

House Bill 5: Defining Sexual Consent

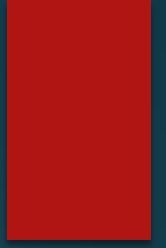
REPRESENTATIVE GERAN TARR

STATE AFFAIRS COMMITTEE


MARCH 27, 2021

How was HB 5 drafted?

- ▶ Priority of STAR (Standing Together Against Rape)
 - ▶ Knew firsthand how law failed to achieve justice for Alaskans who have been raped or sexually assaulted
 - ▶ Has not been updated in forty years
- ▶ 4 year process
 - ▶ Multiple statewide meetings with input from across Alaska over 2 years (2019,2020), bill introduced in 2021
 - ▶ Expert interviews, expert team for developing proposal (combined 60 plus years of experience with sexual assault crimes in Alaska), feedback from Department of Law
 - ▶ Presented at statewide meeting of ANDVSA
 - ▶ More than 100 Alaskans contributed to the drafting of this bill



More listening
than talking



Has consent
ever been as
issue for you?

YES



A RAPE IS LIKE A MURDER
WHERE THE VICTIM LIVES

4 Parts to the Bill

1. Require Rape Kits be tested within six months
2. Update decades old consent definition
3. Add rape by fraud or rape by deception to criminal statutes
4. Address predatory behavior of much older adults in relationships with much younger minors

4 Parts to the Bill

1. Require Rape Kits be tested within six months

Last piece of multi-year Rape Kit Reform Initiative

Accomplishments:

- Ongoing audit of backlog of rape kits

- Testing of backlog of rape kits

- Secure storage of rape kits

- Victim centered approach

- Training for law enforcement for sexual assault response

- Created a timeline for rape kit processing – within 30 days of collection be sent to crime lab, **tested within 1 year**, and survivor be notified within 14 days

The real reason this matter – Justice for Alaskans

KTOO

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Crime & Courts | Southeast

Newly tested DNA sample led to arrest in 1993 rape case, Ketchikan police say

June 30, 2021 by Eric Stone, KRBD - Ketchikan

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raped her for the first time since she jumped from his van 19 years earlier.

He wore a dark tie and a blue face mask, appearing in one of Alaska's first felony jury trials of the COVID-19 pandemic. Sattler was committed to getting justice for what had been done to her. She had subjected her body to the swabbing and prodding and picture taking of a forensic exam after the 2001 kidnapping, so troopers could collect a sample of the rapist's DNA. In court, where a jury of socially distanced strangers examined images of her genitalia, she answered the defense lawyer's questions about why she was barhopping the night of her rape.

In the end, all the little humiliations built a case. A Kenai jury found Carmen Perzechino, a former sled dog musher who had fled to the Philippines, guilty of all counts. He is awaiting sentencing.

The state public safety commissioner celebrated the verdict as a win in Alaska's push to test hundreds of old sexual assault kits collected by state troopers, some dating back to the 1980s. The "kits" are textbook-sized boxes or even bags of evidence collected at the beginning of a sex crime investigation. For a variety of reasons, they were never before submitted to a crime lab where the suspect's DNA would have been extracted, possibly identified and entered into a database.

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After 3 years and \$1.5 million devoted to testing rape kits, Alaska made one new arrest


First of two parts: In the state with the highest rate of sexual assault in the nation, testing the backlog of rape kits may not be enough. Many were from cases where the identity of the suspect was already known, or were opened only to find no usable DNA.

December Milestone in Rape Kit Reform Initiative

alaskasnewssource.com

Live News

State of Alaska announces thousands of unprocessed sexual assault kits have been cleared



By [Patrick Enslow](#)
Published: Dec. 14, 2021 at 8:48 PM AKST

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ANCHORAGE, Alaska (KTUU) - It's been years in the making, but the backlog of thousands of untested sexual assault examination kits from across Alaska is nearly cleared. Gov. Mike Dunleavy's administration recently announced that the final 51 kits have been submitted for the final stages of testing and should be finished by the end of the year.

The backlog of unsubmitted kits [was discovered in 2016](#) after former Gov. Bill Walker's office requested an inventory review. The state then received \$1.09 million in federal grant money from the National Sexual Assault Kit Initiative to help tackle the thousands of sexual assault kits that began compiling in the mid-1990s.

4 Parts to the Bill

1. Require Rape Kits be tested within six months
2. **Update decades old consent definition**

Without consent?

- ▶ Alaska Stat. § 11.41.470

“**Without consent**” means that a person:

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant.

PROBLEMATIC FOR MANY REASONS:

1. Not an affirmative definition
2. Suggests use of force
3. Places burden on victim

Reviewed other states

▶ Minnesota

Minn. Stat. § 609.341 (4).

"**Consent**" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. **Consent does not mean the existence of a prior or current social relationship** between the actor and the complainant or that the complainant failed to resist a particular sexual act. Further:

- ▶ A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.
- ▶ Corroboration of the victim's testimony is not required to show lack of consent.

Montana -Mont. Code Ann. § 45-5-501(1)

- ▶ The term “consent” means words or overt actions indicating a freely given arrangement to have sexual intercourse or sexual contact and is further defined, but not limited to:
- ▶ An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;
- ▶ A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and
- ▶ Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.
- ▶ The victim is incapable of consent because the victim is:
 - ▶ mentally disordered or incapacitated;
 - ▶ physically helpless;
 - ▶ overcome by deception, coercion, or surprise;
 - ▶ less than 16 years old;

Themes in modernized statutes

- ▶ Affirmative definition
 - ▶ Freely given
 - ▶ Agreement
 - ▶ Reversible
 - ▶ Words and actions
- ▶ Previous social or dating relationship does not suggest consent
- ▶ Language that represents all trauma responses: fight, flight, or freeze

New definition proposed in HB 5

- ▶ "consent" means a freely given, reversible agreement specific to the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in the act was positively expressed by word or action.

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3. **Add rape by fraud or rape by deception to criminal statutes**

Rape by Fraud

Concept: An action whereby a person obtains sexual consent and has sexual intercourse of any type by fraud, deception, misrepresentation, or impersonation.

- 12 states currently have specific language
 - 10 have language that says consent does not apply if “it is induced by force, duress, or deception.”
- Laws in Tennessee and Texas specifically use the term “fraud.”
- Federal law addresses “professional purpose” – one component

Rape by Fraud

Concept: An action whereby a person obtains sexual consent and has sexual intercourse of any type by fraud, deception, misrepresentation, or impersonation.

- College campus example
 - <https://abcnews.go.com/US/college-student-hopes-rape-fraud-case-expose-loop-hole/story?id=60211269>

Rape by Fraud

American Law Institute (author of the model Uniform Model Penal Code) had advocated for criminal justice for victims of rape by fraud (2015)

- Model Penal Code “global consent provision” includes language that states – “does not constitute consent ifit is induced by force, duress, or deception of a kind sought to be prevented by the law defining the offense.”

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4. **Address predatory behavior of much older adults in relationships with much younger minors**

Address predatory behavior of much older adults in relationships with much younger minors

Offender	Victim	Crime
23+	13	SAM 1
24+	14	SAM 1
25+	15	SAM 1
26+	16	SAM 1
27+	17	SAM 1
17-22	13	SAM 2
18-23	14	SAM 2
19-24	15	SAM 2

Address predatory behavior of much older adults in relationships with much younger minors

4.23.21 comparison of existing statute with 32-LS0075\G		Office of Rep. Tarr		4.23.21					
Age of victim	Existing statute	Existing statute	Existing statute	Existing statute	Existing statute	New statute	New statute	Existing statute	New statute
	Sexual abuse of a minor in the 4th degree. Class A misdemeanor.	Sexual abuse of a minor in the 3rd degree. Class C Felony.	Sexual abuse of a minor in the 3rd degree. Class C Felony.	Sexual abuse of a minor in the 2nd degree. Class B felony.	Sexual abuse of a minor in the 2nd degree. Class B felony.	Sexual abuse of a minor in the 2nd degree. Class B felony.	Sexual abuse of a minor in the 2nd degree. Class B felony.	Sexual abuse of a minor in the first degree. Unclassified felony.	Sexual abuse of a minor in the first degree. Unclassified felony.
Under 13 years old	AS 11.41.440(a)(1) Offender is under 16 and engages in sexual contact and victim is at least 3 years younger			AS 11.41.436(a)(2) Offender is 16 or older and engages in sexual contact or encourages another to do so and victim is under 13.	AS 11.41.436(a)(7) Offender is under 16 and engages in sexual penetration and victim is at least 3 years younger.	AS 11.41.434(a)(4) Offender is 18 or older and engages in or encourages sexual contact and victim is at least 10 years younger. (Same as for 13, 14, 15; and 16, 17 below.)		AS 11.41.434(a)(1) Offender is 16 or older and engages in or encourages sexual penetration.	AS 11.41.434(a)(4) Offender is 18 or older and engages in or encourages sexual penetration and victim is at least 10 years younger. (Same as for 13, 14, 15; and 16, 17 below.)
13, 14, 15		AS 11.41.438(a) and (b) Offender is 17 or older and engages in sexual contact and victim is at least 4 years younger (Class C felony with prison not more than 5 years)	AS 11.41.438 (a) and (c) Offender is 17 or older and engages in sexual contact and victim is at least 6 years younger (Class C felony with 99 years) (note that AS 12.55.125(i) does not reference back to Sec. 11.41.438)	AS 11.41.436(a)(1) Offender is 17 or older and engages in sexual penetration or encourages another to do so, and victim is at least 4 years younger.		AS 11.41.436(a)(1) Offender is 17 or older and engages in sexual penetration or encourages another to do so, and victim is at least 4 years younger but not more than 10 years younger. (The effect of this is that if victim is 10 years younger the crime moves to first degree.)	AS 11.41.434(a)(4) Offender is 18 or older and engages in or encourages sexual contact and victim is at least 10 years younger. (Same as for under 13; and 16, 17.)		AS 11.41.434(a)(4) Offender is 18 or older and engages in or encourages sexual penetration and victim is at least 10 years younger. (Same as for under 13; and 16, 17.)
Under 16 years old				AS 11.41.436(a)(4) Offender is at least 16 years old and encourages victim under 16 to engages in conduct where photographs, etc. are taken, per AS 11.41.455(a)(2)-(6).	AS 11.41.436(a)(5) Offender is 18 or older and is in a position of authority and offender engages in sexual contact with the victim.			AS 11.41.434(a)(3) Offender is at least 18 and is in a position of authority and offender engages in sexual penetration with victim.	
16, 17	AS 11.41.440(a)(2) Offender is 18 or older and is in a position of authority and offender engages in sexual contact with victim who is at least 3 years younger				AS 11.41.436(a)(6) Offender is 18 or older and is in a position of authority and offender engages in sexual penetration with the victim.		AS 11.41.434(a)(4) Offender is 18 or older and engages in or encourages sexual contact and victim is at least 10 years younger. (Same as for under 13; and 13, 14, 15.)		AS 11.41.434(a)(4) Offender is 18 or older and engages in or encourages sexual penetration and victim is at least 10 years younger. (Same as for under 13; and 13, 14, 15.)
Under 18 years old				AS 11.41.436(a)(3) Offender is at least 18 and is guardian/parent and offender engages in sexual contact with victim.				AS 11.41.434(a)(2) Offender is at least 18 and is guardian/parent and offender engages in sexual penetration with victim.	

HB 5 sectional

Sections 1 and 2: Rape by Fraud

Sections 3 and 4: Predatory behavior by much older adults engaging in sexual relationships with teenagers at least ten years younger

Section 5: Addressing circumstances in which consent can be given

Section 6: New definition of consent

Sections 7 and 8: Updates the definition of consent in the sections of statute related to failure to report a crime against an adult and failure to report a crime against a child

Section 9: Refers to the updated Military Code of Justice

HB 5 sectional

Section 10: Requires rape kits be tested within six months


Section 11: Repeals the old definitions

Section 12: Law applies to crimes committed after the effective date

Section 13: Effective date for rape kit testing is July 1, 2023

Want 2 outcomes

- ▶ Remove dangerous people from our communities for an appropriate amount of time and with access to sex offender treatment to prevent them from harming others
 - ▶ Fails to prevent harm – this responds to harm
- ▶ Educate Alaskans about consent and change the culture around sexual violence to prevent harm from happening



Change the law to make prosecution for rape more possible in Nome and across Alaska, experts say

By Emily Hofstaedter, KNOM - Nome - February 10, 2021

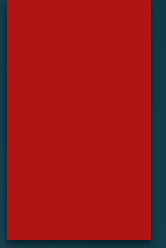


*This is the third in a five-part series from KNOM called **"Seeking Protection, Wanting Justice"** that explores the community dynamics around sexual assault in Nome, and efforts by law enforcement to heal long-standing mistrust within the Alaska Native community.*

HB 5 is the solution

In Alaska, prosecutors and experts say the legal system requires a high burden of proof: Some said an outdated statute dealing with consent ensures most sexual assault cases won't result in convictions.

Advocates and survivors say it's time for some of those laws to change.



More listening
than talking

Questions we have to answer:

- ▶ What is the appropriate criminal justice system response based on the human suffering caused to the survivor?
- ▶ How much of a danger does this person pose to the community and how long should they be removed from the community so they can no longer cause harm?
- ▶ How much do we want to invest to improve public safety and reduce sexual assault in Alaska?

Presenters



Jennifer Brown, STAR

Brian Hosken, State Coordinator of Coaching Boys Into Men

Brenda Stanfill, Executive Director of ANDVSA