

ALASKA STATE LEGISLATURE



REPRESENTATIVE GERAN TARR

Define ‘Consent’ to Protect Alaskans from Rape

Policy Primer – Alaska’s Consent Bill – House Bill 5

Over the decades, Alaska’s failure to define sexual consent in law has led to repeated harm for Alaskans, contributing to our state’s grim distinction of having the highest rate of sexual assault in the United States—nearly four times the national average.

In 2015, more than [90 percent](#) of reported felony-level sex offenses did not result in a criminal conviction. Just nine percent of offenders were held accountable for the harm they caused. Repeat offense is common: Nearly [one-in-five](#) known offenders assault the same survivor multiple times.

Why this pattern of harm? In sex crime cases, Alaska law requires prosecutors to meet the often impossibly high burden of proving that 1) the accused was aware they did not have the victim’s consent, and 2) the accused used force, whether direct or implied.

Alaska’s [House Bill 5](#) aims to end this systemic injustice and make our state safer for everyone by empowering us to be among the strongest defenders of survivors in the nation.

- First, among other details, the bill affirmatively defines “consent” as “a freely given, reversible agreement specific to the conduct at issue by a competent person.”
- Second, it closes legal loopholes by criminalizing specific instances like “rape by fraud,” in which a person obtains sex with another person by misrepresenting their identity.
- Third, it establishes that sex between an adult and a minor of ages 13 to 17, who is at least 10 years younger than the adult, is predatory, and a crime of sexual abuse of a minor.
- Finally, it requires law enforcement agencies to process new sexual assault examination kits (also known as “rape kits”) within six months of collection.

Elaboration

The policies put forward in House Bill 5 were developed across two years of collaboration involving more than 100 Alaskans. The participants are survivors of rape and assault; prosecutors; legal scholars; directors of domestic violence shelters; and Alaskans from regions and cultures across the state. The group evaluated both Alaska law and the strengths and weaknesses of consent laws throughout the U.S.

House Bill 5’s unique, affirmative definition of consent stands in contrast to Alaska’s existing definition of “without consent.” This new language would clarify in law that consent cannot be obtained from a person who is incompetent or unconscious; extracted by threat, force, deception or fraud; or assumed on the basis of a past or present relationship, including marriage.

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Notorious loopholes that permit offenders to escape accountability would be closed. Consider a case of “rape by fraud”, in which a man began having sex with his brother’s partner. The woman did not initially object because she believed the man was her partner. Existing law assumes the man obtained consent. House Bill 5 recognizes he did not obtain consent because the woman was not properly informed.

The age of consent is 16 years old in Alaska. Under the premise that adults alone are capable of understanding the potentially damaging social, emotional and physical consequences of sexual relationships, House Bill 5 would establish that sex between an adult and a minor of ages 13 to 17, who is at least 10 years younger than the adult, is predatory, and a crime of sexual abuse of a minor.

Historically, police in Alaska possessed hundreds of kits of evidence that were collected after alleged rapes or sexual assaults, but never tested. To prevent that from happening again, House Bill 5 would require newly collected “rape kits” to be tested within six months of a laboratory receiving them. It would support this requirement by providing funds for the hiring and training of new lab personnel.

Testimony

“STAR’s board of directors identified updating the definition of consent as a crucial need in its policy priorities in 2018,” said **Keeley Olson, Executive Director of Standing Together Against Rape**. “Since that time, the sponsor and her staff have worked diligently to learn about Alaska sex crime laws, research consent language in other states, and hold multiple statewide public meetings to hear from stakeholders. ... This bill would have a profound effect and help to prevent future crimes.”

“This bill protects survivors by moving the legal definition of consent away from an outdated ‘no means no’ notion of consent to a ‘yes means yes’ framework,” said **Carmen Lowry, Executive Director of the Alaska Network on Domestic Violence and Sexual Assault**. “House Bill 5 shifts the burden of proof off victims and onto alleged offenders. The offender must prove they had consent.”

“Existing law makes it very difficult for jurors to decide that a survivor did not consent to sexual activity,” said **Taylor Winston, Director of the State of Alaska’s Office of Victims’ Rights**. “House Bill 5 provides jurors and judges with clearer language for recognizing when a victim did not consent.”

“The overriding problem,” said **L. Diane Casto, Executive Director of the State of Alaska’s Council on Domestic Violence and Sexual Assault**, is “with how people view consent, not taking into consideration the factors that [can] override a person not giving consent, and their inability to give consent.”

Survivors “need some more men to walk alongside us and be the leaders in this too,” said **Melanie Bahnke, CEO of Kawerak, Inc.**, which serves Alaska Native people in the Bering Strait Region. “It can’t just be women. We need leadership from men saying this is not okay.”

You can help pass Alaska’s Consent Bill. Call or email Representative Tarr’s office today.