

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 23, 2015

1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche

MEMBERS ABSENT

Senator Lesil McGuire, Chair
Senator Bill Wielechowski

COMMITTEE CALENDAR

CONFIRMATION HEARING

Violent Crimes Compensation Board
Dr. George Brown - Douglas

- CONFIRMATION ADVANCED

- State Commission for Human Rights
 - Lester Lunceford Whittier
 - Kathryn Dodge - Anchorage

- CONFIRMATIONS ADVANCED

SENATE BILL NO. 21

"An Act relating to a defense to the crime of prostitution for victims of sex trafficking."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 21

SHORT TITLE: AFFIRMATIVE DEFENSE TO PROSTITUTION

SPONSOR(S): SENATOR(S) GARDNER

01/21/15	(S)	READ THE FIRST TIME - REFERRALS
01/21/15	(S)	JUD, FIN

02/23/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

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WITNESS REGISTER

GEORGE BROWN, MD, FAAP, Appointee
Violent Crimes Compensation Board
Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the Violent Crimes Compensation Board.

LESTER LUNCEFORD, Appointee
State Commission for Human Rights
Whittier, Alaska

POSITION STATEMENT: Testified as appointee to the State Commission for Human Rights.

KATHRYN DODGE, Appointee
State Commission for Human Rights
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the State Commission for Human Rights.

SENATOR BERTA GARDNER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 21.

KATIE BRUGGEMAN, Staff
Senator Berta Gardner
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 21 on behalf of the sponsor.

MELISA ENGEL, Youth Pastor
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 21.

BELLA ROBINSON, Rhode Island Chapter of COYOTE
Providence, Rhode Island

POSITION STATEMENT: Testified on SB 21 as a victim of trafficking.

MAXINE DOOGAN, Community United for Safety and Protection
San Francisco, California

POSITION STATEMENT: Testified in opposition to SB 21.

TARA BURNS, Student
University of Alaska - Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 21

MANDY O'NEAL COLE, Deputy Director
AWARE
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 21.

MELANIE DANTE, representing herself
Philadelphia, Pennsylvania

POSITION STATEMENT: Testified in opposition to the current wording in SB 21.

JOSHUA SPRING, representing himself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 21.

KENDRA HIGGINS, representing herself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 21.

TARA DEVLIN, representing herself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 21.

ROBIN SMITH, representing herself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 21.

NICOLE MERRIWEATHER, Fairbanks Youth Advocates
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 21.

GWEN ADAMS, Priceless Ministry
ChangePoint Church
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 21.

ACTION NARRATIVE

[1:34:39 PM](#)

VICE 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 Costello, Micciche, and Vice Chair Coghill.

CONFIRMATION HEARINGS

Violent Crimes Compensation Board **State Commission for Human Rights**

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VICE CHAIR COGHILL announced the first order of business would be confirmation hearings.

[1:37:10 PM](#)

GEORGE BROWN, MD, FAAP, Appointee, Violent Crimes Compensation Board, provided a brief review of his extensive resume as a physician. [A copy is in the file.] He is honored to be appointed and feels he is paying back to the state for the many benefits he's repeated.

VICE CHAIR COGHILL thanked Dr. Brown for being willing to serve.

SENATOR COSTELLO described Dr. Brown as the old fashioned type of physician who listens and cares enough to visit people in their homes.

SENATOR MICCICHE asked why it is so important to have a physician seat on the Violent Crimes Compensation Board.

DR. BROWN replied it's important to have someone on the board who can review complicated medical records to determine the best course of action for victims of violent crime.

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VICE CHAIR COGHILL asked if he had attended any board meetings to date.

DR. BROWN answered yes; he attended the meetings in Nome and Barrow in person and two more via teleconference.

VICE CHAIR COGHILL highlighted that many victims don't know that help is available. He thanked Dr. Brown for being willing to serve.

DR. BROWN thanked the committee for the opportunity and expressed that children are the most important asset in Alaska.

VICE CHAIR COGHILL asked Mr. Lunceford to tell the committee about his interest in continuing to serve on the State Commission for Human Rights.

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LESTER LUNCEFORD, Appointee, State Commission for Human Rights, said he's enjoyed serving on the commission for the past 12 years and would like to continue to serve. He feels he contributes quite a bit.

VICE CHAIR COGHILL asked what procedural or practical issues the committee should be aware of.

MR. LUNCEFORD explained that when a complainant brings in a case it is reviewed and evaluated for validity and then an investigation and mediation takes place. Sometimes the cases can take several years to resolve, but that can't be helped because there are just a few investigators on the commission. The caseload is high and employing more investigators would help but during times of budget constraint that's not possible.

VICE CHAIR COGHILL asked if the cases are confidential until the investigations are completed.

MR. LUNCEFORD answered yes.

VICE CHAIR COGHILL asked if the board prioritizes or takes cases on a case-by-case basis.

MR. LUNCEFORD said it's case-by-case.

VICE CHAIR COGHILL asked the most common way for people to get in contact with the human rights commission.

MR. LUNCEFORD replied the commission has a website and their telephone number is listed on the State of Alaska roster.

VICE CHAIR COGHILL asked if the commission's number is supposed to be posted in places of employment.

MR. LUNCEFORD said he believes that's correct.

VICE CHAIR COGHILL thanked Mr. Lunceford for being willing to serve another term.

MR. LUNCEFORD said he looks forward to the rest of the process.

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VICE CHAIR COGHILL asked Ms. Dodge to tell the committee where she is and why she would be willing to serve on the State Commission for Human Rights.

KATHRYN DODGE, Appointee, State Commission for Human Rights, said she is currently in Washington, D.C. attending a conference. She explained that she volunteered to serve on the commission because she feels the opportunity for fairness should be open to all.

VICE CHAIR COGHILL asked if she had had an opportunity to attend a meeting.

MS. DODGE answered no.

VICE CHAIR COGHILL asked if she sees anything in the statutes that could be done better in terms of process.

MS. DODGE replied she read a 2010 ombudsman report and became aware that the state was experiencing fiduciary challenges in the late 90s and it sounds as though the state might be facing similar difficulties.

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VICE CHAIR COGHILL thanked Ms. Dodge and told her that her name would be forwarded to the full body for consideration.

MS. DODGE said she looks forward to serving on this important commission.

VICE CHAIR COGHILL stated that in accordance with AS 39.05.080, the judiciary committee reviewed the following and recommends the appointments be forwarded to the joint session for consideration. Violent Crimes Compensation Board - Dr. George Brown, Douglas, Alaska; State Commission for Human Rights - Kathryn Dodge, Fairbanks, Alaska; and State Commission for Human Rights - Lester Lunceford, Anchorage, Alaska. He reminded that passing the report from committee does not indicate an approval or approval; they will be passed along to the full body for consideration.

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At ease

SB 21-AFFIRMATIVE DEFENSE TO PROSTITUTION

VICE CHAIR COGHILL reconvened the meeting and announced the consideration of SB 21. "An Act relating to a defense to the crime of prostitution for victims of sex trafficking."

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SENATOR BERTA GARDNER, sponsor of SB 21, stated that the bill takes a narrow focus on the broad problem of violence and abuse, specifically sex trafficking and coerced prostitution. She clarified that while it's understood that perpetrators and victims can be either male or female, in this presentation the perpetrators would be referred to as him or her and the victims as she. A simple explanation of the idea is that if a person is arrested for prostitution, she can admit she broke the law and then give evidence to show that it was under coercion or force.

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KATIE BRUGGEMAN, Staff, Senator Berta Gardner, introduced SB 21. She reminded the committee that an identical version of the bill received bipartisan support last year but died in House Rules at the end of the 28th Legislature. The hope is that this important and potentially life-saving legislation will pass this year.

MS. BRUGGEMAN stated that SB 21 takes a step to address the burgeoning increase in sex trafficking by providing an affirmative defense in the crime of prostitution. A victim would offer into evidence the fact that she was coerced into the sex trafficking trade and did commit the crime of prostitution but she did so due to coercion by the trafficker. She noted that evidence of sex trafficking would arise in the pretrial plea negotiation process between the prosecutor and the defense. She provided a hypothetical scenario and opined that a reasonable prosecutor would likely take this evidence into account and dismiss the case for lack of the intent element of the crime. She clarified that a victim of sex trafficking charged with prostitution would not be forced or required to invoke this defense. It is a legal option that would give a voice to the many victims of sex trafficking that have been silenced by the current legal system. Today, even if a victim of sex trafficking were to confront their trafficker with threats of seeking help and reporting abuse, the trafficker may say "Well, what are you going to do, go to the cops? They're just going to arrest you again."

MS. BRUGGEMAN concluded that SB 21 does not intend to amend the larger sex trafficking statutes or any other area of prostitution or solicitation crimes and it does not intend to legalize prostitution. This legislation would merely add an optional affirmative defense to a victim who has been sex trafficked.

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MELISA ENGEL, Youth Pastor for five churches in the Juneau community, testified in support of SB 21 to require courts to accept an affirmative defense to the crime of prostitution if the victim can present proof of sex trafficking. She described the legislation as a common sense public policy to chip away at the barriers that force victims of sex trafficking to remain silent. These people need help, compassion, and services. They should not be put through a system that re-victimizes them when they try to speak out.

She spoke of being a person of faith who works with people in poverty. She stressed how difficult it is to get out of the cycle of poverty, especially if you've been charged with a crime. She urged compassion for victims of sex trafficking and having that compassion embodied in policies and laws. SB 21 takes a small but crucial step in that direction.

VICE CHAIR COGHILL named the people online who were available to answer questions.

SENATOR COSTELLO asked if she'd thought about specifically addressing minors as some other states have done. For example, North Carolina takes [sex trafficked minors] into custody as unsupervised juveniles. She assumed the rationale is to allow the minor to access other services.

SENATOR GARDNER replied there are already statutes that seek to protect children and law enforcement takes that seriously. SB 21 addresses adults.

MS. BRUGGEMAN added that a future legislature could look at mechanisms like the safe harbor law that creates an immunity for minors that have been arrested for prostitution; this legislation does not have that focus.

VICE CHAIR COGHILL observed that the bill is narrowly crafted.

SENATOR MICCICHE read an excerpt from the recommendations from the Ad Hoc NGO Working Group on Sex Trafficking in Alaska that

talked about a case that estimated that Don Webster aka Jerry Star made \$3.6 million on 13 of his 25 known victims, and the agency considered it a conservative estimate. He also cited a 11/5/2012 Huffington Post article that talked about a sex trafficking victim who testified that her pimp initially treated her well, but subsequently beat her and threw her into an underground tunnel for days. He noted the zero fiscal note and questioned how victims like those could be expected to come forward and feel their safety would be ensured after they testified. He expressed support for the bill and concern about the ability to provide victims with the tools to make their way out of their situation.

SENATOR GARDNER said it's a valid point. She added that while the bill addresses a real problem, she believes few will take advantage of it, particularly without dedicating a lot of money to provide services like job training. However, in the current fiscal climate she would not propose a robust program of services. Her objective is to provide this option so a victim has the opportunity to go to the police. It's a start, she said.

SENATOR MICCICHE asked if there was any sort of education in rural areas in particular that might help potential future victims recognize the dangers when they leave their village or small community.

SENATOR GARDNER advised that the Department of Education and Early Development (DEED) doesn't require schools to teach personal safety, but it does have a regulation that strongly recommends that every district offer personal safety classes for students.

VICE CHAIR COGHILL commented that this is at least one tool.

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BELLA ROBINSON, Rhode Island Chapter of COYOTE, Providence, Rhode Island, said she was a victim of trafficking when she was a teenager. She shared that at age 17 she was "married off" to a 41-year-old man. She noted that Rhode Island is one of the few states that has decriminalized prostitution, and it does not require a person to prove that they are a victim. She opined that trafficking legislation can always be better. Laws are passed every year, but they don't stop trafficking. She cited statistics for services, jobs, housing, and education. She concluded that "if we are going to reduce trafficking, we need to stop trying to abolish prostitution."

MAXINE DOOGAN, Community United for Safety and Protection, San Francisco, California, testified in opposition to SB 21. She said the bill puts victims in the position of having to defend themselves against charges of prostitution. She cited the Keyana Marshall case to illustrate the difficulty of the current approach. She agreed with the sponsor that few will take advantage of the law.

TARA BURNS, Student, University of Alaska - Fairbanks, Fairbanks, Alaska, testified in opposition to SB 21. She said she was a sex trafficking victim as a minor in Alaska. She currently is studying sex traffic laws as a graduate student. She reminded the committee of the case in Nenana many years ago where a woman in the sex trade was found not guilty of killing a client who attacked her. She cited more recent cases and pointed out that this bill would not protect any of the victims because they were not "forced or induced."

She discussed her research that showed that just one-third of 42 people she surveyed who have had experience in the Alaska sex trade met the federal definition of a sex trafficking victim. The bill would not protect any of those people or make police accept their reports of a crime. She provided an example where a prostitute risked arrest for reporting a sex trafficking crime. She noted that Alaska is called the rape capital of the country. She said this bill divides the victims into two groups; those who were induced and deserve protection, and those who were not induced and risk prosecution if they come forward and report being a victim of sex trafficking.

She suggested the bill should use the federal definition of sex trafficking, which includes all minors in the sex trade, and the use of force, fraud, or coercion in the recruitment, harboring, procurement, and transportation of a person for the purpose of a sex act. She noted the sponsor's opinion piece that says the victim should not have to testify and offer proof that they have been victims of sex trafficking, and she would like the bill to actually do that. The current dual definition has led to police harassment in Alaska. She concluded that the bill has the potential to restore many sex trafficking victims' ability to come forward to report that they have been the victim of a crime, but it also has the potential to increase sex trafficking for those who are excluded from protection, which is the majority of sex trafficking victims in Alaska.

VICE CHAIR COGHILL asked if she sees an affirmative defense as a trap.

MS. BURNS replied it is not a workable solution for victims of sex trafficking. They should neither be arrested in the first place nor coerced into becoming an informant.

VICE CHAIR COGHILL observed that they would be re-victimized.

MS. BURNS agreed and provided an example.

SENATOR MICCICHE said it seems that there are two issues; someone charged with prostitution because they were caught in the act, and someone who has not been charged and wishes to come forward to report sex trafficking.

MS. BURNS thought the latter was the sponsor's intention.

MANDY O'NEAL COLE, Deputy Director, AWARE, Juneau, Alaska, testified in support of SB 21. She pointed out that sex trafficking has been difficult for AWARE to identify. She gave an example of a young woman who was probably trafficked. She described sex trafficking as built on the hopelessness of the victims' situations and provided scenarios whereby a victim might be trafficked. She provided solutions to stopping sex trafficking and opined that the bill is a step in the right direction.

MELANIE DANTE, representing herself, Philadelphia, Pennsylvania, testified in opposition to the current wording in SB 21. She said she is a former homeless teenager and sex trafficking victim who attended college and did research in 2003 on sex trafficking. She found that it is not safe, effective, or beneficial to communicate with law enforcement about sex trafficking. She said she opposes SB 21 because she believes victims should be able to report a crime without being arrested. She agreed that victims do not have the tools to help themselves. The bill does not remedy the long-term costs and consequences of prostitution arrests and trial, and provides confusion between prostitution and sex trafficking. Nor does it provide solutions as to what happens to victims after they report, she said.

JOSHUA SPRING, representing himself, Anchorage, Alaska, testified in support of SB 21. He said he's a paralegal who has spent the last year-and-a-half volunteering in immigration law, which includes refugee and asylum cases. He shared an encounter with a victim of sex trafficking who was sold at age 9. He stressed that surviving as a victim is hard enough without

having the law administer a second layer of shame with legal repercussions. He believes the bill helps these victims.

KENDRA HIGGINS, representing herself, Anchorage, Alaska, testified in support of SB 21. She described the high incidence of sex trafficking in the Fairview region of Anchorage, and the related problems of substance abuse and mental illness. She maintained that the victims deserve protection and a voice without being fearful of arrest or persecution.

TARA DEVLIN, representing herself, Anchorage, Alaska, testified in support of SB 21. She described the situation of a neighbor in the Fairview area of Anchorage who was induced into sex trafficking by a boyfriend.

ROBIN SMITH, representing herself, Anchorage, Alaska, testified in support of SB 21. She said human trafficking is a form of modern day slavery. She shared statistics about sex trafficking of minors in the U.S. She discussed the traumas of prostitution. She maintained that the bill may not be perfect, but it's a step in the right direction. She also spoke in favor of Erin's Law.

NICOLE MERRIWEATHER, Fairbanks Youth Advocates, Fairbanks, Alaska, testified in support of SB 21. She said she works with homeless youth. She spoke of the difficulty of proving sex trafficking for those who are 18 years old. It is also hard to get them out of sex trafficking at that age. She said the bill will provide a way out of sex trafficking for younger people.

GWEN ADAMS, Priceless Ministry, ChangePoint Church, Anchorage, Alaska, testified in opposition to SB 21. She said she leads Priceless, a non-profit organization that supports sex trafficking victims in Alaska. She said she was also a member of former-Governor Parnell's Task Force Against the Crimes of Human Trafficking. She opined that the bill would undermine the work that has already been done to go after the perpetrators of sex trafficking. The only way to go after perpetrators is to get testimony from victims. Law enforcement has access to victims through the initial arrest for the crime of prostitution. Priceless works with victims and law enforcement. Of the 14 victims Priceless is working with, only one has been arrested for prostitution. She spoke against the coercion aspect of the bill. It does not protect victims, but further victimizes them by keeping law enforcement away from their pimps.

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SENATOR MICCICHE said he didn't agree with her logic. Without the bill, a victim has less of an avenue and less motivation to turn in the sex trafficker. This bill allows an affirmative defense and encourages a prostitute who may be a victim of sex trafficking to testify against "their master."

MS. ADAMS replied victims often don't even recognize that they're being trafficked. In order for Priceless to get access to the victims, it requires distance from their pimp; an arrest provides that space.

VICE CHAIR COGHILL suggested the sponsor stay in touch with Ms. Adams.

SENATOR GARDNER described SB 21 as a baby step. Responding to the last testimony, she clarified that the prostitutes are arrested and they testify in their own defense. The state can't coerce them into participating in the prosecution of their pimps.

VICE CHAIR said he would suggest at the next hearing that law enforcement testify first followed by the public defender.

SENATOR MICCICHE clarified that he used the term master not as standing but in recognition that in a trafficking situation there is a slave/master relationship.

VICE CHAIR COGHILL held SB 21 in committee.

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There being no further business to come before the committee, Vice Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:01 p.m.