

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1385 SCOMM 52: JOINT SPEC. COMMITTEE ON LOCAL OPTION LAWS 1985-86

involvement of alcohol. There is a problem in Kotzebue with alcohol-related suicides.

The major reason for the state taking custody of children is parents abusing alcohol or drugs, and not caring for their children.

The troopers stationed in Kotzebue spend a great deal of time conducting search and rescue missions for people who have been drinking, and who get lost between Kotzebue and one of the nearby villages. These searches waste time and money.

Minto, December 16, 1985

Population:	153
Racial Composition:	92% Athabascan 8% Caucasian and Other
Community Status:	Unincorporated; I.R.A. Council
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1983 under state local option law; in addition Minto has tribal laws banning alcohol from the community that are enforced by the Minto Tribal Court

The Minto policeman responds to approximately 20 calls a month. A large percentage of the calls involve either violence, or children who have been abandoned or abused. All of these cases are alcohol-related. Ten felonies occur in Minto during the average year, including sexual assaults and homicides, and these cases all involve alcohol. Five to ten incidents a month involving juveniles occur: 50% of such incidents are alcohol-related.

In 1985, three Minto villagers died from causes that were directly alcohol-related. Suicides, and suicide attempts, are a problem in Minto. When people get drunk and drown in the river, both the village corporation and the state spend a great deal of money on searches that could be better spent for such things as education of young people.

Elders in Minto are afraid to go to bed at night when they know people in the village have been drinking. The fear comes from the knowledge that the elders would be unable to defend themselves if a drunk came into their house during the night. The elders have medical problems caused by fear and depression arising out of the drinking problems of others.

When there is a lot of alcohol in the village, children go to school tired, fall asleep during class and can not pay attention. Children of drinkers go to school with dirty clothes, get more colds than other children, and do not eat properly. These children appear to be nervous, depressed and lonely. Pregnant mothers hurt their unborn children through fetal alcohol syndrome.

Parents become estranged from their children as a result of alcohol. Children go to live with their grandparents while parents are drinking, and sometimes refuse to return to life in the parental home. If the grandparents are out of the village, the children have nowhere to go. Incidents of child abuse occur when parents are drinking.

Spouses of persons who drink suffer from physical abuse and live in constant danger of bodily harm. Mothers are afraid for both themselves and their children.

When shipments of alcohol come into the village, the health aides are frequently called for assistance in the middle of the night. There are many alcohol-related accidents in Minto.

Barrow, December 17, 1985

Population:	3037
Racial Composition:	60% Inupiat Eskimo 40% Caucasian and Other
Community Status:	Incorporated as 1st Class Municipality in 1959, located within the North Slope Borough, which is a Home Rule Borough
Alcohol Status:	The sale of alcohol is prohibited under state local option law, although the importation of alcohol is allowed. ⁴⁰

There are many tragic alcohol-related incidents that occur in Barrow. Between September and December 1985, there were six alcohol-related deaths. In the same time period, only one person died from natural causes. For the past three to four years, between ten and twelve people annually have died alcohol-related deaths from motor vehicle accidents, suicides and homicides.

⁴⁰A local option election was held in Barrow on March 3, 1986 to decide whether the sale and importation of alcohol should be banned. The voters chose to allow alcohol importation to continue by a vote of 304 to 326.

Of all calls to which the Barrow Emergency Medical Technicians respond, 50% are alcohol-related. However, in analyzing just the cases where people have been seriously injured, the vast majority involve alcohol.

The North Slope Department of Public Safety, which provides law enforcement services to all of the North Slope Borough communities, makes approximately 600 arrests a year. In the majority of these cases, the offender is intoxicated. In addition to the arrests, approximately 500 people are placed in protective custody each year.

Elderly people live in fear of alcohol abusers. On many occasions, elders have been forced to leave their own homes for as long as a week at a time because their child or grandchild was uncontrollably drunk and refused to leave the house.

The entire community of Barrow can be disrupted by a single case of whiskey coming into town while whaling activities are taking place. If people stay on shore and drink, instead of going out and getting whales, an entire season of whaling may be lost.

Children of parents who drink to excess have many problems. Some drop out of school, others begin drinking when they are as young as five or six years old. Children may have no place to stay when their parents are on a drinking binge. Drinking parents abuse their children both intentionally and unintentionally. In one family, a child

was suffocated in bed by a father who was drunk and had passed out.

In Barrow, the standard price for a bottle of bootleg whiskey is \$40. However, when the supply is low and during the holidays, the price goes up to between \$60 and \$100. Abusive drinkers spending money on bootleg whiskey causes financial problems for many families.

Arctic Village, December 18, 1985

Population:	111
Racial Composition:	88% Athabascan 12% Caucasian and Other
Community Status:	Unincorporated; I.R.A. Council; Arctic Village is part of the Venetie Indian Reservation
Alcohol Status:	Possession, sale, and importation of alcohol are banned under tribal laws and enforced by the Arctic Village Tribal Court ⁴¹

Arctic Village does not have a problem with alcohol. The last act of violence that occurred in Arctic Village was a stabbing in the early 1970's, but this was not charged as a criminal offense.⁴²

⁴¹The tribal laws banning alcohol in Arctic Village are actively enforced. Persons arriving in Arctic Village are subjected to baggage and personal searches. The asserted authority for conducting the searches is based on the status of Arctic Village as part of the Venetie Indian Reservation. The leaders of Arctic Village take the position that the reservation is private land and, as private land owners, searches are legitimately imposed as a condition of being allowed on private land.

⁴²According to Fairbanks District Attorney Harry Davis,
(Footnote Continued)

Fort Yukon, December 18, 1985

Population: 701
Racial Composition: 63% Athabascan
37% Caucasian and Other
Community Status: Incorporated as Second Class
Municipality in 1959
Alcohol Status: The sale of alcohol is restricted
to a community owned liquor store
under state local option law,
alcohol importation is allowed.⁴³

There are problems with people abusing alcohol in Fort Yukon, and elementary school children are said to suffer as a result of alcohol abuse. However, witnesses in Fort Yukon declined to state the specific nature of the problems.⁴⁴

(Footnote Continued)

it is accurate that there is not a problem with crime in Arctic Village. The district attorney believes this is because Arctic Village has a strong village council that makes all the "troublemakers" leave the village. However, the district attorney noted that when Arctic Village people go to Fort Yukon, they often get drunk and become the victims of crime.

⁴³In late 1984, Fort Yukon banned the sale and importation of alcohol. Within days of the effective date of this vote, a new petition was certified to place the issue once again before the voters. Technical problems with the petition delayed the vote until August 1985, and in this election voters decided to once again allow the sale and importation of liquor in Fort Yukon. Fort Yukon reverted to its status before the ban on importation: alcohol may be imported and may be sold by a community-owned liquor store. However, as of February 1986, the community-owned liquor store has not yet been relicensed by the state, and has not yet reopened for business.

⁴⁴Although Fairbanks District Attorney Harry Davis reports that Fort Yukon has a significant alcohol-related crime problem, he states that very few of the misdemeanors are successfully prosecuted. The district attorney believes this is because the laws in Fort Yukon are selectively enforced based on political considerations. In addition, the district attorney believes that problems are caused by trying misdemeanor cases in Fort Yukon. The district

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The Social Costs of Alcohol Abuse

A person who dies can not be replaced by someone else.

Carl Flynn, Tununak elder

Alcohol is like a whiplash. Elders are being emotionally beaten because of alcohol.

Anesia Hoover, Kasigluk elder

Village populations are so small, interrelated, and interdependent that they become vulnerable to the entire array of negative effects associated with excessive drinking, including interpersonal violence, child neglect, loss of economic opportunity, demoralization, and physical deterioration. Therefore, the alcohol-related social impacts severely impair family and community morale, perpetuate a cycle of negative, even disastrous, events, and jeopardize the physical and cultural survival of the village.

Tom Lonner, Village Alcohol Control

Consumption of Alcohol

The overall level of alcohol consumption, regardless of beverage source, determines the prevalence of dangerous drinkers and alcohol-related problems, both nationally and within Alaska.⁴⁵ Alaska has a high rate of annual consumption in comparison to both the rest of the world and the rest of the United States. Moreover, Alaska has historically shown a dramatic increase over the years in the

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attorney states that Fort Yukon jurors very seldom vote to convict based on their realistic fear of retaliation from defendants.

⁴⁵Analysis of Alcohol Problems Project, Dennis Kelso, Project Director, "Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975," 1977, Volume IV at 104.

average annual alcohol consumption rate. For example, the average annual consumption of absolute alcohol per drinker increased by 80% between 1958 and 1975 in Alaska. This rate is 100% greater than the nationwide rate of increase in the level of alcohol consumption.

In analyzing which factors most affect per capita consumption rates, a recent study pointed to three variables: the cost of alcohol, the hours in which alcohol is available for sale, and the number of outlets in which alcohol may be purchased.⁴⁶ Thus, states with "strict,

⁴⁶P.C.H.S. Group for The Alaska Council on Prevention of Alcohol and Drug Abuse, Inc., "Analysis of Availability Factors Related to Per Capita Alcohol Consumption," February 1985.

Other studies support the finding that availability of alcohol is inextricably linked to numbers of alcohol-related problems. Jerome Rabow, Ph.D. and Ronald K. Watts, Ph.D. in "Alcohol Availability, Alcoholic Beverage Sales and Alcohol-Related Problems," Journal of Studies on Alcohol, 43:767-799, 1982, reached a conclusion similar to that contained in the above-cited February 1985 study, in a comparison of alcohol consumption rates in California counties. Rabow and Watts found this phenomenon to cut across cultural lines: "Availability has an effect on alcohol problems independent of social area characteristics."

On the other hand, commentators have pointed out that factors other than availability impact the rate of alcohol consumption:

Consumption is associated with several of the sociocultural, economic and availability factors but is fully explained by none of them...Economic and legislative approaches to the problems are readily short-circuited by illegal availability...If the experience with Prohibition is any guide, the overall average reduction in intake accounted for by law-abiding citizens may not serve to reduce heavy drinking among those less scrupulous.

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tight, or conservative" liquor laws were found to have low per capita consumption rates, and states with "permissive, loose, or liberal" liquor laws had high per capita consumption.

Medical Consequences

Chronic alcohol consumption has toxic effects on every part of the body, with medical consequences ranging from slight impairments to life-threatening diseases. The most common location of disease is the liver, which is the organ responsible for removing alcohol from the body. Because the liver is essential for detoxification and metabolism, alcoholic liver disease has an indirect adverse effect on many other parts of the body.⁴⁷

Excessive alcohol intake may directly injure the gastro-intestinal tract, muscles, and the pancreas. The cardiovascular system, the nervous system, and the endocrine

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Israel Colon, Ph.D., Henry S.G. Cutter, Ph.D. and Wyatt C. Jones, Ph.D., "Prediction of Alcoholism from Alcohol Availability, Alcohol Consumption and Demographic Data," Journal of Studies on Alcohol, 43:1199-1213, 1982.

The research of both Rabow and Colon expanded on work done by Reginald Smart in 1977. Smart found that income and urbanization had a closer relationship to both per capita consumption and alcoholism rates than simply the availability of beverage alcohol. Reginald Smart, "The Relationship of Availability of Alcoholic Beverages to Per Capita Consumption and Alcoholism Rates," Journal of Studies on Alcohol, 38:891-896, 1977.

⁴⁷U.S. Department of Health and Human Services, "Fifth Special Report to the U.S. Congress on Alcohol and Health," December 1983.

system may be damaged by alcohol travelling through the body in the blood stream. Finally, there is evidence of a strong association between chronic alcohol use and cancer of the stomach, large intestine, pancreas and liver.⁴⁸

Alcohol-related diagnoses in the Indian Health Service Hospital system are about three times the rates for the entire United States and double the rates for races other than Caucasian. For ages 15 to 44 years, generally years of high productivity, the IHS rate for alcohol-related diagnoses is more than four times that of the total United States. See Table 2.⁴⁹

⁴⁸Id.

⁴⁹Id. at 8.

TABLE 2

Discharge rates per 10,000 from Indian Health Service and contract general hospitals and from non-Federal short-stay hospitals by first-listed diagnosis and age, 1981

Age at admission	Alcoholic psychosis		Alcoholic dependence syndrome		Alcoholic nondependent abuse of alcohol		Liver disease	
	IHS	U.S.	IHS	U.S.	IHS	U.S.	IHS	U.S.
All ages	11.8	2.9	35.8	19.7	5.8	1.7	6.4	1.9
Under 15 years	0.0	0.0	0.6	0.6	0.9	0.4	0.0	0.0
15-44 years	19.0	3.1	50.5	22.6	8.6	2.1	8.0	1.1
45-64 years	20.1	6.3	83.2	38.3	8.9	2.3	18.9	5.2
65 years and over	4.9	2.0	21.7	13.6	4.4	1.6	4.2	2.4

Source: Indian Health Service, 1982

Mortality

Studies have consistently shown that alcoholics and heavy drinkers have significantly higher death rates than the rest of the population.⁵⁰ In analyzing specific causes of death, alcoholics show particularly high death rates from cirrhosis of the liver, heart disease and hypertension, cancer of the upper digestive and respiratory tracts, pneumonia, and vascular lesions of the central nervous

⁵⁰ Analysis of Alcohol Problems Project, Dennis Kelso, Project Director, "Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975," Volume IV, 1977.

system.⁵¹ Moreover, the numbers of homicides, suicides, and accidental deaths are increased as a result of alcohol.

Alaska has an extremely high rate of death from both voluntary and involuntary acts of violence - including fires, drownings, accidents, suicides, and homicides. Accidents are the leading cause of death in Alaska.⁵² The number of accidental deaths in Alaska is over twice the national average: Alaska has 103.5 accidental deaths per 100,000 population, compared to a national rate of 47.9 accidental deaths per 100,000.⁵³ A large majority of Alaska's accidental deaths are alcohol-related, as seen in Table 3.

⁵¹Id. Although alcohol contributes to these causes of death, other factors are also involved.

⁵²Alaska Department of Health and Social Services, "The Data Appendix to State Health Plan," July 1983.

⁵³Id. at I-67.

TABLE 3

Mortality Data for Selected Causes of Death in Alaska: 1980-1982⁵⁴

Death cause	1980			1981			1982		
	Total	Alcohol		Total	Alcohol		Total	Alcohol	
	deaths	n	%	deaths	n	%	deaths	n	%
Drowning	86	58	67.4	132	90	68.1	118	80	67.7
Suicide	72	58	80.5	66	53	80.3	56	45	80.3
Alcoholism	16	16	100	11	11	100	8	8	100
Cirrhosis	36	29	80.5	51	30	58.8	41	25	60.9
Fires	23	12	52.2	27	14	51.8	19	10	52.6
Traffic	107	50	48.5	100	53	53	143	94	65.7
Homicide	33	27	81.8	50	41	82	54	44	81.4
TOTAL	373	252	67.5	437	292	66.8	439	306	69.7

Suicide

High rates of suicide have been linked to heavy chronic drinking and the depressing, and isolating, condition of life as an alcoholic. One of the more frequent causes of death among chronic drinkers is suicide and a large proportion of suicide cases are alcoholics.⁵⁵ As high as four out of five persons who attempt suicide have been

⁵⁴Alaska Department of Health and Social Services, Office of Alcoholism and Drug Abuse, "Annual Report to the Legislature," 1982-1984.

⁵⁵Wolfgang Schmidt and Robert Popham, "Alcohol Consumption and Physical Health," 1975.

drinking. Alcoholics commit suicide from six to fifteen times more frequently than the general population.⁵⁶

Suicide attempts and completions occur more frequently among Alaska's native population than among non-natives.⁵⁷ At the present time, the highest at-risk groups for attempting suicides are 15-24 year old native males and females. Table 4 shows the relationship between age, sex and suicides in 110 rural Alaska communities. In rural Alaska, suicide attempts quadrupled during the past decade; in comparison, urban suicide attempts doubled over the same period of time. The frequency of rural suicide attempts is double the rate of attempts in urban areas of the state.

⁵⁶ Id.

⁵⁷ Alaska Native Health Board, Inc., "Rural Health Issues Study and Statewide Suicide Evaluation Project," November 1985.

Table 4

**Alcohol-related Attempted and Completed Suicides in⁵⁸
110 Rural Alaska Communities by Race by Sex: 1982-84**

Year	NATIVE				NON-NATIVE			
	Attempted		Completed		Attempted		Completed	
	M	F	M	F	M	F	M	F
1982	3/44	37/50	17/32	3/4	2/8	1/7	2/4	0/0
1983	28/39	43/58	17/22	1/2	9/16	9/17	2/3	1/2
1984	52/65	76/103	18/19	5/6	5/10	6/19	3/4	0/0

Source: Unverified responses to 1985 ANHB Suicide Survey sent to Community Health Aides, Police Departments and Hospitals.

Northwest Alaska has the highest suicide rate in the state: the number of Inupiat committing suicide in the NANA region is seven times the national average and between 1.7 and 5.8 times higher than the rates of native suicide in other regions of the state.⁵⁹ This rate has increased substantially over the course of the past decade. Alcoholics and alcohol abusers comprise 71% of the persons either attempting or committing suicide.⁶⁰ Although alcohol

⁵⁸Id. at 89.

⁵⁹Robert Travis, "Suicide in Northwest Alaska," White Cloud Journal, 3:23-30, 1983.

⁶⁰In his study, Travis defined an alcoholic as "being intoxicated with problems more than 6 times a year (problems may be legal, medical or family)." The definition used for alcohol abuser was "being intoxicated with loss of control between two and six times a year (loss of control may refer
(Footnote Continued)

appears to be more a facilitator of suicide than an underlying cause, fully 86% of the suicides and suicide attempts in Northwest Alaska are alcohol-related. This reflects a greater correlation between alcohol and suicide than is seen in other native American societies.⁶¹

In an attempt to understand factors contributing to the alarming rate of suicide by Alaska Natives, a study of suicide survivors was conducted by a psychiatrist working in conjunction with the Alaska Native Medical Center in Anchorage.⁶² In his report, the psychiatrist observed the high correlation between alcohol and suicide, and noted that most of the suicide attempts studied were impulsive acts rather than premeditated. As a conclusion, the following advice was offered by the author of the study:

Limiting the easy availability of alcohol would reduce the overall level of traumatic death. Currently some native villages are considering measures to restrict the sale or importation of liquor...However, ultimately to reverse the tragic and disproportionate hazard of suicide among...Native Alaskans, the cultural causes will need to be addressed by Natives who have regained hope and control of their own lives. (Emphasis added)⁶³

(Footnote Continued)
to blackouts, drinking to get drunk, going on binges, or fighting while drunk)."

⁶¹Id.

⁶²Brian L. Kost-Grant, M.D., "Self-inflicted Gunshot Wounds Among Alaska Natives," Public Health Reports, 98:72-78, January-February 1983.

⁶³Id. at 77-78.

Crime

The relationship between alcohol and crime was explained by the head of Alaska's Public Defender Agency⁶⁴ during a 1982 Conference on Violence:

Probably the clearest factor leading to violence...is alcohol. The vast majority of our caseload of offenses involve alcohol, and I think that unless the alcohol question is dealt with, violence is going to continue. ...[V]iolence clearly begets violence. Many of our clients charged now with crimes of violence have been victims of violence in the past. Sexually assaulted children have been repeating that pattern with their own children. Abused physically by their parents, they become abusive people. In terms of possible solutions, the alcohol problem is the first one to combat.⁶⁵

Testimony presented during past legislative hearings documents the relationship between violent crime and alcohol abuse.⁶⁶ In 1981, police, prosecutors, judges, community leaders and victims told the House Task Force on Violent Crime that "alcohol abuse and violent crime are inseparable." The Task Force found that crime is significantly more of a problem in rural Alaska than in the

⁶⁴The Public Defender Agency provides legal representation to people charged with crimes who can not afford to hire a private lawyer.

⁶⁵Dana Fabe, "Criminal Justice and Violence in the 1980's," pp. 88-89 in Knowlton Johnson (Ed.), Insights and Strategies for Confronting Violence: Conference Proceedings, Proceedings of the 1982 Conference on Violence, School of Justice, University of Alaska.

⁶⁶House Task Force on Violent Crime, "Report to the First Session, Twelfth Alaska Legislature," June 1981.

cities. For example, the sexual assault rate for Alaska villages was 99.2 cases per 100,000 people, compared to the statewide sexual assault rate of 51.6 cases per 100,000. The homicide rate in villages was 28.4 per 100,000, compared to a statewide murder rate of 10.8 cases per 100,000.

The relationship between alcohol and crime was explored by the Alaska Judicial Council in 1980.⁶⁷ The Judicial Council gathered data from all ten Superior Court locations in the state. Information contained in felony presentence reports relating to offender drug and alcohol abuse, in the period of time from July 1976 to July 1979, was analyzed. As reflected in Table 5, the Judicial Council data showed a strong relationship between alcohol and crime. The correlation was highest in the category of violent crime.

⁶⁷Alaska Judicial Council, Memorandum from Nick Maroules to Michael Rubinstein, "Relationship of Drug and Alcohol Use to Crime," January 11, 1980, Appendix D in Alaska Department of Health and Social Services, Office of Alcoholism and Drug Abuse, "Annual Report to the Legislature," 1981.

TABLE 5

Frequency of Use of Drugs and Alcohol
At Time of Offense for Four Offense Classes⁶⁸

	<u>Used Drugs</u>	<u>Used Drugs & Alcohol</u>	<u>Used Alcohol</u>
<u>Violent Offenses</u>	3.2%(19)	4.9%(29)	56.3%(330)
<u>Property Offenses</u>	4.0%(29)	4.4%(32)	39.2%(286)
<u>Forgery/Fraud Offenses</u>	2.7%(7)	0.8%(2)	9.1%(24)
<u>"Morals" Offenses</u>	1.1%(1)	9.9%(9)	46.2%(42)

The Judicial Council conducted a second analysis of the relationship between alcohol and felony crime, using 1980 data.⁶⁹ In this study, urban felony cases were evaluated separately from rural cases. As shown in Tables 6 and 7, a strong correlation was found to exist between alcohol use and crime. Violent crime was more frequently linked to alcohol, in both urban and rural areas, than other categories of criminal activity.

⁶⁸Id.

⁶⁹Alaska Judicial Council, "Alaska Felony Sentences: 1980," December 1982.

TABLE 6⁷⁰

Frequency of Use of Drugs and/or Alcohol
At Time of Offense for Five Offense Classes*
(Urban Courts - 1980)

<u>Class of Offense:</u>	<u>Total Cases</u>	<u>Used Drugs</u>	<u>Used Drugs & Alcohol</u>	<u>Used Alcohol</u>
1. Murder/Kidnapping	(n=14)	----- -----	21.4% (3)	78.6% (11)
2. Violent Felonies	(n=142)	2.1% (3)	4.2% (6)	65.5% (93)
3. Property Offenses	(n=195)	2.6% (5)	2.6% (5)	46.2% (90)
4. Fraud Offenses	(n=24)	----- -----	12.5% (3)	12.5% (3)
5. "Other" Offenses	(n=9)	11.1% (1)	----- -----	22.2% (2)

*Percents indicate proportion of all cases within class.

⁷⁰Id.

TABLE 7⁷¹

Frequency of Use of Drugs and Alcohol
At Time of Offense for Five Offense Classes*
(Rural Courts - 1980)

Class of Offense:	Total Cases	Used Drugs	Used Drugs & Alcohol	Used Alcohol
1. Murder/Kidnapping	(n=4)	----- -----	----- -----	100.0% (4)
2. Violent Felonies	(n=142)	1.4% (2)	4.9% (7)	80.1% (113)
3. Property Offenses	(n=151)	2.6% (4)	5.3% (8)	55.6% (84)
4. Fraud Offenses	(n=16)	----- -----	----- -----	6.3% (1)
5. "Other" Offenses	(n=13)	----- -----	15.4% (2)	46.2% (6)

*Percents indicate proportion of all cases within class.
Drug offenses omitted from this analysis.

The relationship between alcohol and misdemeanor crime in 1981 was evaluated by the Judicial Council as part of a study of misdemeanor sentencing patterns.⁷² The figures reflected in Table 8 show that misdemeanor offenders frequently were using alcohol at the time their crime was committed.

⁷¹Id.

⁷²Alaska Judicial Council, "Alaska Misdemeanor Sentences: 1981," December 1983.

TABLE 8

1981 Misdemeanors
Breakdown by Community of
Alcohol and/or Drug Use at Time of Offense⁷³

	No Evidence		Alcohol		Drugs		Alcohol & Drugs		Alc/Drugs (Not Spec.)	
	n	(%)	n	(%)	n	(%)	n	(%)	n	(%)
Anch.	193	(42.2)	240	(52.5)	2	(0.4)	13	(2.8)	9	(2.0)
Barrow	5	(10.0)	43	(86.0)	0		2	(4.0)	0	
Bethel	12	(10.6)	100	(88.5)	1	(0.9)	0		0	
Fair.	55	(21.7)	177	(70.0)	3	(1.2)	12	(4.7)	6	(2.4)
Juneau	22	(21.6)	74	(72.5)	0		6	(5.9)	0	
Kodiak	21	(21.6)	72	(74.2)	1	(1.0)	3	(3.1)	0	
Nome	13	(11.1)	102	(87.2)	0		2	(1.7)	0	
Sitka	21	(23.6)	64	(71.9)	1	(1.1)	2	(2.2)	1	(1.1)
TOTAL	342	(26.8)	872	(68.2)	8	(0.6)	40	(3.1)	16	(1.3)

⁷³Id.

In addition to these statewide studies, the relationship between alcohol and criminal activity has been evaluated in at least one specific region of the state. Tables 9 and 10 show that most incidents of criminal activity in the mid-Kuskokwim area of southwest Alaska were found to be alcohol-related for study years 1979 and 1981-1982.⁷⁴

TABLE 9

Total and alcohol-related incidents by village: 1979

<u>Village</u>	<u>total incidents</u>		<u>alcohol-related incidents</u>	
	<u>number</u>	<u>instigated by</u>		<u>number</u>
		<u>natives</u>	<u>adult male natives</u>	
Aniak	19	14	9	15
Chuathbaluk	2	2	2	2
Crooked Creek	15	15	11	15
Kalskag, Lower	4	4	3	2
Kalskag, Upper	1	1	1	1
Red Devil	1	1	0	1
Sleetmute	6	2	0	6
Stony River	4	3	3	3
Between villages	3	3	3	1
TOTAL	55	45	32	46

⁷⁴David L. Marshall and Susan Soule, "Law Enforcement Incidents, Mid-Kuskokwim: 1979," July 1, 1980; and David L. Marshall, "Law Enforcement Incidents, Mid-Kuskokwim: 1981-1982," May 31, 1983.

TABLE 10

Total and alcohol-related incidents by village: 1981-1982

<u>village</u>	<u>number</u>	<u>total incidents</u>		<u>alcohol-related incidents</u>	
		<u>instigated by</u>			
		<u>natives</u>	<u>adult male natives</u>	<u>number</u>	<u>number</u>
Aniak	6	5	3		2
Chuathbaluk	1	1	1		1
Crooked Creek	7	7	7		5
Kalskag, Lower	7	7	6		4
Kalskag, Upper	9	9	8		7
Sleetmute	22	21	11		20
Stony River	5	4	3		3
TOTAL	57	54	40		42

Families

Heavy drinking appears to have a profound affect on family stability. In families with at least one alcoholic spouse, the rate of separation and divorce is seven times that of the general population. Alcoholism is involved in 40% of family court problems nationwide. One third of the persons interviewed in a 1982 survey felt that alcohol caused problems in their families.⁷⁵

Domestic Violence

An excellent and well-documented study of spouse abuse in three southwestern Alaska Eskimo communities

⁷⁵T. Jacob and R. Seilhamer, "The Impact on Spouses and How They Cope," pp. 114-126 in Alcohol and the Family, St. Martin's Press, 1982.

categorically found that a strong relationship between problem drinking and wife beating exists.⁷⁶ In two of the communities studied, the incidence of spouse abuse was found to be ten times greater than that reported nationally.

The domestic violence problems linked to alcohol were not limited to incidents of spouse abuse: child abuse and parent abuse⁷⁷ were also found to be common in the villages studied. With two exceptions, all cases of child abuse discovered by the researchers involved alcohol. In addition, child neglect was found to be characteristic of households containing problem drinkers. Parent abuse appeared to be 100% alcohol-related.

In comparing men who abuse their spouses with those that do not, the researchers found that the abusers had a history of exposure to spouse abuse in their childhood home. Compared to non-victims, most victims did not have a background of abuse in their own families. These findings suggest that spouse abuse may become more widespread as children from violent homes make families of their own.⁷⁸

⁷⁶Anne D. Shinkwin and Mary C. Pete, "Homes in Disruption: Spouse Abuse in Yupik Eskimo Society," August 1983.

⁷⁷For example, threats made to a parent of sufficient severity to cause the parent to leave the house.

⁷⁸Significantly, the researchers found that when the problem drinker stopped abusing alcohol, the domestic violence usually stopped.

Tables 11 and 12 show the relationship between problem drinking and abusive behavior that was found to exist.

TABLE 11⁷⁹

Proportion of people in spouse abusing relationships who are problem drinkers

	<u>Spouse Abusing Couples % of Problem Drinkers</u>	
	<u>Males</u>	<u>Females</u>
Kotlik	100%	9%
Emmonak	100%	30%
Hooper Bay	*85%	**39%

*Three more batter only when drunk, raising the percentage of alcohol involvement to 94% One is a non-drinking victim whose wife is a problem drinker.

**One abuses her husband.

-

TABLE 12⁸⁰

Violence among problem drinkers

	<u>Problem drinkers</u>		
	<u>Kotlik</u>	<u>Emmonak</u>	<u>Hooper Bay</u>
Total Percent of Problem Drinkers Involved in Violence	71%	72%	66%
Type of Violence			
Non-domestic only	32%	22%	33%
Domestic only	18%	23%	21%
Non-domestic and Domestic	21%	28%	13%

⁷⁹ Id. at 49.

⁸⁰ Id. at 53.

Another study of the relationship between alcohol abuse and domestic violence was conducted in 1982 by analyzing questionnaires completed by clients at a battered women's shelter in Anchorage.⁸¹ This study found that the use of alcohol and drugs was a major contributing factor in domestic violence: 46% of the spouse abusers were reported to always use alcohol or drugs during their violent episodes, and 63% were using alcohol or drugs during the most recent episode of violence. Among spouses reported as substance abusers, 53% were always violent when using alcohol or drugs, and 83% were using alcohol or drugs during the most recent episode of violence.

The Anchorage study also found a relationship between the severity of violence and substance abuse. The more extreme the violence, the more likely that the spouse was using alcohol or drugs: 57% of the women suffering a relatively low level of violence reported that their spouse used alcohol or drugs, while 87% of those suffering extreme abuse had chemical-using spouses. A much higher degree of violence and alcohol or drug abuse was reported by native

⁸¹David Basham and Denise Brothers, "An Investigation of Alcohol and Drug Abuse Among Battered Women in Anchorage," p. 198-206 in Knowlton Johnson (Ed.), Insights and Strategies for Confronting Violence: Conference Proceedings, Proceedings of the 1982 Conference on Violence, School of Justice, University of Alaska, 1983.

clients, both in terms of family history and the reason the client sought assistance at the Anchorage shelter .

Other conclusions of significance reached by the Anchorage researchers are:

1. The history of violence in the male's family is of far more importance in contributing to his violent behavior than is his history of alcohol or drug use, although his use is associated with more severe violence.
2. In cases where women have been mistreated as children, the frequency of beatings tends to be greater.

Alcohol and Pregnancy

Heavy drinking during pregnancy increases the risk of miscarriage and can result in alcohol-related birth defects.⁸² When consumed in large amounts, alcohol can cause fetal alcohol syndrome.⁸³ Fetal alcohol syndrome appears to occur at a rate of 1 to 3 cases per 1,000 births.⁸⁴ The primary characteristics of fetal alcohol syndrome can be grouped into four categories:

⁸²U.S. Department of Health and Human Services, "Fifth Special Report to the U.S. Congress on Alcohol and Health," December 1983.

⁸³Id.

⁸⁴Id.

1. Central Nervous System: Eighty percent of fetal alcohol syndrome patients are mentally retarded. Other central nervous system symptoms are poor motor coordination, reduced muscle tone, tremulousness, irritability in infancy, and hyperactivity in childhood.
2. Growth Deficiencies: Over 80% of fetal alcohol syndrome patients have prenatal and postnatal reduction in body length, weight and head circumference.
3. Facial Abnormalities: A pattern of abnormal features of the face and head is frequently seen in fetal alcohol syndrome patients.
4. Other Malformations: Fetal alcohol syndrome patients suffer malformations of various organ systems, including cardiac, urogenital, and skeletal.⁸⁵

Alcohol-related birth defects occur more frequently than fetal alcohol syndrome.⁸⁶ Low birth weight is the leading cause of infant mortality in Alaska, and alcohol

⁸⁵James Gorman, "Alcohol Related Morbidity and Mortality, Medical Diagnosis and Treatment: A Concept Paper," March 15, 1982.

⁸⁶U.S. Department of Health and Human Services, "Fifth Special Report to the U.S. Congress on Alcohol and Health," December 1983.

consumption by the mother during pregnancy is one of the factors leading to low birth weight.⁸⁷

Children of Alcoholics

Children of alcoholics have been the subject of a great deal of study over the past ten years. Researchers have found that there is a substantial relationship between having an alcoholic parent and development of alcoholism. A compilation of research conclusions reflects the following facts about children of alcoholics:⁸⁸

1. 50% of alcoholics are children of alcoholics.
2. 36% of the children of alcoholics are heavy abusers of alcohol. In comparison, an evaluation of the children of families with serious problems other than alcoholism, shows that 16% abuse alcohol.
3. One out of four children in school has at least one parent who abuses alcohol.
4. Children of alcoholics are frequent victims of incest, child neglect, and other forms of violence and exploitation. In 90% of child abuse cases, alcohol is a significant factor.
5. A disproportionate number of children being

⁸⁷Alaska Native Health Board, Inc., "Rural Health Issues Study and Statewide Suicide Evaluation Project," 1985.

⁸⁸Cindy Scales and Joyce Schwettman, "Children of Alcoholics: Facts and Recommendations," 1985.

referred to school authorities for discipline and entering the juvenile justice system or mental health facilities, are children of alcoholics.

6. Children of alcoholics are prone to experience a range of psychological difficulties, including learning disabilities, anxiety, attempted and completed suicide, eating disorders and compulsive achieving.
7. Family alcoholism is responsible for native students dropping out of high school at a higher rate than other students.
8. Over 50% of people served by Employee Assistance Programs are adult children of alcoholics.

This data is supported by anthropological field work. For example, an analysis of Athabascan drinking habits discussed the reaction of children to parental drinking.⁸⁹ The anthropologist observed that when parents became intoxicated, children maintained and managed the household. Older siblings fed, dressed and cared for younger siblings, thus protecting them from neglect. Children cared for parents rendered helpless by alcohol, and occasionally protected other family members from violent outbursts of the drinking parent. In extreme situations, children left home

⁸⁹Greg Brelsford, "Athabascan Drinking Behavior: A Preliminary Ethnography," Department of Health and Social Services Quarterly, 14-20, Winter 1977.

and stayed temporarily with relatives or friends while their parents were drinking.

Economic Costs

The economic cost to society from alcohol abuse is high. Various methodologies have been used for measuring the cost of alcohol abuse to the State of Alaska in dollars. One study concluded that the total cost for fiscal year 1984, including direct and indirect costs, was \$195,500,000.⁹⁰ Table 13 summarizes the specific figures used in arriving at this total.

⁹⁰California Health Research Foundation, "Economic Costs to State of Alaska for Alcohol, Drug Abuse and Mental Illness, 1983-1984," 1985.

TABLE 13

Costs to the State of Alaska from Alcohol Abuse: 1984

CORE COSTS	<u>\$169,600,000</u>
Direct	<u>25,400,000</u>
Treatment	22,300,000
Support	3,100,000
Indirect	<u>144,200,000</u>
Mortality	41,800,000
Morbidity	102,400,000
Reduced Productivity	92,100,000
Lost Employment	10,300,000
OTHER RELATED COSTS	<u>\$25,400,000</u>
Direct	<u>18,000,000</u>
Motor Vehicle Crashes	7,200,000
Crime	6,800,000
Public	6,100,000
Private	600,000
Property Loss/Damage	100,000
Social Welfare Program	500,000
Other	3,500,000
Indirect	<u>7,400,000</u>
TOTAL	<u>\$195,500,000</u>

Another analysis of the economic cost of alcohol abuse has been prepared by the State Office of Alcoholism and Drug Abuse (SOADA). The figures developed by SOADA indicate that the cost of alcohol abuse in Alaska is \$185,294,061.⁹¹ Since the state gains \$14,868,433 in income from alcohol excise taxes, the net loss to the state under the analysis prepared by SOADA is \$170,425,628.⁹² Table 14 summarizes the specific figures used in arriving at this total.

⁹¹These figures are based on a methodology developed and explained in Volume I of "Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975," by the Analysis of Alcohol Problems Project, Dennis Kelso, Project Director. At the time the 1975 study was completed, the total economic cost attributable to alcoholism and alcohol abuse amounted to \$131.2 million. This amount was compared to figures prepared for the United States as a whole and found to be 65% greater than a corresponding adjusted national estimate.

⁹²According to James Gorman, the Health Planner for SOADA responsible for updating the economic analysis first developed by the Analysis of Alcohol Problems Project, *id.*, these figures represent a conservative estimate of the cost of alcohol abuse to the State of Alaska. For example, none of the dollars spent on running the Alaska Psychiatric Institute are included in the figures, despite the fact that Gorman reports at least 10% of the persons institutionalized at A.P.I. are there for solely alcohol-related problems.

TABLE 14

Selected Computations of Alcohol Related Costs: 1984

Public Assistance Payments:	\$5,828,210
Medical Assistance Payments:	5,650,892
Social Services:	
Foster care, Institutional care for children, Day-care, Protective Services, Homemakers (*some drug costs included)	8,718,444
Motor Vehicle:	
Accidents, Fatalities, Injuries, Property Damage	31,903,460
Criminal Justice System:	
Prosecution, Enforcement, Courts, Corrections	78,644,355
State Office of Alcoholism & Drug Abuse:	15,109,700
Costs of Lost Production:	19,870,000
Estimated Institutional Excess Costs, Health and Medical Care	19,569,000
	<u>TOTAL COSTS</u> \$185,294,061
Net Revenue to State from License Fees and Taxation	<u>TOTAL REVENUE</u> \$14,868,433
	<u>NET COST</u> \$170,425,628

Legal Issues Presented by Proposal to
Ban Possession of Alcohol

Federal Law on Regulating Alcohol

The Twenty-first Amendment to the United States Constitution⁹³ gives states the power to absolutely prohibit, or to limit and regulate, traffic in intoxicating liquors within their borders.⁹⁴ In Ziffrin, Inc. v. Reeves,⁹⁵ the Court determined that a state may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained, or the use to which they may be

⁹³In pertinent part, the Twenty-first Amendment provides that "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

⁹⁴See e.g., California v. LaRue, 409 U.S. 109, 114 r'hrq. denied 410 U.S. 948 (1972):

While the States, vested as they are with general police power, require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power, the broad sweep of the Twenty-first Amendment has been recognized as conferring something more than the normal state authority over public health, welfare and morals.

It is important to note, however, that the Twenty-first Amendment does not empower the states to prohibit or regulate the importation of alcoholic beverages into federal lands within the states that are under the exclusive jurisdiction of the United States, such as national parks and military reservations. Collins v. Yosemite Park & Curry Co., 304 U.S. 518 (1938). See also, Alaska Legal Services Corporation, "Applicability of Alaska Title 4 Alcohol Local Option Law Regarding Federal Enclaves Within Alaska," June 21, 1982.

⁹⁵308 U.S. 132 (1939).

put. States "may adopt measures reasonably appropriate to effectuate"⁹⁶ such prohibitions and may "exercise full police authority in respect of them."⁹⁷

A specific "right to privacy" does not exist under the federal constitution. However, the Supreme Court has found that certain of the specific protections provided in the Bill of Rights have "penumbras" that create "zones of privacy."⁹⁸ In evaluating the federal right to privacy, the Alaska Supreme Court has stated:

...the federal right to privacy arises only in connection with other fundamental rights, such as the grouping of rights which involve the home. And even in connection with the penumbra of home-related rights, the right of privacy in the sense of immunity from prosecution is absolute only when the private activity will not endanger or harm the general public.⁹⁹

Given the nature of the privacy rights that the Court has found to be protected by the federal constitution, it is unlikely that the right to consume alcohol would fall within the boundaries of protected behavior.¹⁰⁰

⁹⁶ Id. at 108.

⁹⁷ Id.

⁹⁸ Griswold v. Connecticut, 381 U.S. 479 (1965). In Griswold, the Court held that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." 381 U.S. at 484.

⁹⁹ Ravin v. State, 537 P.2d 494, 500 (1975).

¹⁰⁰ Griswold v. Connecticut, 381 U.S. 479 (1965) (right of married persons to contraception information); Roe v.
(Footnote Continued)

State Law on Regulating Alcohol

Prohibition laws existed, and were upheld, even before Alaska became a state.¹⁰¹ In In re Kaye,¹⁰² the court acknowledged that the right to sell liquor could be prohibited altogether in Alaska. After statehood, in upholding delegation of rule-making authority to the Alcohol Beverage Control Board, the court stated in Boehl v. Sabre Jet Room,¹⁰³ that the legislature has the power to impose either complete prohibition or any other conditions deemed necessary "to afford the greatest degree of protection to the citizens of the state."¹⁰⁴

The Supreme Court distinguished regulation of alcoholic beverages from regulation of other commercial enterprises because alcohol "possesses the capacity for grave and harmful effects upon the public welfare."¹⁰⁵ In reaching this conclusion, the court did not rely on an extensive

(Footnote Continued)

Wade, 410 U.S. 113 (1973) (right to choose abortion); Stanley v. Georgia, 394 U.S. 557 (1969) (right to possess obscene matter in the home). The Alaska Court of Appeals has stated that, as a matter of federal constitutional law, the consumption of alcoholic beverages does not rise to the same level as the above-enumerated rights. Harrison v. State, 687 P.2d 332 (Alaska App. 1984).

¹⁰¹See History of Alcohol Regulation in Alaska, *supra* at 13.

¹⁰²11 Ak. Rpts. 556, 562 (Ak. Dist. Ct. 1948).

¹⁰³349 P.2d 585 (Alaska 1960).

¹⁰⁴Boehl v. Sabre Jet Room, 349 P.2d at 589.

¹⁰⁵Id. at 589.

evidentiary record. Instead, the court found as a "matter of common knowledge that lack of restraint in this field is almost invariably damaging to the community."¹⁰⁶

Privacy Issues

Article I, Section 22 of the Alaska Constitution states, "The right of the people to privacy is recognized and shall not be infringed." This explicit constitutional right grants greater protection to individual privacy interests than the federal Constitution. In 1975, the Alaska Supreme Court relied on the privacy provision of the state constitution in ruling that adults could not be prohibited from possessing marijuana in their own homes for personal use.¹⁰⁷ The court found that the state had not demonstrated the existence of any legitimate state interest in regulating such conduct strong enough to justify breaching the privacy of an individual's home.¹⁰⁸

¹⁰⁶Id.

¹⁰⁷Ravin v. State, 537 P.2d 497 (Alaska 1975). A common misconception about the Ravin decision is that the court found a constitutional right to possess marijuana. This contention was specifically rejected by the court, which clearly concluded "that there is not a fundamental constitutional right to possess or ingest marijuana in Alaska." Id. at 502. The challenger to the existing local option law in Harrison v. State, 687 P.2d 332, 338 (Alaska App. 1984), conceded that an absolute right to consume alcohol does not exist in Alaska.

¹⁰⁸In so ruling, the court noted that the "effects of marijuana on the individual are not serious enough to
(Footnote Continued)

In its ruling, the court emphasized that privacy in the home is a fundamental right under both the federal and Alaska constitutions. However, the court was equally emphatic that privacy is not an absolute right. The right to privacy

must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely.¹⁰⁹

Therefore, an analysis of whether a statutory provision violates constitutional privacy protections must consider whether the state has demonstrated a sufficient public welfare justification for the statute and whether there is a "close and substantial relationship" between the statute and protection of the public welfare.¹¹⁰ If such a relationship is not shown in cases where fundamental rights are involved, statutory prohibitions will be found unconstitutional:

The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest...The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.¹¹¹

(Footnote Continued)

justify widespread concern, as least as compared with the far more dangerous effects of alcohol, barbituates and amphetamines." (Emphasis added) 537 P 2d. at 509-510.

¹⁰⁹ Id. at 504.

¹¹⁰ Id.

¹¹¹ Id. at 511.

In State v. Erickson,¹¹² the court applied the Ravin standard to a claim that the statutory prohibition against cocaine possession and use in the home violated the right to privacy. After an extensive discussion of the effects of cocaine, the court determined that cocaine presents a "substantial potential for harm" to the public welfare.¹¹³ This was "a sufficient showing of societal risk" to legitimize prohibiting that which would be constitutionally protected in the absence of such a showing.¹¹⁴ Therefore, the court ruled that criminalizing the personal use and possession of cocaine, by adults in their homes, does not impermissibly infringe on the individual's right to privacy.

In considering a challenge to that portion of the local option law which allows communities to ban importation of alcohol, the court in Harrison v. State,¹¹⁵ began its analysis by ruling that there is no fundamental right to possess or consume alcohol in Alaska. However, the court pointed out that the privacy amendment to the state constitution "shields the ingestion of food, beverages or

¹¹²574 P.2d 1 (1978).

¹¹³Id. at 22. As part of its evidentiary summary, the court acknowledged factual support for the contention that "cocaine is probably less dangerous than alcohol, barbiturates or amphetamines."

¹¹⁴State v. Erickson, 574 P.2d at 22 n. 144.

¹¹⁵687 P.2d 332, 338 (Alaska App. 1984).

other substances."¹¹⁶ As a result of the determination that these activities are constitutionally protected, their regulation must be justified as a legitimate health and welfare measure. Since a law banning importation is strongly related to consumption of alcohol in the home, the Harrison court evaluated whether the ban on importation violates state constitutional privacy protections. The court emphasized that because the importation law indirectly regulates consumption of alcohol in the home, the state "bears a heavy burden of justifying the regulation as a legitimate health and welfare measure."¹¹⁷

After referring to undisputed evidence that "unmistakably established a correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime,"¹¹⁸ the Court of Appeals held that the state had met its burden of justifying the local option law as a health and welfare measure. In so ruling, the court made specific reference to previous rulings of the Alaska Supreme Court that had expressly recognized "the deleterious effects of consuming alcoholic beverages" and that had expressly found that alcohol is more dangerous than either

¹¹⁶ Id.

¹¹⁷ State v. Harrison, 687 P.2d at 338.

¹¹⁸ Id.

marijuana or cocaine.¹¹⁹ The Court of Appeals upheld the law by concluding that "enactment of Alaska's local option law bears a close and substantial relationship to the legitimate legislative goal of protecting the public health and welfare by curbing the level of alcohol abuse in our state."¹²⁰

Possession by Consumption

In 1972, the Legislature passed the Uniform Alcoholism and Intoxication Treatment Act.¹²¹ The Uniform Act included a declaration of state policy relating to persons abusing alcohol:

It is the policy of the state that alcoholics and intoxicated persons should not be criminally prosecuted for their consumption of alcoholic beverages and that they should be afforded a

¹¹⁹Id. at 338-39.

¹²⁰Id. at 339. The court rejected Harrison's assertion that the local option law is not substantially related to a legitimate state purpose because the moderate consumption of alcoholic beverages may be medically beneficial:

While moderate use of alcoholic beverages may be beneficial, the evidence showing the harmful effects of consumption is undisputed. The legislature, after considering the severe social costs of alcohol abuse, concluded that all communities should have the option of controlling the level of local distribution and availability. Even though decreased restrictions on the availability of alcoholic beverages may, as Harrison argues, increase the proportion of moderate consumers to alcohol abusers, broadened access to alcoholic beverages will undoubtedly increase the absolute number of alcohol abusers. The threat posed to society by widespread alcohol abuse is enormous.

¹²¹A.S. 47.37.010 et seq.

continuum of treatment so they may lead normal lives as productive members of society.¹²²

In Peter v. State,¹²³ the Alaska Supreme Court considered at length the underlying purpose of the Uniform Act and of the concurrent repeal of Alaska's public drunkenness statute.¹²⁴ The court found that the Uniform Act was passed as a response to changing societal attitudes towards those who are unable to deal with alcohol responsibly:

[The Uniform Act] incorporates into the law the realization that alcoholism is a disease, and that symptoms of this disease, i.e., public drunkenness, should not be made the subject of criminal sanctions. Rather, the legislature has decided that the proper reaction is to treat these manifestations of the disease of alcoholism through a comprehensive care program. To the extent that prior laws would defeat this purpose, they must fall.¹²⁵

The court then invalidated a regulation making it a misdemeanor to appear upon or along a highway or street in an intoxicated condition. This ruling was based on a finding that "there is an irreconcilable conflict between an act, a principal purpose of which is to decriminalize public

¹²²A.S. 47.37.010.

¹²³531 P.2d 1262 (Alaska 1975).

¹²⁴Until its repeal, A.S. 11.45.032 prohibited being drunk, and drinking in public, and made each offense punishable by a maximum \$300 fine, 30 days imprisonment, or both a fine and imprisonment.

¹²⁵Id. at 1271.

drunkenness," and the regulation under consideration.¹²⁶
The court found the regulation to be "little more than a law prohibiting public drunkenness in the guise of a traffic regulation."¹²⁷

In a different context, the Bethel District Court relied on Peter and invalidated a municipal ordinance prohibiting the carrying, concealing and transporting of open containers of intoxicating liquor in public by persons under the influence of intoxicating liquor.¹²⁸ The court found that the ordinance was impermissible because it ran afoul of the purpose of the Uniform Act, and was merely "a lever by which the City attempts to criminalize public drunkenness."¹²⁹

If a law banning possession of alcohol were interpreted to mean that an intoxicated person could be convicted of a law violation simply for possessing alcohol within his or her blood supply, such a law might be invalidated under the analysis applied in the above-cited cases. There appears to be little distinction between prohibiting being drunk in

¹²⁶Id.

¹²⁷Id.

¹²⁸City of Bethel v. John, et. al., B-77-13039 Cr. (1977).

¹²⁹Id. at 9.

public and prohibiting possession of alcohol, when that alcohol is possessed solely within the body.¹³⁰

Criminal, Civil and Quasi-criminal Penalties

In Alaska, the law provides an array of remedies for statutory violations. Persons engaging in prohibited behavior may be prosecuted under the state criminal laws, may be subjected to civil suit, or may be sanctioned by imposition of civil monetary penalties within the context of the rules of criminal procedure. The sanctions that combine aspects of both civil and criminal law are referred to as quasi-criminal offenses.¹³¹

In general, civil actions are brought to protect the rights of individuals, or to remedy private wrongs.¹³² The procedural setting in which these actions are heard is

¹³⁰In addition to the conflicts with the Uniform Act discussed above, there is authority which suggests that internal possession of a controlled substance, standing alone, is insufficient to prove knowing possession of the substance. See, e.g., State v. Flinchbaugh, 659 P.2d 208, 211 (Kan. 1983) ("Once a controlled substance is within a person's system, the power of the person to control, possess, use, dispose of, or cause harm is at an end. The drug is assimilated by the body."), and Hunnicut v. State, Memorandum Opinion and Judgment No. 550 at 4 (Alaska App., March 28, 1984) ("On appeal, the state concedes that internal possession alone cannot support a conviction."). Of course, the offender's state of intoxication could clearly be used as circumstantial evidence of prior possession.

¹³¹State v. Clayton, 584 P.2d 1111, 1114 (Alaska 1978); State v. O'Neill Investigations, Inc., 609 P.2d 520, 525-26 (Alaska 1980).

¹³²State v. O'Neill Investigations, 609 P.2d at 525.

controlled by the rules of civil procedure. Ordinary criminal enforcement mechanisms, such as arrest for failing to respond to a summons, are not available.¹³³

The definition of criminal offense was first set forth by the Alaska Supreme Court in Baker v. City of Fairbanks.¹³⁴ The court held that criminal offenses are those for which a violation may be penalized by incarceration, by loss of a valuable license, or by a fine of such magnitude that it indicates criminality. Criminal offenses are also those which "connote criminal conduct in the traditional sense of the term."¹³⁵

In clarifying the latter phrase, the court has said that offenses "connote criminal conduct" when they have "been long established as part of the common law proscribing criminal conduct"¹³⁶ A criminal connotation may also arise where contemporary social values place "public opprobrium"¹³⁷ on the conduct.¹³⁸

¹³³State v. Clayton, 584 P.2d at 1113.

¹³⁴471 P.2d 386, 402 (Alaska 1970).

¹³⁵Id.

¹³⁶Alaska Public Defender Agency v. Superior Court, 584 P.2d 1106 (Alaska 1978).

¹³⁷"Opprobrium" is defined as "something that brings disgrace" or "public disgrace or ill fame that follows from conduct considered grossly wrong or vicious." Webster's Third New International Dictionary, G. & C. Merriam Co.,
(Footnote Continued)

Quasi-criminal offenses are those that are not serious, and do not connote criminality, yet are intended to be enforced within the context of the criminal justice system.¹³⁹ There are both civil and criminal aspects of quasi-criminal statutes. Civil monetary penalties are used as the sole sanction for noncompliance with the statute, however, criminal procedures, such as arrest for failing to respond to a summons, are available as enforcement tools. If an offense is classified as quasi-criminal, a violator is not entitled to a jury trial, nor is court-appointed counsel available.¹⁴⁰ However, like a criminal case, "A quasi-criminal proceeding 'is for the protection of the public.'"¹⁴¹

(Footnote Continued)
1961.

¹³⁸Alaska Public Defender Agency v. Superior Court, 584 P.2d at 1110.

¹³⁹State v. Clayton, 584 P.2d 1111 (Alaska 1978).

¹⁴⁰Baker v. Fairbanks, 471 P.2d 386 (Alaska 1970); Alexander v. Anchorage, 490 P.2d 910 (Alaska 1971); Alaska Public Defender Agency v. Superior Court, 584 P.2d 1106 (Alaska 1978).

¹⁴¹Id. at 1114, citing Bray v. State, 140 Ala. 172, 37 So. 250, 253 (Ala. 1904):

A prosecution for the violation of a municipal ordinance, designed for the preservation of the public peace, the security of the person or property, or the protection of public morals, has been held frequently by this court to be a quasi-criminal proceeding and not a civil action.

Collateral Legal Issues¹⁴²

The Fifth Amendment to the United States Constitution provides in part: "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb."¹⁴³ If a person is charged and tried or convicted for an offense, the fifth amendment precludes the filing of subsequent charges based on the same incident. However, the double jeopardy clause is triggered only where a person is charged with an "offense." In Alaska, infractions are not considered to be offenses for purposes of double jeopardy.¹⁴⁴

¹⁴²This section sets out the legal support for conclusions reached by the Committee about the effect of proposed amendments to the local option law. See section entitled Committee Findings and Conclusions, infra at 105.

¹⁴³See also Alaska Constitution, article 1, section 9.

¹⁴⁴Carlson v. State, 676 P.2d 603 (Alaska App. 1984), quoting State v. Currie, 41 N.J. 531, 197 A.2d 678, 684-85 (1964):

[V]iolations are generally tried quickly and informally before local police magistrates who are in some instances not even attorneys at law. The evidential presentation may be very limited and the legal representation may likewise be very limited or entirely absent. The maximum fines and terms of imprisonment are minor in comparison to those fixed for violation of our Crimes Act...The elements of oppression or harassment historically aimed at by the constitutional and common law prohibition are not significantly involved; and permitting the second prosecution would not violate the reasonable expectations attendant upon the first proceeding while barring it would operate with gross unfairness to the State:

Under Criminal Rule 45(b), a person charged with a felony, a misdemeanor or a violation shall be tried within 120 days. Service of a traffic infraction citation has been found to trigger Criminal Rule 45, and to bar prosecutions for subsequent charges based on the same incident filed after more than 120 days.¹⁴⁵

The United States Constitution, in the Fourth Amendment, provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause..." The Fourth Amendment applies, and, unless the case is exceptional, search warrants must be obtained, in all contexts: criminal, civil and quasi-criminal.¹⁴⁶

Committee Findings and Conclusions

Findings:

Finding Number One: The abusive use of alcohol interferes in a serious manner with the health, safety, rights and privileges of Alaskans, and with the public welfare.

¹⁴⁵Koch v. State, 653 P.2d 664 (Alaska App. 1982).

¹⁴⁶Camara v. Municipal Court, 387 U.S. 523 (1967); Marshall v. Barlow's Inc., 436 U.S. 307 (1978).

Finding Number Two: The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

Finding Number Three: The prohibition of alcohol in rural Alaska villages is an effective tool for controlling the abusive use of alcohol.

Finding Number Four: Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

Finding Number Five: There is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family stability, and child abuse.

Finding Number Six: The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of alcohol, and would increase the cost of illicitly-available liquor.

Finding Number Seven: The dangers resulting from alcohol abuse are particularly acute in rural Alaska because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.

Finding Number Eight: The most damaging type of abusive alcohol-related behavior is that which affects innocent victims, such as children and elders. Children are particularly vulnerable, and as a result of parental alcohol abuse, suffer from a broad range of serious problems.

Finding Number Nine: The abusive use of alcohol perpetuates an escalating pattern of crime and violence from generation to generation.

Finding Number Ten: The most serious harm to the innocent victims of alcohol abuse takes place in private homes and behind closed doors. In communities that have chosen to ban the sale and importation of alcohol, and that have significant alcohol-related social problems, most drinking takes place in private homes.

Finding Number Eleven: The economic cost of alcohol abuse is high and can not be afforded by either the state or rural communities.

Finding Number Twelve: A significant number of rural Alaska communities want, and would use, the authority to ban possession of alcohol. These communities have had a long-standing belief that alcohol should be completely banned, and this belief is based on a lengthy history of alcohol prohibition in rural villages.

Finding Number Thirteen: The policy decision to ban possession of alcohol is one that must be made by local government. If local authorities are precluded from making such a decision, self-government efforts are undermined,

respect for the state legal system is lost, and the public welfare is damaged.

Finding Number Fourteen: Although Alaska law permits communities to ban the sale and importation of alcoholic beverages, the present law is unenforceable because the possession of alcoholic beverages, including homebrew, is permitted.

Finding Number Fifteen: Despite the serious impact that the abusive use of alcohol has on the public health, safety and welfare, possession of alcohol in violation of a ban is not a serious offense and does not connote criminality. Penalties for violating a ban on alcohol should be limited to civil fines and confiscation of the liquor. Criminal procedures should be used to enforce the civil penalties since the ban on alcohol is for the protection of the public. "Possession of alcohol in violation of a local option law" is a quasi-criminal infraction.

Finding Number Sixteen: A fine of \$1000 is not of such a magnitude that it indicates criminality in either urban or rural Alaska communities.

Finding Number Seventeen: "Possession of alcohol in violation of a local option law" is an infraction, and is not an "offense" for purposes of constitutional double jeopardy considerations.

Finding Number Eighteen: A determination of whether "possession of alcohol in violation of a local option law"

is a violation under Criminal Rule 45(b) should be left to the judiciary.

Finding Number Nineteen: The entire Committee Report to the Legislature, which is entitled "A Search for Control: The Effect of Alcohol on Public Rights and Private Wrongs" is adopted by the Committee and, in its entirety, represents a complete recitation of the Findings of the Joint Special Committee on Local Option Laws.

Conclusions:

[The alcohol problem] is more serious than any war that's going on in the world. Wars have purpose ...but alcohol that abuses young children and all that kind of thing, it is totally no good to nobody.

Neil Charlie, Minto elder

The severity of Alaska's problems with alcohol cannot be overemphasized, or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state, and have repeatedly forced Alaskans to recognize the fragility and vulnerability of human existence. Every possible tool must be available for use in combatting the threat posed by alcohol.

Since Alaska communities are extremely diverse, the tools available to fight alcohol abuse must be equally varied. Approaches to controlling alcohol that are effective in urban areas are unlikely to work in the rural villages of the state. Similarly, alcohol control mechanisms that help stop the disintegration of homogenous and isolated villages, would be completely out of place in a complex

urban community. Laws must be flexible enough to provide solutions to the problems faced in all communities.

Villagers have repeatedly told the Committee that they want the power to completely prohibit alcohol. The broad range of problems that are associated with alcohol abuse, as set forth more fully in the Findings of Fact, legally and morally justify legislative action that grants villages that power. Therefore, the recommendation of the Committee is that the local option law be amended and that communities be granted the power to ban possession of alcohol.

Appendix A

The following documents have formed the basis for the Committee report and have specifically and formally been made a part of the hearing record. In addition to the documents listed, transcripts have been made of all eighteen Committee hearings held during November and December 1985. The transcripts have also specifically and formally been made a part of the hearing record and were heavily relied upon by the Committee in making the Findings of Fact contained in this report.

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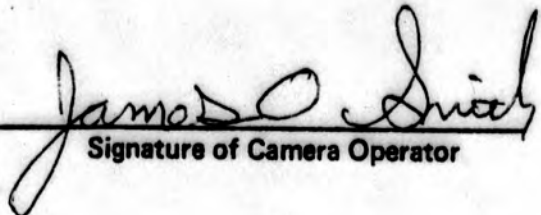
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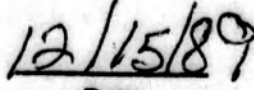


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Joint Special Committee On Local Option Laws

March 13, 1986

N O T I C E

The attached work draft copy of A Search for Control: The Effect of Alcohol on Public Rights and Private Wrongs is provided for your information only and is not for publication at this time. The Joint Special Committee on Local Option Laws will be meeting within the next few days to review and revise the draft. A copy of the final report, when prepared, may be obtained from my office.

Johne Binkley
Chairman
Joint Special Committee on
Local Option Laws

A SEARCH FOR CONTROL:

THE EFFECT OF ALCOHOL ON PUBLIC RIGHTS AND PRIVATE WRONGS

REPORT TO THE LEGISLATURE

JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS

Representative John Binkley, Chairman

Senator John Sackett

Senator Vic Fischer

Senator Edna DeVries

Representative Katie Hurley

Representative John Sund

March 1986

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DRAFT

Prologue

The following letter was submitted to the Committee by a Village Public Safety Officer working in a mid-Kuskokwim village. The description of life in a village terrorized by alcohol abusers reflects much of the testimony presented during Committee hearings, although the problems described in the letter are more severe than those which exist in many places.

December 6, 1985

Honorable Committee Members:

I am presently the VPSO in the village of _____. A very unpopular position at the present time. I recognize that the #1 problem in this village is alcohol abuse. 99.9% of the calls and complaints I get are alcohol related. I've been doing this job for at least 3 months now and I admit that because of alcohol abuse throughout the community that this is the most depressing and discouraging job on earth. No exaggeration intended. Because alcohol abuse is so prevalent, at all levels of the community, from the very young to the very old, that drinking to the point of oblivion is the accepted norm for the majority of the population. And what that accepted norm means is: the alcohol abusers, i.e. the bad guys look at themselves as the good guys. Anybody else, the sober, are regarded as the bad guys. And so it is; the community actually lives in constant fear of itself.

As VPSO, alone, with the nearest help about 90 miles away, and in regards to alcohol abuse, all I can do is pick up the pieces, so to speak, after the alcohol binge is over, and care for the victims, usually the innocent, young children that are neglected and sometimes abused, older persons, or women or weaker men, who get beat upon by the drunks who the next day no longer have any recollection of their actions. The real abusers simply sleep it off until the next binge with alcohol.

I'm seeing a lot of horror stories here that I would not have known were possible. Men with facial cuts and bruises,

women with black eyes who outright refuse to talk about what happened. It is heroic not to 'rat' on another person.

Oh, I forget to mention, this is a community that voted for banning the importation and sale of alcoholic beverages. A law that cannot be enforced most of the time. The booze comes in by way of Red Devil and McGrath, stowed away beneath groceries, personal baggage, hidden on a person or mailed in mixed with groceries shipped into the community by friend or relative.

I'm a firm believer in individual rights, even in regards to purchasing and drinking alcohol....except in this community where alcohol abuse is still out of control. Perhaps there are other villages like this one, although I doubt it. The only hope lies in the fact that a good portion of this community is really sick and tired of living with alcohol abuse...even those persons who drink too much themselves. However, as it is now, whenever alcohol is imported into the village, the whole village goes on an alcohol binge.

I know of two (2) families only who no longer drink at all. And no one drinks in moderation. Alcohol abusers carry the day.

Because of this situation, in this village, living in terror of itself, I recognize a sickness, a disease, so deeply set in alcohol that the individuals no longer know what is good and not good for themselves, their families, relatives, friends and neighbors. Under these most severe conditions, stricter enforcement tools are needed. It should be a crime for anybody to sell liquor, beer and alcohol to another person living in a village like _____. Or for anybody to possess any type of alcohol within this community (including homebrew), just as long as alcohol abuse is prevalent. I would also recommend that an Alaska State Trooper be stationed here for a set amount of time, like maybe a year or two.

Although I've only been VPSO in _____ for 3 months, I've otherwise lived in this area since fall (August) 1972. I'm raising a family here too. Beginning in 1979, I've seen 3 good friends die from drownings, alcohol related, six in plane crashes, alcohol related, and one person who was murdered, also alcohol related. I personally know of at least six rape victims in a similar period of time between 1979 and 1985...all were alcohol related. I know of at least four elderly members of the community that have been beat up, both women and men, as well as younger people. I know of one case where a boyfriend beat up his girlfriend, using his hands and feet, blows to the head and body and when finished with the beating, actually 'pissed' on the victim. The victim was pregnant and the baby was born with respiratory problems and died about a month after birth. I

know a guy who got his arm broken trying to save a girl from being beaten on. And so on and so on, horror stories ad infinitum.

Just one more thing. You will not find these stories in the official statistics. Most of these cases, mentioned in this letter, were never reported. In fact, perhaps only about 10% of all alcohol related crimes and incidents ever get reported. About 90% is never reported. In a village like _____, the only crimes that get reported are the ones perpetrated many times by the same individual. This individual is turned into the troopers as a last resort, meaning that the community has given this individual one break after another, never reporting the crimes, until the community as a whole is completely terrorized by this individual. Yet, when that same individual is brought before a judge, he is always treated as a first offender and he is therefore released to the very community that he has so terrorized, just to start his revenge on those who turned him in. And so the community lives in terror...at night doors are locked, barred and blockaded.

Alcohol abuse...strikes terror in the hearts of everyone...but it is still the individual abuser who is actually striking fear and terror in others.

Respectfully submitted,

P.S. One of the _____ teachers, going through his second year in the village, described to me recently what he thinks it is like to live in the village: "It's just like living on Fourth Ave. in Anchorage all the time," he said. "Would you like to raise your family on Fourth Ave. Would anyone even consider opening a school on Fourth Ave.? That's what I'm doing. In _____, I'm raising a family and teaching school in an environment just like Fourth Ave."

Another teacher, a single male, lives in continuous fear of his life or at least physical well-being whenever a certain village bully is in the village. Right now the individual is in jail. It is a well-known fact that this teacher is the best the community has ever had, yet because of the terror of alcohol abusers, this teacher will not return after the end of this school year.

A third teacher, an elderly lady, spends almost all of her awake time in the school building. She is so afraid she will not venture anywhere in the community except the post office.

Summary of Report

It seems like people are being lost between two [sets of] laws...It's been very recent that the State laws have been implemented to our communities...It seems like our laws that were with us for many years, its just like state law took our laws and threw them out the window. It doesn't seem to work for our people anymore. Since state implemented the laws to us it seems like it created a lot of problems, in terms of alcohol-related deaths, suicides, murders, sexual abuses, things like that.

Teddy Coopchiak, Togiak elder

When we ask for the state troopers to come and help out with problems that we're facing, the answer is always, "We don't have the money."

James Sipary, Toksook Bay

We have a very alarming violence problem in communities, in the villages. I have to attribute most of it to alcohol...We had more homicides in this detachment than in any other detachment in the state for fiscal year 1984 - 1985...I don't have the time to investigate misdemeanors. My Troopers don't go out and investigate misdemeanors...I don't have the personnel to do it.

Captain Joe DeTemple, Alaska State
Troopers D Detachment Commander

Introduction

The numbers of social problems stemming from alcohol abuse in Alaska are staggering. The ravaging affects of alcohol are particularly acute in the isolated native communities of rural Alaska. People in the villages are struggling to accept and accommodate the demands of a Western legal system which is unable to cure the social ills and which appears unresponsive to local needs.

Until recently, alcohol was prohibited in many areas of Alaska from the time alcohol was first introduced into the state. Prohibition was accomplished either by statute or through traditional authority exercised by village councils. Villages may no longer ban alcohol altogether; they are precluded from doing so as a result of the enactment of the present local option law.¹ Many villagers wish to ban alcohol in their communities because they believe that alcohol prohibition is a way to prevent serious social problems from occurring. Moreover, many villagers and analysts believe that existing bans on importing alcohol cannot be enforced unless possession of alcohol is also banned. Therefore, the city councils of several communities in the Yukon-Kuskokwim Delta asked the Legislature to provide them with the statutory authorization to ban possession of alcohol.

Joint Special Committee on Local Option Laws

In order to determine whether Alaska's problems with alcohol abuse are of sufficient severity to legally justify legislation which could result in prohibiting adults from possessing alcoholic beverages in their own homes, the Fourteenth Legislature created the Joint Special Committee on Local Option Laws. The mandate of the Committee, was "to take testimony and collect data on the subject of local

¹A.S. 04.11.490 - A.S. 04.11.496

option elections on the question of banning possession of alcoholic beverages within a community."²

Three Senators and three Representatives were appointed to serve as members of the Committee. The members are: Senator John Sackett, Senator Vic Fischer, Senator Edna DeVries, Representative John Binkley, Representative Katie Hurley and Representative John Sund. Representative Binkley was elected to be Chairman of the Committee, and Laurie H. Otto, an attorney with the Bethel law firm of Otto & Constantino, was hired to advise the Committee on the wide variety of issues with which it was faced.

Committee hearings were held in eighteen far-flung communities throughout Alaska during November and December 1985. The locations of the hearings were: Aniak, Akiachak, Emmonak, Toksook Bay, Nunapitchuk, Bethel, Togiak, Dillingham, Anchorage, Shishmaref, Nome, Gambell, Selawik, Kotzebue, Minto, Barrow, Arctic Village and Fort Yukon.

As a result of travelling through rural Alaska in the winter on small planes and snow machines, Committee Members learned about the isolation of life in rural Alaska, and the degree to which each community must depend on its internal resources. Committee Members experienced some of the sorrows and joys of village life. While Committee hearings were being held in both Nunapitchuk and Selawik, village

²Senate Concurrent Resolution 23, Fourteenth Legislature, First Session

residents were searching the rivers and tundra for persons missing in alcohol-related incidents.³ These tragedies were balanced by the excitement of watching the landing of a bearded fur seal in Gambell, and of seeing the faces of children in Arctic Village when Santa Claus made his yearly arrival.

Committee Findings

Two significant facts were made clear to the Committee as a result of the hearing testimony. First, villagers want to have strong and healthy communities, but their ability to turn this desire into reality is limited because they do not have meaningful input into, and thus control over, most of the governmental decisions which directly affect their lives. Second, the problems related to alcohol abuse in the villages cut across every aspect of community and family life. In the minds of many villagers, community loss of control over government is closely related to the failure of individual community members to take responsibility for themselves and their families by abusing alcohol.

³In Nunapitchuk, the missing man was not found, and is presumed to have fallen through the ice while extremely intoxicated, and to have drowned. In Selawik, the two missing people were found after several days, between Kotzebue and Selawik. Apparently, the people had left Kotzebue for Selawik in an intoxicated condition, without filling the gas tank on their snowmachine. The snowmachine ran out of gas.

Individuals abuse alcohol, in part, because of a belief that they have lost control over their lives.⁴ The resulting abusive, and alcohol-related, behavior is not effectively controlled in many communities. The lack of community control over deviant behavior is caused, in part, by a reasonable belief that enforcement solutions can only be provided by state government. Realistically, however, state government does not have the either the resources or ability to cure local social ills. Thus, the alcohol-related deviant behavior is not controlled and the problems appear to escalate with each passing year.

The belief that enforcement solutions can only be provided by state government is based on the extremely strong dependency relationship binding rural villagers to the state and federal governments. At virtually all levels, and with the best of intentions, government has assumed responsibility for the lives of villagers. In so doing, however, the message has been conveyed that people need not take responsibility for their own lives and for the well-being of their own communities.

⁴See, e.g., Richard H. Robbins, "Alcohol and the Identity Struggle: Some Effects of Economic Change on Interpersonal Relations," pp. 158-190 at 171, in Beliefs, Behaviors, & Alcoholic Beverages: A Cross-Cultural Survey, University of Michigan Press, 1979.

Recommendations for Local Option Legislation

After considering a vast body of evidence, the Committee found that the harm caused by alcohol abuse is so pervasive, serious and overwhelming that villages should have the authority to ban possession of alcohol. Because a measure banning possession of alcohol will only be effective if it receives substantial community support, the Committee decided that the local option election procedure should be followed by communities wishing to ban possession.' The Committee also determined that statutory amendments authorizing communities to ban possession of alcohol should be designed to maximize internal community implementation and local enforcement of the law. If the law were structured in this way, communities would gain more control over local problems, local self-government efforts would be encouraged, and greater responsibility for controlling deviant community behavior would be returned to the villages.

The Committee has proposed legislation which would add a new alternative to the present local option law: an option to ban possession of alcohol, including homebrew. Incorporated municipalities which elect to ban possession would be able to do so by municipal ordinance; established villages could prohibit possession of alcohol by opting to implement an identical state statute. The only permissible penalty for possessing alcohol in violation of a ban would be a fine or community service. Violation of a ban on

possession of alcohol would not be a criminal offense and violators would not receive a criminal record.

The proposed legislation authorizes the Alaska Supreme Court to set a bail forfeiture schedule for violations of the law. Because the statute allows for bail forfeiture, persons not contesting a citation for possessing alcohol could simply mail the appropriate amount of bail to the nearest court in lieu of a fine. Because many villagers have limited access to cash, community service performed under the direction of the city or village council could be substituted for cash bail. One hour of community service would be equal to \$5.00 in cash. Persons contesting a citation would be entitled to a court trial before the nearest judicial officer, and would have the option of performing community service in lieu of any fine imposed by the court. Immediate confiscation of the contraband liquor would be allowed. Forfeiture and destruction of confiscated alcoholic beverages would be permitted in cases where a person either forfeits bail or is convicted of violating the law.

Additional Recommendations

In addition to the local option legislation which has been proposed, the Committee has five recommendations based on the testimony presented during the hearings and the research conducted on behalf of the Committee:

1. The penalty for minor consuming alcohol should be

reduced from its current status as a misdemeanor to a violation punishable by penalties similar to those proposed for possession of alcohol in violation of a local option law. The present laws are rarely enforced by the police, or prosecuted by the district attorneys. Since lack of enforcement engenders disrespect for laws, the statute should be made easier and cheaper to enforce. Additionally, as a matter of policy, there is little social benefit to be gained from giving young people a criminal record for possessing alcohol.

2. During Committee hearings, a large number of people testified that "drunk in public" should be recriminalized.⁵ This issue is complicated and the Committee is not prepared to recommend recriminalization of public intoxication at this time. However, there appear to be significant problems with the Uniform Alcoholism and Intoxication Treatment Act, particularly in rural Alaska. The Committee recommends that the Uniform Act be carefully studied and evaluated by the Legislature to determine whether it continues to

⁵In 1981, the House Task Force on Violent Crime noted similar concerns about the legislative decision to decriminalize "drunk in public". The concerns stemmed from the Task Force conclusion that most violent crimes are predictable and based on long histories of alcohol abuse by criminal offenders. See House Task Force on Violent Crime, "Report to the First Session, Twelfth Alaska Legislature," June 1981.

represent an appropriate approach to Alaska's problems with alcoholism and alcohol abuse.⁶

3. The Committee recommends that increased efforts be made in the areas of substance abuse education and prevention of alcohol abuse. Alcohol and drug abuse education must be made a mandatory part of the curriculum at all grade levels in the public schools, with community elders and leaders taking part in the education process to the greatest extent possible. Treatment programs based on a model relevant and workable for Alaskans living in isolated rural villages need to be developed and implemented.
4. Funding for troopers working in rural Alaska and for village public safety officers needs to be increased. The increase in funding must be accompanied by the placement of a greater emphasis on enforcement of laws punishable by misdemeanor penalties. An attempt must be made to intervene in the lives of abusive drinkers before they become unresponsive to social and legal pressures.

⁶There is no legal impediment to making drunk in public a criminal offense under either the state or federal constitutions. See, Powell v. Texas, 392 U.S. 514 (1968) and Vick v. State, 453 P.2d 342 (Alaska 1969). However, in order to criminalize public drunkenness, the legislature would need to effectuate a change in state policy by amending the Uniform Alcoholism and Intoxication Treatment Act, A.S. 47.37.010, et seq., and by enacting a new statute which prohibits being drunk in public.

5. Executive agencies need to improve their data collection efforts. Further, a serious commitment must be made to using the data collected as the basis for developing and evaluating state policies. In order for officials to reach rational decisions, a consistent historical record, which allows for a reasonable assessment of the repercussions of state action, must be available.⁷

History of Alcohol Regulation in Alaska

The message of the 1962 [Association of Village Council President's] village meeting was not good. Councils discovered that general prohibitions of liquor backed by village consensus and historically by teacher-missionaries and territorial officials would not receive the backing of state law.

Stephen Conn, Town Law and Village Law

⁷The recommendation to improve the state's efforts at collecting data is not new, and is frequently made by researchers assigned the task of making policy recommendations to the legislature. See, e.g. Thomas D. Lonner, Janet R. Eidson, and Paul B. Cunningham, "Legislative Action and Village Social Health: The Assessment of Change Through the Use of Statewide Agency Information Systems," 1984; and Alaska Native Health Board, Inc., "Rural Health Issues Study and Statewide Suicide Evaluation Project," 1985. A study which evaluates what went wrong in an area of rural Canada which has experienced dramatic alcohol-related problems points out the disastrous results of making well-intentioned policy decisions without an adequate factual basis. Anastasia M. Shkilnyk, A Poison Stronger Than Love: The Destruction of an Ojibwa Community, Yale University Press, 1985.

The State said one person can drink in his house and no one can come and bother him. When [I] first heard that, [I] and other people went to [the] city council and told [the council] not to do that. [I] backed it up with what would come later on...if one person drinks in a house without anybody stopping him it will become a problem. [I] tried to tell them, but the city council wouldn't listen to [me].

Dan Nanalook, Togiak elder

From the time of initial Russian contacts with native Alaskans, through the present-day local option legislation, alcohol regulation has been a consistent theme of law enforcement in rural Alaska. Although alcohol has generally been legally available for non-natives, in most of rural Alaska it has only been in the past ten to twenty years that natives have been freely permitted to drink.

Alcohol was used by the Russians as a way to tie workers to the Russian-American Company. The only legal alcohol was that available through the Company stores, and it was rationed out to native workers according to Company policy. The manufacture of homebrew was prohibited through an employment contract which provided:

Everyone in the service of the Company is forbidden, under any pretext whatsoever, to distill liquor from herbs, roots, berries, Company grain, and so forth; or to buy or barter liquor from visiting foreigners and trade in it on Company premises, to make loans or give money to each other for drinking purposes, then drink liquor or use it in any way at all...⁸

⁸Stephen Conn, Alcohol Control and Native Alaskans -
(Footnote Continued)

The terms of this contract were vigorously enforced.

Following the purchase of Alaska in 1867, the United States military governed the territory until passage of the Organic Act of 1884. Originally, the military prohibited alcohol in the territory by classifying Alaska as an Indian reservation, however, the courts found this classification to be inappropriate.⁹ Congress then passed special legislation, extending to Alaska laws which prohibited liquor sales on reservations to Alaska. These laws initially prohibited only commercially-sold liquor, but when it soon became apparent that homebrew was a problem, that too was banned.

Congress responded to Alaskans' pleas for a civil government with passage of the First Organic Act of 1884. Under Section 14 of the Act, "...the importation, manufacture, and sale of intoxicating liquors in said district except for medicinal and scientific purposes is hereby prohibited."¹⁰ Despite the language of the Organic Act, the non-native population took the position that Congress had passed the prohibition law solely for the

(Footnote Continued)

From Russians to Statehood, 1980. Professor Conn has written a series of papers on the history of legal institutions in rural Alaska. The research contained in Professor Conn's papers on "bush justice" provided the foundation for the historical information set forth in this report.

⁹United States v. Seveloff, 1 Ak. Fed. Rpts. 64 (1872)

¹⁰37 Stat. 512