ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 11, 2013
1:03 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
02/01/13	(H)	Heard & Held
02/01/13	(H)	MINUTE(JUD)
02/11/13	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Expressed concerns with some of the provisions of HB 73.

JEFFREY A. MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska
POSITION STATEMENT: Expressed concerns with some of the provisions of HB 73.

PEGGY BROWN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska
POSITION STATEMENT: Expressed concerns with some of the provisions of HB 73.

DAVID SCHADE, Director
Division of Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 73.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska
POSITION STATEMENT: Provided a comment during discussion of HB 73.

LAUREE MORTON, Executive Director
Council on Domestic Violence and Sexual Assault (CDVSA)
Department of Public Safety (DPS)
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 73.

ACTION NARRATIVE

1:03:42 PM

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Keller, Millett, Foster, LeDoux, and Lynn were present at the call to order. Representatives Pruitt and Gruenberg arrived as the meeting was in progress.

HB 73 - CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

1:04:28 PM

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."

1:05:02 PM

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), noting that the PDA has been working with the Department of Law (DOL) to address some concerns with HB 73, explained that the PDA's concern with [Sections 1 and 20-21] of the bill is that in reversing the Alaska Court of Appeals decision in Collins v. State, 287 P.3d 791 (Alaska App. 2012), the current language goes too far, potentially running the risk of precluding certain

factors traditionally considered by the court when determining whether to refer a particular case to a three-judge sentencing panel, factors such as the youthfulness of the offender and his/her lack of a criminal history. Specifically, the problematic language in Section 21's proposed new AS 12.55.175(f) - which stipulates that manifest injustice under the presumptive sentencing ranges may not be established or found by certain showings - is that which reads, "singly or in combination" in reference to paragraphs (1)-(3), which outline showings that the defendant has prospects for rehabilitation that are less than extraordinary, is a youthful offender, and does not have a history of unprosecuted, undocumented, or undetected sexual offenses. The PDA has been working to find alternative language that would serve to only reverse the Collins decision, which resulted in a lowering of the standard used when determining whether to refer a case to a three-judge sentencing panel.

REPRESENTATIVE LEDOUX expressed disfavor with the way Section 21 is currently written, remarking that it really doesn't make any sense to her, and suggested that the factor currently outlined in paragraph (1) - that the defendant has prospects for rehabilitation that are less than extraordinary - instead be used to further delineate to whom the provision applies.

MR. STEINER went on to explain that the PDA's concern with Section 7 of the bill is that as currently written, it's not clear that a violation has to stem from violating a court order. The PDA and the DOL, however, have arrived at acceptable alternative language that would clarify that point. The PDA's concern with [Sections 10 and 24-26] of the bill - in providing the court with the discretionary authority to order a respondent of a protective order 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 Department of Public Safety (DPS)] - is that the proposed changes could result in both practical and constitutional problems arising should the respondent be unable to obtain such a device for some reason, such as its lack of availability or affordability, for example. He indicated that the DOL is in agreement that any such potential problems with those provisions should be eliminated.

1:32:10 PM

MR. STEINER explained that the PDA's concern with [Sections 14-15 and 43-44] of the bill - 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 - is that the proposed changes could result in a constitutional challenge if a witness seeking the immunity is required to testify during the in camera hearing. And if testimony is required under the bill, there is a risk that that testimony could be inappropriately disclosed regardless that it is privileged and inadmissible. Furthermore, although the bill states that the testimony is inadmissible for any other purpose, it doesn't yet specify what is meant by the phrase, "any other purpose".

MR. STEINER explained that the PDA's concern with Sections 16-17 of the bill - requiring that notice for claiming credit toward a sentence of imprisonment for time spent in a treatment program be filed at least 10 days prior to a sentencing hearing or a disposition hearing - is that the proposed changes don't address situations in which the fact that the defendant spent time in a treatment program isn't known prior to the 10-day deadline. This could raise constitutional issues if being given such credit is a right. The PDA's concern with Section 23 of the bill is that in requiring a patron of a prostitute [who is a child] to register as sex offender, it could result in the patron then being guilty of yet another crime if he/she then fails to register as a sex offender. The PDA's concern with Section 31 of the bill is that in adding convictions of an unclassified sexual felony or a class A sexual felony to the list of convictions for which [mandatory parole for good behavior] would not be available, it could result in perpetrators of such crimes losing the incentive to [behave well while incarcerated].

1:37:48 PM

MR. STEINER explained that the PDA's concern with Section 36 of the bill is that in expanding 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), it could result in the OCS making less effort in situations where 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, even in instances where those facts don't have anything to do with the person's parenting ability. This concern is tied to the fact that the bill is also proposing to

add to the list of offenses for which a person must register as a sex offender.

MR. STEINER explained that the PDA's concern with Section 39 of the bill - providing for a direct court rule amendment restricting the release/copying of child pornography for purposes of discovery - is that out-of-state expert witnesses may have the material sent to them, but in-state expert witnesses would have to go to where the material is being kept. The PDA's concern with Section 13 of the bill - excluding evidence of a sex-offense victim's sexual conduct occurring either before or after the offense took place, limiting when a defendant may apply to have such evidence admitted regardless to not later than five days before trial, and providing an exception to that limitation if the request is based on evidence admitted at trial that was not available to the defendant before trial - is that such evidence [could be made available to the defendant before the trial but after the five-day deadline has passed]. This potentially raises a due-process problem because application for the evidence in such situations would be precluded under the bill as currently written. He mentioned that the PDA and the DOL are working on alternative language for that provision, language that would address the PDA's concern while still accomplishing the DOL's goal.

REPRESENTATIVE GRUENBERG questioned the rationale for establishing a five-day limitation on such applications.

MR. STEINER explained that good practice requires evidence issues to be resolved prior to trial.

REPRESENTATIVE MILLETT pointed out that having such issues resolved prior to trial also serves to minimize further victimization of a sex-offense victim during trial.

1:59:38 PM

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), noting he'd submitted written testimony detailing the ACLU of Alaska's concerns with HB 73, explained that the concern with Sections 1 and 20-21 of the bill is that they would reverse the aforementioned Collins decision, which the ACLU of Alaska believes to be setting good policy with regard to referring perpetrators of felony sex offenses to a three-judge sentencing panel for purposes of possibly imposing a sentence below the minimum presumptive sentencing range - good policy particularly in light of current prison overcrowding.

The concern with Sections 2 and 9 of the bill is that they are a bit overbroad in removing, respectively, the civil statute of limitations for felony sex trafficking and human trafficking crimes, and the criminal statute of limitations for the crimes of distribution of child pornography, felony sex trafficking, and human trafficking, because not all of those crimes necessarily involve the factors that are present in the crimes for which the statute of limitations have generally been removed or extended - crimes such as those involving murder or victims who are children. He asked that those provisions of the bill be more narrowly tailored such that the statute of limitations is removed or extended only for those types of crimes.

REPRESENTATIVE MILLETT questioned whether the statute of limitations should also be removed for sex trafficking crimes involving people from rural Alaska because of what she referred to as their cultural inability to comprehend the criminal nature of the situations they find themselves in.

MR. MITTMAN - offering his belief that existing law regarding trafficking crimes contains problems in that as currently written, it could apply to common business activity or to interpersonal agreements unrelated to trafficking or to [compelled/induced] sexual conduct - posited that Sections 2 and 9 of the bill could be more narrowly and carefully crafted to specifically address situations involving a lack of awareness or a lack of comprehension on the part of the victim. Again, as currently written, Sections 2 and 9 are overbroad.

REPRESENTATIVE MILLETT expressed a preference for retaining Sections 2 and 9 as currently written.

REPRESENTATIVE LEDOUX surmised that attorneys representing the victims of felony sex trafficking or felony human trafficking crimes in civil cases would be very supportive of Section 2.

2:13:56 PM

MR. MITTMAN relayed that the concerns the ACLU of Alaska has with Sections 7, 13, 14-15 and 43-44, and 16-17 of the bill are the same concerns the PDA has with those provisions. As detailed in the aforementioned written testimony, the ACLU of Alaska's concern with Section 18 of the bill is that it adds all the crimes of sex trafficking to the list of crimes for which the court would be precluded from suspending the imposition of a sentence; the recommendation, therefore, is that that provision be rewritten such that it would [add only the crimes of sex

trafficking in the first degree and sex trafficking in second degree]. The concern with [Sections 10 and 24-26] of the bill - regarding ordering participation 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 - is that protective orders can be issued during ex parte proceedings, thereby raising a constitutional due process problem that the committee ought to address. He then relayed that Section 39 of the bill - proposing a direct court rule amendment restricting access by defense counsel to child pornography evidence for purposes of discovery - raises significant constitutional concerns.

MR. MITTMAN, in conclusion, noted that he's provided the DOL with a copy of the ACLU of Alaska's written testimony detailing the concerns with HB 73, and that he is hoping to work with the DOL and other interested parties to come up with helpful fixes for the committee.

2:19:59 PM

PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said that the ANDVSA is very supportive of many of the provisions in HB 73. However, the ANDVSA does have concerns with Sections 24-26 of the bill, the provisions providing the court with the discretionary authority to order a respondent of a protective order 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. Victims of domestic violence seek protective orders when they are trying to leave their abusers, and thus this is the most lethal period of time for such victims, with the chances of the domestic violence escalating to a fatal degree being very high. The ANDVSA therefore believes that ordering a perpetrator of domestic violence - as the respondent of a civil protective order - to participate in such a monitoring program would be problematic and probably escalate an already-violent situation, particularly given that such a perpetrator wouldn't yet be accountable under the criminal justice system. Furthermore, research of other states indicates that none have a monitoring program pertaining to civil proceedings, and a report issued by a governor's task force in Maine indicates that any such program isn't suitable for civil proceedings.

MS. BROWN - referring to Section 10 of the bill, providing 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 - explained that the aforementioned Maine report also indicates that any such monitoring program should be managed by the department of corrections, with its existing supervision and risk-assessment capabilities, rather than by the department of public safety. Another concern with Section 10 is that many times, victims don't attend such bail hearings; other states addressing this issue recommend that the victim always consent to the perpetrator participating in such a monitoring program.

MS. BROWN said that the ANDVSA would therefore recommend that HB 73 be changed such that any monitoring program be managed by the Department of Corrections (DOC); that it be established as a pilot project; and that it apply only to [those who have already been charged with or convicted of a domestic violence crime].

REPRESENTATIVE LEDOUX shared her understanding that with such monitoring, the perpetrator would be informed of which locations to avoid, and could therefore extrapolate from that information where his/her victim is.

MS. BROWN concurred, and, in response to a questions, pointed out that it's still not known how effective such monitoring is, though data compiled by the federal Bureau of Justice Statistics (BJS) indicates that monitoring can have some impact on the recidivism rates of those that have already been convicted of a domestic violence crime; observed that [the fiscal note submitted by the DPS] in members' packets outlines a per-person cost of $32 per day for passive monitoring; explained that costs associated with a monitoring program are borne by the state when respondents themselves are unable to pay; and concurred that protective orders can be issued ex parte - without the respondent being present.

2:43:50 PM

DAVID SCHADE, Director, Division of Statewide Services, Department of Public Safety (DPS), relayed that in 2012, 432 people were arrested 521 times for violating a domestic violence protective order, resulting in 678 different "counts." This constitutes an alarming number of violations.

2:46:51 PM

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), in response to questions, indicated that [a monitoring program such as that being proposed by the bill] could help in terms of prosecuting violators and making people safer.

MS. BROWN, in conclusion, relayed that the ANDVSA supports many of the other provisions of HB 73.

2:49:10 PM

LAUREE MORTON, Executive Director, Council on Domestic Violence and Sexual Assault (CDVSA), Department of Public Safety (DPS), referring to high sex-offender recidivism rates, indicated approval of Sections 1 and 20-21 of HB 73 - proposing to reverse the aforementioned Collins decision - and approval of existing law's increased sentencing ranges for persons convicted of felony sex offenses. Statistics from 2006, when those sentencing ranges were increased, indicate that 78.5 percent of sex offenders had at least one prior arrest, and averaged four-and-a-half prior arrests; and that as of January of that year, 93 percent of the 927 then-incarcerated sex offenders had at least one prior arrest - with the average number of arrests per sex offender being eleven-and-three-quarters - and 41 percent had been arrested ten or more times. Furthermore, statistics from the year 2000 indicate that sex offenders averaged 110 victims and 318 offenses before first being caught, and statistics from 2012 compiled by the National Center for Missing & Exploited Children (NCMEC) indicate that an average of 117 children are assaulted by a sexual predator before that predator is first caught. In 2004, a Canadian study that included statistics from Washington and California illustrated that even 25 years after being caught, imprisoned, and released, approximately three out of five sexual predators reoffend.

CHAIR KELLER relayed that HB 73 would be held over.

2:55:51 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:55 p.m.