

From: [Jim Magdanz](#)
To: [House State Affairs](#)
Subject: HB20B - An Act relating to sexual assault
Date: Wednesday, March 13, 2019 1:29:57 PM

Dear Members of the House State Affairs Committee,

I am writing about HB20, as amended, which is scheduled to come before the State Affairs Committee on March 14. I support more precise language in Alaska's sexual assault statutes. I thank the sponsors and this committee for their work on this issue.

I have reviewed HB20A, HB20B, as well as existing statutes, including **AS 11.41.410 sexual assault in the first degree** and **AS 11.41.470 Definitions**.

The issue of consent, including implied consent, is at the heart of any sexual assault, and requires clarity in law. I am glad to see HB20B take a positive approach to consent, defining "consent" rather than defining "without consent." Yet neither the existing statute nor, in my opinion HB20B, provide sufficient definitions of consent. The proposed language in HB20B is:

(9) "consent" means words or overt actions indicating freely given agreement to engage in sexual penetration or sexual contact.

Under this language, a pre-existing relationship could be construed as implied consent for future sexual acts, and the physical and mental state of the victim are not considered. Models for more precise consent language exist in law in other states. I urge you to consider, for example,

"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. 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.

There are other issues with HB20B, including revised provisions for testing sexual assault kits. I expect others will raise these issues with the committee.

But the important point is this: Where HB20A was a simple measure focused on testing sexual assault kits, HB20B is an expansive measure that would add repeal, replace, and add language in multiple sections of the statute relating to sexual assault. The many proposed changes warrant a careful approach by the committee, in particular, the statutory definition of consent.

Thank you.

Jim Magdanz