

HOUSE FINANCE COMMITTEE

April 1, 2011

1:34 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:34 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Co-Chair
Representative Anna Fairclough, Vice-Chair
Representative Mia Costello
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Mike Hawker (alternate)
Representative Reggie Joule
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law; David Wilson, Sergeant, Alaska State Troopers; Representative Mike Chenault, Sponsor; Tom Wright, Staff, Representative Mike Chenault; Representative Mike Chenault.

PRESENT VIA TELECONFERENCE

Quinlan Steiner, Director, Alaska Public Defender Agency, Department of Administration; Daniel Fauske, Chief Executive Officer and Executive Director, Alaska Housing Finance Corporation.

SUMMARY

HB 127 CRIMES INVOLVING MINORS/STALKING/INFO

CS HB 127(FIN) was REPORTED out of Committee with accompanying new indeterminate fiscal note from the Department of Administration and previously published notes: FN 1 (DPS), FN 2 (LAW), FN 3 (ADM), FN 4 (COR), FN 5 (DHS).

HB 175 COURT APPEARANCES; ARSON; INFRACTIONS

HB 175 was HEARD and HELD in committee for further consideration.

HB 203 IN-STATE NATURAL GAS PIPELINE FUND

CS HB 203 (FIN) was REPORTED out of committee with a "do pass" recommendation and with new zero impact fiscal note from the Department of Revenue.

#hb127

HOUSE BILL NO. 127

"An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information; relating to probation; and providing for an effective date."

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ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW, explained that the governor introduced HB 127 as part of his initiative to reduce and eliminate the tragedy of domestic violence and sexual assault. The bill strengthened some of the laws addressing the crimes. The bill also updated statutes to encompass new technological means of victimization. The bill expanded the definitions in the stalking law and raised the penalty for online enticement of a minor to a Class B felony. The legislation raised the penalty for unlawful exploitation of a minor to a Class A felony for all offenders. The bill adopted a new provision related to "sexting," classified as the intention to specifically annoy or humiliate another person. The offence

would be a Class B misdemeanor if distributed and a Class A misdemeanor if posted on a website that was accessible to the public. She noted that the bill adopted two misdemeanor offenses of misuse of confidential information. She discussed that portions of HB 75 were included in HB 127.

DAVID WILSON, SERGEANT, ALASKA STATE TROOPERS made himself available for questions from the committee.

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Representative Edgmon commented on the fiscal notes attached to the bill. He asked about the bill's requirements.

Mr. Wilson responded that most investigations would be streamlined with an administrative subpoena. The administrative subpoena would lessen the burden on state resources. He mentioned one provision, which included the protection of the victim in sexting incidents which also had an effect on resources. He admitted that his experience included investigation as opposed to budget related issues.

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Representative Edgmon appreciated Mr. Wilson's testimony.

Co-Chair Thomas presented a hypothetical situation in which teenagers circulate inappropriate pictures.

Ms. Carpeneti replied that a conviction for a sexting offence required proof that the image's distributor had the specific intent to annoy or humiliate the subject of the photograph.

Co-Chair Thomas asked specifically about a case involving two minors.

Ms. Carpeneti responded that the Division of Juvenile Justice would handle cases involving minors.

Co-Chair Thomas wondered whether teenagers would be guilty of a crime due to circulating pictures of an ex-boyfriend or girlfriend around the internet.

Ms. Carpeneti replied that if evidence existed proving that the person distributed the photo with intent to annoy or humiliate the other minor they could be prosecuted for a crime. She stated that adults were prosecuted in adult court and minors in juvenile court.

Co-Chair Thomas wondered about the provisions in the bill related to insurance and driver's licenses.

Ms. Carpeneti replied that the offences were correctible. The bill would reduce the Class B misdemeanor to an infraction.

Co-Chair Thomas was glad to hear that the crime was reduced and that it was a correctible offence.

Ms. Carpeneti agreed.

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Representative Wilson wondered how the terms "annoy" and "humiliate" were measured.

Mr. Wilson answered that offenders frequently admit the intent. He discussed that other times, incriminating language accompanied a photo. He also relayed that the intent was sometimes difficult to determine.

Representative Wilson wondered whether the language used in the bill was employed often in other legislation. She commented on the difficulty presented when attempting to measure the terms "annoy" and "humiliate."

Mr. Wilson responded that he was unaware of alternative options for the terms.

Representative Gara wondered about Page 5 and the issue related to time in custody. He recalled that a person could be retained in custody before bringing them to a judge for 24 hours. He wondered about the expansion to 48 hours.

Ms. Carpeneti replied that the law required the state to bring a person before a judicial officer in a timely manner, and that would not change. She discussed that it was related to the time a person was arrested and related to the ability to locate and talk with the victim. She believed it possible to locate and have conversations

within 24 hours typically; however, there were circumstances that proved more difficult. She asked Mr. Wilson to provide examples.

Mr. Wilson recalled investigations where enough evidence was gathered to justify apprehending a suspect, yet the timing for arraignment proved difficult because necessary documents were not yet created. A delay to meet the requirements of the statute could result in the better outcome. He relayed that the need for a delay happened infrequently.

Representative Gara wondered about legislative intent allowing 48 hours only in certain circumstances.

Ms. Carpeneti replied that the administration would not have a problem with the expressed intent.

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Vice-chair Fairclough wondered about letters in her committee packet referring to constitutional issues. She discussed 11.61.128 (a). She wondered whether the department might speak to the constitutionality of the legislation. She referred to a letter dated February 4, 2011 from the ACLU.

Ms. Carpeneti replied that the letters addressed a legal challenge to the Alaska statute prohibiting distribution of indecent materials to a minor. This legislation made minor changes specifying the culpable mental state for the offense. The section called into question by the ACLU had since been removed from the bill. She recalled recent motions for summary judgments submitted by both sides of the issue along with a motion to remove it to state court.

Vice-chair Fairclough discussed 11.61.128 addressed distribution of indecent material to a minor. She asked when the change or modification occurred.

Ms. Carpeneti replied that modification occurred in 2010 to add protections, but the section was since removed from the bill.

Vice-chair Fairclough appreciated the Department of Law and stood behind the law that the state and legislature passed

to describe the terrible events that might happen to minors. She stated that her interest was to keep kids safe.

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Mr. Wilson discussed changes to 12.55.155, specifically relating to the online exploitation of a minor sentencing criterion. He relayed that the department investigated crimes against children. He explained the difference between reactive and proactive investigations.

Mr. Wilson discussed the administrative subpoena in depth. He explained that the identification of the potential for criminal activity utilizing email required the investigator to contact the provider of the email service. The investigator would then present the email service with a request for information. A court process would then occur, requiring a federal subpoena allowing the investigator to obtain information regarding the location of a suspect. The next step would be the application for a search warrant and creation of a probable cause statement.

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Mr. Wilson continued to discuss the administrative subpoena process. He explained the legal requirement for search warrants. For urgent cases, the administrative subpoena can streamline the process. The search warrant was always required despite possession of an administrative subpoena.

Representative Gara expressed one remaining concern related to the legislation. He discussed different types of felonies and misdemeanors. He questioned the validity of claiming that the legislation creates an atmosphere that is "tougher on crime."

Mr. Wilson replied that the crimes involving online enticement of minors occur if law enforcement does nothing to stop them. The new legislation would act preventatively. The offenders tend to operate in a serial nature. He commented on the parody between the behavior of the suspects enticing minors online and those who are actively committing sexual abuse of a minor. The legislation allows investigators to practice in a proactive manor.

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Representative Gara wondered whether the legislation attracted concerns regarding fairness from the Public Defender's Agency.

QUINLAN STEINER, DIRECTOR, ALASKA PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION (via teleconference), wondered whether he had been referring to raising the penalties.

Representative Gara explained that he was wondering about anything in general.

Mr. Steiner responded that there had been discussion about Section 7 when the bill had been originally introduced. The language had been changed and the agency's concerns had been dramatically alleviated. He believed that the language related to specific intent would reduce the ability for harm. He expressed concerns that the change from 24 to 48 hours might allow the system to relax in its response leading to additional time spent in jail.

Representative Gara discussed Mr. Steiner's first concern related to a dating couple texting images back and forth to each other. He wondered if the issue had been corrected.

Mr. Steiner believed that the specific intent language corrected the problem.

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Co-Chair Stoltze wondered about the number of people he had been required to defend that had accidentally viewed pornography.

Mr. Steiner asked him to repeat the question.

Co-Chair Stoltze clarified that anecdotal information provided that citizens occasionally "accidently" peruse pornographic material. He wondered how many cases of this nature were defended by the public defender.

Mr. Steiner asked if the question related to Section 7 of the bill.

Co-Chair Stoltze stated that he had received reports of these sorts of crimes.

Mr. Steiner offered to report back to the committee.

Representative Doogan wondered about Section 16 stating "the commissioner may provide active supervision to a person placed on probation for a misdemeanor offence." He wondered if the statement was current law.

Ms. Carpeneti replied that current law provided that the commissioner of corrections would provide probation officers to superior court judges. She clarified that people convicted of felonies receive active supervision on probation. She stated that under the state's current practices there was not active supervision of misdemeanants. She explained that the idea was entirely experimental.

Representative Doogan asked why the increased number of supervised individuals was not reflected in the fiscal note.

Ms. Carpeneti replied that the program was experimental with a limited duration. She relayed that she did not have information about the funding of the project.

Representative Doogan stated that he could not locate the words "experimental program" in the legislation. He stated that the legislation would allow the commissioner to actively supervise misdemeanants. He expressed concern that the practice might result in greater cost to the state.

Representative Doogan noted that Section 16 contained information about subpoena power. He explained that he did not approve of the notion that the Attorney General could issue subpoenas. He asked about changes to the current law.

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Ms. Carpeneti replied that several problems were discovered with the bill that passed last year. She admitted that drafting the legislation regarding subpoenas provided new experiences for herself and her staff. One problem noted was that the prior bill did not allow the Attorney General to have a designee. The reason for the potential subpoenas was to retrieve the information from an internet service provider quickly.

Ms. Carpeneti informed the committee that the second problem involved the former bill specifying a particular

type of service; personal service by a law enforcement officer or certified mail. She stressed that neither option provided a fast investigation. The proposed statute allowed service to be made in any manor authorized by law or acceptable to the internet service provider. She added that internet service providers accepted faxes for federal subpoenas.

Ms. Carpeneti stated that the bill specified that a person who served with an administrative subpoena had a right to ask the judge to quash the subpoena prior to the time allotted for response. She concluded that the proposed legislation addressed those problems recognized in the past proposition.

Representative Gara recalled legislation passed in 2010 regarding pornographic videos and minors. He asked if the proposed legislation dealt with such material.

Ms. Carpeneti replied no.

Vice-chair Fairclough discussed the fiscal notes. She believed that six was the total number of notes.

Ms. Carpeneti believed that the bill had four or five fiscal notes.

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AT EASE

[2:31:06 PM](#)

RECONVENED

Representative Gara MOVED Amendment 1.

Representative Hawker OBJECTED.

Representative Gara MOVED to AMEND the Amendment to change the word impracticable to impractical on Page one, Line 9.

Hearing no objection, the amendment was amended.

Representative Wilson wondered about a definition of the words impracticable and impractical according to the Department of Law.

Ms. Carpeneti believed that "impractical" was easier to understand and that "impracticable" was more of a legal term.

Representative Hawker discussed that his objection was maintained. He believed that the amendment may muddy the waters. He did not like the implication that the statute said this

Co-Chair Stoltze agreed with Representative Hawker on the practical implications. He believed it had been expanded to increase flexibility.

Representative Gara explained that the amendment would allow the extra right to retain a person for 48 hours, only with reasonable measure to accomplish the process in 24 hours. He stated his preference to have the amendment in the statute, potentially drafted as a conceptual amendment. He did not agree with the idea of retaining a person, presumed innocent, without a bail hearing for 48 hours, unless absolutely necessary.

Co-Chair Thomas wondered what the department's position was on the amendment.

Ms. Carpeneti replied that the department did not have problem with the amendment. She explained that she would prefer to have the amendment in legislative intent over statute.

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Representative Doogan wondered whether a tracking method existed to document the amount of time a person must wait, whether it is 24 or 48 hours?

Ms. Carpeneti replied no. A method of collecting the information required a study, which she was happy to do. She noted that it was not uncommon for a defendant to be too intoxicated for arraignment.

Representative Gara had to depart for a Resources meeting.

Representative Joule wondered whether an accompanying letter of intent that might solve the problem.

Ms. Carpeneti responded that a letter of intent was helpful.

Representative Joule responded in the affirmative.

Roll Call:

Nay: 7

Yay: 4

The MOTION FAILED (7 to 4).

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Representative Wilson asked about the length of study required to produce valuable results.

Ms. Carpeneti responded that one year of knowledge would typically deliver necessary data. She pointed out that she was not an expert on statistical inquiries.

Representative Wilson wished to know if legislation was effective.

Vice-chair Fairclough MOVED to report CS HB 127 (FIN) out of committee with individual recommendations and the accompanying fiscal notes.

Representative Doogan OBJECTED for discussion.

Representative Doogan expressed concerns about "sentence creep," which increased the amount of time spent in jail, the amount of supervision and the expense.

Representative Costello stated experience with a case related to sexual abuse of a minor.

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Co-Chair Stoltze shared concerns about sentence creep but wanted to "sentence some creeps."

There were no further objections.

CS HB 127(FIN) was REPORTED out of Committee with accompanying new indeterminate fiscal note from the Department of Administration and previously published

notes: FN 1 (DPS), FN 2 (LAW), FN 3 (ADM), FN 4 (COR), FN 5 (DHS).

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AT EASE

[2:52:57 PM](#)

RECONVENED

#hb175

HOUSE BILL NO. 175

"An Act relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

HB 175 was HEARD and HELD in committee for further consideration.

#hb203

HOUSE BILL NO. 203

"An Act establishing and relating to the in-state gas pipeline fund; and providing for an effective date."

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Vice-chair Fairclough MOVED to ADOPT CSHB 203(FIN) (27-LS0719\D, Kirsch, 3/29/11) as a working document before the committee.

Co-Chair Stoltze OBJECTED for discussion.

REPRESENTATIVE MIKE CHENAULT, SPONSOR, discussed the new CS. He explained that the legislation would establish an instate gas pipeline fund in the general fund. The fund would be managed and invested by the Alaska Gasline Development Corporation (AGDC) according to the new CS. Millions of dollars were invested in the idea of an instate gas pipeline. The funding and departments have changed multiple times throughout the planning process. He stated

that the bill allows for a simple manner of reviewing the funds spent on the project.

Co-Chair Stoltze withdrew his objection to the adoption of the CS.

Hearing NO further OBJECTION it was so ordered.

Representative Wilson wondered whether people could place their permanent funds into the account.

Representative Chenault replied no. The option did not exist, although he found the idea worthy of exploration.

Representative Wilson understood that many Alaskans in her district expressed interest in the option.

Co-Chair Stoltze commented that the current configuration of "Pick, Click, and Give" would not permit the option.

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Co-Chair Stoltze was anxious to find a mechanism to the address gas shortages in Alaska.

Representative Chenault stressed the seriousness of the issue. He discussed the future of Alaska's energy supply and necessary jobs. He believed that a great investment was warranted.

Vice-chair Fairclough discussed a pipe dream. She proposed the idea of including the Alaskan citizens, by allowing them to invest. She expressed interest in buying shares in the ownership of an instate gasline.

Vice-chair Fairclough moved Amendment number 1.

Co-Chair Stoltze objected for discussion.

TOM WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, discussed that the amendment had been proposed by DOR for clarity. He stated that Page 1, Line 8, following "lapses," means that any funds that remain within the fund lapse back into the general fund. He continued with Page 2, Line one following "and," the language was changed to read "shall remain in." Any interest accrued by the account should stay within the fund or appropriated by the legislature back into the fund.

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Co-Chair Stoltze removed his objection.

Hearing no other objections the amendment was adopted.

Co-Chair Stoltze discussed the zero fiscal note.

Representative Chenault echoed the comments of Vice-chair Fairclough regarding Alaskans making a personal investment in the project for a guaranteed rate of return. He recalled Alaskan companies that were also interested in the potential investment.

Representative Hawker discussed that the legislation allowed the AGDC the opportunity to open a bank account, which was an important step towards assuring the transparency of the corporation. He stressed the urgency of the situation.

Representative Edgmon expressed support for the legislation.

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DANIEL FAUSKE, CHIEF EXECUTIVE OFFICER AND EXECUTIVE DIRECTOR, ALASKA HOUSING FINANCE CORPORATION (via teleconference), echoed the prior testimony and offered to answer questions.

Representative Gara supported the legislation, but pointed out the difficult future decision regarding the various options for production of Alaskan natural gas.

Mr. Fauske noted the requirement of a report detailing the analysis on the wide variety of options. The report was due on July 1, 2011. He mentioned that results of the many studies were expected to arrive. He preferred the larger export line, but agreed that each potential project must be properly vetted.

Co-Chair Thomas pointed out HB 152, a funding bill that passed out of the committee a few years prior.

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Representative Guttenberg appreciated that the governor in the 1950s had the foresight to make statements similar to those made today. He viewed the gasline as a utility that would provide great economic benefit to Alaskans.

Representative Wilson asked Mr. Fauske whether there were other funding options that would be provided in July's report.

Mr. Fauske responded in the affirmative. The report would provide estimates, detailed analysis regarding recommended financing strategies, analysis of the tax exempt financing, and recommendations regarding fund equity positions.

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Representative Wilson stressed that the people of Alaska would really like to be a part of the project.

Mr. Fauske believed that was a good suggestion.

Co-Chair Stoltze opened and closed public testimony.

Vice-chair Fairclough MOVED to report CS HB 203 (FIN) out of committee with individual recommendations and the accompanying fiscal note.

CS HB 203 (FIN) was REPORTED out of committee with a "do pass" recommendation and with new zero impact fiscal note from the Department of Revenue.

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ADJOURNMENT

The meeting was adjourned at 3:20 PM.