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

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

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

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

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

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

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

Arctic Village, December 18, 1985

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

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

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

<sup>42</sup>According to Fairbanks District Attorney Harry Davis,  
(Footnote Continued)

Fort Yukon, December 18, 1985

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

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

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(Footnote Continued)

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

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

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

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## The Social Costs of Alcohol Abuse

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

Carl Flynn, Tununak elder

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

Anesia Hoover, Kasigluk elder

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

Tom Lonner, Village Alcohol Control

## Consumption of Alcohol

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

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

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

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

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

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

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

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

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

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

### Medical Consequences

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

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

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

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

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

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

Alcohol-related diagnoses in the Indian Health Service Hospital system are about three times the rates for the entire United States and double the rates for races other than Caucasian. For ages 15 to 44 years, generally years of high productivity, the IHS rate for alcohol-related diagnoses is more than four times that of the total United States. See Table 2.<sup>49</sup>

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<sup>48</sup>Id.

<sup>49</sup>Id. at 8.

TABLE 2

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

| Age at admission  | Alcoholic psychosis |      | Alcoholic dependence syndrome |      | Alcoholic nondependent abuse of alcohol |      | Liver disease |      |
|-------------------|---------------------|------|-------------------------------|------|---|------|---------------|------|
|                   | IHS                 | U.S. | IHS                           | U.S. | IHS                                     | U.S. | IHS           | U.S. |
| All ages          | 11.8                | 2.9  | 35.8                          | 19.7 | 5.8                                     | 1.7  | 6.4           | 1.9  |
| Under 15 years    | 0.0                 | 0.0  | 0.6                           | 0.6  | 0.9                                     | 0.4  | 0.0           | 0.0  |
| 15-44 years       | 19.0                | 3.1  | 50.5                          | 22.6 | 3.6                                     | 2.1  | 8.0           | 1.1  |
| 45-64 years       | 20.1                | 6.3  | 33.2                          | 38.3 | 8.9                                     | 2.3  | 18.9          | 5.2  |
| 65 years and over | 4.9                 | 2.0  | 21.7                          | 13.6 | 4.4                                     | 1.6  | 4.2           | 2.4  |

Source: Indian Health Service, 1982

### Mortality

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

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

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

Alaska has an extremely high rate of death from both voluntary and involuntary acts of violence - including fires, drownings, accidents, suicides, and homicides. Accidents are the leading cause of death in Alaska.<sup>52</sup> The number of accidental deaths in Alaska is over twice the national average: Alaska has 103.5 accidental deaths per 100,000 population, compared to a national rate of 47.9 accidental deaths per 100,000.<sup>53</sup> A large majority of Alaska's accidental deaths are alcohol-related, as seen in Table 3.

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

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

<sup>53</sup>Id. at I-67.

TABLE 3

Mortality Data for Selected Causes of Death in Alaska: 1980-1982<sup>54</sup>

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

Suicide

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

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

<sup>55</sup>Wolfgang Schmidt and Robert Popham, "Alcohol Consumption and Physical Health," 1975.

drinking. Alccholics commit suicide from six to fifteen times more frequently than the general population.<sup>56</sup>

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

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<sup>56</sup> Id.

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

Table 4

Alcohol-related Attempted and Completed Suicides in  
110 Rural Alaska Communities by Race by Sex: 1982-84<sup>58</sup>

| Year | NATIVE    |        |           |     | NON-NATIVE |      |           |     |
|------|-----------|--------|-----------|-----|------------|------|-----------|-----|
|      | Attempted |        | Completed |     | Attempted  |      | Completed |     |
|      | M         | F      | M         | F   | M          | F    | M         | F   |
| 1982 | 3/44      | 37/50  | 17/32     | 3/4 | 2/8        | 1/7  | 2/4       | 0/0 |
| 1983 | 28/39     | 43/58  | 17/22     | 1/2 | 9/16       | 9/17 | 2/3       | 1/2 |
| 1984 | 52/65     | 38/103 | 18/19     | 5/6 | 5/10       | 6/19 | 3/4       | 0/0 |

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

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

<sup>58</sup> Id. at 89.

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

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

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

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

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

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

<sup>61</sup>Id.

<sup>62</sup>Brian L. Kost-Grant, M.D., "Self-inflicted Gunshot Wounds Among Alaska Natives," Public Health Reports, 96:72-78, January-February 1983.

<sup>63</sup>Id. at 77-78.

## Crime

The relationship between alcohol and crime was explained by the head of Alaska's Public Defender Agency<sup>64</sup> during a 1982 Conference on Violence:

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

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

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

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

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

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

The relationship between alcohol and crime was explored by the Alaska Judicial Council in 1980.<sup>67</sup> The Judicial Council gathered data from all ten Superior Court locations in the state. Information contained in felony presentence reports relating to offender drug and alcohol abuse, in the period of time from July 1976 to July 1979, was analyzed. As reflected in Table 5, the Judicial Council data showed a strong relationship between alcohol and crime. The correlation was highest in the category of violent crime.

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

TABLE 5

Frequency of Use of Drugs and Alcohol  
At Time of Offense for Four Offense Classes<sup>68</sup>

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

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

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<sup>68</sup>Id.

<sup>69</sup>Alaska Judicial Council, "Alaska Felony Sentences: 1980," December 1982.

TABLE 6<sup>70</sup>

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

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

\*Percents indicate proportion of all cases within class.

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<sup>70</sup>Id.

TABLE 7<sup>71</sup>

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

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

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

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

<sup>71</sup>Id.

<sup>72</sup>Alaska Judicial Council, "Alaska Misdemeanor Sentences: 1981," December 1983.

TABLE 8

1981 Misdemeanors  
Breakdown by Community of  
Alcohol and/or Drug Use at Time of Offense<sup>73</sup>

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

<sup>73</sup>Id.

In addition to these statewide studies, the relationship between alcohol and criminal activity has been evaluated in at least one specific region of the state. Tables 9 and 10 show that most incidents of criminal activity in the mid-Kuskokwim area of southwest Alaska were found to be alcohol-related for study years 1979 and 1981-1982.<sup>74</sup>

TABLE 9

Total and alcohol-related incidents by village: 1979

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

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

TABLE 10

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

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

Families

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

Domestic Violence

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

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

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

The domestic violence problems linked to alcohol were not limited to incidents of spouse abuse: child abuse and parent abuse<sup>77</sup> were also found to be common in the villages studied. With two exceptions, all cases of child abuse discovered by the researchers involved alcohol. In addition, child neglect was found to be characteristic of households containing problem drinkers. Parent abuse appeared to be 100% alcohol-related.

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

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

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

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

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

TABLE 11<sup>79</sup>

Proportion of people in spouse abusing relationships who are problem drinkers

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

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

\*\*One abuses her husband.

TABLE 12<sup>80</sup>

Violence among problem drinkers

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

<sup>79</sup>Id. at 49.

<sup>80</sup>Id. at 53.

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

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

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

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

Other conclusions of significance reached by the Anchorage researchers are:

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

#### Alcohol and Pregnancy

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

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

<sup>83</sup>Id.

<sup>84</sup>Id.

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

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

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

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

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

### Children of Alcoholics

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

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

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

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

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

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

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

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

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

### Economic Costs

The economic cost to society from alcohol abuse is high. Various methodologies have been used for measuring the cost of alcohol abuse to the State of Alaska in dollars. One study concluded that the total cost for fiscal year 1984, including direct and indirect costs, was \$195,500,000.<sup>90</sup> Table 13 summarizes the specific figures used in arriving at this total.

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

TABLE 13

Costs to the State of Alaska from Alcohol Abuse; 1984

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

Another analysis of the economic cost of alcohol abuse has been prepared by the State Office of Alcoholism and Drug Abuse (SOADA). The figures developed by SOADA indicate that the cost of alcohol abuse in Alaska is \$185,294,061.<sup>91</sup> Since the state gains \$14,868,433 in income from alcohol excise taxes, the net loss to the state under the analysis prepared by SOADA is \$170,425,628.<sup>92</sup> Table 14 summarizes the specific figures used in arriving at this total.

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

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

TABLE 14

Selected Computations of Alcohol Related Costs: 1984

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

Legal Issues Presented by Proposal to  
Ban Possession of Alcohol

Federal Law on Regulating Alcohol

The Twenty-first Amendment to the United States Constitution<sup>93</sup> gives states the power to absolutely prohibit, or to limit and regulate, traffic in intoxicating liquors within their borders.<sup>94</sup> In Ziffrin, Inc. v. Reeves,<sup>95</sup> the Court determined that a state may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained, or the use to which they may be

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

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

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

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

<sup>95</sup>308 U.S. 132 (1939).

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

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

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

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

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<sup>96</sup> Id. at 108.

<sup>97</sup> Id.

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

<sup>99</sup> Ravin v. State, 537 P.2d 494, 500 (1975).

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

## State Law on Regulating Alcohol

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

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

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(Footnote Continued)

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

<sup>101</sup>See History of Alcohol Regulation in Alaska, supra at 13.

<sup>102</sup>11 Ak. Rpts. 556, 562 (Ak. Dist. Ct. 1948).

<sup>103</sup>349 P.2d 585 (Alaska 1960).

<sup>104</sup>Boehl v. Sabre Jet Room, 349 P.2d at 589.

<sup>105</sup>Id. at 589.

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

#### Privacy Issues

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

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<sup>106</sup> Id.

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

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

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

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

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

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

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

<sup>109</sup> Id. at 504.

<sup>110</sup> Id.

<sup>111</sup> Id. at 511.

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

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

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<sup>112</sup>574 P.2d 1 (1978).

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

<sup>114</sup>State v. Erickson, 574 P.2d at 22 n. 144.

<sup>115</sup>687 P.2d 332, 338 (Alaska App. 1984).

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

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

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<sup>116</sup>Id.

<sup>117</sup>State v. Harrison, 687 P.2d at 338.

<sup>118</sup>Id.

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

#### Possession by Consumption

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

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

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<sup>119</sup> Id. at 338-39.

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

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

<sup>121</sup> A.S. 47.37.010 et seq.

continuum of treatment so they may lead normal lives as productive members of society.<sup>122</sup>

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

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

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

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<sup>122</sup>A.S. 47.37.010.

<sup>123</sup>531 P.2d 1262 (Alaska 1975).

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

<sup>125</sup>Id. at 1271.

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

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

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

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<sup>126</sup>Id.

<sup>127</sup>Id.

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

<sup>129</sup>Id. at 9.

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

### Criminal, Civil and Quasi-criminal Penalties

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

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

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

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

<sup>132</sup>State v. O'Neill Investigations, 609 P.2d at 525.

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

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

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

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<sup>133</sup>State v. Clayton, 584 P.2d at 1113.

<sup>134</sup>471 P.2d 386, 402 (Alaska 1970).

<sup>135</sup>Id.

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

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

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

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(Footnote Continued)  
1961.

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

<sup>139</sup>State v. Clayton, 584 P.2d 1111 (Alaska 1978).

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

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

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

Collateral Legal Issues<sup>142</sup>

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

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

<sup>143</sup>See also Alaska Constitution, article 1, section 9.

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

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

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

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

#### Committee Findings and Conclusions

##### Findings:

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

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

<sup>146</sup>Camara v. Municipal Court, 387 U.S. 523 (1967); Marshall v. Barlow's Inc., 426 U.S. 307 (1978).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions:

[The alcohol problem] is more serious than any war that's going on in the world. Wars have purpose but alcohol that abuses young children and all kind of thing, it is totally no good to anybody.

Neil Charlie, Minto elder

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

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

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

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

## Appendix A

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

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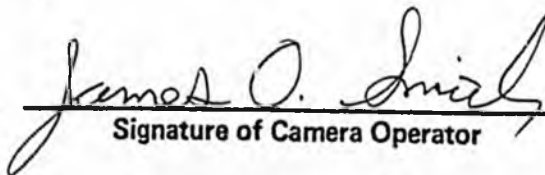
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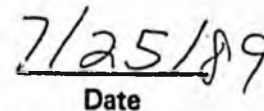


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May, 1986

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Jeanie Henry

*House Judiciary*

*4/2/86*

*1:30 pm*

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 702  
 Title: An Act relating to insurance

**FISCAL DETAIL**

Agency Affected: Commerce & Economic Development  
 BRU: Insurance

Sponsor: Rep. Taylor  
 Requester: House Jud.  
 Date of Request: April 3, 1986

Components: Operations

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

| OPERATING              | FY 86      | FY 87      | FY 88      | FY 89      | FY 90      | FY 91      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |

|                |                  |            |            |            |            |            |
|----------------|------------------|------------|------------|------------|------------|------------|
| <b>CAPITAL</b> | <b>100,000.0</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |
|----------------|------------------|------------|------------|------------|------------|------------|

|                |            |            |            |            |            |            |
|----------------|------------|------------|------------|------------|------------|------------|
| <b>REVENUE</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |
|----------------|------------|------------|------------|------------|------------|------------|

**FUNDING: (Thousands of dollars)**

|               |                  |            |            |            |            |            |
|---------------|------------------|------------|------------|------------|------------|------------|
| GENERAL FUND  |                  |            |            |            |            |            |
| FEDERAL FUNDS |                  |            |            |            |            |            |
| OTHER         | 100,000.0        | -0-        | -0-        | -0-        | -0-        | -0-        |
| <b>TOTAL</b>  | <b>100,000.0</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |

**POSITIONS:**

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULLTIME  | -0- | -0- | -0- | -0- | -0- | -0- |
| PARTTIME  |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

**ANALYSIS:** Attach a separate page if necessary.

Prepared by: John L. George, Director  
 Division: Division of Insurance

Phone: 465-2515  
 Date: April 3, 1986

Approved by Commissioner: Loren H. Lounsbury  
 Agency: Commerce and Economic Development

Date: April 3, 1986

Distribution (by Agency preparing fiscal note):

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