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#	Date In	Doc. Type	Date	Subject	DESCRIPTION	From	Copied	Init.
(1)		Bill	1/19/7	Bill	HB 28			
(2)		FN	1/21/7	Law	Prosecution			
(3)		memo	12/17/6	To: Greenberg Fr: Levy	Leg Council			
(4)		Ltr.	1/23/7	To: Reps! Fr: Erlich	Special Action Com.			
(5)		memo	1/28/6	To: Com. Public Safety Fr: Chief Otte	Mu of Care			
(6)		article	2/18/6	Anch Times				
(7)		article	12/11/5	" "	A-15			
(8)		Statutes		11.66.110				
(9)		Teleg. am	1/29/7	To: Dunley Fr: Faulkner	sup HB 28			
(10)		Ltr	1/21/7	To: Gross Fr: Davis	obj. to HB 28			
A		W.R.	1/30/7	W.A. Reg.				
(11)		Ltr	2/9/7	To: Herrmann Fr: Davis	sup. HB 28			
(12)		CS-WD	1/31/7	CS. W. Draft	S-0185B Levy			
(13)		Ltr	1/30/7	To: Dunley Fr: Baker	Sup. - Mu of Care.			
B		Min.	1/30/7	Minutes				
C		W.R.	2/4/7	W.A. Reg.				
D		Min.	2/4/7	Minutes	CS HB 28			
(14)		CS	-	Final CS HB 28 (CRA)	S-0185B			
(15)		FN	3/2/7	Corrections				
(16)		C Rpt.	2/4/7	Com. Rpt.	SDP CS HB 28 (CRA)			

(#) = Distributed, all files

(Ltr) = Master, Backup, Next Com. Files

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House C+RA	1-30-87	3:00 p.m.
" "	2-4-87	3:00 p.m.

HOUSE COMMITTEE REPORT

10 HB 28

(5)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary

DATE: 02/04/87

The Community and Regional Affairs Committee has considered HB 28

"An Act relating to municipal penalties for prostitution."

RECOMMENDS:

- replace with CSHB28 (C&RA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Heinrich Spruijs

Bette Cato

James Zwolski

Alheid Herrmann

SIGNING OTHER RECOMMENDATIONS:

Heinrich Spruijs

 Chairman's signature

13 HB28

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : HB28
Publish Date : _____

Revision Date: _____
Title: "An act relating to municipal penalties for prostitution."

Agency Affected: Department of Corrections
BRU: _____

Sponsor: Representative Donlev
Requestor: House Committee & Reg. Affairs

Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	186.7	186.7	186.7	186.7	186.7	186.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	186.7	186.7	186.7	186.7	186.7	186.7

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	186.7	186.7	186.7	186.7	186.7	186.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

S Knighton

Prepared by: Susan Knighton, Research Analyst IV Phone: 465-3376
Division: Administrative Services Date: March 2, 1987

Approved by Commissioner: Susan Humphrey-Barnett Date: 3/2/87
Agency: Department of Corrections

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB28

This bill amends AS 29.25.070(a) by providing that municipalities may prescribe a penalty requiring the court to impose a minimum sentence of imprisonment of up to 90 days.

The Department of Corrections is currently housing approximately 12 sentenced inmates per year for the offense of prostitution. The average sentence received is 90 days and 60 actual jail days with all good time received. This results in a cost to the State of \$32,011. (12 inmates x 60 days x \$44.46/day)

During 1986, approximately 110 persons were arrested and booked for the offense of prostitution. These cases are not routinely prosecuted because of the short sentences being imposed by the courts. During 1986, only 12 of the 110 arrested were given jail sentences and the average sentence length was 90 days.

This bill proposes that more active prosecution of these cases will take place if the courts must impose a mandatory sentence of 90 days. To evaluate the effects of these stiffer sentences, we have calculated the fiscal impact of a 50 percent conviction rate, 75% conviction rate and 100% conviction rate.

50% Conviction Rate:

55 inmates sentenced to 90 days	=	3,300
Total Cost = 3300 days x \$44.46	=	146,718
Increased Cost	=	114,707

75% Conviction Rate:

82 inmates sentenced to 90 days	=	4,920
Total Cost = 4920 days x \$44.46	=	218,743
Increased Cost	=	186,732

100% Conviction Rate:

112 inmates sentenced to 90 days	=	6,720
Total Cost = 6720 days x \$44.46	=	298,771
Increased Cost	=	266,760

The 75% Conviction Rate scenerio has been used on the attached fiscal note. These persons will most likely be housed in Community Residential Centers or Restitution Centers.

Original sponsors: Donley and Gruenberg

1 IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 28 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal penalties for prosti-
7 tution."

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

9 * Section 1. AS 29.25.070(a) is amended to read:

10 (a) For the violation of an ordinance, a municipality may by
11 ordinance prescribe a penalty not to exceed a fine of \$1,000 and
12 imprisonment for 90 days. A municipality may prescribe a penalty
13 requiring a court to impose a minimum sentence of imprisonment of up
14 to 90 days and a fine not to exceed \$1,000, as provided in an ordi-
15 nance, for violation of an ordinance that prohibits prostitution. In
16 this subsection, prostitution includes engaging in or agreeing to
17 engage in sexual conduct for a fee, and paying or agreeing to pay a
18 fee in exchange for sexual conduct.



Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: February 4, 1987

SIGN-IN

Subject of meeting: (C) HB 28

HB 37, Further consideration of an Act relating to certain municipal property tax procedures.

HB 28, Further consideration of an Act relating to municipal penalties for prostitution

NAME (PLEASE PRINT)	ADDRESS (COMPLETE)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
✓ MIKE WORLEY	P.O. Box BH, JUNU, AK. 99811	465-4787	DCRA	YES
✓ GAIL HORETSKI	P.O. BOX KC, JUNEAU	x 3428	DEPT. OF LAW	YES - HB 28
Scott Burgess	Juneau	G-1325	AML	Yes HB 37
✓ Roger Jenkins	2201 Roosevelt	465-3875	Self.	
✓ Shirley Armstrong	6430 E 9th Ave	465-4939	Self	no
Rep. Dave Donley		3892	Sponsor HB 28	yes
Rep. Robin L. Taylor	Dist 1A	4905	Sponsor HB 37	yes

**Municipality
of
Anchorage**



Larry Baker, Assemblyman
3947 Locarno Drive
Anchorage, Alaska 99504
Telephone (907) 563-2906

⑬ H-328
P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4311

FEB 3 1987

January 30, 1987

Representative Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Dave:

Thank you for your letter of January 21, 1987. I certainly was pleased to learn that you and Max Gruenberg have introduced legislation to strengthen our statutes on prostitution.

I have felt for many years that our community was in need of stronger legislation by the State of Alaska in order to assist local communities in solving their prostitution problems.

I fully support your efforts and will work with Assemblymen Faulkner and Kubitz to develop solutions on a local level.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry W. Baker".

Larry W. Baker
Chairman

cc: Bill Faulkner
Jim Kubitz

12 HB 28

FEB 2 1987

5-0185B ✓
Levy
1/31/87

Original sponsors: Donley and Gruenberg

1 IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 28 (C&PA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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15 nance, for violation of an ordinance that prohibits prostitution. In
16 this subsection, prostitution includes engaging in or agreeing to
17 engage in sexual conduct for a fee, and paying or agreeing to pay a
18 fee in exchange for sexual conduct.



Alaska House of Representatives
Pouch V -- State Capitol
Juneau, AK 99811
(907)465-4942

Community & Regional Affairs

I thought you might find the attached information
to be of interest.

Adelheid Hermann

⑪ HB 28



CITY OF UNALASKA

P.O. BOX 89 112

UNALASKA, ALASKA 99685

(907) 581-1251

"Capital of the Aleutians"

DEPARTMENT OF PUBLIC SAFETY

February 9, 1987

Representative Adelheid Herrman
P.O. Box 63
Naknek, Alaska 99633

Dear Representative Herrman:

I recently had opportunity to review a Bill proposed by Representative Donley: House Bill #28, "An Act Relating to Municipal Penalties for Prostitution."

The response I prepared for my City Manager presented my perception of the rationale behind the bill and was somewhat negative. In a more recent phone conversation with Representative Donley, the intent of his legislative action was clarified. It is, as I now understand, intended to impact relatively serious problems experienced in the Anchorage/Fairbanks municipalities.

Inasmuch as these municipalities have their own prosecutorial staff and, as House Bill #28 proposes that the suggested ordinance change be optional for municipalities, I now view the bill more favorably. I would recommend support of House Bill #28.

Sincerely,

Peter G. Davis
Peter G. Davis, Director
Department of Public Safety

PGD:plb

(10) HB 28

JAN 21 1987

CITY OF UNALASKA

P.O. BOX 29 112
UNALASKA, ALASKA 99685
(907) 581-1251

"Capital of the Aleutians"



January 21, 1987

TO: Nancy Gross, City Manager
FROM: Peter Davis, Public Safety Director
RE: Review of House Bill No. 28

I have several objections to this bill. They are as follows:

- A. It assumes that prostitution is considered to be the more serious violation or problem present in all municipalities; more so than already encoded. This, of course is, and may not be the case.
- B. It would be contrary to the stated position of the Courts. Violations with fines exceeding \$300 and with extended jail terms, are required to be handled as misdemeanors.
- C. If such an ordinance were to be accepted and enforced, the defendant would be entitled to a jury trial and a defense attorney. The municipality would then have to prosecute the case with its own attorney and provide the defendant with a public defender, if required.

In all, at least for Unalaska, we have other areas of greater concern. Prostitution is not a major, nor an obvious problem, and we have just amended our ordinances to assure better enforcement by making them all violations. It is a nothing bill!

9 HB 28



Telegram

09018

1987 JAN 29 11 47

PDM ANCHORAGE ALASKA 15 01-29 1145A AST

PMS

REF DAVE DONLEY
10200
JUNEAU AK

I AM VERY SUPPORTIVE OF HB28. PLEASE HELP US CLEAN UP OUR NEIGHBORHOODS. THANK YOU.

DR BILL FAULKNER, ANCHORAGE MUNICIPAL ASSEMBLYMAN
400 L ST SUITE 104
ANCHORAGE AK 99501

Continuously Interfolded in Moore Business Forms, Inc. MFB
L-0167-0 1601876

- (b) Criminal possession of explosives is a
- (1) class A felony if the crime intended is murder in any degree or kidnapping;
 - (2) class B felony if the crime intended is a class A felony;
 - (3) class C felony if the crime intended is a class B felony;
 - (4) class A misdemeanor if the crime intended is a class C felony;
 - (5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 31 Am. Jur. Possession of bomb, molotov cocktail, or
 2d. Explosions and Explosives, similar device as criminal offense, 42
 §§ 121-130 ALR3d 1230
 35 C.J.S. Explosives, § 12

Sec. 11.61.250. Unlawful furnishing of explosives. (a) A person commits the crime of unlawful furnishing of explosives if the person furnishes an explosive substance or device to another knowing that the other intends to use the substance or device to commit a crime.
 (b) Unlawful furnishing of explosives is a class C felony. (§ 7 ch 166 SLA 1978)

Chapter 65. Offenses Against Public Convenience.

- Secs. 11.65.010 — 11.65.020. [Renumbered as AS 30.50.020 and 30.50.010.]
- Sec. 11.65.030. Tampering with posted notices. [Repealed. § 21, ch. 166, SLA 1978.]

Chapter 66. Offenses Against Public Health and Decency.

- Article
- 1. Prostitution and Related Offenses: §§ 11.66.100 — 11.66.150
 - 2. Gambling Offenses: §§ 11.66.200 — 11.66.250

Article 1. Prostitution and Related Offenses.

<p>Section</p> <p>100. Prostitution.</p> <p>110. Promoting prostitution in the first degree.</p> <p>120. Promoting prostitution in the second degree.</p>	<p>Section</p> <p>130. Promoting prostitution in the third degree.</p> <p>140. Corroboration of certain testimony not required.</p> <p>150. Definitions.</p>
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NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. Municipality of Anchorage v Afualo, Ct App Op No 213 (File Nos 7094, 7095), 657 P.2d 407 (1983).

would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. Municipality of Anchorage v Afualo, Ct App Op No 213 (File Nos 7094, 7095), 657 P.2d 407 (1983).

There is nothing in this article which

Collateral references. — 63 Am Jur 2d Prostitution § 1 et seq; 27 C.J.S. Disorderly Houses § 1 et seq; 73 C.J.S. Prostitution § 1 et seq; Constitutionality and construction of pandering acts, 74 ALR 311

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness or assignation. — modern cases, 77 ALR3d 519

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. Eleazar v United States, 16 Alaska 561, 241 F.2d 383 (9th Cir. 1956), decided under former AS 11.40.220

plete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. Garibay v State, Ct App Op No 221 (File No 6246), 658 P.2d 1350 (1983)

This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. Municipality of Anchorage v Afualo, Ct App Op No 213 (File Nos 7094, 7095), 657 P.2d 407 (1983).

Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of \$200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. Garibay v State, Ct App Op No 221 (File No 6246), 658 P.2d 1350 (1983)

Actual payment of a fee is not required; an act of prostitution is com-

Collateral references. — Prostitution as vagrancy, 14 ALR 1501; Entrapment to procure women for

immoral purposes, 18 ALR 186, 66 ALR 478, 66 ALR 263

Sec. 11.66.110. Promoting prostitution in the first degree. (a) A person commits the crime of promoting prostitution in the first degree if the person

(1) induces or causes a person to engage in prostitution through the use of force;

(2) as other than a patron of a prostitute, induces or causes a person under 16 years of age to engage in prostitution; or

(3) induces or causes a person in that person's legal custody to engage in prostitution.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.

(c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.

(d) A person convicted under (a)(2) of this section is guilty of a class A felony. (§ 8 ch 166 SLA 1978; am §§ 1, 2 ch 50 SLA 1983)

Effect of amendments. — The 1983 amendment added "Except as provided in" to the beginning of subsection (c) and added subsection (d).

NOTES TO DECISIONS

For case construing former statute prohibiting importing or exporting females for immoral purposes, see *State v. Adkerson*, Sup Ct Op No 294 (File No 520), 403 P.2d 673 (1965).

For case construing former procurement statute, see *Johnson v. State*, Sup Ct Op No 832 (File No 1336), 501 P.2d 762 (1972).

Sentence for procurement upheld. — See *Price v. State*, Sup Ct Op No 1450 (File No 2794), 565 P.2d 855 (1977).

For case construing former statute concerning necessary evidence for prostitution or seduction, see *Johnson v. State*, Sup Ct Op No 832 (File No 1336), 501 P.2d 762 (1972).

Collateral references. — Transporting female for purpose of prostitution, 74 ALK 330.

Woman conniving or consenting to own transportation, 64 ALR 376.

Sec. 11.66.120. Promoting prostitution in the second degree.

(a) A person commits the crime of promoting prostitution in the second degree if the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; or

(2) procures or solicits a patron for a prostitute.

(b) Promoting prostitution in the second degree is a class C felony. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former statute prohibiting soliciting or procuring for purpose of prostitution, see *Piaz v. State*, Sup. Ct. Op. No. 1994 (File No. 3529, 3530, 598 P.2d 960 (1979).

Instruction. — Trial court did not err in

refusing to give instruction requiring state to prove that prostitution enterprise involved in case was of an ongoing nature. *Garibay v. State*, Ct. App. Op. No. 221 (File No. 6246, 658 P.2d 135 (1983).

Collateral references. — Separate acts of taking earnings of or support from pro-

stitute as separate or continuing offenses of pimping. 3 ALR4th 1195.

Sec. 11.66.130. Promoting prostitution in the third degree. (a) A person commits the crime of promoting prostitution in the third degree if, with intent to promote prostitution, the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(2) as other than a patron of a prostitute, induces or causes a person 16 years of age or older to engage in prostitution;

(3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or

(4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

(b) Promoting prostitution in the third degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.260, 11.40.300, 11.40.330, 11.40.410, and 11.40.420.

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law. *Elezar v. United States*, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956).

Lessor may be guilty as keeper. — If a man leases his house to a woman to be kept as a bawdyhouse for purposes of prostitution, and it is kept for such purposes, with his knowledge, he is guilty as keeper. *Rosenkrantz v. United States*, 155 F.3d (9th Cir. 1907).

As well as agent of lessor. — The agent of an owner, who rents a house knowing that it is to be used as a house of prostitution, and that it is so used, may be found guilty as a keeper. *Rosenkrantz v.*

United States, 155 F.3d (9th Cir. 1907).

For case construing former statute prohibiting employment in a house of prostitution or living on the earnings of a prostitute, see *Johnson v. State*, Sup. Ct. Op. No. 832 (File No. 1336), 501 P.2d 762 (1972).

For case construing former statute prohibiting importing or exporting females for immoral purposes, see *State v. Adkerson*, Sup. Ct. Op. No. 294 (File No. 520), 405 P.2d 673 (1965).

For case construing former statute prohibiting pimping, see *Johnson v. United States*, 269 F.783 (9th Cir. 1919).

For case construing former statute prohibiting a male's living with or on the earnings of a prostitute, see *Dunn v. State*, Sup. Ct. Op. No. 409 (File No. 735), 426 P.2d 993 (1967).

Collateral references. — 27 C.J.S. Disorderly Houses; § 1 to 1b, 73 C.J.S. Prostitution; § 6, 7

Constitutionality of statute conferring on chancery courts power to abate bawdyhouse as nuisance: 5 ALR 1474, 22 ALR 542, 75 ALR 129-

Number of females who reside in house or resort thereto for immoral purposes a-

ffecting disorderly character thereof: 12 ALR 529

Entrapment to commit offense as to house of prostitution or as to pandering: 52 ALR2d 1194

Construction of provision of pandering statute as to placing a female in charge of custody of another: 54 ALR2d 1176

Sec. 11.66.140. Corroboration of certain testimony not required. In a prosecution under AS 11.66.110 — 11.66.130, it is not necessary that the testimony of the person whose prostitution is alleged to have been compelled or promoted be corroborated by the testimony of any other witness or by documentary or other types of evidence. (§ 8 ch 166 SLA 1975)

NOTES TO DECISIONS

For case construing former rule as to corroboration of prostitute's testimony, see Johnson v State, Sup Ct Op No 632 (File No 1338, 501 P.2d 762 (1972)).

For cases construing former statute

providing that common fame was competent evidence in a prosecution for keeping a bawdyhouse, see Botts v United States, 155 F. 50 (9th Cir 1907), Hall v United States, 155 F. 52 (9th Cir 1907).

Sec. 11.66.150. Definitions. In AS 11.66.100 — 11.66.150, unless the context requires otherwise,

- (1) "place of prostitution" means any place where a person engages in sexual conduct in return for a fee;
- (2) "prostitution enterprise" means an arrangement in which two or more persons are organized to render sexual conduct in return for a fee;
- (3) "sexual conduct" means genital or anal intercourse, cunnilingus, fellatio, or masturbation of one person by another person. (§ 8 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.61.909

Article 2. Gambling Offenses.

Section	Section
200. Gambling	240. Possession of gambling records in the second degree
210. Promoting gambling in the first degree	250. Affirmative defenses
220. Promoting gambling in the second degree	260. Possession of a gambling device
230. Possession of gambling records in the first degree	270. Forfeiture
	280. Definitions

§ 11.66.110

degrees were af-
State Sup Ct
668 P.2d 1133

+ Gilbertath v.
278 (File No.

Ct App Op
673 P.2d 781

Ct App Op
68 P.2d 1212

Ct App Op
716 P.2d 5

Ct Op No
P.2d 261

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§ 11.66.120

CRIMINAL LAW

§ 11.70.030

volve different intents and different con- furthered Bell v. State Ct App Op No
ducts and differing societal interests are 255 (File No. 5821), 668 P.2d 629 (1983)

Sec. 11.66.120. Promoting prostitution in the second degree.

NOTES TO DECISIONS

Promoting prostitution and manag- did not violate double jeopardy since the
ing prostitution enterprises. — Punish- offenses proscribed by the two statutes in-
ment for inducing or causing a person un- volve different intents and different con-
der the age of 16 to engage in prostitution ducts and differing societal interests are
(AS 11.66.110 a)(2)) and for managing furthered Bell v. State Ct App Op No
supervising, controlling or owning a pro- 255 (File No. 5821), 668 P.2d 629 (1983)stitution enterprise (AS 11.66.120 a)(1))

Sec. 11.66.130. Promoting prostitution in the third degree.

NOTES TO DECISIONS

Quoted in Bell v. State Ct App Op
No. 255 (File No. 5821), 668 P.2d 629
(1983).

Sec. 11.66.140. Corroboration of certain testimony not re-
quired.

NOTES TO DECISIONS

Cited in Bell v. State Ct App Op No.
255 (File No. 5821), 668 P.2d 629 (1983).

Sec. 11.66.150. Definitions.

NOTES TO DECISIONS

Quoted in Bell v. State Ct App Op
No. 255 (File No. 5821), 668 P.2d 629
(1983).

Chapter 70. Miscellaneous Provisions.

Secs. 11.70.010 — 11.70.030. Intent to defraud; use of evidence by
person on charge of perjury; intoxication as defense. [Repealed, § 21,
ch 166, SLA 1978. For current law, see AS 11.46.990(10), 11.81.630.]

Editor's notes. — The repeal line
above is set out to correct an error in the
main pamphlet.

applies to the offense of felon in possession of a concealable firearm. *State v. LaPorte*, Ct. App. Op. No. 306 (File No. 7220, 7285), 672 P.2d 466 (1983).

Conviction upheld. — A person may be convicted of being a felon in possession of a concealable firearm while the predicate conviction is on appeal and the sentence stayed. *Berg v. State*, Ct. App. Op. No. 564 (File No. A-666, 711) P.2d 553 (1985).

Conviction and sentence upheld. — See *Alcan v. State*, Ct. App. Op. No. 572 (File No. A-703, 711) P.2d 1195 (1985).

Conviction and sentence for kidnapping, assault in the first degree, misconduct involving weapons in the first degree

and robbery in the first degree were affirmed. See *Wortham v. State*, Sup. Ct. Op. No. 414 (File No. 7353), 659 P.2d 1133 (1984).

Sentence upheld. — See *Gilbreath v. State*, Ct. App. Op. No. 278 (File No. 7097), 668 P.2d 1354 (1983).

Applied in. *Shaw v. State*, Ct. App. Op. No. 313 (File No. 7561), 678 P.2d 763 (1983).

Cited in. *State v. Frazier*, Ct. App. Op. No. 460 (File No. A-415), 695 P.2d 1212 (1985); *Ackermann v. State*, Ct. App. Op. No. 609 (File No. A-931), 716 P.2d 5 (1986); *State v. Frazier*, Sup. Ct. Op. No. 361 (File No. S-972), 719 P.2d 261 (1986).

Sec. 11.61.210. Misconduct involving weapons in the second degree.

NOTES TO DECISIONS

Sentence affirmed. — See *Alcan v. State*, Ct. App. Op. No. 572 (File No. A-703), 711 P.2d 1195 (1985).

Chapter 66. Offenses Against Public Health and Decency.

Article 1. Prostitution and Related Offenses.

Sec. 11.66.110. Promoting prostitution in the first degree.

NOTES TO DECISIONS

Precluding mistake of age as defense. — Subsection (b) of this section, which expressly dispenses with mistake of age as a defense to promoting prostitution in the first degree, does not violate due process of law. *Bell v. State*, Ct. App. Op. No. 288 (File No. 5821), 665 P.2d 829 (1983).

Under the Revised Alaska Criminal Code, it is defendant's intentional procurement of a person under the age of 16 years for prostitution that renders him liable for first-degree promoting, regardless of his actual awareness of that person's age. *Bell v. State*, Ct. App. Op. No. 288 (File No. 5821), 665 P.2d 829 (1983).

The act of procuring another for pur-

poses of prostitution is *malum in se*, without regard to the age of the person procured, and thus, in a prosecution for procuring a person under the age of 16 years, the intent to procure satisfies the minimal constitutional requirement of criminal intent. *Bell v. State*, Ct. App. Op. No. 288 (File No. 5821), 665 P.2d 829 (1983).

Promoting prostitution and inducing prostitution enterprise. — Procurement for inducing or causing a person under the age of 16 to engage in prostitution (AS 11.66.110(a)(2)) and for managing, supervising, controlling or owning a prostitution enterprise (AS 11.66.120(a)(1)) did not violate double jeopardy since the offenses proscribed by the two statutes in-

8 HB 28

11.65.030

§ 11.66.100

CRIMINAL LAW

§ 11.66.110

NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. *Municipality of Anchorage v. Afualo*, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).
There is nothing in this article which

would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. *Municipality of Anchorage v. Afualo*, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Collateral references. — 63 Am. Jur. 2d, Prostitution, § 1 et seq.
27 C.J.S., Disorderly Houses, § 1 et seq.;
73 C.J.S., Prostitution, § 1 et seq.
Constitutionality and construction of pandering acts, 74 ALR 311.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases, 77 ALR3d 519.

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.
(b) Prostitution is a class B misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdy-house was a misdemeanor at common law, whereas fornication and prostitution were not. *Eleazar v. United States*, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956), decided under former AS 11.40.220.
This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. *Municipality of Anchorage v. Afualo*, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).
Actual payment of a fee is not required; an act of prostitution is com-

plete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. *Garibay v. State*, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).
Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of \$200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. *Garibay v. State*, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Prostitution as vagrancy, 14 ALR 1501.
Entrapment to procure women for

immoral purposes, 18 ALR 186; 66 ALR 478; 86 ALR 263.

Sec. 11.66.110. Promoting prostitution in the first degree. (a) A person commits the crime of promoting prostitution in the first degree if the person

(c) This section applies to home rule and general law municipalities. (§ 7 ch 74 SLA 1985)

Chapter 23. Municipal Officers and Employees.

[Repealed, § 16 ch 118 SLA 1972; § 24 ch 83 SLA 1979; § 88 ch 74 SLA 1985.]

Chapter 25. Municipal Enactments.

Section	Section
10. Acts required to be by ordinance	50. Codification
20. Ordinance procedure	60. Resolutions
30. Emergency ordinances	70. Penalties
40. Codes of regulation	

Sec. 29.25.010. Acts required to be by ordinance. (a) In addition to other actions that this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section grants no authority but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

Opinions of attorney general. — The borough assembly could levy taxes only by means of an ordinance enacted under the terms of a former, similar provision. 1963 Op. Att'y Gen. No. 25.

Under a former, similar provision, where a proposed incorporation petition provided that public health services should be administered not by the bor-

ough assembly but by a board of health which was to be appointed by the borough assembly, but otherwise to operate autonomously in making rules and regulations with the force of law, such rules and regulations would have been illegal ordinances since they would have been promulgated by the board of health rather than by the borough assembly. The board of health would have constituted a borough department illegally established by the incorporation petition, and not by ordinance. 1962 Op. Att'y Gen. No. 9.

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 343-422.

62 C.J.S., Municipal Corporations, § 411 et seq.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural product within municipal limits. 10 ALR3d 1226.

Civil liability of private person as affected by invalidity of statute or ordinance for violation of which arrest was made. 16 ALR3d 535.

Validity of statute, ordinance, or charter provision requiring that workmen on public works be paid the prevailing or current rate of wages. 18 ALR3d 944.

Validity of loitering statutes and ordinances. 25 ALR3d 836.

Validity of municipal regulation of aircraft flight paths or altitudes. 36 ALR3d 1314.

Validity and construction of municipal ordinances regulating community antenna television service (CATV). 41 ALR3d 384.

Validity of statute, ordinance, or regulation requiring fingerprint of those engaging in specified occupations. 41 ALR3d 732.

Validity and construction of zoning ordinance regulating architectural style or design of structure. 41 ALR3d 1397.

Validity and construction of state and municipal enactments regulating lobbying. 42 ALR3d 1046.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines. 44 ALR3d 1301.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 ALR3d 1393.

Validity, construction, and application

of enactments restricting land development by dredging or filling. 46 ALR3d 1422.

Validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction (commuter tax). 48 ALR3d 343.

Buffer provision in zoning ordinance as applicable to abutting land in adjoining municipality. 48 ALR3d 1303.

Operation of nude-model photographic studio as offense. 48 ALR3d 1313.

Validity and construction of statute or ordinance forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 ALR3d 936.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 959.

Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.

Validity and construction of curfew statute, ordinance, or proclamation. 59 ALR3d 321.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 ALR3d 1237.

Application of city ordinance requiring license for laundry, to supplier of coin-operated laundry machines intended for use in apartment building. 65 ALR3d 1296.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees. 68 ALR3d 885.

Application of statute or regulation dealing with registration or carrying of weapons to transient nonresident. 68 ALR3d 1253.

Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.

Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.

Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.

Stiffer sentences will cure Spenard's red-light problem

Dear Editor:

On Nov. 26, you printed a letter from Mr. Dave Donley entitled, "Downtown clean-up creates problems in Spenard." In this letter, Mr. Donley states the case for Spenard fairly well, but he seems to be unaware that there is an alternative. Neither downtown Spenard, nor any other part of our city of borough, needs be resigned to the fact that whores can take over our city and not be stopped. This is not a fact!

When the question was raised some time ago between the legitimate business people of Anchorage and the whores that frequent our city over the territory around the Red Ram, our police chief appeared on television one night to deliberate the problem in a panel discussion. He stated then that Anchorage was overrun by whores because the West Coast cities had increased the jail terms for offenders. In other words, the time served for committing an offense was so stiff, and the result of could no longer continue to make a living from prostitution in those cities and had to come to Anchorage to survive.

Now, if the West Coast cities' philosophy had worked so well for them, the same would hold true and work for Anchorage. However, for this to work we need to enforce stronger legislation against prostitution. So far, I have not heard a single one of our lawmakers, who are

Letters to the editor

entrusted with the job of working for the good of our town, introduce this subject for discussion. Nor are they likely to until the aggrieved people and business persons of Anchorage request changes in our ordinances and insist that they be made.

This brings another subject to

light: bail. The bail business should be stopped, eliminated completely when dealing with this particular type of crime. When an arrest is made for soliciting, the guilty party should be placed in jail until such time as the court can hear their case. Then, upon conviction, the sentence should be 20 to 30 days

in jail for the first offense and this sentence should be doubled for each subsequent conviction. Thirty days should mean 30 days and no time off should be given for good behavior or for any other reason. This request by the business people of the community may not get much attention at first. They may have to finally resort to descending upon an assembly meeting in the force of 200 to 300 at a time, like the crowds Rufus

Dill used to bring in from Mountain View to convince the old city council that they did not want a bar, before some results is finally achieved. In 1976, I owned and operated the Commercial Liquor Store at Fourth Avenue and D Street. A gang of six or eight whores decided to take over that corner including my store. When I talked to policemen about the obvious violation, they said that it did no good to arrest the offenders, because they would just be bailed out and back in business at the same street corner before his shift was over that same day. I understand that their bail was as little as \$100, and that they could make that amount easily within a couple hours. If this is still the case, is it any wonder that the town is overflowing with whores?

It may be that our legislature has set a limit on the time the municipality can imprison the business community and from citizens of the community

in ever increasing amounts before the legislature will change anything.

Dave says we need foot patrols along Spenard Road. Without asking the chief of police about his manpower situation, I already know that he is short both the manpower and the fundings needed to carry this suggestion through. Besides, it is absolutely unnecessary if the changes in sentencing that I have proposed are implemented.

From my own personal experience, I can assure people along Spenard Road that the problem will not "go away" until they organize and make their demands known so that our town becomes a place where a whore would dread to be caught soliciting. The whores would decrease rapidly, and I would like to see how many would still remain after two or three were assured 20 to 30 continuous days in jail for their efforts.

Archie Caudy
4204 Harrison Drive

Anch Times
2/18/86

From get
me the
bills
done

Measures focus on prostitutes

Times Juneau Bureau

JUNEAU — Prostitutes in areas such as Spenard would have to stay off the streets or go to jail if two bills introduced in the state House clear the legislature this year.

The package of legislation would apply to prostitutes across the state, but it is aimed at Spenard, where prostitution activity has stirred controversy in the past.

"(The measure) is designed to rid Spenard and the rest of Alaska of streetwalkers," Rep. Roger Jenkins, R-Anchorage, said in a prepared statement. Jenkins introduced the bills.

One measure would create a law making it illegal to loiter or wander "along public streets without any apparent reason or business."

A companion bill would hand one-year jail sentences to second-time offenders. Currently, those arrested a second time for prostitution get 90 days in jail.

"The residents of Spenard are sick and tired of being known as the prostitution headquarters for Anchorage," said Jenkins, who represents the area.

He said the issue of "prostitutes flaunting themselves on Spenard Road" was the top concern listed by residents responding to his most recent newsletter.

Activity by prostitutes on the streets of downtown Anchorage and the Spenard area of the city has been a matter of concern for merchants, police and city officials.

Merchants have complained that prostitutes have driven prospective customers away from their businesses.

Last summer police moved to rid downtown streets of prostitutes, and merchants said the crackdown reduced street traffic in the area.

Anchorage police had five officers patrolling on foot during the summer and part of the fall, including an officer stationed at Fourth Avenue and Barrow Street virtually around the clock.

Undercover officers concentrated on prostitution and drug crimes in the area, and made 44 arrests related to alleged drug crimes during the crackdown, Commissioner of Public Safety Joe Franklin said.

But some business people said the crackdown simply moved the prostitution problem from downtown to Spenard.

HB 540
HB 591
HB 685

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Municipality of Anchorage

MEMORANDUM

RECEIVED

JAN 28 1986

DATE: January 28, 1986
TO: Commissioner of Public Safety
FROM: Deputy Chief Otte
SUBJECT: Prostitution in the Spenard Area

MUNICIPALITY OF ANCHORAGE
OFFICE OF PUBLIC SAFETY

The following information concerning prostitution in the Spenard area is submitted for your review.

During the past 5 1/2 months, approximately 50 prostitution related arrests have been made in the Anchorage area. For the most part these arrests are evenly divided between the downtown area and the Spenard area. The majority of arrests are for street prostitution offenses, but there are also several involving the various escort services located in the Spenard area. During the past few weeks we have continued to make cases as time and resources allow, however numerous felony cases requiring the assistance of the officers normally assigned to prostitution cases have limited our response.

Currently the three officers assigned to the night shift detective general investigation unit focus most of their time on prostitution related problems. They are supplemented as time permits by the area patrol cars and on occasion by members of the Crisis Intervention Response Team. It is our intent as warmer weather approaches to apply additional resources from Investigations, Patrol and special units in an attempt to preclude the problems experienced last summer both downtown and in the Spenard area. I believe that we can create an environment from an enforcement perspective, in which prostitutes find other locations outside of Anchorage much more pleasant and desirable.

It must be remembered that a long term solution to the prostitution problem in Anchorage requires more than just a commitment on the part of the police department. Our enforcement efforts are only a small portion of the total equation. The rest of the criminal justice system must be committed to dealing with the problem before any long term results will be visible. Although we have repeatedly stressed this point, it has always been overlooked and ignored in years past. When we make arrests, the prosecutor's office must be willing and able to provide the prosecutorial resources necessary. Additionally, and probably most important, the courts must begin to sentence convicted prostitutes in a manner that reflects the feelings within the community. Suspension of jail time and moderate fines will not deter prostitutes from practicing their trade openly on the Anchorage streets.

Commissioner of Public Safety
January 28, 1986
Page Two

Interviews with prostitutes arrested by APD officers during this past summer reveal that most prostitutes come to Anchorage for two reasons. First, they have heard rumors about the money to be made in Alaska. Secondly, crackdown on prostitution in other jurisdictions in the Lower 48 have made Anchorage a more desirable location. In tracking 20 prostitution arrests through the justice system recently, it was learned that only one case resulted in the convicted prostitute receiving any jail time. I do not feel that prostitutes interested in working in Anchorage would feel particularly concerned by these kinds of sentences from the courts.

The other issue that has surfaced periodically concerning prostitution in the Spenard area has to do with the large concentration of massage parlors. While the issues previously discussed apply to individual prostitutes working out of the massage parlors, this in itself would not remove the parlor from existence. It has been our experience that the only way to remedy the large numbers of massage parlors is to initiate and follow through with a civil abatement process against the individual residences. This again requires a long term commitment on the part of the prosecutor and Municipal Attorney's office as well as a long term commitment on the part of the police department to provide the necessary resources to gather the needed information.

I will continue to apply enforcement pressure with the resources available but would request that we attempt a coordinated approach to the problem so as to insure a more long term solution.

Respectfully,



R. Otte
Deputy Chief, Operations

RO:d1

(4) HB 28

JAN 27 1987
Terry CRA
"mem"



Spenard Action Committee

2308 West 47th Street • Anchorage, Alaska 99517
Phone (907) 243-7768

January 23, 1987

TO: The members of the House of Representatives;

My name is David Erlich, I am Chairman of the Spenard Action Committee, a non-profit corporation made up of citizens of the Anchorage area.

Our concern for our community and city are real and sincere. Crime in Anchorage has come a long way the past 20 years and in some respects has surpassed many major cities outside. Our rape rate is the highest in the nation, 5 times the national average, pornography sells at 6 times the national average, organized crime has infiltrated our city as well and now enjoys freedom of operation in prostitution, gambling, pornography, drugs and other activities.

Our laws in the State of Alaska are probably the weakest in the nation to deal with this ongoing threat. We are currently the only state which does not have a conspiracy bill dealing with these activities. Dave Donley bill, HB30 would pertain only to certain crimes but would aid law enforcement authorities here in Anchorage to deal with these certain situations.

Another bill, HB28, deals with the prostitution problems here in our city and would not impact other areas of the state. By allowing the municipality to institute mandatory minimum sentences on a first offense, second offense and third offense basis this will mirror what other cities have done outside to curb their prostitution problems. We currently have 30-40 houses of prostitution operating in Anchorage with a summer influx of hundreds of streetwalkers, who find Anchorage easy prey and weak laws inviting. Your concern and understanding of our particular situation will be greatly appreciated.

In closing, the passage of these bills will help crime prevention in our city, protect the communities retail trade, maintain property values and generally protect and preserve the quality of our neighborhoods, commercial districts and the quality of urban life.

Sincerely,

David Erlich
Spenard Action Committee Chairman

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1986

SUBJECT: Mandatory sentences for prostitution
(Work Order No. 15-0301)

TO: Representative Max Gruenberg

FROM: Keith B. Levy ^{KBL}
Legislative Counsel

You have asked whether legislation would be required to enable municipalities to adopt ordinances providing for a mandatory minimum sentence for prostitution, and if so, whether such legislation would present any constitutional difficulties. I have concluded that while municipalities do not have the authority under existing law to enact such an ordinance, the legislature may grant that authority without running afoul of the constitution.

The Alaska Supreme Court has made it clear that a municipality may make prostitution a crime even though prostitution is already a crime under state law: "It is settled that an act may be made a penal offense under state statute, and also made punishable under an ordinance of a municipal corporation." Wester v. State, 528 P.2d 1179, 1185 (Alaska 1974).

In a later case, however, the court considered whether the City of Kodiak had the authority to enact an ordinance prescribing a mandatory minimum sentence for an offense. Article X, sec. 11, of the Alaska Constitution provides that "a home rule borough or city may exercise all legislative powers not prohibited by law or by charter." Thus, an ordinance is only invalid if it is somehow prohibited by statute or by the municipality's charter. Citing earlier cases, the court applied the following test for determining whether a municipal ordinance is invalid under state law:

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exer-

Representative Gruenberg

Page 2

December 17, 1986

cise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. City of Kodiak v. Jackson, 584 P.2d 1130, 1132 (Alaska 1978).

The court concluded that the mandatory minimum sentencing provisions were irreconcilable with certain criminal procedure statutes and were therefore invalid. However, the decision was based on the fact that the ordinance could not be reconciled with existing state law. There is nothing in the decision to indicate that the legislature could not amend existing law to expressly permit a municipality to enact an ordinance providing for mandatory minimum sentences. The enclosed bill draft does that with respect to prostitution and cures the problems raised in the City of Kodiak case.

If I may be of further assistance, please advise.

KBL:mkr
m7/073

Enclosure

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : HB28
Publish Date : _____

Revision Date: _____
Title: "An Act relating to municipal penalties for prostitution."
Sponsor: Repr. Donlev
Requestor: House Community and Reg. Affs.

Agency Affected: Department of Law
BRU: Prosecution
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard F. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 1/21/87
Ronald W. Lorenson
 Approved by Commissioner: Acting Attorney General Date: 1/21/87
 Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB28

This bill amends AS 29.25.070(a) by providing that municipalities may, under local ordinance, prescribe penalties for prostitution that require a court to impose a minimum sentence equal to the maximum penalty allowed by existing statute, or a \$1,000 fine and imprisonment for 90 days. In this respect, the bill appears to encourage municipalities to seek the maximum allowable penalty in all instances.

Prosecution of municipal ordinance violations is a local responsibility, and such prosecution is not handled by the Department of Law. Consequently, enactment of this bill will not have a fiscal impact on the Department of Law.

The cost of imprisoning violators of municipal ordinances, in state corrections institutions, is reimbursed to the state by the respective municipalities. This reimbursement includes normal, day-to-day operating costs and a pro rata share of lease costs, where the state is using a leased facility. The reimbursement does not, however, include any charge for the state's capital expenses in building and furnishing new corrections facilities. To the extent that encouraging maximum periods of imprisonment may contribute to prison overcrowding, the unreimbursed expense to the state may be very great. This issue should be addressed by the Department of Corrections in a separate fiscal note.