

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 4, 2022

1:05 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 11(JUD)

"An Act relating to community property and to community property trusts; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5

"An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 11

SHORT TITLE: COMMUNITY PROPERTY TRUSTS

SPONSOR(s): SENATOR(s) BEGICH

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	L&C, JUD
03/10/21	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/10/21	(S)	-- MEETING CANCELED --
03/12/21	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

03/12/21 (S) Heard & Held
 03/12/21 (S) MINUTE(L&C)
 03/19/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 03/19/21 (S) Moved SB 11 Out of Committee
 03/19/21 (S) MINUTE(L&C)
 03/22/21 (S) L&C RPT 4DP
 03/22/21 (S) DP: COSTELLO, GRAY-JACKSON, STEVENS,
 HOLLAND
 05/05/21 (S) JUD AT 1:30 PM BUTROVICH 205
 05/05/21 (S) Heard & Held
 05/05/21 (S) MINUTE(JUD)
 05/10/21 (S) JUD AT 1:30 PM BUTROVICH 205
 05/10/21 (S) Moved CSSB 11(JUD) Out of Committee
 05/10/21 (S) MINUTE(JUD)
 05/11/21 (S) JUD RPT CS 3DP 2NR SAME TITLE
 05/11/21 (S) DP: HOLLAND, HUGHES, KIEHL
 05/11/21 (S) NR: MYERS, SHOWER
 05/17/21 (S) TRANSMITTED TO (H)
 05/17/21 (S) VERSION: CSSB 11(JUD)
 05/18/21 (H) READ THE FIRST TIME - REFERRALS
 05/18/21 (H) L&C, JUD
 02/02/22 (H) L&C AT 5:15 PM BARNES 124
 02/02/22 (H) Heard & Held
 02/02/22 (H) MINUTE(L&C)
 02/14/22 (H) L&C AT 3:15 PM BARNES 124
 02/14/22 (H) Moved CSSB 11(JUD) Out of Committee
 02/14/22 (H) MINUTE(L&C)
 02/16/22 (H) L&C RPT 5DP 2NR
 02/16/22 (H) DP: SNYDER, MCCARTY, SCHRAGE,
 SPOHNHOLZ, FIELDS
 02/16/22 (H) NR: NELSON, KAUFMAN
 02/25/22 (H) JUD AT 1:30 PM GRUENBERG 120
 02/25/22 (H) Heard & Held
 02/25/22 (H) MINUTE(JUD)
 03/04/22 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 5

SHORT TITLE: SEXUAL ASSAULT; DEF. OF "CONSENT"

SPONSOR(S): REPRESENTATIVE(S) TARR

02/18/21 (H) PREFILE RELEASED 1/8/21
 02/18/21 (H) READ THE FIRST TIME - REFERRALS
 02/18/21 (H) STA, JUD
 03/26/21 (H) SPONSOR SUBSTITUTE INTRODUCED
 03/26/21 (H) READ THE FIRST TIME - REFERRALS
 03/26/21 (H) STA, JUD
 03/27/21 (H) STA AT 1:00 PM GRUENBERG 120

03/27/21	(H)	Heard & Held
03/27/21	(H)	MINUTE(STA)
04/13/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/13/21	(H)	Heard & Held
04/13/21	(H)	MINUTE(STA)
04/20/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/20/21	(H)	Heard & Held
04/20/21	(H)	MINUTE(STA)
04/27/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(STA)
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	Scheduled but Not Heard
05/04/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/04/21	(H)	Moved CSSSHB 5(STA) Out of Committee
05/04/21	(H)	MINUTE(STA)
05/06/21	(H)	STA RPT CS(STA) 1DP 5AM
05/06/21	(H)	DP: TARR
05/06/21	(H)	AM: VANCE, STORY, EASTMAN, KAUFMAN, KREISS-TOMKINS
05/06/21	(H)	FIN REFERRAL ADDED AFTER JUD
03/04/22	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented CSSSHB 5(STA) and offered a PowerPoint, titled "HB 5: Defining Sexual Conduct."

BRIAN HOSKEN, Student Services Director
Alaska School Activities Association
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of CSSSHB 5(STA).

BRENDA STANFILL, Executive Director
Alaska Network on Domestic Violence and Sexual Assault
Fairbanks, Alaska

POSITION STATEMENT: Provided invited testimony in support of CSSSHB 5(STA).

JENNIFER BROWN, Director
Communications and Development
Standing Together Against Rape

Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of CSSSHB 5(STA).

KACI SCHROEDER, Assistant Attorney General
Criminal Division (Anchorage)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSSHB 5(STA).

ACTION NARRATIVE

[1:05:52 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Claman, Drummond, and Kreiss-Tomkins (via teleconference) were present at the call to order. Representatives Eastman, Kurka, Vance, and Snyder arrived as the meeting was in progress.

SB 11-COMMUNITY PROPERTY TRUSTS

[1:06:34 PM](#)

CHAIR CLAMAN announced that the first order of business would be CS FOR SENATE BILL NO. 11(JUD), "An Act relating to community property and to community property trusts; and providing for an effective date."

[1:06:47 PM](#)

CHAIR CLAMAN opened public testimony on CSSB 11(JUD). After ascertaining there was no one who wished to testify, he closed public testimony.

[CSSB 11 (JUD) was held over.]

HB 5-SEXUAL ASSAULT; DEF. OF "CONSENT"

[1:07:36 PM](#)

CHAIR CLAMAN announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5, "An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing

for an effective date." [Before the committee was CSSSHB 5(STA).]

1:08:45 PM

REPRESENTATIVE GERAN TARR, Alaska State Legislature, as prime sponsor, presented CSSSHB 5(STA). She offered the PowerPoint, titled "HB 5: Defining Sexual Conduct" [hard copy included in the committee packet]. She explained that in 2019, the board of Standing Together Against Rape (STAR) brought its legislative priorities forward and requested the following: an update to the definition of [sexual] consent, updates to the sexual abuse of a minor statute, and rape by fraud be addressed. She explained the process depicted on slide 2, which described the four-year process with multiple statewide meetings with expert interviews and input from across Alaska, along with feedback from the Department of Law (DOL). She stated that the results were presented at a statewide meeting of [the Alaska Network on Domestic Violence and Sexual Assault] ANDVSA. She added that more than 100 Alaskans contributed to the drafting of the bill.

REPRESENTATIVE TARR noted that more than 66 letters of support have been received from organizations, such as the Alaska School Activities Association, STAR, the National Association of Social Workers, ANDVSA, Planned Parenthood Great Northwest, the Alaska Coalition for Justice, Joyful Heart, and Aiding Women in Abuse and Rape Emergencies (AWARE).

REPRESENTATIVE TARR noted that all the public forums begin with the question, "Has consent ever been an issue for you?" She noted that every participant in every forum had responded "Yes." She noted that participants are diverse, including males, females, the young, the old, rural residents, and urban residents. She offered a statement has emerged which characterizes rape as "a murder where the victim lives," which underscores the need for reform to sexual assault statutes. She explained that there are four main parts of the bill: the requirement that rape kits be tested within six months; an update to the 40-year-old definition of consent; an update to the statute to include "rape by fraud" or "rape by deception" to the criminal statute; and the requirement that predatory behavior of much older adults in relationships with much younger minors is addressed.

1:12:44 PM

REPRESENTATIVE TARR explained that the last part of the proposed legislation addressed the multi-year, rape kit reform process, as seen on slide 8, which read as follows [original punctuation provided]:

Last piece of multi-year Rape Kit Reform Initiative
Accomplishments:
Ongoing audit of backlog of rape kits
Testing of backlog of rape kits
Secure storage of rape kits
Victim centered approach
Training for law enforcement for sexual assault response
Created a timeline for rape kit processing - within 30 days of collection be sent to crime lab, tested within 1 year, and survivor be notified within 14 days

REPRESENTATIVE TARR drew attention to slide 9, which depicted news stories highlighting criminal convictions from the testing of the backlog of rape kits across the state. She stated that the importance of the 6-month timeline for testing of rape kits is significant and offered an example which detailed the conviction of a perpetrator from cases in 1993 and in 2001. She added that these victims had awaited decades for justice.

REPRESENTATIVE TARR noted that some of the untested rape kits in Alaska dated back to the 1980s. She stated that the 6-month time limit would ensure the state never have a backlog of untested rape kits again. She noted that in December of 2021, more than 3400 kits have been processed.

REPRESENTATIVE TARR explained the proposed update to the definition of consent on slide 12, which read as follows [original punctuation provided]:

Alaska Stat. § 11.41.470
"Without consent" means that a person:
(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or
(B) is incapacitated as a result of an act of the defendant.
PROBLEMATIC FOR MANY REASONS:
1. Not an affirmative definition
2. Suggests use of force
3. Places burden on victim

REPRESENTATIVE TARR pointed out that research has been conducted regarding laws in other states. She pointed out that the underlined text on slide 13 and slide 14 exemplified the more modernized statutes among laws in Minnesota and Montana.

[1:16:43 PM](#)

REPRESENTATIVE TARR moved to slide 15, which addressed themes in modernized statutes, including: affirmative definition, freely given, agreement, reversible, words and actions, previous social relationship does not suggest consent, and fight, flight, or freeze responses.

REPRESENTATIVE TARR added that updated language would remove the "use of force" requirement to allow for trauma [based] responses, which include the fight, flight, or freeze behaviors. She stated that other states have been reviewing and updating uniform legislation [related to sexual assault] by considering what had been learned since legislation had been drafted up to 50 years ago. She pointed out the new definition of consent on slide 16, which read as follows [original punctuation provided]:

"consent" means a freely given, reversible agreement specific to the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in the act was positively expressed by word or action.

[1:18:04 PM](#)

REPRESENTATIVE TARR drew attention to slide 18, which explained the concept of rape by fraud, which read as follows [original punctuation provided]:

Concept: An action whereby a person obtains sexual consent and has sexual intercourse of any type by fraud, deception, misrepresentation, or impersonation.

- 12 states currently have specific language
- 10 have language that says consent does not apply if "it is induced by force, duress, or deception."
- Laws in Tennessee and Texas specifically use the term "fraud."
- Federal law addresses "professional purpose" - one component

REPRESENTATIVE TARR referred to the USA Gymnastics sex abuse scandal as an example of the "professional purpose" language in federal statute.

[1:20:22 PM](#)

The committee took a brief at-ease.

[1:21:09 PM](#)

REPRESENTATIVE TARR played a video hyperlink which appeared on slide 19, depicting an example of rape by fraud. The perpetrator had been acquitted due to no legal recourse for the victim to pursue. She explained that Alaska has a similar [legal] problem.

[1:24:24 PM](#)

REPRESENTATIVE TARR explained that Alaska's definition of rape is like the one described in the video - "through the use of force, an individual is unconscious or unaware sex is happening, and a person is disabled to the extent the person cannot provide consent." She noted that twelve other states had changed their laws. She shared with the committee the testimony offered in the House State Affairs Standing Committee. The testimony described an individual who had a sexual interaction with a stranger, whom she believed to be her husband. She expressed her hope that the committee would come to an agreement regarding the concept of rape by fraud. She noted that there is an update to the universal code which called for justice for victims of rape by fraud.

REPRESENTATIVE TARR explained that the fourth component in the bill would address predatory behavior of much older adults in relationships with much younger minors. She drew attention to a chart on slide 21. She noted that the legal age of consent is 16, and sex occurs [legally] with another individual whose age is no more than four years senior to the 16-year-old person. She noted that individuals over the age of 18, as adults, may engage in sexual activity with any other adult, with consent. She stated that the bill would address much older adults having sexual interactions with much younger individuals. She stated that a 10-year age gap has been selected for the language of the bill, as stakeholders have offered the observation of an increase in predatory behavior. She noted that there was a case involving [former Alaska Attorney General] Ed Sniffen. It was alleged that he had sexual contact with a 17-year-old person

when he was the age of 27. She added that the matter of sex trafficking would be addressed in this component of the bill, as STAR has reported incidences of much older individuals attending high-school parties to seek out younger individuals. She stated that the responsibility would be shifted to these older adults to be aware of the legal requirement per the age difference in the case of a large age gap.

REPRESENTATIVE TARR noted that younger individuals may be more vulnerable and [lack the skills of] decision making. She pointed out that male or female teachers may have sexual relationships with students, and this circumstance is the only case the behavior is criminal in the current statute which prohibits sexual activity between a younger person and a person in a position of authority. She noted that grooming behaviors have been observed by older adults among 13-, 14-, and 15-year-olds. She stated that these older adults may have been aware of the law, but still created a relationship with the younger person by the use of gifts and other offerings.

[1:30:36 PM](#)

REPRESENTATIVE TARR noted that a former Alaska State Legislative staff member had been more than 10 years older than [the victim]. The staff member had provided alcohol and engaged in sexual activity with the younger person. She stated that STAR has recognized the prohibition of grooming as one of its legislative priorities. She expressed certainty there is a general agreement that when a 30-year-old person attends a high school party, there is cause for concern. She noted that another concern would be the lifelong damage which could occur to a victim, as described by the victim in the Ed Sniffen case, who came forward as an adult. She noted that cultural and societal norms should be considered, and she expressed the opinion that the proposed legislation would encourage healthy relationships. She drew attention to slide 23, which showed a chart depicting proposed sentencing requirements for the new categorization of crime.

REPRESENTATIVE TARR next drew attention to slide 24, which contained the sectional analysis. She offered that the effective dates may need to be adjusted. She stated that the objective of the proposed bill is when someone is harming Alaskans, this person should be removed from society to prevent the harm of others. She advised that, when prosecution fails to prosecute crimes, [perpetrators] learn how to get away with this behavior. She expressed the hope that the conversation would

include rehabilitative work and treatment for sex offenders. She added that other objectives would be to educate Alaskans regarding consent and work toward a cultural change. When the criminal justice system is involved in a case, she said, it is responding to harm. She continued that her office has been contacted by hundreds of Alaskans sharing various stories, ranging from devastating to inspiring. She expressed the opinion that these situations create a ripple effect, impacting an individual's mental health, families, and employment.

1:35:27 PM

REPRESENTATIVE TARR expressed the understanding that, particularly in smaller communities, survivors have difficulty living day-to-day life because of the fear of encountering a perpetrator in the community. She expressed the hope to create change in both the response to, and the prevention of, such crimes.

REPRESENTATIVE TARR pointed out that slide 26 depicts the desired outcomes, including removing dangerous people from communities for an appropriate amount of time, accessing treatment for sex offenders to prevent the harm of others, educating Alaskans about consent, and changing the culture around sexual violence to prevent future harm.

REPRESENTATIVE TARR concluded with slide 29, which depicts the pertinent questions and answers. In conclusion, she encouraged the committee to focus on the proposed sentencing requirements and the application of the proposed statute. She noted the fiscal notes associated with the bill.

1:37:55 PM

BRIAN HOSKEN, Student Services Director, Alaska School Activities Association (ASAA), provided invited testimony on CSSHB 5(STA). He shared that he is a former Anchorage School District administrator, with nearly 30 years of experience overseeing comprehensive academics, activity programs, and athletic programs. Currently, his primary role at ASAA is to facilitate the Coaching Boys into Men (CBIM) program. He relayed that CBIM is an evidence-based comprehensive violence prevention program designed to inspire coaches to teach their athletes the importance of respect for themselves, others, and, particularly, for women and girls. The program incorporates strategies, scenarios, and resources needed to talk with boys

specifically about healthy and respectful relationships, dating violence, sexual assault, and harassment.

MR. HOSKEN stated that CBIM recognizes sports are tremendously influential on culture and the lives of young people, and the program has been designed to utilize this by leveraging the social capital held by athletes. He opined that the principles of teamwork and fair play, which are central to athletics, make participation in sports an ideal platform to teach healthy relationship skills. He explained that he trains coaches to teach a curriculum designed for a 12-week sports season, with the coach presenting weekly training lessons to the athletes. These weekly teaching sessions include topics such as personal responsibility, insulting language, and understanding consent. He expressed support for developing the definition of consent and added that one of CBIM's objectives is to discuss consent, which includes personal boundaries in intimate and sexual activities; furthermore, CBIM objects to the use of pressure, threats, or force in any physical or sexual encounter, and it actively opposes incidents of rape, sexual coercion, and assault. He offered his belief the bill would help further define this teaching component. He went on to discuss the program goals specifically developed for Alaska by ASAA which are validated by the proposed legislation. He pointed out how both ASAA and the bill mutually support the need for a preventative educational component and accountability for perpetrators. He opined that the clarification of the affirmative definition of consent in the proposed legislation would strengthen the scholastic elements of CBIM. To conclude, he expressed enthusiasm for a statewide implementation of CSSSHB 5(STA), once passed, in coordination with CBIM. He expressed the opinion that this would further educate Alaska's youth with the objective of eradicating violence towards women. He invited committee members to attend a coaching session at their local school.

BRENDA STANFILL, Executive Director, Alaska Network on Domestic Violence and Sexual Assault, provided invited testimony on CSSSHB 5(STA). She stated that the development of the content of the bill has been in progress for over 25 years and is now at the forefront to support victims coming forward to report assault. She stated that the current legal definition of sexual assault has indicated to many assault victims that what they experienced was not a crime. She expressed difficulty in aiding victims, especially when the victims are told the alleged assault does not have the legal components to prosecute the behavior as a crime. She stated that in the current law, to

prove the elements of a crime, the victim's body is used [as evidence] to prosecute crimes of sexual assault with force. Juries are often shown intimate pictures and images of a victim's body to try to demonstrate the use of force had occurred.

MS. STANFILL expressed the understanding that the proposed change to the definition of consent would align more with the actual meaning of consent, and it would align with the principles youth in Alaska are being taught regarding consent. Referring to the earlier video, she expressed the opinion that it is an example of the way these crimes occur, and not representative of one person's experience. She stated that STAR receives reports from parents with concern regarding their child's sexual involvement with a much older person. She suggested that this could be related to sex trafficking and grooming. She stated that STAR staff are left to inform families that no legal protection exists in these situations. She added that delays in rape kit testing negatively affects victims while awaiting results, especially in small communities where the assailant lives. Regarding the high rate of sexual assault, she requested that the committee consider the content of CSSSHB 5(STA), so there would be more reporting and prosecution of such crimes in Alaska.

[1:45:34 PM](#)

JENNIFER BROWN, Communications and Development Director, Standing Together Against Rape (STAR), provided invited testimony on CSSSHB 5(STA). She explained that STAR was founded in 1978 as a 24-hour crisis intervention organization with a response team. She stated that STAR provides advocacy for rape victims during court proceedings and medical examinations, because when a sexual assault occurs, an "avalanche" of other things happens in a victim's life. The victim must cope with the assault while maintaining personal safety and employment. She added that STAR also performs education and advocacy activities in the community, offering age-appropriate school curricula in the Anchorage School District. This curriculum pertains to personal safety, healthy relationships, identifying predatory behavior, and identifying assistance through available resources. She noted that STAR also provides adult educational programs for the workplace on sexual harassment. She reiterated that victims often are laden with a burden of proof following a sexual assault. She asked the committee to consider why these proposed changes should not become law.

[1:49:22 PM](#)

REPRESENTATIVE DRUMMOND questioned the timeframe of similar legislation in other states and whether those changes had resulted in a difference.

REPRESENTATIVE TARR responded that, regardless of the length of time the legislation had been in place, differences have been ascertained following the passage of similar legislation in other states. She noted that, in Alaska, a jury trial may take up to two years to prosecute such crimes. She expressed the understanding that the prevention and education aspects of new laws in other states have produced positive results.

REPRESENTATIVE EASTMAN referred to the tables in the presentation depicting the proposed ages of consenting relationships, and he asked whether there is an age below which an individual may not be prosecuted for sexual assault.

REPRESENTATIVE TARR responded that sexual assault of a minor occurs when the victim is under the age of 18. All others would be prosecuted under the sexual assault statute.

REPRESENTATIVE EASTMAN asked whether a five-year-old child could be prosecuted for sexual abuse of a minor.

REPRESENTATIVE TARR deferred to DOL to provide an answer.

[1:53:24 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division (Anchorage), Department of Law, to Representative Eastman's question, responded that DOL seeks to identify an age gap to determine whether sexual assault of a minor has occurred. She noted that there exists a provision of law which addresses an individual under the age of 16 engaging in sexual penetration of a minor under the age of 13. She stated that if a minor is under the ages of 16 and 13, respectively, there could be a crime. She stated that the Division of Juvenile Justice does not prosecute juveniles as young as five years of age and, while the behavior may be considered disturbing, resources outside of the criminal juvenile justice system can be sought.

[1:54:34 PM](#)

REPRESENTATIVE EASTMAN asked what the relationship of offender to victim would be for those under the age of 13.

CHAIR CLAMAN interjected, asking whether, in the case of a 17-year-old offender and a 13-year-old victim, this would be a crime.

MS. SCHROEDER answered that it would be sexual abuse of a minor in the second degree.

CHAIR CLAMAN questioned whether the juvenile court would handle the case involving a 17-year-old offender and whether this would be "waivable." He explained that "waivable" means the offender could be treated as an adult.

MS. SCHROEDER answered that the scenario described would be subject to an automatic waiver.

REPRESENTATIVE SNYDER expressed that she understood the first three components of the bill; however, she questioned whether the approach taken regarding older adults and minors, as proposed in the bill, has been undertaken elsewhere and what impacts may have occurred.

REPRESENTATIVE TARR answered that, through collaboration with the National Conference of State Legislators (NCSL), reports have been obtained for states which have imposed either 7- or 10-year restrictions on age gaps. Considering cultural considerations, such as existing relationships among different-aged high schoolers, the 10-year age difference was chosen. She stated that the 10-year age gap was selected also because these age groups have very different lifestyles and stages of development. She noted that Legislative Legal Services has provided research to support the 10-year age gap.

REPRESENTATIVE SNYDER expressed her interest in learning more on the topic and reviewing the reports and documents.

[1:59:34 PM](#)

REPRESENTATIVE TARR, in response to Representative Eastman's request, offered that research has been conducted in relation to whether the wording of legislation works in an [experimental] court setting. She expressed the need to incorporate language which would work during a trial. She referenced the Uniform Penal Code, which would have a review of statutes and reports demonstrating the change in the thought process on these laws, where these laws have been in existence for more than 50 years.

2:01:30 PM

CHAIR CLAMAN questioned whether there are additional anticipated changes to the proposed bill, other than changes to the effective dates.

REPRESENTATIVE TARR answered that DOL is working with her office regarding consent language. Concerning consent, she pointed out new language has been contemplated to retain the provisions of "freely given, reversable, and specific."

CHAIR CLAMAN asked whether she is prepared to offer her position on these proposed changes to the language in the bill.

REPRESENTATIVE TARR, responding, pointed out her main objective is that "use of force" not be the main component of consent. She added that some states have retained "use of force" as an element of assault; however, in this usage, "use of force" amounts to a higher level of crime.

2:04:17 PM

REPRESENTATIVE VANCE asked whether data exists on resulting changes in prosecutions for states which have had similar changes in their law.

REPRESENTATIVE TARR expressed uncertainty that such data exists. She noted that some of these changes have been recent, with some data existing pertaining to education and prevention efforts. She added that sexual assault crimes are typically difficult to prosecute since the crime occurs with few witnesses and typically among two people. She expressed the hope that the new law would reflect societal and cultural expectations around behaviors and consent.

REPRESENTATIVE EASTMAN asked whether grooming behavior is a crime in the absence of a sexual assault. He suggested that an individual who has been subject to grooming may be "brainwashed" and unable to offer consent.

REPRESENTATIVE TARR allowed that the behavior of grooming was a consideration in drafting the bill, and currently the providing of gifts [to a minor] is not criminal behavior.

CHAIR CLAMAN added that providing alcohol and drugs as gifts [to a minor] would be a crime.

MS. SCHROEDER concurred that grooming behavior is not illegal. She stated that there exists a struggle to determine what is predatory behavior and grooming behavior concerning the giving of gifts. She stated that the distribution of indecent materials would be categorized as a crime. She noted that sexual abuse of a minor is not subject to the provision of consent.

[2:09:07 PM](#)

REPRESENTATIVE EASTMAN postulated that rape by fraud could be compared with a lack of informed consent, comparable to what is required for medical procedures.

REPRESENTATIVE TARR stated that other states have included affirmative consent. She stated that Washington State has produced a report showing rape by fraud is perpetrated along six general areas with some overlap. She listed these to be fraudulent treatment, sexual impersonation, sexual scams, sexual theft, abuse of authority, and sexual extortion. She added that the least likely to occur is sexual impersonation.

REPRESENTATIVE EASTMAN questioned whether the law requires information to be provided prior to a sexual encounter, such as one's Human Immuno Virus (HIV) status.

MS. SCHROEDER responded that there are no legal requirements for an individual to provide specific information before engaging in a sex act.

[2:11:48 PM](#)

CHAIR CLAMAN asked whether any problems have emerged since the requirement under previous legislation imposing a one-year timeline for testing of rape kits.

REPRESENTATIVE TARR responded that, per the crime lab, the ordinary timeline for the testing of rape kits is more than two years. To accommodate the request for additional staffing, she stated that the lab has suggested an incremental shortening of the timeline from two years to one year. She stated that the testing involves highly trained professionals with certifications. She stated that the change from one year to six months would require additional resources identified in the associated fiscal note. She offered that the lab has identified the "gold standard" of testing to be 90 days, and, following the

passage of the proposed legislation, no additional resources would be required for the lab to further this standard.

2:14:15 PM

CHAIR CLAMAN asked whether there were any prosecutions where DOL was unable to get a rape test kit tested in time for trial.

MS. SCHROEDER offered her understanding that, if there is an active prosecution, the case would be assigned a higher priority for testing at the lab. She added that, while delays in testing may occur, it does not amount to a detriment to prosecution of such cases. In response to a follow-up question, she stated that DOL would be supportive of a change from the one-year testing to six months. In response to a follow-up question, she stated that DOL would not take a position on requirements imposed on the Department of Public Safety.

2:15:48 PM

REPRESENTATIVE TARR expressed the understanding that the testing kit timeline is important to the individual awaiting results. She added that cases exist where the identity of the perpetrator is not known. In response to a question from Chair Claman, she stated that there is a distinction between rural and urban locations pertaining to the timeframe of rape kit testing.

2:17:02 PM

REPRESENTATIVE KURKA asked for a description of the process of rape kit testing.

REPRESENTATIVE TARR explained that evidence is collected with a rape test kit from the victim and from the perpetrator. She noted that processing of kits has previously occurred outside the state; however, with the increase of resources allowed for the crime lab, kits can be now processed in state. She added that the increase in crime lab resources benefitted the prosecution of other crimes, such as homicides. She added that genetic information, once processed, is entered into the federal Combined DNA Index System database to compare it with other possible crimes. She suggested the video, titled "I Am Evidence" to ascertain additional information on the collection of evidence and identifying perpetrators across jurisdictions.

REPRESENTATIVE KURKA asked what percentage of rape kits are tested which result in the identity of the perpetrator being not known.

REPRESENTATIVE TARR expressed uncertainty.

CHAIR CLAMAN asked whether the rape test kit consists only of evidence gathered at the time of a medical rape exam of the victim.

MS. SCHROEDER cautioned that, to answer, she would need to consider how the question pertains to the proposed bill. She offered that "suspect kits" are available to test a suspect.

[2:22:17 PM](#)

REPRESENTATIVE TARR restated the response that the percentage of cases is unknown in which the subject is not identified. She explained that biological evidence of a sexual assault should be collected within 72 hours of the crime, and the victim should not shower or change clothing prior to testing. She added that a victim, who is comfortable engaging with law enforcement, could file a report, evidence can be collected and stored, and an anonymous report of the crime to law enforcement, within a certain period, may be filed.

[2:24:50 PM](#)

REPRESENTATIVE KURKA asked the process for collecting evidence from an accused person.

CHAIR CLAMAN offered that DOL may broadly explain considerations regarding the fourth amendment and probable cause.

MS. SCHROEDER answered that, to collect biological evidence, a warrant would be required based on the existence of probable cause.

CHAIR CLAMAN added that law enforcement could request for an individual's consent to collect evidence in the absence of a warrant.

MS. SCHROEDER confirmed that these cases may occur, and DOL would seek the warrant regardless.

[2:26:36 PM](#)

REPRESENTATIVE EASTMAN asked whether rape kit evidence could consist of evidence collected from a crime scene, not solely from a victim's body.

MS. SCHROEDER answered that [evidence collected from a crime scene] would be evidence in the case. She stated that rape kits exist to collect evidence from a person's body, and this involves an extensive process.

REPRESENTATIVE TARR added that her office has [an unused] rape test kit for interested parties to examine. It includes a sealable box, gloves, swabs, and instructions. She noted that some communities have a Sexual Assault Response Team (SART) or Village Public Safety Officers (VPSOs), while others do not. She reminded the committee that previously there was not a tracking system for rape test kits.

[2:29:07 PM](#)

REPRESENTATIVE DRUMMOND questioned the qualifications for collecting evidence in a rape kit. She questioned what would occur in a community with no qualified person.

MS. SCHROEDER answered that the preferred option would be a medical professional to collect the evidence. She noted that communities with no such medically trained personnel, a law enforcement officer, or VPSO, a community health aide may collect evidence.

REPRESENTATIVE DRUMMOND postulated that, in rural communities, a rape test kit would need to be available in a community, and that a victim would need to know which person would be qualified in the community to proceed. She asked whether the collection of evidence could be remotely supervised by a health care professional via telehealth. She expressed concerns about the impact on the investigation concerning the trained personnel, community resources, and communications infrastructure, among others.

REPRESENTATIVE TARR responded that Representative Drummond has answered her own question with the concerns she expressed. She reiterated that security would be of importance in the rural communities. She noted that judicial proceedings are more frequently conducted remotely than in the past, but those cases usually involve individuals already in custody. She noted that SARTs consist of a law enforcement officer, a victim's advocate, and a forensic nurse. She added that victims may share their

story in one interview with the entire team, rather than several interviews. She deferred to Ms. Stanfill.

MS. STANFILL added that ANDVSA has coordinated with the National Council on Sexual Assault to address the concerns expressed in the current line of questioning. She explained that a women's coalition in Bethel has obtained equipment and additional funding to support telehealth and training. Because of [limited] broadband access, she said, telehealth is limited.

[2:34:01 PM](#)

REPRESENTATIVE DRUMMOND estimated that 38 villages exist for which Bethel is the hub. She asked whether victims in the surrounding villages can rely on support from the community health aide, and other supports, in Bethel.

MS. STANFILL answered that six communities have rolled out support for victims of sexual assault, and the equipment costs have had a negative impact on establishing the same in other communities. She added that the process of selection has been based on communities with a community health aide.

[2:35:26 PM](#)

REPRESENTATIVE EASTMAN referred to the earlier video and asked whether the language in the proposed bill, including "inducement", would address the scenario portrayed in the video.

REPRESENTATIVE TARR concurred that "inducement" is included, along with "concealment that the offender is another person based on the offender's real identity", which would address specific behavior. She expressed the opinion that the language included in the bill would be important. She urged the committee to understand the concept of rape by fraud, so the appropriate language to describe the undesired behavior could be considered.

[2:39:10 PM](#)

REPRESENTATIVE EASTMAN asked whether a crime would be committed in the case where an individual fails to disclose his/her identity, or in the case when an individual presents a false identity.

REPRESENTATIVE TARR asked for clarification on the distinction posed. She described the anecdotes based on which the law had

been drafted as involving individuals "posing" as someone known to the victim. She referred to a report by Washington State involving historical instances of rape by fraud.

REPRESENTATIVE EASTMAN asked, should CSSSHB 5(STA) pass, would an individual promising marriage in exchange for sex constitute a crime.

REPRESENTATIVE TARR expressed her belief that this would not, since the matter of the individual's identity is not misrepresented.

MS. SCHROEDER offered her opinion that neither of the two examples offered in the discussion would constitute a crime, regardless of the passage of the proposed legislation. She recalled earlier testimony regarding sexual abuse of a minor in the second degree and offered the clarification that the waiver process in this case would be discretionary.

[2:44:33 PM](#)

REPRESENTATIVE VANCE expressed her hope that the topic of coercion would be addressed in CSSSHB 5(STA), as it relates to grooming and human trafficking. She asked Representative Tarr to explain how coercion [may be unlawful] in current law and how the proposed legislation would address the matter.

REPRESENTATIVE TARR referred to Section 6 of the proposed legislation and the updated definition of consent. She noted that the new definition includes consent be "freely given".

REPRESENTATIVE VANCE asked for DOL's opinion on whether to include the word "coercion," or if it is implied in the proposed language, as written.

MS. SCHROEDER expressed the belief that "coercion" is addressed adequately in the bill, and an overlap exists with existing statute regarding coercion. She suggested that an amendment could be considered to ensure no contradiction exists between the proposed legislation and the existing statute.

REPRESENTATIVE VANCE questioned the case where a person was proven to have coerced sex from another with the promise of marriage. She asked whether this person would be guilty of assault by coercion.

MS. SCHROEDER cautioned that the scenario described by Representatives Eastman and Vance [regarding the promise of marriage] and coercion, as it relates to CSSSHB 5(STA), are two different matters. She noted that coercion, with the promise of marriage, would be a challenge to prove, and the proposed legislation would not address this particular conduct. She offered a broad example of coercion related to CSSSHB 5(STA) as involving someone withholding a promotion for sex.

CHAIR CLAMAN noted that AS 11.41.530 contains the definition of coercion.

[2:48:37 PM](#)

REPRESENTATIVE EASTMAN asked for the legal distinction between coercion with the promise of marriage, or coercion with the promise of a promotion.

MS. SCHROEDER offered to follow up with a complete answer.

[HB 5 was held over.]

[2:50:22 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:50 p.m.