

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

February 6, 2020

3:03 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 (via teleconference)
Representative Laddie Shaw

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 198

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

- MOVED HB 198 OUT OF COMMITTEE

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
02/04/20	(H)	Heard & Held
02/04/20	(H)	MINUTE(STA)
02/06/20	(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
02/04/20	(H)	Heard & Held
02/04/20	(H)	MINUTE(STA)
02/06/20	(H)	STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE ANDY JOSEPHSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Commented on HB 198 as prime sponsor and answered questions.

TAMMIE WILLIS

Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 198.

LESLIE BYRD

Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 198.

DAVID BRIGHTON

Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 198.

LILY SPIROSKI

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 198.

TRIADA STAMPAS, Policy Director

American Civil Liberties Union (ACLU) of Alaska

Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 198.

RAYMOND LEE

Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 198.

VERI DI SUVERO

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 198.

KATIE BOTZ

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing of SSHB 182.

ACTION NARRATIVE

[3:03:00 PM](#)

CO-CHAIR ZACK FIELDS called the House State Affairs Standing Committee meeting to order at 3:03 p.m. Representatives Hopkins, Thompson, Vance (via teleconference), Fields, and Kreiss-Tomkins were present at the call to order. Representatives Shaw and Story arrived as the meeting was in progress.

HB 198-AGGRAVATING FACTORS AT SENTENCING

[Contains discussion of HB 82.]

[3:04:01 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."

[3:04:46 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, paraphrased a question asked by Representative Vance during the 2/4/20 House State Affairs Standing Committee meeting: "If we are imposing this on a jury, we need to define certain terms, otherwise it's a heavy burden on our citizens. It's our job to provide the scope of what this legislation's intent is." He responded that the job of jurors is already very difficult; they already must decide, for example, whether someone intended to pull the trigger or whether the gun just went off by accident. He said there is nothing in the law that helps jurors; they just must use their judgments. He mentioned that the other terms in AS 12.55.155(c)(22) - the hate crimes code - are not defined; and the burden to define the new terms is no greater.

REPRESENTATIVE JOSEPHSON stated that he performed a search of the number of times courts consulted Webster's dictionary since 1960 and found they consulted the dictionary 316 times. He relayed that yesterday [2/5/20] the Kenai City Council joined the Soldotna City Council in supporting legislative action [Resolution No. 2020-05, included in the committee packet]. He mentioned that the committee will receive a letter from Kaci Schroeder, legislative liaison and Assistant Attorney General, Department of Law (DOL), to answer the question as to whether the use of the word "sex" in paragraph (22) could be infused with broader meaning to encompass the goals of the proposed legislation. He offered that the essence of her response was that it is unlikely.

[3:07:54 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 1, [labeled 31-LS1369\M.1, Radford, 2/4/20], which read:

Page 4, line 6, following "person's":
Insert "pregnancy or"

CO-CHAIR FIELDS objected.

REPRESENTATIVE VANCE explained that Amendment 1 would add the word "pregnancy" to the list of aggravating factors. She said that pregnant women have been targeted and, depending on the year, it is the second or third leading cause of death among pregnant women. She offered the various reasons pregnant women are targeted: the woman doesn't want an abortion; an intimate partner does not want the responsibility of a child; someone wants to cover up an affair. The targeting is solely with the intent of killing the unborn child in the woman's womb. She expressed her belief that this group of people should receive extra protections under the law.

REPRESENTATIVE VANCE continued by saying, "I do realize that so many crimes will be eligible for hate crimes - hate crime treatment - that those victims who are not covered will perhaps rightly feel discriminated against." She added that all human life is precious; all crimes against humanity should be prosecuted to the full extent of the law. She asked, "If justice is blind, why are we requiring the judge and jury to examine if the person falls into a certain class of people?" She mentioned that under the U.S. Constitution, all men are created equal; society works to ensure all are treated equally under the law. She asked, "Why would we continue to propose

legislation that treats some more equal than others? On what basis do we conclude that one crime is singled out for extra penalties but not others?" She stated that the crime that occurred on the Kenai Peninsula [the 12/9/19 attack on Tammie Willis] is a terrible crime and should be prosecuted to the full extent of the law but questioned adding more categories to the statute. She stated that she feels for the pregnant women who have been attacked because they are carrying a child; however, since the 14th Amendment of the U.S. Constitution guarantees equal justice under the law, she is withdrawing Amendment 1.

[3:11:48 PM](#)

CO-CHAIR FIELDS opened public testimony on HB 198.

[3:12:12 PM](#)

TAMMIE WILLIS relayed the incident that occurred to her and the ensuing negative effects. She stated the following: On November 14 [2019] she found a disparaging and threatening note on her truck, [passed out during the 2/4/20 House State Affairs Standing Committee meeting but not included in the committee packet]. On November 22 an object was thrown at her truck shattering her windshield. On December 9, she was assaulted in her home, repeatedly cut with a knife, and punched extensively. She required medical treatment and considerable recovery time. She has moved to another location; rarely goes out alone; does not sleep well; has panic attacks and nightmares. Coming forward with her story has generated considerable hate messages on social media, but at the same time there has been an outpouring of support from people all over Alaska and from her own community. She relayed that the support was most clearly demonstrated on January 4, when close to 200 people showed up - including many community leaders - to a town hall meeting to discuss the safety of the lesbian, gay, bisexual, transgender, and questioning (LGBTQ) community. She said that it made her realize that there were more people willing to take a stand against hate than she ever imagined. At the meeting, members of the LGBTQ community and their allies shared their stories of bullying, harassment, violence, prejudice, and loss due to the issues related to sexual orientation and gender identity. She offered:

In an ideal world where everyone is treated with respect and dignity, legislation like HB 198 and HB 82 would not be needed, but our world is not there yet. Until it is, HB 198 sends a clear message from our

leaders that hate and violence are not the values we share as a community. They are not Alaskan values and they will not be tolerated.

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LESLIE BYRD testified that although not an anti-discrimination act, the proposed legislation is a step in the right direction. She stated that she has heard arguments that the proposed legislation is unnecessary and gives one group special treatment over others; she maintained that it doesn't. She asserted that although "sexual orientation" and "gender identity" are associated with the LGBTQ community, every person on earth has these characteristics, just as everyone has the characteristics of sex, age, ability, and race. She said, "There's literally nothing for anyone to lose with HB 198 other than the time spent arguing on it, and the perpetrators of these violent acts." She maintained that these types of laws are needed as long as abuse continues; just because a cisgender heterosexual person does not see the harm and violence committed towards lesbian, gay, bisexual, and transgender (LGBT) people, that does not mean that it doesn't occur. She added, "Passage of this bill would acknowledge and validate the experiences of these marginalized people." She urged the legislators to demonstrate leadership in a positive and inclusive direction. She offered that crimes targeting members of a class of people are meant to instill fear in everyone in the class, which makes the inclusion of sexual orientation and gender identity in aggravating laws so important.

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DAVID BRIGHTON offered the following justification for the proposed legislation:

I believe that the laws that we create are in order to deter things that we don't want to see in society - violence - and when there is an increased likelihood of violence as we see against the LGBTQ community, creating legislation and laws - punishments that would deter that - is an appropriate measure to take for our government.

MR. BRIGHTON offered that as a member of the LGBTQ community, he has become aware of the violence in his community and he has been anxious about being targeted. He offered that no one should feel that way. He urged the passage of HB 198 to deter

prejudiced actions against anyone in society but specifically the LGBTQ community.

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LILY SPIROSKI testified that she is a bisexual Alaska Native; "coming out" to her peers in school led to bullying and harassment. Teachers and principals did nothing to protect her because the basis of the harassment was due to her not liking men - her sexuality. She mentioned that she is proud to be a part of the LGBTQ community; however, the fact that people of that community do not feel safe and are not protected by Alaska's hate crime laws is "old-school." She urged passage of HB 198 for the safety of the LGBTQ community and the safety of future generations.

3:21:45 PM

TRIADA STAMPAS, Policy Director, American Civil Liberties Union (ACLU) of Alaska, paraphrased from her written testimony, which read in part [original punctuation provided]:

As you consider House Bill (HB) 198, the American Civil Liberties Union (ACLU) of Alaska urges you to take a more comprehensive approach to providing safety and protection against discrimination against lesbian, gay, bisexual, transgender and queer (LGBTQ) Alaskans. HB 198 takes too narrow an approach to provide meaningful protections against harm and discrimination for LGBTQ Alaskans. We neither support nor oppose the bill in its current form, and instead urge you to make specific improvements.

This formal acknowledgment that LGBTQ Alaskans are targeted for hate-motivated crimes simply for who they are reflects the unfortunate and unacceptable reality for our LGBTQ neighbors. It also sends an important message that crimes motivated by anti-LGBTQ bias merit the same community condemnation as those motivated by other forms of bias already in Alaska's hate crimes law. We applaud the spirit of inclusivity that has prompted this bill.

If the goal, however, is to provide greater safety and protection from discrimination for LGBTQ Alaskans, this incarceration-only approach is limited both in its scope and effectiveness.

An Incarceration-Only Approach Does Not Make LGBTQ People Safer

Summarizing a large body of research related to crime deterrence, the United States Department of Justice has concluded, "increasing the severity of punishment does little to deter crime."³ The research finds that criminals generally know very little about the penalties associated with specific crimes, and do not calibrate their behavior accordingly. The evidence does not show that imposing a longer term of incarceration on a person convicted of a crime makes others less likely to commit similar crimes. Instead, some research shows that longer prison sentences lead to a greater likelihood of recidivism, as incarcerated individuals exit prison with diminished life prospects and having had extended exposure to other criminals.⁴

The research shows that the certainty of being caught and punished is a more effective deterrent than the severity of the punishment - that is, individuals are far less likely to commit a crime if they believe they will be caught.⁵

In addition, imprisonment is a limited and often counterproductive means of addressing the social disorders that lead to crime,⁶ and without affirmative measures to address the underlying causes of bias-based violence, it does not create conditions for greater safety for LGBTQ Alaskans.

As HB 198 *only* calls for longer terms of imprisonment, it can not [sic] stand alone as an effective deterrent of bias crimes against LGBTQ Alaskans.

An Incarceration-Only Approach Does Not Protect LGBTQ Alaskans from Discrimination

Research shows that LGBTQ individuals are disproportionately likely to experience poverty, food insecurity and homelessness (particularly youth homelessness).⁷ Yet LGBTQ Alaskans still lack state-level protections against discrimination in housing, employment, financial services and public accommodations.

The ability to discriminate with near-impunity in these aspects of everyday life leave our LGBTQ neighbors less likely to be able to meet basic needs and thrive in our communities.

Real LGBT Protections for Alaskans Require a Comprehensive Approach

We encourage you to pursue a more comprehensive approach to providing safety and protection against discrimination than HB 198 currently provides LGBTQ Alaskans. The elements of a more comprehensive approach should include the following:

- Passage of HB 82 to provide civil non-discrimination protections to LGBTQ Alaskans;
- Dedicated law enforcement liaisons (whether Alaska State Troopers or local law enforcement agents) to the LGBTQ community in every region of the state, along with law enforcement training on LGBTQ discrimination and bias crimes, to enable law enforcement agencies [sic] to build trust within the LGBTQ community, spot bias-related activity early, and increase the likelihood that perpetrators of bias-motivated crimes are identified and caught; and
- A prevention model that includes educational programs - starting with antibullying measures in schools - that debunk stereotypes and promote respect and tolerance for difference, as well as community-based antiviolence programs.

The discrimination that LGBTQ Alaskans experience is pervasive and abhorrent to the fair, free, and welcoming state we all want Alaska to become. Alaska needs a comprehensive approach that provides our LGBTQ neighbors safety and protection from discrimination in all aspects of everyday life - not just when a violent crime has been committed. I thank you for the opportunity to offer input and urge you to continue to pursue this issue until full equality for all Alaskans is achieved.

³ "Five Things about Deterrence." U.S. Department of Justice National Institute for Justice, May 2016. Available at <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See, e.g., Marsha Weissman, *Aspiring to the Impracticable: Alternatives to Incarceration in the Era of Mass Incarceration*, 33 N.Y.U. Rev. L. & Soc. Change 235 (2009); Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, U.S. Dep't of Health & Human Serv. & Urban Institute, *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities* (2002), available at <http://aspe.hhs.gov/hsp/prison2home02/haney.pdf>; Dina Rose and Todd Clear, *Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory*, 36 Criminology 441 (1998, rev. 2006).

⁷ See, e.g., M.V. Lee Badgett et al. *LGBT Poverty in the United States: A Study of Differences between Sexual Orientation and Gender Identity Groups*. UCLA School of Law Williams Institute, October 2019; Taylor N.T. Brown et al. *Food Insecurity and SNAP Participation in the LGBT Community*. UCLA School of Law Williams Institute, July 2016; and Morton, M.H., Dworsky, A., & Samuels, G.M. (2017). *Missed opportunities: Youth homelessness in America. National estimates*. Chicago, IL: Chapin Hall at the University of Chicago.

[3:27:51 PM](#)

RAYMOND LEE testified as a transgender man. He stated that he is in the process of transitioning to a man and has been discriminated against in doctors' offices, in insurance offices, and by police officers. He said that he has not yet been attacked physically; however, LGBTQ people experience discriminatory attitudes while in contact with the various professions in Alaska and live with the possibility of someone acting on those attitudes. According to the ACLU, about 4 percent of Alaskan adults identify as LGBT. That represents about 20,000 people and is based on the number of people willing to admit in the survey that they are LGBT. He maintained that LGBT people need protection from violence, and they need to be considered under hate crimes laws. Alaska, as a state, needs more hate crime reporting and education for police. Hate crimes vary and groups experiencing hate crimes have different needs.

He said that on the national level, the Federal Bureau of Investigation (FBI) includes hate crime laws, because of the terrorizing effect of hate crimes being inflicted on people based on identity - for who they are and not for personal reasons.

[3:32:45 PM](#)

VERI DI SUVERO expressed her support for HB 198. She said that she is the director of an organization, but even in a position of some power, she has experienced discrimination. She said that it has not yet turned violent, but she is afraid for her safety and is afraid to reveal who she is. She urged the legislators to continue to uphold the rights of Alaskans as they are trying to be successful residents in the state. She said that the proposed legislation is not about making people more equal, but about recognizing systematic disadvantages against people as well as ruining people's lives.

CO-CHAIR FIELDS closed public testimony on HB 198.

[3:34:54 PM](#)

REPRESENTATIVE VANCE thanked the testifiers and mentioned the importance of open discussion. She acknowledged the vulnerability of people speaking "on the record" about crimes committed against them and against those of the LGBT community and stated that their involvement in the discussion is important. She expressed her belief that sexual orientation and gender identity is an uncomfortable topic; legislators feel that they will be targeted if they do not approach the subject with sensitivity. She stated that people need to work to respect each other regardless of societal beliefs. She offered that hate crimes are a "slippery slope," because beliefs don't automatically equate to being hate speech or hate crimes. She maintained that legislation that criminalizes people's thoughts, beliefs, and speech violates the First Amendment [to the U.S. Constitution] rights of freedom of speech and freedom of religion and ultimately the 14th Amendment of the U.S. Constitution granting equal justice under the law. She said, "I don't want to diminish the experiences of the LGBTQ community or anyone else that has had discrimination or a crime perpetrated against them. All acts against humanity is wrong, because all life is precious." She advocated for dealing with the crimes. She stated that she cannot support HB 198, because it segregates different groups of people for additional penalties. She offered that the proposed legislation represents "going down a

dangerous road"; it is against the U.S. Constitution; it promotes the belief that justice is blind. She maintained that justice should be equally distributed for everyone; it is not just an LGBTQ issue but applies to every American; it leads to discrimination against those people who are not included in the special groups.

CO-CHAIR KREISS-TOMKINS expressed his appreciation with the testimonies of Representative Vance and Ms. Stampas. He expressed his belief that community condemnation for hate crimes and what they represent has been a societal decision in Alaska and across the country; it is a component of the justice system and an appropriate sanction.

[3:41:45 PM](#)

CO-CHAIR KREISS-TOMKINS moved to report HB 198 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 198 was reported from the House State Affairs Standing Committee.

[3:42:31 PM](#)

The committee took an at-ease from 3:42 p.m. to 3:45 p.m.

HB 182-SEXUAL ASSAULT EXAMINATION KITS: TESTING

[3:45:30 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."

[3:45:52 PM](#)

CO-CHAIR KREISS-TOMKINS moved to adopt HB 182, Version 31-LS1188\A as the working document. There being no objection, Version A was before the committee.

[3:46:45 PM](#)

CO-CHAIR FIELDS moved Amendment 1, [labeled LS-1188\A.1, Radford, 2/6/20], which read:

Page 2, line 5:
Delete "2020"

Insert "2021"

CO-CHAIR KREISS-TOMKINS objected for discussion purposes.

CO-CHAIR FIELDS explained that Amendment 1 would replace the effective date of "2020" with "2021", giving the Department of Public Safety (DPS) time to implement the proposed legislation.

CO-CHAIR KREISS-TOMKINS withdrew his objection to Amendment 1. There being no further objection, it was so ordered.

[3:47:24 PM](#)

CO-CHAIR FIELDS opened public testimony.

[3:47:39 PM](#)

KATIE BOTZ testified in support of the proposed legislation as a victim of sexual abuse. She expressed her belief that a one-year timeline for testing a rape kit is not victim oriented and forces the victim to be re-victimized. She asked the legislators to be "victim oriented" [in their consideration of legislation], as it is the only way to address crimes and problems.

CO-CHAIR FIELDS closed public testimony.

[3:50:00 PM](#)

CO-CHAIR KREISS-TOMKINS moved to report HB 182, Version 31-LS1188\A, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[It was subsequently determined that SSHB 182 was before the committee; therefore, SSHB 182 was treated as held over. The committee substitute (CS) for SSHB 182, Version 31-LS1188\U, Radford, 2/6/20, was adopted as a work draft during the 2/11/20 House State Affairs Standing Committee meeting and CSSSHB(STA) was reported from the committee.]

CO-CHAIR KREISS-TOMKINS offered remarks on the upcoming House State Affairs Standing Committee meeting of 2/11/20.

[3:52:06 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:52 p.m.