

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 16, 2012

1:05 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Mike Hawker (alternate)

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."

- MOVED CSHB 50(JUD) 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

HOUSE BILL NO. 344

"An Act relating to child support awards; repealing Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

- BILL HEARING POSTPONED

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
03/14/12 (H) Heard & Held
03/14/12 (H) MINUTE(JUD)
03/16/12 (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
03/14/12 (H) Heard & Held
03/14/12 (H) MINUTE(JUD)
03/16/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE DAN SADDLER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 50.

JAMES R. WALDO, Staff

Representative Lindsey Holmes

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 359, explained Amendment 4.

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

POSITION STATEMENT: Responded to questions and provided comments during discussion of proposed amendments to HB 359.

RICHARD SVOBODNY, Deputy Attorney General
Central Office
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions and provided comments during discussion of proposed amendments to HB 359.

ACTION NARRATIVE

[1:05:34 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Gatto, Lynn, Keller, Pruitt, Thompson, and Gruenberg were present at the call to order. Representative Holmes arrived as the meeting was in progress.

HB 50 - ACCESS TO LICENSED PREMISES

[1:06:18 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."

[1:06:41 PM](#)

REPRESENTATIVE DAN SADDLER, Alaska State Legislature, sponsor of HB 50, offered his understanding that members' packets now contain two proposed amendments, and relayed that he has no objections to the change proposed by [what would become Amendment 1], referring to it as a solid extension of the

benefits of patriotic clubs to the spouses of military personnel.

[1:07:27 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 27-LS0254\A.1, Gardner, 3/15/12, which read:

Page 1, line 9:

Following "duty":

Insert ", and their accompanying spouses,"

REPRESENTATIVE PRUITT [although no formal objection was stated] removed his objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 1 was adopted.

[1:08:52 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 27-LS0254\A.2, Gardner, 3/16/12, which read:

Page 2, line 5, following "club":

Insert "or the spouse of a guest or member of the club"

REPRESENTATIVE SADDLER, in response to a question, said that he has no objection to the change proposed by Amendment 2 as long as it wouldn't require the spouse of the active-duty military member to also have a military identification (ID) card issued by the U.S. Department of Defense (DOD) or the U.S. Department of Homeland Security.

REPRESENTATIVE GRUENBERG confirmed that it wouldn't.

CHAIR GATTO, after ascertaining that there were no objections, announced that Amendment 2 was adopted.

[1:09:45 PM](#)

REPRESENTATIVE PRUITT moved to report HB 50, as amended, out of committee with individual recommendations and the accompanying [zero fiscal note]. There being no objection, CSHB 50(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:10 p.m. to 1:12 p.m.

HB 359 - SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

1:12:38 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." [Before the committee was HB 359 as amended via the adoption of Conceptual Amendments 1 and 2 on 3/14/12.]

1:13:10 PM

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 3, labeled 27G-2-C, 3/15/2012, (3:03 pm), Carpeneti, which contained handwritten changes and which originally read [original punctuation provided]:

Page 4, line 29 through page 5, line 3:

Delete all material and insert:

"(c) Prostitution is a class C felony if

(1) the defendant is a patron of a prostitute;

(2) the prostitute is under 18 years of age;

(3) the defendant is over 18 years of age and at least three years older than the prostitute.

(d) In a prosecution for a felony under this section that provides that the prostitute be under 18 years of age, it is an affirmative defense that, at the time of the alleged offense, the defendant

(1) reasonably believed the prostitute to be 18 years of age or older; and

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

[The handwritten changes in Amendment 3 as moved by Representative Gruenberg involved replacing the words, "is a patron of", with the word, "patronizes" in its subsection (c)(1).]

REPRESENTATIVE GRUENBERG explained that Amendment 3 would replace the language in Section 6 - currently proposing to add a new subsection (c) to AS 11.66.100, which pertains to the crime of prostitution - with language adding a different new subsection (c) and a new subsection (d), thereby providing for an affirmative defense for the perpetrator of that crime - who, as outlined in AS 11.66.100(a)(2), would be a person who offers a fee in return for sexual conduct - based on a reasonable mistake as to the age of his/her victim. Under changes proposed by existing Sections 5 and 6 of HB 359, 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 AS 11.66.100 would remain a class B misdemeanor.

[1:16:29 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to amend] Amendment 3 by adding the word, "and" to the end of Amendment 3's subsection (c)(2); this would clarify that all three elements outlined in that subsection (c)'s proposed paragraphs (1)-(3) must be present. There being no objection, Amendment 3 was so amended.

REPRESENTATIVE KELLER, for the purpose of discussion, objected to the motion to adopt Amendment 3, as amended.

REPRESENTATIVE GRUENBERG explained that it is Amendment 3's subsection (d) - the language of which was taken in part from AS 11.41.445(b) - that provides the affirmative defense based on a reasonable mistake as to the age of the victim. He opined that it should be up to the perpetrator of the crime to prove not only that he/she reasonably believed his/her victim was 18 years of age or older, but that he/she also took reasonable measures to verify that fact.

REPRESENTATIVE GRUENBERG mentioned that AS 11.81.900(b)(2) defines the term, "affirmative defense" for purposes of Title 11 as:

- (2) "affirmative defense" means that
 - (A) some evidence must be admitted which places in issue the defense; and
 - (B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

REPRESENTATIVE GRUENBERG offered his understanding that under Amendment 3, as amended, the perpetrator would have both the burden of going forward and the burden of persuasion; and that it would be up to the court, on a case-by-case basis, to determine whether those burdens have been met.

CHAIR GATTO, after ascertaining that there were [no longer any] objections to the motion before the committee, announced that Amendment 3, as amended, was adopted.

1:24:14 PM

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 4, labeled 27G-2-A, 3/15/2012, (3:01 pm), Carpeneti, which read [original punctuation provided]:

Page 8, lines 21 - 22, following "witness":

Delete "would be required to travel more than 50 miles to the court or"

Page 8, line 23, following "court":

Insert "; and the procedure allows the parties a fair opportunity to examine the witness. The video conference technician shall be the only person in the presence of the witness unless the court, in its discretion, determines that another person may be present. Any person present with the witness must be identified on the record"

CHAIR GATTO relayed that [the committee] would object for the purpose of discussion.

1:24:32 PM

JAMES R. WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, explained that Amendment 4 would change Section 16's proposed new subsection (h) to AS 12.47.100 - one of the provisions in Alaska's code of criminal procedure pertaining to insanity and competency to stand trial - such that it would no longer stipulate that testimony by contemporaneous two-way video conference may be allowed if the witness would be required to travel more than 50 miles to court, and such that it would additionally stipulate that the procedure involving such testimony must allow the parties a fair opportunity to examine the witness, that the video conference technician shall be the only person in the presence of the witness unless the court, in its discretion, allows another person to also be present, and

that any person present with the witness must be identified on the record. Under Amendment 4, proposed subsection (h) would still stipulate that testimony by contemporaneous two-way video conference may be allowed if the witness lives in a place from which people customarily travel by air to the court. Amendment 4 would ensure that what he termed, "witness coaching" didn't occur under Section 16's proposed new subsection (h) to AS 12.47.100.

REPRESENTATIVE KELLER questioned whether Amendment 4 would place a burden, or have a fiscal impact, on the Alaska Court System (ACS) - specifically Amendment 4's stipulation that it would be up to the court to determine whether to allow another person to be present with the witness and the video conference technician.

MR. WALDO acknowledged that he'd not yet discussed that issue with the ACS, but ventured his belief that probably all that would be required under Amendment 4 would be a ruling by the court that a particular person should also be allowed to be in the witness's presence.

[1:28:35 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to questions, indicated that Amendment 4 would have no fiscal impact on the ACS, and that the ACS frequently makes use of certified translator services, adding that to date, she's not heard of any mistranslation problems arising from the use of those court-approved services.

REPRESENTATIVE GRUENBERG referred to the language in Section 16's proposed subsection (h) which stipulates that testimony by contemporaneous two-way video conference may be allowed if the witness "lives in a place" from which people customarily travel by air to the court, and suggested that that language should be changed to instead read, "is in a place", because where the witness is at the time of the pretrial hearing to determine competency is more important than where he/she lives.

MS. MEADE indicated that changing "lives" to "is" in that provision would be acceptable to the ACS, and that doing so might be an improvement. In response to a question pertaining to Amendment 4's stipulation that all persons present with the witness must be identified on the record, she indicated that in

her experience, that stipulation shouldn't present a problem for such persons or place them in any danger.

REPRESENTATIVE HOLMES concurred, and mentioned that Amendment 4 is intended to address concerns about who might be present with the witness when he/she testifies, because when a person testifies remotely, it is not always possible to tell who else could be in the room with that person. In the courtroom, in comparison, everyone can at least see everyone else and so would notice someone's efforts to coach the witness, for example.

REPRESENTATIVE PRUITT pointed out, however, that not everyone in the courtroom identifies himself/herself on the record, whereas under Amendment 4, everyone at the remote location would have to, and such exposure carries potential risk.

MS. MEADE, in response to comments and questions, pointed out that Section 16's proposed AS 12.47.100(h) would only apply to witnesses at competency hearings, not defendants and not criminal trials.

REPRESENTATIVE KELLER objected to the motion, and then indicated that he was removing his objection.

CHAIR GATTO, after determining that there were no [further] objections, announced that Amendment 4 was adopted.

[1:40:08 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 5, labeled 27G-2-B, 3/15/2012, (2:24 pm), Carpeneti, which read [original punctuation provided]:

Page 17, line 1, following "testimony":
Insert "at trial"

Page 17, line 11, following "stand.", through line 15:
Delete all material.

Insert "The video conference technician shall be the only person in the presence of the witness unless the court, in its discretion, determines that another person may be present. Any person present with the witness must be identified."

REPRESENTATIVE PRUITT objected for the purpose of discussion.

REPRESENTATIVE HOLMES explained that Amendment 5 - addressing Section 25, which is proposing a direct court rule change to Rule 38 of the Alaska Rules of Criminal Procedure via the addition of a new Rule 38.3 that would allow testimony from a witness by contemporaneous two-way video conference at trial - is similar to Amendment 4 in that Amendment 5 also stipulates that the video conference technician shall be the only person in the presence of the witness unless the court, in its discretion, allows another person to also be present, and that any person present with the witness must be identified on the record.

MS. MEADE, in response to a question, surmised that the normal procedure for identifying translators would be applied by the court.

REPRESENTATIVE PRUITT removed his objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 5 was adopted.

[1:45:22 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), in response to questions and comments, explained that under Section 25's proposed new Rule 38.3, in order for the court to authorize testimony of a witness by contemporaneous two-way video conference, all the specific criteria outlined in paragraphs (1)-(3) of proposed Rule 38.3(b) must be satisfied. In drafting HB 359, research conducted by the DOL indicated that whenever a witness was authorized by the U.S. Supreme Court to present testimony by contemporaneous two-way video conference, those same criteria had been satisfied.

[1:48:29 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 6, to change the language of Section 25's proposed new Rule 38.3(b) by adding the word, "only" between the words, "witness" and "if", such that subsection (b) would then in part read, "the court may authorize the contemporaneous two-way video conference testimony of a witness only if ...". There being no objection, Amendment 6 was adopted.

[1:49:49 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 7, to replace the word "lives" with the word "is" in Section 16's proposed new AS 12.47.100(h); subsection (h) would then in part stipulate that in a hearing to determine competency, a witness's testimony by contemporaneous two-way video conference may be allowed if the witness is in a place from which people customarily travel by air to the court.

REPRESENTATIVE KELLER objected.

REPRESENTATIVE GRUENBERG indicated that Amendment 7 would address situations in which the witness happens to be out of town on the day of the defendant's competency hearing.

REPRESENTATIVE KELLER cautioned against making the language of proposed AS 12.47.100(h) too broad.

REPRESENTATIVE GRUENBERG indicated that under Amendment 7, the witness's location, rather than his/her living situation, would become the determining factor for the court.

REPRESENTATIVE KELLER removed his objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 7 was adopted.

[1:52:43 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 8, to add the phrase, ", for good cause shown," after the words, "the court may" in Section 16's proposed new AS 12.47.100(h); subsection (h) would then in part read, "the court may, for good cause shown, allow the testimony of a witness ... if the witness is in a place from which people customarily travel by air to the court".

REPRESENTATIVE HOLMES objected for the purpose of discussion.

MS. MEADE questioned who would have to show good cause: the witness, the defendant, or the DOL?

REPRESENTATIVE GRUENBERG posited that it would be the party seeking permission for the witness to testify remotely by contemporaneous two-way video conference.

MS. MEADE questioned whether, under Conceptual Amendment 8, good cause would mean something beyond the fact that the witness was

in a place from which people customarily travel by air to the court.

REPRESENTATIVE GRUENBERG opined that it would depend on the particular situation.

MS. MEADE indicated that she takes no position on Conceptual Amendment 8.

MR. SVOBODNY, in response to comments, indicated that case law already addresses the issue of "good cause", and expressed concern that Conceptual Amendment 8 could result in competency hearings being unnecessarily delayed, and that it would gut Section 16.

REPRESENTATIVE HOLMES offered her belief that the court isn't going to allow anyone to take undue advantage of Section 16's proposed procedure, and opined that Conceptual Amendment 8 would create inconsistencies in Alaska law.

MR. SVOBODNY concurred.

MS. MEADE, in response to comments, suggested - as an alternative to Conceptual Amendment 8 - adding the phrase, ", in its discretion," after the words, "the court may" in Section 16's proposed new AS 12.47.100(h); subsection (h) would then in part read, "the court may, in its discretion, allow the testimony of a witness ... if the witness is in a place from which people customarily travel by air to the court".

REPRESENTATIVES HOLMES and GRUENBERG expressed favor with that suggestion.

REPRESENTATIVE GRUENBERG then withdrew Conceptual Amendment 8.

[2:08:45 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Conceptual Amendment 9 [as suggested by Ms. Meade].

REPRESENTATIVE HOLMES objected for the purpose of discussion, and then removed her objection.

MR. SVOBODNY relayed that Conceptual Amendment 9 addresses his concern.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Conceptual Amendment 9 was adopted.

[2:09:26 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 10, to add the phrase, ", except the defendant" after the words, "may allow the testimony of a witness" in Section 16's proposed new AS 12.47.100(h); subsection (h) would then in part read, "allow the testimony of a witness, except the defendant, including the psychiatrist or psychologist who examined the defendant, to testify".

REPRESENTATIVE KELLER objected.

MR. SVOBODNY, in response to a question, pointed out that in such proceedings the defendant has the right to be present in the courtroom but isn't required to be; the defendant may instead prefer to provide testimony by contemporaneous two-way video conference. The concern, he relayed, is that under Conceptual Amendment 10, the defendant could be precluded from doing so.

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 10.

REPRESENTATIVE GRUENBERG, referring still to Section 16's proposed new AS 12.47.100(h), questioned whether the phrase, "including the psychiatrist or psychologist who examined the defendant" ought to be changed to instead say, "including any psychiatrist or psychologist who examined the defendant".

MR. SVOBODNY suggested that perhaps changing the wording from "the psychiatrist" to "a psychiatrist" would be more grammatically correct. Such a change would also clarify that there could be more than one such psychiatrist or psychologist.

[2:12:56 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 11 [as suggested by Mr. Svobodny]. There being no objection, Amendment 11 was adopted.

REPRESENTATIVE HOLMES - referring to Sections 16 and 25, both addressing testimony of a witness by contemporaneous two-way video conference - questioned whether Section 25 should be amended in the same fashion as Section 16 was with regard to the phrase, "the court may, in its discretion,".

MS. MEADE said that although the ACS would not object to such a change, language in both sections stipulates that the court "may" allow or authorize such testimony, and the word, "may" already implies discretion.

REPRESENTATIVE HOLMES [made a motion to adopt Amendment 12,] to change the language of Section 25's proposed new Rule 38.3(b) by adding the phrase, ", in its discretion," between the words, "the court may" and the word, "authorize" such that subsection (b) would then in part read, "the court may, in its discretion, authorize the contemporaneous two-way video conference testimony of a witness". There being no objection, Amendment 12 adopted.

[HB 359, as amended, was held over.]

[2:17:16 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:17 p.m.