

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

March 21, 2019

3:04 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Gabrielle LeDoux
Representative Andi Story
Representative Adam Wool
Representative Sarah Vance
Representative Laddie Shaw

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20

"An Act relating to sexual assault; relating to the definitions of 'without consent' and 'consent'; relating to failure to report a violent crime; relating to sexual misconduct under the code of military justice; requiring law enforcement agencies to test sexual assault examination kits; requiring notification of completion of testing; relating to reports on untested sexual assault examination kits; and providing for an effective date."

- HEARD & HELD

HOUSE CONCURRENT RESOLUTION NO. 4

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to the membership of the Committee on Committees.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 20

SHORT TITLE: SEXUAL ASSAULT EXAMINATION KITS

SPONSOR(S): REPRESENTATIVE(S) TARR

02/20/19	(H)	PREFILE RELEASED 1/7/19
02/20/19	(H)	READ THE FIRST TIME - REFERRALS

02/20/19 (H) STA, FIN
03/11/19 (H) SPONSOR SUBSTITUTE INTRODUCED
03/11/19 (H) READ THE FIRST TIME - REFERRALS
03/11/19 (H) STA, FIN
03/12/19 (H) STA AT 3:00 PM GRUENBERG 120
03/12/19 (H) Heard & Held
03/12/19 (H) MINUTE(STA)
03/14/19 (H) STA AT 3:00 PM GRUENBERG 120
03/14/19 (H) <Bill Hearing Canceled>
03/21/19 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HCR 4

SHORT TITLE: UNIFORM RULES: COMMITTEE ON COMMITTEES

SPONSOR(s): STATE AFFAIRS

03/15/19 (H) READ THE FIRST TIME - REFERRALS
03/15/19 (H) STA, JUD
03/19/19 (H) STA AT 3:00 PM GRUENBERG 120
03/19/19 (H) Heard & Held
03/19/19 (H) MINUTE(STA)
03/21/19 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE GERAN TARR

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented the committee substitute (CS) for SSHB 20, Version G, as prime sponsor, with the use of a PowerPoint presentation.

DAVID KANARIS, Assistant Chief
Alaska Scientific Crime Detection Lab
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SSHB 20, Version G.

ACTION NARRATIVE

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CO-CHAIR ZACK FIELDS called the House State Affairs Standing Committee meeting to order at 3:04 p.m. Representatives LeDoux, Story, Wool, Vance, Shaw, Kreiss-Tomkins, and Fields were present at the call to order.

HB 20-SEXUAL ASSAULT EXAMINATION KITS

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CO-CHAIR FIELDS announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20, "An Act relating to sexual assault; relating to the definitions of 'without consent' and 'consent'; relating to failure to report a violent crime; relating to sexual misconduct under the code of military justice; requiring law enforcement agencies to test sexual assault examination kits; requiring notification of completion of testing; relating to reports on untested sexual assault examination kits; and providing for an effective date."

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REPRESENTATIVE GERAN TARR, Alaska State Legislature, as prime sponsor of SSHB 20, expressed her intention to explain the changes put forth by the committee substitute (CS), Version G.

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CO-CHAIR KREISS-TOMKINS moved to adopt the proposed committee substitute (CS) for SSHB 20, Version 31-LS0253\G, Radford, 3/21/19, as the working document. There being no objection, Version G was before the committee.

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REPRESENTATIVE TARR began with slides 3 and 4, entitled "Mental State in Criminal Code," and reminded the committee of the standard language used by the drafter of the original version of SSHB 20 - "should know or should reasonably know" - which would be replaced in the CS with language that was more consistent with existing statutes. This language adheres to the four phases of mental state as it relates to criminal law, which are "intentionally," "knowingly," "recklessly," or "criminal negligence." She stated that the "reckless disregard" standard has been recommended by the Department of Law (DOL) and is defined on slide 4 as follows:

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a

gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

REPRESENTATIVE TARR turned to slides 5-7 and relayed that Version G replaces "or reasonably should know" with "or recklessly disregards" in Sections 1-3 to be consistent with the standards that are currently used in criminal law.

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REPRESENTATIVE TARR related that Sections 4-7, which address "consent," have been set aside for further consideration of the definition of consent. She explained that the implications are far-reaching; they represent a cultural shift; and significant work has been accomplished in the last few years in connection with the Me Too movement [a movement against sexual harassment and sexual assault]. She reminded the committee that currently "consent" is defined in terms of "without consent" rather than in the affirmative - "giving consent." She said that more time is needed to ensure that the priorities of the advocacy groups are considered, as well as model language from other states. She maintained that the proposed legislation has defined "consent" as overt actions that express consent; however, there are other aspects of the definition that need further attention. Examples of additional definition for consideration are as follows: having been previously engaged in a relationship does not imply consent; consent may be given and taken away in the same sexual encounter; physical state may imply physically incapable of giving consent.

CO-CHAIR FIELDS expressed his desire for something in writing from a prosecutor stating that the "recklessly disregard" standard would be adequate to prosecute someone who raped an incapacitated person. He suggested that "recklessly disregard" is too high of a standard. He offered the example of an inebriated person who raped someone who was incapacitated. He asked, "Is it reckless disregard if you yourself are inebriated?"

REPRESENTATIVE VANCE expressed concern with changing the wording from "who" to "when" so that it states, "when the offender knows." She asked, "What if they say, 'Well, I didn't know.'?" She asked whether that would automatically make the crime not a crime.

REPRESENTATIVE TARR responded that in redefining sexual assault in the second degree, [AS 11.41.420(a)] currently reads, in part, as follows:

- (a) An offender commits the crime of sexual assault in the second degree if
- (1) the offender engages in sexual contact with another person without consent of that person;
 - (2) the offender engages in sexual contact with a person
 - (A) who the offender knows is mentally incapable;

REPRESENTATIVE TARR, in response to Representative Vance, relayed that under Version G, no language would be eliminated; "who the offender knows is mentally incapable" would be replaced with "the offender knows or recklessly disregards that the other person is mentally incapable". Using this language would more clearly define the circumstances in which it would be applied. In response to Representative Fields, she said that one of the challenges regarding crimes involving two individuals with competing stories is that the standard should not be so low as to allow too much opportunity to avoid prosecution, but not so high that the standard cannot be met. She agreed that the committee should hear testimony from DOL.

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CO-CHAIR FIELDS suggested that the original version of SSHB 20, updated an anachronistic definition of "consent" regarding intercourse with children. He asked, "Why would we not ... update that anachronistic language?"

REPRESENTATIVE TARR answered that staff is attempting to update all of the sections, which include the failure to report [a violent crime committed against] a child, the failure to report [a violent crime committed against] an adult, the military code of justice, and the overall definition of consent. She maintained that updating the statutes is a significant undertaking; every word is important in terms of its implication and how it is applied in a courtroom; and the effort will be a significant accomplishment by the legislature.

REPRESENTATIVE TARR referred to slide 8, entitled "Section 4: Sexual Assault Examination Kits," and discussed the three requirements, shown on the slide as follows:

1. That all sexual assault examination kits are sent to the crime lab within 30 days of collection
2. That all sexual assault examination kits be tested within one year
3. That victims be notified by law enforcement within two weeks of receiving the results that the kit has been tested

REPRESENTATIVE TARR explained that the only change under Version G is the requirement that kits be tested within one year instead of six months. She expressed her desire that there be a 30-day standard; it is the best practice to which states aspire. She mentioned that when her office began this effort four years ago, the length of time for the testing of kits was 18 months; currently the average is 10 months. She maintained that meeting a six-month timeline would require additional staffing, which is reflected in the fiscal note (FN); it would require a policy decision and support from the legislature to add these new positions. She relayed that personnel at Alaska's Scientific Crime Detection Laboratory ("crime lab") [Department of Public Safety (DPS)] indicated that with existing staffing, they can meet the one-year testing timeline. She asserted that shortening the timeline for testing would be an important improvement to public safety; the aggressive timeline was intentional in order to attach the corresponding FN and address the fundamental questions: What means justice? What is justice for a victim? How long should a victim have to wait?

CO-CHAIR FIELDS expressed his viewpoint that one year is too long [to wait for a sexual assault examination kit to be tested]; he would prefer the proposed legislation stipulate six months.

REPRESENTATIVE STORY stated that she also would like a shorter time frame, and it is important to have the information about additional cost for meeting the six-month timeline. She maintained that it is important for the victim to be kept abreast of the progress regarding the processing of the kit and the timeline.

REPRESENTATIVE WOOL stated that he supports kits being tested as soon and as quickly as possible. He maintained that legislators do not know the workload of the crime lab personnel; state agency [budgets] have been cut for many years. He expressed his belief that arbitrarily setting timelines is irresponsible.

REPRESENTATIVE VANCE relayed that it is exciting to hear that DPS has been trying to expedite the process and has made significant improvements. She expressed that it would be helpful to know the costs and demands that the timeline would impose on DPS; however, this issue is just one piece of the criminal justice system, and a shorter timeframe does not ensure that the other pieces of the system would automatically be expedited. She said that she supports being provided with information on the whole picture of what justice would look like in a sexual assault case to ensure that funds are not being taken from one piece and injected into another piece without improving the whole system.

CO-CHAIR FIELDS asked to hear from crime lab personnel regarding the feasibility of the six-month time period.

REPRESENTATIVE TARR interjected that the forthcoming FN for the six-month timeline would show a cost of \$662,200.

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DAVID KANARIS, Assistant Chief, Alaska Scientific Crime Detection Lab, DPS, relayed that that the FN reflects the addition of four positions, which is the estimated additional staff needed to meet the timeline of six months. He acknowledged that six months is a significant delay and his hope is to shorten it eventually. He said that he wishes to create a dedicated sexual assault team whose only function would be to process the kits as soon as possible; to do that, the lab would need three forensic scientists and one forensic scientist supervisor to handle all the case management and associated case information.

REPRESENTATIVE TARR relayed that in the FN, the four positions would cost \$453,200; the consumables needed to process an additional 120 kits would cost \$122,000. She stated that she supports the costs associated with the six-month timeline; however, if the \$662,000 is not appropriated, then the process time would be one year.

REPRESENTATIVE TARR, in response to Representative Vance, stated that due to budget cuts, DOL was short 27 positions; consequently about 7,000 sexual assault cases were left unprosecuted over a two-year period. She said that at that time, DOL prioritized homicides, sexual assaults, and abuse of minors; however, at the same time, Anchorage had a spike in homicides. The reduction in staffing and the increase in more difficult cases for prosecution resulted in the two-year time frame. She agreed with Representative Vance that other pieces of the system have an impact. She offered that five more prosecutors were added to staff last year.

REPRESENTATIVE TARR continued with slide 8 and drew attention to the new subsections (b) and (c) under Section 4 of Version G [page 4, lines 18-23]. She read from the slide as follows [original punctuation provided]:

New: (b) criminal action can not be dismissed if
deadline not met

(c)If case is resolved before kit is tested, timeline
does not apply (plea deal)

REPRESENTATIVE TARR explained that subsection (b) would address the concern that the crime lab or a law enforcement agency failing to meet a deadline might impact a case negatively. Under Version G, this would not be allowed to occur. She added that subsection (c) addresses the possibility of a plea deal occurring before a kit is tested.

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REPRESENTATIVE TARR referred to slides 9 and 10, which address Section 5 and Section 6 of Version G, and stated that in these two sections language was added to require the reason a kit was not tested [to be added to the report to DPS]; Section 5 involves preparation of the report, and Section 6 involves delivering the report to the legislature.

REPRESENTATIVE TARR turned to slide 11, which addresses Section 7 of Version G, to direct attention to the actual wording used in the Sexual Assault Kit Initiative (SAKI) reports for why a kit was not tested. She maintained that using this language would make statutes consistent with sexual assault examination kit reporting practices. The language was shown on slide 11, as follows:

A sexual assault examination kit is ineligible for testing if the law enforcement agency or state department finds that the sexual assault examination kit

(1) Is scientifically unviable

(2) Does not meet eligibility requirements for inclusion in the combined DNA Index System Database; or

(3) Was collected from a person who wishes to remain anonymous

REPRESENTATIVE TARR moved on to slide 12, entitled "Section 8: Applicability," and stated that under Version G, the applicability of the proposed legislation would apply to offenses committed on or after the effective date. She turned to slide 13, entitled "Section 13: Effective Date," and stated that under Version G, the effective date would be January 1, 2021, to allow ample time for implementation.

REPRESENTATIVE TARR, to address Representative Story's question about victim notification, said that staff struggled with how to address this issue. She mentioned software that allows access to a sexual assault examination kit database using a secure login and unique identifier to track the kit. She stated that the software costs \$135,000 to purchase and maintaining the database costs \$80,000 per year. She maintained that tracking becomes less important as the timeframe is truncated. She offered that with the one-year timeline, set by Version G, it becomes a question of where the state wants to expend its funds. She maintained that her preference is to use funds to hire staff in the hope that with more timely processing, notification of victims becomes less of an issue. She suggested that with a two-year wait for test results, a victim, who must continually call and retell his/her story, is re-traumatized. She mentioned that Version G would require that law enforcement notify the victim within two weeks.

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REPRESENTATIVE STORY expressed that it is very important for victims to be informed timely.

CO-CHAIR FIELDS stated that SSHB 20, Version G, would be held over.

HCR 4-UNIFORM RULES: COMMITTEE ON COMMITTEES

[3:31:54 PM](#)

CO-CHAIR FIELDS announced that the final order of business would be HOUSE CONCURRENT RESOLUTION NO. 4, Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to the membership of the Committee on Committees.

[3:32:03 PM](#)

The committee took an at-ease from 3:32 p.m. to 3:34 p.m.

[3:33:37 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 1, [labeled 31-LS0673\S.1, Wallace, 3/15/19], which read:

Page 1, line 12, following "committee":

Insert "**and the Committee on Committees,**"

CO-CHAIR FIELDS objected for the purpose of discussion.

REPRESENTATIVE VANCE relayed that she supports the intent of HCR 4 to make the Uniform Rules conform with legislative practices and to allow for the appointment of at least five members on the Committee on Committees, but not to exceed 25 percent of the total house membership. She stated that under the proposed amendment, the Committee on Committees would be entitled to the number of seats proportional to the number of minority members, like the appointment of members of standing committees. She offered that such a proportional makeup of the Committee on Committees would be equitable. She said, "Our democracy is designed to protect the voice of the minority." She expressed her belief that legislative conduct should reflect that principle.

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CO-CHAIR KREISS-TOMKINS stated that he opposes Amendment 1 but not because he opposes the sentiment behind the amendment. He explained that HCR 4 was developed in consultation with the leaderships of the House and Senate; it offers an intentionally narrow and prescriptive approach. He maintained that because of the alignment of the leadership of both bodies to draft the resolution, he is hesitant to make any additional changes to the

Uniform Rules than what was discussed. He offered that the Committee on Committees is a "different animal"; it has no policy-making power; it is entirely appointed by the presiding officer - the President of the Senate or the Speaker of the House; and there is effectively no deliberation that occurs in the Committee on Committees. He mentioned that he understands on a symbolic level the importance of minority representation. He said it is worth noting that the minority leader of the Senate has a seat on the Senate Committee on Committee; that is not true for the House. He reiterated that a proportional representation on the Committee on Committees would be a symbolic gesture and one to which he is sympathetic.

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REPRESENTATIVE WOOL asked for confirmation of his understanding: by statute, the Committee on Committees in the House is to have five members; currently it has seven; the proposed resolution would specify at least five members; if seven, all seven can be from the majority; and the Senate allows one minority member to serve on its Committee on Committees.

CO-CHAIR KREISS-TOMKINS replied, "That is correct." He added that the presiding officer appoints the entirety of the Committee on Committees. The President of the Senate appointed the Senate minority leader to the Committee on Committees.

REPRESENTATIVE WOOL asked for the number of members on the Senate Committee on Committees.

CO-CHAIR KREISS-TOMKINS answered, "There are five members on the Senate Committee on Committees."

CO-CHAIR FIELDS relayed that he supports the amendment and would consider it as a separate Uniform Rules change.

REPRESENTATIVE LEDOUX commented that she thought [former] Representative [Charisse] Millet served on the Committee on Committees last year [2018].

CO-CHAIR KREISS-TOMKINS stated that he thought that was correct. He offered that he would be willing to work with Representative Vance to gauge the support of the House and Senate leaderships for her proposed rules change; if there is alignment from the leadership of both bodies, he would support it.

REPRESENTATIVE VANCE suggested that offering amendments to be heard in committee, in fact, is the process for getting input from the legislative bodies. She relayed that she approached legislators with more seniority and the Speaker of the House about this issue. She expressed that her reason for offering the amendment is that when passing legislation or adjusting the Uniform Rules, legislators should not think just about the current situation, but about the future; circumstances change and leaders change; it is an opportunity to make improvements now, not later.

REPRESENTATIVE LEDOUX expressed her belief that every committee member in House State Affairs Standing Committee supports the amendment; therefore, they would not want to hold up the resolution. She suggested that the committee pass the amendment, discuss it with the leadership, and if it is not supported, it can be changed in the next committee of referral - the House Judiciary Standing Committee.

CO-CHAIR KREISS-TOMKINS offered that Representative LeDoux has made a good point. He said that his preference would be to have the conversations with leadership first before passing the amendment, although either order would work. He mentioned that there is no rush to pass the resolution; it is a "housekeeping" measure. He offered to approach the House and Senate leaderships about amenability to incorporate the amendment [into the resolution]. In response to Co-Chair Fields, he confirmed his desire to hold over the resolution.

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REPRESENTATIVE WOOL relayed that he supports that decision; he does not like to pass on resolutions to be "fixed" in the next committee; and the resolution could fail due to the amendment. He stated that he remembers the Committee on Committees having minority members in the past - possibly as a courtesy; it is not a policy committee, but a committee to facilitate the Speaker in appointing committees. He speculated that the committee had changed from five to seven members to add two minority members.

REPRESENTATIVE SHAW suggested voting on the amendment so that it would be considered in the next committee.

CO-CHAIR FIELDS clarified that Representative Kreiss-Tomkins has suggested that the resolution not be reported from the committee to give him time to discuss it with leadership. He maintained that he supports the amendment, if it doesn't stop the

resolution from going forward. He asked Representative Vance whether she supports holding the resolution over and discussing it with leadership.

REPRESENTATIVE VANCE concurred with that plan of action and stated that if leadership does not support the amendment, she would withdraw the amendment.

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CO-CHAIR FIELDS opened public testimony on HCR 4. After ascertaining that no one wished to testify, he closed public testimony.

CO-CHAIR FIELDS stated that HCR 4 would be held over.

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ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:48 p.m.