

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 000 / 2

17 SCOMM 6: SENATE SPECIAL COMM. ON ALCOHOLISM 1977-78

Dr. Helen Beirne
Cont.

the same person you pick up time after time after time that you escort to the hospital

L. E. Ed Brown

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That's true and I think that possibly each one of our 30 personnel on the street could probably stand on the corner of 4th and C and pick out each and every one of them. that they haul on a day to day basis. They could probably tell you each and every one of them who have beat them back downtown from the hospital. our reports are publically filed they can be checked and on any particular given day, take a 7 day period and take any day, and probably find at least a half a dozen people that we haul on a daily basis, for no other apparent reason then maybe a bar owner wants to get them out of a bar, they are falling down, and we get many calls, emergency type calls, for a man down, well we don't know what a man down is and we don't know who it is and we just assume that the person is really ill. So we may not have a unit that's close by for instance if it's a four _____ call, we hear it _____, well maybe it's impossible, the unit from the Spenard area would have to go on it's call, which means they're going red lights and sirens on an emergency call downtown, 4th and C for a man down, get down there and find out that a man is just sitting down ther sleeping. So there's lots of dangers and hazards in this particular type of clientele and 99 and 9/10ths of the time, they don't call for the service it's others that call for them. It's a bad situation and those are the people that I would like to see some direction toward getting them or finding them a facility, some kind of a treatment thing.

Dr. Helen Beirne

I like to make one other comment. In addition to Ed's services which have been on going a long period of time, the Emergency Service of the Salvation Army. I think the last time they gave me a _____ something like 100 calls in a day sometimes. Now that's in addition to what Ed is getting. There is much _____ as to whether this is only 300 people we're talking about, some people estimate 2000. I think it's probably somewhere under 500 so you can imagine how many of these people are being picked up time and time again. If we do only have 4 or 500 in this particuiar population. and what it's costing the taxpayers.

Unknown
S/A ?

We actually know most of these fellas on a first name basis. they're that familiar to us, we just pick them up and bring them in and they go out again and we pick them up. They know us and we know them,

Senator Colletta

Thank-you

Unknown
Paul Fairclough ?

If I could address a question to Ed. Ed the Alaska State Troopers recently have come forth with a volunteer service in Eagle River. If a proposal were made I wonder if we could develop volunteer patrols to supliment your EMS patrol.

L. E. Ed Brown

Well, in the 9 years I've been with the service, and been involved in Eagle River, to my knowledge there has never been an alcoholic problem in Eagle River.

Unknown
P. 4

No, I'm referring to ASP's new volunteer services they got up there. Could we not in fact develop a volunteer patrol to at least supplement your patrol, your EMS patrol, at least on a volunteer basis.

Unknown S/Amy

Anybody held for three days wouldn't beat the truck downtown.

Unknown

I don't think it would work because of the liability

Paul Faulkner

That would be the problem, liability

Unknown S/Amy

And the problem is, unless you have some way of holding these people, we have the same problem, that they do, they beat us downtown again. If we can bring them to our walk-in center but, they don't have to stay they can walk right out again and do what they were doing before.

Unknown

'Cause a majority of the hospitals don't want to keep them there.

Unknown

But they'll bill the state though

Senator Colletta

Doug Weiford, Yvonne Alfred, Tom Quintner, Peggy Rosten

Peggy Rosten

I have nothing to say, I'm just here on behalf of the Municipality. I'm in charge of drafting legislation. so that when it comes to the point that we have a legislative proposal, I'll be the person that will draft it and make my recommendations on it. I hope to be down in Juneau next session

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Senator Colletta

Thank-you

Senator Ray

It's an improvement (Laughter)

Senator Colletta

Barbara Hoffman,

Unknown

Barbara Hoffman is not here

Senator Colletta

Bill Farber

Unknown H.B.?

Bill is with the State Troopers, is he not? I don't see anyone else here representing them.

Senator Colletta

Dennis Kelso,

Dennis Kelso

I don't wish to make any comments now

Senator Colletta

Leonard Nugen

Leonard Nugen

Yeah, I don't know what all ya been over this morning, but I assume it has to do with the public inebriant and the DWI's. and so forth

Senator Colletta

Right, those two issues.

Leonard Nugen

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The big thing that I see with the drunk that's on 4th Ave. or the alcoholic is that we do need a way to hold him, we do need some legislation where we can court commit these people. And pick them up and get them dried out at least enough so they can think off that avenue. You know, we talk about emergency patrol and stuff, if we had a place and could commit these people that I have heard just since I've been here, it's the same people over, and over and over and if we look at the expense of what it's costing us as taxpayers then we need a way to hold these people, if we're going to have to take care of these people, let's do it a little cheaper way. I know there's a lot of people against court committing people, involuntary commitment, but I was one of those people that were committed approximately 18 years ago, and I wouldn't be standing here sober today had they not court committed me. Made me a ward of the State of Oregon, and as a result I'm sober today. and I hope a worthwhile citizen. Again we talk about the DWI, just went to court with one yesterday, I will be going back to court with another one that I have right now in the Studio Club and one's 50 DWI's the other has 60 DWI's when the court had these people in the beginning, you can turn them out to this class once a week, that just isn't cutting it. We got to get these people to treatment, and that's when you do it, when you got a handle on them. The guy's in trouble right then, and I think deserves a choice, the one hell of a big fine or whatever, or treatment. We can, and we need these things. You know, another man that had this past summer got 7 1/2 years. He wasn't so lucky as these other people. And it was his second, there were two people died as a result of it. And, so these are the kind of things that we got to have something to head off when we have a handle on these people, and they're turned right back out on the street. I know that if I drink, I don't know what I'll do, so I know I can't drink. Somebody had to get a hold on me, to tell me I couldn't drink, to tell me why I couldn't drink what was wrong with me, when I wasn't drinking. These are the kinds of things that I'm looking at today, and this is a continual thing, we got these two particular people. One of them should have been treated back in 1971 when he got his first DWI, you can set up all the classes you want to he can come to them half drunk once a week, once a month, it might, it will help some. But what about after he gets 6 of them, what happens when we're falling short some where. We need something more than what we got. Somebody's not doing their job the first time, or we wouldn't have 6 up and we do need a way to hold these people whether we do it with the court, however, I don't know but I know, I know something's got to be done. and I do feel if we do something of this nature that it's going to save the taxpayers money it's going to save peoples lives, and it's going give us something to work with, you know there's a lot of us working. and I for one work on an average about 16 hours a day. And there isn't enough money to pay time and wages. I just lost one of the best help I've ever had because there is no money to pay her wages with. These are the kinds of things, we got 30 people in the Studio Club today, and 2 more on the way so there will be 32 there very soon. We're trying to do

Leonard Nugen Cont. something with these people. I would much rather get somebody even come from jail if I got some kind of a hold on them. They say it don't work, but it works.

Senator Colletta Thank-you. Senator Ray.

Senator Ray I agree with what he's saying but he, I'm trying to see (TAPE TURNED) cause to themselves or to others, yet how do you propose to take a drunk who hasn't done anything

Leonard Nugen That hasn't done anything?

Senator Ray That hasn't done anything but get drunk.

Leonard Nugen If we're picking him up and detoxing him twice a week, he's costing me money.

Senator Ray He's costing you money, that's agreed, but what I'm talking about is the criminal, or the criminal act to keep him confined. You just by your own admission said we can't keep him confined even now when they're picked up driving while intoxicated you say ya got a swinging door. And yet we're trying to figure out some way to pick them up and throw them in the can for drinking.

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Leonard Nugen I'm not talking about throwing him in the can, I'm talking about a court commitment, involuntary commitment to get this man dried out and get some treatment into him. There's people been on that avenue for 15 or 20 years, and you know that Senator and I know that

Senator RAY I can go down there and pick out half of them myself

Leonard Nugen That's right, so this is the thing When do we, if we're going to have to go to all this expense and he becomes a nuisance to society, if he's a nuisance than we have got to do something Now I don't know, we have got to have laws, we have got

Senator Ray It's the public consent that I'm talking about. What I first talked to Helen about, perhapes you weren't here. Can you get the public to respond, and enforce legislation providing for involuntary commitment on drunks. I don't know.

Leonard Nugen I beleive we can, I beleive we can whip

Senator Ray I don't know

Leonard Nugen If you could point out to these people x number of tax dollars over here of what talking _____ and what it would cost with this committment

Senator Ray We keep telling about the capitol every day and it they don't seem to understand that. (Laughter)

Senator Colletta Ma'am I'm going to hold comments from the others until the committee is finished.

Senator Ray I'm in agreement, I'm just trying to figure out what kind of a public reception you're going to get.

Leonard Nugen Well, I think it would be good. I think people are getting tired of being scared of even driving on the road. Those of us that are sober and when you really look at how many times people have been in jail, with 5 or 6 DWI's and when you really look at the public inebriated down here on 4th Ave. weekly, month, until you know that you can't treat him right here in town, you got to get something outside of town, where you can hold this man and give him some good food, I don't mean ~~me~~ treat him, I don't mean jail him, I mean give him treatment and have something, an alternative. It's either that or if he walks off then jail him, if he wants jail, let's take care of the man, at least he's not laying out here freezing to death or he's not going to cause somebody else to be dead.

Senator Colletta Thank-you, Representative Lethin? Ma'am?, Mr. Nugen I believe there's another question.

Unknown No, I really didn't have another question, I wanted to say that I agree with him and I again want to come back to this, I don't think it has to be a criminal law. I think that we're back to the civil proceeding if possible. Another think, I think there's a consensus around this table, we know this should happen, and if this many people can't influence and educate people who don't know, then there's something wrong with us.

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Senator Ray How many people here have been arrested for drunk while driving? (Pause) How many of you have been picked up for being inebriated? (Pause) How many of you spent a night in jail? (Pause) (Laughter) What I mean is, sure the majority of the people here are most working with a program or programs associated with the problem directly, but you're talking to somebody else when you're talking to the public which surprised me when they put the bill through in fact I voted against it, on the drunkenness being a crime. Which allowed the situation to get to where it is now. and they have these very liberal people sitting in the legislature at that time, and that's the result. Just like you have a kid riding out and don't have to tell his parents any thing about his medical or any thing else. You think that's right?

Senator Colletta Prior to calling the next

Senator Ray You think that's right?

Senator Colletta Prior to calling the next

Senator Ray You just lost me pal.

Senator Colletta I can't pass up the opportunity nor can I resist taking the liberty to comment on that last show of hands. Mr. Porter probably, in his new position will never spend a night in jail again, anyway. (Laughter) The crux of what I'm wanting to say is there's more than one way to skin a cat, he recently has been promoted so there's no more night work. (Laughter)

Senator Ray How long ago since we worked together Brian? 14 years, 16 years?

Brian Porter 14, 15 years ago.

Senator Ray That's when I was head of the ABC Board.

Senator Colletta There's usually a source from where all problems stem. (Laughter)

Senator Ray I was not the first Chairman. (Laughter)

Senator Colletta Ken Hume, or is someone representing the Downtown Businessmen's Association? That concludes the names on the list that I have. If there are others here that do not appear on my list, we do have approximately 10 minutes before the noon recess. Does someone else wish to speak? Yes, sir.

Ralph L. Van Allen All I hear here we seem to want to pass laws to lock these people up.

Senator Colletta Sir, would you identify yourself?

Ralph L. Van Allen Ralph Van Allen. and put this guy in a certain program or etc. Now we got different programs, approaches and everything else. My approach is aversion therapy. Why don't we set up a hospital also it's a volunteer, if he goes out on a Saturday night, gets drunk, next morning he's hung over. Make it a voluntary, so the State's paying for it. We're talking \$17 million it's costing us taxpayers. For \$2,000. you can cure that man, and then you can get him into AA and other programs and he will stay cured. You're going to have to make a program where, when he's hung over, that's when he wants help, and he will seek help if he can get it without being condemned the rest of his life. And I'm sure you're going to find people who would go to the program, but when you start threatening and your going to lock him up and make him go to this and if he misses one meeting then we, he gets stuck in jail for a week or something like that. Nobody's going to go for that.

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Unknown How do you force him to take the therapy

Ralph Van Allen I said it would be voluntary. They guy, if he is drunk and he's hung over before he gets that next drink if he can pick up that phone and call and say, Hey, admit me, he's going to go, but if he gets that first drink, he's going to say no, I don't want to drink, I don't want to be cured, I don't want any help, I don't need the help, I've had my drink for the day.

Unknown How many you know got cured that way?

Ralph Van Allen Voluntarily?, Myself

Senator Colletta O.K. Additional Comments

Ralph Van Allen I know a lot of people, a lot of drunks that just said I can't handle that stuff and just quit it. Flat.

Senator Ray He's got more than a kernel of truth in what he's saying. You're not going to force people to be sober, there's no way man.

Ralph Van Allen When he's hung over and sick

Senator Ray You know that yourself.

Ralph Van Allen that's when he wants help

Senator Ray You have to motivate yourself to do it. How did you get out of it. One day you looked in the mirror and said "My God, is that me?"

Ralph Van Allen Well, that's a long story.

Senator Colletta O.K. Any additonal comments on

Senator Ray Kris I think had something to say

Senator Colletta O.K., Kris?

Representative Lethin I just wanted to ask Helen if she had heard anything about this Lutheren Hospital down in Chicago.

Dr. Helen Beirne Ah, yes, i've heard of it. We had a group of people with the university about 3 years ago from that hospital that put on a couple workshops. Apparantly has a good track record.

24 Representative Lethin Just kind of programs _____

Dr. Helen Beirne Indeed, it incorporates several things. It incorporates AA, treatment, I don't know if involuntary treatment, usually people go there voluntarily. I would like to comment on what the gentleman here said. We do have state supported facilities for people who do go voluntarily. We're putting a great deal of money into programs that are of that. They are there.

Ralph Van Allen Well who get's the help from those programs?

Dr. Helen Beirne Who ever asks for it.

Senator Ray I think what we're going to have to do you know, is, I picture the alcoholism programs as more or less of a big funnel. Like this, and you have all these people swimming around here telling everybody what to do and justifying their own existance in the program, and it gets smaller and smaller, by the time it gets down here, there's very little that comes out of the end of that funnel. If you could just somehow manage to turn that around so that the bigger base goes out to the public treatment and the smaller base is with the thinkers and, I think we would improve everything. Other than that I don't have too much improve everything. Other than that I don't have too much too say.

Senator Colletta Anyone else wish to comment.

Unknown
Dr. Dexter

I think one of the problems
I think one of the problems in developing legislation of this kind is that you have to have a pretty clear, concise definition of the kind of population you're looking for. If you just make it drunkenness then obviously the public is going to get pretty excited about the trampling on of their civil rights. If you have a pretty clear definition of what population you're talking about, the chronic alcoholic who are again pretty measureable, then I think you have a pretty good chance of the public support.

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Senator RAY

Yeah, but how do you measure them? How do you measure them if it's not a crime and there isn't any public records to be kept on admissions or released then there's no public, for all intents and purposes, there's nothing public

Dr. Dexter

But it is an illness, and it is a definable illness, that has pretty

Senator Ray

When it get's to that extent, it's an illness. When it gets to that it's

Dr. Dexter

Yeah, and I

Senator Ray

questionable whether it's an illness or not.

Dr. Dexter

But as I say, it is, there are pretty specific criteria you can look for. and if you build these into the law, I think you can get public support for it.

Senator Ray

If you go along with what Ed says, then it's the same people and if you write it in to the law, a person who has been picked up in a certain length of, by Emergency, by medical ~~treatment~~ or been brought into protective custody so many times then we'll have a certain period of time that's what we're talking about, that he goes.

Dr. Dexter

That's only one measureable aspect of it.

Senator Ray

That's right, I understand what you're say, but that's about the approach you're going to have to take. You're not going to be able to throw, this as a chatch-all

Dr. Dexter

No

Senator RAY

That's when you're going to have you're problems with your civil rights groups and anybody that feels like it then they're the ones that are going to come down there and are beating on your doors. Oh, some of us are a little bit more hard headed and say too bad.

Senator Colletta

Dr. Beirne

Dr. Helen Beirne

May I ask Brian one question? The people who come in actually with DWI's, they actually are given sentences. They become a

Dr. Helen Beirne
Cont. court related case, at this point, don't they? Now, we'll see in the paper where it's a 30 day sentence, with 30 days suspended. Of course we know that some of them have good attorneys but is it a possibility that many are not being sentenced because there is no place to hold them. You can't afford to take up a cell for a common, good citizen who happens to be an alcoholic and is irresponsible driving drinking. If you had a place with less security, do you think a number of these people would stay there? Take their week sentence, whatever it is and take a forced education program with that.

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Brian Porter The kinds of people we're talking about are the kinds of people that the _____ with the last 20 years that I know of. We have probably a better escape ratio from a totally open prison farm than McNeil Island.

Senator Ray Where they can walk away.

Dr. Helen Beirne I guess what I'm thinking about is that we have many of these people again who are, who have jobs. They're probably people who certainly don't want to go in jail 3 or 4 days because of their reputation and because of other things. If there was a place where they could serve their sentence which would not have to be maximum security do you feel that a number of them would stay there and serve a 5 day sentence, take a forced education program and it might possible do some benefit to keep them from their irresponsible driving habits again.

Brian Porter Well, we admit to being a total fundamentalist in believing there is some effect from deterrents. We know the kind of person who is going to receive a short sentence, I think it ought to be as exemplary as possible, something that he wouldn't want to repeat. So I would rather he do that in jail. If you're going to have a treatment program, create an environment that will facilitate treatment, if you're going to punish, punish, if you're going to treat, treat. Don't treat in the jail and don't

Paul Faulkner Don't punish in treatment.

Senator Ray The other, what was that when I was up two weeks ago, I made a tour of the sixth street annex over there on the, I think the rate of capacity there on any given day is the _____ was rated for 96 occupancy and the day I was there at 2:00 in the afternoon they had 148 people and that's why I asked some of you if you'd ever spent a night in jail. You might try it some time and see how, good citizens don't want to go back to jail, I'll guarantee you that. Where he doesn't mind that you wash him up and press his suit and give him a couple of meals, get him on his feet again, he don't mind that at all, he take that and the chance to read the book or sit there and look at it. And say yeah, I'm getting it, I'm pulling all this stuff in and go out and do the same thing again. In other words all you got is just a dry out center for some people. That's what the majority of the alcoholic programs in Alaska are now are just dry out places for people.

Senator Colletta Mr. Cole, would you like a few minutes?

Mr. Cole I don't think so Senator. I've got a whole list of notes I've taken on this involuntary commitment that I'd like to sit down and _____

Senator Colletta Thank-you, It's noon and I'd like to ask the staff if there is any need for a 1:00 continuance?

Jerry Abramczyk Not since we've finished here.

Senator Colletta If not, then I'd wish to thank all of you for taking the time and sharing your views with us and hopefully we'll see many of you in the coming weeks and especially on October 19th at the public hearing in the City of Anchorage. The Committee leaves this afternoon for Western Alaska

Senator Ray Some of the Committee leaves for Western Alaska (Laughter)

Senator Colletta I might take just one minute to explain some of the controversy that may have arisen over the Committee's activities I did speak with the Governor in regards to a press release on the lack of publicity regarding our activities and he pleaded total ignorance and I'm forced to believe him. I think there was a breakdown in communication, which is the problem we're talking about (Laughter) but none the less there are State monies that we do expend, the Committee considered it in their wisdom there was no sense in advertising it the Metropolitan areas of our Western leg. But I did notify and I'm hopeful that we'll have exceptional input from Western Alaska. WE mailed out 850 personal letters and we made over 50 personal telephone calls to individuals who are concerned with this problem. We have spots running on 10 radio with the message being translated into the Yupik language so I don't know why the Governor says it isn't publicized. He is correct it is not being publicized in Anchorage, it's not time for input here, so the Committee is working, that's what I wish to leave you with and I thank you all for coming, and we'll see you on the 19th

Senator RAY Can I just enlighten the

Senator Colletta Yes

Senator Ray I talked to the Governor yesterday on the same matter, and he responded in the fact that he had been acquainted by some of the legislators that their people in their villages had not been apprised of the meeting and, simply because those villages were not on the agenda I suppose although the people from those villages were invited to participate in the hearings being held and while being totally ignorant on it, that and a variety of other subjects, he did apologize more or less to the Committee and particularly to the Chairman.

Senator Colletta Thank You

UNITED STATES GOVERNMENT

Memorandum

TO : Chief, Social Work Service (122)

DATE: July 1, 1977

FROM : Program Planning Specialist (122A)

SUBJECT: Proposal for a no-cost community rehabilitation center (Sheltered Workshop - Residential Care Unit).

There is a definite need for an after-care unit in Anchorage which would serve a population of veterans in need of a structured environment and provide purposeful, directed activities of economic value to the veterans and community. It would also provide an attractive sheltered living arrangement. This would be a no-cost to agency situation. The population served would be those who have been in multiple rehabilitation programs and half-way living situations as well as in boarding homes, nursing homes and hospitals. The population would necessarily be limited, at the onset, to those who have individual income in small amounts such as VA pension, Supplemental Social Security income, State Welfare funds and/or small compensations from other sources.

The setting would be one of a live-in sheltered work-shop arrangement which would eventually become a producing unit of marketable materials manufactured by the individuals living in the facility and therefore sharing in the income derived from the sale of those commodities.

It is projected that social service agencies all have many clients they support, who are very possibly living in poor environments and do not receive the proper follow-up care, therefore becoming candidates for further rehabilitative or medical problems. The bulk of these clients are supported by monies from some source. Those monies might very well be directed toward their own self support, therefore returning a degree of integrity to them and possibly returning some to the main stream in time. I would establish a semi-permanent residence for those not able to return to regular community living.

The depth of talents and dormant skills in both alcoholics and other individuals who have become non-productive is often great. These individuals may not be utilizing any of their skills to any degree. They have sometimes lost many of their skills but may very possibly be able to regain some of them and put them into proper use in a sheltered work-shop living situation.

I will report here-in, facts in establishing such a unit.

Purpose is to fill a void which has been created by a lack of reinforcement in present rehabilitation programs and to serve a population of those in need which has not previously been properly done. We wish to prevent further disintegration of individuals from mental, physical and social incapacities. This will establish a method to maintain gains which individuals have made in previous rehabilitation programs and very possibly enhance those gains to a



point where they can re-establish in the community. This method will attempt to stop the recycling of individuals entering the rehabilitation system and make a more purposeful use of monies spent by agencies toward rehabilitation. We wish to create an environment which is conducive to preventing development of dependencies and produce an attitude and environment which may very possibly do exactly the opposite. It will also alleviate much of the further costs of hospitalization. Built into the program would be a method to maintain and/or rebuild the family stability with a distinct possibility of re-establishing family and social relationships which very possibly might have been lost otherwise. In a sheltered workshop the clients would work on contracts which would afford them a percentage of the profits on each commodity sold, and therefore would maintain a feeling of productivity. Within the unit would be a native craft area wherein native individuals would be allowed to work on their individual items and thus sell them on the market for a proper price; and also afford a training area to enhance the inherent skills of many native men in the art and carving area.

The unit is a semi-self supporting unit with payment for care coming from the individual, SSI, possible VA, State Welfare, Office of Vocational Rehabilitation and/or the Municipality. Also native organizations may very well be able to have voluntary input, these would include BIA, CINA and other regional native corporations. Other possibilities in the future are direct grants, possibly from the State Legislature and several othersources.

In this type of unit volunteer help would be solicited from various agencies, such as Veterans of Foreign Ward, Disabled American Veterans, Alcoholics Anonymous and service organizations such as the Lions Club, Elks Club, Shrine, Salvation Army, Catholic Charities and Jaycees.

The recycling of individuals in rehabilitation programs has become an almost laughing matter, in that it appears many individuals receiving rehabilitation do nothing with what they have learned or gained after they leave the programs. A large void is in the employment area. No agency, to my knowledge, is doing a great deal about re-employing individuals which they have "rehabilitated" and they pay very little or no attention to their living arrangements. Therefore, the work which has been accomplished is by and large lost.

Most of the individuals placed in the unit, would be those which rehabilitation programs would find rather unacceptable. Those who have small incomes and are able to pay for their own care, would also be able to gain more income from the sale of whatever commodities would be made and sold in the unit. Those who do not have incomes would very possibly be able to pay for their own care from the income derived from the sale of their products.

In summary, the purpose of this report is to indicate a willingness and desire to establish such a unit to both enhance the Veterans Administration Programs and to assist other agencies in having some logical after-care for individuals who otherwise would not gain a great deal from whatever efforts are being made in their behalf by other agencies. It will require a great deal of cooperation between agencies and it will require, of course, a staff of individuals who are knowledgeable, willing and capable of using their innovative

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abilities in a proper way. A further report of the physical structure, cost factors and staff requirements will be submitted.

WILLIAM V. HOGG

STAFF REQUIREMENTS

- I. Resident Director
 - A. College graduate- Masters Degree/Social Sciences
 - B. Over 35 years of age
 - C. Capable of innovating- see job description.
- II. Assistant Director
 - A. Degree- Social Science
- III. Administrative Officer
- IV. Vocational Training Staff
 - A. Public Relations- Sales and Promotion
Acts as salesman, ideaman and community liason.
 - B. Shop foreman (Supr.)
Runs wood shop and arts and crafts area
 - C. Vocational Rehabilitation Specialist
Planning projects and coordinating abilities with work.
 - D. Social Worker (SWA)
Acts as Counselor and advisor
 - E. Resident shift personnel
2 for each day shift & for swing. 1 for graveyard and 2 relief.
- V. Cooks (2)
 - A. Chief cook
 - B. Assistant Cook
- VI. Maintenance Staff
- VII. Director of Volunteers (Non-paid)
- VIII. Executive Secretary

PHYSICAL STRUCTURE - PROJECT CHUGIAK ELEMENTARY SCHOOL - TWO FLOORS

+ Has

.. Has not

- + 1. Kitchen, Dining and Serving Capacity.
- + 2. Recreational (Multi-Purpose Room).
- + 3. Adequate Lavatory Facilities.
- 4. Needs Installation of Showers.
- 5. Needs Floor Tile Replacement - Upstairs and Downstairs.
- 6. Repairs to Stage.
- + 7. Has Adequate Office Space
- + 8. Nursing Station (Convert Front of Old Principal's Office or Use Existing Nurses Station).
- 9. Void of Furnishings.
- + 10. Occupational Therapy Area or Crafts Area in Old Kindergarden.
- 11. Emergency Lighting Needs Battery Replacement.
- 12. No Sprinkler System.
- 13. No Laundry Facilities.
- 14. Roof Needs Repair.
- + 15. Grounds are Spacious and Ideal for Outside Activities.
- + 16. Large Storage Area.
- + 17. Heating Facilities are Adequate
- 18. Large Rooms Need Dividers for Living Area, Beds etc.
- 19. Inside Painting Necessary.
- 20. No Wheel Chair Access Ramps.

MEMORANDUM

JAN 13 1977
AM PM
7,8,9,10,11,12,1,2,3,4,5,6

TO: Bert Hall, Health Director

FROM: Allan Tesche, Assistant Municipal Attorney

DATE: June 23, 1976

SUBJECT: Legal Guidelines for Short Term, Involuntary
Commitments Under the Uniform Alcoholism and
Intoxication Treatment Act.*4*
Mike
for your
review prior
to Fred AM
meeting

This memorandum outlines some of the more important legal issues involved in implementing provisions of the Uniform Alcoholism and Intoxication Treatment Act as amended by the most recent session of the legislature. Before turning to the substantive discussion however, let me first point out several important general principles upon which the Act is founded and which will inevitably guide any court called upon to review the legality or appropriateness of administrative or legal actions taken by the Municipality pursuant to the Act. First, the coverage of the Uniform Act is relatively broad. The legislature intended to deal with a wide variety of problems related to intoxication and alcoholism, and prohibited contrary municipal enactments. See Peter v. State, 531 P2d 1263 (Alaska 1975). Second, the Act expresses a clear policy that alcoholism should be treated not as a crime but as a disease. AS 47.37.010 states that "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 continuum of treatment so that they may lead normal lives as productive members of society". The Act consistently favors medical treatment over detention or confinement of intoxicated persons and where confinement in detention facilities is permitted, they are narrowly limited to special or extraordinary circumstances. Because the legislature was unusually explicit in expressing its intent that alcoholism is to be treated as a disease rather than a crime, reviewing courts will examine detention or imprisonment of alcoholics with careful scrutiny. Finally, throughout the Act appear numerous provisions which are designed to protect the fundamental constitutional rights of persons who may be committed voluntarily or involuntarily, to alcoholism programs and treatment facilities. While many of these provisions, especially those which impose strict limits on the time period for commitments and require adversary

proceedings before long term commitments may be imposed, place special burdens on program administrators and local officials, the Act consistently and vigilantly protects the due process rights of individuals involved. Local alcoholism programs, therefore, must at every step be designed to ensure that persons involuntarily committed to such programs are guaranteed their full complement of procedural and substantive constitutional protections.

SHORT TERM EMERGENCY CARE

-AS 47.37.170(a) as amended now reads:

(a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premises where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee, or a peace officer, may be taken into protective custody and assisted by a peace officer or member of the emergency service patrol to his home, an approved public treatment facility, an approved private treatment facility, or other appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

AS 47.37.170(b) as amended now reads:

(b) A person who appears to be ^{INCAP}incompacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or other appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health and safety.

Section 170 and other provisions of the Act clearly allow voluntary commitment of alcoholics to approved public treatment facilities. The Act gives administrators of such facilities discretion in deciding whether or not to admit such persons for treatment, and if they are refused admission, administrators should refer such persons to other approved public treatment facilities. AS 47.37.160(b).

Section 170(a) also permits short term, involuntary commitment of a "person who appears to be intoxicated in a public place and to be in need of help". For the purposes of this section, a person is intoxicated if they are one "whose mental or physical functioning is substantially impaired as a result of the use of alcohol". AS 47.37.270(10). "Substantially impaired" probably means something more than merely affected or influenced by alcohol, it means impairment of physical or mental capabilities to a significant degree. Under this section, a person intoxicated in a public place may be taken either to his home, an approved public treatment facility, an approved private treatment facility, or other appropriate health facility by either a member of the emergency service patrol or a peace officer. Only where all of the preceding facilities, including the person's home, are determined to be unavailable, may an intoxicated person be taken into protective custody and placed in a state or municipal detention facility. Similarly, a person who appears to be intoxicated in or about a licensed premises who refuses to leave upon being requested by either the owner, an employee, or a peace officer may be taken into protective custody under the same restrictions.

AS 47.37.170(b) allows persons "incapacitated by alcohol in a public place" to be taken into protective custody by a peace officer or member of the emergency service patrol and brought to approved public or private treatment facilities or other appropriate health facilities for emergency medical treatment. For the purposes of this section, "incapacitated by alcohol means a person who, as a result of consumption of alcohol, is rendered unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety". AS 47.37.170(j). Only where no approved treatment facility or emergency medical service is available, and where it appears necessary for the protection of the person's health or safety, may a person who appears to be incapacitated by alcohol in a public place be taken to a state or municipal detention facility pursuant to this subsection.

Only peace officers or members of emergency service patrols may make involuntary commitments under Section 170. You should be aware that only certain individuals are designated peace officers, and that emergency service patrols are patrols consisting of "persons trained to give assistance in public places to persons who are intoxicated." Members of emergency service patrols should be capable of providing first aid in emergency situations and should be capable of transporting intoxicated persons to their homes and from public treatment facilities. AS 47.37.230. Your Department should be aware that the State of Alaska has the

authority to promulgate regulations for the establishment, training, and conduct of emergency service patrols, and should take care that the Municipal Emergency Service Patrol, when established, fully complies with such regulations.

Section 170 permits involuntary commitment to "approved private treatment facilities which are inspected, regulated and approved pursuant to AS 47.140. "Approved public treatment facilities" means a treatment agency operated under the direction and control of the State Department of Health and Social Services or one which provides treatment through a contract with the State of Alaska" under AS 47.37.130(g) and which complies with standards and regulations issued for such facilities by the State of Alaska pursuant to AS 47.37.140. You should take care that public and private treatment facilities used by your department in connection with its alcoholism programs have been approved by the State of Alaska and fully comply with all regulations the State may issue under the Act.

Persons committed to public or private treatment facilities under Section 170 may be detained at such facilities only as long as they are incapacitated by alcohol up to 48 hours after admission. Persons who are taken to detention facilities may be detained only until a public or private treatment facility or emergency medical service is made available, or until they are no longer intoxicated or incapacitated by alcohol or, for a maximum period of twelve hours, whichever occurs first. AS 47.37.170(j). Hence, it appears that the legislature limited short term confinements and detention facilities under §170 to twelve hours while allowing short term confinements up to 48 hours in approved public or private treatment facilities.

INTERMEDIATE COMMITMENTS

AS 47.37.180 allows involuntary commitments in approved public treatment facilities for longer than 48 hours if certain requirements are met.

"An intoxicated person who has threatened, attempted to inflict, or inflicted physical harm on another or is likely to inflict physical harm on another unless committed, or is incapacitated by alcohol" may be committed for involuntary intermediate care by Section 180. Applications for such commitments are made to administrators of approved public treatment facilities and may be made by physicians, spouses, guardians, or relatives of the persons to be committed, or any other responsible person. Administrators of approved public treatment facilities have the discretion to refuse applications if, in their opinion, the application and

accompanying documentation failed to sustain grounds for commitment. AS 47.37.180(d).

Persons may be involuntarily detained under Section 180 only until the administrator of the treatment facility determines that grounds for commitment no longer exist or no more than five days, whichever is shorter. If, however, a petition for long term involuntary commitment pursuant to AS 47.37.190 (discussed below) is filed within five days after a Section 180 commitment and the administrator of such facility finds that grounds for emergency commitment still exist, he may detain the person until the petition for long term commitment is heard and determined but no longer than 10 days after filing such petition. AS 47.37.180(e). This subsection would, in essence, permit commitment in such facilities up to 15 days. Finally, it should be noted that subsection (f) of 47.37.180 requires that persons involuntarily detained under that section be given within 24 hours after their commitment a written explanation of their right to counsel and an opportunity to consult with legal counsel.

LONG TERM INVOLUNTARY COMMITMENT

AS 47.37.190 authorizes long term commitments up to 30 days in the custody of the State Office of Alcoholism for treatment in an approved public treatment facility. A person may be so committed if he is an alcoholic who "habitually lacks self control in using alcoholic beverages and who has threatened, attempted to inflict, or inflicted physical harm on another, and that unless committed is likely to inflict physical harm on another or who is incapacitated by alcohol." Long term commitment proceeding under Section 190 are initiated by written petition of the person's spouse, guardian, relative, certifying physician, or an administrator in charge of an approved public treatment facility.

Of the three major forms of involuntary commitment, Section 190 proceedings offer the most procedural and substantive protections for the rights of persons committed. Section 190 guarantees persons committed the right to have a jury hear and consider evidence relating to their mental and physical condition, representation by counsel or other persons during the proceeding, examination by a physician of the patient's choosing or a court appointed physician, and other constitutional protections normally associated with criminal proceedings. Persons may be committed under Section 190 for no longer than 30 days but may be committed for a further period of up to 90 days if an order for recommitment is filed in a timely manner and approved by the court.

Long term commitments under Section 190 are essentially custody proceedings brought to commit persons to the custody or care of the State Office of Alcoholism; the Municipality should not initiate Section 190 proceedings until it is

certain that the State is willing to assume the responsibility for the treatment or care of persons whose custody would be awarded to the State.

As the Uniform Act is fairly complicated and for different situations sets forth detailed and specific rules, I urge your department to seek legal counsel prior to the initiation of any short term, intermediate, or long term involuntary commitment programs to make sure that the precise requirements of the Act are met, and to reduce our liability exposure.

AT/ejt



The Salvation Army's COMPREHENSIVE ALCOHOLISM SERVICES

DAVID G. BOYD, Captain
Director

CLARENCE WISEMAN
GENERAL

RICHARD E. HOLZ
TERRITORIAL COMMANDER

ARTHUR SMITH, Major
DIVISIONAL COMMANDER

MEMORANDUM

To: Ed Stewart, Alcoholism Program Manager
Municipality of Anchorage

From: Paul Piper, Program Director
SACAS

Date: March 23, 1977

Subject: Legal interpretation of "incapacitated by alcohol"

At approximately 10:15 this morning, as per your instructions, I called Mr. Allen Tesche directly with the following question, "Can we hold as incapacitated by alcohol an individual who has been in our program for detoxification and who has been recently medicated such that if he should leave against medical advice and drink, there is great potential for physical harm, including the possibility of death to the individual". After exchanging several questions and answers, Mr. Tesche's opinion is that if the individual's judgement is so incapacitated that he/she is unable to recognize the danger, or potential danger to themself, and there is a strong possibility that the individual will endanger themself, and that is related to alcohol, and alcoholism and the effects of alcohol, that we could make the decision to hold the individual until they are beyond the danger point.

Mr. Tesche stated that the key in this type of situation is to determine the current functioning level of judgement of the client and the involvement of alcohol or alcoholism.

On the basis of this understanding of our phone communication, I am issuing appropriate orders to staff. If my interpretation is in error in any place, I would appreciate being notified as soon as possible in writing so that the error may be corrected.

Municipality of Anchorage

MEMORANDUM

See
MAR 18 1977
CMO

DATE: March 15, 1977

TO: Dr. Helen Beirne, Behavioral Health Services Manager

FROM: Steve White, Legal Intern

SUBJECT: Legal Issues Raised at 9 March, 1977, Alcoholism Program Meeting

This memo addresses several legal issues which were raised during Wednesday's meeting. I recommend that you consider them when preparing your procedural manual for the program.

A. Protection from Civil and Criminal Liability.

As Allan Tesche pointed out, Section 47.37.170(g) of the Uniform Act protects members of the Emergency Service Patrol from liability in their duties only so long as they are complying with the other provisions of that section. It is clear, then, that no immunity would be granted unless your field orders strictly comply with the procedural requirements of AS 47.37.170.

Qualified protection for personnel at the Treatment Center is provided by AS 09.65.090 which states:

Section 09.65.090 Civil Liability for Emergency Aid. (a) A person at a hospital or other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death, is not liable for civil damages as a result of an act or omission in rendering emergency aid. (b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

There should be no question that your detoxification center would qualify as an "other location". Therefore, the issue will be determined by the patient's condition. For patients who need aid to prevent their serious harm or death, the statute provides immunity from ordinary negligence. For those patients undergoing routine treatment for non-serious conditions, program personnel will be liable for their ordinary negligence. In neither event, will they be immune from liability for their gross negligence, recklessness, or intentional behavior.

The difference between ordinary negligence, gross negligence, and recklessness is a matter of the degree of carelessness. Ordinary negligence is a failure to take the degree of care that a reasonable person, similarly trained and in like circumstances, would take. Where personnel fail to take precautions or proper actions due to their inadvertence, unskillfulness, or incompetence, ordinary negligence can be found. Gross negligence and recklessness are characterized by a greater degree of carelessness. They will be found where personnel consciously choose actions with the knowledge that they contain a high risk of harm to others. [Leavitt v. Gillaspie, 433 P.2d 61, 65 (Alaska 1968)] Intentional misconduct, of course, would arise when personnel act with the desire that a patient be harmed.

B. Notification of Kin.

Section 43.37.170(f) of the Uniform Act provides:

(f) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, his request shall be granted.

This section implies that the incapacitated patient has a lesser right to confidentiality than does a patient who is sober. Only the latter may prevent the immediate notification of his family or next of kin. However, this reading is contrary to both AS 47.37.210 and to Federal Regulations. (Part II, Subchapter A, Chapter 1 of Title 42, Code of Federal Regulations) These require confidentiality of the patient's involvement and records regardless of his condition. The Federal Regulations permit disclosure only with the patient's written consent or in the event of a medical emergency. Furthermore, they expressly supercede any state law which would authorize or compel disclosures prohibited by them.

Consequently, the program should not notify a patient's family about his admission unless either written consent has been obtained, or the patient is suffering from a serious medical condition beyond mere intoxication.

C. Chemical Restraint of Patients.

The injection of sedatives into unruly patients can raise the issues of invasion of personal privacy, battery, and unauthorized medical practice. Although the statutes and cases do not specifically deal with chemical restraints, the introduction of foreign substances into a person without his consent necessarily impinges on his constitutional right of privacy. In addition, it presents

the legal question of whether this method is "excessive force" in that particular situation. Generally, one may counter aggression or violence with only that force necessary to neutralize the threat. Any additional force, can create civil liability for battery.

It is possible that the injection itself, if performed by unqualified personnel, can create liability for unauthorized medical practice. For this reason, it is a standard procedure of the Alaska Psychiatric Institute and the Anchorage Police Department to transport violent persons to licensed medical professionals for sedative injections.

Considering these problems, I recommend that your program use chemical restraint, if at all, as a last resort. The program should attempt physical restraint of the patient before turning to injection. If chemicals are used, it is imperative that they be administered by licensed medical personnel.

RICHARD W. GARNETT III
Municipal Attorney

By: Steve White
STEVE WHITE
Legal Intern

SW:ljc

cc: Charles Anderson, Chief of Police

Municipality of Anchorage

MEMORANDUM

DATE: March 9, 1977
TO: Helen Beirne
FROM: Allan E. Tesche, Steve White
SUBJECT: Alcoholism Program Components

After our meeting this morning, I made a few notes of what I consider major elements of a program description for involuntary commitments under the Uniform Alcoholism and Intoxication Treatment Act. Perhaps this outline could help you in organizing a procedures manual with the Salvation Army.

I. Emergency Services Patrol

A. Establishment

AS 47.37.230

1. Certification by State Office

- a. requirements
- b. implementation plans

2. Qualification of Members

- a. training
- b. experience
- c. character
- d. personal - age? physical?, etc.

3. Training of Patrol - description

AS 47.37.230

- a. care of intoxicated persons
- b. first aid
- c. The State Act/Regulations
- d. standing orders

B. Function of Patrol

1. Personnel Involved

- a. shifts and hours

- b. Pairs or individuals
- 2. Areas of Operation - priority places
- 3. Equipment Involved
 - a. vehicles
 - b. radio communication
 - c. equipment in vehicles
 - d. clothing/uniforms
- 4. Supervision
 - a. lines of authority
 - b. re-training, evaluation
 - c. emergencies

II. Voluntary Walk-in Procedures

- A. Determination of Whether to Admit and Treat
 - 1. Medical Examination
 - 2. Other Criteria? Who Decides? AS 47.37.150(1)-(3)
 - 3. If no Admission, Obligation to Refer to other Public Facility if Available AS 47.37.160(b)
Transportation -- AS 47.37.170(c)
- B. Method and Scope of Treatment
 - 1. Integration with that of Involuntaries?
- C. Confidentiality of Fact of Treatment, Records

III. Initial Contact with Client-Involuntaries

- A. Observations
 - 1. Danger to Self or Society AND
 - 2. Intoxicated OR
 - 3. Incapacitated AS 47.37.170(j)
- B. Contact and Actions Taken on Street
 - 1. Identification of Patrol Members

2. Intoxicated Persons
 - a. transport home
 - b. to de-tox if home unavailable or if patient requests it. AS 47.37.170(a)
3. Incapacitated Persons AS 47.37.170(b)
 - a. transport to de-tox
 - b. first aid
 - c. care, restraints during trip
 - d. records keeping/call in
4. If Police Needed-See Police Protocol Agreement
5. Search of Persons-Pat Down AS 47.37.170(i)

IV. Detention at De-tox

- A. Initial Screening Decisions
 1. Who Makes Screening Decision
 2. Criteria for Distinguishing between Intoxicated and Incapacitated Persons
 3. When Made (upon arrival)
- B. Intoxicated Persons
 1. To be Released if They Request
 2. Urge Voluntary Submission to Treatment
 3. May Transport to Other Treatment Facilities if De-tox Treatment Unavailable
- C. Incapacitated Persons - Admission Procedures
 1. Search of Persons
 - a. when
 - b. what for
 - c. procedures
 2. If de-tox Unavailable for Incapacitated Persons, What Next?

- a. Must be Taken to Private Treatment Centers (AATC?) or Hospital, if Available
 - b. if Facilities in (a) above area Unavailable, to jail AS 47.37.170(B)
- 3. Physical Examination AS 47.37.170(C)
 - a. when: "ASAP"
 - b. who - licensed M.D. only
 - c. what components, forms used
- 4. Admission Decision
 - a. who makes
 - b. when made AS 47.37.150(1)-(3)
 - c. criteria used
 - d. how recorded, forms used
- 5. Statement of Rights
 - a. substance
 - (1) to know where individual is
 - (2) to consult with attorney
 - (3) to contact family/friends if requested
 - (4) to confidentiality of records
- 6. Procedure
 - a. when rights read - must be at meaningful tim and place
 - b. whose responsibility
 - c. notation
- V. De-tox Facilities, Equipment, and Staffing
 - A. Facilities
 - 1. holding units - describe
 - 2. offices

- 3. other
- B. Equipment
 - 1. medical supplies
 - 2. bedding/furniture
 - 3. administrative
- C. Staffing
 - 1. supervision
 - a. who, qualifications
 - b. when on duty
 - c. describe responsibilities
 - d. emergency situations
 - 2. employees
 - a. shifts and hours of employees
 - b. training and qualifications
 - c. duties

VI. Care Component

- A. Physical Safety AS 47.37.170(i)
 - 1. Protection from Self
 - a. removal of dangerous objects from person
 - b. isolation
 - c. physical restraints
 - d. other - chemical restraints
 - 2. Protection from Others AS 47.37.170(i)
 - a. isolation of violent persons
 - b. police agreement
 - 3. Persons responsible for safety

- B. Individual treatment plan must be Prepared AS 47.37.150(4)

C. Counselling

VII. Release

A. Involuntary Commitments

1. When: 48 hours maximum, sooner if no longer
incapacitated AS 47.37.170(d)

2. Release Decision

a. who makes

b. criteria

c. recording of release and decision

B. Release from Jail (where treatment originally
unavailable)

1. No more than 12 Hours, or sooner, if

2. Person no longer incapacitated or intoxicated, or

3. Treatment becomes available

4. Responsible adult assumes custody AS 47.37.170(i)

C. Voluntary Commitments

1. when: on request AS 47.37.160(b), 170(d)

D. Supplemental Assistance (housing, etc). AS 47.37.160(c)

E. Transportation to other facilities AS 47.37.170(c)

VIII. Out-Patient Treatment Component

A. Legal Requirements

1. Preference for out-patient care in making
admission decisions AS 47.37.150(2)

2. Out-patient care shall be encouraged when
clients leave AS 47.37.160(c)
AS 47.37.150(5)

B. Program Description

C. Mechanics

1. Staff

- 2. Equipment
- 3. Facilities
- D. Other components of treatment program
- IX. Program Evaluation Component AS 47.37.140
- X. Police/Trooper Protocol - Should Concern Following Areas
 - A. Under what circumstances will APD respond to request to take intoxicated person:
 - 1. to de-tox
 - 2. or to jail
 - B. Automatic response by APD if person refuses to leave bar?
 - C. When will APD arrest
 - 1. Behavior at de-tox
 - D. Will APD do involuntary 12 hour Civil Commitments at State Jail if our facility "unavailable"? This requires communication between Jail and De-tox concerning availability at de-tox
- XI. General Areas of Concern
 - A. Client Confidentiality AS 47.37.210
 - B. Use of Physical Force
 - C. Visitation and Communication AS 47.37.220
 - D. General Goals/Philosophy of Program

RICHARD W. GARNETT III
Municipal Attorney

By: ALL E Tesche
ALLAN E. TESCHE
Assistant Municipal Attorney

By: Steve White
STEVE WHITE
Legal Intern

MEMORANDUM

DATE: February 3, 1977

TO: Ed Stewart, Alcoholism Program Manager

FROM: Steve White, Legal Intern

SUBJECT: Legal Opinions on Aspects of the Alcoholism Program

Rec
FEB 7 1977
DMLD

This memorandum addresses itself to inquiries which were directed to the Department of Law by Mr. Gordon Stockdale, Treatment Services Manager of the Salvation Army. In order to implement the Alcoholism Program through his agency, he desired legal opinions on the following questions:

1. May the Program require a patient to reveal his social security number?

Under the provisions of the Privacy Act of 1974, a government agency which requests that an individual reveal his social security number must inform him whether this disclosure is mandatory, the authority for this request, and what uses will be made of it. Unless the agency was maintaining a system of records and was validly requiring disclosure before 1 January, 1975, it may not deny any benefit provided by law to the individual who refuses to reveal his number. [Pub.L. No. 93-579, Section 7(A)(1), (2) (December 31, 1974)]. One might argue that an amendment to the Social Security Act, contained in the Tax Reform Act of 1976 [Pub.L. No. 94-455, Section 1211 (October 4, 1976)], supercedes this restriction. Section 1211 allows a government agency to require disclosure of the number, but only if that agency is administering, among other permissible programs, one which provides "general public assistance". Since this term is a legal expression that is uniformly applied to welfare and other income subsistence programs, it is doubtful that alcoholism treatment can qualify under 1211's allowance.

Considering only the provisions of the Privacy Act, then, it is clear that the Alcoholism Program may request a patient's social security number provided that, at the same time it furnishes him with the information concerning voluntariness, authority, and intended use. However, since alcoholism treatment would be considered a "benefit provided by law" (AS 47.37.170), unless disclosure was authorized and compelled by this program prior to 1975, a patient may not be denied treatment solely because he refuses to reveal his number.

2. What are the legal requirements of confidentiality in the Alcoholism Treatment Program?

Both Alaska Statutes and Federal Regulations require confidentiality in alcoholism treatment programs. AS 47.37.210 states that registration and other records of treatment are confidential and are privileged to the patient. Information from records may be made available for alcoholism research, but only if the patient's name is not disclosed. Even greater protection is afforded minor patients. Alaska Statute 47.10.090 provides that all information, pertaining to a minor and prepared by a government agency, is privileged and cannot be disclosed without a juvenile court's permission. Although this section deals primarily with cases brought in court, the language is broad enough to cloak juveniles' records with general immunity from discovery and with protection from disclosure.

Federal Regulations require a comprehensive cloak of confidentiality around those alcohol programs which are assisted by the Federal government. Generally speaking, these regulations provide that records which pertain to the identity, and treatment of present and former patients are confidential. These may be disclosed only with the patient's written consent, or in the event of a medical emergency, or in order to conduct research, evaluations, and audits, or where one has obtained an appropriate court order. (Part 2, Subchapter A, Chapter 1 of Title 42, Code of Federal Regulations). The Regulations spell out specific guidelines for these and other situations, and they should be consulted for any questions regarding the extent of disclosure (Section 2.18), the use of identification cards (Section 2.20), and the guidelines for consent (Section 2.31), as well as the areas of disclosure without consent (Subpart D) and court orders (Subpart E).

Mr. Stockdale indicated that the treatment of minor patients was an area of concern for his agency. Section 2.15 of the Federal Regulations addresses itself directly to this point. Since Alaska law authorizes medical treatment of minors without parental consent (AS 9.65.100), only the minor may consent to the disclosure of his records, or the fact of his treatment, to his parents or others. However, this limitation is bypassed if the minor lacks the mental or physical capacity to make a rational decision in the matter. When the situation poses a threat to his physical well-being which would be reduced by disclosure of certain information, the regulation allows program personnel to communicate this information to the parents.

The overall thrust of these regulations then, is to segregate the fact of alcoholic treatment from the identity of any particular patient. Keeping this general purpose in mind should alert program personnel to any potential violations of these regulations during their day-to-day handling of records and information. Specific questions and long-term policy decisions should be referred either directly to the text of the regulations, or to this Department.

3. Is a minor legally capable of giving consent for his own treatment of alcoholism?

Section 9.65.100 of the Alaska Statutes distinguishes between a minor who is emancipated, i.e., living apart from his parents and managing his own financial affairs, and a minor who is still living with, and financially dependent upon his parents. In the former case, the minor may give unqualified consent for his own medical treatment. In the latter situation, the minor may grant consent, but he must be given counseling prior to treatment if his parents cannot be contacted or, if contacted, are unwilling to grant or withhold consent.

Therefore, prior to treating a patient 18 years or younger, the program should determine whether the minor is still living with and financially dependent upon his parents or legal guardians. If so, the program should attempt to contact them and to gain their consent to treatment. If unsuccessful in either of these efforts, the program should counsel the minor prior to accepting his consent and to rendering treatment. Concerning the nature of this "counseling", the statute only states that the counselor shall "keep in mind not only the valid interest of the minor but also the valid interest of the parent or guardian and the family unit". [AS 9.65.100(2)]. Of course, consent gained from any source should be committed to a signed writing.

4. Does the fact of intoxication either void or qualify the consent given by a patient for his treatment?

Neither Alaska Statutes or case law directly addresses the issue of tort liability when consent is given while intoxicated. AS 11.70.030 provides that intoxication is not a defense to a criminal act, but intoxication may be considered by the court when a particular motive, purpose, or intent is a necessary element of the crime. By analogy, one may argue that since intoxication does not excuse a criminal act, neither should it negate the voluntary act of granting consent. Intoxicated consent should stand as a complete defense to any action for tort liability.

This analogy is strained, however, due to the historical distinction between tortious and criminal conduct. It is questionable practice to draw and rely upon parallels between them. Furthermore, the qualification in AS 11.70.030 may subvert this analogy. Since intoxication can disqualify motive or purpose in criminal acts, it can be argued that it may likewise diminish the mental elements necessary for informed consent.

Consequently, the Alcohol Program should not rest entirely upon this analogy. When possible, personnel should not solicit written consent for treatment until the patient can comprehend the meaning of the act he is performing. In questionable situations, I recommend

that several persons be present who can testify regarding the patient's capacity to understand the nature, extent, and consequences of his treatment.

RICHARD W. GARNETT III
Municipal Attorney

Steve White

Steve White
Legal Intern

SW:ljc

cc: Bert Hall
Gordon Stockdale

Municipality of Anchorage

MEMORANDUM

DATE: January 26, 1977

TO: Ed Stewart

FROM: Allan *AT* Tesche, Assistant Municipal Attorney

SUBJECT: Selected Legal Issues Arising Under AS 47.37.

Rec
JAN 31 1977
LMO

At your request I have prepared a summary of important legal issues which confront the Department and its prime contractor in the administration of the Comprehensive Alcoholism Program pursuant to AS 47.37.010 et seq. You should realize that my comments here are by no means an exhaustive treatment of every conceivable legal issue raised by the Uniform Act, rather this memo highlights only those issues which appear legally significant to me at this time. Certainly your office will return with more precise questions regarding the Act as you begin the Emergency Service Patrol and related programs; those questions will, of course, receive more thorough attention by our legal staff. Finally, I strongly suggest that you and the Salvation Army read the Uniform Act very carefully and slowly in order to understand the legal limits of alcoholism programs under the Uniform Act. For this purpose I have prepared several copies of the act (complete with the most recent 1976 amendments) and attached them hereto, and urge you to become intimately familiar with its provisions.

AS 47.37.140 Requires the State Office of Alcoholism to set standards for "approved" treatment facilities, permits state inspection and registry of facilities, requires disclosure of information concerning use of facilities to the State office, and provides for suspension or revocation of State approval.

Note that the language of 47.37.140(a) requires establishment of the state standards for facilities "before their approval as public or private treatment facilities" (emphasis added). Standards shall "concern only the health conditions to be met and standards of treatment to be afforded patients. I am aware that the state office has adopted elements 1-8 of the JCAH Accreditation Manual for Alcoholism Programs, effective July 1, 1977. But the state has not yet devised its "procedure by which alcoholism programs will apply for approval as a public or private facility." (letter of Bob Cole to Ed Stewart, November 23, 1976) That the state has not, by its own admission, completed the process of implementing the new regulations at least raises the question of whether any facility can be officially approved until the state issues the final regulations regarding procedures for application and approval. I suspect that absent the final regulations regarding application and approval, a facility could qualify for some sort of interim approval if it met the substantive requirements of the JCAH Manual.

AS 47.37.150 Requires the State Office to set standards or criteria for admission of persons into Alcoholism programs. Note, however, that the Uniform Act requires the State Office to use at least three guidelines in setting admissions standards:

1. Wherever possible, patients should be admitted voluntarily rather than involuntarily. You should, therefore, structure the admissions procedure for the Municipality's program in such a way as to comply with state admissions procedures remembering that the legislature has expressed a decided preference for voluntary rather than involuntary admission. 47.37.150(a).
2. The Act also expresses a clear preference for "out-patient or intermediate treatment" over in-patient care. 47.37.150(b). Hence admissions standards should permit in-patient care only if out-patient or intermediate care will be ineffective.
3. 47.37.150(c) mandates that individuals who have withdrawn from earlier treatment or who have relapsed from earlier treatment may not, on the sole basis of such withdrawal or relapse, be denied admission to the program.
4. As part of every patient's admission, staff should quickly prepare an individual treatment plan or program, and maintain the plan for the patient. AS 47.37.150(d)
5. Note that AS 47.37.150(d) requires a "continuum of coordinated treatment services" after a person leaves a facility.

AS 47.37.160 permits alcoholics to voluntarily apply for treatment in approved public facilities.

Note that, consistent with state regulations, the administrator of the facility has the discretion to decide whether the person seeking treatment will be admitted. If the administrator refuses admission to one seeking treatment, he shall, wherever possible, refer that person to another public treatment facility 47.37.160(b).

Note also that persons leaving in-patient care should be encouraged to consent to continuing out-patient or intermediate treatment.

AS 47.37.170 permits both voluntary and involuntary commitments of certain alcoholics up to 48 hours.

Note that 47.37.170(a) permits intoxicated persons to voluntarily consent to emergency, short term treatment.

Note that 47.37.170(a) permits peace officers or patrol members to take an intoxicated person into protective custody if that person, after being requested to leave, refuses to leave a bar, or is in a public place and in need of help. For the purposes of 47.37.170(a) "intoxicated person" means a person "whose mental or physical functioning is substantially impaired as a result of the use of alcohol. This definition seems to describe an individual who is somewhat less than "incapacitated" by alcohol. Note, however, the additional "need of help" requirement.

Once in protective custody, 47.37.170(a) requires that the intoxicated person in need of help be taken to the following places:

1. his home
2. an approved public treatment facility
3. an approved private treatment facility
4. other appropriate "health facility"
5. jail. (only if none of the above are available)

Interestingly enough, the Act does not seem to allow detention of "intoxicated" persons in need of help pursuant to Section 170. The new language of Section 170, where it speaks to the dangerous or belligerent drunk, allows only his removal from a bar or harm-threatening situation, and "commitment" to an approved facility. By not setting time limits on how long one so apprehended could be detained, we must presume that he may legally leave the facility on his own request at any time following commitment. Hence Section 170(a) has limited usefulness for this kind of person: it can get him out of a bar and protect other people from his acts, but it cannot keep him in detox against his wishes.

Your practical solution, of course, is to initiate commitment proceedings under Section 180 (discussed below) if you suspect that an intoxicated person detained under Section 170 needs, but will refuse, treatment.

Note that 47.37.170(b) does allow detention of persons "incapacitated by alcohol" in certain facilities, following the order of preference discussed above. For the purposes of 47.37.170(b) "incapacitated by alcohol" means:

a person who, as the result of consumption of alcohol, is rendered unconscious, or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety.

Observe that "incapacitated by alcohol" as used in 47.37.170(b) means something more serious than "intoxicated in need of help" as required by 47.37.170(a). 47.37.170(d) allows detention of such incapacitated persons in an approved treatment facility only as long as he remains incapacitated by alcohol or for 48 hours which ever is sooner.

Note that 47.37.170(c) requires prompt examination of all persons admitted to emergency treatment by a licensed physician.

Note that 47.37.170(f) requires public treatment facilities to promptly notify the next of kin of persons admitted to treatment unless an intoxicated person in need of help requests that such notice not be given.

Note that involuntary detentions under 47.37.170 are not arrests [47.37.170(i)], that detaining officer may take reasonable measures, including searches of persons detained, to protect themselves [47.37.170(i)] and that detaining officers who comply with Section .170 are not criminally or civilly liable thereby 47.37.170(g).

AS 47.37.180 describes procedures for intermediate commitment to certain treatment facilities.

Note that under 47.37.180(a)-(f) a means is provided for commitment of certain intoxicated persons to involuntary treatment in an approved public treatment facility for up to 48 hours. Intoxicated persons who have threatened, or have actually inflicted physical harm may be involuntarily committed if the other requirements of Section 180 are met.

As the language of Section 180 indicates, both intoxicated and incapacitated persons may be committed under that section. While the statutory definition of "intoxicated" found at 47.37.270(10) as qualified by 47.37.180(a)(1) is somewhat expansive, I would suggest a narrower definition that is more consistent with recent court decisions: For the purposes of Section 180 commitments, an intoxicated person is one whose mental or physical functions are so impaired by the use of alcohol that the person cannot, without the help of family or friends, survive safely in freedom, or if allowed to remain free, poses an immediate threat to the physical safety of other persons.

Note that Section 180(a) also provides an alternate way for detaining incapacitated persons contrasting the potentially shorter 170 commitments of those same persons.

47.37.180 also details additional commitment procedures for both intoxicated and incapacitated persons under that section:

1. Note who may bring the individual to the facility: peace officers, a health officer, the patrol, the person himself, his wife, guardian, or any other interested person. 47.37.180.
2. Note who may make written application for a Section .180 commitment: the same people who may bring the individual to the facility. 47.37.180(b).
3. Note that the application for a Section 180 commitment must be in writing and must "state facts to support the need for emergency treatment and be accompanied by a physician's certificate supporting the need for emergency treatment and stating that the physician has examined the person sought to be committed within two days before the certificate's date" 47.37.180(b). The physician's certificate and other documentation used in connection with the application for commitment under this section, should set forth specific and detailed facts which demonstrate that the individual to be committed is either intoxicated and harmful or is incapacitated by alcohol according to the more restrictive definitions I've suggested above.
4. Note that the Administrator of the facility must approve the application for commitment. 47.37.180(c), (d).
5. Note the time limits of subsection(c) without court order, one may be detained under Section .180 for no more than 48 hours, or when on the advice of medical staff, the administrator determines that the grounds for commitment no longer exist. 47.37.180(e). But with a court order approved by a District or Superior Court judge, one may be detained under Section 180 for up to 5 days. But if a petition for involuntary commitment under Section 190 is filed within 5 days from the date of admission, and grounds exist for continued emergency commitment, the person may be detained for no more than 10 days following the date the petition for .190 commitment is made. I would strongly suggest that you require

the individual detained or his counsel to appear with your legal representatives when seeking judicial approval of commitments beyond 48 hours. These proceedings should, consistent with due process, be sufficiently adversarial in nature so that the detained persons rights are adequately and independantly safeguarded by counsel.

Note that 47.180(f) requires copies of the documentation used in connection with the .180 commitment be served on the individual detained and that he be given an explanation of his right to counsel and an opportunity to consult with counsel.

AS 47.37.190 describes procedures for involuntary long term commitments to the custody of the State Department of Health and Social Services. The legal aspects of Section 190 are not discussed here.

AS 47.37.210 protects confidentiality of patient records. Remember also the Federal act as well.

AS 47.37.220 guarantees all patients in approved treatment facilities the right to visit family, friends, and counsel, subject to reasonable program limitations.

AS 47.37.230 permits establishment of emergency service patrols and requires the state office to issue regulations "for the establishment, training and conduct of emergency service patrols." Patrols must conform to state standards to permit members to perform the duties and enjoy the protections of the Uniform Act.

RICHARD W. GARNETT III
Municipal Attorney

Allan E. Tesche
Assistant Municipal Attorney

AET:ljc

cc: Bert Hall

MEMORANDUM

State of Alaska

TO: Robert L. Cole, Coordinator
Office of Alcoholism
Department of Health and Social Services

DATE: January 12, 1977

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Liability of the Of-
fice of Alcoholism
if treatment facilities
receive temporary ap-
proval under AS 47.37

By: *Elizabeth R. Arnold*
Elizabeth R. Arnold
Assistant Attorney General

The Office of Alcoholism has raised three questions relating to its approval of alcohol treatment facilities throughout the state:

1. Is an "approval" under AS 47.37.140 a license?
I have found no legislative history on AS 47.37 which sheds light on this point. /1 There is, however, no requirement in AS 47.37 that all alcoholic treatment facilities in the State be approved by the Office of Alcoholism. Consequently, the Office's approval does not seem to have the effect of a general

/1 The Health, Education and Social Services Committee of the state House and Senate kept no written minutes in 1972. The bill was referred to the Finance Committee of both houses, where minutes were taken. The minutes from these committees (attached) do not address the question of approval from the Office but may be useful for your office to have on file. There is no letter from the Attorney General's Office in our 1972 files reviewing the bill for the governor. The governor allowed the bill to become law without his signature because of "some question as to certain provisions of the legislation." (no specifics) 1972 Senate Journal 1388-89.

The two opinions (informal) of the Attorney General interpreting aspects of AS 47.37 are also attached for your files, although they do not discuss what "approval" means. Commentaries on the Uniform Act, on which AS 47.37 is based, offer no explanation of the approval concept.

license in the area. 12

The Office's approval does have the effect of a license, however, for facilities under its direct control or providing treatment through contract. AS 47.37.130(g) and .270(3). A reading of AS 47.37 shows that such public treatment facilities funded by the Office of Alcoholism should not be able to operate a program without the Office's approval: AS 47.37.160 (voluntary treatment of alcoholics), AS 47.37.170 (treatment for intoxicated persons and those incapacitated by alcohol), AS 47.37.180 (emergency commitment), AS 47.37.190(a) (persons who may petition for involuntary commitment), and AS 47.37.200(f) (treatment of a persons involuntarily committed to the custody of the Office) all refer only to an "approved public treatment facility."

12 Compare a true licensing statute such as AS 47.35.100, which provides:

LICENSE REQUIRED. (a) Without a license issued by the department in accordance with its regulations no person may operate an agency providing any of the following services;

- (1) the placement of children for foster home care;
- (2) the placement of children for adoption; or
- (3) individual and family counseling.

(b) The license shall remain in effect until revoked for cause. The department shall give written notice of revocation at least 90 days before the effective date of the revocation.

(c) In this section "agency" does not include an individual who occasionally provides the services set out in (a) of this section.

If the Office of Alcoholism withdraws its approval of a facility operating under contract, there seems to be nothing in the statutes to prohibit its operation if it meets other applicable state requirements. The facility would have to operate without money from the Office of Alcoholism and without any other benefits of the Office's approval such as possible eligibility for third party payments or commitment of patients in the custody of the Office to the facility or transfer of patients from an approved public facility.

As to private treatment facilities, it would seem that the Office of Alcoholism should not contract with unapproved private facilities (AS 47.37.030(2)) nor should its grantees transfer patients to an unapproved private facility (AS 47.37.180(3)) ¹³ since without inspection and approval the Office of Alcoholism cannot insure that a private facility is providing "adequate and appropriate treatment". AS 47.37.030(c) There seems to be nothing in the statute which prohibits private treatment facilities from operating in the State without approval by the Office of Alcoholism if they comply with other state requirements.

The "approval" required in AS 47.37 may be in conflict with other licensing statutes. Several states seem to have recognized this problem in adopting the Uniform Alcoholism and Intoxication Treatment Act. The Georgia statute which corresponds to AS 47.37.140, Ga. Code An. 99-3908, provides:

(b) The department shall include rules and regulations pertaining to treatment for alcoholism in existing licensing programs for health care institutions. Special inspections shall be made for treatment facilities that are not subject to existing licensing laws governing hospitals and nursing homes.

¹³ AS 47.37.200(i) states that a competent patient committed to the custody of the Office for treatment, or his parent, sibling, adult child or guardian may arrange with a private facility for transfer from an approved public facility. The transfer is not initiated by the Office or the treatment facility, however.

The corresponding section of the Illinois Uniform Act provides that the State Department of Public Health shall prescribe the standards and perform the inspections of public and private treatment facilities (in consultation with the state Department of Mental Health) but that the standards shall not apply to any facility located in a licensed hospital in the state. 91 1/2 Ill. Ann. Stat. § 509(1), (4), (7).

If the Office of Alcoholism believes that no alcoholic treatment facilities in the state should be able to operate without its approval, it should try to have AS 47.37 amended during this legislative session to make this point clear. The relation between approval by the Office of Alcoholism and licensing of health care facilities by other agencies could also be clarified by legislative amendment to AS 47.37, as in the Georgia and Illinois statutes cited above.

2. and 3. Can the Office of Alcoholism issue temporary or presumptive approval of programs in anticipation of future inspection and if so, what would be the potential liability of the office and/or the program if a patient were not properly treated by the program?

a. Programs now operating under contract with the Office of Alcoholism:

For programs now under contract with the Office of Alcoholism it seems reasonable to issue an interim approval.

The steps set out in your request -- 1) establishment of standards; 2) inspection based on standards; 3) approval by the Office after inspection; 4) operation of the program -- are those created by AS 47.37.140. Consequently, no program should be operating at this time with state alcohol funds if the facility is not approved by the Office of Alcoholism after inspection.

The inspections and grants made by the Office are arguably proof of de facto approval. Furthermore, the Office's defunding of at least one treatment facility could be seen as proof that the Office is operating under some "standards" as required by AS 47.37.140(a) -- even if these standards are not published. The terms of the contract with each facility

might also be seen as embodying the Office's standards. /4

The Office of Alcoholism is concerned about its liability if it issues an interim approval since it fears that certain existing programs will not be able to meet the standards effective July 1, 1977. The Office's liability would not seem to be increased by such an interim approval, especially since it is now funding facilities which are admitted unapproved because of an absence of standards required by the 1972 statute.

With or without approval by the Office of Alcoholism, a facility is liable for treatment of a patient which rises to the level of negligence (or medical malpractice in the case of medical personnel) under ordinary principles of tort law, and it should have insurance to cover such liability. A judge or jury would decide whether the conduct of the employees of the facility was so unreasonable and out of bounds as to constitute negligence (or malpractice).

As to the Office's liability, with or without official approval of facilities which are receiving its grants, its contract with the facility may contain a "save harmless"

/4 The Office of Alcoholism might take the position that it has not yet begun to operate under AS 47.37 and is still operating only under AS 47.30, which provides for a grant-in-aid program for alcoholism treatment facilities with no statutory or regulatory requirements for program "approval" based on established "standards" as in AS 47.37. If this position is taken, however, the office must explain why it has not begun to implement the provisions of AS 47.37 since the act was passed in 1972.

clause -- one which provides that the State of Alaska is not liable for negligent acts or omissions by the grantee which cause harm to a third person. This type of clause might protect the state now and after approval based on the July 1, 1977 standards. The Office of Alcoholism is, however, ultimately responsible for providing "adequate and appropriate treatment" to all persons treated for intoxication or alcoholism or incapacity because of alcohol at facilities funded by the Office. AS 47.37.130(c). If the Office is or should be aware of grossly inadequate or inappropriate treatment at any facility which is receiving state alcoholism funds, a court might find that it is the duty of the Office to intervene in spite of a "save harmless" clause in the grant.

An interim approval for those treatment facilities now under contract with the Office of Alcoholism could be based on the most recent inspection or on a new on-site inspection, either of which shows that the facility will most likely be able to meet the standards in 7 AAC 29.010-.900 by the effective date of July 1, 1977. The facilities could be required to set out in writing what they plan to do to implement the July 1, 1977 standards between now and then. Furthermore, the facilities should be informed in writing that such approval is temporary and does not assure approval after July 1, 1977, if the facility cannot meet the standards by then.

The need for approval based on the recently promulgated standards soon to be found at 7 AAC 29 arises from two situations: 1) the facilities' desire for eligibility for third party payments such as Blue Cross/Blue Shield and 2) the perceived need to begin or increase involuntary commitments of alcoholics to the custody of the Office for treatment in approved public treatment facilities under AS 47.37.190-.200.

In both these situations the effect of an interim approval by the Office will be tempered by other forces. 1) Blue Cross/Blue Shield undoubtedly requires more than state approval of a facility before making third party payments to it. Presumably some independent investigation would be made. The third party payor should understand that the Office's approval does not guarantee the facility's ability to comply with the new state standards after July 1,

1977. 2) In an involuntary commitment hearing, AS 47.37.200 provides:

No court may order the commitment of a person unless it determines that the office is able to provide adequate and appropriate treatment for him.

A court would be obliged to look at the treatment facility to which the Office was proposing to commit the person and to determine whether that or another facility could provide adequate and appropriate treatment. The court should be apprised of the fact that the Office's interim approval does not mean that the program will definitely be able to meet the new state standards after July 1, 1977.

b. Programs now operating without state funds:

The question is more difficult for facilities which receive no state funds but desire approval, mainly for third party payment purposes. If the Office of Alcoholism has acted to date as though the facilities were approved -- by inspecting them, for example, or listing them or requiring them to file information with the Office (AS 47.37.140(b) - (d)), then perhaps the same de facto approval arguments apply as to programs receiving state funds, and interim approval is reasonable. There might be an equal protection problem if interim approval were granted to those facilities now under contract with the Office but not to other facilities, where each could show the same likelihood of meeting the July 1, 1977 standards by that date.

The Office's attention is called to the statutory requirements for other regulations besides the recently promulgated standards, including those governing admission to treatment facilities -- e.g., AS 47.37.130(d) and (g), AS 47.37.150, AS 47.37.160(b). The Attorney General's Office is available to work with the Office of Alcoholism in developing and promulgating these regulations.

ERA:jf

SCOMM

#6:4c

Partial Transcript
Mc Grook meeting
Sept 16

MIKE COLLETTA:

My name is Mike Colletta, Senator of the Anchorage area and Chairman of the Special Senate Committee on Alcohol and Alcoholism. On my left is Senator Glen Hackney, a member of the committee and Chairman of Health and Social Services Committee in the Senate in the Fairbanks area. These are the only two committee members - - the other three for varied reasons were unable to attend and many of them will take this up on different segments of our hearing tour. Accompanying us, though, is Commissioner Frank Williamson, the Department of Health and Social Services. Mr. Pat Sharrock, Director of the ABC Board and Mr. Richard Peters, the Attorney General's Office. The purpose of our hearings, if, in fact, we wish to call them hearings, I think I would prefer that they are more an informal discussion over a problem that Governor Hammond has identified to be major concern to all of Alaska. That is, alcohol and alcohol abuse. It is my intent that these hearings will be conducted in as informal a manner as possibly can be done. At the same time, holding the continuity of good order. McGrath is the first stop of the official hearing tour. And here we will visit the surrounding village areas. And rather than ask you for your suggestions and advice on legislation that has been proposed, I think

*partial transcript
McGrath meeting
Sept 16*

it suffices to say that the Governor's package of legislation relating to the most important problems ~~can~~^{has} receive statewide attention and with that I think that he would be desirous the same as we are in a solution, or at least substantial curtailment in this project. With that in mind, the method in which we wish to conduct these hearings, you may refer to that package specifically. The committee as such will not. What we seek from you is your suggestions as to how can we address this problem. It is not our intent to suggest because we are in McGrath that McGrath is the community being singled out by having an excessive amount of the problem. We don't know. We do know one thing and feel very, very optimistic that our there with those many minds, some workable and constructive solutions can be legislated into being a benefit to us all. I wish now to allow Senator Hackney to make a few comments and Senator I will give you the floor. I would like to suggest one other thing; each of you received a card and hopefully have pencils or pens. During the course of these hearings should you think of something, would you please write it down, you may sign your name to the suggestion or you may not. But, we really would. Many times we're not afforded the

opportunity at the time that the thought passes through our minds so maybe if we jot it down and then we'll go through them at the conclusion of the hearings and hopefully, if you sign your name we'll know who to thank if not, we'll just have to be satisfied that one of your suggestions was what was implemented. Senator Hackney. . . .

SENATOR HACKNEY:

I can't do anything except second what pretty much what Mike said here. I hope these will be very informal hearings and I think that there are those who don't want to say anything during the hearing that would want to come up to a committee member afterwards, please feel free to do it. We're not here to - - as outsiders, necessarily, we've lived here a long, long time. I would like to comment on what Mike said that a problem that applies specifically to McGrath or to this area. It applies to my area, to Fairbanks. We hope to hear what the people in the Fairbanks area have got to say about the problem. But, I wouldn't downplay the size of it because of wherever we go around the land, we hear that alcoholism and the use and abuse is the biggest problem in Alaska. We would like to hear what answers you have for us. The answers that we can use in the legislative process and maybe do some good in solving the problem.

MIKE COLLETTA: I will allow any of those accompanying us also ~~to address~~
~~the group~~ at this time, Commissioner Williamson, Peterson
and Sharrock. Who would like to speak first.
Let me ask that anyone who wishes, give us a nod
so that we can recognize you and give an answer.
Do you agree that Alaska faces an alcoholism problem?

(later in tape)

QUESTION FROM SOMEONE IN THE SCHOOL DISTRICT:

The main thing is that the school kids don't have
proper care and I'm not really very familiar
with the Governor's package (indiscernible). Could
you tell us very briefly what the package is?
What is the Governor's package? That you were
talking about?

MIKE COLETTA: I would refer that question to a gentleman who
had considerable input into that. Commissioner
Williamson would you answer that?

WILLIAMSON: Sure. And perhaps - - I started to make some
comments and thought I would see how the
comments developed here with everyone. I'll preface
it by saying that Governor Hammond's impressions
of the problem in Alaska from his own long number
of years in the bush primarily in the Bristol Bay
area where he personally had many of the same
experiences that all of us have had. My own
experience - I will reflect on this - stems now

from about twenty-two years of experience in Alaska and it's an interesting thing for me to return to some of these communities such as McGrath which I personally did twenty-two years ago where drinking really wasn't a problem. One of the villages that we are going to visit on our trip - Niposkiok - was the first village I worked in and I never saw drinking and I never saw anyone intoxicated. I can say the same thing for Hooper Bay and Chevak and some of the other places I worked. At that time, in the mid fifties, mid to late fifties, the problem was just starting to just emerge in communities like Bethel, where people were coming in from the villages. Well, in any case, Governor Hammond's only comments to me were that he viewed it as a very serious social health problem throughout the Bristol Bay area and suspected that it was a similar elsewhere and his comment was that we would look into it. We did and we did it by implementing a law that hadn't been implemented when the state adopted the Uniform Alcoholism Intoxication Act. The law states that there shall be an inter-departmental committee comprised of, I think it's five

Commissioners of state departments that have direct - - these departments activities are either affected by or have a direct impact on the distribution and use problem of alcohol. We inaugerated this committee, it had never met before, to my knowledge. In the interim we up the Office of Alcoholism which at that time had a staff of three when we started and then we hired a skilled professional, Bob Cole, known to some of you, to come in and get our program going. We started program evaluations throughout the state to try to find out what sort of impact our programs were having. And not too much. Unfortunately. In any case, we brought together a team of people which included the commissioners of eight departments of State government, I think it's finally the way it came down together with them having received word people from Budget and Management, the Criminal Justice Planning Agency and so on and we spent about eight months. Coincident with that, we obtained a fairly large grant from ^{NIAAA} ~~NIPDA~~ which again by law was charged with supplying states with funds to implement the Uniform Act. So we were able to get money to get our own research - - not that there hasn't been a lot of it done elsewhere, but to begin our own research on the problems particularly as it relates to Alaska

and the relationship of the Alaska problem to that in other states. The Governor's package of legislation was the outcome of the deliberations of the inter-departmental coordinating committee and it wasn't completely an in-house group although largely so. We had input at that time from programs throughout the State some from AFN, some from some of the native corporations, and quite a bit from regional health corporations, regional records within light of those working with various other things. It wasn't a target of the committee that we come up with specific legislative proposals, per se, although ultimately those deliberations resulted in a number of bills and that were introduced this last session, that were our best guess as to some of the things that might function to curb alcoholism and the use of alcohol throughout the state. The package, per se, includes a number of measures, I don't know if I need to go into detail about all of them. Four of them relate to taxes. One of the findings of the committee - and, incidentally I have just one copy with me of that inter-departmental coordinating committee report which is easy reading and can be read in just an hour or two in the evening and includes the highlights of all of our findings. I'll add to that that the money we obtain NIAAA resulted in the production

of a much more exhaustive study, some several volumes that you might not want to wade through. But the small inter-departmental committee report is available for anyone who is interested and would like to leave their name and address and I would be certain that you would receive a copy. Then you can go over the whole thing, the findings relative to the problems throughout the State and what the rationale was to the various legislative proposals. In any case, one of the findings was that the problem of alcohol abuse cost the taxpayers in this state a great deal of money from the State's General Fund. Far more than is obtained by present taxing schedules on alcoholic beverages. We also learned that it had been a long period of years, since 1961, since there had been a tax increase an excise tax increase on alcoholic beverages. Such that, since, over that span of time other commodities had increased in the consumer price index by some forty percent. Alcoholic beverages some 3/10ths of one percent. The relevance of this, to the problem, the relative cost of alcoholic beverages is declining, relative to other commodities. The excise tax measure we hoped would, and still do, would help to make up some of the deficit. We get about seven million dollars now that we can use for a lot

of our programs through taxation and the exact amounts of tax increase proposed were related to that amount that the State is expending annually and not being reimbursed by taxes. We also felt that it would shift the burden, or a greater proportion of it to those who actually use the beverages. So spread it around a little bit in that regard. It also was based on the market place and the impact of increasing taxes have even with the commodities such as alcoholic beverages in that they tend to depress sales to one extent or another, probably in this case, not very much. That was one measure and the other was the allocation of at least 1.5 million in addition for prevention education and treatment programs. A third bill links the excise taxes to the consumer's price index. Such that as that changes excise taxes change with it. Another, the fourth tax measure would allow municipalities to tax beverage alcohol at a rate higher than other commodities and hopefully this would encourage local treatment for local governments for alcohol expenses. Those are the four tax measures, three tax measures and one relative to them. Another was to provide local communities with options regarding how they individually wanted to handle the problem. They felt one existed that needed this kind of action. And this would allow for

local optional actions. In which some thirty five percent of the local governing body could establish that there would be an opportunity for voters to choose among several options such as completely restricting sale and that was the option that the bulk of the voters wish to pursue and have some history of this in Alaska whether its failed or whether it hasn't. A second option was to completely restrict sale plus ban shipment by mail or telephone order in the communities, have a limited community liquor license allowing the community to run a store which would only be allowed to sell a limited amount of alcohol ordered two weeks in advance. That option is premised on experience in (Frobisher Bay and Baflan Island) where the local community has a serious problem with binge drinking and found that if they had delayed sales there was a great reduction. I have further information on this if you are interested. Another was a community liquor license which would allow the community to run its own liquor store, limit sales, control sales hours and thereby hopefully minimizing use of binge drinking. The profits from the sales at the store could be used for local treatment due in other alcohol related costs.

That is the consensus of opinion as to what

This is not been out by what we heard at the meetings - Ft Yukon is getting \$40,000 a month from the local store but still cannot get \$6,000 for their community center.

should be done. To further bring to bear on such option sanctions, it was felt that communities voting themselves dry would lose revenue. And, this has been important various other places, that there could be a revenue sharing measure from the State which would reimburse communities for revenues lost, the dry community group. Also that there would be possession limits in communities that voted themselves dry. Roughly a case of fifths, distilled spirits or 4.5 gallons of wine. Illegal sale penalties are also proposed that are considering a sale in violation of local options, bootlegging, treating this as a felony and with a maximum sentence of six years and fines up to \$30,000 or from up from one year and \$5,000. The committee felt that the present penalties for illegal sales are an acceptable cost when people can make without a great deal of effort \$100,000 or more per year . The confiscation of vehicle or other conveyance of used in bootlegging activities on conviction the conveyance could be sold to the local community. Public notice for licenses, ban on advertising that promotes sale, this proved to be during later parts of the legislative session a controversial part of a package as is the excise tax measure and any thoughts we can glean about these things

*wasn't this in committee
~~sub~~
amendment?*

would be useful certainly to all of us. But the courts have never held that advertising which is contrary to the best interests of health and welfare people is necessarily correct. And there are many states that ban this kind of advertising. That is, two for the price of one, kind of advertising that is to promote more drinking, drink more and more often. There was a bill for appropriations for alcohol treatment (plane going over) some other measure included in sort of a cleaning of the legislation, the major siake - Title IV on alcohol combining our drug abuse and alcohol offices experienced in the comments I heard tonight a rationale for behavioral health model which is something that I estowed that drinking is really things and that its good to approach it that way. We talked a good deal in Anchorage today about involuntary commitments to treatment facilities which is a part of this legislation. That's pretty essentially the package, its primarily a tax issue and you feel an increase in taxes to help pay the bills is appropriate also moderates consumption. I might mention in that regard that most of the efforts made deal with this problem have been ~~ence~~^{one} to limit the availability of the beverages through one mechanism or another, they haven't

been measures designed to reduce the amount of beverage being drunk and turning it around that way would be a landmark effort in this state or anywhere else. The tax measures, the local optional elections, the type of licenses in the community, maybe you don't think any of these things would work. Increased expenditures for treatment programs and for education programs, involuntary commitment or the business of the people out of their own minds certainly a hazard to themselves and perhaps a hazard to others. The Uniform Act passed by the Federal Government in 1972 considers intoxication, public intoxication not a crime so the police can tell you about what kind of a problem this poses for and it is very real. That's pretty essentially the package and if you have questions about it I'll try to answer those. I certainly agree of course with both Mike and Glenn that I'm tired of listening to myself and I'm tired of listening to other committee members and I'm tired of listening to all the folks in Juneau and I personally want to hear from people in rural areas, particularly the smaller ones. Communities such as Bethel, Kotzebue, Nome and so on where I have made more visits certainly than I have been able to make to smaller communities. They are very opinionated about all these things

and they have been very helpful and that isn't necessarily a barometer of what I consider truly rural Alaska.

QUESTION:

Superintendent of the Iditarod School District and there are about 11 different people in this group who work with the school district and in different types of jobs and perhaps if some of them could comment I think it would help to get across the concern of education as a profession in the area, some of the problems that come up because of problems stemming from alcohol or alcoholism related issues. Also there are, I believe, if you met me before, there's been a lot of work that's been done locally. I'm not sure of your background in what you know about what's been done locally and we don't know what the Governor's plan is as far as it relates to education, and so forth. If you could summarize, maybe what is proposed, our schools is it mainly to be community based or.

WILLIAMSON:

What we hear around the State from teachers and I have heard from those in this area, is that there is not in existence, for Alaska, a curriculum package that really meets the needs of all Alaska's communities. Nor has there been ample opportunity if one were available to assist teachers in its use. If that's the route we want to go. There is a lot of controversy nationally and with all

the other educators I've talked to, about what sorts of things should be in the package. We talked about the substance, we talked about other sorts of things combined with what is the best strategy. We had Department of Education input into the task force, of course, I have some more of their specific ideas here if you - - but I don't know the thinking out here and what your experience has been.

QUESTION:

That's why I think some of the people may comment on this. It does involve public safety. I think

Rich from Holy Cross just happened to be here on other business and could comment on like - two attempted rapes

SCOMM

#6:4D

Alaska State Legislature

SENATOR MIKE COLLETTA



SENATE FLOOR LEADER

Senate

November 30, 1977

The Special Senate Committee on Alcoholism and Alcohol Abuse has now completed the first round of hearings. The Committee has traveled to 31 communities in North and Western, Southcentral and Southeast Alaska. The suggestions and comments that we have received from the people of Alaska have been both varied and highly enlightening to the members of the Committee.

As we promised, we are hereby enclosing a summary of the comments received from all the communities visited. The next step of the process is up to you.

Review the suggestions that were made from people in other communities, compare these with the suggestions and comments that were made at the meeting in which you participated, and write a section for a law as you think it should be written.

Only you know first hand what steps must be taken to solve alcohol abuse and its related problems in your community. By combining your solutions together with the solutions of people in other communities, we will arrive at a solution for the problems of alcoholism and alcohol abuse for all Alaska.

This is a problem that affects all people in all areas of the state and can be solved only by all of us working together. The comments you return to us will be used to write the law which will be acted upon in the next session. You are helping draft the first CITIZENS LEGISLATIVE BILL to be considered by the Alaska State Legislature.

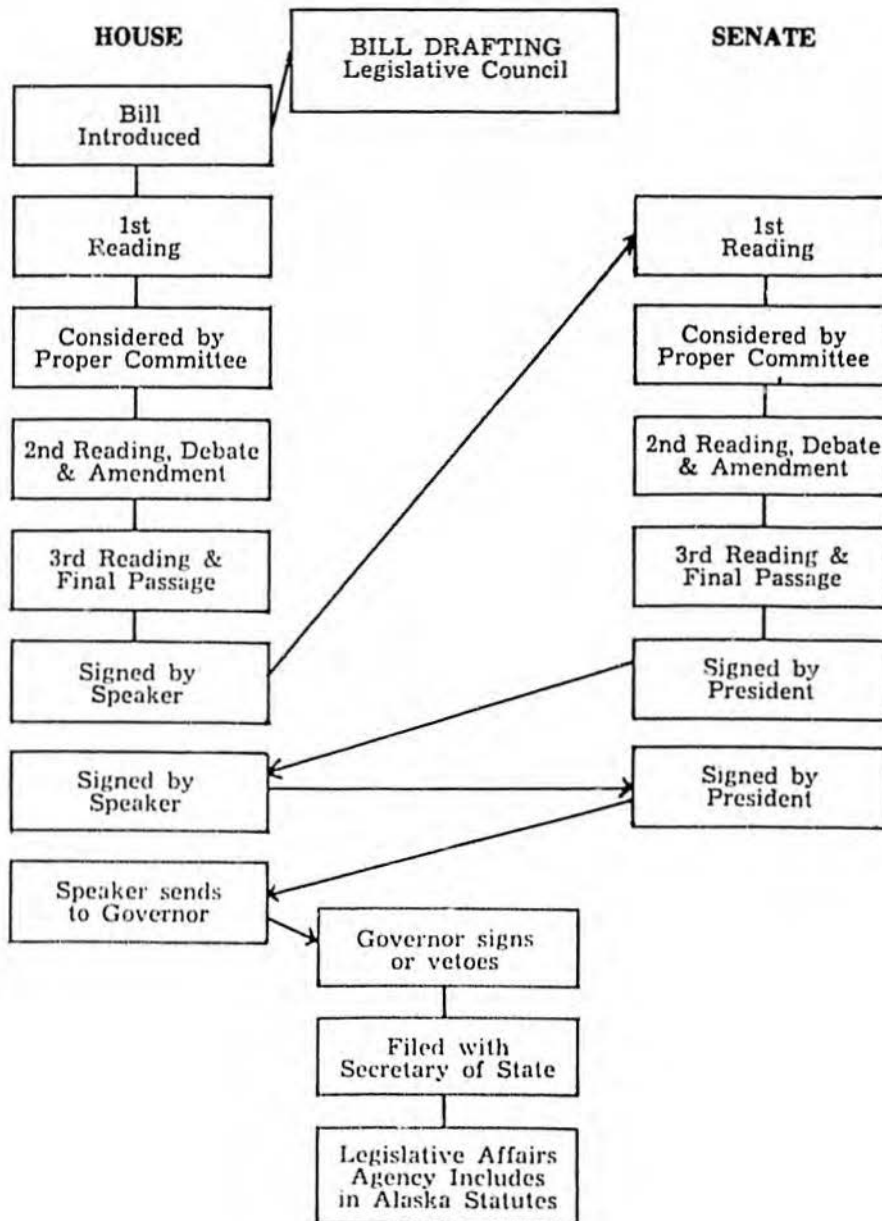
Sincerely,

Mike Colletta

Senator Mike Colletta
Chairman Special Senate
Committee on Alcoholism and
Alcohol Abuse

MAJOR STEPS IN THE PASSAGE OF A BILL THROUGH THE LEGISLATURE

Originating in the House of Representatives
(The many recordings of the Bill in its various forms have been
eliminated for simplification)



tell us what to do

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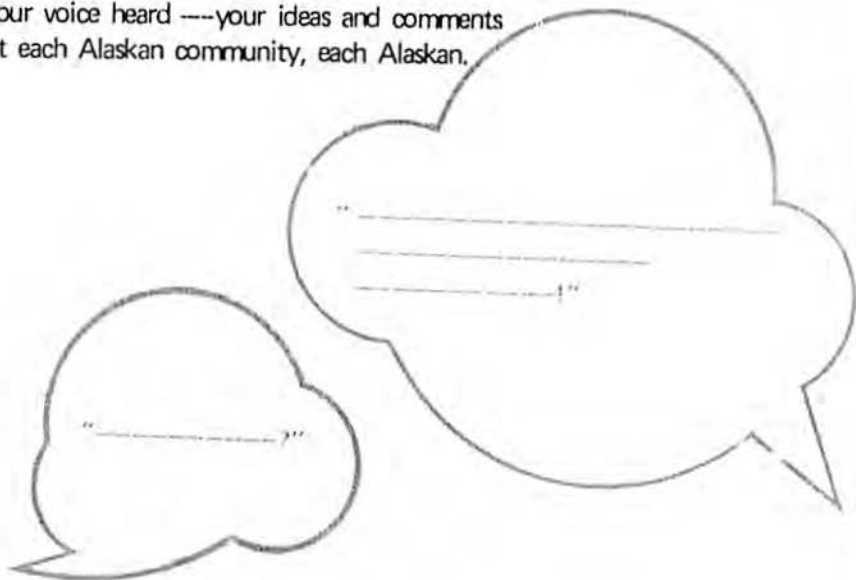
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enforcement

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"We have 500 people in ----- and we have 4 liquor places. Why not look at the law that allows this many?"

"... if it's against the law to drive when drunk because an innocent person might get hurt, then why can't you pass a law against being drunk anytime because innocent children and spouses get hurt and we all get hurt if the crime rate goes up or medical bills get high due to alcoholism."

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"...prohibit airlines from serving liquor on morning flights"

"Require the courts to refer people to treatment programs whenever a person appears before a judge for family disturbances, child neglect, DWI, OMVI, assault, breaking and entering, curfew violation or anything when there is a legal way to get a person into a program."

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Senator Mike Colletta, Senator Glenn Hackney,
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education- prevention

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"...need an education program started when person is young. It's hard to rehabilitate a person 50 years old with a long habit."

"...provide a tax deduction for contributions to alcoholism programs or hospital alcoholism units the same way it is allowed for contributions to political candidates. Have the state income tax form with a little box to check off money for alcoholism."



local option

"The problem is that attempts to help an alcoholic have been a demotivating force. The state tries to do everything for the person and nothing is left for the person to do for himself."

"...use para-professionals in outlying areas but train them as alcoholism counselors."

"The pay as you go approach is the concept of our profit making corporations [native], but the state is not in the profit business. Alcoholism is one of those human need areas that must be approached on a need to solve basis regardless of where the money comes from."

"Higher taxes are OK but it's important to make certain the money is used at the grass-roots level, not to hire more people in Juneau."

"...even though this is a dry town, liquor is available. Maybe if we had a local store it would help control the situation. 24 people have drowned coming back from Tenakee after drinking."

"...binge drinking is our biggest problem in ———. If we had a community store and it were available here then people wouldn't want to drink it all up at once."

"...programs and more money won't help unless you have the local people directly involved. The state cannot solve the problem from Juneau."

"Bootlegging is very lucrative, but local people will not testify against their own people."

"There is a lot of money being wasted for alcoholism by competing state agencies. Office of Alcoholism, Mental Health, Community & Regional affairs, Vocational Rehabilitation, Highway Safety are all spending money. If we could coordinate all the money there might be enough to help the problem at the local level."

"...instead of the state telling us what programs they will give us money for, why not establish a revenue sharing or grant-in-aid formula for alcoholism dollars to be used directly in each local area as that area wants?"

"Get local people involved in determining how alcohol money should be spent, particularly in running the programs. Outside alcoholism experts from Juneau that come in for short periods of time cause more damage than good."

"Alcoholism and health problems are very great here but they are low priority items for the City Council. No money is being spent by the City for our alcoholism problem. If we could only get the license fees for the bars in the town into the program it would be a great help."

"...stop paying welfare and unemployment benefits in cash. Provide surplus food and real jobs because with welfare checks people only buy liquor. The state welfare system feeds the alcohol problem."

"Authorize a local 'problem board' from the village council and let them handle problem persons the way the elders want. A week on the wood pile will help them more than fancy talking."



alternatives- treatment

"Bars and alcohol fill a void in ----- . People drink and go to bars for participation because there are no alternatives to drinking."

"Regardless of the reasons people give for drinking, if you really want to stop problem drinking you must provide alternative activities. The State should take the lead in community schools, recreational outlets, sports and hobbies."

"Alaska needs a statewide detoxification center and a local halfway house program with trained local counselors in each community."

"...if we had a local person to talk to people having problems...a local person trained to help local people..."

"Give money to every local hospital to set up an alcoholism ward where people from the community can go for medical treatment to dry out and for counseling to get the will power not to drink again."

"We need a qualified counselor in -----, not a person who comes in one day a month from -----."

"An alcoholic does not have a free will where liquor is concerned. His body needs it and his mind knows nothing else except his next drink. He needs to be forced into treatment. Change the law and tell the alcoholic he has a choice of 6 months in jail or 6 months in a treatment program."

"Provide incentives for employers to put their people through compulsory treatment. The person then has a choice of finding help or finding a new job."

"...we have a severe drinking problem with young people. There's no place for kids to go, no juvenile activities that are coordinated or planned."

"The treatment program in ----- is nothing more than a recycling plant. The problem drinker just passes through a revolving door."

"...provide a special municipal building grant for multi-purpose buildings in ----- . Then we could have more activities planned and less drinking."

"The alcoholic who has a problem will get alcohol regardless of the price or its availability even if he has to make it himself. Why punish others who drink without problems? Concentrate on those with the problem through prevention and early intervention, even if you have to force a person into treatment."

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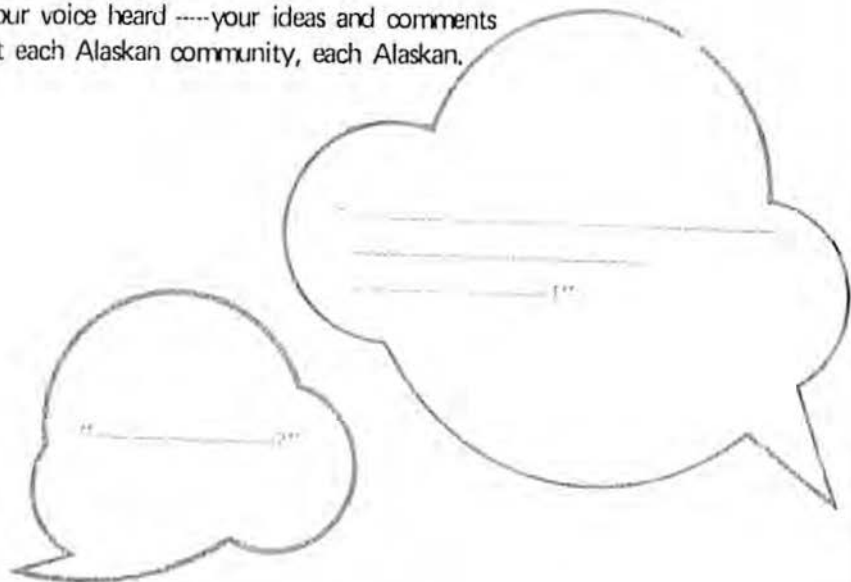
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MEMORANDUM

TO: CITIZENS LEGISLATIVE BILL PARTICIPANTS

FROM: MIKE COLLETTA

RE: STATUS REPORT ON LEGISLATIVE RECOMMENDATIONS
January 5, 1978

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One of the contributing factors to the difficulties we had was that you did not have a copy of the summary points of items to be included in the Citizens Bill. The summary is attached to this memorandum. It includes those items most often mentioned by the public as important.

The next phase of our project now involves taking these items and "fitting" them into a comprehensive package for legislative and administrative implementation. As you know, each of the various sections must be coordinated in order to be effective. Education, enforcement and treatment activities must complement each other in the local setting.

The legislature will convene next week and I intend to personally tell each legislator about our special project. It would be beneficial for you to communicate your interest and views to your district representative. With everyone involved in a full scale attack on alcoholism and alcohol abuse I am confident we can solve Alaska's greatest human needs problem.

Best Wishes

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education- prevention

- primary alcoholism education curriculum in the public school system, grades K through 12
- basic alcoholism education and in-service type training for persons with a main-line contact with alcoholics: police officials, judges, social workers, doctors, nurses; village health aides, etc.
- accredited training for state certified teachers involving workshops or seminars
- training for persons dispensing alcohol as a pre-requisite to licensing
- provision for a statewide alcoholism education and training resource center to provide coordination, education materials, and training for local programs to draw upon
- specialized training for coordination and joint operations in liquor law enforcement by Alcoholic Beverage Control Board and other police agencies

enforcement

- increase penalties for all convictions involving alcohol and a motor vehicle (NOTE: several seperate pieces of legislation already before legislature addressing this provision. The very strong public comment about this will be relayed)
- licensing of bartenders, cocktail waitresses and others who dispense alcoholic beverages
- increase Alcoholic Beverage Control Board personnel with a particular emphasis on patrolmen and investigators
- require no more than one liquor beverage to be served to a single patron at a time.
- establish strict guidelines for the sale of alcohol beverages by telephone or mail order

alternatives. treatment

- Mandatory alcoholism counseling referrals by judges whenever an individual becomes involved in the judicial process and alcohol is a contributing factor. Requirements for case histories to be a part of the court record, with provisions for confidentiality, to enable the court to make an appropriate length and type of treatment referral. Medical and alcoholism evaluations would be a part of the history.

- Series of detoxification centers such as funding a local hospital to establish a separate alcoholism ward, or if the local community determines a greater need, a complete and separate detox facility.

- Establish guidelines and criteria for para-professionals in outlying areas and enable non-profit health corporations to act as primary contractors for providing alcoholism services.

- Make available low interest loans to community corporations similar to other special areas such as economic development, minorities, veterans and student loans. This low interest loan would be for design and construction of recreation, sports, or adult social gathering places with the condition that alcohol would be prohibited in the facility.