

HOUSE FINANCE COMMITTEE

April 2, 2012

1:37 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:37 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 Reggie Joule
Representative Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Richard Svobodny, Deputy Attorney General, Criminal Division, Department of Law; Lisa Mariotti, Policy Director, Alaska Network of Domestic Violence and Sexual Assault; Nancy Meade, General Counsel, Office of the Administrative Director, Alaska Court System; Jane Pierson, Staff, Representative Steve Thompson; Beth Chapman, Private Attorney, Juneau.

PRESENT VIA TELECONFERENCE

Regina Chennault, Physician and Member, Violent Crimes Compensation Board; Gloria O'Neill, President and Chief Executive Officer, Cook Inlet Tribal Council, Anchorage;

Sergeant Kathy Lacey, Anchorage Police Department; Lieutenant Rodney Dial, State Trooper, Department of Public Safety; Gerad Godfrey, Chair, Violent Crimes Compensation Board; Alice Myers, Board Member, Mary Magdalene Home Alaska, Anchorage; Quinlan Steiner, Public Defender Agency; David Shaftel, Private Attorney, Anchorage; Douglas Blattmachr, Alaska Trust Company.

SUMMARY

HB 292 PRINCIP.& INC/PROBATE/UTMA/RETIREMT/ETC.

CSHB 292(L&C) was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN1 (CED).

HB 359 SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

CSHB 359(FIN) was REPORTED out of committee with a "do pass" recommendation and with two new zero fiscal notes from the Department of Administration, two new zero fiscal notes from the Department of Public Safety, one new zero fiscal note from the Department of Law, one new indeterminate note from the Department of Corrections, and one previously published indeterminate fiscal note: FN8 (CRT).

#hb359

HOUSE BILL NO. 359

"An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date."

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ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW,

introduced testifiers representing the Department of Law (LAW), as well as other experts in the field that were available for questions.

RICHARD SVOBODNY, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, was present for questions.

REGINA CHENNAULT, PHYSICIAN AND MEMBER, VIOLENT CRIMES COMPENSATION BOARD (via teleconference), spoke in strong support of the bill. She testified that her membership on the board offered her firsthand knowledge of the damage caused as a result of sex trafficking. She spoke of a case in Anchorage that involved an offender driving the streets of the city and abducting children on their way to school, then forcing them into sex trafficking through drugs, bodily harm, and intimidation. She stated that one 16 year old young woman abducted by the offender ended up brutally beaten, pregnant, addicted to drugs, and suffering from multiple, life-long sexually transmitted diseases. She furthered that experience as a trauma surgeon had shown her that when left unchecked, offenders and victims continued the cycle of violence through generations. She thought that a provision pertaining to any harm of an unborn child should be considered.

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Co-Chair Stoltze directed attention to a provision in the bill that provided for video conferencing for the competency hearing and the trial. He queried her stance on the subject of video conferencing.

Dr. Chennault asked for clarification of the question.

Ms. Carpeneti explained that there were two provisions in the bill related to the simultaneous taking of testimony from victims by video conferencing. She said that one was for the pre-trial competency hearing and the other was for the actual trial. She qualified that the trial provision was very limited because of the right of cross examination. She furthered that the competency provision was broader, but the court held the burden to determine the fairness of the proceedings.

Dr. Chennault responded that if the child victim could not be present at the court proceedings the video conferencing

provisions would be a key asset for the prosecution of offenders.

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GLORIA O'NEILL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COOK INLET TRIBAL COUNCIL, ANCHORAGE (via teleconference), spoke in support of the bill. She testified that the council was particularly troubled by the luring of young Alaska Native women from villages into the sex trade. She pointed out to the committee that sex traffickers often preyed upon the most vulnerable, and often most invisible to society: the homeless, runaway youth, and youth in foster care. She asserted that there were a disproportionate number of Native women in the sex trade in Anchorage. She relayed that the typical age for Alaska Native females entering into the trade was 15 to 17 years old, and that they were especially vulnerable because they could be labeled as "exotic." She supported the bill because it recognized that the victims of the trade were just that: victims, and not prostitutes or criminals. She added that the council supported increased sentences for perpetrators. She stressed that the council was dedicated to partnering with public and private entities to ensure that there were appropriate preventative and response services for victims in the hope that victims would move on to lead happy and successful lives.

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SERGEANT KATHY LACEY, ANCHORAGE POLICE DEPARTMENT (via teleconference), voiced support for the legislation. She noted that the language change from "promoting prostitution" to "sex trafficking" was significant because "promoting prostitution" implied a business arrangement between the trafficker and the victim. She furthered that the average age of entry into the trade was 14 years-of-age, and that the young age made victims particularly vulnerable. She believed that increasing penalties for the patrons of prostitution was also important.

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Vice-chair Fairclough solicited her opinion about striking the videoconferencing provision, which was intended to address the 6th amendment right to confront and question the accuser.

Ms. Lacey noted that she had not seen the amendment; however, she believed that whatever could be done to make the situation easier on the victims, the better.

LIEUTENANT RODNEY DIAL, STATE TROOPER, DEPARTMENT OF PUBLIC SAFETY (via teleconference), spoke in support of the bill and was available for questions.

GERAD GODFREY, CHAIR, VIOLENT CRIMES COMPENSATION BOARD (via teleconference), pointed to a letter of support included in members' packets (copy on file). He voiced strong support for the victim centered approach taken by the bill. He shared that while serving on the board he had noticed that a certain percentage of victims that submitted claims had been on an unhealthy life trajectory. He thought that the state, through legislation, could assist the victims in becoming positive members of society. He stated that sex trafficking victims typically had low self-esteem, which was compounded by working in the trade. He believed that the system should be sensitive about labeling victims. He relayed that victims were able to recognize their self-worth when those who exploited them suffered severe consequences. He asserted that the videoconference provision was important because it would allow the victim to be part of the process without the fear of re-victimization.

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LISA MARIOTTI, POLICY DIRECTOR, ALASKA NETWORK OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT, spoke in strong support of the legislation; specifically, the language change of "promoting prostitution" to "sex trafficking" because it maintained focus on the acts of a perpetrator. She stated that the victims of sex trafficking were often the most vulnerable members of society; homeless adults and children of both sexes were often preyed on by groups of perpetrators. She testified in support of increasing penalties for patronizing a prostitute; particularly if the sex worker was a minor.

Vice-chair Fairclough discussed the use of videoconferencing; specifically, children who were victims of sexual assault being allowed to provide video testimony instead of appearing in a courtroom. She shared that the administration had requested that the committee consider

allowing videoconferencing for competency hearings of defendants. She asked Ms. Mariotti's opinion on the matter.

Ms. Mariotti responded that LAW was trying to address the fact that there were very few experts available in Alaska. She addressed the children videoconferencing law, which had been upheld in the court of appeals. She assured the committee that LAW had worked to balance the constitutional rights of the victim and the confrontational rights of the defendant under the 6th Amendment. She thought that it would be challenged, but that LAW would win the challenge.

Vice-chair Fairclough understood that there were certain situations under which a judge, or jury, could allow videoconferencing. She queried the circumstances under which a vulnerable child could testify through videoconference.

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Ms. Mariotti replied that she was not an expert in the area. She believed that the basis for the videoconferencing provision was because children were particularly vulnerable. She said the provision could be extended to victims who could be re-traumatized by facing their perpetrators in court.

Ms. Carpeneti stated that the bill allowed for remote testimony if the witness was unavailable to appear in person. She said that the proposed procedure would be two-way video, and would require the witness to see the courtroom as if they were actually sitting in the witness stand. She added that the provision supplemented current law, which allowed for one way video testimony of a child victim, if the court found that facing the person in court would be too traumatic. She relayed that in certain, fact-specific circumstances, where the witness could not make it to the court room, the witness could testify remotely.

Vice-chair Fairclough asked whether there would be a person from the court system with the videoconferencing witness. Ms. Carpeneti answered that the bill required the victim to be alone with the videoconference. She clarified that an application could be made to the court to allow for a person to accompany a child for support.

Representative Gara asserted that he did not intend for his amendment to lead to the re-victimization of witnesses. He said that the bill did not seem to be aimed at protecting victims from being re-victimized. He cited Page 16, which allowed for the videoconference testimony if the witness was unavailable. He pointed to the mandatory requirements for videoconferencing:

(1) the requesting party establishes that testimony by two-way video conference is necessary to further an important public policy;

(2) the requesting party establishes that the witness is unavailable

He surmised that if the witness was available, even if they were a victim, the provision would not apply.

Ms. Carpeneti agreed. She explained that the witness may have moved out of state, which would make them unavailable. She stressed that if the witness was a child under 16 years of age, the court of appeals had upheld that one-way video could be used.

Ms. Carpeneti furthered that the court rule in Section 24 of the bill was limited. She stated that the procedure had been upheld by the United States Supreme Court, and was similar to a procedure that had been upheld by the state's court of appeals.

Representative Gara asked if there were procedures in place that would protect witnesses in the courtroom.

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Ms. Carpeneti responded that victims were protected under statute, but not necessarily in the courtroom setting. She stated that the right of notice, and the opportunity to be heard were among the protections provided by the court.

Representative Gara hypothesized that the court could allow testimony to happen by deposition, with all parties in different locations.

Ms. Carpeneti responded that the courts had held that the two-way video conferencing was fair to all people involved

because it gave the judge the chance to evaluate the person's demeanor.

ALICE MYERS, BOARD MEMBER, MARY MAGDALENE HOME ALASKA, ANCHORAGE (via teleconference), spoke in favor of the legislation. She testified that many of the women that passed through the home had been preyed upon in their youth by pimps, working prostitutes, and in some cases their own mothers. She opined that it was common for a child to begin soliciting under the tutelage of the mother. She said the mother would in turn sell the child to a pimp for drugs. She added that the women that passed through the home did not have the job skills needed to build a new life. She said they were often homeless, poor, unskilled, undereducated, drug addicted, mentally and physically unhealthy, felons, lacking in familial support, and most all of them were mothers. She relayed that these women continued to exist in a cycle; rotating between survival on the streets and incarceration, and often incarceration was a welcome respite. She testified in support of the language change in the bill, and the addition of stronger patron accountability.

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NANCY MEADE, GENERAL COUNSEL, OFFICE OF THE ADMINISTRATIVE DIRECTOR, ALASKA COURT SYSTEM, explained that the competency hearings in Section 16 of the legislation were not uncommon. She said that the hearings were part of a criminal case; however, during a competency hearing not all defendant protections would be attached. She thought that there could be questions concerning the constitutionality of the provision, but that the court had no opinion on the matter. She clarified that not every courtroom currently had the capacity to support the two-way video conferencing. She directed attention to the indeterminate fiscal note. She said that in some situations Skype could be used, but that the court did not have the ability to provide high-quality, high-sound video in all different criminal proceedings. She said that Section 24 of the bill could apply in all criminal cases.

Representative Guttenberg queried the issue of severability regarding the legislation.

Ms. Carpeneti responded that there was a general severability statute in Alaska law that provided that if

one provision in a bill was found to be unconstitutional the rest of the bill would still stand.

Ms. Meade elaborated that the video-conferencing portions of the bill were not necessarily related to the sex trafficking provision; they were two different parts of criminal law that would be changed by the bill.

Representative Doogan asked for an explanation of Page 16, line 20. He wanted to know the standard of "clear and convincing evidence," as well as what it was being applied to on lines 30 and 31.

Ms. Carpeneti responded that "clear and convincing evidence" was a standard that was more difficult to reach than preponderance of evidence, which was the standard used in most civil litigation. She said that the state was required to prove beyond a reasonable doubt before someone could be convicted of a crime, which was the highest burden of proof in law. She relayed that "clear and convincing" rested between "preponderance of evidence" and "beyond a reasonable doubt."

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Representative Doogan asked why the highest standard of beyond a reasonable doubt had not been used.

Ms. Carpeneti responded that the court of appeals had found that clear and convincing would be the appropriate burden of proof in the case of unavailability of child witnesses.

Representative Doogan noted that the same standard applied throughout the legislation to patrons of prostitution.

Ms. Carpeneti clarified that the standard that applied to a patron of a prostitute was beyond a reasonable doubt.

Co-Chair Thomas thought that plea bargains should not be allowed in child sex trafficking cases. He felt that perpetrators should be barred from hiring the best and most capable attorneys.

Ms. Carpeneti responded that the state public defender was excellent. She reminded the committee that the right to an attorney was protected under the constitution. She added that the crime of sex trafficking in the first degree as

described in the bill would be an unclassified felony, which was the highest level of crime under state law.

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Representative Gara cited Page 16. He surmised that the court had a stronger interest in protecting victims as opposed to generic witnesses. He understood that the provision would apply to all unavailable witnesses. He suggested limiting Line 5 to "testimony from a victim." He thought that the court would be more willing to protect a victim. He believed that this would protect victims without extending the provision to other witnesses.

Ms. Carpeneti responded that there were some witnesses who could be critical to the prosecution of the case, that were not the victim, but were unavailable. She said that the rule would only be applied if the court found that the witness had a connection to a particular victim under a particular fact pattern. She stressed that the provision would have to be justified and would be limited. She shared that the language followed what the United States Supreme Court had upheld under Maryland v. Craig [The court ruled that the Sixth Amendment's Confrontation Clause, which provides criminal defendants with the right to confront witnesses against them, did not bar the use of one-way closed circuit television to present testimony by an alleged child sex abuse victim.] She shared that the decision in that case had required the court to make fact specific determinations that a particular witness, for a particular case, justified the use of videoconferencing.

Representative Gara understood that presently, the courts deposed witnesses if they were unavailable.

Ms. Carpeneti said that a deposition was a possibility, and then the court would decide if it was admissible. She furthered that a two-way video would be more helpful to the process than a flat deposition.

Representative Neuman expressed concern with the lack of definition for "indecent materials" found on Page 3, line 31 of the legislation.

Ms. Carpeneti replied that Section 4, page 3, line 30 was specifically in the bill to address a decision by the Federal District Court, which found that the state's

statute prohibiting the distribution of indecent materials to minors was unconstitutionally overbroad. The section had been rewritten in order to address the concerns of that decision; it required the state to prove that the defendant intentionally distributed the material, or possessed it with the intention to distribute, to a person known, or believed, to be a child. She cited Page 4, lines 9 through 18, which described the prohibited material.

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Representative Neuman opined that the language on Page 4 described acts, and not material. He asserted that indecent material could be any number of things. He requested a description of exactly what were indecent materials.

Ms. Carpeneti responded that the provision would cover material in a variety of formats: books, email, video, any material that included the prohibited acts.

Representative Neuman explained that his concern stemmed from the fact that there were definitions in the bill for other acts.

Ms. Carpeneti responded that Section 3 of the bill expanded the definition of "serious felony offense" solely for the purpose of the law dealing with conspiracy. She said that the law that dealt with conspiracy was limited in its application to serious crimes. She explained that the bill provided for two additional crimes: human trafficking in the first degree and sex trafficking in the second degree.

Representative Neuman wondered whether it would be better to include a description of what the indecent materials were. Additionally, he pointed to Section 13 related to the forfeiture of property; he asked for a definition of property.

Ms. Carpeneti replied that the forfeiture provision would include items such as cars, houses, money; anything used to institute, aid, or facilitate sex trafficking, as well as anything received or derived from sex trafficking. She stated that current law allowed that the state could seek forfeiture of money or property that was used to commit sex trafficking. The legislation would add the crime of promoting prostitution by an adult seeking a prostitute who was underage.

Representative Wilson wondered what the current ultimate penalty was for a perpetrator related sex trafficking.

Ms. Carpeneti responded that the maximum term was 99 years. She noted that the bill only changed the penalty applied to the patron of a prostitute. She furthered that if the sex worker was under 18, and if there were three or more years between the patron and the worker, the penalty would be a Class C felony.

Representative Wilson wondered why it mattered how old the patron was, if the victim was a minor.

Ms. Carpeneti believed that the age of the patron was important because it was expected that the patron would be of an age of maturity, and would be more cognizant of their behavior when patronizing a minor sex worker.

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Vice-chair Fairclough noted that some patrons consider sexual activity with a minor exotic, which meant that pimps would receive a premium price. She explained that this was the reasoning behind increasing the penalty for patron knowingly soliciting underage prostitutes.

Vice-chair Fairclough wondered what would prevent the department from using expert witnesses exclusively in a two-way video conference. She thought that this would ensure that the jury heard from the best experts possible.

Ms. Carpeneti responded that the reason for putting the possibility in statute was that there was a shortage of psychiatrists and psychologists that had the expertise to testify to the competency of a person charged with a crime. She said that the approach was to use the expertise and resources as efficiently as possible; for example, having an expert appear by videoconference in a village, rather than having the expert travel. She stated that as long as the court found that it was fair, and all participants had a fair chance to examine the witness, out-of-state experts could be used.

Vice-chair Fairclough offered that a defense would then have the same opportunity to provide an expert. She noted that weather conditions occasionally made it impossible for in-time arrival to some communities. She believed the

benefits of the two-way conferencing outweighed the negatives. She thought that it was important to recognize that technological advancements, like two-way videoconferencing, were realities to consider in the future crafting of policy.

Co-Chair Stoltze moved to amendments.

Representative Gara had no intention of offering amendment 2. He stressed that the amendment had not been written with the intention of re-victimizing witnesses.

Representative Gara MOVED to ADOPT Amendment 1:

Page 5, line 15:

After "under" delete "18"

After "under" insert "20"

Co-Chair Stoltze OBJECTED for discussion.

Representative Gara explained Amendment 1. He believed that young women were barely out of high school at age 20, and were therefore as impressionable as someone who was 18. He thought that increasing the penalty for a sex trafficker who hired a person under age 20, rather than 18, would result in fewer young people entering the sex trade.

Ms. Carpeneti agreed that people under 20 years old were very vulnerable.

Co-Chair Thomas opined that defense lawyers for sex traffickers were often provided at the expense of the state.

Representative Costello asked what the sentencing guidelines would be for the crime of sex trafficking in the first degree involving an 18 year-old, as the bill was currently written. She queried the same sentencing guidelines and crime label if the victim was a 19 year-old.

Ms. Carpeneti responded that the bill would raise the penalty for a patronizing an under aged prostitute (if there was three years age difference between the patron and the prostitute) from a Class B misdemeanor to a Class C felony, which was five years in jail. She said that sex trafficking in the first degree would be an unclassified felony if the victim was under 18 years old and would have

a maximum term of 99 years. Under current law if the victim was over 18 the maximum term was 20 years. She furthered that sex trafficking in the second degree was a Class B felony that could result in 10 years in prison. She relayed that sex trafficking in the third degree was a Class C felony and carried a maximum term of 5 years and sex trafficking in the fourth degree was a Class A misdemeanor, with a maximum term of one year. She noted that the penalties for sex trafficking were not changed in the legislation. She said that if the age was changed from under 18 to under 20, the penalty for people that induced victims under 20 would be raised to an unclassified felony.

Representative Costello wondered whether there was any overlap related to the minimum and maximum terms that would be given to perpetrators.

Ms. Carpeneti answered that she had just listed the maximum terms of imprisonment. She specified that the sentencing ranges could be found in AS 12.55.125. She stated that the term would depend on the offender's criminal history. She assured the committee that the state had significant sentencing ranges for people who victimized other people in a sexual way.

Representative Costello probed what change the amendment would have in the overall effect of the legislation.

Co-Chair Stoltze interjected that the question was about what would happen to 19 year-old victims.

Ms. Carpeneti replied that the defendant would be subject to an unclassified felony prosecution. She added that under current law someone found guilty of soliciting a 19 year old would be subject to a maximum term of 20 years in prison.

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Representative Costello queried the minimum sentences.

Ms. Carpeneti responded that a defendant that was convicted of sex trafficking in the first degree when the victim was under 18, and if the victim was under 13 years-old, first offense: 25 to 35 years; 13 years-old and above: 20 to 30 years. She added that the range would increase if a firearm or weapon was used.

Representative Joule understood the range encompassed the minimum to the maximum sentence that could be given.

Ms. Carpeneti replied that when a judge was sentencing a person for the first offense of sex trafficking of a child, the range if the victim was under 13 years-old would be 25 to 35 years. She said that the range would be subject to alteration depending on mitigating or aggravating factors.

Representative Joule surmised that the minimum sentence was a moving target based on aggravated or mitigating circumstances.

Ms. Carpeneti replied that that was true.

Representative Neuman understood that the age change in the proposed amendment would make the law stricter.

Ms. Carpeneti responded in the affirmative.

Representative Gara clarified that the amendment spoke to the sex trafficker and not the patron.

Representative Wilson wondered if the amendment changed the original intent of the bill, which was to protect minors age 18 and under.

Ms. Carpeneti replied that generally speaking in criminal law terms a minor was a person under 18 who was addressed by the juvenile justice system. She said that in certain circumstances the courts could treat people as juveniles up to 20 years of age.

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Representative Wilson wondered how the change would impact the fiscal note. She maintained her OBJECTION to the amendment.

Representative Gara clarified that the amendment only related to the sentence against the sex trafficker. He reiterated that it would not change any of the laws relating to a minor.

Ms. Carpeneti agreed that the amendment would only change the penalty for promoting prostitution in the first degree

for a person who was guilty of the trafficking of a person under the age of 20.

Co-Chair Stoltze reiterated that the amendment would not affect the patron or the victim.

Representative Joule clarified that the judge had the discretion to declare a person a minor even if the person was over the age of 18.

Ms. Carpeneti responded that she did not know whether the judge would have the authority. She stressed that the legislature would define the crime in the bill, which would inform the prosecution and the court system of the elements of the crime.

Representative Wilson WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 1 was ADOPTED.

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Co-Chair Thomas revisited whether the bill could be changed so that people accused of sex trafficking would be barred from retaining a state appointed public defender.

Ms. Carpeneti advised against limiting the availability of public defenders. She stated that the accused had the right under constitutional law to a criminal defense lawyer.

Co-Chair Thomas maintained his position that defendants in sex trafficking cases should not be allowed a defense paid for by the state.

Representative Gara explained that public defenders were awarded to defendants that met specific poverty guidelines. He added that not many sex traffickers were poor. He recognized that defendants could hide their assets.

Vice-chair Fairclough pointed to the fiscal notes: Court System, Department of Administration, Department of Public Safety, Department of Law, Department of Corrections.

Representative Costello pointed to a typo in OMB component number 43 in the word substitute.

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Representative Doogan opined that another indeterminate fiscal note was attached to legislation before the committee.

Vice-chair Fairclough MOVED to report CSHB 359(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 359(FIN) was REPORTED out of committee with a "do pass" recommendation and with two new zero fiscal notes from the Department of Administration, two new zero fiscal notes from the Department of Public Safety, one new zero fiscal note from the Department of Law, one new indeterminate note from the Department of Corrections, and one previously published indeterminate fiscal note: FN8 (CRT).

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AT EASE

[3:14:17 PM](#)

RECONVENED

#hb292

HOUSE BILL NO. 292

"An Act relating to property exemptions for retirement plans; relating to pleadings, orders, liability, and notices under the Uniform Probate Code; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to insurable interests for life insurance policies; relating to transfers of individual retirement plans; relating to the community property of married persons; and amending Rule 301(a), Alaska Rules of Evidence."

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Vice-chair Fairclough MOVED CSHB 292(L&C), 27-LS1232/I as a working document before the committee. There being NO OBJECTION it was so ordered.

JANE PIERSON, STAFF, REPRESENTATIVE STEVE THOMPSON, explained the legislation. She read from the sponsor statement:

House Bill 292 provides for amendments to statute in the following areas:

- Extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse).
- Provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements.
- Amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations.
- Provides rules concerning who may control the disposition of decedents' remains.
- Makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code.
- Provides that IRA interests can be voluntarily transferred to a family member or trust.
- Makes amendments to Alaska's community property provisions to update and clarify the ownership of community property.
- Allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.

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DAVID SHAFTEL, PRIVATE ATTORNEY, ANCHORAGE (via teleconference), detailed the sectional analysis (copy on file).

Representative Edgmon asked for the highlights of the bill. Mr. Shaftel pointed to Section 4 and 5, which dealt with extending virtual representation from agreements that were reached in court to agreements that were reached outside of court, such as settlements or trust accountings. He furthered that Sections 6 through 8 spoke to a method for modifying trust, and had been adopted by 13 states. He continued to explain that Sections 9-25 dealt with the Alaska Principal and Income Act, and incorporated new federal regulations and recommendations from national experts to improve the income act. Sections 26 through 28

detailed the amendments to Alaska Uniform Transfers to Minors Act; the change allowed, with the minors consent, the extension of the accounts beyond the age of 25. He concluded that Section 29 related to decedents remains.

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Representative Costello asked whether Sections 26 through 28 provided a ceiling of 25 years of age, or extended the age.

Mr. Shaftel replied that the extension could be applied to any age that was agreeable to the minor and the custodian.

Representative Costello asked about the priority list in Section 29 related to the decision of disposing of remains.

Mr. Shaftel answered that the list could be found on Pages 24 and 25 of the bill. He continued to Section 30, which spoke to insurable interests and clarified the law and made it clear that trusts and business entities could own life insurance if the beneficiaries were those with an insurable interest. He stated that Section 31 dealt with transfers of IRA interests and allowed for the voluntary transfer of IRA interests for estate planning purposes. Sections 32 through 36 spoke to the state community property act and clarified survivorship questions and beneficiary designations.

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Representative Guttenberg asked about sections 6 through 8; particularly the last paragraph. He wondered about the level of flexibility that would be allowed for adjusting to changing circumstances.

Mr. Shaftel replied that the statute was a result of hearing in New York concerning the balance of correcting administrative types of errors and dispositive changes. He said that when making a change to the trust the dispositive plan in place would need to be followed. He said that increasingly he had seen plans where the trustee was given absolute discretion to make distributions, which allowed for more leeway. He relayed that there was no such thing anymore as a completely irrevocable trust. He stressed that the provision had been carefully vetted.

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DOUGLAS BLATTMACHR, ALASKA TRUST COMPANY (via teleconference), spoke in strong support of the bill.

BETH CHAPMAN, PRIVATE ATTORNEY, JUNEAU, strongly supported the legislation.

Representative Gara asked whether there was any language in the bill that would weaken the rights of beneficiaries or victims of fraud.

Ms. Chapman responded in the negative.

Co-Chair Thomas CLOSED public testimony.

Vice-chair Fairclough discussed the one zero fiscal note from Department of Commerce, Community and Economic Development.

Vice-chair Fairclough MOVED to report CSHB 292(L&C) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 292(L&C) was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN1 (CED).

ADJOURNMENT

[3:31:26 PM](#)

The meeting was adjourned at 3:31 PM.