

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 20, 2019

2:18 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

Representative Louise Stutes
Representative Adam Wool

COMMITTEE CALENDAR

HOUSE BILL NO. 14

"An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 14

SHORT TITLE: ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

SPONSOR(S): REPRESENTATIVE(S) LINCOLN

02/20/19	(H)	PREFILE RELEASED 1/7/19
02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	STA, JUD
02/28/19	(H)	STA AT 3:00 PM GRUENBERG 120
02/28/19	(H)	Heard & Held
02/28/19	(H)	MINUTE(STA)
03/07/19	(H)	STA AT 3:00 PM GRUENBERG 120
03/07/19	(H)	Moved CSHB 14(STA) Out of Committee
03/07/19	(H)	MINUTE(STA)
03/08/19	(H)	STA RPT CS(STA) 7DP
03/08/19	(H)	DP: VANCE, LEDOUX, WOOL, SHAW, STORY, KREISS-TOMKINS, FIELDS
03/20/19	(H)	JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE JOHN LINCOLN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 14 as prime sponsor.

ROSE FOLEY, Staff
Representative John Lincoln
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis of HB 14 on behalf of Representative Lincoln, prime sponsor.

ISAAC WILLIAMS
No More Free Passes (NMFP)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 14.

JAENELL MANCHESTER
49th Rising
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 14.

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

POSITION STATEMENT: Testified in support of HB 14.

MARILYN CASTEEL, Executive Director
Safe and Free Environment (SAFE)
Dillingham, Alaska

POSITION STATEMENT: Testified in support of HB 14.

KACI SCHROEDER
Assistant Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 14.

ACTION NARRATIVE

[2:18:00 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:18 p.m. Representatives Eastman, Shaw, LeDoux, Kopp, and Claman were present at the call to order.

HB 14-ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

[2:18:44 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 14 "An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness." Before the committee was CSHB14(STA), Version 31-LS0182\G.

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REPRESENTATIVE JOHN LINCOLN, Alaska State Legislature, introduced HB 14 as prime sponsor. He read from his sponsor statement [original punctuation provided]:

House Bill 14 (HB 14) classifies the act of ejaculating on a person without their consent as a sex crime and recognizes the serious nature of strangulation to the point of unconsciousness by classifying the act as first degree assault and including it in the list of aggravating factors for sentencing.

In the fall of 2018 a plea deal agreement illuminated the fact that ejaculating on a person without their consent could not be prosecuted as a sex offense in Alaska. This bill enhances sexual assault statutes by adding unwanted contact with ejaculate to the definitions of sexual assault in the third degree and sexual abuse of a minor in the third degree, depending on the age of the victim.

HB 14 also acknowledges the seriousness of strangulation. Strangulation is prevalent in domestic violence incidences, and 56% of women murdered in Alaska in 2017 were killed by an intimate partner. A study published by the Journal of Emergency Medicine found that a prior non-fatal strangulation increases a woman's likelihood of becoming a homicide victim by 700%, and non-fatal strangulation preceded 43% of

domestic homicides. This bill recognizes the gravity of strangulation as a precursor to future violent crimes.

REPRESENTATIVE LINCOLN thanked organizations that helped with crafting HB 14 including 49th Rising, No More Free Passes (NMFP), the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), the Public Defender Agency, the Department of Law (DOL), and several co-sponsors.

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ROSE FOLEY, Staff, Representative John Lincoln, Alaska State Legislature, paraphrased the sectional analysis included in the committee packet, which read:

Section 1: Amends AS 11.41.200(a), classifying strangulation to the point of unconsciousness as assault in the first degree.

Section 2: Amends AS 11.81.900(b)(15), clarifying that "dangerous instrument" with relation to strangulation includes hands or "other body parts".

Section 3: Amends AS 11.81.900(b)(60), to include in the definition of sexual contact "the defendant's knowingly causing the victim to come into contact with ejaculate".

Section 4: Amends AS 12.55.155(c), adding strangulation to the point of unconsciousness to the list of aggravating factors to be considered at sentencing.

Section 5: Establishes that the provisions are applicable only to crimes committed on or after the effective date of the legislation.

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CHAIR CLAMAN opened public testimony on HB 14.

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ISAAC WILLIAMS, No More Free Passes (NMFP), testified in support of HB 14, which he said would restore public confidence by closing loopholes exposed in the Justin Schneider case. He said

NMFP is pleased with how the bill addresses strangulation; he called it "one of the most dangerous and horrific things that can happen to a victim." He stated that NMFP supports changes made to the companion bill [heard in the Senate Judiciary Standing Committee. These changes include an added provision requiring a prosecutor to make a reasonable effort to contact a victim about a potential plea deal. He described another change that would address strangulation that does not result in unconsciousness. He said a third change would increase penalties for strangulation from 0 to 2 years to 1 to 3 years. He asked the committee to consider incorporating those changes. He thanked the committee for hearing HB 14 and stressed its importance.

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JAENELL MANCHESTER, 49th Rising, described 49th Rising as a nonpartisan organization working "to make Alaska as safe as it is beautiful." She said Alaska has the highest rate of reported sexual assault in the country. She relayed a University of Alaska Anchorage Justice Center study that found one in every three Alaska women has experienced sexual violence in her lifetime. She characterized those numbers as "underestimates." She said 49th Rising supports HB 14 because it would address statutory deficiencies regarding strangulation. She noted that strangulation leaves a devastating impact on victims and is often associated with sexual and domestic violence. She mentioned a study that found that women who have been strangled are seven times more likely to be victims of attempted homicide. She described the internal injuries that can result from strangulation. She added that the psychological trauma associated with strangulation can cause a victim to attempt suicide. She remarked that HB 14 would also close statutory loopholes relating to nonconsensual contact with ejaculate matter. She referenced the Schneider case and described the traumatizing effect of unpunished nonconsensual contact.

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CARMEN LOWRY, Executive Director, Alaska Network of Domestic Violence and Sexual Assault (ANDVSA), said ANDVSA is a membership-based organization comprised of 24 community-based organizations providing life-saving services to victims and survivors of domestic violence and sexual assault. She said ANDVSA supports HB 14. She thanked Representative Lincoln for introducing the bill and the committee for hearing it. She said

frequent discussion of sexual violence will help dispel the culture of silence that makes it a difficult topic to broach.

MS. LOWRY said she is mindful that legislation dealing with these issues is brought to the forefront "because of victims... [and] survivors." She cited the Schneider case as well as the murder of Ashley Johnson-Barr. Ms. Lowry discussed a conversation with Ashley Johnson-Barr's father. She said it is good to see strangulation recognized in HB 14. She noted that it requires only 10 seconds for a strangulation victim to lose consciousness. She added that she feels the provision addressing nonconsensual contact with ejaculate is critical because of the fear and intimidation that results from such a situation.

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MARILYN CASTEEL, Executive Director, Safe and Free Environment (SAFE), identified herself as Alaska Native and a survivor of domestic assault. She said, according to the Alaska Victimization Survey for the Bristol Bay region, she is one of 50 percent of adult women in the region to have experienced intimate partner violence, sexual violence, or both. She said SAFE is a member of ANDVSA and that, in fiscal year 2018, it provided sex abuse services to 193 adults and 36 children in the Bristol Bay region. She affirmed SAFE's support of HB 14, which she said recognizes the lethality and impact of strangulation, specifically in sex cases. She said HB 14 also recognizes the danger that "other body parts" pose as dangerous instruments. She said she supports making it a sex offense to ejaculate on someone without consent. She added that a person convicted for that crime should be required to register as a sex offender. She said it is good to know that she is a strong Alaska Native woman who is able to speak on behalf of all victims of violence who cannot and do not have a voice. She reaffirmed her support for the bill.

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CHAIR CLAMAN, after ascertaining that no one else wished to testify, closed public testimony on HB 14.

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REPRESENTATIVE EASTMAN asked how "contact" will be defined as used in section 3. He asked if it has to be direct or if it can be indirect.

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, said "contact" would be defined as it is in Webster's Dictionary and that it would essentially mean "touching." She noted that, in the context of the legislation, it is "touching with the substance that is named ... in the bill."

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REPRESENTATIVE EASTMAN referred to section 2, which relates to AS 11.81.900(b)(15) and the definition of "dangerous instrument." He asked as to the purpose of subparagraph B and why the items mentioned therein are not already incorporated in subparagraph A.

MS. SCHROEDER said subparagraph B was added "a number of years ago" specifically to target strangulation. She said that, while it may appear upon initial reading that subparagraph A may cover that, there was debate about whether that was the case. She said, rather than litigate the issue, the decision was made to ask the legislature to change the law to make clear that hands could be identified as a dangerous instrument.

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REPRESENTATIVE EASTMAN asked a question regarding how statute distinguishes between unwanted sexual contact and consensual sexual contact. He noted that some jurisdictions are comprehensive in detailing the expression of consent for any type of sexual event. He asked how the language proposed by HB 14 would be interpreted in this regard.

MS. SCHROEDER said Alaska sexual assault statutes require conduct to be "without consent," which is specifically defined as "with or without resisting, the victim is coerced by the use of force against person or property by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone, or if the victim is incapacitated by the actions of the defendant." She said DOL is required to meet that definition to charge sexual assault.

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REPRESENTATIVE LEDOUX asked if this statute would cover a situation in which an offender ejaculates into a victim's handbag.

MS. SCHROEDER said the statute in question relates to sexual assault, which requires "without consent" which in turn requires some force. She said she does not see any force in Representative LeDoux's hypothetical so she does not think it would qualify.

REPRESENTATIVE LEDOUX asked "even if it's without consent?"

MS. SCHROEDER said "without consent" has a specific statutory definition. She said the hypothetical situation does not include the necessary coercion or force required for it to qualify.

REPRESENTATIVE LEDOUX responded, "It would just be disgusting without being necessarily illegal."

MS. SCHROEDER said it might fall under the harassment statute, which is "with the intent to harass or annoy."

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REPRESENTATIVE EASTMAN recounted an incident that took place during a prison tour during which an inmate threw semen on his friend. He asked how the law would treat that situation.

MS. SCHROEDER said she does not think that situation qualifies as sexual assault. She said the situation is more akin to harassment in the first degree, which was enacted to protect correctional officers. She said harassment in the first degree is a class A misdemeanor. She added that it is not a sex offense and does not require sex offender registration.

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CHAIR CLAMAN announced that HB 14 would be held for further review.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:44 p.m.