

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 18, 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. 1

"An Act relating to issuance of drivers' licenses."

- HEARD & HELD

HOUSE BILL NO. 69

"An Act exempting certain firearms and firearm accessories in this state from federal regulation; providing criminal penalties for federal officials who enforce or attempt to enforce a federal law, regulation, rule, or order regulating certain firearms and firearm accessories in this state; and providing for an effective date."

- MOVED CSHB 69(JUD) OUT OF COMMITTEE

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

HOUSE BILL NO. 83

"An Act relating to certain federal statutes, regulations, presidential executive orders, and secretarial orders; relating to the duties of the attorney general; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 1

SHORT TITLE: REQUIREMENTS FOR DRIVER'S LICENSE

SPONSOR(S): REPRESENTATIVE(S) LYNN, HAWKER, CHENAULT, JOHNSON

01/16/13 (H) PREFILE RELEASED 1/7/13
 01/16/13 (H) READ THE FIRST TIME - REFERRALS
 01/16/13 (H) STA, JUD
 01/29/13 (H) STA AT 8:00 AM CAPITOL 106
 01/29/13 (H) Moved CSHB (STA) Out of Committee
 01/29/13 (H) MINUTE(STA)
 01/30/13 (H) STA RPT CS(STA) 7DP
 01/30/13 (H) DP: HUGHES, MILLETT, ISAACSON, KELLER,
 GATTIS, KREISS-TOMKINS, LYNN
 02/18/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 69

SHORT TITLE: EXEMPT FIREARMS FROM FEDERAL REGULATION

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

01/16/13 (H) READ THE FIRST TIME - REFERRALS
 01/16/13 (H) JUD
 01/18/13 (H) BILL REPRINTED 1/17/13
 02/08/13 (H) JUD AT 1:00 PM CAPITOL 120
 02/08/13 (H) Heard & Held
 02/08/13 (H) MINUTE(JUD)
 02/18/13 (H) JUD AT 1:00 PM CAPITOL 120

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
 02/11/13 (H) Heard & Held
 02/11/13 (H) MINUTE(JUD)
 02/18/13 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

FORREST WOLFE, Staff
 Representative Bob Lynn
 Alaska State Legislature

POSITION STATEMENT: Assisted with the presentation of HB 1 on behalf of one of the joint prime sponsors, Representative Lynn.

AMY ERICKSON, Director
 Division of Motor Vehicles (DMV)

Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 1.

KATHLEEN STRASBAUGH, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: As the drafter, responded to a question during discussion of HB 1.

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

POSITION STATEMENT: Relayed that no constitutional problems have been found with HB 1.

MATTHEW KERR
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 1.

DEAN WAUSON
Eagle River, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 1.

JEFFREY LANDFIELD
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 1.

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 69.

THOMAS WRIGHT, Staff
Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 69, explained the changes incorporated into the proposed committee substitute (CS), Version 0, on behalf of the sponsor, Representative Chenault.

LYNN WILLIS

Eagle River, Alaska

POSITION STATEMENT: Testified in opposition to HB 69.

RICHARD SVOBODNY, Deputy Attorney General

Central Office

Criminal Division

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 73, responded to issues raised.

ACTION NARRATIVE

[1:03:22 PM](#)

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

HB 1 - REQUIREMENTS FOR DRIVER'S LICENSE

[1:04:19 PM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 1, "An Act relating to issuance of drivers' licenses." [Before the committee was CSHB 1(STA).]

REPRESENTATIVE LYNN, as one of the joint prime sponsors, characterized HB 1 as a "commonsense bill" and explained that under it: the Division of Motor Vehicles (DMV) would be able to issue a foreign person a driver's license for a period of less than five years if the person is authorized to stay in the United States for less than five years or indefinitely; and the foreign person, [for a period of up to five years after the license is first issued,] may be able to renew the license without fee, though if the period of authorized stay is indefinite, the license shall have to be renewed yearly. He offered his understanding that under current law, a foreign person who is authorized to stay in the country for less than five years can still obtain a driver's license that's valid for five years, and opined that this doesn't any make sense. In conclusion he surmised that the DMV would be capable of complying with HB 1.

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FORREST WOLFE, Staff, Representative Bob Lynn, on behalf of Representative Lynn, one of the joint prime sponsors of HB 1, pointed out that it's the federal government that determines how long foreign persons may legally stay in the United States, and remarked that the state should not be issuing [driver's licenses that are valid] in excess of such federally-authorized lengths of stay. House Bill 1 would authorize the DMV to issue driver's licenses with durations of less than five years in certain circumstances. He offered his understanding that under the bill, foreign persons whose federally-authorized length of stay is less than five years would have their driver's license expire at the same time as the authorized length of stay; that this reflects best practice according to the American Association of Motor Vehicle Administrators (AAMVA); and that 36 other states and the District of Columbia have similar laws/regulations.

MR. WOLFE, too, noted that under the bill, renewal of such driver's licenses would be without fee for a period of up to five years after the license is first issued; and that if the period of authorized stay is indefinite, the license shall have to be renewed yearly. House Bill 1 addresses only driver's licenses, not State-issued identification (ID) cards, and wouldn't change how a person obtains a driver's license, or what documentation shall be required by the DMV. If a person uses what he referred to as "immigration" documentation to establish his/her identity, however, then the DMV shall issue a driver's license with the same expiration date as used in that documentation. Similar legislation, he noted in conclusion, passed the House during the last legislature. In response to a question, he offered his belief that HB 1 would not negatively impact people living in rural Alaska any more than it would those living elsewhere in Alaska.

REPRESENTATIVE MILLETT referred to a letter in members' packets from attorney Margaret Stock expressing points of concern with HB 1 and noting that similar laws in other states have not withstood legal challenge, and questioned whether research has been conducted into the constitutionality of HB 1, into whether the DMV would be able to comply the bill, and into how the bill would impact Alaska's foreign seasonal workers.

REPRESENTATIVE LYNN reiterated that HB 1 would provide the DMV with the authority to issue driver's licenses with durations of less than five years.

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AMY ERICKSON, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), relayed that none of the DMV's practices would change under HB 1, and that DMV employees have been trained to deal with the documents required for driver's licenses.

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KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), in response to a question, said she herself was not aware of any challenges to laws similar to that being proposed by HB 1.

REPRESENTATIVE GRUENBERG disclosed that he knows Ms. Stock, an expert in immigration law and a former professor at the United States Military Academy West Point. He then suggested that the title of HB 1 be narrowed.

REPRESENTATIVE LYNN said he would not object to doing so.

REPRESENTATIVE GRUENBERG expressed concern that HB 1 could result in practical problems for those living in communities that do not have a DMV office.

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RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), relayed that the DOL has reviewed HB 1 and has found no constitutional problems with it.

CHAIR KELLER observed that the bill itself doesn't address documentation.

REPRESENTATIVE LEDOUX, in response to a question, noted that the aforementioned letter from Ms. Stock includes a statistic from the Center for Migration Studies indicating that Alaska's unauthorized immigrant population is less than 5,000 people.

REPRESENTATIVE GRUENBERG pointed out that existing AS 28.15.101(c)(1) says that a driver's license may not be renewed by mail if the most recent renewal was by mail, and surmised, therefore, that under HB 1, a foreign person would

have to renew his/her driver's license in person at a DMV office at least every other time he/she renews it. This could become onerous for those living in rural Alaska.

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MATTHEW KERR opined that HB 1 would needlessly bloat Alaska's bureaucracy, would slow down processing at the DMV, and would cause a lot of trouble to people who are following the law - all to solve a nonexistent problem in Alaska. He questioned the legislature's goal in limiting the validity of some driver's licenses. If it's not to address an immigration issue, then what type of driving violation would warrant such a limitation? Would the State of Alaska prefer that foreign people simply continue to use their foreign driver's licenses? For many individuals, the period of legal presence in the United States can change on a daily/weekly basis, often changing faster than the associated documentation. Even under existing law, a friend of his in the country legally, he relayed, had to go "DMV shopping" in order to find DMV personnel who could comprehend his complete and correct documentation. It appears that the concept of HB 1 is derived from a simplified and utopian view of U.S. immigration law, a view that fails, however, to comprehend what an expensive, bureaucratic mess HB 1 would create. In conclusion, he said he supports having the drivers who share the road with him pass the DMV's examination requirements, but doesn't support punishing foreign persons who are in the country legally, and that that is why he opposes HB 1.

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DEAN WAUSON - after referring to points raised in the aforementioned letter by Ms. Stock and by previous testifiers, and mentioning that he enforces federal immigration laws - characterized HB 1 as a commonsense piece of legislation, and offered his belief that it wouldn't cause any problems for the DMV or increase anyone's costs.

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JEFFREY LANDFIELD said he doesn't think that Alaska has a problem needing to be solved by HB 1, and that he believes the bill would massively increase bureaucracy. Mentioning that he has a lot of foreign friends in the country legally under different statuses, he, too, offered an example of a foreign person, a student, in the country legally who couldn't get DMV

personnel to comprehend the documentation provided. He characterized HB 1 as having everything to do with immigration, and said he doesn't think that the DMV is equipped to deal with such a complex issue. In conclusion, he reiterated that he doesn't think a problem exists in Alaska, and predicted that HB 1 would instead cause problems, and would be expensive and burdensome for the people it applies to.

CHAIR KELLER observed that the DMV has submitted a zero fiscal note for HB 1.

REPRESENTATIVE LYNN, in conclusion, said that under HB 1, foreign persons would have their driver's license expire at the same time as their foreign documentation; that this reflects best practice; and that other states have passed similar laws.

MR. LANDFIELD pointed out, however, that such documentation wouldn't necessarily reflect the most up-to-date information about the foreign person's status and legal presence.

CHAIR KELLER closed public testimony, and relayed that [CSHB 1(STA)] would be held over.

HB 69 - EXEMPT FIREARMS FROM FEDERAL REGULATION

[1:38:11 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 69, "An Act exempting certain firearms and firearm accessories in this state from federal regulation; providing criminal penalties for federal officials who enforce or attempt to enforce a federal law, regulation, rule, or order regulating certain firearms and firearm accessories in this state; and providing for an effective date." [Left pending from the hearing on 2/8/13 was the motion to adopt the proposed committee substitute (CS) for HB 69, Version 28-LS0290\N, Strasbaugh, 2/4/13, as the working document; included in members' packets was a new proposed CS for HB 69, Version 28-LS0290\O, Strasbaugh.]

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REPRESENTATIVE LYNN withdrew his motion to adopt the proposed committee substitute (CS) for HB 69, Version 28-LS0290\N, Strasbaugh, 2/4/13, as the working document.

REPRESENTATIVE LYNN then moved to adopt the proposed CS for HB 69, Version 28-LS0290\0, Strasbaugh, as the working document. There being no objection, Version 0 was before the committee.

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REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, sponsor, relayed that Version 0 of HB 69 incorporates changes addressing concerns raised about taxation and retroactivity.

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THOMAS WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, on behalf of the sponsor of HB 69, Representative Chenault, explained that to ensure continuation of certain federal funding, the language in Section 1's paragraph (1) referencing the taxation of firearms and ammunition has been removed; and that to address an ex post facto problem, the language stipulating that Section 5's proposed new AS 44.99.500(f) is retroactive to January 1, 2013, has been removed.

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LYNN WILLIS said he opposes HB 69 and its concept because it would make felons out of law-abiding Alaskans employed by the federal government, including Alaska's congressional delegation. How would legislators feel if a municipality passed an ordinance stipulating that State laws are unenforceable within the municipality and that those who create/enforce such laws are criminals? With regard to the bill's attempt to nullify federal law, he asked members to consider that over 600,000 Americans died between 1861 and 1865 when certain southern states attempted it. Furthermore, multiple federal court rulings don't uphold the concept. The federal government, he predicted, isn't going to just stand by and allow nullification or allow the punishment of federal employees for enforcing federal law.

MR. WILLIS added:

I served 22 years as a member of the Alaska National Guard; as a federal civil servant and as an active duty member, I served with federal marshals, federal civil service employees, as well as state troopers and Anchorage police officers - we were all guardsman. What would you have us do under the concept of this bill? Arrest each other?

MR. WILLIS, in conclusion, mentioned that he's submitted written testimony in opposition to HB 69, and surmised that passage of HB 69 would illustrate to all Alaskans employed by the federal government just how they can expect to be treated by the legislature.

CHAIR KELLER, after ascertaining that no one else wished to testify, closed public testimony on HB 69. He indicated favor with HB 69.

REPRESENTATIVE GRUENBERG warned that federal employees will enforce federal law, and therefore any Alaskans who rely on HB 69 to protect them from such enforcement shall nonetheless end up in federal court and perhaps be convicted of a federal crime. This is something he is loath to subject his constituents to, he relayed, and therefore, for this reason as well as because the bill is both unconstitutional and unenforceable, he would be voting against the bill regardless that he disapproves of the federal government's actions. Some other approach should be taken, he opined, such as striving to have federal law changed.

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REPRESENTATIVE LYNN moved to report the proposed CS for HB 69, Version 28-LS0290\0, Strasbaugh, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 69(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:53 p.m. to 1:56 p.m.

HB 73 - CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

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CHAIR KELLER [announced that the final 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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RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), relayed that he would be addressing issues raised during the last two hearings on HB 73. With regard to Sections 1 and 20-21 of HB 73 - which would reverse the 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 - he explained that the Alaska Supreme Court has since agreed to review the Alaska Court of Appeals' decision in Collins. Sections 1 and 20-21, as currently worded, would ensure that the legislature's intent is followed in the meantime.

MR. SVOBODNY, with regard to Section 13 of HB 73 - 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 - explained that this provision would ensure that the sex-offense victim has been given a fair opportunity beforehand to prepare for the disclosure of such evidence during trial if the court chooses to allow it. In response to comments and questions, he acknowledged that Section 13 would result in an indirect court rule change, and mentioned that a change is being made to the Senate companion bill in order to address a concern that such evidence [could be made available to the defendant before the trial but after the five-day deadline has passed]. No longer does the court give instruction to the jury that a rape victim's history of promiscuity ought to be taken into account when determining whether to convict the perpetrator, but it was just such commonly-given instruction that has since resulted in the establishment of certain protections specifically for sex-offense victims.

REPRESENTATIVE LEDOUX expressed disfavor with Section 13's proposed changes.

REPRESENTATIVE MILLETT indicated favor with Section 13's proposed changes.

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MR. SVOBODNY, with regard to Section 36 of HB 73 - 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), 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 - explained that for purposes of receiving certain federal funding, such a provision must now be included in

statute. In response to comments and a question, he indicated that he would research whether any other circumstances should be added to the list being expanded by Section 36, and offered his understanding that all but one of the sex offenses for which someone must register as a sex offender are felony-level offenses.

MR. SVOBODNY, with regard to Sections 14-15 and 43-44 of HB 73 - 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, such that the judge would be required to speak with the witness about his/her testimony before deciding whether to grant the immunity, and be required to 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 - explained that these provisions are intended to correct problems that have arisen as a result of how some judges and defense attorneys have been approaching the issue of transactional immunity. Some judges have been threatening to dismiss the underlying criminal case when the attorney general chooses not to grant a particular witness transactional immunity, and some defense attorneys in domestic violence cases have improperly raised the issue of transactional immunity and then purposely disclosed a witness's confidential information. In response to comments and questions, he indicated that the DOL views the changes proposed by Sections 14-15 and 43-44 as the best approach to address such problems.

[HB 73 was held over.]

[3:00:32 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.