

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 2, 2020

2:27 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Chuck Kopp
Representative Harriet Drummond
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative Laddie Shaw

MEMBERS ABSENT

Representative David Eastman

COMMITTEE CALENDAR

HOUSE BILL NO. 198

"An Act relating to aggravating factors considered at sentencing."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 198

SHORT TITLE: AGGRAVATING FACTORS AT SENTENCING

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/21/20	(H)	PREFILE RELEASED 1/10/20
01/21/20	(H)	READ THE FIRST TIME - REFERRALS
01/21/20	(H)	STA, JUD
02/04/20	(H)	STA AT 3:00 PM GRUENBERG 120
02/04/20	(H)	Heard & Held
02/04/20	(H)	MINUTE(STA)
02/06/20	(H)	STA AT 3:00 PM GRUENBERG 120
02/06/20	(H)	Moved HB 198 Out of Committee
02/06/20	(H)	MINUTE(STA)
02/07/20	(H)	STA RPT 5DP 1NR
02/07/20	(H)	DP: HOPKINS, THOMPSON, STORY, FIELDS, KREISS-TOMKINS
02/07/20	(H)	NR: SHAW
03/02/20	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE ANDY JOSEPHSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 198.

REPRESENTATIVE GARY KNOPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As co-sponsor, provided information regarding HB 198.

NATHANIEL GRABMAN, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered a PowerPoint presentation on HB 198 on behalf of Representative Andy Josephson, prime sponsor.

TAMMIE WILLIS
Soldotna, Alaska

POSITION STATEMENT: Offered testimony in support of HB 198 and related information pertaining to an attack that she endured.

KAREN LOEFFLER
Anchorage, Alaska

POSITION STATEMENT: Offered testimony in support of HB 198.

CHARLES MCKEE
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 198.

VIKKI JO KENNEDY
Self-Gramma Brigade
Juneau, Alaska

POSITION STATEMENT: Offered testimony in support of HB 198.

DAVID BRIGHTON
Kenai, Alaska

POSITION STATEMENT: Offered testimony in support of HB 198.

NATALI JONES, Itinerant School Counselor
Homer, Alaska

POSITION STATEMENT: Offered testimony in support of HB 198.

ACTION NARRATIVE

[2:27:30 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:27 p.m. Representatives Claman, Kopp, LeDoux, and Shaw were present at the call to order. Representatives Drummond, and Stutes arrived as the meeting was in progress.

HB 198-AGGRAVATING FACTORS AT SENTENCING

[2:28:04 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 198, "An Act relating to aggravating factors considered at sentencing."

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REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor presented HB 198. He stated that HB 198 is not "a civil rights bill, it's a crime bill." He said that the legislation proposed under HB 198 would establish that if a group of Alaskans, who identify as homosexual or have a gender identity that is expressed differently than the majority, are deliberately attacked by an assailant because of those characteristics, the assailant could be subject to enhanced penalties. He expressed that some people might say that HB 198 sounds radical, but he said that it is not radical. He stated that there are variations of this type of legislation in 32 of the 50 U.S. states, including 6 very conservative states, such as Nebraska and Kansas. He expressed that a vast majority of the states have these types of hate crimes.

REPRESENTATIVE JOSEPHSON said that hate crimes have existed since the late 1970s and early 1980s. He said that 45 states have hate crimes, 32 of which have an enhanced penalty called a "bias-motivated aggravator" when someone is targeted because of his/her sexual orientation or gender identity. He expressed that the proposed legislation would rarely be needed, "but when it's needed, it's really needed," otherwise the result is community outrage. He explained that Chief Justice William Rehnquist, a very conservative justice originally appointed by President Richard Nixon as an Associate Justice and then Chief Justice under President Ronald Reagan, declared in the 1993 case of Wisconsin v. Mitchell that it is constitutional to consider enhanced penalties in hate crime cases. He stated that in the

1993 decision, Chief Justice Rehnquist reversed the decision made by Wisconsin's Supreme Court that it was unlawful to punish a hate crime more severely. He explained that what had happened in the case, is some African American men had deliberately attacked a man because he was white. Wisconsin determined that it was going to punish the crime more severely because it was a race-based crime. He said that in his decision, Chief Justice Rehnquist expressed concern with the idea that an attack on an individual based on an inherent characteristic could result in a response from the community that would provoke retaliatory crimes, inflict distinct emotional harms on the victims, and insight community unrest.

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REPRESENTATIVE JOSEPHSON said that Chief Justice Rehnquist explained that those kinds of crimes could result in racial infighting based on retaliatory acts and inflict emotional harm. He said that crimes without specifically targeted populations affect all people equally; there is no greater harm to one segment of society. He said the only way to protect a group from a crime, inflicted with the intent to hurt that specific group, is through a statement of community condemnation.

REPRESENTATIVE JOSEPHSON said that he thinks some people think that the legislation proposed under HB 198 would be unfair, as members of a majority population would not "benefit" from it. He expressed that his reaction to that is that it would not be something to begrudge, because no one gets a benefit except for the community "writ large." He said that the victim in a situation like this would have been assaulted feloniously or murdered; an individual would not want to be in a position that he/she would benefit from the proposed legislation, as something "went horribly wrong" if he/she entered that category.

REPRESENTATIVE JOSEPHSON explained that the proposed legislation is about community condemnation. He expressed that Alaska already has 37 "aggravators" and the proposed legislation would add a sexual orientation and gender identity clause to the twenty-second aggravator, which is about race, religion, creed, and nationality; he said that the clause fits in logically with this group. He expressed that the proposed legislation could not be abused by a prosecutor. He explained that current law requires a finding beyond a reasonable doubt that the aggravator should apply, the finding must be made by all 12 jurors who just found the defendant guilty at sentencing, and then the judge

would be the "final backstop," and could decide not to enhance the sentence.

REPRESENTATIVE JOSEPHSON remarked that the City Councils in Kenai and Soldotna, which are most closely connected to the incident that Representative Knopp would be describing in his presentation, voted overwhelmingly, by a vote of 5 to 2, to support HB 198 as the remedy to the solution. He said that 11 members of the Anchorage Municipality, by not taking it off the consent agenda, voted recently to support HB 198.

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REPRESENTATIVE GARY KNOPP, Alaska State Legislature, as co-sponsor provided information regarding HB 198. He expressed that there was no one better than Representative Josephson to explain the details and legalities of the proposed legislation. He stated that he was present to speak about HB 198 because the issue that prompted the proposed legislation happened in his hometown. He said that his Bureau and cities in his District passed overwhelming support for HB 198.

REPRESENTATIVE KNOPP explained that supporters of the Lesbian, Gay, Bisexual, and Transgender (LGBTQ) community held a town hall meeting to address what had happened in his hometown and invited him to attend, which he did; there were approximately 200 people at the meeting. He said that the LGBTQ community requested that he bring the proposed legislation forward, which he said he thinks was a fair and reasonable request. He remarked that he has been asked whether a new class of people is being created by offering support to these people, and he said that is not the case; fair and equal treatment is being extended to all classes of people, regardless of who they are, their beliefs, and how they choose to live their lives.

REPRESENTATIVE KNOPP expressed that he was honored to sit in front of the House Judiciary Standing Committee, as it has two members who worked in law enforcement for most of their careers to fight for equality, and three licensed attorneys who practiced law in support of equal representation. He said that legislators need to try and extend that same equality. He stated that some people can not get over their religious beliefs and express a dislike for the LGBTQ community, and he said that people are not being asked to like the LGBTQ community, only to extend equal treatment to all members of society. He reiterated what Representative Josephson had said regarding the hurdles for applying aggravators; they are enormous.

REPRESENTATIVE KNOPP stated that discrimination is not allowed based on religious beliefs, or hate crimes, without additional penalties. As an example, he asked whether the same thing would apply to a group of Atheists, who didn't have religious beliefs but were targeted in a hate crime. He expressed that the LGBTQ group could be considered in the same category and the proposed legislation would not be creating a special group. He added that he thinks a series of issues relating to hate crimes could come forward in the future, and the legislature's job is to ensure that people are treated equally across a spectrum, regardless of how they live their lives. He expressed that he thinks HB 198 is the appropriate legislation to move.

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REPRESENTATIVE KNOPP stated that it was very clear to him that the attack that took place in Soldotna was a targeted hate crime. He explained that there was a homophobic note, a smashed windshield and damage to the vehicle, and a knife attack which cut the victim up severely requiring many days in the hospital. He said that it was a horrific crime, the attacker was full of hatred, and it quite possibly could have been a murder. He said that these attacks are what he hopes the proposed legislation would prevent and would make it clear that the consequences are severe in a targeted hate crime.

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REPRESENTATIVE JOSEPHSON commented that in the event that the question would arise as to whether there are federal laws that would offer solace or comfort to these victims of hate crimes, the answer is no; he explained that a "federal nexus" or a connection to federal jurisdiction is required. He said that the attack mentioned by Representative Knopp took place at the victim's garage door late at night, the attacker was not there to steal, and the victim was cut badly from the wrist to the elbow on both arms. He expressed that this was a serious felony assault.

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NATHANIEL GRABMAN, Staff, Representative Andy Josephson, Alaska State Legislature, offered a PowerPoint presentation on HB 198, on behalf of Representative Andy Josephson, prime sponsor.

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MR. GRABMAN, referencing slide 2 of the PowerPoint Presentation, explained that aggravating factors in sentencing do not come in to play until after a defendant has been convicted of a crime. He said that AS 12.55.155(c) contains 37 separate factors which can be considered at sentencing and must first be proven, which allows for sentencing beyond the presumptive ranges set out in law. He said that AS 12.55.125(d) contains mitigating factors and the combination of mitigating factors and aggravating factors can cause sentences to be above or below presumptive sentences in some cases.

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MR. GRABMAN, referencing slide 3 of the PowerPoint presentation, explained that aggravating factors exist because motive and details are important, things aren't always in "black and white context," and there are often "far more shades of gray between those extremes." He said that all laws are ultimately reflections of societal attitudes about right and wrong. He remarked that when aggravating factors come into relevance, the defendant has already been convicted and the details are broadly considered to be abhorrent or aberrant from what could be considered a typical crime of that sort.

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MR. GRABMAN, referencing slide 4 of the PowerPoint presentation, stated that HB 198 would amend Aggravator 22, which comes into play when a victim is targeted based on his/her race, sex, color, creed, physical or mental disability, and ancestry or national origin. He said that HB 198 would add the words "sexual orientation or gender identity" to that list.

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MR. GRABMAN, referencing slide 5 of the PowerPoint presentation, explained some of the data from the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program over the last few years. He pointed out that crimes reported to the FBI that were motivated by bias against an individual because of his/her sexual orientation have risen approximately 15 percent from 2015 to 2018. He said that crimes reported based on a bias against someone for his/her gender identity, increased by approximately 30 percent in 2018.

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MR. GRABMAN, referencing slide 6 of the PowerPoint presentation, pointed out that Alaska has not been immune to hate crimes. He said that the events on the Kenai Peninsula occurred over a few weeks in late November and early December of 2019, which prompted HB 198 into existence.

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MR. GRABMAN, referencing slide 7 of the PowerPoint presentation, pointed out the U.S. states that have aggravator laws in place. He expressed that he found it interesting that there are four or five states that do not have aggravator laws, and a majority of states have aggravators relating to sexual orientation and gender identity.

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MR. GRABMAN played a YouTube video that was approximately three minutes long that explained hate crime statistics. [<https://www.cnn.com/videos/us/2019/11/07/hate-crime-statistics-explainer-orig.cnn>]

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CHAIR CLAMAN opened invited and public testimony on HB 198.

[2:50:58 PM](#)

TAMMIE WILLIS offered testimony in support of HB 198, and related information pertaining to an assault that she endured. She stated that on November 14, 2019, she found a note on her truck that was full of homophobic slurs and a threat that she would be hurt. She said that on November 22, 2019, an object was thrown at her truck, which shattered her windshield. She explained that she later learned that the Soldotna police found a rock with the word "dyke" written on it at the location where her windshield was shattered. She said that on December 9, 2019, the situation escalated to include an assault in her home, where she was repeatedly cut with a knife and punched until nearly the entire left side of her body was covered in bruises. She said that her wounds required 20 staples and 2 stitches, and it took almost a month for the bruises to disappear. She expressed that she was lucky that a power outage the morning of the assault made it difficult for her assailant to see her, otherwise she said that she has no doubt the outcome would have been much worse for her.

MS. WILLIS stated that since the assault she has left her home in Sterling and moved into the residence hall at Kenai Peninsula College where she works. She said that she rarely goes out anymore, and when she does it is for short trips typically in the company of a friend. She expressed that she does not sleep well, has panic attacks in the dark, and still wakes her wife up with nightmares. She said that since coming forth with her experience, she has learned the hard way why people are often reluctant to come forward with their stories; she expressed that the outpouring of hatred she has experienced on social media since coming forward "cuts deep, just like the knife did." She said that every news story, every time she testifies, and every time she takes a stand against what happened there is a new outpouring of hate rhetoric that attempts to dismiss her experience altogether.

MS. WILLIS stated that there has also been an outpouring of support from people all over Alaska and the community where she was hurt. She said that this support was clearly demonstrated on January 4, 2020, when 200 people attended a town hall meeting to discuss the safety of the LGBTQ community. She said that religious leaders, community leaders, state leaders, and community members showed her that there were more people willing to take a stand against hate than she had ever imagined. She expressed that these people listened with their hearts open as members of the LGBTQ community shared stories of bullying, harassment, violence, prejudice, and loss due to issues relating to sexual orientation and gender identity. She said that due to listening with open hearts, people came to understand that her experience was not the exception, and that the reality for LGBTQ people living in Alaska includes living with fear, harassment, and the threat of violence.

MS. WILLIS stated that legislation like that proposed under HB 198 would not be needed in an ideal world, but the world is not there yet. She said that what happened to her was a hate crime, and she clarified that a hate crime is a message crime, meant to instill fear in the victim and the group that the victim belongs to. She expressed that until the world is at a place where everyone is treated with respect and dignity, HB 198 would send a clear message from Alaska's leaders that hate and violence are not the values shared as a community; they are not Alaskan values and they will not be tolerated.

MS. WILLIS expressed thanks for the committee listening to her testimony and said that she thinks the proposed legislation is

very important and means a lot to her as a member of the LGBTQ community. She said that she learned in the last week or so that nearly 1,000 people have signed a petition in support of HB 198, many of them members of the LGBTQ community and their allies who have similar stories to hers.

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CHAIR CLAMAN thanked Ms. Willis for her testimony and remarked, "I think I express the sentiment of all members of the committee that what happened to you is not acceptable in any way, and in fact quite horrible, and I'm sorry that you suffered that."

[2:55:04 PM](#)

KAREN LOEFFLER offered testimony in support of HB 198, as former United States Attorney for the District of Alaska. She stated that she wanted to emphasize the points Representative Josephson had made about why it is necessary for the state to move the proposed legislation forward. She explained that the federal government takes a "back seat" to the state on hate crimes; not only do the federal statutes require special jurisdiction, in order for a U.S. attorney in Alaska to take up a hate crime, he/she has to go to Washington and get permission. She stated that it is acknowledged that the government entity responsible for protecting its citizens in these areas is the state. She explained that the proposed legislation would fill in a hole that the federal government also had to fill.

MS. LOEFFLER said that in 2009 the federal legislature enacted the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, which she said involved two murders, "one was a young man killed at the University of Wyoming because he was gay, the other individual was killed in Texas; he was a black man that was dragged behind a truck." She said that the reason the law was passed is because federal law, like Alaska state law, dealt with increased punishments for race, religion, and other things, but did not address the issue of someone who was killed solely because of his/her sexual orientation. She spoke of the danger and lack of safety in communities when individuals are targeted for who they are, which she said was noted by the individual who was the victim of this crime in a way upon which she could never expound.

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CHARLES MCKEE stated, "I support this bill." He then offered further information regarding his experience.

[3:00:28 PM](#)

VIKKI JO KENNEDY, Self-Gramma Brigade, offered testimony in support of HB 198. She said that she had lived with the first legally married lesbian couple in Duval County, Florida, and expressed that she had never received so much kindness and love in her life. She said that she was living with the couple when a massacre happened in Orlando, which devastated the community in that area. She said that she doesn't think that the proposed legislation would stop hate crimes from happening in Alaska, but she thinks it would help in sentencing. She expressed that she was in support of HB 198 and feels very badly for the individual who was attacked in Soldotna. She said that supporting the proposed legislation does not indicate that someone is in support of being gay or not but supports sentencing for people who promote hate. She summarized that "hate is hate," and encouraged that this group of people be added to existing statute, as a group to be protected like everyone else.

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DAVID BRIGHTON offered testimony in support of HB 198. He stated that many people in the LGTBQ community remain anonymous out of fear, many LGBTQ students suffer due to their sexual orientation or gender identity, and the risk of suicide is substantial for young people in the LGBTQ community. He expressed that HB 198 would not solve all the problems, but it would address some of them, and would help the situation. He asked that the committee please support the proposed legislation and take a stand to express that it wants to protect the youth in the LGBTQ community. He stated that he is on the planning committee for Soldotna Pride in the Park, and when he left the last meeting, he was looking over his shoulder to see if he was being followed. He expressed that he had not been in situations where he was afraid of retaliation very often in his life. He said that he has heard people in this debate say that people in the LGBTQ community are looking to be considered "more equal," but he encouraged that it be considered that the proposed legislation would offer more protection for a group of people that are at a higher risk of violence against them.

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NATALI JONES, Itinerant School Counselor, offered testimony in support of HB 198. She expressed that it broke her heart to see that students who had spoken out in Soldotna had not received support from the adults in their community. She said that she thinks, as legislators, the committee has an opportunity to set a standard and expectation of safety. She expressed that she hopes HB 198 gets passed, so that there will be a greater understanding that every person deserves to be safe. She said that as her colleague had just mentioned, the LGBTQ community has one of the highest rates of suicide, because its members live in fear and are marginalized. She said that the LGBTQ community is in a situation in which it is unequal, and the community is asking for the equality and safety which every student, and human, deserves.

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CHAIR CLAMAN, after ascertaining that there was no one else who wished to testify, closed public testimony on HB 198.

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CHAIR CLAMAN announced that HB 198 would be held over for further review.

[3:06:57 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:07 p.m.