

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

January 31, 2017

3:03 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp

MEMBERS ABSENT

Representative Andy Josephson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 71

"An Act relating to compensation, merit increases, and pay increments for certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 7

"An Act relating to the exhibition of marked ballots."

- HEARD & HELD

HOUSE BILL NO. 31

"An Act requiring the Department of Public Safety to develop a tracking system and collection and processing protocol for sexual assault examination kits; requiring law enforcement agencies to send sexual assault examination kits for testing within 18 months after collection; requiring an inventory and reports on untested sexual assault examination kits; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 71

SHORT TITLE: NO ST. EMPLOYEE PAY INCREASE FOR 2 YRS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/20/17 (H) READ THE FIRST TIME - REFERRALS
01/20/17 (H) STA, FIN
01/31/17 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 7

SHORT TITLE: DISPLAY OF PHOTOS OF MARKED BALLOT
SPONSOR(s): KREISS-TOMKINS

01/18/17 (H) PREFILE RELEASED 1/9/17
01/18/17 (H) READ THE FIRST TIME - REFERRALS
01/18/17 (H) STA, CRA
01/31/17 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 31

SHORT TITLE: SEXUAL ASSAULT EXAMINATION KITS
SPONSOR(s): TARR

01/18/17 (H) PREFILE RELEASED 1/9/17
01/18/17 (H) READ THE FIRST TIME - REFERRALS
01/18/17 (H) STA, FIN
01/31/17 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

SHELDON FISHER, Commissioner
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Presented HB 71 on behalf of the House Rules Standing Committee, sponsor, by request of the governor.

BILL MILLS, Assistant Attorney General
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 71.

ALICIA NORTON, Intern
Representative Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 7 on behalf of Representative Kreiss-Tomkins, prime sponsor.

REID MAGDANZ, Staff

Representative Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 7 on behalf of Representative Kreiss-Tomkins, prime sponsor.

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 31, as prime sponsor.

CAPTAIN DAN LOWDEN, Deputy Commander
Division of Alaska State Troopers (AST)
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 31 and answered questions.

CRYSTAL GODBY
Community United for Safety and Protection (CUSP)
Nenana, Alaska

POSITION STATEMENT: Testified in support of HB 31.

DR. CARMEN LOWRY, Executive Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 31.

KEELEY OLSON, Executive Director
Stand Together Against Rape (STAR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 31.

ACTION NARRATIVE

[3:03:59 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:03 p.m. Representatives Tuck, Wool, Birch, Johnson, Knopp, and Kreiss-Tomkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 71-NO ST. EMPLOYEE PAY INCREASE FOR 2 YRS

[3:05:24 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 71, "An Act relating to compensation, merit increases, and pay increments for certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

3:06:30 PM

SHELDON FISHER, Commissioner, Department of Administration (DOA), presented HB 71 on behalf of the House Rules Standing Committee, sponsor, by request of the governor. Mr. Fisher used a PowerPoint presentation, titled "Salary Freeze for Nonunion Employees," for his presentation. He referred to Slide 1, titled "What Does the Bill do?" and relayed that the governor's budget included a pay freeze for employees not covered by collective bargaining agreements. He noted that the governor also requested the Department of Administration (DOA) to negotiate similar language [as in HB 71] with each of the bargaining units, as agreements come up for negotiation. He maintained HB 71 was introduced to respond to the state's fiscal challenges. He stated that the governor expressed that it was appropriate to freeze the automatic employee salary increases for a period of time, considering he has asked citizens of the state to accept a reduced permanent fund distribution. The proposed legislation freezes the Cost of Living Allowance (COLA) for the nonunion employee group, and he added that no COLAs have been given in the current administration. The proposed legislation also freezes merit increase pay increments and any bonuses. He stated that HB 71 would reduce the governor's salary by one-third. He explained that the governor could gift a portion of his salary back to the state treasury but would have to pay taxes on the full salary. Through HB 71, the governor would avoid paying taxes on the amount he returns to the treasury.

3:08:51 PM

MR. FISHER, in response to Representative Wool's request for clarification, reiterated that the governor would receive a reduced salary and would only pay taxes on the reduced amount. He said that absent HB 71, the governor would be forced to receive and pay taxes on the full amount, then return some portion.

REPRESENTATIVE JOHNSON asked if the "net" would be the same.

MR. FISHER responded, "The net could be orchestrated to be the same," but the governor wished to reduce his salary by a third, and if he wants his take-home pay to be the same, it would have to be "something less than a third," and he doesn't feel he should be paying the federal government taxes on some amount of money that he is not receiving.

REPRESENTATIVE TUCK asked, "What is the governor's salary?"

MR. FISHER answered he believed it to be \$150,000 per year.

REPRESENTATIVE BIRCH asked if HB 71 would affect future governors.

MR. FISHER responded that HB 71 would sunset in two years; therefore, it would not last beyond the governor's term of office.

MR. FISHER continued his presentation with Slide 2, titled "Who Does the Bill Include?" He said HB 71 would include employees not covered by a collective bargaining agreements in the executive branch, and employees of boards, commissions, and authorities. He added that it would include employees in the legislative branch, employees at the University of Alaska not covered by collective bargaining agreements, the governor, lieutenant governor, department heads, and legislators. He stated that it would not include the court system, citing the separation of powers as the reason.

MR. FISHER turned to Slide 3, titled "Why is the Bill Needed?" and offered that merit pay and pay increments are included in statute; therefore, DOA does not have the flexibility to implement the freezes absent legislation. He said, as well, that these freezes were part of the governor's budget package and are intended to address the [fiscal] shortfalls the state is facing.

MR. FISHER concluded with Slide 4, titled "Estimated Savings," and said that HB 71 would affect approximately 5,000 state employees, or 23 percent of the workforce, and over the two-year period save about \$4.2 million.

[3:12:46 PM](#)

REPRESENTATIVE LEDOUX asked why including the courts was a separation of powers issue, but including the legislature was not.

MR. FISHER explained that HB 71, if enacted, would be a law that was adopted by the legislature and signed by the governor; therefore, both the legislative and executive branches would have accepted the legislation. Since the court system is outside this process, he said, the legal view is that it would be an impermissible intrusion into their operations to include them in the legislation.

REPRESENTATIVE LEDOUX asked Mr. Fisher if he was saying that the legislature has no say in employee compensation for the court system.

MR. FISHER said that since the legislature is the appropriating body, appropriating the court system's budget is subject to its discretion. He said he believed that under the separation of powers, there are limitations on the extent to which the legislature and governor can collectively work together to manage or dictate salaries in the court system.

REPRESENTATIVE LEDOUX asked, "If you chose not to freeze the merit increases, would there be anything that would keep you from simply changing the range[s] of people?" She cited that the legislature capped the salary of legislative staff to a range 22, with a few exceptions, in the Twenty-Ninth Alaska State Legislature, 2015-2016.

[3:16:09 PM](#)

BILL MILLS, Assistant Attorney General, Department of Law (DOL), said that by statute, the State of Alaska does have a salary cap, and the ranges are determined by the salary schedule that is established by the legislature. The administration determines what jobs fit into what ranges through classification analyses. He said, "Just saying we want to save money and we'll change a range, I'm not really sure if that's something that the executive could do." He reiterated that a statute does establish the salary ranges.

REPRESENTATIVE LEDOUX asked, "So nobody who's ever been ... at a range 23 has ever gone to a range 22 or a range 21?"

MR. FISHER responded he is sure that has happened, but offered his understanding that what Mr. Mills is saying is that in cases where it has happened, it is consistent with the merit principles, such as, the job function changed. He stated what he believed to be the real question: "Could there be a

wholesale direction to reduce salaries or cap and would that be consistent with the merit principle established in the constitution?" He added, "That would be the analysis that we'd have to think more seriously about."

3:19:40 PM

REPRESENTATIVE KNOPP stated he had a serious level of discomfort with HB 71. He opined there were serious inequalities: House staff at ranges 23 and 24 have been moved down to range 22; Senate staff ranges have not been lowered; and some departments have negotiated wages with no step and COLA increases. He asked if the 5,000 employees that would be affected by HB 71 include those across the university system and all departments.

MR. FISHER responded yes, the 5,000 employees that would be affected are in the executive branch, the legislature, the other corporations, and the university, but the court system would not be included.

REPRESENTATIVE KNOPP identified other inequalities: teachers, represented by bargaining units, would continue to receive COLA and merit increases, but under HB 71, university teachers would not. He offered, "This is not a bad concept, but the problem is it's not shared equally" He mentioned that the administration has discussed negotiating freezes in future collective bargaining agreements, but he opined that there are no guarantees. He asked if the House could enact that there would be no negotiated merit or COLA increases in the collective bargaining agreements for two years.

MR. FISHER said DOA negotiates about one-third of the collective bargaining agreements each year. He said that any change takes a number of years to be adopted across the spectrum of bargaining units. He opined, "It's important to start somewhere and ... it's not unreasonable to start with our uncovered employees, as the governor has proposed." He stated his belief that the legislature could dictate, by statute, prohibiting DOA from negotiating increases. He added that DOA brings all of the collective bargaining agreements to the legislature for its approval.

3:23:41 PM

REPRESENTATIVE WOOL queried why fiscal year 2019 (FY 19) savings were less than those of FY 18 [as shown on Slide 4.]

MR. FISHER said the reason was that pay increments are awarded every year but merit increments every other year.

REPRESENTATIVE WOOL requested clarification that HB 71 would result in a freeze and not range reductions, as mentioned by Representative LeDoux.

MR. FISHER responded yes, under HB 71, there would be a freeze of their salaries.

REPRESENTATIVE WOOL asked if other groups of state employees have been subject to a salary freeze since the current fiscal crisis began.

MR. FISHER answered no, this is the first salary freeze that DOA has introduced.

REPRESENTATIVE WOOL asked if the group of employees referred to in HB 71 was the only group not subject to collective bargaining. He also asked if other state employees, such as teachers and university professors, are under collective bargaining agreements; therefore, imposing a salary freeze on them would be harder.

MR. FISHER said yes, the majority of state employees are subject to collective bargaining; therefore, DOA has been instructed by the governor to negotiate a comparable freeze as collective bargaining agreements are up for re-negotiation.

[3:26:07 PM](#)

REPRESENTATIVE BIRCH said that if 5,000 employees represent 23 percent of the total employment population, then the total employee population would be about 21,700. He went on to say that if a salary freeze for 23 percent of employees would yield \$4.2 million in savings, then a freeze applied to all employees would save an amount approaching \$20 million. He urged DOA to negotiate a salary freeze for all of the labor contracts. He asked if the eleven collective bargaining agreements have all been negotiated, or if they are coming up for negotiation.

MR. FISHER answered that DOA is currently in negotiations with the Public Safety Employees Association (PSEA), the three Alaska Marine Highway bargaining units, the Alaska Vocational Technical Center Teachers' Association (AVTECTA), and the Teacher Education Association of Mt. Edgecumbe (TEAME). He said there will be more agreements negotiated next year.

[3:27:25 PM](#)

REPRESENTATIVE TUCK asked how the court system's wages and benefits are determined.

MR. FISHER responded that the court system adopts its own rules and policies for wages and benefits.

REPRESENTATIVE TUCK asked if the rules and policies were set by regulation.

MR. FISHER said he didn't know and would provide the committee with information as to whether it is through a handbook or a formal regulatory process.

REPRESENTATIVE TUCK cited Article XII, Section 6, of the Alaska State Constitution and read, "The legislature shall establish a system under which the merit principle will govern the employment of persons by the State." He stated, "The question I have is the definition of merit." He offered that if employees are not under a collective bargaining agreement, then merit means a salary could "go up or go down." He asked, "How is it that you wouldn't be able to do that already based on the constitution?"

MR. FISHER stated his understanding that the question was: "Could we freeze people at a particular level?" He brought up an example of a highly skilled doctor whose range 29 salary is frozen at a range 20, which is comparable to someone with much less education and skill. He said the question implied by the clause Representative Tuck read is: "Are we being consistent with the merit principle if we treat those two people at a range 20 and don't acknowledge the additional education, skill, and capabilities of that doctor, in this example?" Mr. Fisher relayed that he is not denying that DOA could do what Representative Tuck suggested but reiterated Mr. Mills's point regarding a more sophisticated analysis to determine if the merit principle is being followed.

REPRESENTATIVE TUCK offered that the legislature would have to look to case law definition on merit principle. He acknowledged the separation between the legislative branch and the executive branch. He asked since the legislature oversees the budget for all three branches, why under the merit system general provision court system employees would be excluded, when the constitution says "will govern the employment of persons by the State."

MR. FISHER gave an example to explain the basic principle of separation of powers as it related to the court. He asked the committee to imagine a scenario where the legislature did not like the opinions that were being issued by the Alaska Supreme Court and concluded that Alaska Supreme Court justices should be paid a dollar per year. He said even though the legislature has appropriated ample money to the court system, the court system still needs to have flexibility to manage its own affairs in order to remain independent of the legislative and executive branches. He added that the court system has aggressively managed costs, including reduced salary and hours.

REPRESENTATIVE TUCK conceded that a similar situation has occurred between the executive and legislative branches, wherein the legislature, not liking a governor's appointment, tried to "zero out" the appointee's position control number (PCN). He wondered aloud how the separation can be made between the judicial and legislative branches but not between the executive and legislative branches.

[3:34:04 PM](#)

REPRESENTATIVE JOHNSON asked what portions of HB 71, in regard to salary freezes and salary reduction, are already under the governor's control.

MR. FISHER answered that the governor cannot institute a salary freeze without proposed legislation.

REPRESENTATIVE JOHNSON asked if the governor could accomplish what is proposed in HB 71 internally, because the merit pay can go "up or down."

MR. FISHER responded that the merit pay is a defined amount based on employee performance, and there is no discretion as currently structured.

[3:36:14 PM](#)

REPRESENTATIVE LEDOUX referred to Mr. Fisher's example about the Alaska Supreme Court justices and expressed her belief that judges' salaries are constitutionally guaranteed for the time of their service.

MR. FISHER repeated the basic principle of separation of powers, as it relates to HB 71. If passed, HB 71 would be adopted by the

legislature and signed by the executive branch; therefore, application of HB 71 to those two branches of government is appropriate and doesn't offend the separation of powers principle in the constitution. He added that to extend the statute to include the court system would be viewed as troublesome, because the court system is not part of the legislative process and has no way to protect itself.

[HB 71 was held over.]

HB 7-DISPLAY OF PHOTOS OF MARKED BALLOT

[3:38:14 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 7, "An Act relating to the exhibition of marked ballots."

[3:39:08 PM](#)

ALICIA NORTON, Intern, Representative Kreiss-Tomkins, Alaska State Legislature, presented HB 7 on behalf of Representative Kreiss-Tomkins, prime sponsor. She stated that "ballot selfies" are currently illegal in the state of Alaska. She explained that "ballot selfie" refers to a picture taken of oneself within the voting booth. She said that the goal of HB 7 is to make ballot selfies legal. She relayed that ballot selfies could be an expression of support - for a candidate, a cause, or voting in general. She said that Alaska's law is not currently rigorously enforced; therefore, there would not be a dramatic change to the status quo. She related that bans on ballot selfies have already been ruled unconstitutional in several other states, and passage of HB 7 would allow Alaska to follow the trend across the U.S. She said that the Division of Elections (DOE) raised concerns regarding the prohibition of electioneering, and staff is currently working with Legislative Legal and Research Services to create language to address those concerns. She mentioned that an amendment will be forthcoming.

[3:41:04 PM](#)

REPRESENTATIVE BIRCH asked Ms. Norton if she has identified any concerted opposition to HB 7.

MS. NORTON mentioned that one person has expressed concern with vote buying and asked if ballot selfies would be considered advertising under the Alaska Public Offices Commission (APOC)

regulations. Ms. Norton said she was looking into that possibility.

[3:41:50 PM](#)

REPRESENTATIVE WOOL asked if it is currently against the law to take a picture of yourself with the ballot or just the ballot alone. He asked if a ballot selfie was a picture of yourself with the ballot.

MS. NORTON responded that a ballot selfie is a photo of yourself with your ballot.

REPRESENTATIVE WOOL asked if it was stated in statute that it is illegal to take a picture of yourself with your ballot.

MS. NORTON responded that statute does not state that you can't take a ballot selfie but states you are not allowed to show your ballot to another person.

REPRESENTATIVE WOOL asked if it is against the law to show a picture of his completed ballot, without his face in the picture, to someone else.

MS. NORTON responded yes, but it would be legal if HB 7 becomes law.

REPRESENTATIVE WOOL asked if anyone has been prosecuted in Alaska for the crime of showing his/her ballot to another person.

MS. NORTON answered that she wasn't completely sure, but has no knowledge of anyone being prosecuted for that crime.

REPRESENTATIVE LEDOUX asked if Ms. Norton knew if anyone had been prosecuted in another state.

MS. NORTON responded that a Colorado woman was prosecuted for a ballot selfie. The woman filed a suit claiming her right to free speech was violated.

REPRESENTATIVE LEDOUX asked about the outcome of the suit.

MS. NORTON said the ruling was in the woman's favor. It was determined to be an infringement of her freedom of speech.

[3:44:55 PM](#)

REPRESENTATIVE TUCK stated that the ban of ballot selfies is currently an electioneering prohibition. He asked if the original intent of the ban was related to the prohibition on campaigning and campaign materials within a 200-foot zone of a polling location.

MS. NORTON responded yes.

[3:46:50 PM](#)

REPRESENTATIVE WOOL offered that a ballot selfie could be used as proof of a vote in the case of vote buying. He asked if walking around with a picture of your ballot on your phone would be an electioneering violation or an expression of free speech.

MS. NORTON answered that an amendment will be introduced that would prevent people from taking photos of their ballots and presenting them within the polling place or within 200 feet of the polling place.

[3:48:54 PM](#)

REID MAGDANZ, Staff, Representative Kreiss-Tomkins, Alaska State Legislature, on behalf of Representative Kreiss-Tomkins, prime sponsor of HB 7, said that the Alaska Division of Elections suggested that HB 7, as written, allowed for the possibility of the ballot selfie being shared within the polling place. He reiterated that the forthcoming amendment would clarify that showing the ballot selfie within 200 feet of a polling place would still be prohibited.

[3:49:25 PM](#)

REPRESENTATIVE LEDOUX asked how someone within the polling place with a cell phone could be prevented from seeing a ballot selfie of someone outside the polling place.

MR. MAGDANZ said that it is certainly a possibility, as are other possibilities, such as seeing a Facebook post while in the polling place. He mentioned that the drafters of HB 7 considered those possibilities to be in line with protecting free speech. He added that if the committee has concerns, HB 7 could be amended accordingly.

[3:50:43 PM](#)

REPRESENTATIVE KNOPP asked if it is illegal to display one's completed ballot while walking across the polling place to the ballot box.

MR. MAGDANZ confirmed that is illegal and would remain illegal under HB 7.

[HB 7 was held over.]

HB 31-SEXUAL ASSAULT EXAMINATION KITS

[3:51:33 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 31, "An Act requiring the Department of Public Safety to develop a tracking system and collection and processing protocol for sexual assault examination kits; requiring law enforcement agencies to send sexual assault examination kits for testing within 18 months after collection; requiring an inventory and reports on untested sexual assault examination kits; and providing for an effective date."

[3:52:11 PM](#)

REPRESENTATIVE GERAN TARR, Alaska State Legislature, presented HB 31, as prime sponsor. She testified that just a few weeks ago, serial rapist Clifford Lee was sentenced to 90 years for four rapes and one attempted rape, occurring in 2014. She said Mr. Lee had a long history of systematically targeting and raping disadvantaged women. She added that the deoxyribonucleic acid (DNA) testing of a rape kit tied Mr. Lee to additional unsolved rapes occurring in 2001 and 2005. She stated that for 16 years Mr. Lee, a dangerous criminal, had been in "our community" possibly harming other victims. She referred committee members to an article about Mr. Lee in the bill packet.

MS. TARR pointed out, "This is just the most recent story that brutally reminds us of Alaska's epidemic of sexual assault. It reminds us of our responsibility to victims to diligently collect and process evidence to bring violators to justice and remove perpetrators from our communities." She stated that Alaska currently has a backlog of 3,600 untested rape kits. She claimed it is an enormous disrespect to the victims who have endured the trauma of sexual assault and have taken the effort to be tested, only to have the evidence be disregarded. She offered that she respects the right of victims to choose not to

press charges to avoid additional trauma, but claimed that the intent of HB 31 is to give victims the right to press charges and have the DNA from the rape kits entered into a [tracking system] database to use for solving other crimes. She declared that Alaska communities remain at risk if rapists, who could have been identified by the DNA evidence, escape justice.

MS. TARR stated that Alaska consistently ranks among the highest in the nation for rates of rape and sexual assault. She offered, "We must do everything we can to turn around this epidemic." She said that in 2015, she was proud to sponsor House Bill 117, regarding Alaska's backlog of sexual assault examination kits. She stated she applauds Governor Bill Walker and his staff who, at that time, "took on this issue" and successfully procured a \$1.1 million federal Department of Justice (DOJ) grant to inventory and process the backlogged kits. She offered that HB 31 would establish a new system to avoid a backlog, as currently exists. She said that the proposed legislation would establish a uniform protocol for processing rape kits, which will assist Alaska's 200-plus law enforcement agencies to consistently collect and process the sensitive evidence in a timely manner. She mentioned that the new system would require the rape kits be sent for testing no later than 18 months after the sexual assault examination. She added that HB 31 would require the Department of Public Safety (DPS) to report on the number of untested rape kits, in order to avoid a large backlog. She offered that the approach outlined in HB 31 is part of a national effort. It has been shown in states across the country that obtaining the DNA evidence catches dangerous criminals and makes communities safer. She concluded that in an effort to give victims justice, HB 31 should be passed.

MS. TARR referred to a packet of letters in support of HB 31, which came from individual Alaskans across the state, the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), and other women's organizations familiar with the impact of sexual assault and associated trauma.

MS. TARR said that HB 31 would create a standard protocol for processing rape kits, and a database for tracking them. She referred to the fiscal note, which includes a link to a description of the sexual assault kit tracking and inventory management system. The fiscal note shows a cost of about \$100,000 for the tracking system. She added that additional staff would be needed to meet the requirements of HB 31. She stressed, "Even in lean budget times, these are dollars very

well spent." She conceded that many sexual assaults are committed by an individual the victim knows, but as in the case of Mr. Lee, women were attacked and brutalized in the traumatic rape by a stranger. She noted how difficult it must be for an individual to overcome such an event. She said, "People's lives often fall apart and people commit suicide - they end their life from that kind of trauma." She admitted that \$260,000 is difficult to consider in the current budget crises but offered, "If we can save any one victim, I think, its dollars well spent."

[3:57:35 PM](#)

REPRESENTATIVE BIRCH asked why there is such a large backlog and how old the [unprocessed] rape kits are.

REPRESENTATIVE TARR offered two reasons for the backlog. She said rape kits are sent out to law enforcement organizations but are not tracked; therefore, it is difficult to know if they have been "lost along the way." She said that another reason rape kits have not been tested is that many sexual assault cases involve a known perpetrator. She went on to say that even though the DNA evidence may not be relevant in these cases, the perpetrator may have been involved in other crimes. She offered that including the DNA evidence in the database could link the perpetrator to another crime.

REPRESENTATIVE TARR stated that some of the untested kits "go back years." She conceded that an individual might request that the kit not be tested. She noted the suffering some victims experience after such a traumatic event and said that some just choose to "move on." She said that facing the set of events involved with pressing charges - the multi-year court case, follow-up testing, testifying in court - might seem insurmountable for some victims. She concluded that with the passage of HB 31, "we can protect that victim and give them the space and path forward, while also using the DNA evidence for its intended purpose."

REPRESENTATIVE BIRCH expressed his support for HB 31 and mentioned his constituent, Bonnie Craig, involved in a case that was "cold" for years, which was ultimately solved through the DNA of someone "half a continent away." He expressed his hope that the backlog was not continuing to accrue, and welcomed comments from DPS on that matter.

REPRESENTATIVE TARR responded that the current backlog [for unprocessed rape kits in Alaska] is 3,600. She went on to say such a backlog is not uncommon among states and a national effort emerged to respond to the issue. She started working on this issue in 2015, after receiving information from a national organization, called End the Backlog. She said that at the time, Alaska did not have good information on the number of backlogged rape kits. She said that at the same time, DOJ recognized this issue as a critical public safety need and developed a grant program to help states process their backlogs. She said the first step in applying for funding was completing an audit to define the extent of the backlog problem and, thus, the need for grant funds. She relayed that a bill was initiated; Governor Walker carried the initiative forward and worked with law enforcement agencies to complete the audit; and DPS was able to submit the grant application and receive the \$1.1 million grant. She said the grant should help DPS get through the existing backlog of 3,600 rape kits, and HB 31 would set time parameters for the ongoing processing of rape kits.

[4:03:13 PM](#)

CAPTAIN DAN LOWDEN, Deputy Commander, Division of Alaska State Troopers (AST), Department of Public Safety (DPS), reiterated the various reasons for the backlog of rape kits: victims choose not to press charges; the perpetrator is known; and cases are "pled out" before kits are tested. He offered his belief that no rape kits went untested due to disinterest. He said when the rape kits were administered, they were often thought of as for an individual case. He offered that with cases such as the one Representative Tarr cited, DPS is realizing there are serial perpetrators who are missed if kits go untested. He said DPS supports HB 31. He stated, "We believe that by testing more kits, we will catch more people."

REPRESENTATIVE BIRCH asked about opposition to HB 31. He also asked if for cases involving known perpetrators, rape kit testing is considered unnecessary.

CAPTAIN LOWDEN answered that there are rules for how long rape kits are retained. He said he suspects that cost may have been a factor in cases, for example, when the perpetrator was convicted before the rape kit was processed. He opined that the thought processes [for processing rape kits] have now changed in recognition that the information could help in other cases.

[4:07:00 PM](#)

REPRESENTATIVE KNOPP referred to a phrase in HB 31, on page 2, line 1, which read: "18 months after collection." He asked, "Why 18 months ...?" He also asked if there is a timeframe for getting the results of the test back.

REPRESENTATIVE TARR responded that after consulting with prosecutors, she chose a timeframe that would fit within the timeframe needed to gather enough evidence to bring a case to trial. She would support a shorter timeframe, but offered that this timeframe fits the fiscal note appropriation. She added that HB 31 calls for hiring a fulltime staff person, which she suspects would allow DPS to process rape kits in house. She stated her understanding that currently some rape kits are processed in state, but kits processed with federal grant money would be sent out of state for processing.

REPRESENTATIVE KNOPP said he is interested in the current schedule for processing rape kits. He said that processing 3,600 kits would take nine and a half years, at a process rate of one kit per day. He asked if DPS is processing a rape kit every day and if it has a 10-year backlog.

REPRESENTATIVE TARR said that the federal grant funds will be critical to the effort of processing the backlog, and many more kits will be processed much faster than one per day. She pointed out that the effective date of HB 31 would be January 1, 2018, which would give DPS time to work through the backlog before that effective date. She expressed her hope that there would be a seamless transition from completing the work of processing the backlog to meeting the requirement of HB 31, if passed.

REPRESENTATIVE KNOPP rephrased his question to ask what the 3,600 kit backlog represents in processing time, that is, the rate of processing kits.

CHAIR KREISS-TOMKINS requested the representatives from DPS to provide that information.

[4:12:02 PM](#)

REPRESENTATIVE WOOL referred to the letter from the Tennessee Coalition to End Domestic & Sexual Violence, in the committee packet, which cites the processing of a backlog of 12,000 untested rape kits. It also mentioned a law requiring kits to be tested in 60 days, or for the person who did not want to

press charges, put into a hold for three years. He asked if currently all rape kits in Alaska are tested in state or out of state.

REPRESENTATIVE TARR replied a combination of both, and added that [place of testing] is determined by the complexities of the evidence collected and the specific analysis capabilities in the DPS laboratory versus more sophisticated analysis Outside. In response to Representative Knopp's question, she said, "If you've got the money to pay for it, there are scientists who can process this evidence." She said that once the capacity exists, the processing can be done faster. She offered that the backlog would be processed in a shorter time frame than that described by Representative Knopp.

REPRESENTATIVE WOOL asked for the cost of processing a rape kit.

REPRESENTATIVE TARR referred to page 2 of the fiscal note, which cites a cost of about \$1,500 per kit. She stated that would be the standard cost. She reminded the committee that the cost of processing the backlog is not included in the fiscal note, since that would be covered by the federal grant. She offered that HB 31 would improve the training and overall processing of rape kits.

[4:15:00 PM](#)

REPRESENTATIVE BIRCH asked if the high cost is due to legal issues, such as chain of custody.

REPRESENTATIVE TARR answered yes, and referred to the fiscal note, page 2, third paragraph, which states the tracking system would cost about \$96,000.

REPRESENTATIVE WOOL pointed out that 3,000 backlog kits that cost \$1,500 each to process amounts to considerable expense - \$4.5 million - and reiterated that the fiscal note did not address that issue, which is a separate financing need.

REPRESENTATIVE TARR agreed.

[4:16:44 PM](#)

CHAIR KREISS-TOMKINS opened public testimony on HB 31.

[4:16:57 PM](#)

CRYSTAL GODBY, Community United for Safety and Protection (CUSP), explained that the Community United for Safety and Protection (CUSP) is a group of current and former sex workers, sex trafficking victims, and allies. She said CUSP is working to protect everyone in Alaska's sex industry. She paraphrased from the following written testimony [original punctuation provided]:

We would like to extend out full support for this important House Bill. Perpetrators must know that they are going to suffer consequences for their heinous crimes because rape kits are no longer going to be hidden away as the lowest priorities.

Alaska will never stop being the rape capital of the United States as long as we don't even have rape kits prioritized to process and then match results with state and national data bases to hold accountable those responsible in a timely manner. In 2014, Detroit identified 188 serial rapists by processing just 1,600 rape kits out of their much larger backlog.

In December of 2016, Community United for Safety and Protection had Hays Research firm in Anchorage conduct a survey of 904 Alaskan voters' priorities. Processing Alaska's backlog of rape kits was a close second priority to investigating cases of murdered and missing sex workers, with 36% listing it as their first priority and 37% listing it as their second priority

Clearly, Alaskans take this issue seriously and are in agreement with the passing of HB 31.

[4:18:52 PM](#)

CARMEN LOWRY, Ph.D., Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), stated that ANDVSA represents 18 member programs across the state, most of which provide shelter and emergency services to victims and survivors of domestic violence and sexual assault. She noted the six affiliate members, who are also part of the large ANDVSA network. She said that ANDVSA fully supports HB 31. She asserted that HB 31 raises the accountability of law enforcement, sexual assault response teams (SART), and taxpayers.

DR. LOWRY cited three reasons for ANDVSA support of HB 31. She claimed that as SART members perform examinations and collect data and evidence for prosecution, there must be a system for tracking rape kits, to understand the backlog problem. She said the second reason is "efficiency"; how to become more efficient and where to focus resources. She stated the third reason is "effectiveness"; enactment of HB 31 would lead to better prosecution. She said her final point addressed balancing the state's need to track rape examination kits with victims' rights to choose whether or not to prosecute. She said HB 31 would promote respect for the process of gathering evidence, which is intensive, intimate, and invasive, and ensure that victims are respected. She said, "The message is when we do this kind of evidence gathering through a rape examination kit, something will come from it."

REPRESENTATIVE BIRCH noted the challenges of smaller communities in regard to gathering evidence after an assault charge, and he asked about custody of the rape kit.

DR. LOWRY said she didn't know but would provide that information to the committee.

[4:26:07 PM](#)

KEELEY OLSON, Executive Director, Stand Together Against Rape (STAR), testified in support of HB 31 on behalf of STAR. She claimed that the proposed legislation represents the best standard practice recognized nationwide. She said that after an audit of the current backlog, it is critical to determine a consistent process for all law enforcement agencies across the state. She said that HB 31 would answer all the important questions raised by the committee members. She mentioned that there are many jurisdictions throughout the state that have an alternative reporting mechanism, called non-investigative reports. She said that in these cases, the victim undergoes a forensic examination, and the evidence is saved in case the victim chooses to proceed with a law enforcement investigation. She offered that these rape kits are collected by the examiner with an advocate present, but no law enforcement personnel is notified. She said a victim of sexual assault may come forward at any time to file an anonymous report and request to have his/her case opened up for full investigation. She stated the importance of not coercing victims to participate in the criminal legal process against their will.

REPRESENTATIVE BIRCH asked if for some rape kits, victims may choose not to submit them to law enforcement, and the kits are put into a holding place.

MS. OLSON responded yes. She said the reason for that is to provide options to victims who are hesitant to "come forward" or intimidated by the process but recognize the need for evidence to be collected in a timely manner to reserve the right to open those cases to investigation. She added alternative reporting has resulted in "some very successful prosecutions" as a result. She mentioned this mechanism is a provision of the Violence Against Women Act (VAWA) [of 1994].

CHAIR KREISS-TOMKINS said he will leave public testimony open on HB 31.

[HB 31 was held over.]

[4:32:30 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:32 p.m.