

<https://www.knom.org/wp/blog/2021/02/05/part-3-seeking-justice-wanting-protection-disparities-in-sexual-assault-crimes-in-nome/>

Part 3: Seeking justice, wanting protection: disparities in sexual assault crime in Nome

KNOM Radio

Western Alaska has the highest sexual assault rate in the state, and those are just the cases that are actually [reported to authorities](#). Even when everything in a sexual assault case is reported instantly and an investigation is done right away, statistics show, most cases will not go to court. Cases can take years to go to trial, if they ever make it.

In Alaska, prosecutors and experts said the legal system requires a high burden of proof, and some said an outdated consent statute ensures most sexual assault cases won't result in convictions. Advocates and survivors said it's time for some of those laws to change.

Many Referrals, Few Charges

On a late November afternoon, sunlight streamed through the window in the Nome District's Attorney's office, illuminating boxes packed floor to ceiling filled with hundreds of old case files. Those files are being digitized, and some of the older, less-serious misdemeanors may even be disposed of forever.

"But like the sex cases, we always keep those no matter what happens."
– John Earthman, the Nome District Attorney

He said the felony cases and more violent crimes will always be kept on file. And Earthman gets plenty of those. Over four years, from 2014-2017, police and troopers referred 102 cases of sexual assault and sexual abuse of a minor to the Nome DA, who is tasked with deciding which reports will lead to criminal charges. Data indicates that the [number of sexual assaults being reported](#) to Nome Police is increasing.

Earthman, who has been at the Nome DA's office since the late nineties, gets cases from the Alaska State Troopers, Nome Police, and law enforcement in the Kotzebue-area. But it's the sexual assault cases he said that are most difficult for the people involved and the most difficult to charge.

"I'm not even supposed to charge something unless I have a reasonable belief that I can get a conviction that I can prove this case beyond a reasonable doubt."

That's a strict order from the Department of Law, said Earthman. In the [span from](#) 2014-2017, only 36% of the sexual assaults on adult victims were charged in Nome. Statewide that number from the same time period was barely higher at 38%.

The burden is on the prosecutor to prove the elements of the crime beyond a reasonable doubt, like in every other criminal case. The most straight-forward cases include DNA evidence and a confession from the assailant, but Earthman said those are rare. One of the most challenging things a prosecutor has to show is that the encounter wasn't consensual as defined very strictly by [state law](#).

"Without consent, by statute, by law is with or without resisting. This happens because of force or happens because of a threat of injury."
– John Earthman, the Nome District Attorney.

A survivor has to prove they feared physical harm. Essentially, if they didn't actively say "no" and weren't physically forced into the act, the State of Alaska could interpret the sex as consensual.

Most referrals don't have enough of that evidence and don't meet the definition for assault, explained Earthman, "That's where most cases get screened down. That's what we call it."

The law becomes a challenge for educators who want to teach what healthy sexual relationships should look like. L. Diane Casto is the executive director for the Alaska Council on Domestic Violence and Sexual Assault (CDVSA).

"In the work that we do consent means it's an 'affirmative' consent. You say you give your consent or you don't give your consent. If you don't give your consent. The person doesn't have it. But that's not how the law necessarily works."
– L. Diane Casto

Not A Law That Helps Survivors

It has been almost [40 years](#) since the definition of "without consent" was updated by the State of Alaska.

Survivor advocates say these definitions are highly problematic for a number of reasons. Keely Olson is the Executive Director of Standing Against Rape, or STAR. She doesn't think the law accounts for the way someone typically behaves after they've already survived sexual assault.

"Unfortunately, under the law unless they can express that they... they fought back, they pushed, they screamed; they made it very clearly known that this was not something that they wanted to do. But rather that they froze, and they just laid there. That doesn't qualify under the statute as a sexual assault."
– Keely Olson

And that type of "freeze response" behavior can be especially common Olson said in previous sexual assault or child sex abuse survivors. A [recent report](#) from the state health department reported that over 13% of Alaskans experienced some type of

childhood sexual abuse, while that number is closer to 20% for Alaska Native women. Almost all of the women who spoke with KNOM for this series reported experiencing some type of molestation or rape before they reached adulthood.

When an adult survivor of childhood sex abuse is assaulted, Olson said it's common for their body to remember old trauma responses.

"You're very likely to go back to the same kind of response that helped you survive as a child, which was to pretend you were asleep, to be very quiet, to not make any noise, to just kind of go away in your mind and wait for it to be over. So we see that as a trauma response that isn't really codified in the law."

But then there are the cases involving alcohol. It is illegal under state law to have sex with someone who is "unaware" and that includes someone too drunk to consent. But as Earthman said, he still has to prove the assailant knew the person was unaware.

"So we see that as a trauma response that [freeze response] isn't really codified in the law."

– KEELY OLSON

"For example, one person reports, 'Look, I was so drunk. I know that I wasn't capable of making a valid consent.' Pretty traumatic, right? So the cops go talk to the other person. 'Yeah, I was there. I know. I had so much that if anything happened I know I could not have agreed to anything that happened between us. I couldn't have done it.' I've had that scenario and who do you charge there?"

– John Earthman, the Nome District Attorney

Prosecutors in both rural and urban Alaska said that alcohol is a common factor in sexual assault cases, both assailant and survivor have often been drinking. Tom Hoffer serves as the DA in Bethel and formerly served at the DA's office in Fairbanks too. In both places, he said alcohol is a complicating factor.

"The biggest impediment in prosecution is where alcohol in fact, influences someone's body or impacts them, where they're not able to remember what happened. And that makes it harder. You know, that's one of those factors if a witness doesn't remember what they saw or what happened to them."

– Tom Hoffer, Bethel DA

Both prosecutors said drunkenness can't be used as a legal defense to get away with assault. Even if the assailant doesn't recall the assault they can still be charged. But prosecution does need other evidence, like DNA, and strong accounts. Alcohol can compound an already narrow threshold prosecutors have to prove a case.

The Nome Police Department regularly reports that most of the incidents they respond to "involve alcohol" but that's a designation left up to the individual, responding officer.

Sergeant Wade “Gray” Harrison formerly worked as an investigator for the Nome Police and still assists the department with many investigations, particularly sexual assaults.

“Basically, at any point, during the forensic exam with the victim, if they disclosed that they were drinking, or the suspect was drinking... or if they were at a party where alcohol was involved, that was a factor. And it’s just a simple “alcohol involved”—check it. And that’s probably 90% are obvious [alcohol involved].”

– Wade “Gray” Harrison

Survivors have said that NPD’s emphasis on drinking plays into racialized stereotypes about Alaska Native people.

Some survivors said they felt they were less likely to be taken seriously if they were drinking or drunk at the time of the assault. Most of them reported using alcohol as a way to cope with past trauma or sexual assault. Despite high rates of alcohol misuse, there are no in-patient substance misuse treatment facilities in Nome.

When alcohol becomes a complicating factor in why a survivor’s case can’t be prosecuted, it often adds to feelings of self-blame. Dr. Ingrid Johnson works as an associate professor at the University of Alaska Anchorage Justice Center. She studies different elements of the ways sexual assault survivors seek help. She says low prosecution rates are often one of the cited reasons a sexual assault goes unreported.

“You don’t want to have to go out, you know, essentially air your dirty laundry out and have your name dragged through the mud, because, you know, your substance abuse is going to be brought up and your mental health issues and your risky behaviors... the defense is going to try to essentially drag you through the mud.”

– Dr. Ingrid Johnson

Looking for Laws That Keep People Safe

Earthman said he sees many cases of what he calls “sexual trauma” that can’t initially be charged in court.

“We don’t just dump these cases, I mean, we may not be able to charge them at that time. Some of these cases can be revived and can be charged if there’s another similar case later on. Tragically, that means someone else has been a victim.”

– John Earthman, the Nome District Attorney

When a suspect is reported for a sexual assault, [data](#) shows that there’s a 17% chance they’ve already assaulted the survivor reporting them.

Those statistics are galvanizing for people like Geran Tarr, an Anchorage-based representative in the Alaska House.

“I just am constantly amazed at how spectacularly the laws fail to keep people safe.”

– Geran Tarr

Tarr is trying to change the Alaska consent statute. Her legislation was one of dozens of pre-filed bills for the January 2021 legislative session. In her [proposal](#), the individuals involved actually have to give each other permission to have sex.

Tarr points out that Alaska's laws weren't written by the people they're primarily failing.

“A lot of these statutes weren't written with women contributing to the language at all. I can't believe a woman would have ever helped write a statute that created a legal loophole for sexual assault. Women weren't involved in writing these laws, because they weren't members of the governing bodies at the time.”

– Geran Tarr

As Tarr [drafted that legislation](#), she spoke with groups from all over the state: including survivors, activists, prosecutors, and experts in other states. While Alaska's consent laws are based on even older state laws; the paragraph defining “without consent” hasn't been updated since 1982. Meanwhile, other states have adopted updated sexual assault laws based on more contemporary understandings of rape and consent. A state like Montana [defines](#) consent as “words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.”

The most recent [report](#) from the Alaska Justice Commission shows that 46% of survivors are Alaska Native women, despite Alaska Native people making less than 20% of the state's total population. Advocates said there are a lot of complicated reasons for why Native women are so overrepresented in those numbers; those reasons include a history of trauma from colonization which has led to increased vulnerability from poverty and homelessness, and a lack of resources for mental health and addiction.

But with so few cases going to court, some people like survivor advocate Lisa Ellanna of Nome see the statute as particularly failing Native women who try to hold their assailants accountable.

“The people that are most disproportionately affected by this issue are Alaska Native women. So that is another protected class. This is a discriminatory policy.”

– Lisa Ellanna

Re-visiting the consent statute is a good step forward for someone like Casto of the CDVSA, but she pointed out that it will always be difficult to trial sexual assault in the courts.

“No matter what legal definition you have of it [consent], it becomes incumbent upon the victim to kind of prove that there wasn't consent. And it's challenging she said to find legal phrasing that will make the definition of consent clear while still being able to hold up in court. I don't think any of us believe the current statute meets the needs of Alaska,

in terms of sexual assault and making sure that people are held accountable for their actions, it clearly needs to be changed.”
– L. Diane Casto