ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3381 HJUD HB 589 - HB 590

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CS HB 589 (Judiciary)
Version #2 dated April 17, 1986

An Act relating to disability insurance; and providing for an effective date.

SECTIONAL ANALYSIS

Prepared by Rep. John Sund's office; April 17, 1986

(Note: This will only explain differences from Version #1 of the bill.)

Section 1
ARTICLE 2
Sec. 21.55.100. Page 4, line 2: offers the state plan, including the medicare supplement plan, only to those people who are high risks. Standard risks and groups would not be eligible.

Sec. 21.55.170. Page 12, line 7: caps the premium at 150% of the average rate of the plan if it were offered to standard risk people as determined by the five largest disability insurers in the state.

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Section 1
ARTICLE 1
Sec. 21.55.010. Page 1, line 12: creates the Comprehensive Disability Insurance Association, a nonprofit corporation with membership consisting of all licensed disability insurers and licensed hospital or medical service corporations in the state that write on an expense incurred basis. Insurers must be members of the association in order to do business in the state.

Sec. 21.55.020. Page 1, line 21: sets a seven-member board of directors selected by association members and approved by the director of the state Division of Insurance. The director or a designee will be a nonvoting, ex officio member of the board.

Sec. 21.55.030. Page 2, line 11: describes the association's general powers.

Sec. 21.55.040. Page 2, line 20: subjects association articles, bylaws and operating rules to the approval of the director of the Division of Insurance.

Sec. 21.55.050. Page 3, line 25: exempts the association from the Administrative Procedure Act.

Sec. 21.55.060. Page 3, line 27: exempts the association from taxes.

ARTICLE 2
Sec. 21.55.100. Page 4, line 2: offers the state plan, including the medicare supplement plan, only to those people who are high risks. Standard risks and groups would not be eligible. Each plan will have an option of three deductibles.

Eligibility requirements for the high-risk plan are defined. The association may not deny coverage to any eligible state resident.

Sec. 21.55.110. Page 5, line 13: explains the minimum benefits of the state plan, which is a basic major medical plan. Lifetime maximum benefit is $1 million.

Sec. 21.55.120. Page 8, line 12: explains two types of medicare supplement plans: a minimum benefits plan which is defined in present regulation and an expanded coverage plan.

Sec. 21.55.130. Page 8, line 15: offers deductibles of $200, $500 or $1,000 per person. The maximum copayment by enrollees would be 20% once the deductible is met for all health care and 50% for mental health care. Maximum annual payments of deductible and copayments cannot exceed $2,000 for individuals and $4,000 for families. The plan would pay 100% once those limits are reached.

Sec. 21.55.140. Page 9, line 17: excludes coverage for preexisting conditions if the condition began within the six months just preceding the effective date of coverage. Preexisting conditions would not be covered for the first year of a plan. The limitation can be waived for a 10% additional premium payment, or if the insured's previous insurance was terminated and the state plan application is made within 31 days following termination.

Sec. 21.55.150. Page 10, line 15: describes care and services that are not covered by the plan.

Sec. 21.55.160. Page 12, line 3: requires the association to adopt a plan for coordinating benefits with other insurance coverage.

Sec. 21.55.170. Page 12, line 7: caps the premium at 150% of the average rate of the plan if it were offered to standard risk people as determined by the five largest disability insurers in the state.

ARTICLE 3

Sec. 21.55.200. Page 12, line 19: sets guidelines for the association's selection of a writing carrier through a bidding process.

Sec. 21.55.210. Page 12, line 26: explains the duties of the writing carrier which will be contracted for three-year terms unless earlier termination is approved by the director.

The carrier will perform the administrative and claims payment functions of the plan and report quarterly to the association. The carrier will be reimbursed for direct and indirect expenses of administering the plan.

Sec. 21.55.220. Page 14, line 8: allows enrollment in the state plan to all eligible people and requires that association members will share the claim losses and administrative expenses that exceed premium payments. Each member will contribute to the association an amount based on that member's share of all disability insurance premiums paid

in the state. Assessments will be made yearly, unless interim assessments are desired.

A member's failure to pay an assessment within 30 days could cease that member's certification to operate in the state.

Net gains will be held at interest to offset future losses.

ARTICLE 4

Sec. 21.55.300. Page 15, line 25: states that all residents or groups of up to 25 residents are eligible for the state plan. An individual who has voluntarily ended coverage in the state plan, however, cannot reenter the plan for 12 months.

Sec. 21.55.310. Page 16, line 1: explains the enrollment procedure and disallows those people covered under another medical plan as the primary policyholder from enrolling in the state plan. A person loses eligibility upon ceasing residency.

Sec. 21.55.320. Page 16, line 18: requires the state plan writer to respond to the applicant within 30 days of receiving the application.

Sec. 21.55.330. Page 16, line 27: permits 60 day retroactive coverage for those high risk individuals whose previous insurance terminated, if premiums are paid.

Sec. 21.55.340. Page 17, line 5: requires that the high-risk portion of the plan be advertised to the public and that the plan writer pay a $50 referral fee to every insurance agent who refers an accepted applicant to the state plan. An insurer who rejects or restricts a policy must tell the applicant about the state plan.

ARTICLE 5

Sec. 21.55.400. Page 17, line 28: explains the duties of the director of the Division of Insurance in regard to the state plan.

Sec. 21.55.410. Page 18, line 10: states the state is not liable for association actions.

Sec. 21.55.500. Page 18, line 14: offers chapter definitions. Resident is defined as a person who has lived in the state at least six consecutive months prior to application and intends to remain. Absence from the state is permitted for medical reasons.

Section 2. Page 21, line 3: requires that the state plan be available by July 1, 1987.

Section 3. Page 21, line 6: sets an immediate effective date.

POSITION PAPER

House Bill 589

The apparent goal of HB 589, to make available high quality health insurance and basic life insurance coverage at attractive group rates to all Alaskans who are willing to pay for it themselves is hard to argue with. However, there appears to be an underlying misconception that somehow the fact that there are existing policies of group insurance being provided to state employees presents an opportunity for a "free lunch." In fact, when the number of people to be served is large, as it presumably is in this case, there is little if any advantage in combining groups and there are compelling reasons to separate the claims experience of the two groups (state employees and citizens who elect to participate).

Certainly the State of Alaska could make a group health policy available to citizens of the state but it would seem to make more sense to offer a basic, no frills major medical package and price it according to the claims experience of those who choose to enroll in the plan. Bids to provide the coverage could be solicited and a servicing carrier chosen who would collect premiums, pay claims and maintain records. This would provide the maximum advantage to citizens, ensuring a competitive, fair rate without any significant state subsidy and without getting the state

into the insurance business.

Our analysis and position on this bill is based on the assumption that residents would be required to furnish evidence of insurability as a requirement for enrollment in the life insurance coverage or that the bill would be amended to allow for resident participation in the health plan only. Without these requirements, the impact on life insurance premiums would be significant due to the high possibility of adverse selection from the new group.

The question that must be answered is, "What possible advantages does the plan in HB 589 have when compared with the scenario described above?" We think there are no real advantages and several serious disadvantages. One might ask if the rates the state enjoys because of a large group of relatively good risks couldn't be passed on to citizens who enroll. This could only be done at the expense of those rates; in other words, if the experience of those who signed up was worse than the state average (and we are reasonably certain it would be), the rate would be driven up for everyone and the state would be in the position of subsidizing coverage for those individuals. We have tried to show this effect in our Fiscal Note analysis. Also, the coverage provided to state employees, regardless of bargaining unit, is first rate and includes audio, visual and dental coverage; we do not feel it would be appropriate for a general offering in any event.

For these reasons the Department of Administration is opposed to HB 589. If the legislature feels that this issue must be addressed, we feel a

non-subsidized approach such as the one indicated above would be more appropriate.

J. K. Humphreys — 3/5/86

J.K. Humphreys, Director, Division of Retirement & Benefits — Date

Eleanor Andrews — 3/5/86

Eleanor Andrews, Commissioner, Department of Administration — Date

PROVIDENT
COMPANIES

CHATTANOOGA, TN 37402

April 11, 1986

Honorable M. Mike Miller
Room 122, State Capitol
P. O. Box V
Juneau, Alaska 99811

Re: Committee Substitute for House Bill No. 589 --
Comprehensive Disability Insurance Association

Dear Representative Miller:

We are very concerned with the Committee Substitute for House Bill 589 recently introduced to the Legislature, which would establish an assigned risk pool for uninsurables and would offer major medical insurance to all eligible residents of Alaska.

As we understand the bill, it would require all insurance companies licensed to write disability insurance in the State of Alaska (whether or not they are actively engaged in the health insurance market) and all licensed hospital or major medical service corporations in the state to maintain membership in the Comprehensive Disability Insurance Association as a condition of doing disability insurance business in Alaska. The Board of the Association would select a writing carrier to provide the coverage established by the bill, which appears to be a standard type major medical insurance policy with a choice of a $200, $500, or $750 deductible and which would provide for 20% coinsurance (50% for diagnosis or treatment of mental conditions), and a $2,000 limit per covered individual and $4,000 limit per covered family on out-of-pocket expenses.

The proposal would make available to Alaska residents (1) a group plan for groups of 3 to 25 residents, (2) an individual plan for residents who are standard risks, and (3) an individual plan for residents who are high risks. The plan would also include a Medicare supplement policy for residents age 65 and older. Premium rates would be based on whether or not it is an individual or group plan, and if an individual plan, whether or not it is a high risk or standard risk, as well as the age group and the choice of deductible. Rates would be determined by sound actuarial methods. The bill would further require that at least 85% of the collective premiums for the plan be used to pay claims, while a maximum of 15% could be used for administrative costs. All costs of the plan which are not paid out of premiums would be assessed against Association members in amounts based on the amount of business the member writes in Alaska to cover claim payments that exceed premium receipts. The act does not provide for an offset of any assessment against premium taxes.

First, let me state that I do not know why the State of Alaska would consider such a bill. To require all health insurance companies doing business in the State of Alaska to finance insurance for residents of your state over and above a reasonable cost, despite the experience of the state plan, and in competition with the private insurer, would have the net effect of most health carriers simply withdrawing from the state. Why do business in a state where the state is going to compete with you, and furthermore, is going to put you at a competitive disadvantage by requiring you to support their plan and not receive a premium tax offset for the assessments for the Association (which does not have to pay premium tax on their policy while insurance companies are paying premium taxes on the business they sell)? I do not believe any insurance company would remain in a state which enacted such a law, and we would certainly give serious consideration to withdrawing from the State of Alaska and would probably do so.

Law Department 615/755-1244
Provident Life and Accident Insurance Company

Furthermore, I believe other companies would also withdraw. Why would they stay when such a bill would put them at such a competitive disadvantage that everyone in Alaska would elect the state plan? The only thing a disability insurer would be doing if it were authorized to write disability insurance in Alaska would be to subsidize the state plan. This should be done by the taxpayers and not the insurance companies doing business in the state. I know of no better way to make certain that health insurance is unavailable to residents of your state than to enact a bill such as this one.

As one of the leading health insurance companies writing employee benefits, a suggestion that there might be a lack of competition in the small group health insurance market disturbs us. This has not been our experience. We believe the market is extremely competitive and that there are insurance companies offering coverage through this market which is both comprehensive in coverage and competitive in price with rates offered to larger groups. The problems in providing group health benefits at an affordable cost do not exist because insurance companies are not active and competitive in the marketplace; they exist because (1) there is not sufficient control on the providers of health care which would enable health care costs to be curbed, (2) the enactment of mandated benefits covering all aspects of health care, including some benefits which are not benefits for the treatment of an illness or injury, which has a substantial over-all impact on the premium rates of health insurance, and (3) the tendency of state legislatures and state governments to put the financial burden of social responsibility on the insurance buying public.

If you are concerned with the lack of insurance for some types of individuals such as uninsurables, then I would suggest that you enact a bill similar to the one recently enacted in Indiana providing comprehensive health insurance coverage for residents of that state who are uninsurable, with a full premium tax offset for assessments paid by health insurers doing business in Indiana. Providing coverage for the uninsurables is a social responsibility and not one that should be passed on to the insurance buying public in the form of higher premiums. I believe that other health insurance is available to most persons in the State of Alaska, as it is in other states, if they want to purchase it.

We urge you to take a serious look at this bill when it comes up for a vote in the Alaska Legislature, and would encourage you to oppose it unless you wish almost all of the health insurance in Alaska to be provided by the state at state expense. If you wish to discuss any of our comments further or if we can provide you with any additional information in support of our position, please let us know.

Sincerely yours,

Charles T. Cady

Charles T. Cady
Vice President, General Counsel
and Secretary

CTC:fd/2271z

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MENDENHALL BUILDING
320 FOURTH STREET, SUITE B
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(907) 586-3537

April 22, 1986

M. Mike Miller, Chairman
House Judiciary Committee
P.O. Box 1494
Juneau, Alaska 99802

RE: House Bill 589 (An act relating to disability insurance; and providing for an effective date.)

Dear Representative Miller:

I am the registered lobbyist for the Alaska Nurses Association. The Association has some concerns about the impact of HB 589 on the practice of nursing. If the bill is scheduled for a hearing I believe the Association will want to appear and present testimony. Specifically, the Association recommends:

1. Acquired Immune Deficiency Syndrome (A.I.D.S.) should be added to the list of high risk conditions under sec. 21.55.100 (e)(3);

2. the language "at the physician's direction" should be deleted form sec. 21.55.110 (2) - registered nurses frequently perform services that are within the area of nursing practice and those services should be covered by the plan;

3. sec. 21.55.150 (13) should be deleted - we believe it is poor policy to exclude services of a registered nurse from coverage simply because she resides in the covered individual's home - this makes no more sense than excluding the services of a physician who treats a member of his family.

Please do not hesitate to contact me if you have a

question about the Association's position on HB 589, nurses, the practice of nursing, or any other matter.

Very truly yours,

David T. Walker

DTW/dsm
cc: Kay Lahdenpera
Barbara Walker
Laura Rima
Alaska Nurses Association
Constance Trollan

CAI INC

COMMUNICATING FOR AGRICULTURE

Law Office Building
P.O. Box 677
Fergus Falls, Minnesota 56537-9990

Phone (218) 739-3241

MINNESOTA APRIL 1985

I. PLAN SUMMARY

1.	Minnesota Contact:	Mr. Dave Platt Manager, Underwriting Research and Contracts Dept. Blue Cross-Blue Shield P.O. Box 64560 St. Paul. MN 55164 (612) 456-8561
2.	Plan Administrator:	Blue Cross-Blue Shield
3.	Effective Date:	June 1976
4.	Board Composition:	7 members selected by members of the pool
5.	Benefit:	Regular Plan - $250,000 Lifetime Benefit Medicare Supplement - $100,000 Lifetime Benefit
6.	Deductible:	$500, $1,000
7.	Stop Loss:	Regular plans - $3,000/Individual Medicare Supplement - $1,000/Individual
8.	Premium Cap:	125% Maximum
9.	Waiting Period:	6 Months for pre-existing conditions
10.	Pre-existing conditions:	Not covered if diagnosed or treated within 90 days preceding the policy date until 6 months after the policy date.
11.	Eligibility Criteria:	Rejected by one carrier Rider by one carrier
12.	Agent fee:	Referral fee of $50
13.	Medicare qualified plan:	Yes

MINNESOTA

II. OPERATIONAL DATA

1. Total individuals covered by plan at end of:

1981	2,918
1982	4,25[illegible]
1983	6,669
1984	9,158
As of April 1, 1985	10,359

2. Total premiums collected by plan at end of:

1981	$ 1,305,245.00
1982	$ 2,325,060.00
1983	$ 4,[illegible]2,351.00
1984	$ 6,[illegible]13,829.00

3. Total claims paid by plan at end of:

1981	$ 2,852,845.00
1982	$ 4,514,172.00
1983	$ 6,981,967.00
1984	$ 9,761,835.00

4. Total assessment to members of plan for:

1981	$ 1,000,000.00
1982	$ 3,000,818.00
1983	$ 3,487,532.00
1984	$ 4,795,071.00

5. What was the total cost to administer the plan in:

1981	$ 163,156.00
1982	$ 298,823.00
1983	$ 383,741.00
1984	$ 665,100.00

6. Does your state allow for a premium tax credit on the assessment? X Yes ___ No

Comments _____

7. Is there a maximum percentage assessment allowed towards the companies (such as 1%)? ___ Yes X No

Comments _____

8. What was the percentage assessed to members (such as .8%) at the end of:

1981	-
1982	-
1983	-
1984	-

Each assessment is based on the ratio of the contributing members total amount of accident and health insurance premium received from or on behalf of Minnesota residents divided by the total cost of accident and health insurance premium received by all Association Contributing Members from or on behalf of Minnesota residents, as determined by the Commissioner of Commerce for the state of Minnesota.

9. What were the total premiums collected by all companies in your state at the end of:

1981	$	N/A
1982	$	N/A
1983	$	N/A
1984	$	N/A

10. What were the total premium taxes paid by all companies in your state at the end of:

1981	$	N/A
1982	$	N/A
1983	$	N/A
1984	$	N/A

11. Did the above taxes paid include all companies or were some exempt from paying taxes (such as self-insurers)?

Self-Insurers and non-profit service plan corporations do not pay premium tax.

12. What problems has your plan experienced?

13. Additional comments:

Individuals covered -

Plan 1	($1,000 deductible)	2,265
Plan 2	($500 deductible)	5,525
Plan 4	(Med Supplement - 65 & over)	622
Plan 5	(Med Supplement - Under 65)	123
		8,535

Minnesota feels that adjustments made to the plan since its inception have made for a very good program.

Minnesota also has a listing of eighteen conditions which allow for automatic acceptance into the pool without having to receive a rejection notice from an insurance carrier.

CAP INC

COMMUNICATING FOR AGRICULTURE

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NORTH DAKOTA

APRIL 1985

I. PLAN SUMMARY

1. North Dakota Contact:	Mr. Bob Carlson 4510 - 13th Ave. SW Fargo, ND 58121-0001 (701) 282-1235
2. Plan Administrator:	Blue Cross-Blue Shield
3. Effective Date:	June 1981
4. Board Composition:	10 members - 1 from each member of the 10 insurers with the highest annual premium volumes
5. Benefit:	$250,000 Lifetime Benefit
6. Deductible:	$250 $500 $1,000
7. Stop Loss:	$3,000/Individual
8. Premium Cap:	135% Maximum
9. Waiting Period:	6 Months for pre-existing conditions
10. Pre-existing conditions:	Not covered if diagnosed or treated within 90 days preceding the policy date until 6 months after the policy date. Waiting period is waived if applicant has been covered under an insured health plan within past year. Pre-existing condition clause may also be waived upon payment of additional premium.
11. Eligibility Criteria:	Rejected by one carrier Riders by two carriers Resident for six months
12. Agent fee:	Referral fee of $25
13. Medicare qualified plan:	Yes

NORTH DAKOTA

II. OPERATIONAL DATA

1. Total individuals covered by plan at end of:

1981	-0-
1982	78
1983	245
1984	615
As of April 1, 1985	727

2. Total premiums collected by plan at end of:

1981	$ -0-
1982	$ 73,408.00
1983	$ 138,666.00
1984	$ 455,874.00

3. Total claims paid by plan at end of:

1981	$ -0-
1982	$ 103,400.00
1983	$ 345,918.00
1984	$ 1,058,694.00

4. Total assessment to members of plan for:

1981	$ -0-
1982	$ 49,862.00
1983	$ 229,483.00
1984	$ 605,367.00

5. What was the cost to administer the program in:

1981	$ -0-
1982	$ 33,111.00
1983	$ 25,306.00
1984	$ 35,904.00

6. Does your state allow for a premium tax credit on the assessment? X Yes ___ No

Comments _____

7. Is there a maximum percentage assessment allowed towards the companies (such as 1%)? ___ Yes X No

Comments _____

8. What was the percentage assessed to members (such as .8%) at the end of:

1981	-0-
1982	.03%
1983	.11%

9. What were the total premiums collected by all companies in your state at the end of:

1981	$ N/A
1982	$ N/A
1983	$73,667,853.0
1984	$ N/A

10. What were the total premium taxes paid by all companies in your state at the end of:

1981	$ N/A
1982	$ N/A
1983	$ N/A
1984	$ N/A

11. Did the above taxes paid include all companies or were some exempt from paying taxes (such as self-insurers)?

Self-Insurers do not report to the State Insurance Department, and are therefore exempt.

12. What problems has your plan experienced?

No major problems.

13. Additional comments:

Enrollment seems to be picking up. Approximately 30 individuals are signed up per month.

Assessments - Assessments are made to all companies doing more than $100,000 of accident and health insurance business in the state. Assessments are based on each company's premium volume as compared to the total for all companies. Assessments are a direct offset against premium taxes.

Lead carrier expenses are, by law, limited to 12.5% of premium.

COMMUNICATING FOR AGRICULTURE

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INDIANA

MAY 1985

I. PLAN SUMMARY

1.	Indiana Contact:	Ms. Helen Adrian Deputy Commissioner Indiana Dept. of Insurance 509 State Office Bldg. Indianapolis, IN 46204 (317) 232-2418
2.	Plan Administrator:	Mutual of Omaha
3.	Effective Date:	July 1982
4.	Board Composition:	5 to 9 members selected by members of the pool
5.	Benefit:	Plan I - No limit Plan II - No limit, $50,000 Lifetime Benefit for mental and nervous disorders
6.	Deductible:	Plan I - $200 Plan II - $200, $500, $1,000
7.	Stop Loss:	Plan I - $1,000/Individual; $2,000 Family Plan II - $1,000/Individual; $2,000/Family $1,500/Individual; $3,000/Family $2,000/Individual; $4,000/Family
8.	Premium Cap:	150% Maximum
9.	Waiting Period:	6 months for pre-existing conditions
10.	Eligibility Criteria:	Rejected by two carriers, notified of benefit reduction, premium increase or not eligible for medicare. Criteria may be waived under certain conditions.
11.	Pre-existing conditions:	Not covered if diagnosed or treated within 6 months preceding the policy date until 6 months after the policy date. May be waived under certain conditions.
12.	Agent fee:	$25.00
13.	Medicare qualified plan:	No

INDIANA

II. OPERATIONAL DATA

1. Total individuals covered by plan at end of:

1981	-0-
1982	41
1983	2,288
1984	3,510
As of April 1, 1985	3,428

2. Total premiums collected by plan at end of:

1981	$ -0-
1982	$ 34,479.69
1983	$ 2,352,179.23
1984	$ 6,356,995 39

3. Total claims paid by plan at end of:

1981	$ -0-
1982	$ -0-
1983	$ 217,877.60
1984	$ 6,843,690.79

4. Total assessment to members of plan for:

1981	$ -0-
1982	$ 53,300.00
1983	$ 10,601.00
1984	$ 134,077.00

5. What was the total cost to administer the plan in:

1981	$ -0-
1982	$ 28,936.61
1983	$ 56,511.63
1984	$ 256,462.35

6. Does your state allow for a premium tax credit on the assessment? X Yes ___ No

Comments _____

_____

7. Is there a maximum percentage assessment allowed towards the companies (such as 1%)? ___ Yes X No

Comments: _____

8. What was the percentage assessed to members (such as .8%) at the end of:

	1981 _____
	1982 _____
Does not use %	1983 _____
	1984 _____

9. What were the total premiums collected by all companies in your state at the end of:

1981 $_____
1982 $_____
1983 $_____
1984 $_____

10. What were the total premium taxes paid by all companies in your state at the end of:

1981 $_____
1982 $_____
1983 $_____
1984 $_____

11. Did the above taxes paid include all companies or were some exempt from paying taxes (such as self-insurers)?

_____

_____

12. What problems has your plan experienced? _____

_____

_____

13. Additional comments:

The Indiana plan has a provision whereby the pre-existing condition waiting period can be waived if the individual is willing to pay an additional premium of 10% over the life of the contract. This provision has worked very well. As of November 1, 1984, over 1,400 policy-holders were using this waiver.

Indiana also has a list of conditions whereby a rejection notice from an insurance carrier is not required to become eligible for the plan.

COMMUNICATING FOR AGRICULTURE

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WISCONSIN APRIL 1985

I. PLAN SUMMARY

1. Wisconsin Contact:	Ms. Rosemary Van Susteren P.O. Box 7873 Madison, WI 53707 (608) 267-2305
2. Plan Administrator:	Mutual of Omaha
3. Effective Date:	June 1981
4. Board Composition:	9 members - Commissioner or his Rep., Rep. of Health Policy Council, Reps. of 2 nonprofit insurers appointed by Comm., Reps. of 2 other insurers, 3 public members appt. by Commissioner
5. Benefit:	$250,000 Lifetime Benefit
6. Deductible:	Plan I - $1,000 Plan II - Medicare Part A deductible
7. Stop Loss:	Plan I - $2,000/Individual $4,000/Family Plan II - $500
8. Premium Cap:	150% Maximum
9. Waiting Period:	6 months for pre-existing conditions
10. Pre-existing conditions:	Not covered if diagnosed or treated within 6 months preceding the policy date until 6 months after the policy date.
11. Eligibility Criteria:	Cancelled or rejected by two carriers, rider by one carrier 50% or greater premium increase by one carrier.
12. Agent fee:	Referral fee of $35
13. Medicare qualified plan:	Yes, for persons under 65

WISCONSIN

II. OPERATIONAL DATA

1. Total individuals covered by plan at end of:

1981	309
1982	977
1983	1,798
1984	1,916
As of April 1, 1985	1,940

2. Total premiums collected by plan at end of:

1981	$ 127,740.00
1982	$ 618,216.00
1983	$ 1,232,352.00
1984	$ 2,079,996.00

3. Total claims paid by plan at end of:

1981	$ 37,165.00
1982	$ 1,144,686.00
1983	$ 2,463,703.00
1984	$ 3,104,604.00

4. Total assessment to members of plan for:

1981	$ 100,000.00
1982	$ 1,300,000.00
1983	$ 2,000,000.00
1984	$ 1,683,925.00 (Collected)

5. What was the cost to administer the plan in:

1981	$ 28,212.00
1982	$ 85,206.00
1983	$ 156,964.00
1984	$ 196,338.00

6. Does your state allow for a premium tax credit on the assessment? ___ Yes X No

Comments

7. Is there a maximum percentage assessment allowed towards the companies (such as 1%)? ___ Yes X No

Comments:

8. What was the percentage assessed to members (such as .8%) at the end of:

1981	N/A
1982	N/A
1983	N/A
1984	N/A

9. What were the total premiums collected by all companies in your state at the end of:

1981	$	N/A
1982	$	N/A
1983	$	N/A
1984	$	N/A

10. What were the total premium taxes paid by all companies in your state at the end of:

1981	$	N/A
1982	$	N/A
1983	$	N/A
1984	$	N/A

11. Did the above taxes paid include all companies or were some exempt from paying taxes (such as self-insurers)?
N/A

12. What problems has your plan experienced? Coordinating benefits with other government programs. Cash flow problems experienced first two years.

13. Additional comments:

Experience for Wisconsin shows that for each $1.00 of premium received, paid claims are $2.00

Wisconsin will be considering legislation in 1985 to allow for the members of the pool to receive general program revenue relief against some of their assessment. Legislation will also be considered to allow premium subsidies for those individuals with a low income.

Richard BEAULIEU, Appellant,
v.
James V. ELLIOTT, Appellee.

James V. ELLIOTT, Appellant,
v.
Richard BEAULIEU, Appellee.
Nos. 765, 766.

Supreme Court of Alaska.
Dec. 5, 1967.

Action for damages for personal injuries sustained in automobile accident. The Superior Court, Third Judicial District, Hubert A. Gilbert, J., entered judgment for plaintiff and defendant appealed. The Supreme Court, Dimond, J., held that record which disclosed implicit finding that plaintiff's wage earning capacity had been impaired for remainder of his work life of 29 years and disclosing testimony that plaintiff's inability to work would only continue from one to five years did not set forth findings of fact to enable reviewing court to have clear understanding of basis of trial court's decision that plaintiff sustained permanent 50 percent impairment of earning capacity and case would be remanded for more detailed and explicit findings of fact.

Judgment set aside and case remanded with directions.

1. Administrative Law and Procedure ⇐501

Findings or judgment of quasi-judicial administrative agency in proceedings before it are not admissible in subsequent action against person not a party to such proceedings.

2. Attorney and Client ⇐85

Admissions of fact by counsel during course of trial are binding on his client if made with express purpose of dispensing with formal proof of some fact at trial and are thus used as substitute for legal evidence of the fact.

3. Evidence ⇐264

Even if statement in defendant's brief filed subsequent to close of trial suggesting award to be made plaintiff for damages from personal injuries and containing computation based on 50 percent disability rating for next five years did constitute admission of fact binding on defendant, it admitted only that plaintiff's earning capacity had been 50 percent impaired for period of five years and not for plaintiff's remaining work life.

4. Trial ⇐388(1)

Trial court must comply meticulously with requirements of rule with respect to making of findings of fact in order to give reviewing court clear understanding of basis of trial court's decision and to enable reviewing court properly to appraise elements which entered into award of damages. Rules of Civil Procedure, rule 52(a).

5. Appeal and Error ⇐1177(8)
Trial ⇐395(1)

Record which disclosed implicit finding that plaintiff's wage earning capacity had been impaired for remainder of his work life of 29 years and disclosing testimony that plaintiff's inability to work would only continue from one to five years did not set forth findings of fact to enable reviewing court to have clear understanding of basis of trial court's decision that plaintiff sustained permanent 50 percent impairment of earning capacity and case would be remanded for more detailed and explicit findings of fact. Rules of Civil Procedure, rule 52(a).

6. Appeal and Error ⇐1176(1)

Whether trial court improperly used Air Force physical evaluation board's findings to award plaintiff $16,088 for impaired earning potential caused by depressive reaction could not be determined where trial court in awarding total of $169,937.25 made no mention of award for $16,088 for depressive reaction and trial court would be directed to make more detailed and explicit findings of fact on remand. Rules of Civil Procedure, rule 52(a).

7. Damages ⇐15

General principle underlying assessment of damages in tort cases is that injured person is entitled to be replaced as nearly as possible in position he would have occupied had it not been for defendant's tort.

8. Damages ⇐226

Damages awarded for future loss of earnings should not be reduced to present value.

9. Damages ⇐60

Disability retirement pay which plaintiff became entitled to upon retirement from Air Force by reason of injuries sustained in automobile accident would not be used to mitigate damages and reduce award for loss of future earnings.

10. Damages ⇐100

Damage award for impairment of earning capacity should not be reduced by amount representing estimated income taxes that injured party would have to pay on future income.

11. Damages ⇐99

Amount of income taxes which injured party would have had to pay had he earned amount awarded prior to trial should be deducted from the award for past loss of wages.

12. Damages ⇐60

Damages in form of past loss of wages sustained by serviceman as result of automobile accident could not be diminished or mitigated on account of payments received by serviceman from Air Force by virtue of contractual arrangement between serviceman and government for payment during periods of physical incapacity from performing his duty.

13. Damages ⇐132.5

Evidence that osteomyelitis had developed in bone of plaintiff's ankle injured in automobile accident and testimony that it was reasonable medical probability that osteomyelitis would remain with plaintiff for rest of his life supported award of $71,241 for pain and suffering that plaintiff would experience for expected 29 years remaining of his life.

14. Damages ⇐97

In determining amount of award for pain and suffering, juror or judge should necessarily be guided by some reasonable and practical consideration and should endeavor to make reasonable or sane estimate.

15. Damages ⇐97

There is no fixed measure of compensation in awarding damages for pain and suffering.

16. Damages ⇐97

Assessing damages for future pain and suffering by using per diem formula was not manifestly unfair or unjust.

17. Appeal and Error ⇐1013

Ultimate question for decision on review of award for damages for pain and suffering is whether sum awarded is reasonable and not how it was arrived at.

18. Appeal and Error ⇐1013

Award of damages will not be set aside on claim of excessiveness unless it is so large as to appear manifestly unjust or result of passion or prejudice or disregard of evidence or rules of law.

19. Damages ⇐226

Amount awarded for future pain and suffering will not be reduced to present worth.

20. Damages ⇐185(1)

Record disclosing no testimony by plaintiff's physician that he told plaintiff to bear as much weight as possible on injured ankle and disclosing that physician prescribed that plaintiff use crutches to tolerance by testing how much weight he would be able to put on his foot would not substantiate defendant's claim that plaintiff's pain and suffering were attributable to plaintiff's failure to follow orders of his doctor in not bearing as much weight as possible on his ankle.

21. Appeal and Error ⇐1176(1)

Record which failed to disclose why trial court used plaintiff's military pay rather than civilian pay scales in computing plaintiff's impairment of future earning capacity as result of injury to ankle, where plaintiff indicated that he might have retired from military service if he had not received medical discharge because of injury, was insufficient to enable reviewing court to determine whether award for impairment of future earning capacity was inadequate and trial court would be directed to make further findings on remand.

22. Appeal and Error ⇐1177(8)

Findings disclosed by record were not sufficient for purpose of determining whether evidence established that impairment of plaintiff's earning capacity was total or near total rather than 50 percent as determined by trial court.

23. Appeal and Error ⇐984(5)

Where liability is admitted but amount of damages is contested, question of which category of rule pertaining to computation of attorney fees is applicable is matter within discretion of trial court. Rules of Civil Procedure, rule 82(a)(1).

24. Costs ⇐173(1)

Where liability for injury to plaintiff's ankle was admitted but question of damages was contested in four-day trial resulting in award of $169,937.25 compensatory damages, trial court's assessing attorney's fees at rate prescribed by rule for cases concluded without trial was not abuse of discretion. Rules of Civil Procedure, rule 82(a)(1).

25. Appeal and Error ⇐981(1)
Costs ⇐12

Taxing of costs rests largely in sound discretion of trial court and reviewing court will not interfere with exercise of that discretion except in cases of abuse.

26. Costs ⇐154

Refusal to include in costs assessed against defendant certain expenses incident to taking of depositions which allegedly were necessary to establish liability, where plaintiff did not point out what depositions were involved, how they related to liability, when they were taken, or when concession of liability was made by defendants, was not abuse of discretion.

James J. Delaney, Jr., and James K. Singleton, of Delaney, Wiles, Moore & Hayes, Anchorage, for appellant in No. 765 and appellee in 766.

Robert M. Libbey, of Kay, Miller, Jacobs & Libbey, Anchorage, for appellee in No. 765 and appellant in 766.

Before NESBETT, C. J., and DIMOND and RABINOWITZ, JJ.

OPINION

DIMOND, Justice.

As a result of an automobile accident on April 13, 1963, James Elliott suffered a fracture dislocation of his right ankle. He brought this action for damages against Richard Beaulieu. Liability was conceded by Beaulieu, and the issue of damages was tried by the court without a jury. The trial court filed findings of fact and conclusions of law and entered judgment awarding Elliott $169,937.25 compensatory damages, costs of $82.40, and attorney's fees in the amount of $13,870.29. Both parties have appealed. We shall consider first Beaulieu's appeal.

Beaulieu's Appeal

In his brief on appeal, Beaulieu states 21 specifications of error. These resolve themselves into six principal issues to be reviewed and determined by this court.

1. *Impairment of Earning Capacity.*

There is no question but that Elliott suffered a permanent injury. The fracture dislocation of his right ankle, after several unsuccessful operations, resulted in a lack of a true ankle joint per se. As Dr. Scholtens said: "There is simply a ragged margin of rather sclerotic bone." He also stated, "It's not a joint any more but it's just a couple of pieces of bone grating against each other." Dr. Wichman testified that the joint was such that Elliott's ankle could be used only as a "peg". In

addition, osteomyelitis developed in the ankle bone and both Shelton and ... testified that the reasonable medical probabilities were that such disease would continue for the remainder of Elliott's life.

In its third conclusion of law the trial court stated:

> That plaintiff will suffer a future wage loss in the amount of $80,110.40, after taking into consideration the fact that his wage earning capacity has been impaired to the extent of fifty (50%) per cent plus the further fact that his rate of pay at the time of discharge was $402.30 per month and plus the further fact that he has a remaining work life of twenty-nine (29) years.[1]

Beaulieu contends that there is no evidence to support the court's determination that Elliott suffered an impairment of earning capacity which would result in a loss of future wages.

On this point we must remand the case to the trial court for the making of more explicit findings of fact. The court's conclusion as to loss of future wages contains the implicit finding that Elliott's wage earning capacity had been impaired for the remainder of his work life of 29 years. The court gives no indication, however, of the factual basis for such an ultimate finding, nor does it indicate how it reconciles such a finding with the testimony of two physicians who spoke on the subject of Elliott's capacity to be gainfully employed. Dr. Foster testified that in his opinion, while Elliott was unable to work at the time of the trial in 1966, this inability would at the most only continue from one to five years, and that the condition of Elliott's ankle would steadily improve so that within that period of time he would be able to engage in a sedentary type of occupation that would not involve prolonged walking, running or ... lifting. It was Dr. Foster's opinion that Elliott's future earning capacity was impaired only to the extent that he must move to clerical work rather than truck driving which he had done prior to 1963. Dr. Wickman testified that the prognosis of the condition of Elliott's ankle was satisfactory, that he would be limited in daily activities because he would have to use his ankle as a peg and would be deprived of the movements that a normal ankle offers, that it would be possible for him to be gainfully employed in a sedentary type of occupation, but that he could not give an estimate as to when that might be because he did not know how much dead bone was present in the ankle.

As to the extent of impaired earning capacity, the court reached the conclusion that there was a 50% impairment. But the court does not say how it arrived at that figure. And we are unable to tell from our review of the record.

Conceivably, the court's determination of a percentage impairment was influenced by Elliott's testimony that he had received a medical discharge from the United States Air Force in January of 1966, and that he was receiving from the government a 60% disability compensation, 40% of which was attributable to his ankle, and the remaining 20% to other medical problems not related to the accident. That this may have influenced the court appears to be a possibility, because the court made Finding of Fact No. 19 which provided as follows:

> That on October 17, 1964, plaintiff was discharged from the hospital to "travel status"; that on January 14, 1966, plaintiff was given a medical discharge from the Air Force, as above mentioned; that the physical evaluation board, found plaintiff to be 60% disabled, assigning a 40% disability because of the injuries to plaintiff's right ankle, a 10% disability to a "depressive reaction" and a 10% disability due to an impairment of vision; that the latter disability is not related to the accident of April 13, 1963.[2]

[1] If the court based its conclusion as to degree of impairment of earning capacity upon certain findings of an Air Force physical evaluation board, this would have been error. The findings or judgment of a quasi-judicial administrative agency in proceedings before it are not admissible in a subsequent action against a person not a party to such proceedings.[3]

The trial court also may have been influenced in its determination of the existence of a 50% impairment of earning capacity by what Elliott characterizes as admissions made by Beaulieu's trial counsel. In his opening statement at the trial, counsel for Beaulieu admitted that Elliott had sustained a "permanent injury", that this did not render him 100% disabled, and that the question for determination was just how much "he will lose in the future because of the injury." In his brief filed subsequent to the close of the trial Beaulieu's counsel said this:

> In summary, it is suggested by the defense that the Court make its award to the Plaintiff on the basis of the figures set forth below. These figures take into consideration: The prognosis established by the medical experts; the 60% disability rating established by the Air Force, of which 50% is attributable to Plaintiff's ankle injury; and, the Plaintiff's ability to be gainfully employed in the future as a clerk or transportation specialist in the transportation industry, or as a travel agent.
>
> * * * [I]t is * * * suggested that the following award be made:

For past lost wages	$10,000.00
For future "lost wages", or diminution of earning capacity, based on 50% disability rating for the next five years ...	11,500.00
For past pain and suffering	7,000.00
For future pain and suffering	10,000.00
For permanent disability and injury to ankle	25,000.00
Total	$61,500.00

[2,3] It is true that admissions of fact by counsel during the course of the trial are binding on his client,[4] if they are made with the express purpose of dispensing with the formal proof of some fact at the trial, and are thus used as a substitute for legal evidence of the fact.[5] It does not appear that this was the purpose of counsel's statement in his brief filed subsequent to the trial. But even if it did constitute an admission of fact binding on Beaulieu, it is an admission only that Elli-

1. The pertinent part of Conclusion of Law No. 3 originally read:
   "That plaintiff will suffer a future wage loss in the amount of $80,110.40, after taking into consideration the *fact that his disability is 50%*. * * * [Emphasis added.]
   The italicized words were amended by the court on Elliott's motion to read: "That his wage earning capacity has been impaired to the extent of fifty (50%) per cent."

2. Apart from Elliott's testimony just mentioned, we do not know where the trial court obtained information regarding the findings of the Air Force physical evaluation board. Such findings were not introduced into evidence at the trial.

3. Cady v. Fraser, 122 Colo. 252, 222 P.2d 422, 425 (1950).

4. Ferrolino Corp. v. General Aniline & Film Corp., 207 F.2d 912, 916-917 (7th Cir. 1953), cert. denied, 347 U.S. 953, 74 S.Ct. 673, 98 L.Ed. 1098 (1954), reh. denied, 347 U.S. 979, 74 S.Ct. 784, 98 L.Ed. 1118 (1954), reh. denied, 348 U.S. 851, 75 S.Ct. 19, 99 L.Ed. 671 (1954).

5. Dallas v. Stovall, 48 Wash.2d 619, 296 P.2d 312, 313 (1956); Humble Oil & Refining Co. v. Sun Oil Co., 190 F.2d 705, 711 (4th Cir. 1951), cert. denied, 342 U.S. 820, 72 S.Ct. 367, 96 L.Ed. 617 (1952).

ott's earning capacity had been 50% impaired for a period of five years, and not for the remaining work life of Elliott of 29 years as found by the trial court. Consequently, what Beaulieu's counsel said in his brief does not satisfactorily explain or establish the basis for the trial court's Conclusion of Law No. 3 which dealt with impairment of earning capacity.

[4, 5] It is most important that the trial court comply meticulously with the requirements of Civil Rule 52(a)[6] with respect to the making of findings of fact in order to give us a clear understanding of the basis of the trial court's decision, and to enable us to properly appraise the elements which entered into the court's award of damages.[7] This was not done in this case. Our review of the record leaves us with the conclusion that the trial court's findings with respect to damages for future impairment of earning capacity are not sufficiently detailed to afford us a clear understanding of the basis for the court's award.[8] We therefore will remand this case to the trial court for the purpose of making detailed and explicit findings as to Elliott's earning capacity and the degree of impairment in respect thereto.[9]

In his Finding of Fact No. 19 the trial court referred to the fact that the Air Force physical evaluation board had found Elliott to be 60% disabled, and that 10% of that disability was due to a "depressive reaction". In Finding of Fact No. 22 the court stated that a psychiatric evaluation of Elliott had been made, that the psychiatric findings were that Elliott had developed a depressive reaction attributable to permanent crippling, deformity of the lower extremity, semi-isolation, and a protracted period of surgery and recovery, and that such depressive reaction was proximately caused by the accident of April 13, 1965. Beaulieu contends that the judge used the Air Force physical evaluation board's findings to award Elliott $16,083.00 for that part of his impaired earning potential caused by a depressive reaction, and that this was error.

[6] We are unable to review this point because nowhere in the court's finding of fact or conclusions of law or judgment is there any mention of an award of $16,083.00 for a depressive reaction as an element of Elliott's impaired earning capacity. It may be that the trial court intended that of the 50% impairment of earning capacity which is found to exist, 10% was due to a depressive reaction. However, we are unable to determine if that is the case from the record as it now exists. This point should be clarified on a remand of the case for more detailed and explicit findings of fact.

2. *Future Wage Loss—Present Value.*

The trial court did not reduce the amount it found as damages for future impairment of earning capacity to present value. Instead, the court stated that "The interest rate reduction and decline in purchasing power of the dollar is off-set by pay increases plaintiff could have expected in the future from his military service." Beaulieu contends that the failure to reduce the damages to present value was prejudicial error.

[7] The general principle underlying the assessment of damages in tort cases is that an injured person is entitled to be

6. Civ.R. 52(a) provides in part:
In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment • • •.

7. Patrick v. Sedwick, 413 P.2d 169, 174-176 (Alaska 1966); Hamilton v. Lotto, 391 P.2d 948, 949 (Alaska 1964); Spenard Plumbing & Heating Co. v. Wright Const. Co., 370 P.2d 519, 525-526 (Alaska 1962); Merrill v. Merrill, 368 P.2d 510, 518 (Alaska 1962); Dickerson v. Geiermann, 368 P.2d 217, 219 (Alaska 1962).

8. Patrick v. Sedwick, note 7 supra, 413 P.2d at 175.

9. Patrick v. Sedwick, note 7, supra, 413 P.2d at 176.

replaced as nearly as possible in the position he would have occupied had it not been for the defendant's tort.[10] In the case of impairment of future earning capacity, it is reasoned that a failure to reduce damages to present value would be to place the injured person in a better position than he would have occupied except for the defendant's tort, because the injured person would get all of his future wages long in advance and would be able to invest the lump sum and realize earnings on such investment during the intervening period.[11] For this reason—that money has the power to earn money—it has become the generally accepted rule that damages awarded for future loss of earnings should be reduced to present worth.[12]

[8] In applying the general rule, the Supreme Court of Washington has stated a formula for reducing awards of future earnings to present value which involves the "rate of interest (which) could fairly be expected from safe investments which a person of ordinary prudence, but without particular financial experience or skill, could make in that locality."[13] This formula, although empirical at best, is probably as definite as any that has been devised. But we believe that the rule for reducing awards, including the formula applied by the Washington court, ignores facts which should not be ignored. Annual inflation at a varying rate is and has been with us for many years. There is no reason to expect that it will not be with us in the future. This rate of depreciation offsets the interest that could be earned on government bonds and many other "safe" investments. As a result the plaintiff, who through no fault of his own is given his future earnings reduced to present value must, in order to realize his full earnings and not be penalized by reduction of future earnings to present value, invest his money in enterprises, other than those which are considered "safe" investments, which promise a return in interest or dividends greater than the offsetting rate of annual inflation. But ours is a competitive economy. By their very nature some enterprises backed by investors' money are going to fail with resulting loss to individuals. Thus, instead of being assured of earnings at rates greater than the annual rate of inflation, the injured plaintiff stands a chance of entirely losing his future earnings by unlucky or unwise investments. Since the plaintiff, through the defendant's fault and not his own, has been placed in the position of having no assurance that his award of future earnings, reduced to present value, can be utilized so that he will ultimately realize his full earnings, we believe that justice will best be served by permitting the trier of fact to compute loss of future earnings without reduction to present value. The plaintiff is more likely to be restored to his original condition under the rule we adopt than under the prevailing rule which calls for a discounting of the award for future earnings.

Our conclusion is fortified by another factor which also may not be ignored. This is the factor, relied upon by the trial judge, which involves wage increases that the injured plaintiff might have expected to receive in the future had he not been injured.

10. Hill v. Varner, 4 Utah 2d 166, 290 P.2d 448, 449 (1955); Restatement, Torts § 924 comment d, at 634-35 (1939); McCormick, Damages § 86, at 304 (1935). Accord United States v. Hatahley, 257 F.2d 920, 923, 79 A.L.R.2d 668 (10th Cir. 1958); Hoghett v. Caldwell County, 313 Ky. 85, 96, 230 S.W.2d 92, 21 A.L.R.2d 273 (1950).

11. McCormick, Damages § 86, at 304 (1935).

12. Wentz v. T. E. Connolly, Inc., 45 Wash.2d 127, 273 P.2d 485, 491 (1954); Borcherding v. Eklund, 156 Neb. 196, 55 N.W.2d 643, 650 (1952); Daughtry v. Cline, 224 N.C. 381, 30 S.E.2d 322, 324, 154 A.L.R. 789 (1944); Rigley v. Prior, 290 Mo. 10, 233 S.W. 828, 832 (1921); Restatement, Torts § 924 comment d, at 634-35 (1939); McCormick, Damages § 86, at 304 (1935); Annots., 77 A.L.R. 1439, 1446 (1932) 154 A.L.R. 796, 797 (1945).

13. Wentz v. T. E. Connolly, Inc., supra note 12, 273 P.2d at 492.

It is a matter of common experience that as one progresses in his chosen occupation or profession he is likely to increase his earnings as the years pass by. In nearly any occupation a wage earner can reasonably expect to receive wage increases from time to time. This factor is generally not taken into account when loss of future wages is determined, because there is no definite way of determining at the time of trial what wage increases the plaintiff may expect to receive in the years to come. However, this factor may be taken into account to some extent when considered to be an offsetting factor to the result reached when future earnings are not reduced to present value. Thus, if there is any fear that failure to reduce the present value will give the plaintiff more than he is entitled to because of the possibility of his making successful investments of the sum awarded at returns greater than the annual rate of inflation, such fear is obviated by the fact that the award may well be deficient in that it does not take into account probable wage increases that the plaintiff would ordinarily be expected to receive in the future.

3. *Retirement Pay.*

Elliott testified that he would receive disability retirement pay from the Air Force in the amount of $191.00 a month for the remainder of his life. Beaulieu contends that the trial judge committed prejudicial error in refusing to deduct the net present value of future retirement pay from the award for future loss of earnings. Beaulieu's argument is that to allow Elliott damages for future wage loss, in addition to his retirement pay, is to unjustly enrich Elliott by allowing him double compensation for his injuries.

[9] The general principle underlying the assessment of damages in tort cases is that an injured person is entitled to be replaced as nearly as possible in the position he would have occupied had it not been for the defendant's tort.[14] Elliott had been in the Air Force for about 18 years at the time of his discharge and he testified that he had intended to remain in the service for at least 20 years. If he had not been injured, Elliott could have continued to earn to his full capacity and, in addition, after 20 years' service, would have been entitled to retire and draw retirement pay.[15] By reason of his injuries, Elliott was entitled under law to be retired early for disability and draw retirement pay in lieu of retirement on a regular basis after completion of 20 years' service.[16] The award of damages for impaired earning capacity has the effect of putting Elliott in the same position he would have occupied had it not been for the injury, because the damages represent what Elliott could have earned had he not been injured and the disability retirement pay represents that which Elliott had earned and become entitled to under law by reason of his years of service in the Air Force. In other words, Elliott now receives an amount representing wages he could have earned were it not for the injury, plus retirement pay; had he not been injured, he would have received the full wages he could have earned during his remaining work life, in addition to receiving the retirement pay to which he would become entitled by reason of his years of service in the Air Force. Thus, Elliott, under the court's award, is getting no more than he would have gotten had he not been injured. The disability retirement pay Elliott is receiving should not be used to mitigate damages and reduce the award for loss of future earnings.

4. *Income Taxes.*

Beaulieu argues that the trial judge erred in failing to deduct from the damages awarded for impairment of future earning capacity an amount representing income taxes that Elliott would have had to pay on future income.

The courts are divided on this question. It is the more general view, supported by a majority of American decisions, that an amount representing future income taxes should not be deducted from the award.[17] As was stated by the Supreme Court of Rhode Island:

> This view has been adopted by the various courts on diverse grounds but primarily on the ground that the quantum of such taxation is of necessity in the realm of conjecture.[18]

[10] We adopt the majority rule. Income tax rates, provisions relating to deductions and exemptions, and other aspects of income tax laws and regulations are so subject to change in the future that we believe that a court cannot predict with sufficient certainty just what amounts of money a plaintiff would be obliged to pay in federal and state income taxes on income that he would have earned in the future had it not been for a defendant's tortious conduct. We hold that a damage award for impairment of earning capacity should not be reduced by an estimated amount representing income taxes that the injured party may be required to pay on future income. In awarding damages to Elliott for impaired earning capacity, the court did not err in failing to take income tax consequences into consideration.

[11] The rule we adopt has no application, however, as to the court's award of past wages in the amount of over $10,000.00. The reason for the rule—inability to predict with sufficient certainty what taxes would have to be paid—does not exist here, because taxes on income earned prior to trial can be easily calculated based on income tax laws and regulations as they existed at the time the wages would have been earned. The court erred in failing to deduct from the award for past loss of wages the income taxes Elliott would have had to pay had he earned the amount awarded prior to the trial.

5. *Past Loss of Wages.*

Elliott testified that he had not lost any military pay or allowances between the date of the accident in April 1955 and the date of his military discharge in January 1956. During that period of time Elliott was either hospitalized or on leave, except for the period January to August, 1954, when he was on duty status. The trial court awarded $10,752.85 for a partial past wage loss covering the period from the date of the accident to the day of Elliott's discharge from the Air Force, but excepting the period between January and August, 1954, when Elliott was on duty status.

Beaulieu contends that this award for past wages was error. His argument in essence is that the general principle underlying the assessment of damages in tort cases is that the injured person is entitled to be replaced as nearly as possible in the position he would have occupied had it not been for the defendant's tort, and that since Elliott suffered no loss of wages during the period in which he should be awarded none.

[12] In arguing that the award should be sustained, Elliott urges the adoption of the collateral source rule, which provides that damages may not be diminished or mitigated on account of payments received by plaintiff from a source other than the defendant.[19] We applied this rule as to workmen's compensation benefits in Ridgeway v. North Star Terminal & Stevedoring Co.[20] We apply the rule in this instance. By entering the military service, Elliott in effect agreed to perform certain duties and func-

14. Note 10 supra.

15. 10 U.S.C.A. §§ 8914, 8880, 8991 (1959).

16. 10 U.S.C.A. §§ 1201, 1402 (1959).

17. Annot., 63 A.L.R.2d 1295, 1296 (1959).

18. Odin v. Cardi, 218 A.2d 370, 377 (R.I. 1966). See also Dixie Feed & Seed Co. v. Byrd, 52 Tenn.App. 619, 376 S.W.2d 715, 719 (1963); appeal dismissed, 379 U.S. 15, 85 S.Ct. 117, 13 L.Ed.2d 84 (1964); Cunningham v. Roderiet Vinedegen, 323 F.2d 308, 313-315 (2d Cir. 1963); Spencer v. Martin K. Eby Const. Co., 196 Kan. 315, 350 P.2d 18, 22-25 (1960); Kawamoto v. Yamatake, 49 Haw. 42, 410 P.2d 976, 981 (1966).

19. Bell v. Primeau, 101 N.H. 227, 138 A.2d 729, 730, 7 A.L.R.3d 512, 514 (1962). The collateral source rule is followed in most jurisdictions. Annot., 7 A.L.R.3d 516, 520 (1966).

20. 378 P.2d 617, 650 (Alaska 1963).

tions in exchange for certain benefits given him by the government. One of these benefits was that he was to receive military pay and allowances during periods of physical incapacity from performing his duties. This was in the nature of a contractual arrangement between Elliott and the government when he became a member of the armed forces, and which he may have paid for by accepting wages lower than those he might have obtained from the performance of like duties in civilian life. The income that Elliott received from the government is not the result of earnings, but of such previous contractual arrangement.[21] Such a contractual arrangement was made for Elliott's own benefit, and not for the benefit of a tort feasor, such as Beaulieu. The latter has no right to claim the benefit of such an arrangement by having the damages awarded against him reduced by the amount that Elliott was paid by the government during the period of his disability. The trial court did not err in awarding damages for loss of wages during the period of Elliott's disability while he was still in the military service.

5. Future Pain and Suffering.

The court awarded Elliott $71,211.00 for pain and suffering that he would experience for the remainder of his life. Beaulieu contends that the evidence does not justify such an award.

An infection, osteomyelitis, had developed in the bone of Elliott's injured ankle. Elliott testified that from the time of the onset of the osteomyelitis he was required to keep his ankle in an upright position for a period of from four to five days on an average of once a month to alleviate the pain he experienced, that he suffered pain of a sufficient intensity to keep him awake the better part of the night on an average of one night per week, and that there was an open, draining sinus on his ankle. Beaulieu concedes that Elliott's testimony was sufficient to justify an award for past pain and suffering.[22] However, Beaulieu contends that there is a lack of substantial medical evidence to justify an award for pain and suffering in the future.

Dr. Wichman testified that the osteomyelitis would cause the sinus tract in Elliott's ankle to become obliterated or plugged by bone particles in the drainage fluid—osteomyelitis being the type of infection caused by the healing process in draining away or discarding dead bone—and that this caused a pressure build-up and a swelling with resulting pain.

Dr. Foster testified that the probable source of Elliott's pain was the presence of injured tissues which, throughout the injury, operation and infection, became so altered that with use they became sore. It is true, as Beaulieu points out, that Dr. Foster said that within approximately five years from the time of trial, Elliott would be able to return to work and would no longer be limited by the infection. But the doctor also testified that at the end of the five-year period Elliott would still have some pain, and that it was a reasonable medical probability that the osteomyelitis would remain with Elliott the rest of his life.

Dr. Scholtens gave his opinion as to the reasonable medical probability of the infection in Elliott's ankle continuing for the remainder of his life. He said:

> Yes, I have an opinion, and my opinion is that the infection present, by all odds, will continue, there's an excellent possibility for the rest of his life, no matter what medical attempts are made to clear the infection in the ankle. Present—the experience with osteomyelitis indicates that it's very, very difficult to treat, that cures are relatively infrequent. Recurrences of those that appear to be cured are frequent. For those reasons, I would feel that he, at present, has a chronic infection. He has the fuel for the infection, dead bone, and I think that this will continue in the future for as far as I can see.

And as to the reasonable medical probability of the general condition of the ankle improving or remaining the same, Dr. Scholtens said:

> I'd say that the chances are that his ankle will stay very much the same as it is, with no appreciable change. This is by far the greatest probability. * * * There's- there's a slight chance that it could get worse. There's a slight chance that it could get better, but—and I'm not talking in terms that if he never sees a doctor again. I mean if he's treated, I think the chances of this appreciably improving are slim or really of getting a great deal worse, that's what I'm saying.

[13] The trial court found that it was a reasonable medical probability that Elliott's condition, including the infection in the ankle and the pain, would continue for the remainder of his life. The medical evidence supports such a finding; we cannot say that it is clearly erroneous. Such a finding, in turn, justifies the court's conclusion that Elliott should be awarded damages for pain and suffering for the remainder of his life. An award of such damages was not error.

The trial court used a per diem formula in assessing damages for future pain and suffering. In its Conclusion of Law No. 5 the court said:

> That plaintiff is entitled to recover from defendant the sum of $78,636.00 for past and future pain and suffering, for his general physical disability and permanent crippling and for the fact that he will no longer be able to lead that sort of life to which he had become accustomed. The past pain and suffering is set at the sum of $7,500.00. The future pain and suffering of $71,211.00 is based upon a finding of $20.00 per day for 52 days per year and an additional $3.00 per day for 313 days per year for a total sum of $1,979.00 per year multiplied by 36 years.

Beaulieu contends that such a method of ascertaining damages constituted prejudicial error.

A similar contention was made by a defendant in Imperial Oil, Ltd. v. Drlik, 234 F.2d 4 (6th Cir. 1956), cert. denied, 352 U.S. 941, 77 S.Ct. 261, 1 L.Ed.2d 236 (1956), where the trial court had used a per diem formula in awarding damages for pain and suffering. It was argued there that damages for pain and suffering cannot be properly computed by using a mathematical formula. In answer to this argument, the Court of Appeals said:

> It remains to be considered whether the method used by the District Judge in determining the total amount was error as a matter of law. It may be that it was a novel one but it does not follow that it invalidates the award. In determining the amount of an award for pain and suffering a juror or judge should necessarily be guided by some reasonable and practical considerations. It should not be a blind guess or the pulling of a figure out of the air. At the same time there is no exact or precise measuring stick. Exact compensation is impossible in the abstract but the juror or judge should endeavor to make a reasonable or sane estimate. The practical considerations influencing a particular juror or judge or the reasoning used by him may very well differ with the method used by another juror or judge, yet each of such different methods or modes of reasoning may be a reasonable method of reaching the desired result. We are more concerned with the result reached by a reasonable process of reasoning and consistent with the evidence, than we are with which one of several suitable formulas was actually used by the juror or judge. It is not necessary for us to adopt the method used by the District Judge as a rule of law for the proper disposition of such an issue, and we do not do so. In our opinion, it was not an arbitrary or unreasonable approach to the problem presented and its application was so adjusted in the present case as to be consistent

21. Restatement, Torts § 920 comment c (1939).

22. The trial judge awarded Elliott $7,500 for past pain and suffering.

with the evidence and to reach a result which does not appear to us to be manifestly unjust. United States v. Puscedu, 5 Cir., 224 F.2d 5; City of Knoxville, Tenn. v. Bailey, 4 Cir., 222 F.2d 529, 531.[23]

[14-17] We agree with the foregoing. As we stated in Patrick v. Sedwick,[24] there is no fixed measure of compensation in awarding damages for pain and suffering, and such an award necessarily rests in the good sense and deliberate judgment of the tribunal assigned by law to ascertain what is just compensation. We can see nothing manifestly unfair or unjust about the method used by the trial court in assessing damages for future pain and suffering. In fact, as was suggested in the dissenting opinion in the Kansas case of Caylor v. Atchison, Topeka & Santa Fe Ry. Co.,[25] it appears to be a fair argument and a rational approach to treat damages for pain the way it is endured—day by day, month by month, year by year. Ultimately, however, the question for decision is whether the total sum is reasonable or not, regardless of how it was arrived at. We find no error in the method used by the trial court in awarding damages for future pain and suffering.

[18] Beaulieu contends that the total sum awarded is unreasonable and is grossly excessive. We shall not set aside an award on a claim of excessiveness unless it is so large as to strike us that it is manifestly unjust, such as being the result of passion or prejudice or a disregard of the evidence or rules of law.[26] Considering the evidence of permanent damage to Elliott's ankle, the osteomyelitis, and the pain and suffering he is likely to endure for the remainder of his life, it is our opinion that the award for future pain and suffering was not manifestly unjust.[27] And Beaulieu has not contended in his brief or in oral argument that the trial court acted through passion or prejudice.

Beaulieu contends that the court erred in not reducing the future pain and suffering award to present value. He relies principally on the case of Affett v. Milwaukee & Suburban Transp. Corp.,[28] where the court, after disapproving of the use of a mathematical formula for computing damages for pain and suffering, said: Logically, if this method were followed, the gross amount arrived at should be discounted to its present worth." [29]

[19] If an award for future pain and suffering must be reduced to present value when a mathematical formula is used, it must be for the same reason that an award for future earnings is discounted under the prevailing rule—i. e., because the plaintiff receives his damages for the future long in advance and is able to invest the sum awarded and realize earnings during the intervening period. But we have held that as to impairment of future earning capacity, the award should not be reduced to present value. The same reasoning applies here as to an award for future pain and suffering. Because of the annual rate of inflation offsetting dividends or interest that may be expected on "safe" investments, and of the risk of loss involved in making other investments, a plaintiff is more likely to be restored to his original condition had defendant not committed his tort by allowing the plaintiff his award for future pain and suffering without reduction to present worth.

Finally, Beaulieu contends that the greater part of Elliott's pain and suffering was attributable to his failure to follow his doctor's orders in not bearing as much weight as possible on his ankle, and therefore that such pain and suffering cannot be the basis for the recovery of damages.

Dr. Wichman did state that if he were asked by Elliott for treatment, he would suggest as much ambulation as possible, and that it was his opinion that complete ambulation would be his suggestion or prescription. However, there is no evidence that Dr. Wichman ever told Elliott to bear as much weight as possible on his ankle. All that Wichman said was that this is what he would prescribe if he were to treat Elliot for his injury.

[20] There is also no testimony by Dr. Foster that he told Elliott to bear as much weight as possible on his ankle. The doctor stated that he prescribed crutches and advised Elliott to use them to tolerance by testing how much weight he would be able to put on his foot, absorbing the rest with the crutches. When Dr. Foster was asked what his suggested course of procedure would be, based on his examination of Elliott's ankle, he stated:

> My suggested course of procedure is for Sergeant Elliott to continue bearing what—weight he can on his foot, to treat it when it becomes inflamed and sore and red by warm soaks and elevation, to continue on the use of the crutches up to the limits of comfort, to maintain his brace on his ankle as he is.

There is nothing in the evidence to show that Elliott had not done what Dr. Foster suggested that he do. The record does not substantiate Beaulieu's claim that Elliott's pain and suffering was attributable to his failure to follow the orders of his doctor.

Elliott's Appeal

As a basis for computing Elliott's impairment of future earnings for the remainder of his work life of 29 years, the court used Elliott's wage scale in the Air Force at the time of his discharge in the amount of $162.50 a month. On his appeal, Elliott claims that his future wage loss was greater than that determined by the court. The basis for his claim is that, considering evidence of his experience in truck driving and traffic management, the court ought to have determined what earnings Elliott probably would and could have received in civilian life—the wage scale there being higher for the same type of work than in the military service.

[21] We have held that this case must be remanded to the trial court for the purpose of making detailed and explicit findings as to Elliott's earning capacity and the degree of impairment in respect thereto. Such findings may contain the answer to the question as to why the court used Elliott's military pay, rather than civilian pay scales for equivalent work, as a basis for computing future wage loss for the entire period of 29 years, when Elliott had indicated that he may have retired from the Air Force at the end of 20 years of service which would have been approximately two years after his discharge if he had not received a medical discharge. In the absence of adequate findings and a clear understanding of the basis for the court's award, we are unable to pass upon Elliott's contention that the award for impairment of future earning capacity was inadequate.

[22] Similarly, we are unable to pass upon Elliott's contention that the evidence established that the impairment of his earning capacity was total, or near total, rather than 50% as determined by the court. Adequate findings as to Elliott's degree of impairment of earning capacity may afford a clear understanding of the basis for the court's determination. The findings are not sufficient for that purpose now.

Elliott's next point has to do with attorney's fees allowed by the court. Civil Rule 82(a) (1) provides as follows:

> Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be allowed

23. 224 F.2d at 11. See Annot., Per Diem or similar mathematical basis for fixing damages for pain and suffering, 69 A.L.R.2d 1347 (1958).

24. 413 P.2d 169, 176 n. 21 (Alaska 1966).

25. 190 Kan. 261, 374 P.2d 52, 61 (1962).

26. Imperial Oil, Ltd. v. Drlik, 234 F.2d 1, 11 (6th Cir. 1956), cert. denied, 352 U.S. 941, 77 S.Ct. 261, 1 L.Ed.2d 236 (1956).

27. Accord, Peters v. Benson, 425 P.2d 149, 152 (Alaska 1967); National Bank of Alaska v. McHugh, 416 P.2d 239, 241 (Alaska 1966); Patrick v. Sedwick, 413 P.2d 169, 175 (Alaska 1966).

28. 11 Wis.2d 604, 106 N.W.2d 274, 279, 86 A.L.R.2d 927, 936 (1960).

29. See also Bigley v. Prior, 200 Mo. 10, 23, S.W. 828, 832 (1921); Comment, 60 Mich.L.Rev. 612, 629-30 (1962).

to in fixing such fees for the party recovering any money judgment therein, as part of the costs of the action allowed by law:

ATTORNEY'S FEES IN AVERAGE CASES

	Contested	Without Trial	Non-Contested
First $2,000	25%	20%	15%
Next $3,000	20%	15%	12.5%
Next $5,000	15%	12.5%	10%
Over $10,000	10%	7.5%	5%

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court as a part of the costs of the action, in its discretion, in a reasonable amount.

The court awarded Elliott $13,870.29 attorney's fees based on the percentages listed in the "without trial" category of the above rule. Elliott claims that this was an erroneous application of the rule, and that a correct computation of attorney's fees should have been under the "contested" category[30] because even though liability was admitted, the question of damages was in issue and was contested in a four-day trial.

[23] In a case like this where liability is admitted but the amount of damages is contested, the question of which category of Civil Rule 82(a) (1) is applicable in computing attorney's fees is a matter within the discretion of the trial court. We limit our review in matters of this type to the question of whether the court exceeded the bounds of such discretion—whether such discretionary authority has been abused.[31]

[24] The court's reasons for assessing attorney's fees as it did was that liability was admitted, that the total recovery of damages was large, and that the attorney's fees allowed were adequate. Considering the character of this litigation and the amount of recovery,[32] we cannot say that the court's reasoning was not sound and that the manner of applying the rule amounted to an abuse of discretion.[33]

Costs were assessed against Beaulieu in the amount of $82.40. Elliott claims that it was error to not include in the costs certain expenses incident to the taking of depositions necessary to establish liability.[34]

[25, 26] The taxing of costs rests largely in the sound discretion of the trial court, and we shall not interfere with the exercise of that discretion except in cases of abuse.[35] Elliott claims that the depositions taken were necessary to establish liability. But he does not point out what depositions were involved, how they related to liability, when they were taken, or when the concession of liability was made by Beaulieu. In these circumstances we cannot find any abuse of discretion in the court's refusal to allow as costs the expenses incident to the taking of said depositions.

The judgment is set aside. The case is remanded to the superior court for the purpose of making appropriate findings as to the damage issues referred to in this opinion and for the further purpose of entering an appropriate judgment thereon.

30. Attorney's fees computed under the "Contested" category of the rule would have amounted to $17,843.73.

31. McDonough v. Lee, 420 P.2d 459, 465 (Alaska 1966); Kenai Power Corp. v. Strandberg, 415 P.2d 659, 661 (Alaska 1966); Patrick v. Sedwick, 413 P.2d 169, 178-179 (Alaska 1966); Professional Gen. Agency v. Raffetto, 391 P.2d 951, 954 (Alaska 1964); Davidsen v. Kirkland, 362 P.2d 1068, 1070-1071 (Alaska 1961).

32. Elliott's total recovery, in addition to costs and attorney's fees, was $103,037.25.

33. McDonough v. Lee, 420 P.2d 459, 465 (Alaska 1966).

34. Civ.R. 79(b) provides that "A party entitled to costs may be allowed * * * the necessary expenses of taking depositions for use at trial * * *."

35. Euler v. Waller, 295 P.2d 765, 768, 97 A.L.R.2d 155, 157-158 (10th Cir. 1961).

Warren A. TAYLOR, Appellant,
v.
DISTRICT COURT FOR the FOURTH JUDICIAL DISTRICT, AT FAIRBANKS, Appellee.
No. 704.

Supreme Court of Alaska.
Dec. 8, 1967.

The Superior Court, Fourth Judicial District, Everett W. Hepp, J., affirmed judgment of the district court which held attorney in contempt for failure to appear for trial at time set. Upon the attorney's appeal, the Supreme Court, Dimond, J., held that action of the attorney in agreeing to a trial setting in the superior court two days before date previously set for trial of another case in the district court, with result that the attorney was unable to appear for the district court trial when the superior court trial extended longer than two days, did not give rise to an inference, which would support judgment of contempt, of a willful disregard or disobedience by the attorney of the district court order in setting the district court case for trial.

Reversed and remanded with directions.

1. Contempt ⇐2

In order for there to be contempt, it must appear that there has been a willful disregard or disobedience of the authority or orders of the court. Rules of Civil Procedure, rule 90.

2. Contempt ⇐20

Attorney's failure to appear in court at time specified by order of the court may amount to an indirect, but not a direct, contempt of court. Rules of Civil Procedure, rule 90.

3. Contempt ⇐5(1)

Purpose of civil rule relating to contempt in requiring a motion in indirect contempt proceedings to be supported by affidavits is to afford one charged with contempt the procedural due process requirement of notice of the charge against him. Rules of Civil Procedure, rule 90(b).

4. Contempt ⇐51(1)

In proceeding by district court judge to hold attorney in contempt of court for failure to appear for trial at time required, it was unnecessary under rule for judge to have filed in his own court his affidavit stating that the attorney had failed to appear at the time required, in view of fact that the attorney was duly apprised of the charge against him by the district court's order directing the attorney to show cause why he should not be punished for the alleged contempt. Rules of Civil Procedure, rule 90(b).

5. Contempt ⇐20

Action of attorney in agreeing to a trial setting in the superior court two days before date previously set for trial of another case in the district court, with result that the attorney was unable to appear for the district court trial when the superior court trial extended longer than two days, did not give rise to an inference, which would support a judgment of contempt, of a willful disregard or disobedience by the attorney of the district court order in setting the district court case for trial. Rules of Civil Procedure, rule 90.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

HB

590

HOUSE
COMMITTEE REPORT JUDICIARY

(7)

Date referred: 2/14/86

FURTHER REFERRALS: FINANCE

DATE: 08 APRIL 1986

The TRANSPORTATION Committee has considered HB 590

"An Act relating to loitering on public highways."

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[X] zero fiscal note

SIGNING DO PASS:

Bette Cats

McDonald Ben

Dick Slutz

Walt Furnace

SIGNING OTHER RECOMMENDATIONS:

AV Marrou NO REC

Mike Dunn NO REC

Bette Cats
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

MAR 5 1986

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 590
Title : An act relating to loitering on public highways.

Sponsor : Jenkins
Requestor : House Transportation
Date of Request : 2/14/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Alaska State Troopers

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

KLewis

Prepared by : T. Michael Lewis TML
Division : Highway Safety Planning Agency
Phone : 465-4371
Date : 3/3/86

Approved by Commissioner : D Knowles
Agency : Public Safety
Date : 3/3/86

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

10/25/85

Alaska State Legislature

BOX V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

April 2, 1986

MEMORANDUM

TO: Representative Bette Cato, Chairman
House Transportation Committee

FROM: Representative Roger Jenkins

SUBJECT: HB 590 - An act relating to loitering on public highway

I have enclosed a copy of HB 590 and related backup for your review as well as the members of your Transportation Committee .

This bill was introduced as a package with two (2) other bills, HB 591 - An act relating to prostitution and HB 685 - An act relating to patronizing a prostitute.

The residents of my district are at their wits end over the problems of prostitution in the Spenard area. My community has suffered from the reputation associated with massage parlors which managed to invade the neighborhood in the early 1970's. The people in my district do not want an additional burden of prostitutes flaunting themselves on Spenard Road. They want the girls off the street. One of the driving forces for the reconstruction of Spenard Road is to help Spenard receive a long overdue facelift which includes realignment of the roadway with the possible condemnation of several currenting operating massage parlors.

This bill addresses the problems of loitering or wandering along a public street without any apparent reason or business. Alaska does not have any loitering or vagrancy statutes but other states do.

Thank you for your support and scheduling this bill for a hearing. It is my hope that this bill along with others mentioned above will help to discourage street walkers in Spenard.

Enclosures

TABLE OF CONTENTS

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Introduced: 2/14/86
Referred: Transportation,
Judiciary and Finance

IN THE HOUSE BY JENKINS

HOUSE BILL NO. 590

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to loitering on public highways."

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

* Section 1. AS 11.61.150(a) is amended to read:

(a) A person commits the crime of obstruction of highways if the person knowingly

(1) places, drops, or permits to drop on a highway any substance that creates a substantial risk of physical injury to others using the highway; [OR]

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard; or

(3) loiters in the highway right-of-way.

* Sec. 2. AS 11.61.150 is amended by adding a new subsection to read:

(d) It is an affirmative defense to a prosecution under (a)(3) of this section that no person suffered mental distress or physical injury as a result of the presence of the defendant in the highway right-of-way.

2

Int roduced: 2/14/86
Referred: Judiciary
and Finance

IN THE HOUSE BY JENKINS

HOUSE BILL NO. 591

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to prostitution."

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

* Section 1. AS 11.66.100 is amended to read:

Sec. 11.66.100. PROSTITUTION. (a) A person commits the crime of prostitution if the person

(1) engages in or agrees or offers to engage in sexual conduct in return for a fee;

(2) is an inmate of a place of prostitution; or

(3) loiters in or within view of a public place or public highway for the purpose of being hired to engage in sexual conduct.

(b) Prostitution is a class B misdemeanor, provided that a person who is convicted more than once under this section is guilty of a class A misdemeanor.

* Sec. 2. AS 11.66.150 is amended by adding new paragraphs to read:

(4) "inmate" means a person who engages in prostitution in or through the agency of a place of prostitution;

(5) "public highway" means a street or highway that is maintained by public funds.

Introduced: 2/17/86
Referred: Judiciary and Finance

IN THE HOUSE

BY JENKINS, PEARCE AND HANLEY

HOUSE BILL NO. 685

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to patronizing a prostitute."

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

* Section 1. AS 11.66 is amended by adding a new section to read:

Sec. 11.66.105. PATRONIZING A PROSTITUTE. (a) A person commits the crime of patronizing a prostitute if the person

(1) offers or agrees to pay another person a fee to engage in sexual conduct; or

(2) enters or remains in a place of prostitution with the intent to engage in sexual conduct other than as a prostitute.

(b) Patronizing a prostitute is a class B misdemeanor.

3

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - HB 590

SUPPORT

MARCH 3, 1986

"An act relating to loitering on public highways."

This bill makes it illegal for an individual to loiter upon the right-of-way of a public highway in Alaska.

As the primary contributing factor in all pedestrian accidents is "pedestrian in roadway" this bill would tend to help reduce pedestrian accidents by decreasing the number of individuals that loiter upon the right-of-way of a highway. It could apply to children playing in the right-of-way as well as to hitchhikers.

Recommended by: T. Michael Lewis
T. Michael Lewis, Program Director
Alaska Highway Safety Planning Agency

Date: 3/3/86

Approved by: James O'Vadon for
Robert J. Sundberg
Commissioner
Department of Public Safety

Date: 3/3/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 590
Title : An act relating to loitering on public highways.

Sponsor : Jenkins
Requestor : House Transportation
Date of Request : 2/14/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Alaska State Troopers

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : T. Michael Lewis
Division : Highway Safety Planning Agency
Phone : 465-4371
Date : 3/3/86

Approved by Commissioner : _____
Agency : Public Safety
Date : 3/3/86

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

10/25/85

Alaska State Legislature

4

BOX V
JUNEAU, ALASKA 99811
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2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

FOR IMMEDIATE RELEASE
February 17, 1986

Contact: Rep. Roger Jenkins
(907) 465-4530

REP. JENKINS INTRODUCED TWO BILLS THAT CRACKS DOWN ON PROSTITUTION

JUNEAU -- Representative Roger Jenkins introduced two bills Friday in the Alaska House of Representatives that are aimed at making the Spenard community safer. HB 591 is designed to rid Spenard and the rest of Alaska of street walkers Jenkins bill also toughens the penalty from 90 days imprisonment up to a year for second time offenders. The companion bill, HB 590, addresses the problems of loitering or wandering along public street without any apparent reason or business. Both bills zero in on the problem of street walking.

Jenkins said, "The residents of Spenard are sick and tired of being known as the prostitution headquarters for Anchorage. The results of my newsletter indicate that the number one issue is prostitutes flaunting themselves on Spenard Road." Jenkins continued, "Alaska currently does not have a law on the books that addresses loitering or wandering along a public street without any apparent reason or business. HB 590 and 591 get right to the heart of this problem."

Jenkins' Spenard District has been notorious over the years for its massage parlors. The community has suffered from the reputation associated with the night scene. Anchorage Neighborhood Housing Services, Inc. has over the last few years been helping the community to recycle and revitalize the neighborhood and are very supportive of all measures that will enhance the communities image.

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

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February 10, 1986

MEMORANDUM

TO: Representative Roger Jenkins

ATTN: Shirley Armstrong

FROM: Mark Torgerson MT
Legislative Analyst

RE: Prostitution Laws in Washington State
Research Request 86-107

You asked us to research Washington's Criminal Code to determine the punishment for first and second convictions of prostitution and patronizing prostitution (if Washington has such a crime). The Revised Code of Washington (RCW) Section 9A.88.030 makes prostitution a misdemeanor. Because of this, convicted offenders are not subject to mandatory sentencing (which applies exclusively to convicted felons). Moreover, RCW Section 9.92.030 states that those convicted of misdemeanors which contain no specific sentence (like prostitution) can be imprisoned for up to ninety days in jail and/or fined up to $1,000. Therefore, the sentencing judge can impose a jail sentence ranging from zero to ninety days regardless of the number of prior prostitution convictions. In addition, the judge has discretion to suspend part or all of the sentence. As written, this law applies equally to prostitutes and "customers."

Washington's law prohibits "patronizing juvenile prostitutes"--offering or engaging in sexual conduct with a person under eighteen years of age for a fee (RCW 9.968.100). This crime is a Class "C" felony subject to the state's recently enacted sentencing guidelines (presumptive sentencing). Under this scheme, a convicted offender's sentence depends upon two factors: 1) seriousness of the crime; and 2) the offender's prior criminal history. According to Marilyn Nowogroski, Assistant King County Prosecutor in Seattle, those convicted for a first offense of the above crime would probably receive a presumptive sentence ranging from 15 to 20 months, while second offenders' would get a 21 to 26-month sentence.

Attached are the pertinent sections of the Washington Criminal Code. In addition, I have attached copies of patronizing and prostitution statutes in Utah and California.

I hope that this information is helpful to you. Please call me if you have additional questions.

MT

Attachments

California

Any person violating any provision of this section is guilty of a misdemeanor. Nothing in this section shall prohibit a person, other than a public employee acting within the scope of his or her employment, from soliciting the injured person's attorney for the sale or use of such photographs.

Added by Stats 1971 ch 694 § 3; Amended Stats 1976 ch 495 § 1.

Amendments:

1976 Amendment: Added the last sentence.

Cross References:

Misdemeanors and punishment therefor: §§ 17, 19, 19a.

§ 647. [Disorderly conduct; Restrictions on prosecution]

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who engages in any act of prostitution. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself and to account for his presence when requested by any peace officer so to do, if the surrounding circumstances are such as to indicate to a reasonable person that the public safety demands such identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, toluene, any substance defined as a poison in Schedule D of Section 4160 of the Business and Professions Code, or any combination of any intoxicating liquor, drug, toluene, or any such poison, in such a condition that he is unable to exercise care for his own safety or the safety of others, or by reason of his being under the influence of intoxicating liquor, any drug, toluene, any substance defined as a poison in Schedule D of Section 4160 of the Business and Professions Code, or any combination of any intoxicating liquor, drug, toluene, or any such poison, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(ff) When a person has violated subdivision (f) of this section, a peace

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officer, if he is reasonably able to do so, shall place the person, or cause him to be placed, in civil protective custody. Such person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to such placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(g) Who loiters, prowls, or wanders upon the private property of another, in the nighttime, without visible or lawful business with the owner or occupant thereof.

(h) Who, while loitering, prowling, or wandering upon the private property of another, in the nighttime, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful business with the owner or occupant thereof.

(i) Who lodges in any building, structure, vehicle, or place whether public or private, without the permission of the owner or person entitled to the possession or in control thereof.

In any accusatory pleading charging a violation of subdivision (b) of this section, if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading; and, if the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in the county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on parole, or on any other basis until he has served a period of not less than 45 days in the county jail. In no such case shall the trial court grant probation or suspend the execution of sentence imposed upon the defendant.

In any accusatory pleading charging a violation of subdivision (b) of this section, if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous

conviction shall be charged in the accusatory pleading; and, if two or more of such previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in the county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on parole, or on any other basis until he has served a period of not less than 90 days in the county jail. In no such case shall the trial court grant probation or suspend the execution of sentence imposed upon the defendant.

Added Stats 1961 ch 560 § 2 p 1672; Amended Stats 1965 ch 1959 § 1 p 4487; Stats 1967 ch 1317 § 1 p 3140; Stats 1969 ch 204 § 1 p 488, ch 1319 § 2 p 2657; Stats 1970 ch 26 § 1 p 43, effective March 23, 1970; Stats 1971 ch 1581 § 1; Stats 1977 ch 426 § 1.

Amendments:

1965 Amendment: Added the second sentence of subd (b).

1967 Amendment: Substituted "influence of toluene or any substance defined as a poison in Schedule D of Section 4160 of the Business and Professions Code, or under the influence of any combination of any intoxicating liquor, drug, toluene or any such poison," for "combined influence of intoxicating liquor and any drug" wherever it appears after "or any drug, or the" in subd (f).

1969 Amendment: (1) Deleted the former introductory clause which read: "Every person who commits any of the following acts shall be guilty of disorderly conduct, a misdemeanor:"; (2) deleted "of the same sex" after "persons" in subd (b); (3) deleted "; or," after "thereof" at the end of subd (g); (4) added "(h)" at the beginning of the eighth paragraph; (5) substituted "(i)" for "(h)" at the beginning of the ninth paragraph; and (6) added the last two paragraphs.

1970 Amendment: (1) Added the introductory clause; (2) deleting "or" before "any drug" wherever it appears in subd (f); (3) deleted "or the influence of" after "any drug," wherever it appears in subd (f); (4) deleted "or" before "any substance" wherever it appears in subd (f); (5) deleted "under the influence of" before "any combination" wherever it appears in subd (f); (6) substituted "the" for "such" after "a violation of" in the last two paragraphs; (7) substituted "the" for "such" before "previous" wherever it appears in the next to last paragraph; (8) added "a period of" wherever it appears in the last two paragraphs; (9) deleted "or" before "on parole" in the last two paragraphs; (10) substituted "he" for "the defendant" after "basis until" in the last two paragraphs; and (11) substituted "the defendant" for "such person" after "sentence imposed upon" in the last two paragraphs.

1971 Amendment: Added subd (ff).

1977 Amendment: (1) Substituted "person" for "man" after "reasonable" in subd (e); and (2) amended subd (i) by (a) adding "vehicle," after "structure," in the first paragraph; (b) substituting "that" for "the" before "subdivision," and the semicolon for the comma after "in the accusatory pleading" wherever it appears in the second and third paragraphs.

Former Section: Former § 647, relating to vagrants, was enacted 1872, amended by Stats 1891 ch 117 § 1 p 130, Stats 1903 ch 89 § 1 p 96, Stats 1911 ch 316 § 1 p 508, Stats 1929 ch 35 § 1 p 78, Stats 1931 ch 288 § 1 p 696, Stats 1939 ch 1078 § 1 p 3002, Stats 1947 ch 989 § 1 p 2255, Stats 1955 ch 169 § 2 p 638, and repealed by Stats 1961 ch 560 § 1 p 1672.

Cross References:

Taking female for purpose of prostitution: § 266e.
Selling female for immoral purposes: § 266f.
Pimping: § 266h.
Pandering: § 266i.
Abduction of female for prostitution: § 267.
Registration of persons convicted of violating subd (a) or (d) of this section: § 290.

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Collateral Reference:
Witkin Crimes §§
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Forms:
Suggested form is

Proof of Facts:
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prostitution law

Law Review Article
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(2) Any film intended solely for use by an employer for the instruction of his employees.

History: L. 1977, ch. 93, § 11.

Separability Clause.

Section 12 of Laws 1977, ch. 93 provided: "If any provision of this act or the application of any provision to any person or circumstance is held invalid, the remainder of this act shall not be affected thereby."

Part 13

Prostitution

76-10-1301. Definitions.—For purposes of this part:

(1) "Sexual activity" means intercourse or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.

(2) "House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(3) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(4) "Public place" means any place to which the public or any substantial group thereof has access.

History: C. 1953, 76-10-1301, enacted by L. 1973, ch. 196, § 76-10-1301.

Collateral References.

Prostitution⇨1.
73 C.J.S. Prostitution § 1.
63 Am. Jur. 2d 364, Prostitution § 1.

76-10-1302. Prostitution.—(1) A person is guilty of prostitution when:

(a) He engages or offers or agrees to engage in any sexual activity with another person for a fee; or

(b) Is an inmate of a house of prostitution; or

(c) Loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(2) Prostitution is a class B misdemeanor, provided that any person who is twice convicted under this section shall be guilty of a class A misdemeanor.

History: C. 1953, 76-10-1302, enacted by L. 1973, ch. 196, § 76-10-1302.

Collateral References.

Disorderly House⇨2.
27 C.J.S. Disorderly Houses § 1.
24 Am. Jur. 2d 81, Disorderly Houses § 1.

Disorderly character of house as affected by the number of females who reside therein or resort thereto for immoral purposes, 12 A. L. R. 529.

76-10-1303. Patronizing a prostitute. — (1) A person is guilty of patronizing a prostitute when:

(a) He pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or

(b) He enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(2) Patronizing a prostitute is a class C misdemeanor.

History: C. 1953, 76-10-1303, enacted by L. 1973, ch. 196, § 76-10-1303.

Collateral References.

Prostitution⇨1.
73 C.J.S. Prostitution § 4.
63 Am. Jur. 2d 366, Prostitution § 2.

76-10-1304. Aiding prostitution.—(1) A person is guilty of aiding prostitution if he:

(a) Solicits a person to patronize a prostitute; or

(b) Procures or attempts to procure a prostitute for a patron; or

(c) Leases or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or

(d) Solicits, receives, or agrees to receive any benefit for doing any of the acts prohibited by this subsection.

(2) Aiding prostitution is a class B misdemeanor, provided that a second conviction under this section shall be a class A misdemeanor.

History: C. 1953, 76-10-1304, enacted by L. 1973, ch. 196, § 76-10-1304; L. 1974, ch. 32, § 29.

Compiler's Notes.

The 1974 amendment deleted former subd. (1)(a) which read: "Owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business; or"; redesignated former subds. (1)(b) to (1)(e) as (1)(a) to (1)(d); and made minor changes in phraseology and punctuation.

Cross-References.

Corroboration necessary, 77-31-14.

Husband and wife, competency as witness against each other, 77-44-4.

Collateral References.

Prostitution⇨1.
73 C.J.S. Prostitution § 7.
63 Am. Jur. 2d 372, Prostitution § 8.

Constitutionality and construction of pandering acts, 74 A. L. R. 311.

Law Reviews.

State Preemption and the Exercise of Municipal General Welfare Powers: A City's Anti-Prostitution Ordinance, 1968 Utah L. Rev. 419.

DECISIONS UNDER FORMER LAW

Construction.

Crime of pandering was complete when person encouraged female person to become prostitute; success was not necessary component of crime. State v. Gates, 118 U. 182, 221 P. 2d 878.

Corroboration.

Under former Penal Code prohibition of pandering, woman could not be accomplice but only victim, but under 77-31-14, testimony of prosecutrix must have been corroborated. State v. Smith, 2 U. (2d) 358, 274 P. 2d 246.

Testimony of another prostitute that she overheard conversation between defendant and prosecutrix, meaning of which was to induce prosecutrix to prostitution, was sufficient corroboration of prosecutrix' testimony to sustain conviction for pandering. State v. Woodall, 6 U. (2d) 8, 305 P. 2d 473.

Entrapment.

Prosecution for pandering was improper, where city detective deliberately planned and induced commission of offense which otherwise would not have been committed by anyone. State v. McCornish, 59 U. 58, 201 P. 637.

Information.

Prior to 1937 amendments to Code of Criminal Procedure, information for pandering was not sufficient which merely charged offense in language of statute;

Prisoners not to be treated with unnecessary rigor, Const. Art. I, § 9.

Witnesses in prison, Rules of Civil Procedure, Rule 45 (b).

Collateral References.

Criminal Law⇐1208(6).

24B C.J.S. Criminal Law § 1985.

21 Am. Jur. 2d 551, Criminal Law § 590.

Absence of accused at return of verdict in felony case, 23 A. L. R. 2d 456.

Validity, under indeterminate sentence law, of sentence fixing identical minimum and maximum terms of imprisonment, 29 A. L. R. 2d 1344.

DECISIONS UNDER FORMER LAW

Consequences of felony conviction.

Under former 76-1-36, which suspended civil rights and forfeited private trusts and public offices following conviction, no consequences followed a conviction of a felony except those declared thereby. People v. Flynn, 7 U. 378, 26 P. 1114.

Under former 76-1-36, justice of the peace held a "public office" and upon sentence for felony automatically forfeited his office; whether innocent or guilty of a felony and whether the conviction were later reversed, policy of law was to forbid continuance in office by one convicted and sentenced for a felony; forfeiture was not part of judgment or punishment and stay of execution did not stay the forfeiture. State v. Burke, 101 U. 48, 117 P. 2d 454.

Imprisonment in state prison.

Former Penal Code defined "felony" as an offense punishable by death or imprisonment in state prison without regard to whether the offense was otherwise characterized as a felony. United States v. Jones, 5 U. 552, 18 P. 233.

Prior to the 1973 Code, making, drawing, uttering and delivering check with intent to defraud third party was punishable by imprisonment in state prison, and therefore was a felony. State v. Scott, 105 U. 31, 140 P. 2d 929.

Indeterminate sentence.

Under former statute prescribing penalty for murder, a sentence "for an indeterminate term between ten years and life," upon conviction for second degree murder was fatally defective; court had to impose a fixed and definite term of imprisonment within prescribed limits. Lee Lim v. Davis, 75 U. 245, 284 P. 323, 76 A. L. R. 460.

One-year sentence.

Where imprisonment not exceeding one year was statutory penalty for manslaughter, defendant's sentence of "not exceeding one year" was a lawfully worded sentence of one year, which could be commuted by board of pardons at any time. State v. Empey, 65 U. 609, 239 P. 25, 44 A. L. R. 558.

Trial while in penitentiary.

Prior to the 1973 Code, a convict could be tried and sentenced for criminal offense committed in trying to escape from state prison, though trial and sentence were had before term of imprisonment had expired; person attained for one felony could be prosecuted criminally for another. People v. Flynn, 7 U. 378, 26 P. 1114.

Voluntary manslaughter.

Prior to 1973 Code, ten-year sentence for manslaughter was erroneous but not invalid in view of former statute which provided that if person should be sentenced for definite term, sentence should not be void. State v. Gardner, 62 U. 62, 217 P. 976.

76-3-204. Misdemeanor conviction—Term of imprisonment.—A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

(1) In the case of a class A misdemeanor, for a term not exceeding one year;

(2) In the case of a class B misdemeanor, for a term not exceeding six months;

(3) In the case of a class C misdemeanor, for a term not exceeding ninety days.

History: C. 1953, 76-3-204, enacted by L. 1973, ch. 196, § 76-3-204.

Collateral References.

Criminal Law⇐1208(1).

24B C.J.S. Criminal Law § 1986.

21 Am. Jur. 2d 551, Criminal Law § 590.

Washington

9A.88.010. Public indecency

Notes of Decisions

In a criminal prosecution under 18 U.S.C.A. § 1461, which prohibits the mailing of obscene materials, sensitive persons are included as part of the relevant "community" by whose standards obscenity is to be judged, for purposes of the First Amendment obscenity test applicable prior to the Miller decision. Pinkus v. United States (1978) 436 U.S. 412, 56 L.Ed.2d 293, 98 S.Ct. 1808

State's application of former maximum 20-year sentence for indecent exposure, after such offense had been reduced from felony to misdemeanor subsequent to petitioner's acquittal on indecent exposure charge due to insanity, so as to require his continued confinement in mental institution did not violate Eighth Amendment or state constitution. Matter of Big Cy Kolocotronis (1983) 99 Wash.2d 147, 660 P.2d 731.

State's application of the former maximum sentence for indecent exposure, after such offense had been reduced from felony to misdemeanor subsequent to petitioner's acquittal on indecent exposure charge due to insanity, so as to require his continued confinement in mental institution did not deny petitioner equal protection, in view of fact that such procedures were justified by state's interest in providing treatment to the mentally ill and in protecting the public from dangerous individuals. Matter of Big Cy Kolocotronis (1983) 99 Wash.2d 147, 660 P.2d 731.

State's application of the former maximum sentence for indecent exposure, after such offense had been reduced from felony to misdemeanor subsequent to petitioner's acquittal on indecent exposure charge due to insanity, so as to require his continued confinement in mental institution was not a denial of procedural due process, in view of fact that the procedures contained in statutory provisions relating to the criminally insane included the full panoply of protections required by due process and petitioner had taken advantage of them. Matter of Big Cy Kolocotronis (1983) 99 Wash.2d 147, 660 P.2d 731.

State's application of the former maximum sentence for indecent exposure, after such offense had been reduced from felony to misdemeanor subsequent to petitioner's acquittal on indecent exposure charge due to insanity, so as to require his continued confinement in mental institution did not deny petitioner substantive due process, in view of fact that his continued confinement was based on his continued dangerousness, as established by recent violent acts. Matter of Big Cy Kolocotronis (1983) 99 Wash.2d 147, 660 P.2d 731.

Section 9A.04.010, which stated in effect that statutory provisions relating to criminally insane were to apply to persons committed under prior law as being criminally insane and to any proceedings then pending or thereafter commenced unless it would not be in interest of justice or would be infeasible, did not indicate an intent that new maximum sentence, which went into effect when offense of public exposure was reduced from felony to misdemeanor, was to be retroactively applied in determining maximum period of commitment of person acquitted of such offense due to insanity; even if statute would have been applicable to his case, it would have been infeasible to require reevaluation of case under the new statutes. Matter of Big Cy Kolocotronis (1983) 99 Wash.2d 147, 660 P.2d 731.

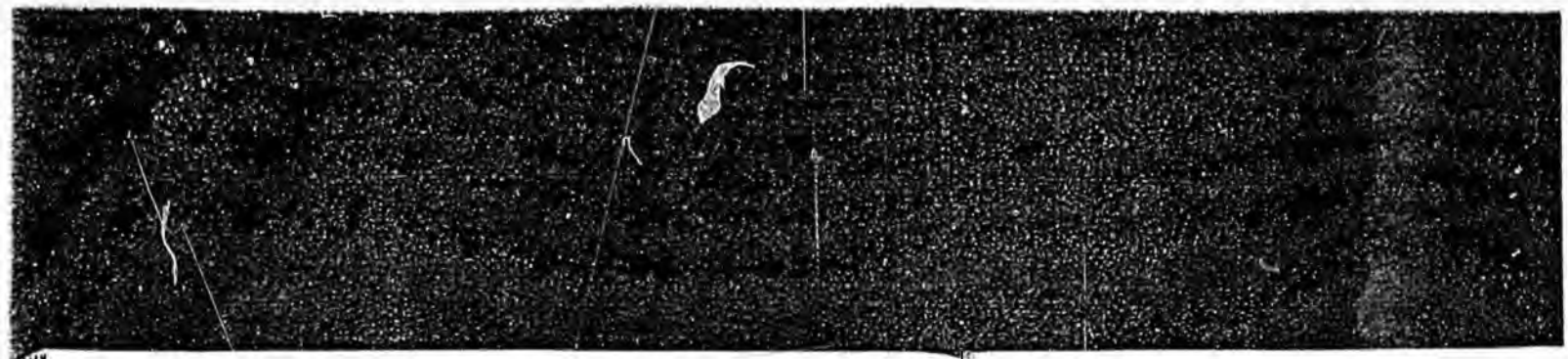
Proof was insufficient to sustain conviction for public indecency when defendant lured two boys into the upstairs area of his garage and masturbated in front of them. State v. Sayler (1983) 36 Wash.App. 230, 673 P.2d 870.

Conduct forbidden by public indecency statute is "public conduct" and public, in that context, must refer to place. State v. Sayler (1983) 36 Wash.App. 230, 673 P.2d 870.

9A.88.020. Recodified as § 9A.44.110

9A.88.030. Prostitution

(1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.



(2) For purposes of this section, "sexual conduct" means "sexual intercourse" as defined in RCW 9A.44.010(1) or "sexual contact" as defined in RCW 9A.44.100(2).

(3) Prostitution is a misdemeanor.

Amended by Laws 1979, Ex.Sess., ch. 244, § 15, eff. July 1, 1979.

Effective date—Laws 1979, Ex.Sess., ch. 244: See § 9A.44.902.

Law Review Commentaries

Void-for-vagueness issue: judicial response 56 Wash.L.Rev. 131 (1980–81).

Notes of Decisions

Heterosexual genital intercourse was hard core of conduct within the phrase "sexual conduct," and thus statute providing that person was guilty of prostitution if such person engaged or agreed or offered to engage in sexual conduct with another person in return for fee was not unconstitutionally vague. State v. Zuanich (1979) 92 Wash.2d 61, 593 P.2d 1314.

Where defendant accepted police officer's offer for a "date" for a "fee" of $60, and where, according to the officer, the term "date" in "street language" refers to an act of prostitution, the conduct of defendant fell squarely within the proscription of prostitution ordinance and analogous state prostitution statute. City of Yakima v. Emmons (1980) 25 Wash.App. 798, 609 P.2d 973.

While defendant argued that prostitution ordinance was so broad it could well be applied to a legitimate escort service or teenagers on a date, neither of these situations involves a specific agreement to engage in sexual intercourse in return for a fee, and in the absence of such a commercial arrangement, there is no violation of the ordinance. City of Yakima v. Emmons (1980) 25 Wash.App. 798, 609 P.2d 973.

Mere act of offering to engage in sexual intercourse for a consideration is a violation of the law; no overt act is required to complete the offense. City of Yakima v. Emmons (1980) 25 Wash. App. 798, 609 P.2d 973.

Prostitution ordinance, making it "unlawful for any person to engage in or offer or agree to engage in sexual conduct with another person in return for a fee," was not unconstitutionally vague, since there is a hard core of conduct—heterosexual genital intercourse—which saves it from the infirmity of vagueness; nor was the ordinance unconstitutionally overboard, despite defendant's claim that it might infringe on First Amendment rights. City of Yakima v. Emmons (1980) 25 Wash.App. 798, 609 P.2d 973.

Speech directed toward persuading someone to enter into an illegal arrangement, i.e., prostitution, does not involve constitutionally protected speech City of Yakima v. Emmons (1980) 25 Wash. App. 798, 609 P.2d 973.

There is nothing objectionable in making it a crime to agree to engage in act of sexual conduct even though one of parties may be physically incapable or mentally indisposed to fulfill the agreement. City of Yakima v. Esqueda (1980) 26 Wash.App. 347, 612 P.2d 821.

Where defendant, an avowed transsexual, had commercial purpose in agreeing to meet undercover agent after work and to engage in "sex" for $150 in that defendant's remuneration from cocktail lounge for evening depended solely upon his selling drinks to customers such as agent, immunity would not extend to male defendant from prosecution for agreeing to commit act of prostitution simply because he was unable to fulfill the agreement. City of Yakima v. Esqueda (1980) 26 Wash.App. 347, 612 P.2d 821.

Ordinance proscribing agreeing to engage in prostitution should apply equally to men as well as women. City of Yakima v. Esqueda (1980) 26 Wash.App. 347, 612 P.2d 821.

Since state's use of defendant's prior prostitution convictions to prove her intent to commit prostitution loitering for which she was charged was collateral, state had no burden of proving that her prior convictions were constitutionally valid. State v. Brown (1981) 30 Wash. App. 344, 633 P.2d 1351.

In prosecution for prostitution loitering under city ordinance, evidence was sufficient to support conviction. State v. Brown (1981) 30 Wash.App. 344, 633 P.2d 1351.

Evidence of a prior prostitution conviction is a circumstance which may tend to prove purpose or intent in a prostitution loitering case. State v. Brown (1981) 30 Wash.App. 344, 633 P.2d 1351.

This section governing promotion of prostitution proscribes engaging in conduct designed to aid act of prostitution, that is, sexual conduct with another in return for a fee, whereas child pornography statute (§ 9.68A.010 et seq.) is designed to prevent photographing or displaying sexually explicit conduct by minors, and either statute is "general" statute; therefore, prosecutor did not abuse her discretion in charging defendant with promoting prostitution in first degree, which was warranted by available evidence. State v. Shuck (1983) 34 Wash.App. 456, 661 P.2d 1020.

Municipal ordinance making a person guilty of prostitution loitering if he or she remained in a public place and intentionally solicited, induced, enticed, or procured another to commit prostitution was not unconstitutional on its face for overbreadth or vagueness. State v. VJW (1984) 37 V 1068.

Municipal ordi tution loitering process as impro proof to defen require defend presence or stat hence, did not shift burden t VJW (1984) 37 1068.

Municipal ord in repeatedly st stop motor vehi waiving of arm gesture to be c whether a perso citing, inducing, another to com unconstitutional that it specifica done with inte prostitution and what conduct w VJW (1984) 37 1068.

9A.88.060. Promoting prostitution—Definitions

Notes of Decisions

Words "agreement or understanding" in this section defining when person profits from prostitution were not open to attack as being unconstitutionally vague. State v. Yancy (1979) 92 Wash.2d 153. 594 P.2d 1342.

Section 9A.88.070 providing punishment for offense of promoting prostitution was not overbroad as infringing upon First Amendment freedoms. State v. Yancy (1979) 92 Wash.2d 153, 594 P.2d 1342.

Section 9A.88.070 providing punishment for promotion of prostitution was not aimed only at large commercial enterprises but was applicable to defendant, an assertedly amateur promoter. State v. Yancy (1979) 92 Wash.2d 153, 594 P.2d 1342.

Speech toward the persuasion of another to enter into an illegal arrangement does not enjoy constitutional protection. State v. Cann (1979) 92 Wash.2d 193, 595 P.2d 912.

Clause defining term "advances prostitution," within this section proscribing conduct promoting prostitution, is not unconstitutional (1979) 92 Wash

This section v son advances pr in any other c tute, aid, or fa prise of prostit fers or invitat signed to initia State v. Cann (P.2d 912.

Under this person advanc gages in any c tute, aid, or f prise of prostit the conduct an agreement wh within the stat ute covers m prostitution. Wash.2d 193,

Since this se prostitution" tive means of prosecutor sh with particul (1979) 23 Was

State v Thuna (1910) 59 Wn 689, 109 P 331, 111 P 768, 140 Am St Rep 902.

Law gives to woman who carries on indiscriminate illicit sexual relations with men designation of common prostitute, and whether she is such at any given time depends on course of her conduct. State v Chemeres (1944) 20 Wn 2d 712, 147 P2d 815.

In prosecution of female "for purpose of prostitution or sexual intercourse," evidence that third person had sexual intercourse with female subsequent to her abduction, together with evidence of defendant's acquiescence and apparent consent to such conduct, is relevant to issue of defendant's purpose or motive for the abduction. State v Humburgs (1970) 3 Wn App 31, 472 P2d 416.

9A.88.050 Prostitution—Sex of parties immaterial—No defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

(1) Such persons were of the same sex; or

(2) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.88.050.

COLLATERAL REFERENCES

63 Am Jur 2d Prostitution § 1.

NOTES OF DECISIONS

Term "every person" in statute includes females as well as males. State v Kelly (1918) 102 Wn 265, 172 P 1175.

9A.88.060 Promoting prostitution—Definitions. The following definitions are applicable in RCW 9A.88.070 through 9A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

U.S.—18 U.S.C.A. § 2252.
Utah—U.C.A.1953, 76-10-1206.5(3).
Va.—Code 1950, § 18.2-374.1.
W.Va.—Code, 61-8C-3.
Wis.—W.S A. 940.203(4).
Wyo.—W.S.1977, § 14-3-102.

9.68A.070. Possession of depictions of minor engaged in sexually explicit conduct

(1) A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a gross misdemeanor.

(2) As used in this section, "minor" means a person under sixteen years of age.

Added by Laws 1984, ch. 262, § 6.

9.68A.080. Processors of depictions of minor engaged in sexually explicit conduct—Report required

(1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) As used in this section, "minor" means a person under sixteen years of age.

Added by Laws 1984, ch. 262, § 7.

9.68A.090. Communication with minor for immoral purposes

(1) A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under sixteen years of age.

Added by Laws 1984, ch. 262, § 8.

9.68A.100. Patronizing juvenile prostitute

(1) A person is guilty of patronizing a juvenile prostitute if that person engages or agrees or offers to engage in sexual conduct with a minor in return for a fee, and is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under eighteen years of age.

Added by Laws 1984, ch. 262, § 9.

9.68A.110. Certain defenses barred, permitted

(1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law

enforcement and prosecution agencies shall not employ r investigation of a violation of RCW 9.68A.090 or 9.68A. does not apply to individual case treatment in a recogni or individual case treatment by a psychiatrist or psy under Title 18 RCW, or to lawful conduct between spou

(2) In a prosecution under RCW 9.68A.050, 9.68A.(9.68A.080, it is not a defense that the defendant did no the child depicted in the visual or printed matter: *Pro* defense, which the defendant must prove by a prep evidence, that at the time of the offense the defe possession of any facts on the basis of which he or she have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040 or 9.68 defense that the defendant did not know the alleged vic *ed,* That it is a defense, which the defendant must pro ance of the evidence, that at the time of the offer reasonably believed the alleged victim to be at least eig based on declarations by the alleged victim.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060 not a defense that the defendant did not know the al *Provided,* That it is a defense, which the defendant preponderance of the evidence, that at the time of the c ant reasonably believed the alleged victim to be at lea age based on declarations by the alleged victim.

(5) In a prosecution under RCW 9.68A.050, 9.68A.06(state is not required to establish the identity of the all

Added by Laws 1984, ch. 262, § 10.

Source:

Laws 1980, ch. 53, §§ 2, 3.
Former §§ 9.68A.020, 9.68A.030.

9.68A.120. Seizure and forfeiture of property

The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor explicit conduct.

(2) All raw materials, equipment, and other tangible p any kind used or intended to be used to manufacture o or printed matter that depicts a minor engaged in sexu and all conveyances, including aircraft, vehicles, or vess intended for use to transport, or in any manner to facil tion of, visual or printed matter in violation of 9.68A.060, but:

(a) No conveyance used by any person as a com transaction of business as a common carrier is subject this section unless it appears that the owner or other the conveyance is a consenting party or privy to a viol

(b) No property is subject to forfeiture under this any act or omission established by the owner of the pr committed or omitted without the owner's knowledge

9.92.010. Punishment of felony when not fixed by statute

Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine.

Amended by Laws 1982, 1st Ex.Sess., ch. 47 § 5.

Severability—Laws 1982, 1st Ex. Sess., ch. 47: See Historical Note following § 9.41.190.

United States Supreme Court

Lesser sentence upon plea of guilty constitutionally permissible, see Corbitt v. New Jersey (1978) 99 S.Ct. 492, 439 U.S. 212, 58 L.Ed.2d 466.

Notes of Decisions

When a sentence has been imposed for which there is no authority in law trial court has the power and the duty to correct the erroneous sentence, when the error is discovered. Petition of Carle (1980) 93 Wash.2d 31, 604 P.2d 1293.

Proper penalty under § 72.65.070, making it a crime to willfully fail to return to work release program, would be that provided by this section, applicable when specific penalty provision is absent. State v. Danforth (1982) 97 Wash.2d 255, 643 P.2d 882.

Trial court acts in excess of its jurisdiction if it imposes a sentence contrary to law, and such an issue relating to the trial court's jurisdiction may be raised for the first time on appeal. State v. Silvernail (1980) 25 Wash.App. 185, 605 P.2d 1279, certiorari denied 449 U.S. 843, 66 L.Ed.2d 51, 101 S.Ct. 124, rehearing denied 449 U.S. 1026, 66 L.Ed.2d 488, 101 S.Ct. 596.

Prisoner has no substantive right to sentence of shorter duration than maximum allowed by statute. Matter of Bonds (1980) 26 Wash.App. 526, 613 P.2d 1196.

Legislature may provide for civil and criminal penalties in the same act without converting a civil proceeding thereunder into a criminal or penal one. Zahradnik v. State, Dept. of Licensing (1982) 31 Wash.App. 771, 644 P.2d 742.

9.92.020. Punishment of gross misdemeanor when not fixed by statute

Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

Amended by Laws 1982, 1st Ex.Sess., ch. 47, § 6.

Severability—Laws 1982, 1st Ex. Sess., ch. 47: See Historical Note following § 9.41.190.

9.92.030. Punishment of misdemeanor when not fixed by statute

Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine.

Amended by Laws 1982, 1st Ex.Sess., ch. 47, § 7.

Severability—Laws 1982, 1st Ex. Sess., ch. 47: See Historical Note following § 9.41.190.

9.92.050. Commitment to state reformatory

Application

This section is inapplicable to felonies committ July 1, 1984. See § 9.92.900.

9.92.060. Suspending sentences

Whenever any person shall be convicted of any cri burglary in the first degree, arson in the first degr knowledge of a female child under the age of ten years may in its discretion, at the time of imposing sentence direct that such sentence be stayed and suspended until by such court, and that the sentenced person be placed a parole or peace officer during the term of such sus terms as the court may determine: *Provided*, That suspension of sentence, the court shall require the pay assessment required by RCW 7.68.035: *Provided f* condition to suspension of sentence, the court may re person to make such monetary payments, on such terms appropriate under the circumstances, as are necessary any order of the court for the payment of family su restitution to any person or persons who may have suff by reason of the commission of the crime in question or pleads guilty to a lesser offense or fewer offenses a prosecutor's recommendation that the offender be requ on to a victim of an offense or offenses which pursuant to a plea agreement, (3) to pay any fine suspended and the court or other costs incurred in the case, including reimbursement of the state for costs of to this state by extradition was required, and (4) to co or interlocal drug fund. In no case shall a sentence the provisions of this section unless the person if sente in a penal institution be placed under the charge of a p a duly appointed and acting officer of the institution to sentenced: *Provided*, That persons convicted in justice under supervision of a probation officer employed for board of county commissioners of the county wherein If restitution to the victim has been ordered under s section, the officer supervising the probationer shall effort to ascertain whether restitution has been m restitution has not been made, the officer shall infor that violation of the terms of the suspended sentence months prior to the termination of the suspended sen

Amended by Laws 1979, ch. 29, § 1, eff. June 7, 1979; Laws 1 § 4, eff. Jan. 1, 1983; Laws 1982, 1st Ex.Sess., ch. 47, § 8.

Application

This section is inapplicable to felonies commi July 1, 1984. See § 9.92.900.

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Trial court acts in excess of its jurisdiction if it imposes a sentence contrary to law, and such an issue relating to the trial court's jurisdiction may be raised for the first time on appeal. State v. Silvernail (1980) 25 Wash.App. 185, 606 P.2d 1279, certiorari denied 449 U.S. 843, 66 L.Ed.2d 51, 101 S.Ct. 124, rehearing denied 449 U.S. 1026, 66 L.Ed.2d 488, 101 S.Ct. 596.

Prisoner has no substantive right to sentence of shorter duration than maximum allowed by statute. Matter of Bonds (1980) 26 Wash.App. 526, 613 P.2d 1196.

Legislature may provide for civil and criminal penalties in the same act without converting a civil proceeding thereunder into a criminal or penal one. Zahradnik v. State, Dept. of Licensing (1982) 31 Wash.App. 771, 644 P.2d 742.

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nvicted of a gross misdemeanor for which no punishment y statute in force at the time of conviction and sentence, by imprisonment in the county jail for a maximum term of not more than one year, or by a fine in an amount of not more than five thousand dollars, or by both such fine.

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Severability—Laws 1982, 1st Ex. Sess., ch. 47: See Historical Note following RCW 9.41.190.

9.92.050. Commitment to state reformatory

Application

This section is inapplicable to felonies committed on or after July 1, 1984. See § 9.92.900.

9.92.060. Suspending sentences

Whenever any person shall be convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court, and that the sentenced person be placed under the charge of a parole or peace officer during the term of such suspension, upon such terms as the court may determine: *Provided*, That as a condition to suspension of sentence, the court shall require the payment of the penalty assessment required by RCW 7.68.035; *Provided further*, That as a condition to suspension of sentence, the court may require the convicted person to make such monetary payments, on such terms as the court deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund. In no case shall a sentence be suspended under the provisions of this section unless the person if sentenced to confinement in a penal institution be placed under the charge of a parole officer, who is a duly appointed and acting officer of the institution to which the person is sentenced: *Provided*, That persons convicted in justice court may be placed under supervision of a probation officer employed for that purpose by the board of county commissioners of the county wherein the court is located. If restitution to the victim has been ordered under subsection (2) of this section, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence.

Amended by Laws 1979, ch. 29, § 1, eff. June 7, 1979; Laws 1982, 1st Ex.Sess., ch. 8, § 4, eff. Jan. 1, 1983; Laws 1982, 1st Ex.Sess., ch. 47, § 8.

Application

This section is inapplicable to felonies committed on or after July 1, 1984. See § 9.92.900.

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ALR and C.J.S. references. — Power of municipality to require Sunday closing, 29 ALR 407, 420; 37 ALR 575.

Validity, construction and application of statute or ordinance requiring closing, during certain hours, of place where intoxicating liquor is sold, as affected by fact that such places are also used for other business, 139 ALR 756.

48 C.J.S. Intoxicating Liquors § 207.

Sec. 04.16.020. Solicitation of alcoholic beverages. (a) A person may not pay or receive from another a salary, percentage or commission to solicit or encourage a patron of licensed premises to purchase alcoholic or other beverages for consumption by a person other than the patron.

(b) A licensee, his agent, or employee may not knowingly permit a person to loiter within or about premises licensed under this title for the purpose of begging or soliciting a patron or visitor to purchase alcoholic or other beverages for the person who is begging or soliciting. (§ 3 ch 131 SLA 1980)

Former law construed. — See Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc., Sup. Ct. Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquor §§ 297, 298.

48 C.J.S. Intoxicating Liquors § 267.

Sec. 04.16.030. Sale or disposition of alcoholic beverages to drunken persons. A licensee, his agent, or employee may not with criminal negligence

(1) sell, give, or barter alcoholic beverages to a drunken person;

(2) allow another person to sell, give, or barter an alcoholic beverage to a drunken person within licensed premises;

(3) allow a drunken person to enter and remain within licensed premises or to consume an alcoholic beverage within licensed premises;

(4) permit a drunken person to sell or serve alcoholic beverages. (§ 3 ch 131 SLA 1980)

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 265, 266.

48 C.J.S. Intoxicating Liquors §§ 257, 258.

Sec. 04.16.040. Access of drunken persons to licensed premises. A drunken person may not knowingly enter or remain on premises licensed under this title. (§ 3 ch 131 SLA 1980)

Sec. 04.16.045. Obligation to enforce restrictions in licensed premises. A licensee, his agent or employee may not permit the consumption of alcoholic beverages by any person within licensed premises unless it is permitted by the license. (§ 3 ch 131 SLA 1980)

Revisor's note. — This section was originally enacted as AS 04.16.041 but was renumbered by the revisor of statutes.

Cross reference. — As to responsibility of licensee for violations, see AS 04.16.150.

(6) "witness" means

(A) a witness summoned or appearing in an official proceeding; or

(B) a person who the defendant believes may be called as a witness in an official proceeding, present or future. (§ 6 ch 166 SLA 1978; am § 20 ch 12 SLA 1980)

Cross references. — For definition of terms used in this title, see AS 11.81.900; for additional definition of judicial officer, see AS 22.20.010.

Effect of amendments. — The 1980 amendment inserted "a judge of the court of appeals" following "the chief justice" near the middle of paragraph (2).

NOTES TO DECISIONS

Applied in State v. Huggins, Ct. App. Op. No. 127 (File Nos. 6535, 6595), P.2d (1982).

Chapter 60. Offenses Against Public Policy.

Secs. 11.60.010 — 11.60.220. Lotteries; minors; opium dens; gambling; dangerous animals at large; vagrancy. [Repealed, § 21, ch 166, SLA 1978. For present law on gambling offenses, see AS 11.66.200 — 11.66.280; for present law on selling or giving of tobacco to minor, see AS 11.76.100.]

Sec. 11.60.225. [Renumbered as AS 44.09.015.]

Secs. 11.60.230 — 11.60.240. Full and equal accommodations, facilities, privileges. [Repealed, § 8, ch. 117, SLA 1965.]

Secs. 11.60.250 — 11.60.270. [Renumbered as AS 29.43.100 — 29.43.110.]

Sec. 11.60.280 — 11.60.320. [Renumbered as AS 42.20.300 — 42.20.340.]

Secs. 11.60.340 — 11.60.350. Conspiracy against rights; deprivation of rights under color of law. [Repealed, § 21, ch. 166, SLA 1978. For law on interference with constitutional rights, see AS 11.76.110.]

Chapter 61. Offenses Against Public Order.

Article

1. Riot, Disorderly Conduct, and Related Offenses (§§ 11.61.100 — 11.61.150)
2. Weapons and Explosives (§§ 11.61.200 — 11.61.250)

Article 1. Riot, Disorderly Conduct, and Related Offenses.

Section

100. Riot

110. Disorderly conduct

(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. 2d, Explosions and Explosives, §§ 121-130.

35 C.J.S., Explosives, § 12.

Possession of bomb, molotov cocktail, or similar device as criminal offense, 42 ALR3d 1230.

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 — 11.66.280)

Article 1. Prostitution and Related Offenses.

Section

100. Prostitution
110. Promoting prostitution in the first degree
120. Promoting prostitution in the second degree
130. Promoting prostitution in the third degree
140. Corroboration of certain testimony not required
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 complete 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, 34 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 prostitute 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. 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).

Collateral references. — 27 C.J.S., Disorderly Houses, §§ 1 to 18, 73 C.J.S., Prostitution, §§ 6, 7.

Constitutionality of statute conferring on chancery courts power to abate bawdyhouses as nuisances, 5 ALR 1474; 22 ALR 542; 75 ALR 1298.

Number of females who reside in house or resort thereto for immoral purposes as affecting 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 or custody of another, 54 ALR2d 1178.

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 1978).

NOTES TO DECISIONS

For case construing former rule as to corroboration of prostitute's testimony, see Johnson v. State, Sup. Ct. Op. No. 832 (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 11.81.900.

Article 2. Gambling Offenses.

like other property, is subject to escheatment. In essence the result is the same as where, in the case of an administered estate, the probate court requires the deposit to be delivered to the administrator, and ultimately, upon a finding of no heirs, turns it over to the state. Territory of Alas. v. First Nat'l Bank, 22 F.2d 377 (9th Cir. 1927).

Sec. 09.50.150. Escheat of money or property of defunct organizations or corporations. When an organization or corporation becomes defunct and leaves money or property belonging to it, and no person institutes a proceeding to have the money or property distributed with four years after the organization becomes defunct, the money or property escheats to the state and shall be delivered to the commissioner of revenue. If the person in possession of the money or property refuses to deliver it to the state, the attorney general shall bring an action to recover the money or property for the state. (§ 14.09 ch 101 SLA 1962)

Sec. 09.50.160. Recovery by claimant of money or property of defunct organizations or corporations. A person having a claim or interest in money or property of a defunct organization or corporation may bring an action for recovery of escheated money or property only within seven years after the corporation or organization becomes defunct. (§ 14.10 ch 101 SLA 1962)

Article 3. Abatement of Lewd Houses

Collateral references. — 24 Am. Jur. 2d, Disorderly Houses, §§ 23 — 36.

66 C.J.S., Nuisances, §§ 45, 77, 102 — 169.

Sec. 09.50.170. Abatement of places used for immoral act. A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for the purposes of lewdness, assignation, or prostitution or any other immoral act is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the lewdness, assignation, or prostitution is conducted, permitted, or carried on, continues or exists, and the furniture, fixtures, and other contents constitute a nuisance and may be enjoined and abated. (§ 20.01 ch 101 SLA 1962)

NOTES TO DECISIONS

A bawdyhouse is a nuisance per se, and it is also a public nuisance. Snyder v. Kelter, 4 Alaska 447 (1912).

A bawdyhouse is not a "house" within the meaning of the 4th amendment of the United States Constitution. United States v. Ashworth, 7 Alaska 64 (1923).

The intention of the legislature, as disclosed by this article, was to suppress houses of lewdness and prostitution, and to prevent persons from maintaining or conducting such houses, either at the place where they were being maintained or at any other place throughout the judicial division; also to abate the nuisance then existing, by closing up the same for the period of one year. Territory of Alas. v. House No. 24, 7 Alaska 611 (1927).

Article provides for injunction against maintaining nuisance and for abatement of building. — From a consideration of this article, it is apparent that it has a twofold application, namely, a personal injunction against setting up, maintaining, or conducting a nuisance of the character described, the injunction operating in futura, and the abatement of the building where the prescribed nuisance is being carried on. Territory of Alas. v. House No. 24, 7 Alaska 611 (1927).

And court has no discretion but to issue injunction and order abatement. — Where the evidence is clear that a house was maintained as a nuisance, there is no discretion in the court under this article but to issue the injunction, and also to order the abatement of the nuisance. Territory of Alas. v. House No. 24, 7 Alaska 611 (1927).

Testimony that house had a reputation as a house of prostitution is not sufficient. United States v. Rex Hotel, 8 Alaska 21 (1928).

Sec. 09.50.180. Injunction. When there is reason to believe that a nuisance as defined in AS 09.50.170 — 09.50.240 exists, the attorney general shall, or a citizen may bring an action to perpetually enjoin the nuisance, the person maintaining it, and the owner, lessee, or agent of the building or group upon which the nuisance exists. (§ 20.02 ch 101 SLA 1962)

Cross references. — For court rule on injunctions generally, see Civ. R. 65.

NOTES TO DECISIONS

Legislature may authorize enjoining nuisance violating criminal statute. — It is within the authority of the legislature to enlarge the powers of an equity court by empowering it to enjoin the maintenance of a nuisance, although the maintenance thereof may be a violation of a criminal statute. Territory of Alas. v. House No. 24, 7 Alaska 611 (1927).

Sec. 09.50.190. Dismissal. If the complaint is filed by a citizen, the action may be dismissed only upon approval of the attorney general and affidavit of the complainant and the complainant's attorney giving the reasons why the suit should be dismissed. The court may refuse to dismiss the suit and may direct the attorney general to prosecute the action. (§ 20.03 ch 101 SLA 1962)

Sec. 09.50.200. Contempt proceeding. If an injunction granted under the provisions of AS 09.50.170 — 09.50.240 is violated, the court may summarily try and punish the offender. A party found guilty of contempt under the provisions of AS 09.50.170 — 09.50.240 is pun-

ishable by a fine of not more than $1,000, or by imprisonment for not less than three months nor more than six months, or by both. (§ 20.04 ch 101 SLA 1962)

Cross references. — For contempt procedures, see Civ. R. 90.

Sec. 09.50.210. Order of abatement. Upon judgment that a nuisance exists, an order of abatement shall be entered directing the removal from the building or place of the fixtures, furniture, and movable property used in the nuisance and their sale in the manner provided for the sale of chattels under execution. The order shall also direct the closing of the building or place against its use for any purpose for a period of one year unless sooner released. A person who breaks and enters or uses a building, structure or other place so directed to be closed is guilty of contempt and shall be punished for contempt as provided in AS 09.50.200. (§ 20.05 ch 101 SLA 1962)

Sec. 09.50.220. Proceeds of sale. (a) The proceeds of the sale of the contents shall be applied as follows:

(1) to the payment of fees and costs of the removal and sale;

(2) to payment of the allowances and costs of closing and keeping closed the buildings or places;

(3) to the payment of plaintiff's costs;

(4) to the payment of any balance remaining to the owner of the property sold.

(b) If the proceeds do not fully discharge all the costs, fees, and allowances, the premises may also be sold under execution issued upon the order of the court and the proceeds of the sale applied in like manner. However, the building or realty in which the nuisance is conducted or real estate on which it stands may not be subject to a lien, judgment, or costs unless the owner, or an agent or representative of the owner, has been duly served with process in the action and been given an opportunity to show good faith and to immediately abate the nuisance. (§ 20.06 ch 101 SLA 1962)

Sec. 09.50.230. Release of premises to owner. If the owner of the premises has not been guilty of a contempt in the proceedings, and appears and pays all costs, fees, and allowances which are a lien on the premises, and files a bond with sureties approved by the court in the full value of the property as determined by the court to the effect that the owner will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one year thereafter, the court may order the premises to be delivered to the owner and cancel the order of abatement. The lease of the property does not release it from a judgment, lien, penalty, or liability to which it may be subject by law. (§ 20.07 ch 101 SLA 1962)

Sec. 09.50.240. Fine for contempt as lien on premises. A fine imposed as punishment for contempt against the owner is a lien upon the premises to the extent of the interest of that person in the premises and is enforceable and collectible by execution issued by the order of the court. (§ 20.08 ch 101 SLA 1962)

Article 4. Claims Against State.

NOTES TO DECISIONS

Cited in University of Alaska v. Geistauts, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), P.2d (1983).

Collateral references. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 87 — 89, 79 — 128.

81A C.J.S., States, §§ 174, 189, 194 — 202, 297 — 313.

Applicability of estoppel doctrine against state, 1 ALR2d 344.

Contributory negligence as defense to action by state, 1 ALR2d 827.

Tortious breach of contract as within consent by state to suit on contract, 1 ALR2d 864.

Denial of recovery for damage to property by negligence of governmental agents, on basis of immunity of state from suit without its consent, 2 ALR2d 694.

Declaratory relief with respect to unemployment compensation as suit against state, 14 ALR2d 835.

Liability for spread of fire purposely and lawfully kindled, 24 ALR2d 291.

Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision, 24 ALR2d 928.

Immunity of state or governmental unit or agency from liability for damages in tort in operating hospital, 25 ALR2d 203.

Tort liability for injury or damage resulting from insecticide and vermin eradication operations, 25 ALR2d 1057.

Tort liability in connection with destruction of weeds, 34 ALR2d 1210.

Governmental or proprietary nature of function, 40 ALR2d 927.

Liability for injury to property inflicted by wild animal, 57 ALR2d 255.

Maintainability of action where state owns an undivided interest in property, 59 ALR2d 937.

Liability for vehicle accident occurring because of accumulation of water on streets, 61 ALR2d 425.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability, 68 ALR2d 1437.

Liability of state, or its agency or board, for costs in civil action to which it is a party, 72 ALR2d 1379.

Liability of state for damages to successful plaintiff or relator in mandamus, 73 ALR2d 929.

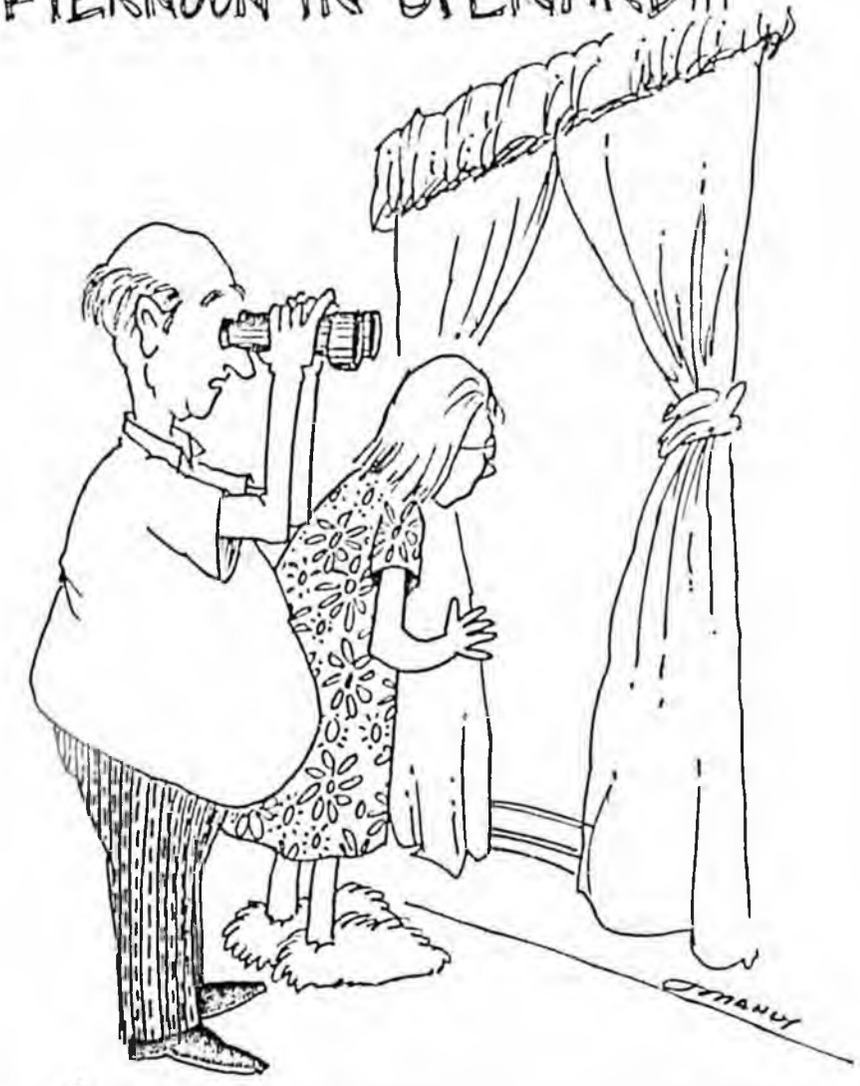
"Motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicle, 77 ALR2d 945.

Snow removal operations as within doctrine of governmental immunity from tort liability, 92 ALR2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 ALR3d 382.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 55 ALR3d 930.

ONE AFTERNOON IN SPENARD...



I DON'T KNOW... CAN'T TELL. IT'S EITHER A BUNCH OF TEACHERS ON THEIR WAY TO PICKET MITCH ABOOD, OR A BUNCH OF HOOKERS ON THEIR WAY TO PICKET ROGER JENKINS!

7

Spenard becomes new hangout for hookers

Continued from Page C-1

"A bunch of girls — maybe five or six — came around all at once, and started, you know, the same old lines: 'C'mon baby, wanna have a good time?' I think I'll stay with the pickup from now on."

Other Spenard business owners also report seeing women prowling the street in groups, a practice that apparently grew more widespread this summer.

"These women nowadays are somethin' else, tough," said one Spenard nightclub bartender who asked to not be identified. "They're stronger than nine acres of garlic."

Police promise they'll pursue the streetwalkers no matter where they roam, Smith said. He added, however, that effective enforcement will require follow-through from city prosecutors and judges.

Smith said the women have told investigators they came to Anchorage in response to pressure in Lower 48 cities like Seattle, where judges are handing out 30-day sentences on a second conviction.

"That same sort of thing should probably be happening up here," Smith said.

At least one Spenard businessman says he welcomes the addition to the road's variety of entertainment offerings.

"I must say that there are a lot better dressed people along Spenard Road now than there ever were before," said Mr. Whitekeys, owner of the Fly by Night club. "It's like a beautification program. It's great, and Lord knows we could use it."

Anchorage Daily News 8/18/85

Hookers move to new turf

By LARRY CAMPBELL
Daily News reporter

Police efforts to rid downtown of streetwalkers have apparently just pushed the problem to Spenard Road, where prostitutes are plying their trade with a vigor not previously seen in the area, according to Spenard business owners.

From Fireweed Lane to Chugach Way, observers say they see women waving, shouting and pawing prospective customers in the evening hours. The complaints of businessmen along Spenard Road sound like those of downtown proprietors earlier this summer.

"I see them approaching cars, sometimes even standing out in the street, waving down guys," said Terry Yurashak, part owner and manager of Spenardo DeVinci's, a neighborhood nightclub. "It's a regular sideshow out there."

Spenard's problem is apparently the result of a police crackdown on downtown sidewalk prostitution earlier this season, said Capt. Del Smith, head of police investigations and commander of the department's General Investigative Unit. Officers of that unit conduct vice investigations and are most familiar with the city's prostitution problem.

"It appears that we've driven at least some of them out of downtown," said Smith. On Tuesday night, one of his investigators counted five known prostitutes in the central business district, down from the average of 35 women actively selling sex downtown, he said.

While the location has changed, techniques apparently have not.

In early July, two visitors to Anchorage reported being accosted by gangs of women downtown. The same technique is apparently taking hold in Spenard, said Nash Gomez, owner of Pancho's Villa, a Mexican restaurant at 31st Avenue and Spenard Road.

"Last week I got off and went to my car," Gomez said. "I usually drive my old pickup, but that night I had my Continental.

See Page C-3, SPENARD

Anchorage Daily News Saturday, June 22, 1985 a-19

Influx of streetwalkers stirs protest downtown

By LARRY CAMPBELL
Daily News reporter

A skirmish in a smouldering battle between downtown merchants and prostitutes flared Friday evening when someone stretched a banner across a downtown street accusing Anchorage streetwalkers of having Acquired Immune Deficiency Syndrome.

The banner appeared across Eagle Street at Fifth Avenue about 9 p.m. Waving in the breeze about 25 feet above the street were the words, "These Hookers have A.I.D.S.," and , in smaller print, "Hooker Street."

Nearby, a woman who gave the name Olivia Williams, scoffed at the sign.

"Of course I'm a prostitute. What else would I be doing standing here," Williams said. "But I don't have no AIDS."

When police arrived, Williams pointed them to Michael Barnes, owner of Barnes Security, as the man who erected the banner. Barnes denied to police having anything to do with the sign which was removed by police.

"I think it's funny as hell, though," Barnes told a reporter. "I think whoever did it was doing a community service.

"Look at them," he added, gesturing to what was now a small knot of women who, along with Williams, were pointing and laughing at the banner. "This corner is filthy with them."

Friday night was not Barnes' first encounter with the women regularly seen standing at the corner across from the Sheraton Anchorage Hotel. Last week, he said, he brought a bullhorn with a siren to the corner, hoping to draw attention and drive them away.

"They called the cops, and this officer told me they (the women) could have me arrested for hassling them," Barnes said. "They got rights, but what kind of rights do we have who work and live down here."

The number of women standing on downtown sidewalks routinely increases during the warm summer months, according to police patrol and vice officers. Downtown merchants say they are upset this year because their sidewalks and storefronts are especially crowded.

The problem has spread from the traditional Fourth Avenue bar areas to both Fourth and Fifth avenues and nearly their entire lengths through downtown, Barnes said, judging from what he sees while patrolling downtown private businesses.

Williams, who says she is a year-round regular in Anchorage, said she thinks the summer migration is no worse than other summers. Women who come from Outside, like Hawaii and California, tend to be more aggressive, she said.

July 3, 1985 Anchorage Daily News

East side business owners take case against streetwalkers to city officials

By LARRY CAMPBELL
Daily News reporter

During the time when most of the city's streetwalkers are off duty, downtown business owners were on their feet, railing at city officials Tuesday morning about what those women do when plying their trade.

The problem of streetwalkers parading their wares on downtown sidewalks has never been worse, especially in the east section of downtown, charged about 60 business men and women during a meeting at the Red Rum Motor Lodge on Fifth Avenue.

Mayor Tony Knowles and other city officials could offer few quick solutions to the problem after getting an earful about strong-arm robberies, blatant sex-selling techniques and acts of vandalism allegedly committed by the women.

"They're waving down cars, swearing and leaving used condoms and other trash in front of our businesses," said Carl Rentschler, speaking for the East Anchorage Business and Property Owners Association. His insurance agency offices are at the corner of East Fifth Avenue and Eagle Street.

"When anyone calls the police, their pimps are tuned into the police frequencies on radios and they come around and pick the women up. By the time the police get there, they (officers) are asking us, 'What's the problem?'

"The pimps and prostitutes are in complete control," Rentschler said.

"This is the worst year in 30 years of business," said John Brown, general manager of the Lucky Wishbone restaurant at East Fifth Avenue and Juneau Street. "The prostitutes, the bums. They defecate on the floors in our restrooms, urinate out in the open in the parking lot. It's like there's no law against being animals in public."

"How come you can get all the 'ladies of the night' off the street when the governors come to town and no other time?" questioned Dave Yeabower, referring to the National Conference of Mayors last month. Yeabower said he attended the meeting as a concerned citizen, adding that he was accosted two weeks ago by a group of about 20 women who took his wallet, only to return it when they found no money inside.

The anger from the business owners and operators was nearly a repeat of the same sentiments two years ago by their counterparts only a few blocks to the west. Then, a block of bars at Fourth Avenue and C Street and a downtown walk-in center for the homeless near Fourth and D Street brought complaints from businesses in the Post Office and Sunshine malls and surrounding establishments.

Those bars and the walk-in center are gone now, for the most part bought up and dismantled by the city. Police also have increased foot patrols in the area, and the Brother Francis Shelter and Bean's Cafe are now located at the far eastern end of Third Avenue.

In addition, when women are arrested on prostitution charges, court magistrates sometimes set curfew and geographic restrictions that bar them from the heart of downtown. All these actions have tended to drive streetwalkers, the homeless and others to the eastern fringe of the downtown business area, said city officials.

The problem also is intensified by more than the usual amount of women coming to Anchorage from Outside, say police and prostitutes who live year-round in Anchorage.

City Public Safety Commissioner John Franklin said police foot patrols are continuing. But he noted that when an officer arrests a streetwalker or drunk, the arrest and required paperwork can take that officer off the street for an hour or more. By that time, the person can be released on minimal or no bond with only a requirement to appear in court on the charges.

Police Chief Brian Porter added that his department's efforts are hampered by the judicial system, which had no representative at the Tuesday morning meeting.

"We can make the arrest. But if the seriousness isn't

See Page C-3, PROSTITUTES

Prostitutes

Continued from Page C-1

felt throughout the judicial system it's not much good," Porter said, citing a recent instance in which a judge suspended his 120-day sentence of a woman charged with prostitution.

"That kind of thing is not going to solve the problem," Porter said.

Some businesspeople said nothing will happen until downtown business interests decide to attack the problem themselves.

"We had these talks last year and before that, but we never really got together and the problem's gotten worse," said Denny's Restaurants owner Ken Hume, representing the Downtown Anchorage Association. The restaurant chain's administrative offices are at East Second Avenue and Cordova Street.

"Unless we get away from the emotionalism and come up with some suggestions for the mayor, nothing will really happen," said Hume

Hookers switch to theft

By LARRY CAMPBELL
Daily News reporter

Some downtown street walkers have apparently chosen a hard-sell technique laced with theft to make money, spurred, authorities believe, by a surplus of prostitutes this summer.

For the past two weeks, an increasing number of men walking or driving around the east downtown area of Anchorage have become targets of ambush tactics by groups of women who slip their hands into victims' pockets for cash.

It's a technique unusual for Anchorage, and is prevalent this summer because of the larger than usual number of prostitutes plying their trade here, according to police and city prosecutors.

"For whatever reason, there are more girls out there, and competition is tight," said Capt. Del Smith, chief of police investigations. "When you have a situation like that the robberies and thefts are always going to go up."

One of the attacks took place early Friday morning against two Oregon men driving downtown. While stopped at a stop sign at East Fifth Avenue and Eagle Street, Bud Howard said he and his son, Nelson, were mandated by female caresses.

"I'm 69 years old, and nothing like this has ever happened to me before," said Howard, on a fishing vacation with his son.

"All of a sudden, there were four or five girls on either side of my car," Howard said. "They asked things like, ... well, you know. I tried to wave 'em off. Then they opened the car doors and were all over us in a second."

Howard said he was able to keep one woman from grabbing the ignition key. Another woman draped herself across Howard's lap, pinning his arms down.

"I simply couldn't believe it," Howard said. "Grabbing for your crotch and saying things. One of 'em even got the back door open and was trying to get in."

Howard said that after about two minutes, "It seemed longer, though," he was able to move on, pushing away the women as he drove off. After driving a block away he felt his pocket.

"They'd got my money clip," Howard said. "I knew one of 'em was in there."

The previous evening, another Anchorage visitor and three friends were similarly attacked. The victim, a Seattle insurance representative who asked not to be named, said the four of them had just come out of the Great Alaskan Bush Company. After getting into their car, a woman gestured to all of them.

The men waved the woman off, but were soon pounced upon by five women who piled into the vehicle and started "reaching for the goods, so to speak," he said.

After kicking them out of the car — "no easy task," he said — three of the men noticed that their wallets were gone. The insurance man said he lost $340.

"You're just powerless because you don't want to punch them; all you can do is push them out of the bloody car," the victim said.

Police have begun working harder at making cases against downtown streetwalkers, Smith said. Officers are trying to bring more charges of loitering for the purposes of prostitution. Those cases are usually hard to make, however, because prosecutors must later prove that a suspect was standing around with the intent to sell sex.

"We have to have officers watching for repeated gestures, flagging down at least three or four cars," Smith said.

Winning a conviction also means finding a witness, most often a potential customer who will testify that the suspect actually tried to sell him sex, said Jim Ottinger, municipal prosecutor.

Prostitutes

Continued from Page A-1

See Back Page: PROSTITUTES

Anchorage Daily Times 6/23/85

Downtown prostitutes accused of having AIDS

Associated Press

Someone unhappy with the prostitutes congregating near the Sheraton Anchorage Hotel put a banner over the street Friday evening proclaiming "These Hookers Have AIDS."

Beneath the reference to the deadly Acquired Immune Deficiency Syndrome, the banner described Eagle Street at Fifth Avenue as "Hooker Street."

Henry, a woman who identified herself as Olivia Williams, scoffed at the sign.

"Of course I'm a prostitute. What else would I be doing standing here?" Williams said. "But I don't have no AIDS."

"I think it's funny as hell," said Michael Barnes, owner of Barnes Security. He was identified by Williams as the probable source of the banner.

"I think whoever did it was doing a community service," he said. But Barnes denied responsibility for the banner.

He said, however, the incident wasn't his first encounter with the women. Last week, he said, he brought a ladyhorn with a siren to the corner, hoping to draw attention to them and drive them away.

"[illegible] the cops, and this officer told me they could have me arrested for hassling them," Barnes said. "They got rights, but what kind of rights do we have who work and live down there?"

The number of prostitutes working the downtown streets increases during the warm summer months, but merchants say sidewalks and storefronts are especially crowded this year.

Williams, who said she is a year-round resident of Anchorage, said she thinks the summer migration is no worse than in the past. She also said the outsiders tend to be more ag-

Proprietors complain about prostitutes

by Earl Swift
Times Writer

Angry businessmen and women attended a special meeting with city officials Tuesday morning to voice their concern with Downtown's prostitutes. They said the prostitutes have robbed their businesses of customers, threatened them with physical harm and ruined their neighborhood's appearance.

But the meeting left many of those gathered with little hope that the situation will change quickly. Authorities told them prostitution cases are difficult to prosecute and will continue to be until changes are made to relevant state and city laws.

Anchorage Mayor Tony Knowles, Public Safety Commissioner John Franklin, Police Chief Brian Porter and Assistant Municipal Attorney Jim Ottinger met with about 75 store and hotel operators in the Red Ram Motel's dinner-theater to discuss what the latter described as an out-of-control prostitution problem on Downtown's Fourth, Fifth and Sixth avenues.

"We've tried calling the authorities only to see the prostitutes leave for 20 minutes in vans which are tuned to police frequencies," Carl Rentschler of the East Anchorage Business and Property Owners Association said.

"With as high as 20 prostitutes standing together, sometimes in bathing suits, waving down cars, soliciting, swearing, littering the sidewalks with used condoms and other trash, we now feel helpless," he said.

"We must watch the law being willfully broken daily, with no apparent relief in sight," he added. "Believe us, the pimps and prostitutes are in complete control — not the law enforcement authorities."

Meanwhile, police said that the department's Crisis Intervention Response Team — a unit specially trained to handle hostage situations and other high-tension incidents — will be deployed on foot patrol throughout Downtown for the rest of the summer.

Dave Yeabower, a Bush resident who told the panel he often visited Downtown Anchorage during trips to the city, said he had begun to avoid some areas after he was attacked and robbed by several prostitutes.

"These new ones, they're vicious," he said. "I really can't accept the fact that we can't put some senior officers on foot patrol to drive these people off the streets."

Chong Sanders, owner of the Far East Chinese Restaurant at 528 E. Fifth Ave., said she had been beaten by three prostitutes after refusing to allow the women in her business.

The meeting, announced by Knowles in a June 19 letter to local businessmen, came after one or more local residents suspended a banner over one Downtown intersection June 13, proclaiming the area "Hooker Street."

But Franklin, Porter and Ottinger said although officers often arrest purveyors in the world's oldest profession, their efforts are limited by constitutional law, low bails and low police manpower.

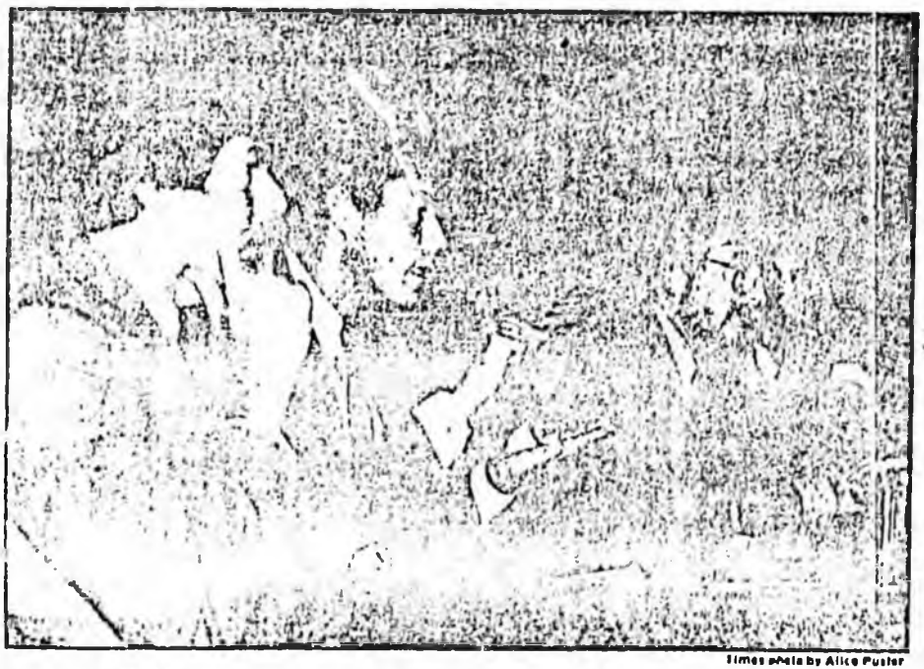
"We can't arrest anybody because they look like a hooker," Franklin said. "We can't arrest anybody because they're unemployed. Vagrancy ordinances are long gone. We can't arrest anybody just for being there.

"Twenty years ago, it was a lot more simple for the police."

The chief agreed. "The times have changed in terms of the tools available to the police department in order to control ... the streets," he said.

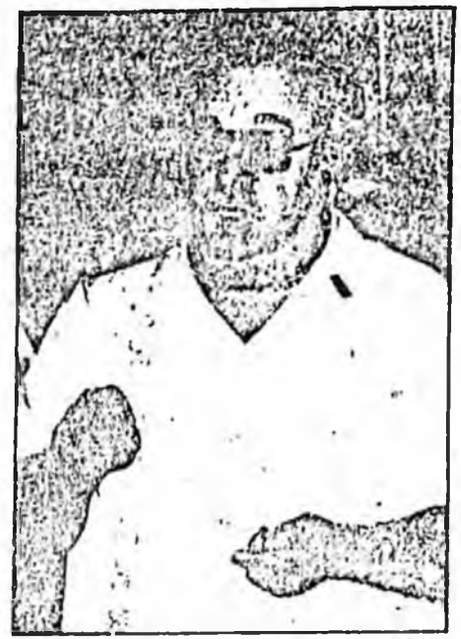
And although city police have made 50 loitering for prostitution arrests since May 1, he said, the department has been unable to further attack the problem because it cannot afford to devote a high number of officers to prostitution patrols for extended periods of time. "We have 'x' number of officers and we can only deploy 'x' officers to any one problem at any given time," he said.

Porter and other panels urged the business owners to contact local newspapers and politicians with their concerns.



Times photo by Alice Puster

From left, municipal attorney Jim Ottinger, Mayor Tony Knowles, Police Commissioner John Franklin and Chief of Police Brian Porter meet Tuesday with Downtown hotel and store operators



Times photo by Alice Puster

Al Ballone of Public Employees Union speaks at the public meeting on Downtown prostitutes

Anchorage Times 7/2/85

...Officers wage never-ending ..reet war

by Earl Swift
Times Writer

Larry Robinett steers his unmarked squad car onto East Fifth Avenue at Eagle Street, an intersection that has become a Porkchop Hill in the city's recently stepped-up battle against prostitution.

On a typical night, the sidewalks outside the area's hotels, bars and small shops are peppered with working women uniformed in breathlessly tight spandex or outrageously short skirts, many waving and taunting to potential customers as the avenue's traffic passes by.

But this is hardly a typical night, and Robinett — one of three Anchorage police investigators working in the department's General Investigations Unit, or GIU — senses it only minutes into his shift.

- Prosecutors say prostitutes are hard to convict
- Pimps play various roles with women they exploit
- Male prostitutes also walk Downtown

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Not a single high-heeled soul stands restlessly on the avenue's corners, nor in the alleys, nor in the storefront shadows cast by the sinking, late-evening sun.

Not one gum-chewing *fille de nuit* loiters outside a nearby topless-bottomless joint, firing pornographic glances at passing motorists.

No gangs of flittery streetwalkers are gathered at the southwest corner of Fourth Avenue and Barrow Street, a sidewalk crossing that for years has hosted a concentrated dose of bawdy, often violent, professionals.

"Damn," Robinett says as he eases his car onto Gambell Street and heads south. "The word must be out."

The word carries news of the police department's latest ploy in this never-won war on the city's wide-open vice. The GIU, along with the two investigators comprising the force's Felony Suppression Unit, have combined — temporarily, at least — into an attack squad.

The group's single-minded goal is to erase a large part of Anchorage's sex-for-hire industry, which this year boasts an estimated 200 to 250 full-time fe-

See Battle, page A-6

Battle against prostitution never ends

Continued from page A-1

male practitioners.

Tonight the units have changed their working hours, a practice they plan to continue to keep their quarry off balance.

It is an effort sparked by a new cast to an old problem. The area's prostitutes, according to dozens of police reports filed this year, are supplementing their carnally earned income with muggings, often performed on unsuspecting motorists who happen to get caught at the wrong red light with one of their car doors unlocked.

"It used to be," Robnett says, "that you'd pay $100 and get something in return. Now, you're just as likely to get rolled."

The problem, along with the industry's burgeoning ranks, have prompted hundreds of complaints from scores of local businesses, which have found that the women's presence makes for poor customer flow.

Tonight, the officers have apparently been second guessed. Despite a late shift start, Robnett and the other four officers on the hooker patrol — up against ranks perhaps 50 times their number — find Downtown deserted.

The trade's communication system — faster, it sometimes seems, than the detectives' sophisticated radios — has put out the warning. It is passed by telephone, by word of mouth and by whatever hidden intelligence sources the industry has at its disposal.

Mark O'Brien and Jim Ellis coast down Fifth Avenue in a big, four-door sedan that bears out of state plates and no external clues to its purpose. They, like Robnett, are working 7 p.m. to 3 a.m., late hours prompted by the past week's street activity.

"We'd patrol all through here and see maybe five of them the whole night until we got off at 11," O'Brien says. "And on my way home I'd see 50."

Now, as the time approaches 11, a few girls are beginning to make their way out on the town, and the cops — restless after a four-hour wait — are ready to do battle.

The officers have an intelligence system of their own, a system largely based on their memory of past court cases and their familiarity with many key figures on the streets. The battle between police and prostitute is as much one of information-gathering and dissemination as it is of anything else.

Speaking with the patrol's other members via portable two-way radios, they pass on their sightings and inquire about other areas of town. O'Brien announces that he has two prostitutes in sight near Fifth and Karluk. Another voice crackles with the news that three women are loitering at 12th and Gambell. Still another advises that several hookers have gathered at Fourth and A Street.

Things are heating up. Ellis, behind the sedan's wheel, swings the car to the curb, just a few feet from two young women who, perched on high altitude stiletto heels, are headed down Fifth in the same direction. They glance warily over their shoulders, recognize O'Brien, and speed up slightly.

"Come here," O'Brien orders.

The women approach. "Get off the street unless you want to go to jail," he tells them. "I don't want to see you down here. If I do, you're going to jail tonight." The women assure the officers that they're headed home.

A few minutes later, the cops are parked in a lot across Gambell from the Baranof Lounge, watching five women ply their trade on the opposite corner. If Fourth and Fifth avenues are the setting for the police department's fiercest battles with the trade, Gambell Street marks the city's DMZ, a weird, transitional neighborhood that until two months ago had never seen a prostitute.

Court-imposed restrictions placed on the women — and [illegible] to get those arrested for prostitution-related offenses out of the traditional "red light district" — have forced them to spread their operations to the south and east.

Instead of staying within a six-block area on Fourth and Fifth, the pros are now found as far south as 36th Avenue, as far east as Hyder Street, as far west as Spenard Road. The exodus has hurt business, the cops suspect — customers no longer know where to find them. But it's also made the policemen's job tougher. The five cops now have a third of the city to patrol.

At first it appears only three hookers are there, wildly dressed and tightly clustered. But O'Brien and Ellis point to two other women standing nearby, clad in pastel-colored slacks and conservative blouses. They look like college students, maybe Bible camp counselors.

"They've been up here for a couple weeks now," O'Brien says. "We picked up one of them the other night.

"I don't think they're making much money," he says, a reference to their dress — which hardly advertises the wares they offer for sale. "I just don't understand it. What they do make they hand right over to their pimp."

Their pimp, the detectives say, is a violent man who has battered both women in the recent past. Like most in the pandering profession, he bills himself as a "protector," someone who will offer his clients a place to stay and a guarantee that they won't be recruited by other pimps. But no one protects the women from their own pimps, and the men are often the greatest danger the hookers face.

"You'll see them driving along making pickups," O'Brien says of the men. "The girls will run out and hand over the money. But what are you going to do? The girls won't testify against them, and they'll tell you the guy is a friend of theirs and they owed him money. You can't make a case out of that."

Ellis guns the car across Gambell and into the Baranof's lot, and the women scatter, the Bible counselors headed south and the others moving north. They follow the latter first, chasing them up to Ninth Avenue, then turn around to tackle the others.

The women are crossing a grocery store parking lot, staring straight ahead despite the car's presence only a few feet aw[ay]. "Good evening," O'Brien sa[ys]. The women don't answ[er]. "Come here," he barks.

"I want you off the street," [he] tells them, then explains th[at] their refusal to comply with [his] wishes will spell a night at t[he] Sixth Avenue Jail.

"We were just going to t[he] store to use the phone," One [of] the women, not-so-Bible-like [at] close range, practically spits [at] him.

"I want you off the stre[et]," O'Brien reiterates.

"We have to call a taxi," t[he] woman nearly shouts. Her pa[rt]ner disappears into the su[per]market and reappears a few mi[n]utes later. "The cab'll be here [in] 10 minutes," she announces.

"Fine," Ellis answers. "[We'll] be back in eight."

A small hatchback pulls into [a] parking lot across the stre[et], three women inside. The car [is] one of many the officers have seen loaded with prostitutes, prompting the detectives to sur[mise] that the working girls mis[s]ing from the streets are inste[ad] using cars to look for action.

Their radios crackle with [the] news that many of Downtow[n's] regulars are staking claim [to] street corners in Spenard as E[llis] swings his sedan behind [the] hatchback. O'Brien picks u[p the] radio as he eyes the smaller [car], noting that it has no light[s]. "[The] girls seem to be working in [cars] tonight," he broadcasts. "[We're] making some traffic stop[s]."

That said, he and Ell[is] [pull] over the hatchback. [The] driver lacks a license and [they tell] the women to leave the [car] there. The scantily [clad] starts hoofing it toward [...]

"Get off the stre[et]," [he] warns again, "or you'll [go to] jail."

Back on Fi[fth] [...]

parking lot as the woman beg[ins] to cut across the tarmac. El[lis] stops the car only inches fr[om] her elbow.

"Aren't you in your restrict[ed] area?" O'Brien yells. T[he] woman nods. "I'm going the[re] now," she says, pointing acro[ss] the street.

"Aren't you in your area?" [he] repeats. She begins to simme[r]. "I told you," she says. "I'm ju[st] walking over there now. I ha[ve] to walk through here to ge[t] there."

"No," O'Brien snaps. "You['re] to stay out of that area. That's [a] lawful order of the court, and y[ou] are not to enter that area for a[ny] reason.

See Vice, page A-3x

Prostitutes descend on city's streets

Continued from page A-1

"I've talked to several of them who have told me that they came up from Seattle because down there they're getting 30 days in jail for second offenses," O'Brien said while on patrol last week. "A lot of these girls are new in town."

"There are about as many of them out here as there were back then," Robinett said. "They're all over the place. I've driven down here and seen 50 of them standing around."

Police Capt. George Novacky, who worked vice for the city force during the oil boom, agreed. "I would say that the visibility of the prostitutes is probably close to what it was during the pipeline days," he said Thursday. "Everyone's complaining about it. People in the community seem to be more outspoken in their concern about it than they were then."

Security firm president Mike Barnes, who said he instructs his guards to arrest at least one prostitute a week outside his Fourth Avenue office, said some of the women are particular problems.

"They'll jump in the car and molest you, or anyone you've got in the car with you, six or seven at a time," he said. "They're selling dope. You see them smoking a joint, walking down the street."

John Kennedy, office manager for Dr. Harry Nahorney's dental offices at 203 E. Fifth Ave., said he'd witnessed the women's aggression several times. "I've noticed it's become a little more competitive," he said, "because a car or truck will pull up to the curb and three or four of them will run to it."

Complaints, most of them from downtown business owners who say the women's presence hurts their image and ability to draw customers, have prompted a vigorous police attempt to clear streetwalkers from the area.

But the officers have so far found themselves undermanned for the task. The department's combined GIU and Felony Suppression units — comprising the detectives charged with addressing the problem — together boast only five members.

And, although their efforts are bolstered by daily anti-prostitution foot patrols conducted by the force's nine-member Crisis Intervention Response Team, the latter officers have been assigned regular shifts and days off — meaning that only two are usually on the street during a shift.

Complicating the situation further is the area the police are called upon to cover. While prostitution-related activities have typically been confined to several downtown blocks, many arrested streetwalkers are restricted from the area as part of their release or probation conditions.

Although the measure has kept many of the women from assembling at certain key intersections, it has also prompted many to seek workplaces outside downtown — and, therefore, has further stretched thin the police force assigned to control them.

Thursday. "I think we need to look at them a little bit more towards revising them. It's having an effect that we hadn't really anticipated."

Ottinger and several officers said the industry's decentralization [illegible] its the city's prosti[illegible]se prospective custon[illegible]ger know where to find them. But, they acknowledged, the trend may soon spark complaints from businesses and homeowners in areas previously clear of the women.

Meanwhile, more than a month after several downtown businessmen and women met with city officials to voice their concerns about prostitutes, several workers say the situation has gotten little better.

"I'll see them coming in to get something to eat," said John Brown, manager of the Lucky Wishbone restaurant at Fourth Avenue and Karluk Street. "Then they'll leave and cross the street to ply their trade. There's some nights they'll be over there throughout the night.

"I was surprised that there were some working down here, this far east," he said.

Louie Vukmir, owner of Fifth Avenue's Polar Bar, said prostitutes in his business's block have "hurt us. They're tough.

They're a problem," he said. "The last six months they've been going strong. I've seen a lot of hookers in this town over the years, and they've never been this strong."

Vukmir said he is building a fence behind his property so that prostitutes will not be able to use his alley as an escape route from police. "When we're done, they won't be able to run behind the building," he said.

Kennedy said the orthodontics profession has been affected, as well. "We've had a few customers transfer to other offices, because some of them don't feel it's appropriate for their children to be exposed to it.

"Both Dr. Nahorney and I have been solicited," he said.

Anchorage Times 7/21/85

City plagued by aggressive prostitutes

by Earl Swift
Times Writer

Prostitutes have descended on Anchorage's streets in numbers rivaling those of the city's pipeline years, and local officials say the influx has tested the resources of both police and prosecutors charged with fighting the age-old crime.

Anchorage police officers assigned to the department's General Investigations Unit said last week there may be as many as 100 female prostitutes working on the city's streets this summer, and that their visibility and aggressiveness at least equals that of prostitutes in Anchorage during the city's mid-1970s oil boom.

All told, the investigators said, some 200 to 250 women, including those not working on the street, are probably in the profession here. The total does not account for the area's male prostitutes, child prostitutes, and self-employed, high-priced call girls.

And the phenomenon, Cpl. Mark O'Brien, investigator Larry Robinett and other officers said last week, is at least partly due to the city's oil-rich reputation and stiffened criminal penalties against the women's activities in Lower 48 communities.

See Prostitutes, page A-5