

Alaska Criminal Justice Commission  
Sex Offenses Workgroup

**Meeting Summary**

**Thursday February 15, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4<sup>th</sup> floor, Anchorage  
And Teleconference

Commissioners present: Joel Bolger, Brenda Stanfill, Quinlan Steiner, Trevor Stephens

Participants: John Skidmore, Suki Miller, Terra Burns, Renee McFarland, Amber Nickerson, Keely Olson

Staff: Susanne DiPietro, Barbara Dunham

**Introductions**

Barbara Dunham explained that since the last meeting, Commissioner Dean Williams had delegated the chairmanship of the Workgroup to Deputy DOC Commissioner Karen Cann. They had also recognized that the sex trafficking proposals and the report to the legislature were really two diverging issues so they decided to devote separate meetings to them. Barbara needed more time to work on the draft report to the legislature, so this meeting would just be devoted to the sex trafficking proposals.

**Sex trafficking proposals**

Barbara explained that at the last meeting, representatives from the Public Defender's office planned to meet with representatives from CUSP to see if their proposals could be merged.

Quinlan Steiner confirmed that he and Renee McFarland had met with the CUSP folks and they were able to incorporate some of their ideas, but they were not in total agreement. He explained that essentially, the idea behind the PD's proposal was to separate sex trafficking from promoting prostitution. The Alaska's promoting prostitution statutes were relabeled as sex trafficking statutes, but did not change any of the elements of the crime. In most jurisdictions, however, the crime of sex trafficking typically involves an element of force, fraud, or coercion while the crime of promoting prostitution does not. They are two different concepts requiring different policy responses and separating the two will help people be clear about policy directives.

Quinlan said that under the current sex trafficking statutes, the penalties seemed to unfairly target measures sex workers take for their safety, so the proposal was also intended to change that. If sex workers were less likely to be penalized with a felony, they would be more likely to take safety measures to protect themselves.

Renee walked the group through the proposal. The first statute was first-degree sex trafficking (AS 11.66.110); the current version of that statute prohibits "induc[ing] or caus[ing] another person to engage in prostitution through the use of force." The proposal added "or coercion" after force.

The current first-degree sex trafficking statute also prohibits "induc[ing] or caus[ing] another person" who is under 20 or in the defendant's legal custody "to engage in prostitution." The proposal lowers the age cutoff to 18, as that was the age cutoff before the laws were changed.

The proposal also added "or an act of prostitution" after "engage in prostitution" in each place that phrase is used. The "act of prostitution" phrase was added to capture victims who may have previously

engaged in prostitution of their own consent but were then forced or coerced into a particular act of prostitution.

The proposed second-degree sex trafficking would prohibit “induc[ing] or caus[ing] another person to engage in prostitution or an act of prostitution through the use of fraud or deception.” The current version of that statute prohibits things like managing a place of prostitution, procuring a patron for a prostitute, or facilitating travel in return for commercial sexual conduct. The current statute classifies this crime as a class B felony and the proposed statute would retain that classification.

Under the proposal, the conduct currently prohibited under second-degree sex trafficking (as described above) would be relabeled as first-degree promoting prostitution and classified as a Class C felony. Similarly, third-degree sex trafficking would become second-degree promoting prostitution, classified as a Class A misdemeanor; fourth-degree sex trafficking would become third-degree promoting prostitution, classified as a Class B misdemeanor.

For the second- and third-degree promoting prostitution proposals, there were alternate versions; the first uses the language of the statutes as they existed after the passage of SB 91 and the second uses the language of the statutes as they existed after the passage of SB 54.

The second-degree promoting prostitution proposal also contained a provision (in both versions) that prohibits inducing or causing someone, with the intent to promote prostitution, to do something that person has a legal right to abstain from. This language reflected reports from the CUSP representatives that sex workers were being asked to do things that didn’t involve sex work.

Renee explained that the alternate versions were drafted when SB 54 was in the legislature and not yet enacted. Susanne DiPietro asked if the group’s focus should then be on the second versions. Quinlan said yes.

Quinlan added that the proposed statutes also collapsed the ideas of a “place of prostitution” and a “prostitution enterprise” because the current statutes treat the two differently based on what he thought were anachronistic ideas about sex work. He thought there was no reason to differentiate between the two and so they are treated the same under this proposal.

Justice Bolger noted the addition of coercion to the first-degree sex trafficking statute, and asked if it would also protect against the threat of force against a third party. Terra Burns said she thought that should be added. Renee said that it might already be included in the definition of coercion but she could also redraft it to make it explicit. Quinlan said it was not their intent to exclude that scenario and Justice Bolger suggested it should be made more explicit.

John Skidmore said that he had reviewed the proposals but thought that for the most part, there were reasons why the statutes were the way they were, and did not see a reason to change them. He was also not sure what problem this proposal was solving. He understood the desire to separate the ideas of sex trafficking and promoting prostitution but he was not so sure that the ideas were in fact that separate. His research showed they were part and parcel of the same thing.

Brenda Stanfill asked John how he would classify a situation where three people were living together and one of them posts an ad on the internet for another—would that be promoting prostitution or sex trafficking? John said he was not sure, but without other details would venture to say that was promoting prostitution.

John said he thought this proposal would make sex trafficking more difficult to prosecute, especially in cases where a victim is refusing to self-identify as a sex trafficking victim despite evidence of coercion. Quinlan said the issue was in cases that don’t involve coercion, right now, that conduct is labelled sex trafficking. The proposal aligned with the more common definitions used nationally, which typically label sex trafficking as prostitution that is induced through force or coercion.

Keely Olson noted there was a statewide task force on sex trafficking, and suggested sharing this proposal with that group. It consists of many stakeholders such as state and local prosecutors and social service workers. The task force also has a legislative subcommittee. Terra said that she had been part of the group but she didn't think it had met for over 3 years. Keely said that the task force had just met the day before and the subcommittee meets regularly as well.

Susanne asked what kinds of things the legislative subcommittee was looking at. Keely said she wasn't sure, but thought it was looking at extending safe harbor laws. Terra said that Alaska already had a law that was much stronger than a safe harbor law.

Quinlan said one of the PDs attended the meeting the day before and said that they were looking at massage parlor licensing. He got the sense that the group was not very active. He preferred to just forward the proposal to the Commission, and thought that if the task force wanted to weigh in they could do so at or before the next Commission meeting.

Brenda asked whether anyone from the Dept. of Law had discussed the proposal with the PDs; it sounded to her as if Law was not in agreement with the proposal. John said they had not sat down to talk about it, and agreed that they did not support a majority of it, with the exception of adding fraud and coercion to the statutes. Law would continue to oppose the proposal at the plenary meeting.

Quinlan thought it was worth debating the principles behind the proposal:

- 1) Separating the concepts of sex trafficking and promoting prostitution
- 2) Aligning the penalties for operating a place of prostitution and a prostitution enterprise
- 3) Penalizing measures that sex workers take for safety reason as misdemeanors rather than felonies.

Quinlan said it sounded like Law disagreed with that and John said that was true. Quinlan said he didn't think there was any way to resolve this impasse with a compromise, and thought that the workgroup should just vote on whether to forward the proposal on to the full Commission. The workgroup could forward either the proposal on the table or just the principles.

Terra suggested adding another principle, that fraud and coercion should be added to the statutes.

Brenda said she was struggling with the idea of forwarding a non-consensus proposal, because she didn't really want to do the kind of detailed work at the full Commission meeting that was better suited to the workgroup. It seemed to go against the Commission's usual practice of negotiating details at the workgroup level. Quinlan thought this was a slightly different situation because it didn't sound like there was anything negotiation could accomplish.

Susanne said it sounded like there were four concepts on the table, with the Department of Law in favor of only one of them. She thought that the workgroup could drop them or forward them.

Justice Bolger said he thought there was another option—to share the proposal with the statewide task force to get their feedback. It sounded to him like the task force had members with direct experience in these issues. Keely looked up the group membership and noted that it was comprised of law enforcement groups, religious groups, and representatives from the departments of Labor and Law.

Terra said that she had participated in the group in the past and that the group rarely met, and if it did, rarely came to any agreement.

Brenda said she didn't think the workgroup should forward nonconsensus proposals to the full Commission. She thought the workgroup could forward the fraud/coercion idea and send the rest of the ideas to the task force. Judge Stephens also thought the workgroup could forward just the idea that had consensus.

Terra said she thought the workgroup had already agreed on idea 1, that the concepts of sex trafficking and promoting prostitution should be separated. John said he didn't think that was the case, and

that he agreed with Justice Bolger that it made sense to get the input of the task force. He didn't want to forward an academic concept that was not informed by direct experience.

Susanne noted that the Commission typically gets input from other groups and individuals two ways—one is in workgroup meetings, where people can comment on ideas more informally, and the other was in the plenary meetings, where people can provide a public comment in the more formal public comment period. She wondered if the thought was to have someone from the task force attend a workgroup meeting or a plenary meeting, or if the thought was to send the proposal to the task force to have them review it.

Justice Bolger said his thought was the latter approach. He didn't necessarily doubt what Terra was saying about the task force's productivity, but he thought it was worth a try to ask for their feedback. John agreed.

Quinlan disagreed and said he would rather just vote on whether to forward it to the Commission.

Brenda said that the group had already spent a lot of time on this and also had not seen any data on what impact this would have. She didn't see the point in investing more resources on this issue and would rather have the task force take the idea and run with it.

Amber Nickerson said she tried to participate in the task force but was not informed of meetings. She said that this workgroup had the membership of CUSP which represents sex trafficking victims and sex workers. She suggested that if the workgroup was going to forward the proposal to the task force, that the workgroup also ask the task force to reach out and include CUSP in their discussions.

Quinlan noted that CUSP also raised the issue of exploitation of sex workers which was not penalized in the current statute and merited a penalty of some sort. He agreed that if the issue were referred to the task force that the workgroup should also recommend that the task force consult CUSP.

Susanne said it sounded like the exploitation issue was a fifth concept on the table. She wondered if the workgroup should forward the concepts or the proposed statutes. Barbara suggested sending both, noting that the proposed statutes were intended to address the five concepts.

Susanne wondered what the timeline should be. Keely noted that the task force would next meet in May.

Brenda asked if there was any data on what impact this proposal would have, or how many cases it might affect. John said he estimated there were perhaps 30 cases in the last 5 or so years. He explained there are studies that indicate sex trafficking is a big problem, but those cases aren't getting to law enforcement.

Brenda said she wanted to make sure those cases were actually sex trafficking and not prostitution. She was concerned that consensual prostitution was being charged as a felony. John said there were no cases where that happened and it resulted in a conviction. There was one case where CUSP lodged a complaint and the charges against that individual were dismissed. He noted there were some cases, such as the Amber Batts case, where CUSP would argue that the conduct was promoting prostitution, not sex trafficking, but the Department of Law would disagree.

Amber said that she was Amber Batts (she has since changed her name) and she did think that her conduct was not sex trafficking. She said that in her case, force or coercion were not proved; she was a sex worker working with other sex workers, and that conduct would have been promoting prostitution before the law changed.

Terra said she also disagreed that conduct that would be considered ordinary prostitution was not being charged as sex trafficking, and offered to forward charging documents.

Brenda said that she was more concerned with the resolution of those cases as she was aware that sometimes cases get overcharged. She wanted to find a balance here, and wanted to make sure that ordinary

prostitution remains a misdemeanor, and that the proposal on the table accomplishes that. She suggested breaking the proposal into two parts, forwarding the idea of adding fraud and coercion to the existing statutes to the Commission and sending the rest to the task force.

Quinlan said he wasn't sure that piecemealing was a good idea, and also noted that in the proposal, fraud was included in the second degree sex trafficking statute and coercion was in the first degree statute.

The group agreed to send the proposed statutes and the concepts behind them to the task force. Keely noted that the next task force meeting was in May, so if the task force got the proposal well before then, its legislative subcommittee could take a look at it first. Brenda said that she wanted to make sure folks from the Network (ANDVSA) were included, so that it wasn't just Anchorage representatives at the meeting.

Barbara said she would circulate what she prepared to the workgroup before sending it to the taskforce.

### **Public Comment**

Suki Miller said she agreed with the course taken as she thought it was important to get broad-based support for such changes, especially from people with more of a "boots on the ground" perspective.

Terra said she wanted to be clear that people on the task force are people who benefit from the penalization of sex work and the task force does not include actual victims or sex workers. Quinlan asked whether inclusion of CUSP should be included in the workgroup's request to the task force. Susanne said that the request could also include a request on what the policy is on including different groups—she was not sure how they operate. John said that the workgroup could also request that the task force explain with whom they consulted. Brenda said that if the task force comes up with a totally different idea, it would be an indication that not everyone had a voice in the process.

### **Next Meeting**

The group agreed the next meeting on sex trafficking would take place after the task force met and had a chance to respond to the workgroup's request for comment. In the meantime, the group would meet again once Barbara had prepared the next draft of the report to the legislature.