

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 1, 2013

1:05 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 73

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling

centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 73

SHORT TITLE: CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	JUD, FIN
02/01/13	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MICHAEL C. GERAGHTY, Attorney General
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Presented HB 73 on behalf of the administration and responded to a question.

JOSEPH A. MASTERS, Commissioner
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 73 and responded to questions.

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

POSITION STATEMENT: Assisted with the presentation of HB 73 and responded to questions.

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

POSITION STATEMENT: During discussion of HB 73, provided comments and expressed concern with Section 30.

ACTION NARRATIVE

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CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Keller, Millett, Pruitt, and Gruenberg were present at the call to order. Representatives Lynn, Foster, and LeDoux arrived as the meeting was in progress.

HB 73 - CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

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CHAIR KELLER announced that the only order of business would be HOUSE BILL NO. 73, "An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of

certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

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MICHAEL C. GERAGHTY, Attorney General, Department of Law (DOL), to introduce HB 73, relayed that the bill's theme is important for purposes of both law enforcement and prosecution because it's consistent with the governor's goal of reducing domestic violence (DV), sexual assault, and sexual abuse of minors in Alaska. For far too long these crimes have been occurring in Alaska at shameful rates, and for purposes of addressing this problem, HB 73 is a step in the right direction. He went on to explain that HB 73 contains provisions that would reverse a recent Alaska Court of Appeals decision that misinterpreted legislative intent with regard to increased sentencing ranges for persons convicted of felony sex offenses; a petition for review of that court decision is currently pending before the Alaska Supreme Court, and, meanwhile, HB 73's proposed statutory redress is meant to be consistent with the legislature's intent when it last addressed those sentencing ranges, back in 2006. House Bill 73 also contains provisions that would address a gap in Alaska's sexual assault statutes by prohibiting probation/parole officers from engaging in sexual conduct with persons on probation/parole; this gap was brought to light by a situation that occurred last year in which a [probation] officer working under contract coerced [persons on probation] to have sex with him.

ATTORNEY GENERAL GERAGHTY explained that HB 73 also contains provisions that would provide greater protection to victims of sexual assault, sexual abuse of a minor, and DV crimes. For example, a hearing before a judicial officer would be required before a person arrested for a bail violation resulting from a DV crime could [again] be released; and evidence of a sex-offense victim's sexual conduct before and after the offense took place would be excluded. House Bill 73 also contains provisions that would change the procedure used when determining whether to grant a witness immunity under the Fifth Amendment - immunity for testimony that could incriminate oneself. Currently, a proffer containing a description of the testimony in question is submitted by the witness's attorney, but there is no procedure in place for the judge to verify the credibility of the witness. Under the bill, the trial judge would be required to hear the witness's testimony and assess his/her credibility before deciding whether to grant immunity, and the state would be allowed to appeal the judge's decision.

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JOSEPH A. MASTERS, Commissioner, Department of Public Safety (DPS), after relaying that the DPS is steadfast in its commitment to the governor's goal of ending sexual assault, sexual abuse of minors, and domestic violence (DV) in Alaska, indicated that HB 73 contains provisions that would strengthen and broaden the investigative tools used by law enforcement to apprehend perpetrators of these and other such crimes. Under the bill, for example, law enforcement could obtain judicial authorization to intercept communications in sex trafficking cases; such crimes commonly require the perpetrators to communicate and cooperate with each other. The bill would also require a person who is the patron of a prostitute or of a victim of sex trafficking to register as a sex offender; would provide additional protections to victims and survivors of DV, sexual assault, and stalking crimes; would add victims of human trafficking, sex trafficking, and unlawful exploitation of a minor crimes to the list of those who may apply for violent crimes compensation; and would provide the attorney general with the authority to designate another attorney working for the DOL to also address applications for administrative subpoenas seeking business records from Internet service providers in cases involving child pornography, online enticement of a minor, and unlawful exploitation of a minor crimes - currently only the attorney general may address such applications. In conclusion, he opined that HB 73 contains important provisions for the

safety and protection of Alaskans, and urged the committee to support it.

ATTORNEY GENERAL GERAGHTY, in response to a question, confirmed that the DOL has discussed HB 73 with the Office of Public Advocacy (OPA) and the Public Defender Agency (PDA).

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), referring to the sectional analysis included in members' packets, explained that Sections 1 and 20-21 of HB 73 would reverse the aforementioned Alaska Court of Appeals decision in Collins v. State, 287 P.3d 791 (Alaska App. 2012), wherein for purposes of sentencing a person convicted of a felony sex offense, the court - based on a 2006 legislative letter of intent accompanying legislation increasing the [presumptive] sentencing ranges for felony sex offenses - misinterpreted the legislature's intent and instead established non-statutory mitigating factors that resulted in the perpetrator, under standards different than those used for other [felony] crimes, going before a three-judge panel for sentencing. Section 2 of HB 73 would remove the statute of limitations for felony sex trafficking and human trafficking crimes so as to allow the victims of such crimes to bring civil action against their perpetrators at any time.

MS. CARPENETI explained that Sections 3-6 of HB 73, to address a gap, would amend the statutes pertaining to the class C felony crime of sexual assault in the third degree and the class A misdemeanor crime of sexual assault in the fourth degree so as to prohibit probation/parole officers from engaging in sexual penetration or sexual contact with persons on probation/parole, and would define the term, "probation officer" to include not only probation officers appointed by the commissioner of the Department of Corrections (DOC) but also probation officers working in specialty courts who may not necessarily have been so appointed. Again, this gap was brought to light by a situation that occurred last year in which a probation officer working on contract at a therapeutic court in Anchorage coerced probationers to have sex with him. Current law already prohibits law enforcement officers and correctional officers from engaging in such activity with people in custody. In response to a question, she noted that for purposes of a single subject, the provisions of HB 73 address the subject of crimes.

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MS. CARPENETI explained that Section 7 of HB 73, to address another gap, would amend the statute pertaining to the [class A misdemeanor] crime of unlawful contact in the first degree such that it would also apply to a person under official detention who [knowingly contacts or attempts to contact] a witness or a victim in violation of an order; this gap was brought to light by a situation in Fairbanks in which a person, as a condition of bail, was ordered not to contact the victim, but because the person couldn't "make" bail, he was still incarcerated when he contacted the victim in violation of the order, and thus his particular circumstance did not fit the existing criteria outlined in that statute. Section 8 of HB 73 would allow for the forfeiture of property owned by the patron of a prostitute or of a victim of sex trafficking if the property [was used to institute, aid, or facilitate, or was received or derived from] the crime of prostitution or the crimes of sex trafficking. This provision addresses the governor's [goal of] reducing the demand side of prostitution [and sex trafficking] in Alaska. The existing forfeiture provision only addresses the crimes of sex trafficking and the class C felony crime of prostitution, wherein the prostitute is a child and the patron is an adult at least three years older; as changed by Section 8, that provision would then also apply to the class B misdemeanor crime of prostitution, wherein the person is the patron of a prostitute who's an adult.

REPRESENTATIVE LEDOUX expressed discomfort with the concept that one's property could be subject to forfeiture before one is convicted of a crime.

MS. CARPENETI, in response to questions and comments regarding Section 8, relayed that forfeiture is not often pursued, that detailed procedures have already been established to address property owned by more than one person, that the standard used in forfeiture proceedings, which are civil proceedings, is a preponderance of the evidence, that the fact finder in such proceedings has the discretion to determine what property, if any, shall be forfeit, and that it can be difficult to store/maintain forfeited property; acknowledged that it's conceivable that one's property could be subject to forfeiture without one having been convicted of a crime, that such does already occasionally occur in situations involving bootlegging or fish and game violations, and that perhaps the statute Section 8 is proposing to amend ought to also be changed to reflect that the property shall be subject to forfeiture, rather than that it shall be forfeited; and ventured that Section 8's

proposed change is appropriate and could act as a significant deterrent, though the provision may not be utilized much.

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MS. CARPENETI explained that Section 9 of HB 73 would remove the statute of limitations for prosecuting the crimes of distribution of child pornography, felony sex trafficking, and human trafficking. In response to a question, she noted that the crimes being added to the provision Section 9 is proposing to change are all felonies. Sections 10 and 24-26 of HB 73 would provide the court with the discretionary authority to order a person charged with [or convicted of] a domestic violence crime to participate in a monitoring program with a global positioning [device or similar technological means that meet the guidelines for a monitoring program adopted by the DPS] if the person is released on bail [before or after trial, or pending appeal,] or to include such a requirement in a protective order [- either a domestic violence protective order or a protective order for sexual assault or stalking].

COMMISSIONER MASTERS, in response to questions regarding Sections 10 and 24-26, explained that GPS technology is now fairly commonplace, that both active and passive tracking devices are currently available, that in the past the DPS has utilized tracking devices under very specific circumstances in certain cases but isn't currently actively engaging in any kind of a monitoring system on a regular basis, and that the DOC does have some experience "in this area" via its current electronic monitoring programs. In response to comments and further questions, he surmised that the bill - in providing the court with the authority to order a person to participate in a monitoring program - addresses both existing and future technologies via the language in Sections 24 and 26 that says, "a monitoring program with a global positioning device or similar technological means"; mentioned that there are other states that currently have electronic monitoring programs; pointed out that currently electronic technologies are being used to victimize people; ventured that [Sections 10 and 24-26] would provide law enforcement with the ability to instead use these same technologies as a tool by which to protect people; and explained that in adopting any monitoring program, the DPS - while taking into consideration the type of equipment available, it's capabilities, it's intended usage, how the program would be operated, any potential pitfalls, and what type of program would be best for Alaska - would conduct extensive research, seek input from stakeholders, determine which guidelines to

institute, and promulgate regulations following the requirements of the Administrative Procedure Act.

MS. CARPENETI added that passage of these provisions of the bill would enable the DPS to start that process.

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MS. CARPENETI explained that Section 11 of HB 73 would require persons arrested for a violation of a condition of release in connection with a crime involving domestic violence to appear before a judicial officer in person - or by telephone in situations involving an arraignment - before they can again be released from custody; under current law, this requirement applies to persons arrested for a crime involving DV before they can initially be released from custody. [Section 12] of HB 73 would expand the list of crimes for which an application can be made to intercept a private communication, to also include the crimes of sex trafficking in the first and second degree and human trafficking in the first degree; again, such crimes generally require the perpetrators to communicate and cooperate with each other. Section 13 of HB 73 would expand the provision that excludes evidence of a sex-offense victim's sexual conduct such that it would then exclude conduct occurring either before or after the offense took place; would limit when a defendant may apply to have such evidence admitted regardless, to not later than five days before trial; [and would provide an exception to that limitation if the request is based on evidence admitted at trial that was not available to the defendant before trial]. The provision Section 13 is proposing to change applies to the crimes of sexual assault, sexual abuse of a minor, and unlawful exploitation of a minor, [as well as to attempts to commit any of those crimes].

MS. CARPENETI explained that Sections 14-15 and 43-44 of HB 73 would change the procedure used when determining whether a witness in a criminal prosecution is entitled to [transactional immunity under the Fifth Amendment to the U.S. Constitution]. Currently, a judge considers a proffer submitted by the witness's attorney containing a description of the testimony in question, but there is no procedure in place for the judge to verify the credibility of the witness. Under the bill, the judge would also be required to speak with the witness about his/her testimony before deciding whether to grant the immunity, and enter findings of fact and conclusions of law in a sealed written order, and the state would be allowed to appeal the judge's decision. All the information disclosed during such in

camera proceedings - under both existing law and under the bill's proposed changes - is sealed and cannot be used for any purpose whatsoever, and neither the defense nor the prosecution is present. In response to a question, she explained that in such situations, the judge has the authority to disclose to one attorney at the Department of Law only whether the privileged testimony is in connection with a high-level felony, a low-level felony, or a misdemeanor. These proposed changes, she posited in conclusion, will help the court address the issue [of transactional immunity] in a better-informed manner.

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MS. CARPENETI explained that Sections 16-17 of HB 73 would require that the notice for claiming credit toward a sentence of imprisonment for time spent in a treatment program be filed at least 10 days prior to the hearing; these sections apply to sentencing hearings and to disposition hearings, respectively, and greater efficiencies are anticipated under their proposed changes. Section 18 of HB 73 would add the crimes of sex trafficking to the list of crimes for which the court would be precluded from suspending the imposition of a sentence. Section 19 of HB 73 would require that when sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime, [or each attempt or solicitation to commit the offense]; each conviction should be recognized via the imposition of consecutive time in prison, she proffered, even if for just one additional day. Section 22 of HB 73 would add the crimes of sex trafficking in the first degree and online enticement of a minor to the definition of what constitutes a sexual felony for purposes of AS 12.55; this provision addresses an oversight that occurred when the presumptive sentencing ranges for felony sex offenses were increased in 2006, she surmised.

MS. CARPENETI explained that Section 23 of HB 73 would require patrons of a prostitute who is a child to register as sex offenders. Section 27 of HB 73 would provide a conforming change to the statute addressing the warnings on a protective order to reflect that the maximum fine for a misdemeanor violation of such an order has recently been raised from \$5,000 to \$10,000. Section 28 of HB 73 would expand the definition of what constitutes a "victim counseling center" to include military organizations so as to ensure that communications

between victims of domestic violence and counselors working at a military victim counseling center remain confidential. In response to a question, she offered her understanding that the definition Section 28 is proposing to expand already addresses tribal organizations. Section 29 of HB 73 would add the crimes of human trafficking, sex trafficking, and unlawful exploitation of a minor to the list of crimes for which a victim may apply for violent crimes compensation.

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MS. CARPENETI explained that Sections 30 and 40-41 of HB 73, respectively, would require that as part of Alaska's judicial retention evaluations, the Alaska Judicial Council (AJC) shall also compile and disseminate to the public data about a judge's compliance with the statute requiring that a sentencing report include information about the financial, emotional, and medical effects of the crime on the victim and his/her need for restitution; would directly amend the Alaska Rules of Criminal Procedure to require that either a victim impact statement, or a written explanation of why the victim or his/her representative could not be interviewed, be included in a presentence report; and would directly amend the Alaska Rules of Criminal Procedure [to require that the content of the victim impact statement in the presentence report be taken into consideration when preparing the sentencing report, and] to allow such content to be taken into consideration for other appropriate purposes. These provisions are intended to strengthen the recognition of victims' rights in Alaska.

MS. CARPENETI explained that Section 31 of HB 73 would add convictions of an unclassified sexual felony or a class A sexual felony to the list of convictions for which [mandatory parole for good behavior, referred to as a good time deduction in the term of imprisonment,] would not be available. Sections 32-35 of HB 73 would provide the attorney general with the authority to designate another attorney working for the DOL to also address applications for administrative subpoenas seeking business records from Internet service providers in cases involving child pornography, online enticement of a minor, and unlawful exploitation of a minor crimes; currently, only the attorney general may address such applications, and the changes effected by these sections of the bill would address instances in which the attorney general himself/herself is unavailable. Having two attorneys with the authority to address such applications would be helpful to law enforcement since the investigation of such crimes can require pretty fast action.

Section 36 of HB 73 would expand the list of circumstances for which the court may determine that reasonable efforts to reunite a child with his/her family need not be taken by the Office of Children's Services (OCS), to include circumstances wherein the court has found by clear and convincing evidence that the parent or guardian has committed sexual abuse against that child or against any of his/her other children, or is registered or required to register as a sex offender. This proposed change would allow Alaska law to comply with federal requirements.

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MS. CARPENETI explained that Sections 37-38 of HB 73 would, respectively, add athletic coaches to the list of those people who, if they have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect, are required to report the harm immediately to the Department of Health and Social Services (DHSS); and would define the term, "athletic coaches" such that it would include both volunteer and paid coaches: "a paid or a volunteer leader or assistant of a sports team in a public or private school, public or private postsecondary institution, or sponsored by a state municipality, or other local government organization, or a sports team that receives public funding". In response to comments and questions, she explained that in order to violate the statutory reporting requirement, a person would first have to have reasonable cause to suspect that harm occurred and then fail to report it - in other words, harm that isn't noticed is not required to be reported; ventured that some coaches, even volunteer coaches, spend a significant amount of time with children and so should have a duty to report harm if they see it; and relayed that a violation of the statutory reporting requirement would be a class A misdemeanor.

REPRESENTATIVE LEDOUX expressed discomfort with the changes proposed by Sections 37-38 as they relate to volunteers, made reference to [troop] leaders of youth organizations, and questioned why the list of those who have a duty to report isn't also being expanded to include all who volunteer their services.

REPRESENTATIVE MILLETT noted that there have been cases wherein great harm to children has resulted from a failure to report.

MS. CARPENETI concurred. She then went on to explain that Section 39 of HB 73 would directly amend the Alaska Rules of Criminal Procedure to limit the publication of child pornography required during the discovery process in a criminal trial; under

this provision, however, the defendant and his/her attorney may view the material [at a law enforcement or prosecution facility,] and the court may send the material directly to an out-of-state expert witness. Section 42 of HB 73 would directly amend Rule 404(b) of the Alaska Rules of Evidence to allow evidence of any prior similar bad acts to be admitted in prosecutions involving physical or sexual assault or abuse of a minor; this would be similar to what's allowed in prosecutions involving sexual assault crimes and domestic violence crimes. Currently, for prosecutions involving physical or sexual assault or abuse of a minor, there is a limitation wherein only evidence of those similar bad acts that occurred within the prior 10 years is admissible; under the bill, that 10-year limitation for such evidence in such prosecutions would be removed. Under this change, the court would determine, on a case-by-case basis, whether to allow evidence of a particular prior bad act.

MS. CARPENETI explained that Sections 45 and 46 of HB 73, respectively, outline the applicability of the bill's various provisions and provide for an effective date.

CHAIR KELLER mentioned that members' packets contain the fiscal notes for HB 73.

REPRESENTATIVE LEDOUX, returning attention to the changes proposed by Sections 37-38, questioned whether the bill should be changed so as to mandate that everyone shall report suspected child abuse or neglect.

MS. CARPENETI expressed disfavor with such a change. Those who currently have a statutory duty to report are people who have significant contact with children and thus have the opportunity observe them and the state of their health.

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NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that although impacted by many of HB 73's provisions, the ACS won't have a problem implementing most of them. Referring to the changes proposed by Sections 10 and 24-26 - giving the court the discretionary authority to order a person charged with or convicted of a domestic violence crime to participate in a monitoring program with a global positioning device or similar technological means that meet the guidelines for a monitoring program adopted by the DPS - she provided her understanding of what occurs now with regard to the in-house monitoring system

the DOC has been effectively using, and confirmed that employing any such system for respondents of domestic violence protective orders would be new under the bill.

MS. MEADE - noting that some of the provisions of the bill remove the statute of limitations for certain crimes, and that some provisions increase and expand the definitions of certain crimes - relayed that these proposed changes will undoubtedly result in more case filings, though how many more or what the impact will be on the ACS is not yet known and thus any costs associated with the increase in filings would likely just be absorbed by the ACS. Referring to the changes proposed by Sections 14-15 and 43-44 - regarding changing the procedure used when determining whether a witness in a criminal prosecution is entitled to transactional immunity under the Fifth Amendment to the U.S. Constitution - she explained that those provisions won't result in any substantial change in the ACS's practice except to the extent that they require a judge to make and then seal written findings that can then be immediately appealed. The Alaska Court of Appeals can routinely handle any such expedited proceedings, but the more of them that come before the court, the greater the issue of prioritizing them then becomes, she cautioned.

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MS. MEADE, to outline some concerns the ACS has with HB 73, referred to the statutory and court rule changes proposed by Sections 30 and 40-41 regarding judicial retention evaluations, sentencing reports, presentencing reports, and victim impact statements. She pointed out that the DOC, via the use of a template, already routinely includes in their presentencing reports either a victim impact statement or an explanation of why the victim couldn't be interviewed, and cautioned that Section 40's proposed court rule change requiring that that information always be included - although not constituting a substantial change in the DOC's procedure - could therefore have the unintended consequence of delaying sentencing hearings in instances wherein that information isn't included for some reason. Such delays may be of concern to those who are already concerned about the length of time sentencing in felony cases can take.

MS. MEADE warned that Section 30's proposed statutory change - requiring the Alaska Judicial Council (AJC) to also compile and disseminate data about a judge's compliance with the statute stipulating that particular information about the victim be

included in a sentencing report - could be problematic in that the AJC and the ACS have been unable to come up with a specific mechanism by which to arrive at fair statistics, because how well a judge is considering victim information is subjective, thereby making it difficult to determine whether any particular judge is sufficiently doing so. One possible mechanism to try, she ventured, might be to change the felony-judgment form used by the courts such that judges would be able to check certain boxes in order to illustrate [the degree of their consideration of the victim's information]. The ACS's fiscal note reflects an estimated cost of \$20,000 for making [a corresponding] change to the ACS's case management system so that the AJC could be provided with the data it needs for its judicial retention evaluations. Another point to consider, she added, is that judges are already very attentive to victims at sentencing proceedings in those rare instances when the victims attend. The ACS, she assured the committee in conclusion, would be happy to address internally in some fashion any perceived lack of judicial attentiveness to victims, rather than via Section 30's current approach.

[HB 73 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:58 p.m.