

LEGAL SERVICES

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MEMORANDUM

April 7, 2021

SUBJECT: Human trafficking and sex trafficking in Alaska
Statute (HB 106; Work Order No. 32-GH1581\A.1)

TO: Representative Sarah Vance

FROM: Claire E. Radford
Legislative Counsel



Attached is the draft amendment, which amends human trafficking in the first degree to include coercion. Coercion is an offense under AS 11.41.530, and a person involved in human trafficking by means of coercion can currently be charged with both offenses. By including "coercion" in the human trafficking statute, coercion becomes an element of the offense, which must be proven for a defendant to be found guilty. Under this amendment, a prosecutor could charge coercion as a separate crime in instances of human trafficking, but the verdicts might merge for sentencing purposes.¹

The language you provided includes the term "commercial sex act" under the offense of human trafficking. Under Alaska Statutes, human trafficking as it pertains to a "commercial sex act" falls under sex trafficking. The sex trafficking statutes are found at AS 11.66.110 - 11.66.135. Including the term "commercial sex act" in human trafficking in the first degree would create statutory overlap and could create due process issues where different people engaging in the same conduct could be charged with disparate classes of offenses. This term has therefore not been included in this amendment.

Your request also referenced age as it relates to sex trafficking. Sex trafficking in the first and second degree differentiate between the level of the offense when a person being trafficked is below and above 20 years of age. If you would like to make changes to the sex trafficking statutes, please advise.

¹ The Alaska Court of Appeals has explained, "when the counts of the defendant's indictment charge separate theories of the same crime, or when the counts of the indictment charge separate crimes that will ultimately be treated as the "same crime" . . . Alaska law allows the government to seek a jury verdict on each count. The double jeopardy clause comes into operation later, when the sentencing court is asked to enter judgment on those verdicts. At that time, the court must merge one or more of the verdicts so that the defendant receives only the number of convictions and sentences allowed by the double jeopardy clause. *Garhart v. State*, 147 P.3d 746, 752 - 753 (Alaska App. 2006).

This may present a single subject issue. The Alaska Constitution limits bills to one subject.² The single subject requirement requires that all matters in an act "fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."³ Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the court has held that bills relating to such broad themes as "development of water resources,"⁴ "taxation,"⁵ "land,"⁶ "intoxicating liquor,"⁷ and "criminal law"⁸ are acceptable.⁹ However, there was a strong dissent in one case against allowing broad subject matter in a single bill.¹⁰ And in 2010, for the first time, the Alaska Supreme Court invalidated a piece of proposed legislation for failure to satisfy the single subject requirement.¹¹ Here, it is difficult to determine what single subject would fit all aspects of the bill, as minors go missing for other reasons than human trafficking and human trafficking also applies to adults. This amendment may therefore violate the single subject requirement.

If I may be of further assistance, please advise.

CER:mjt
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Attachment

² Art. II, sec. 13, Constitution of the State of Alaska provides, in relevant part, "Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws."

³ *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

⁴ *Gellert v. State*, 522 P.2d 1120 (Alaska 1974).

⁵ *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 545 (Alaska 1978).

⁶ *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

⁷ *Van Brunt v. State*, 646 P.2d 872 (Alaska App. 1982).

⁸ *Galbraith v. State*, 693 P.2d 880 (Alaska App. 1985).

⁹ *Evans v. State*, 56 P.3d 1046, 1070 (Alaska 2002).

¹⁰ *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173 (Alaska 1985). In his dissent, at page 1182, Justice Moore stated: "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce."

¹¹ *Croft v. Parnell*, 236 P.3d 369 (Alaska 2010).