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**20**

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1989

SUBJECT: Senate Bill 20, sectional analysis  
TO: Senator Pat Rodey  
FROM: Jack Chenoweth  
Legislative Counsel



Senate Bill 20 defines the crime of conspiracy with reference to offenses in two general categories--

- (1) trafficking in controlled substances through purchase and sale or delivery of illicit drugs; and
- (2) prostitution and the promotion of prostitution.

\* \* \*

Bill section 1 adds two new sections that together set out the principal substantive provisions of the crime of conspiracy. In that bill section --

Proposed AS 11.31.120(a) defines the crime. It follows the Model Penal Code suggestion by basing the definition on a finding that the offender has agreed with at least one other person to engage in or perform the offense. The section also incorporates two related requirements, the first that the agreement be communicated, and the second that one of the parties shall have performed an overt act in furtherance of the offense.

Proposed AS 11.31.120(b) speaks to the dimension of the crime of conspiracy as it relates to the participating parties. This subsection broadens the conspiracy net to include persons with whom the offender knows that his or her co-conspirator conspired, although the offender may not know the exact identities of these persons.

Following the Model Penal Code's suggestion, proposed AS 11.31.120(c) identifies certain defenses that a person

charged as a conspirator may not claim. They include provisions that the defendant may not claim as a defense the defender's individual incapacity or immunity from criminal responsibility for conduct that constitutes an offense, and instances in which the defendant asserts as a defense a co-conspirator's incapacity or immunity from criminal responsibility for any of the reasons specified in the second paragraph. Section 120(c)'s provisions are included in recognition of the legal basis for the definition of the conspiracy, that is, the evidence of the defendant's agreement and purpose to commit a crime, notwithstanding a party's legal incapacity or immunity.

An ongoing question related to the crime of conspiracy involves its applicability to instances involving crimes that, by their definition, require the efforts of at least two people. (Adultery and bigamy are typically used as examples, but delivery of controlled substances is an equally valid example.) In jurisdictions that follow a common law-based conspiracy provision, the courts have fashioned and typically apply something called the "Wharton Rule". Under the Wharton Rule, a person may not be charged with or convicted of conspiracy if only the minimum number of parties necessary for commission of the substantive offense had agreed to its commission. The effect of the Wharton Rule is to shield from a prosecution for conspiracy both parties to a crime that, by definition, required the concerted action of these two persons.

In conjunction with analysis and discussion of the Wharton Rule, AS 11.31.120(d) exempts from criminal liability for conspiracy a defendant "who would not be legally accountable under AS 11.16.120(b) for the conduct of the person with whom the defendant conspired". The purpose of the provision is to assure that a person who would not be criminally liable as a party if a crime was completed would not be liable for conspiracy when the crime is not completed. The cross-referenced provision, AS 11.16.120(b), states:

Except as otherwise provided by a provision of law defining an offense, a person is not legally accountable for the conduct of another constituting an offense if

. . .

(2) the offense is so defined that the person's conduct is inevitably incidental to its commission.

As that existing provision may be applied, this office has previously advised that AS 11.16.120(b)(2) would, when read with proposed AS 11.31.120(d), provide a defendant a defense to a prosecution for conspiracy for purchase of a controlled substance. The opinion rested on the finding that the conduct of the purchaser was "inevitably incidental" to the commission of the offense, and thereby brought within that defense. In other words, as with the court-fashioned Wharton Rule, reading the existing statute and proposed AS 11.31.120(d) together, one could not be successfully prosecuted, for example, for both the delivery of the controlled substance (under AS 11.71.010 - 11.71.050) and for the conspiracy to deliver a controlled substance. In other words, one could not be convicted for both the criminal object crime and the agreement to commit it.

Following the Model Penal Code example, these proposed conspiracy provisions are defined on a "unilateral" basis: that is, the crime is defined with reference to the criminal behavior of the individual--specifically, that individual's agreement--rather than resting the definition on a mutual decision. In other words, a distinguishing element of conspiracy is the presence of an agreement. Proposed AS 11.31.120(e) is intended to set up an affirmative defense to cover the situation in which the individual enters into agreement with only one other person and it is found that the second party is a law enforcement officer or similar person whose involvement in the conspiracy was to obtain evidence of criminal activity. The subsection is intended to be responsive to a concern that the conspiracy provision not operate when the only second party involvement was that of a law enforcement officer acting consistently with the officer's law enforcement duties.

Typically, conspiracy statutes generally define a duration to the conspiracy, and specify the conditions or circumstances under which an offender may withdraw from the conspiracy. Following, generally, the Model Penal Code example, proposed AS 11.31.120(f) serves that purpose. The requirement in this statute is, of course, that the withdrawal shall have been timely communicated to a law enforcement official so that law enforcement authorities, "reasonably acting on the warning", would have had an opportunity to prevent commission of the crime.

A chapter of the state's criminal code, AS 11.16, sets out provisions prescribing legal accountability--individually, for the conduct of another, and for an organization--and

enumerates exemptions by way of affirmative defense. Proposed AS 11.31.120(g) provides that the requirements and exception of AS 11.16 are made specifically applicable to ascertain and define the criminal liability of the conspirator as to the offenses that are committed in furtherance of the conspiracy.

Proposed AS 11.31.120(h) classifies the crime of conspiracy for purposes of imposition of sentence.

Another element bearing upon conspiracy prosecutions is, of course, the statute of limitations applicable to initiation of prosecution under the conspiracy statute. Because conspiracy is defined as a "continuing course of conduct" subject to termination as specified by law, it is often critical to know, and difficult to ascertain with certainty, the time at which a conspiracy ceases. The language provided in proposed AS 11.31.125, based on the Model Penal Code example, is an attempt to specify with a degree of certainty the durational element of the conspiracy.

In context, the events or circumstances specified in the section seem straightforward.

\* \* \*

Bill sections 2 and 3 amend and add to provisions of current law that limit multiple convictions for the inchoate crime and for the related, substantive crime.

Given the generally consistent treatment afforded to conspiracies, attempts, and solicitations, the amendments made in bill section 2 serve the purpose of applying the same limitations to the crime of conspiracy to deliver a controlled substance or to engage in prostitution as are currently applicable to the crimes of attempt and solicitation. These provisions address in turn: denial of a defense in a prosecution for the inchoate crime for completion of the objective crime [subsection (a)]; a limitation on multiple convictions "for conduct" that was "designed to commit or culminate in commission of the same crime" [subsection (b)]; a limitation on conviction predicated on the same course of conduct under the inchoate criminal provision and for successful completion of the object crime [subsection (c)]; and a provision specifically permitting prosecution of multiple counts on a single information or indictment [subsection (d)].

Senator Pat Rodey

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February 6, 1989

The material in bill section 3 stands for the proposition that various offenses that are the product of a continuous relationship between the parties are part of a single conspiracy and should be so treated. This section is predicated on the assumption that multiple criminal objectives do not necessarily presume multiple conspiracies. The provision merely codifies existing case law. See Braverman v. United States, 317 U.S. 49, 87 L.Ed. 23, 63 S.Ct. 99 (1942).

TBC:kb  
wkk1/105

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 19, 1989

SUBJECT: Comparing Senate Bill 16 and Senate Bill 20  
TO: Senator Pat Rodey  
FROM: Jack Chenoweth  
Legislative Counsel

The essential difference in the two bills is one of scope or definition of the crime described.

The subject matter of Senate Bill 16 is the definition of the crime of "conspiracy to deliver a controlled substance." Since the scope of the conspiracy is limited to the subject matter of controlled substances, I drafted to add the definition to the Controlled Substances chapter (AS 11.71) of the title defining offenses.

The subject matter of Senate Bill 20 is the definition of the crime of conspiracy in a slightly broader context. In addition to defining "conspiracy" as it applies to delivery of a controlled substance under AS 11.71, SB 20 includes in the definition "conspiracy" as it relates to the substantive crimes of prostitution and promotion of prostitution. Since this definition of conspiracy has a concern that involves more than one category of criminal activity, I drafted to add the provisions to the "inchoate crimes" chapter, AS 11.31.

Allowing for stylistic differences, in virtually every other respect, the provisions of the two measures are substantively parallel. There is one exception. AS 11.31.120(f) [page 2, lines 14 - 20] appears in SB 20; it does not have a comparable provision in SB 16. The subsection is included specifically in response to a request from the sponsor of the House measure from which this Senate version was taken to assure that a defendant could not be convicted for conspiracy if the agreement of the defendant on which the conspiracy charge is based had been made only with a law enforcement officer. The House sponsor indicated a reluctance to permit a charge of conspiracy to lie where the agreement could well involve an entrapment.

If you need more than this, please contact me.

JBC:kb  
wkk1/056

- (b) Criminal possession of explosives is a
- (1) class A felony if the crime intended is murder in any degree or kidnapping;
  - (2) class E 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.]*

*11.65.030. Tampering with posted notices. [Repealed, § 21, ch. 166, SLA 1978.]*

### Chapter 66. Offenses Against Public Health and Decency.

*title*

*Prostitution and Related Offenses (§§ 11.66.100 — 11.66.150)*

*Gambling Offenses (§§ 11.66.200 — 11.66.280)*

#### Article 1. Prostitution and Related Offenses.

Sec	Section
100. Prostitution	130. Promoting prostitution in the third degree
110. Promoting prostitution in the first degree	140. Corroboration of certain testimony not required
120. Promoting prostitution in the second degree	150. Definitions

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 bawdyhouse 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

(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 (d) of this section" 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. 1338), 501 P.2d 762 (1972).

Sentence for procurement upheld. — See Price v. State, Sup. Ct. Op. No. 1450 (File No. 2794), 565 P.2d 858 (1977).

For case construing former statute concerning necessary evidence for prostitution or seduction, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

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

Woman conniving or consenting to own transportation, 84 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 *Plas v. State*, Sup. Ct. Op. No. 1904 (File Nos. 3529, 3530), 598 P.2d 966 (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 1350 (1983).

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

titute 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 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. *Eleazar 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. *Rosencranz v. United States*, 155 F. 38 (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. *Rosencranz v.*

*United States*, 155 F. 38 (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. 1338), 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), 403 P.2d 673 (1965).

For case construing former statute prohibiting pimping, see *Johnson v. United States*, 260 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).

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the crime of  
Conspiracy."  
Sponsor: Sen. Rodey  
Requestor: Senate Judiciary

Agency Affected: Department of Law  
BRU: Prosecution  
Components: Third Judicial District

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		150.7	155.2	160.0	164.8	169.7
TRAVEL		10.8	11.1	11.4	11.7	12.1
CONTRACTUAL		17.4	17.9	18.4	19.0	19.6
SUPPLIES		11.4	11.7	12.1	12.5	12.9
EQUIPMENT		17.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>207.8</b>	<b>195.9</b>	<b>201.9</b>	<b>208.0</b>	<b>214.3</b>

CAPITAL						
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REVENUE						
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND		207.8	195.9	201.9	208.0	214.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Please see the attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director

Division: Administrative Services

*Richard I. Pegues FOR*

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Agency: Department of Law

Phone: 465-3672

Date: January 30, 1989

Date: January 30, 1989

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 20

This bill makes it a crime for two or more persons to "conspire" together to violate state or municipal laws regarding drugs and prostitution. The bill allows persons to be prosecuted for conspiracy, even though the crime that was the object of a conspiracy was neither attempted nor completed.

Given the limits set by the bill, and the broad authority provided under existing law for the prosecution of persons involved in drug trafficking, enforcement activities undertaken as a result of this bill will be complicated and expensive. The focus of enforcement actions taken under this bill will be on major narcotics rings.

Investigation and prosecution of large-scale drug cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires at least the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A conspiracy law will not decrease the amount of work involved in pursuing drug traffickers, rather conspiracy prosecutions will require the investment of significant time and effort on the part of state prosecutors. In addition, a conspiracy law will not cure the problematic and expensive practice of granting separate trials to co-defendants.

A good example of the complexities involved in prosecuting drug traffickers in the single big drug case that the state was able to pursue in FY85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors, on a daily (and sometimes hourly) basis, consulted with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers who kept track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compiled telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions. Considering the sophistication of narcotics traffickers, and the efforts that would be necessary to implement a conspiracy law, the Department of Law believes that it will need the dedicated services of at least a full-time attorney, a paralegal, and a secretary in the Anchorage District Attorney's Office.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 20

	<u>Atty IV</u>	<u>P/A II</u>	<u>Leg. Sec. I</u>	<u>Total</u>
71000	73.4	45.0	32.3	150.7
72000	5.4	5.4	-0-	10.8
73000	6.6	6.6	4.2	17.4
74000	4.2	4.2	3.0	11.4
75000	6.5	2.5	8.5	17.5
	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>
Total	96.1	63.7	48.0	207.8

Costs beyond FY 90 include a 3% annual inflation factor, less one-time equipment costs.

Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	17,188			
Premium Pay				
Other				
Total Personal Services		73,432		
Travel		5,400		
Contractual		6,600		
Commodities		4,200		
Equipment		6,500		
Other				
Total Cost		96,132		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	96,132		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
<p><b>Justification</b></p> <p>This is the first of three positions that will be needed to provide prosecution services of defendants who conspire to violate state laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking rings is extremely time consuming and labor intensive and will require a minimum of one new attorney in addition to the drug prosecutor already provided through the federal anti-drug enforcement program. Allocation to the full-working level of Attorney IV for this position is recommended because of the seriousness of the crimes being prosecuted.</p>				

**P - For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Third Judicial District

Page 1 of 3  
 Revised Date

**FY 90**

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Type of Expenditure		Justification		
1	2	This is the second of three positions that will be needed to provide prosecution services of defendants who conspire to violate state laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking rings is extremely time consuming and labor intensive and will require the services of a skilled paraprofessional in the preparation of evidence. Allocation to the Paralegal Assistant II, full working level is recommended.		
		Amount		
		3		
Salary	32,424			
Benefits	12,562			
Premium Pay				
Other				
Total Personal Services		44,986		
Travel		5,400		
Contractual		6,600		
Commodities		4,200		
Equipment		2,500		
Other				
Total Cost		63,686		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	63,686		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Third Judicial District

Page 2 of 3  
 Revised Date

**FY 90**

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
<b>Justification</b>				
This is the third of three positions that will be needed to provide prosecution services of defendants who conspire to violate state laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking rings is extremely time consuming and labor intensive and generates substantial legal documentation, including: search warrants, subpoenas, motions, affidavits, and legal memoranda. Consequently, full-time secretarial services will be required. Allocation to the Legal Secretary I level is recommended in view of the heavy documentation load.				
<b>Type of Expenditure</b>		<b>Amount</b>		
1	2	3		
Salary	22,020			
Benefits	10,256			
Premium Pay				
Other				
Total Personal Services		32,276		
Travel		-0-		
Contractual		4,200		
Commodities		3,000		
Equipment		8,500		
Other				
Total Cost		47,976		
<b>Funding Source for Total Cost</b>				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	47,976		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Third Judicial District.

Page 3 of 3  
 Revised Date

**FY 90**

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the crime of conspiracy... controlled substance."  
 Sponsor: Sen. Faiks  
 Requestor: Senate Judiciary

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: Third Judicial District

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

OPERATING	FY 39	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		150.7	155.2	160.0	164.8	169.7
TRAVEL		10.8	11.1	11.4	11.7	12.1
CONTRACTUAL		17.4	17.9	18.4	19.0	19.6
SUPPLIES		11.4	11.7	12.1	12.5	12.9
EQUIPMENT		17.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>207.8</b>	<b>195.9</b>	<b>201.9</b>	<b>208.0</b>	<b>214.3</b>

CAPITAL						
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REVENUE						
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND		207.8	195.9	201.9	208.0	214.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard L. Pegues, Director  
 Division: Administrative Services

Phone: 465-3672

Approved by Commissioner: Richard L. Pegues / FOR  
 Agency: Department of Law

Date: January 26, 1989

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.  
 Agency: Department of Law

Date: January 26, 1989

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the crime of conspiracy... controlled substance."  
 Sponsor: Sen. Faiks  
 Requestor: Senate Judiciary

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: Third Judicial District

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		150.7	155.2	160.0	164.8	169.7
TRAVEL		10.8	11.1	11.4	11.7	12.1
CONTRACTUAL		17.4	17.9	18.4	19.0	19.6
SUPPLIES		11.4	11.7	12.1	12.5	12.9
EQUIPMENT		17.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>207.8</b>	<b>195.9</b>	<b>201.9</b>	<b>208.0</b>	<b>214.3</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND		207.8	195.9	201.9	208.0	214.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: January 26, 1989  
 Approved by Commissioner: Richard I. Pegues /FOR/  
Grace Berg Schaible, Atty. Gen. Date: January 26, 1989  
 Agency: Department of Law

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 16

This bill makes it a crime for two or more persons to "conspire" together to violate state laws regarding drugs. The bill allows persons to be prosecuted for conspiracy, even though the crime that was the object of a conspiracy was neither attempted nor completed.

Given the limits set by the bill, and the broad authority provided by existing law for the prosecution of persons involved in drug trafficking, enforcement activities undertaken as a result of this bill will be complicated and expensive. The focus of enforcement actions taken under this bill will be on major narcotics rings.

Investigation and prosecution of large-scale drug cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires at least the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A conspiracy law will not decrease the amount of work involved in pursuing drug traffickers, rather conspiracy prosecutions will require the investment of significant time and effort on the part of state prosecutors. In addition, a conspiracy law will not cure the problematic and expensive practice of granting separate trials to co-defendants.

A good example of the complexities involved in prosecuting drug traffickers in the single big drug case that the state was able to pursue in FY85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors, on a daily (and sometimes hourly) basis, consulted with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers who kept track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compiled telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions. Considering the sophistication of narcotics traffickers, and the efforts that would be necessary to implement a conspiracy law, the Department of Law believes that it will need the dedicated services of at least a full-time attorney, a paralegal, and a secretary in the Anchorage District Attorney's Office.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 16

	<u>Atty IV</u>	<u>P/A II</u>	<u>Leg. Sec. I</u>	<u>Total</u>
71000	73.4	45.0	32.3	150.7
72000	5.4	5.4	-0-	10.8
73000	6.6	6.6	4.2	17.4
74000	4.2	4.2	3.0	11.4
75000	6.5	2.5	8.5	17.5
	<hr/>	<hr/>	<hr/>	<hr/>
Total	96.1	63.7	48.0	207.8

Costs beyond FY 90 include a 3% annual inflation factor, less one-time equipment costs.

Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	17,188			
Premium Pay				
Other				
Total Personal Services		73,432		
Travel		5,400		
Contractual		6,600		
Commodities		4,200		
Equipment		6,500		
Other				
Total Cost		96,132		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	96,132		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Justification**  
This is the first of three positions that will be needed to provide prosecution services of defendants who conspire to violate state laws regarding drugs. Investigation and prosecution of large-scale drug trafficking rings is extremely time consuming and labor intensive and will require a minimum of one new attorney in addition to the drug prosecutor already provided through the federal anti-drug enforcement program. Allocation to the full-working level of Attorney IV for this position is recommended because of the seriousness of the crimes being prosecuted.

**Request For  
New Position**

Agency Department of Law  
BRU Prosecution  
Component Third Judicial District

Page 1 of 3  
Revised Date

**FY 90**

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This is the second of three positions that will be needed to provide prosecution services of defendants who conspire to violate state laws regarding drugs. Investigation and prosecution of large-scale drug trafficking rings is extremely time consuming and labor intensive and will require the services of a skilled paraprofessional in the preparation of evidence. Allocation to the Paralegal Assistant II, full working level is recommended.				
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	12,562			
Premium Pay				
Other				
Total Personal Services		44,986		
Travel		5,400		
Contractual		6,600		
Commodities		4,200		
Equipment		2,500		
Other				
Total Cost		63,686		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	63,686		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Third Judicial District

Page 2 of 3  
 Revised Date

**FY 90**

Position Title <b>Legal Secretary I</b>		No. of Positions 1	Range/Step 10A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This is the third of three positions that will be needed to provide prosecution services of defendants who conspire to violate state laws regarding drugs. Investigation and prosecution of large-scale drug trafficking rings is extremely time consuming and labor intensive and generates substantial legal documentation, including: search warrants, subpoenas, motions, affidavits, and legal memoranda. Consequently, full-time secretarial services will be required. Allocation to the Legal Secretary I level is recommended in view of the heavy documentation load.				
Type of Expenditure		Amount		
1	2	3		
Salary	22,020			
Benefits	10,256			
Premium Pay				
Other				
Total Personal Services		32,276		
Travel		-0-		
Contractual		4,200		
Commodities		3,000		
Equipment		8,500		
Other				
Total Cost		47,976		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	47,976		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Department of Law  
 BRU Prosecution  
 Component Third Judicial District

Page 3 of 3  
 Revised Date

**FY 90**

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 20  
PUBLISH DATE: \_\_\_\_\_

### FISCAL NOTE

REQUEST: \_\_\_\_\_

REVISION DATE: \_\_\_\_\_  
TITLE: "An act relating to the  
crime of conspiracy"  
SPONSOR: Sen. Rodey  
REQUESTOR: Sen. Judiciary Cmte

AGENCY: Department of Law  
BRU: Prosecution  
COMPONENTS: Third Judicial  
District

#### EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERS. SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND/BUILD.						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL		0	0	0	0	0
CAPITAL						
REVENUE						

#### FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

#### POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Please see the attached analysis

PREPARED BY: \_\_\_\_\_

*Janice A. Faiks*  
Senator Jan Faiks, Chairman  
Senate Judiciary Committee

DATE: February 20, 1989

PHONE No.: 465-4523

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 20  
PUBLISH DATE: \_\_\_\_\_

**FISCAL NOTE**

REQUEST: \_\_\_\_\_

REVISION DATE: \_\_\_\_\_  
TITLE: An act relating to the crime of conspiracy  
SPONSOR: Sen. Rodey  
REQUESTOR: Sen. Judiciary Cmte

AGENCY: Department of Law  
BRU: Prosecution  
COMPONENTS: Third Judicial District

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERS. SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND/BUILD.						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL		0	0	0	0	0
CAPITAL						
REVENUE						

**FUNDING: (THOUSANDS OF DOLLARS)**

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Please see the attached analysis

PREPARED BY: \_\_\_\_\_

*Jan Faiks*  
Senator Jan Faiks, Chairman  
Senate Judiciary Committee

DATE: February 20, 1989  
PHONE NO.: 465-4523

Continuation of Fiscal Note Analysis for SB 20

Passage of the conspiracy laws contained in SB 20 will give the state an additional tool to use when criminal behavior cannot be prosecuted under existing laws regulating drug sales or prostitution. Prosecution under SB 20 is not mandatory, and may take place at the state's discretion as circumstances warrant, generally as an adjunct to an investigation and prosecution already taking place under existing laws, using existing resources.