

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 27, 2012
1:06 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Wes Keller
Representative Lindsey Holmes
Representative Mike Hawker (alternate)

OTHER LEGISLATORS PRESENT

Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 221

"An Act relating to the appointment of counsel for persons accused of crimes; and amending Rule 39.1, Alaska Rules of Criminal Procedure."

- MOVED HB 221 OUT OF COMMITTEE

HOUSE BILL NO. 278

"An Act allowing as a condition of probation for a defendant convicted of certain sex offenses a prohibition against the defendant's residing at a residence where outdoor recreational equipment suitable for use by children under 16 years of age is located on the property."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 221

SHORT TITLE: PUBLIC DEFENDER APPOINTMENT PROCEDURES

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

04/01/11 (H) READ THE FIRST TIME - REFERRALS
04/01/11 (H) JUD, FIN
02/22/12 (H) JUD AT 1:00 PM CAPITOL 120
02/22/12 (H) Heard & Held
02/22/12 (H) MINUTE(JUD)
02/24/12 (H) JUD AT 1:00 PM CAPITOL 120
02/24/12 (H) -- MEETING CANCELED --
02/27/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 278

SHORT TITLE: SEX OFFENDER PROBATION CONDITIONS

SPONSOR(S): REPRESENTATIVE(S) PETERSEN

01/17/12 (H) PREFILE RELEASED 1/13/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) JUD
02/27/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 221.

REPRESENTATIVE PETE PETERSEN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 278.

MONICA SOUTHWORTH, Staff
Representative Pete Petersen
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 278, responded to questions on behalf of the sponsor, Representative Petersen.

JEFFREY A. MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska

POSITION STATEMENT: Suggested that HB 278 be changed.

CARMEN GUTIERREZ, Deputy Commissioner
Office of the Commissioner - Anchorage

Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 278.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 278.

SUSAN SULLIVAN, Executive Director
Victims for Justice (VFJ)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 278.

TRACEY WOLLENBERG, Deputy Public Defender
Appellate Division
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 278.

ACTION NARRATIVE

[1:06:32 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Thompson, Lynn, Pruitt, and Gruenberg were present at the call to order. Representative Gatto was excused. Representative Chenault was also in attendance.

HB 221 - PUBLIC DEFENDER APPOINTMENT PROCEDURES

[1:07:17 PM](#)

VICE CHAIR THOMPSON announced that the first order of business would be HOUSE BILL NO. 221, "An Act relating to the appointment of counsel for persons accused of crimes; and amending Rule 39.1, Alaska Rules of Criminal Procedure."

VICE CHAIR THOMPSON mentioned that members' packets now include a fiscal note from the Alaska Court System (ACS).

The committee took an at-ease from 1:09 p.m. to 1:11 p.m.

VICE CHAIR THOMPSON noted that public testimony on HB 221 had been closed during the bill's previous hearing.

[1:12:27 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to questions, explained that the ACS has submitted a substantial fiscal note for HB 221, detailing the estimated costs associated with requiring all who seek court-appointed legal representation to complete a signed sworn financial statement, with most of the estimate reflecting costs associated with the additional ACS personnel that would be needed to assist everyone with the required forms. She then spoke about the process currently undertaken by those who are not presumptively eligible for court-appointed legal representation, highlighting the fact that if this process must be undertaken by everyone, it would constitute quite a change in the ACS's daily operations. She also mentioned that logistical issues would arise, such as when several defendants from various cases come before the court handcuffed together. The ACS's fiscal note also reflects the estimated cost of providing interpreter services during this phase of the process, and the estimated cost of translating the necessary forms into languages other than English.

MS. MEADE, in response to questions, pointed out that if HB 221 becomes law, the ACS must arrange to have the necessary personnel, equipment, and procedures in place, and thus the bill's fiscal impact wouldn't necessarily change as a result of adding a specific effective date. She agreed to research the issue further, though.

[1:19:05 PM](#)

REPRESENTATIVE PRUITT moved to report HB 221 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 221 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:19 p.m. to 1:21 p.m.

HB 278 - SEX OFFENDER PROBATION CONDITIONS

1:21:40 PM

VICE CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 278, "An Act allowing as a condition of probation for a defendant convicted of certain sex offenses a prohibition against the defendant's residing at a residence where outdoor recreational equipment suitable for use by children under 16 years of age is located on the property."

1:22:12 PM

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 278, Version 27-LS1197\M, Gardner, 2/23/12, as the working document.

REPRESENTATIVE PRUITT objected for the purpose of discussion.

1:22:35 PM

REPRESENTATIVE PETE PETERSEN, Alaska State Legislature, sponsor, explained that by altering the statute pertaining to conditions of probation - AS 12.55.100 - HB 278 would provide the court with the discretionary authority to set, as an additional condition of probation for those convicted of certain sex offenses, a prohibition pertaining to outdoor recreational equipment suitable for use by children under 16 years of age. This bill was engendered by a situation [that occurred in Anchorage] in which a man sexually abused three children after luring them onto his property with such equipment. The intent of HB 278 is to prevent such situations from occurring. According to some national statistics from the Center for Sex Offender Management (CSOM) - [some of which are] included in members' packets - one in four girls and one in seven boys have been sexually assaulted; 67 percent of all people who've been sexually assaulted are children 17 years of age and younger; 86 percent of all children who are sexually assaulted are female; previously-convicted perpetrators are much more likely to reoffend; and child molesters - over a four- to five-year period - have a recidivism rate of 12.7 percent. Sex offenders - as a group - are very heterogeneous, and so it's important to treat each case uniquely and individually, he remarked, indicating that HB 278 would provide for just that type of treatment, giving Alaska courts another tool with which to tailor a sex offender's probation. Again, the bill would only apply in situations involving certain sex offenses, and the proposed additional condition of probation would be discretionary, rather

than mandatory. House Bill 278, he relayed in conclusion, is supported by Victims for Justice (VFJ), the Alaska Peace Officers Association (APOA), and the Alaska Association of Chiefs of Police, Inc. (AACOP).

VICE CHAIR THOMPSON said he supports the concept of HB 278, but remarked that the bill itself seems pretty broad.

[1:26:30 PM](#)

MONICA SOUTHWORTH, Staff, Representative Pete Petersen, Alaska State Legislature, on behalf of the sponsor, Representative Petersen, in response to questions, offered her understanding that no other state has a condition of probation like the one HB 278 is proposing, but pointed out that some of Alaska's existing conditions of probation already address the private property of certain convicted sex offenders; for example, there are conditions pertaining to [residing on property near school grounds,] to possessing or using a computer, and to using or creating an Internet site.

VICE CHAIR THOMPSON questioned whether snow machines or basketballs would qualify as "outdoor recreational equipment" for purposes of the bill.

MS. SOUTHWORTH said, "I suppose."

VICE CHAIR THOMPSON again remarked on the seeming broadness of the bill.

REPRESENTATIVE PRUITT expressed concern that such broadness could potentially violate the constitutional rights of convicted sex offenders.

REPRESENTATIVE PETERSEN offered his belief that by applying only to the behavior of installing outdoor recreational equipment on one's property or at one's residence - rather than to the behavior of residing at a residence where such equipment is located - Version M would address such concerns.

REPRESENTATIVE LYNN characterized the intent of the bill as good, but questioned whether the court already has the authority to provide for such a condition of probation.

REPRESENTATIVE PETERSEN offered his belief that the court does have that authority now. However, specifying it in statute would ensure that the court itself knows it has that authority,

particularly in light of the aforementioned Anchorage situation. In response to other questions, he ventured that if a convicted sex offender already had such equipment on his/her property or at his/her residence, then, depending on the specific facts of the case, the court could order the person to dismantle the equipment, or to relocate, or to ask the actual property owner to dismantle the equipment, as a condition of probation.

VICE CHAIR THOMPSON questioned whether such would constitute a taking by the state.

REPRESENTATIVE PETERSEN said he didn't know. In response to other questions, he indicated that the bill's proposed prohibition would only apply while the convicted sex offender is on probation; and reiterated that depending on the specific facts of the case, a convicted sex offender could be ordered to relocate or to [work with] the actual property owner regarding installing/dismantling such equipment.

[1:35:59 PM](#)

REPRESENTATIVE GRUENBERG expressed a preference for the original version of the bill, and suggested, therefore, that his motion to adopt Version M as the work draft be tabled.

The committee took a brief at-ease.

REPRESENTATIVE PRUITT removed his objection to the motion to adopt Version M as the work draft.

REPRESENTATIVE GRUENBERG made a motion to table his motion to adopt proposed committee substitute (CS) for HB 278, Version 27-LS1197\M, Gardner, 2/23/12, as the work draft. There being no objection, it was so ordered.

[1:39:21 PM](#)

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), after mentioning that he'd provided written testimony detailing the ACLU of Alaska's concerns with HB 278, pointed out that a convicted sex offender's inability to find housing once released from prison can lead to him/her reoffending. He suggested, therefore, that HB 278 be changed such that the proposed condition of probation would instead be a prohibition on "creating" an attraction for children, rather than a prohibition on either "residing" or "installing".

1:41:11 PM

CARMEN GUTIERREZ, Deputy Commissioner, Office of the Commissioner - Anchorage, Department of Corrections (DOC) - after briefly describing how the DOC currently treats those convicted of sex offenses against children under its sex offender containment model, and providing some statistics regarding the resulting recidivism rates - explained that research indicates that HB 278 would not provide Alaska's probation officers with a useful tool. She, too, noted that a convicted sex offender's inability to find housing once he/she is released from prison can lead to him/her reoffending, and that the court already has the authority to provide for special conditions of probation such as the one proposed by the bill regarding outdoor recreational equipment. She added that probation officers, if they find anything inappropriate at a probationer's home, already have the authority to require him/her to change his/her living situation.

REPRESENTATIVE GRUENBERG questioned the constitutionality of existing AS 12.55.100(e)(2)(A)-(C).

MR. MITTMAN and MS. GUTIERREZ agreed to research that issue further.

MS. GUTIERREZ, in response to another question, reiterated that a convicted sex offender's inability to find housing once he/she is released from prison can lead to him/her reoffending.

1:54:08 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that the ACS has no position on HB 278. She, too, noted that the court already has the authority to provide for special conditions of probation when they are reasonably related to the initial offense, adding that it's the DOC that makes recommendations regarding what conditions ought to be imposed.

1:55:21 PM

SUSAN SULLIVAN, Executive Director, Victims for Justice (VFJ), said that the board of directors of the VFJ shares the sponsor's concern for victims and potential victims of pedophiles, and believes HB 278's proposed condition of probation to be

reasonable, not burdensome, particularly given its discretionary nature.

[1:56:52 PM](#)

TRACEY WOLLENBERG, Deputy Public Defender, Appellate Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), expressed concern that the language of HB 278's proposed discretionary condition of probation is over-broad and vague, and thus could leave a convicted sex offender out on probation without any housing options. For example, the term, "outdoor recreation equipment" is not yet defined in the bill, and so could refer to a broad range of items commonly found in people's homes, and the word, "property" could refer to an apartment building, over which a tenant who is a convicted sex offender would have no control. Convicted sex offenders out on probation are already severely limited with regard to where they can live, and HB 278 would only increase those limitations and perhaps create more problems than it would solve. The perceived problem, she posited, can already be addressed without the bill, because the court has the authority to impose conditions of probation that are reasonably related to the initial offense. In conclusion, she, too, agreed to research the constitutionality of existing AS 12.55.100(e)(2)(A)-(C).

REPRESENTATIVE PETERSEN, in response to comments, indicated that he would continue to work on addressing the concerns raised.

VICE CHAIR THOMPSON relayed that HB 278 would be held over [with the motion to adopt Version M as the work draft having been tabled].

[2:03:42 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:03 p.m.