

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 25, 2013

1:34 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Lesil McGuire, Vice Chair  
Senator Fred Dyson  
Senator Donald Olson

**MEMBERS ABSENT**

Senator Bill Wielechowski

**COMMITTEE CALENDAR**

CONFIRMATION HEARING

**Select Committee on Legislative Ethics**

Antoinette "Toni" Mallott, Juneau

- CONFIRMATION ADVANCED

SENATE BILL NO. 43

"An Act relating to theft offenses; and providing for an effective date."

- HEARD AND HELD

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."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 43

SHORT TITLE: PROPERTY CRIMES

SPONSOR(s): SENATOR(s) COGHILL

02/04/13	(S)	READ THE FIRST TIME - REFERRALS
02/04/13	(S)	JUD
02/22/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/22/13	(S)	Heard & Held
02/22/13	(S)	MINUTE(JUD)
02/25/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 22

SHORT TITLE: CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/16/13	(S)	READ THE FIRST TIME - REFERRALS
01/16/13	(S)	JUD, FIN

01/30/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
01/30/13 (S) Heard & Held  
01/30/13 (S) MINUTE(JUD)  
02/04/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/04/13 (S) Heard & Held  
02/04/13 (S) MINUTE(JUD)  
02/11/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/11/13 (S) Heard & Held  
02/11/13 (S) MINUTE(JUD)  
02/15/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/15/13 (S) Heard & Held  
02/15/13 (S) MINUTE(JUD)  
02/18/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/18/13 (S) Heard & Held  
02/18/13 (S) MINUTE(JUD)  
02/22/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/22/13 (S) Heard & Held  
02/22/13 (S) MINUTE(JUD)  
02/25/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

ANTOINETTE "TONI" MALLOTT, Appointee  
Select Committee on Legislative Ethics  
Juneau, AK

**POSITION STATEMENT:** Testified as appointee to the Select Committee on Legislative Ethics

NEISJE STEINKRUGER, representing herself

**POSITION STATEMENT:** Provided information on SB 43 based on her experience as a former superior court judge.

CHRIS NETTELS, President  
GeoTek Alaska, Inc. and  
National Federation of Independent Businesses  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to SB 43.

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

**POSITION STATEMENT:** Testified on SB 43 to report the misdemeanor and felony theft charges and dispositions for 2012.

JEFF JESSE, Chief Executive Officer

Alaska Mental Health Trust Authority (AMHTA)  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 43.

JANET MCCABE  
Partners For Progress  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 43.

SEAN CROUSORE, Loss Prevention Coordinator  
Fred Meyer  
Alaska district  
Portland, OR

**POSITION STATEMENT:** Testified in opposition to SB 43.

TOM STENSON, Legal Director  
ACLU of Alaska  
Anchorage, AK

**POSITION STATEMENT:** Testified on SB 43 and refuted testimony from retailers.

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

**POSITION STATEMENT:** Commented on proposed amendments to SB 22, version U.

CHUCK KOPP, Staff  
Senator Fred Dyson  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Described proposed amendments to SB 22.

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

**POSITION STATEMENT:** Commented on proposed amendments to SB 22.

#### **ACTION NARRATIVE**

[1:34:38 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Dyson, McGuire, and Chair Coghill.

**Confirmation Hearing**  
**Select Committee on Legislative Ethics**

[1:35:56 PM](#)

CHAIR COGHILL announced the first order of business would be a confirmation hearing to reappoint Toni Mallott to the Select Committee on Legislative Ethics.

[1:36:10 PM](#)

ANTOINETTE "TONI" MALLOTT, appointee, Select Committee on Legislative Ethics, said she has served on the ethics committee for three years and believes in what the committee does. She informed the committee that she is a retired teacher who grew up in Rampart.

CHAIR COGHILL observed that the public members are particularly important to the workings of the committee. He thanked Ms. Mallott for her service and being willing to continue.

[1:38:20 PM](#)

SENATOR MCGUIRE moved to forward the name Antoinette Mallott to the full body for consideration. There being no objection, it was so ordered.

[1:38:46 PM](#)

SENATOR OLSON joined the committee.

**SB 43-PROPERTY CRIMES**

[1:39:18 PM](#)

CHAIR COGHILL announced the consideration of SB 43. [CSSB 43, labeled 28-LS0401\U was before the committee.] He opened public testimony.

[1:39:58 PM](#)

NEISJE STEINKRUGER, retired superior court judge, clarified that she was speaking for herself to provide information about the resources used in the criminal justice system. She explained that over the past two decades, a number of crimes have moved from a misdemeanor to a felony, which has shifted work from the district court to the superior court. She noted that district courts handle misdemeanor cases and impose sentences of up to one year and superior courts handle felony cases and impose sentences of more than one year. She pointed out that penalties for theft crimes have not shifted to the "bigger hammer" but the sheer numbers of theft cases can have an impact on the system.

JUDGE STEINKRUGER said "the felony machine" uses the biggest hammer everywhere along the way, the first of which is the grand jury. Whenever someone is charged with a felony, the case first goes before a grand jury. Depending on the location, between 30 and 60 private citizens are called every month for grand jury selection. At least 18 citizens are selected along with 6-10 alternates. Again depending on location, those jurors go in every week for one to three months to do one to three days of work. People often are unaware of the impact this has on private citizens, but it's a big part of the felony machine, she said.

The second part of the machine is the witnesses' time. Quite often law enforcement officers are called to testify in grand jury but private citizens must testify as well. There is also significant Department of Law time. Once a case is charged as a felony, the court appoints counsel and that involves the Public Defender Agency and/or the Office of Public Advocacy. Because of the way these crimes are set out, it takes the experienced people in these offices to handle felonies.

The case is then handled in superior court and because it's a felony, it is seldom resolved quickly. Often there are felony-level bail hearings, which mean time for the court and continuances. Once there is a plea agreement or the trial is over, the Department of Corrections (DOC) potentially has to prepare a presentence report, assign a probation officer, and the person is on felony probation.

JUDGE STEINKRUGER said the criminal justice system has limited resources so it's important to look at the whole package and decide how to spend those limited resources. She asked the committee to consider whether it wanted to spend it on domestic violence, sexual assault, child abuse, and violence in general or on things that aren't at the highest end of public safety. She highlighted that in misdemeanor cases the judge has the discretion to sentence up to one year, and that sentences for felony theft are almost uniformly under one year.

[1:50:14 PM](#)

SENATOR DYSON asked what percentage of felony theft cases plead out before they go to trial.

JUDGE STEINKRUGER estimated that now it would be about 95 percent.

CHAIR COGHILL said he appreciates the context of her testimony.

[1:51:41 PM](#)

CHRIS NETTELS, President, GeoTek Alaska, Inc., Anchorage, AK, said he was also testifying on behalf of the National Federation of Independent Businesses to ask the committee not to pass SB 43, which would increase the \$500 felony threshold for theft and property offenses. He reported numerous incidents of stealing at his business property, four of which were thefts valued at \$500 or more. In the past two or three years he has seen a significant increase in the numbers of petty thefts valued at \$200 to \$300, but in the last year there have been several thefts valued between \$1,000 and \$3,500.

MR. NETTELS expressed concern that increasing the felony threshold will have the unintended consequence of increasing the numbers of some crimes. He said he understands the argument for increasing the felony threshold because of inflation, but wonders if all laws will be similarly inflation proofed. He also asked if the penalties would drop if deflation occurs.

He concluded that the \$500 felony threshold has served well and he did not support passage of SB 43.

[1:54:48 PM](#)

CHAIR COGHILL, speaking as the sponsor, said he certainly had no argument about how violated somebody feels when thievery occurs in their business.

SENATOR DYSON commented that inherent in the foregoing testimony is the notion that thieves know when the value of a theft passes from a misdemeanor to a felony, and make decisions based on that knowledge. He asked if that's a logical deduction.

MR. NETTELS said yes; he opined that if the bill passes, the word will get out and it will encourage people to take on more risk in stealing things.

[1:56:49 PM](#)

CHAIR COGHILL asked if he'd had trouble making a case to the police or courts in felony theft cases.

MR. NETTELS said no, although he had never received a follow up call or had any property returned in any of the five reports he filed with the police.

CHAIR COGHILL asked Detective Plummer if the police were more likely to respond to a felony theft report as opposed to a misdemeanor theft report.

1:58:34 PM

}DETECTIVE ROSS PLUMMER, Anchorage Police Department (APD)\* Municipality of Anchorage\* Anchorage, AK, said yes.{ He explained that APD detectives work felony cases and patrol officers are responsible for follow up on misdemeanor cases, but call volumes leave little time for follow up. If a misdemeanant suspect isn't caught right away or if there isn't a tip that locates the suspect, the chance of closing the case is very small.

CHAIR COGHILL asked if a felony theft would receive more detective-level involvement.

DETECTIVE PLUMMER said yes; felony thefts receive two screenings, one by patrol and the second by detectives, whereas misdemeanor thefts receive just one screening by patrol.

CHAIR COGHILL asked if businesses had a valid fear that raising the felony threshold would cause misdemeanor thefts to receive less police attention.

DETECTIVE PLUMMER acknowledged that there was that chance.

2:01:18 PM

NANCY MEADE, General Counsel, Alaska Court System (ACS), Anchorage, AK, directed attention to the charts in the packets of criminal theft charges and disposition for 2012.

MS. MEADE reviewed the class C felony and class A misdemeanor criminal theft charges filed in 2012 and noted that the 3,611 total charges were split evenly between felonies and misdemeanors. The conclusion, she said, is that misdemeanor thefts come into the courthouse at about the same rate as felony thefts.

2:05:12 PM

MS. MEADE reviewed the 2012 criminal theft charge dispositions affected by SB 43, which show that there were more than twice as many misdemeanor theft convictions as felony theft convictions. In 2012, there were 1,208 misdemeanor convictions for theft and 512 felony convictions for theft.

MS. MEADE referenced an earlier question and pointed out the low trial rate. Of the 493 theft 2 felony convictions: 13 were guilty after trial, 443 were guilty after a guilty plea, and 31 were guilty after a no contest plea.

The statistics show that less than one-third of the theft 2 class C felony charges ended in convictions. Of 1,738 charges filed, 493 resulted in convictions and 995 resulted in no convictions. By comparison, there were 869 convictions and 578 no convictions for theft 3 class A misdemeanors.

MS. MEADE noted another factor with theft 2 is that there are more dispositions than charges, which means that some convictions are coming from somewhere else. She said a likely conclusion is that some cases were dismissed when the defendant accepted a guilty plea to a lesser charge. Although there may be other explanations, it's clear that at least some of the 952 dismissals were charged in the theft 2 category but disposed in the theft 3 category. She said she didn't have exact numbers but several hundred wouldn't be an unreasonable estimate based on these statistics.

[2:09:31 PM](#)

SENATOR DYSON surmised that a \$600 theft often is disposed as a misdemeanor.

MS. MEADE said the statistics don't provide that information, but it's not illogical.

SENATOR DYSON asked about the process for getting citizen rights returned after serving time for a felony conviction.

MS. MEADE deferred the question.

[2:11:06 PM](#)

JEFF JESSE, Chief Executive Officer, Alaska Mental Health Trust Authority (AMHTA), Anchorage, AK, testified in support of SB 43. He said he looks at the bill from several perspectives based on his work experience and he appreciates the concerns of business regarding professional thieves. However, they take a much more sophisticated approach to crime than his clients. He related that when he was a juvenile public defender he was struck by his clients' lack of sophistication in either anticipating consequences or taking basic steps to avoid detection.

MR. JESSE stated that the unintended consequence of not increasing the felony theft threshold to keep up with inflation is that more mental health beneficiaries receive felony charges and that precludes them from therapeutic courts. He acknowledged that the system self-corrects somewhat with more plea agreements to lesser charges, but expressed continuing concern about

limiting access to therapeutic courts. He highlighted that the idea of therapeutic court is to keep people from cycling through the system.

MR JESSE said his other concern relates to the barrier crime issue. Among other obstacles, a convicted felon faces numerous barriers to employment despite the knowledge that the best way to reduce recidivism is to ensure that a person has a job that provides a legitimate means of support.

MR. JESSE reiterated both his sympathy for businesses that suffer theft crimes and his belief that people who aren't necessarily professional criminals need to be treated in a way that gets them out of the cycle of criminal behavior. Increasing the penalty, stigmatizing them, and reducing their opportunities to avoid recidivism is not the answer.

[2:15:52 PM](#)

JANET MCCABE, Partners For Progress, testified in support of SB 43. She said that PFP has long been concerned that too many nonviolent Alaskans are in prison. Ten years ago, the majority of prisoners were violent offenders, whereas today over 60 percent of prisoners are serving time for a nonviolent offense. The consequence is that the state is spending a lot of money on incarceration that otherwise could be spent for education and infrastructure.

She highlighted that because of outdated felony thresholds, many nonviolent offenders receive felony sentences for stealing what would have been valued at \$200 in 1978. She suggested that Alaska should follow what all other western states have done and raise the felony threshold.

MS. MCCABE cited statistics that show that 95 percent of all prisoners return to the community, but that felons face over 400 legal barriers to life in the community. Most felons find it difficult to rent an apartment or find employment and often can't even qualify for food stamps. She related that even conservative Texas Representative Jerry Madden has advised legislators to lock up true felons and help the others join the lawful community. She urged the committee to follow that wise advice and pass SB 43.

[2:18:57 PM](#)

SEAN CROUSORE, District Loss Prevention Coordinator, Fred Meyer stores of Alaska, testified in opposition to SB 43. He said that

Fred Meyer is a full-line grocery and general merchandise retailer that would suffer if SB 43 were to pass.

He explained that thievery has changed over the years and today Fred Meyer faces professionals who steal merchandise like Dyson vacuum cleaners, KitchenAid mixers, iPods, and flat screen TVs. He said the prices of these products have deflated over time, which means that the theft of three or four flat screen TVs doesn't reach the \$1,500 threshold that the bill proposes. Furthermore, the items that professional thieves steal are very low margin and the cost comes out of the stores' profits from which wages and benefits for nearly 3,000 associates are paid.

He asked the committee to reconsider the legislation. It will lead to more theft and a bigger hit to retailers' profits.

[2:25:27 PM](#)

CHAIR COGHILL asked if Fred Meyer had any trouble getting the police to respond to misdemeanor thievery.

MR. CROUSORE said no; Fred Meyer tries to bring only those cases to the police that it can prove intent.

CHAIR COGHILL said his written testimony would be welcome.

[2:26:32 PM](#)

TOM STENSON, Legal Director, ACLU of Alaska, said he expected to hear testimony from retailers that thieves are currently stealing just under \$500 because they know the boundary for a felony. That wasn't the case. The committee heard that people on the street will know that the felony standard has changed, but not that people's behavior is affected by the current low felony standard.

He said the written testimony from Fred Meyer was that professional thieves are stealing two Dyson vacuum cleaners or four flat screen TVs, but Dyson vacuum cleaners cost between \$300 and \$500 so a theft of two vacuums is already a felony offense. Based on that testimony, the current \$500 statutory limit doesn't appear to make any difference to people.

MR. STINSON pointed out that unlike robbery, homicide, rape, or assault, theft offenses are ones where commercial operators like Fred Meyer can manage security to discourage theft. He opined that some commercial stores want to pass the costs associated with their business on to the state. That doesn't seem like an

appropriate use of state resources and it's not clear that it would deter anybody, he stated.

2:31:50 PM

CHAIR COGHILL stated that he would not close public testimony.

SENATOR MCGUIRE asked the sponsor to consider both a \$1,000 threshold and using the criminal conspiracy statues to make the crimes stackable. She said she didn't see any reason for retailers to change their advertising, because stealing is a crime in the state of Alaska.

CHAIR COGHILL held SB 43 for further consideration.

**SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT**

2:35:20 PM

CHAIR COGHILL announced the consideration of SB 22 and noted there were several amendments for the committee to consider. [Version U was before the committee.]

CHAIR COGHILL asked Senator Dyson to move Amendment 1, labeled 28-GS1587\U.1.

SENATOR DYSON moved Amendment 1.

**AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR DYSON  
TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:  
Delete "**and felony human trafficking**"

Page 1, line 7:  
Delete "**or human trafficking**"

Page 3, line 15, following "minor**i**":  
Insert "**or**"

Page 3, lines 16 - 17:  
Delete "**i or**  
**(5) felony human trafficking**"

Page 7, lines 12 - 13:  
Delete "**i**"

(9) human trafficking in violation of AS 11.41.360 or 11.41.365"

Page 7, line 18:

Delete "AS 11.41.120 - 11.41.330 [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71*i*":

Insert "or"

Page 9, lines 9 - 10:

Delete "i or

(5) human trafficking in the first degree under AS 11.41.360"

CHAIR COGHILL objected for discussion purposes.

CHUCK KOPP, staff to Senator Fred Dyson, explained that Amendment 1 deletes the references to human trafficking because the term "human trafficking" is so broad that it could apply to anyone who is compelled, duressed, or deceived to use their labor skills. He cited examples of people brought to work at a remote mining site or on a commercial fishing boat to illustrate that the term encompasses more than sex crimes and sex trafficking. He opined that the nature of human trafficking would open the possibility of future legal action, both civil and criminal.

He reviewed the amendment and noted that two references to "human trafficking" are in the title. He explained that the deletions on page 3 relate to Section 2, bringing a civil action at any time. The deletions on page 7 relate to Section 10, general time limitations for prosecution of offenses. The deletions on page 9 relate to Section 14, authorizations by the court for the attorney general to intercept communications.

[2:40:15 PM](#)

SENATOR DYSON stated that Amendment 1 encompasses a simple concept, which is that most people mistake the term human trafficking to be human sex trafficking, not labor violations. He said the committee saw that confusion in a previous hearing and they heard that public safety hasn't had any of those trafficking cases to prosecute. The amendment simply removes the term "human trafficking" and keeps the bill centered on human sex trafficking. He offered his perspective that the amendment offers clarification.

MR. KOPP said the last change in Amendment 1 is in Section 28 on page 15, line 20, paragraph (M). That section relates to incidents and offenses to which the chapter applies.

[2:41:31 PM](#)

CHAIR COGHILL noted that change did not appear in Amendment 1.

MR. KOPP responded that a member of Senator Coghill's staff caught the omission. Both legislative legal and the sponsor's office missed it.

CHAIR COGHILL asked if the Department of Law (DOL) had any comment.

[2:42:06 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), explained that human trafficking covers a broad range of behavior as the result of an amendment last year that removed the requirement that one of the elements of the offense is bringing people to the state and then subjecting them to labor violations or adult entertainment. She agreed that removing that element was problematic, but the director of the criminal division has said that there have been serious cases involving human trafficking in this state that DOL wouldn't be able to prosecute because of the [statute of limitations].

She said she understands the argument as a result of the change last year, but human trafficking does cover serious felony conduct that sex trafficking does not. For example, when some women were brought to this state from Russia under false pretext they were not forced to engage in prostitution; they were forced to engage in adult entertainment and work for very little money.

[2:43:55 PM](#)

SENATOR MCGUIRE stated unequivocal opposition to Amendment 1 and reminded the committee that she was part of those discussions last year. She said slavery is slavery and Alaska does not tolerate bringing people to the state under the pretense that they will have the opportunity to be paid a wage for their services when the real intent is to keep the people in confinement. She recognized that Alaska has a number of industries that make it ripe for that kind of activity and opined that the statute should be very clear that Alaska does not tolerate slavery, human trafficking, or sex trafficking. She agreed with Ms. Carpeneti that these sophisticated networks

won't entice under sex trafficking; they'll invite people to the state to be a part of a cultural dance troupe, for example. She reiterated support for maintaining status quo with regard to human trafficking.

[2:46:05 PM](#)

SENATOR DYSON asked if she was saying that there is no law against deceiving somebody, bringing them to the state, not paying them, and keeping them confined against their will.

MS. CARPENETI said there are other possibilities but they would be very fact dependent. Depending on the circumstance, kidnapping or theft by deception or various other charges might apply. Although the human trafficking statute is broad, serious crimes are committed that would not fall under felony sex trafficking. She suggested the committee consider having only first degree felony sex trafficking in these various provisions.

SENATOR DYSON said he was astonished that somebody who brings people to the state and holds them against their will can't be prosecuted without that term being on the books.

[2:47:44 PM](#)

MR. KOPP clarified that human trafficking would still be a crime; the amendment simply applies the normal statute of limitations to mount a civil action after a prosecution for human trafficking.

MS. CARPENETI confirmed that human trafficking would still be in the law, and clarified that she was talking about the civil and criminal statutes of limitations. Right now, if human trafficking is removed from the civil statute of limitations provision and added to the criminal statute of limitations provision, someone could bring a cause of action for 10 years.

[2:49:22 PM](#)

SENATOR MCGUIRE said her point is that there should be parity between the crimes of sex trafficking and human trafficking because they mingle and the lines are sometimes difficult to differentiate. She disagreed with arbitrarily limiting a right of action on human trafficking because there was no good policy reason to treat it differently. The bill brings it all together and says this is the kind of behavior that won't be tolerated. She noted that at one time there was a statute of limitations on rape and child molestation. That was changed and this should be as well.

CHAIR COGHILL asked if both a conviction and sentence were required.

[2:51:08 PM](#)

MS. CARPENETI said she thought a conviction was required for a civil action.

CHAIR COGHILL said if the criminal action was already satisfied under this conviction, the next question is whether the potential for a civil action should forever be held open.

MS. CARPENETI said she would follow up because the statute doesn't say it, but her understanding is that the practical effect of bringing a civil action based on a criminal act is that it would be easier if the person has been convicted.

[2:52:26 PM](#)

SENATOR DYSON withdrew Amendment 1 without prejudice.

[2:52:49 PM](#)

SENATOR DYSON moved Amendment 2, labeled 28-GS1587\U.2

**AMENDMENT 2**

OFFERED IN THE SENATE BY SENATOR DYSON  
TO: CSSB 22(JUD), Draft Version "U"

Page 6, line 25:

Delete "AS 11.66.100(a)(2), 11.66.100(c),  
[AS 11.66.100(c)] or 11.66.110 - 11.66.135"  
Insert "AS 11.66.100 - 11.66.135 [AS 11.66.100(c)  
OR 11.66.110 - 11.66.135]"

CHAIR COGHILL objected for discussion purposes.

[2:53:11 PM](#)

MR. KOPP explained that Amendment 2 expands the possibility of criminal forfeiture to everyone who participates in the crimes of sex trafficking and prostitution. The provision is discretionary with the court. The statute also covers those who manage, own, or supervise prostitutes.

CHAIR COGHILL asked if the Department of Law (DOL) had any comment on Amendment 2.

[2:55:26 PM](#)

MS. CARPENETI said DOL has no object to the amendment since the committee has already made it discretionary at sentencing. She added DOL did some research on the equal protection question raised in an earlier hearing and found cases that upheld disparate penalties for the two parties involved in prostitution.

[2:56:08 PM](#)

CHAIR COGHILL removed his objection and finding no other objection, announced that Amendment 2 passed.

[2:56:23 PM](#)

SENATOR DYSON moved Amendment 3, labeled 28-GS1587\U.3.

### AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR DYSON  
TO: CSSB 22(JUD), Draft Version "U"

Page 10, line 6, following "privileged":

Delete "and inadmissible"

Insert "; [AND] inadmissible, and may not be

used"

CHAIR COGHILL objected for an explanation.

MR. KOPP explained that Amendment 3 refers to the proffer under AS 12.50.101. It clarifies that the testimony of the witness and the proffer of the attorney is privileged, inadmissible, and may not be used for any other purpose. He opined that this was fair balance because the person is waiving their Fifth Amendment right.

CHAIR COGHILL asked if the Department of Law (DOL) had any comment on Amendment 3.

[2:59:21 PM](#)

MS. CARPENETI said Department of Law has no objection to the amendment, but she wanted to clarify the mistaken testimony the committee heard on Friday regarding who has access to the information the witness has provided the judge in the written proffer and testimony. Mr. Stenson assumed that both the prosecution and the defense get to know that information, but that is not correct. The state doesn't know what's in the proffer, which makes it difficult to appeal the court's finding that the witness has a valid claim of privilege. This is only a problem in those cases that the judge decides the witness has a

Fifth Amendment privilege and says that if the state doesn't grant immunity and get that witness to testify he will dismiss the underlying charge against the defendant.

CHAIR COGHILL asked about potential witness intimidation and, in Section 17, how the state could appeal something it didn't know about.

MS. CARPENETI said the state moves cautiously when it doesn't know. She added that after Mr. Stenson testified she thought about adding clarification in Section 17 that the parties don't get to see what's in that written findings. If the state appeals the decision, that sealed document goes to the court of appeals.

[3:02:40 PM](#)

CHAIR COGHILL removed his objection and finding no other objection, announced that Amendment 3 passed.

[3:03:14 PM](#)

SENATOR DYSON moved Amendment 4, labeled 28-GS1587\U.4

**AMENDMENT 4**

OFFERED IN THE SENATE BY SENATOR DYSON  
TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 14:  
Delete "**or volunteer**"

Page 20, line 1:  
Delete "or volunteer"

CHAIR COGHILL objected for discussion purposes.

MR. KOPP explained that the amendment makes it clear that athletic coaches should be mandatory reporters, but that the same criminal liability is not applied to volunteers.

[3:03:52 PM](#)

SENATOR MCGUIRE stated opposition to Amendment 4. To set the stage for her objection, she read the purpose of the child protection statute, Chapter 47.17 as follows:

In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm

through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the department. It is not the intent of the legislature that that persons required to report suspected child abuse or neglect under this chapter investigate the suspected child abuse or neglect before they make the required report to the department. Reports must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state investigative and social services available in a wider range of cases at an earlier point in time, to make sure that investigations regarding child abuse and neglect are conducted by trained investigators, and to avoid subjecting a child to multiple interviews about the abuse or neglect. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child; safeguard and enhance the general well-being of children in this state; and preserve family life unless that effort is likely to result in physical or emotional damage to the child.

SENATOR MCGUIRE applauded the governor for adding athletic coaches and volunteers to the list of persons required to report, because it will enhance the safety and well-being of children in Alaska. Coaches and volunteers are on the front lines and see kids with great frequency, sometimes more often than their busy parents, she said.

She pointed out that the standard is a reasonable suspicion and that there is no requirement that the volunteer investigate. They are only required to pass their suspicion along to the professionals. She said she cannot imagine that a volunteer who truly cares about kids and is volunteering for the right reasons would suddenly stop volunteering because this bill passed.

SENATOR MCGUIRE reiterated her vehement opposition to Amendment 4. It may be a volunteer that suspects a coach of child abuse, she concluded.

[3:08:07 PM](#)

CHAIR COGHILL held SB 22 in committee with Amendment 4 pending.

[3:08:26 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:08 p.m.