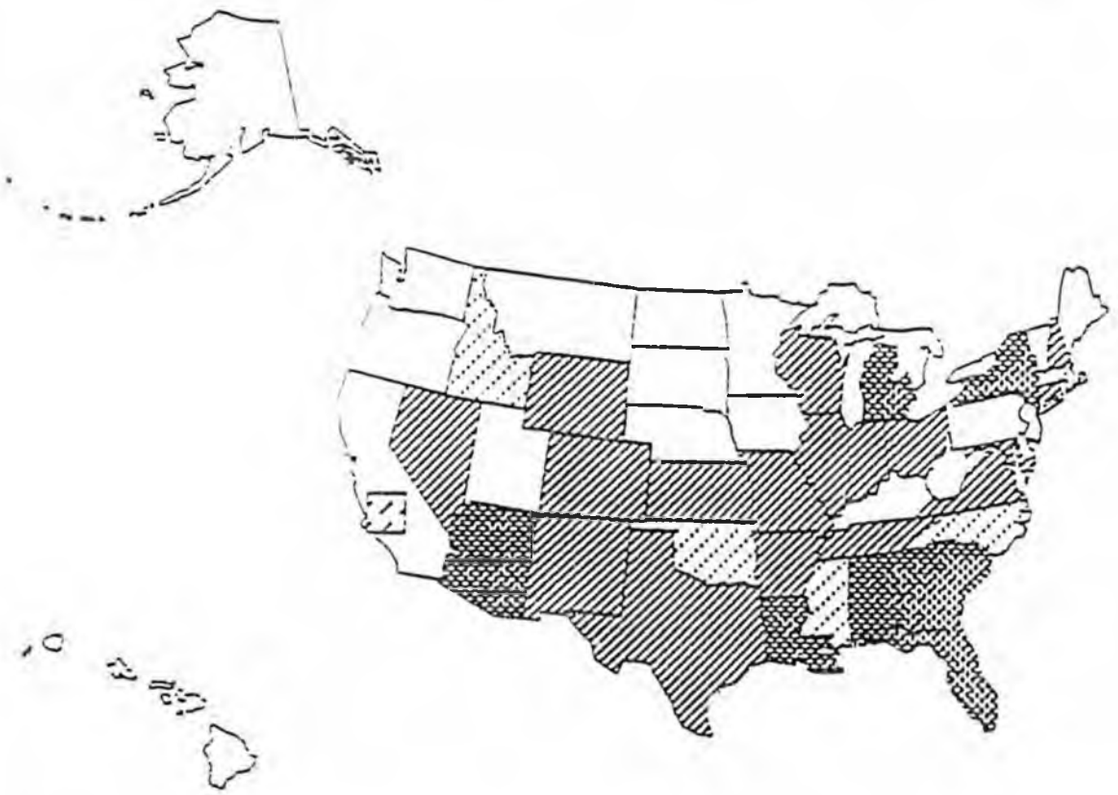
Figure 1.

Boot Camp/Shock Incarceration Facility Use in the States



Enacted enabling legislation in 1989 or 1990 session (16)

Enabling legislation prior to 1989 (3)

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 to 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 a location, 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. §28.2256(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 counseling & 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 §40-28-130 (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 in state penitentiary, age, no previous incarceration, lists ineligible crimes.	PA	Separation from general inmate population	Board of Charities & Reform

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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

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States, counties opening boot camps for juveniles

and some private firms providing prison health care

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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 *© 1991 Wakeman/Walworth Inc.*

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, non-profit 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

3.11.93

Hickel: Put young offenders in camp

By IAN MADER
The Associated Press

JUNEAU — Work camps, counseling and job training for young Natives convicted of alcohol-related crimes might put them on the right track and ease crowding in the state's prisons, Gov. Wally Hickel said Wednesday.

Hickel

One-third of Alaska's prison population is Native, and 95 percent of the crimes that put those Natives behind bars involve alcohol, Hickel said.

"When someone gets drunk and turns violent, they go to jail — usually a dead-end street," Hickel said. "But jails and prisons don't have to be places where people just waste away."

Hickel spoke at the opening of a two-day teleconference among corrections officials, Native leaders and inmates to look at ways of improving the prison system for Natives.

Sen. Georgianna Lincoln, D-Rampart and chairwoman of the legislature's bush caucus, said a major problem with the Corrections Department is that only two probation officers and 7 percent of all its employees are Native.

About 16 percent of the state's population is Native.

"We must have role models," she said.

Hickel used the opportunity to push "Operation

Please see Page B-3, WORK CAMPS

WORK CAMPS: An alternative to jail

Continued from Page B-1

Hope," his administration's proposal to put young offenders convicted of crimes involving alcohol in a boot camp. The camp would be open only to inmates 18 to 25 who are not considered dangerous.

The sentences, paid for by the offenders, would include boot-camp work, job training and alcohol counseling.

Few other details of "Operation Hope" have been worked out.

The boot camp would be at Point MacKenzie across Cook Inlet from Anchorage, but no money has been included so far in the Corrections Department's proposed budget for fiscal 1994.

Any additions to the Corrections budget face stiff scrutiny. A House Finance subcommittee already has cut about $8 million from Hickel's request of $124 million for the department.

Hickel told the teleconference that alcohol was at the root of much of the state's crime.

But Native inmates speaking from the Fairbanks prison said alcohol was just a symptom of deeper problems, including racism and dysfunctional families.

Robert Hirn of Fairbanks and Paul Shewfelt of Fort Yukon said racism helped land them in jail. Shewfelt said tribal courts run by Natives could impart fairer judgments and sentences for Native offenders.

"I think people should be taking care of their own instead of letting strangers come in to their land and pass judgment," Shewfelt said.

SB

53

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**;

SPONSOR STATEMENT

(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.

NEWS RELEASE

STATE OF ALASKA

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FOR RELEASE: January 20, 1993
No. 93-014

A.G. GIVES ABORTION REGULATIONS LEGAL CLEARANCE

JUNEAU--Attorney General Charles Cole today gave legal approval to regulation changes that will cease state payment for elective, nontherapeutic abortions under Alaska's general relief medical assistance program. Women eligible for the general relief medical program may still obtain state payment for a therapeutic abortion after the regulations are effective.

The regulations were submitted to Lt. Governor Jack Coghill for filing. Coghill signed them this morning.

Cole believes that the regulations would withstand legal challenge under the constitutions of both the United States and the State of Alaska.

"The validity of the regulations under the federal constitution is clear," Cole said. "The United States Supreme Court has repeatedly held that states are not required by the federal constitution to expend public funds for abortions.

"We also believe that the Alaska Supreme Court should conclude that when balancing the conflicting rights and interests, the right of privacy does not require state payment for an elective, nontherapeutic abortion under the general relief medical program."

Cole said he is confident that the regulations would withstand a challenge based on state equal protection guarantees, especially when the state pays for no other elective medical procedures for otherwise healthy persons under the general relief medical program.

-more-

A.G. REVIEW

The regulations also contain a technical provision conforming the state Medicaid program to federal Medicaid regulations as required in order to receive federal funding.

The regulations become effective 30 days after filing by the Office of the Lieutenant Governor.

####

MEMORANDUM

State of Alaska

Department of Law

TO: Hon. Theodore Mala
Commissioner
Health and Social Services

DATE: January 20, 1993

FILE: 993-93-0040

TEL.NO: 465-3600

SUBJECT: DHSS regulations re abortion payments under Medicaid and General Relief Medical Programs (7 AAC 43; 47)

FROM: Charles E. Cole
Attorney General

As required by AS 44.62.060, we have reviewed your department's adoption and amendment of regulations that preclude state payment for elective abortions under Alaska's general relief medical assistance program. The regulations also contain a technical provision conforming the state Medicaid program to federal Medicaid regulations as required in order to continue to receive federal participation. The regulations should withstand legal attack under the constitutions of both the United States and the State of Alaska. We approve the changes for filing by the lieutenant governor. A duplicate of this memorandum is being furnished the lieutenant governor, along with the regulations and related documents. In accordance with AS 44.62.125(b)(6), some corrections have been made in the regulations, as shown on the attached copy.

The validity of the regulations under the federal constitution is clear. The United States Supreme Court has repeatedly held that states are not required by the federal constitution to expend public funds for abortions as part of their state medical assistance programs. Harris v. McRae, 448 U.S. 297 (1980); Beal v. Doe, 432 U.S. 438 (1977); Maher v. Roe, 432 U.S. 464 (1977).

The result is less clear under the state constitution as to general relief medical amendments, primarily owing to the state constitution's explicit recognition of the right of privacy. However, the Alaska Supreme Court has held that the right of privacy is not absolute. Falcon v. Alaska Pub. Offices Comm'n, 570 P.2d 469, 476 (Alaska 1977). In addressing a challenge to regulations based on that constitutional guarantee, the Alaska Supreme Court balances the conflicting rights and interests of the individual and the state. More specifically, the nature and extent of the privacy invasion is balanced against the importance of the state interest. Breese v. Kirkpatrick, 718 P.2d 962, 969 (Alaska 1968). The more fundamental the privacy right, the greater the state's burden to sustain the state action in light of the right

involved. State v. Erickson, 574 P.2d 1 (Alaska 1978), 22 n.144; Ravin v. State, 537 P.2d 494, 515 (Boochever, J., concurring).

We believe that the Alaska Supreme Court should conclude that when balancing the conflicting rights and interests, the right of privacy does not require state payment for an elective abortion under the general relief medical program. Presently, the majority of states with an expressed state constitutional right of privacy do not pay for elective abortions. Even in those states where the right of privacy is an implied right, more restrictive statutes have been upheld against state constitutional challenges. See Fischer v. Dept. of Pub. Welfare, 502 A.2d 114 (Pa. 1985). While we recognize that the Supreme Court of California has reached a contrary result under its express state constitutional right of privacy, we do not find that court's reasoning as persuasive. See Committee to Defend Reproductive Rights v. Myers, 625 P.2d 779 (Cal. 1981). It does not seem reasonable or intended by Alaska's constitution for the right of privacy to require payment for purely elective abortions under the general relief medical program just because this state chooses to cover pregnancy services for poor women, as the California case appears to reason.

We believe that the regulations should also withstand a challenge based on state equal protection guarantees. The Alaska Supreme Court applies a sliding scale analysis to equal protection challenges using a three-step approach. Erickson, 574 P.2d at 12. First, the court determines the importance of the individual interest impaired by the challenged statute or regulation. See State v. Ensearch Alaska Construction, Inc., 787 P.2d 624, 631 (Alaska 1989). Second, the court examines the importance of the state interest. In this case, the court would review the purpose of the law. Depending on the importance of the individual interest, the state's interest must fall somewhere on a continuum from mere legitimacy to a compelling interest. Id. Finally, the court examines the nexus between the state interest and the state's means of furthering that interest. Id. With respect to the chosen means, the equal protection clause requires that the nexus fall somewhere on a continuum from substantial relationship to least restrictive means, depending on the importance of the individual interest. Id.; see also Sonneman v. Knight, 790 P.2d 702, 704 (Alaska 1990).

At least one state court, when faced with a state equal protection analysis, has found that the state may have a legitimate state interest in refusing to fund elective, nontherapeutic abortions that are not performed to protect the life or health of

the mother. Right to Choose v. Byrne, 450 A.2d 925, 937 (N.J. 1982).[1]

We believe that our court should find, as well, that nonpayment for elective abortions under the general relief medical program does not violate equal protection guarantees, especially when the state pays for no other elective procedures for otherwise healthy persons under the general relief medical program. The importance of the state's express, legitimate interests, including an interest in uniform program administration, outweighs the individual's interest in payment for an elective abortion under the entirely state financed general relief medical program.

The regulations should also survive attack under state guarantees of substantive due process. The Alaska Supreme Court has held that a regulation violates substantive due process when it "has no reasonable relationship to a legitimate governmental purpose." Sonneman v. Knight, 790 P.2d at 706, quoting Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 373, 351 (Alaska 1988). The new regulations will allow equal treatment of elective procedures and are necessary for consistent management of the general relief medical program. Since the regulations are reasonably related to a legitimate purpose, the regulations should meet substantive due process guarantees.

The new regulations are consistent with the enabling statutes and are reasonably necessary to administer the general relief medical program. Prior attorney general opinions do not restrict your department's ability to adopt these regulations. At the time those opinions were written, the body of state court decisions was limited. Since those opinions were issued, many of the leading state cases on these issues have been decided. In addition, it appears that those prior attorney general opinions were addressing potential payment limitations substantially different from and more restrictive than those adopted by your department. Therefore, the conclusions reached in those opinions do not affect the validity of these regulations.

The new regulations are also substantially different from the funding restrictions that were placed before the Alaska voters in a 1982 ballot initiative. Therefore, the initiative's defeat does not affect your department's authority to adopt these regulations.

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[1] The Supreme Court of New Jersey ultimately struck down the New Jersey statute because it prohibited state payment of all abortions "except where it is medically indicated to be necessary to preserve the woman's life" and did not provide abortion services where the health of the mother was at risk. Right to Choose, 450 A.2d at 927. The New Jersey court would have sanctioned the approach taken by your department's regulations.

In the final analysis, the regulations that your department has adopted provide abortion funding where it is medically necessary to preserve the woman's life and health (including certain psychological conditions) as well as in cases of rape or incest and, therefore, should withstand legal challenge. While few legal conclusions can be made with absolute certainty, we believe that, if the regulations are challenged, the court should find them as constitutional and lawful.[2]

CEC:pml

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[2] We note that over 30 states do not pay for elective abortions under their state medical assistance programs. Alaska would be joining this majority trend when these regulations take effect.

7 AAC 43.140 is amended to read:

7 AAC 43.140. ABORTIONS. (a) Payment for **an** abortion[S] **will, in the department's discretion,** [MAY] be covered under medicaid **if** [WHEN] the physician services invoice is accompanied by certification that [ONE OF THE FOLLOWING CONDITIONS EXISTS:]

[(1)] the life of the mother would be endangered if the pregnancy were carried to term[;

(2) SEVERE AND LONG-LASTING PHYSICAL HEALTH DAMAGE TO THE MOTHER WOULD RESULT IF THE PREGNANCY WERE CARRIED TO TERM; OR

(3) PREGNANCY IS THE RESULT OF RAPE OR INCEST].

(b) **A procedure** [PROCEDURES] **that is** [WHICH ARE] not covered under this section will be covered under General Relief Medical[,] **to the extent provided in** 7 AAC 47. (Eff. 3/18/79, Register 71; am / / , Register)

Authority: AS 47.05.010 **AS 47.07.040**
AS 47.07.030 AS 47.07.050

7 AAC 43.825 is amended to read:

7 AAC 43.825. PROGRAM. **Except as limited under 7 AAC 43.140, family** [FAMILY] planning services will be covered by medicaid when provided by **a** family planning **clinic of** [CLINICS UNDER] the

d [D]ivision of p[P]ublic h[H]ealth, a local health department[S], a student health service[S], a private family planning clinic[S], or a private physician[S]. Except as limited under 7 AAC 43.140, drugs [DRUGS], supplies, devices, and medical procedures provided by a physician or under physician supervision will be covered under this chapter. (Eff. 8/18/79, Register 71; am / / , Register)

Authority: AS 47.05.010
AS 47.07.040
AS 47.07.050

7 AAC 43.835 is amended to read:

7 AAC 43.835. DEFINITION. In 7 AAC 43.825 - 7 AAC 43.835, "family planning services" refers to those services and materials provided with the purpose of postponing, avoiding, or terminating pregnancy, including the dispensing of birth control drugs and devices for males and females, and the performance of vasectomies, sterilizations, and abortions for the purpose of avoiding or terminating pregnancy, except as limited under 7 AAC 43.140. (Eff. 8/18/79, Register 71; am / / , Register)

Authority: AS 47.05.010
AS 47.07.040

AS 47.07.050

7 AAC 47.170(b) is amended to read:

(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]. (Eff. 3/23/78, Register 65; am 8/1/86, Register 99; am 11/28/86, Register 100; am __/__/__, Register ___)

Authority: AS 09.65.100 AS 47.25.130
AS 47.05.010 AS 47.25.170
AS 47.25.120

7 AAC 47.200 is amended to read:

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:

(1) major medical care as defined in 7 AAC 47.290;

(2) skilled nursing home care;

(3) intermediate nursing home care;

(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;** ~~and physician services~~ [provided for ~~a therapeutic abortion~~ [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;

(8) prescribed drugs and medical supplies for a recipient with a specific diagnosis as described in 7 AAC 47.271(b);

(9) repealed 7/1/87. (Eff. 3/23/78, Register 65; am 5/2/79, Register 70; am 5/17/82, Register 82; am 5/25/82, Register 82; am 9/23/84, Register 91; am 8/1/85, Register 95; am 8/1/86, Register 99; am 11/28/86, Register 100; am 7/1/87, Register 103; am / / , Register)

Authority: AS 47.05.010 AS 47.25.170
AS 47.25.120
AS 47.25.130 AS 47.25.195

7 AAC 47.210(7) is amended to read:

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];

- - -

(Eff. 3/23/78, Register 65; am 5/2/79, Register 70; am 4/15/82, Register 82; am 5/25/82, Register 84; am 8/1/86, Register 99; am 11/28/86, Register 100; am 7/1/87, Register 103; am / / , Register)

Authority: **AS 47.05.010** [AS 47.50.010]
AS 47.25.120
AS 47.25.130
AS 47.25.170

7 AAC 47.290(3) is amended to read:

(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**;

7 AAC 47.290(5) is repealed:

(5) repealed __/__/__;

7 AAC 47.290 is amended by adding new paragraphs to read:

(7) "elective abortion" means a procedure, other than a therapeutic abortion, to terminate a pregnancy;

(8) "therapeutic abortion" means the termination of a pregnancy

(A) certified by a physician as medically necessary (i) to prevent the death or disability of the woman, or (ii) to ameliorate a condition harmful to the woman's physical or psychological health; or

(B) that resulted from actions that would constitute a crime of sexual assault under AS 11.41.410 -- 11.41.425, a crime of sexual abuse of a minor under AS 11.41.434 -- 11.41.440, or the crime of incest under AS 11.41.450. (Eff. 8/1/85, Register 95; am 12/4/85, Register 96; am 8/1/86, Register 99; am 11/26/86, Register 100; am / / , Register)

Authority: AS 47.05.010 AS 47.25.130
AS 47.25.120 AS 47.25.170

Released 7/24/92

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DIVISION OF LEGAL SERVICES

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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.

LEGAL SERVICES SUMMARY

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]

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[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]

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[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.

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 1104 (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.

is a legitimate g vernmental 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 c her 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 abor ion 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).

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.

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.

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

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PP-93-02

HESS Position/fiscal notes

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.

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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: K. Burnett, B. Brock
Division: Medical Assistance, DHSS
Phone: 465-3355
Date: 1-26-93

Approved by Commissioner: (R) Theodore A. Mala, MD, MPH
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.

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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 nct 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: [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
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.

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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 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: K. Curtis, B. Spruce
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
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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