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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO: HB 344

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to the arrest of a person  
for illegal possession of alcohol" BRU: Alaska State Troopers  
 Sponsor: Representative Ulmer Component: Detachments  
 Requestor: H. HES COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

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

FUNDING: (Thousands of Dollars)

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

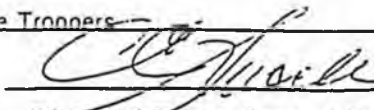
Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 01/12/94  
 Approved by Commissioner:  Date: 01/17/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. HB 344**

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: \*An Act relating to arrest of a person for illegal possession . . . . \* BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 Sponsor: Rep. Ulmer  
 Requestor: (H) Hes COMPONENT SERIAL NO. 43

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of current year (FY94) cost: non-?

**POSITIONS:**

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

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

Prepared by: Brant McGee, Public Advocate Phone: 274-1684  
 Division: Office of Public Advocacy Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura Date: 2/9/94  
 Agency: Administration

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*Admin - OPA - Fiscal Note*

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 344

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to arrest of a person for illegal possession . . . ." BRJ: Public Defender Agency  
 Component: Public Defender Agency  
 Sponsor: Rep. Ulmer  
 Requestor: (P) Hes COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender  
 Division: Public Defender Agency

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

Approved by Commissioner: Nancy Bear Usery  
 Agency: Administration

Date: 2/9/94

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Admin - Public Defender Agency - Fiscal Note



# Alaska State Legislature

House of Representatives  
 COMMITTEE ON HEALTH, EDUCATION  
 AND SOCIAL SERVICES

DATE: 2/11/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 \*HB ~~344~~ 344: ARREST OF MINORS FOR CONSUMING ALCOHOL  
 \*HB 332: PUBLIC HEALTH COMMISSION  
 \* INDICATES FIRST PUBLIC HEARINGS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Don Dupovich	—	Box 021571 Juneau	99802	6-2173	6-1575	(Y) N	HB 344
Bob Berryhill	AHRP	157 Bedwells Ave JUNO	99801	6-2626	6-2626	Y (N)	HB-332
Deborah Smith	AMHB	431 N. Franklin Juneau	99801	6-1175	5-3071	(Y) N	HB 332
Elmer Lindstrom	DAISS	Commissioner's Office			5-3030	(Y) N	HB 332
Juanita Heasley	DPS	POB-7 20020	99802		465-2650	questioning Y N	HB 344
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



**Alaska State Legislature**  
**House of Representatives**  
 COMMITTEE ON HEALTH, EDUCATION  
 AND SOCIAL SERVICES

SUBJECT OF MEETING:

DATE: 2-10-94

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
SHERRIE COLL	Alaska Womens Lobby	P.O. Box 22156, Juneau AK 99802			463-6744	(Y) N	HB 332
Harlan Knudson	Hosp & Nursing Home Assn	319 Seaward 99701			586 1790	(Y) N	HB 332
Denny DeGross	Alaska Public Health Assoc	2348 Kander Cir Anch, AK 99515			344-5824	Y N	HB 332
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

- 1 HB 344 ARREST OF MINORS FOR CONSUMING ALCOHOL
- 2 HB 332 PUBLIC HEALTH COMMISSION ESTABLISHED

\*\*\* PARTICIPATING LIOS \*\*\*

ANC ANCHORAGE	716 W 4TH. #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL	LOCATION STAFF
NOM NOME	FRONT STREET	LOCATION STAFF
TOK TOK	MP 1314 AK. HWY	LOCATION STAFF

\*\*\* VOLUNTEER & OFFNET SITES \*\*\*

ZZZ OF1 OFFNET 1 WASHINGTON STATE AARON KATZ (206)543-3670

PARTICIPANTS IN: ANCHORAGE ANC

1	BONNIE NELSON	AKPTRG	TSFY. HB 332
	20615 WHITE BIRCH RD	CHUGIAK	AK 99567 (907)688-3017
2	SHINJI WAKABAYASHI		OBSV. ALL ITEMS
	734 E 76TH AVE	ANCHORAGE	AK 99518 (907)349-1658

PARTICIPANTS IN: FAIRBANKS FBX

1 MS.	TERESA LYONS		TSFY. HB 332
	P.O. NOX 74119	FAIRBANKS	AK 99707 (907)479-3667
2 MS.	JULIE HOPKINS		OBSV. HB 332
	P.O. BOX 73573	FAIRBANKS	AK 99707 (907)456-2939
3 MS.	JOY GRIFFIN		OBSV. HB 332
	P.O. BOX 73305	FAIRBANKS	AK 99707 (907)479-7351
4 MS.	BARB AVIAL		OBSV. HB 344
	4160-5 6TH ST.	FT. WAINWRIGHT	AK 99703 (907)356-2946
5 MS.	DARLENE DEMIENTIEFF		OBSV. HB 344
	318 SLATER DR.	FAIRBANKS	AK 99701 (907) 52-8171
6 MS.	SHARON CAINARATA		OBSV. HB 344
	3427 JEREMY LN.	NORTH POLE	AK 99705 (907)488-4293
7 MS.	TERES STANG		OBSV. HB 344
	455 3RD AVE.	FAIRBANKS	AK 99701 (907)452-7066

PARTICIPANTS IN: JUNEAU JNU

1 REP.	CYNTHIA TOOHEY		TSFY. HB 344
			AK (907)000-0000
2 REP.	CON RUNDE		TSFY. HB 344
			AK (907)000-0000
3 REP.	IRENE NICHOLIA		TSFY. HB 344
			AK (907)000-0000
4 REP.	AL VEZEY		TSFY. HB 344
			AK (907)000-0000

LTN1100-R01  
02/14/94

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02  
20:24:51

TCN: 40287 DATE & TIME: 02/10/94 15:00 TO 17:00 STATUS:7 STATS. IN

PARTICIPANTS IN: JUNEAU JNU

5 REP.	GARY DAVIS		TSFY. HB 344
			AK (907)000-0000
6 REP.	PETE KOTT		TSFY. HB 344
			AK (907)000-0000
7 REP.	HARLEY OLBERG		TSFY. HB 344
			AK (907)000-0000
8 REP.	INF SITTON		TSFY. HB 344

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### SPONSOR STATEMENT HB 344

Teen drinking is a major health problem in our state. It is vital that we recognize this and make every effort to address the problem through education, treatment and consistently enforced laws.

A recent judicial interpretation of current Alaska law held that a law enforcement officer may only make an arrest for minor consuming when a juvenile under the age of 18 is actually seen drinking the beverage or holding a container. HB 344 will allow police officers the discretion to make an arrest when there is reasonable cause to believe that the minor has consumed alcohol. Society thus provides a consistent message - teen drinking is not acceptable, it poses significant health and safety concerns, and law enforcement will intervene when necessary.

HB 344 returns the law to what it was prior to Magistrate John Sivertsen's decision and is what most people believe is the law. But a loophole in the law has been identified, and we must close it so that law enforcement can intervene and detain juveniles as appropriate.

The City and Borough of Juneau Department of Health and Social Services, in conjunction with the Division of Chemical Dependency, and the Mayor's Task Force on Drug Abuse Among Juneau's Youth assisted in the development of HB 344 and fully endorses the bill. It is further supported by The Association of Alaska School Boards, The Alaska Peace Officers Association and many private citizens.

#### SPONSOR STATEMENT



49

§ 04.16.050

ALCOHOLIC BEVERAGES

§ 04.16.051

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n-

hotel, restaurant or eating place, may enter and remain within those premises for the purpose of employment, but may not in the course of employment, sell, serve, deliver or dispense alcoholic beverages. (§ 3 ch 131 SLA 1980; am § 16 ch 28 SLA 1981; am §§ 4—7 ch 109 SLA 1983)

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**Effect of amendments.** — The 1983 amendment rewrote subsection (a); in subsection (b) substituted "or an" for "his" preceding "agent," inserted "of the licensee" following "employee," substituted "21 years" for "19 years" in three places, and made other minor, punctuation changes; in subsection (c) inserted "by other provision in" following "Notwithstanding," deleted "his" following "in the course of," and made other minor, punctuation changes; and added subsection (d).

NOTES TO DECISIONS

Cited in *Wike v. State*, Ct. App. Op. No. 004 (File No. 5185), 623 P.2d 356 (1981); *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 04.16.050. Possession or consumption by persons under the age of 21.** A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b). (§ 3 ch 131 SLA 1980; am § 8 ch 109 SLA 1983)

**Effect of amendments.** — The 1983 amendment substituted "21" for "19."

NOTES TO DECISIONS

Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**SUBJECT: CHILD ADVOCACY**

94-39

**UNDERAGE DRINKING**

WHEREAS, alcohol abuse has a major debilitating effect on Alaska's children; and  
WHEREAS, underage drinking frequently puts impaired drivers on the highway; and  
WHEREAS, the ability of law enforcement to cite underage drinkers and bring them into contact with drug/alcohol counseling can have positive effects for young people; and  
WHEREAS, a recent Alaska Court ruling prevents law enforcement officials from citing underage drinkers unless the officer specifically observes the youths drinking;  
THEREFORE BE IT RESOLVED, that the Association of Alaska School Boards urges Alaska Legislature to amend AS 04.16051 (b) to allow officers to consider empirical evidence and to require a suspected youth to take a breathalyzer test.

**SUBJECT: CHILD ADVOCACY**

94-40

**URGING THE ALASKA LEGISLATURE TO FUND LOCAL PROGRAMS TO COMBAT HEALTH PROBLEMS AMONG ALASKA'S ADOLESCENT POPULATION**

WHEREAS, the Association of Alaska School Boards has, on numerous past occasions, directed its attention to the educational problems associated with poor health among the adolescent school population; and,  
WHEREAS, the Alaska Adolescent Pregnancy and Parenthood Task Force, co-chaired by Senators Druce Pearce and Johnny Ellis, reported to the Legislature in 1991 that it had analyzed the problems and had concluded that: "...the State should provide adequate funding to school districts for school health services...; and,  
WHEREAS, other data (as compiled in the study completed in 1992 by the State Department of Health and Social Services and the Alaska Native Health Board, the Alaska Department of Labor, the National Center for Health Statistics, and the other sources) demonstrate that Alaska leads the nation in such health problems as sexually-transmitted diseases, teen pregnancy, the adolescent birth rate, and associated ills; and,  
WHEREAS, the Legislature approved Chapter 94, SLA 1991, an act that (among other things) specifically authorized the appropriation of funds for the purpose of encouraging and supporting locally-based initiatives to combat the problems associated with adolescent pregnancy and parenthood, to design and implement public awareness and education programs, to begin or to expand peer counseling programs, and to engage in related local activities to address adolescent health problems; and,  
WHEREAS, in spite of that authority, the Legislature has thus far failed to provide the necessary financial support for school-based adolescent health initiatives;  
THEREFORE BE IT RESOLVED, that the Association of Alaska School Boards does hereby strongly urge the Alaska Legislature to act on its authority to fund programs to address adolescent health issues during the next legislative session.

# Ruling limits arrests of minors drinking illegally

By ED SCHOENFELD

THE JUNEAU EMPIRE

A recent court ruling could mean fewer underage Juneau residents will be prosecuted for illegal drinking.

The ruling, by Juneau Magistrate John Sivertsen Jr., instructed police and troopers that they must catch a person under 21 drinking alcohol or holding an open can or bottle before a minor consuming arrest can be made.

That means it will be harder for officers to arrest someone found at a drinking party, staggering or passed out with alcohol on his or her breath for minor consuming.

"We rarely see someone tossing back a beer in our presence," said Juneau Police Chief Mike Gelston.

The ruling, however, still allows

police to issue citations to 18-, 19- and 20-year olds mandating a court appearance.

But it prevents much enforcement action against those under 18, who cannot be issued a citation because of their age, said Juneau District Attorney Richard Svobodny.

That means fewer young people will be referred to alcohol counseling and treatment programs, said Don Dapevich, who runs the municipality's chemical dependency unit.

"The kids learn quickly and the message out to the kids right now is you can drink with impunity," Dapevich said.

The ruling, which apparently has affected only some Southeast communities, could be appealed,

but it will probably be addressed in legislation, said Dean Guanelli, the state Law Department's criminal division administrator.

The ruling involved a January charge against a 19-year-old Juneau man with a history of minor consuming arrests.

According to court documents, the man was "found extremely intoxicated on South Franklin Street hardly able to stand up." The arresting officer smelled alcohol and noted the man's eyes were blood-shot but did not actually see him drinking or holding an open container before searching and jailing him, court records said.

The man's attorney, Donna McCready of the public defender's office, claimed that was illegal. Previous court rulings had determined

police must have a warrant or see the law being broken before arresting someone for a misdemeanor, such as minor consuming, McCready said.

Magistrate Sivertsen agreed and dismissed the charge.

"The mere smell of alcohol did not give the police officer sufficient reason to believe that the crime was being committed in the officer's presence," wrote Sivertsen in a March opinion that also called the arrest "an affront" to the constitution.

The presence of alcohol in a suspect's body is not enough for an arrest or conviction, he wrote.

Superior Court judges in Juneau and Ketchikan and the Alaska Court of Appeals have issued rulings suggesting Sivertsen's deci-

sion would be upheld by higher courts, so the state is looking toward a legislative solution, Guanelli said.

The issue is being discussed with several lawmakers and is expected to come up when lawmakers return to work in January.

Ketchikan and Juneau municipal officials are also considering writing their own laws to permit arrests without witnessing the act of minor consuming.

Since the rulings have taken place only in the judicial district covering Southeast Alaska, its impact has apparently been limited to Panhandle communities.

Svobodny said the number of minor consuming cases taken to court seems to have dropped since he issued a memo in May telling

police and troopers about the ruling.

Dapevich also said referrals to a Juneau assessment program for youths charged with minor consuming has dropped.

Gelston, however, said it is too early to tell how much effect Sivertsen's ruling has had, since the number of minor consuming arrests fluctuates greatly. There were 324 arrests in 1991, 194 in 1992, and 62 in the first half of this year.

Guanelli said the effect of the ruling may be lessened by using other laws to fight minor consuming.

"It's certainly not open season to just go out to Anke Rec and start partying because there are still ways the police can arrest you," he said.

## BRIEFLY

### Alaska

**Store owner sentenced for teen shooting:** An Anchorage furniture store owner has been sentenced to five years in prison without parole for the shooting death of a teenager during a scavenger hunt last year.

Five years is the standard sentence for manslaughter, the crime that Jim Lowe was convicted of in December for killing 18-year-old Clyde Thompson.

Superior Court Judge Karl Johnstone sentenced Lowe on Thursday after sending the case to a three-judge panel for review. Johnstone had sought permission for a lesser sentence given what he called Lowe's excellent prospects for rehabilitation.

The panel, however, returned the case to Johnstone whose only option was to impose a sentence of five years or more.

Prosecutor Jim Hanley said five years in prison is the best way to deter others who think they're justified in using lethal force against thieves.

With time off for good behavior and time served, the 62-year-old Lowe could be released in two years and nine months.

**Anchorage man says he's innocent of Pepsi hoax:** An Anchorage man has pleaded innocent to charges he falsely reported finding a hypodermic syringe in a Pepsi can last month.

Federal authorities have accused Jose Pagan of participating

## Alaska heat warms up tourism

By DEAN FOSDICK

THE ASSOCIATED PRESS

**ANCHORAGE** - It's soggy in the Rockies, flooding in the Midwest and hot and humid in the East, but old-timers are calling this the best stretch of weather they've seen in Alaska in 30 years.

And that is accounting in part for what's shaping up as another banner year for tourism around the state.

"We've had such a fantastic summer so there's a lot going on," Carol Lay, with the Fairbanks Convention and Visitors Bureau, said Thursday. "I think we're seeing a few more out-of-town tours and soft adventure tours because of the weather."

"The Golden Days festival starts tomorrow and the city's packed. You still can find room, but the city is very full and it's expected to get fuller."

John Quinley, a spokesman for

influenced by new counting methods at the Klondike park in Skagway, he said.

But the visitor center at Kenai Fjords in Seward is seeing a whopping increase in people, Quinley said.

"June of last year saw 9,639 people through the door," he said. "June of this year saw 24,284."

"We know cruise numbers are up. Highway numbers are down a little from last year but still ahead of '91," said Pete Carlson, with the state Division of Tourism in Juneau. "The ferry system is down a bit because the Taku was down (for maintenance)."

Lisa Rallo, with the Alaska Public Lands Information Center at the junction community of Tok, said visitor numbers are down a bit from last year at the Alaska-Canada border but vehicle movement is up 8 percent on the Taylor Highway.

but visitor-wise it was equal to 1991," Rallo said. "1992 was the record year because it was the 50th anniversary year of the highway and it was promoted a lot."

"We're only like 2,000 vehicles down, overall. The salmon bake is having the best year it's had in a long time. Hotels and camp grounds are generally full."

Kari Westlund, with the Convention and Visitors Bureau in Juneau, said cruise ship lines are running at 98 percent to 100 percent capacity each week.

"In addition to the great weather, we have had a lot of whales and eagles and the fishing has been good."

"Nature has been a big factor for us this year," Westlund said.

JUNEAU EMPIRE 7-16-93

## Fish line entangles bald eagle

JEANINE POHL

THE JUNEAU EMPIRE

An adult male bald eagle tried to dive for the bait on a boater's fishing line in Glacier Bay National Park and ended up drowning, tangled in monofilament line.

The incident happened Monday in Ripple Cove, on the west side of the bay, across from park headquarters at Bartlett Cove.

Mary Kralovec, with the Park Service's resource management division, said the boaters reported an entangled eagle, and she and rangers traveled by boat to Ripple Cove.

"The fishing line was wrapped around the primary feathers,

there was no sign of a hook,



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IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,  
Plaintiff,

vs.

IVAN SABON,  
Defendant.

Filed in the Trial Courts  
State of Alaska, First District  
At Juneau

FEB 2 1992

By     *KW*     Deputy

Case No. 1JU-S92-00053 CR

MEMORANDUM DECISION/ORDER

ON MOTION TO DISMISS

I. FACTUAL AND PROCEDURAL BACKGROUND

On 10 January 1992 , the Defendant, Ivan Sabon, was charged with having violated AS 04.16.050 on or about the same date. The allegation are that "Sabon was found extremely intoxicated on S. Franklin St., hardly able to stand up." The Uniform Summons and Complaint Form filed by police officer Steffel states that Mr. Sabon was "incarcerated." (Complaint, JPD case no. 92000455).

On 11 February 1992, Mr. Sabon, filed a Motion To Dismiss. The Defendant's statement of facts include the following:

that police officer Steffel approached Mr. Sabon as he was walking on the sidewalk along S. Franklin Street;  
that the officer alleges she smelled alcohol on Mr. Sabon's person and observed Mr. Sabon's eyes to be bloodshot;

that officer Steffel seized Mr. Sabon, charged him with minor consuming, and transported him to the Juneau Police Department; and

that police officers conducted a search of Mr. Sabon's pockets, and confiscated a bus pass which did not appear to belong to Mr. Sabon.

1 Mr. Sabon asserts that his arrest was unlawful as the alleged  
2 illegal in violation of due process of law under Alaska  
3 Constitution, Art. I, Sec. 14. Mr. Sabon submits that he did not  
4 "consume, possess, or control alcoholic beverages" under AS  
5 04.16.050 in the "presence" of the arresting officer. As such, Mr.  
6 Sabon contends his arrest without a warrant was contrary to the  
7 relevant arrest statute AS 12.25.030. (Motion, pp. 1-6).

8 On 13 February 1992, the State of Alaska filed its Opposition  
9 To Motion To Dismiss. The State declares even if this were an  
10 illegal arrest "(and it isn't in the state's view)", such is not  
11 a valid basis for dismissal of the action or suppression of the  
12 evidence. The defendant's remedy, contends the State, rests with  
13 the civil courts. (Opposition, p. 1).

14 On 13 February 1992, Mr. Sabon filed an Amended Memorandum In  
15 Support Of Motion To Dismiss. This amended pleading submits  
16 additional authority for Mr. Sabon's position. (Supp. p. 6-7).

17 It is noteworthy that the State's has not provided a statement  
18 of facts which in any way contradicts the defendant's factual  
19 statement. Also, the State has not explained their view that Mr.  
20 Sabon's arrest was legal. The State merely states their belief  
21 without support. In any event, the State seeks to minimize the  
22 merits of Mr. Sabon's position by characterizing it to be a "waste  
23 of time responding to the law school exam question posed by Sabon."  
24 (Opposition, p. 1). Instead, the State declares it is "not opposed  
25 to suppressing all evidence seized following Sabon's arrest."

(Opposition, p. 1-2).

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II. POINTS AND AUTHORITIES

The Alaska Constitution, Art. I, Sec. 14 provides:

[t]he right of the people to be secure in their person, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The offense with which Mr. Sabon stands charged in violation of AS 04.16.050 declares:

A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages....

The relevant arrest statute, AS 12.25.030, provides in pertinent part as follows:

(a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in the presence of the person making the arrest;....

"An arrest for a misdemeanor made by an officer without a warrant is valid if the offense is committed in his presence." Miller v. State, 462 P.2d 421, 425 (Alaska 1969). When a person is arrested on a misdemeanor, "the lawfulness of the arrest depends on whether the arresting officer was present at the commission of the offense." Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969). The Alaska Supreme Court has recognized "that the grounds for arresting a person without a warrant for a misdemeanor committed in the presence of an officer are considerably more

1 restricted than those which would constitute probable cause for a  
2 felony arrest without a warrant." Miller v. State, 462 P.2d at 426,  
3 fn.3.

4 Whether a seizure has occurred is a question of fact. In  
5 Waring v. State, 670 P.2d 357, 364 (Alaska 1976), the test for  
6 determining whether a seizure occurred was explained:

7 [W]e will employ an objective standard to determine  
8 whether or not a seizure has occurred, i.e., whether or  
9 not a reasonable person would believe that he or she was  
10 free to go....Such a confrontation, therefore, will  
11 amount to a seizure 'only if the officer added to those  
12 inherent pressures by engaging in conduct which a  
13 reasonable man would view as threatening or offensive  
14 even if coming from another private citizen.' 3  
15 W.LaFave, "Search and Seizure: A Treatise on the Fourth  
16 Amendment," Sec.9.2, at 53, 54 (1978). The critical  
17 inquiry would be whether the policeman, although perhaps  
18 making inquiries which a private citizen would not be  
19 expected to make, has otherwise conducted himself in a  
20 manner consistent with what would be viewed as a  
21 offensive contact if it occurred between two ordinary  
22 citizens.

### 23 III. APPLICATION AND ANALYSIS

24 In the instant case, there seems to be little dispute over  
25 the fact that Mr. Sabon was arrested. He was transported to the  
Juneau Police Department. His pockets were searched by police  
officers. He was incarcerated at Lemon Creek Correctional Center.  
His arraignment was the next day. It is clear that a reasonable  
man in Mr. Sabon's situation would view as threatening or offensive  
the police conduct in this case. As such, the police had "seized"  
Mr. Sabon who had been placed under "arrest."

The significance of Mr. Sabon's arrest is that under AS

12.25.030 the police were only authorized to make such a  
1 misdemeanor arrest of Mr. Sabon if the alleged crime of minor  
2 consuming had been committed or attempted in the police officer's  
3 presence. The common understanding of the term "consume" is "to  
4 eat or drink up." Webster's New World Dictionary 305 (2ed. 1982).  
5 The statutory definition of the word "possess" is "having physical  
6 possession or the exercise of dominion or control over property."  
7 AS 11.81.900 (45). There is sufficient grounds for a misdemeanor  
8 arrest when the alcohol is in the minor's immediate dominion and  
9 control. see, Miller v. State, 462 P.2d 421, 427 (Alaska 1969)  
10 (open case of beer on the floor behind the driver's seat).  
11 Additionally, the power of a person to control or possess an  
12 alcoholic beverage ends once the person swallows the alcohol. see,  
13 State v. Thronsen, 809 P.2d 941, 943 (Alaska App. 1991) (affirming  
14 the trial court's rationale that "mere presence in the body cannot  
15 support a criminal conviction for possession).  
16

17 On the present facts, officer Steffel did not actually see Mr.  
18 Sabon drink any alcohol. Additionally, the officer did not report  
19 observing any alcoholic beverages in Mr. Sabon's presence. Mr.  
20 Sabon was not witnessed as having any dominion or control over  
21 alcoholic beverages. The odor of alcohol on Mr. Sabon was  
22 circumstantial evidence that Mr. Sabon in the past may have  
23 consumed, possessed, or controlled alcohol. The mere smell of  
24 alcohol, however, did not give the police officer sufficient reason  
25 to believe that the crime of AS 04.16.050 was being committed in

1 the officer's presence. As such, Mr. Sabon's arrest was not in  
2 compliance with the limitations of AS 12.25.030, and was a  
3 violation of Mr. Sabon's constitutional rights under Art.1, Sec.  
4 14 to be secure against unwarranted searches and seizures. Cf.,  
5 A.B.A., Standards for Criminal Justice, vol.II, (2ed. 1986), sec.  
6 10-2.2 (mandatory issuance of citation).

7 The conclusion reached above is not precluded by AS 01.10.050  
8 which states: "Words in the present tense include the past and  
9 future tenses and words in the future tense include the present  
10 tense." This statute may have some application in whether charges  
11 can be filed against an accused. This statute, however, does not  
12 apply to whether a misdemeanor arrest can lawfully be made under  
13 AS 12.25.030. The purpose for the limitations of misdemeanor  
14 arrest are clear. The statutory intent would be rendered null and  
15 void if a police officer was able to arrest a person for a  
16 misdemeanor crime previously committed. Any such use of AS  
17 12.25.030 would be contrary to reason, policy, and precedent.

18 Beyond the above-referenced rationale construing Alaska's  
19 right against unwarranted search and seizure, several other  
20 decisions dealing with related rights under the Alaska Constitution  
21 compel a strict application of article I, section 14. In Breese  
22 v. Smith, 501 P.2d 159 (Alaska 1972), the supreme court interpreted  
23 article I, section 1 of the Alaska Constitution, which includes the  
24 guarantee "that all persons have a natural right to life, liberty,  
25 the pursuit of happiness, and the enjoyment of the rewards of their

1 own industry." Relying on this provision's affirmative grant of  
2 the right to "liberty," the supreme court held:

3 [T]he term "liberty" is an elusive concept, incapable of  
4 definitive, comprehensive explication. Yetr at the core  
of this concept is the notion of total personal immunity  
from government control: the right "to be let alone."

5 Bresse vs. State, 501 P.2d at 168.

6 The court normally will use the exclusionary remedy as the  
7 primary means of effectuating certain basic constitutional rights.  
8 The rationale for the exclusionary rule is deterrence of  
9 unconstitutional methods of law enforcement; and the imperative of  
10 judicial integrity which requires that the courts not be made  
11 "party to lawless invasions of the constitutional rights of  
12 citizens by permitting unhindered governmental use of the fruits  
13 of such invasions." see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684  
14 (1961); and Terry v. Ohio, 392 U.S. 1, 13, 88 S.Ct. 1868, 1875  
15 (1968). The court.

16 In short, police misconduct which shocks the conscience,  
17 or is of a nature that calls for the judiciary, as a  
18 matter of judicial integrity, to disassociate itself from  
benefits derivable therefrom, would lead us to invoke the  
exclusionary rule.

19 State v. Sears, 553 P.2d 907, 914 (Alaska 1976).

20 However, the court is not limited to the remedy of the  
21 exclusionary rule. The court may on its own motion "and in  
22 furtherance of justice," order an action be dismissed. see, Cr.R.  
23 43 (c); see also, Cr.R. 1 and 2. Because of the small number of  
24 criminal cases which actually go to trial, the deterrent effect of  
25

1 the exclusionary rule is severely limited if the remedy for lawless  
2 conduct of the police is restricted to the exclusionary rule.  
3 Furthermore, the aggravated facts and circumstances of a particular  
4 case may lead the court to the conclusion that dismissal is  
5 warranted in the furtherance of justice, judicial integrity, and  
6 deterrence. The admittedly extreme measure of dismissal is  
7 appropriate when the government's outrageous conduct has  
8 egregiously violated fundamental constitutional rights.

9 The authors of the constitution did not believe that any one  
10 branch of government could be relied upon to honor or make  
11 effective the fundamental guarantees contained in the Constitution  
12 and the Bill of Rights. The prohibition against unlawful search  
13 and seizure is a positive expression of restraint against the abuse  
14 of governmental power. The role of the judicial system is vital  
15 to the preservation of the fundamental rights. James Madison, in  
16 an address to Congress, stated:

17 [I]ndependent tribunals of justice will consider  
18 themselves in a peculiar manner the guardians of those  
19 rights; they will be an impenetrable bulwark against  
20 every assumption of power in the Legislative or  
21 Executive; they will be naturally led to resist every  
22 encroachment upon rights expressly stipulated for in the  
23 Constitution by the declaration of rights. 1 Annals of  
24 Congress 439 (1789).

25 Courts can not direct the daily operations of government and  
law enforcement. The judiciary can respond only to those issues  
brought before it in a case-by-case procedure. Indeed, the  
protection of fundamental constitutional rights frequently has been

1 achieved by refusing to validate unlawful police conduct. see,  
2 Fresneda v. State, 458 P.2d 134, 139-40 (Alaska 1969).

3 If courts allow unlawful action by other branches of the  
4 government in the enforcement of law, then the judiciary becomes  
5 party to the wrong. When courts condone the unlawful and  
6 unconstitutional arrests, they render the statutory and  
7 constitutional guarantees a nullity.

8 As Mr. Justice Brandeis observed in his historic dissent in  
9 Olmstead v. United States, 277 U.S. 438, 48 S.Ct.564, 575 (1928):

10 In a government of laws, existence of the government will  
11 be imperilled if it fails to observe the law  
12 scrupulously. Our government is the potent, the omni-  
13 present teacher. For good or for ill, it teaches the  
14 whole people by its example. Crime is contagious. If  
15 the government becomes a lawbreaker, it breeds contempt  
16 for law; it invites every man to become a law unto  
17 himself; it invites anarchy.

18 In the same case, Mr. Justice Holmes declared:

19 [W]e must consider the two objects of desire both of  
20 which we cannot have and make up our minds which to  
21 choose....We have to choose, and for my part I think it  
22 is less evil that some criminals should escape than that  
23 the government should play an ignoble part.  
24 ....If the existing code does not permit district  
25 attorneys to have a hand in such dirty business it does  
not permit the judge to allow such iniquities to succeed.

Unless actions are subject to dismissal in the furtherance of  
justice for flagrant violations of constitutional rights, we engage  
in governmental hypocrisy in a significant fashion. We are not  
dealing with "law school exams" (see, State Opposition, p.1).  
Rather, we are addressing important constitutional principles.  
Freedom from unlawful search and seizures (and warrantless arrest)

1 goes to the very heart of our constitutional history. The right  
2 of privacy and to "be let alone" is at issue. Protection from the  
3 government's unlawful search and seizure is at stake. Our  
4 discussion is not a "waste of time" (see, State Opposition, p.1).  
5 The values and rights in question are basic to our governmental  
6 structure.

7 Constitutional rights become simply words without content  
8 unless there is a meaningful consequence for their violation. The  
9 judiciary fails to support and defend the constitution (as we are  
10 sworn to do) if we permit official lawlessness.

11 In the instant case, Mr. Sabon was not only unlawfully  
12 arrested without a warrant, but also he was incarcerated and his  
13 pockets were searched. The indignity resulting from the arrest of  
14 Mr. Sabon was compounded by his subsequent incarceration and  
15 search. The government's action was an affront both to Mr. Sabon  
16 and the constitution. The aggravated nature of this lawless police  
17 conduct in violation of fundamental statutory and constitutional  
18 rights mandates a remedial response. Mr. Sabon's right to be let  
19 alone was violated. Further, the State's conduct amounted to a  
20 illegal search and seizure of Mr. Sabon. It is the opinion of this  
21 court in the interest: (1) of deterring such police conduct in the  
22 future, (2) of preserving the integrity of the judiciary, (3) of  
23 protecting fundamental constitutional rights, and (4) of furthering  
24 justice, that the present action is subject to the exclusionary  
25 rule and also to dismissal.

1 In summary, Mr. Sabon was arrested without a warrant for the  
2 misdemeanor offense of minor consuming. The arresting officer did  
3 not observe Mr. Sabon consume or possess alcohol. Mr. Sabon's  
4 arrest was not in accord with AS 12.25.030 and violated Alaska  
5 Constitution, art. I, section 14. The exclusionary rule leads to  
6 the suppression of evidence obtained following Mr. Sabon's arrest.  
7 The interests of police deterrence, judicial integrity,  
8 constitutional rights and furtherance of justice together with  
9 insufficient evidence, as a matter of law, call for dismissal of  
10 the present charges.

11 IV. CONCLUSION

12 Therefore, based on all of the above, and for good cause  
13 having been shown,

14 It Is Hereby Ordered, Adjudged, and Decreed:

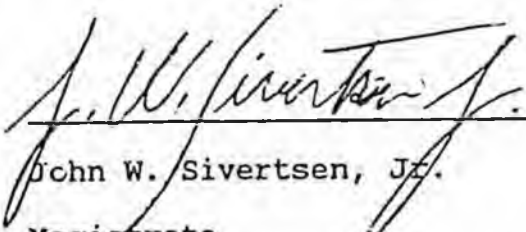
15 That any and all evidence seized following Mr. Sabon's arrest  
16 shall be suppressed;

17 That Defendant's Motion To Dismiss is Granted; and

18 That the present case is Dismissed with prejudice.

19 Dated this 2 March 1992.

20 In The District Court At Juneau

21   
22 \_\_\_\_\_  
23 John W. Sivertsen, Jr.  
24 Magistrate

25 **CERTIFICATION**

The undersigned certifies that on the 2 day of  
March, 1992, a true copy of this  
document was served on the following attorneys:  
Don Dutcher, Esq. & David Boy  
Donna McCready, Esq. & David Boy  
By X. W. Sivertsen, Magistrate

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

JUL 09 1992

FIRST JUDICIAL DISTRICT AT JUNEAU

Clark of Court

By Jan \_\_\_\_\_ De

STATE OF ALASKA,  
Petitioner,

vs:

JOSEPH JIM,  
Respondent.

Case No. 1JU-92-50SCR

MEMORANDUM AND ORDER

The petition for review is denied

The defendant in this case was charged with Minor Consuming Alcohol and moved in the district court to dismiss as the arrest for the offense took place after the offense was completed and the offense did not take place in the officer's presence. The State opposed dismissal and urged that suppression was all that should occur. The District court denied the motion to dismiss but suppressed evidence that was collected after the arrest.

The State petitions for review and the defendant opposes.

The State fails to address the critical issue in the District Court's order with respect to AS 12.25.030. The State's reading of AS 01.10.050 does not, ipso facto repeal the requirement that an arrest for a misdemeanor take place in the officer's presence.<sup>1</sup>

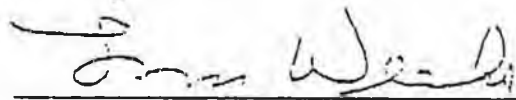
While there may be some issue as to whether an officer may

<sup>1</sup> Except for noted amendments pertaining to domestic violence and driving while intoxicated.

1 "seize" a person to preserve evidence of consumption, without a  
 2 warrant in exigent circumstances, that seizure, under Alaska law,  
 3 may not be for arrest to bring charges but only for obtaining  
 4 evidence. Neither the State nor the defendant raised the issue and  
 5 this court does not decide it.

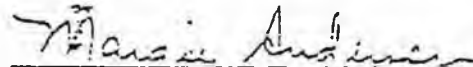
6 Officers, of course, may be under a legal obligation to take  
 7 an alcohol-incapacitated minor into protective custody if the minor  
 8 is unable to care for his or her self.<sup>2</sup> The officer may also issue  
 9 a citation.<sup>3</sup>

10 Dated July 6, 1992

11 

12 Larry Weeks  
 Superior Court Judge

13 I certify that I served J. Ron Sutcliffe and David Seid the above  
 14 pleading on this 7<sup>th</sup> day of July 1992 by placing it in their  
 15 court box.

16 

17 Margie Anderson  
 Secretary to Judge Weeks

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 25 <sup>2</sup> Bussell v. Anchorage, 741 P.2d 250 (Alaska 1987)

<sup>3</sup> AS 12.25.180

1 IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 STATE OF ALASKA,

4 Plaintiff,

5 v.

6 JOSEPH RANDALL JIM,

7 Defendant.

RECEIVED

Jun 26 1992

DEFENDER,  
JUNEAU

FILED IN THE TRIAL COURTS  
STATE OF ALASKA, FIRST DISTRICT  
AT JUNEAU

JUN 26 1992

By \_\_\_\_\_ Secur

8  
9 No. 1JU-92-609 CR

10 MEMORANDUM AND ORDER

11 This matter is before the court on defendant's motion to  
12 dismiss. Defendant filed no reply to the State's opposition and  
13 neither party has requested oral argument.

14 Defendant was arrested at 10:25 p.m. on June 2, 1992, for  
15 the offense of minor consuming alcohol, a misdemeanor. The factual  
16 record concerning the circumstances of the arrest is somewhat vague,  
17 but it is undisputed that the defendant was not consuming alcohol  
18 in the presence of the officer. At most, he had consumed it some  
19 time before he was contacted by the officer.

20 Whether or not one construes AS 04.16.050 to cover both the  
21 past and present tense or not and whether or not one engages in the  
22 "exercise in sophistry" (see State v. Hornaday, 713 P.2d 71  
23 (Washington 1986), Brachtenbach, J. dissenting) necessary to hold  
24 that one who has consumed is not in possession, it is clear that the  
25 act of consuming charged in the complaint was complete before


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defendant was arrested, and not in the presence of the arresting officer. AS 12.25.030 requires that the misdemeanor be committed in the officer's presence before he or she can arrest without a warrant.

Having determined that the arrest is illegal, the court must still deny the motion to dismiss. No persuasive argument is advanced by defendant in support of his request to dismiss, and the court is aware of none. The arrest clearly was not outrageous conduct. The officer had probable cause and, indeed, may have taken defendant to the Lemon Creek Jail at defendant's request. ~~Any event, suppression of any evidence seized as a result of the illegal arrest appears to be both the remedy supported by precedent and quite an adequate remedy in the circumstances of this case.~~

IT IS SO ORDERED.

Dated at Ketchikan, Alaska, this 23rd day of June, 1992.

  
Thomas E. Schulz  
Superior Court Judge

CERTIFICATION

The undersigned certifies that on the 26<sup>th</sup> day of June, 19 92, a true copy of this document was served on the following attorneys:  
J. Ron Sutcliffe; DONNA MC CREADY.

W. J. [Signature]