

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

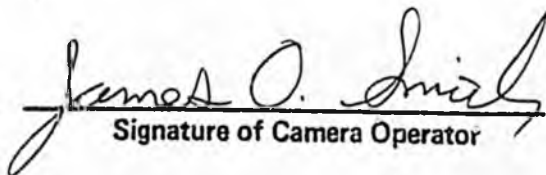
3387 HJUD HB 692 - HB 700

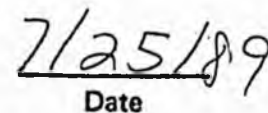
63



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

G R 2

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3000

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

4/25/86

8:00 AM

A M E N D M E N T~~HOUSE BILL NO. 692~~

By Cato and Hurley

TO: CSHB 692 (State Affairs)

Page 12, following line 2, insert the following new bill sections to read:

** Sec. 28. AS 04.11.400(a) is amended to read:

(a) Except as provided in (g), (h), (i), [AND] (j), and (k) of this section, a new license may not be issued and the board may prohibit relocation of an existing license

(1) outside an established village, incorporated city, unified municipality, or organized borough if after the issuance or relocation there would be more than one restaurant or eating place license for each 1,500 population or fraction of 1,500 population or more than one license of each other type, including licenses that [WHICH] have been issued under (g) or (h) of this section, for each 3,000 population or fraction of 3,000 population in a radius of five miles of the licensed premises or location of premises sought to be licensed, excluding the populations of established villages, incorporated cities, unified municipalities, and organized boroughs that are wholly or partly included within the radius;

(2) inside an established village, incorporated city, or unified municipality if after the issuance or relocation there would be inside the established village, incorporated city, or unified municipality more than one restaurant or eating place license for each 1,500

population or fraction of 1,500 population or more than one license of each other type, including licenses that [WHICH] have been issued under (g) or (h) of this section, for each 3,000 population or fraction of 3,000 population inside the established village, incorporated city, or unified municipality;

(3) inside an organized borough but outside an established village or incorporated city located within the borough, if after the issuance or relocation there would be inside the borough, but outside the established villages and incorporated cities located within the borough, more than one restaurant or eating place license for each 1,500 population or fraction of 1,500 population or more than one license of each other type, including licenses that have been issued under (g) or (h) of this section, for each 3,000 population or fraction of 3,000 population inside the borough, excluding the population of those established villages that have conducted an election on a question set out in AS 04.11.490, 04.11.496, or 04.11.500, and excluding the population of incorporated cities located within the organized borough.

* Sec. 29. AS 04.11.400 is amended by adding a new subsection to read:

(k) The board may approve the issuance or relocation of a club license without regard to (a) of this section if the issuance or relocation of the license has the approval of the local governing body of the established village, incorporated city, unified municipality, or organized borough where the licensed premises will be located."

Renumber remaining bill sections accordingly.

ALCOHOLIC BEVERAGE CONTROL BOARD

POLICY MATTERS RE

HB 692

1. Biennial rather than annual renewal of liquor licenses. Transitional provisions in Section 36 provide for one-half of licenses to renew each year. Annual wholesale excess license fee is retained.
2. Changes expiration of a license from December 31 to January 31 but allows a licensed business to remain open if a renewal is not filed by January 31. If a renewal application is filed between February 1 and March 31, the late filing penalty is raised from \$100 to \$400.
3. Notices to creditors, community councils and local governing bodies are given by applicants rather than the Board's staff.
4. Allows a "public convenience" license issued under AS 04.11.400(i) to be transferred to another person. Under current law a license issued under AS 04.11.400(j) may neither be transferred to another person nor to another location.
5. Increases minimum number of days a license must be operated during a calendar year from 30 days to 45 days (SB 69).

ALCOHOLIC BEVERAGE CONTROL BOARD

Analysis of HB 692 Legislation

MISCELLANEOUS

1) Sections 1 - 7 and 9 - 14

These sections double license fees to coincide with biennial renewal provided in section ~~18~~ 20

2) Section 8

Provides for biennial renewal of wholesale license but retains annual submission of additional fees based on gross sales during each calendar year.

3) Section 15-16 and 19

Amended to require the applicant for renewal of a pub license and conditional contractor's permit to file approval from the college or university with the renewal application. This is presently required for a pub license under AS 04.11.220.

4) Section 18, 22 and 23

Allows the director to determine satisfactory proof that proper notices under AS 04.11.310 and certain approvals accompany applications for licenses and permits. This is generally the current practice.

5) Section 17

Same as section 1.

6) Section 20 and 21

Changes annual renewal to biennial renewal, changes expiration from 12/31 to 1/31, allows a business to stay open if renewal not filed by 1/31, but penalty is raised from \$100 to \$400. In section 21 "the board may not accept an application for renewal after March 31 of the renewal year."

7) Section 24

This section establishes public notice requirements for all applications. All notices are to be provided by the applicant rather than the board's staff. This includes notices to governing bodies, community councils and creditors. Also, only one notice is provided to a community council. Under Mike Miller's HB34, the board provides two notices to community councils in addition to the notice to community councils by a "municipality" under AS 04.21.010 as amended by HB34. Notice by municipalities is retained in AS 04.21.010.

8) Section 25

Changes minimum operating requirement from 30 days to 45 days (this amendment also resides in SB 69) during each 12-month period in the two-year (biennial) license period.

- 9) Section 26
Established biennial operating requirement for recreational site licensed.
- 10) Section 27
Amends to provide that a creditor may file a claim within 30 days from the last notice to the creditor under AS 04.11.310 (see section 19). Repeals requirement that an application for transfer to another person be denied if the license was issued under AS 04.11.400(j) (public convenience).
- 11) Section 28
Provides that a local governing body may protest any application within 30 days of notice from the applicant [BOARD].
- 12) Section 29
Changes from 90 to 60 the number of days in which the board must consider an application. Reason: Since the board's staff does not give notice, 30 days is taken up by the requirement that the applicant give notice to a local governing body. The overall formal period of application processing will remain at 90 days. Also, the amendment reads that the board will consider an application within 60 days rather than deciding to grant or deny (this agrees with present practice).
- 13) Section 30
Repeals present AS 04.11.520. Reenacted to state that the board may not grant an application without proof that notice under AS 04.11.310 to a local governing body was given by the applicant.
- 14) Section 31
Changes renewal deadlines from February 28 to March 31, but allows a business to operate during a grace period - February 1 through March 31. *See item 6.*
- 15) Section 32
Technical word changes to coincide with biennial renewal.
- 16) Section 33
Changes annual to biennial fees refund of license fees to municipalities.
- 17) Section 34
Changes license period from one year to two years.
- 18) Section 35
Provides a definition of "renewal year."

19) Section 36

Transitional provision:

The director establishes which licensees (approximately one half for one year) renew for implementing biennial renewal.

20) Section 37

Provides that the board may adopt regulations to implement the Act.

21) Section 38

Provides for an immediate effective date for section 37.

22) Section 39

Makes transitional provisions effective on November 1, 1986.

23) Section 40

Effective date of all other sections is December 31, 1986.

STATE OF ALASKA
THE LEGISLATURE

FOLCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1986

SUBJECT: Liquor Licenses
(HB 692)

TO: Representative Katie Hurley

FROM: Michael F. Ford *M. F.*
Legislative Counsel

The following is a sectional analysis of HB 692:

Section 1 - changes the beverage dispensary license fee from annual to biennial.

Section 2 - changes the fee for a restaurant or eating place license from annual to biennial.

Section 3 - changes the club license fee from annual to biennial.

Section 4 - changes the bottling works license fee from annual to biennial.

Section 5 - changes the brewery license fee from annual to biennial.

Section 6 - changes the winery license fee from annual to biennial.

Section 7 - changes the package store license fee from annual to biennial.

Section 8 - changes the general wholesale license fee from annual to biennial.

Section 9 - changes the wholesale malt beverage and wine license from annual to biennial.

Section 10 - Requires a wholesale malt beverage and wine licensee to file an affidavit of business transacted during the previous calendar year.

Section 11 - changes the distillery license fee from annual to biennial.

Section 12 - changes the common carrier dispensary license from annual to biennial.

Section 13 - changes the fee for a recreational site license from annual to biennial.

Section 14 - changes the fee for a pub license from annual to biennial.

Section 15 - changes the issuance of a conditional contractors permit from an annual to a biennial period.

Section 16 - changes the renewal period of a conditional contractors permit from annual to biennial.

Section 17 - changes the fee for a conditional contractors permit from annual to biennial.

Section 18 - requires that applicants for a new license or permit submit certain evidence satisfactory to the director, with the application.

Section 19 - amends the information required to be submitted for renewal of a license or permit.

Section 20 - sets out procedures for renewal of a license.

Section 21 - prohibits the board from accepting a license application after March 31, of the renewal year.

Section 22 - amends the procedures for transferring a license to another person.

Section 23 - amends the procedures for transferring a license to another location.

Section 24 - Establishes procedures for giving public notice of issuance, relocation or transfer of ownership of a license.

Section 25 - Amends the grounds for which an application for renewal of a license may be denied.

Section 26 - Allows renewal of a recreational site license if the license was used at least once during each of the two preceding calendar years.

Section 27 - Requires denial of an application to transfer a license if the transferor has not paid certain debts. Removes the requirement that the application be denied if issued under AS 04.11.400(j).

Section 28 - Amends the procedure for a local governing body to protest the issuance, renewal, relocation or transfer of a license to another person.

Section 29 - Requires the board to consider whether to grant or deny an application within 60 days after receipt of the completed application.

Section 30 - Requires an applicant to provide proof that notice of the application has been given to the local governing body.

Section 31 - Establishes time limits for renewal and termination of a license.

Section 32 - Requires the director to mail notice of termination to each licensee.

Section 33 - Requires biennial instead of annual fees to be refunded to a municipality.

Section 34 - Allows the board to issue licenses for two six month periods, rather than biennially. Provides that all other licenses are effective for a two year period.

Section 35 - Definition.

Section 36 - Transitional provisions.

Section 37 - Allows the board to adopt regulations.

Section 38 - Effective date.

Section 39 - Effective date.

Section 40 - Effective date.

HOUSE
COMMITTEE REPORT

JUDICIARY

4/21

(7)

Date referred: 2/21/86

FURTHER REFERRALS: FINANCE

DATE: 4/17/86

The STATE AFFAIRS Committee has considered HB 692

"An Act relating to the issuance, renewal, transfer of ownership, and relocation of liquor licenses; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSHB 692 (SA) same title
- new title

and recommends Do Pass

further referral to the _____ Committee

and attaches:

- letter of intent
- first fiscal note Sept 120
- new fiscal note
- zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Katie Hurley

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

Roger Jenkins No Rec

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

Katie Hurley
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No: HB 692
Title: Relating to issue, renewal, and transfer of liquor licenses

Sponsor: House Judiciary Committee
Requestor: House State Affairs Comm.
Date of Request: April 3, 1986

FISCAL DETAIL

Agency Affected: Department of Revenue
BRU: Alcoholic Beverage Control Board

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Patrick L. Sharrock
Division: Alcoholic Beverage Control Board
Phone: 277-8638
Date: April 10, 1986

Approved by Commissioner: Wm. H. Sivak
Agency: Department of Revenue
Date: April 10, 1986

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska State Legislature




House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMO: March 18, 1986

TO: Rep. Katie Hurley
Chairwoman, House State Affairs Comm.

FROM: Rep. M. Mike Miller 
Chairman, House Judiciary Committee

RE: HB 692/ liquor license renewal, etc.
Request for hearing

You currently have HB 692 in committee, a bill that would change the deadline requirements for renewal of liquor licenses. I respectfully request that a hearing be scheduled on this bill at your earliest convenience.

The bill was submitted by the Judiciary Committee at the request of the Department of Revenue and the Alcoholic Beverage Control Board.

The bill, if enacted, would stagger the dates upon which liquor license renewal applications and other required submittals would come due. Currently, all licenses come due on the same date each year, creating a paperwork bottleneck in the administration of this necessary annual procedure. The bill is basically a housekeeping measure allowing better management of this program. The bill also contains a repealer section eliminating a conflict between two contradictory statutory provisions which came about inadvertently with the passage last year of HB 34, and which came to light during the interim.

If you have any questions regarding this request, please contact me directly or have your staff call Bob Speed of my office (x-4990).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1986

SUBJECT: Liquor Licenses **HB 692**
(Work Order No. 14-1739)

TO: Representative M. Mike Miller

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked whether section 35 of this work order, defining "renewal year" is necessary. As section 21 of the bill prohibits the board from accepting an application for renewal after March 31 of the "renewal year", a definition of that term appears necessary.

At your request, I have also included (in section 27) a repeal of AS 04.11.360(11), prohibiting transfer of a license issued under the public convenience exception of AS 04.11.400(j). This repeal would allow licenses issued under the public convenience exception to be transferred to another person.

Finally, please note that in section 20 I have added a new paragraph (4), that provides an extension for renewal applications filed on January 31, rather than March 31 as requested, because the March 31 deadline is already taken care of in section 31 of the draft.

MFF:mkr
M3:048

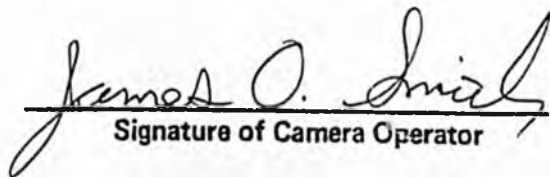
Enclosure

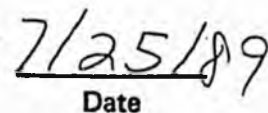


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

HB

700

UNFINISHED BUSINESSSSHB 700

The Speaker waived the Judiciary Committee referral on SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (relating to regulation of alcoholic beverages and enactment of municipal ordinances) at the request of the Chairman.

SSHB 700 was sent to the Finance Committee.

HB 417

Representatives Frank, Jenkins and Martin added their names as co-sponsors to HOUSE BILL NO. 417 (annulling a regulation requiring a person proposing a subdivision to submit certain information to the Department of Environmental Conservation).

HB 438

Representative Hurley added her name as co-sponsor to HOUSE BILL NO. 438 (relating to penalties for violating the Alaska Historic Preservation Act; effective date).

HB 517

Representative M.M. Miller added his name as co-sponsor to HOUSE BILL NO. 517 (relating to the private sale and consignment of works of art).

ENGROSSMENTHB 601

HB 601 was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

HB 699

Reconsideration of the following was not taken up on this legislative day. It was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration:

HB 699
Creating the Railbelt energy fund;
effective date

STATE OF ALASKA



REPRESENTATIVE JOHNE BINKLEY

MEMORANDUM

TO: Representative Fritz Pettyjohn

FROM: Representative John Binkley, Chairman
Joint Special Committee on Local Option Laws JB

DATE: April 7, 1986

RE: Joint Special Committee Report to the Legislature

Attached is a copy of "A Search for Control: The Effect of Alcohol on Public Rights and Private Wrongs." It is the summation of hearings, research, and recommendations by the Joint Special Committee on Local Option Laws on the subject of the local option laws under Title 4 of Alaska Statutes.

The Committee held hearings in eighteen communities throughout Alaska during 1985. We heard from villagers, community leaders, public safety officers, agency representatives, and government officials. The Committee has concluded that the severity of Alaska's problems with alcohol cannot be overemphasized or exaggerated. We found that alcohol-induced tragedies have become a reality of daily life across the entire state. We believe and strongly advocate that every possible tool must be available for use in combatting the threat posed by alcohol.

The findings and conclusions of the Committee as are fully set forth in the report (pages 105-110). Briefly, the Committee has found that the broad range of problems associated with alcohol abuse and the diversified nature of Alaska's communities clearly demonstrate the need for amendment to the Local Option Laws--to give villages another option to better control alcohol within their own community. It is the basis for the introduction of House Bill 700 which expands the current local option laws.

In reading "A Search for Control" I would encourage you to pay special attention to the summations of community testimony, beginning on page 32, the Legal Issues, starting at page 91, and the conclusions and findings, as noted above, pages 105 to 110. Please don't hesitate to call me if you have questions on either the report or the legislation.

Expanding options available to communities in their efforts to control alcohol abuse will not in and of itself solve the alcohol problems in Alaska. It is a step in the right direction, though, for us to give communities the tools they need to deal with their problems at the local level.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 28, 1986

REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

The Honorable John Binkley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: House Bill 700

Dear Representative Binkley:

This letter is in response to your request for an opinion by the Department of Law on the constitutionality of House Bill 700. You asked that we pay particular attention to the right of privacy under Art. I, sec. 22 of the Alaska Constitution.

House Bill 700 would create another "local option" whereby communities may vote to ban possession of intoxicating beverages. Possession of alcoholic beverages in the home (including homemade liquor) would be a violation of the ban, but possession of alcohol in the body would not. Violation of the ban would be made an infraction punishable by a maximum \$1,000 fine and the person would not be entitled to publicly-financed counsel or trial by a six or twelve-person jury.

The most obvious question raised by this proposal is whether banning possession of alcohol in the home violates the right to privacy under Art. I, sec. 22, of the Alaska Constitution. We believe that the answer is no, and the state is prepared to defend the validity of such a law when a court challenge is brought. A brief discussion follows.

Right to Privacy

Despite the minimal penalties provided by this bill (and the ability to "pay" a fine through community work service), there is no doubt that such a law will be challenged as an invasion of privacy under Art. I, sec. 22 and Ravin v. State, 537 P.2d 497 (Alaska 1975) (possession of small amounts of marijuana, by adults in their homes, is protected).

The many public hearings held by your committee throughout the state elicited hours of testimony from people from all walks of life on the problems created by alcohol in

rural Alaska and are summarized in your committee's detailed report. A Search For Control: The Effect Of Alcohol On Public Rights And Private Wrongs, Report to the Legislature, Joint Special Committee on Local Option Laws (March 1986) (hereafter Report). The problems created by alcohol are well known and beyond dispute (see Findings 1 through 9 and 11, Report at 108-09). There seems to be ample evidence, and it stands to reason, that in communities banning sale and importation of alcohol, much drinking takes place in private homes. (Finding 10, id.) Given the enormous economic and social costs of alcohol abuse, it is not surprising that communities would want to ban possession. (Finding 12, id.)

Giving communities this additional option (and allowing community work service to be administered through village councils) provides a greater measure of local control over a problem which, although it exists statewide, has its most severe impact at the local level. This bill represents the legitimate view that each community should be the sole judge of whether an expectation of privacy in the possession of alcohol is one that their localized society believes is reasonable and deserving of protection. In other words, the balance between one person's right to possess and consume alcohol and the public's right to safety and security should be made on a village by village basis by the voters in each locale.

One of the most important of the committee's findings is that present laws are not adequate to deal with problems created by possession of alcohol, including homebrew. (Finding 14, Report at 110.) Because present laws are inadequate, the legislature may devise different means to achieve its legitimate health and safety purposes. This is not to say that the legislature is free to devise draconian and irrational solutions to a problem once a less intrusive method has failed. For example, we understand that there are some who have advocated ideas that amount to a virtual suspension of search and seizure protections in order to completely eradicate all traces of alcohol from a village. This bill obviously does not go that far, and is consistent with state and federal law regarding searches and seizures. In the absence of a person's consent, or exigent circumstances, a search warrant issued by a judicial officer will still be required to gain entrance to a person's home. See Report at 107.

The means chosen by the committee to make alcohol laws more effective helps cure a problem created by current local option laws and by opinions such as Ravin v. State. As noted in Finding 14, Report at 110, Alaska law prohibits sale and importation of alcoholic beverages but permits possession. Similarly, the Ravin case left intact criminal prohibition of sale or public possession of marijuana, but legitimized home

Sectional Analysis

Committee Substitute for Sponsor Substitute Bill for House Bill 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

SECTION 1: Sets forth in Legislative Findings the specific reasons for amending the existing local option law.

SECTION 2: Provides established villages and municipalities the authority to hold elections to ban possession of alcohol, as an addition to the options for regulating alcohol allowed under current law. Following an election, alcoholic beverages would be banned by city ordinance in municipalities and by state statute in established villages. Excludes from the definition of possession "alcoholic beverages within the digestive system of a person."

SECTION 3: Specifies that a petition for local option election constitutes a proposed ordinance of a municipality.

SECTION 4: Sets penalty for possession of alcohol in violation of law as a maximum \$1,000 fine, for which community work, supervised by the governing body of the community, may be substituted at the option of the offender. Authorizes the Supreme Court to set a bail forfeiture schedule after consultation with an advisory committee. Mandates that the Commissioner of the Department of Public Safety develop a uniform citation form, which must be adopted by municipalities. Allows appearance on a citation to be waived, a plea of no contest to be entered, and bail and all alcoholic beverages seized to be forfeited. Specifies that possession of alcohol in violation of the law is not a criminal offense, and does not give rise to the right to jury trial or to court-appointed counsel.

SECTION 5: Provides that alcoholic beverages possessed in violation of a ban is subject to forfeiture.

SECTION 6: Provides an exception to the requirement that a court hearing be held within 48 hours of seizure of property subject to forfeiture for alcoholic beverages possessed in violation of a community ban on alcohol. This section does not change Alaska law

relating to search and seizure, rather it recognizes that alcohol possessed in violation of a ban is contraband and that a court hearing to consider the propriety of its seizure would have no purpose.

SECTION 7: Specifies that forfeiture may occur at the point when judgment has been entered on a citation.

SECTION 8: Requires that alcoholic beverages forfeited under the law be destroyed no earlier than 30 days after forfeiture.

SECTION 9: Authorizes municipalities to adopt ordinances banning possession of alcohol as set forth in Section 2 of CSSSHB700.

SECTION 10: Clarifies that the definition of alcoholic beverage includes privately produced beverages containing alcohol.

SECTION 11: Conforms Title 29 with Sections 2 and 9.

SECTION 12: Conforms Title 29 with Sections 2 and 9.

SECTION 13: Conforms Title 29 with Sections 2 and 9.

SECTION 14: Conforms Title 29 with Sections 2 and 9.

SECTION 15: Conforms Title 29 with Sections 2 and 9.

SECTION 16: Conforms Title 29 with Sections 2 and 9.

A SEARCH FOR CONTROL:
THE EFFECT OF ALCOHOL ON
PUBLIC RIGHTS AND PRIVATE WRONGS



REPORT TO THE LEGISLATURE
JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS

Representative John Binkley, Chairman
Senator John Sackett
Senator Vic Fischer
Senator Eena DeVries
Representative Katie Hurley
Representative John Sund

March 1986

Prepared by
Laurie H. Otto
Otto & Constantino, Attorneys Law
P. O. Box 2098
Bethel, Alaska 99559

TABLE OF CONTENTS

<u>Table of Contents</u>	i
<u>Prologue</u>	3
<u>Introduction</u>	4
Joint Special Committee on Local Option Laws	5
Committee Findings	7
Recommendations for Local Option Legislation	9
Additional Recommendations	10
<u>History of Alcohol Regulation in Alaska</u>	13
<u>Studies of Alaska's Local Option Law</u>	24
<u>The 1985 Local Option Hearings</u>	32
Aniak	34
Akiachak	36
Emmonak	37
Toksook Bay	38
Nunapitchuk	39
Bethel	40
Togiak	46
Dillingham	47
Anchorage	49
Shishmaref	50
Nome	51
Gambell	53
Selawik	54
Kotzebue	55
Minto	56
Barrow	58
Arctic Village	60
Fort Yukon	61
<u>The Social Costs of Alcohol Abuse</u>	62
Consumption of Alcohol	62
Medical Consequences	64
Mortality	66
Suicide	68

Crime	72
Families	79
Domestic Violence	79
Alcohol and Pregnancy	83
Children of Alcoholics	85
Economic Costs	87
<u>Legal Issues Presented by Proposal to Ban Possession of Alcohol</u>	91
Federal Law on Regulating Alcohol	91
State Law on Regulating Alcohol	93
Privacy Issues	94
Possession by Consumption	98
Criminal, Civil and Quasi-Criminal Penalties	101
Collateral Legal Issues	104
<u>Committee Findings and Conclusions</u>	105
Findings	105
Conclusions	109
<u>Appendix A</u>	111
<u>Table 1</u>	42
Criminal Offenses by Trooper Detachment: FY 84-85	
<u>Table 2</u>	66
Discharge rates per 10,000 from Indian Health Service and contract general hospitals and from nonfederal short-stay hospitals by first listed diagnosis and age, 1981	
<u>Table 3</u>	68
Mortality data for selected causes of death in Alaska: 1980 - 1982	
<u>Table 4</u>	70
Alcohol-related attempted and completed suicides in 110 rural Alaska communities by race and sex: 1982 - 1984	
<u>Table 5</u>	74
Frequency of use of drugs and alcohol at time of offense for four offense classes	
<u>Table 6</u>	75
Frequency of use of drugs and/or alcohol at time of offense for five offense classes (urban courts - 1980)	

<u>Table 7</u>	76
Frequency of use of drugs and alcohol at time of offense for five offense classes (rural courts - 1980)	
<u>Table 8</u>	77
1981 misdemeanors breakdown by community of alcohol and/or drug use at time of offense	
<u>Table 9</u>	78
Total and alcohol-related incidents by village: 1979	
<u>Table 10</u>	79
Total and alcohol-related incidents by village: 1981 - 1982	
<u>Table 11</u>	81
Proportion of people in spouse abusing relationships who are problem drinkers	
<u>Table 12</u>	81
Violence among problem drinkers	
<u>Table 13</u>	88
Costs to the State of Alaska from alcohol abuse: 1984	
<u>Table 14</u>	90
Selected computations of alcohol-related costs: 1984	

Prologue

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

December 6, 1985

Honorable Committee Members:

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

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

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

Introduction

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

Teddy Coopchiak, Togiak elder

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

James Sipary, Toksook Bay

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

Captain Joe DeTemple, Alaska State Troopers D Detachment Commander

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

Until recently, alcohol was prohibited in many areas of Alaska from the time it was first introduced into the state.

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

Joint Special Committee on Local Option Laws

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

¹A.S. 04.11.490 - A.S. 04.11.496.

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

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

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

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

²Senate Concurrent Resolution 23, Fourteenth Legislature, First Session.

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

Committee Findings

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

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

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

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

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

Recommendations for Local Option Legislation

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

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

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

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

Additional Recommendations

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

1. The penalty for minor consuming alcohol should be reduced from its current status as a misdemeanor to a violation punishable by penalties similar to those proposed for possession of alcohol in violation of a local option law. The present laws are rarely enforced by the police, or prosecuted by the district attorneys. Since lack of enforcement engenders disrespect for laws, the statute should be made easier and cheaper to enforce. Additionally, as a matter of policy, there is little social benefit to be gained from giving young people a criminal record for possessing alcohol.
2. During Committee hearings, a large number of people testified that "drunk in public" should be recriminalized.⁵ This issue is complicated and the Committee is not prepared to recommend recriminalization of public intoxication at this time. However, there appear to be significant problems with the Uniform Alcoholism and Intoxication Treatment Act, particularly in rural Alaska. The Committee recommends that the Uniform Act be carefully studied and evaluated by the Legislature to determine whether it continues to

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

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

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

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

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

History of Alcohol Regulation in Alaska

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

Stephen Conn, Town Law and Village Law

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

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

Dan Nanalook, Togiak elder

From the time of initial Russian contacts with native Alaskans, through the present-day local option legislation, alcohol regulation has been a consistent theme of law enforcement in rural Alaska. Until the last ten to twenty years, federal statutes, state statutes, village ordinances and community sanctions have all been used as control mechanisms to prohibit rural Alaskans from using alcohol.

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

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

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

The terms of this contract were vigorously enforced.

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

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

(Footnote Continued)

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

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

¹⁰37 Stat. 512.

natives. Although sale of alcohol to natives was considered a serious offense, juries refused to charge non-natives selling alcohol to non-natives.

Enforcement of the prohibition laws was hampered by Alaska's size and the unavailability of adequate transportation. Moreover, the Alaska Commercial Company actively opposed the enforcement of liquor regulations because alcohol was used by the Company as a way to purchase furs. In remote areas where the Alaska Commercial Company was the only source of imported food and equipment, supplies were withheld from liquor enforcement officers as a means of driving them out of the Territory.

In order to enforce the liquor laws, as well as laws prohibiting the indiscriminate slaughter of marine mammals, the Treasury Department sent enforcement officers to Alaska on revenue cutters. Although the officers on the cutters discovered the manner in which alcohol was being illegally distributed to the natives, once again difficulties enforcing the law caused by Alaska's immense size were quickly encountered. A solution to the enforcement problem was suggested: "the right to search suspected vessels for contraband goods."¹¹

¹¹Captain C.L. Hooper, "Report on the Cruise of the U.S. Revenue-Steamer Corwin in the Arctic Ocean," November 1, 1880, quoted in Stephen Conn, "Alcohol Control and Native Alaskans - From the Russians to Statehood: The Early Years," 1982.

The next enforcement step was the creation of a territorial Indian police force in 1885, which was a fixture of Alaska law enforcement until at least 1907. The objective of this force was "the promotion of cleanliness, sobriety and good order among the Indians."¹² In the villages where these officers were located, "the manufacture of the vile intoxicating compound known as "hoochinoo" has been entirely broken up."¹³

With the Alaska gold rush in the late 1890's came a new approach to liquor regulation in Alaska - for the non-native population. Outright prohibition was replaced by laws that allowed licensed liquor outlets. The benefit of this approach was that revenues collected from high liquor outlet license fees could be used to pay for public schools and buildings. However, the purchase of alcohol by, or sale to, Alaska natives was still prohibited:

If any person shall, without the authority of the United States, or some authorized officer thereof, sell, barter, or give to any Indian or half-breed who lives and associates with Indians, any spiritous, malt or vinous liquor or intoxicating extracts, such person shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in the penitentiary for a term not to exceed two years.¹⁴

¹²Governor Swineford, Territorial Governor of Alaska, "Report to the Secretary of the Interior," 1885, quoted in Stephen Conn, "Alcohol Control and Native Alaskans - From the Russians to Statehood: The Early Years," 1982.

¹³Id.

¹⁴Alaska Territorial Governor, "Report to the Secretary of the Interior," 1909.

The 1915 legislature passed a joint resolution providing for an election on whether voters wanted the Territory of Alaska to be "wet" or "dry." When put before the electorate, the Alaska "Bone-Dry Law" passed by a margin of nearly two to one.¹⁶ Despite its technical applicability to the entire population of Alaska, the "Bone-Dry Law" was primarily enforced against natives, and non-natives selling to natives. Repeal of the "Bone-Dry Law" quickly followed the elimination of national prohibition in 1932.

In addition to the "Bone-Dry Law", the territorial legislature specifically continued the policy of prohibition for Alaska natives. A 1915 law made the act of giving or selling alcohol to a native a misdemeanor punishable by a fine or imprisonment. Natives soliciting, or attempting to purchase, alcoholic beverages were subject to the same sanctions as the seller.¹⁵ This law outlived national prohibition, and was not repealed until 1953 when federal laws prohibiting drinking by American Indians were abolished. However, just as the "Bone-Dry Law" failed, attempts to suppress liquor among the natives also proved to be ineffective. The laws failed because of inadequate enforcement efforts and because:

The Indian like the white man throughout the Fourth Division has become adept in the ways and means of screening himself from the eyes of the law, hiding his illicit distillery in secretive

¹⁵Alaska Legislature Ch. 51, SLA 1915.

¹⁶Becky Smith, "Prohibition in Alaska," Alaska Journal, 3:170-179.

places...These places being off of the regular route of travel and out of sight and ear shot, the officer in search and travel on hurriedly trip; will most likely overlook them.¹⁷

Although the "Bone-Dry Law" was repealed and the ban on selling liquor to natives was largely unenforced, prohibition continued to be a fact of life in rural Alaska. The Indian Reorganization Act was extended to Alaska villages in the mid-1930's and provided for tribal governments with legitimate fining and jailing authority.¹⁸ In most IRA communities, ordinances were passed banning the use and possession of liquor. These villages perceived themselves as dry and enforced the prohibitions against possession or use of alcoholic beverages through the 1960's,¹⁹ despite the liberalization of both state and federal legal policies relating to possession of alcohol by natives.

¹⁷Letter from H.E. Seneff, Special Officer for the Suppression of Intoxicating Liquor to Governor George Parks, July 1, 1930 which is appended to Stephen Conn, "Alcohol Control and Native Alaskans - From the Russians to Statehood: The Early Years," 1982.

¹⁸This authority was arguably made illegal following statehood by the Alaska Constitution that provided for a centralized judicial system. Victor Fischer, Alaska's Constitutional Convention, University of Alaska Press, 1975. However, up to and including 1986, some communities that do not have state judicial officers do have village councils that continue to act as both legislative and judicial bodies.

¹⁹In the 1980's, some Alaskan villages have reasserted powers granted to them by the Indian Reorganization Act. Among the recent actions taken under the authority of the IRA, are bans on alcohol within village boundaries.

At the first meeting of the Association of Village Council Presidents (A.V.C.P.), an organization of villages in the Yukon-Kuskokwim Delta begun in 1962,²⁰ regulation of alcohol was a major topic considered. Discussions at this meeting focused on the development of uniform ordinances that would apply throughout the Delta. As an example, the person chairing the meeting presented the ordinances used in his village:

1. If anyone from any other village should get drunk in town or making trouble, should be fined \$10.00.
2. Anyone making alcoholic brew without a license will be reported to the State Police.
- ...
6. If a man is drunk and makes trouble, will be stopped by the council and if he does not obey the council will be fined \$10.00.

...

Council leaders attending the A.V.C.P. meeting were informed that under state law they did not have the authority to ban alcohol, even if doing so was in the community interest. Further, representatives of the state legal system attending the meeting advised that enforcement

²⁰Although A.V.C.P. was not formed until 1962, regional organizations, such as the Regional Council of Yupik Village Chiefs, had existed in the Yukon-Kuskokwim Delta for many years.

²¹Stephen Conn, "Town Law and Village Law: Satellite Villages, Bethel and Alcohol Control in the Modern Era - The Working Relationship and its Demise," 1982.

of such laws could make council leaders subject to lawsuit or arrest.

Though state law had removed direct responsibility over village crime from the villages, the state legal apparatus was not prepared to prevent crime in the villages or to deal with minor offenses, this in an epoch when councilmen perceived that village liquor control and action against minor offenses was the key to prevention of serious crime in the village...²²

During A.V.C.P. meetings throughout the 1960's, the region's problems with alcohol continued to be a focus of discussion, as village leaders sought ways to control misconduct by community residents. Region leaders were frustrated by state legal officials who did not offer any institutional support to villages that wished to remain dry and to retain the ban on alcohol. As these villages were made to recognize their dependence on authority originating outside their communities, ordinances banning alcohol were abandoned in many places. The communities were forced to rely on the state troopers and a remote legal process that appeared to take action against a person only after an incident of serious criminal behavior.

As direct controls on the availability of alcohol disintegrated, law enforcement efforts focused on controlling the behavior of intoxicated individuals. Public drunkenness and other minor acts of drunken criminal behavior often resulted in jail sentences - in communities

²²Id.

where law enforcement services were readily available. In remote villages, leaders continued to complain about the lack of consistent service provided by the troopers.

In 1972, Alaska adopted the Uniform Alcoholism and Intoxication Treatment Act.²³ The Uniform Act reflected a policy decision that intoxicated persons should not be subjected to criminal penalties simply for consuming alcoholic beverages, that public drunkenness should not constitute a crime, and that, instead of jail, persons with problems related to alcohol abuse should be afforded treatment opportunities.

The Supreme Court interpreted the Uniform Act to preclude cities, regulations, and ordinances that, as a practical matter, would result in the criminalization of public drunkenness.²⁴ In urban Alaska, this decision was welcomed by police departments because it shifted the burden of dealing with public inebriates from the police to the medical community. However, the reaction was different in rural Alaska:

While urban police cheered, rural police were puzzled. What were they going to do about intoxicated persons, especially those incapacitated, when no sophisticated medical facilities (nor willing medical personnel) were available? People in the Arctic, incapacitated

²³A.S. 47.37.010 et seq.

²⁴Peter v. State, 531 P.2d 1263 (1975), see Possession by Consumption, infra at 98.

ten steps from their front door, let alone out on the streets, would quickly freeze to death.²⁵

Although the Uniform Act was amended in 1976 to allow incapacitated and intoxicated persons to be taken into protective custody, these terms were narrowly drawn. Only those persons who are actually unconscious, totally incapable of caring for themselves, or otherwise in need of help, can be taken into custody.²⁶ Those persons who are simply drunk (and potentially dangerous) can not legally be taken into protective custody.

In 1980, the legislature responded to a large body of evidence demonstrating the strong relationship between alcohol abuse and crime by passing a "local option law."²⁷ Under the law, communities that want to limit the importation or distribution of alcoholic beverages can hold elections and choose one of several options for regulating alcohol. The available options are:

1. Prohibition of the sale of alcohol;
2. Prohibition of the sale and importation of alcohol;
3. Restriction of the type of license available for selling alcohol (i.e. beer and wine only);
4. Restriction of alcohol sales to community-owned liquor stores.

²⁵Kim L. Moeller, "Alcohol Abuse and the Police in Rural Alaska: The North Slope Borough and City of Barrow Experience," 2d Ed., January 1979.

²⁶A.S. 47.37.170(a)(b) and (j); A.S. 47.37-270(11).

²⁷A.S. 04.11.490 et seq.

The local option law has been held to be a constitutional exercise of legislative power.²⁸ At present, 67 communities throughout Alaska have chosen to ban the sale and importation of alcohol through use of the local option process.

Studies of Alaska's Local Option Law

What is achieved by the local option law may not be control over alcohol but control over community.

Tom Lonner and Ken Duff, Village
Alcohol Control and the Local Option
Law, June 1983

The villages' attitude in the region visited was that if a new technology to stem the tide of alcoholism is available, "let's get it."...If a community improves, no one will be able to tell which particular new (since 1980) tool (e.g., local option, selective enforcement, intimidation, extralegal enforcement, elders' meetings, religious meetings, peer counseling, natural helpers, spirit committees, school prevention programs, talking circles, community development, counselors, mental health and suicide programs, safe houses, women's shelters, treatment programs, protective custody, VPSO, courts, trooper support, self-determination movement) did the trick. The whole is seen as operating, not only the individual parts.

Steve Edwards and Tom Lonner,
Feasibility Study on the Effects of
the Local Option Law on Local
Communities, November 1985

The University of Alaska, through its Center for Alcohol and Addiction Studies and its School of Justice, has

²⁸Harrison v. State, 687 P.2d 332 (1984).

completed several studies of Alaska's local option law.²⁹ The studies were conducted primarily for the purpose of evaluating the effects of implementation of the local option law in rural Alaska communities. The results and findings of these local option studies are presented in this section.³⁰

In evaluating the local option law, the researchers were hampered by the non-existence of adequate data, particularly in relation to criminal justice problems in rural Alaska. Because agency-generated data is extremely limited and, in large part, documents only negative events, the researchers based their conclusions on local communities' perceptions of positive indicators of change.

Communities are adopting a wide variety of control measures, including the local option law, in an attempt to prevent residents from abusing alcohol. The local option law is an indirect method of controlling alcohol-related behavior and is used because villages do not have direct

²⁹Thomas D. Lonner and J. Kenneth Duff, "Village Alcohol Control and the Local Option Law," June 24, 1983; Thomas D. Lonner, Janet R. Eidson, and Paul E. Cunningham, "Legislative Action and Village Social Health: The Assessment of Change Through the Use of Statewide Agency Information Systems," 1984; Steven M. Edwards and Thomas D. Lonner, "Feasibility Study on the Effects of the Local Option Law on Local Communities," November 1, 1985.

³⁰Unless otherwise noted, the findings and conclusions in this section are those set forth in the University of Alaska studies prepared by Thomas D. Lonner, J. Kenneth Duff and Steven Edwards.

control over either the use of alcohol by community members or the resulting alcohol-related deviant behavior. Local option is considered to be a significant and indispensable tool because it helps prevent problems from occurring. Many other and varied tools are used in conjunction with the local option law to control alcohol abuse, such as: assertions of tribal authority, support for the village public safety officer program and organization of elders meetings.³¹

The ingredients for controlling alcohol-related problems in villages include:

1. A clear identification of the source of the problem;
2. Community consensus on the problem;
3. The means to control the source or supply of alcohol;
4. Council support for controlling alcohol and

³¹Other researchers have noted the need for each community to take an individualized approach to controlling alcohol-related problems. See, e.g. Anne Shinkwin and Mary Pete, "Alaskan Villagers' Views on Problem Drinking: 'Those Who Forget'," Human Organization, 41:315-322, Winter 1982:

It is clear that a single approach to drinking problems in native Alaskan communities cannot be expected to be successful. Programs must be designed that accommodate the highly variable community contexts that apparently characterize these communities. In this case study, a common cultural tradition has not resulted in communities today of a single type, and this has significantly affected their responses to the management of drinking.

enforcement of the law;

5. Active community and agency involvement in alcohol control activities;
6. Continuity of control over long periods of time; and
7. Certainty of enforcement and punishment.

The local option law appears to be implemented most frequently in communities that have a predominantly native population; are not regional centers; do not have a road system linking the village to other communities; have never had retail alcohol outlets; and have only recently had continuous contact with a culture different from that which is dominant in the village. It is unlikely that communities outside rural Alaska, or a community that serves as a regional hub, will vote to ban the sale and importation of alcohol.

The most frequently used option allows for banning the sale and importation of alcohol. The use of the most restrictive option reflects the desire of many villages to severely limit access to alcohol. If villages could totally prohibit both the manufacture and possession of alcohol, many communities would opt for complete prohibition, and for the ability to search and seize persons and residences suspected of harboring liquor. Indeed, a number of villages included both of these powers in their petitions for local option elections, only to find that the Division of Elections rejected their petitions. Many villagers are

frustrated and cannot understand why their powers to institute prohibition and searches are limited, since their motive in doing so would be to "save human lives, entire communities, and entire cultures."

In those communities that have implemented the local option law, there has been a significant reduction in alcohol-related dangerous behavior. This reduction is much greater, proportionally, than the reduction in availability of alcohol. The indicators upon which the researchers relied in concluding that the local option law has resulted in changes of behavior are: less public drinking and public drunkenness, declines in the amount of alcohol-related interpersonal violence and accidents, and marked improvements in the physical appearance and scholastic performance of the children of drinking parents.

In addition to the direct benefits, other positive side effects of the local option law have been identified. These benefits resulted from the process used in making the decision to regulate alcohol. By implementing the law through an election, the burden of responsibility for the law shifted from the council and village leaders to the entire voting population. As a result, both law-making and enforcement have been made easier.

Although the immediate effect of the local option law was a steep decline in the number of alcohol-related problems, the positive effects of the law have eroded over time. The rates have not, however, returned to the high

levels that existed before passage of the local option law. In general, the people whose behavior seems most changed by the local option law are those people who need assistance in staying sober, or in moderating alcohol intake. The drinking behavior of these people is not so abusive or dangerous as to be beyond the influence of the social, peer or legal pressure that becomes a part of village reality as a result of the local option law.

The VPSO and the local option law are mutually sustaining. Neither the law without an enforcement officer, nor an enforcement officer without the local option law, are sufficient to combat alcohol-related problems. However, if a village adopts a local option law and delegates enforcement of the law exclusively to the city council members, the VPSO, or the state trooper, the law will not succeed. The effectiveness of the law in controlling village problems is directly dependent on peer pressure and the desire of the entire community to limit the availability of alcohol.

Despite its benefits, there are problems with the current local option law. These problems include: the complexities of the law are perceived to inhibit enforcement; lack of village control over which cases are pursued through the criminal justice system; and pressures placed on VPSOs who work without community-wide support, sufficient trooper support, or adequate training.

Other problems with the current local option law flow from the belief of many villagers that after a community elects to ban the sale and importation of alcohol, the law will result in the village being "dry." Frustrations developed when people realized that the law was neither self-executing, nor would its passage immediately stop all alcohol-related problems in the community. People were surprised to learn that: possession of alcohol was not against the law; homebrew was not against the law; the law did not authorize warrantless searches; the law could be rescinded in a future election; the complexities of evidence law and legal process needed to be learned and followed in order to ensure convictions; and the troopers would not immediately and automatically respond to reports of local option law violations.

The local option law also does not regulate the availability of alcohol to village residents outside the boundaries of the community. Villagers travel to regional centers, purchase liquor and become intoxicated. As a result, the villages view the larger towns that serve as regional centers to be significant sources of alcohol, and alcohol-related problems. Although both perceptions may be accurate, there may be a hidden benefit from exporting village drinking to the regional centers because, in some respects, they offer a safer drinking environment than the villages. The regional centers are a safer place to drink because these communities have substantially better law

enforcement and health care facilities than do the villages. Dangerous behavior is, therefore, more likely to be controlled in the regional centers. The increased load on the service agencies in the regional centers is not viewed by the agencies as either significant or difficult to handle.

The researchers point out that the concept of prohibition, or regulating alcohol, is not a novel one for Alaska natives, who lived under such a ban until at least 1953. Even after the formal ban was lifted, alcohol did not become readily available in isolated rural communities due to strict internal village controls over alcohol, in combination with bad transportation systems, lack of money, and the absence of a heavy market demand for liquor. Thus, older Alaska natives, who are in a position to weigh the costs and benefits of legal prohibition against the price villagers have paid for its disappearance, have concluded that prohibition is necessary for the survival of the village.

Since villagers accurately perceive that the local option law was written specifically for them, they do not understand why the law did not provide them with the tools they believe to be necessary to accomplish their objectives. If voting "dry" means "no more alcohol, no more drinking, and no more drunks", which is how many villagers interpret "dry", then people want the power to enforce prohibition, to put an end to homebrew, and to seize privately-held alcohol.

Villagers concerns about alcohol are not based on moral judgments about drinking, or a desire to intrude on the power of individuals to make decisions about their personal health. The primary reason people want to ban alcohol is because it is intimately related to the deaths of village members. The deaths of young people are of particular concern because many villagers believe that the survival of their culture is completely dependent on the caliber of future community leaders, many of whom are dying in alcohol-related incidents.

The 1985 Local Option Hearings

The Joint Special Committee on Local Option Laws was created by Senate Concurrent Resolution 23 which specifically mandated that the Committee "hold public hearings in rural communities and...take testimony and collect data on the subject of local option elections on the question of banning possession of alcoholic beverages within a community." In its initial meeting, after considering financial and time constraints, the Committee decided to limit the hearing locations to communities in the western and northern portions of the state. This decision was made because most of the communities that have chosen to take advantage of the present local option law are located in western and northern Alaska.

Alaska communities are extremely diverse, in terms of location and cultural composition. They vary in size from tiny traditional villages to large modern cities. The governmental structures range from home-rule boroughs to tribal councils. Variety also exists in the ways communities regulate alcohol: in some places alcohol is freely available, in others its availability is regulated, and in still others, "extralegal" means are used to prohibit alcohol entirely.

In holding the hearings, the Committee attempted to visit a representative sample of Alaska communities in order to learn as rich as possible about the problems faced by each. The hearings lasted approximately three hours in each community, and over 200 people participated by providing oral testimony. Written testimony was accepted from those people unable to testify in person.

Contact was made with political leaders, health professionals, representatives of the legal system, residents of neighboring villages, and other interested persons in each community in advance of the Committee hearing. The contacts were made to ensure full participation in the hearing process, and were supplemented by newspaper and radio advertising about the hearings. Interpreters assisted the Committee in communities where a substantial portion of the population did not speak English.

A community-by-community summary of a small percentage of the testimony presented during the hearings follows. The

sole purpose of providing partial summaries is to set forth the kinds of problems caused by alcohol abuse in each community. Many other topics were discussed in depth during the hearings, including individual observations on the wisdom of amending the local option law. All of the testimony was relied upon by Committee Members in reaching conclusions about what recommendations for legislation should be made.³² Full transcripts of the hearings have been prepared and made part of the Committee hearing record. To provide some perspective on the enumerated community problems, basic data has been provided about each community in which hearings were held.

Aniak, November 18, 1985

Population:	475
Racial Composition:	72% Yupik Eskimo or Athabascan 27% Caucasian and Other
Community Status:	Incorporated as 2d Class Municipality in 1972
Alcohol Status:	Sale of alcohol is illegal under state local option law; alcohol importation is banned

³²Topics discussed during the hearings included: individual perceptions about whether the local option law has, or has not, reduced the number of alcohol-related problems; whether the social problems with alcohol abuse are of sufficient severity to justify invading the privacy of the home by banning possession of alcohol; enforcement problems with the local option law; search and seizure issues confronted by enforcers of the local option law; the relationship between education and prevention and the occurrence of alcohol-related problems; the relationship between unemployment and alcohol abuse; and the degree to which homebrew creates community problems.

Crime in Aniak is 95% alcohol-related and alcohol is involved in 100% of the violent crimes (assaults, murders and sexual assaults). There is an average of three to five assaults in Aniak a month. Very few women are beaten where alcohol is not involved. Of the clients at the Aniak Counseling Center, 95% are referred by the court after having been charged with an alcohol-related crime. Most are single males between the ages of 23 and 35-45.

Deaths in the Aniak area in the last few years have almost all been related to alcohol. In the past year and four months, there have been five alcohol-related deaths in Aniak alone.

Children of alcohol abusers suffer problems with their schooling. They do not get enough sleep at night and do not get their homework done because of parents drinking and partying in the home. Children of drinkers take over parental chores and care for younger siblings. Almost all cases of child abuse and neglect involve alcohol abuse. Many children of drinkers suffer from malnourishment, and some have health problems caused by mothers drinking during pregnancy.

In the villages surrounding Aniak, over 60% of the people drink to the point where they cause problems for themselves and other people. More juveniles drink in the villages than in Aniak, perhaps because baby-sitters are not

used in the villages, and children are taken with parents to drinking parties.

Akiachak, November 18, 1985

Population:	438
Racial Composition:	91% Yupik Eskimo 9% Caucasian and Other
Community Status:	Incorporated as 2d Class Municipality in 1974 ³³
Alcohol Status:	Both the sale and importation of alcohol are illegal under an ordinance established by the I.R.A. Council ³⁴

Alcohol has been an ongoing problem for Akiachak, and for the region, for several decades. It is the number one cause of death for native people. All the major crime and family problems in Akiachak are related to alcohol.

Many people have committed suicide while intoxicated; others have gotten drunk, disappeared and have never been found. Within the last year, the deaths of three people in Akiachak have been alcohol-related.

³³Although Akiachak was incorporated as a second class city in 1974, the community has effectively, although not legally, dissolved the municipality and has turned its governmental responsibilities over to the I.R.A. Council. The state Local Boundary Commission has refused to approve a petition for dissolution of the Akiachak municipal government and this refusal is currently the subject of active litigation in the Bethel Superior Court.

³⁴State law does not recognize the validity of Akiachak's ordinance prohibiting the sale and importation of alcohol despite the approval of the ordinance by the I.R.A. Council. Akiachak has not held a local option election under state law.

Specific alcohol-related problems in Akiachak include: accidents resulting from people handling firearms and other dangerous instruments when they are drinking; children being sexually abused; and fighting within families.

Witnesses from Kwethluk attending the hearing stated that the alcohol-related problems in Kwethluk are the same as those in Akiachak. Many people in Kwethluk have been prosecuted for committing alcohol-related crimes, including serious assaults and homicides.

Emmonak, November 19, 1985

Population:	567
Racial Composition:	91% Yupik Eskimo 9% Caucasian and Other
Community Status:	Incorporated as 2d Class Municipality in 1969, maintains Active I.R.A. Council
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1981 under state local option law

Alcohol is a problem in Emmonak. The majority of crimes are alcohol-related. It is rare that a serious crime, such as sexual assault or homicide, occurs without the involvement of alcohol. There are alcohol-related deaths, drownings and suicides. Women are beaten and become rape and incest victims because of alcohol in the home and in the village.

Children of alcohol abusers have both physical and emotional problems. They come to school late, sleepy, and embarrassed because their parents have been drinking. Children of drinkers follow in their parents' footsteps by

using and abusing alcohol. As a result, there are young people from Emmonak in jail for alcohol-related crimes, including rape and sexual abuse.

Bootleg whiskey costs \$100 a bottle in Emmonak. When people spend their money on alcohol, less cash is available to provide for the needs of the rest of the family. Food and clothing can not be purchased for the children of people who spend their cash on liquor.

Alcohol has a ripple effect throughout the entire community. Drinkers create problems for people that work in offices, and people that run businesses. Neither the village corporation, nor the city government, can function when it is being run by people abusing alcohol.

Toksook Bay, November 19, 1985³⁵

Population:	333
Racial Composition:	94% Yupik Eskimo 6% Caucasian and Other
Community Status:	Incorporated as 2d Class Municipality in 1972, maintains active I.R.A. Council
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1981 under state local option law

Alcohol causes problems in this region. The biggest problem is the number of people dying alcohol-related deaths

³⁵Testimony in Toksook Bay was given by persons from Tununak, Chefornek, Mekoryuk, Kipnuk and Toksook Bay. The summary of testimony includes statements made by persons from each village. All five villages have banned the sale and importation of alcohol under the state local option law.

such as accidents, drownings and murders. Families have been burned out of their homes in alcohol-related fires. Serious crimes are committed by persons under the influence of alcohol.

When young people are drinking in the village, the elders worry and can not sleep. The drinkers cause problems not only for their own family, but also for the entire village by being disruptive and making others feel uneasy.

Alcohol can interrupt critically important subsistence activities. For example, last year two people were shot and wounded in an alcohol-related incident during the time when everyone in the village was at spring fish camp. The families of those who were wounded had to leave fish camp before they had finished getting the necessary amount of fish.

Nunapitchuk, November 20, 1985

Population:	641
Racial Composition:	96.5% Yupik Eskimo 3.5% Caucasian and Other
Community Status:	Incorporated as 2d Class Municipality in 1969, maintains active I.R.A. Council
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1981 under state local option law

Alcohol-related drownings are a particular problem for Nunapitchuk. People also have died in fires, and other accidents that involve alcohol abuse. There are a growing number of such deaths each year, and include the deaths of young adults.

Intoxicated people cause disruption within their families and within their community. When people abuse alcohol, their attitudes change. They do not show respect for elders. Elders become uneasy and fearful, and can not eat or sleep, as a result of concern about the behavior of alcohol abusers.

Problems often arise in the village as a result of persons consuming alcohol in their homes. Innocent people, including children, are hurt by alcohol abusers. Parents are driven out of their houses by adult children getting drunk in the family home. Essential and irreplaceable family tools, such as snowmachines and boat engines, are broken or destroyed by persons under the influence of alcohol.

A witness from Kasigluk testified that the problems with alcohol are not just in one village, but in the entire region.

Bethel, November 20, 1985

Population:	4432
Racial Composition:	50.5% Yupik Eskimo and Athabascan 49.5% Caucasian and Other
Community Status:	Second Class Municipality, incorporated in 1957
Alcohol Status:	Sale of alcohol is prohibited under the state local option law; importation of alcohol is permissible. ³⁶

³⁶In the past two decades, Bethel has vacillated between allowing alcohol to be sold within the community and
(Footnote Continued)

Most of the witnesses testified as representatives of government and social service agencies based in Bethel.

Alaska State Troopers: Most of the violence in the region, and 90% of the crime, is alcohol-related. The problem with alcohol-related violence is "very alarming." The troopers do not have the time, or money, to investigate misdemeanors. There are too many serious felonies that must be investigated.

Of 150 deaths investigated by the troopers in the Bethel area in the past three years, 75 were alcohol-related: 24 were drownings, 11 were suicides and 15 were "very violent, vicious homicides." Despite the comparatively low population in the detachment, the number of assaults was higher than everywhere in the state except Anchorage, as shown in Table 1, using figures provided by the troopers. There are comparatively few burglaries in the region. However, the burglaries that are committed are done with the intent to steal alcoholic beverages, or to secure a warm place to make homebrew. At least one murder was committed by a person after he had broken into his victim's house to steal alcohol.

(Footnote Continued)

prohibiting the distribution of alcohol. A recent ballot measure that would have allowed the sale of alcohol was defeated by the voters. A separate vote to ban the importation of alcohol also failed.

TABLE 1

Criminal offenses by Trooper Detachment: FY84-85

	<u>Southeast</u>	<u>Anchorage</u>	<u>Kenai Chain Kodiak</u>	<u>Bethel Nome Kotzebue</u>	<u>Fairbanks</u>
Homicide	1	7	6	8	4
Rape	11	54	23	38	24
Robbery	3	13	8	1	10
Assault	208	364	293	333	260
Burglary	244	718	302	150	385
Larceny	557	220	361	78	606
Auto Theft	123	220	109	24	130
Arson	8	9	5	11	11
TOTALS	1155	2474	1107	643	1430

Bethel Police Department: In 1984, the Bethel Police Department investigated 18 deaths; the majority were homicides and all but one was alcohol-related. Assaults and sexual assaults were also a problem. Since an aggressive policy of picking up drunks under the protective custody statute has been instituted, these numbers have decreased dramatically. In 1985, there have been only three death investigations. Although all were alcohol-related, two were accidental deaths and one was a suicide.

Of all Bethel police cases in 1985, 56% were alcohol-related. Police officers responding to calls for assistance in private residences accounted for 39% of the police activity; 90% of these cases were alcohol-related.

Of cases involving criminal acts, 80-90% were alcohol-related. Assaults and sexual assaults were 99% alcohol-related.

Bethel District Office of Probation and Parole: Of the 139 probationers or parolees who were under supervision in November 1985, 92% were native, 6% were Caucasian and 2% were black, with 18% living in Bethel and 82% living in 50 different remote villages. The crimes for which offenders were under supervision were: 40% assaults, 28% sexual assault or abuse, 21% burglary or theft, 6% homicides, 4% alcohol or drug offenses, and 1% all other offenses. In 96% of the cases alcohol was involved in the underlying offense.

The Bethel office has one of the highest parole and probation revocation rates in the state. At least 98% of the revocations are alcohol-related. Nine out of ten offenders under supervision come from homes where there has been chronic substance abuse by one or both parents.

Yukon-Kuskokwim Delta Regional Hospital: Bethel has the largest and busiest Indian Health Service hospital outside of Anchorage. The second most frequent cause for admission to the hospital is "accidents and injuries," including rapes, assaults, three-wheeler accidents, suicide attempts, and frostbite. Approximately 70-80% of the accidents and injuries are directly alcohol-related. Other medical problems directly related to alcohol are child abuse, child neglect and sexual abuse.

Elders suffering from mental anguish is another problem that is frequently encountered at the Bethel hospital. Elders come into the hospital with vague complaints - aches and pains that do not fit into any recognized syndrome. After lengthy discussions with the patient, the underlying cause of the complaints usually turns out to be concern about a son or daughter who is drinking.

Southwestern Council for the Prevention of Child Sexual Abuse: Statistics relating to child sexual abuse in the Bethel area have been compiled since 1981. In 1981, there were 17 cases of child sexual abuse reported; in 1982, there were 27 cases; in 1983, there were 86 cases; in 1984, there were 121 cases; from January 1 to June 30, 1985, there were 130 cases; and from July 1 to October 31, 1985, there were 60 cases reported. These figures reflect only those cases that were processed through the legal system. Of the reported cases, alcohol was involved at least 70% of the time. The percentage of cases that are alcohol-related appears to be growing. In most incidents, the offender is someone known to the victim.

District Attorneys Office: Alcohol is intimately related to virtually every criminal case in the Yukon-Kuskokwim Delta. It is also intimately related to the vast majority of social service cases.³⁷

³⁷In explaining the effect of alcohol on the
(Footnote Continued)

Tundra Women's Coalition: In 1984, TWC provided direct client services to 697 people. Of these, 316 were experiencing physical or emotional abuse and 36 were experiencing sexual abuse. The TWC shelter provided a total of 4,456 nights of protection to 221 women and 259 children. Approximately one-half of these women identified a village in the Delta area as their permanent place of residence. Alcohol was involved in the cases of approximately 92-95% of the abused clients served through the TWC program. The percentage of cases that were alcohol-related stayed at the same level in 1985.

Bethel Group Home: The Bethel Group Home is a treatment facility for emotionally disturbed or delinquent boys. Of the clients served by the Group Home, 85% either had an active alcohol problem at the time they entered the program, or at some time in the past. Ninety-five percent of the boys with a background of abusing alcohol came from families who had at least one member with an alcohol

(Footnote Continued)

Yukon-Kuskokwim region, the District Attorney used the following analogy: "[Alcohol] in a lot of villages is a toxic material. A toxic material that is shortening life spans, that is causing deaths, either in the form of accidents or homicides, that is severely impacting people's health, that is destroying families. If we had a toxic material that was being dumped into the water supply and that was being consumed by the people and causing those effects, we wouldn't have any hesitation to say, 'Whatever needs to be done to stop that is going to be done.' Alcohol for some reason is viewed differently... [But] the poison is killing people, and I don't think that just because it has the name alcohol or liquor that we can ignore the toxic character of the substance."

problem. Eighty percent of the boys had an immediate relative die an alcohol-related death and 30% of the deaths were suicides. Seventy percent of the residents had committed an act of violence while under the influence of alcohol. Eighty-five percent of all residents had been the victim of a violent crime within the family. Eighty percent of the boys came from families with active domestic violence problems.

Togiak, November 25, 1985

Population:	513
Racial Composition:	Unknown; the majority of the population is Yupik Eskimo
Community Status:	Incorporated as 2d Class Municipality in 1969, maintains active I.R.A. Council
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1982 under state local option law

In Togiak, close to 100% of the police cases are alcohol-related. The police respond to at least ten calls a week. Approximately half of the police calls are for problems with juveniles that are alcohol-related. There are serious problems with alcohol-related domestic violence in Togiak.

There have been a number of deaths and drownings where alcohol was an underlying cause. Alcohol has been involved in suicides in the village. People have frozen to death while intoxicated. In the winter, there are problems with people travelling to Dillingham on snowmachines to buy liquor and getting lost between Togiak and Dillingham.

Every year searchers need to be sent out to look for people who have gotten lost.

There are people in the community with very serious drinking problems. When parents drink, children stay with grandparents for two to three days, or until the parents stop drinking. When parents are drinking heavily and spending all their money on alcohol, there often is no money left to buy food and winter clothing for the children.

When people drink and cause trouble in small villages like Togiak, everyone in the community is disturbed. Neighbors living near alcohol abusers may be kept awake the entire night.

Dillingham, November 26, 1985

Population:	1656
Racial Composition:	57% Yupik Eskimo 43% Caucasian and Other
Community Status:	Incorporated as 1st Class Municipality in 1963
Alcohol Status:	Both the sale and importation of alcohol are allowed

The alcohol problems in the Bristol Bay region are devastating, with the worst devastation occurring in the villages. Alcohol is not just making people miserable, it is obliterating a culture.

Approximately 50% of all police cases are alcohol-related each year. During the summer, alcohol is involved in as high as 90% of the cases. Of the violent crimes committed in Dillingham, 95% were alcohol-related. Alcohol-related charges include domestic violence, assaults

and shoplifting. There are many cases of driving while intoxicated and alcohol-related accidents. In recent years, alcohol has contributed to the deaths of three people in motor vehicle accidents.

In the first ten months of 1985, there were 404 people picked up and placed in protective custody in Dillingham. Of these, 85-90% were from villages. In the same period of time, the police responded to 2097 alcohol-related complaints.

Between January and November 1985, 674 cases were referred to the local district attorney for prosecution. Of these cases, 209 people were charged with fish and game violations. Alcohol was involved in 400 of the remaining 465 cases, including 85 cases of driving while intoxicated, 62 cases of domestic violence (all were alcohol-related), 30 cases of misconduct involving weapons (28 were alcohol-related), and 81 cases of minors consuming alcohol or illegal liquor importation.

A large number of people in the region die from alcohol-related causes such as drowning, freezing to death or accidents. Alcohol is directly involved in at least 50-60% of the deaths. In addition, long-term medical problems resulting from alcohol abuse cause the deaths of local residents.

The Dillingham agency that provides services to victims of domestic violence and sexual assault reported that alcohol is definitely involved in 60% of the cases handled by the agency, and may be involved in an additional 26% of

the cases. Many of the agency clients are from dry villages in the Bristol Bay region. Some are villagers who abuse alcohol and are sexually assaulted while in Dillingham; others are victims of alcohol-related domestic violence that has occurred in the village. Alcohol-related domestic violence is a serious problem in the villages.

Counselors travelling to rural communities, and working with juveniles, see children with serious alcohol problems. Children as young as six years old are starting to drink. Based on information received from both children and teachers in the Bristol Bay region, it appears that sixty percent of all children under ten have been drunk at least once, all children have tasted liquor by the time they are ten years old, and those over ten drink once a week.

Other children have parents who abuse alcohol, and these children are being emotionally and spiritually harmed. They stay at school as long as possible because they are afraid to go home and face violent family situations. Babies with fetal alcohol syndrome are born at the local hospital and their numbers appear to be increasing.

Anchorage, December 9, 1985

Population:	248,263
Racial Composition:	85.2% Caucasian 5.3% Black 5.1% Native 4.3% Other
Community Status:	Unified as a Home Rule Municipality in September 1975
Alcohol Status:	Both the sale and importation of alcohol are allowed

Testimony in Anchorage was given primarily by persons discussing the policy implications of amending the local option law, and by persons from rural communities for whom it was convenient to testify in Anchorage. The testimony of rural residents has been incorporated into the summary of testimony from the community closest to that in which the person resided.

Shishmaref, December 10, 1985

Population:	393
Racial Composition:	93% Inupiat Eskimo 7% Caucasian and Other
Community Status:	Incorporated as 2nd Class Municipality in 1969, maintains active IRA Council
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1983 under state local option law

In Shishmaref, between 85% and 95% of all police cases are alcohol-related. All of the felonies are alcohol-related and included assaults with weapons and sex crimes.

Within families, alcohol precipitates incidents of domestic violence and family crisis. The use and abuse of alcohol is threatening the structure of the extended family. Children and grandchildren in some families are either excluded, or exclude themselves, from extended family activities in an effort to be protected from alcohol abusers.

Nome, December 11, 1985

Population:	3861
Racial Composition:	61% Inupiat and Siberian Yupik Eskimo
	39% Caucasian and Other
Community Status:	Incorporated as 1st Class Municipality in 1901
Alcohol Status:	Both the sale and importation of alcohol are allowed

Alcohol is a significant contributing factor in 80% of the crimes in the Nome region, and 95% of the violent crimes (homicides, serious assaults, and sexual assaults). Incidents of probation violations are 95% alcohol-related. Much of the property crimes motivated by a desire to get alcohol. Homes are broken into by persons intending to steal liquor, or money is stolen specifically to enable the thief to buy alcoholic beverages.

Children in need of aid proceedings handled by the Nome District Attorney's Office are generally brought for one of two reasons: either parents are drinking or children are sexually abused. There is an overlap between the two categories of cases because alcohol contributes to the phenomenon of child sexual abuse. Drinking parents may neglect or physically abuse their children.

There is a pattern of children first entering the system as children in need of aid because their parents are abusing alcohol, next being charged with alcohol-related acts of juvenile delinquency, and finally, when they become adults, being sent to jail for alcohol-related crimes. Children from families with severe alcohol abuse problems

appear to have a high probability of becoming involved in the criminal justice system later in life. Juvenile delinquency cases are alcohol-related in the same percentages as adult crime.

Of clients that begin alcohol treatment in Nome, very few are from families that are comprised of healthy, sober people. Each person that comes into treatment affects, and is affected by, many other people.³⁸ 99.9% of clients entering treatment have been the victims of alcohol-related physical or sexual abuse.

³⁸ A Nome alcohol counselor related the following example of how the abusive use of alcohol hurts children: "I went into a community...I'm not sure if the alcohol came in on the plane that I was on or if it came on another plane that came in that day. There were two sober adults for the entire week that [I was] in that particular village. That was myself and...[a] teacher...From watching the kids from day one to day five, it was just incredible...how the behaviors changed in those children. The children were from kindergarten up to about seventh grade. There were maybe nine or eleven children, total, in that school. By the second day two of the children had started bedwetting, and their clothes were not changed through the entire week I was there...On day three they started falling asleep in the classroom, and the teacher just let them because they were up during the night. It was either the last day or that Thursday that one of the parents came into the school...[The] eleven kids [were working] in different areas [of the room]. The parent came in and it was immediate: all eleven kids went into different kinds of behavior. About three of them stood up, [put their hands over their ears, and started rhythmically rocking back and forth],...two of them hid under tables and chairs...And that is [alcohol] affecting other people."

Gambell, December 11, 1985

Population: 441
Racial Composition: 96% Siberian Yupik Eskimo
4% Caucasian and Other
Community Status: Incorporated as 2nd Class
Municipality in 1963, maintains
active IRA Council
Alcohol Status: Both the sale and importation of
alcohol have been banned since
1981 under state local option law

Approximately 120 criminal cases are filed yearly in Gambell, and 90% are alcohol related. Most charges are brought for either assault and battery or importation of alcohol in violation of the local option law. Only three to four felonies are committed yearly, and are mostly assaults with dangerous weapons. All of the felonies are alcohol-related.

All of the cases handled by the magistrate in the past 18 years involving children being placed in state custody on an emergency basis were alcohol-related. In cases where juveniles were charged with violating the law, alcohol was involved 99% of the time.

Alcohol abuse directly interferes with the education of young people. Students come late to class and are not alert. Drinking adults keep the youngsters awake so they are tired when they come to school. Other children drink because they have been around adults who are using alcoholic beverages. It is hard to teach children with alcohol in their bloodstream.

There are more alcohol problems in the spring and early fall in Gambell than in the summer, late fall and winter.

People do not drink when there is hunting or whaling to be done, or in the fall when the weather starts getting cold and money is needed to pay for fuel.

Selawik, December 12, 1985

Population:	545
Racial Composition:	Unknown; the majority of the population is Inupiat Eskimo
Community Status:	Incorporated as 2nd Class Municipality in 1977
Alcohol Status:	Both the sale and importation of alcohol have been banned since 1983 ³⁹ under state local option law

If alcohol were not a problem in Selawik, there would be no need for a magistrate. Of the 82 people brought before the magistrate in 1985, all had been drinking at the time of committing the offense with which they were charged.

The police respond to approximately 40 calls a week. On the average, 30 of the calls are for alcohol-related incidents. Felonies are committed 3 to 4 times a week, and all of the felonies are alcohol-related, as are all incidents involving violence. In the recent past, there has been one alcohol-related murder in Selawik. There are a large number of suicides in Selawik, and the surrounding region, and alcohol is involved 94% of the time.

³⁹Selawik has held three local option elections: as a result of the first election, sale and importation were banned; after the second election, importation was allowed; and, in a third election held within months of the vote to allow importation, the community once again voted to ban the sale and importation of alcohol.

Alcohol causes many problems within families, such as domestic violence, child neglect and the breaking up of homes. Children suffer the most from abusive drinking. Some suffer from malnourishment; others need to undergo surgery because they were not properly cared for by drinking parents. Children are left alone when adult family members get drunk. There are more accidents in homes where people drink.

The homes of alcohol abusers are cold, because the cash income is used for alcohol instead of stove oil. A fifth of whiskey costs \$120 in Selawik, and a pint costs \$60.

Witnesses from Ambler and Shungnak attending the hearing testified that both villages have alcohol-related problems similar to those experienced in Selawik.

Kotzebue, December 12, 1985

Population:	2981
Racial Composition:	80% Inupiat Eskimo 20% Caucasian and Other
Community Status:	2nd Class Municipality, incorporated in 1958
Alcohol Status:	Both the sale and importation of alcohol are allowed

Crimes are committed by people because they have had too much to drink 45% of the time in Kotzebue. Someone involved, either the victim or the suspect, has been drinking in 85-90% of the cases. In the region surrounding Kotzebue, 95% of the crimes are alcohol-related. It is very rare that a violent crime is committed without the

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

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

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

Minto, December 16, 1985

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

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

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

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

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

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

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

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

Barrow, December 17, 1985

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

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

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