

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988  
5322 SJUD SB 383 - SB 384 8672

89



STATE OF OREGON

INTEROFFICE MEMO

TO: Catherine Webber  
House Judiciary Committee

DATE: April 8, 1987  
04098702C

FROM: Gil Bellamy, J.B.  
Administrator

SUBJECT: 13 to 18 Year Old Driver's License Denial Law

The 13-18 year old driver's license denial law took effect October 15, 1983. Under the terms of this law, a person between the ages 13 and 18 who is found to have violated alcohol or drug laws loses their privilege to drive for one year or until age 17 whichever is longer. A second offense results in a denial for one year or until 18, whichever is longer. A judge can end the denial period after 90 days.

This law was proposed by school officials, particularly Wes Smith (967-4515), to reduce the consumption of alcohol and other drugs by students. The law was backed by traffic safety advocates because juveniles who illegally consume alcohol and other drugs inevitably either drive while under the influence or aid and abet other young people in doing so.

This law is virtually cost-free and has been a more effective deterrent than the sponsors of the legislation hoped. The driver's license is the equivalent of a right of passage in America and is highly prized.

Since the law took effect during 1983, a relevant evaluation is to compare 1982 with 1984 data. The following table contains the number of ARRESTS for juveniles (persons under 18) for offenses which result in a denial of the driver's license.

<u>Offense Category</u>	<u># Juveniles Arrested</u>		<u>% Change '82-'84</u>
	<u>1982</u>	<u>1984</u>	
DUI	456	378	-17%
Open Container	373	205	-45%
All Liquor Law Violations	4,496	3,970	-12%
All Drug Violations	969	755	-22%

There were 1,760 driver's license denials for alcohol offenses in 1986. Of this number, 207 were second denials, 27 were third denials, 4 were fourth denials and one person was denied a driver's license five times.

GB:cek

bcc: Wes Smith

law and those people apparently is not the same, and in each of those cases they said, 'In this case, the trial judge abused his discretion.' So I would suggest that you be very optimistic.

There was no discretion for the trial court to abuse in this instance. The judgment should have been set aside as having been granted in violation of ORCP 69B(2), which provides, in part:

"If the party against whom judgment by default is sought has appeared in the action or if the party seeking judgment has received notice that the party against whom judgment is sought is represented by an attorney in the pending proceeding, the party against whom judgment is sought (or, if appearing by representative, such party's representative) shall be served with written notice of the application for judgment at least 10 days, unless shortened by the court, prior to the hearing on such application."

In *Denkers v. Durham Leasing Co.*, 299 Or 544, 704 P2d 114 (1985), the Supreme Court held that there is no notice requirement for the entry of an order of default. That entry is a purely ministerial act, which may be done by the clerk. The ten-day notice to a represented party required by ORCP 69B(2) is a notice of an application for a judgment by default, which presupposes an existing order of default. See also *Morrow Co. Sch. Dist. v. Oreg. Land and Water Co.*, 78 Or App 296, 716 P2d 766 (1986).

Here, defendant's motion was to set aside the judgment, not the order of default. The motion was well taken because of plaintiff's failure to give the notice required by ORCP 69B(2) after an order of default is taken. Entry of the judgment was therefore erroneous, and the court should have set it aside.

Reversed and remanded.

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,

Respondent,

v.

PAULA MARIE DAY,

Appellant.

(M84-1158; CA A39279)

84 Co App 241  
733 P2d 937

Appeal from District Court, Douglas County.

Robert H. Anderson, Judge.

Argued and submitted September 11, 1986.

Philip M. Suarez, Roseburg, argued the cause and filed the brief for appellant.

Carol Munson, Assistant Attorney General, Salem, argued the cause for respondent. With her on the brief were Dave Frohnmayer, Attorney General, and Virginia L. Linder, Solicitor General, Salem.

Before Buttler, Presiding Judge, and Warren and Rossman, Judges.

ROSSMAN, J.

Affirmed.

Reconsideration Denied 04/24/87

Pet'n. for Rev'n. by Cuyler

Denied 06/16/87

## ROSSMAN, J.

Defendant appeals her conviction for driving while suspended, contending that the statute under which her driver's license was suspended is unconstitutional under the Oregon Constitution. She was found to have violated ORS 471.430, which prohibits persons under 21 years of age from possessing alcohol. Because she was 17 years old,<sup>1</sup> her driver's license was suspended pursuant to *former* ORS 482.593(1),<sup>2</sup> which provided:

"Whenever a person who is 17 years of age or younger, but not younger than 13 years of age, is convicted of any offense described in this subsection or determined by a juvenile court to have committed one of the described offenses, the court in which the person is convicted shall prepare and send to the Motor Vehicles Division, within 24 hours of the conviction or determination, an order of denial of driving privileges for the person so convicted. This section applies to any crime, violation, infraction or other offense involving the possession, use or abuse of alcohol or controlled substances."

Defendant first contends that that statute violates Article I, section 20, of the Oregon Constitution:

"No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

She does not challenge the legal authority of the legislature to pass legislation controlling alcohol possession or motor vehicle operation, *see State v. Freeland*, 295 Or 367, 667 P2d 509 (1983), but challenges the content of the statute as constituting a constitutionally impermissible classification. She contends that it violates Oregon's Privileges and Immunities Clause, either because its classification is a "suspect class" or because the statute impinges on a "fundamental right," either of which requires the court to apply the strict scrutiny test.

We turn first to defendant's suspect class argument. Here, the state has granted the privilege of driving, which,

<sup>1</sup> In *State ex rel Juv. Dept. v. White*, 83 Or App 225, 730 P2d 1279 (1986), we held that *former* ORS 482.593 applied to persons up to their eighteenth birthdays.

<sup>2</sup> *Former* ORS 482.593 was repealed by Or Laws 1983, ch 16, § 475, and replaced by ORS 809.260. Or Laws 1985, ch 16, § 206 (which became effective January 1, 1986, Or Laws 1985, ch 16, § 476).

under Article I, section 20, must be available to all citizens "upon the same terms," unless a denial can be reasonably justified. *Former* ORS 482.593 denies driving privileges (or the ability to apply for the privilege) to persons who are 13 through 17 years old and are guilty of being a minor in possession. The group to whom the privilege is denied is not based on an immutable personal characteristic that can be suspected of reflecting "invidious" social or political premises, *i.e.*, "prejudice or stereotyped prejudgments," and therefore it is not a suspect classification. See *Hewitt v. SAIF*, 294 Or 33, 45, 653 P2d 970 (1982).

Because the classification is not suspect, the question is whether the legislative distinction "bears a rational relationship to some legitimate state interest." *Ritchie v. Board of Parole*, 35 Or App 711, 717, 583 P2d 1 (1978), *adhered to as modified* 37 Or App 385, 587 P2d 1036 (1978). See *Olsen v. State ex rel Johnson*, 276 Or 9, 19, 554 P2d 139 (1976). We will not hold it invalid "if any state of facts reasonably may be conceived to justify it." *Brown v. Portland School Dist. #1*, 48 Or App 571, 576, 617 P2d 665 (1980), *rev'd on other grounds* 291 Or 77, 628 P2d 1183 (1981).

The legislative history reveals that the law was intended to meet two goals: deterrence of drug and alcohol possession and use among young people and promotion of highway safety. Both goals are legitimate. The legislature considered the sanction appropriate to meet these goals because of the lack of other meaningful penalties for the group and the recognition that driving is a privilege young people do not want to lose. We hold that *former* ORS 482.593 is rationally related to legitimate state interests.

As a separate challenge, defendant argues that the ability to drive is a "fundamental right" and that, under Article I, section 20, any infringement of that right must be subjected to strict scrutiny. This federal "fundamental rights" analysis does not apply to privileges and immunities challenges under the Oregon Constitution. In *Olsen v. State ex rel Johnson*, *supra*, the court instead balanced the interest involved against the state's justification for denying the interest to a certain group.

Thus, we balance the privilege of driving against the justification for denying it to persons 13 to 17 years of age who

are convicted of minor in possession. We conclude that the interest in possessing an operator's license, although an important entitlement, is outweighed by the state's goals of promoting highway safety and deterring drug and alcohol possession and use by those between the ages of 13 and 17. Accordingly, we hold that *former* ORS 482.593 does not violate Article I, section 20.

Defendant also argues that the statute violates Article I, section 16, of the Oregon Constitution, which provides in pertinent part:

"Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense."

She contends that the license suspension penalty is out of proportion to other penalties for more serious conduct. Juveniles are subject to legal consequences in the juvenile system, including detention or other loss of personal freedom, for misconduct that would not constitute a crime if committed by an adult, *e.g.*, the status offense of being a runaway. A loss of driving privileges for conviction of minor in possession is not a disproportionate penalty when compared to the loss of liberty that can be imposed for other offenses.<sup>3</sup>

Affirmed.

<sup>3</sup> Defendant also contends that the statute violates Article I, section 16, because the penalty is not related to the offense. It is.

Michael B. PRAETE, Movant,

v.

COMMONWEALTH of  
Kentucky, Respondent.

Jon T. EMNETT, Movant,

v.

COMMONWEALTH of  
Kentucky, Respondent.

Court of Appeals of Kentucky.

Jan. 9, 1987.

On discretionary review from orders of the Circuit Court, Taylor County, William M. Hall, J., and the Circuit Court, Fayette County, Armand Angelucci, J., the Court of Appeals, Wilhoit, J., held that statute relating to revocation of driver's license upon conviction for driving under the influence, by providing for potentially harsher penalties for drivers under age 18, did not violate equal protection, did not constitute special legislation and did not contravene prohibition against cruel and unusual punishment.

Affirmed.

1. Constitutional Law ⇨230.5

Automobile drivers under age of 18 do not constitute suspect class for purposes of equal protection analysis. U.S.C.A. Const. Amend. 14.

2. Automobiles ⇨132

Constitutional Law ⇨230.5

Criminal Law ⇨1213.2(1)

Statutes ⇨77(1)

Statute relating to revocation of driver's license upon conviction for driving under the influence, by providing for potentially harsher penalties for drivers under age 18, did not violate equal protection, did not constitute special legislation and did not contravene prohibition against cruel and unusual punishment. KRS 189A.070, 189A.070(1, 2); U.S.C.A. Const. Amends. 8, 14; Const. § 17.

Phil Allan Bertram, Bertram & Cox, Campbellsville, for movant Michael D. Praete.

Jim M. Alexander, Alexander & Schreiner, Lexington, for movant Jon T. Emmett.

David L. Armstrong, Atty. Gen., Kay Winebrenner, Asst. Atty. Gen., Frankfort, for respondent Com.

Before CLAYTON, HAYES and WILHOIT, JJ.

WILHOIT, Judge.

These two cases are before the Court on discretionary review from an opinion and order of the Fayette Circuit Court and of the Taylor Circuit Court which affirmed orders of the respective district courts. The only question presented is whether KRS 189A.070 is unconstitutional.

Section (1) of KRS 189A.070 provides that if a person 18 years of age or older is convicted of operating a motor vehicle while under the influence of alcohol or other impairing substance, that person's driver's license shall be revoked for six months for the first offense, 12 months for the second, and 24 months for subsequent offenses. Section (2) of the statute provides that if a person under the age of eighteen is convicted of such an offense, his driver's license shall be revoked until he reaches the age of 18 or for the period of time set out in Section (1), whichever is longer.

The movants contend that the statute's disparate treatment of drivers under the age of 18 and those over that age offends both the Constitution of the United States and the Constitution of Kentucky. They maintain that the equal protection guarantee of the Fourteenth Amendment to the United States Constitution is violated because the statute has created a "suspect classification" (drivers who have not yet reached the age of majority), which requires strict scrutiny by the courts, and that there is no rational basis for not imposing the same penalty upon all drivers who are under the legal age for drinking

(21), rather than under 18 for §

[1] We do drivers under suspect class tion analysis.

Retirement v S.Ct. 2562, 49 we must cons ute's treatme unrelated to t imate purpose that the legisl al. See Vanc. S.Ct. 939, 59 1

[2] The op the Fayette Ci as could we v the "rational b as follows:

While it is t the ages of not legally in Kentucky deemed to poses unle Those betw eighteen, c deemed to : may reaso requiring c over the a tantly, the cide that m are entitle those mino lack of mac of alcohol : vehicle upc

For these s not constitut.

(21), rather than singling out those who are under 18 for potentially harsher treatment.

[1] We do not believe that automobile drivers under the age of 18 constitute a suspect class for purposes of equal protection analysis. See *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976); hence, we must consider only whether the statute's treatment of those under 18 is so unrelated to the achievement of any legitimate purpose that we can only conclude that the legislature's actions were irrational. See *Vance v. Bradley*, 440 U.S. 93, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979).

[2] The opinion of Judge Angelucci of the Fayette Circuit Court points out as well as could we why the statute does not fail the "rational basis test." That opinion held as follows:

While it is true that individuals between the ages of eighteen and twenty-one cannot legally purchase alcoholic beverages in Kentucky, under KRS 2.015 they are deemed to be adults for all other purposes unless they are handicapped. Those between the ages of sixteen and eighteen, on the other hand, are still deemed to be minors and the legislature may reasonably regard them as a class requiring closer supervision than those over the age of eighteen. More importantly, the legislature may properly decide that members of the general public are entitled to greater protection from those minors who have demonstrated a lack of maturity in both the consumption of alcohol and the operation of a motor vehicle upon the highways of the state.

For these same reasons the statute does not constitute special legislation in contra-

vention of Section 59 of the Kentucky Constitution. The statute applies equally to all drivers who have not attained the age of majority, and as pointed out by Judge Angelucci, there are distinctive and natural reasons, based upon a consideration of maturity, or rather a lack thereof, for making such a classification. As also pointed out, the classification bears a reasonable relationship to the legislative purpose of protecting public safety. See *Schoo v. Rose*, Ky., 270 S.W.2d 940 (1954). Likewise, the statute does not violate Section 3 of the Kentucky Constitution. See *Markendorf v. Friedman*, 280 Ky. 484, 133 S.W.2d 516, 127 A.L.R. 416 (1939).

Finally, we do not believe that the statute contravenes the prohibition against cruel and unusual punishment found in the Eighth Amendment to the United States Constitution, or Section 17 of the Kentucky Constitution. For one thing, the penalty imposed upon those under 18 does not shock the conscience, neither is it greatly disproportionate to the offense, nor does it go beyond what is necessary to achieve the legislative intent. See *Workman v. Commonwealth*, Ky., 429 S.W.2d 374, 33 A.L.R.3d 326 (1968).

The judgments of the trial courts are affirmed.

All concur.



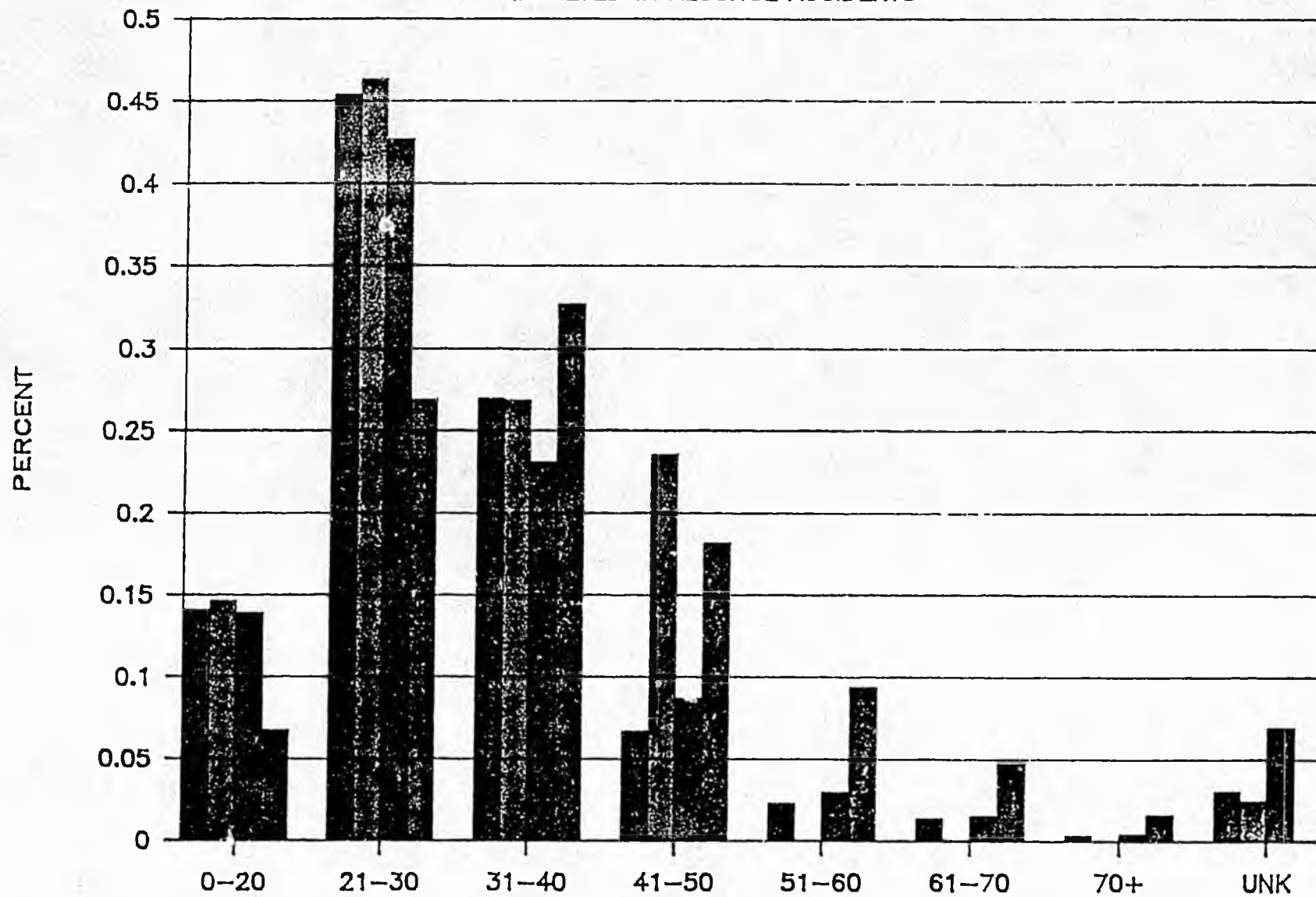
ACCIDENTS BY DRIVER AGE GROUPS

1986

DRIVER AGE	DRIVERS INJURY ACC	DRIVERS FATAL ACC	DRIVERS TOTAL ACC	% OF TOTAL INJURY	% OF TOTAL FATAL	% OF TOTAL ACC	DRIVERS ALC INJ	DRIVERS ALC ACC	DRIVERS TOTAL ACC	% OF ALC INJ	% OF ALC ACC	% OF ALC ACC	TOTAL DRIVER LICENSES	% OF LICENSED DRIVERS
0-20	1,010	25	3,585	16.6%	15.0%	14.5%	95	6	297	14.1%	14.6%	13.9%	25,875	6.7%
21-30	2,115	53	8,095	34.7%	38.1%	32.7%	300	19	636	45.4%	46.3%	42.7%	103,335	26.6%
31-40	1,551	32	6,157	25.5%	23.0%	24.9%	178	11	344	26.9%	26.6%	23.1%	125,906	32.7%
41-50	696	12	2,884	11.4%	8.6%	11.7%	44	4	129	6.7%	23.5%	8.7%	69,902	18.1%
51-60	338	13	1,435	5.5%	9.4%	5.8%	15	0	44	2.3%	0.0%	3.0%	36,015	9.4%
61-70	179	0	654	2.9%	0.0%	2.6%	9	0	22	1.4%	0.0%	1.5%	18,047	4.7%
70+	66	2	245	1.1%	1.4%	1.0%	2	0	6	0.3%	0.0%	0.4%	6,053	1.6%
UNK	139	2	1,670	2.5%	1.4%	6.6%	20	1	103	3.0%	2.4%	6.9%	0	0.0%
TOTAL	6,094	139	24,725	24.6%			661	41	1,491	44.3%	2.7%	6.0%	325,186	

# PERCENT OF DRIVER BY AGE GROUP

INVOLVED IN ALCOHOL ACCIDENTS



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EXHIBIT

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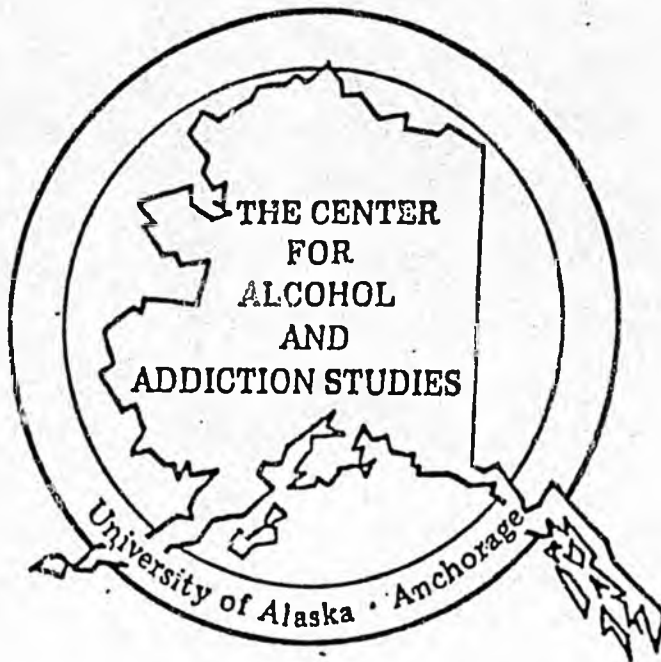
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Adolescent Drug-Taking Behavior Followup Study

Juneau: Grade 7 thru 12



Bernard Segal, Ph.D.  
 The Center for Alcohol and Addiction Studies  
 University of Alaska Anchorage  
 October, 1987

*Get him down here.*

Funded by a grant from the State Office of Alcoholism and Drugs Abuse,  
 Department of Health and Social Services

*Segal working on  
 general conclusions  
 for all districts*

The preliminary results of the study pertaining to Juneau students is presented as a confidential report to the Juneau Borough School District. The findings will not be made public in any manner by CAAS, and will not be presented in any way that will allow Juneau to be identified in published documents. If the school district chooses to make the findings public, only then will the information be in the public domain.

This document presents a summary of the major findings, specifically focusing on substance use, alcohol, and tobacco. Comparisons will be made with previous findings and with findings from other Alaska communities. A complete report of the findings will be released by SOADA upon the study's completion. Additional findings pertaining to Juneau will be forwarded after further analysis of the data is completed.

I would like to express my appreciation to the Juneau Borough Schools for enabling me to include Juneau in this follow-up study.

Bernard Segal, Ph.D.  
Principal Researcher and,  
Director, Center for Alcohol and Addiction Studies

# **CORRECTION**

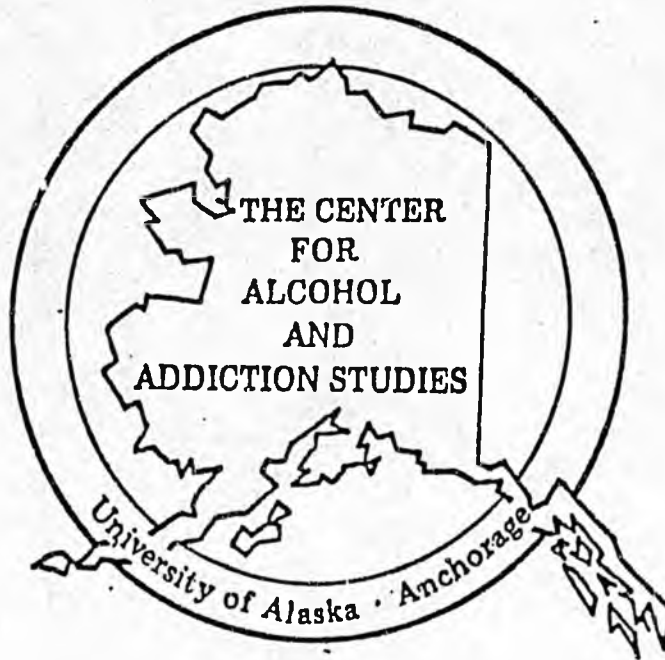
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## Preface

### **Adolescent Drug-Taking Behavior Followup Study (Preliminary Findings)**

During 1981 and 1982 an extensive statewide study, sponsored by the State Office of Alcoholism and Drug Abuse (SOADA), was undertaken by the Center for Alcohol and Addiction Studies (CAAS) to estimate the prevalence of drug-taking behavior among Alaskan youth. A comprehensive report of the findings was released in 1983 (Segal et al., 1983). That research involved eight widely separated urban and rural school districts representative of the different regions of Alaska, except for the Aleutian chain. The locations were Anchorage, Juneau, Bethel, Fairbanks, Juneau, Kotzebue, Nome, and Sitka. These sites were selected in order to obtain a representative sample of the state's junior and senior high school students. This research also served to establish baseline information about drug-taking behavior among Alaskan youth so that comparisons could be made with subsequent studies.

The present research, also under the auspices of a grant from SOADA, is a follow-up study of the initial study undertaken during 1981-1982. The overall aims of the current study are: (1) to assess the nature and extent of current drug-taking behavior among Alaskan youth, (2) to compare the current findings with the initial study of drug-taking behavior, (3) to examine psychosocial characteristics associated with use and nonuse of chemical substances, and (4) to explore some of the implications that the findings have for prevention of substance abuse. Some of the specific objectives are:

- (1) To obtain demographic and socialization information about adolescents in grades 7 - 12 relative to use or nonuse of chemical substances.
- (2) To obtain information on the prevalence of specific chemical substances, including alcohol and tobacco.
- (3) To obtain data relating to the patterns of drug-taking behavior, including alcoholic beverages and tobacco products.
- (4) To obtain data relating to actual or perceived peer group use of specific drugs, including alcohol and tobacco.
- (5) To obtain information on the consequences of drug-taking behavior
- (6) To obtain information about which factors serve to contribute to or mitigate against drug-taking behavior.

The preliminary results of the study pertaining to Juneau students is presented as a confidential report to the Juneau Borough School District. The findings will not be made public in any manner by CAAS, and will not be presented in any way that will allow Juneau to be identified in published documents. If the school district chooses to make the findings public, only then will the information be in the public domain.

This document presents a summary of the major findings, specifically focusing on substance use, alcohol, and tobacco. Comparisons will be made with previous findings and with findings from other Alaska communities. A complete report of the findings will be released by SOADA upon the study's completion. Additional findings pertaining to Juneau will be forwarded after further analysis of the data is completed.

I would like to express my appreciation to the Juneau Borough Schools for enabling me to include Juneau in this follow-up study.

Bernard Segal, Ph.D.  
Principal Researcher and,  
Director, Center for Alcohol and Addiction Studies

## Introduction

The apparent ongoing use of mind-altering substances in the United States, particularly by youth, has continued to challenge the efforts of educators, health professionals, law enforcement agencies, and governmental authorities, to deal with the problem. Despite significant efforts at prevention of drug abuse, it is patently clear that some youth will try drugs, and that a few will continue to use them to the point where they become substance abusers. From large surveys conducted in the United States, we have seen that there was an upward trend in the use of illicit drugs that began during the 1970s, which reached its peak in the 1980s. There is still considerable concern that while the use of many illicit psychoactive substances is beginning to decline, others such as cocaine are just beginning to stabilize, or even show modest increases in use.

This study provides an opportunity to review what is happening within Alaska with respect to the use of illicit psychoactive substances and about drinking and use of tobacco products among the state's adolescent population. It is envisioned that these findings will be useful to both the state and school districts in their efforts to address the continuing problem of drug use among adolescents.

It is important to note that the findings reported herein are based on self-report questionnaires. Although the research literature continues to indicate that such data are valid, a note of caution should be introduced. The findings can only reflect what the adolescent respondents say they think they have taken, and not what was actually used. It is well known that counterfeit and lookalike drugs exist, and that youngsters may have taken such substances thinking that they were the "real thing." In this instance what is important is that drug-taking behavior occurred, and that it was reported as having had occurred. Furthermore, it is always possible that some adolescents who may have tried a chemical substance may not have reported such use, or that some students may have either over- or under-reported their use. Each questionnaire was reviewed for consistency of responses to attempt to obtain reliable and valid data.

### Confidentiality and Anonymity

The purpose of this research was to gain an understanding of drug-taking behavior among Alaskan Adolescents, and not to identify those who use or have tried a drug. Considerable effort was undertaken to obtain the most reliable and valid responses from the students choosing to participate in the study by ensuring their anonymity and confidentiality. The student's names were not asked for in any phase of the research, nor were any identifying measures used except to identify the community in which surveying was undertaken. The only

identifying information on the questionnaire was age, gender, grade, and ethnicity, none of which could be used to identify any single student.

## Method

### Questionnaire

The questionnaire used in the 1987 study was similar to the one used in the previous study, but with a different format. The questionnaire was designed to be self-administered and restricted to an administration time of one class period (about 50 minutes). The types of data items outlined below were collected through the questionnaire shown in Appendix A.

#### (1) Demographic

This section included question that inquired about: gender, ethnic background, age, participation in drug education programs, grades obtained, and length of time lived in community.

#### (2) Drug Usage

Information on drug usage included an extensive set of question on nonprescriptive or social/recreational use of marijuana, cocaine, crack, stimulants, hallucinogens, depressants, heroin, inhalants, and tranquilizers, with specific reference to recency and frequency of use, problems from use, age of first use, and level of peer use.

#### (3) Alcohol

This section includes information about the quantity and frequency of consumption, and about some adverse consequences of drinking.

#### (4) Tobacco

Information on cigarette smoking and on use of smokeless tobacco products, including the quantity and frequency of use.

#### (5) Personality Items

The use or nonuse of drugs is in part influenced by personality characteristics. The incorporation of a measure of personality attributes facilitates an evaluation of what personality traits are related or unrelated to nonuse of drugs and to differing pattern of drug use.

### The Sample

Sampling within the Juneau schools was undertaken by the School District itself, utilizing the method of stratified random sampling to obtain a representative sample of students in grades 7-12. Stratification was based on class and gender. A total of 418 completed questionnaires were obtained. A response rate cannot be provided because the total number of students asked to complete the questionnaire is not known. Additionally, since the total

number of students in grades 7-12 is not known, it is not possible to report what percentage of the total population of students in grades 7-12 is represented in the sample. A description of the samples follows.

Characteristics of the Juneau Student Sample

<u>Gender</u>	<u>N</u>	<u>%</u>	<u>Ethnicity</u>	<u>N</u>	<u>%</u>	<u>Grade</u>	<u>N</u>	<u>%</u>
Males	199	47.6	Alaska Native	41	10.0	7	86	20.6
Females	218	52.2	White	317	75.8	8	88	21.1
Unreported	1	.2	Am. Indian	11	2.6	9	70	16.7
Total	146		Asian-Pacific	21	5.0	10	66	15.8
			Black	10	2.4	11	78	18.7
			Hispanic	6	1.4	12	29	6.9
			Other	6	1.4	NR*	1	.2
			Not reported	6	1.4			

\*Not reported

Participation by School, Gender\*, and Grade\*

<u>School</u>	<u>Grade</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>Total</u>
Drake								
Males		21	22					43
Females		22	27					49
Dryden								
Males		20	17					37
Females		23	21					44
J. Alternative								
Males			1	19	1			21
Females				15	0			15
Juneau-Douglas H.S.								
Males				11	37	37	13	98
Females				25	28	41	16	110
Total:		86	88	70	66	78	29	417
Males								199
Females								218

\*One student did not report gender, and one did not indicate grade.

The extent to which this sample is representative of the school district's student population cannot be estimated because the actual class sizes and

representation by gender are unknown. What is evident, however, is that the sample is that seniors are underrepresented and, overall, more females than males are represented in the sample.

## Results

### Part I. Chemical Substances

#### Opportunity to Try and Trying Drugs

Trying mood-altering drugs does not occur without an opportunity to be exposed to such substances. After exposure, a choice is then made to try or not try a given drug. Table 1, which is represented graphically in Figure 1, presents the findings with respect to the number of students who indicated that they had an opportunity to try one or more of the different mood-altering substances listed in the questionnaire. A comparison with the 1982 findings is also presented.

Inspection of the findings indicate that some changes in students' opportunity to try, or exposure to, chemical substances has occurred since 1982. Most noticeable is the increase in opportunities to try inhalants (+18.9%), which is almost doubled since 1982. A large increase in opportunities to try tranquilizers (+11.0%) has also taken place. In contrast, opportunities to try cocaine decreased since 1982 (-4.5%). Although some other changes have also occurred, the nature of these shifts suggest that exposure to these substances has remained fairly constant. Overall, what these findings suggest is that adolescents may be trying to keep up with current drug trends or "fads." It is thus possible that an actual increase in the actual available of these substances has not occurred, but that the changes reported by the students reflects a shift in their pattern of use.

#### Lifetime Experience (Prevalence)

##### (1) Prevalence of Use: Trying One or More Drugs

Figure 2A shows how many respondents reported actually having tried one or more chemical substances. Presently, 58.4 percent of those surveyed, over half of the sample, reported having tried one or more of the chemical substances listed in the questionnaire during their lifetime. The number of students reported having tried one or more drugs in 1982 was 42.6 percent. The difference between the two statistics represents an increase of 15.8 percent (over a five year period). Table 2 shows the patterns of use reported by the students.

##### (2) Lifetime Prevalence: (Ever vs. Never Trying a Chemical Substance)

Table 2, accompanied by Figure 2B, indicates how many adolescents in the

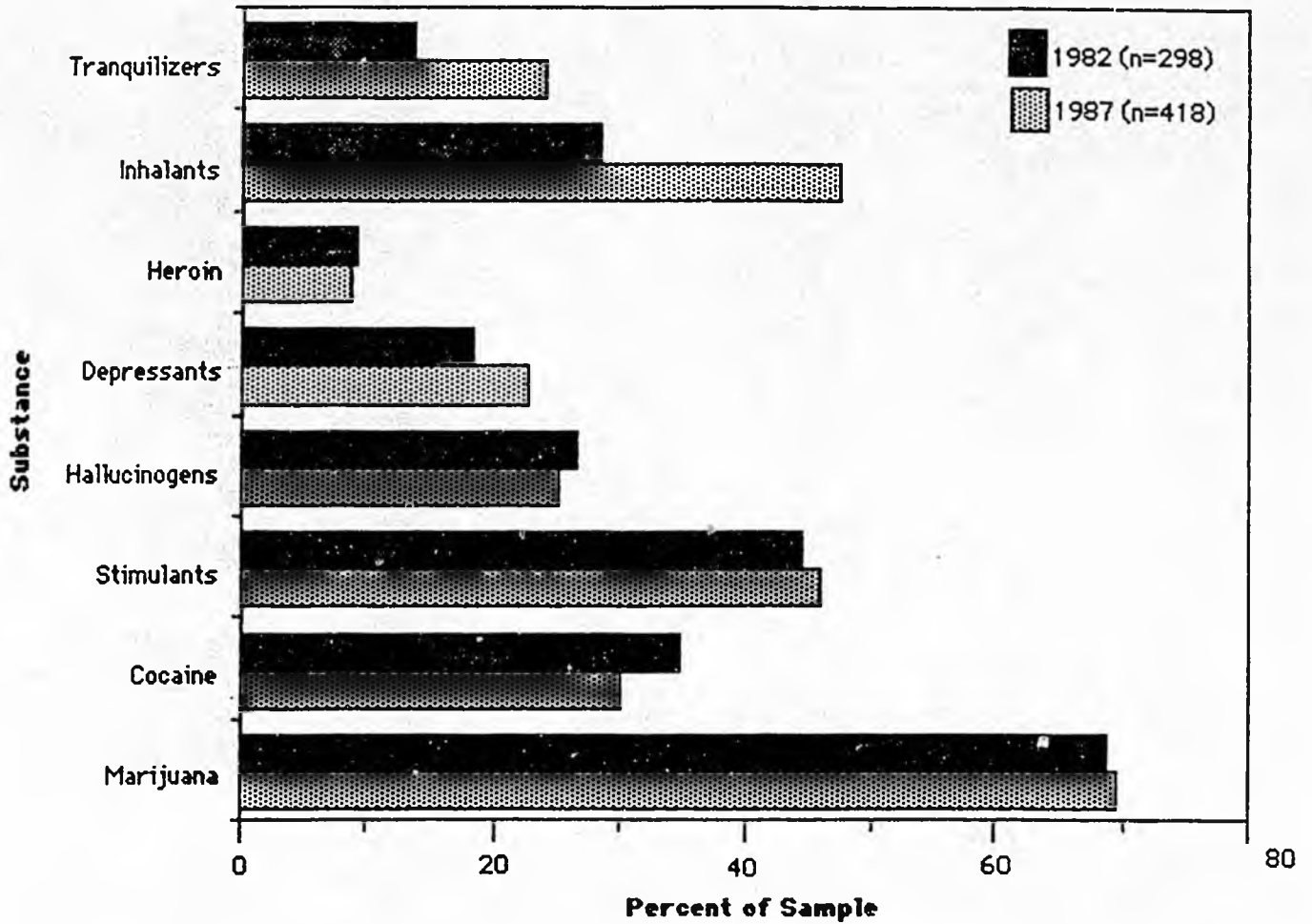
**Table 1**  
**Opportunity to Try and Trying Drugs:**  
**Comparison of 1982 and 1987 Findings**  
**Juneau Schools**  
**Grades 7-12**

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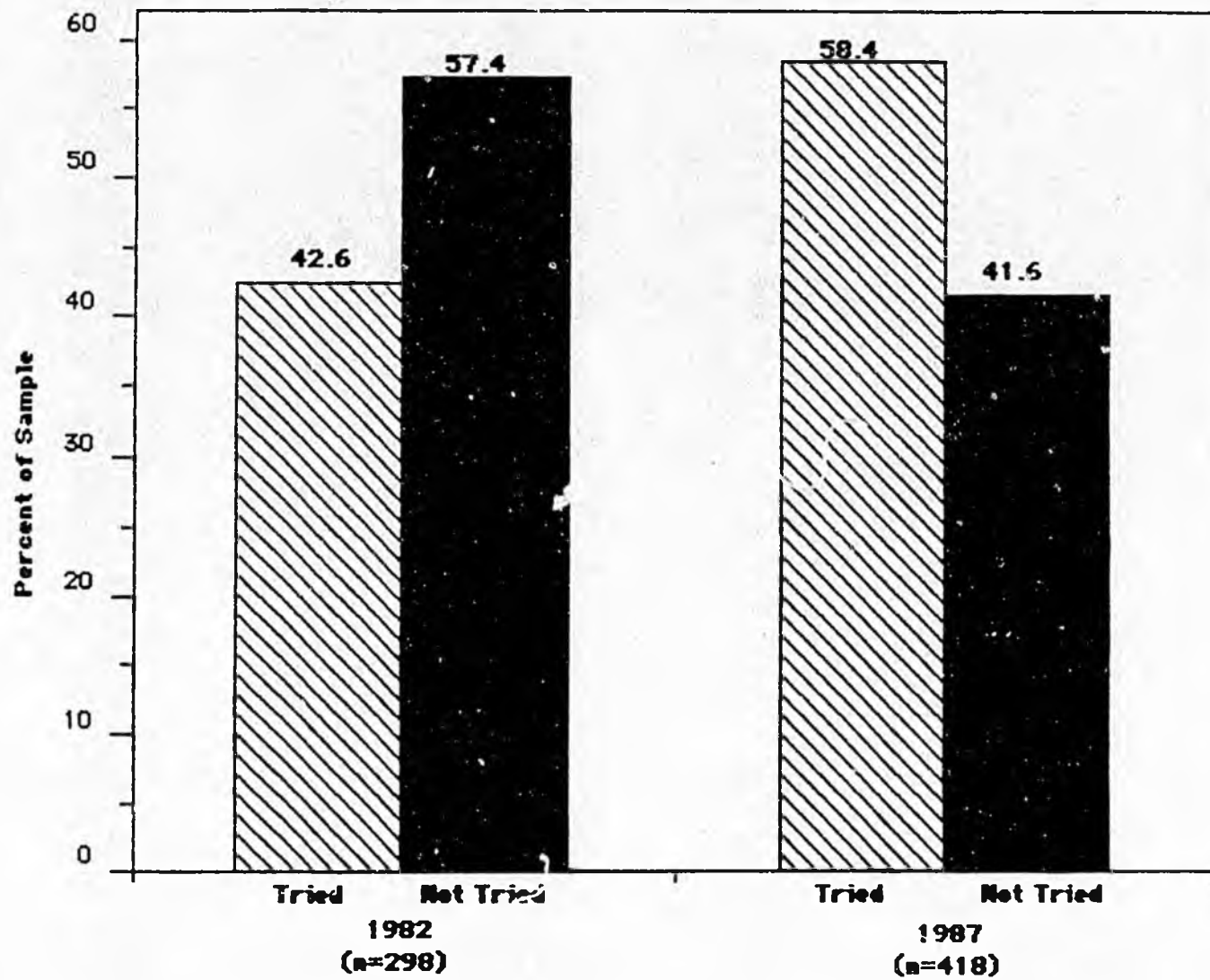
<u>Drug</u>	<u>1987</u> (n=418) Percent of Sample <u>Having a Chance to Try</u>	<u>1982</u> (n=298) Percent of Sample <u>Having a chance to Try</u>
Marijuana	69.4	68.7
Hallucinogens	25.1	26.5
Cocaine	30.1	34.6
Heroin	8.6	9.1
Inhalants	47.4	28.5
Stimulants	46.2	44.6
Depressants	22.7	18.1
Tranquilizers	24.2	13.4
Crack	1.4	--

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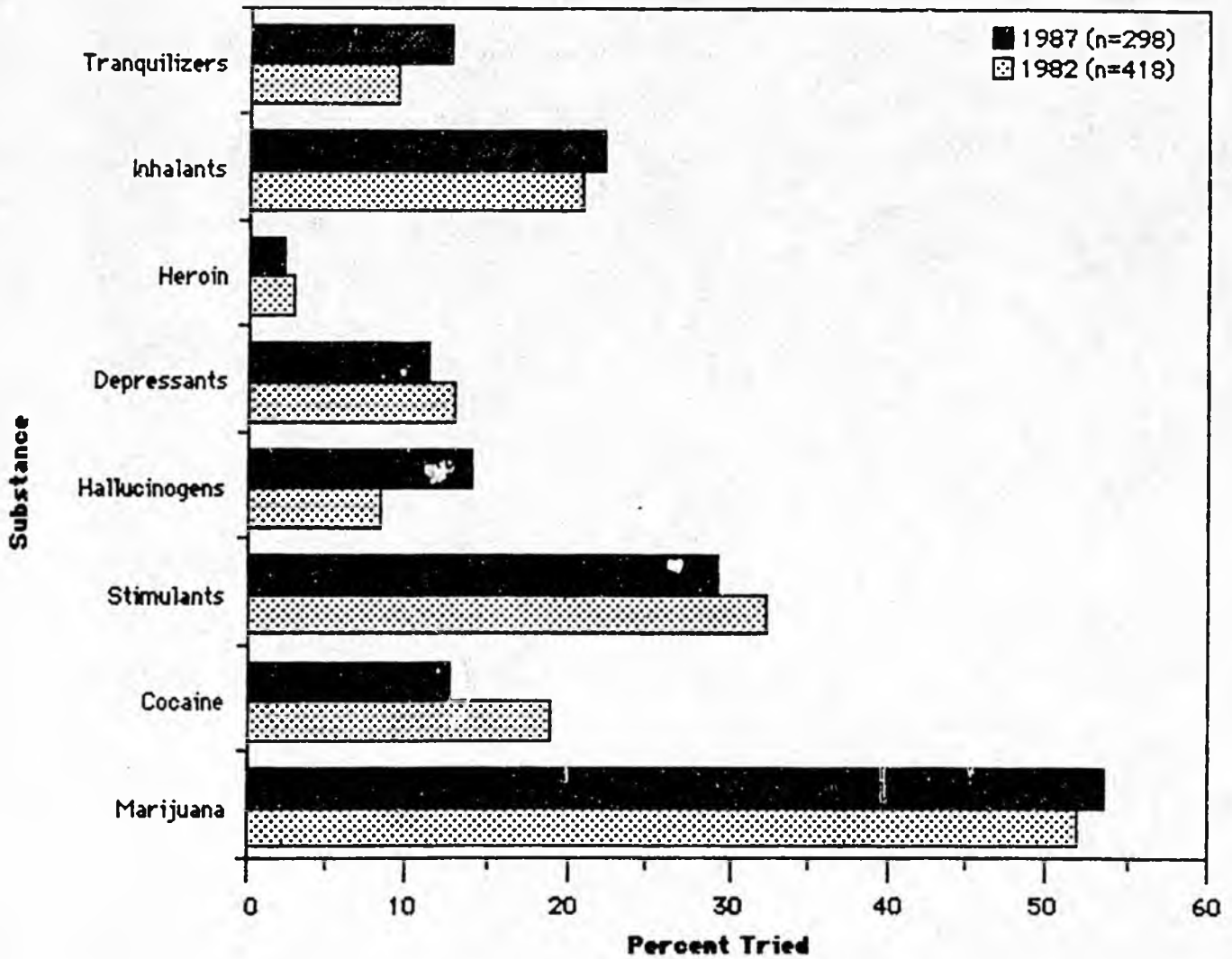
**Figure 1**  
**Juneau Schools**  
**Opportunity to Try Chemical Substances**  
**Comparison of 1987 and 1982 Findings**  
**Grades 7-12**



**Figure 2A**  
**Juneau Schools**  
**Lifetime Experience with One or More Chemical Substances**  
**Grades 7-12**



**Figure 2B**  
**Juneau Schools**  
**Lifetime Experience with One or**  
**More Chemical Substances**  
**Comparison of 1982 and 1987 Findings**  
**Grades 7-12**



**Table 2**  
**Lifetime Experience with One or More**  
**Chemical Substances**  
**1982 and 1987**  
**Juneau Schools**  
**Grades 7-12**

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<u>Drug</u>	<u>Lower*</u> <u>Limit</u>	<u>1987</u> <u>(n=418)</u>	<u>Upper*</u> <u>Limit</u>	<u>1982</u> <u>(n=298)</u>	<u>Change</u>
Marijuana	48.5	53.3	58.1	51.7	+ 1.6%
Hallucinogens	10.6	13.9	17.2	8.1	+ 5.8%
Cocaine	9.5	12.7	15.9	18.8	- 6.1%
Heroin	0.8	2.2	3.6	2.7	- .5%
Inhalants	18.2	22.2	26.2	20.8	+ 1.4%
Stimulants	25.0	29.4	33.8	32.2	- 2.8%
Depressants	8.2	11.2	14.2	12.8	- 1.6%
Tranquilizers	9.5	12.7	15.9	9.4	- 3.3%
Crack	0.3	1.4	2.5	--	--

---

\*95% Confidence Interval. These figures represent the lower and upper confidence intervals within which the true population value lies (95 out of 100 times).

sample indicated having tried one or more of the different substances during their lifetime. (Also incorporated in Table 2 are the upper and lower confidence levels for the statistics obtained from the 1987 sample. These figures represent the range within which the true population value would be found 95 out of 100 times.) Based on these findings it is clear that marijuana was the most commonly experienced drug, but that the number of adolescents trying it has increased very slightly since 1982 (+1.6%). The largest increase in lifetime experience was for hallucinogens (+5.8%). Experiences with cocaine have shown a decrease (-6.1%), and stimulant use has also declined (-2.8%). Inhalants have shown a modest increase of 1.4%.

The overall pattern of use, however, has generally remained the same since the initial study. Marijuana, stimulants, and inhalants, continue to be the top three drugs tried, respectively. Cocaine, which was fourth in 1982, is presently tied for fifth place with tranquilizers. The decline in the prevalence of cocaine is consistent with national trends indicating a decrease in its use among youth (NIDA, 1987).

#### Number of Drugs Tried

Figure 3 shows the number of drugs tried by gender. The largest number of students tried only one drug, with males exceeding females by 14.2%, but more females tried two or three drugs than males. An equal number of males and females have tried four drugs (50%), after which the pattern varies between males and females as to who had tried more drugs. After four drugs, however, as the number of drugs tried increases, the number of students trying five or more drugs decreases.

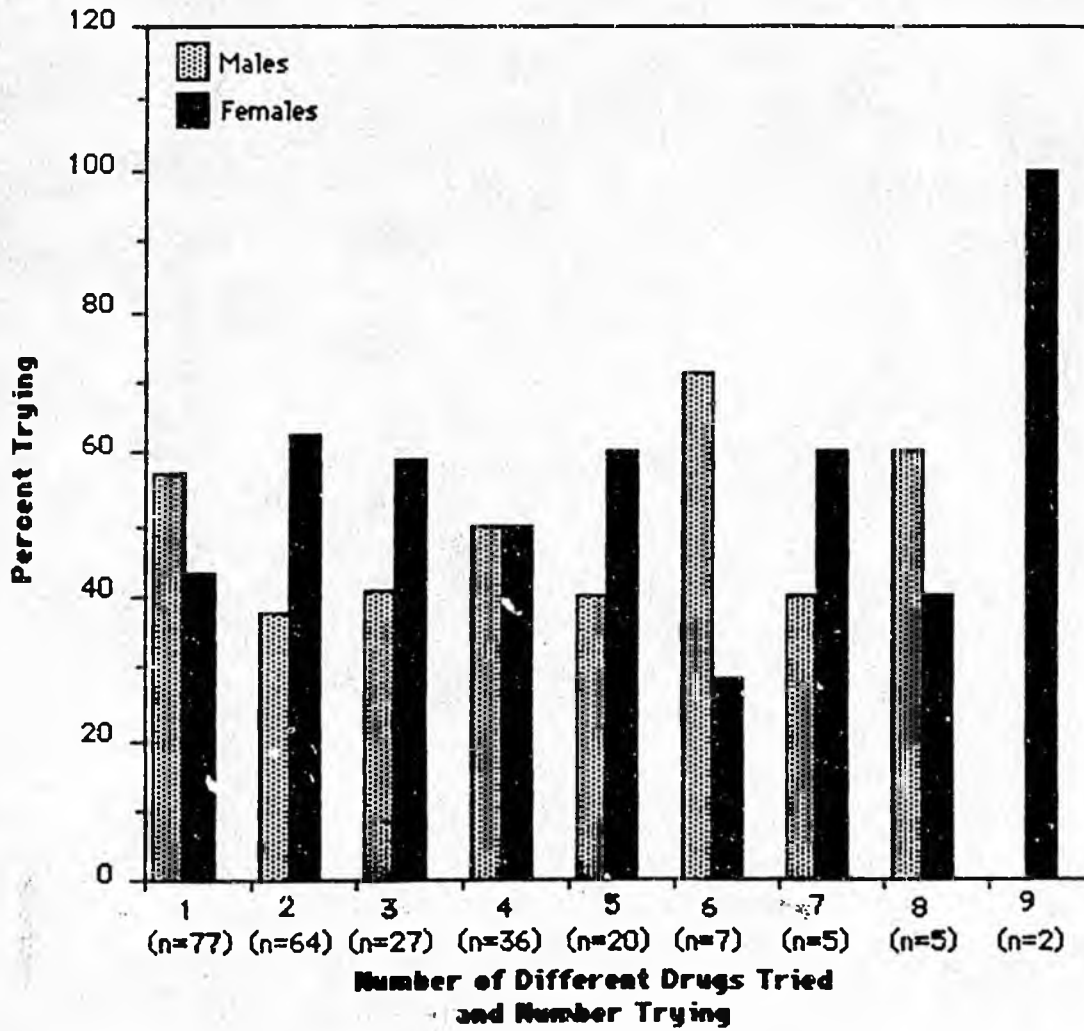
#### Experience With Drugs by Grade

Figure 4A provides a report of drug use according to grade and gender. What this table describes is the percentage of students who have tried one or more drugs by the time they have reached their current grade level. Inspection of the data shows that as grade level increases there is a corresponding increase in drug-taking behavior. The increase between grades 7 - 10 is particularly striking, increasing at what appears to be a consistent rate of about 6 percent per year. Although there is a slight decrease in the number of students who tried drugs by the 11th grade, this decline is offset by a slight increase in drug use among seniors (12th grade).

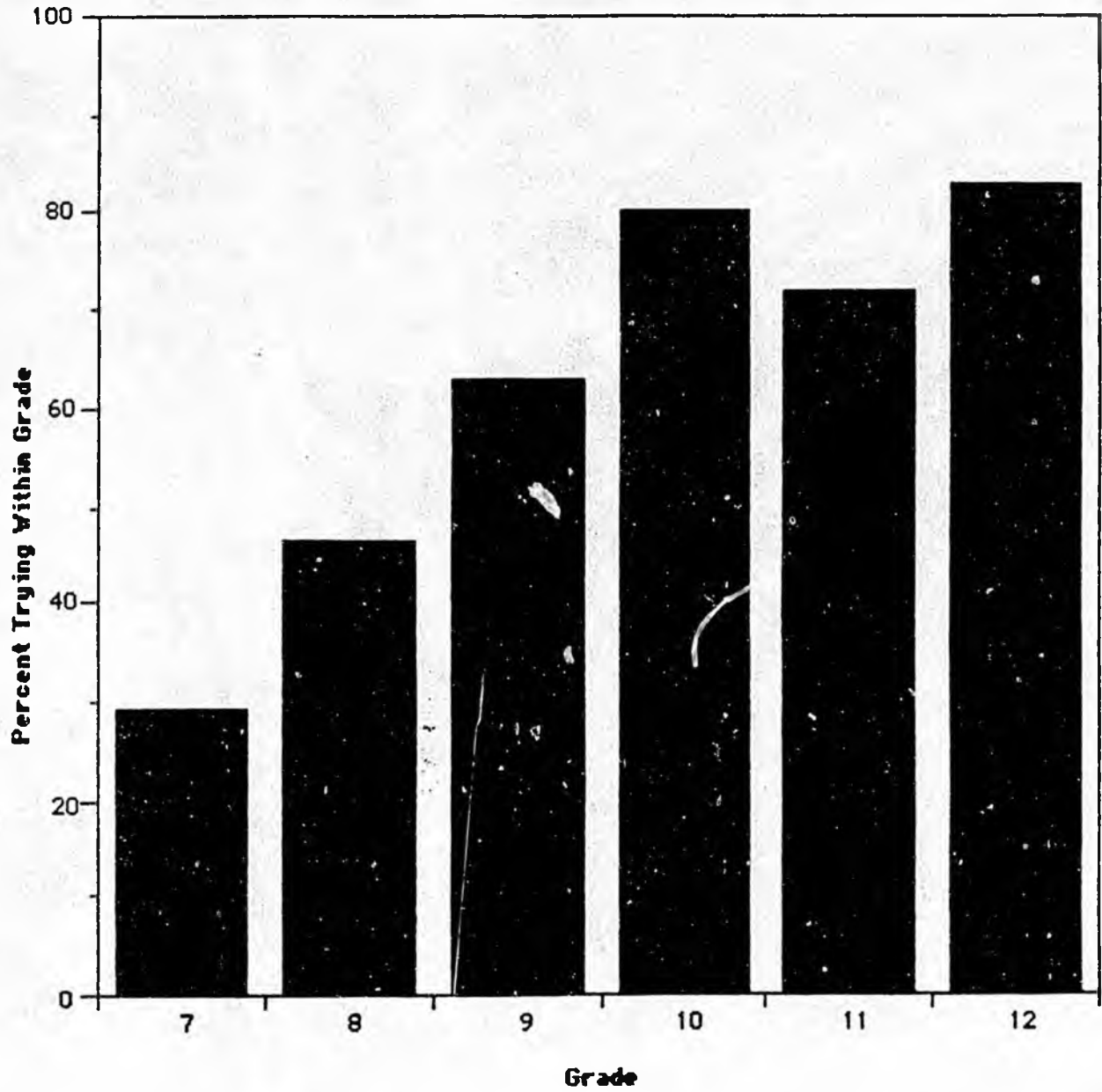
#### Experience with Drugs by Gender Within Grade Levels

Figure 4B expands the data in Table 4A by including gender. As can be observed, in the early grades (7 and 8) males tend to have tried more drugs than females, but that by the 9th and 10th grades, females begin to exceed males with respect to experiences with chemical substances. These two grades also appear to be the grades levels during which drug-taking behavior

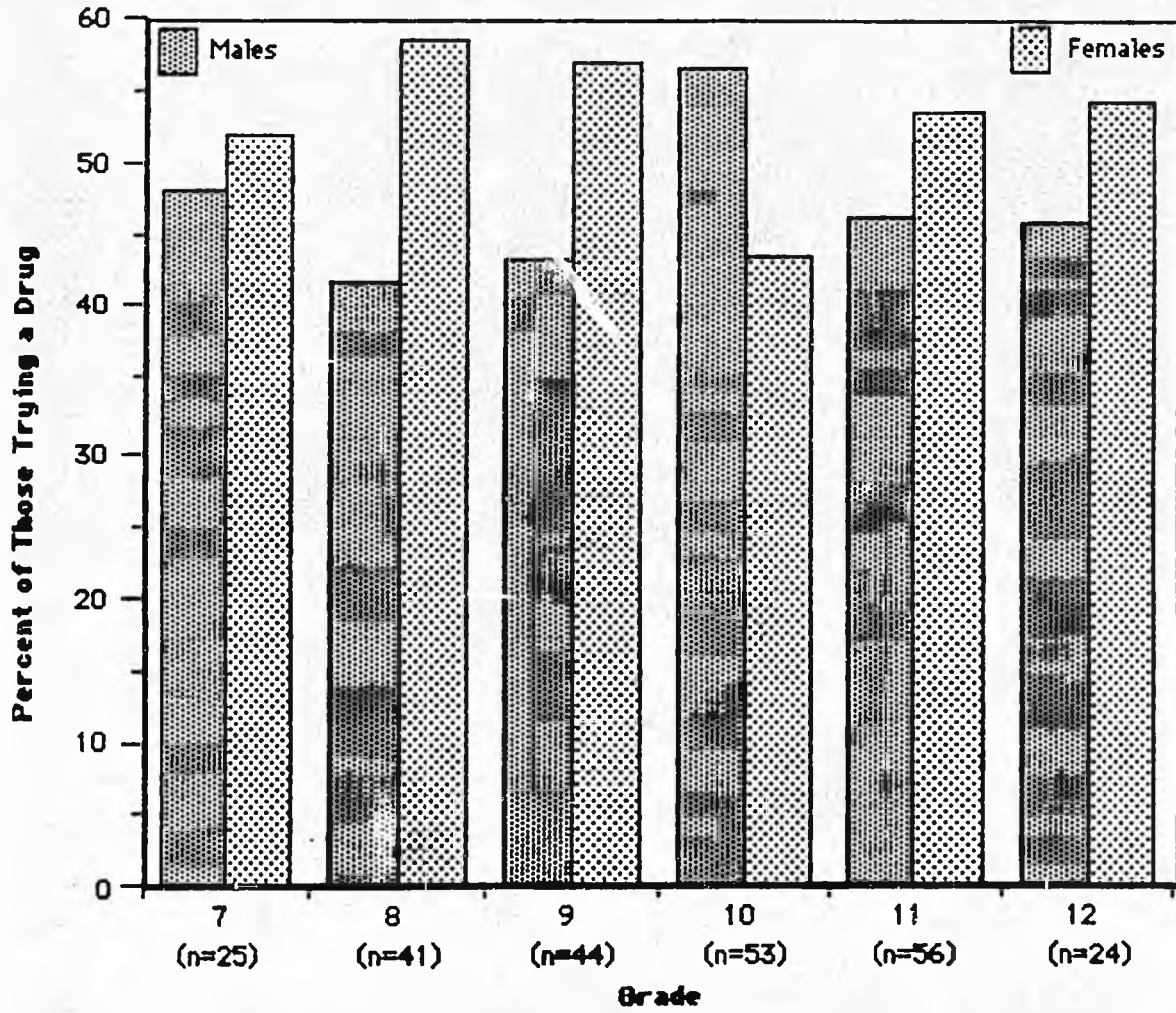
**Figure 3**  
**Number of Drugs tried by Gender**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



**Figure 4A**  
**Experience with Drugs by Grade**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



**Figure 4B**  
**Experience with Drugs by Gender and Grade**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



begins to peak. By the 11th and 12th grades drugs-taking behavior begins to decline, with more females having experienced drugs in the 11th grade than males. This process is dramatically reversed in the 12th grade where females exceeded the number of males with respect to drug-taking behavior.

### Frequency and Recency of Use

The report thus far has described data pertaining to lifetime experience with drugs, that is, ever having tried one or more drugs without respect to the number of times tried or how recently a drug may have been taken. This section focuses on how many times respondents reported having used a drug during the month prior to sampling (past month), during past year, and during their lifetime. The data is based on an analysis of the reports of use by those adolescents who have indicated that they have tried any substance. Both crack and heroin were not included because of their low prevalence rates. It should be noted that the reports of lifetime experience, past year, and past month experiences may not have been treated as mutually exclusive categories by the respondents. Therefore the data presented may reflect a summation of experiences, in which an individual reported that he or she tried a substance once during their lifetime, which occurred either during the past year or past month or both. It is imperative to recognize that the following seven figures (5A-5G) depict three unique percentages (lifetime, past year, past month) derived from the total number of students who ever tried each of the substances. The number of students who have ever tried each substance for the given time period is included in the legend within each figure.

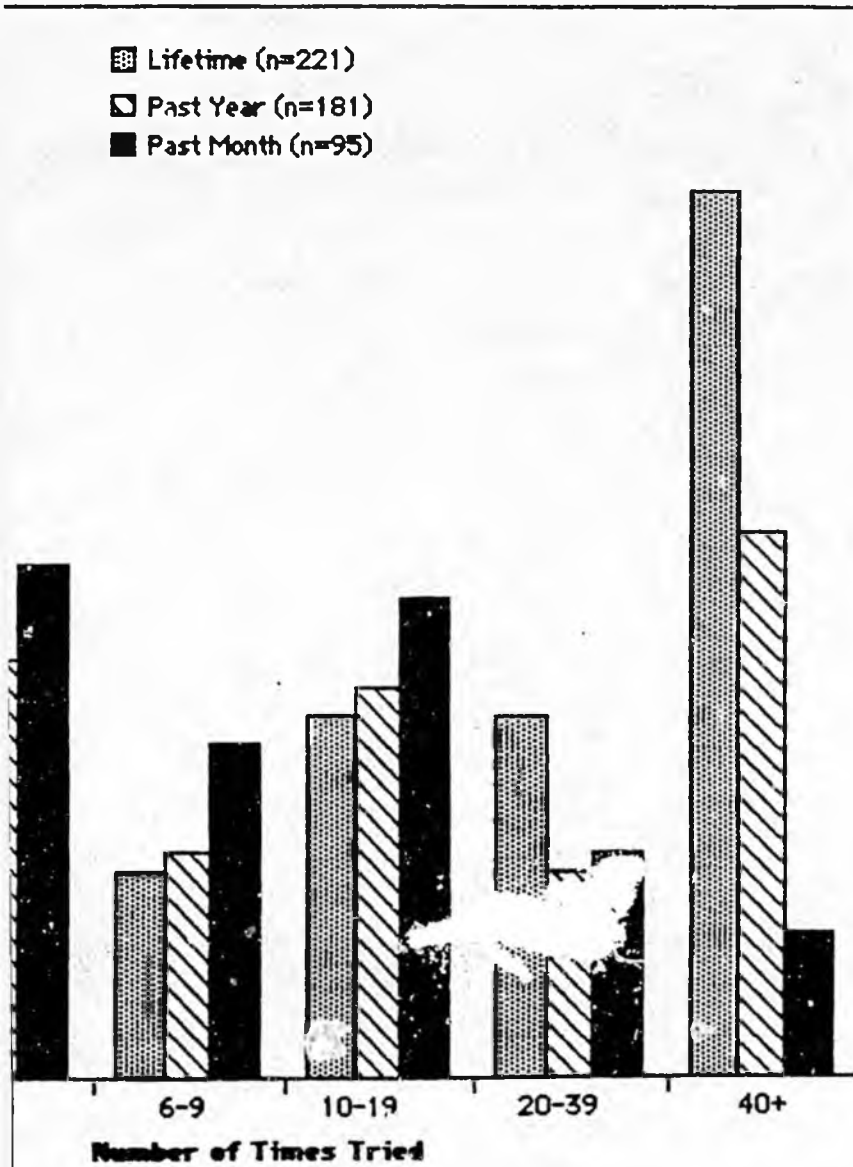
#### **1. Marijuana**

Figure 5A shows the distribution of reports of frequency and recency of use of marijuana. What is evident is that the prevalence of marijuana has been high, and that both experimental and regular use has occurred. Experimental use (1-2 times) was highest during the past month, suggesting ongoing infrequent or experimental use. In contrast to this pattern, a large number of students have used marijuana more extensively. Over 30% of those having used marijuana did so 40 or more times during their lifetime, over 20 percent did so during the past year, and slightly over 5 percent reported having used marijuana forty or more times during the past month. Overall, many students have apparently tried and continue to use marijuana, following a pattern that ranges from infrequent to what may be termed "regular" use.

#### **2. Cocaine**

Table 5B shows that of those adolescents who have indicated having tried cocaine at some point in their life, the clear majority do so experimentally or infrequently (five times or less). Of these, 80 percent had tried it during the past month, over 50 percent reported having tried it during the past year, and over 40 percent had tried it at some point during their lifetime. A small

**Figure 5A**  
**Prevalence and Recency of Marijuana Use**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



number of students (6.7%) have indicated that they used cocaine 6-9 times during the past month. More frequent use of cocaine has occurred among a small number of students one or more years ago.

### **3. Stimulants**

Figure 5C reports on the pattern of stimulant use. As can be observed, among those who indicated having tried stimulants a large percentage of have done so experimentally (less than five times) during the past month and year. More recent and frequent is also reported by a small number of students, some of which occurred during the past month.

### **4. Hallucinogens**

An active pattern of hallucinogen use is evident among the number of students who reported having tried a hallucinogenic substance. The results, shown in Figure 5D, indicate that the predominant level of use has been one or two times, but 75% of those who have tried it did so during the past month. More recent and frequent use is also reported, with 6.3 percent having used such substances 10-19 times during the past month. More extensive use has also occurred, but this has taken place a year or more ago.

### **5. Depressants**

The predominate mode of experience with depressant substances, as shown in Table 5E, appears to be primarily experimental (1-2 or 3-5 times), but some students have used depressants more extensively.

### **6. Inhalants**

Inhalant use, as revealed in Table 5F, shows a varying pattern of use, ranging from infrequent (1-2 times) during the past month to more frequent (40+ times) during the past month. The overall pattern suggests that an active involvement with inhalant substances is occurring.

### **7. Tranquilizers**

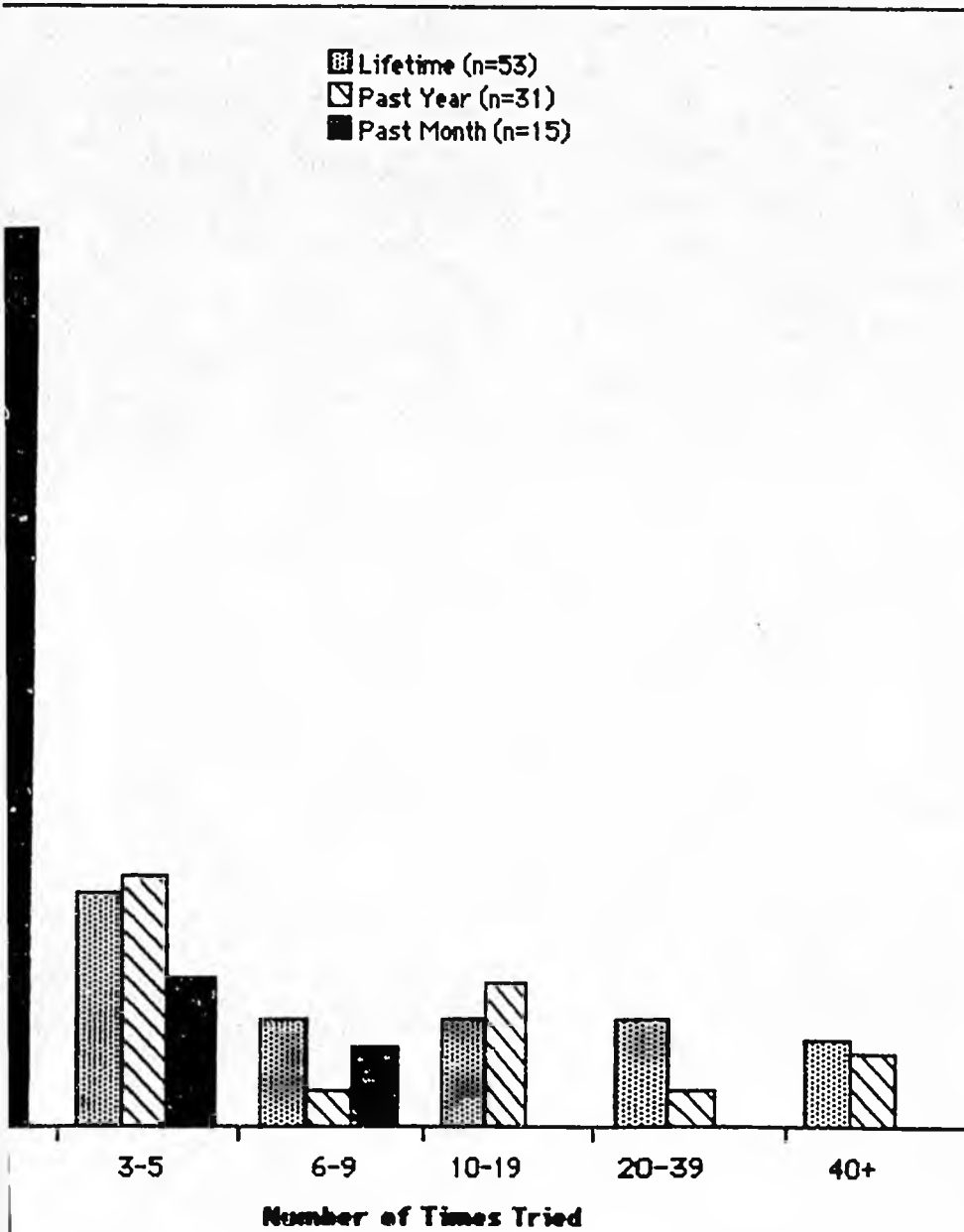
Figure 5G shows that use of tranquilizer type drugs has been chiefly experimental, but that students have used it within the past month, and that a small number have also used such substances extensively.

In summarizing the findings pertaining to recency and frequency of drug-taking behavior, it appears that there is a mixed pattern of ongoing experimental and more sustained use of most substances. The substances used most recently and with greater frequency are marijuana, cocaine, stimulants, hallucinogens, and inhalants.

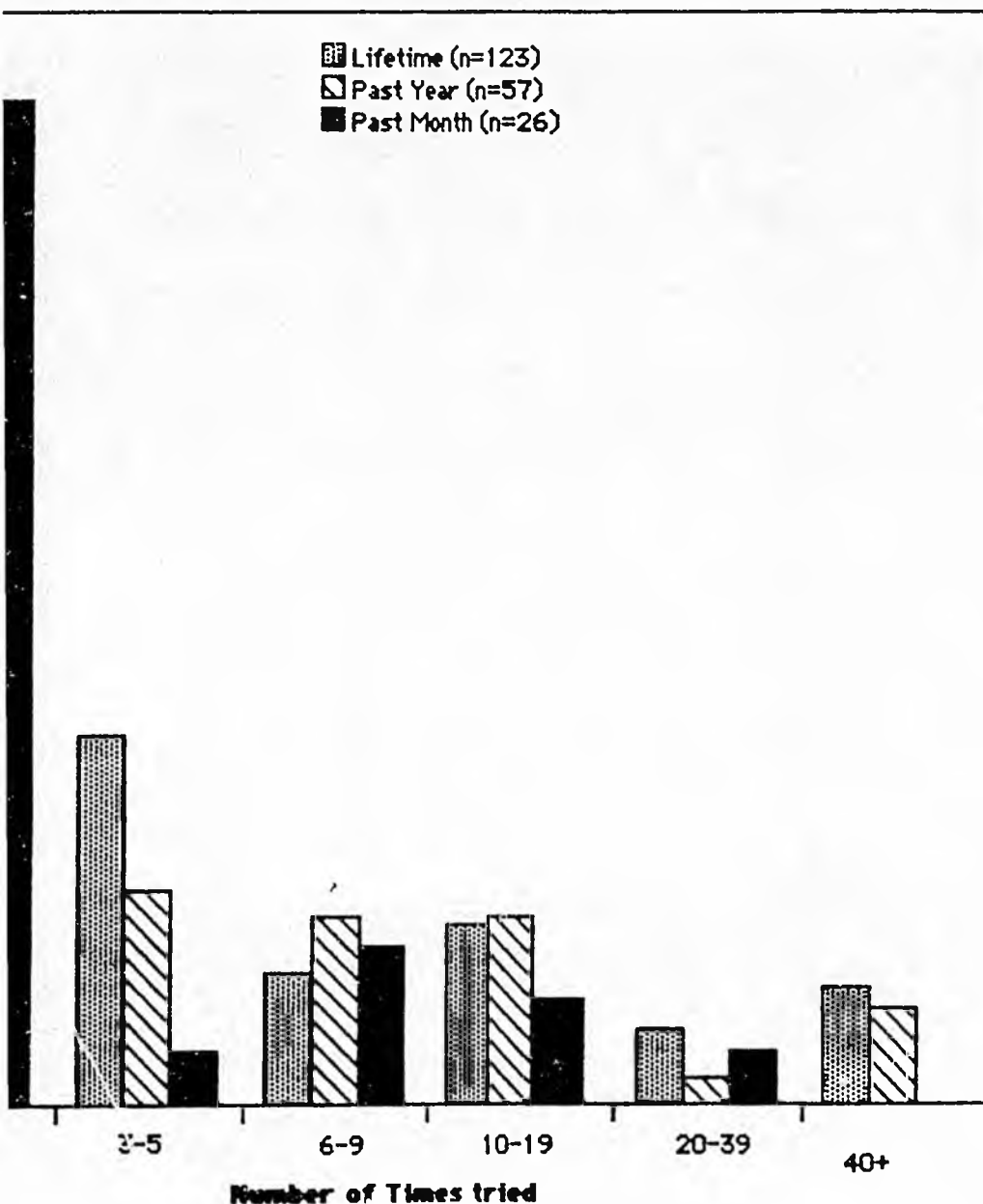
### **Age of First Experience With Marijuana, Stimulants, and Inhalants**

Figure 6 shows the ages with which respondents indicated having first tried

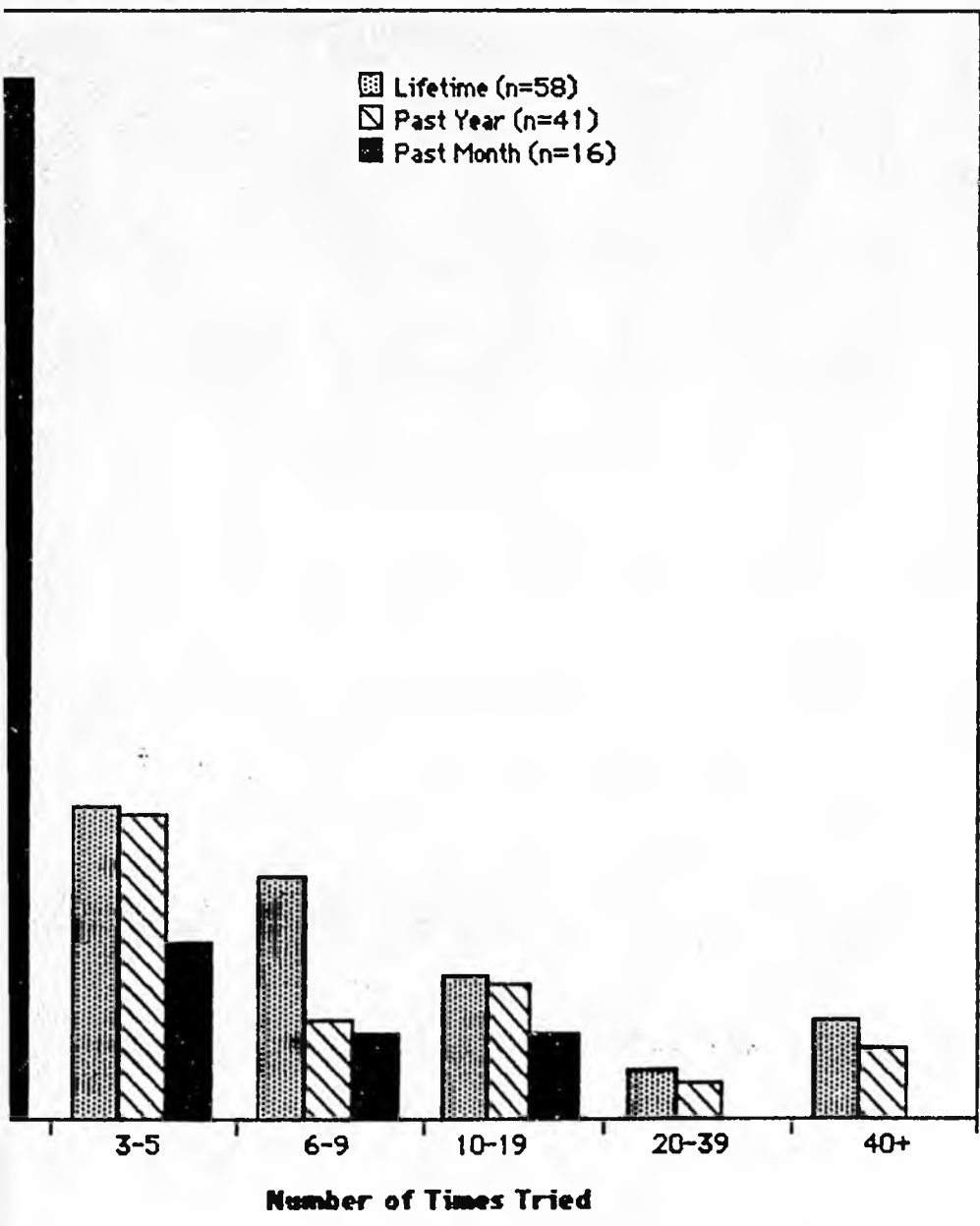
**Figure 5B**  
**Frequency and Recency of Cocaine Use**  
**Jureau Schools**  
**Grades 7-12**  
**1987**



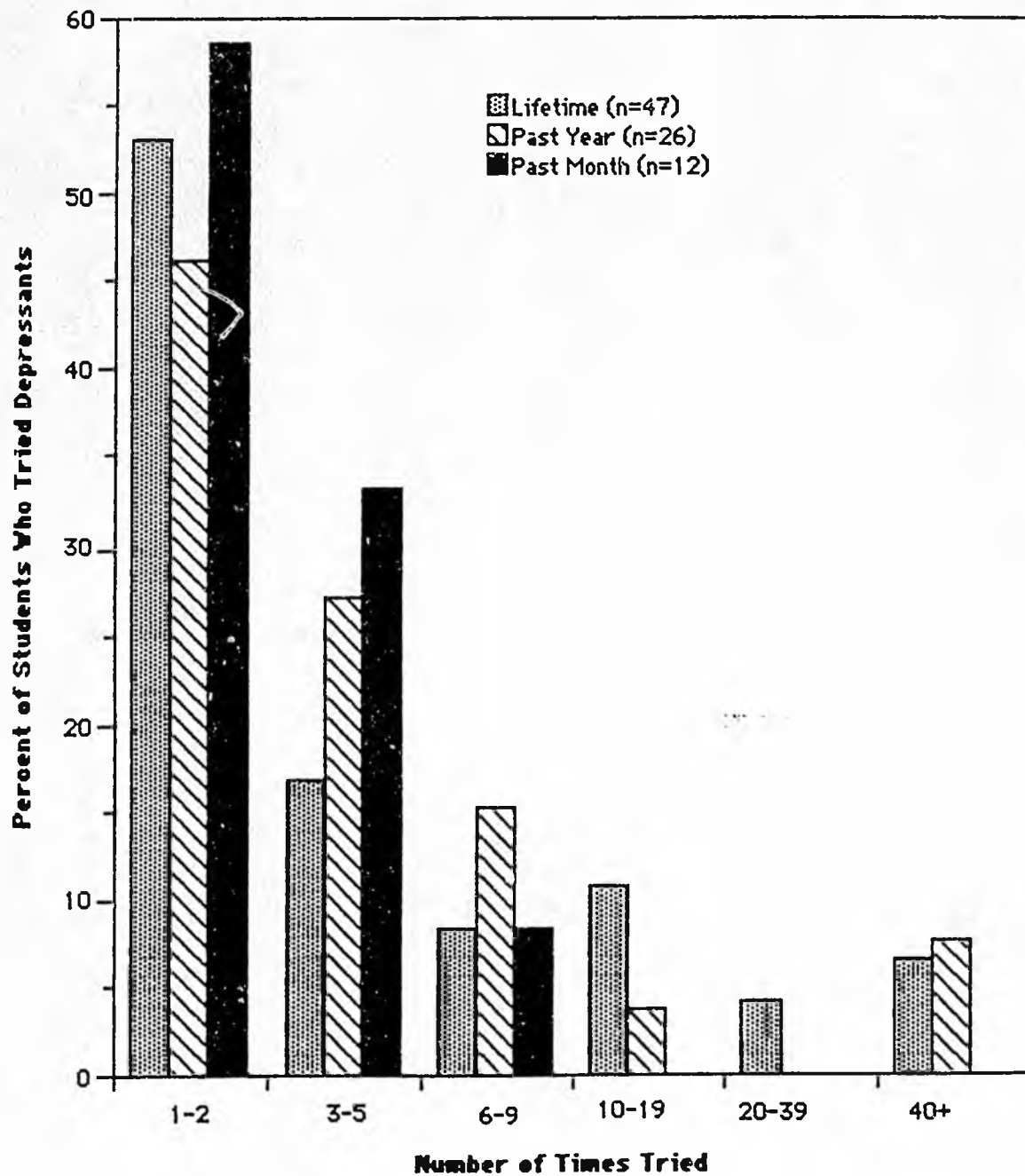
**Figure 5C**  
**Frequency and Recency of Stimulant Use**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



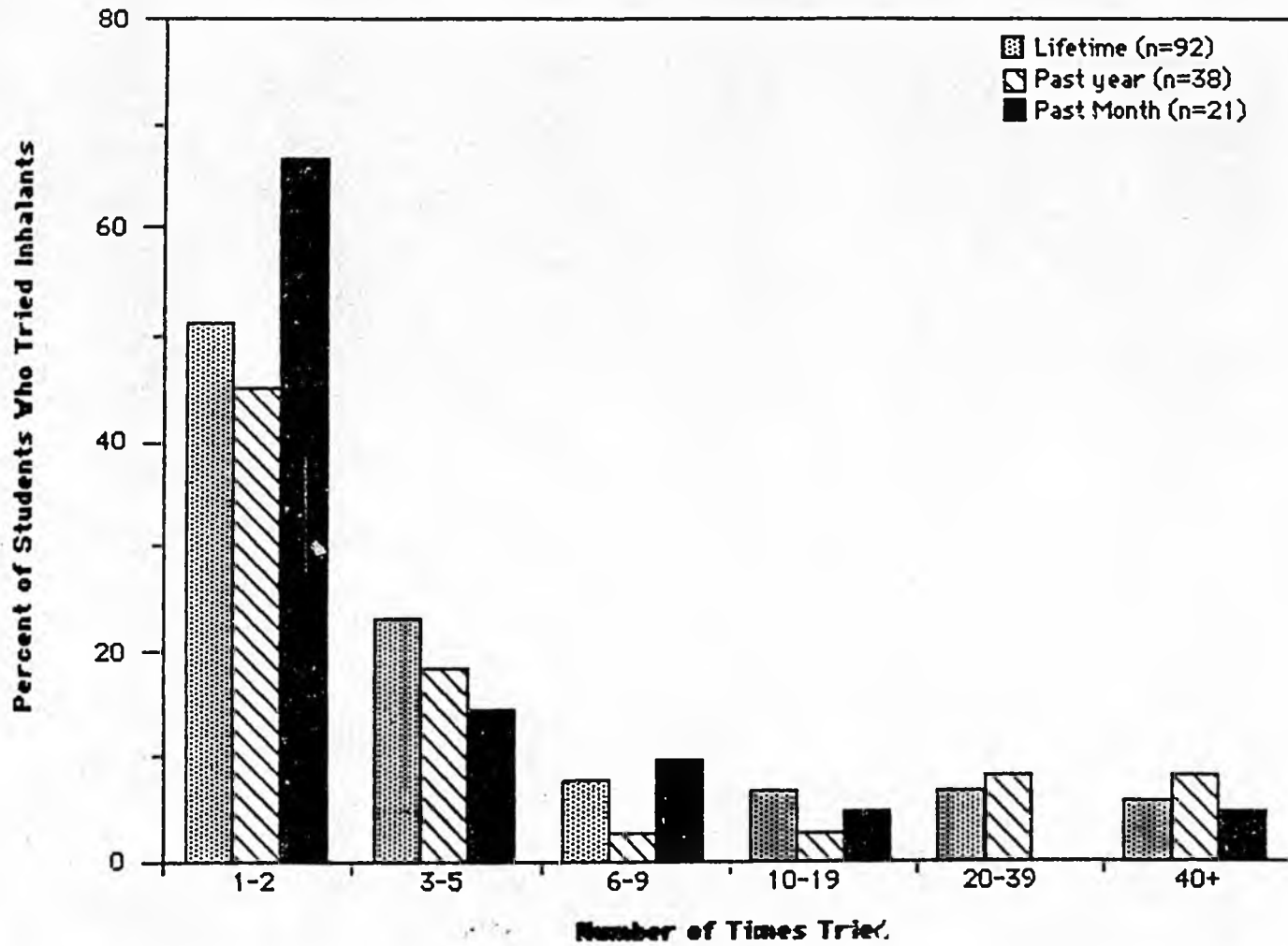
**Figure 5D**  
**Frequency and Recency of Hallucinogen Use**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



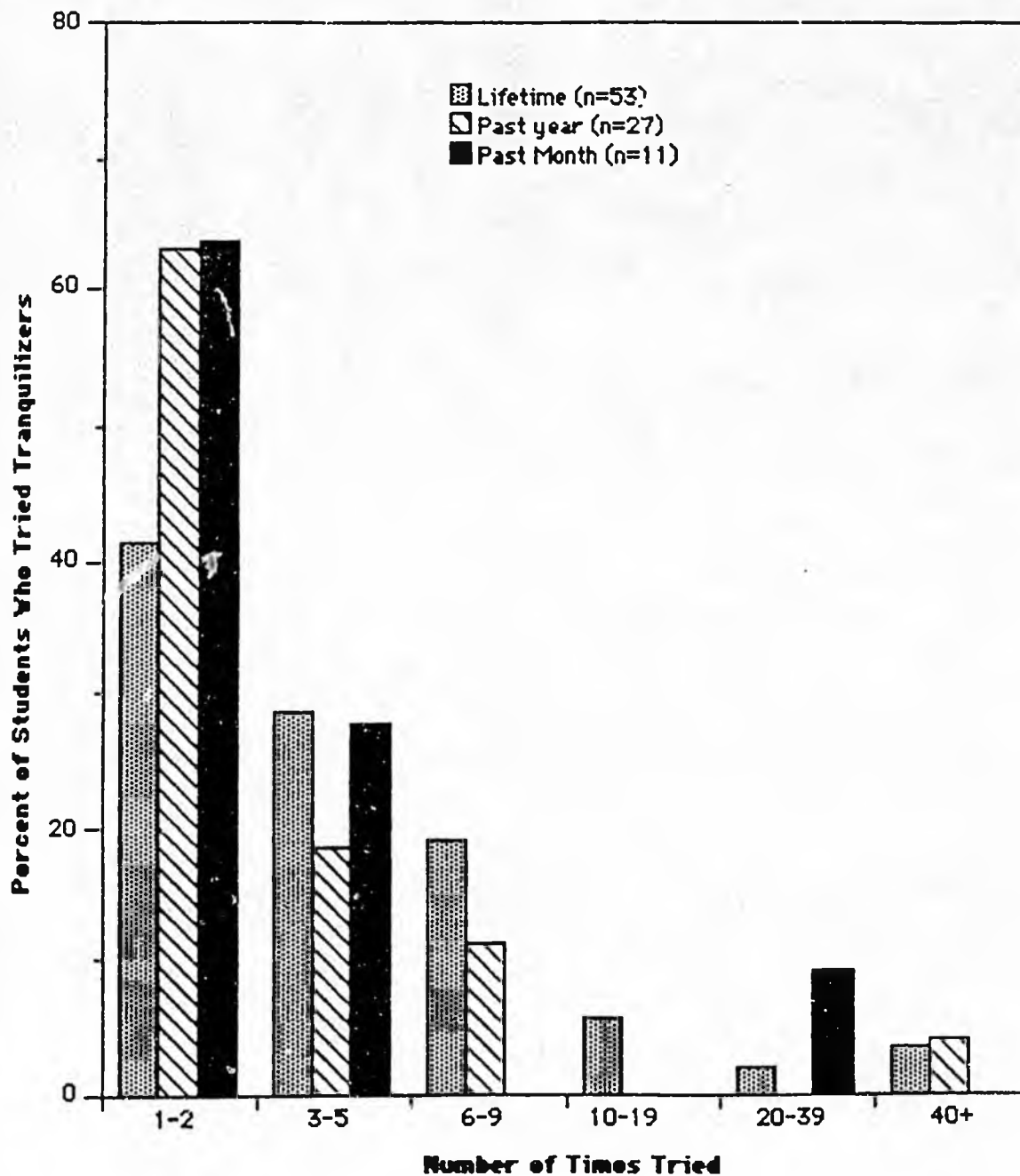
**Figure 5E**  
**Frequency and Recency of Depressant Use**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



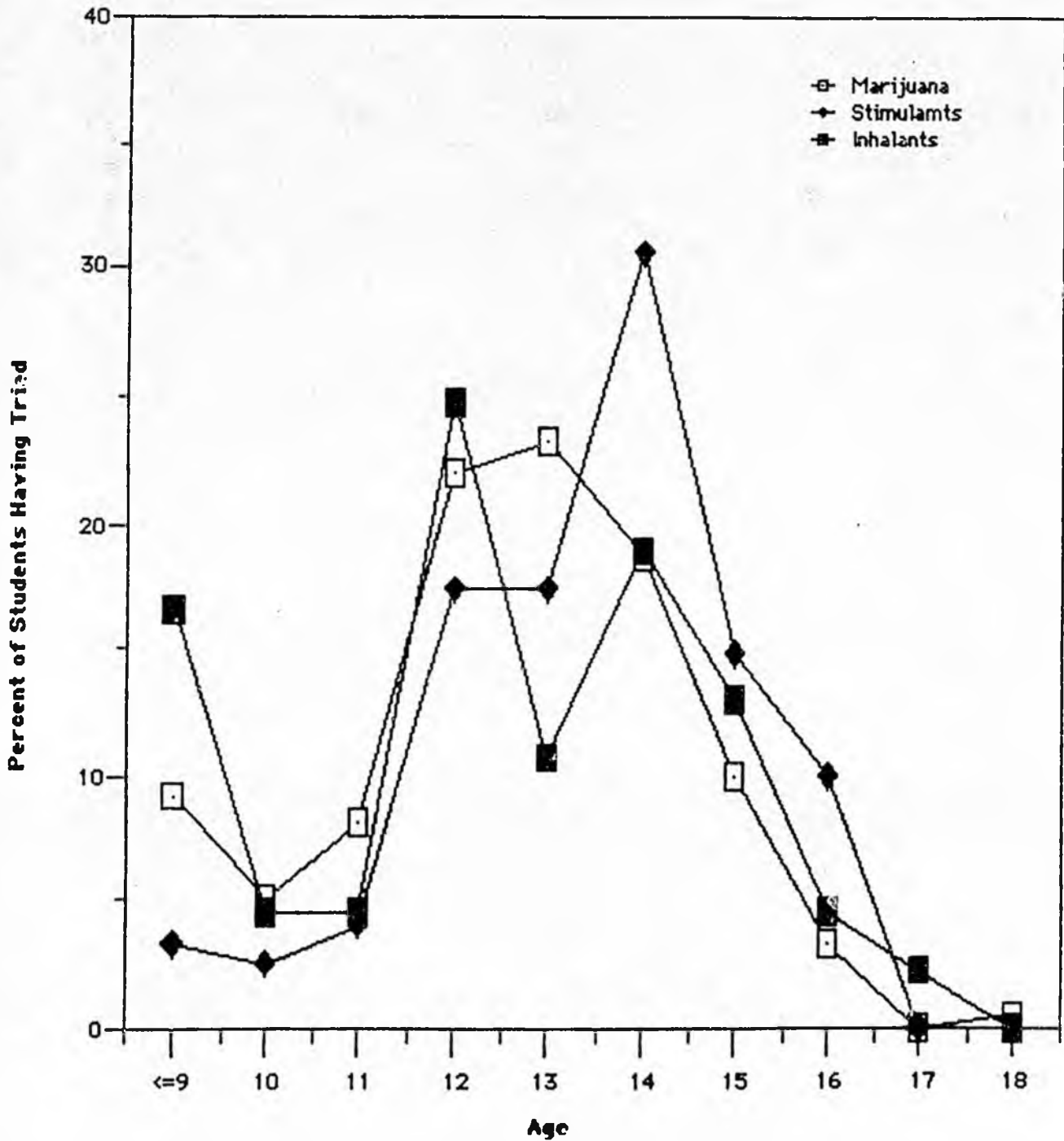
**Figure 5F**  
**Frequency and Recency of Inhalants Use**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



**Figure 5G**  
**Frequency and Recency of Tranquilizers Use**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



**Figure 6**  
**Age of Initiation into**  
**Marijuana, Stimulants, and Cocaine**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



marijuana, stimulants, and inhalants, the three drugs tried most frequently by the sample. At nine years or less a small number of students have been initiated into substance use, with the highest number trying an inhalant type substance. Subsequent to nine years there is a decrease in initiation until age 12, where the first major peak occurs for all three substances. This high initiation level then drops sharply for inhalants, increases slightly for marijuana, and remains stable for stimulants at age 13. Subsequent to this point initiation into marijuana declines sharply. By age 14 initiation into stimulants peaks again at age 14, then drops sharply. Initiation into inhalants also increases, and then declines.

What the configuration of these three curves suggests is that inhalants tended to be used more than marijuana and stimulants at an early age, but that as age increases, interest shifts to experiencing marijuana and stimulants. Twelve years appears to correspond to a "critical period" of initiation into trying marijuana, inhalants, and stimulants. Subsequent to age 12 initiation to these substances declines, except for stimulants, which seems to attract the attention of 14 year olds. The data also suggests that if these substances were not tried by or before age 17, initiation into their use declines.

## **Part II. Alcohol**

### Lifetime Prevalence of Experience with Alcohol

Figure 7 shows the number of students who reported ever having tried alcohol in 1987 and 1982. (The lower confidence limit for the statistic pertaining to the number of students who drank is 64.7; the upper limit is 73.5.) As can be observed, the prevalence of lifetime experience with alcohol has decreased very slightly (1.4%) since 1982. The difference, however, is sufficiently small to conclude that the number of students who tried alcohol in 1982 and in 1987 remains at a consistent level.

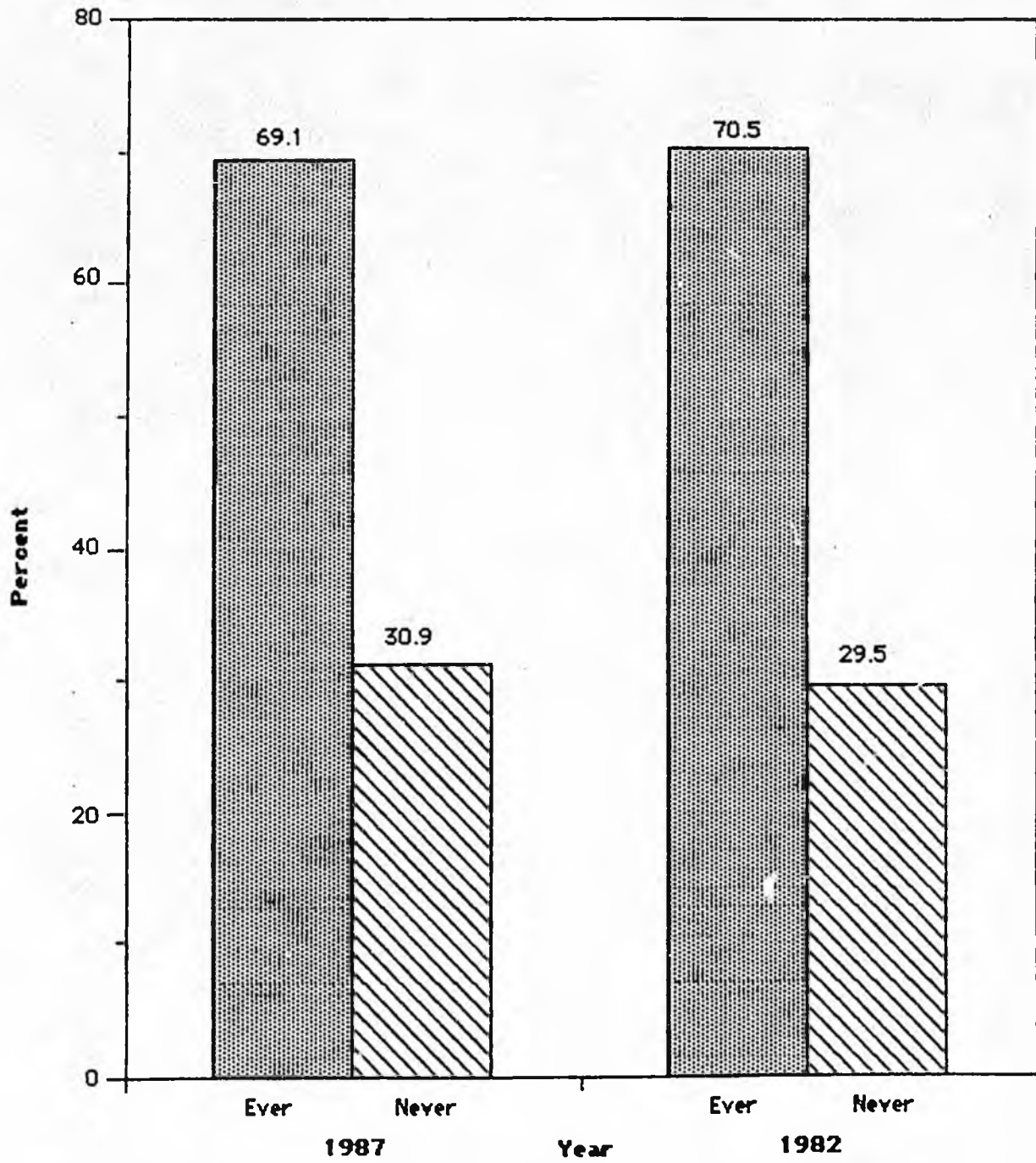
### Frequency of Drinking During the Past 30 Days

Figure 8 reports the frequency of alcohol consumption among students who indicated having consumed alcohol during the past 30 days. Of those, over 30% indicated that they did not drink during the past 30 days. Among those who did report that they consumed alcohol, the largest number reported drinking 2-3 times a week. What seems evident from the data is that alcohol is being consumed, and its use ranges from infrequent for a majority of respondents, to more frequently (more than 3-4 times a week) for a smaller number of students.

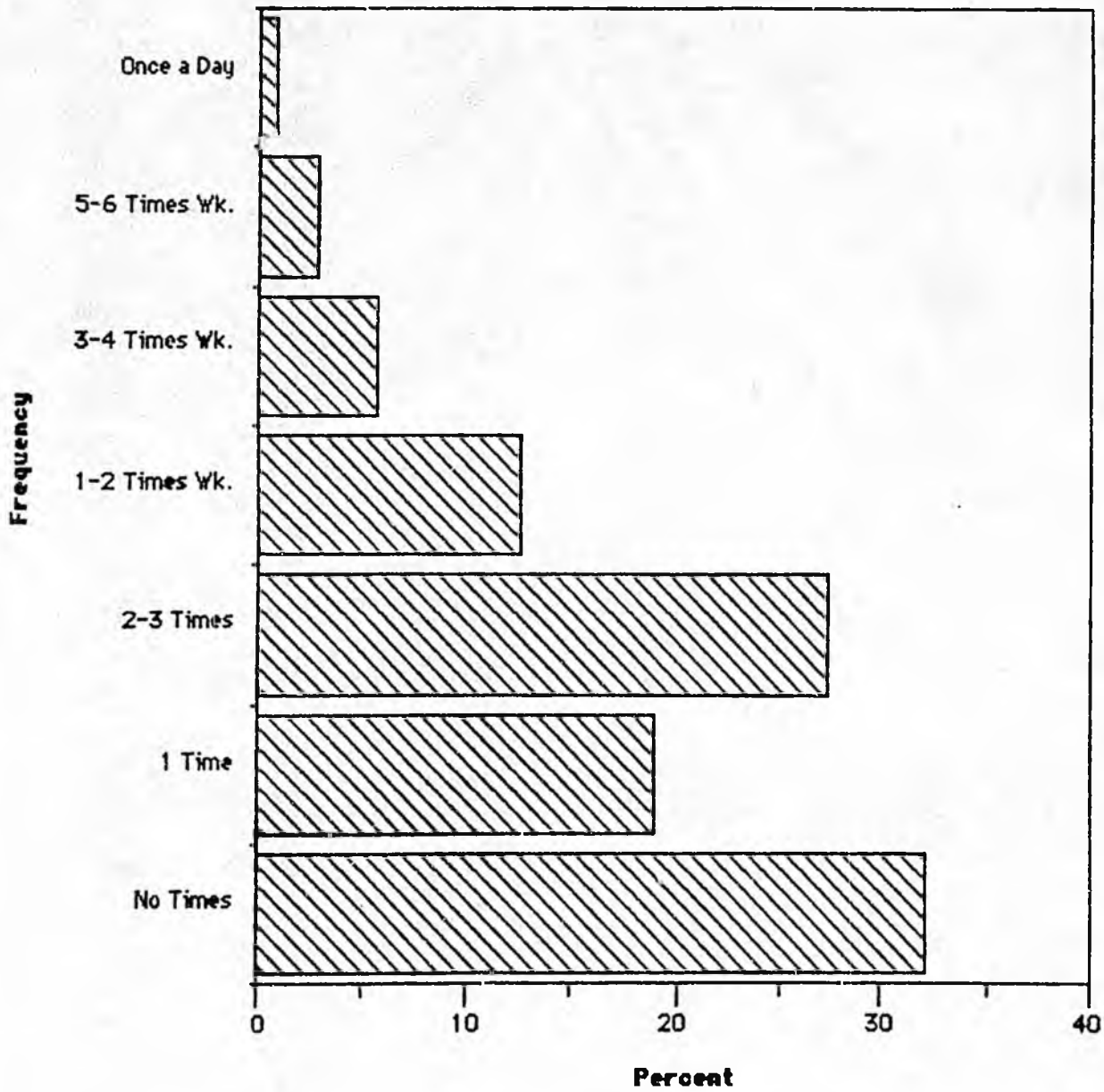
### Drinking by Gender

Figure 9 reports on use of alcohol by gender, comparing lifetime and past year experience with alcohol. Interestingly, more females than males showed

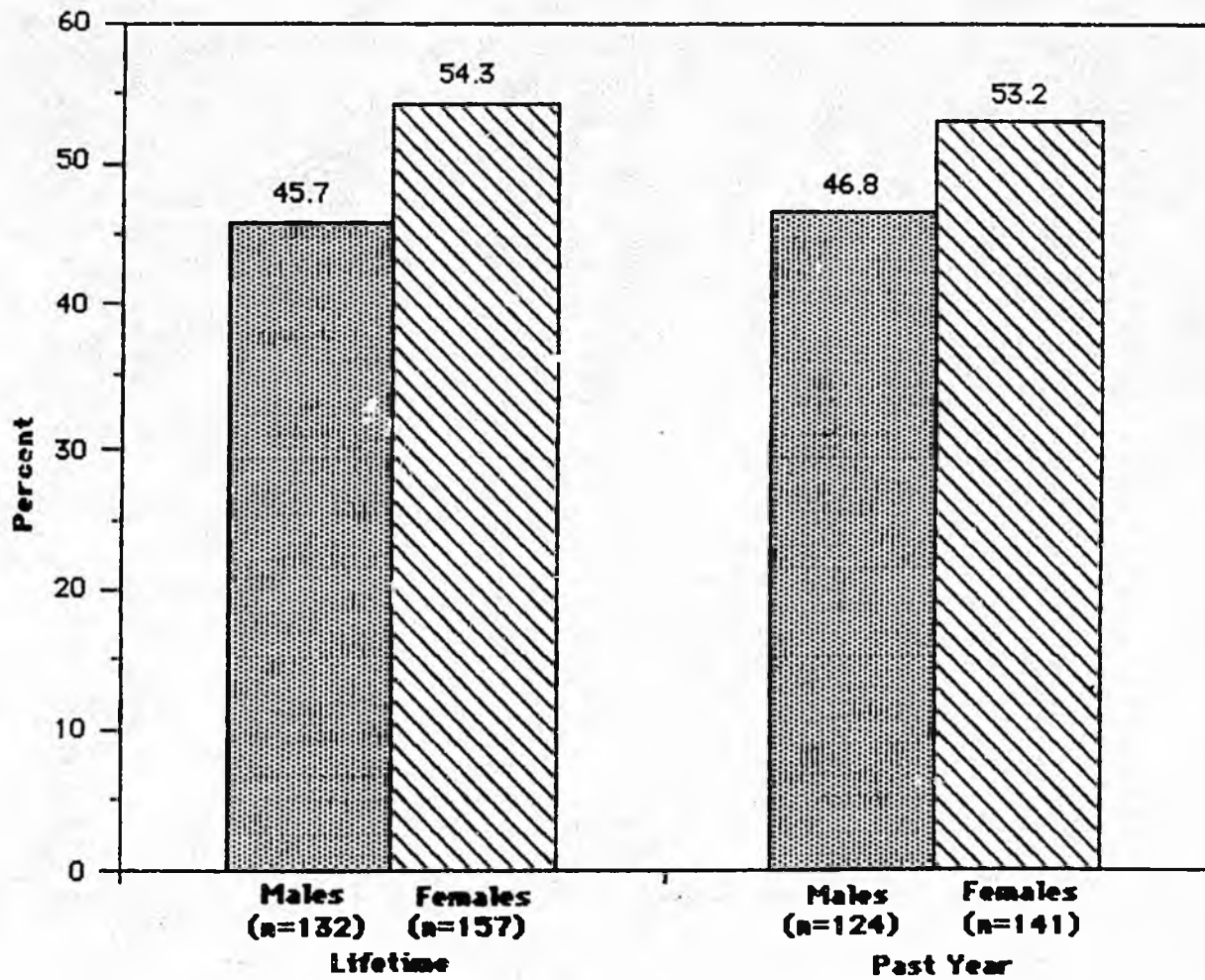
**Figure 7**  
**Lifetime Experience With Alcohol**  
**Comparison of 1982 and 1987**  
**Juneau Schools**  
**Grades 7-12**



**Figure 8**  
**Frequency of Drinking Past 30 Days**  
**Juneau Schools Grades 7-12**  
**1987**  
**(n=289)**



**Figure 9**  
**Alcohol Use by Gender During**  
**Lifetime and Past Year**  
**Juneau Schools**  
**1987**



both higher rates of lifetime prevalence and use during the past year

### Consequences of Drinking

Figure 10 shows how many respondents reported the frequency with which their drinking resulted in either feeling high, getting drunk or very high, or in having gotten sick during the past year. Inspection of the findings indicate that most of the students who drank did so to get high, but many of those who did drink experienced drunkenness or became sick one or more times. There are some students, however, who report more frequent incidents of adverse consequences associated with their drinking, and if these self-reports are accurate, these occurrences meet established criteria representative of "problem drinking" among adolescents (Rachel et al., 1980).

## **Part III. Tobacco**

### Smoking and Chewing/Smokeless Tobacco

Figure 11 provides a description of the prevalence rates for lifetime use of tobacco (ever tried), and a comparison of the present findings with those obtained in 1982. Data for comparing the prevalence rates from the 1982 sample for chewing/smokeless tobacco were unavailable. As can be noted, the prevalence of cigarette smoking has increased (by 24.7 percent) since 1982. Over a third of those sampled have also indicated having used smokeless or chewing tobacco.

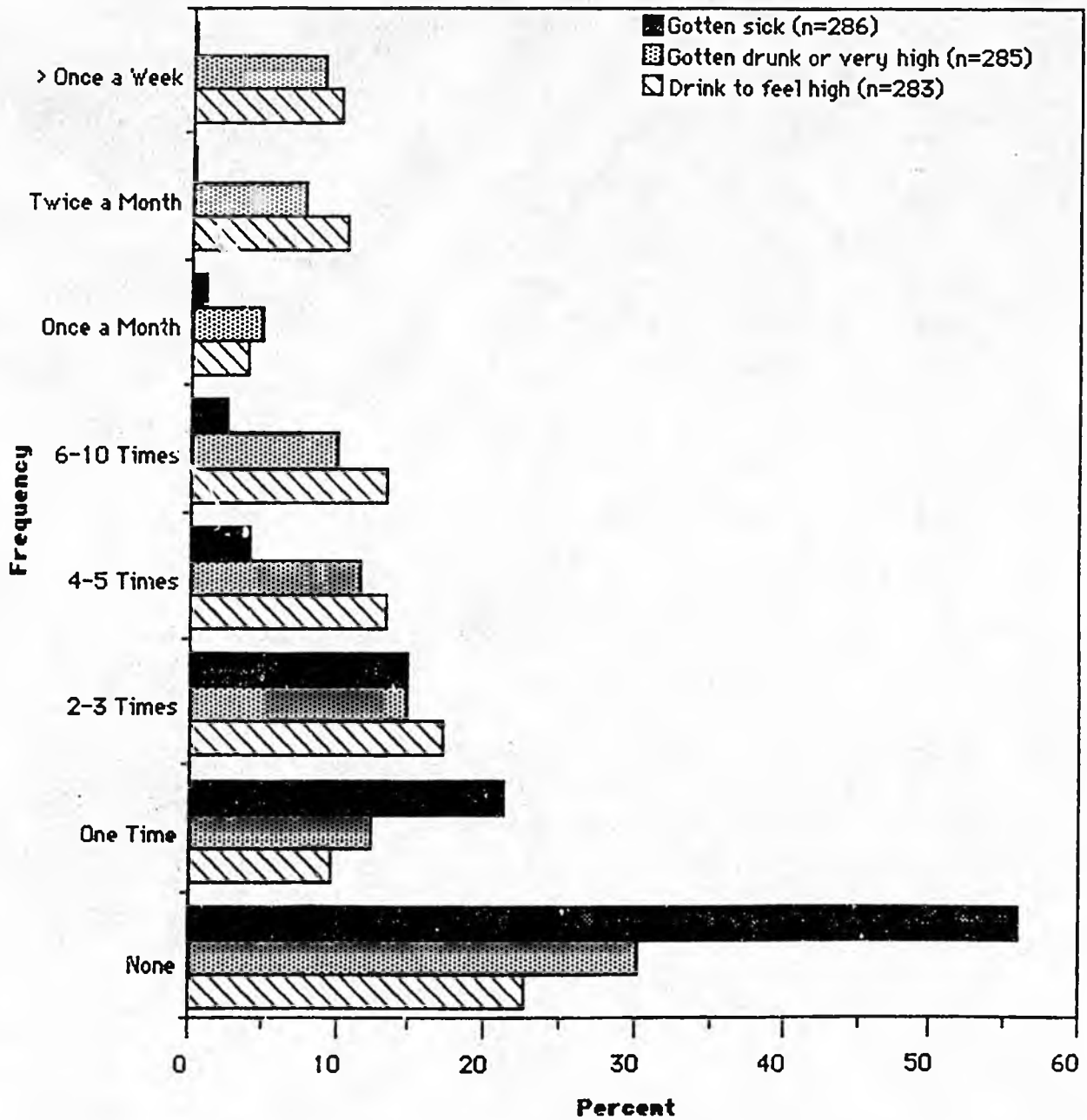
## **Part IV. Students' Perception of Increase or Decrease in Drug Use**

Figure 12 presents the summarized results of questions that asked students to report whether they thought use of any of the substances had increased or decreased in their school during the past year. The students' perception of the level of use, for the most part, appears to be consistent with the pattern of drug use observed with respect to the reports of recency and frequency of substance use. Marijuana, cocaine, hallucinogens, and stimulants, which showed a recent and frequent pattern of use, are all perceived by the students as having increased in use during the past year. Surprisingly inhalants, which showed a recent and frequent pattern of use, was perceived as having decreased in use by the students. The students also report that alcohol and tobacco use have increased during the past year, and this perception is almost universal.

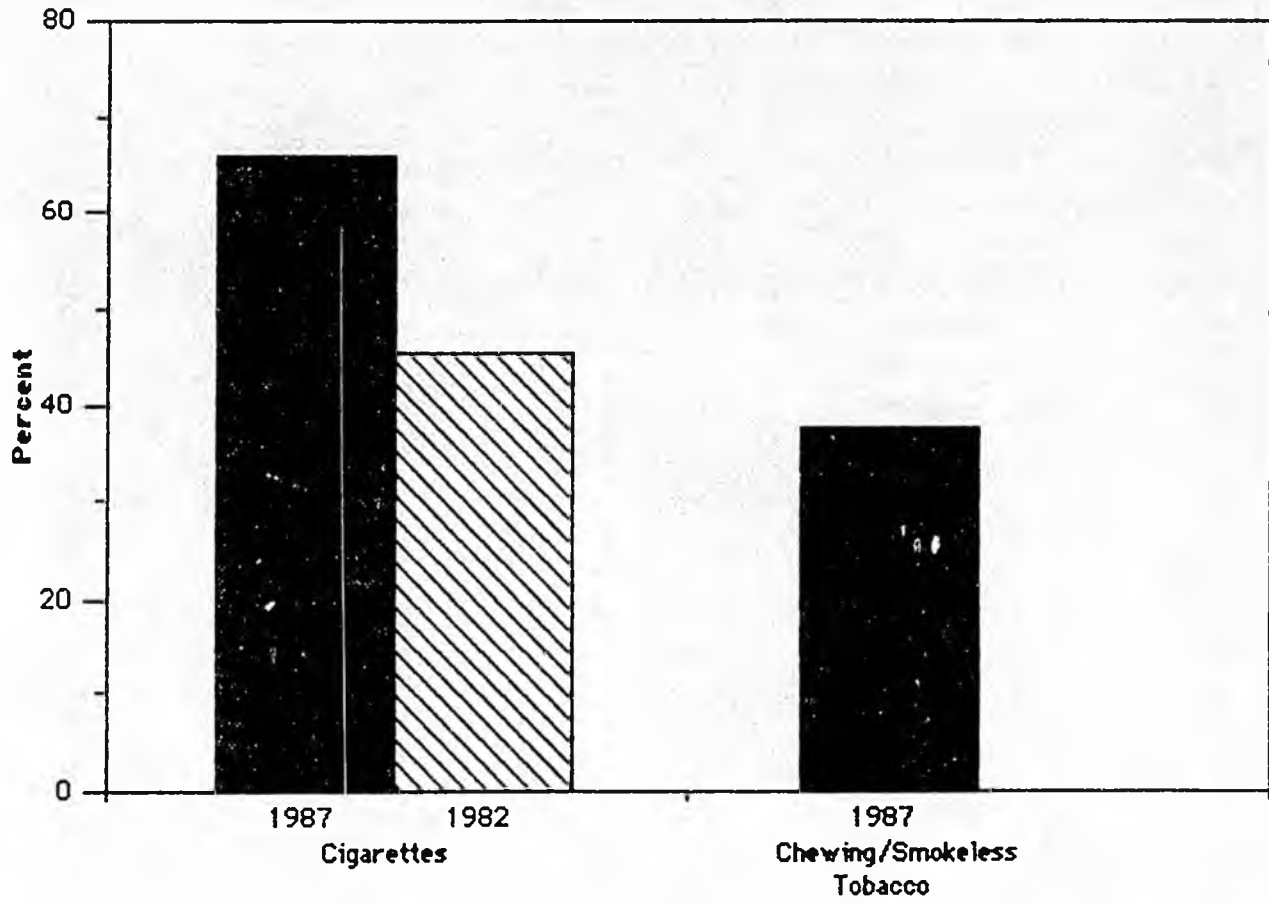
## **Part V. Comparison with Other Alaska Communities**

Figure 13 provides a comparison of the findings for reports of lifetime experience with chemical substances from Juneau with two other Alaskan communities surveyed in the spring of 1987. As can be observed Juneau, except for lifetime experiences with stimulants, either shows the lowest, or second lowest, prevalence rate among the three communities.

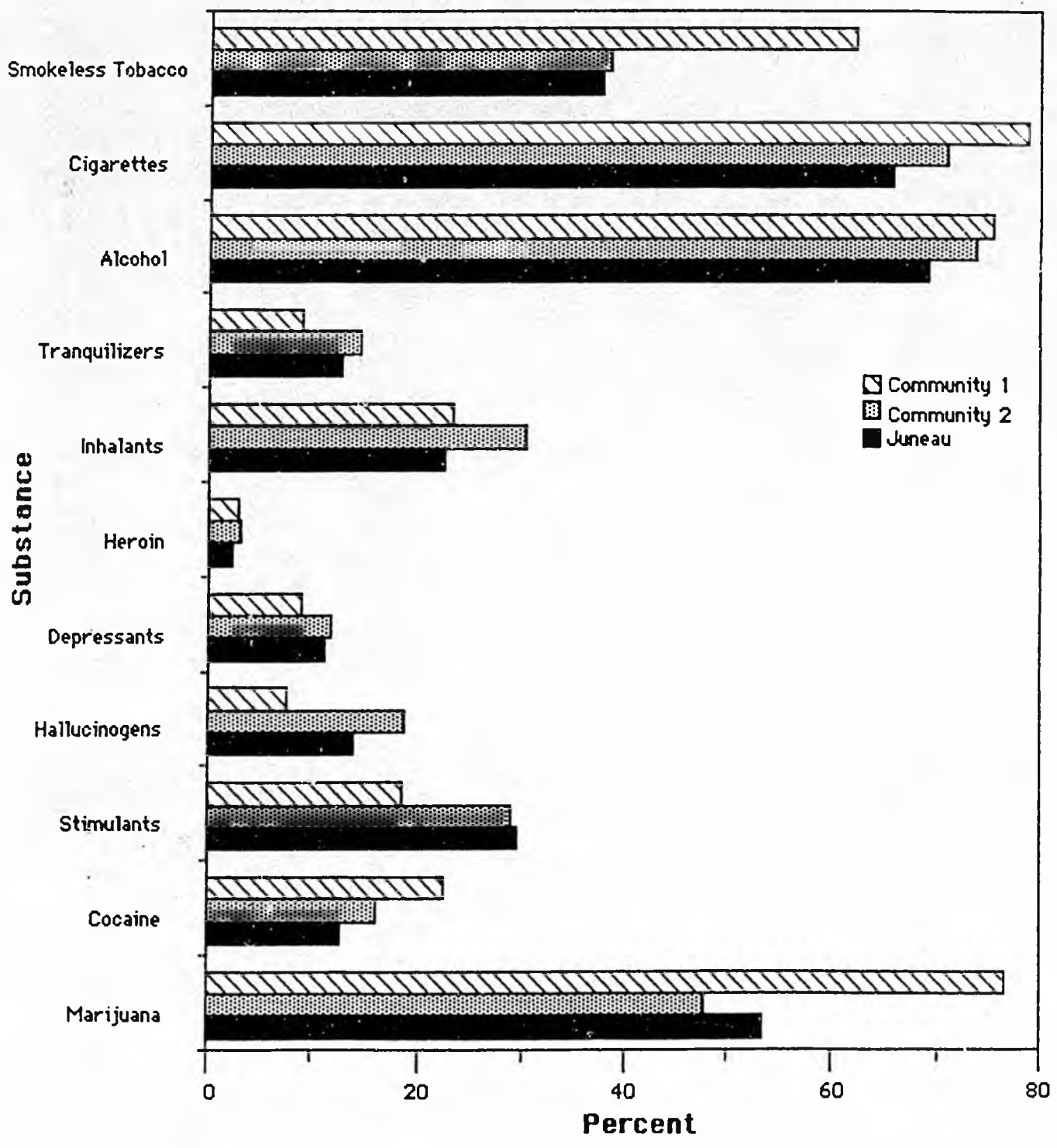
**Figure 10**  
**Consequences of Drinking During**  
**the Past Year**  
**Juneau Schools**  
**Grades 7-12**  
**1987**



**Figure 11**  
**Use of Tobacco Products**  
**Lifetime Experience**  
**Juneau Schools**



**Figure 13**  
**Lifetime Prevalence**  
**Comparison of Experiences with Chemical**  
**Substances Among Three Alaska Communities**  
**1987**



## Discussion and Implications

In summarizing the findings, it is apparent that drug-taking behavior is prevalent in varying degrees among the students responding to the questionnaire, and that changes in the pattern of drug use has taken place since the previous survey was undertaken in 1982. Increases have occurred in the use of some substances, some have appeared to stabilize, while others have decreased. Although marijuana continues to show the highest overall prevalence, experience with hallucinogens and inhalants have increased slightly, while cocaine has decreased. While the findings do suggest that the drug-taking behavior reported by the students can largely be described as experimental or infrequent use, a pattern of more frequent use is also evident. Of special interest in this pattern of use is that more females than males are involved in drug-taking behavior. Additionally, the present findings indicate a downward trend in age of initiation into drug use. Previous research (Segal, 1986) suggested that age 13 was the peak year for initiation into drugs, but the present findings indicate that age 12 now appears to be the critical year for initiation into drug use.

The prevalence of alcohol use was also high, and encompassed a wide range of different types of consumption, one of which is consistent with criteria indicating problem drinking among a small number of students. The extent of smoking is also high, having increased by 25 Percent since 1982.

The findings suggest that efforts are needed to reduce or minimize teenage involvement with chemical substances, tobacco products, drinking, and its associated negative consequences. Both direct and indirect strategies can be utilized to modify the situation. Direct strategies encompass drug education or prevention programs within the school setting that deal directly with the problem. Indirect strategies focus on modifying conditions believed to influence adolescents' behavior with respect to use of drugs. An example of an indirect strategy is a program to help students develop decision making skills useful in dealing with high risk situations. Such a program, however, needs to correspond to the point at which students are at a high risk for initiation into drugs, alcohol, or tobacco products. Based on the results of this study, a critical point would be at the grade level corresponding to age 11, one year before the first peak initiation period occurs.

In approaching the problem of preventing/minimizing the use of mood-altering substances, smoking or use of chewing/smokeless tobacco, and use of alcohol, it is important to take note that illicit drug use, smoking, and drinking, have become incorporated into the American lifestyle. Adolescents are thus, to a large extent, reflecting the value system of the larger society, and their behavior with respect to alcohol, drugs, and tobacco, can be

considered, to some extent, to be "normative" behavior. Many adolescents thus become involved with drugs in order to know what drug experience are like. Segal (1985-86) has shown that a major reason given by adolescents who try drugs is to experience the sensation that drugs provide. This does not diminish the need, however, to eliminate or reduce drug use among youth, particularly when other adolescents have reported that they used drugs to reduce stress (Segal, 1985-86), a motive that suggests that some adolescent drug users may be in need of help.

An effective way to combat the problem of drug use is a combination of both direct and indirect programs, in which the school and community cooperate on establishing an education/prevention program that is designed to meet common goals and objectives. A broadbased, community-wide approach, involving all elements of the community (parents, children, educators, police, governmental officials, counselors, etc.) is required to alleviate the problem of teenage smoking, drinking, and drug-taking behavior.

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Appendix A

**The Center for Alcohol and Addiction Studies**

**University of Alaska, Anchorage**

**Confidential Student Questionnaire**

Dear Student:

The purpose of this study is to help us to understand better your feelings and experiences with respect to alcohol and other drugs. About 3,000 students across Alaska will take part in this study. Your answers will be kept absolutely confidential. There is no way to identify any student who responds. We do not ask your name - do not write it anywhere on the questionnaire. Your participation is voluntary. We need your help, and hope that you will contribute to the success of this study.

Thank you for your cooperation.

**Directions**

This is not a test and you are not timed on any section or group of questions. Please read carefully all the directions for each question. It is important that you follow the order of questions within each section. If you do not understand or cannot read a question raise your hand and someone will assist you.

When you have finished the questionnaire put it in the envelope that has been provided by the monitor. No one at the school will see or read your answers. The envelope will be sealed after the last questionnaire is completed. All the envelopes will be immediately taken to the University to be coded and entered into the computer. All questionnaires will be destroyed after the computer file has been set up.

**Part 1. Background Information**

1. I am

Female

Male

2. My ethnic background is? (Please check the correct one.)

Alaska Native

Hispanic

American Indian

White

Asian or Pacific Islander

Other: Which \_\_\_\_\_

Black

3. How old were you as of your last birthday? \_\_\_\_\_

4. What grade are you in? (Please check the correct one.)

6th  7th  8th  9th  10th  11th  12th

5. Have you ever taken part in an alcohol or drug education/prevention program in one of your classes?

No (Go to #7)

Yes (continue)

6. At which grade did you take part? (Check all that apply)

5th grade or below

9th grade

6th grade

10th grade

7th grade

11th grade

8th grade

12th grade

7. What grades do you usually get? (Check the one that applies to you for each column.)

During this school year

During the year before

Mostly A's

Mostly A's

Mostly A's and B's

Mostly A's and B's

Mostly B's

Mostly B's

Mostly B's and C's

Mostly B's and C's

Mostly C's

Mostly C's

Mostly C's and D's

Mostly C's and D's

Mostly D's and F's

Mostly D's and F's

8. How many years have you lived in this community? \_\_\_\_\_

**Part 2. This set of questions asks about your experiences with recreational drugs used to get high or to feel good.**

**Section 1. Marijuana**

Marijuana, which is sometimes called "grass," "pot," "weed," "smoke," "bud," "Mary Jane," or "joint," is a substance that is usually smoked.

9. Have you ever had a chance to try marijuana?  No  Yes

10. Have you ever tried marijuana?

No (Go to Section 2)

Yes (Continue)

11. How old were you when you first tried it? \_\_\_\_\_

12. Have you ever been high or stoned on marijuana to the point where you were pretty sure that you had experienced its effect?

I never got high

Have gotten high more than once

Have gotten high once

I get high almost every time I use it

13. How many different times have you used marijuana?

	No times	1-2 times	3-5 times	6-9 times	10-19 times	20-39 times	40+ times
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 2. Cocaine.**

Cocaine, which is called "coke," "toot," "blow," or "snow," or other names, is a white powdery substance that is usually sniffed or smoked.

14. Have you ever had a chance to try cocaine?  No  Yes

15. Have you ever tried cocaine?

No (Go to Section 3)

Yes (Continue)

16. How did you use it? (Check all the apply to you.)

I have sniffed it

I have smoked it

I have injected it (shot it up)

I have used it in freebase form

17. How old were you when you first tried it? \_\_\_\_\_

18. Have you ever been high on cocaine to the point where you were pretty sure that you had experienced its effect?

I never got high

Have gotten high more than once

Have gotten high once

I get high almost every time I use it

19. How many different times have you used cocaine?

	No times	1-2 times	3-5 times	6-9 times	10-19 times	20-39 times	40+ times
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 3. Crack**

Another type of cocaine is called "crack." This form of cocaine looks like a piece of rock or soap, and is smoked.

20. Have you ever had a chance to try crack?  No  Yes

21. Have you ever tried crack?

No (Go to Section 4)

Yes (Continue)

22. How old were you when you first tried it? \_\_\_\_\_

23. Have you ever been high on crack to the point where you were pretty sure that you had experienced its effect?

I never got high

Have gotten high once

Have gotten high more than once

I got high almost every time I use it

24. How many different times have you used crack?

	No <u>times</u>	1-2 <u>times</u>	3-5 <u>times</u>	6-9 <u>times</u>	10-19 <u>times</u>	20-39 <u>times</u>	40+ <u>times</u>
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 4. Stimulants ("Uppers")**

Stimulants or amphetamine drugs, known as "uppers," "speed," "crystal," "bennies," "dexies," "pep pills," "crosstabs," "crossroads," and "crisscross," among other names, are used to make one feel more alert, energetic, or to obtain a high. They are usually taken in pill form.

25. Have you ever had a chance to try stimulants?  No  Yes

26. Have you ever tried stimulants?

- No (Go to Section 5)
- Yes (Continue)

27. How old were you when you first tried any? \_\_\_\_\_

28. Have you ever been high on a stimulant to the point where you were pretty sure that you had experienced its effect?

- I never got high
- Have gotten high more than once
- Have gotten high once
- I get high almost every time I use it

29. How many different times have you used stimulants?

	No <u>times</u>	1-2 <u>times</u>	3-5 <u>times</u>	6-9 <u>times</u>	10-19 <u>times</u>	20-39 <u>times</u>	40+ <u>times</u>
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 5. Hallucinogens**

Hallucinogens, which are also called psychedelics, consist of such substances as LSD ("Acid"), Mescaline, and PCP, among other substances. Some of the slang names for hallucinogens are "mushrooms," "ecstasy," or "angel dust," "window pane," and "blotter acid." These substances are used to experience hallucinations, or to alter how things are seen, change one's mood, feelings, or level of awareness.

30. Have you ever had a chance to try hallucinogens?  No  Yes

31. Have you ever tried hallucinogens?

- No (Go to Section 6)
- Yes (Continue)

32. How old were you when you first tried any? \_\_\_\_\_

33. Have you ever been high on an hallucinogen to the point where you were pretty sure that you had experienced its effect?

- I never got high
- Have gotten high more than once
- Have gotten high once
- I get high almost every time I use it

34. How many different times have you used hallucinogens?

	No <u>times</u>	1-2 <u>times</u>	3-5 <u>times</u>	6-9 <u>times</u>	10-19 <u>times</u>	20-39 <u>times</u>	40+ <u>times</u>
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 6. Depressants ("Downers")**

Depressant or "downer" type drugs, known as barbiturates, one of which is called Quaalude, are chemical substances used to calm oneself down or to get a high, much like using alcohol. Such drugs are usually taken in pill form, and are called "barbs," "blues" or "blue devils," "yellow jackets," "purple hearts," "soapers," or "ludes."

35. Have you ever had a chance to try depressants?  No  Yes

36. Have you ever tried depressants?

No (Go to Section 7)

Yes (Continue)

37. How old were you when you first tried any? \_\_\_\_\_

38. Have you ever been high on a depressant to the point where you were pretty sure that you had experienced its effect?

I never got high

Have gotten high more than once

Have gotten high once

I get high almost every time I use it

39. How many different times have you used depressants?

	No times	1-2 times	3-5 times	6-9 times	10-19 times	20-39 times	40+ times
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 7. Heroin**

Heroin, which is sometimes called "H," "horse," "junk," "Mexican brown," or "smack," can be a white or brownish powdery substance that can be injected (shot up), sniffed, or smoked.

40. Have you ever had a chance to try heroin?  No  Yes

41. Have you ever tried heroin?

No (Go to Section 8)

Yes (Continue)

42. How old were you when you first tried it? \_\_\_\_\_

43. Have you ever been high on heroin to the point where you were pretty sure that you had experienced its effect?

I never got high

Have gotten high more than once

Have gotten high once

I get high almost every time I use it

44. How many different times have you used heroin?

	No times	1-2 times	3-5 times	6-9 times	10-19 times	20-39 times	40+ times
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 8. Inhalants**

Inhalants are chemical substances, such as gasoline, kerosene, aerosol sprays, paint, glue, and other chemicals, or drugs such as nitrous oxide or amyl nitrate, that are sniffed or inhaled to induce a high.

45. Have you ever had a chance to try inhalants?  No  Yes

46. Have you ever tried any inhalants?

No (Go to Section 9)

Yes (Continue)

47. How old were you when you first tried any? \_\_\_\_\_

48. Have you ever been high on an inhalant to the point where you were pretty sure that you had experienced its effect?

- Not sure I ever got high
- Have gotten high more than once
- Have gotten high once
- I get high almost every time I use it

49. How many different times have you used inhalants?

	No times	1-2 times	3-5 times	6-9 times	10-19 times	20-39 times	40+ times
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Section 2. Tranquilizers**

Tranquilizers are substances used to calm oneself, to relax or to get high. One such drug is Valium.

50. Have you ever had a chance to try tranquilizers?  No  Yes

51. Have you ever tried any tranquilizers?

- No (Go to Part 3)
- Yes (Continue)

52. How old were you when you first tried any? \_\_\_\_\_

53. Have you ever been high on a tranquilizer to the point where you were pretty sure that you had experienced its effect?

- I never got high
- Have gotten high more than once
- Have gotten high once
- I get high almost every time I use it

54. How many different times have you used tranquilizers?

	No times	1-2 times	3-5 times	6-9 times	10-19 times	20-39 times	40+ times
In your lifetime .....	—	—	—	—	—	—	—
During the last 12 months .....	—	—	—	—	—	—	—
During the last 30 days .....	—	—	—	—	—	—	—

**Part 3.**

If you have never tried a drug answer #54. If you have tried a drug, skip to #55.

54. If you have never tried a drug, was it because of any of the following?

(Check the column that best applies to you for each item.)

	Very True of me	Often True of me	Sometimes True for of me	Seldom True of me	Not True of me
Fear of damage to my mind .....	—	—	—	—	—
Moral reasons .....	—	—	—	—	—
Knowing friends who had a bad trip .....	—	—	—	—	—
Fear of having a bad experience .....	—	—	—	—	—
No opportunity to try a drug .....	—	—	—	—	—
Disappoint my parents .....	—	—	—	—	—
Pressure from friends .....	—	—	—	—	—
May cause addiction .....	—	—	—	—	—
It is illegal .....	—	—	—	—	—
Not important for me to try .....	—	—	—	—	—
Because of something I learned in school....	—	—	—	—	—

(Skip to #56)

55. Have any of the following ever happened to you as a result of your experience with any type of drug?  
(Check all that apply to you.)

	<u>Never</u>	<u>Once</u>	<u>2-3 Times</u>	<u>4 or more Times</u>
Got into trouble with your teachers or principal.....	—	—	—	—
Had it get in the way of school work.....	—	—	—	—
Got into trouble with your friends.....	—	—	—	—
Got into trouble with the police.....	—	—	—	—
Had a bad trip.....	—	—	—	—
Resulted in an accident or injury to you or others.....	—	—	—	—
Been suspended from school.....	—	—	—	—

(Continue below)

56. Do you think the use of any of the substances listed below has increased in your school during the past year? (Please check all the ones you believe have gone up.)

___ Alcohol	___ Cocaine	___ Stimulants
___ Tobacco	___ Crack	___ Depressants
___ Marijuana	___ Hallucinogens	___ Inhalants
___ Heroin	___ Tranquilizers	

57. Do you think the use of any of the substances listed below has decreased in your school during the past year? (Please check all the ones you believe have gone down.)

___ Alcohol	___ Cocaine	___ Stimulants
___ Tobacco	___ Crack	___ Depressants
___ Marijuana	___ Hallucinogens	___ Inhalants
___ Heroin	___ Tranquilizers	

58. About how many of your friends have tried: (Check the appropriate place)

	<u>None</u>	<u>1 or 2</u>	<u>Several</u>	<u>Most</u>	<u>All</u>	<u>Don't Know</u>
Marijuana.....	—	—	—	—	—	—
Cocaine.....	—	—	—	—	—	—
Crack.....	—	—	—	—	—	—
Stimulants.....	—	—	—	—	—	—
Hallucinogens.....	—	—	—	—	—	—
Depressants.....	—	—	—	—	—	—
Heroin.....	—	—	—	—	—	—
Inhalants.....	—	—	—	—	—	—
Tranquilizers.....	—	—	—	—	—	—
Alcohol.....	—	—	—	—	—	—
Cigarettes.....	—	—	—	—	—	—
Smokeless tobacco.....	—	—	—	—	—	—

59. About how many of your friends use: (Check the appropriate place)

	<u>None</u>	<u>1 or 2</u>	<u>Several</u>	<u>Most</u>	<u>All</u>	<u>Don't Know</u>
Marijuana.....	—	—	—	—	—	—
Cocaine.....	—	—	—	—	—	—
Crack.....	—	—	—	—	—	—
Stimulants.....	—	—	—	—	—	—
Hallucinogens.....	—	—	—	—	—	—
Depressants.....	—	—	—	—	—	—
Heroin.....	—	—	—	—	—	—
Inhalants.....	—	—	—	—	—	—
Tranquilizers.....	—	—	—	—	—	—
Alcohol.....	—	—	—	—	—	—
Cigarettes.....	—	—	—	—	—	—
Smokeless tobacco.....	—	—	—	—	—	—

Part 4. The questions in this part ask about your experiences with beer, wine, and liquor.

60. Have you ever had a drink of wine, beer, or liquor - not just a sip or taste - with friends outside of your home?

- No (Go to Part 5)
- Yes (Continue)

61. Have you had a drink of wine, beer, or liquor - not just a sip or taste - with friends outside of your home during the past year?

- No
- Yes

62. How old were you when you had your first drink (not just a sip or taste) with friends at a party or some other kind of get together outside of your home? \_\_\_\_\_

63. How many times did you drink beer, wine, or liquor during the past 30 days?

- No time
- 1 time
- 2-3 times
- 1-2 times a week
- 3-4 times a week
- 5-6 times a week
- Once a day
- More than once a day

64. Think of all the times when you had beer, wine, or liquor during the past 30 days. How many drinks do you usually have?

(Think of one can of beer, a glass of wine, or a mixed drink as equal to one drink.)

- I did not drink during this time
- 1 drink
- 2 drinks
- 3-5 drinks
- 6-10 drinks
- 11 or more drinks

65. During the past year, about how many times did you drink just to feel a little high or light-headed?

- None
- 2-3 times
- 6-10 times
- Twice a month
- One time
- 4-5 times
- Once a month
- Once a week or more

66. During the past year, about how many times have you gotten drunk or very, very high?

- None
- 2-3 times
- 6-10 times
- Twice a month
- One time
- 4-5 times
- Once a month
- Once a week or more

67. During the past year, about how many times have you gotten sick (nauseas or vomiting) as a result of drinking?

- None
- 2-3 times
- 6-10 times
- Twice a month
- One time
- 4-5 times
- Once a month
- Once a week or more

68. Have you ever had any of the following happen to you as a result of drinking?

(Place a check where it applies to you for each item.)

	<u>Never</u>	<u>Once</u>	<u>2-3 Times</u>	<u>4 or more Times</u>
Gotten into trouble with your teachers or principal. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Had it get in the way of school work. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gotten you in trouble with your friends. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gotten you in trouble with the police. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gotten you in a fight. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resulted in an accident or injury to you or others. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have driven when drinking? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

69. How many of your close friends drink alcoholic beverages at least once a week?

- Most of my friends don't drink at all
- None of my friends drink at least once a week
- Some of my friends drink at least once a week
- Most of my friends drink at least once a week
- All of my friends drink at least once a week

---

**Part 5. Tobacco**

70. Have you ever tried smoking cigarettes?

- No (Go to \*78)
- Yes (Continue)

71. Have you smoked more than two or three times?

- No
- Yes

72. How old were you when you first tried smoking cigarettes? \_\_\_\_\_

73. How many times during the past 30 days have you smoked cigarettes?

- None (Go to \*77)
- 1 time
- 2-3 times
- 1-2 times a week
- 3-4 times a week
- 5-6 times a week
- Once a day
- Two or three times a day
- More than four times a day

74. Think of all the times when you have smoked during the past 30 days. About how many cigarettes did you smoke during a day?

- 1-5 cigarettes a day
- 6-10 cigarettes
- 11-15 cigarettes
- 16-20 cigarettes
- 21 or more cigarettes

75. Would you consider yourself:

- An occasional smoker (go to \*79)
- A moderate smoker (Go to \*76)
- A light smoker (Go \*76)
- A heavy smoker (Go to \*76)

76. How old were you when you became a light, moderate, or heavy smoker? \_\_\_\_\_

(Skip to \*79)

77. If you have stopped smoking, was it for any of these reasons? (Check all that apply to you.)

- Just didn't feel a need to smoke anymore
  - Fear of damage to my body
  - Parents disapproved
  - Friends disapproved
  - Because of something I learned in school
  - Other: \_\_\_\_\_
- (Go to \*79)

78. If you have never smoked, was it for any of the following reasons? (Check all that apply to you.)

- Just don't feel a need to smoke
  - Fear of damage to my body
  - Parents disapproved
  - Friends disapproved
  - Because of something I learned in school
  - Other: \_\_\_\_\_
- (Go to \*79)

79. Have you ever tried chewing tobacco or smokeless tobacco (such as Skoll)?

No (Go to #85)

Yes

80. How old were you when you first tried smokeless tobacco? \_\_\_\_\_

81. How many times during the past month (30 days) have you used either chewing or smokeless tobacco?

(Check the columns that apply to you for both types of smokeless tobacco.)

	<u>Chewing Tobacco</u>	<u>Smokeless Tobacco</u>
None.....	___	___(Go to #84)
1 time.....	___	___
2-3 times.....	___	___
1-2 times a week...	___	___
3-4 times a week...	___	___
5-6 times a week...	___	___
Once a day.....	___	___
More than once a day.	___	___

82. Would you consider yourself:

An occasional user (Go to #84)

A moderate user (Go to #83)

A light user (Go to #83)

A heavy user (Go to #85)

83. How old were you when you became a light, moderate, or heavy smokeless or chewing tobacco user? \_\_\_\_\_

(Skip to Part 6)

84. If you have used smokeless or chewing tobacco but have now stopped, was it for any of these reasons?

(Check all that apply to you.)

Just didn't feel a need to use it anymore

Fear of damage to my body

Parents disapproved

Friends disapproved

Other: \_\_\_\_\_

85. If you have never used smokeless tobacco, was it for any of the following reasons? (Check all that apply to you.)

Just don't feel a need to use it

Friends disapproved

Parents disapproved

Fear of damage to my body

Because of something I learned in school

Other: \_\_\_\_\_

**Please Continue on the Next Page**

**Part 6**

Please answer the following questions, whether you have used drugs or not, concerning some different feelings or experiences that people have. Read each item and check the statement that best describes you. Answer every item.

	Very True of me	Often True of me	Sometimes True of me	Seldom True of me	Not True of me
I would enjoy being a famous person.....	—	—	—	—	—
I don't really have fun at parties.....	—	—	—	—	—
I often act without thinking.....	—	—	—	—	—
I enjoy being alone.....	—	—	—	—	—
I am pretty cautious.....	—	—	—	—	—
I daydream about doing hard tasks.....	—	—	—	—	—
I care what others think about me.....	—	—	—	—	—
I do not give up easily on a problem.....	—	—	—	—	—
I feel that I have a lot of control over my future....	—	—	—	—	—
I often wish I had more good friends.....	—	—	—	—	—
My daydreams often cheer me up when I feel sad...	—	—	—	—	—
I almost never ask for help or advice.....	—	—	—	—	—
Being successful is important to me.....	—	—	—	—	—
I like to tell others how to do things.....	—	—	—	—	—
I try not to take life very seriously.....	—	—	—	—	—
When I want something - I want it now - not later...	—	—	—	—	—
I'm afraid I'm not very popular.....	—	—	—	—	—
I am not interested in anything unless it is exciting..	—	—	—	—	—
My feelings are easily hurt.....	—	—	—	—	—
I sometimes question the reason why I do things....	—	—	—	—	—
Sometimes I take myself too seriously.....	—	—	—	—	—
Being successful at what I do is important to me....	—	—	—	—	—
What others think of me is not important to me.....	—	—	—	—	—
I like to feel free to come and go as I please.....	—	—	—	—	—
I am not easily pressured by my friends.....	—	—	—	—	—

This is the end of the questionnaire.

*Thank you for filling it out.*

SB

384

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

Proposed CS for  
BILL VERSION: SB 384  
PUBLISH DATE: 2/1/88

*Rec'd  
4-14-88  
EJX*

FISCAL NOTE

REQUEST:

Revision Date: 2/1/88 Agency Affected: Office of the Governor  
 Title: An Act relating to adoption of regulations and the presumption... BRU: Executive Operations  
 Sponsor: Rules Committee Components: Executive Office  
 Requestor: Rules Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		72.7	75.2	77.6	80.4	83.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		5.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		77.7	75.2	77.6	80.4	83.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		77.7	75.2	77.6	80.4	83.0
FEDERAL FUNDS						
OTHER						
TOTAL		77.7	75.2	77.6	80.4	83.0

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Analysis is attached.

Prepared by: Michael A. Nizich, Director *Man* Phone: 465-3616  
 Division: Division of Administrative Services Date: 4/14/88  
 Approved by Commissioner: [Signature] Date: 4/14/88  
 Agency: Office of the Governor

Distribution (by preparer):

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

CONTINUATION OF FISCAL NOTE FOR PROPOSED COMMITTEE  
SUBSTITUTE TO SB 384

This analysis assumes SB 384 will be amended to include identical provisions as those of CS HB 420 (State Affairs), a copy of which is attached.

Section 1 of this bill amends AS 44.62.040(b) to include the Governor's signature on regulations. "The signature of the governor approving adoption of the regulation as required by AS 44.62.065 must accompany the regulation."

The addition of the signing of regulations to the Governor's duties could result in some delays in the approval process due to scheduling conflicts.

Section 2 of this bill adds a new section to AS 44.62, "Sec. 44.62.065. GOVERNOR'S SIGNATURE. A regulation or order of repeal is not valid unless the governor has approved its adoption in writing."

The Office of the Governor will need to establish a regulatory review process, which will create the need for an additional Special Staff Assistant who will be charged with research and preparation of a policy review of each regulation referred to the Governor for approval.

Personal Services

Special Staff Assistant - Range 24

	FY 89	FY 90	FY 91	FY 92	FY 93
Salary	56.3	58.3	60.3	62.5	64.6
Benefits	12.7	13.2	13.6	14.2	14.7
Ins.	3.7	3.7	3.7	3.7	3.7
Total:	72.7	75.2	77.6	80.4	83.0

Equipment

Purchase of personal computer, printer, and software, plus required cabling for hookup to mainframe.

FY 89

Total: 5.0

Travel, contractual services, and supply requirements for this position will be absorbed by the Executive Office budget, as will any administrative or clerical support requirements.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

April 14, 1988

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

Re. SB-384

Senator Willie Hensley, Chair  
Administrative Regulation Review  
Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: CSHB 420 (SA) --  
administrative regulations

Dear Senator Hensley:

When testifying on this bill before the House State Affairs Committee a couple of days ago, I mentioned that, if Sec. 2 is to be retained, the exception at page 1, lines 22 and 23, should be expanded. After the hearing, your assistant, Dave Gray, phoned to ask me for a list of additional kinds of regulations that should be excepted from the general requirement of having the governor's signature. Here is a quick list:

1. regulations that implement federal/state programs (e.g., aid to families with dependent children);
2. regulations such as safety standards (e.g., highways and airports) imposed as a condition of federal aid;
3. University of Alaska regulations, adopted by the Board of Regents;
4. ombudsman regulations;
5. occupational licensing regulations adopted by the 18 citizen boards appointed by the governor;

6. regulations of the Alaska Public Offices Commission, a body charged with regulating certain activities of politicians, including the governor;

7. regulations of the following multi-member boards, commissions, authorities, etc., where the intent of the enabling legislation was clearly to provide for multi-person decision making:

- A. Alcoholic Beverage Control Board;
- B. Alaska Industrial Development and Export Authority;
- C. Alaska Housing Finance Corporation;
- D. Alaska State Building Authority;
- E. Alaska Public Utilities Commission;
- F. State Board of Education;
- G. Professional Teaching Practices Commission;
- H. Board of Fisheries and Board of Game;
- I. Alaska Resources Corporation;
- J. Alaska Oil and Gas Conservation Commission;
- K. Medicaid Rate Commission;
- L. Permanent Fund Corporation;
- M. Municipal Bond Bank Authority;
- N. Alaska Public Broadcasting Commission;
- O. Alaska Railroad Corporation;
- P. Parole Board;
- Q. Commercial Fisheries Entry Commission;
- R. Alaska Commission on Postsecondary Education;
- S. Workers' Compensation Board.

I have not had time to check all of the relevant statutes pertaining to each of the items in this list, but I think that the point is clear. There are certain functions and certain kinds of decisions for which it would not be appropriate to have a statute formally requiring gubernatorial approval in each instance. There undoubtedly are more than I have been able to come up with in this quick list.

I would renew my suggestion that secs. 1 and 2 be deleted from this committee substitute.

I have just received word that the Senate Judiciary Committee will be taking up SB 384 (identical to HB 420) this

Senator Willie Hensley, Chair  
Administrative Regulation Review Committee

April 14, 1988  
Page 3

afternoon. Therefore, I am sending Senator Kerttula a copy of this letter.

Yours truly,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:



Arthur H. Peterson  
Assistant Attorney General  
and Regulations Attorney

AHP:jf

cc: The Hon. Jay Kerttula, Chair  
Senate Judiciary Committee  
Alaska State Legislature

5-1340B  
Bannister  
4/14/88

Original sponsor: Rules/Administrative  
Regulation Review Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 384 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption of regulations."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 44.62.040(b) is amended to read:

9 (b) Citation of the general statutory authority under which a  
10 regulation or order of repeal is adopted, as well as citation of  
11 specific statutory sections being implemented, interpreted or made  
12 clear, shall follow the text of each regulation or order of repeal  
13 submitted under (a) of this section. The signature of the governor  
14 approving adoption of the regulation or order of repeal as required by  
15 AS 44.62.065 must accompany the regulation or order of repeal.

16 \* Sec. 2. AS 44.62 is amended by adding a new section to read:

17 Sec. 44.62.065. GOVERNOR'S SIGNATURE. A regulation or order of  
18 repeal is not valid unless the governor has approved its adoption in  
19 writing. The lieutenant governor may not accept a regulation or order  
20 of repeal for filing under AS 44.62.040 unless it is accompanied by  
21 the governor's approval of adoption. This section also applies to  
22 regulations and orders of repeal exempted from submission to the  
23 lieutenant governor under AS 44.62.040(a). This section does not  
24 apply to emergency regulations, emergency orders of repeal, or to  
25 regulations or orders of repeal of the Department of Fish and Game.

26 \* Sec. 3. AS 44.62.200(a) is amended to read:

27 (a) The notice of proposed adoption, amendment, or repeal of a  
28 regulation shall include

29 (1) a statement of the time, place, and nature of proceed-

1 ings for adoption, amendment, or repeal of the regulation;

2 (2) reference to the authority under which the regulation  
3 is proposed and a reference to the particular code section or other  
4 provisions of law which are being implemented, interpreted, or made  
5 specific;

6 (3) an informative summary of the proposed subject of  
7 agency action and of the action's intended effect on persons subject  
8 to the action; the summary must include a description of the substance  
9 of each repealed regulation and a description of the intended effect  
10 of the repeal;

11 (4) other matters prescribed by a statute applicable to the  
12 specific agency or to the specific regulation or class of regulations;

13 (5) a summary of the fiscal information required to be  
14 prepared under AS 44.62.195.

15 \* Sec. 4. The amendments made to AS 44.62.040 by sec. 1 of this Act and  
16 AS 44.62.065, enacted by sec. 2 of this Act, apply to regulations and  
17 orders of repeal adopted on or after the effective date of this Act. The  
18 amendments made to AS 44.62.200 by sec. 3 of this Act apply to notices of  
19 proposed action published on or after the effective date of this Act.  
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# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

February 8, 1988

Hon. Jay Kerttula  
Chair  
Senate Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 384 (and HB 420) --  
adoption of regulations  
and presumption of vali-  
dity of regulations

Dear Senator Kerttula;

Your staff assistant has asked for our comments on this bill, which I understand will be coming up for hearing before your committee tomorrow. I have not spoken with the governor about this bill, and, in offering the following comments, do not claim that they necessarily represent this Administration's position on this bill.

A few days ago, I received from the lieutenant governor's office a copy of a June 1987 report to the legislature's Administrative Regulation Review Committee (ARRC), entitled "Alternative Approaches To Oversee Administrative Regulatory Activities." It appears that this bill's origins are in that report.

The bill was prepared by the legislature's ARRC, and I commend the committee's efforts in considering the issues presented. However, in these comments I must stress the constitutional and practical difficulties the bill's enactment would generate. In doing so, I echo some of the November 9, 1987 comments to the ARRC by the legislative counsel who drafted the bill.

Here is a quick section-by-section commentary:

### SECTION 1.

Section 1 amends AS 44.62.040(b) to require that the signature of the governor accompany a regulation. This is a mechanical provision offered in conjunction with the new statute in sec. 3 of the bill. The governor's signature could simply be added to the standard adoption form. This requirement by itself should not pose a major difficulty, although it will usually involve some delay. However, please see the comments below regarding sec. 3.

SECTION 2.

This would amend AS 44.62.050, the section requiring preparation of the regulations drafting manual, to require that the manual include "detailed instructions and examples of" the informative summaries required by current AS 44.62.200(a)(3). Basically, this is not a bad idea. However, a simple note or phone call to the regulations attorney (AS 44.62.125), suggesting that inclusion in the next edition of the manual, would suffice. A statutory requirement of this sort is totally unnecessary and could be troublesome.

SECTION 3.

This section adds a new statute, AS 44.62.065, that would require the governor's approval of each regulation adopted by an executive-branch agency. By its terms, the approval requirement applies to regulations exempted from the other requirements of the regulations-adoption portion of the Administrative Procedure Act (AS 44.62).

While constitutional, this formal requirement poses a major practical problem. If the governor's signature and approval are to be anything more than pro forma boilerplate, it will be necessary to establish a review process in the governor's office. If the governor's approval is to have meaning and substance, additional staff and a considerable amount of time will be required. Each year for the past six years, for example, an average of 153 new Administrative Procedure Act (APA) regulations projects have been initiated. I do not know how many projects exempted from the APA are undertaken each year. Being responsible for the Department of Law's legal review of all regulations projects, I know that it is a very time-consuming function. A policy review of both APA and non-APA regulations by the governor and his staff would require at least as much effort.

Under current constitutional provisions (see, for example, art. III, secs. 1 and 24, Alaska Constitution), the Alaska governor has the authority to affect the outcome of regulations projects. Under the proposal in sec. 3 of this bill, however, an entire structure and procedure must be established to ensure that review for every project.

SECTION 4.

This section's amendment of AS 44.62.100(a) is merely a compatibility amendment to take into account the new subsection proposed in sec. 5.

SECTION 5.

This proposed subsection, to be added to AS 44.62.100, the section on presumptions from filing, presents both practical and constitutional problems, as noted in the November 9, 1987 memo to the ARRC from legislative counsel. First of all, its provision that the legislature may adopt a special concurrent resolution "determining that a regulation is not within the procedural or substantive authority delegated" applies to all four of the presumptions in subsection (a). Those presumptions, listed in sec. 4 of the bill, are based on the legal review and approval given by the Department of Law under current AS 44.62.060. They are legal conclusions, some objective and some subjective. For example, presumption number two is that the regulation was filed and made available for public inspection -- something readily ascertainable. Presumption number one is simply that the regulation was adopted. And number four is simply that the text of the certified copy is the same as the text of the adopted regulation. Only presumption number three regarding "all requirements of this chapter," leaves room for debate. It seems foolish to have a concurrent resolution of the legislature reverse the presumptions in AS 44.62.100(a)(1), (2), and (4). What would be the reason to do so?

Of even greater significance are the constitutional issues this proposal raises. First, in making a determination that a regulation is "not within the procedural or substantive authority delegated to the agency," the legislature is making a legal judgment -- something reserved by the constitution to the judicial system. Thus there is a separation-of-powers problem. Second, in having the presumptions of validity reversed by a special concurrent resolution of the legislature, this proposal runs into the same kind of situation dealt with in State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). There, the Alaska Supreme Court said, essentially, (1) regulations have the force of law, (2) when the legislature attempts to change a regulation or the effect of a regulation it is changing the law, (3) the Alaska Constitution sets out the procedures for the legislature to use to change the law, and (4) a concurrent resolution does not satisfy the constitutional procedures for law-making. Although this proposal is for a change of the burden of proof in connection with a challenge to a regulation, whereas the statute involved in the A.L.I.V.E. Voluntary case provided for annulment of a regulation, the problem and the analysis are essentially the same, notwithstanding the fact that a resolution adopted under this statute would not actually change a regulation itself.

A December 29, 1987 memo from Kathy Hathaway to Senator

Hensley offers Ms. Hathaway's opinion that this provision, based on sec. 3-204(d) of the Model State Administrative Procedure Act (1981) is valid. She cites an Iowa case, which the Uniform Law Commissioners' commentary under that section mentions "impliedly" upheld a similar provision. Schmitt v. Iowa Department of Social Services, 263 N.W.2d 739 (Iowa 1978). You will note that that case predates both the Alaska Supreme Court's decision in State v. A.L.I.V.E. Voluntary and the United States Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983). Also, Ms. Hathaway did not mention that the entire subsection in the Model Act is bracketed, indicating that it does not have the full endorsement of the Uniform Law Commissioners, but is merely offered as an option that some states might want to consider, if likely to be held valid in their respective jurisdictions. Although the Uniform Law Commissioners' commentary under sec. 3-204 of the Model Act goes into some detail regarding the constitutional issues presented by a "legislative veto" or suspension of a regulation, it does not address the "law-making" rationale in connection with the burden of proof shift.

#### SECTION 6.

This section amends AS 44.62.200(a)(3) to require more detail in the informative summary that is published to give public notice of a proposed regulation adoption. While, in many instances, it would be helpful to have more information in the notice, the greater specificity of that detail, required across the board, would often restrict an agency's ability to respond to public comment at a written or oral hearing. If public testimony prompts a significant change in the original version of a regulation, the agency would have to begin the process anew, to assure that members of the public who might want to comment on the new proposal are adequately notified. The current provision is written to provide the necessary response flexibility.

In addition, the requirement that the notice describe the effect of each change will not always be possible to meet. Additional discussion of this in the drafting manual might help, without the legal consequences of failure that this generally applicable statute could entail. I wonder whether the bill's reference to an "analysis of the effect of the repeal" (page 3, lines 10 and 11) means something different from the "summary of the effect of" the change (page 3, lines 7 and 8).

It would be helpful to know more specifically what the problems are with the current system, which gave rise to the committee's proposal. As it is, I recognize that not all public

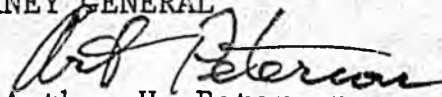
notices are ideal, but I cannot support this bill. At least two of its proposals can be easily handled without legislation. Others create constitutional and practical problems. The clash between policy expressed by the executive branch and that desired by the legislature is a traditional one best addressed by legislation governing the program at issue. There is no adequate, constitutional shortcut.

Thank you for this opportunity to comment. I would be happy to go into more detail on the points mentioned above and to offer additional information and analysis if you wish.

Yours truly,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:

  
Arthur H. Peterson

Assistant Attorney General  
and Regulations Attorney

GBS:AHP:cb

cc: Hon. Willie Hensley  
Chair  
Administrative Regulation Review Committee  
Alaska State Legislature

Hon. Stephen McAlpine  
Lieutenant Governor

Bob Evans  
Legislative Liaison  
Office of the Governor

# Alaska State Senate

P.O. Box V  
Juneau, AK 99811  
Phone: (907) 465-2444  
465-3862/465-4923

P.O. Box 1069  
Kotzebue, Alaska 99752  
(907) 442-2494



Senate Finance Committee  
State Affairs Committee  
Vice-Chair, Rules Committee  
Chair, Administrative Regulation Review

William L. Hensley

## MEMORANDUM

To: Sen. Faiks, President  
Rep. Grussendorf, Speaker

Rep. Sund, Vice Chairman  
Sen. Sturgulewski, Member  
Sen. Szymanski, Member  
Rep. Hoffman, Member  
Rep. Hanley, Member

From: Sen. Hensley, Chairman *WH*  
Administrative Regulation Review Committee

Re: Proposed legislation for the committee meeting on  
Wednesday, January 27.

Based on the committee discussion October 17, I present the following:

1. Attached is draft legislation that would require the governor's specific approval of agency regulation and rule making. It would also allow the legislature to shift the burden of proof of any regulation by action of a special resolution.
2. Two sectionals are included which give different emphasis on constitutionality questions.
3. An amendment proposed by Rep. Pourchot would require the published notification of proposed regulations be more descriptive of their substance and effect.

One comment: I requested the draft legislation to give the governor blanket authority over regulation approval, knowing full well that there are most probably areas which the legislature and/or the governor want exempted. Fish and game regulations are a prime consideration. APUC and AHFC actions are other examples. I would appreciate the committee's thoughts in this regard.



IOWA GENERAL ASSEMBLY

ADMINISTRATIVE RULES REVIEW COMMITTEE

SENATE MEMBERS

BERL E. PRIEBE  
CHAIR  
DONALD V. DOYLE  
DALE L. TIEDEN

SECRETARY EX OFFICIO

PHYLLIS BARRY

STAFF

JOSEPH A. ROYCE

HOUSE MEMBERS

JAMES D. O'KANE  
VICE CHAIR  
EDWARD G. PARKER  
BETTY JEAN CLARK

29 January 1988

FEB 4 1988

State of Alaska  
Alaska Legislature  
Attn: Mr. David Grey  
BOX "V"  
Juneau, Alaska, 99811

Re: The "objection" process in rules review

Dear Dave:

I was very pleased to hear from you yesterday and I'm even more pleased to hear that your legislature is considering giving its regulations review committee objection power. I'm sorry that I have never had an opportunity to do a study to document the impact the objection process has in Iowa, but I can guarantee it ensures that government agencies carefully consider suggestions and criticisms offered by our rules committee. The best evidence of this is that the frequency of objections is decreasing. While the volume of rule-making is steadily growing, the ability of the committee and the various agencies to compromise their seems to be increasing. This is reflected by the a stabilization in the number of objections. In 1986 the committee imposed five objections, up from three objections in 1985. Rather than risk having an objection placed on a rule, agencies tend, if possible to be willing to modify a proposal if requested by the committee.

A total of 104 objections have been imposed since 1977, but the trend has clearly been toward a decline in their frequency, as indicated below:

1977.....36	1982.....02
1978.....24	1983.....03
1979.....13	1984.....04
1980.....06	1985.....03
1981.....08	1986.....05

On a percentage basis, approximately one percent of the filings put into effect annually have an objection placed on them. In 1977 the percentage was almost ten percent.

The mechanics of the objection process are fairly simple. At any

time the committee may selectively call up a rule for review and impose an objection. An objection is simply the committee's opinion that a rule is "arbitrary, capricious, unreasonable or beyond the authority delegated to the agency". This action must be taken at a formal committee meeting, upon a vote of four members of the six member committee. A document is prepared detailing the committee's findings. It is certified as being true and accurate by the committee chair and then filed in the office of the Code Editor. A copy is published in the Iowa Administrative Bulletin and Code.

The document must contain more than a simple reference to the specific statutory grounds for objection. The document must contain these grounds and a brief elaboration of reasons for this finding. It must be detailed enough to apprise the agency of the precise nature and scope of the objection. Schmitt v. Department of Social Services, 263 N.W.2d 739 (Iowa, 1978).

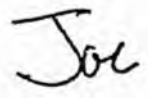
The objection does not impact the effective date of a rule or prevent the agency from enforcing it. An objection places a cloud on the validity of the rule. It reverses the burden of proof in a subsequent judicial action contesting the validity of the rule. The objection removes the "presumption of validity" that courts commonly accord an administrative rule. The agency then bears the burden of proving the validity of its rule. If the agency fails to meet this burden of proof, the agency must pay both the court costs and the attorney fees for the party attacking the rule (section 17A.4(4)"a").

An objection does not have an expiration date and will remain in effect as long as the rule itself. Procedural objections (limited to committee findings that the proper rule-making procedures were not followed) may expire two years after the effective date of a rule. ss17A.4(3) establishes a two year statute of limitations to challenge a rule on the grounds that the notice provisions of Chapter 17A were not followed.

I should note that objections are somewhat limited in their impact. They reverse the burden of proof only upon the grounds specified by the ARRC in the document. If a court overturns a rule on grounds not specified in the objection, attorney fees will not be awarded. Iowa-Illinois Gas & Elec. v. Iowa State Commerce Commission, 334 N.W.2d 748 (Iowa, 1983).

As a conclusion, I enclose an excerpt from State Administrative Rule Making, by Arthur Bonfield. He is a nationally recognized expert in Ad. law and a law professor at the University of Iowa. It provides more detail and commentary on the objection process than any other article I have seen. It is largely drawn from the Iowa provisions. If I can be of any additional help at all, please just give me a call.

Sincerely,



Joseph Royce  
staff

10 September 1987

Department of Insurance  
Securities Bureau  
Lucas State Office Building  
Attn: Craig Goettsch

Re: Objection-191 IAC 19.60(2), relating to fees imposed for an interpretive opinion.

Dear Sir:

At its September 9 meeting the committee voted to object to the fifty dollar fee for interpretative opinions, appearing in 191 IAC 19.60(2). It was the opinion of the committee this charge is beyond the authority of the bureau. This provision appears as part of ARC 7871, in X IAB 5 (8-26-87).

Section 17A.9, Iowa Code, requires every agency to provide a method allowing the public to obtain the agency's formal opinion or interpretation on questions relating to the agency statutes, rules or policy. These statements are called declaratory rulings. They appear to be identical to the "interpretive opinion" established in the subrule. The statute makes no provision for the assessment of a fee nor has any agency attempted to impose one; to do so would run contrary to the purpose of section 17A.9. Declaratory rulings are essential to allow the public an opportunity to clarify questions and uncertainties about agency law or policy. They provide a service which is intended to encourage the public to request advice and interpretations from government agencies. A fee for this service would discourage its use and could lead to needless violations of law or policy through misinterpretation or misinformation. It is the opinion of the committee the "interpretive opinion" is a form of declaratory ruling and that section 17A.9, Iowa Code, precludes the imposition of a fee for this service.

CERTIFIED AS A TRUE AND CORRECT  
COPY OF THE COMMITTEE ACTION THIS  
\_\_\_\_\_ DAY OF SEPTEMBER, 1987, BY:

\_\_\_\_\_  
Berl Eastman Priebe  
Chairman

ATTORNEY GENERAL[61] (cont'd)

than 30 days prior to the anniversary of the current registration. An application for renewal must be accompanied by a nonrefundable fee of \$200. The renewal application must include all changes in the information which has been provided in the previously filed application.

These rules are intended to implement 1987 Iowa Acts, House File 520.

[Filed emergency 8/7/87, effective 9/7/87]
[Published 8/26/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/26/87.

ARC 7870

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of 1987 Iowa Acts, House File 614, section 16, the Insurance Division of Iowa hereby emergency adopts and implements the rescission of rule 19.1(523A), "Forms," of Chapter 19 of the Iowa Administrative Code.

The rescission is necessary to conform to changes in the reporting requirements of the Iowa Prearranged Funeral Contracts Act. Prior to July 1, 1987, the reports were filed with the applicable County Recorder. After July 1, 1987, reports will be filed with the Securities Bureau of the Iowa Insurance Division.

The rescission of the rule and adoption of the rules proposed on this date and published herein under Notice of Intended Action as ARC 7875, will bring the Bureau's rules into compliance with the amendments contained in 1987 Iowa Acts, House File 614, which were effective July 1, 1987.

In compliance with Iowa Code section 17A.4(2), the Division of Insurance finds that public notice and participation are unnecessary and impracticable because the changes merely bring the chapter into compliance with the statutory amendments, which nullified the statutory basis and authority of the rescinded rule.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this action, 35 days after publication, should be waived and the rescission should be made effective upon filing with the Administrative Rules Coordinator on August 7, 1987, as it confers a benefit on the public since the rescinded rule could be construed to be in conflict with the statute. Also, the rescission is necessary to ensure proper compliance with the statute, and the notice period would delay adoption of new administrative regulations conforming to the amendments.

R.A.C. 191 -19.1(523A) is rescinded.

[Filed emergency 8/7/87, effective 8/7/87]
[Published 8/26/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/26/87.

ARC 7871

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of 1987 Iowa Acts, House File 614, section 16, the Insurance Division of Iowa hereby emergency adopts and implements new rule 19.60(72GA, HF614).

The new rule is a temporary, transitional rule that will help the Securities Bureau control administrative delays in processing initial permit applications by allowing applicants to file at any time after September 1, 1987, rather than having them wait until January 1, 1988. To further facilitate implementation of 1987 Iowa Acts, House File 614, the proposed rule will authorize an initial report and allow the Securities Bureau to accept and require fees on a temporary basis, prior to the adoption of the permanent regulations also proposed on this date.

The Division of Insurance finds that pursuant to Iowa Code section 17A.4(2), public notice and participation are contrary to the public interest in that speedy implementation of this rule is necessary to assure timely and reasonable treatment of those seeking permits required by the Iowa Prearranged Funeral Contracts Act.

The Division of Insurance also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule should be waived and the rule be made effective on September 1, 1987, as it confers a benefit upon the public to assure timely and reasonable treatment of those seeking permits required by the Iowa Prearranged Funeral Contracts Act.

New rule 19 -19.60(72GA, HF614) is adopted as follows:

191-19.60(72GA, HF614) Transitional rule.

19.60(1) The Iowa securities bureau may accept and process applications for establishment permits and sales permits filed pursuant to the Iowa prearranged funeral contracts Act at any time after September 1, 1987.

19.60(2) The Iowa securities bureau may accept and require the following fees at any time between September 1, 1987, and January 1, 1988:

- 1. Application packet .....\$ 5.00
2. Certification .....\$ 5.00
3. Duplicate permit fee.....\$ 5.00
4. Establishment permit fee.....\$ 50.00
5. Interpretative opinion .....\$ 50.00
6. Filing fee (annual report) .....\$200.00-300.00
7. Filing fee (seller's initial report) .....\$ 25.00
8. Name change .....\$ 10.00
9. Photocopies of records (per page) .....\$ 0.50
10. Print out of permit holders .....\$ 10.00
11. Sales permit fee .....\$ 5.00

19.60(3) The Iowa securities bureau may accept and require an initial report from sellers, as a prerequisite for an establishment permit, on the form prescribed by the commissioner.

19.60(4) The Iowa securities bureau may accept and require the following forms at any time between September 1, 1987, and January 1, 1988:

a. Content. Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Iowa State Office Building, Des Moines, Iowa 50319.

NOTE: Rule later dropped

JR

After this rule was adopted, the Administrative Rules Review Committee of the General Assembly filed an objection on May 21, 1981, that the rule is unreasonable. The utilities applied for rehearing before the commission, but the application was denied on May 22, 1981. They next requested the commission to issue a statement of reasons for and against the rule, pursuant to section 17A.4(1)(b) of the Code. The commission issued the statement on July 15, 1981.

The utilities then sought judicial review of the rule, pursuant to section 17A.19 of the Code. Iowa Citizen/Labor Energy Coalition, Inc. (IC/LEC) intervened in the appeal.

On judicial review the utilities allege the rule exceeds the commission's statutory authority, is unreasonable, and violates constitutional clauses. The commission, on the other hand, contends that it has statutory authority under sections 476.1, .2, and .8 of the Code to promulgate mandatory utility financing.

The district court found the commission exceeded its statutory authority in promulgating the rule and therefore did not address the issues of unreasonableness and unconstitutionality. The commission and IC/LEC appealed to this court.

**Scope of review.** We first consider two preliminary issues.

[1] A. This court will make anew the determination which the district court may make under section 17A.19 of the Code. *Temple v. Vermeer Manufacturing Co.*, 285 N.W.2d 157, 159 (Iowa 1979). In reviewing agency rule making, we can properly consider both the record made before the agency and before the district court. *Security Savings Bank v. Hoston*, 283 N.W.2d 249, 251 (Iowa 1980); *Community Action Research Group v. Iowa State Commerce Comm'n*, 275 N.W.2d 217, 219 (1979).

[2] B. An agency rule is presumed valid and the burden is on the party challenging it to demonstrate that a "rational agency" could not conclude the rule was within the agency's delegated authority. *Milholin v. Vochies*, 320 N.W.2d 552, 554 (1982); *Iowa Auto Dealers Ass'n v. Iowa Department of Revenue*, 301 N.W.2d 750, 762 (Iowa 1981); *Hierote Homes, Inc. v. Riedemann*, 277 N.W.2d 911, 913 (Iowa 1979); *Davenport Community School District v. Iowa Civil Rights Comm'n*, 277 N.W.2d 907, 910 (Iowa 1979).

[3.4] Once the Administrative Rules Review Committee objects to the contested

rule, however, the burden shifts to the agency in a judicial review proceeding to prove the validity of the rule. *Iowa Auto Dealers Ass'n* 301 N.W.2d at 762; *Iowa Code* § 17A.4(1)(a) (1981). The committee objected that the rule was unreasonable. It did not object, however, with respect to the agency's delegated authority to promulgate such a rule. We find, therefore, that the district court correctly retained the burden on the utilities to prove promulgation of the rule was beyond the commission's statutory authority.

II. *Agency's statutory authority.* We pass then to the merits of the controversy.

[5, 6] A. To be valid, a rule adopted by an agency must be within the scope of powers delegated to it by statute. *Haesemeyer v. Mosher*, 308 N.W.2d 35, 37 (Iowa 1981); *Temple v. Vermeer Manufacturing Co.*, 285 N.W.2d 157, 159 (Iowa 1979); *Hierote Homes, Inc. v. Riedemann*, 277 N.W.2d 911, 913 (Iowa 1979); *Davenport Community School Dist. v. Iowa Civil Rights Comm'n*, 277 N.W.2d 907, 910 (Iowa 1979); *Quaker Oats Co. v. Cedar Rapids Human Rights Comm'n*, 268 N.W.2d 862, 868 (Iowa 1978). The ultimate determination of whether an agency could have rationally concluded it was acting within its delegated powers is for the court. *Haesemeyer* 308 N.W.2d at 37; *Iowa Department of Revenue v. Iowa Merit Employment Comm'n*, 243 N.W.2d 610, 615 (Iowa 1976); *Schnitt v. Iowa Department of Social Services*, 263 N.W.2d 739, 745 (Iowa 1978).

B. The commission finds authority to promulgate mandatory utility financing in the recent amendments to sections 476.1 and .2 of the Code. Section 476.1 now provides in part:

The jurisdiction of the commission under this chapter shall include programs designed to promote the use of energy conservation strategies by rate or service-regulated gas and electric utilities.

Section 476.2 now provides in part:

The commission shall promulgate rules concerning the use of energy conservation strategies by rate or service regulated gas and electric utilities by July 1, 1981.

We note that the word "shall" in the statute means "shall" and "shall promulgate rules concerning the use of" energy conservation strategies. (Iowa Code § 17A.4(1)(b)) Section 41(26) of the Code provides that use of the word "shall" in a statute imposes a duty. Thus the commission's jurisdiction is to determine if



at 735, 596 P.2d at 1151. But the court stated:

The Legislature is given plenary power to confer other powers upon the commission. This plenary power, however, is subject to the limitation that the additional powers bestowed upon the commission must be "cognate and germane to the regulation of public utilities."

*Id.* Requiring utility financing was not found by the court to be within the domain of utility regulation. *Id.* at 660, 156 Cal. Rptr. at 736, 596 P.2d at 1153.

The District of Columbia Public Service Commission dealt with this problem in a proceeding entitled *Re Residential Energy Conservation Policy Act of 1978* (Dist. Colum. Pub. Serv. Comm'n No. 743, 7/16/82), 48 Pub. Util. Rep. 4th 575. The commission concluded it had no authority to order utilities to provide direct loan financing of residential conservation measures. *Id.* at 584. The function of that commission is to "insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable." D.C. Code Ann. § 43-402 (1981). But the commission found

that a direct utility loan program is not a necessary and integral part of the utility services required . . . and therefore is not a 'service' under the implied regulatory authority of the commission. If utilities are to be required to undertake the substantial burden of establishing direct financing programs . . . there must be a clearer manifestation of the intent of the council of the District of Columbia or The Congress to grant the commission authority to do so. . . . For these reasons we find that the commission lacks authority to order a direct utility loan program.

48 P.U.R. 4th at 585.

We likewise find authority to require financing to be such a departure from traditional utilities regulation that it must be clearly manifested by legislative enactment. We agree with the district court that the commission does not have authority under its present powers to require utility financing. We intimate no opinion on any constitutional implications in compulsory utility financing by statute.

D. Intervenor urges us to consider certain provisions in chapter 93 of the Iowa Code relating to solar energy. The promulgated rule, however, has been amended to delete any portions regarding solar energy. We therefore find no need to consider chapter 93. Having found the commission acted outside its delegated authority, we also find no need to reach the utilities' challenges of unreasonableness and unconstitutionality.

AFFIRMED.

## PROCEDURE FOR PROMULGATING REGULATIONS:

### I. PUBLIC NOTICE

1. 30 days before the adoption, amendment, or repeal of a regulation, notice shall be:

- a) published in the newspaper of general circulation,
- b) mailed to every person who has filed a request,
- c) mailed to the commissioner,
- d) mailed to interested persons (when appropriate in the judgement of the agency),
- e) furnished to the Department of Law with a copy of the proposed regulation,
- f) furnished to all incumbant legislators and the LAA
- g) furnished to the standing committee of each house have jurisdiction over the subject matter, together with a copy of the proposed regulation,
- h) furnished to the staff of the Administrative Regulation Review Committee.

2. Failure to mail notice does not invalidate an action taken by an agency.

4. Notice shall include:

- a) statement of time, place and nature of proceedings for adoption of regulation,
- b) reference to the authority under which the regulation is proposed,
- c) informative summary of the proposed subject of action,
- d) fiscal note if the regulation would require increased appropriations by the state.

5. On the date designated in the notice the agency shall give the opportunity to present statements in writing. (orally is optional to agency.)

6. An interested person may petition for adoption or repeal of a regulation. Agency has 30 days to deny petition in writing or schedule the matter for public hearing.

### II. SUBMISSION TO THE DEPARTMENT OF LAW

1. Department of Law prepares a written statement of approval or disapproval after each regulation has been reviewed in order to determine:

- a) its legality,
- b) existence of statutory authority,
- c) its clarity,
- d) compliance with drafting manual.

### III. SUBMISSION TO THE LIEUTENANT GOVERNOR

1. Agency shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation adopted (with three exceptions).
2. Lieutenant governor may not accept a regulation which is not accompanied by written statement of Department of Law's approval.
3. Lieutenant governor shall supply a set of the AAC to each local government unit.
4. A regulation becomes effective on the 30th day after the date of its filing by the lieutenant governor.