

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 25, 2013

1:16 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

HOUSE BILL NO. 140

"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 22

"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."

- SCHEDULED BUT NOT HEARD

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
02/11/13	(H)	Heard & Held
02/11/13	(H)	MINUTE(JUD)
02/18/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/18/13	(H)	Heard & Held
02/18/13	(H)	MINUTE(JUD)
02/25/13	(H)	JUD AT 1:00 PM CAPITOL 120
02/25/13	(H)	Scheduled But Not Heard
03/22/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/13	(H)	Heard & Held
03/22/13	(H)	MINUTE(JUD)
03/25/13	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

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

POSITION STATEMENT: Provided comments and responded to questions during discussion of proposed amendments to HB 73, Version U.

ACTION NARRATIVE

[1:16:18 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:16 p.m. Representatives Keller, Gruenberg, Foster, LeDoux, Lynn, Millett, and Pruitt were present at the call to order.

HB 73 - CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

[1:18:15 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."

[Before the committee was the proposed committee substitute (CS) for HB 73, Version 28-GH1587\U, Strasbaugh, 3/20/13, which was adopted as the working document on 3/22/13.]

[1:18:49 PM](#)

REPRESENTATIVE LEDOUX made a motion to adopt Amendment 1, labeled 28-GH1587\U.3, Strasbaugh, 3/23/13, which read:

Page 20, lines 18 - 20:

Delete ", the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial"

Insert "and the defendant's attorney"

Page 20, line 23:

Delete "outside the state"

CHAIR KELLER objected.

REPRESENTATIVE LEDOUX explained that Amendment 1 would address the concern expressed by the Public Defender Agency (PDA) regarding Section 39's proposal to directly amend Rule 16(b) of the Alaska Rules of Criminal Procedure in order to limit the publication of child pornography required during the discovery process in a criminal trial - that concern being that under Section 39 as currently written, only an out-of-state expert witness may have such evidentiary material sent to him/her, whereas an in-state expert witness would instead have to travel

to where that material is being kept. Under Amendment 1, the evidentiary material could instead be sent to the expert witness regardless of where he/she is located.

CHAIR KELLER removed his objection, and announced that Amendment 1 was adopted.

1:23:08 PM

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 2, labeled 28-GH1587\U.1, Strasbaugh, 3/22/13, which read:

Page 19, line 3:
Delete "[OR]"
Insert "or"

Page 19, lines 4 - 5:
Delete "or, with respect to (9) of this subsection, in performance of their occupational or volunteer duties,"

Page 19, lines 22 - 31:
Delete all material.

Renumber the following bill sections accordingly.

Page 20, line 2:
Delete "includes a paid or volunteer"
Insert "means a paid"

Page 22, line 29:
Delete "sec. 43"
Insert "sec. 42"

CHAIR KELLER objected.

REPRESENTATIVE GRUENBERG explained that Amendment 2, by deleting all of the bill's references to volunteer athletic coaches, would result in only paid athletic coaches [being added to the statutory list of people who would be required to report instances of suspected child abuse/neglect]; Amendment 2 would also define the term, "athletic coach" to mean a paid leader or assistant of [certain] sports teams, and would provide conforming changes addressing the renumbering of the bill's remaining sections.

CHAIR KELLER removed his objection, and ascertained that there were no further objections. [Although nothing further was stated, Amendment 2 was treated as having been adopted.]

[1:27:02 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 3, labeled 28-LS8002\A.1, Strasbaugh, 3/22/13, which read:

Page _____, line _____:

Insert "**relating to the rights of certain victims of sexual assault, sexual abuse of a minor, or incest to obtain legal and equitable remedies for injuries arising from the conduct of a perpetrator;**"

Page _____, line _____:

Insert a new bill section to read:

"* **Sec. A.** AS 25.23.180(i) is amended to read:

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of **sexual assault**, sexual abuse of a minor, or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct."

CHAIR KELLER and REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG - after mentioning that the drafter would insert Conceptual Amendment 3's proposed additional language where appropriate under Version U, and referring to a memorandum dated March 22, 2013, to a research brief dated February 11, 2013, both from Legislative Legal and Research Services, and to information included therein regarding a [1986] court case and resulting legislation passed in [1987] - explained that currently, under the statutes addressing adoption, one could have one's parental rights terminated on the grounds that one perpetrated a crime of sexual assault or a crime of sexual abuse of a minor on the other parent of the child conceived by that illegal act. However, the statute stipulating that proceedings for such termination of parental rights do not affect the rights of the victim to obtain legal and equitable civil remedies from the perpetrator - sometimes referred to as a "savings" statute, he remarked - does not yet apply to victims of the crimes of sexual assault. Instead, that savings statute currently only applies to victims of sexual abuse of a minor crimes and to victims of incest crimes.

Conceptual Amendment 3 would address that gap not dealt with [in 1987] by adding to that savings statute a reference to the crimes of sexual assault, so that it would then also apply to the victims of those crimes.

REPRESENTATIVE GRUENBERG, in response to comments and questions, asserted that the change proposed by Conceptual Amendment 3 to AS 25.23.180(i) is necessary in order to provide statutory clarification regarding the rights of victims of sexual assault crimes - again, AS 25.23.180(i) currently only addresses the rights of victims of sexual abuse of a minor crimes and the rights of victims of incest crimes; pointed out that the bill, in the context of sexual offenses, is already proposing other changes to Alaska's civil statutes; and offered his belief, therefore, that Conceptual Amendment 3 would not be ruled by the courts as violating Alaska's single-subject requirement for legislation. [Adoption of] Conceptual Amendment 3 won't do any harm, he opined in conclusion.

[1:43:10 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL) - in response to further comments and questions, and noting that she would need to conduct further research - acknowledged that Conceptual Amendment 3, in addressing Alaska's adoption statutes in the context of sexual assault crimes and resulting legal proceedings, is tangentially relevant to the bill. She too noted that in the context of sexual offenses, HB 73 is already proposing other changes to Alaska's civil statutes, characterized Conceptual Amendment 3 as proposing a "savings clause," and offered her understanding that it would provide clarity.

REPRESENTATIVE GRUENBERG, in response to further comments, agreed to research the issues raised by Conceptual Amendment 3 further, and provide the committee with additional information.

REPRESENTATIVE GRUENBERG therefore then withdrew Conceptual Amendment 3.

[Note to the reader: The changes proposed by Conceptual Amendment 3 were redrafted for inclusion in Version U specifically, and were addressed again and adopted - via what became known as Amendment 4 - during the committee's 3/27/13 hearing on HB 73.]

[2:02:25 PM](#)

REPRESENTATIVE GRUENBERG [referred to] a proposed amendment labeled 28-GH1587\U.4, Gardner/Strasbaugh, 3/25/13, and to a memorandum from Legislative Legal and Research Services dated March 25, 2013; the proposed U.4 amendment read:

Page 1, line 1, following "**Act**":

Insert "**relating to the crime of human trafficking;**"

Page 2, line 19:

Delete "SECS. 21 AND 22"

Insert "SECS. 23 AND 24"

Page 3, line 4:

Delete "sec. 21"

Insert "sec. 23"

Page 3, line 5:

Delete "sec. 22"

Insert "sec. 24"

Page 3, following line 7:

Insert a new bill section to read:

"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT FOR SEC. 4. It is the intent of the legislature in AS 11.41.360(a), as amended by sec. 4 of this Act, to delete the requirement that the sexual conduct, entertainment, or labor be compelled or induced to occur in this state and by doing so allow the prosecution of human trafficking offenses regardless of whether the compelling or inducing or the sexual conduct, entertainment, or labor occurs in this state or outside this state to the maximum extent permitted by the constitution."

Renumber the following bill sections accordingly.

Page 3, following line 7:

Insert a new bill section to read:

"* **Sec. 4.** AS 11.41.360(a) is amended to read:

(a) A person commits the crime of human trafficking in the first degree if the person compels or induces another person to engage in sexual conduct,

adult entertainment, or labor [IN THE STATE] by force or threat of force against any person, or by deception."

Renumber the following bill sections accordingly.

Page 22, line 11:

Delete "sec. 16"

Insert "sec. 18"

Page 22, line 18:

Delete "Sections 2 - 15, 19, 20, 24, and 30"

Insert "Sections 3 - 17, 21, 22, 26, and 32"

Page 22, line 20:

Delete "Sections 16, 21 - 23, 27, and 28"

Insert "Sections 18, 23 - 25, 29, and 30"

Page 22, line 22:

Delete "Section 17"

Insert "Section 19"

Page 22, line 24:

Delete "Section 18"

Insert "Section 20"

Page 22, line 28:

Delete "Section 16"

Insert "Section 18"

Page 22, line 29:

Delete "sec. 43"

Insert "sec. 45"

The committee took an at-ease from 2:03 p.m. to 2:08 p.m.

CHAIR KELLER offered his understanding that there was still a question regarding whether the proposed U.4 amendment would actually do as Representative Gruenberg intended.

[2:09:07 PM](#)

REPRESENTATIVE GRUENBERG relayed that what he'd intended with the proposed U.4 amendment was for it to address activity [constituting the crime of human trafficking in the first degree] wherein the perpetrator is outside Alaska but the victim is in Alaska, so that the state would have jurisdiction to

prosecute such a perpetrator regardless of whether he/she ever sets foot in Alaska.

REPRESENTATIVE MILLETT indicated favor with that concept.

REPRESENTATIVE GRUENBERG offered his understanding that Alaska's courts have already addressed a similar jurisdiction issue.

CHAIR KELLER, again noting that there was still a question regarding the actual effect of the proposed U.4 amendment, requested that further research be conducted before the committee takes any action on that amendment.

CHAIR KELLER, referring then to HB 73's Version U, characterized Section 2's proposal to eliminate the civil statute of limitations for felony-level sex trafficking and human trafficking crimes as a huge change.

MS. CARPENETI, in response to questions regarding the proposed U.4 amendment, indicated that enforcement, prosecution, and jurisdiction issues can arise when addressing behavior occurring outside Alaska.

REPRESENTATIVE PRUITT added that he is interested in ensuring that the proposed U.4 amendment also addresses activity [constituting the crime of human trafficking in the first degree] wherein the perpetrator is in Alaska but the victim is outside Alaska, so that the state would have jurisdiction to prosecute such a perpetrator regardless of whether his/her victim is ever in Alaska.

REPRESENTATIVE GRUENBERG added his understanding that existing law already addresses certain jurisdiction issues, and agreed to conduct further research into the issues raised by the proposed U.4 amendment.

[HB 73, Version U as amended, was held over.]

[2:30:51 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:30 p.m.