



House State Affairs
Alaska State Capitol
Juneau, AK 99081

Re: HB 5 (Sexual Assault; Def. of “Consent”)

March 27th, 2021

Dear Chair Kreiss-Tomkins and State Affairs Committee Members:

Planned Parenthood Votes Northwest & Hawai'i (“PPVNH”) writes to express our support of HB 5 and urges the committee to take action on this critical bill. As a trusted provider of sexual assault survivors, Planned Parenthood is deeply committed to advancing policies and programs that work to reduce sexual assault, provide support for sexual assault survivors, and help survivors seek justice. By updating the definition of “consent” and addressing Alaska’s backlog of sexual assault examination kits, HB 5 will have a direct positive impact on survivors across Alaska.

Alaska’s sexual assault rates are unacceptably high – and these rates are likely underestimates because sexual assault is often tragically underreported. For good reason, survivors fear coming forward, in part because the current Alaska statute is insufficient to adequately prosecute attackers. Even when a survivor reports an assault, they often face doubt and judgment and must navigate an often humiliating and degrading legal process when seeking justice. These barriers to justice are exacerbated for individuals from historically marginalized communities, including (but not limited to) transgender people and others from LGBTQ communities; studies suggest that around half of transgender people and bisexual women will experience sexual violence at some point in their lifetimes and are often unable to report or prosecute these crimes due to systemic barriers and discrimination.¹ Unfortunately, we know that not only are a small percentage of sexual assault cases reported, criminal charges are filed in even fewer cases. Ultimately, survivors of assault face myriad obstacles in reporting and seeking justice. HB 5 takes important steps toward supporting survivors and improving processes in our legal system and builds upon legislation from 2018 and 2019 to tackle the persistent sexual assault examination kit backlog.

HB 5 updates Alaska’s antiquated definition of consent to ensure more survivors get justice

Importantly, HB 5 redefines Alaska’s antiquated and problematic definition of consent. Alaska’s current definition of consent places an unreasonably high burden of proof on survivors and the

¹ Sexual Assault and the LGBTQ Community, *Human Rights Campaign* (2021). Available at: <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

prosecution to prove an assault occurred. Specifically, the current statute requires that the offender used force, threat, or deception to have sex with the survivor and that the offender was mentally aware they did not have consent from the survivor.² In reality, the psychological and physiological responses to sexual assault often lead survivors to “freeze” during an assault,³ effectively making it impossible for them to physically fight back during an assault. We must reject the antiquated premise that presumes individuals are always sexually available and willing to engage in sexual behavior in the absence of clear indications to the contrary. This definition has subjected an enormous number of survivors to unwanted sexual intimacy and prevented many survivors from coming forward or accessing justice, which is thoroughly documented in the #MeToo Movement. Alaska’s current definition not only fails to accurately capture the realities of sexual assault, it also puts a burden on survivors that is so high that it prevents the state from holding perpetrators accountable.

HB 5’s updated definition of consent will more accurately represent the experience of sexual assault survivors and assist survivors in accessing justice. HB 5 defines consent as a “freely given, reversible agreement specific to the conduct at issue by a competent person.” This definition is critical because when it comes to sex, consent is not a one-time act – it is an ongoing agreement that a person can revoke at any time for any reason. A survivor should not need to show they resisted force to get justice against sexual assault and violence, and the bill’s definition would allow courts to consider a variety of factors when determining if consent is present. Evolving social standards around sexual behavior overwhelmingly agree that the absence of “no” does not equate to consent. As such, many other states have taken action to update their legal codes to reflect these societal changes.⁴ It is time Alaska’s statute reflects our evolved understanding of and respect for sexual autonomy.

HB 5 reduces our state’s backlog of sexual assault examination kits

The bill also requires that laboratories where a sexual assault examination kit is sent conducts a serological or DNA test on the kit within six months after the kit is submitted to the laboratory, down from the current one-year requirement. This builds upon previous legislation requiring annual audits of the backlog and expediting the time agencies have to submit examination kits. Despite these important gains, the state still has 811 untested sexual assault examination kits in its possession.⁵ While the state is making great strides in reducing the backlog, it is crucial that all sexual assault examination kits are collected, submitted, and tested in the fastest manner possible. Leaving these sexual assault examination kits untested leaves thousands of sexual assault survivors without closure and perpetrators without justice. We are grateful for the work

² A.S. § 11.41.370

³ Crist, Carolyn. “Many rape victims experience paralysis during assault,” Reuters Health, 6/15/17. Available at: <https://www.reuters.com/article/us-health-rape-tonic-immobility/many-rape-victims-experience-paralysis-during-assault-idUSKBN19626W>

⁴ The Laws in Your State, *Rape, Abuse, & Incest National Network* (2021). Available at: <https://rainn.org/laws-your-state-alaska>

⁵ 2020 Report on Untested Sexual Assault Examination Kits. Department of Public Safety. Available at: <https://dps.alaska.gov/getmedia/035dc0cb-e40a-45c8-94c9-f5613ac4d49f/2020-Report-on-Untested-Sexual-Assault-Examination-Kits.pdf>



Planned Parenthood Votes Northwest and Hawai'i

lawmakers have already done to address our state's kit backlog, but we know there is more work to be done. Our state has a duty to keep our communities safe and ensure that every sexual assault survivor finds closure and justice, and HB 5 takes us in that direction.

We thank you for the opportunity to give our support to HB 5.

Sincerely,

A handwritten signature in black ink, appearing to read 'Morgan Lim', written in a cursive style.

Morgan Lim
Alaska Government Relations Manager
Planned Parenthood Votes Northwest & Hawai'i