

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

February 4, 2020

3:01 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Grier Hopkins
Representative Andi Story
Representative Steve Thompson
Representative Sarah Vance
Representative Laddie Shaw

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 198

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

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 182

"An Act relating to testing of sexual assault examination kits; and providing for an effective date."

- 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

BILL: HB 182

SHORT TITLE: SEXUAL ASSAULT EXAMINATION KITS: TESTING

SPONSOR(s): REPRESENTATIVE(s) TARR

01/21/20 (H) PREFILE RELEASED 1/10/20
01/21/20 (H) READ THE FIRST TIME - REFERRALS
01/21/20 (H) STA, FIN
01/27/20 (H) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/27/20 (H) READ THE FIRST TIME - REFERRALS
01/27/20 (H) STA, FIN
02/04/20 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE ANDY JOSEPHSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 198 as prime sponsor.

REPRESENTATIVE GARY KNOPP, Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 198 as a co-sponsor.

NATHANIEL GRABMAN, Staff
Representative Andy Josephson
Alaska State Legislature

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

KAREN LOEFFLER
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 198, as a former U.S. Attorney for the District of Alaska.

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SSHB 182, as prime sponsor, with the use of a PowerPoint presentation.

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

POSITION STATEMENT: Answered questions during the hearing on SSHB 182.

ACTION NARRATIVE

3:01:08 PM

CO-CHAIR ZACK FIELDS called the House State Affairs Standing Committee meeting to order at 3:01 p.m. Representatives Story, Thompson, Vance, Shaw, Fields, and Kreiss-Tomkins were present at the call to order. Representative Hopkins arrived as the meeting was in progress.

HB 198-AGGRAVATING FACTORS AT SENTENCING

3:01:49 PM

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

3:02:21 PM

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor of HB 198, relayed that the proposed legislation would create a modified statutory aggravator based on gender identity and sexual orientation in paragraph (22) of the aggravators [listed under AS 12.55.155(c)]. He said approximately 32 states recognize some form of specific legal safeguard within their respective criminal codes for persons of the lesbian, gay, bisexual, transgender (LGBT) community or some subset of the same. "Essentially 32 touch on some sort of criminal aggravator in that larger cohort." It is accomplished by providing a sentencing enhancement - or aggravator - in cases in which the victim was targeted because of the individual's gender identity or sexual orientation status. He mentioned that "targeted" is self-explanatory.

REPRESENTATIVE JOSEPHSON explained that the enhanced sentence could be perceived as either a deterrent to misconduct by a perpetrator or protection of same sex orientation persons - a historically victimized group of Americans. Alaska law lacks any provision offering further deterrents - or punishment - to defendants who target persons based on their gender identity or orientation status. He lamented that sadly it sometimes takes a horrific and unfortunate event to engender willingness to provide a public statement in support of enhanced sanctions for the targeting of persons based on qualities inherent in them. Alaska recently experienced that type of incident.

REPRESENTATIVE JOSEPHSON continued by saying that typically when a person is victimized by a felony outside of any targeting

related to his/her race, sex, disability, or such, a presumptive statute applies and the greater society - while angered and frustrated - is not specifically imperiled. He stated:

If we all see on the local news or read in the paper that there was an assault, often we ask ourselves was the person ... arrested and detained, and we are relieved when we hear they were. And if you're not in some defined protected group, you may view it in a certain way as well. That is, if it was a crime of a general nature, not targeting any specific group, then ... the normal human reaction is to say, "We have a crime problem," but to be more relaxed certainly once an arrest is made, but not suffer the anxiety that goes with realizing the person who was targeted is a person whose group I'm in too.

REPRESENTATIVE JOSEPHSON relayed that where there are indications that a subset of society is an intentional target of attack, that group can feel particularly threatened and with cause. He mentioned [the 1993 U.S. Supreme Court case] Wisconsin v. Mitchell - a case involving a white victim attacked by African Americans. The Wisconsin Supreme Court asserted that the legislature cannot have a constitutional law that aggravates a sentence. Chief Justice [William] Rehnquist gave the opinion that "hate crimes" are constitutional; he was concerned that such crimes could create a state of anxiety that legislators should feel free to protect.

[3:06:41 PM](#)

REPRESENTATIVE JOSEPHSON further stated that presently there are 37 different sentencing enhancements in Alaska law that allow the court to add sentence time beyond the statutory presumptive period. Currently AS 12.55.155(c), paragraph (22), specifies that a sentence can be aggravated where "the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin"; under HB 198, five words would be added - "sexual orientation or gender identity". He said that Alaska is one of the 45 states that have hate crimes, but not one of the 32 states that include gender identity and sexual orientation [as a basis for a hate crime].

REPRESENTATIVE JOSEPHSON added that under HB 198, the crime would be charged as usual, and the prosecutor would be required

to announce the he/she will seek an aggregator. He said that under the U.S. Supreme Court decision, in most instances the same 12 jurors that made a felony conviction would be required to determine whether beyond a reasonable doubt an aggravator has been proven; that is, there was some hostility or hatred of that targeted person.

[3:09:17 PM](#)

REPRESENTATIVE GARY KNOPP, Alaska State Legislature, as a co-sponsor of HB 198, relayed that the incident that prompted the proposed legislation occurred in his community. He stated that the LGTB community is broadly defined and has grown across the state. He was surprised to see 200 people attend a town meeting in support of the LGBT community; the request of the group was that the list of hate crime aggravators be expanded to include sexual orientation and gender identity.

REPRESENTATIVE KNOPP described the three incidents that occurred to the victim, Tammie Willis: a homophobic note was found on her vehicle; her vehicle windshield and front end were smashed in by a large boulder; and she was attacked at home by knife and severely injured. He maintained that a prosecutor has a huge hurdle to overcome in providing proof of an aggravator. He said that the proposed legislation is in response to a request from his community. To people who suggest that he is creating a "new class of people" with special protections, he responds that they are the same protections that are extended to any class of people. He said that he expects that the list of aggravators in statute will increase over time. He referred to the "discrimination bill" [House Bill 184, introduced in the Thirtieth Alaska State Legislature, (2017-2018)] and emphasized that "we don't discriminate in this day and age for any reason."

REPRESENTATIVE KNOPP offered that some people don't like the LGBT community; he is not asking them to like the LGBT community; however, he is advocating that individuals in the LGBT community are entitled to the same protection as other groups.

[3:13:25 PM](#)

REPRESENTATIVE JOSEPHSON suggested getting data from the Department of Law (DOL) on the number of times - out of 37 aggravators - paragraph (22) is the basis for an increase in sentence above the presumptive range. He expressed his belief that the use of paragraph (22) [in sentencing] is very uncommon

and maintained that the use of sexual orientation or gender identity as an aggravator also would be uncommon; however, he stated, "You need it when you need it, because if you don't have it, then you're effectively saying this is just a typical assault, when it's not a typical assault." He further maintained that it is common in the criminal code to rely on the facts to tell as best they can what is transpiring in the mind of the assailant or offender. An example is a premeditated homicide versus a homicide committed in a state of impassioned fury; the premeditated homicide is treated more severely. He added, "Here you're talking about the targeting of someone in a very deliberate way, systematic way."

CO-CHAIR FIELDS asked Representative Knopp to discuss the resolution passed by the City of Soldotna in support of HB 198.

REPRESENTATIVE KNOPP replied that the City of Soldotna passed a resolution in support of the proposed legislation; the meeting of about 200 people included many public officials from both Kenai and Soldotna, as well as broad support. The City of Kenai will consider a similar resolution tomorrow [2/5/20].

[3:16:27 PM](#)

REPRESENTATIVE VANCE asked why sexual orientation and gender identity do not fall under "sexual discrimination," which is already in statute.

REPRESENTATIVE JOSEPHSON responded that the issue is currently before the U.S. Supreme Court. The essence of the dispute is: the [President Barak] Obama administration's position was that "sex" could include gender identity and sexual orientation; the [President Donald J.] Trump administration has declared that it absolutely does not. The dispute before the U.S. Supreme Court is not about a criminal matter; however, one might argue that the standard for defending an appellate review would be stricter in a criminal case, because someone's freedom is at stake. The court would interpret the law narrowly, and most likely a challenge to a ruling based on gender identity and sexual orientation being included under "sexual discrimination" would fail. He expressed his belief that [as the statute is written] Ms. Willis would not see her assailant suffer any additional sentence.

[3:18:55 PM](#)

REPRESENTATIVE VANCE suggested that in view of "sexual discrimination" being narrowly defined by the courts, definitions for sexual orientation and gender identity should be added to the statute.

REPRESENTATIVE JOSEPHSON expressed his belief that no definitions were included for any of the aggravators - creed, disability, and so on. He suggested that to do so would be burdensome and provocative; "it would needlessly delay the movement of the bill in a way that ... misses the point." He maintained that what is being discussed here is: "What's in the mind of the defendant?" He said that it is less important whether someone truly was a same sex-oriented person; what is important is that the defendant believed the person was. He stated that there are many instances for which the Alaska Supreme Court goes to the dictionary for definitions. He suggested that Representative Vance could offer a definition; however, he opined that it is not required.

REPRESENTATIVE VANCE expressed that before the law is imposed on the members of a jury, the [parameters] of the terms should be narrowly defined. Deciding what a defendant is believing or thinking is a heavy burden on jurors; the legislature should provide the scope of what the legislative intent is.

[3:21:55 PM](#)

REPRESENTATIVE HOPKINS asked Representative Knopp what the note on Ms. Willis's vehicle said.

REPRESENTATIVE KNOPP replied he did not remember exactly. He confirmed that the note referred to the victim's sexual orientation, not gender. In response to Representative Vance, he said that in conversations with lawyers, they confirmed the distinction - not hating a person because of gender but because of being gay or having had a transgender operation. He mentioned that the lawyers said, "That's the difference. You don't necessarily hate the "sex," but you do when they modify their behavior in that sense." He maintained that is the reason for needing "sexual orientation" in the proposed legislation. He added that the perpetrator acts on his/her hatred; it's not just a single act, but repeated acts; and not something he/she would do against any other male or female.

REPRESENTATIVE JOSEPHSON said that to be clear, the definitions follow the chapter. He referred to the definitions for the chapter listed under AS 12.55.185 and pointed out that race,

sex, color, creed, physical or mental disability, ancestry, and national origin are not defined. He maintained that the state has had this list of aggravators for decades, and there has been no need to define the terms. He opined that defining the terms is unnecessary.

CO-CHAIR FIELDS commented on the incident.

[3:26:16 PM](#)

CO-CHAIR KREISS-TOMKINS asked whether the DOL Criminal Division has been consulted to answer the question of whether the current hate crime laws would encompass the incident in Soldotna. He expressed his agreement with Representative Josephson's understanding that they would not; however, a DOL opinion might assuage any doubts on the matter.

REPRESENTATIVE JOSEPHSON answered, "That consultation has not happened." He reiterated that 32 states have adopted similar measures; 6 or 7 very "red" states protect this class of people. He asserted that these people are not being protected; they are, in some cases, viciously assaulted and murdered. The Federal Bureau of Investigation (FBI) hate crime data supports the fact that by percent, the LGBT community - more than any other community - is victimized. He added that using the word "protection" suggests a special privilege; he pointed out that it is only a special privilege for those assaulted or murdered or otherwise victimized by a felony. He said, "It's not a category to begrudge. It's a category to protect. ... There's always going to be crime, and if it's a generic - sort of general crime - we apply a presumptive sentence. But for decades, starting in the '60s, we said under ... hate crimes, we're going to enhance sentences if you're bringing a certain animus, because that animus hurts everyone in the society in a unique way."

REPRESENTATIVE STORY thanked the representative for introducing the bill.

[3:29:15 PM](#)

REPRESENTATIVE SHAW mentioned that any crime directed toward any person could be hateful and could be regarded as a hate crime. He suggested [a crime resulting from] social interactions between families - a husband kills a wife and a child - committed out of hate. He asked, "When do we stop adding to the

aggravated factors and not just say a hate crime could very well be attached to literally any crime in some respect?"

REPRESENTATIVE JOSEPHSON answered, "If you are a six-foot-six red-haired ... man, you are not going to be targeted because you're [a] six-foot-six red-haired person." He offered that the additional category in paragraph (22) evolved because "the facts are in that in these other groups, you very well might." He pointed out the irony of Justice Rehnquist - a very conservative justice - authoring the 1993 decision, which offered protection for a white person being attacked based on race and enhancing the sentence for the crime.

CO-CHAIR FIELDS referred to the "six-foot-six red-haired man" example and pointed out that over 100 years ago Irish people were not considered white; therefore, if these laws had been in place at the time, a crime against an Irishman - because he is Irish - would have been considered a hate crime. Irish people are now considered white. He suggested that the trend is toward fewer groups being excluded as different, which is a positive trend.

[A copy of the note left on the windshield in the Soldotna incident was passed out to the committee members. It was not included in the committee packet.]

[3:32:59 PM](#)

NATHANIEL GRABMAN, Staff, Representative Andy Josephson, on behalf of Representative Josephson, prime sponsor of HB 198, presented a PowerPoint presentation, entitled "HB 198: An Act Relating to Aggravating Factors Considered at Sentencing." He began with slide 2, entitled "Aggravating Factors in Sentencing," which read:

If a defendant is convicted of a crime, they will then be sentenced. A large number of factors may be considered during this phase.

AS 12.55.155(c) contains 37 separate factors which, if proven, shall be considered at sentencing, and allow for additional sentencing beyond the presumptive range spelled out in AS 12.55.125.

In conjunction with AS 12.55.125(d), mitigating and aggravating factors may be considered when a defendant

is sentenced, and may increase or decrease the overall sentence imposed.

MR. GRABMAN turned to slide 3, entitled "Why Do We Have Aggravating Factors?" and explained that people recognize that many of the things they do and say occur in "shades of gray." He reviewed the information on the slide, which read:

- Motive and details matter.
- As with all laws, these factors reflect societal attitudes.
- In instances where aggravators are relevant, the defendant has already been convicted and the details of the crime are broadly considered abhorrent or aberrant.
- When a sentence is imposed beyond the presumptive range, it can be seen as an indication that the motive was particularly egregious or that the defendant demonstrated a disregard for societal norms beyond what might be expected for a 'typical' crime of that type.

MR. GRABMAN added that society has decided not to condone certain biased motivated attacks on individuals or groups. He moved on to slide 4, entitled "HB 198 Amends Aggravator 22," which read:

- AS 12.55.125(c)(22) currently allows a sentencing court to impose additional sentencing if "the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin"
- HB 198 adds "sexual orientation or gender identity" to this list.

MR. GRABMAN referred to the charts in slide 5, which graphically represent FBI data from 2015-2018. He stated that the data shows that biased motivated attacks due to sexual orientation has been trending upward for the last four years for which data is available. The data also demonstrates that gender identity crimes saw a 30 percent spike in the last year of the data.

MR. GRABMAN turned to slide 6, entitled "Alaska is not Immune" to reference some Alaska headlines about the incident.

REPRESENTATIVE VANCE asked whether the FBI data consisted of U.S. statistics or Alaska statistics.

MR. GRABMAN replied, "These are U.S. statistics." He referred to a [Cable News Network (CNN)] video at the end of the slide show which reports that the statistics are inadequate and underreported. He added that the numbers on the chart reflect what has been reported to the FBI.

MR. GRABMAN turned back to slide 6 to point out that the events that occurred in Soldotna from the time of the note on the windshield to the time of the resolution of support by the Soldotna City Council was a matter of months.

MR. GRABMAN moved on to slide 7, entitled "Existing State Laws Nationwide," to point out that 4-5 states do not have any aggravators in statute; two-thirds of states have some protection for these classes.

REPRESENTATIVE JOSEPHSON reminded the committee before watching the video that the matter [addressed by HB 198] is partially covered by federal law; however, there is no federal nexus for the assault of the victim at her home in Sterling.

3:38:10 PM

[A three-minute video, produced by CNN and entitled "Hate Crimes Statistics Explainer," was played for the committee. The link to the video was displayed on slide 8, which read: <https://www.cnn.com/videos/us/2019/11/07/hate-crime-statistics-explainer-orig.cnn>].]

3:42:26 PM

KAREN LOEFFLER relayed that she was a 30-year federal prosecutor and finished her career as a U.S. Attorney [for the District of Alaska]. She stated that the first line in the protector of community members against the types of assaults being discussed is the state. The federal government has civil rights laws, but they are secondary to state law; they involve situations in which individuals are attacked because of their status while they are engaged in federally protected activities; therefore, the protection is limited. The primary protection against people based on their status comes from the state.

MS. LOEFFLER continued by saying that it is very common for judges to consider the motivation of an attacker - both as a litigator and as an aggravator. She explained that community consciousness makes attacking someone solely based on status is abhorrent to society. In Alaska and federally, there were no special protections for people attacked solely due to gender identity or sexual orientation. That changed in 2009 with the [Matthew] Shepard and [James] Byrd [Jr. Hate Crimes Prevention] Act, which added protection for sexual orientation after the attack on [Matthew Shepard in Wyoming in 1998].

MS. LOEFFLER relayed that people who choose to attack someone they do not know based solely on who that person is or on specific characteristics of the person - and not on the circumstances of a situation - are more dangerous to society and its future. She stated that she supports the proposed legislation because it "fills a hole" that the public became aware of due to the incident in Soldotna. She added that statutes such as the one proposed by HB 198 are rarely utilized but "when this type of thing happens, we need them to be there."

CO-CHAIR FIELDS repeated Representative Vance's question about having more comprehensive definitions in statute and whether it would make a difference for prosecuting hate crimes.

MS. LOEFFLER replied that generally terms such as those included in the proposed legislation are not defined within statute. She offered that there is a difference between attacking someone because the person is male or female and attacking the person because the person is gay.

CO-CHAIR FIELDS stated that HB 198 would be held over.

[3:47:43 PM](#)

The committee took an at-ease from 3:48 p.m. to 3:49 p.m.

hb49

HB 182-SEXUAL ASSAULT EXAMINATION KITS: TESTING

[Contains discussion of HB 49]

[3:48:56 PM](#)

CO-CHAIR FIELDS announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 182, "An Act relating

to testing of sexual assault examination kits; and providing for an effective date."

[3:49:22 PM](#)

CO-CHAIR KREISS-TOMKINS moved to adopt the sponsor substitute (SS) for HB 182, Version 31-LS1188\M, as the working document.

REPRESENTATIVE VANCE objected for discussion purposes.

[3:50:04 PM](#)

The committee took a brief at-ease.

[It was determined that adoption of SSHB 182 was not necessary.]

[3:50:24 PM](#)

REPRESENTATIVE GERAN TARR, Alaska State Legislature, relayed that in the fall of 2014, she received a letter from the "End the Backlog" organization - a project of the Joyful Heart Foundation. The Joyful Heart Foundation was founded by actress Mariska Hargitay of the Law & Order: Special Victims Unit television series in response to the many communications she received from individuals who were victims of sexual assault. She started the End The Backlog initiative to end the backlog of untested rape kits.

REPRESENTATIVE TARR stated that Alaska is making significant gains on [rape kit testing] reform. She referred to slide 2 of the PowerPoint, entitled "Joyful Heart Foundation - 6 Pillars," which read:

- Annual statewide inventory of untested kits: A recurring count of all untested rape kits enables stakeholders to understand the scope of the problem and monitor progress.
- Mandatory testing of backlogged kits: Eliminate the existing backlog by requiring law enforcement agencies to submit all previously untested kits to the lab and requiring the kits to be tested.
- Mandatory testing of new kits: Prevent future backlogs by requiring law enforcement agencies to promptly submit all newly collected kits to the lab, and

requiring the lab to test these kits within a specific time frame.

- Statewide tracking system: Ensure that hospitals, law enforcement, and labs are using the same system to track rape kits. Build in a mechanism for survivors to check the status of their kits throughout the process, from collection to analysis.
- Victims' rights to notice: Grant victims the right to receive information about the status and location of their rape kit, and require that victims be informed if their kit will not be tested and prior to destruction.
- Funding for reform: Appropriate state funding to address these issues

REPRESENTATIVE TARR stated that Alaska has accomplished almost everything on the list of reforms and outlined Alaska's progress as shown on slide 3, entitled "Where are we?" which read:

2014	Launch Rape Kit Reform Initiative
2015	Introduce HB 117, requiring a statewide audit of all untested rape kits, legislative hearings lead to request for audit of the crime lab
2016	Continued working with crime lab staff and public safety officials on reforms like instituting a tracking system for all rape kits
2017	Reforms pass requiring statewide audit of untested kits (SB 55)
2018	Reforms pass establishing law enforcement and anonymous reports for victim centered approach, require law enforcement to have training on sexual assault response, require audit on untested kits to be annual (HB 31)
2019	Reforms pass requiring timely testing of rape kits and victim notification (HB 49)

2020 House Bill 182 to shorten timeline for testing - 60 days or 6 months?

REPRESENTATIVE TARR referred to the document, entitled "Annual Inventory of Untested SAKs," [included in the committee packet], that presents the last three years of the statewide audit numbers. She reviewed the kit tracking process. She added that Alaska now requires a victim be notified by public safety officials within two weeks of a rape kit being tested. Some states offer an online tracking system in which a victim can track the progress of the rape kit online. Alaska does not yet have a full tracking system in that regard.

REPRESENTATIVE TARR addressed the issue of the timeline for testing: When the reform work began, rape kit processing took a little more than two years. With work on capacity, funding, and training, the timeline was reduced to about one year. The current version of SSHB 182 puts the timeline at 60 days as the best practice for Alaska.

REPRESENTATIVE TARR continued with slide 4, entitled "Why Timing of Testing is Important," which offered a case study and read:

Mosley is in custody now, but he was allowed to roam Anchorage freely for more than eight months after Anchorage police detectives learned his DNA implicated him in three sexual assaults, and forwarded charges to the Department of Law.

During that time, a fourth woman was raped.

REPRESENTATIVE TARR relayed the passage on slide 5, entitled "Lives Changed Forever," which read:

"The effect on the victims cannot be overstated. Some of these women waited years to find out who their assailant was. [One woman] moved back to her hometown out of fear and shame. One of these women, after years of suffering from infertility despite her best efforts with her partner, became pregnant as a result of the rape. The cruel irony of carrying the child of her rapist after years of trying to have a child with her partner had a significant impact on her. For each of these women, they re-live the trauma of the rape and recently endured having to tell a grand jury what happened to them."

REPRESENTATIVE TARR offered that the story she just related is just one of many in Alaska. She emphasized the power of timing in rape kit testing.

[3:56:28 PM](#)

REPRESENTATIVE TARR moved to slide 6, entitled "We MUST do better." In addressing the fiscal note (FN) for SSHB 182 she relayed the following: Alaska's Scientific Crime Detection Laboratory ("crime lab") is a great facility, but it has never been fully staffed for Alaska to have the in-state capacity to do all the forensic processing necessary. The crime lab is processing as much as possible for the whole state, although for some circumstances, kits must be sent out of state. She stated, "It's a big uplift to get these highly qualified technical staff in place." She mentioned that after HB 49 was enacted [calling for the testing of sexual assault examination kits, signed into law 7/11/19], it took several months for a position to be created, several more months for recruitment and hiring, and another year and a half of training. She complimented the efforts of the new director of the crime lab, David Kanaris, to make the crime lab work better. She said that crime lab staff are doing everything they can; it is a matter of the legislature providing additional resources so that staff can scale up their operations to meet any new requirements. She stated that the goal is 60 days [for the testing of sexual assault examination kits]; however, the next realistic step is probably 6 months due to the challenge of filling positions and evolving the system. Once the 6-month timeline is achieved, staff will be better able to assess the additional resources necessary to meet 60 days. She mentioned that the estimates in the FN reflect multiple phases in the process. She continued by saying that there have been discussions about strengthening the relationships with local law enforcement as the capacity of the state crime lab increases; "better response will just mean improved public safety for the whole state."

REPRESENTATIVE TARR referred again to the document, entitled "Annual Inventory of Untested SAKs," to point out the numbers from the statewide inventory: in 2017, 3,484 sexual assault kits (SAKs) were inventoried; in 2019, 1,696 SAKs were inventoried.

[4:01:30 PM](#)

[A trailer for the documentary, I am Evidence, was played for the committee, to demonstrate the consequences of delay in processing sexual assault kits. The link to the trailer was displayed on slide 7, which read: https://www.youtube.com/watch?v=7_b1SbbSu6Y

REPRESENTATIVE TARR relayed that on an annual basis, Alaska receives about 1,100 kits to be processed, which represents many lives impacted. It is an issue that impacts everyone in the state.

4:05:16 PM

DAVID KANARIS, Chief, Scientific Crime Detection Laboratory, Department of Public Safety (DPS), relayed that he became chief of the crime lab in July 2019 and is reviewing processes within the lab. His goal is as follows: to reduce backlog; improve turn-around times; address retention and recruitment, develop partnerships with local stakeholders; develop multidisciplinary teams with the Department of Law (DOL) and law enforcement; and increase transparency within the system. He said, "I believe Alaska's public has a right to know what's actually happening within the crime lab. We don't want us to be a black box." He stated that ultimately, he wants to make lab data available to the public on the website.

MR. KANARIS offered that what Alaska has seen regarding sexual assault mirrors what has occurred nationally; there has been a large increase in the number of cases being submitted. With the increased focus on publicity nationally, the sexual assault kit initiative, and capital appropriations made available within the state, there has been more focus on sexual assaults. Between 2011 and 2017, according to national crime statistics, there has been an uptick in violent crime rates in the state as well.

MR. KANARIS continued by saying that when the lab was opened in 2012, about 300 deoxyribonucleic acid (DNA) cases were submitted; in 2019, 651 cases were submitted; the current year [2020] has seen a 33 percent increase, which puts the lab on track for receiving 900 cases for the year. He stated that he is looking for ways to handle the increase and shorten processing times, including more personnel, process changes, changes in the training program, and procedural changes.

REPRESENTATIVE THOMPSON asked for a progress report on the status of the backlog of untested rape kits.

MR. KANARIS answered that there are three groups of kits. The 2016 federal funds through the sexual assault kit initiative (SAKI) were used to test only DPS Alaska State Trooper (AST) kits, which numbered slightly under 600. Testing of those kits was completed and the funds exhausted. In 2017, the state made a capital appropriation of \$2.75 million to test the rest of the kits, which numbered 2,500. Of those, 1,219 have been submitted to a third-party testing company. The third group consists of the ongoing cases that come in, which is estimated to be 900 this year. Of those, about 60-70 percent represent sexual assaults, and they will be tested. The current timeline for testing is about 9 months, which is a significant improvement over the 2-year testing timeline of 2-3 years ago.

[4:10:30 PM](#)

REPRESENTATIVE VANCE thanked the sponsor for her efforts. She suggested a change to the effective date - currently 7/1/2020 - to a later date, considering the lab is a couple years from eliminating the backlog and at the point where it can process cases as they are received.

REPRESENTATIVE TARR explained that currently 6 months is a realistic timeframe. It is her desire that the proposed legislation be amended to require testing to be done within 6 months with the effective date of 7/1/2021. Additional funding would be required in fiscal year 2021 (FY 21) to create the positions.

REPRESENTATIVE VANCE asked whether there have been discussions about expectations and timelines for hiring qualified people for the crime lab, considering the difficulty recruiting other DPS employees and the resulting slowdown of timelines on important public safety matters. She maintained that such a delay would affect the effective date in meeting the goals of the proposed legislation.

REPRESENTATIVE TARR replied that initially, 1/1/2021 was considered, but the date was changed to 7/1/2021 for the very reason Representative Vance cited - to allow for an appropriate amount of time to hire and train employees. She referred to Mr. Kanaris's credentials and tours of the crime lab.

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REPRESENTATIVE VANCE asked whether there have been any prosecutions as a result of kits being processed.

REPRESENTATIVE TARR responded that Mr. Kanaris has some information on results, but kits are still being processed. She stated that SAKI evaluated kit testing to establish best practices, and Mr. Kanaris has stated that if there is not usable evidence after testing, the lab can quickly notify the victim.

REPRESENTATIVE THOMPSON also asked about the results of catching up on kit testing. He asked for the number of cases affected and the number of identifications.

REPRESENTATIVE TARR answered that because criminal prosecution is involved, she does not receive that information. She added that the information is privileged and for the benefit of law enforcement personnel.

MR. KANARIS stated that of the 568 SAKI cases, 199 had DNA profiles available. Of those, 57 were enter into the Combined DNA Index System (CODIS) and got hits in the database; 61 were "warm" [confirmatory] hits; and 66 were cold hits, that is, providing completely new information to the law enforcement agency. He mentioned that one of the cases is now active in DOL. He said he has less information on the cases funded under the capital appropriation. Of the 2,568 SAKs, a portion has been tested, and as of November [2019] about 212 had a profile that was available to be uploaded into CODIS. He offered that about one-third of cases have a usable DNA profile. At that point, it is up to law enforcement to investigate further. He cited research which stated that the benefit to society of testing one SAK is \$130,000 - an 8,000 percent return on investment.

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REPRESENTATIVE HOPKINS referred to the "Report from End the Backlog on Alaska," page 2, which read: "No tracking system exists." He asked for comment on the tracking system.

REPRESENTATIVE TARR responded that at the time House Bill 117 was introduced [during the Twenty-Ninth Alaska State Legislature, (2015-2016)] there was no system of unique identifiers for the kits; therefore, it was impossible to know if the tested kits being sent back to the local police departments had been used. Subsequently the crime lab changed its operations internally so that each kit now has a unique identifier and can be tracked. She added that the capital

budget a couple years ago included not only funds for testing but funds for high capacity storage shelves; therefore, the crime lab now can be the central repository for the kits. The tracking system tracks the location of the kits. A tracking system to the victim would allow the victim to log in and track the progress of the kit. She referred to victims being retraumatized when asked to retell their stories over and over. Alaska has not fully established victim tracking; however, law enforcement must notify the individual within two weeks that the rape kit was tested. Under HB 49, the kit must be sent to the crime lab within 30 days; it must be tested within one year; and the victim must be notified within two weeks [of testing]. The proposed legislation [SSHB 182], if amended, would require the SAK be tested within 6 months. She emphasized that the timelines add certainty to the process for the victims.

CO-CHAIR FIELDS referred to the letter [dated 1/31/20 and included in the committee packet] from Providence Health & Services Alaska offering support for the proposed legislation.

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REPRESENTATIVE THOMPSON referred to the \$2.75 million that the legislature appropriated in 2018 to process the rape kits. He asked whether all the funds have been expended.

REPRESENTATIVE TARR answered that during the reform process an industry has developed around rape kit testing because so many kits were untested and large sums of federal money became available. She said that of the 2,500 kits to be tested, about 1,290 have been submitted for testing with results back on 1,000. She stated that until all kits have been submitted and tested, the state won't know the remaining balance in the funds. The high capacity shelves have been purchased.

MR. KANARIS responded that none of the funding was to be used for in-state personnel; it was determined that using the funds to hire and train personnel would result in too many staff for the ongoing amount of work. The decision was made to outsource the kits to a third party on the East Coast. The [third party] agency is halfway through testing the kits, and kits coming into the lab are being forwarded on to the agency as well. Crime lab staff is tasked with uploading the profiles into COTIS after testing is complete.

REPRESENTATIVE THOMPSON asked whether current kits from AST are being sent to the Lower 48 to be tested, or whether crime lab personnel are performing the tests on the current kits.

MR. KANARIS answered that cases inventoried under the capital appropriation - the ones that are stored at local police departments and have never been submitted to the crime lab - are being outsourced. Any current kits are being tested within the state.

REPRESENTATIVE VANCE referred to the FN, [included in the committee packet], which read: "private forensic science service provider could meet a 60-day testing window." She asked for the turnaround time for outsourced kits.

MR. KANARIS answered that it takes 200 days on average for testing to be completed at the private company.

CO-CHAIR FIELDS asked for confirmation that in summary, Alaska is expanding its internal capacity while outsourcing some of the backlog.

MR. KANARIS answered, "Yes, that's absolutely correct."

CO-CHAIR FIELDS stated SSHB 182 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 [4:26] p.m.