

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 18, 2005

1:11 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 131

"An Act increasing the criminal classification of theft of an access device and of obtaining an access device or identification documents by fraudulent means; increasing the criminal classification for certain cases of fraudulent use of an access device; and providing for an effective date."

- MOVED HB 131 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 7

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor.

- MOVED CSHJR 7(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 148

"An Act relating to trafficking of persons."

- HEARD AND HELD

HOUSE BILL NO. 101

"An Act relating to sex trafficking and tourism."

- HEARD AND HELD

HOUSE BILL NO. 187

"An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 188

"An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 131

SHORT TITLE: ACCESS DEVICE & I.D. DOCUMENT CRIMES

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

02/09/05	(H)	READ THE FIRST TIME - REFERRALS
02/09/05	(H)	JUD, FIN
02/23/05	(H)	JUD AT 1:00 PM CAPITOL 120
02/23/05	(H)	Scheduled But Not Heard
03/02/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/02/05	(H)	Heard & Held
03/02/05	(H)	MINUTE(JUD)
03/18/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 7

SHORT TITLE: CONST AM: SEC. OF STATE REFERENCES

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	STA, JUD, FIN
03/03/05	(H)	STA AT 8:00 AM CAPITOL 106
03/03/05	(H)	Moved Out of Committee
03/03/05	(H)	MINUTE(STA)
03/04/05	(H)	STA RPT 4DP
03/04/05	(H)	DP: GARDNER, GATTO, ELKINS, SEATON
03/18/05	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 148

SHORT TITLE: TRAFFICKING OF PERSONS
SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/14/05 (H) READ THE FIRST TIME - REFERRALS
02/14/05 (H) JUD, FIN
03/07/05 (H) JUD AT 1:00 PM CAPITOL 120
03/07/05 (H) Heard & Held
03/07/05 (H) MINUTE(JUD)
03/18/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 101

SHORT TITLE: SEX TRAFFICKING AND TOURISM
SPONSOR(S): REPRESENTATIVE(S) CROFT

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) JUD, FIN
03/07/05 (H) JUD AT 1:00 PM CAPITOL 120
03/07/05 (H) Heard & Held
03/07/05 (H) MINUTE(JUD)
03/18/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JOHN B. SKIDMORE, Assistant District Attorney
Third Judicial District (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 131, responded to questions.

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 7, provided a comment.

REPRESENTATIVE BETH KERTTULA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 148.

ANDREA DOLL
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 148 and HB 101, and urged passage of both bills.

SARALYN TABACHNICK, Executive Director
Aiding Women in Abuse and Rape Emergencies (AWARE Inc.)
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 148 and HB 101,
spoke in support of legislation criminalizing the trafficking of
persons.

REPRESENTATIVE ERIC CROFT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 101.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing
Committee meeting to order at [1:11:10 PM](#). Representatives
McGuire, Anderson, Coghill, Kott, Dahlstrom, Gara, and Gruenberg
were present at the call to order.

HB 131 - ACCESS DEVICE & I.D. DOCUMENT CRIMES

[1:12:20 PM](#)

CHAIR MCGUIRE announced that the first order of business would
be HOUSE BILL NO. 131, "An Act increasing the criminal
classification of theft of an access device and of obtaining an
access device or identification documents by fraudulent means;
increasing the criminal classification for certain cases of
fraudulent use of an access device; and providing for an
effective date."

[1:12:29 PM](#)

JOHN B. SKIDMORE, Assistant District Attorney, Third Judicial
District (Anchorage), Department of Law (DOL), relayed that he
was available to answer questions regarding HB 131.

REPRESENTATIVE COGHILL said his concern is that the threshold of
\$50 is very low over which to become a felon, and suggested that
maybe the focus should be on the criminal intention of taking
someone's identity rather than on the specific value of
merchandise stolen; therefore, even if the a person only stole
\$10 worth of merchandise, the felony penalty would be applied
because of the seriousness of identity theft. He offered his
belief that circumstances involving a family member taking
checks or credit cards would be a civil crime or a crime of

passion, and said he questions whether having a \$50 threshold would be so arbitrary as to runs afoul of the law [in some manner].

MR. SKIDMORE said he has no problem with a threshold lower than \$50. On the question of why it would be okay to have a threshold as low as \$50, he pointed out that the crime of forgery in the second degree - AS 11.44.505 - has no threshold, so even if a check is forged for only \$5, it still results in a felony charge; he noted that other states have varying thresholds, and sometimes no threshold, for making the theft of an access device a felony.

MR. SKIDMORE said he has no concerns regarding familial situations involving credit cards, because if both family members have their names on the credit card, then both family members are entitled to use it - and the same applies in situations involving checking accounts - and if only one family member's name is on the credit card and another family member uses it, then it becomes a civil matter and the prosecutor is unlikely to accept such a case because it will be hard to meet the burden of proof beyond a reasonable doubt that one family member intended to defraud another family member. The bill stipulates that the intent is to defraud, and the prosecutor has the discretion to screen out cases in which family members are using one another's credit cards. He added that although he cannot guarantee that the prosecution would never pursue such a case, it is unlikely absent extenuating circumstances wherein it can be proven that clearly, one family member didn't have permission to use the other family member's credit card. He then remarked that property offenses are never considered crimes of passion.

REPRESENTATIVE COGHILL indicated that Mr. Skidmore's comments were helpful.

1:20:02 PM

REPRESENTATIVE COGHILL asked what the difference in intent would be, for the purpose of a lawsuit, if the proposed threshold of \$50 is kept in the bill. Must the value of the merchandise stolen be \$50 or more before a prosecution can occur?

MR. SKIDMORE said the current threshold is arbitrary and doesn't affect intent at all; via the language currently in HB 131, the legislature is deciding whether the use of an access device is a misdemeanor or a felony, so even if the value of the merchandise

stolen is under the currently proposed threshold of \$50, a crime has still been committed. He opined that the bill will be helpful in situations wherein someone takes another's identity by stealing identification cards and access devices, and that such conduct constitutes a significant problem that must be addressed because of the potential to adversely affect a victim's credit history and, hence, his/her life.

REPRESENTATIVE GARA indicated that perhaps the \$50 threshold for using a stolen credit card is acceptable to him, but he has a concern about Sections 1 and 4 because they appear to say that just stealing someone's access device or obtaining it by fraudulent means, regardless of whether it is ever used, will result in a felony charge. Using a hypothetical example of a pickpocket who steals someone's wallet and keeps the money but throws away the credit card, he asked whether that person could be charged with a felony, or whether the prosecution would have the discretion to charge the pickpocket with a lesser crime.

MR. SKIDMORE offered his belief that that person could be charged with a felony because the theft of the credit card potentially exposes the victim to significant financial damage; however, the hypothetical pickpocket might not be charged with a felony if he/she threw away the credit card, since the prosecution might not be able to show an intent to [use the credit card]. He noted that he hasn't yet seen anyone such as the hypothetical pickpocket convicted of a felony for his/her first offense, adding that that is function of prosecutorial discretion.

REPRESENTATIVE GRUENBERG mentioned that he might have had a case "like that."

REPRESENTATIVE GARA said it seems that Section 1 would make it a felony even if the person threw away the credit card, because he/she still stole the credit card, and that Section 4 appears to make it a felony because stealing a credit card, whether intentional or not, could be looked upon as obtaining an access device by fraudulent means. He said he is agreeable to having it be a felony when someone steals a credit card and uses it, but would not want just the taking of a credit card to be a felony.

[1:29:40 PM](#)

REPRESENTATIVE GRUENBERG noted that AS 11.46.100, which is referenced in Section 1, says in part:

Sec. 11.46.100. Theft defined.

A person commits theft if

(1) with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another;

REPRESENTATIVE GRUENBERG offered his belief that by referencing AS 11.46.100, Section 1 would make just stealing a credit card a felony.

MR. SKIDMORE concurred, but added that with regard to the question of whether taking a credit card but not using it should be a felony, he suggested that the committee should consider situations in which someone is arrested and is found to have several credit cards in his/her possession. If mere possession of someone else's credit card doesn't constitute a felony, then prosecutors will have to wait until the person is actually caught using a stolen credit card before they can prosecute him/her with a felony; he noted, however, that just because one could be charged with a felony, the prosecution might not feel that a particular person should be charged with a felony. If, on the other hand, a person with past convictions is caught with a stolen credit card in his/her possession, it wouldn't be appropriate to only be able to charge that person with a misdemeanor, he opined, and characterized HB 131 as a tool that the prosecution can use when dealing with people who truly are trying to commit identity theft.

REPRESENTATIVE GRUENBERG noted that AS 11.46.990(8) says in part:

(8) "deprive" or "deprive another of property" means to

(A) withhold property of another or cause property of another to be withheld from that person permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to that person;

(B) dispose of the property in such a manner or under such circumstances as to make it unlikely that the owner will recover the property;

REPRESENTATIVE GRUENBERG offered his belief that this definition, coupled with Section 1 of the bill, would make stealing someone's credit card and throwing it away a felony.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 131.

REPRESENTATIVE GRUENBERG opined that HB 131 is a good bill because a credit card is basically "a license to charge up to the limit."

[1:34:41 PM](#)

REPRESENTATIVE COGHILL moved to report HB 131 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 131 was reported from the House Judiciary Standing Committee.

HJR 7 - CONST AM: SEC. OF STATE REFERENCES

CHAIR McGUIRE announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 7, Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor.

[1:35:17 PM](#)

REPRESENTATIVE ANDERSON, speaking as the sponsor, introduced HJR 7 by paraphrasing from a document titled, "OPENING STATEMENTS ON HJR 7", which read [original punctuation provided]:

In the Congressional Act of July 24, 1897, federal law provided for the position of "surveyor general" for Alaska -- a person appointed by the president and subject to US Senate confirmation -- and, by the Act of June 6, 1900, creating Alaska as a District, assigned to the other duties of that officer additional duties as "secretary of the district" ex officio.

The Congressional Act of March 3, 1925, abolished the surveyor general position but established the position as Secretary of the Territory. That statute required that the Secretary of the Territory be a resident "within the territory for which ...appointed" and hold office for a fixed term of four years.

The secretary was to execute the powers and perform the duties of the territorial governor during the

latter's vacancy or absence -- in other words, the secretary would serve as "Acting Governor."

Basically, however, the secretary was charged to "preserve and record all the laws and proceedings" of the legislature and the governor, transmit laws adopted by the territorial legislature and other relevant documents to the Congress for review, and perform other specified duties.

The Secretary of Alaska was, until superseded by the Secretary of State under the state constitution in January 1959, a federal officer, but the officer's role in the affairs of the territory was clearly a model for the Secretary of State's role under the new state constitution.

In 1970 the legislature proposed and the voters of Alaska approved a series of amendments to the State constitution that changed the name of the office of "Secretary of State" to the office of "Lieutenant Governor".

At that time, the drafting attorneys did not catch all of the references to Secretary of State".

HJR 7 attempts to correct the two references to "Secretary of State" in the Alaska constitution that are left. The proposed amendments, if approved by the Legislature, would be placed before the voters in the next General Election.

REPRESENTATIVE ANDERSON characterized HJR 7 as a simple technical revision, and relayed that Legislative Legal and Research Services has requested this change to the Alaska State Constitution to alleviate any ambiguity that might be caused by the two remaining references to "secretary of state." He urged passage of [HJR 7].

[1:37:50 PM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HJR 7.

REPRESENTATIVE KOTT referred to language on page 2, line 1, which says, "He", and said this seems to suggest that only males

can be head of departments. He suggested that they change "He" to "They".

[1:39:16 PM](#)

REPRESENTATIVE GRUENBERG noted that language on page 1, line 10, also uses "he". He suggested that HJR 7 be amended such that all references to gender in the Alaska State Constitution be made gender neutral.

REPRESENTATIVE KOTT posited that such a change might engender greater voter turnout.

REPRESENTATIVE ANDERSON agreed to such a change.

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, pointed out, however, that such a change is not necessary because Article XII, Section 10, of the Alaska State Constitution says in part: "Personal pronouns used in this constitution shall be construed as including either sex."

REPRESENTATIVE ANDERSON, nonetheless, recommended that "he" be changed to "they" in Sections 1 and 2 of HJR 7.

REPRESENTATIVE KOTT said he would prefer that change.

[1:41:31 PM](#)

REPRESENTATIVE KOTT made a motion to adopt Amendment 1, to change page 1, line 10, such that it says, "while they were a member, and to change page 2, line 1, such that it says, "They".

REPRESENTATIVE GRUENBERG opined, however, that conforming changes should be made throughout the constitutions.

CHAIR MCGUIRE asked whether there were any objections to Amendment 1. There being none, Amendment 1 was adopted.

[1:42:35 PM](#)

REPRESENTATIVE ANDERSON moved to report HJR 7, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHJR 7(JUD) was reported from the House Judiciary Standing Committee.

HB 148 - TRAFFICKING OF PERSONS

HB 101 - SEX TRAFFICKING AND TOURISM

CHAIR MCGUIRE announced that the final order of business would be a hearing on two bills: HOUSE BILL NO. 148, "An Act relating to trafficking of persons."; and HOUSE BILL NO. 101, "An Act relating to sex trafficking and tourism."

[1:43:12 PM](#)

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, sponsor of HB 148, noted that at the bills' last hearing, some questions were posed that she'd like to respond to at this time. With regard to the question of why [the Department of Law's proposed change] includes language about coming to the state, she said that the Department of Law (DOL) recommended such language because "it's about the easiest way to distinguish trafficking, or the potential crime, from the already existing crimes of promoting prostitution and coercion." She pointed out, however, that such language could result in situations being treated differently depending on whether the persons were brought in from another country or state, or whether they were brought in to a community from another area of Alaska.

REPRESENTATIVE KERTTULA suggested that this issue be one that the committee address, and relayed that the groups who deal with this crime are divided on this issue. Some groups support the idea that trafficking naturally includes transporting, she noted, but suggested that such groups are not considering "the problem we face here in Alaska," where a woman from Eek or Egegik could be in just about as much trouble, if she were picked up and brought out of the village, as a Ukrainian woman would be - she wouldn't have a support system and wouldn't speak the language and might be frightened of authority figures. So although the DOL's suggested change will address one issue, it might not be the most appropriate given the potential situations that could occur in Alaska, she concluded.

[1:46:38 PM](#)

ANDREA DOLL explained that she has just returned from a presentation on [human] trafficking given by the U.S. Agency for International Development at the United Nations' headquarters in New York. She went on to say:

The U.S. government has made trafficking in persons a high priority through legislation, a presidential directive, and an anti-trafficking presidential

initiative. Trafficking in human beings has drawn international attention, and we know that there are between 800,000 and 900,000 persons trafficked annually between international borders. This figure does not include numbers that are trafficked within a country. There is evidence that Alaska is both a transit corridor as well as a destination. It is a criminal justice problem; there is a critical need for state, sub-regional, regional, and international agreements to address this problem.

Alaska will make its contribution by criminalizing the trafficking of persons by making it an unclassified felony. Traffickers will then be prosecuted ... at the state [level] as well as at the federal level. There'll be [a] no tolerance attitude for this criminal activity within our state borders. Very few people in the United States are aware of the problem, much less it's size and toll. Those women and children who have been rescued from servitude suffer from posttraumatic stress disorder similar to combat victims and victims of state organized torture. The practice of trafficking spawns health problems, high HIV/AIDS [human immunodeficiency virus/acquired immunodeficiency syndrome], [and] high rates of Hepatitis B [and] cervical cancer - it is a fertile ground for criminal activity.

[1:49:24 PM](#)

MS. DOLL continued:

It is a calamity. Yet the United States is a prized destination because it offers a market. By taking action on House Bill 148 and House Bill 101, the state of Alaska will create awareness of the problem, its human toll, and will be taking needed steps to implement educational programs [to] create awareness within the business sector - particularly the tourism industry and internet providers that advertise mail order brides. I - indeed, the civilized world - urges this body to pass House Bill 148 and House Bill 101.

REPRESENTATIVE COGHILL asked how one becomes aware of the issue of human trafficking, particularly with regard to Alaska.

MS. DOLL replied that she can not say how one becomes totally aware of all the details, but added that it is very clear that studies have been done, and relayed that although she can provide the committee with data on individual countries, she doesn't have data regarding Alaska specifically.

[1:51:45 PM](#)

SARALYN TABACHNICK, Executive Director, Aiding Women in Abuse and Rape Emergencies (AWARE Inc.), said she would be speaking in support of "this legislation making it a crime to traffic in persons." In recent times, she relayed, AWARE Inc. staff can recollect two instances of providing services to women who were brought to Juneau, Alaska, and forced to engage in forced labor, sexual conduct, and/or involuntary servitude. She surmised that if AWARE Inc. is serving two such women, then there are probably many more women in similar situations whom AWARE Inc. is not serving. She relayed that the women were initially told that they would be provided with jobs and economic opportunities, yet once they were here, the jobs did not exist and the women were forced into "economic and sexual exploitation."

MS. TABACHNICK said that the experiences of these women were horrific, and the difficulties they experienced in coming to AWARE Inc. for help was similar to the difficulties experienced by mail order brides, in that they were told that they would be incarcerated and sent back to their countries of origin, where they had been living in poverty and/or abuse. This is often the message given by perpetrators of abuse, she noted, adding that AWARE Inc. works comprehensively with abused immigrant women in these situations; therefore, having legislation that criminalizes the trafficking of persons in Alaska will serve to protect victims and perhaps give them the courage to step forward and ask for the intervention, support, and advocacy they deserve. Within the U.S., she noted, "we now have the Victims of Trafficking and Violence Protection Act [of 2000]," and said she is hopeful the Alaska State Legislature will pass similar legislation this session.

MS. TABACHNICK, in response to questions, relayed that AWARE Inc. became incorporated in 1978; that AWARE Inc. provides services to victims of domestic violence and sexual assault in Juneau and northern Southeast Alaska, services which include safe shelter, legal advocacy, information and referral, outreach, transportation, counseling and support in elder abuse, child abuse, domestic violence and sexual assault situations, and a 24-hour crises line; that the aforementioned women might

have originally called AWARE Inc. because they were victims of sexual assault; and that although she is unable to speak in detail about the aforementioned women in particular because of confidentiality issues, AWARE Inc. is working with an immigrant and refugee organization in Anchorage in an effort to provide these women with the services they need.

1:55:47 PM

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 148 and HB 101.

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, sponsor of HB 101, mentioned that others may wish to speak on the bills at a later time, and asked that public testimony be left open.

CHAIR McGUIRE said she would keep public testimony open, and relayed that written testimony would be accepted by the committee even after the bills move from committee.

1:56:20 PM

REPRESENTATIVE CROFT offered a comparison of 101, 148, and the DOL's proposed change. Although all three items address the issue of trafficking of persons for labor or sexual services, the latter portion of Section 1 of HB 101 - proposed 11.66.410 - specifically deals with Alaskan tour companies providing and advertising sex tourism services for people who are traveling out of state to other countries. Although it is known that "this" is a huge, international problem, it is not known how many companies advertise such services or how they advertise such services. He indicated that there has been a major push by many groups, agencies, and individuals to deal with "this" problem, but Alaska doesn't yet have anything that makes it a crime to provide such services.

CHAIR McGUIRE offered her understanding that there is precedent for putting a law in place even before it known whether a particular crime is being committed.

REPRESENTATIVE CROFT opined that all 50 states should make [providing such services illegal]. He said his intent with [proposed AS 11.66.410] is to criminalize knowingly providing sex tourism services. He offered his belief that the difficulty with the DOL's proposed change, HB 148, and Section 1 of HB 101 revolves around the issue of how to deal with situations in

which a person is brought into the state for the purpose of performing labor and/or sexual services.

REPRESENTATIVE GRUENBERG characterized [proposed AS 11.66.410 of HB 101] as a stand alone provision, and referred to page 2, lines 21-22, which says, "(2) organizes, arranges, sells, or advertises tourism packages or activities using and offering sexual acts as enticement for tourism". He said his concern with such language is that it might apply to a company advertising a tour to certain counties in Nevada, for example, where prostitution is legal, thereby interfering with that company's right of free expression.

REPRESENTATIVE CROFT opined that Nevada can do what it wants with regard to legalized prostitution, but since Alaska has decided to criminalize prostitution, it can also decide that it doesn't want travel services being offered for the purpose of hiring prostitutes anywhere else. He said he didn't see such a prohibition as interfering with the right of free expression.

REPRESENTATIVE GRUENBERG pointed out, however, that advertising, which is referred to in proposed AS 11.66.410, is considered a form of free expression.

REPRESENTATIVE CROFT replied, "I have no right to advertise criminal conduct just because it's communicative, and assuming you can ... criminalize the underlying conduct, ... the advertising of it can be [criminalized], I believe."

REPRESENTATIVE GRUENBERG concurred, but noted that not all counties in Nevada have legalized prostitution, and relayed an example of an establishment built on skids that was located at the junction of three counties; as the different counties changed their laws regarding prostitution, the establishment would change location just by moving its building.

REPRESENTATIVE ANDERSON offered a hypothetical example of marijuana being made legal in Alaska and companies in other states advertising tours to Alaska for the purpose of smoking marijuana. He suggested that the advertisement of such would be illegal.

REPRESENTATIVE GRUENBERG pointed out, however, that under Representative Croft's argument, since gambling is illegal in Alaska but not in Nevada, the advertisement of tours to Nevada for the purpose of gambling could be criminalized.

CHAIR McGUIRE suggested that the bill could specify that it applies if the location the advertisement pertains to has criminalized the behavior; however, she added, such specificity could "take the teeth out" of the bill.

REPRESENTATIVE CROFT noted that some countries might make prostitution illegal but then don't enforce its laws. Referring to HB 101, he pointed out that paragraphs (1) and (3) of proposed AS 11.66.410(a) reference proposed AS 11.66.400, which he said pertains to "child" sexual activity, and posited that such isn't legal anywhere.

REPRESENTATIVE GRUENBERG suggested, "Why don't you just tie it back to that."

CHAIR McGUIRE pondered whether the standard for commercial speech is "less" than it is for [individual speech].

REPRESENTATIVE CROFT remarked, "Commercial speech is less and, certainly, there's almost none for illegal activities."

[2:06:29 PM](#)

REPRESENTATIVE GRUENBERG offered his belief that [a restriction such as is currently in proposed AS 11.66.410] could criminalize the entire tour industry for just advertising tours to Nevada.

REPRESENTATIVE CROFT said that perhaps the easiest way to address Representative Gruenberg's concern would be to have proposed AS 11.66.410(a)(2) reference AS 11.66.410.

CHAIR McGUIRE remarked that that might be a place to start. She asked Representative Croft to continue with his testimony.

REPRESENTATIVE CROFT said HB 101 prohibits commercial sex acts with children under the age of 18 but does not specify that transportation must be an element. He pointed out that HB 148 uses the terms "forced labor", "sexual conduct", and "involuntary servitude"; does not specify that transportation must be an element; and applies to both minors and adults. The DOL's proposed change, he relayed, does have the element of transport and specifies that either fraud or force is used. He offered his interpretation that the DOL's proposed change could apply to situations wherein someone promises a prospective employee that the weather is always nice in Alaska.

CHAIR McGUIRE said, "It's a divisible issue there," adding that she sees what the DOL is attempting to accomplish with regard to getting at all of the types of situations that could occur. She mentioned that she has dealt with the issues surrounding "adult entertainment."

REPRESENTATIVE CROFT said he is concerned that the terms used in the DOL's proposed change could be overreaching, and indicated that he is attempting, via HB 101, to deal with sexual conduct involving children.

The committee took an at-ease from 2:10 p.m. to 2:12 p.m.

2:12:21 PM

REPRESENTATIVE COGHILL, referring to the DOL's proposed change, said he is wondering whether the language regarding fraudulent representation would apply to those who misrepresent a business opportunity, adding that he wouldn't want such people to escape justice just because they didn't use force to get someone to come to Alaska.

REPRESENTATIVE GRUENBERG offered his belief that the bill would not apply to a business opportunity but would apply to a labor contract.

REPRESENTATIVE CROFT acknowledged that the issues of sex involving children, sexual activities, and forced labor are complicated. He said he wants "the bill" to cover situations in which persons are brought into the state for commercial sexual activities under false pretenses or via the use of force, and situations involving bringing persons into Alaska and forcing them to work for low or no wages under some form of threat. He suggested that a third issue to consider is whether to criminalize the transportation of persons only if they are being brought into Alaska.

REPRESENTATIVE CROFT offered his belief that Representative Kerttula is more interested in "the transport aspect," and said he believes that transporting people across state lines [has been dealt with via] the "Mann Act" [White-slave Traffic Act] and treats people like property. Therefore, he indicated, he doesn't want to limit the bill such that it only applies when people are transported across state lines; the location is irrelevant when compared to the behavior, and he doesn't see a substantial reason to limit the bill in that manner even though

it is often the case that people are being brought across state lines for the aforementioned purposes.

CHAIR McGUIRE referred to the bill she and Representative Gara introduced last year regarding the licensure of adult oriented establishments, and noted that testimony indicated that the young women performing in such establishments were also given fraudulent information about what the jobs entailed. Therefore, it doesn't matter much to her that those young women weren't transported to Alaska from another country, because it is the acts of coercion and fraud that are inappropriate.

[2:17:31 PM](#)

REPRESENTATIVE KERTTULA said one of the hardest issues to address is that the fundamental description of trafficking involves transportation. Another problem is that the existing crimes of coercion and prostitution have elements similar to the bills before the committee, and so a distinguishing factor must be used; admittedly, transport is one such distinguishing factor, so there might be some way of structuring that factor so that it pertains to transport or travel itself, rather than to transporting or traveling into the state.

CHAIR McGUIRE said that perhaps they should consider restructuring all the statutes pertaining to "this whole area," so that situations involving transportation are addressed, as well as situations involving the use of fraudulent means to recruit performers into a sex-oriented business.

REPRESENTATIVE GRUENBERG noted that sometimes hypothetical examples are used to illustrate the fallacy in an argument, and offered an example involving him telling his son to clean up his room to illustrate how the term "recruiting, by coercion, to engage in forced labor" could be misinterpreted by some, since HB 148, for example, doesn't specify that sexual conduct must be an element in order for the bill to apply.

REPRESENTATIVE KERTTULA said that the term "labor" was included in HB 148 because it "is such a huge part of trafficking" - often people are trafficked just for the purpose of performing labor. She characterized HB 148 as being more inclusive of the types of things [she wants to address].

CHAIR McGUIRE relayed that because of technical difficulties, Dennis Holway and Floyd Smith, who were standing by to testify via teleconference, would be submitting written testimony. She

then asked Representative Kerttula whether there would be any way to intertwine labor with some of the other elements, so that the bill wouldn't apply to a situation wherein someone promises a prospective employee that the weather in Alaska is always good.

REPRESENTATIVE KERTTULA suggested that the committee provide her with questions that she can ask of the expert who is scheduled to give a presentation on sex trafficking on April 1, 2005. Additionally, perhaps HB 101 and HB 148 could be addressed separately, she said, characterizing the issue of sex tourism as an easier issue to deal with, and offered her belief that Representative Croft would be amenable to working on the bills separately. With regard to Chair McGuire's question, she said that part of problem is that if a container car bringing people into the state is discovered by the authorities, it might not be possible to prove that the people were being transported for the purpose of performing sexual acts but it might be possible to prove they were being transported for the purpose of engaging in labor.

CHAIR MCGUIRE relayed that Representative Anderson has pointed out that HB 148 defines "forced labor" and "involuntary servitude" fairly narrowly, and she posited that this definition should address the concern Representative Gruenberg raised via the hypothetical example involving his son.

REPRESENTATIVE KERTTULA concurred, adding that perhaps portions of HB 148 [such as the definitions] could be incorporated into the DOL's proposed change.

[2:24:40 PM](#)

REPRESENTATIVE GRUENBERG turned attention to page 1, line 7, of HB 148, and noted that it uses the phrase "will be". He said he would prefer for the language to be changed such that it covers both "will be" and "has been" situations. He then opined that the bill shouldn't just cover people being brought into the state but should also cover those that are being moved around the state as well those that are being taken out of the state.

CHAIR MCGUIRE mentioned that the committee could address the issue of sex tourism as a separate concept, and then could look at creating an omnibus bill, or at using what remains of the two bills and the DOL's proposed change to create a vehicle, or at creating a committee bill to address the remaining concerns on

this issue. She asked the sponsors and members to give the issue more thought.

REPRESENTATIVE CROFT offered his belief that the committee was close to resolving the issue of sex tourism, and offered that the committee could do as Representative Gruenberg has suggested and ensure that all three paragraphs of proposed AS 11.66.410(a) are linked directly with the crime of child prostitution. This would clarify that he wishes to prohibit "sex tours for child prostitution purposes." He agreed to would work with staff on a committee substitute (CS) for HB 101.

CHAIR McGUIRE suggested instead that they simply alter HB 101 in committee.

[2:27:56 PM](#)

CHAIR McGUIRE, referring to HB 101, made a motion to adopt Conceptual Amendment 1, to remove [proposed AS 11.66.400].

REPRESENTATIVE GRUENBERG noted that if Conceptual Amendment 1 were adopted, then language on page 2, lines 25 and 27, would have to be altered as well, since they reference proposed AS 11.66.400.

CHAIR McGUIRE concurred.

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

[2:29:06 PM](#)

CHAIR McGUIRE suggested that Amendment 2 should redefine a commercial sex act.

REPRESENTATIVE GRUENBERG remarked that exotic dancing could be considered a type of commercial sex act.

CHAIR McGUIRE noted that proposed AS 11.66.400 had defined "commercial sex act" as any sex act for which anything of value is given to or received by any person.

REPRESENTATIVE GRUENBERG asked whether "sex act" is statutorily defined.

CHAIR McGUIRE said it is not.

The committee took an at-ease from 2:30 p.m. to 2:31 p.m.

2:31:52 PM

CHAIR MCGUIRE relayed that Conceptual Amendment 1 would be incorporated into a forthcoming CS; she indicated that the CS will also put proposed AS 11.66.410 "into some semblance of order."

REPRESENTATIVE GRUENBERG opined that the bill should also address sex tourism involving adult persons. If an age threshold is included in the bill, it could be very difficult to prosecute someone who claims he/she didn't know the victim was under 18. In response to a question, he said he would no longer have a concern regarding the right of free expression if the advertisement is tied to an illegal activity by altering all three paragraphs of proposed AS 11.66.410(a).

REPRESENTATIVE CROFT referred to proposed AS 11.66.400, which had been deleted via Conceptual Amendment 1, and noted that the behavior it prohibited involved engaging in a commercial sex act with a person under the age of 18 or with a person who was forced, coerced, or fraudulently induced to engage in that act.

CHAIR MCGUIRE opined that AS 11.66.410 should incorporate that concept.

REPRESENTATIVE GRUENBERG pointed out, however, that the state will have to prove that the tour operators/organizers knew that the behavior their clients were engaging in was illegal.

REPRESENTATIVE CROFT suggested that perhaps the committee will have to define the activity it is criminalizing and then also make it a crime to travel in order to engage in that criminal activity.

REPRESENTATIVE COGHILL noted that the federal government has already made the distinction as to what activity is illegal, and suggested that they look at any existing federal language on this issue. He opined that forcing someone to engage in a commercial sex activity is bad even if the victim is an adult, and suggested that it constitutes a form of kidnapping.

2:36:42 PM

REPRESENTATIVE GRUENBERG said he supports "this," but added that he is looking at the practicality of prosecution, and predicted that the minors from the foreign countries will have to be brought into the U.S. to act as witnesses.

CHAIR McGUIRE noted that sometimes just having a law in place can serve as a deterrent, offering her belief that the goal is to send the message that Alaska is not a good place to "set up shop."

REPRESENTATIVE GRUENBERG pondered whether other states have addressed this issue.

REPRESENTATIVE CROFT said he would bring back a CS that addresses sex tourism, adding that he doesn't care whether the advertised destinations have legalized prostitution - he wants to make it illegal to advertise tours for that purpose.

CHAIR McGUIRE offered her belief that the committee wants to see a vehicle that addresses the trafficking of people, regardless of age, and suggested that perhaps there could be a different penalty if the victim is under the age of 18. She also posited that the labor issue won't be that difficult to address. She expressed a preference for having a bill that addresses movement into Alaska, within Alaska, and out of Alaska.

[HB 148 and HB 101 were held over.]

ADJOURNMENT

[2:40:57 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:40.