

SB

36

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/16/07

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 01/18/07
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

State Affairs Committee considered SENATE BILL NO. 36

SB 36 SENTENCING FOR ALCOHOL-RELATED CRIMES

"An Act relating to sentencing for the commission of certain offenses influenced by alcohol and to the offense of consumption of alcohol in violation of sentence."

and recommends:

- be replaced with SCS or CS SB 36 (STA)
- adopt previous SCS or CS _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

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| SENATE BILL: |
| <input checked="" type="checkbox"/> Same Title |
| <input type="checkbox"/> New Title |
| <hr/> |
| HOUSE BILL: |
| <input type="checkbox"/> Same Title |
| <input type="checkbox"/> Technical Title Change |
| <input type="checkbox"/> New Title w/ SCR # _____ |


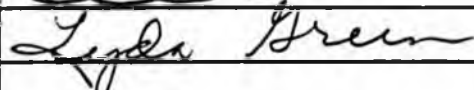
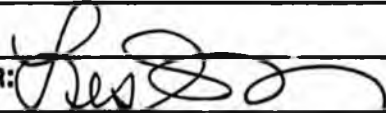
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| DOA | 01/22 | | ✓ | | |
| DOA | 01/22 | | ✓ | | |
| DOC | 01/22 | | ✓ | | |
| LAW | 01/22 | | | ✓ | |

PREVIOUS FISCAL NOTE(S):

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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS | PRINTED LAST NAME | DO PASS | DO NOT PASS | NO REC | AMEND |
|--|-------------------|---------|-------------|--------|-------|
|  | French | X | | | |
|  | | | | ✓ | |
| | | | | | |
| | | | | | |
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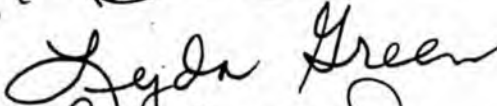
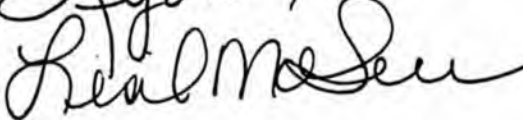
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SENATOR LESIL MCGUIRE
CHAIR, STATE AFFAIRS

Letter of Intent SB 36 – “Sentencing for Alcohol-Related Crimes”

The legislature recognizes that laws alone may not achieve the same level of behavioral correction that counseling and treatment are designed to provide. It is therefore the intent of the legislature that the courts, when addressing those who are first time violators of AS 12.55.015 (a) (13) in this act, use when available, Therapeutic Court in lieu of a standard sentencing.

If openings in the Therapeutic Court are not available, the legislature intends that standard sentencing for a class A misdemeanor be carried out as set out in AS 11.56.768 (b) (d) of this Act.

 SEN. FRENCH
 SEN. GREEN
 CHAIR MCGUIRE

**Addictions Treatment in Corrections:
Alaska Has the Opportunity to Provide Essential, Cost-effective Services**

- Research on Alaska's newly incarcerated prisoner population reveals the strong relationship between substance abuse and criminality: 91 % of the prisoners assessed had a substance use disorder some time in their lives, 79% in the last year severe enough to require treatment. *These rates are as high as or higher than any data previously reported in the scientific literature since standardized diagnostic studies of prisoners began two decades ago.*
- Over the last four years, funding for substance abuse treatment within correctional facilities operated by the Department of Corrections has decreased dramatically. Only three treatment programs for prisoners remain, two in Alaska and one in Arizona. These are Residential Substance Abuse Treatment programs (RSAT), one for men at Wildwood Correctional Center, one for women at Hiland Mountain Correctional Center and one for Alaska prisoner incarcerated in Arizona.
- RSAT is an intensive, six to 12 month program proven effective with high-risk offenders with lengthy criminal histories associated with substance abuse. **When checked six-months following release into the community, 84% of the women graduates and 83% of the men graduates followed through with aftercare recommendations, and 88% percent of the women graduates and 93% of the men graduates remained drug free.**
- While RSAT is a critical for substance abuse treatment of the offenders with lengthy criminal histories and the most serious addictions, it is not enough! The State of Alaska must invest in RSAT as well as a full continuum of services for those whose addictions are a contributing cause to their crimes.
- Even short-term treatment in prisons is crucial to cutting recidivism and will save the State of Alaska money. Research shows that the percent of former prisoners who reported any criminal activity declined by 60% after substance abuse treatment, and the average annual crime-related costs to society fell by \$8,611 per individual.**
- Now is the time to seize new opportunities for prisoner substance abuse assessment and treatment programs within the Department of Corrections. The State of Alaska must fund culturally appropriate and gender specific substance abuse treatment for inmates who need it, including special groups within the inmate population such as sex offenders and those dually diagnosed with mental illness and addictions.

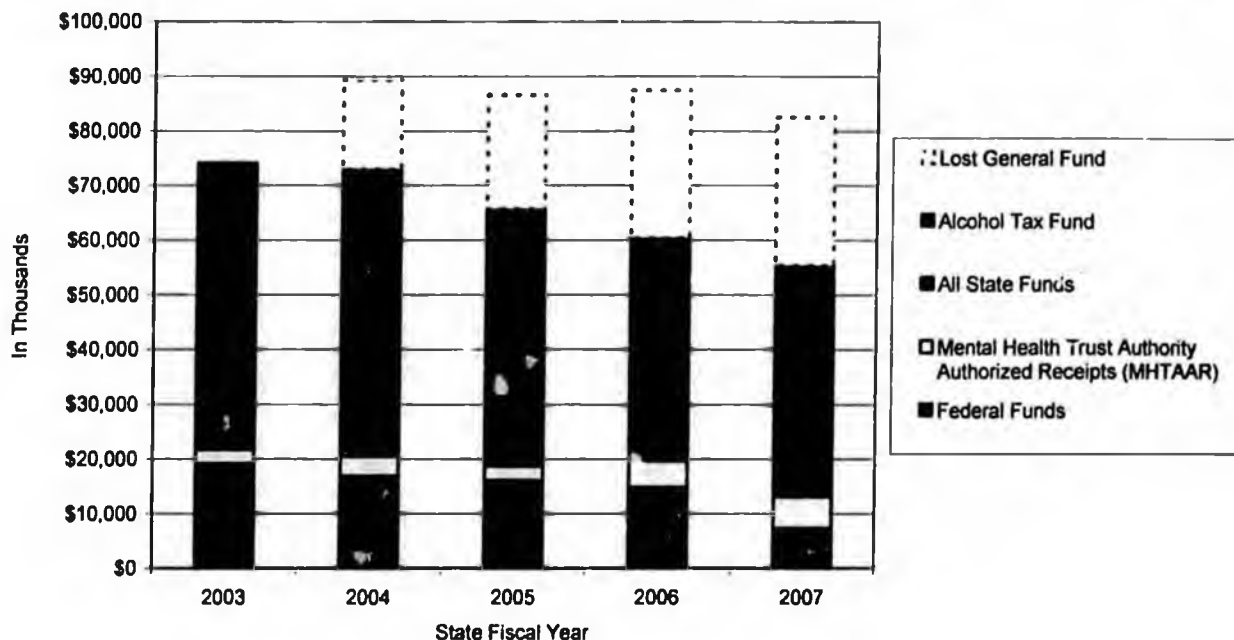
* State of Alaska, Department of Corrections. Women's evaluation, 2000; Men's evaluation, 2002

**Koenig, et al (1999). *National Treatment Improvement Evaluation Study*. SAMHSA

Millions of Dollars Earmarked for Substance Abuse Prevention and Treatment Are Not Being Used for the Intended Purpose by the Legislature

- In 2002, the 22nd Alaska Legislature passed HB 225 that increased the excise tax on alcoholic beverages by 7.5 cents per drink. The legislation, sponsored by Representative Lisa Murkowski, also created the Alcohol and Other Drug Treatment and Prevention Fund (ADTP) into which 50% of all alcohol taxes are now deposited.
- Each year, approximately \$17 million in alcohol taxes are deposited in the ADTP. With "carry over" from previous years, the fund is expected to hold over \$20 million in FY 07.
- In her sponsor statement, Representative Murkowski wrote that the fund "would help provide revenue needed for the expanded treatment, therapeutic courts, diversion programs and other initiatives now under consideration in the Legislature."
- But the Legislature has not expanded prevention and treatment services by adding ADTP dollars to General Fund/Mental Health dollars (GF/MH). Instead they took away GF/MH and replaced it with ADTP. The result? **No net increase for prevention and treatment.**
- In 2003, the cost of alcohol and drug abuse to Alaska's economy was estimated to be \$738 million in lost productivity, accidents, health care, criminal justice and public assistance.*
- In 2005, 18% of all adults and 21% of those between 18-24 reported binge drinking.**
- **If the ADTP fund was used as intended, to supplement, not supplant GF/MH spending, in FY 07, the State of Alaska would have an additional \$20 million for treatment and prevention of alcoholism and substance abuse. Supplement, don't supplant!**

General Funds for Behavioral Health Services Lost Due to Supplantation with Alcohol Tax Fund



1 (c) In this section, "consumption of alcohol" means to ingest, orally or
2 otherwise, alcohol or any substance containing alcohol.

3 (d) Except as provided in (e) of this section, consumption of alcohol in
4 violation of sentence is a class A misdemeanor. ^{is option} (therapeutic courts)(?)

5 (e) Consumption of alcohol in violation of sentence is a class C felony if the
6 defendant has been previously convicted of violating this section.

7 * Sec. 2. AS 12.55.015(a) is amended to read:

8 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
9 sentence on a defendant convicted of an offense, may singly or in combination

10 (1) impose a

11 (A) fine when authorized by law and as provided in
12 AS 12.55.035; or

13 (B) day fine when authorized by law and as provided in
14 AS 12.55.036 if the court does not impose a term of periodic or continuous
15 imprisonment or place the defendant on probation;

16 (2) order the defendant to be placed on probation under conditions
17 specified by the court that may include provision for active supervision;

18 (3) impose a definite term of periodic imprisonment;

19 (4) impose a definite term of continuous imprisonment;

20 (5) order the defendant to make restitution under AS 12.55.045;

21 (6) order the defendant to carry out a continuous or periodic program
22 of community work under AS 12.55.055;

23 (7) suspend execution of all or a portion of the sentence imposed under
24 AS 12.55.080;

25 (8) suspend imposition of sentence under AS 12.55.085;

26 (9) order the forfeiture to the commissioner of public safety or a
27 municipal law enforcement agency of a deadly weapon that was in the actual
28 possession of or used by the defendant during the commission of an offense described
29 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

30 (10) order the defendant, while incarcerated, to participate in or
31 comply with the treatment plan of a rehabilitation program that is related to the

1 defendant's offense or to the defendant's rehabilitation if the program is made available
2 to the defendant by the Department of Corrections;

3 (11) order the forfeiture to the state of a motor vehicle, weapon,
4 electronic communication device, or money or other valuables, used in or obtained
5 through an offense that was committed for the benefit of, at the direction of, or in
6 association with a criminal street gang;

7 (12) order the defendant to have no contact, either directly or
8 indirectly, with a victim or witness of the offense until the defendant is
9 unconditionally discharged;

10 (13) order the defendant to refrain from consuming alcohol,
11 subject to AS 11.56.768, for a period of time up to the lifetime of the defendant,
12 including during the term of any sentence and as a condition of probation,
13 suspended sentence, and suspended imposition of sentence, if

14 (A) the defendant was convicted of a felony under AS 11.41
15 and the court finds by clear and convincing evidence that the defendant's
16 conduct constituting the offense was substantially influenced by the
17 consumption of alcohol; or

18 (B) the court finds by clear and convincing evidence that,
19 based on the defendant's history, there is reason to believe that imposing a
20 requirement that the defendant refrain from consuming alcohol is
21 necessary to protect the public and the defendant was convicted of a
22 violation of AS 28.35.030 or 28.35.032 and the defendant has been
23 previously convicted two or more times or the offense resulted in death or
24 serious physical injury to another person; in this subparagraph,
25 "previously convicted" has the meaning given in AS 28.35.030.

26 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

27 (j) Nothing in (a)(13) of this section limits or restricts the authority of a court
28 to order a person to refrain from the consumption of alcohol as a condition of sentence
29 or probation.

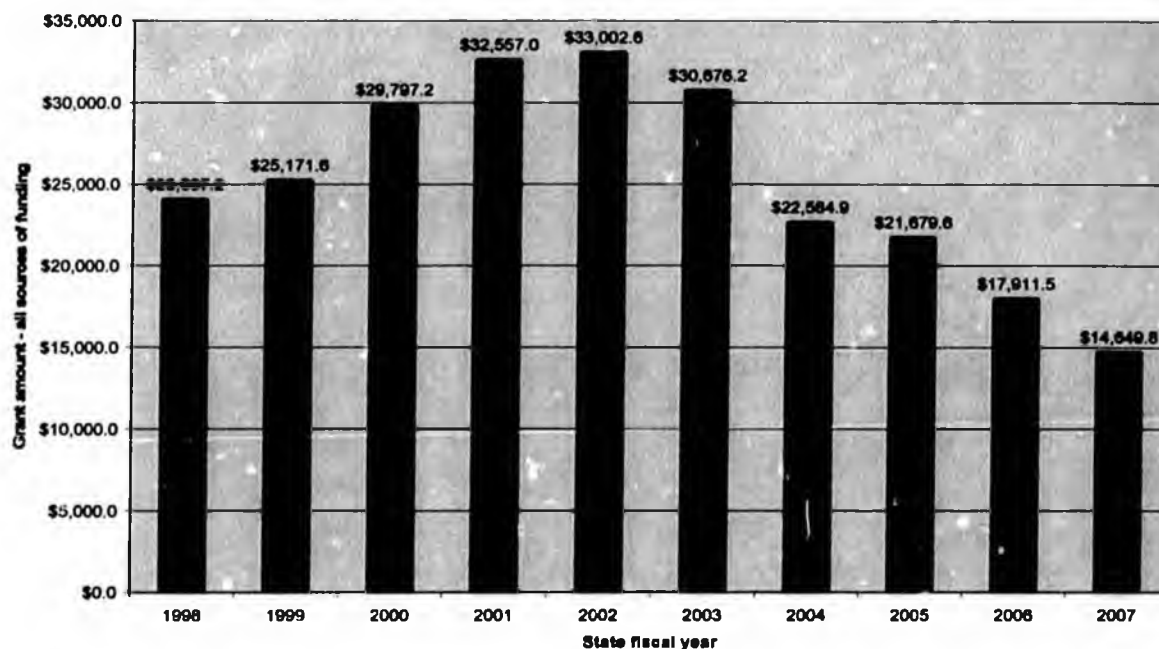
30 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
2 date of this Act. References to previous convictions apply to convictions occurring before, on,
3 or after the effective date of this Act.

State Funding for Substance Abuse Prevention and Treatment Not Keeping Pace with Community Need

- In 2004, approximately 38,000 Alaskans age 12 and over either abused or were dependent on alcohol.*
- In 2005, 18% of all adults and 21% of those between 18-24 reported binge drinking.**
- In Alaska, 79% of newly incarcerated inmates were actively abusing or dependent on alcohol or other substances in the year before their incarceration.
- Children in alcohol-abusing families are almost four times more likely to be maltreated, and 10 times more likely to be neglected; 81% of all reports of harm against Alaska children involve substance abuse.
- In 2003, the cost of alcohol and drug abuse to Alaska's economy was estimated to be \$738 million in lost productivity, accidents, health care, criminal justice and public assistance.***
- Between FY 2002 and FY 2007, state funding for substance abuse treatment dropped by 56.2% or \$18.6 million.
- In 2004, over 35,000 Alaskans who needed treatment for alcohol abuse could not receive it due to lack of availability.* **Medicaid does not cover most substance abuse treatment.**
- **Just three years ago, GF appropriations for prevention and treatment of substance abuse were 50% higher than today. Increase GF appropriations to at least the FY 2005 level. Alaska cannot afford to ignore the costs of substance abuse to the state and to Alaskan families.**

Department of Health and Social Services Substance Abuse Grant Funding, FY 1998 - 2007



Alaska State Legislature

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Sponsor Statement SB 36

Alcohol Ban Option For Certain Violent Felons

In the interest of public safety and reducing the rate of recidivism among certain violent offenders, I have introduced Senate Bill 36 giving judges a new option when sentencing felons who commit crimes against persons. (As 11.41)

In instances that clear and convincing evidence shows a long-term pattern of alcohol abuse as a major contributing factor in the commission of a violent crime against a person, or in the case of extreme DUI convictions, a judge may impose as a condition of sentencing, up to a lifetime prohibition on the use of alcohol.

This legislation is intended to accomplish three main objectives. The first is to allow courts to remove a controlled substance from those who have a long track record of being dangerous when they use it. The second is to prevent future acts of violence by establishing a different threshold for re-arrest before actual violence may occur. The third goal is to establish a lifelong deterrent to offenders who might be tempted to use a substance that unleashes their violent nature.



Unhooked Science Readings

The unhooked.com science section contains selected educational readings from the scientific and popular literature about alcoholism, addiction, and recovery. The views expressed in the articles are those of their authors and not necessarily those of the science pagemaster or the webmaster or of the person who suggested the article to the list. This material is made available solely for the nonprofit educational use of unhooked.com readers as an aid in their personal recovery, and no other use is authorized or intended. [Click here for the current Science Section reading list.](#)

Domestic Violence & Alcohol and Other Drugs

"Alcohol is associated with a substantial proportion of human violence, and perpetrators are often under the influence of alcohol." Eighth Special Report to the U.S. Congress on Alcohol and Health (Secretary of Health and Human Services, September 1993)

Studies of domestic violence frequently document high rates of alcohol and other drug (AOD) involvement, and AOD use is known to impair judgment, reduce inhibition, and increase aggression. Alcoholism and child abuse, including incest, seem tightly intertwined as well. The connection between child abuse and alcohol abuse "may take the form of alcohol abuse in parents or alcohol intoxication at the time of the abuse incident." [1] Not only do abusers tend to be heavy drinkers, but those who have been abused stand a higher probability of abusing alcohol and other drugs over the course of their lifetime.

Alcohol consistently "emerges as a significant predictor of marital violence." [2] Alcoholic women have been found to be significantly more likely to have experienced negative verbal conflict with spouses than were nonalcoholic women. They were also significantly more likely to have experienced a range of moderate and severe physical violence.

Studies have shown a significant association between battering incidents and alcohol abuse. Further, a dual problem with alcohol and other drugs is even more likely to be associated with the more severe battering incidents than is alcohol abuse by itself. The need for preventing alcohol and other drug problems is clear when examining the following statistics are examined:

- In 1987, 64 percent of all reported child abuse and neglect cases in New York City were associated with parental AOD abuse. [3]
- A study of 472 women by the Research Institute on Addictions in Buffalo, NY, found that 87 percent of alcoholic women had been physically or sexually abused as children, compared to 59 percent of the nonalcoholic women surveyed (Miller and Downs, 1993). [4]
- A 1993 study of more than 2,000 American couples found rates of domestic violence were almost 15 times higher in households where husbands were described as often drunk as opposed to never drunk. [5]
- Battered women are at increased risk of attempting suicide, abusing alcohol and other drugs, depression, and abusing their own children. [6]
- Alcohol is present in more than 50 percent of all incidents of domestic violence. [5]

While alcohol and other drug use is neither an excuse for nor a direct cause of family violence, several theories might explain the relationship. For example, women who are abused often live with men who

drink heavily, which places the women in an environment where their potential exposure to violence is higher.

A second possible explanation is that women using alcohol and other drugs may not recognize assault cues and even if they do, may not know how to respond appropriately. Third, alcohol and other drug abuse by either parent could contribute to family violence by exacerbating financial problems, child-care difficulties, or other family stressors. Finally, the experience of being a victim of parental abuse could contribute to future alcohol and other drug abuse.

To reduce the incidence of these problems in the future, prevention of alcohol and other drug abuse must be a top priority. For more information, call the National Clearinghouse for Alcohol and Drug Information at 1-800-729-6686.

All statistics cited in this Making the Link fact sheet come from the following sources:

1. Widom, Cathy Spatz. "Child Abuse and Alcohol Use." Research Monograph 24: Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives. Rockville, MD: National Institute on Alcohol Abuse and Alcoholism, 1993.
2. Kantor, Glenda Kaufman. "Refining the Brushstrokes in Portraits of Alcohol and Wife Assaults." Research Monograph 24: Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives. Rockville, MD: National Institute on Alcohol Abuse and Alcoholism. 1993.
3. Chasnoff, I.J. Drugs, Alcohol, Pregnancy and Parenting, Northwestern University Medical School, Departments of Pediatrics and Psychiatry and Behavioral Sciences, Hingham, MA, Kluwer Academic Publishers, 1988.
4. Miller, Brenda A. and Downs, William R. "The Impact of Family Violence on the Use of Alcohol by Women," Alcohol Health and Research World, Vol. 17, No. 2, pp. 137-143, 1993.
5. Collins, J.J., and Messerschmidt, M.A. Epidemiology of Alcohol-Related Violence. Alcohol Health and Research World, 17(2):93-100. U.S. Department of Health and Human Services, National Institute on Alcohol Abuse and Alcoholism, 1993.
6. Fact Sheet on Physical and Sexual Abuse, Substance Abuse and Mental Health Services Administration, April 1994.

Spring 1995 NCADI Inventory Number ML001



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Vol. 150 No. 8, August 1996
ARTICLE

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Illicit substance use, gender, and the risk of violent behavior among adolescents

C. P. Dukarm, R. S. Byrd, P. Auinger and M. Weitzman
Division of Adolescent Medicine, University of Rochester (NY) School of Medicine and Dentistry, USA.

OBJECTIVES: To analyze data from a nationally representative sample of high school students to investigate the relationship between substance use and violent behavior among adolescents and to examine this relationship in both male and female adolescents. **DESIGN:** Cross-sectional analyses of the 1991 Centers for Disease Control and Prevention's Youth Risk Behavior Survey. **SETTING:** Public and private schools in the 50 states. **PARTICIPANTS:** The participants were 12,272 high school students. **MAIN OUTCOME MEASURE:** To determine the prevalence of weapon carrying and physical fighting among male and female adolescents. **RESULTS:** A significant increase in the number of female adolescents carrying weapons and physically fighting was associated with all forms of substance use. Reports of carrying a weapon increased with recent alcohol consumption (34% vs 17%, $P < .001$) and use of marijuana (48% vs 22%, $P < .001$), cocaine (71% vs 25%, $P < .001$), and anabolic steroids (62% vs 25%, $P < .001$). The prevalence of physical fighting was also significantly higher among adolescents who used illicit substances than among adolescents who denied drug use. The risk of violent behavior increased significantly, and was of equal magnitude, for adolescent females and males who used illicit substances. **CONCLUSIONS:** Alcohol and illicit substance use are highly associated with increased risk of violent behavior. These data also demonstrate that the risk of violence by adolescent females who are substance users is substantial.

THIS ARTICLE HAS BEEN CITED BY OTHER ARTICLES

Predictors of Aggression at School: The Effect of School-Related Alcohol Use

Finn and Frone
NASSP Bulletin 2003;87:38-54.
ABSTRACT

Jocks, Gender, Binge Drinking, and Adolescent Violence

Miller et al.
J Interpers Violence 2006;21:105-120.
ABSTRACT

Anabolic Androgenic Steroids and Aggression: Studies Using Animal Models

McGINNIS

Annals NYAS Online 2004;1036:399-415.

ABSTRACT | FULL TEXT

Characterization of Interpersonal Violence Events Involving Young Adolescent Girls vs Involving Young Adolescent Boys

Mollen et al.

Arch Pediatr Adolesc Med 2004;158:545-550.

ABSTRACT | FULL TEXT

A Cross-national Study of Violence-Related Behaviors in Adolescents

Smith-Khuri et al.

Arch Pediatr Adolesc Med 2004;158:539-544.

ABSTRACT | FULL TEXT

Predicting Fatal Assault Among the Elderly Using the National Incident-Based Reporting System Crime Data

Chu and Kraus

Homicide Studies 2004;8:71-95.

ABSTRACT

Adolescent Assault Injury: Risk and Protective Factors and Locations of Contact for Intervention

Cheng et al.

Pediatrics 2003;112:931-938.

ABSTRACT | FULL TEXT

Early Risk Factors for Violence in Colombian Adolescents

Brook et al.

Am. J. Psychiatry 2003;160:1470-1478.

ABSTRACT | FULL TEXT

National Survey of Pediatricians' Violence Prevention Counseling

Borowsky and Ireland

Arch Pediatr Adolesc Med 1999;153:1170-1176.

ABSTRACT | FULL TEXT

African American Mothers in South Central Los Angeles: Their Fears for Their Newborn

Schuster et al.

Arch Pediatr Adolesc Med 1998;152:264-268.

ABSTRACT | FULL TEXT

Demographic, Intrinsic, and Extrinsic Factors Associated With Weapon Carrying at Sch

Kodjo et al.

Arch Pediatr Adolesc Med 2003;157:96-103.

ABSTRACT | FULL TEXT

Adolescent Suicide Attempts: Risks and Protectors

Borowsky et al.

Pediatrics 2001;107:485-493.

ABSTRACT | FULL TEXT

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* HOME Alcohol Controversies

Alcohol and Sexual Assault: The Connection

by **Scott Hampton, Psy.D.**

Alcohol and sexual assault often happen together. According to some research, 30 percent of all sexual assaults occur when the perpetrator is under the influence of alcohol. In some cases, the victim is also intoxicated. Drinking makes it easy for the perpetrator to ignore sexual boundaries, while the victim's intoxication makes it more difficult for her to guard against an attack.

A common misunderstanding is that if people commit sexual assaults only when drunk, then (a) the drinking must have caused the assault and (b) sobriety and alcohol counseling are adequate to prevent future assaults. These erroneous conclusions confuse correlation and causation. To illustrate consider the correlation between consciousness and sexual assault. Perpetrators of sexual assault typically commit sex assaults only when they are awake, but it would be ridiculous suggest that being awake caused them to commit sexual assaults. So, what is the relationship between alcohol and sexual violence?

First, alcohol use does not cause sexual violence. Putting alcohol into your system does not cause you to commit a s assault anymore than putting gasoline into your car causes to drive to the airport. Gasoline makes it easier to do what

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- » Anti-Alcohol Industry
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want to do (e.g., drive a car) while alcohol also makes it easier to do what you want to do (e.g., grope women). If you do at least think about doing something when sober, you are more likely to do it when drunk. For example, no one worries about becoming so intoxicated that he will lose control and stab himself in the eye with a fork. Why? Because he would never consider doing that when sober.

Alcohol acts as a permission slip. By reducing inhibitions, alcohol often makes it more likely that someone will choose to sexually assault another person. As one man in a violent offender program noted, "When I first came to your program I told you that I hit my wife because I was drunk; now I realize that I drank so that I could hit her." He realized that alcohol was not an excuse or even an explanation for the abuse. Instead, alcohol was a way that he had tried to avoid responsibility for the abuse.

Sexual assault occurs despite alcohol use, not because of it. When someone is extremely intoxicated, we call that person "impaired." "Impaired" means that you have more difficulty performing tasks. Therefore, if you are going to sexually assault someone when drunk, you have to try harder, focus your attention and be more determined than if you were sober. In effect, people who sexually assault when drunk, do so, not because they are intoxicated, but despite their intoxication. They have to overcome the impairment to commit the sexual assault.

Memory loss is not the same as lack of intent. If a perpetrator of sexual assault claims that he has no specific recollection of the assault, that does not mean that he had no intention of doing it at the time. All it means is that the perpetrator is currently either unable or unwilling to report his state of mind when the assaults occurred. For example, sometimes we hear perpetrators report on events that were acceptable (e.g., "I remember drinking and dancing") but not the events that could result in arrest and prosecution (e.g., "I don't recall fondling that person"). Or the perpetrator will not recall the offense but will be able to assert with confidence what his state of mind was at the time (e.g., "I had no desire for sexual gratification."). How can you NOT remember what you did, be absolutely certain what your motives were when you did it? How does alcohol know which memories to delete and which to keep intact?

Sexual assault and substance abuse are separate issues. If

someone violates sexual boundaries while drunk, that person has two problems that need to be addressed. Taking responsibility for alcohol consumption addresses only half of the problem. The perpetrator also needs to take responsibility for the sexual violence. On the most basic level, the perpetrator needs to learn that all sexual contact without permission is sexual violence.

To address this, good sex offender programs teach the principles of sexual consent. These principles are:

1. **Privilege.** Sex is never a right; it is always a privilege, honor, a gift that can either be granted or taken away from the person you wish to have contact with.
2. **Permission.** Since sexual contact is always a privilege, you always must seek permission before initiating contact. In addition, you need to be sober enough to know whether or not you have been given permission. Permission requires that the other person is capable, at the time, of giving permission (e.g., that person is old enough, sober enough, and not coerced by you to say "Yes.") If the other person is afraid to say "No" because you have a position of power or authority, you cannot know whether your potential sexual partner truly wishes to have contact with you (even if she does not actively resist your advances).
3. **Justification/Intent.** There is no excuse for engaging in sexual contact without consent. Sexually respectful people adopt the philosophy of "First Do No Harm." Those who do not respect sexual boundaries should not be allowed to explain or minimize their use of aggression as the result of alcohol or drug use, stress, deviant arousal patterns, lack of control or misunderstandings.
4. **Responsibility.** The only person who ever is responsible for a sexual assault is the perpetrator. The victim never is. As members of their community, we share responsibility for holding perpetrators accountable for their violence. How do we do this? By never blaming victims for the harm they suffered. By remembering that sexual violence is not a part of the disease of alcoholism." By never letting a perpetrator's sexual access and satisfaction become more important than the victim's sexual safety and autonomy. Keeping these principles in mind, we can make great strides in achieving sexual safety in our community.

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References and Readings

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Alcohol and sexual violence: key findings from the research

Andrea Finney

Sexual violence is a serious public health and criminal justice problem. Many men and women suffer sexual violence, a number of whom experience severe physical injuries or subsequently develop mental health problems. Alcohol is an important dimension in sexual violence – many perpetrators are drinking when they attack their victims or have alcohol abuse problems. Furthermore, many victims have alcohol 'problems'. This report presents the key findings from published UK and international research on the relationship between alcohol and sexual violence. As sexual violence is often committed in the context of intimate partner relationships, this report relates to Findings No. 215 (Finney, 2003a).

Key points

- The British Crime Survey estimates that one in ten women have been sexually victimised since age 16 (Myhill and Allen, 2002).
- Many perpetrators have drunk alcohol immediately prior to the incident and/or have drinking problems (Grubin and Gunn, 1990).
- Perpetrator alcohol consumption is sometimes associated with increased sexual violation and physical aggression (Brecklin and Ullman, 2002).
- The tendency for drinking to be a shared activity, the pharmacological effects of alcohol and beliefs and expectations about the effects of alcohol are important in explaining why sexual violence is frequently committed by or against people who have been drinking (Testa and Parks, 1996; Abbey et al., 2001).
- Many victims develop drinking problems as a response to victimisation and problematic drinking is an early predictor of post-traumatic stress disorder development among victims (Darves-Bornoz et al., 1998).

Sexual violence affects many people's lives profoundly. Among over 48,000 police recorded sexual offences during the 12 months to April 2003, there were more than 11,000 rapes and almost 24,000 indecent assaults against females and over 800 rapes and 4,000 indecent assaults against males (Sallsbury, 2003). However, official data considerably underestimate the true extent of sexual violence.

The British Crime Survey (BCS) estimates that less than one in five incidents of female sexual victimisation comes to police attention (Myhill and Allen, 2002). In addition, a study of female rapes coming to police attention in 1996 showed over one-quarter were not subsequently recorded (Harris and Grace, 1999).

The views expressed in these findings are those of the authors, not necessarily those of the Home Office (nor do they reflect Government policy)

The 1998 and 2000 sweeps of the BCS included self-completion questionnaires on sexual victimisation and provide the most recent and reliable figures on the nature and extent of adult sexual violence. (Note: published BCS findings relate to sexual victimisation among women only)

According to the BCS 2000 (Myhill and Allen, 2002), about one in every 100 women (aged 16-59) had experienced some form of sexual victimisation in the previous year, just under half of whom had experienced rape. This suggests there were an estimated 61,000 female victims of rape in England and Wales in the year preceding the 2000 BCS. One in ten women reported some form of sexual victimisation since the age of 16.

Some findings from the research on sexual violence and rape:

- Sexual violence is undoubtedly perpetrated by and against both men and women (Emmers-Sommer and Allen, 1999 - US).
- However, adult victims are predominantly female (Testa and Parks, 1996 - US).
- Women are most often sexually victimised by a man they know, typically a current or ex-partner (Myhill and Allen, 2002; Harris and Grace, 1999).
- In combined 1998 and 2000 BCS sweeps, 67% of rapes against women were committed by current or ex-partners or 'dates'. The assailant was a stranger in only 8% of rapes (Myhill and Allen, 2002).
- Attacks by partners and ex-partners are also the incidents most likely to result in victim injury (Myhill and Allen, 2002).

'Sexual violence' refers here to any form of physical sexual assault, completed and attempted rape. The focus is on sexual violence against people aged 16 years and over, female victimisation and male perpetration except where stated otherwise. Research from the US is often drawn on as relatively little alcohol-related sexual violence research has been undertaken in the UK. (Where examples of research are given, the country where the research is published is indicated unless the research is from the UK.)

Whilst findings from the US are largely transferable to the UK, beliefs and expectations are sensitive to cultural differences. Therefore, some generalisations should be made cautiously.

Key findings are presented here from national and international research on:

- prevalence of drinking by perpetrator and victim at the time of sexual violence
- the association of alcohol 'problems' with such violence

- the characteristics and consequences of alcohol-related sexual violence
- the role of alcohol in sexual violence.

Key research recommendations are also identified.

Prevalence of alcohol-related sexual violence

International research indicates a strong association between alcohol use - both 'drinking in the event' and long term drinking patterns - and sexual violence.

Drinking in the event

Drinking in the event refers to drinking at the time of the incident.

Research indicates a substantial proportion of sexual violence *perpetrators* are drinking at the time of the incident:

- In a UK study of 142 men imprisoned for rape, 58% reported drinking in the six hours prior to the rape. A further 12% had used a combination of alcohol and drugs (Grubin and Gunn, 1990).
- In a survey of 10,000 US State prisoners, 57% of those convicted of rape reported drinking at the time they committed the crime (Bureau of Justice Statistics, 1983; reported in Martin, 1992 - US).
- A national US victimisation survey found offenders had used alcohol and/or drugs in 61% of sexual violence incidents, most (76%) of whom had used alcohol alone (Brecklin and Ullman, 2001 - US).

(Note: in self-report studies there may be a tendency for perpetrators to over-report drinking in the event to minimise personal responsibility.)

Findings on the proportion of sexual violence *victims* who are 'drinking in the event' vary widely:

- A review of six North American arrestee studies, mostly using police report data, reported six to 36% of victims consumed alcohol prior to the event (Roizen, 1997 - US).
- In a review of seven US college student sexual victimisation surveys, victims were drinking in between 35% and 81% of incidents (Testa and Parks, 1996 - US).

Problem drinking

There is also evidence that both perpetrators and victims are more likely to be problem drinkers.

Studies indicate many sexual violence *perpetrators* are 'heavy' or 'problem' drinkers:

- Among 142 imprisoned rapists in the UK, researchers deemed 37% were 'alcohol dependent' at the time of interview (Grubin and Gunn, 1990).
- Among a sample of Canadian imprisoned offenders (72 rapists, 34 child molesters and 24 nonsexual violent offenders), almost half (46%) the rapists were 'severe alcohol abusers' compared with 4% of the non-sexual violent offenders. Notably, differences in drug abuse were less pronounced (Abracen et al., 2000 - Canada).

Studies also indicate many sexual violence *victims* are more likely to be 'problem' drinkers:

- A US study of 238 female undergraduate students found those with histories of severe sexual victimisation (attempted or completed rape) reported greater weekly alcohol consumption rates than non-victimised women (Corbin et al., 2001 - US).
- Among 296 male and female Greek college students, men and women with self-report histories of unwanted sexual contact reported heavier alcohol consumption than those without such histories (Larimer et al., 1999 - Greece).
- In a Canadian study of 358 gay and bisexual men, alcohol abuse was almost three times more common among those who reported having experienced non-consensual sex by another man (in childhood, adulthood or both) compared with non-victimised men (Ratner et al., 2003 - Canada).

Characteristics and consequences of alcohol-related sexual violence

Victim-offender relationship

Although most sexual assaults occur between people who know each other, alcohol-related sexual assaults are more likely to occur between people who do not know each other well (Abbey et al., 2001 - US; Testa and Parks, 1996 - US). Koss et al. (1988 - US) examined alcohol involvement in rapes characterised by different victim-offender relationship types in a sample of US college women. Alcohol was consumed by both victim and offender most often in cases of casual dates, and least often in rapes involving spouses or family members.

Situational characteristics

Violence in general commonly occurs in and around licensed premises and alcohol is a factor in many such incidents (see Finney, 2003b). Licensed premises are also associated with greater frequency of sexual attacks (Combs-Lane and Smith, 2002 - US). Alcohol-related sexual violence is more likely to occur in bars and at parties than at either person's home (Abbey et al., 2001).

There is often both offender and victim drinking in incidents of sexual violence (Abbey et al., 2001 - US; Martin, 1992 - US). Using US police report data, Amir (1971 - reported in Roizen, 1997 - US) found two-thirds of alcohol-related rape cases involved both victim and offender drinking. This is likely to reflect the importance of drinking alcohol and of pubs and parties as settings for socialising and strongly relates to the finding that most sexual assaults involve people who know each other.

Rarely, however, is the victim the only person to have been drinking (Abbey et al., 2001 - US; Martin, 1992 - US). For example, Brecklin and Ullman (2002 - US) found that only two out of 859 female victims of sexual assault had been drinking when the offender had not.

Outcome severity

Research suggests that the severity of sexual violence varies with alcohol use. North American studies of official data show alcohol-related rapes involved greater physical force by the offender and greater victim injury compared with incidents in which neither party was drinking (Collins and Messerschmidt, 1993 - US; Hodge, 1993). US survey research suggests that offender drinking increases the likelihood and severity of victim injury (e.g., Brecklin and Ullman, 2002 - US).

Evidence on the effects of alcohol use on the level of sexual violation is mixed:

- Official data suggest sexual humiliation is likely to be greater when the offender has been drinking (Roizen, 1997 - US).
- Other survey-based studies suggest that rape completion is more likely if the offender has been drinking (e.g., Brecklin and Ullman, 2002 - US) while others suggest perpetrator drinking is not related to rape completion at all (e.g., Abbey et al., 2002 - US).
- Using national US victim survey data, Brecklin and Ullman (2001 - US) found rape completion was less likely if the offender had been drinking, relating in part to effective victim resistance.
- Using data from a national sample of college women, Ullman et al. (1999 - US) found offender drinking did not relate directly to severity of sexual violation. However, offender drinking did relate to the level of offender aggression which in turn related to severity of sexual violation.

Contrasting findings may relate to varying methods and definitions employed in different studies.

Increased victim drinking levels are associated with decreased offender aggression, victim resistance and physical injury (e.g., Abbey et al., 2002 – US; Brecklin and Ullman, 2002 – US). They are, however, associated with increased risk of completed, compared with attempted, rapes (Abbey et al., 2002 – US).

The role of alcohol

Any behaviour committed in the context of alcohol consumption, violent or otherwise, results from interaction between factors relating to the individual, to the immediate environment and to the alcohol consumed.

Research indicates that alcohol is best seen as contributing to violent behaviour, rather than causing it (McCord, 1993 – US). Further, the role of alcohol is likely to be multifaceted. Graham et al. (1998 – Canada) describe the alcohol-related factors which may relate directly or indirectly to violence as falling into four groups:

- 'cultural' factors, relating to how alcohol and its relation to violence are understood in society
- 'person' factors, relating to individuals' responses to, expectations and beliefs about alcohol
- 'pharmacological' factors relating to the psychopharmacological properties of alcohol
- 'context' factors, relating to the physical and social circumstances in which alcohol is consumed.

A number of theories have been proposed to explain how alcohol contributes to sexual violence, many of which have found support in research. Some of these are discussed below.

Disinhibition

Perpetrator intoxication may disinhibit sexual and physical aggression, and decrease the ability to understand a victim's non-consensual signals (Collins and Messerschmidt, 1993 – US). Intoxicated victims may be less able to identify assault before it becomes severe or less able to defend themselves effectively, or they may be more likely to enter risky situations (Testa and Parks, 1996 – US). This may relate to the finding that alcohol is more often present in spontaneous sexual acts compared with those which are 'planned' (Collins and Messerschmidt, 1993 – US).

Beliefs and expectations

Beliefs and expectations about alcohol appear to be especially important in alcohol-related sexual violence.

There are a number of ways beliefs about drinking can affect behaviour:

- Alcohol is widely believed to increase sexual desire and capacity, and also increase aggressive behaviour, especially in men. This may predispose some men to act sexually and aggressively after drinking alcohol (Abbey et al., 2002).
- Many sexual violence perpetrators blame alcohol for their transgressions and heavy drinkers are especially likely to invoke alcohol as a post-offence excuse (Abbey et al., 2001).
- A US study of college 'date rapists' (Kanin, 1984; in Abbey et al., 2001) found most (62%) reported they had committed rape because they had been drinking.
- Additionally, women who drink alcohol are commonly viewed as being more sexually available and promiscuous than women who do not (Abbey et al., 2001 – US). Wild et al. (1998) found perpetrators are blamed less by third parties when the victim is drunk, regardless of perpetrator drinking.
- Also, women who drink in certain contexts may present 'easier' targets to sexually aggressive men who perceive them to be more sexually available (Testa and Parks, 1996 – US).

Context

The relationship between alcohol and sexual violence is likely, in some cases, to reflect the contexts in which people often meet, socialise and consume alcohol. Increased risk of sexual violence at bars and parties may relate to greater exposure to potential assailants (Combs-Lane and Smith, 2002 – US) or because people commonly expect other people within drinking settings to be receptive to sexual advances (Abbey et al., 2001 – US).

Strategy

Alcohol may be used as a strategy for perpetrating rape (Brecklin and Ullman, 2001 – US), perhaps because people believe alcohol has incapacitating, courage-building or aphrodisiac qualities (Abbey et al., 2001 – US). Many 'date rapists' report deliberately getting a woman drunk in order to have sexual intercourse with her (Abbey et al., 2001 – US). Testa and Parks (1996 – US) suggest acquaintances or strangers may find it easier to act aggressively when the victim is intoxicated. Conversely, perpetrators of sexual violence against intimate partners may be better able to coerce, rather than force their victims, by employing powers of authority, fear or persuasion as alternative strategies.

Alcohol and the role of victimisation

The development of alcohol problems among victims may be a result of the experience of sexual violence rather than contributing to sexual victimisation. Alcohol use is a common response in times of psychological stress and US research supports suggestions that sexually assaulted women consume alcohol partly to self-medicate (Miranda et al., 2002 – US). Alcohol abuse is an early predictor of post-traumatic stress disorder in sexual violence victims (Darves-Bornoz et al., 1998 – Europe). Acierno et al. (1999 – US) also suggest that alcohol abuse is associated with an increased risk of post-traumatic stress disorder following rape. The precise process in the development of alcohol problems is, however, likely to be complex. Abbey et al. (2001 – US) suggest that drinking during sexual encounters can help past victims cope with negative feelings about sex but doing so puts them at greater risk of future violation.

Conclusions

Alcohol use in the event is common in incidents of sexual violence and perpetrator and victim drinking is common. This may be a function of the situation in which sexual violence occurs, or the influence of alcohol-related pharmacological and expectancy effects on sexual behaviour. Alcohol use is more likely in incidents of sexual violence between people who do not know each other well than intimates and the presence of alcohol has implications for the severity of sexual violence outcomes. Alcohol problems are common among male perpetrators of sexual violence. Alcohol problems are also common among sexual violence victims, which in many cases develop following victimisation. Alcohol relates to sexual violence via a number of direct and indirect pathways.

Research gaps and recommendations

UK research on alcohol-related sexual violence is sparse. Research is needed to identify what types of sexual crimes are committed by which type of people, under what circumstances, and the roles alcohol plays in the commission of these crimes.

The following are key knowledge gaps.

- The prevalence of alcohol involvement in a variety of sexual violence types.
- The type of drinking (intoxication in the event; chronic drinking) implicated in sexual violence.

- The influence of person-related factors (such as aggressive disposition; beliefs and expectancies) on alcohol-related sexual violence.
- The relative role of alcohol in sexual violence characterised by different combinations of victim-offender relationships and settings (domestic; social settings).
- The role of alcohol in potentially high risk and marginalised groups, for example, young people, specific ethnic or cultural groups, students, homeless people, dependent drinkers and victims of domestic violence.
- The role of alcohol in non-reporting by sexual violence victims.

Finally, theories of the relationship between alcohol and sexual violence need to be developed and tested.

However, sexual violence is undoubtedly a difficult and sensitive subject to research, fraught with ethical and practical dilemmas. Studies need to look at the multitude of factors potentially related to alcohol in sexual violence and their interrelations (Abbey et al., 2001 – US). Research findings can vary quite substantially depending on who is asked about sexual violence and alcohol use (offender, victim or officials). Research, therefore, needs to use multiple approaches to strengthen knowledge and validate findings.

Reporting rates for sexual offences are low and alcohol use compounds this outcome (Fisher et al., 2003 – US). This suggests official data should not be relied upon alone. Experiences of sexual violence are not always interpreted as transgressions by victims and offenders (Koss et al., 1988 – US). It is therefore necessary to carefully construct definitions of sexual violence. Brecklin and Ullman (2002 – US) suggest conducting surveys presented, for example, as surveys on personal safety with a focus on interpersonal violence rather than as 'crime' surveys. Additionally, however, victims who have been drinking may be less likely to realise or recall they have been sexually assaulted (Abbey et al., 2001 – US). This needs to be acknowledged when interpreting research findings.

Andrea Finney is now a Senior Research Officer in the Home Office Research, Development and Statistics Directorate's Measuring and Analysing Crime Programme but was formerly in the Drug and Alcohol Research Programme. The author would like to thank Stuart Lister, University of Leeds, and Mary McMurrin, Cardiff University, who peer-reviewed this Findings.

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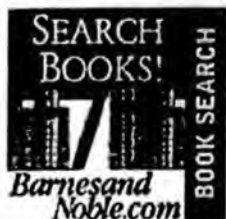
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DATA POINTS: Alcohol and traffic deaths

- Between 1982 and 1993, 266,291 deaths in the United States were alcohol-related -- one fatality every 30 minutes.
- Traffic fatalities in alcohol-related crashes rose by 4 percent from 1994 to 1995. The 17,274 alcohol-related fatalities in 1995 (41 percent of total traffic fatalities for the year) represent a 24 percent reduction from the 22,715 alcohol-related fatalities reported in 1985 (52 percent of the total).
- The National Highway Traffic Safety Administration estimates that alcohol was involved in 41 percent of fatal crashes and in 7 percent of all crashes in 1995.
- The 17,274 fatalities in alcohol-related crashes during 1995 represent an average of one alcohol-related fatality every 30 minutes.
- More than 300,000 people were injured in crashes where police reported that alcohol was present -- an average of one person injured approximately every two minutes.
- Approximately 1.4 million drivers were arrested in 1994 for driving under the influence of alcohol or narcotics. This is an arrest rate of one for every 127 licensed drivers in the United States.
- In 1995, 32 percent of all traffic fatalities occurred in crashes in which at least one driver or nonoccupant had a blood-alcohol content of .10 or greater. More than two-thirds of the 13,564 people killed in such crashes were themselves intoxicated. The remaining one-third were passengers, nonintoxicated drivers, or nonintoxicated nonoccupants.

- The rate of alcohol involvement in fatal crashes is three and one-third times as high at night as during the day (62.3 percent vs. 18.8 percent). For all crashes, the alcohol involvement rate is nearly five times as high at night (14 percent vs. 3 percent).

- In 1995, 32 percent of all fatal crashes during the week were alcohol-related, compared to 54 percent on weekends. For all crashes, the alcohol involvement rate was 5 percent during the week and 11 percent during the weekend.

- In 1995, 32.5 percent of all fatal traffic accidents involved drivers with a blood-alcohol content of greater than .10.

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 - [Alcohol Alert: Drinking and Driving](#)
- [Drinking and Driving Debate](#) - information from the American Beverage Institute on the drinking and driving and BAC debate
- [National Commission Against Drunk Driving](#) - a non-profit organization of private and public sector leaders

who are dedicated to minimizing the human and economic losses resulting from motor vehicle crashes by working to make driving impaired a socially unacceptable act

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THE ROLE OF AGGRESSION-RELATED ALCOHOL EXPECTANCIES IN EXPLAINING THE LINK BETWEEN ALCOHOL AND VIOLENT BEHAVIOR

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Abstract:

Studies have demonstrated an acute effect of alcohol on violent behavior. A remaining issue is the motivation of some offenders for using alcohol before offending. A common explanation is based on the relationship between daily drinking habit and drinking before offending. Drawing upon the deviance disavowal assumption, the embolden hypothesis, and expectancy theories, the present study argues that alcohol may be used intentionally to promote or excuse the violent consequences of drinking. Using data from the 1993 Buffalo Longitudinal Study of Young Men, the present study examines the independent effect of aggression-related alcohol expectancies on drinking before offending and the interactive effect of aggression-related alcohol expectancies and daily alcohol consumption on drinking before offending. The results indicate a significant effect of aggression-related alcohol expectancies on alcohol use before offending. This supports the

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argument that drinking may be a means for carrying out violent acts. A significant interactive effect was found between aggression-related alcohol expectancies and daily alcohol consumption. "Heavy" daily alcohol consumption increased the likelihood of drinking before offending for individuals who had high aggression-related alcohol expectancies more than those who had low such expectancies. Aggression-related alcohol expectancies moderated the effect of daily drinking on drinking before offending. The implications of these findings are discussed for the link between alcohol and violence.

Keywords:

Alcohol, Violence, Expectancies

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1: J Stud Alcohol Suppl. 1993 Sep;11:118-27.

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Alcohol and violent pornography: responses to permissive and nonpermissive cues.

Norris J, Kerr KL.

Alcohol and Drug Abuse Institute, University of Washington, Seattle 98105.

Both alcohol consumption and violent pornography have been implicated independently in the commission of sexual aggression. In addition to alcohol consumption, the presence of alcohol in the context of violent pornography may act as a permissive cue to influence judgments of such material's acceptability and self-reported likelihood of engaging in sexually violent behavior. To test this proposition, an experiment which varied beverage condition (alcohol vs no alcohol), expectancy set (expect vs do not expect alcohol) and a permissive (presence of alcohol) vs nonpermissive (absence of alcohol) cue was conducted on both male and female subjects. Secondary analyses on male subjects alone investigated the role of the personality trait hypermasculinity in affecting judgments. Results showed that (1) alcohol itself rather than expectancy set influenced judgments and willingness to engage in sexual violence; (2) the presence of alcohol interacted with alcohol consumption to affect willingness to engage in sexual violence; (3) men high in hypermasculinity judged the violent pornographic story more positively than did men low in this trait; and (4) alcohol interacted with hypermasculinity to affect acceptability judgments, but only for men low on this trait. These findings are consistent with cognitive disruption models and show promise for future investigations of the influence of permissive cues, as well as the role of hypermasculinity.

MeSH Terms:

- Adult
- Aggression/psychology*
- Alcohol Drinking

- [Comparative Study](#)
- [Erotica/psychology*](#)
- [Ethanol/adverse effects*](#)
- [Female](#)
- [Humans](#)
- [Judgment/drug effects](#)
- [Male](#)
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- [Sex Factors](#)
- [Sexual Behavior/drug effects*](#)

Substances:

- [Ethanol](#)

PMID: 8410953 [PubMed - indexed for MEDLINE]

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(REVISED)
FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB036-LAW-CJL-1-26-07
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title An Act relating to sentencing for alcohol related RDU Criminal Division
crimes. Component Criminal Justice Litigation
Sponsor Senator Therriault
Requester Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | *** | *** | *** | *** | *** | *** |

Estimate of any current year (FY2007) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Please see the attached Analysis Continuation sheet.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
Division Administrative Services Division Date/Time 1/26/07 11:10 AM
Approved by: Robert Meiners for Talis Colberg, Attorney General Date 1/26/2007
Agency Department of Law

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. SB036-LAW-CJL-1-26-07

ANALYSIS CONTINUATION

This bill would allow a court, as part of a sentence for conviction of a crime against a person, or in certain drunk driving and refusal to submit to a breathalyzer offenses, to order the defendant not to consume alcohol for a period up to the defendant's lifetime. The court would first have to make certain findings by clear and convincing evidence, such as for a crime against a person, that the defendant's conduct was substantially influenced by the consumption of alcohol. The violation of the order imposed as a part of sentence would be a new crime, consumption of alcohol in violation of sentence. Violation of the new crime would be a class A misdemeanor for the first offense, and a class C felony for a second or subsequent offense.

Under current law courts may order a person not to drink as a condition of probation. Many petitions to revoke probation are based, at least in part, by violation of this condition. This suggests that the provisions in the bill may have a significant impact on the caseload of the District Attorneys offices; however, the budget impact is indeterminable since it is impossible to predict with any certainty how many such violations will arise. .

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

*Advisory Board on Alcoholism and Drug Abuse
Alaska Mental Health Board*

Sarah Palin, GOVERNOR

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January 29, 2007

Senator Lesil McGuire, Chair
Senate State Affairs Committee

Dear Senator McGuire:

Thank you for the opportunity to testify on SB 36, Sentencing for Alcohol Related Crimes, and thank you for your willingness to consider the negative outcomes of this legislation – more addicts in prison, less opportunities for treatment, greater costs to the State of Alaska.

I want to respond to comments made by Senator Bunde regarding alcohol treatment and the data on successful outcomes. Senator Bunde is correct, in that the data on recidivism after alcohol treatment is abysmal. As I told the committee, relapse is common during the first month after treatment and throughout the first year after treatment. But, research also tells us that if an alcoholic can stay sober for the first year, they are much more likely to be sober after three years; and if they can stay sober for three years, they are much more likely to be sober at 10 years.¹ This speaks to the need for follow-up services, community treatment and family supports.

Alcohol treatment is never a wasted effort. A study that appeared in the January 2007 issue of the journal *Brain* revealed that after just two months of abstinence, an alcoholic's brain volume, reduced from excessive alcohol use, increased an average of 1.8%, and the communication efficiency of their brain cells rose 20%. Abstinence, even short periods, enables the brain to regain some substance and perform better. This appears to be consistent with the fact that many addicts, although they need multiple attempts at recovery, finally attain the capacity to reform.

I have provided the Committee with two additional "fact sheets." One discusses alcohol treatment in Alaska's prisons, and the success of the Residential Substance Abuse Treatment Program (RSAT). The other speaks to the question – how do we pay for the treatment we know Alaskans need? The answer is the state's alcohol tax and the Alcohol and Other Drug Treatment and Prevention Fund. Created in 2002, the fund was intended to increase our capacity to prevent and treat alcohol abuse. This has not happened. because instead of using the fund to supplement prevention and treatment, we have used it to supplant general fund. The fact sheet expands on this information and provides specifics in the amount of money that could be used annually to address this crisis.

Thank you for your attention to this matter. I will not be available to testify on the bill on Tuesday, but will check back with your office on Thursday to answer any questions you or committee member may have.

Sincerely,

Angela Salerno, Advocacy Coordinator

¹ *Initial and Long-Term Alcohol Treatment Success: 10-Year Study of the Project MATCH Albuquerque Sample*. Center on Alcoholism, Substance Abuse, and Addictions, University of New Mexico, 2002.

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Senator Lesil McGuire
Chair, Senate State Committee

Fax

To: Leg Legal, Jerry Luckhaupt **From:** Shalon Szymanski, SSTA Committee Aide

Fax: 2029 **Pages:**

Phone: **Date:** February 22, 2007

Re: Final CS Request (SB 36) **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• Comments:

SB 36 moved out of SSTA today.

If you have any questions, please feel free to contact me at 4522.

ALASKA STATE LEGISLATURE

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Sen. Lyda Green
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Sen. Con Bunde



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SENATOR LESIL McGUIRE
CHAIR, STATE AFFAIRS

Memorandum

To: Leg. Legal

From: Shalon Szymanski, Committee Aide
Senate State Affairs Committee

Date: February 22, 2007

Re: Final CS Request (SB 36)

Please create a Final Committee Substitute (STA) for work order # 25-LS0282\C.

SB 36 did move out of committee today.

Thank you!

25-LS0282C
Luckhaupt
1/23/07

CS FOR SENATE BILL NO. 36()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR THERRIAULT

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to sentencing for the commission of certain offenses influenced by**
2 **alcohol and to the offense of consumption of alcohol in violation of sentence."**

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

4 *** Section 1. AS 11.56 is amended by adding a new section to read:**

5 **Sec. 11.56.768. Consumption of alcohol in violation of sentence. (a) A**
6 **person commits the crime of consumption of alcohol in violation of sentence if the**
7 **person knowingly consumes alcohol in violation of an order imposed under**
8 **AS 12.55.015(a)(13), AS 28.35.030, or 28.35.032.**

9 **(b) In a prosecution under this section, it is an affirmative defense that**
10 **(1) the alcohol was consumed under the direction of, a health care**
11 **professional as part of medical treatment of the defendant; or**
12 **(2) the alcohol was consumed as a nonprescription medication in doses**
13 **and for the purposes recommended by the manufacturer of the medication or as**
14 **approved by the United States Food and Drug Administration.**

1 (c) In this section, "consumption of alcohol" means to ingest, orally or
2 otherwise, alcohol or any substance containing alcohol.

3 (d) Except as provided in (e) of this section, consumption of alcohol in
4 violation of sentence is a class A misdemeanor.

5 (e) Consumption of alcohol in violation of sentence is a class C felony if the
6 defendant has been previously convicted of violating this section.

7 * Sec. 2. AS 12.55.015(a) is amended to read:

8 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
9 sentence on a defendant convicted of an offense, may singly or in combination

10 (1) impose a

11 (A) fine when authorized by law and as provided in
12 AS 12.55.035; or

13 (B) day fine when authorized by law and as provided in
14 AS 12.55.036 if the court does not impose a term of periodic or continuous
15 imprisonment or place the defendant on probation;

16 (2) order the defendant to be placed on probation under conditions
17 specified by the court that may include provision for active supervision;

18 (3) impose a definite term of periodic imprisonment;

19 (4) impose a definite term of continuous imprisonment;

20 (5) order the defendant to make restitution under AS 12.55.045;

21 (6) order the defendant to carry out a continuous or periodic program
22 of community work under AS 12.55.055;

23 (7) suspend execution of all or a portion of the sentence imposed under
24 AS 12.55.080;

25 (8) suspend imposition of sentence under AS 12.55.085;

26 (9) order the forfeiture to the commissioner of public safety or a
27 municipal law enforcement agency of a deadly weapon that was in the actual
28 possession of or used by the defendant during the commission of an offense described
29 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

30 (10) order the defendant, while incarcerated, to participate in or
31 comply with the treatment plan of a rehabilitation program that is related to the

1 defendant's offense or to the defendant's rehabilitation if the program is made available
2 to the defendant by the Department of Corrections;

3 (11) order the forfeiture to the state of a motor vehicle, weapon,
4 electronic communication device, or money or other valuables, used in or obtained
5 through an offense that was committed for the benefit of, at the direction of, or in
6 association with a criminal street gang;

7 (12) order the defendant to have no contact, either directly or
8 indirectly, with a victim or witness of the offense until the defendant is
9 unconditionally discharged;

10 (13) order the defendant to refrain from consuming alcohol.
11 subject to AS 11.56.768, for a period of time up to the lifetime of the defendant,
12 including during the term of any sentence and as a condition of probation,
13 suspended sentence, and suspended imposition of sentence, if

14 (A) the defendant was convicted of a felony under AS 11.41
15 and the court finds by clear and convincing evidence that the defendant's
16 conduct constituting the offense was substantially influenced by the
17 consumption of alcohol; or

18 (B) the court finds by clear and convincing evidence that,
19 based on the defendant's history, there is reason to believe that imposing a
20 requirement that the defendant refrain from consuming alcohol is
21 necessary to protect the public and the defendant was convicted of a
22 violation of AS 28.35.030 or 28.35.032 and the defendant has been
23 previously convicted two or more times or the offense resulted in death or
24 serious physical injury to another person; in this subparagraph,
25 "previously convicted" has the meaning given in AS 28.35.030.

26 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

27 (j) Nothing in (a)(13) of this section limits or restricts the authority of a court
28 to order a person to refrain from the consumption of alcohol as a condition of sentence
29 or probation.

30 * Sec. 4. AS 28.35.028(a) is amended to read:

31 (a) Notwithstanding another provision of law, with the consent of the state and

1 the defendant, the court may elect to proceed in a criminal case under AS 11.56.768,
2 AS 28.35.030, or 28.35.032, including the case of a defendant charged with violating
3 the terms of probation, under the procedure provided in this section and order the
4 defendant to complete a court-ordered treatment program. The state may not consent
5 to a referral under this subsection unless the state has consulted with the victim and
6 explained the process and consequences of the referral to the victim. A court may not
7 elect to proceed under this section if the defendant has previously participated in a
8 court-ordered treatment program under this section two or more times.

9 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
12 date of this Act. References to previous convictions apply to convictions occurring before, on,
13 or after the effective date of this Act.

Angela Scelarno (sp)

STATE OF ALASKA

Frank H. Murkowski, GOVERNOR

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January 23, 2007

**Testimony to the Senate State Affairs Committee on SB 36 by:
Angela Salerno, Advocacy Coordinator, Advisory Board on Alcoholism and Drug Abuse**

Further criminalization and incarceration of people with alcohol addiction will not be an effective strategy in stopping the cost of addictions borne by families, communities and the state of Alaska.

Alcohol addiction is a chronic relapsing disorder. It is not unusual for an addict to relapse within one month following treatment, nor is it unusual for an addict to relapse 12 months after treatment. Studies have shown that **54 percent** of all alcohol abuse patients can be expected to relapse, and that **61 percent** of that number will have multiple periods of relapse.

This data was collected on people lucky enough to get treatment for their alcohol addiction. The federal Substance Abuse and Mental Health Services Administration (SAMHSA) estimates that in 2004, over **35,000 Alaskans** who needed treatment could not receive it because it was not available. Why? Between FY '02 and FY '07, state funding for substance abuse treatment dropped by 56% or \$18.6 million.

Criminalizing alcohol relapse and incarcerating addicts has the potential to make the situation worse. In FY 04, funding for substance abuse treatment in Alaska's prisons was slashed – 15 programs were eliminated. Prisoners with alcohol addictions hit the street without treatment or support for successful reentry. If their criminality is driven by the addiction, as is often the case, they are bound to return to prison again and again, with no way to break the cycle. Our prisons are full, we send prisoners out of state, and the new prison planned for Alaska will be full on the day it opens.

Instead of more prison beds, we recommend that those who commit crimes fueled by alcohol be diverted to treatment. Alaska should adopt the model pioneered by the state of California. Brought about by a voter initiative in 2000, Proposition 36 requires that an offender convicted of a nonviolent, drug-related crime be offered probation and community-based drug treatment in lieu of prison. Outcome evaluations of Proposition 36 show:

- More than 140,000 were diverted from incarceration to treatment during the first four years – half were accessing treatment for the first time.
- The number of people incarcerated in state prisons for drug possession fell by 32%.
- Prop. 36 rendered unnecessary the construction of a new men's prison, saving the state at least half a billion dollars, and resulted in the shuttering of a woman's state prison.
- Cost-benefit studies show that every \$1 invested in treatment saved \$4 in costs for the criminal justice system.

Please do not take Alaska down this expensive and ineffective path. Consider treatment over punishment. Treatment works, recovery happens.