STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 1502

By: Leftwich of the Senate

and

Lindley of the House

COMMITTEE SUBSTITUTE

[crimes, criminal procedure, and cities - prostitution - punishment for prostitution - increasing fines - authorizing certain municipalities to enact certain ordinances - prohibiting personal recognizance bond for prostitution - codification -

emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1028, is amended to read as follows:

Section 1028. It shall be unlawful in the State of Oklahoma:

(a) To keep, set up, maintain, or operate any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance with the intent of committing an act of prostitution, lewdness, or assignation;

(b) To knowingly own any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance used with the intent of committing an act of lewdness, assignation, or prostitution, or to let, lease, or rent, or contract to let, lease, or rent any such place, premises, or conveyance, or part thereof, to another with knowledge or reasonable cause to believe that the intention of the lessee or rentee is to use such place, premises, or conveyance for prostitution, lewdness, or assignation;

(c) To offer, or to offer to secure, another with the intent of having such person commit an act of prostitution, or with the intent of having such person commit any other lewd or indecent act;

(d) To receive or to offer or agree to receive any person into any house, place, building, other structure, vehicle, trailer, or other conveyance with the intent of committing an act of prostitution, lewdness, or assignation, or to permit any person to remain there with such intent;

(e) To direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the intent of such directing, taking or transporting is prostitution, lewdness or assignation;

(f) To knowingly accept, receive, levy, or appropriate any money or other thing of value without consideration from a prostitute or from the proceeds of any woman engaged in prostitution;

(g) To knowingly abet the crime of prostitution by allowing a house, place, building, or parking lot to be used or occupied by a person who is soliciting, inducing, enticing, or procuring another to commit an act of lewdness, assignation, or prostitution or who is engaging in prostitution, lewdness, or assignation on the premises of the house, place, building, or parking lot.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1031, is amended to read as follows:

Section 1031. A. Except as provided in subsection B or C of this section, any person violating any of the provisions of Section 1028, 1029 or 1030 of this title shall be guilty of a misdemeanor and, upon conviction, shall be ~~imprisoned~~ punished by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year~~; and the~~ or by fines as follows: a fine of not more

than Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any of such provisions, a fine of not more than Five Thousand Dollars ($5,000.00) upon the second conviction for violation of any of such provisions, and a fine of not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such provisions, or by both such imprisonment and fine. In addition, the court may require a term of community service of not less than forty (40) nor more than eighty (80) hours. The court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

B. Any person who engages in an act of prostitution with knowledge that they are infected with the human immunodeficiency virus shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than five (5) years.

C. Any person who engages in an act of child prostitution, as defined in Section 1030 of this title, shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than ten (10) years and by fines as follows: a fine of not more than Five Thousand Dollars ($5,000.00) upon the first conviction, a fine of not more than Ten Thousand Dollars ($10,000.00) upon the second conviction, and a fine of not more than Fifteen Thousand Dollars ($15,000.00) upon the third or subsequent convictions.

D. Any person violating any of the provisions of Section 1028, 1029 or 1030 of this title within one thousand (1,000) feet of a school or church shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not more than five (5) years or by fines as follows: a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any of such

provisions, a fine of not more than Five Thousand Dollars ($5,000.00) upon the second conviction for violation of any of such provisions, and a fine of not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such provisions, or by both such imprisonment and fine. In addition, the court may require a term of community service of not less than forty (40) nor more than eighty (80) hours. The court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 1081, is amended to read as follows:

Section 1081. Any person who shall procure any other person for prostitution, or who, by promise, threats, violence or by any device or scheme shall cause, induce, persuade or encourage another person to become a prostitute; or shall procure a place as inmate in a house of prostitution for another person; or who shall, by promise, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or who shall, by fraud, or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any other person to become a prostitute, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution, or who shall procure any other person, who has not previously practiced prostitution to become a prostitute within this state, or to come into this state or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any other person to become an inmate of a house of prostitution within this state, or to come into this state or leave this state for the purpose of prostitution, shall be guilty of pandering, and upon conviction for any offense

under this article shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a period of not less than two (2) years nor more than twenty (20) years and by fines as follows: a fine of not less than ~~Three Hundred Dollars ($300.00) and not to exceed~~ One Thousand Dollars ($1,000.00) and not more than Three Thousand Dollars ($3,000.00) upon the first conviction for such offense, a fine of not less than Three Thousand Dollars ($3,000.00) and not more than Six Thousand Dollars ($6,000.00) upon the second conviction, and a fine of not less than Six Thousand Dollars ($6,000.00) and not more than Nine Thousand Dollars ($9,000.00) for the third or subsequent convictions for such offense.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1101.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

Bail, by sufficient sureties, may be admitted upon all arrests for violations of Sections 1028, 1029, 1030, or 1081 of Title 21 of the Oklahoma Statutes and shall be in an amount of not less than Fifteen Thousand Dollars ($15,000.00). Bail on personal recognizance bond for such offenses shall not be admitted.

SECTION 5. AMENDATORY 11 O.S. 2001, Section 14-111, is amended to read as follows:

Section 14-111. A. The governing body of a municipality may provide for enforcement of its ordinances and establish fines, penalties, or imprisonment, as authorized by subsections B through D of this section, for any offense in violation of its ordinances, which shall be recoverable together with costs of suit. The governing body may provide that any person fined for violation of a municipal ordinance who is financially able but refuses or neglects to pay the fine or costs may be compelled to satisfy the amount owed by working on the streets, alleys, avenues, areas, and public grounds of the municipality, subject to the direction of the street

commissioner or other proper officer, at a rate per day as the governing body may prescribe by ordinance, but not less than Five Dollars ($5.00) per day for useful labor, until the fine or costs are satisfied.

B. ~~Cities~~ 1. Except for municipal ordinances related to prostitution, cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Two Hundred Dollars ($1,200.00) and costs or imprisonment not exceeding six (6) months or both the fine and imprisonment, but shall not have authority to enact any ordinance making unlawful an act or omission declared by state statute to be punishable as a felony; provided, that cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding six (6) months or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges.

2. For violations of municipal ordinances relating to prostitution, including but not limited to engaging in prostitution or soliciting or procuring prostitution, a municipal criminal court of record may enact ordinances prescribing an imprisonment not to exceed six (6) months, and fines as follows: a fine not to exceed Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any such ordinances, a fine of not more than Five Thousand Dollars ($5,000.00) upon the second conviction for violation of any of such ordinances, and a fine of not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such ordinances, or both such fine and imprisonment as well as a term of community service of not less than forty (40) nor more than eighty (80)hours.

C. Municipalities having a municipal court not of record may enact ordinances prescribing maximum fines pursuant to the

provisions of this subsection. A municipal ordinance may not impose a penalty, including fine and costs, which is greater than that established by statute for the same offense. The maximum fine for traffic-related offenses relating to speeding or parking shall not exceed Two Hundred Dollars ($200.00). For all other offenses, the maximum fine shall not exceed Five Hundred Dollars ($500.00). The ordinances may prescribe costs pursuant to the provisions of Section 27-126 of this title or imprisonment not exceeding sixty (60) days or both the fine and imprisonment; provided, that municipalities having only a municipal court not of record shall not have authority to enact any ordinance making unlawful any act or omission declared by state statute to be punishable as a felony; provided further, that municipalities having a municipal court not of record may enact ordinances prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding ninety (90) days or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges.

D. Municipalities having both municipal criminal courts of record and municipal courts not of record may enact ordinances, within the authority of this section, for each court.

E. No municipality may levy a fine of over Fifty Dollars ($50.00) until it has compiled and published its penal ordinances as required in Sections 14-109 and 14-110 of this title.

F. No municipality may levy a fine of more than Ten Dollars ($10.00) nor court costs of more than Fifteen Dollars ($15.00) for exceeding the posted speed limit by no more than ten (10) miles per hour upon any portion of the National System of Interstate and Defense Highways, federal-aid primary highways, and the state highway system which are located on the outskirts of any municipality as determined in Section 2-117 of Title 47 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 11 O.S. 2001, Section 28-102, is amended to read as follows:

Section 28-102. A. The municipal criminal courts of record shall have original jurisdiction to hear and determine all prosecutions when a violation of any of the ordinances of the city where the court is established is charged, as provided by Article VII, Section 1 of the Oklahoma Constitution.

B. Except in cases when the penalty provided for the violation of an ordinance is a fine in the amount of Two Hundred Dollars ($200.00) or less, excluding court costs, or by imprisonment, or by both such fine and imprisonment, all persons charged before such municipal criminal court of record shall be entitled to a trial by jury, unless waived by the defendant. Judgment and sentence imposed by the judge shall be as effective as if the same had been rendered and imposed by a jury.

C. The maximum punishment that may be levied in any municipal criminal court of record is a fine not exceeding One Thousand Two Hundred Dollars ($1,200.00) and costs, an imprisonment not to exceed six (6) months, or both such fine and imprisonment. Provided, the maximum punishment that may be levied in any municipal criminal court of record for violations of municipal traffic ordinances not including ordinances relating to driving a motor vehicle under the influence of alcohol or drugs is a fine not exceeding Five Hundred Dollars ($500.00) and costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. Provided, further that any municipal criminal court of record may levy a fine not to exceed One Thousand Dollars ($1,000.00) and costs, an imprisonment not to exceed six (6) months, or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges. Provided, further, that for violations of municipal ordinances relating to prostitution, including but not limited to engaging in prostitution

or soliciting or procuring prostitution, any municipal criminal court of record in cities with more than two hundred thousand (200,000) in population may levy an imprisonment not to exceed six (6) months, and fines as follows: a fine not to exceed Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any such ordinances, a fine of not more than Five Thousand Dollars ($5,000.00) upon the second conviction for violation of any of such ordinances, and a fine of not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such ordinances, or both such fine and imprisonment, as well as a term of community service of not less than forty (40) nor more than eighty (80) hours.

D. ~~When a~~ A defendant who has been in jeopardy for the same or any lesser included offense in the municipal criminal court of record or district court~~, he~~ shall not be prosecuted in any other court for the same or a lesser included offense.

SECTION 7. AMENDATORY 11 O.S. 2001, Section 28-114, is amended to read as follows:

Section 28-114. A. ~~If~~ Except as otherwise provided in this section, if a resident of a municipality served by a municipal court is arrested by a law enforcement officer for the violation of any ordinance for which Section ~~11 of this act~~ 28-114.1 of this title does not apply, or is arrested for violation of a nontraffic ordinance, the officer shall immediately release said person if the person acknowledges receipt of a citation by signing it. Provided, however, the arresting officer need not release said person if it reasonably appears to the officer that the person may cause injury to ~~himself~~ self or others or damage to property if released, that the person will not appear in response to the citation, or the person is arrested for an offense against a person or property. If said person fails to appear in response to the citation, a warrant

shall be issued for ~~his~~ the person's arrest and ~~his~~ the person's appearance shall be compelled.

If the arrested resident is not released by being permitted to sign a citation as provided for in this subsection, ~~he~~ the resident shall be admitted to bail either before or after arraignment, or shall be released on personal recognizance. A municipality may prescribe a fine for up to the maximum amount authorized by courts not of record for failure of a person to have a valid ~~driver's~~ driver license when charged with a traffic violation.

B. If a nonresident of a municipality served by a municipal court is arrested by a law enforcement officer for a violation of any ordinance for which Section ~~11 of this act~~ 28-114.1 of this title does not apply, the defendant shall be eligible to be admitted to bail either before or after arraignment.

C. The amount and conditions of bail granted pursuant to the provisions of subsections A and B of this section shall be determined by the judge, within the limitation prescribed by this section, who shall prescribe rules for the receipt of bail and for the release on personal recognizance. In the event of arrests at night, emergencies, or when the judge is not available, a court official, the chief of police or ~~his~~ the chief's designated representative may be authorized by the judge, subject to such conditions as shall be prescribed by the judge, to accept a temporary cash bond in a sufficient amount to secure the appearance of the accused. ~~The~~ Except as provided in this subsection, cash bond shall not exceed the maximum fine provided for by ordinance for each offense charged. The court official, chief of police or ~~his~~ the chief's designated representative is authorized, subject to such conditions as shall be prescribed by the judge or by law, to release a resident of the municipality on personal recognizance. Provided, however, that a person arrested in a municipality for violations of municipal ordinances relating to prostitution, including but not

limited to engaging in prostitution or soliciting or procuring prostitution, shall not be released on personal recognizance.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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