

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 2, 2017

3:04 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. 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

HOUSE BILL NO. 7

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

- MOVED CSHB 7(STA) OUT OF COMMITTEE

HOUSE BILL NO. 82

"An Act relating to vehicle registration; relating to off-road system restricted noncommercial drivers' licenses; relating to off-highway commercial drivers' licenses; relating to off-road system eligible areas; and relating to motor vehicle liability insurance."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 31

SHORT TITLE: SEXUAL ASSAULT EXAMINATION KITS

SPONSOR(S): REPRESENTATIVE(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
01/31/17 (H) Heard & Held
01/31/17 (H) MINUTE(STA)
02/02/17 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 7

SHORT TITLE: DISPLAY OF PHOTOS OF MARKED BALLOT

SPONSOR(S): REPRESENTATIVE(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
01/31/17 (H) Heard & Held
01/31/17 (H) MINUTE(STA)
02/02/17 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

CELESTE NOVAK, Staff
Representative Tarr
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 31 on behalf of Representative Tarr, 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.

LIBBY BAKALAR, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 7.

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

POSITION STATEMENT: Presented Amendment 1 on behalf of Representative Kreiss-Tomkins, prime sponsor of HB 7.

TARA RICH, Legal and Policy Director
American Civil Liberties Union (ACLU) of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 7.

TASHA ELIZARDE
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 7.

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 31, as prime sponsor.

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

POSITION STATEMENT: Testified in support of HB 31.

ACTION NARRATIVE

[3:04:54 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:04 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 31-SEXUAL ASSAULT EXAMINATION KITS

[3:06:24 PM](#)

CHAIR KREISS-TOMKINS announced that the first 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."

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REPRESENTATIVE BIRCH asked if rape kits from victims who choose not to prosecute remain in the backlog and who owns the kits. He added that his question relates to the issue of deoxyribonucleic acid (DNA) evidence being tracked and made available for use in the prosecution of a serial criminal.

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CELESTE NOVAK, Staff, Representative Tarr, Alaska State Legislature, on behalf of Representative Tarr, prime sponsor of HB 31, said that the rape kits, once received by the crime lab, remain there in perpetuity. She stated that even if the victim chooses not to pursue the case, the DNA evidence is kept on hand should it be needed in that case or in a serial assault case.

REPRESENTATIVE BIRCH asked if one of the reasons for a backlog of unprocessed rape kits is that there is no immediately pressing prosecution.

MS. NOVAK responded that is correct. She said the Department of Public Safety (DPS) reported that the Scientific Crime Detection Laboratory ("the crime lab") is currently able to keep up with rape kit processing requests. She added that the fiscal note reflects DPS's anticipation of an increase in kits submitted should HB 31 become law.

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REPRESENTATIVE KNOPP asked about the current procedures for handling rape kits. He asked if they are stored in the DPS crime lab until they are ready to be processed; shipped out of state to be processed and stored; or shipped out of state to be processed then shipped back to the crime lab.

MS. NOVAK offered her understanding that the DPS crime lab is processing the backlog of kits, and the kits are not going out of state. She offered to provide the committee additional information for clarification.

CHAIR KREISS-TOMKINS mentioned the two different processes described in the previous House State Affairs Standing Committee meeting of 01/31/17: one, using U.S. Department of Justice

(DOJ) grant money to clear out the backlog; and the other, ensuring a backlog doesn't accumulate in the future.

MS. NOVAK stated that outsourcing kits to out-of-state locations is due to the type of processing required. Kits that are processed at the crime lab in Alaska are kept at the lab in perpetuity.

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REPRESENTATIVE JOHNSON asked if the backlog of unprocessed kits was due to other reasons and "not just because they can't get to them."

MS. NOVAK offered her understanding that there is no backlog, because DPS caught up with the processing of all kits, after receiving grant funds from DOJ.

REPRESENTATIVE JOHNSON referred to a February 1 article from the Alaska Public Media, which says that at the end of 2016, there were 59 more rape kits to process. She asked for the make-up of those kits.

MS. NOVAK responded that the crime lab has 102 kits on hand, with 35 currently being processed. Of the 102 kits yet unprocessed, 2 are from October, 25 from November, 34 from December, and 41 from January [2017]. She added that DPS has indicated it is able to maintain progress with those kits.

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The committee took an at-ease from 3:15 p.m. to 3:22 p.m.

[3:21:31 PM](#)

CHAIR KREISS-TOMKINS announced that HB 31 will be set aside.

[HB 31 was brought before the committee again following the hearing on HB 7.]

HB 7-DISPLAY OF PHOTOS OF MARKED BALLOT

[3:21:48 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."

REPRESENTATIVE WOOL asked for confirmation that HB 7 would change [AS 15.15.280] to make a prohibited activity legal. He asked why the now outdated statute could not be removed.

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REID MAGDANZ, Staff, Representative Kreiss-Tomkins, Alaska State Legislature, on behalf of Representative Kreiss-Tomkins, prime sponsor of HB 7, explained that HB 7 would maintain the prohibition against someone sharing his/her own physical ballot, yet allow sharing a photo, video, or other image of the ballot.

REPRESENTATIVE WOOL asked if the original statute, which prohibits sharing a physical ballot, also prohibits sharing a photo image of the ballot.

MR. MAGDANZ agreed that the current statute has been interpreted to include images of one's ballot. He said the current wording of the statute is, "Subject to AS 15.15.240 a voter may not exhibit the voter's ballot to an election official or any other person so as to enable any person to ascertain how the voter marked the ballot." He commented that the statute has been interpreted to refer to sharing the physical ballot or sharing a photo of the ballot.

REPRESENTATIVE WOOL reiterated that the original statute prohibits sharing one's ballot, and the statute has been interpreted to include photos. He asked if HB 7 would remove the "photo image part" of the statute but continue to prohibit sharing the physical ballot. He stated that HB 7 would differentiate between physical ballot sharing and ballot photo sharing, yet they have been interpreted as being the same.

MR. MAGDANZ responded that the intent of HB 7 would be to prohibit sharing a physical ballot, and to allow sharing photos, videos, or images of the ballot.

REPRESENTATIVE WOOL asked if the interpretation of the original statute - to include photo images - is a result of case testing or of common belief. He also asked if the original statute would be reinterpreted to remove photo images from the prohibition.

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LIBBY BAKALAR, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), Department of Law (DOL), replied that the interpretation of the statute to include photo images has not been case-tested in Alaska. She explained that the statute was enacted in 1960 along with the prohibition against political persuasion at the polls. She stated that the original intent of the 1960 statute was to ensure no one "waved their ballot around" in order to encourage anyone to vote in a particular way. She said that at the time of elections, the Division of Elections (DOE) receives phone calls from voters asking about the legality of ballot selfies. She referred to Chapter 15 of the Alaska Statutes, which describes the election code, and specifically AS 15.56, which addresses election crimes. She said according to AS 15.15.300, the penalty for exhibiting a marked ballot is "spoiling of the ballot."

MS. BAKALAR offered that the proposed legislation seeks to "catch up with technology" and opined that no one in the First Alaska State Legislature, 1959-1960 anticipated selfies. She mentioned that the prohibition against selfies has been case-tested in New Hampshire. The United States Court of Appeals for the First Circuit declared that a statute actively prohibiting a ballot selfie was unconstitutional under the First Amendment [to the U.S. Constitution]. She said that to her knowledge, there has been no prosecution or civil remedy imposed for exhibiting a ballot [in Alaska]. She went on to say DOL advises voters who ask about being prosecuted for the crime of showing a marked ballot selfie, that clearly the statute was never meant to encompass photography, because there was no portable photography at the time the statute was enacted. She reiterated that the intent of the statute was to prohibit electioneering.

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REPRESENTATIVE TUCK offered his understanding that the statute was enacted not only to prohibit electioneering, but also vote buying.

MS. BAKALAR agreed and offered that the statute was enacted to avoid true malfeasance at the polls intended to impact the outcome of the election. She offered her understanding that ballot selfies are taken to celebrate the act of having voted and not to persuade anyone to vote in a particular way. She admitted that the ballot selfie was "uncharted territory."

[3:31:00 PM](#)

REPRESENTATIVE LEDOUX asked about the extent of absentee voting in 1960, when the law was passed.

MS. BAKALAR replied that she believes absentee voting was implemented after the law was passed, since the legislature of 1960 was the first legislature after statehood.

REPRESENTATIVE LEDOUX asked how the statute could be enforced at all with respect to absentee ballots.

MS. BAKALAR responded that the statute refers to conduct at the polling place.

REPRESENTATIVE LEDOUX offered her belief that vote buying would more likely occur in the context of absentee voting.

MS. BAKALAR referred to AS 15.20.010 to verify that the "no-cause or no-fault" absentee voting statute was enacted in 1960, the same year as the exhibition prohibition statute.

REPRESENTATIVE LEDOUX asked for verification that the ballot cannot be shown to another person in the polling place, but a picture of the ballot can be shown and an absentee ballot can be shown. She wondered aloud if it made any sense to have the statute at all.

MS. BAKALAR responded that the issue is one of intent and state of mind. She asserted that the "evil" that the exhibition prohibition is designed to prevent is vote buying and influencing the outcome of the election. She went on to say that whether it is an absentee ballot or a ballot in a polling place, without the intent to persuade someone else to vote in a particular way, there is no violation. She agreed that it is impossible to control everything that happens in regard to absentee ballots, but, she added, DOE has security measures for processing absentee ballots. She reiterated that the exhibition statute is meant to discourage pressure on voters at the polling place.

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REPRESENTATIVE BIRCH commented that if the issue hasn't come up and if no one has been prosecuted for violating the statute, "maybe it's better to let sleeping dogs lie."

MS. BAKALAR asserted that the reason to clarify the issue is to address voter confusion. She reiterated that DOE and DOL do

field a substantial number of phone calls from people asking about the legality of ballot selfies. She added that as the current law is technically drafted, it is hard for the agencies to respond. She stated that the intent of HB 7 is to address that confusion and tell voters that as long as they are not trying to politically persuade anyone at the polling place, it is alright to take a ballot selfie and share it with their friends.

[3:37:42 PM](#)

REPRESENTATIVE KNOPP asked if it would be "cleaner" to repeal the existing statute rather than modify it.

MS. BAKALAR responded that she didn't think so, since HB 7 would retain the policy behind the initial statute. She emphasized that the 200-foot rule is to avoid political persuasion in the polls, and it is still an important policy. She opined that amending the statute that prohibits this particular conduct is better than repealing the statute.

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REPRESENTATIVE WOOL offered that since DOL still gets calls about this issue, the statute change would give DOL a definitive response. He said, "This is sort of a legal out for the Department of Law"

MS. BAKALAR agreed and added, "... and also for the Division of Elections and for voters in general." She cited states with active prohibition and high profile ballot selfie cases, and offered that HB 7 would reduce voter confusion and allow DOE to definitively tell voters, in statute, that this conduct is permitted.

[3:40:39 PM](#)

REPRESENTATIVE TUCK stated his belief that the proposed legislation attempts to balance electioneering with First Amendment rights. He expressed his concern regarding undue influence or "vote bullying." He commented that he would like to see provisions that protect voters from vote bullying, even in one's own home. He said not only should the person filling out the ballot be restricted, but the person trying to bully should be restricted, and there should be a consequence for bullying. He brought up another concern - the possibility of people taking photographs when other voters are behind them. He

said he had other concerns about restrictions in the general area of polling locations. He opined that if ballot selfies are allowed, they should be allowed only inside the voting booth and nowhere else in the polling place. He added his belief that it is not a right to free speech to photograph other people in the polling place. He asserted that a person should be bound by the 200-foot restrictions, currently in statute, until he/she is in the voting booth. At that point, he claimed, they are enclosed and not taking photographs of other people. He concluded that there should be some sort of limitation on when, where, and how one photographs.

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REPRESENTATIVE KNOPP moved to adopt Amendment 1, [labeled 30-LS0111\A.2, Bullard, 2/2/17], which read:

Page 1, line 1, following "**ballots**":

Insert "**and the prohibition on political persuasion near election polls**"

Page 1, following line 2:

Insert a new bill section to read:

"* **Section 1.** AS 15.15.170 is amended to read:

Sec. 15.15.170. Prohibition of political persuasion near election polls. (a) During the hours the polls are open, a person who is in the polling place or within 200 feet of any entrance to the polling place may not

(1) attempt to persuade a person to vote for or against a candidate, proposition, or question;
or

(2) physically display a photo, video, or other image of the person's marked ballot in an attempt to persuade a person to vote for or against a candidate, proposition, or question.

(b) The election officials shall post warning notices at the required distance in the form and manner prescribed by the director."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 1, line 11, following "(2)":

Insert "subject to the prohibition on political persuasion in, or within 200 feet of an entrance to, a polling place under AS 15.15.170,"

REPRESENTATIVE LEDOUX objected for purpose of discussion.

[3:43:23 PM](#)

ALICIA NORTON, Intern, Representative Kreiss-Tomkins, Alaska State Legislature, on behalf of Representative Kreiss-Tompkins, prime sponsor of HB 7, relayed that the proposed amendment would prohibit physically showing a photo, video, or other image of a person's marked ballot within the polling place or within 200 feet of the polling place in an attempt to persuade a person to vote for or against a candidate, proposition, or question.

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REPRESENTATIVE LEDOUX removed her objection to the motion to adopt Amendment 1.

REPRESENTATIVE TUCK objected for purpose of discussion.

[3:44:49 PM](#)

REPRESENTATIVE BIRCH asked if "physically display a photo" means to send it to someone or share it with someone.

MS. NORTON responded that the phrase means having a phone and directly putting it "in someone's face."

[3:45:11 PM](#)

REPRESENTATIVE TUCK stated that he thinks Amendment 1 is an important amendment, because it would prohibit electioneering by a person exiting the voting booth, but still within the polling location, and would allow the display of the marked ballot photo only after leaving the polling location. He asserted that he still has a concern regarding photographs taken within the 200-foot perimeter, as the person is going to or from the voting booth. He offered his desire to address that issue at some point.

REPRESENTATIVE TUCK removed his objection to Amendment 1. There being no further objection, Amendment 1 was adopted.

REPRESENTATIVE LEDOUX asked Representative Tuck what problem he has with photographing another person going into and out of the polling location.

REPRESENTATIVE TUCK responded that a person has a right to refrain from voting and cited his concern regarding undue pressure. He offered that people may feel uncomfortable with being photographed in the voting location and, consequently, deterred from voting. He mentioned the possibility of a selfie stick "coming over the top" while in the voting booth. He asserted that if ballot selfies are allowed as a First Amendment right, then there needs to be limitations on when and how photographs are taken.

REPRESENTATIVE LEDOUX asked Ms. Bakalar to confirm that it is now possible, under our current voting rules, to determine who has voted and who has not voted, through poll watchers.

MS. BAKALAR responded, "That is correct."

[3:48:31 PM](#)

REPRESENTATIVE TUCK asked if any public member could look at the electoral rolls.

MS. BAKALAR offered her understanding that when the polling place is opened, election board members are present. They are trained to control the polling place and maintain proper custody of the ballots. She added there are poll watchers assigned by political parties and candidates to be in the polling places, remain in ear shot of the poll workers, ask for names to be read, and examine precinct registers. She asserted that the precinct register is a public record. She maintained that how a person votes is constitutionally protected, but the fact that a person voted in a given election is of public record.

REPRESENTATIVE TUCK made the point that the poll watchers must be trained and abide by rules. He conceded that after the election is over, when the polling location is closed, information on who voted becomes public record. He said, however, that he is not comfortable with people, who are not trained and do not know the rules, being able to take photographs in polling locations as voters come and go. His concern, he said, was in regard to voter intimidation. He stated his belief that there should be more restrictions on when and where polling location selfies may be taken.

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CHAIR KREISS-TOMKINS asked for clarification that "photographs of people coming in and out of the polls," as Representative Tuck mentioned, is not in reference to a photograph of a ballot in the ballot booth, but taking photos of people who are waiting to cast their ballots.

REPRESENTATIVE TUCK confirmed he was referring to a selfie photograph including someone else in the polling location.

CHAIR KREISS-TOMKINS asked if the scenario described by Representative Tuck was currently legal.

MS. BAKALAR stated that she doesn't believe there is any polling place photography prohibitions. She mentioned that the media is in polling places every election day.

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REPRESENTATIVE BIRCH suggested that it would be impossible to keep reporters or cameras out of polling places, and a person's presence at the polling place is public information. He maintained that one's personal space in the voting booth remains sacrosanct.

[3:52:36 PM](#)

REPRESENTATIVE KNOPP commented that there is no perfect legislation and there will always be more "what ifs." He said he sees no problem with HB 7 or the [the adopted] Amendment 1. He opined that [the adopted] Amendment 1 addresses Representative Tuck's concern in that it cites the prohibition against political persuasion. He stated he supports the bill, as amended.

[3:54:10 PM](#)

REPRESENTATIVE LEDOUX asked Ms. Bakalar, "What kind of training are poll watchers given?"

MS. BAKALAR said there is a poll watcher's handbook but no other formal training.

REPRESENTATIVE TUCK opined that it is appropriate to ask "What if, what if, what if?" He expressed the importance of making sure that any ballot photo be limited to a person's own ballot.

He referred to language in [the adopted] Amendment 1, beginning on page 1, line 12 [as numbered in the amendment], which read:

(2) physically display a photo, video, or other image of the person's marked ballot in an attempt to persuade a person to vote for or against a candidate, proposition, or question.

REPRESENTATIVE TUCK voiced his concern that "person's" refers to the individual person's ballot and not some other person's ballot.

MS. BAKALAR confirmed that was her understanding - that "person's" refers to the person who is taking a picture of his/her own ballot.

CHAIR KREISS-TOMKINS asked if HB 7 would be clearer if the word "person's" [adopted under Amendment 1] were changed to "voter's".

MS. BAKALAR agreed.

REPRESENTATIVE TUCK expressed that he was comfortable with [the adopted] Amendment 1, with the explanation that "person's" refers to the person who marked the ballot. He added that any necessary change to HB 7 could be made "down the road."

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CHAIR KREISS-TOMKINS opened public testimony on HB 7.

[3:58:52 PM](#)

TARA RICH, Legal and Policy Director, American Civil Liberties Union (ACLU) of Alaska, said that the provisions of the election statutes originally came from the Australian Ballot Reforms and were enacted in the 1890s as a result of widespread election problems in the United States. She attested that Alaska adopted the laws [prohibiting the display of ballots] wholesale as all states had done. She asserted that the laws were in response to the practice of political parties using color-coded or otherwise distinctive ballots, which made it obvious for whom a person was voting, and thus made it easier to influence voting and buy votes. Ballot laws were enacted that outlawed displaying ballots. Ms. Rich claimed, "That, in America, is what allowed us to have a secret ballot."

MS. RICH went on to say that as technology has advanced, the prohibition against displaying one's ballot was too broadly worded. She gave her opinion that [the adopted] Amendment 1 is needed, because the ACLU has challenged these laws in five states that use the interpretation of photographing a ballot as a violation of the election laws. She said that in her opinion, Alaska has avoided legal challenges because of DOE's reasonable interpretation of the law - that it should not be enforced against people photographing their own ballots.

MS. RICH pointed out the second aspect of the issue, that one has a free speech right to take a photo of his/her own ballot. She said this right is known, in legal terminology, as core political speech, and is one of the most protected rights. She offered that photographs of people going into and out of polling locations are currently completely legal. She said that currently the only photo restriction in a polling place is that of the ballot itself. She said if the law restricted what a photograph could contain, it would be unconstitutional, because it would be a "content-based" restriction. She added that controlling speech in that way would almost assuredly be a violation of the First Amendment right to free speech.

MS. RICH stated her third point, which is that this issue isn't just about voter confusion, but is also about legal vulnerabilities for the State of Alaska. Ballot selfie prohibition may become a legal liability for DOE.

[4:04:28 PM](#)

TASHA ELIZARDE testified that she supports HB 7. She said she is a 17-year-old high school student who cannot yet vote. She said in two or three months she will be eligible to vote and looks forward to commemorating the event by taking a ballot selfie. She conceded that the issue HB 7 addresses is a small issue, but stated, "I personally think it's all about being able to express my First Amendment right." She asserted that allowing ballot selfies would create a more civically engaged community through social media, especially among teenagers.

MS. ELIZARDE said she is a senior at Juneau Douglas High School (JDHS). She said she discussed HB 7 with two government classes taught by Gary Lehnhart and reported that the vast majority of the approximately 40 students in those classes supported HB 7 for the same reasons she supports it. She reiterated those reasons: to encourage self-expression and to engage more

teenagers in the political process. She opined that with all the legal issues that were raised in the committee meeting, HB 7 would be a good way to clarify the statute. She conceded that the law was instituted for good reasons, but "times have changed," and most people who choose to take a ballot selfie, do so because they want to express their love for voting or support for a candidate, not to intimidate other voters. She reemphasized that she fully supports HB 7.

[4:07:43 PM](#)

CHAIR KREISS-TOMKINS closed public testimony on HB 7.

REPRESENTATIVE TUCK referred to the testimony of Ms. Rich of the ACLU, as well as page 1, lines 5 and 11, specifying the "voter's ballot" or "voter's marked ballot", and agreed with the recommendation that changing [the language adopted under] Amendment 1 to read "voter's marked ballot" would make the language consistent with the rest of the statute.

[4:09:11 PM](#)

REPRESENTATIVE LEDOUX moved to report HB 7, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 7(STA) was reported out of the House State Affairs Standing Committee.

[4:09:35 PM](#)

The committee took an at-ease from 4:10 p.m. to 4:14 p.m.

HB 31-SEXUAL ASSAULT EXAMINATION KITS

[4:14:04 PM](#)

CHAIR KREISS-TOMKINS announced that as the final order of business, the committee would once again consider HB 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."

REPRESENTATIVE JOHNSON asked how DNA, as evidence, is stored, if there is no related prosecution.

REPRESENTATIVE TARR, Alaska State Legislature, as prime sponsor of HB 31, expressed her understanding that collected evidence is the property of law enforcement until such time a crime is resolved. She mentioned that property that is confiscated during an arrest would be returned if the case was resolved favorably for the arrested individual. She recommended consulting with the Alaska Police Standards Council (APSC) to ensure her information is accurate.

REPRESENTATIVE JOHNSON expressed her concern for privacy. She offered her understanding that once evidence is collected, it is under the control of the law enforcement agency that is investigating the incident, and sexual assault kits are treated as evidence and are in the physical custody of the law enforcement agency. She described a hypothetical situation in which [a rape] happens and a rape kit is collected, but either the charges are dropped or no one is charged. In that scenario, she said, evidence has been collected, but "no crime's been committed." She observed that the fiscal note reflects the cost of storing the DNA evidence and tracking it. Representative Johnson stated that while she supports catching criminals and prosecuting them to the full extent of the law, she has concern for the those whose DNA is being kept when they have never been charged with a crime.

[4:18:28 PM](#)

REPRESENTATIVE TARR related two different scenarios. One involves an individual who is sexually assaulted, a rape kit is collected, but because it was a known perpetrator, the kit was not processed. She asserted that even if the perpetrator was known to that victim, law enforcement has learned that sometimes the perpetrator has been involved in other crimes, and the sexual assault incident should not be thought of as an isolated case. She added that from law enforcement's perspective, that evidence is very valuable. She cited that this scenario demonstrates the challenge of balancing needs, and law enforcement has chosen the public safety need over the privacy need of the perpetrator. She asserted that in this scenario, charges would be pressed, but the kit would not be essential for the prosecution to make a case.

REPRESENTATIVE TARR related a circumstance where the victim chooses not to press charges against the perpetrator and that, she conjectured, was the basis of Representative Johnson's concern. She queried, "Does a person have a right for that

evidence to not be used in a way that would incriminate them in another crime if they weren't pressing charges for this crime?" She stated her understanding that this question has been resolved in favor of the public safety need being the first priority.

REPRESENTATIVE JOHNSON stated her concern for a fiscal note solely for the purpose of tracking rape kits, and not for catching up with a rape kit backlog or for bringing justice to victims. She stated, "We have to be aware that ... this isn't something that's going to make it more likely that someone is going to have justice; in this case, ... personal information's going to be tracked."

REPRESENTATIVE TARR responded that because there is currently no tracking, it is impossible to know where a kit is in the process and who is in possession of the kit. She opined that the greatest value of the tracking system is ensuring a kit is not lost in the process. She cited the challenges of rural communities in collecting and handling evidence: a community may not have a Village Public Safety Officer (VPSO); a trooper must come from out of town; and there are time limits on the viability of biological evidence. She conceded that these circumstances are somewhat unique to Alaska because of geography and limited access between communities, but she asserted that the tracking system would facilitate identifying these problems. She stated she shared the concerns that people have regarding personal information in a database and the potential for it to be used to harm an individual.

[4:25:14 PM](#)

CHAIR KREISS-TOMKINS stated that HB 31 will be held over.

REPRESENTATIVE BIRCH paraphrased information provided to the committee by Representative Tarr and said, "Internal review indicates that there are kits that were never submitted to the lab and go back as far as the mid-'80s." He asked how many kits are in the backlog.

REPRESENTATIVE TARR responded that the audit revealed a backlog of 3,600 unprocessed rape kits. She added that these kits are the ones that have not been sent to the crime lab. She said that the other numbers [102 kits yet unprocessed, 2 from October, 25 from November, 34 from December, and 41 from January 2017] reflect the kits that have been sent to the crime lab and the status of those kits. She pointed out that the

discrepancies between the numbers demonstrate the need for tracking both the chain of [custody] and the life cycle of each kit. She said currently the only information known about a kit is when it was received and "where it's at in processing." She mentioned that the 3,600 unprocessed rape kits are of most concern to the public - where they are and why they have been languishing. She reiterated the importance of processing rape kits in order to discover perpetrators in other crimes; she referred to the article on Clifford Lee [in the committee packet], which demonstrates the importance of the DNA evidence that linked him to prior assaults.

[4:28:50 PM](#)

KEELEY OLSON, Executive Director, Standing Together Against Rape (STAR), brought up the possibility of a victim submitting to a forensic examination without giving consent to open an investigation. She said the report, in that instance, is called a non-investigative report. In Anchorage it is referred to as an anonymous victim report. She said that these victims are not giving consent for the rape kits to be tested but may choose to do so at any time. She asserted that this practice provides more options for someone who is nervous about reporting. She attested that this mechanism of reporting is a requirement of the Violence Against Women Act (VAWA) [of 1994]. She stated STAR is very concerned about these anonymous kits being tested without the victim's consent.

REPRESENTATIVE BIRCH pointed out that in a comment made earlier, once the sample is taken, it is in law enforcement control and can be used "down the road." He stated, "It is an open question for me."

MS. OLSON responded that Representative Tarr has expressed she is open to drafting policy to ensure that anonymous kits, for which there is no consent for investigation, are isolated.

[4:32:07 PM](#)

CHAIR KREISS-TOMKINS closed public testimony on HB 31.

[HB 31 was held over.]

[4:32:21 PM](#)

ADJOURNMENT

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