



House Bill 5: Defining Sexual Consent

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STATE AFFAIRS COMMITTEE


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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
- ▶ 2 year process
 - ▶ Multiple statewide meetings with input from across Alaska
 - ▶ Expert interviews, 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 an
issue for you?

YES



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- ▶ An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;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.

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 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



Lisa Ellanna and Darlene Trigg, community advocates from Nome

Keeley Olson, Executive Director of STAR

Taylor Winston, Executive Director of Alaska's Office of Victims' Rights

Brian Hosken, State Coordinator of Coaching Boys Into Men