THE CONSTITUTIONALITY OF SOBRIETY CHECKPOINTS IN ALASKA

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I. INTRODUCTION

Despite a rising tide of public indignation and stiffer penalties that include mandatory jail time and administrative license revocation, drunk drivers continue to account for more than half of all traffic deaths in Alaska.[1] The extremely low probability of detection by police using traditional roving patrol techniques — variously estimated at from one-in-two hundred to one-in-two thousand[2] — has contributed to what the California Supreme Court has referred to as an "attitude of impunity" on the part of drunk drivers.[3]

In recent years, communities throughout the United States have instituted sobriety checkpoint programs in an effort to deter drunk driving. The National Highway Transportation Safety Administration has recommended that the thirty-three states that do not use sobriety checkpoints, including Alaska, institute such programs to achieve that goal.[4] Unlike roving patrols, which stop drivers only when the officer has individualized suspicion or probable cause to believe that the crime of driving while under the influence of alcohol is in progress, sobriety checkpoints stop all drivers passing through the checkpoint.[5] Because there is no probable cause, or even any individualized suspicion for the stop, sobriety checkpoint programs have been challenged

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1. ALASKA DEP'T OF PUBLIC SAFETY (June 7, 1990) [hereinafter PUBLIC SAFETY STATISTICS] (unpublished statistics, on file with the *Alaska Law Review*).

2. NATIONAL TRANSP. SAFETY BD., DETERRENCE OF DRUNK DRIVING: THE ROLE OF SOBRIETY CHECKPOINTS AND ADMINISTRATIVE LICENSE REVOCATIONS 3 (1984) [hereinafter DETERRENCE OF DRUNK DRIVING]; Ingersoll v. Palmer, 743 P.2d 1299, 1312 (Cal. 1987) (quoting 4 WAYNE LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.8(d) (2d ed. 1987)).

3. *Ingersoll*, 743 P.2d at 1312.

4. DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 20-22.

5. Some programs stop only a fraction of the traffic passing through the checkpoint. Officers determine which vehicles will be stopped by applying some neutral formula determined in advance by administrative officials. Such formulas are intended to minimize officer discretion and possible discriminatory enforcement. *See, e.g., Ingersoll*, 743 P.2d at 1303.

as violating the Fourth Amendment to the United States Constitution[6] and analogous state constitutional provisions.

In *Michigan Department of State Police v. Sitz*,[7] the United States Supreme Court addressed such a challenge and held that a properly conducted sobriety checkpoint does not require probable cause or constitute an unreasonable search or seizure. The Court reached this conclusion after balancing the minimal intrusion on the privacy of the motorist against both the state's compelling interest in deterring drunk driving and the effectiveness of checkpoints in achieving this goal.[8]

The impact of the *Sitz* decision in Alaska is uncertain. Although Article I, Section 14 of the Alaska Constitution[9] is somewhat broader than the Fourth Amendment,[10] it "substantially parallels" its federal counterpart.[11] It is therefore likely that sobriety checkpoints would pass constitutional muster under this nearly identical state constitutional provision. Additionally, however, the Alaska Supreme Court will test the constitutionality of sobriety checkpoints under Article I, Section 22 of the Alaska Constitution,[12] which provides an explicit guarantee of the right to privacy absent in the Federal Constitution.[13]

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6. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

7. 110 S. Ct. 2481 (1990).

8. *Id.* at 2485-88.

9. Article I, Section 14 provides:

> The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ALASKA CONST. art. I, § 14.

10. The relevant language of Article I, Section 14 of the Alaska Constitution is the same as the Fourth Amendment except that Alaska added the phrase "and other property" to the list of "persons, houses, papers and effects" protected from unreasonable searches and seizures. *Compare* ALASKA CONST. art. I, § 14 *with* U.S. CONST. amend. IV.

11. Weltin v. State, 574 P.2d 816, 821 n.15 (Alaska 1978).

12. Article I, Section 22 of the Alaska Constitution provides: "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this Section." ALASKA CONST. art. I, § 22.

13. The Alaska Civil Liberties Union has reasoned that sobriety checkpoints cannot pass muster under the standards of the privacy clause of Alaska's constitution, and therefore dismissed *Sitz* as having no application in Alaska. Dirk Miller, *DWI Roadblock Proposal Gets Sober Response,* Juneau Empire, Aug. 2, 1990, at 1.

To date, however, the constitutionality of sobriety checkpoints in Alaska has never been conclusively tested in the courts.[14]

Part II of this article examines the United States Supreme Court's holding in *Sitz*, and discusses the likelihood of the Alaska Supreme Court following the reasoning of *Sitz* in an analysis of the constitutionality of sobriety checkpoints under Article I, Section 14 of the Alaska Constitution. Part II also examines the likelihood that the court will apply the administrative search doctrine to conclude that properly conducted sobriety checkpoints are constitutional. Part III examines the constitutionality of checkpoints under the privacy clause of the Alaska Constitution and concludes that sobriety checkpoints are the least intrusive and most effective method of meeting the compelling need to reduce the number of highway deaths caused by drunk drivers.

II. LEGALITY OF SOBRIETY CHECKPOINTS UNDER THE SEARCH AND SEIZURE PROVISIONS OF THE FEDERAL AND ALASKA CONSTITUTIONS

A. Federal Law Prior to *Michigan Department of State Police v. Sitz*[15]

The United States Supreme Court has described the function of the Fourth Amendment as limiting the "search and seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals."[16] The Court has noted that an individual does not give up his reasonable expectations of privacy when he steps into an automobile,[17] although that expectation may be "significantly different from the traditional expectation of privacy and freedom in one's residence."[18] The Court has also held that the detention of motorists through random stops or checkpoints by government officials — regardless of how briefly the motorist is detained — constitutes a "seizure."[19]

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14. In 1988, the town of Petersburg attempted to set up a sobriety checkpoint to encourage sobriety on high school graduation night. The Alaska Civil Liberties Union immediately filed suit against the city, challenging the procedure. The case was settled out of court with Petersburg agreeing not to reinstitute the checkpoint. *Id.* at 8.

15. 110 S. Ct. 2481 (1990).

16. United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976) (citations omitted).

17. Delaware v. Prouse, 440 U.S. 648, 662-63 (1979).

18. *Martinez-Fuerte*, 428 U.S. at 561 (citing United States v. Ortiz, 422 U.S. 891, 896 n.2 (1975)).

19. *Prouse*, 440 U.S. at 653; *Martinez-Fuerte*, 428 U.S. at 556. Even forcing motorists to slow down enough for officers to make a visual check may constitute a seizure. *Martinez-Fuerte*, 428 U.S. at 546 n.1.

The Court has rejected the notion, however, that motorists enjoy absolute protection against law enforcement stops in the absence of probable cause.[20] The Fourth Amendment protects only against "unreasonable" searches and seizures. The Court will determine the reasonableness of a vehicular stop by balancing the intrusion on the individual's Fourth Amendment interest in privacy against the promotion of legitimate governmental interests.[21] In striking the balance, the Court has held that the requirement of individualized suspicion may be dispensed with in cases of necessity and where other safeguards exist to prevent abuses of discretion by overly zealous law enforcement officials. As the Court has clarified:

> [T]he reasonableness standard *usually* requires, at a minimum, that the facts upon which an intrusion is based be capable of measurement against "an objective standard," whether this be probable cause or a less stringent test. In those situations in which the balance of interests precludes insistence upon "some quantum of individualized suspicion," other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not "subject to the discretion of the official in the field."[22]

In a trio of cases decided in the 1970's, the Court explored the extent to which exigent circumstances may permit law enforcement officials to stop motorists without probable cause. In the first of these cases, *United States v. Brignoni-Ponce*,[23] the Court struck down random stops by border patrol agents to detect illegal aliens and smuggling in areas north of the Mexican-American border. The Court acknowledged that the "importance of the governmental interest at stake, the minimal intrusion of a brief stop, and the absence of practical alternatives for policing the border,"[24] allowed an officer to stop a vehicle upon a reasonable suspicion that it contained illegal aliens.[25] The Court nonetheless concluded that the government had not made out a compelling case for dispensing entirely with the requirement of individualized suspicion because "the nature of illegal alien traffic and the characteristics of smuggling operations tend to generate articulable grounds for identifying violators."[26] The Court thus struck the balance between the government's interests and the level of intrusion on the individual's rights by requiring a reasonable or articulable suspicion for a stop.

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20. *Prouse*, 440 U.S. at 655.

21. *Id.* at 654.

22. *Id.* at 654-55 (emphasis added) (citations omitted); *see also* Brown v. Texas, 443 U.S. 47, 51 (1979).

23. 422 U.S. 873 (1975).

24. *Id.* at 881.

25. *Id.*

26. *Id.* at 883.

The Court took up the issue of border patrols again during the following term in *United States v. Martinez-Fuerte*.[27] This case involved the use of fixed checkpoints set up by the border patrol to detect illegal aliens on an interstate highway sixty-six miles north of the Mexican-American border. The checkpoint was well-lit and approaching motorists were warned well in advance of the official nature of the stop. All vehicles were required to slow to a virtual, if not a complete, halt. Following a cursory visual screening, most motorists were allowed to resume their progress. In a relatively small number of cases, where the "point" agent decided that further inquiry was in order, vehicles were directed to a secondary inspection area in order to question the occupants about their citizenship and immigrant status.[28] The defendants contended that because *Brignoni-Ponce* required, at a minimum, reasonable suspicion for a stop, routine checkpoint stops were invalid.[29]

The Court noted both the "substantiality of the public interest in the practice of routine stops for inquiry at permanent checkpoints"[30] and the necessity "of a traffic-checking program in the interior" to effectively control the flow of illegal aliens.[31] The Court again utilized a balancing test, reasoning that a requirement of individualized suspicion was unworkable and insufficient to act as a deterrent to illegal entry:

> A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly.[32]

Finally, the Court reasoned that "[w]hile the need to make routine checkpoint stops is great, the consequent intrusion on Fourth Amendment interests is quite limited."[33] The Court distinguished the roving stops at issue in *Brignoni-Ponce* on the ground that while "the objective intrusion — the stop itself, the questioning, and the visual

27. 428 U.S. 543 (1976).
28. *Id.* at 545-46.
29. *Id.* at 556.
30. *Id.*
31. *Id.*
32. *Id.* at 557.
33. *Id.*

inspection"[34]—was identical, "the subjective intrusion — the generating of concern or even fright on the part of lawful travelers — is appreciably less in the case of a checkpoint stop."[35] Roving stops frequently occurred at night and involved only a single officer, who exercised unreviewable discretion in selecting those vehicles to be stopped. The checkpoint stop, by contrast, was performed in a "regularized manner" that reassured motorists that the stop was properly authorized. Because officers had no discretion in deciding which cars would be stopped, the possibility for abusive and harassing stops was all but eliminated.[36]

The Court rejected the defendants' argument that an area warrant should have been obtained, noting that imposing such a requirement would not contribute to the usual functions of a warrant: defining the limits of the search, reassuring the suspect of the authority of the searching officer, and "prevent[ing] hindsight from coloring the evaluation of the reasonableness of a search or seizure."[37] The Court reasoned that these functions were served adequately by the "visible manifestations of the field officers' authority" present at the checkpoint and by the ability of a court to review the reasonableness of the location and operation of the checkpoint after-the-fact.[38]

In the final case of the trio, *Delaware v. Prouse*,[39] the Court distinguished its holding in *Martinez-Fuerte* and held that, in the absence of probable cause or reason to suspect that laws were being broken, a roving stop to inspect a motorist's license and registration violated the Fourth Amendment. The Court noted that the stop in question involved "unbridled officer discretion"[40] and the same intrusions on privacy expectations as the roving stops at issue in *Brignoni-Ponce*.[41] Because the number of unlicensed drivers was assumed to be low, and because the likelihood of detection through roving stops was regarded as not significantly greater than would otherwise occur using a probable cause standard, the Court believed that the stops would not provide a meaningful deterrent.[42] Annual registration and vehicle checks would provide an alternative, more effective check on unregistered and unsafe vehicles. Notwithstanding the importance of the state's "vital interest" in ensuring that only safe drivers and vehicles are permitted

34. *Id.* at 558.
35. *Id.* at 558-59.
36. *Id.* at 559.
37. *Id.* at 565.
38. *Id.* at 565-66.
39. 440 U.S. 648 (1979).
40. *Id.* at 661.
41. *Id.* at 657.
42. *Id.* at 659-60.

on the highways,[43] the Court concluded that "the spot check does not appear sufficiently productive to qualify as a reasonable law enforcement practice under the Fourth Amendment."[44]

The Court in dicta, however, indicated that despite the impermissibility of roving spot checks, stationary checkpoints might be constitutional. The Court stated:

> This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative.[45]

Thus, following *Prouse*, the Fourth Amendment rules for vehicular stops absent individualized suspicion or probable cause can be summarized as follows: (1) the state must be attempting to effectuate a legitimate and important public policy; (2) the nature of the problem must be such that requiring individualized suspicion would be inadequate to address it; (3) the procedure for conducting the stops, when judged in light of other, less intrusive means available to the state, must substantially advance the state's interest; (4) the procedure must be structured in such a way as to minimize the discretion of individual officers and provide a reviewing court with a basis for determining reasonableness; and (5) the procedure must be carried out in such a way as to minimize intrusions on privacy and subjective fears generated by police stops.

B. *Michigan Department of State Police v. Sitz*[46]

Relying on the holding in *Martinez-Fuerte* and the dicta in *Prouse*, communities in a number of jurisdictions began employing sobriety checkpoints as a deterrent to drunk driving.[47] For example, in

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43. *Id.* at 658.

44. *Id.* at 660.

45. *Id.* at 663 (dictum) (citation omitted).

46. 110 S. Ct. 2481 (1990).

47. For a summary of how these programs have fared in the courts, see Scott Reynolds, Note, *The Use of Sobriety Checkpoints to Combat Drunk Drivers,* 54 MO. L. REV. 485 (1989).

Prior to *Sitz*, several state courts held that sobriety checkpoints were impermissible under state constitutional standards which, like those of the Alaska Constitution, were deemed to be more stringent than federal standards. *See, e.g.*, City of Seattle v. Mesiani, 755 P.2d 775 (1988) (construing WASH. CONST. art. I, § 7: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."). The majority in *Mesiani* held that the checkpoint program, which was conducted by the Seattle police without authorization by statute or ordinance, "was not authorized by law" as required by the state constitution. *Id.* at 777. Three concurring justices, however, believed that a program authorized by statute or ordinance could be constitutional. *Id.* at 778-79. The Rhode Island Supreme Court has similarly held that

1986, Michigan law enforcement officials began operating a sobriety checkpoint program pursuant to state-wide guidelines governing checkpoint operation, site selection and publicity. Under the guidelines, all vehicles passing through the checkpoints were stopped and the drivers briefly examined for signs of intoxication. If the officer detected any such signs, the driver was directed to a secondary investigation area. All other drivers were permitted to proceed immediately. The average delay for each vehicle was twenty-five seconds.[48]

The Michigan sobriety checkpoint procedure was the subject of judicial review in *Michigan Department of State Police v. Sitz.*[49] The United States Supreme Court reaffirmed that *Martinez-Fuerte* and *Brown v. Texas*[50] established the appropriate balancing test for cases dealing with police stops of motorists on public highways.[51] The Court summarized the test as requiring a balancing between (1) the state's interest in preventing drunk driving and the extent to which sobriety checkpoints can be said to advance that interest and (2) the degree of intrusion caused by the checkpoint upon the reasonable privacy expectations of individual motorists.[52]

The Court began its analysis by identifying the state interest: "No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it."[53] Furthermore, the Court reasoned, the intrusion on motorists stopped at the checkpoints was slight, both by objective and subjective standards.[54] Objectively, the duration of the stop and intensity of the investigation were minimal. The subjective intrusion — the "potential to generate fear and surprise

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Rhode Island's constitution, unlike the Fourth Amendment of the United States Constitution, affords absolute protection against warrantless searches and seizures. Pimental v. Department of Transp., 561 A.2d 1348 (R.I. 1989). *But see* Idaho v. Henderson, 756 P.2d 1057 (Idaho 1988) (refusing to adopt a per se rule making checkpoints unconstitutional under any circumstance).

At least one court relied on a state-created right of privacy, similar to that found in Article I, Section 22 of the Alaska Constitution. *See* State v. Church, 538 So. 2d 993 (La. 1989) (construing LA. CONST. art. I, § 5: "Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy."). In *Church,* the Louisiana Supreme Court reasoned that "the effectiveness of roadblocks is questionable, especially when weighed against other measures less intrusive on individual privacy, such as roving patrols which act only when there is an articulable basis for a stop." *Id.* at 997.

48. Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481, 2483-84 (1990).

49. 110 S. Ct. 2481 (1990).

50. 443 U.S. 47 (1979).

51. *Sitz,* 110 S. Ct. at 2485.

52. *Id.* at 2488.

53. *Id.* at 2485.

54. *Id.* at 2486. The "objective" standard considers the duration of the seizure and the intensity of the investigation. The "subjective" standard examines the level of fear generated in law-abiding citizens by being stopped at the checkpoint. *Id.*

in motorists"[55] — was minimized by the absence of discretion in the stopping officers and the visible manifestations of authority displayed at the checkpoints.[56] Significantly, the Court held that "[t]he 'fear and surprise' to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a sobriety checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the stop."[57]

Much of the Court's attention focused on the "effectiveness" element of the balancing test. Although the Court declined to weigh the effectiveness of alternative measures, stating that such choices "remain[] with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers,"[58] it did recognize that empirical evidence supported the effectiveness of sobriety checkpoints. Specifically, the Court noted that, "on the whole, sobriety checkpoints resulted in drunken driving arrests of around 1 percent of all motorists stopped."[59]

The effectiveness of sobriety checkpoint programs, however, should be measured not in terms of arrests, but in terms of the reduction in the number of serious accidents attributable to drunk drivers. Deterrence is the primary goal of sobriety checkpoint programs. Although the evidence is still fragmentary, and results may differ over time, the emerging statistics tend to support the effectiveness of sobriety checkpoints when measured by this standard. Alcohol-related fatalities in the District of Columbia dropped by sixty-three percent

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55. *Id.*

56. *Id.*

57. *Id.* The Court's belief that law-abiding motorists would not regard a sobriety checkpoint as a significant intrusion on their privacy is borne out by statistics compiled by several jurisdictions that have polled motorists stopped at sobriety checkpoints. In these jurisdictions, 80 to 90% of all those stopped approved of their use. According to a National Transportation Safety Board study, the approval rate is 87.3% in Delaware, 86% in Maryland, and 88% in the District of Columbia. DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 9. The approval rate in various cities in California has been said to be 80% in Burlingame, *see* Ingersoll v. Palmer, 743 P.2d 1299, 1303 n.3 (Cal. 1987), and 87.1% in Bakersfield and North Sacramento. Mark R. Soble, Note, *Clearing the Roadblocks to Sobriety Checkpoints*, 21 U. MICH. J.L. REF. 489, 489-90 n.6 (1988) (citing Memorandum from D. Montagner, Operational Planning Section, California Highway Patrol, to Planning and Analysts Division (Oct. 9, 1985)).

58. *Sitz*, 110 S. Ct. at 2487.

59. *Id.* at 2488 (citation omitted). The California Supreme Court noted that roving patrols, stopping motorists only when individualized suspicion existed, made twice as many arrests per work hour as officers conducting checkpoints. Ingersoll v. Palmer, 743 P.2d 1299, 1311 (Cal. 1987).

following the introduction of sobriety checkpoints.[60] One county in Maryland reported a seventy-five percent drop in alcohol-related fatalities following implementation of a checkpoint program. Another Maryland county reported a seventy-one percent decrease in all alcohol-related accidents.[61] A New Jersey study reported a twenty-nine percent reduction in single-vehicle alcohol-related nighttime crashes.[62] In two Florida counties implementing sobriety checkpoints, researchers recorded a fifty-five percent (self-reported) reduction in drunk driving and a twelve percent reduction in alcohol-related crashes.[63] Delaware reported a thirty-two percent decrease in alcohol-related accidents after implementing a checkpoint program.[64] Statistics from foreign countries show similar marked reductions in alcohol-related traffic accidents following implementation of checkpoint programs.[65]

C. Sobriety Checkpoints Under the Alaska Law of Search and Seizure

As noted earlier, Article I, Section 14 of the Alaska Constitution is very similar to the Fourth Amendment of the United States Constitution. In construing the Alaska provision, the Alaska Supreme Court gives "careful consideration to the holdings of the United States Supreme Court, although [it is] not bound by them."[66] In *Lacy v. State,*[67] the Alaska Supreme Court cited *Martinez-Fuerte* and the dicta in *Prouse* favorably and at length. In *Lacy,* police erected a roadblock across the only road leading from the scene of a rape. The Alaska Supreme Court held that "roadblocks can properly be established when a serious crime has been committed for purposes of investigation or apprehension of a suspect where exigent circumstances exist and

60. NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., ROADSIDE SOBRIETY CHECKPOINTS (1990) (unpublished issue paper, on file with the *Alaska Law Review*).

61. DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 8 (citations omitted).

62. JAMES L. NICHOLS & FRANCES BAKER DICKMAN, EFFECTIVENESS OF ROADSIDE SOBRIETY CHECKPOINTS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN. 5 (1989) (unpublished, on file with the *Alaska Law Review*).

63. *Id.*

64. DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 8 (citations omitted).

65. *Id.* at 7 (citations omitted). Melbourne, Australia experienced a 59% decrease in nighttime fatalities and a 39% reduction in serious crashes. In France, there was a 13.9% decrease in highway fatalities and a 12.5% decrease in highway injuries. In Sweden, which has used sobriety checkpoints since 1974, only 2% of drivers on the road on weekend nights have blood alcohol counts greater than 0.05%, compared to an estimated 13% of United States drivers. *Id.*

66. State v. Glass, 583 P.2d 872, 876 (Alaska 1978).

67. 608 P.2d 19, 21-22 (Alaska 1980).

where the roadblock is reasonable in light of the particular circumstances of the case."[68] Although the facts, and consequently the holding, in *Lacy* were much narrower than the sobriety checkpoint facts in *Sitz*,[69] the Alaska Supreme Court's treatment of *Martinez-Fuerte* and *Prouse* suggests that it, like the United States Supreme Court, would extend the logic of those cases to encompass sobriety checkpoints.

Alternatively, if the court declines to adopt the reasoning of *Sitz*, sobriety checkpoints may still be held constitutional under the administrative search doctrine. Generally, the doctrine provides that where there is a history of regulation in an area, a notion of implied consent, or an urgent state interest, a warrantless inspection will pass constitutional muster if made pursuant to statutory authority.[70]

In *State v. Salit*,[71] the Alaska Supreme Court held that warrantless searches of boarding airline passengers pursuant to the Air Transportation Security Act of 1974[72] came within the administrative search exception to the warrant requirement, and therefore did not violate the Fourth Amendment or Article I, Section 14 of the Alaska Constitution.[73] In *Woods & Rohde, Inc. v. Department of Labor*,[74] the Alaska Supreme Court recognized, but did not apply, the rationale of

68. *Id.* at 21.

69. *Id.*; *cf. Sitz*, 110 S. Ct. at 2483-84 (checkpoints set up at selected positions along the highway for purposes of detecting drunk drivers).

70. Woods & Rohde, Inc. v. Department of Labor, 565 P.2d 138, 145 (Alaska 1977). In a line of cases that closely parallels *Martinez-Fuerte* and *Prouse*, the United States Supreme Court has held that where "regulatory inspections further urgent federal interest, and the possibilities of abuse and the threat to privacy are not of impressive dimensions, the inspections may proceed without a warrant where specifically authorized by statute." United States v. Biswell, 406 U.S. 311, 317 (1972); *see also* Colonnade Catering Corp. v. United States, 397 U.S. 72, 77 (1970) (recognizing Congress' authority to set out "standards of reasonableness for searches and seizures," yet declaring the forcible entry of inspectors into a locked liquor storeroom not within the scope of the federal statute and therefore unconstitutional). The Court in *Martinez-Fuerte* uses both *Biswell* and *Colonnade Catering* to support the proposition that "the Fourth Amendment imposes no irreducible requirement of [individualized] suspicion," which is "usually a prerequisite to a constitutional search or seizure." *Martinez-Fuerte*, 428 U.S. at 561.

71. 613 P.2d 245 (Alaska 1980).

72. 49 U.S.C. §§ 1356, 1357, 1516 (1974) (current version at 49 U.S.C. §§ 1301, 1472, 1511 (1976)).

73. *Salit*, 613 P.2d at 250. Justice Matthews set out the circumstances that justified an exception to the warrant requirement: "(1) unique danger, (2) the fact that the warrant requirement is unworkable in [the] area, and (3) the fact that the search is in a sense consented to by those wishing to fly." *Id.* at 258 (Matthews, J., concurring) (footnote omitted).

74. 565 P.2d 138 (Alaska 1977).

the administrative search doctrine.[75] Thus, the court has recognized the existence of situations in which the Fourth Amendment will not prohibit the state from using administrative searches and seizures.[76]

In *Ingersoll v. Palmer,*[77] the California Supreme Court invoked the administrative search doctrine in approving sobriety checkpoints. The California court likened sobriety checkpoints to airport searches, agricultural inspections, vehicle equipment checks and illegal alien checkpoints.[78] The court then distinguished sobriety checkpoints from dragnet searches:

> Dragnet searches explicitly undertaken for the purpose of uncovering evidence of crime but without any reason to believe any criminal activity has taken place, are unreasonable. . . . [T]he sobriety checkpoint here was operated not for the primary purpose of discovering or preserving evidence of crime or arresting lawbreakers, but primarily for the regulatory purpose of keeping intoxicated drivers off the highways to the end of enhancing public safety. Analytically it is much the same as an immigration checkpoint or a checkpoint to inspect for the safety of equipment or compliance with agricultural regulations.[79]

The California Supreme Court employed the same three-element balancing test the United States Supreme Court used three years later in *Sitz* by "weighing the gravity of the governmental interest or public concern served and the degree to which the program advances that concern against the intrusiveness of the interference with individual liberty."[80] The court concluded that roving stops based on articulable suspicion had been ineffective as a deterrent to drunk driving,[81] noting that not only was the likelihood of detecting drunk drivers extremely low — estimated at one-in-two thousand[82] — but also that roving stops often do not detect an impaired driver until that driver has placed others at risk.[83] "It is only fortuitous," the court remarked, "that an officer happens to be in a position to see a drunk entering the freeway on the on-ramp [sic] before that drunk happens to kill some innocent person."[84]

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75. *Id.* at 143-44. The court did not apply the doctrine as it found that the phrase "and other property" in Article I, Section 14 of the Alaska Constitution protected the defendant's privacy interest in his business premises. *Id.* at 150.

76. *Salit,* 613 P.2d at 250 (Matthews, J., concurring).

77. 743 P.2d 1299 (Cal. 1987).

78. *Id.* at 1305-08.

79. *Id.* at 1309 (citations omitted).

80. *Id.* at 1311.

81. *Id.* at 1312.

82. *Id.* (citing 4 WAYNE LAFAVE, SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.8(d) (2d ed. 1987)).

83. *Id.* at 1313.

84. *Id.* at 1312 (quoting State *ex rel.* Ekstrom v. Justice Court, 663 P.2d 992, 999 (Ariz. 1983) (Feldman, J., concurring)).

The California Supreme Court rejected the suggestion that because roving patrols result in more arrests per officer hour than checkpoints, they are a more effective and less intrusive means of addressing the problem. The court noted that two of the objectives of the checkpoint program, to increase public awareness of the problem and to increase the drunk driver's perception of the likelihood of apprehension, cannot be measured in arrest rates.[85] The court stated that effectiveness in these terms may be difficult to quantify, but noted, for example, that a Maryland court had found that sobriety checkpoint programs resulted in an increase in designated drivers, taxi calls and chartered vehicles for social events.[86]

Finally, the California court set out a useful checklist of attributes a constitutional sobriety checkpoint program should have in order to minimize officer discretion and the intrusiveness of the stop. These factors include supervisory control of program design and site selection, a neutral formula to determine which cars will be stopped, maintenance of proper safety conditions, site-selection criteria, limits on the duration of the initial stop, adequate indicia of the official nature of the roadblock and advance publicity.[87]

A sobriety checkpoint program similar to the California program, properly designed to minimize both officer discretion and the intrusiveness of the stop, should thus be found to satisfy Article I, Section 14 of the Alaska Constitution, either under the United States Supreme Court's reasoning in *Michigan Department of State Police v. Sitz* or the administrative search doctrine.

III. SOBRIETY CHECKPOINTS AND THE RIGHT OF PRIVACY

Ultimately, the interest protected by both the Fourth Amendment and Article I, Section 14 of the Alaska Constitution is the citizen's reasonable expectation of privacy. Once sobriety checkpoints in Alaska have been tested under search and seizure standards, the question arises whether the protections provided by the privacy clause of the Alaska Constitution require an additional inquiry into the constitutionality of sobriety checkpoints.[88] If sobriety checkpoints satisfy

85. *Id.*

86. *Id.* (citing Little v. State, 479 A.2d 903, 913 (Md. 1984)).

87. *Id.* at 1313-17. The United States Department of Transportation has published a similar set of guidelines in the form of a Model Policy, which is reproduced in the appendix to this article. U.S. DEP'T OF TRANSP., MODEL POLICY: SOBRIETY CHECKPOINT GUIDELINES C-5 to C-8 (Nov. 1990) [hereinafter MODEL POLICY] (appended hereto).

88. In the context of a search incident to lawful arrest, the Alaska Supreme Court has held that the privacy clause of Article I, Section 22 does not add to the privacy protections of Article I, Section 14's prohibition against unreasonable searches and seizures. Weltin v. State, 574 P.2d 816, 821 n.15 (Alaska 1978). The California

search and seizure standards as argued in the preceding section, logically they should also meet the test of the privacy clause.

Although Article I, Section 22 may provide different or additional protection to motorists stopped at sobriety checkpoints, that protection is not absolute.[89] Analysis of this protection entails a balancing of the nature and extent of the intrusion upon the individual's right of privacy against the interests of the state in protecting the welfare of others.[90] On this sliding scale, the outcome is determined not only by the strength of the privacy expectation but also by the seriousness of the threat to the public welfare.[91]

In *Ravin v. State*,[92] a case marking the outer bounds of Alaska privacy jurisprudence, the Alaska Supreme Court noted: "The right of the individual to do as he pleases is not absolute, of course: it can be made to yield when it begins to infringe on the rights and welfare of others."[93] Earlier, the court had explained:

> [T]his right [to privacy] must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. . . . When a matter does affect the public, directly or indirectly, it loses its wholly private character, and can be made to yield when an appropriate public need is demonstrated.[94]

Supreme Court, in holding that sobriety checkpoints did not violate the search and seizure provisions of the California Constitution, carefully considered the privacy implications of such stops, but did not cite or discuss the privacy clause of the California Constitution. *See* Ingersoll v. Palmer, 743 P.2d 1299, 1307 (Cal. 1988). The privacy clause of the California Constitution provides as follows:

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness *and privacy*.

CAL. CONST. art. I, § 1 (emphasis added). The Alaska Supreme Court has likened the protections of this clause of the California Constitution to those provided by Article I, Section 22 of the Alaska Constitution. State v. Glass, 583 P.2d 872, 879 (Alaska 1978).

89. Ravin v. State, 537 P.2d 494, 509 (Alaska 1975).

90. Pratt v. Kirkpatrick, 718 P.2d 962, 969 (Alaska 1986); Falcon v. Alaska Pub. Offices Comm'n, 570 P.2d 469, 476 (Alaska 1977).

91. *See* State v. Erickson, 574 P.2d 1 (Alaska 1987). Just as the right of privacy is affected by the location in which it is asserted, it may also be influenced by the gravity of the danger to the public welfare. For example, while ingesting marijuana in the home is protected, ingesting more dangerous drugs, such as cocaine, is not. *Id.* at 21-22.

92. 537 P.2d 494 (Alaska 1975).

93. *Id.* at 509.

94. *Id.* at 504.

Ravin suggests that a properly designed sobriety checkpoint program would not violate the privacy clause. The court noted that "[t]he privacy amendment to the Alaska Constitution was intended to give recognition and protection to the home,"[95] further clarifying that "[i]f there is any area of human activity to which a right to privacy pertains more than any other, it is the home."[96]

The *Ravin* court specifically warned that the right of privacy would not shield conduct that posed a danger to others on the public highways.[97] While activity in the home is at one end of the privacy scale, the court reasoned that public safety concerns place the individual operating a motor vehicle on a public highway on the opposite end of that scale, thereby justifying greater intrusions upon that individual's privacy.[98]

Even if society is willing to recognize that a citizen has a reasonable expectation of privacy when operating a motor vehicle, and even if sobriety checkpoints infringe upon this right, then under the current privacy jurisprudence it still must be shown both that there is a compelling interest in deterring drunk driving and that checkpoints bear a sufficiently close and substantial relationship to the furtherance of that interest.[99]

Alaska's interest in deterring drunk driving is clearly compelling. In 1989, fifty-five percent of all traffic fatalities in Alaska were alcohol-related,[100] a percentage almost identical to the national average.[101]

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95. *Id.* at 503-04.

96. *Id.* at 503. Recently, the Alaska Supreme Court went so far as to say that the "fundamental right" of privacy may be limited to activity that remains in the home, and that "when an individual leaves his home and interacts with others, competing rights of others . . . may take precedence." Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123, 1135 (Alaska 1989) (holding that Article I, Section 22 does not prevent a private employer from requiring drug testing for safety reasons).

97. *Ravin*, 537 P.2d at 511 & n.67 (observing that, by impairing the user's driving ability, use of marijuana by drivers affects the welfare of the general public).

98. *Id.* at 510.

99. *Id.* at 504 (adopting the close and substantial relationship test); *see also* State v. Erickson, 574 P.2d 1, 22 (Alaska 1978) (applying the close and substantial relationship test to cocaine possession in the home); Harrison v. State, 687 P.2d 332, 338 (Alaska Ct. App. 1984) (applying the close and substantial relationship test to the state's interest in protecting the public health and welfare by regulating the importation of alcohol). Compare this close and substantial relationship test to the federal standard employed in *Prouse,* in which the United States Supreme Court concluded that random stops to detect unlicensed drivers and unregistered vehicles were not "*sufficiently productive* to qualify as a reasonable law enforcement practice under the Fourth Amendment." Delaware v. Prouse, 440 U.S. 648, 660 (1979) (emphasis added).

100. PUBLIC SAFETY STATISTICS, *supra* note 1.

101. *See* DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 2. In 1984, the National Transportation Safety Board published the following statistics regarding alcohol

The Alaska Legislature and the Alaska Supreme Court have characterized alcohol abuse as more dangerous than that of either marijuana or cocaine.[102] The National Highway Transportation Safety Administration has recognized the danger drunk drivers pose and has recommended that Alaska institute a program of sobriety checkpoints to deter drunk driving.[103]

Critics of sobriety checkpoints do not question the compelling need to control and reduce drunk driving. The battle is fought over whether checkpoints bear a sufficiently "close and substantial relationship" to this compelling interest to satisfy the second prong of the test. The standard for determining whether a relationship is sufficiently "close and substantial" is imprecise. The function of the "close and substantial" standard is similar to that of the constitutional prohibition against overbreadth. The standard has been used to strike down statutes that go beyond the measures needed to address legitimate state concerns and thereby unnecessarily infringe upon important constitutional rights. In *Robison v. Francis*,[104] for example, the Alaska Supreme Court struck down a local hire statute because it provided an employment preference to all Alaskans, not just those who were chronically unemployed. The court noted that in applying the "close and substantial relationship" standard — at least in this context — " 'the availability of less restrictive means' is relevant."[105]

Opponents of sobriety checkpoints also argue that for a relationship to be sufficiently "close and substantial" to satisfy the constitutional test, the most effective means of achieving the legislative goal should be used. They argue that traditional roving patrols are not only less restrictive than checkpoints, but seemingly more effective in detecting drunk drivers.[106] Where important public health and safety

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related highway fatalities: In 1980, 55% of all highway fatalities were alcohol-related; in 1981, 57%; and in 1982, 58%. *Id.*

102. *See Harrison*, 687 P.2d at 339; ALASKA STAT. §§ 04.11.490-498 (1986) (granting the "local option" to prohibit the sale or possession of alcoholic beverages).

103. DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 22.

104. 713 P.2d 259 (Alaska 1986), *later appeal on other grounds*, 777 P.2d 202 (Alaska 1989).

105. *Id.* at 264 (quoting New Hampshire v. Piper, 470 U.S. 274, 284 (1985)). In several cases where privacy rights were infringed, the court has required the state to demonstrate that the means selected are the "least restrictive." *See* Jones v. Jennings, 788 P.2d 732, 739 (Alaska 1990) (least intrusive means analysis persuasive in context of protecting documents from discovery); Department of Revenue v. Oliver, 636 P.2d 1156, 1166-67 (Alaska 1981) (requiring that compelled tax return information must be obtained by least restrictive means). Important public health and safety considerations were not present in either case.

106. *See, e.g.*, Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481, 2491-92 (1990) (Stevens, J., dissenting); Ingersoll v. Palmer, 743 P.2d 1299, 1311 (Cal. 1987). It was on this basis that the Louisiana Supreme Court held that sobriety checkpoints

considerations hang in the balance, however, it is not necessary that the means selected to effectuate the state's interest be either the least restrictive or the most effective solution to the problem.[107]

In *Harrison v. State*,[108] for example, the Alaska Court of Appeals upheld a law that gave local communities the option to ban the importation of alcoholic beverages. The defendant argued that the law infringed the privacy of local residents who use alcohol in moderation for the sake of punishing a relatively small number of alcohol abusers. Moreover, the defendant argued, because alcohol could still be obtained in other areas, the relation between the law and its purpose of curbing the social costs of alcohol abuse was not "substantial" enough to justify the infringement of the right to privacy. The court of appeals rejected these arguments, holding that "the threat . . . posed by widespread alcohol abuse is enormous," and the local option law bears a "close and substantial relationship to the legitimate legislative goal of protecting the public health and welfare by curbing the level of alcohol abuse in our society."[109]

It is, of course, always possible to postulate other, less-restrictive means of law enforcement.[110] In the *Harrison* context, for example, local communities conceivably could have controlled problems attributable to alcohol abuse through an array of measures ranging from increased education to stricter enforcement of laws against selling liquor to drunken persons.[111] When all these less-intrusive means have been tried and fail, however, the community is justified in experimenting with more restrictive measures. As the effectiveness of a new procedure cannot be immediately determined, the question then arises how to balance the effectiveness of the procedure and the compelling interest of the state against the intrusiveness of the procedure in determining whether it is constitutionally permissible. The United States Supreme Court and the California Supreme Court, recognizing this difficulty, have declined to prohibit what may be a highly effective law

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violated the privacy clause of that state's constitution. State v. Church, 538 So. 2d 993, 997-98 (La. 1989).

107. *See* Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

108. 687 P.2d 332 (Alaska Ct. App. 1984).

109. *Id.* at 339.

110. In *Martinez-Fuerte*, the United States Supreme Court noted that "the logic of . . . elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search and seizure powers." United States v. Martinez-Fuerte, 428 U.S. 543, 557 n.12 (1976).

111. *See, e.g.*, ALASKA STAT. § 04.16.030 (Supp. 1990) (sales to drunken persons prohibited) and § 04.16.040 (1986) (access of drunken persons to licensed premises prohibited).

enforcement technique by applying an overly stringent standard of "effectiveness."[112]

Regardless of whether a "close and substantial relationship" is interpreted as requiring the least-restrictive alternative or the most effective alternative, the result in Alaska should be the same. Alaska communities do not have effective, less-intrusive means at their disposal to reduce the high incidence of alcohol-related traffic deaths and serious injuries. Stiffer DWI penalties, public education programs, and greater enforcement have had only a limited, short-term deterrent effect. Alcohol-related traffic fatalities as a percentage of all traffic fatalities actually *rose* from fifty to fifty-five percent after mandatory jail sentences for DWI were instituted in 1978.[113] In 1982, the year before Alaska substantially increased the penalties for DWI and authorized swift administrative license suspension, fifty-five percent of all fatal traffic accidents in Alaska were alcohol-related.[114] The percentage dipped to fifty percent in 1984, the year following enactment, but climbed back up to fifty-four percent in 1985 and has remained persistently in the mid-fifty percent range since that time.[115] California experienced a similar dip-and-climb phenomenon following enactment of stiffer penalties.[116]

As opponents of sobriety checkpoints have pointed out, it is probably correct that roving patrols employing articulable suspicion as grounds for stopping motorists result in more arrests per officer work hour than checkpoints and are a "less-intrusive means" of dealing

112. Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481, 2487 (1990); Ingersoll v. Palmer, 743 P.2d 1299, 1312 (Cal. 1987) ("It would be presumptuous in the extreme for this court to prohibit the use of an otherwise permissible and potentially effective procedure merely because its effectiveness is at the present time largely untested. Indeed, to do so would prevent the compilation of any data to show its effectiveness.").

113. PUBLIC SAFETY STATISTICS, *supra* note 1. Mandatory sentencing went into effect on October 10, 1978. Act effective Oct. 10, 1978, ch. 152, § 2, 1978 Alaska Sess. Laws 1 (codified as amended at ALASKA STAT. § 28.35.030 (1989)).

114. PUBLIC SAFETY STATISTICS, *supra* note 1; Act effective Oct. 17, 1983, ch. 77, §§ 13-15, 1983 Alaska Sess. Laws 13-15 (codified as amended at ALASKA STAT. § 28.35.030 (1989)).

115. PUBLIC SAFETY STATISTICS, *supra* note 1. Alcohol-related fatalities represented only 39.3% of all fatal accidents in 1983, a 12-year low. This anomaly may be attributable to an unusually high number of non-alcohol-related fatalities in that year. *Id.* In any event, since the stricter penalties did not become law until November 1983, it is unlikely that the drop was influenced by passage of the legislation.

Interestingly, the law seems to have had some modest effect in reducing non-fatal alcohol-related accidents. Prior to 1983, alcohol-related accidents (fatal and non-fatal) were approximately 13-15% of all accidents. Following enactment of the stiffer penalties, that percentage appears to have stabilized in the range of 10-11%. *Id.*

116. *See* Ingersoll v. Palmer, 743 P.2d 1299, 1312 (Cal. 1987).

with drunk driving.[117] As noted above, however, a primary goal of a sobriety checkpoint program is *deterrence,* which is measured in the decline in serious injuries and deaths attributable to drunk drivers, not the number of arrests made. If deterrence is the goal — as opposed to detection and arrest — sobriety checkpoints *are* the least-intrusive means of reaching the objective.[118]

Finally, the amount of intrusion caused by sobriety checkpoints is relatively low and can be minimized by following the steps suggested in the United States Department of Transportation's Model Policy.[119] These include adequate advance publicity explaining the goals of the program and the procedures to be used, the use of specially trained officers, and thoughtful design of the checkpoint to reduce the subjective anxiety associated with police stops.

IV. CONCLUSION

Traditional law enforcement techniques, such as roving police patrols that stop drivers only when articulable suspicion of intoxication is present, have failed to remove drunk drivers from Alaska's highways. Public education programs, greater enforcement, and stiffer penalties have had some impact, but they seem unable to reduce the number of traffic fatalities attributed to drunk drivers in Alaska by more than a few percentage points. Sobriety checkpoints, which have proven effective in deterring drunk driving in communities throughout the United States, are the only promising technique that has not been tried in Alaska.

The decision of the United States Supreme Court in *Michigan Department of State Police v. Sitz*[120] has removed Fourth Amendment

117. *See id.* at 1311.

118. *See* State v. Superior Court, 691 P.2d 1073, 1076-77 (Ariz. 1984) (accepting state evidence that no less-intrusive alternative existed); *cf. Ingersoll,* 743 P.2d at 1311-13 (roving stops less effective than checkpoints in deterring drunk driving). The New York Governor's Alcohol and Highway Safety Task Force concluded that "the systematic . . . traffic checkpoint is the single most effective action in raising the community's perception of the risk of being detected and apprehended for drunk driving . . . ." People v. Scott, 473 N.E.2d 1, 4-5 (N.Y. 1984) (citing REPORT OF GOVERNOR'S ALCOHOL AND HIGHWAY SAFETY TASK FORCE 103 (1981)). The California Highway Patrol survey found that 87.1% of those surveyed believed that sobriety checkpoints increase a drunk driver's risk of being detected and arrested, and 79.6% believed that checkpoints in fact deter drunk driving. *See* Soble, *supra* note 57, at 492 n.23 (citing Memorandum from D. Montagner, Operational Planning Section, California Highway Patrol, to Planning and Analysts Division (Oct. 9, 1985)). Sobriety checkpoints are endorsed by the National Transportation Safety Board, the National Highway Traffic Safety Administration and the International Chiefs of Police. DETERRENCE OF DRUNK DRIVING, *supra* note 2, at 5, 20, 31.

119. MODEL POLICY, *supra* note 87.

120. 110 S. Ct. 2481 (1990).

objections to the use of sobriety checkpoints. It is likely that the Alaska Supreme Court would adopt this analysis in applying the virtually identical search and seizure provisions of Article I, Section 14 of the Alaska Constitution.

Additionally, it appears unlikely that Article I, Section 22 of the Alaska Constitution, the privacy clause, will provide a constitutional barrier to the implementation of sobriety checkpoints. The Alaska Supreme Court has repeatedly rejected any notion that the right to privacy in Alaska is absolute, and in *Ravin v. State*[121] carefully distinguished between the privacy protections afforded individuals in the home, where no threat to public safety was perceived, and on the highway, where the rights and safety of others were endangered.

Finally, although the application of important constitutional protections is obviously not to be decided by popular vote, public perception of sobriety checkpoints is clearly relevant. It is, after all, subjective expectations of privacy as recognized by society that are protected by Article I, Section 22.[122] The extremely high percentage of motorists experiencing sobriety checkpoints who approve of their use — eighty to ninety percent[123] — suggests both that society is no longer willing to sanction an expectation of privacy that shields drunk driving and that it is prepared to accept the minimal inconvenience caused by checkpoint stops.

121. 537 P.2d 494 (Alaska 1975).
122. Jones v. Jennings, 788 P.2d 732, 738 (Alaska 1990).
123. *See supra* note 57.

APPENDIX

UNITED STATES DEPARTMENT OF TRANSPORTATION MODEL POLICY[124] SOBRIETY CHECKPOINT GUIDELINES

I. PURPOSE

The purpose of this policy is to provide guidelines for the physical construction and operation of a sobriety checkpoint in order to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or other drugs.

II. POLICY

It shall be the policy of this law enforcement agency to implement a sobriety checkpoint program. This will be done as part of a comprehensive enforcement program. To ensure standardization of this program a clear and concise set of written guidelines has been developed governing procedures on how checkpoints will be operated within this jurisdiction.

To implement this policy this agency must:

- Satisfy federal, state and local legal requirements.
- Conduct checkpoints with a minimal amount of intrusion or motorist inconvenience.
- Assure the safety of the general public as well as law enforcement officers involved.
- Provide for an objective site selection process based on relevant data.
- Provide for public information and education to maximize the deterrent effect and heighten awareness of the impaired driving problem.
- Provide for a systematic procedure for data collection and after impact analysis report to monitor and ensure standardization and consistency of the sobriety checkpoint program.
- Officer selection should be based on experience and training. Operational procedures will be covered during a briefing period prior to each checkpoint.

124. This policy was originally printed as Appendix C to document #DOT-HS-807-656, available to the public through National Technical Information Services, Springfield, VA.

III. DEPARTMENTAL GUIDELINES

Written guidelines, consistent with existing agency policies, prepared in advance of the checkpoint program must:

A. Be approved by the agency's chief law enforcement official or designee prior to commencement of the checkpoint.

B. Specify signing, safety equipment, warning devices, barriers, etc. that will be used, their placement and proper use at the scene. This specification will be consistent with applicable standards and regulations. (See the relevant state or local manuals on traffic control devices, etc.)

C. Specify the method for selecting motorists to be contacted, e.g., "every vehicle, every fifth vehicle," etc. to ensure objectivity.

D. Provide for an operational briefing of personnel prior to each checkpoint. At this time designate assignments and respective duties.

E. Specify dialogue and educational material to be used by checkpoint personnel.

F. Provide for the removal of vehicles to the predetermined area when further investigation is required.

G. Public reaction to the use of sobriety checkpoints can be obtained by several different methods. Recommended procedures for obtaining feedback are:
   1. Mail in surveys.
   2. Verbal feedback from motorists at checkpoint site.
   3. Periodic public opinion polls.

IV. PROCEDURES

A. Site Selection

This department must be able to objectively outline criteria utilized in the site selection process:

1. Alcohol/Drug related traffic experiences.
   a. Unusual incidence of alcohol/drug related crashes.
   b. Alcohol/drug impaired driving violations.
   c. Unusual number of nighttime single vehicle crashes.
   d. Any other documented alcohol/drug related vehicular incidents.
2. Select locations which permit the safe flow of traffic through the checkpoint.
   a. Consideration should be given to posted speed limits, traffic volume and visibility.

b. Ensure sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway.
c. Consider other conditions that may pose a hazard.

3. The site should have maximum visibility from each direction and sufficient illumination. If permanent lighting is unavailable ensure that portable lighting is provided.

B. Personnel
1. A sworn, uniformed officer will be assigned to provide on-scene supervision of the checkpoint.
2. The checkpoint will be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation.

C. Advance Notification
1. For the purpose of public information and education, this agency will announce to the media that checkpoints will be conducted.
2. This agency will encourage media interest in the sobriety checkpoint program to enhance public perception of aggressive enforcement, to heighten the deterrent effect and to assure protection of constitutional rights.
3. This agency will provide advance notification of the checkpoint to public safety agencies expected to be impacted.

D. Motorists Warnings/Safety Methods
1. Special care is required to warn approaching motorists of the sobriety checkpoint.
2. Basic equipment will include, but is not limited to:
a. Warning signs placed in advance of the checkpoint
b. Flares, fusees, or similar devices
c. Safety cones or similar devices
d. Permanent/portable lighting
e. Marked patrol vehicles
3. The use, placement and types of traffic control devices must comply with federal, state, or local transportation codes.

E. Contingency Planning
Any deviation from the predetermined guidelines must thoroughly document the reason for the deviation. (i.e. traffic backing up, intermittent inclement weather.)

F. Data Collection and Evaluation

To monitor and ensure standardization and consistency of the sobriety checkpoint program a systematic method of data collection will be incorporated.

1. After action report may include, but is not limited to:
   a. Time, date, and location of checkpoint.
   b. Weather conditions.
   c. Number of vehicles passing through checkpoint.
   d. Average time delay to motorists.
   e. Predetermined order of selecting motorists.
   f. Number and types of arrests.
   g. Number of motorists detained for field sobriety testing.
   h. Identification of unusual incidents such as safety problems/other concerns.
2. To assist in determining the effectiveness of a checkpoint operation, a periodic impact analysis will include the following types of information.
   a. Crash rate reduction.
   b. Impaired driving offenses.
   c. Impaired driving convictions.
   d. Public opinion survey to determine increased perception of detection and apprehension of impaired drivers.