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- File -

STATE OF ALASKA THE LEGISLATURE

FOURTH STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1983

SUBJECT: Solicitation of prostitutes
(CSSB 143 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: James H. Lear
Legislative Counsel *JHL*

You have requested our office to prepare a committee substitute for Senate Bill 143 to provide a local option for municipalities to exercise if they wish to prohibit solicitation of prostitutes. You have received two versions in draft form for your consideration.

The first version provides for a local option election that would be held pursuant to a petition by voters within a municipality. If a majority of the voters voting in an election vote to penalize solicitation of a prostitute, such conduct is automatically punishable as a class B misdemeanor without any action by the municipal government. In effect, solicitation of a prostitute would violate a state law but only if committed within the boundaries of a municipality that voted to punish such conduct.

The second version amends AS 11.66.100 by adding a new subsection that would specifically authorize municipalities to enact an ordinance prohibiting solicitation of a prostitute. In the opinion of this office, such legislation would not only be unnecessary but inadvisable.

In the case of Anchorage v. Afualo, 657 P.2d 407 (Alaska 1983), the Alaska Court of Appeals made it clear that such legislation is superfluous.

In its decision the Court of Appeals held that an Anchorage ordinance was not irreconcilably in conflict with the statute prohibiting someone from engaging or offering to engage in sexual intercourse for a fee, but not prohibiting offering a prostitute money for sexual intercourse.

Senator Bill Ray
Page 2
April 18, 1983

It is unnecessary to adopt legislation that would specifically authorize a municipality to do something that the Court of Appeals says they can already do under existing law. It is also inadvisable to adopt a specific authorization such as the one contemplated, since a logical inference could be drawn to support the argument that a municipality cannot enact an ordinance prohibiting criminal conduct unless the Alaska Criminal Code specifically authorizes a municipality to do so.

If you have any further question pertaining to the subject matter of this memorandum, do not hesitate to contact our office.

JHL:csh
15/007

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 143 Date on Bill: 2-24-83
 Title: "An Act making solicitation...punishable as a class B misdemeanor"
 Sponsor: V. Fischer
 Requestor: SEN. JUDICIARY

1. Estimated fiscal impacts on: No fiscal impact is anticipated.

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue				
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan ^{GCA} Phone: 263-5691
 Division: Alaska State Troopers ^{mck} Date: 3-2-83

Approved by Commissioner: *[Signature]* Date: 3/8/83
 Department: Public Safety

5. Distribution:
- Original to Legislative Finance
 - Copy to OMB
 - Copy to Sponsor
 - Copy to Requestor



TONY KNOWLES
MAYOR

ANCHORAGE POLICE DEPARTMENT

625 C STREET • ANCHORAGE, ALASKA 99501-3599
TELEPHONE (907) 279-1441



BRIAN S. PORTER
CHIEF

February 28, 1983

Senator Vic Fischer
c/o Mr. David Dye
Senate State Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 143

Dear Senator Fischer,

The adoption of Senate Bill 143 would bring the State Criminal Code in line with the current parallel ordinance and enforcement policy within the Municipality of Anchorage.

Some years back, Anchorage possessed a traditionally worded ordinance prohibiting soliciting for the purpose of prostitution. It was found by the Court, to be unconstitutional as it only prohibited this behavior for women and not men.

We corrected and redrafted the ordinance and used it successfully against both men and women.

A few months ago, a District Court Judge threw out this ordinance as she felt it conflicted with the intent of the State law that only includes women. While I think a wiser decision would have been to throw out the State Statute, it is now moot as her decision was overturned by the State Court of Appeals.

I support Senate Bill 143. As mentioned, I feel the current construction of AS 11.55.100 (a) is constitutionally questionable. Additionally, prohibiting both men and women from soliciting for the purpose of prostitution is a better deterrent and a much better enforcement tool.

Sincerely,

Brian S. Porter
Chief of Police

BSP:vka

SENATE JUDICIARY COMMITTEE

Meeting Minutes
3/28/83

The meeting was called to order by Senator Ray, Chairman at 1:30 p.m.

All members of the Committee were present with the exception of Senator Eliason who was excused. Senator Kerttula attended the meeting and participated in the discussion regarding the first order of business.

The first order of business was Senate Bill 143--Making solicitation of a prostitute by a patron a crime punishable as a class B misdemeanor-- as to which the prime sponsor, Senator Vic Fischer, testified, explaining the purpose of the bill and providing copies of a letter from the Chief of the Anchorage Police Department endorsing the bill (a copy of which is attached hereto).

Senator Ziegler asked a question regarding where the impetus for the bill came from, to which Senator Fischer responded by explaining that it arose out of his personal beliefs and also out of a conversation he recently had with the Chief of the Anchorage Police Department wherein the Chief stated that the enforcement of anti-prostitution statutes will be greatly facilitated by this bill.

Senator Ziegler also asked about similar legislation in other states, to which Senator Fischer responded that he did not have that information presently available.

Senator Kerttula stated that the potential for entrapment has been a major concern in this type of legislation.

Senator Ray asked a question about the type of sexual conduct required for a prosecution or conviction under this statute. Senator Fischer responded to this question and discussion was had wherein Senator Pettyjohn also participated.

Senators Pettyjohn and Ray raised a question about the language "money or other compensation" being too broad and too vague because, according to Senator Pettyjohn, it would include innocent "romantic liaisons" and offers of any incentive, including a ride, dinner or even a piece of cheese (as to the latter, Senator Kerttula pointed out that this seems to be a reference to the potential for "entrapment" that he previously mentioned). Furthermore, Senator Pettyjohn pointed out that such broad, ambiguous language would make the statute subject to prosecutorial abuse.

Further discussion was then had wherein all the Senators participated and in the course of which the following things were mentioned:

Some thought has been given to simply repealing the prostitution statutes; i.e., legalizing prostitution. Senator Fischer actually discussed the matter with enforcement people who were in favor of it, but he feels that politically it just wouldn't go anywhere. Prostitution appears to be a serious problem only in certain parts of Anchorage and it is feared that this bill is apt to create an enforcement problem in localities where the problem doesn't presently exist.

The municipality of Anchorage passed an ordinance that does the same thing as this bill and, although a trial judge declared the ordinance invalid because it allegedly conflicted with the legislative intent of existing state law, the court of appeals more recently reversed that decision and, therefore, it appears that the Anchorage ordinance can be enforced without additional legislation.

Senator Ray proposed a simple redefinition of prostitution to include anyone who engages in sexual conduct, including the offer or acceptance thereof, for compensation. This proposal was discussed at some length and several senators seemed to favor it.

Senator Ray also proposed a local option provision, as to which, after a good deal of discussion, there appeared to be widespread approval.

The second order of business was Senate Bill 167--Relating to correctional facilities, good time computation, and the imprisonment and rehabilitation of offenders--as to which Senator Ray announced that CSHB 103 has just been referred to the Committee and, therefore, further action on Senate Bill 167 will be deferred until CSHB 103 is acted upon. Furthermore, Senator Ray assigned the subcommittee on CSHB 103 to Senator Pettyjohn who agreed to bring the bill up for consideration on Friday, April, 8, 1983.

The third and final order of business was a brief report by Senator Josephson on his recent trip to Washington, D.C., where he had some interesting discussions regarding corrections and juvenile offenders.

There being no further business, the meeting adjourned at 2:04 p.m.

to dismiss or suppress, examinations and hearings on competency, the period during which the defendant is incompetent to stand trial, interlocutory appeals, and trial of other charges.

No pre-trial motion shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period. (emphasis supplied)

The language of this section which we have emphasized is sufficiently broad to include a period of delay due to granting a motion of counsel to withdraw. Thus, the court would have been justified in concluding that the delay caused by the motion was more than sufficient to bring this case within the 120 day limit prescribed by Criminal Rule 45.

There being no error, the conviction must be affirmed.

AFFIRMED.



Debbie PLAS, Appellant,

v.

STATE of Alaska, and Avrum M. Gross,
Attorney General, Appellees.

Dorothy FARRELL and Jean
Ross, Petitioners,

v.

STATE of Alaska, Respondent.

Nos. 3530, 3529,

Supreme Court of Alaska.

Aug. 24, 1979.

Appeals were taken from judgments of the Superior Court, Third Judicial District, John Bosshard and C. J. Occhipinti, JJ., in actions challenging constitutionality of prostitution statute. The Supreme Court,

Connor, J., held that clause of prostitution statute prohibiting certain conduct "by a female" was invalid as in violation of equal protection; however, clause "by a female" was separable from remainder of statute so that prostitution proscription, absent "by a female" limiting clause, was valid.

Affirmed.

1. Constitutional Law \Rightarrow 213.1(2)

In assessing equal protection claims under Alaska Constitution, Court must consider purpose of statute, with legitimacy of purpose, means used to accomplish legislative objective, and then determine whether means chosen substantially further goals of enactment and balance state interest in chosen means against nature of constitutional right which is at issue. Const. art. 1, §§ 1, 3.

2. Constitutional Law \Rightarrow 224(5)

In creating criminal offenses it is particularly important for equal protection purposes that any distinctions as to gender rest upon some logical classification having a basis in actual conditions of human life. Const. art. 1, §§ 1, 3.

3. Constitutional Law \Rightarrow 224(5)

Prostitution \Rightarrow 1

Statutes \Rightarrow 64(6)

Clause of prostitution statute prohibiting certain conduct "by a female" was invalid as in violation of equal protection; however, clause "by a female" was separable from remainder of statute so that prostitution proscription, absent "by a female" limiting clause, was valid. Const. art. 1, §§ 1, 3; AS 11.40.210, 11.40.230, Laws 1955, c. 104.

Margie MacNeille, Alaska Legal Services,
Jeffrey M. Feldman, Asst. Public Defender,
Anchorage, for appellant and petitioners.

Burry Stern, Asst. Atty. Gen., Anchorage,
Anne Carpeneti, Asst. Atty. Gen., Daniel W.
Hickey, Chief Pros., Avrum M. Gross, Atty.
Gen., Juneau, for appellees and respondent

Before RABINOWITZ,
NOR, BOOCHEVER,
THEWS, JJ.

OPINION

CONNOR, Justice.

This opinion arises from a criminal case on review and a criminal case consolidated for review. The facts are uncontested. Appellant Debbie Plas, Alaska State Trooper, was charged with the purpose of prostitution under AS 11.40.230 which reads:

"It is unlawful with intent to procure or solicit, or to procure or solicit for the purpose of prostitution."

In a preceding section,

"Prostitution includes the receiving of the body for carnal intercourse for hire."

It is this statutory definition of prostitution which is the issue in this appeal.

Appellant Plas was charged with the purpose of prostitution under AS 11.40.230. The statute was invalid under the equal protection clause of article 1, sections 1 and 3 of the Alaska Constitution, and the Supreme Court's decision to the United States Supreme Court. The district court granted the writ of habeas corpus. The state elected not to appeal. However, enforcement of the writ was stayed.

A civil complaint for injunctive relief was filed on behalf of appellant Plas to obtain a ruling, binding on the superior courts, of the unconstitutionality of the Alaska's statutes regulating prostitution offenses. In her complaint, she asserted:

1. That she is a resident of the State of Alaska and

1. AS 11.40.220 states: "It is unlawful to engage in prostitution in the state."

2. In the superior court, she sought the granting of review

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER, BURKE and MATTHEWS, JJ.

OPINION

CONNOR, Justice.

This opinion arises from a petition for review and a criminal appeal that were consolidated for review by this court. The facts are uncontested. On June 19, 1976, appellant Debbie Plas was charged by an Alaska State Trooper with soliciting for the purpose of prostitution in violation of AS 11.40.230 which reads:

"It is unlawful within the state to procure or solicit, or to offer to procure or solicit for the purpose of prostitution."

A preceding section, AS 11.40.210 states:

"Prostitution includes the giving or receiving of the body by a female for sexual intercourse for hire."¹

It is this statutory language which is at issue in this appeal.

Appellant Plas moved to dismiss the charge against her on the ground that the statute was invalid on its face, as violative of the equal protection of the laws required by article I, sections 1 and 3 of the Alaska Constitution, and the Fourteenth Amendment to the United States Constitution. The district court granted a dismissal. The state elected not to pursue an appeal. However, enforcement of the statute continued.

A civil complaint for declaratory and injunctive relief was subsequently filed on behalf of appellant Plas, in an effort to obtain a ruling, binding on the district courts, of the unconstitutionality of Alaska's statutes regulating prostitution related offenses. In her complaint, appellant Plas asserted:

1. That she is a female resident of the State of Alaska subject to prosecution

1. AS 11.40.220 states:

"It is unlawful to engage in prostitution in the state."

2. In the superior court, the state stipulated to the granting of review. The state recognized

under the state's statutes regulating prostitution related offenses;

2. That she was arrested and charged with having violated AS 11.40.230 and that the case was dismissed by the district court;

3. That, as a female citizen, she is still subject to arrest and prosecution under the statutes;

4. That any additional harassment, arrest or prosecution of her pursuant to the statutory scheme would cause her economic and emotional injury;

5. That AS 11.40.210-230 are violative of article I, section 3, of the Alaska Constitution and the fourteenth amendment to the United States Constitution because they distinguish between criminal and non-criminal conduct on the basis of sex.

The State of Alaska moved to dismiss the complaint on the grounds that the plaintiff lacked sufficient standing to bring the action. The superior court granted the state's motion to dismiss, finding that the statutes were constitutional and that Plas was without standing to prosecute this action.

On April 20, 1977, appellants Farrell and Ross were charged by an Alaska State Trooper with soliciting for the purpose of prostitution in violation of AS 11.40.230. A motion to dismiss on the ground that the statute was unconstitutional was denied by the district court. Farrell and Ross unsuccessfully sought reversal in the superior court, and then petitioned us for review, which we have granted.² The questions presented are (1) whether AS 11.40.210-230 is unconstitutional, and (2) whether appellant Plas has standing to challenge the constitutionality of the statute.

Two provisions of the Alaska Constitution bear upon our decision:

Article I, section 1, provides:

"*Inherent Rights.* This constitution is dedicated to the principles that all per-

son has a controlling decision on the validity of the statute would be in the public interest and would result in a saving of the state's resources.

sons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

Article I, section 3, provides:

"*Civil Rights.* No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section."

It is significant that the category "sex" was added to article I, section 3, of the Alaska Constitution by amendment in 1972.³ We must thus consider the statute in the light of this constitutional prohibition, and the guarantee of equal rights and protection under the law contained in article I, section 1, of the Alaska Constitution.

[1] As we stated in *State v. Erickson*, 574 P.2d 1 (Alaska 1978), we must assess equal protection claims under the Alaska Constitution by considering the purpose of the statute, the legitimacy of that purpose, the means used to accomplish the legislative objective, and "then determine whether the means chosen substantially further the goals of the enactment." *Id.* at 12. We must also balance the state interest in the chosen means against the nature of the constitutional right which is at issue. *Id.* at 12.

3. It appears that at least one woman member of the Alaska Constitutional Convention, Delegate Hermann, argued strenuously against the inclusion of that word in this section, on the ground that it was unnecessary. 2 Proceedings of the Alaska Constitutional Convention 1296 (Jan. 5, 1956).

4. We find unpersuasive the state's argument that the definition section of the statute, AS 11.40.210, is ambiguous, and that when taken with the general prohibitory section, AS 11.40.220, and the punishment section, AS 11.40.250, which applies to a "person" convicted, the definition can be read to contain an implied prohibition of male prostitution.

5. For example, in *Lamb v. Brown*, 456 F.2d 18 (10th Cir. 1972), the court struck down an Oklahoma statute which allowed females under the age of 18 years to be proceeded against

[2] It is apparent that the statute invidiously discriminates against females. The offense of prostitution is capable of being committed by a male,⁴ but is nowhere made criminal by the statute. In striking at prostitution the legislation singles out only the female body as the critical physical element of the crime. In view of gender neutrality required by article I, section 3, of the Alaska Constitution, the means used to accomplish the legislative end lacks rational justification. In creating criminal offenses it is particularly important that any distinctions as to gender rest upon some logical justification having a basis in the actual conditions of human life.⁵ In our view the statute is unconstitutional insofar as it limits its operation to selling of only a female body.⁶ This does not, however, end our task.

The language which presents the constitutional difficulty here is the phrase "by a female" contained in AS 11.40.210. We must consider whether the statute, with that offending language stricken, can still accomplish its general intended purpose, and thus be saved from total nullity through the operation of the severability clause of this statute.⁷ We think that the statute can be so sustained, with the mentioned words omitted. For the provision would then read:

"Prostitution includes the giving or receiving of the body for sexual intercourse for hire."

under the juvenile code rather than by a criminal proceeding, but entitled males to such benefits only if they were under the age of 16 years. See also *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971).

6. As Judge Cates put it, concurring in *Holloway v. City of Birmingham*, 55 Ala.App. 568, 574, 317 So.2d 535, 541 (1975), "[O]ur society, either in a sepsis or asceticism, should be evenhanded."

7. Chapter 104, § 6, SLA 1955 provides:

"If any portion of this Act shall be declared unconstitutional, such decision shall not affect the validity of the remaining portions or sections of this Act."

It would then be neutral as to gender, it would accomplish the broad aim of the statute, and would not unreasonably distort the legislative intent." We believe that this is the proper solution to the problem.

[3] We hold that the clause "by a female" is invalid for violating article I, section 3, of the Alaska Constitution, but that the balance of the statute remains legally intact. In view of our holding we need not decide the question of whether appellant Plas has standing to attack the statute.

AFFIRMED.



Julie CARLSON and James
Carlson, Appellants,

v.

STATE of Alaska, Appellee.
No. 3919.

Supreme Court of Alaska.

Aug. 24, 1979.

Plaintiff and her husband brought action against the State for injuries inflicted at highway turnout by bear allegedly attracted to the site by accumulated, uncollected garbage on State-owned property. The Superior Court, Third Judicial District, Victor D. Carlson, J., granted summary judgment for the State, and plaintiffs appealed. The Supreme Court, Burke, J., held that: (1) the State did not fall within discretionary acts exception to waiver of sovereign immunity in Alaska Tort Claims Act, and (2) unresolved questions of fact precluded granting of summary judgment for the State.

Reversed and remanded.

8. See *Lynden Transport, Inc. v. State*, 532 P.2d 700, 713 (Alaska 1975), where we set forth the test for severability as follows:

The test for determining the severability of a statute is twofold. A provision will not be deemed severable "unless it appears both

1. Judgment ⇐181(2)

It is only existence of issues of material fact which precludes granting of motion for summary judgment. Rules of Civil Procedure, rule 56(c).

2. States ⇐112.2(1)

Under planning-operational test for determining applicability of "discretionary act" sections of Alaska Tort Claims Act, in which decisions that rise to level of planning or policymaking are considered "discretionary acts" which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be "discretionary acts" and therefore are not immune from liability, distinction between planning decisions and operational decisions does not depend merely on who made decision, but rather on type of decision that is being made, examined within analytical framework which is sensitive to policies underlying discretionary function or duty exception. AS 09.50.250(1).

3. States ⇐191(1)

The reason for preserving sovereign immunity for certain acts of the state is necessity for judicial abstention in certain policymaking areas that have been committed to other branches of government. AS 09.50.250.

4. States ⇐112.2(2)

The state's decision on broad question of whether to maintain highway turnouts in winter at all is "policy determination" that cannot give rise to tort liability; however, decisions made pursuant to that policy on how to implement it are "operational decisions" which impose duty upon state to act with reasonable care. AS 09.50.250(1).

See publication Words and Phrases for other judicial constructions and definitions.

that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fall." (footnote omitted)

t that the statute invidiously discriminates against females. The statute is capable of being applied to males,⁴ but is nowhere made applicable to males. In striking at prostitution singles out only the critical physical element of gender neutrality. The use of gender neutrality in section 3, of the Alaska Constitution means used to accommodate lack of rational justification for criminal offenses it is not that any distinctions upon some logical justification in the actual condition of a female body.⁵ In our view the statute is unconstitutional insofar as it limits its application to only a female body.⁶ We think that the statute, with the mentioned provision, should be evened, end our task.

which presents the constitutional issue here is the phrase "by a female" in AS 11.40.210. Whether the statute, with the phrase stricken, can still be considered to have a general intended purpose, rather than total nullity, is a question of the severability of the statute.⁷ We think that the statute, with the mentioned provision, should be evened.

includes the giving or receiving of sexual intercourse

code rather than by a crime. The statute entitles males to such benefits under the age of 16 years. See *Moren*, 429 U.S. 190, 97 S.Ct. 1717 (1976); *Reed v. Reed*, 404 U.S. 251, 30 L.Ed.2d 225 (1971).

put it, concurring in *Holloman*, 55 Ala.App. 568, 197 So.2d 541 (1975), "[O]ur society, with its asceticism, should be evened.

SLA 1955 provides: "If any provision of this Act shall be declared unconstitutional, such decision shall not affect the remaining portions of the Act."

ever, where a lease contains a non-waiver provision such as the one contained in the subject lease, courts have given full effect to those provisions and have held that previous failures on the landlord's part to cancel for a breach of a covenant do not constitute a waiver of such a provision.⁸ Thus, given the existence of a non-waiver provision, the landlord may demand strict compliance with a lease provision concerning time of payment without giving prior notice of such demand.⁹

[4, 5] We hold that because of the non-waiver provision of the lease, the state did not waive its right to rely solely on the May 5, 1964, notice before cancelling the lease.¹⁰ Therefore, the superior court was correct in determining that the issue as to the mailing of the supplemental notice was not material.¹¹

Affirmed.

(1961); *Powell v. Cannon*, 119 Cal.App. 2d 748, 260 P.2d 202 (1953); *Beck v. Trovato*, 260 Iowa 693, 150 N.W.2d 657 (1967); *Milbourn v. Aska*, 81 Ohio App. 79, 77 N.E.2d 610 (1949); *Bertrand v. Pate*, 284 S.W.2d 802 (Tex.Civ.App.1955). These cases are in line with analogous contract doctrine. 6 S. Williston, *Law of Contracts* § 856, at 231 (3d ed. 1962); 3A A. Corbin, *Law of Contracts* § 764, at 532-33 (1960); *Restatement of Contracts* § 311 (1932).

8. *Robinson v. Hadley*, 351 F.2d 385 (9th Cir. 1965); *Williams v. Behrend*, 55 A.2d 138 (D.C.Mun.App.1947); *Streeter v. Middlemas*, 240 Md. 169, 213 A.2d 471 (1965). For cases involving non-waiver provisions in contracts, see *Lundberg v. Switzer*, 146 Wash. 416, 263 P. 178 (1928); *Brown v. Chowchilla Land Co.*, 59 Cal.App. 164, 210 P. 424, 427 (1922).

9. In this regard we find the court's reasoning in *Lundberg v. Switzer*, 146 Wash. 416, 263 P. 178, 179 (1928), persuasive:

[T]he parties had a right to place in the contract any terms or conditions which were not unlawful or against public policy. In providing in the contract that acceptance of the delayed payments should not operate as a waiver of future payments, it cannot be said that the parties did anything which contravened any rule of law or went coun-

Joseph H. JOHNSON, Appellant,
v.
STATE of Alaska, Appellee.
No. 1338.

Supreme Court of Alaska.
Oct. 6, 1972.

Defendant was convicted before the Superior Court, Third Judicial District, Edward V. Davis, J., of living on the earnings of a prostitute and procuring a female for prostitution, and he appealed. The Supreme Court, Boney, C. J., held that failure to instruct on need for corroboration of testimony of prostitute, who was the sole witness and whose testimony was not otherwise corroborated, was plain error requiring reversal of conviction for procuring for prostitution.

ter to public policy. Where the vendor has waived strict performance by accepting delayed payments, he may by due notice to the purchaser reinstate strict performance . . . as to subsequent payments after having waived that performance by accepting delayed payments, it would seem to follow that the parties to the contract in the first instance, if they saw fit to do so, could agree that the acceptance of delayed payments should not operate to waive strict performance as to any future payments. (Citations omitted)

10. Because we have disposed of this issue solely by reviewing the lease provisions, we need not decide the issue raised by the state as to the effect of the regulations governing the lease of state lands. In this regard, the state contended that the requirements of notice and non-waiver provisions of the regulations cannot be altered by conduct of a state employee.

11. Further, Stephens has suggested that we keep in mind the equitable principle that "equity abhors a forfeiture." We have not been unmindful of that maxim; however, the record in this case discloses no equities in favor of Stephens that would dictate application of that maxim. More particularly, the record fails to indicate that any improvements had been placed on the land by Stephens.

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conviction on one count affirmed and other count reversed and case remanded.
Bochever, J., not participating.

1. Criminal Law \S 911

A motion for a new trial is addressed to the sound discretion of trial judge.

2. Criminal Law \S 942(2)

Where prostitute's probation officer and mother testified at hearing to perpetuate recantation testimony and presented evidence refuting at least some of prostitute's recantation and prostitute's trial testimony and pretrial sworn statements were substantially similar to her trial testimony and recantation consists of unsworn oral statements, it was not abuse of discretion to deny a new trial on ground of newly discovered evidence; fact that prostitute was sole prosecution witness did not require otherwise. AS 11.40.300, 11.40.350.

3. Criminal Law \S 510

Corroboration of prostitute's testimony was necessary to convict defendant of procuring a female for prostitution. AS 11.40.350, 12.45.040.

4. Criminal Law \S 507(7)

Phrase "illicit connection" as mentioned in statute requiring corroboration of testimony of an injured female to secure conviction for inveigling, enticing, or taking away an unmarried female for purposes of prostitution does not encompass living off the earnings of a prostitute; phrase is a Victorian euphemism for unlawful sexual intercourse. AS 11.40.300, 12.45.040.

See publication Words and Phrases for other judicial constructions and definitions.

5. Criminal Law \S 510

Corroboration of prostitute's testimony was not necessary to convict defendant of living on the earnings of a prostitute. AS 11.40.300, 12.45.040.

6. Criminal Law \S 510

Testimony of accomplices, like that of injured females, must be corroborated in order to support a conviction of inveigling, enticing, or taking away an unmarried female for purposes of prostitution. AS 12.45.040.

7. Criminal Law \S 511(1)

To be sufficient, evidence corroborating testimony of the injured female in prosecution for enticing, inveigling or taking away an unmarried female for purposes of prostitution should be considered in conjunction with the prostitute's testimony; such evidence must be consistent and harmonious with her testimony and evidence will be adequate for purposes of corroboration statute if it dispels the assumed distrust of the prostitute's testimony. AS 12.45.040.

8. Criminal Law \S 511(1)

Testimony of prostitute's probation officer and mother, which testimony was generally consistent and harmonious with that of the prostitute, could not be considered as corroborating prostitute's testimony, for purpose of convicting defendant of procuring a female for prostitution, where such testimony was only brought forth at hearing to perpetuate recantation testimony to be considered in ruling on motion for new trial. AS 11.40.350, 12.45.040.

9. Criminal Law \S 511(9)

Trial testimony of prostitute's uncle that he knew defendant and had seen his niece with defendant during period in which niece had testified to being a prostitute working for defendant and that defendant gave affirmative response to uncle's inquiry if defendant thought it was right for the niece to be out on the streets could not be read to corroborate prostitute's testimony that defendant had led her into the profession, in violation of procuring statute. AS 11.40.350, 12.45.040.

10. Criminal Law \S 1038(2), 1173(2)

Failure to instruct on need for corroboration of testimony of prostitute, who was the sole witness in prosecution for procur-

ing a female for prostitution and whose testimony was not otherwise corroborated, was plain error requiring reversal. AS 11.40.350, 12.45.610.

Victor D. Carlson, Public Defender, Michael L. Rubinstein, Meredith A. Wagstaff, Asst. Public Defenders, Anchorage, for appellant.

John E. Havelock, Atty. Gen., Juneau, Robert L. Eastaugh, Asst. Dist. Atty., Anchorage, for appellee.

Before BONEY, C. J., and RABINOWITZ, CONNOR and ERWIN, JJ. [BOOCHEVER, Justice, not participating].

OPINION

BONEY, Chief Justice.

The defendant, Joseph H. Johnson, was tried by a jury and convicted of two counts. Count I charged him with living on the earnings of a prostitute in violation of AS 11.40.300.¹ Count II charged him with procuring a female for prostitution in violation of AS 11.40.350.²

At trial, the state called only one witness, a female then 15 years of age and of limited mentality. She had begun her career as a prostitute when she was 13 years old, and, was, by her own testimony, a thief and a user of marijuana, "speed," and mescaline. Her testimony, though replete with inconsistencies, alterations, and admitted lies, was generally to the effect that Johnson had led her into prostitution,

1. AS 11.40.300 provides:

A male person who acts as an employee or servant in and about a room, house, or place of prostitution, or who engages or assists in operating or managing a room, house or building for the purpose of carrying on prostitution, or a male or female person who knowingly lives on, or is supported in whole or in part by the money or other valuable consideration realized, procured or earned by a female person through the prostitution of any other female person is guilty of a felony, and upon conviction, is punishable by imprisonment in

and that he had lived, at least in part, on her earnings as a prostitute.

The sole witness presented by the defense was the prostitute's uncle. He testified that he knew Johnson and that he had seen his niece with Johnson in Anchorage during the period during which she had testified to being a prostitute working for Johnson. He stated that he had asked if Johnson thought it was right for the niece to be "out on the streets" and that the reply was "yes."

After his conviction, but prior to the entry of judgment, Johnson moved for a new trial based on newly discovered evidence in the form of the prostitute's recantation of her testimony. Before the motion was ruled on, a hearing to perpetuate the recantation testimony was held. At that hearing, the superior court informed the prostitute of the gravity of the offense of perjury and the seriousness of the penalty therefor. The court advised her that she had a right not to testify, that she had a right to a court appointed attorney, and that her testimony could be used against her in a prosecution for perjury. The prostitute chose not to testify.

Some evidence was, however, produced at the hearing. The prostitute's probation officer and mother did testify, presenting evidence refuting at least some of the prostitute's recantation. Three exhibits were also offered. The first was a transcription of the prostitute's unsworn oral recantation as recorded in the office of Johnson's counsel. The other two were her sworn statements made prior to trial,

the penitentiary for not less than two years nor more than five years.

2. AS 11.40.350 provides:

A person who induces, entices or procures, or attempts to induce, entice or procure a female for the purpose of prostitution or concubinage, or for other immoral purpose, or to enter a house of prostitution in the state, is guilty of a felony, and upon conviction is punishable by imprisonment in the penitentiary for a period of not less than two years nor more than 20 years, or by a fine of not less than \$1,000, or by both.

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both of which were substantially similar to her trial testimony.

The motion for a new trial was subsequently denied. Johnson was then sentenced to five years on each count, to be served concurrently.

Two sets of issues are raised on this appeal. The first relates to the denial of the new trial, the second to the applicability of AS 12.45.040,³ our corroboration statute.⁴

I

Johnson argues that the superior court erred in denying his motion for a new trial based on newly discovered evidence.

In denying Johnson's motion, the superior court relied upon our decision in *Salinas v. State*⁵ where we adopted from *Pitts v. United States*⁶ the standard for granting a new trial on the basis of newly discovered evidence:

A motion for a new trial based on the ground of newly discovered evidence has to meet the following requirements: (1) It must appear from the motion that the evidence relied on is, in fact, newly discovered

covered, i.e., discovered after the trial; (2) the motion must allege facts from which the court may infer diligence on the part of the movant; (3) the evidence relied on must not be merely cumulative or impeaching; (4) must be material to the issues involved; and (5) must be such as, on a new trial, would probably produce an acquittal.⁷

The superior court concluded that, while the first four criteria had been met, the fifth criterion had not been satisfied.

[1] A motion for a new trial is, by the clear weight of authority, addressed to the sound discretion of the trial judge.⁸ Johnson does not argue that the superior court abused its discretion; indeed he concedes there was no abuse. Rather, Johnson argues that the "peculiar circumstances at bar" require a different rule of narrow application to those cases where each and every element of the state's case is dependent upon the credibility of a single witness who later recants. He argues that the fact of recantation calls the witness's veracity into issue, and, since reasonable men could

3. AS 12.45.040 provides:

Upon a trial for inveigling, enticing, or taking away an unmarried female for the purposes of prostitution, or for seducing and having an illicit connection with an unmarried female, the defendant shall not be convicted upon the testimony of the injured female unless her testimony is corroborated by some other evidence tending to connect the defendant with the commission of the crime.

4. An originally filed, the appeal raised only issues going to the denial of the motion for a new trial. After confronting the parties at oral argument with the corroboration statute, this court ordered them to file supplemental briefs on the applicability of AS 12.45.040. The parties were specifically directed to discuss the following six questions:

1. Is AS 12.45.040 applicable to either Count I or II of the indictment?

2. Assuming AS 12.45.040 is applicable to either or both counts, discuss the sufficiency of the evidence to corroborate the testimony of [the prostitute] as to the applicable count.

3. Discuss the evidentiary test applicable under AS 12.45.040, and discuss spe-

cifically the application of the rule announced in *Oxenberg v. State*, 302 P.2d 803 (Alaska 1961).

4. Was an instruction concerning the corroboration of the testimony of [the prostitute] required? Discuss the type and content of any instruction required?

5. Assuming there was no evidence sufficient to corroborate the testimony of [the prostitute], was it plain error to fail to apply the statute?

6. Assuming there was evidence sufficient to corroborate the testimony of [the prostitute], was it plain error to fail to instruct us to the requirement of corroboration?

5. 373 P.2d 512 (Alaska 1962).

6. 263 P.2d 808 (9th Cir. 1959), cert. den'd, 360 U.S. 919, 70 S.Ct. 1438, 3 L.Ed.2d 1535 (1959).

7. *Id.* at 819; *quoted*, *Salinas v. State*, 373 P.2d 512, 514 (Alaska 1962).8. *United States v. Johnson*, 327 U.S. 106, 111-112, 66 S.Ct. 464, 90 L.Ed. 502, 565-566 (1945); *Pedersen v. State*, 429 P.2d 327, 333 (Alaska 1966); *Salinas v. State*, 373 P.2d 512, 513 (Alaska 1962).

ing a female for prostitution and whose testimony was not otherwise corroborated, was plain error requiring reversal. AS 11.40.350, 12.45.040.

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OPINION

BONEY, Chief Justice.

The defendant, Joseph H. Johnson, was tried by a jury and convicted of two counts. Count I charged him with living on the earnings of a prostitute in violation of AS 11.40.300.¹ Count II charged him with procuring a female for prostitution in violation of AS 11.40.350.²

At trial, the state called only one witness, a female then 15 years of age and of limited mentality. She had begun her career as a prostitute when she was 13 years old, and, was, by her own testimony, a thief and a user of marijuana, "speed," and mescaline. Her testimony, though replete with inconsistencies, alterations, and admitted lies, was generally to the effect that Johnson had led her into prostitution,

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and that he had lived, at least in part, on her earnings as a prostitute.

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the penitentiary for not less than two years nor more than five years.

2. AS 11.40.350 provides:

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both of which were her trial testimony.

The motion for a new trial was frequently denied. The court sentenced to five years imprisonment, served concurrently.

Two sets of issues were presented. The first set of issues was for a new trial, the second set of issues was AS 12.45.040,³ ou

Johnson argues that the court erred in denying a new trial based on newly discovered evidence.

In denying Johnson's motion for a new trial, the court relied upon the holding in *v. State*⁴ where the United States Supreme Court held that a new trial on the ground of newly discovered evidence:

A motion for a new trial on the ground of newly discovered evidence to meet the foregoing requirements must appear to be based on evidence not previously relied upon.

3. AS 12.45.040 provides:

Upon a trial or hearing for the purpose of determining whether a person shall not be held liable for the testimony in evidence taken at the trial or hearing.

4. An originally filed motion for a new trial on the ground of newly discovered evidence.

Issues going to the merits of the case are not to be raised for the first time at oral argument unless the parties have filed supplemental briefs in support of their positions.

1. In AS 11.40.300, Count I or II.

2. Assumed to be either or both of the grounds for a new trial set forth in the preceding paragraph.

3. Discussed under AS 12.45.040.

then differ on that issue, requires a new trial.

[2] We disagree with Johnson and conclude that the instant case presents no special circumstances compelling a special rule. We agree with the United States Supreme Court that the orderly administration of criminal justice requires that the trial judge, who is by virtue of his relationship to the case exceptionally well qualified to pass on the newly discovered evidence, be the one to whose sound discretion the motion for a new trial be committed.⁹ Here, the superior court had to consider the prostitute's unsworn recantation as against her trial testimony, her two sworn statements, and the testimony of her mother and her probation officer, all of which were generally consistent. In view of this evidence, the trial court was well within the bounds of discretion in concluding not only that the evidence would not produce an acquittal, but also that the recantation was not to be believed.

There was no error in denying the motion for a new trial.

II

We turn now to the issues raised concerning the applicability of our corroboration statute.

Although the uncorroborated testimony of a victim of a sex crime was sufficient to support a conviction at common law,¹⁰ her testimony was not received without question. As early as 1680 it was recognized that:

9. *United States v. Johnson*, 327 U.S. 100, 111-112, 66 S.Ct. 404, 90 L.Ed. 502, 505-506 (1945).

10. 7 J. Wigmore, *Evidence* § 2061, at 342 (3d ed. 1940).

11. I. M. Hale, *Pleas of the Crown* 633, 635 (1680), *quoted in* 7 J. Wigmore, *Evidence* § 2061 at 342, 345; *see* *Kelly v. United States*, 90 U.S.App.D.C. 125, 104 F.2d 150, 153 (1952); *State v. Dixon*, 47 Haw. 444, 390 P.2d 759 (1964); *De Armond v. State*, 285 P.2d 236, 238 (Okla. Cr.1955); *Rice v. State*, 195 Wis. 181, 217 N.W. 607, 608 (1928).

. . . [T]he credibility of [the victim's] testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony It is one thing whether a witness be admissible to be heard; another thing, whether they are to be believed when heard. It is true, rape is a most detestible crime, and therefore ought severely and impartially to be punished by death; but it must be remembered that it is an accusation easily to be made and hard to be proved; and harder to be defended by the party accused, tho never so innocent.¹¹

The unjust convictions derived from factually unfounded accusations result from:

. . . [T]he heinousness of the offense many times transporting the judge and jury with so much indignation that they are hastily carried to the conviction of the person accused thereof, by the confident testimony sometimes of malicious and false witnesses.¹²

The early articulations of reasons for requiring corroboration were couched in terms of protecting male defendants from the untruthful accusations of unchaste and immoral women.¹³ The possibility that unfounded malice¹⁴ or blackmail¹⁵ might lead to a false accusation has also motivated the courts to require corroboration of the complaining witnesses' testimony. Among the accusations most productive to a blackmailer are those which can be committed verbally, such as inducing a female

12. I. M. Hale, *Pleas of the Crown* 363 (ed. 1778), *quoted in* *De Armond v. State*, 285 P.2d 236, 238 (Okla. Cr.1955).

13. *E. g.*, *Boddie v. State*, 52 Ala. 305, 308 (1875), *quoted in* 7 J. Wigmore, *Evidence* § 2061 at 345 (1940).

14. *People v. Jordan*, 23 Mich.App. 375, 178 N.W.2d 659, 662 (1970) (a startling example of a conviction for rape based upon uncorroborated testimony).

15. *Kelly v. United States*, 90 U.S.App.D.C. 125, 104 F.2d 150, 153 (1952).

for the purpose of proving in Count II. As to the admitted offense, the Court in the District of Columbia threatened to charge one with

. . . [H]as been threatened with violence to constitute a threatened person because of the threat. . . . the crime, and so does the accusation of it, of a privilege, that the law accusation is a coercion not resist. This is a case in which a threat supply the place of a

Courts have also recognized far more subtle than malice might lead to a of sexual misbehavioratives may cause even to bring false charges have been known to be attacks and then to be rounding circumstances that one might conclude themselves believed their o

[3] AS 12.45.040 statute, applies to veigling,¹⁶ enticing,¹⁷ an unmarried female for titution.²¹ Count II

16. *Id.* (footnotes omitted); *State*, 12 Ga. 203, 3

17. *State v. Butenhoff*, N.W.2d 894, 899 (C

18. *Coltrane v. United D.C.*, 295, 418 F.2d

19. "To lend on or not ceiving; to ensure to entice by enjoining tice alluring, ent Webster's New Int of the English Language (1960).

20. "(1.) To incite draw on by exciting lure; attract bad sense, to lead ev' to tempt." *Webster's National Dictionary* of 851 (2d ed. 1930).

for the purpose of prostitution as charged in Count II. As to another verbally committed offense, the Court of Appeals for the District of Columbia has noted that a threat to charge one with such an offense:

... [I]t has been held repeatedly to be sufficiently equivalent to force and violence to constitute robbery if the threatened person parts with money because of the threat. 'So abominable is the crime, and so destructive is even the accusation of it, of all social right and privilege, that the law considers that the accusation is a coercion which men cannot resist. This seems to be the only case in which a threat to prosecute, will supply the place of actual force.'¹⁶

Courts have also recognized that motives far more subtle than blackmail or overt malice might lead to unfounded allegations of sexual misbehavior. Psychological motives may cause even mature complainants to bring false charges.¹⁷ Complainants have been known to have fantasized sexual attacks and then to have described the surrounding circumstances so convincingly that one might conclude that they themselves believed their own testimony.¹⁸

[3] AS 12.45.040, our corroboration statute, applies to prosecutions for inveigling,¹⁹ enticing,²⁰ or taking away an unmarried female for the purposes of prostitution.²¹ Count II refers to AS 11.40.350

which prohibits one from "induc[ing], entic[ing] or procur[ing] ... a female for the purpose of prostitution."²² Both the purposes underlying our corroboration statute and the similarity in phrasing between AS 12.45.040 and AS 11.40.350 dictate that corroboration be required for conviction of Count II.

[4,5] The transaction alleged in Count I however, is economic, not sexual; the purpose of AS 11.40.300 is to inhibit prostitution, rather than to protect the chastity of young women. Under Count I, there is no "injured female" within the meaning of that phrase as used in AS 12.45.040.²³ The possibility that an accusation such as is made in Count I might be motivated by spite or abnormal psychological condition has not been recognized as being any greater than for other nonsexual offenses. The purpose of AS 12.45.040 is thus irrelevant to Count I. We conclude, therefore, that there was no error in not applying the corroboration statute to Count I.²⁴

[6,7] The testimony of accomplices, like that of injured females, must be corroborated in order to support a conviction.²⁵ The inherent distrust which attaches to accomplice testimony is very similar to that which attaches to the testimony of injured females: either type of testimony may be motivated by blackmail, malice, or an abnormal psychological condition.²⁶ We

16. *Id.* (footnotes omitted) quoting *Long v. State*, 12 Ga. 293, 319 (1852).

17. *State v. Butenhoff*, 279 Minn. 177, 155 N.W.2d 804, 809 (Minn.1968).

18. *Coltrane v. United States*, 135 U.S.App. D.C. 205, 418 F.2d 1131, 1134 (1969).

19. "To lead on or astray by blinding, or deceiving; to ensnare or win over by guile; to entice by enjoling . . . To practice alluring, enticing, or ensnaring." Webster's New International Dictionary of the English Language 1305 (2d ed. 1960).

20. "(1.) To incite or instigate. (2.) To draw on by exciting hope or desire; to allure; attract . . . Often, in a bad sense, to lead astray; to induce to evil, to tempt." Webster's New International Dictionary of the English Language 854 (2d ed. 1960).

21. Note 3 *supra*.

22. Note 2 *supra*.

23. Johnson's contention that "illicit connection," as mentioned in AS 12.45.040, encompasses living off the earnings of a prostitute is unfounded. "Illicit connection" is a Victorian euphemism for unlawful sexual intercourse. Black's Law Dictionary 883 (4th ed. 1951).

24. *Accord*, *State v. Hargon*, 2 Or.App. 553, 470 P.2d 383, 385 (1970); *State v. McCowan*, 203 Or. 551, 280 P.2d 976, 979 (1955).

25. AS 12.45.020.

26. The desire to self-exculpate may lead a person to falsify accomplice testimony. A similar motivation, to escape prosecution as a prostitute in exchange for testimony against the person who procured her, may apply to injured females.

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therefore conclude that the proper standard by which to determine if there was adequate corroboration should be the same for accomplices and injured females. We have previously discussed at length the standard for corroboration of accomplice testimony in *Oxenberg v. State*.²⁷ As modified for the present context the features of the test are as follows: the corroborating evidence should be considered in conjunction with the prostitute's testimony; such evidence must be consistent and harmonious with her testimony; the corroborating evidence will then be adequate for purposes of AS 12.45.040 if it dispels the assumed distrust of the prostitute's testimony which in the first instance lead to the corroboration requirement.²⁸

[8,9] Here, we can find no corroborating evidence which the jury could have considered.²⁹ The testimony of the prostitute's uncle, discussed above, was consistent and harmonious with the prostitute's own testimony in that it may be read to indicate that she was in fact a prostitute and that Johnson was aware of her career. However, it can not be read to support the prostitute's testimony that Johnson had led her into her profession and thereby violated AS 11.40.350. Thus the uncle's testimony in no way dispels the distrust which gives rise to the corroboration requirement.

We hold, therefore, that, while corroboration was needed for conviction of the offense charged in Count II, there was none.

27. 362 P.2d 803, 805-808 (Alaska 1961).

28. *Id.* at 897.

29. We note that the testimony of the prostitute's probation officer and mother was generally consistent and harmonious with that of the prostitute. However, their testimony was not before the jury but was only brought forth at the hearing to perpetuate testimony to be considered in ruling on the motion for a new trial. Their testimony can not, therefore, be considered for purposes of AS 12.45.040.

We next must consider whether or not the failure of the trial court to apply AS 12.45.040, and thereby to instruct the jury on the need for corroboration, constitutes plain error.

[10] We believe that a corroboration instruction requirement would serve three purposes: the judge would be required to make a preliminary determination that the evidence, if believed by the jury, is sufficient to satisfy the need for corroboration;³⁰ the instruction would call to the attention of the jury the fact that the testimony in need of corroboration may be motivated or influenced by factors which should lessen its credibility unless it is adequately corroborated; it would require that, before the jury can find the defendant guilty, it must find the corroborative evidence credible and supportive of the testimony of the injured female.³¹ We fail to see how the *Oxenberg* standard of corroboration can be implemented and how the purposes of AS 12.45.040 can be effectuated³² unless the jury is instructed as to corroboration. We therefore hold that it was plain error not to apply the corroboration statute and thereby not to instruct the jury on corroboration. The conviction on Count II must be reversed.³³

Johnson's conviction for living off the earnings of a prostitute, as charged in Count I, is affirmed. His conviction for procuring a female for prostitution, as charged in Count II, is reversed. The case is remanded with directions to dismiss Count II.

30. See *State v. ...*, 154 Mont. 231, 462 P.2d 186, 190 (Mont.1969).

31. *U. v. United States v. Bryant*, 137 U.S. App.D.C. 124, 1327, 1332 (1969) (rape instruction).

32. We further note that AS 12.45.040 states that "the defendant shall not be convicted" on uncorroborated testimony. (Emphasis added.) The plain meaning of the emphasized phrase requires reversal.

33. See *Burgas v. State*, 489 P.2d 130, 133 (Alaska 1971).

Jack MORA

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Original sponsor: V.Fischer

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 143 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing municipalities to make solicita-
7 tion of a prostitute by a patron a crime of prosti-
8 tution."

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

10 * Section 1. AS 11.66.100 is amended by adding a new subsection to
11 read:

12 (B) Notwithstanding the provisions of (a) of this section, a
13 municipality may enact an ordinance making it unlawful for a person to
14 solicit another person to engage in sexual conduct by offering to
15 provide monetary or other compensation.

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17 *Renumber existing (B) to (c)*

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19 *In (a) change the gender*

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