

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 9, 2022

1:32 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S) :

Board of Governors of the Alaska Bar

Jedidiah Cox - Anchorage

- CONFIRMATION(S) ADVANCED

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: 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
03/04/22	(H)	Heard & Held
03/04/22	(H)	MINUTE(JUD)
03/09/22	(H)	JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

JEDIDIAH COX, Appointee  
Board of Governors of the Alaska Bar  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as an appointee to the Board of Governors of the Alaska Bar.

JOHN SKIDMORE, Deputy Attorney General  
Office of the Attorney General  
Criminal Division (Anchorage)  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Presented a document to the committee, titled "HB 5 Additional Document - Department of Law Sexual Assault and Consent Draft Language" and answered questions.

**ACTION NARRATIVE**

[1:32:00 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 1:32 p.m. Representatives Drummond, Vance, Snyder, Kriess-Tomkins (via teleconference), and Claman were present at the call to order. Representatives Kurka and Eastman arrived as the meeting was in progress.

**CONFIRMATION HEARING(S):**  
**Board of Governors of the Alaska Bar**

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CHAIR CLAMAN announced that the first order of business would be the confirmation hearing on the governor's appointee to the Board of Governors of the Alaska Bar.

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CHAIR CLAMAN opened public testimony.

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JEDIDIAH COX, Appointee, Board of Governors of the Alaska Bar, testified as the appointee to the public member seat on the Board of Governors of the Alaska Bar. He provided examples of accomplishments of the board during his preceding three-year tenure. Among these accomplishments he stated that the board had purchased the building in Anchorage which provides revenue and improvements to the work environment. He stated that he is a member of the building management subcommittee which is overseeing the renovations. He noted that the board has also implemented mitigation measures during the COVID-19 pandemic, including maintaining the availability of the exam to Alaska Bar Association members and members of the public. He pointed out that the board has also transitioned the positions of Chief Executive Officer and its general counsel. He added that the board has not increased its dues for members despite inflation. He shared that he is a member of the committee for the Alaska Bar Association which conducts performance evaluations.

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MR. COX, in response to a question from Representative Eastman, answered that the availability of attorneys in Alaska is a matter of concern to the board. He spoke about the test score

requirement and how the board had reviewed this requirement in 2019. He stated that the board had not determined a need for a change to the score at that time, and the board would reexamine the issue at its next meeting. He noted that there exists a national shortage of attorneys, and there is a pro bono program for economically disadvantaged individuals. In response to a follow-up question, he stated that the Alaska Bar Association has reciprocity with all 50 states and Washington, D.C. This allows for individuals with three years of good standing with the local state's bar association to practice law in Alaska, with a few additional caveats.

CHAIR CLAMAN asked Mr. Cox to share his experience and level of participation in board activities as a public, non-attorney member.

MR. COX shared that he has been impressed with the board's ability to consider diverse viewpoints, and the public member often brings important perspectives on key issues.

REPRESENTATIVE EASTMAN referred to the resume provided to the committee and asked Mr. Cox to explain his experience in the Florida House of Representatives.

MR. COX answered that he was the executive secretary for the Florida State Legislature's House Rules Committee. He shared that he often dealt with lobbyists.

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CHAIR CLAMAN, after ascertaining there was no one else who wished to testify, closed public testimony on the confirmation hearing of the governor's appointee to the Board of Governors of the Alaska Bar.

REPRESENTATIVE EASTMAN commented on the shortage of practicing attorneys in Alaska; however, there are individuals seeking to be employed as attorneys. He encouraged the legislature and the Alaska Bar Association to consider both of these needs during the confirmation process.

REPRESENTATIVE DRUMMOND thanked Mr. Cox for his service and participation in the process.

CHAIR CLAMAN offered that one of the challenges faced by the board is the balance between increasing licenses and the quality of competency among practicing attorneys.

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REPRESENTATIVE SNYDER stated that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointee and recommends the following name be forwarded to a joint session for consideration: Jedidiah Cox for the Board of Governor's for the Alaska Bar. She stated this does not reflect the intent of any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

CHAIR CLAMAN announced that the name of Jedidiah Cox would be forwarded to the joint session.

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

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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).]

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JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law (DOL), testified during the hearing on CSSSHB 5(STA). He stated that he has been practicing law in Alaska for more than 24 years, and during this time Alaska has had a "pernicious" problem with sexual assault. Despite having investigators, the Alaska State Troopers, municipal law enforcement agencies, special prosecutors, and public outreach campaigns to build awareness of the issue, Alaska has the highest rate of sexual assault in the nation. He acknowledged that the legislature has appropriated funding and passed legislation to address the issues. Having prosecuted a variety of sexual assault cases, he shared that he has been in the untenable position of explaining to victims who had verbally refused consent that the state was unable to prosecute because of the [legal] definition of consent. He pointed out, per the current law, if there is a lack of the use of force, or a lack of a threat of force, it would not rise to the level of being a crime.

MR SKIDMORE shared that he is the longest-serving member on the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) and related his experience of explaining to victims why such conduct is not prohibited by law. He expressed the opinion that the meaning of the word "consent" is "willingness, harmony or concordance, or agreement with what can happen." He argued that it is long past the time to update the law accordingly. He pointed out that law has evolved past the era where women were viewed as property, and rape was not a crime against a woman but a crime against her father or husband. He described consent to a sexual act as an act both parties have an interest in doing. He stated that the laws regarding consent have been changing, and over the last decade the drafters of the Model Penal Code began this review. He stated that several states have updated laws to include three concepts: free will, the ability to withdraw consent, and the consideration of the totality of circumstances. He offered that DOL advocates the inclusion of such concepts in changes to Alaska law.

MR. SKIDMORE recalled House Bill 49 [passed during the Thirty-First Alaska State Legislature] had included attempts to introduce these three concepts into law. He expressed excitement of the current administration's support for the changes regarding sexual assault in the law. He referred to the document he passed out to the committee, titled "HB 5 Additional Document - Department of Law Sexual Assault and Consent Draft Language" [included in the committee packet]. The document outlined DOL's proposed language change on the matter of consent. He offered that the department is open to discussion to determine the ideal language. He reiterated that the three concepts [listed above] are important to the department.

MR. SKIDMORE reminded the committee that sexual assault in Alaska is a long-standing problem. He emphasized that, should the laws about consent change, it would not likely result in a panacea which stops sexual assault. He stated that cases will be as difficult to prove as they are under the current law because this conduct typically occurs between two individuals in a private setting without witnesses or recordings; however, this does not equate to a lack of need for changes to the law. He pointed out that young Alaskans are learning about healthy relationships and the concepts of consent, and the state government should recognize the existence of the need to update the laws accordingly. He explained that the document before the committee is not the proposed bill, [but suggested language]. He noted that Section 1 describes sexual assault in the first

degree, and the definition is the result from the study of this legislation in other states. He noted that states with a broader definition of consent maintain a separation of degrees of sexual assault. In other words, a situation where consent is not offered is different than when an individual is struck, beaten, or threatened with a weapon, and each situation has differing degrees of criminal conduct. He stated that the proposed language provides that sexual assault would remain an unclassified felony, punishable by 20 to 30 years in prison. He read from the document, which read as follows [original punctuation provided]:

(a) An offender commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person by

(A) the use of force or the express or implied threat of force against any person or property; or

(B) causing the victim to become incapacitated;

MR. SKIDMORE added that causing incapacitation of a victim would not be a case where someone has a mental illness [and is unable to offer consent.] He explained that causing incapacitation would be a defendant making an affirmative act, such as giving a drug, hitting, or strangling the victim. He explained that this is newly proposed language in the definition of "use of force" in the elements of assault.

MR. SKIDMORE stated that sexual contact is preserved in law in the proposed language in Section 2, and AS 11.41.420(a) would be updated to eliminate the need for the threat or use of force. He referred to Section 3 of the document, drawing attention to paragraph (7), which contains proposed language pertaining to sexual assault in the third degree, which read as follows [original punctuation provided]:

(7) under circumstances not proscribed under AS 11.41.420, the offender engages in sexual contact with another person without consent of that person.

MR. SKIDMORE stated that the new definition would replace the existing definition in AS 11.41.470(10) to include "without consent". He stated that the proposed language would distinguish when consent exists and when it does not exist, on page 3, which read as follows [original punctuation provided]:

(A) means that there was not a freely given, reversible agreement specific to the conduct at issue, and is determined by the totality of the circumstances surrounding the offense;

B) includes

(i) an expression of lack of consent through words or conduct;

(ii) the defendant fraudulently representing that the sexual act serves a professional purpose: in this paragraph "professional purpose" means an act the defendant has represented as a necessary part or component of a provided service, part of the routine course of a procedure, or a component of the defendant's profession that would occur if a person sought services from another practitioner in the same field as the defendant;

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MR. SKIDMORE explained that a lack of consent through words or conduct could be evidenced by a victim saying "No," or by a victim slapping or pushing an individual away. He offered an example of a fraudulent representation of a professional, such as a medical professional, personal trainer, or yoga instructor, who engages in sexual contact which is not necessary to the service provided. He stated that this would be sexual assault.

MR. SKIDMORE pointed out Section 3, subparagraph (C), which read as follows, [original punctuation provided]:

(C) In this paragraph,

(i) "agreement" does not include a current or previous dating, social or sexual relationship by itself, or the manner of dress of the victim

(ii) "freely given" means agreement to cooperate in the act was positively expressed by word or action pursuant to free will;

(iii) "reversible agreement" means an agreement to engage in the conduct at issue may be revoked at any time;

(iii) "expression of lack of consent" does not require verbal or physical resistance and may include inaction.

MR. SKIDMORE characterized revocation of consent as, "It's okay to change your mind." He explained that the inclusion of the potential for inaction is necessary because prosecutors frequently encounter victims who, from shock or surprise, freeze in the moment and do not provide the required consent. He pointed out Section 5, regarding the crime of coercion. He stated that this is when a person compels a victim to engage in conduct when there is a legal right to abstain. He listed the conduct beginning on paragraph (1), which read as follows [original punctuation provided]:

- (1) inflict physical injury on anyone, except under circumstances constituting robbery in any degree, or commit any other crime;
- (2) accuse anyone of a crime;
- (3) expose confidential information or a secret, whether true or false, tending to subject a person to hatred, contempt, or ridicule or to impair the person's credit or business repute;
- (4) take or withhold action as a public servant or cause a public servant to take or withhold action;

MR. SKIDMORE stated that these types of behaviors, among the others listed, would be sexual assault. He added that the proposed language would include Section 6, which would repeal AS 11.41.470(8), which contains the current definition of consent. He stated that CSSSHB 5(STA) would address sexual assault in circumstances of fraud, which the administration has not taken a position on. Also, he said CSSSHB 5(STA) would address sexual abuse of a minor, increasing penalties if there is a 10-year age gap. He stated that in current statute, the age gap is limited to 4 years, and the administration has not taken a position on this either. He offered that the administration supports the proposed legislation's stance on consent and the Sexual Assault Response Team (SART) kit testing.

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MR. SKIDMORE, in response to a question from Representative Kurka, answered that Section 6 would be a conforming statutory update to the definition of consent. In regard to this, he encouraged the committee to focus on the three elements: free will, reversible, and consideration of the totality of the circumstances.

MR. SKIDMORE, in response to a question from Representative Vance concerning the "totality of the circumstances", answered

that prosecutors review each case on an individual basis, as it would be impossible to legislate every nuance. He postulated that no two incidents of alleged sexual assault would be the same. He stated that the law will often consider the totality of the circumstances of an incident. In example, he explained that the existence of a previous relationship may not be consent, but if a couple had engaged in certain behaviors previously, it would need to be evaluated as part of the evidence in determining whether consent was given. He offered another scenario in which a person unknown to the victim was touched in the manner defined as sexual contact in a public location. The court would consider if there existed any reason the aggressor would think the conduct was appropriate. He listed some other elements of circumstance: whether the two people knew one another, where they were located, what previous contact had occurred between them, and what communications may have occurred to determine if a defendant had acted knowingly and recklessly.

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REPRESENTATIVE EASTMAN asked whether the definition of "agreement" would be excluded from the totality of the circumstances.

MR. SKIDMORE answered that "agreement" is not constituted by the factors listed in the definition and should not be considered by itself.

REPRESENTATIVE EASTMAN asked whether consent would be legally measured to determine when it had been revoked, especially in the case of inaction.

MR. SKIDMORE answered that it is difficult for prosecutors to prove this had occurred beyond a reasonable doubt. He answered that an "agreement" is revoked when an individual indicates that engagement in the conduct is no longer wanted. He offered examples of an individual saying, "Stop," "Get off of me," or "I don't want to do this anymore," or the individual pushing the other individual away. He characterized these examples as clear indications of the revocation of consent. He added that it would be important to consider whether the other individual continues the conduct with "reckless disregard". In response to a follow-up question, he answered that an individual disrobing in front of another would be an agreement to engage in some type of conduct, resulting in the two questions: what type of conduct and to what extent.

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REPRESENTATIVE EASTMAN asked whether a subset of issues under circumstances not proscribed in AS 11.41.410 would amount to a crime.

MR. SKIDMORE answered by offering an example of coercion, in which an individual threatens to accuse an individual of having committed a crime if the victim does not engage in sexual contact. He stated that the investigation would seek to determine if the threat was enough to overcome the person's free will. He advised that all the elements need to be met to amount to the incidence of sexual assault. If all elements are not met, the crime would be coercion.

REPRESENTATIVE EASTMAN asked whether a person could be convicted of a crime of coercion with sexual acts, but not a crime of coercion with sexual assault.

MR. SKIDMORE answered that sexual acts defined as "sexual assault" include sexual contact and sexual penetration, with each having a definition in statute. He expressed the possibility for a person to engage in what may be called "a sex act," but it does not meet the definitions; therefore, it would need to be outside of these definitions to not be considered and prosecuted as a sexual assault.

REPRESENTATIVE EASTMAN expressed his concern about acts which do not qualify as a sexual assault or coercion.

MR. SKIDMORE offered that the phrase "other circumstances not proscribed" exists so the crime would either be sexual assault or coercion.

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REPRESENTATIVE SNYDER gave an example of sexual penetration by one person with another person who was unconscious, but the perpetrator had not caused the other individual to be unconscious. She questioned whether this act would be sexual assault in the first degree.

MR. SKIDMORE answered that it would be sexual assault in the second degree. In response to a follow-up question about the degree of the crime, he answered that if the defendant causes the incapacitation, this would be a more significant crime.

REPRESENTATIVE SNYDER allowed that crimes involving force are serious and asked what constitutes the second degree in the scenario described earlier. She questioned whether this classification is unique to Alaska.

MR. SKIDMORE referenced the classification in the Model Penal Code and stated that this is in the legislation for all other states he had researched. He offered that both instances involve the commission of a crime, but what makes one worse is when the offender causes the incapacitation. This is a greater predatory crime in the eyes of the law.

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CHAIR CLAMAN stated that the language in the document categorizes "sexual penetration without consent" to be a first-degree sexual assault, regardless of whether the victim was "punched." He expressed the opinion that victims have reported experiences equally violent. He questioned DOL's rationale in treating the occurrence of additional violence as a higher degree than the failure to understand the lack of consent.

MR. SKIDMORE responded that victims have expressed a similar point of view. He noted that this approach exists across the country, reflecting the Model Penal Code and federal law. He stated that, when an individual engages in additional acts of violence, or causes a victim to become incapacitated, these circumstances indicate the perpetrator took additional steps to engage in the criminal conduct. He added that these additional steps can be seen as aggravating factors and can be treated more harshly through sanctions or sentencing.

CHAIR CLAMAN pointed out the criticism of the current law is that to prosecute any sexual assault, the definition requires the use of force. He questioned DOL's requirement of force for sexual assault in the first degree but not for second- or third-degree assaults.

MR. SKIDMORE, regarding sexual assault and consent, responded that the discussion for this across the country addresses what is it that overcomes the consent. For example, consent may be overcome using force, the threat of force, or through some other coercive behavior. He added that many states have laws which indicate consent may be overcome using fraud, and there are cases where the person is incapable of consenting, such as an incapacitated person. He added that most, if not all, states

have laws concerning persons of a certain age as not being capable of giving consent. He explained that laws address the different ways in which consent is not obtained and which of these ways is more egregious. Regarding the threat of force, or the use of force, there is uniformity among laws which puts this at the highest level of crime. He noted that some state laws require the use of a firearm or serious physical injury to amount to the highest level of crime. He explained that the decision of what is the highest level of crime is policy decided by each state's legislature. He added that the Alaska law does not categorize the use of a dangerous instrument during the commission of a crime to amount to a more serious crime, but that aggravating factors may exist to address these concepts. In response to a follow-up question, he stated that, under the current law, aggravating factors must be found by a jury prior to the court applying the aggravating factor at sentencing.

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REPRESENTATIVE KURKA offered an example in which a person was incapacitated due to medical intervention and another person, who was not directly involved in the incapacitation of the victim, commits a sexual assault. He suggested that this would imply premeditation and could be a serious crime. He asked for a distinction between the first- and second-degree assault.

MR. SKIDMORE agreed that the circumstance described would be alarming. He referred to paragraph (3), which addresses sexual assault in the first degree. He relayed that it occurs when a person engages in sexual penetration with another person who the offender knows is mentally incapable, and who is in the offender's care under the authority of law. He further explained that paragraph (4) addresses when the offender engages in sexual penetration and knows the victim is unaware the sexual act is being committed, and the offender is a healthcare worker, or the offense takes place during the professional treatment of the victim. He noted that both instances are tantamount to sexual assault in the first degree. He answered that sexual assault in the first degree in a presumptive sentencing range for a first offense is 20 to 30 years and sexual assault in the second degree is 15 to 30 years.

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REPRESENTATIVE SNYDER asked whether the use of force would be required for penetration of an incapacitated person because the victim could not further aid the act. She asked for an

explanation of whether this amounted to the existence of the use of force.

MR. SKIDMORE offered that this question is one of great consternation among prosecutors. He referred to AS 11.81.900 and the definition of the "use of force". He stated that the Alaska Court of Appeals opined the use of force should be more than the force which is necessary to achieve the outcome of sexual penetration or contact. He cited the cases of the State v. Townsend, Court of Appeals No. A-10502 (Alaska Ct. App. Sep. 14, 2011), and the State v. Mayfield, 442 P.3d 794 (2019), which contain discussions regarding the use of force beyond what is necessary solely for the act itself.

CHAIR CLAMAN postulated that neither case has been published.

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REPRESENTATIVE EASTMAN asked whether the case of sexual assault involving penetration of someone who is incapacitated is equal to the case of sexual assault involving contact with semen.

MR. SKIDMORE answered that the distinctions in penalties for the two scenarios would be a policy call by the legislature. He added that sexual assault in the second degree has a larger presumptive sentencing and includes a 15-year range of potential penalty imposed at sentencing.

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REPRESENTATIVE KURKA reiterated the question whether the sexual act on an incapacitated person would necessarily require the use of force.

MR. SKIDMORE, concerning someone who is already incapacitated, answered that the use of force would not be further considered. He added that, under current law, the use of force pertaining to "without consent" occurs when a person's willingness to engage in the conduct is overcome by the threat or use of force. He added that, cases involving a person who is unable to provide consent, the use of force is not an issue despite the occurrence of the use of force. He postulated that a case involving a person beating another person who is incapacitated before or during a sexual assault might be charged with sexual assault in the second degree along with a separate crime of assault.

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CHAIR CLAMAN asked whether Mr. Skidmore could recall the facts and circumstances in the State v. Townsend case.

MR. SKIDMORE stated that the case is commonly referred to as "a case of surprise." He explained that an individual was in a bar in Juneau, and another person grabbed his crotch. He stated that the case was reported to the police department, and the district attorney proceeded with filing charges of sexual assault, to which the Court of Appeals ruled that surprise was not cause for sexual assault. In response to a follow-up question, he explained that the court's reasoning had been because the conduct occurred by surprise, and force was not necessary to accomplish the act; therefore, it did not qualify as a sexual assault.

MR. SKIDMORE, in response to a question from Representative Vance, answered that the case was dismissed with no conviction.

CHAIR CLAMAN asked whether there might have been the potential to prosecute a crime other than sexual assault in the State v. Townsend case, such as harassment or fourth-degree assault.

MR. SKIDMORE answered that the crime of assault requires more pain or physical injury to exist. He opined that the case could amount to charges of either a Class A or Class B misdemeanor of harassment. He added that the law requires for harassment to have occurred, the conduct would be committed with the intent, or with the conscious objective, to engage in offensive contact with the intent to harass the person. As a defense under current law, the defendant could relate he did not intend to harass the other person, or he held the belief the other person would welcome the contact. He added that another filed bill would address this matter under discussion; however, under current law, it is not illegal to grab an individual's genitals. He offered this as an example of the need for the reform of the law.

CHAIR CLAMAN asked what the outcome would have been had the victim reported the act as having caused pain.

MR. SKIDMORE postulated that the defendant could likely be charged with assault in the fourth degree by the definition of physical injury under AS 11.81.900, as this requires pain.

REPRESENTATIVE VANCE complimented Mr. Skidmore's ability to recall details of cases, as this aided in the discussion.

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REPRESENTATIVE SNYDER, should CSSSHB 5(STA) pass, questioned whether the State v. Townsend case circumstances would result in a charge of sexual assault in the third degree.

MR. SKIDMORE answered that it would.

REPRESENTATIVE SNYDER asked whether sexual contact would necessarily be limited to areas of the body typically associated with sexual contact.

MR. SKIDMORE offered the example that a foot massage never qualifies as sexual contact. He noted that sexual contact is defined in AS 11.81.900(b)(61) as touching, either directly or through clothing, a victim's genitals, anus, or female breast. He added that, under current law, the inner thigh or the groin would not meet the definition.

REPRESENTATIVE SNYDER asked whether the state would prosecute an individual who derived pleasure from touching an unwilling person's body [part, where the body part] is not currently defined in the statute.

MR. SKIDMORE answered that, unlike some states requiring the existence of sexual gratification from a particular type of touching, Alaska law requires only certain parts of the body qualify as sexual contact. He noted that contact with semen is included in current law in Alaska.

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REPRESENTATIVE EASTMAN asked whether the conduct described in the State v. Townsend case had amounted to sexual contact because it had involved contact through clothing with the victim's genitals.

MR. SKIDMORE answered that the contact itself did qualify, but the use of force did not exist. He stated that the circumstances of the use of force, or the threat of force, are required. He pointed out that the focus of the discussion is whether there is a lack of consent and whether the use of force is sufficient.

REPRESENTATIVE EASTMAN referred to the definitions in AS 11.81.900(b)(61) and (62) regarding penetration. He asked

whether the law draws a distinction between male and female victims.

MR. SKIDMORE responded that they are treated as equal under the definition. In closing, he stated that as a prosecutor of more than 24 years, he has struggled with the concept of consent, as he understood the definition in law. He expressed the opinion that this area in law should be changed within the purview of the legislature. He urged the committee to consider the proposed definitions and to take action to change the law to codify a common understanding of what is allowed and what is not allowed.

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CHAIR CLAMAN announced that HB 5 was held over.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:51 p.m.