

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 16, 2019

5:16 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Louise Stutes

**OTHER LEGISLATORS PRESENT**

Representative John Lincoln

**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."

- MOVED CSHB 14(JUD) OUT OF COMMITTEE

**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
03/20/19	(H)	Heard & Held
03/20/19	(H)	MINUTE (JUD)
04/15/19	(H)	JUD AT 1:00 PM GRUENBERG 120
04/15/19	(H)	Heard & Held
04/15/19	(H)	MINUTE (JUD)
04/16/19	(H)	JUD AT 5:15 PM GRUENBERG 120

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Introduced Amendment 2 to HB 14 on behalf of HB 14, the bill's prime sponsor.

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

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

**ACTION NARRATIVE**

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**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 5:16 p.m. Representatives LeDoux, Eastman, Shaw, Kopp, and Claman were present at the call to order. Representative Wool arrived as the meeting was in progress. Representative John Lincoln was also present.

**HB 14-ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR**

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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 CSHB 14(STA), version 31-LS0182\G.]

CHAIR CLAMAN said the committee would take up amendments to HB 14. He noted for the record that Legislative Legal Services has permission to make any technical and conforming changes to the bill. He recapped the adoption of Amendment 1 during the bill's previous hearing.

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REPRESENTATIVE KOPP moved Amendment 2, labeled 31-LS0182\G.9, Radford, 4/16/19, which read:

Page 1, line 2:  
Delete "**and**"

Page 1, line 3, following "**unconsciousness**":  
Insert "**; relating to the duties of the prosecuting attorney; and relating to victim notifications**"

Page 7, following line 26:  
Insert new bill sections to read:

"\* **Sec. 5.** AS 12.61.015(a) is amended to read:

(a) If a victim of a felony, **a sex offense as defined in AS 12.63.100**, or a crime involving domestic violence requests, the prosecuting attorney shall make a reasonable effort to

(1) confer with the person against whom the offense has been perpetrated about that person's testimony before the defendant's trial;

(2) in a manner reasonably calculated to give prompt actual notice, notify the victim

(A) of the defendant's conviction and the crimes of which the defendant was convicted;

(B) of the victim's right in a case that is a felony to make a written or oral statement for use in preparation of the defendant's presentence report, and of the victim's right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

(C) of the address and telephone number of the office that will prepare the presentence report; and

(D) of the time and place of the sentencing proceeding;

(3) notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case;

(4) confer with the victim or the victim's legal guardian concerning a proposed plea agreement before entering into the plea [AN] agreement to ask the victim or the victim's legal guardian whether the victim is in agreement with the proposed plea agreement; the prosecuting attorney shall record whether the victim or the victim's legal guardian is in agreement with the proposed plea agreement;

(5) inform the victim of a pending motion that may substantially delay the prosecution and inform the court of the victim's position on the motion; in this paragraph, a "substantial delay" is

(A) for a misdemeanor, a delay of one month or longer;

(B) for a felony, a delay of two months or longer; and

(C) for an appeal, a delay of six months or longer.

\* **Sec. 6.** AS 12.61.015 is amended by adding new subsections to read:

(d) The court may reschedule a hearing to consider a plea agreement as needed to allow additional time to comply with the victim notification requirements under (a)(2) and (4) of this section.

(e) Nothing in this section requires a victim or a victim's legal guardian to provide a response to a prosecuting attorney regarding a plea agreement or requires the prosecuting attorney to be bound by the victim's or legal guardian's response regarding the plea agreement."

Renumber the following bill section accordingly.

REPRESENTATIVE EASTMAN objected.

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ROSE FOLEY, Staff, Representative John Lincoln, Alaska State Legislature, said Amendment 2 was the result of consultation with advocacy and survivor groups, including the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA). She spoke to the desire to strengthen victim notification requirements.

MS. FOLEY addressed line 11 on page 1 of the amendment, which she said would mandate that victims of all sex offenses are provided the rights laid out in AS 12.61. She said this would provide them the same notifications already afforded to victims of felonies and domestic violence offenses.

MS. FOLEY addressed line 7 on page 2, which she said would strengthen existing victim notification requirements and would require the attorney to record whether the victim or the victim's guardian is in support of a proposed plea agreement.

MS. FOLEY addressed line 19 on page 2 [section 6], which she said would add new language to AS 12.61.015 that allows for the court to reschedule a plea hearing to allow additional time for the prosecution to comply with the victim notification requirements. She noted the addition of AS 12.61.015(e), which would clarify that a victim is in no way required to provide a response to an attorney regarding the plea agreement.

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REPRESENTATIVE EASTMAN, regarding section 6, asked if there would be a particular period of time that the court could delay a meeting.

MS. FOLEY said it is her understanding it would be at the court's discretion and that it would be whatever the court felt was necessary to allow the prosecutor to comply with the notification requirements.

REPRESENTATIVE EASTMAN asked if this would conflict with a defendant's right to a speedy trial.

MS. FOLEY said it is her understanding that it would not.

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REPRESENTATIVE LEDOUX noted that victim notification statute currently applies to victims of felonies and crimes involving domestic violence. She asked which sex offenses are not already covered under those definitions.

MS. FOLEY said there are misdemeanor sex offenses that are not covered under current statute. She said these include sexual assault of a minor in the fourth degree, sexual assault for

attempted sexual abuse of a minor, sexual assault in the third degree, and certain juvenile-on-juvenile sex crimes.

REPRESENTATIVE LEDOUX asked why the provision related to a delayed plea hearing wouldn't possibly interfere with the constitutional right to a speedy trial.

MS. FOLEY said she cannot answer that conclusively. She said she believes it is part of the balancing act between a victim's right to notification and the defendant's right to a speedy trial.

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KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, said the plea hearing delay is typically only a day or two, which is just enough time for the prosecution to call and confer with the victim. She clarified that this relates to situations in which the defendant is entering into a plea agreement, so the hearing in question is a change of plea hearing during which the defendant intends to plead guilty. She said that would negate the need for a trial.

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REPRESENTATIVE EASTMAN asked if it is the intent of the amendment to also cover attempted sex offenses.

MS. SCHROEDER said the language includes all felonies, all sex offenses, and crimes involving domestic violence. She said an attempt would fall under that classification.

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REPRESENTATIVE WOOL referred to language referring to the conferring with a victim or a victim's legal guardian. He asked if this is a standard concept; he remarked that he is unfamiliar with it. He asked what happens when the victim does not agree with the terms of the plea agreement.

MS. SCHROEDER confirmed that conferring with the victim is a requirement under current law and a standard practice when DOL enters into a plea agreement. She explained how DOL describes the terms of the agreement to the victim. She said if the victim does not agree with the plea agreement and wishes for that to be expressed to the court, he/she has options to notify

the court, either in writing, orally at the hearing, or by asking DOL to pass on his/her thoughts.

REPRESENTATIVE WOOL asked if this sort of victim notification only occurs for certain categories of crime.

MS. SCHROEDER said the law requires DOL to confer with the victim for all felonies and all crimes of domestic violence. She said Amendment 2 would require DOL do it for all sex offenses, though she noted that it is already standard practice to confer with sex crime victims. She said the only crimes about which DOL does not confer with victims are low level crimes, such as class B misdemeanor theft. She said this is because of a lack of resources.

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REPRESENTATIVE EASTMAN asked about the process by which Amendment 2 was brought forward, noting that the maker of the amendment is Representative Lincoln, who is not a committee member. He asked if the amendment was received by the deadline.

CHAIR CLAMAN explained that the amendment was received in a timely manner and, because there were questions, he elected to work with the maker of the amendment to rework it. He said it was a discretionary decision by him as chair to allow additional time for Representative Lincoln's office to work on the amendment. He noted that it has been a routine practice in all committees for a bill sponsor to present amendments, but it must be a committee member who moves the amendment.

REPRESENTATIVE EASTMAN withdrew his objection. There being no further objection, Amendment 2 was adopted.

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REPRESENTATIVE KOPP thanked Representative Lincoln for bringing forward HB 14 to address an unfortunate loophole in the law. He noted that the bill addresses both a use of force issue that covers strangulation to unconsciousness and the issue of unwanted contact with ejaculate. He remarked on unfortunate situations that can come about from loopholes that have existed for decades in state law.

REPRESENTATIVE EASTMAN commented that the committee has not been able to effectively reconcile some of the conflicting language

in the bill. He opined that it is probably worth the committee's time to do so.

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REPRESENTATIVE LEDOUX moved to report version 31-LS0182\G of HB 14, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

A roll call vote was taken. Representatives LeDoux, Wool, Shaw, Kopp, and Claman voted in favor of reporting HB 14 out of committee. Representatives Eastman voted against. Therefore, HB 14 was reported out of the House Judiciary Standing Committee by a vote of 5-1.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:29 p.m.