

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

April 12, 2019

9:33 a.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Gabrielle LeDoux
Representative Andi Story
Representative Sarah Vance
Representative Laddie Shaw

MEMBERS ABSENT

Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Adam Wool

COMMITTEE CALENDAR

HOUSE BILL NO. 33

"An Act relating to defenses to sexual assault; and relating to registration of sex offenders."

- MOVED CSHB 33(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 33

SHORT TITLE: SEXUAL ASSAULT; SEX OFFENDER REGISTRATION

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

02/20/19	(H)	PREFILE RELEASED 1/11/19
02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	STA, JUD
04/11/19	(H)	STA AT 3:00 PM GRUENBERG 120
04/11/19	(H)	Scheduled but Not Heard
04/12/19	(H)	STA AT 9:30 AM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE MATT CLAMAN

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 33, Version S, as prime sponsor.

LIZZIE KUBITZ, Staff

Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the sectional analysis for HB 33, Version S, on behalf of Representative Claman, prime sponsor.

ACTION NARRATIVE

[9:33:12 AM](#)

CO-CHAIR ZACK FIELDS called the House State Affairs Standing Committee meeting back to order at 9:33 a.m. Present at the call back to order were Representatives LeDoux, Story, Vance, Shaw, and Fields.

HB 33-SEXUAL ASSAULT; SEX OFFENDER REGISTRATION

[9:33:47 AM](#)

CO-CHAIR FIELDS announced that the only order of business would be HOUSE BILL NO. 33, "An Act relating to defenses to sexual assault; and relating to registration of sex offenders."

[9:34:41 AM](#)

REPRESENTATIVE SHAW moved to adopt the committee substitute (CS) for HB 33, [Version 31-LS0292\S, Radford, 4/8/19], as the working document. There being no objection, Version S was before the committee.

[9:34:57 AM](#)

REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, as prime sponsor of HB 33, Version S, paraphrased from the sponsor statement, included in the committee packet, which read:

House Bill 33 clarifies that a person who is convicted of a sex crime and required to register as a sex offender in another state is also required to register as a sex offender in Alaska. Under HB 33, sex offenders and child kidnappers who have been convicted in other states (outside Alaska) would have to register in Alaska databases if they are residing in the state. This clarification will bring more accountability for people who otherwise might not have a state record.

House Bill 33 also removes a legal defense to sexual assault that currently exists in state law. In certain limited circumstances, current law still allows a perpetrator of sexual assault to use marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is mentally incapable, incapacitated, or unaware that the sexual act is being committed. HB 33 removes this defense.

Over the last few months, Alaskans have read heinous reports of sexual assault and violence at the local, state, and national level. By proposing amendments to improve Alaska's sexual assault and sex offender registration statutes, concerned community members can trust that the legislature is listening and taking important steps to update our laws to improve public safety.

REPRESENTATIVE CLAMAN explained that Version S clarifies that an out-of-state juvenile offender who was charged and adjudicated as a minor in that state and was required by that state to register as a sex offender is not required to register as a sex offender in Alaska. Alaska does not require juvenile sex offenders to register; a court may find that the Alaska privacy law protects that information.

[9:37:08 AM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, on behalf of Representative Claman, prime sponsor of HB 33, Version S, reviewed the sectional analysis, included in the committee packet, which read:

Section 1

AS 11.41.432(a) - Defenses.

Removes marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is mentally incapable, incapacitated, or unaware that the sexual act is being committed.

Section 2

AS 12.63.010(d) - Registration of sex offenders and related requirements.

Conforming amendment. Amends AS 12.63.010(d) to reflect change made in Section 3 of the bill.

Section 3

AS 12.63.020 - Duration of sex offender or child kidnapper duty to register.

Amends AS 12.63.020 to clarify that a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction is also required to register as a sex offender in Alaska.

Section 4

AS 12.63.100(6) - Definitions.

Adds a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction to the definition of "sex offender or child kidnapper."

Section 5

Uncodified law

This section contains applicability provisions.

[9:39:09 AM](#)

REPRESENTATIVE VANCE asked how the sex offender registration is enforced and how the state knows whether sex offenders coming into the state are compliant.

REPRESENTATIVE CLAMAN replied that all states have sex offender registration requirements. Typically, when those who are required to register in one state move to another state, they must enquire about registering with the state's department of public safety. He relayed that there are Alaska laws regarding failure to register; non-registration is a felony. He said that he cannot speak to the level of investigative resources dedicated to enforcing the laws; it is a question for the Department of Public Safety (DPS).

REPRESENTATIVE VANCE maintained that identifying sex offenders and enforcing the laws is a matter of public trust. She referred to page 4, line 3, of Version S, which read, "provide for tolling of the registration period ..." and asked what "tolling" meant.

REPRESENTATIVE CLAMAN explained the tolling provision with the following example: A sex offender, who comes into Alaska on January 1st and is registered in the state from which he/she came, would be required to register in Alaska for the next year. If that person failed to register, the duty to register would continue even if the obligation to register based on the out-of-state conviction ended January 1st of the following year. The tolling provision states that the person, who was required to register for the year in Alaska and did not, may not claim that year [for fulfilling the registration obligation]. The sex offender would have to register in Alaska, even though he/she may not have needed to register if just arriving at the end of the second year.

[9:43:41 AM](#)

REPRESENTATIVE VANCE asked Representative Claman to speak to the need for removing marriage as a defense under Version S.

REPRESENTATIVE CLAMAN explained that currently for consenting, functioning adults, marriage is not a defense for sexual assault. Under Version S, the removal of marriage as a defense strictly relates to situations in which the spouse is incompetent. The situation arises among the elderly with significant mental disease and disorders, those with dementia, those who are highly intoxicated, and people who have overdosed on drugs. He reiterated that Version S does not change existing law under which marriage is not a defense for sexual assault.

[9:46:22 AM](#)

REPRESENTATIVE LEDOUX asked whether there can no longer be sexual relations between married people if one or the other is afflicted with dementia.

REPRESENTATIVE CLAMAN replied that Quinlan Steiner [Director, Public Defender Agency (PDA), Department of Administration (DOA)] pointed out that the question is still an active topic; a person suffering from dementia may consent to many things besides sexual relationships.

REPRESENTATIVE LEDOUX gave an example: A husband and wife go to a party; they both become very intoxicated; they are entitled to go to bed together because it is their bed. She expressed her concern that the proposed legislation provides a "bludgeon" in divorce court.

REPRESENTATIVE CLAMAN relayed a story that he heard: Two married people are in exactly the situation Representative LeDoux described; they have sex; and the next morning one is upset, and the other doesn't remember anything. He said that typically such instances don't lead to criminal charges, but hopefully to counseling sessions. He stated that what constitutes consent and not consent in those circumstances is difficult; incapacity goes to the question of the ability to consent.

REPRESENTATIVE LEDOUX expressed that while the hope is that such an event would not lead to criminal charges, it appears to her that is exactly what Version S is designed to do. She asked what prompted that provision in the proposed legislation.

REPRESENTATIVE CLAMAN answered that these issues arose in questions responding to the Schneider case [Justin Schneider was convicted of kidnapping and assault for an August 15, 2017, incident in Anchorage]. The Department of Law (DOL) identified the current status of the marriage defense of incapacitated persons as an issue that needed review.

[9:50:41 AM](#)

REPRESENTATIVE STORY offered her support for the proposed legislation requiring the registration of sex offenders and appreciation for the concerns regarding enforcement. She expressed that she understands why the changes under Section 1 of Version S need to be in law; there are complicated issues; however, that is why we have counsel.

REPRESENTATIVE VANCE asked how Version S relates to the Schneider case, considering the two people involved in that incident were not married.

REPRESENTATIVE CLAMAN stated that Representative Vance was correct in that Mr. Schneider was not married to the woman that he assaulted. He stated that when an event in the public raises questions about the status of Alaska criminal law, it is not uncommon for the legislature to look at other laws to see if other areas of law need change, even though the facts of that case have no particular relation to the changes proposed under Version S. He offered that what the Schneider case did was to cause the public to demand the legislature look for other issues and loopholes in Alaska sexual assault statutes. When researched, he found that the loophole that allowed Schneider not to be charged with a sexual assault exists in 49 of the 50

states. He stated that the topic of the marriage defense was reviewed to determine whether there were situations in which it should continue to exist.

REPRESENTATIVE VANCE relayed the larger precept: In the marriage agreement, there is an assumed consent; however, being mentally incapable infringes on that individual's right to their security; that is, if one person in the marriage is mentally incapacitated, the original contract of marriage cannot breach one's individual right to give consent. She asked if her understanding was correct.

REPRESENTATIVE CLAMAN responded, "You pose an interesting question." He expressed his belief that as a legal matter, Alaska and all 50 states no longer consider marriage a blanket consent; people must consent every day.

[9:57:14 AM](#)

REPRESENTATIVE LEDOUX acknowledged that marriage does not presuppose consent to rape; however, Version S seems to regulate the situation she related - of the married couple, both inebriated, having sexual relations, one being upset in the morning, and the other not remembering the incident. She stated that she is not sure she supports the proposed legislation.

MS. KUBITZ responded that the discussion has been focused on marriage; however, the scenarios happen in many different relationships for which there are no dedicated statutes. She mentioned that although Version S addresses spousal rape, committee members are discussing many other scenarios.

REPRESENTATIVE LEDOUX expressed that she understands that the issue arises in other scenarios; they become "he said she said" cases. She maintained that in those other scenarios, consents must be given at each stage; whereas, two people who share one bed [through co-habitation] and who are drunk [presents a scenario apart from the others].

[9:59:49 AM](#)

REPRESENTATIVE VANCE expressed her concern for people's individual rights and protecting freedoms. She asked for more time to review Version S.

REPRESENTATIVE STORY referred to the sectional analysis of Section 1 of Version S, which read:

Removes marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is mentally incapable, incapacitated, or unaware that the sexual act is being committed.

REPRESENTATIVE STORY relayed that the public would agree with this provision as a "bottom line," regardless of the various issues.

REPRESENTATIVE SHAW agreed that even though there may be a hundred debatable scenarios, the bottom line is self-explanatory. He said he supports the proposed legislation.

REPRESENTATIVE CLAMAN offered his availability to discuss the legislation with committee members in more detail.

[10:04:44 AM](#)

REPRESENTATIVE SHAW moved to report CS for HB 33, Version 31-LS0292\S, Radford, 4/8/19, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB(STA) was reported from the House State Affairs Standing Committee.

[10:05:04 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:05 a.m.