

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 14, 2012

1:02 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes
Representative Mike Hawker (alternate)

MEMBERS ABSENT

Representative Steve Thompson, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 50

"An Act relating to the purchase of alcoholic beverages at a club and to access by certain persons under 21 years of age to a club's licensed premises when alcoholic beverages are present."

- HEARD & HELD

HOUSE BILL NO. 128

"An Act relating to prohibiting the use of cellular telephones by minors when driving motor vehicles; and providing for an effective date."

- MOVED CSHB 128(TRA) OUT OF COMMITTEE

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 50

SHORT TITLE: ACCESS TO LICENSED PREMISES

SPONSOR(S): REPRESENTATIVE(S) SADDLER

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) L&C, JUD
04/04/11 (H) L&C AT 3:15 PM BARNES 124
04/04/11 (H) Moved Out of Committee
04/04/11 (H) MINUTE(L&C)
04/05/11 (H) L&C RPT 5DP 2NR
04/05/11 (H) DP: CHENAULT, THOMPSON, SADDLER,
JOHNSON, OLSON
04/05/11 (H) NR: HOLMES, MILLER
03/14/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 128

SHORT TITLE: BAN CELL PHONE USE BY MINORS WHEN DRIVING

SPONSOR(S): REPRESENTATIVE(S) GARDNER

01/28/11 (H) READ THE FIRST TIME - REFERRALS
01/28/11 (H) TRA, JUD
03/01/11 (H) TRA AT 1:00 PM CAPITOL 17
03/01/11 (H) Heard & Held
03/01/11 (H) MINUTE(TRA)
02/16/12 (H) TRA AT 1:00 PM CAPITOL 17
02/16/12 (H) Heard & Held
02/16/12 (H) MINUTE(TRA)
03/01/12 (H) TRA AT 1:00 PM CAPITOL 17
03/01/12 (H) Moved CSHB 128(TRA) Out of Committee
03/01/12 (H) MINUTE(TRA)
03/02/12 (H) TRA RPT CS(TRA) 2DP 2DNP 1NR 1AM
03/02/12 (H) DP: MUNOZ, GRUENBERG
03/02/12 (H) DNP: JOHNSON, PRUITT
03/02/12 (H) NR: PETERSEN
03/02/12 (H) AM: P.WILSON
03/14/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 359

SHORT TITLE: SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/22/12 (H) READ THE FIRST TIME - REFERRALS
02/22/12 (H) JUD, FIN

03/05/12 (H) JUD AT 1:00 PM CAPITOL 120
03/05/12 (H) Heard & Held
03/05/12 (H) MINUTE(JUD)
03/14/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE DAN SADDLER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 50.

SHIRLEY GIFFORD, Director
Alcoholic Beverage Control Board ("ABC Board")
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 50.

REPRESENTATIVE BERTA GARDNER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 128.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 128.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: As the presenter, responded to questions
during discussion of HB 359.

KATHRYN MONFREDA, Chief
Criminal Records and Identification Bureau
Division of Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 359.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 359.

DAVID SCHADE, Director
Division of Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 359.

ACTION NARRATIVE

[1:02:33 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives Gatto, Keller, Gruenberg, Lynn, and Hawker (alternate) were present at the call to order. Representatives Pruitt and Holmes arrived as the meeting was in progress.

HB 50 - ACCESS TO LICENSED PREMISES

[1:02:53 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 50, "An Act relating to the purchase of alcoholic beverages at a club and to access by certain persons under 21 years of age to a club's licensed premises when alcoholic beverages are present."

[1:03:12 PM](#)

REPRESENTATIVE DAN SADDLER, Alaska State Legislature, sponsor, referred to HB 50 as an "access" bill, and assured the committee that the bill wouldn't allow anyone under age 21 to consume alcohol legally. [Section 1 of] HB 50, he proffered, would make it easier for military personnel to "enjoy companionship in the clubhouses of service and patriotic organizations" by removing the language in AS 04.11.110(d) which stipulates that active-duty military personnel may purchase alcoholic beverages sold under a club license only on special occasions when extended the privilege by patriotic organizations; specifically, Section 1

would delete the phrase, "upon special occasions" from AS 04.11.110(d)(3). He indicated a belief that this provision would only apply to those active-duty military personnel "who are over the age of 21." [Section 2 of] HB 50, he proffered, would allow active-duty military personnel under age 21 to access the premises of patriotic organizations licensed as clubs under AS 04.11.110 if such personnel are guests or members of the club; specifically, Section 2 would delete from AS 04.11.110(g) the [exclusionary] reference to AS 04.16.049, and would add to AS 04.11.110(g)(2) the words, "is a guest or member of the club and". He indicated a belief that this provision would not allow [underage] active-duty military personnel to consume alcohol.

REPRESENTATIVE SADDLER offered his understanding that excluding underage active-duty military personnel from such clubs can erode "unit" cohesion and reduce morale. In conclusion, he reiterated that HB 50 won't allow underage active-duty military personnel to consume alcohol legally, additionally offering his belief that the bill simply clarifies that active-duty military personnel "over 21" don't have to wait for a special occasion [to purchase alcohol served under the club license], and that underage active-duty military personnel can visit patriotic clubs if they are members or guests.

[1:05:52 PM](#)

REPRESENTATIVE SADDLER, in response to questions, said that a person must be at least 17 years of age to enlist in the military, and, if not yet 18 years of age, must also obtain permission from his/her parent or guardian; and that under Alaska law, anyone under the age of 21 may enter and remain in a licensed premises if accompanied by a parent, a guardian, [or a spouse who is at least 21 years of age].

REPRESENTATIVE GRUENBERG questioned why Section 2 of the bill is proposing to delete from AS 04.11.110(g) the [exclusionary] reference to AS 04.16.049; noted that the bill doesn't address spouses of active-duty military personnel; and suggested that the bill be changed to also apply to such spouses.

REPRESENTATIVE SADDLER replied:

Much of the justification for this, as presented to me by the [Veterans of Foreign Wars (VFW)], was for the purpose of allowing younger-aged soldiers to attend clubs, meetings, that were unit based, and that

basically [were] an off-duty kind of unit call. I had not considered whether spouses would be included in that, or whether it would be important for them to attend privately. ... I would be glad to entertain that kind of amendment

REPRESENTATIVE HOLMES - with regard to Section 2's proposal to delete from AS 04.11.110(g) the [exclusionary] reference to AS 04.16.049 - explained that doing so is necessary because Section 3 of HB 50 is proposing to add to AS 04.16.049(a) a new paragraph (4) specifying that a person under 21 years of age may enter or remain in a licensed premises if he/she is permitted to do so under AS 04.11.110(g), which, again, under the bill, is being altered to provide just such an allowance for underage active-duty military personnel who are guests or members of the club.

1:10:41 PM

SHIRLEY GIFFORD, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety (DPS), said she understands the desire to maintain relations between military personnel, and, having been "pretty much raised up in a paramilitary organization," how important having the ability to socialize with other members is to camaraderie. However, she warned, HB 50 would be very, very difficult to enforce. And although the bill wouldn't allow underage persons to drink alcohol legally, exposing them to an environment [in which everyone else is drinking] could result in them drinking too regardless that doing so would be illegal. Alaska has over 80 clubs of the type addressed by the bill, but the ABC Board has only 5 investigators, and sometimes obtaining access to such clubs for purposes of inspection/enforcement is difficult. On that issue, she noted that a couple of years ago she had suggested that the ABC Board be issued a card granting it access to such clubs for inspection purposes - to ensure that underage persons are not being provided alcohol - but the suggestion was turned down. In conclusion, she said, "I think that this is going to be very difficult, I think it exposes underage persons to a dangerous product - a legal product, but a dangerous one nonetheless - and I am in opposition of this bill."

CHAIR GATTO acknowledged that perhaps underage military personnel could be provided alcohol in such a club, but pointed out that if the changes proposed by HB 50 don't work out, then the law could be changed again later.

REPRESENTATIVE LYNN disclosed that he is a member of a couple such clubs, and characterized their environments as being "pretty darn good."

REPRESENTATIVE SADDLER, in response to a question, offered his understanding that in such clubs, non-members are not allowed to order anything.

REPRESENTATIVE GRUENBERG disclosed that he, too, is a member of such a club.

REPRESENTATIVE SADDLER, in response to questions and comments, explained that although the bill is not specific with regard to the location of any such clubs, it is proposing changes to the language in both AS 04.11.110(d)(3) and AS 04.11.110(g)(2) that specifically addresses patriotic organizations which sell alcohol under a club license. He added that existing AS 04.11.110(b) specifies what types of entities could obtain such a club license.

[1:20:14 PM](#)

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 50.

REPRESENTATIVE HAWKER characterized Ms. Gifford's comments as offensive.

MS. GIFFORD, in response to questions, relayed that AS 04.11.110(b) reads in part:

(b) A club license may only be issued to a club, fraternal organization, patriotic organization, or social organization that has been (1) chartered by a state or national organization for a period of two consecutive years before application for a license under this section; or (2) chartered by a national organization and the national organization has maintained a chartered club or organization within the state for a period of at least 20 years.

MS. GIFFORD added that that statute does not differentiate with regard to such a club's physical location, and reiterated that there are 80 such clubs in Alaska. In response to a further question, she noted that AS 04.11.250 pertains to two-year conditional contractors' permits, which address the sale of beer and wine on military and naval reservations.

[1:25:22 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt a conceptual amendment, "to expand the bill to include the spouses of active-duty military personnel if they meet the other requirements here, and that would mean that they must be accompanying the military personnel and be a guest of the member of the club."

REPRESENTATIVE GRUENBERG, in response to comments and questions, indicated that he would be withdrawing his conceptual amendment until it could be drafted properly; pointed out that Section 1's proposed AS 04.11.110(d) doesn't currently address the spouses of guests of club members; and clarified that he wants the permissions that HB 50 would grant to active-duty military personnel to also be granted to their spouses when accompanying them.

CHAIR GATTO relayed that HB 50 would be held over.

HB 128 - BAN CELL PHONE USE BY MINORS WHEN DRIVING

[1:30:02 PM](#)

CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 128, "An Act relating to prohibiting the use of cellular telephones by minors when driving motor vehicles; and providing for an effective date." [Before the committee was CSHB 128(TRA).]

[1:30:08 PM](#)

REPRESENTATIVE BERTA GARDNER, Alaska State Legislature, sponsor, explained that HB 128 would make it illegal for a person under 18 years of age to use a cellular telephone ("cell phone") while driving a motor vehicle [on a highway or vehicular way or area]; in terms of enforcement, the bill does not provide an exemption for the use of "hands-free" cell phone technology, and a violation would be a secondary offense [resulting in an infraction punishable under AS 28.90.010]. The hope with this legislation, she indicated, is to ban cell phone use by the very youngest of Alaska's drivers, those who - statistically - are the least experienced, are more easily distracted, and are "most commonly" involved in motor vehicle accidents that result in serious physical injury or death. Members' packets include a letter from the lobbyist for State Farm Insurance Companies - Lessmeier & Winters, LLC - that posits passage of HB 128 would

result in an immediate saving of lives and prevention of injuries; insurance companies, she surmised, keep current with regard to what factors increase the risks of driving so as to be able to set their insurance rates accordingly.

REPRESENTATIVE GARDNER noted that according to that letter, drivers between the ages of 16 and 19 are four times more likely to be involved in a motor vehicle accident; one in five of all automobile deaths is attributed to "teen driving"; the leading causes of "teen accidents" include inexperience and distraction; and a recent study indicates that nine out of ten teenagers [report that "teen use" of cell phones while driving was common], and that seven out of ten teenagers say they have observed other teenagers driving and using a cell phone while being emotionally upset. Fiscal notes from the Department of Law (DOL) and the Department of Public Safety (DPS) state that HB 128 would have no fiscal impact. Regardless that some would argue common sense can't be legislated, and regardless that that might be true, the point is that drivers who are distracted pose a danger to others on the road. In conclusion, acknowledging that there is not yet support for a ban on cell phone use while driving for all drivers, she expressed her hope that HB 128's proposed ban for Alaska's youngest drivers would be supported.

REPRESENTATIVE GARDNER added that in her household, she, as a parent, banned the use of cell phones while driving, surmising that other parents might appreciate being able to tell their children that the law forbids such behavior.

[1:34:25 PM](#)

CHAIR GATTO characterized passing HB 128 as the right thing to do, and pointed out that the behavior of driving while using a cell phone doesn't just impact the driver - such behavior instead impacts everyone on the road. He expressed his hope, however, that the proposed ban wouldn't at some point be expanded to include the use of all cell phones by all drivers while driving.

REPRESENTATIVE LYNN acknowledged that as currently written, the bill is targeting a group of drivers that have a higher rate of accidents than other groups, but expressed concern that if the bill is passed, other groups of people would eventually be added to the list of those who would be precluded from using a cell phone while driving.

REPRESENTATIVE KELLER indicated a concern with precluding the use of cell phones while driving.

REPRESENTATIVE GARDNER, in response to comments, pointed out that teenagers, disproportionately, use cellphones more and do so more often while driving, and are therefore dying at higher rates because of it. She offered her understanding that statistics included in members' packets illustrate that the crash fatality rate is highest for 16- and 17-year-olds; that the crash fatality rate for 16- to 20-year-olds is twice as high as that for other ages; that approximately two-thirds of motor vehicle accidents resulting in the death of a passenger involved a teenage driver; and that the overwhelming majority of crashes involving teenage drivers were due to the driver's failure to employ safe driving practices, failure to recognize risk, and deliberate risk-taking. Other information in members' packets indicates that ever since California, in 2008, banned the use of "hand-held" cell phones while driving, there has been a 47 percent decrease in the number of fatal motor-vehicle accidents resulting from the use of a cell phone.

[1:41:02 PM](#)

REPRESENTATIVE GARDNER, regarding the argument that having a conversation with someone in the car can also be distracting, pointed out that at least the person in the car can help the driver become aware of potentially dangerous situations. Furthermore, [studies] indicate that a person's brain is engaged in a different manner when speaking to someone over the phone than it is when speaking to someone face-to-face.

REPRESENTATIVE HOLMES said she supports HB 128.

REPRESENTATIVE GARDNER, in response to questions, indicated that the terms, "highway" and "vehicular way or area" as those terms are used in HB 128 are both already defined in statute under AS 28.90.990(a)(13) and (30); those provisions, respectively, read:

(13) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular travel, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

(30) "vehicular way or area" means a way, path, or area, other than a highway or private property, that is designated by official traffic control devices or customary usage and that is open to the public for purposes of pedestrian or vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles as determined by the Department of Public Safety or other agency having jurisdiction over the way, path, or area.

REPRESENTATIVE HOLMES - in response to questions and comments regarding CSHB 128(TRA)'s specific effective date of July 1, 2012 - noted that bills proposing to change Alaska's [criminal statutes] generally contain a specific effective date of July 1.

1:44:43 PM

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), in response to a question, explained that under HB 128 as currently written, if law enforcement officers were to witness a minor using a cell phone while driving, because it would only be a secondary offense, they could either look for a primary offense for which to pull the driver over, or they could contact the driver later on and inform him/her that he/she was engaging in illegal behavior. He warned that the ability of law enforcement officers to enforce the bill could be limited if it remains a secondary offense. In response to other questions, he explained that the penalties for infractions are generally set by the court, and could involve a fine of up to \$300; and indicated that providing for a specific effective date can be helpful in terms of giving the administration adequate time to inform the public about changes in the law.

REPRESENTATIVE HOLMES, in response to another question, expressed a preference for retaining the bill's specific effective date of July 1, 2012.

REPRESENTATIVE GARDNER, in response to an additional question, relayed that although she would be amenable to providing for an even later specific effective date, any such delay could result in more children being killed than if the proposed law goes into effect as soon as possible.

REPRESENTATIVE HAWKER sought clarification that the bill's proposed ban would only apply in situations involving moving vehicles, not stationary ones.

REPRESENTATIVE GARDNER said that's correct.

LIEUTENANT DIAL concurred.

REPRESENTATIVE HAWKER reported that approximately 80 percent of his constituents that responded to a district survey he sent out were in favor of restricting cell phone use while driving, and thus he would be voting in favor of HB 128 regardless of his personal feelings about it.

REPRESENTATIVE GRUENBERG suggested that the bill be clarified with regard to whether it also applies to the use a cell phone while stopped at a stop sign/light; and questioned whether they should amend the bill to address future technology, perhaps by adding the phrase, "or similar device" wherever the bill uses the term, "cellular telephone".

REPRESENTATIVE GARDNER, on the latter point, expressed disfavor with changing the bill in that fashion.

[2:01:16 PM](#)

REPRESENTATIVE HAWKER moved to report CSHB 128(TRA) out of committee with individual recommendations and the accompanying zero fiscal notes.

CHAIR GATTO said, "I'm sure there is an objection."

A roll call vote was taken. Representatives Gruenberg, Holmes, Hawker (alternate), and Gatto voted in favor of the motion. Representatives Lynn, Keller, and Pruitt voted against it. Therefore, CSHB 128(TRA) was reported from the House Judiciary Standing Committee by a vote of 4-3.

HB 359 - SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

[2:02:30 PM](#)

CHAIR GATTO announced that the final order of business would be 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."

[2:04:17 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), noted that she'd described the provisions of HB 359 during its last hearing, and, in response to a question, explained that AS 11.66.110 - currently addressing the crime of promoting prostitution in the first degree, and which Sections 7 and 8 of the bill would change to instead address the crime of sex trafficking in the first degree - stipulates that a reasonable mistake as to the age of the victim is not a defense; and that this is similar to the stipulation provided in Section 6 - proposing to add a new subsection (c) to AS 11.66.100, which addresses the crime of prostitution - that the age of the victim is not a circumstance that requires proof of a culpable mental state. She mentioned that the [Alaska] Court of Appeals - in Bell v. State - recently upheld the stipulation in AS 11.66.110.

REPRESENTATIVE HAWKER mentioned that questions he'd had regarding the differences between the proposed statutory references in Section 12's proposed AS 11.66.140 and those in Section 13's proposed AS 11.66.145 have since been addressed.

MS. CARPENETI, in response to questions, clarified that under the changes proposed by [Sections 5 and 6] to AS 11.66.100 - again, addressing the crime of prostitution - it would be a class C felony to be the "patron" of a prostitute who is under 18 years of age if the "patron" is at least three years older than his/her victim, and, again, the prostitute's age wouldn't be a circumstance that requires proof of a culpable mental state, meaning that it wouldn't matter what age the "patron" thinks his/her victim is; furthermore, that statute - both existing and as proposed under the bill - does not currently provide for an affirmative defense based on a reasonable mistake as to the age of the victim. Under the bill, if the prostitute - the victim - is instead 18 years of age or older, a violation of that statute would remain a class B misdemeanor, though comments received from the Public Defender Agency (PDA) indicate that Section 6 ought to be changed in order to clarify that the proposed increase in penalty to a class C felony only applies to the "patron," not the victim. In addition to reiterating that

AS 11.66.110 stipulates that a reasonable mistake as to the age of the victim is not a defense, she also mentioned that with regard to Alaska's sexual assault and sexual abuse of a minor crimes, AS 11.41.445(b) states:

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant

(1) reasonably believed the victim to be that age or older; and

(2) undertook reasonable measures to verify that the victim was that age or older.

MS. CARPENETI, in response to further questions, indicated that she would be amenable to perhaps adding similar affirmative-defense language to the bill's proposed AS 11.66.100, though another option, she ventured, would perhaps be to instead add a culpable mental state of criminal negligence to that provision.

REPRESENTATIVE GRUENBERG expressed concern with that provision's current lack of an affirmative defense for the perpetrator.

[2:12:35 PM](#)

CHAIR GATTO pointed out that when a perpetrator makes an assumption with regard to his/her victim's age, the perpetrator is taking a pretty big risk; and expressed disfavor with the [oft-heard] excuse, "Well, I had no idea she was that young."

MS. CARPENETI, in response to further comments and questions, explained that the purpose of the bill's proposed changes to AS 11.66.100 is to protect children who are being victimized by persons promoting prostitution - or, the crime of sex trafficking, as that activity would be called after passage of the bill; the statutes pertaining to that crime embody a different societal interest than those pertaining to sexual assault and sexual abuse of a minor crimes. She again noted that the statute pertaining to the first degree crime - AS 11.66.110, violations of which are [either a class A felony or] an unclassified felony - does not provide for an affirmative defense based on a reasonable mistake as to the age of the victim; and that she would be amenable to perhaps adding affirmative-defense language to the bill's proposed AS 11.66.100. Again, the goal of Sections 5 and 6 is to protect children from adults who would victimize them.

MS. CARPENETI reiterated that another option - if the committee is not in favor of the changes currently provided by Sections 5 and 6, or of adding affirmative-defense language - could be to perhaps instead add a culpable mental state to the bill's proposed AS 11.66.100, thereby requiring the state to prove beyond a reasonable doubt that the "patron" acted with criminal negligence - or with some other culpable mental state as the committee prefers - with regard to the age of the victim. In response to comments, she confirmed that providing for an affirmative defense puts the burden of proof on the defendant, whereas providing for a culpable mental state would keep the burden on the state; and reiterated that under the changes currently proposed by [Sections 5 and 6] to AS 11.66.100, it would be a class C felony to be the "patron" of a prostitute who is under 18 years of age if the "patron" is at least three years older than his/her victim, but otherwise violations of that statute would remain a class B misdemeanor.

CHAIR GATTO surmised that a mistake as to age will always be offered as a defense by people who get caught having sex with children.

[2:18:35 PM](#)

REPRESENTATIVE PRUITT opined that it's important to understand the rationale for making it a felony to be the "patron" of a prostitute who is under 18 years of age, that being that generally such children have not become prostitutes of their own free will but have instead been forced into it by people engaged in sex trafficking. This has become a huge problem in rural Alaska, in that children from the villages, after being presented with "an opportunity" to come to the big city, are then being forced into becoming sex slaves once they arrive. The changes proposed by Sections 5 and 6 of the bill are intended to address this problem, and serve as a deterrent. In conclusion, he indicated disfavor with providing for an affirmative defense based on a mistake as to the age of the victim, because the goal is to protect children from having their lives ruined by being turned into sex slaves.

REPRESENTATIVE GRUENBERG continued to express concern with the lack of an affirmative defense based on a reasonable mistake as to the age of the victim, and offered a hypothetical example involving a member of the military who pays a child to have sex with him.

REPRESENTATIVE PRUITT again remarked on the potential for the bill's proposed changes to AS 11.66.100 to serve as a deterrent to such people.

REPRESENTATIVE KELLER pointed out that in Representative Gruenberg's hypothetical example, the military member is still a predator. He expressed favor with making such behavior a class C felony as Sections 5 and 6 - as currently written - are proposing to do.

MS. CARPENETTI, in response to a question, explained that the maximum sentence for a class C felony is five years. She concurred that in Representative Gruenberg's hypothetical example, the military member is a predator. The governor, in proposing these changes to AS 11.66.100, she relayed, is trying to address the problem described by Representative Pruitt, trying to get at those who are willing to take the risk that the person they are paying to have sex with is a child.

[2:24:19 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Conceptual Amendment 1, to delete Section 20 in its entirety and renumber the remaining sections accordingly.

REPRESENTATIVE KELLER objected for the purpose of discussion.

REPRESENTATIVE HOLMES explained that Section 20 is proposing to add to AS 12.63.100(6) - which defines the term, "sex offense" for purposes of requiring a person in Alaska to register as a sex offender or child kidnapper - a new subparagraph (D) that would additionally define a sex offense as being a crime in another jurisdiction that requires the person to register as a sex offender or child kidnapper in that other jurisdiction. The rationale for deleting Section 20, she relayed, is that other jurisdictions that maintain a sex offender registry sometimes criminalize behavior that isn't illegal in Alaska, and thus under Section 20, the Alaska State Legislature's authority to decide what behavior should or shouldn't constitute a registrable offense would be delegated to all those other jurisdictions. That doesn't quite seem right, she concluded.

REPRESENTATIVE HAWKER expressed favor with Amendment 1, adding that he thinks it's wrong for the legislature to abdicate its responsibility as a law-making body. He mentioned, though, that he would be amenable to perhaps adding certain specific offenses to AS 12.63.100(6).

REPRESENTATIVE HAWKER also mentioned that if Conceptual Amendment 1 is adopted, he would be offering an additional amendment to "zero out" the Department of Public Safety's (DPS's) fiscal note of \$124,200, because it's based solely on the anticipated fiscal impact Section 20 would have on the department. In response to a question, he drew members' attention to the indeterminate fiscal notes accompanying HB 359.

CHAIR GATTO observed that a letter from the American Civil Liberties Union of Alaska (ACLU of Alaska) in members' packets indicates opposition to Section 20, with page 6 of that letter stating in part, "Section 20 Is Unwise; It Shackles Alaska's Policy to Every Other Jurisdiction".

REPRESENTATIVE HOLMES pointed out that if someone is convicted of a registrable offense in another jurisdiction, and that offense is similar to a registrable offense in Alaska, then [under existing AS 12.63.100(6)] the person would still be required to register in Alaska; this would not change under Conceptual Amendment 1. In comparison, the language Section 20 is proposing to add doesn't specify that the offense in that other jurisdiction has to be one that is similar to a registrable offense under Alaska law.

[2:32:33 PM](#)

KATHRYN MONFREDA, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety (DPS), in response to questions, after noting that she is responsible for managing Alaska's sex offender registry, mentioned that the courts have already addressed the issue of who may be required to register as a sex offender, and that sometimes other jurisdictions do notify Alaska when someone who formerly had to register in Alaska then registers in their jurisdiction; acknowledged that perhaps some sex offenders leave Alaska in search of a jurisdiction in which they won't have to register; and indicated that to the DPS's knowledge, that isn't a widespread problem.

REPRESENTATIVE KELLER said he was going to remove his objection to adopting Conceptual Amendment 1, expressed agreement with the ACLU of Alaska's aforementioned point regarding Section 20, and asked Ms. Carpeneti to comment.

MS. CARPENETI said that the other side of the argument is that if sex offenders from other states are able to avoid registering

in their "home" state simply by coming to Alaska, then Alaska will become the place where sex offenders move to in order to avoid having to register as sex offenders. This is a public safety issue for the legislature to make a decision about, but the DOL's position, hence the inclusion of Section 20's proposed change to 12.63.100(6), is that it is in the public interest not to have Alaska become a state where people who have to register in other states come because they won't have to register here.

REPRESENTATIVE KELLER acknowledged that point, but offered his understanding that there are already other ways of keeping track of people who move to Alaska with a criminal record.

MS. CARPENETI said she is not familiar with any such procedure. Only when a person who's moved to Alaska commits a crime in Alaska is the state then able to take steps to research the person's criminal record.

[2:37:25 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), concurred - absent such a person voluntarily contacting the state, law enforcement officers would have no way of knowing of his/her presence in the state until they have a specific reason to contact him/her and investigate his/her background.

CHAIR GATTO remarked that the objection was removed, ascertained that there were no further objections, and announced that Conceptual Amendment 1 was adopted.

[2:40:02 PM](#)

REPRESENTATIVE HAWKER made a motion [to adopt Conceptual Amendment 2, to adopt a zero fiscal note in place of fiscal note number 6 from the Department of Public Safety]. He again offered his understanding that that fiscal note's estimated impact on the DPS is based solely on Section 20, which has been deleted.

[2:40:57 PM](#)

DAVID SCHADE, Director, Division of Statewide Services, Department of Public Safety (DPS), confirmed Representative Hawker's understanding.

REPRESENTATIVE GRUENBERG [although no objection had been stated] removed his objection.

CHAIR GATTO ascertained that there were no objections, and announced that Conceptual Amendment 2 was adopted.

REPRESENTATIVE HOLMES offered her belief that HB 359 requires further work.

CHAIR GATTO relayed that HB 359 [as amended] would be held over.

[2:42:58 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:43 p.m.