

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 2, 2022

1:46 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

HOUSE BILL NO. 325

"An Act relating to domestic violence."

- 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: HB 325

SHORT TITLE: DOMESTIC VIOLENCE

SPONSOR(S): REPRESENTATIVE(S) RASMUSSEN

02/16/22	(H)	READ THE FIRST TIME - REFERRALS
02/16/22	(H)	JUD
02/25/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/25/22	(H)	Heard & Held
02/25/22	(H)	MINUTE (JUD)
05/02/22	(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
03/04/22	(H)	Heard & Held
03/04/22	(H)	MINUTE(JUD)
03/09/22	(H)	JUD AT 1:00 PM GRUENBERG 120
03/09/22	(H)	Heard & Held
03/09/22	(H)	MINUTE(JUD)
03/30/22	(H)	JUD AT 1:00 PM GRUENBERG 120
03/30/22	(H)	Heard & Held
03/30/22	(H)	MINUTE(JUD)
04/13/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/13/22	(H)	Heard & Held
04/13/22	(H)	MINUTE(JUD)
04/15/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/15/22	(H)	Heard & Held
04/15/22	(H)	MINUTE(JUD)

04/27/22 (H) JUD AT 1:00 PM GRUENBERG 120
04/27/22 (H) Heard & Held
04/27/22 (H) MINUTE (JUD)
05/02/22 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

MIKE HENRY, Sergeant
Alaska State Troopers
Department of Public Safety
Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 325.

KATIE TEPAS, Program Coordinator
Alaska State Troopers
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 325.

JAYNE ANDREEN
Alaska Public Health Association
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 325.

EMMA POTTER, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented an explanation of changes in the proposed CS for SSHB 5, Version R, on behalf of Representative Claman.

ACTION NARRATIVE

[1:46:06 PM](#)

HAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:46 p.m. Representatives Snyder, Eastman, Vance, and Claman were present at the call to order. Representatives Drummond, Kreiss-Tomkins, and Kurka arrived as the meeting was in progress.

HB 325-DOMESTIC VIOLENCE

[1:46:41 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 325, "An Act relating to domestic violence."

CHAIR CLAMAN opened public testimony on HB 325.

[1:47:35 PM](#)

MIKE HENRY, Sergeant, Alaska State Troopers (AST), Department of Public Safety (DPS), informed the committee that he was a police instructor for strangulation investigations and sex crimes with experience investigating domestic violence. He stated his support for HB 325 and summarized the components of the bill. He explained that the publishing or distribution of nonconsensual pornography, also referred to as revenge porn or sextortion, was sometimes used by a perpetrator against household members as a means of causing harm. He added that it was ultimately a means of asserting power and control, which was the primary root of domestic violence offenses. This criminal conduct was being used by perpetrators to coerce or punish victims, he said. He believed that the proposed legislation would provide additional protections and access to services for the victims, such as protective orders; bring additional consequences for offenders, such as mandatory arrests; and accurately describe the conduct. He reiterated his support for HB 325.

[1:50:17 PM](#)

CHAIR CLAMAN asked Sergeant Henry to comment on a hypothetical scenario in which an individual in Fairbanks was sending "sexting" communications about a person who was in Juneau, which would make the person in Fairbanks subject to mandatory arrest.

SERGEANT HENRY shared his understanding that the scenario could be classified as an existing crime within the definition of domestic violence that could be accomplished remotely, such as threats, violating conditions of release, violating a protective order, stalking, elements of harassment in the second degree, and assault in the third degree. He reminded the committee that crimes involving domestic violence must be committed by a household member against another household member. He offered the definition of "household member," which broadly included people who formerly lived together and people in prior spousal relationships. For that reason, he said it was common for domestic violence crimes to occur between people not living in the same household.

CHAIR CLAMAN asked whether the definition would cover people who had been on several dates.

SERGEANT HENRY cited Section 5 of AS 18.66.990, which provided the definition of "household member." He pointed out that the definition included adults or minors who are currently dating or who have dated in the past.

[1:54:25 PM](#)

REPRESENTATIVE EASTMAN requested the definition of dating.

SERGEANT HENRY was not aware of a legal definition. He referred the committee to the dictionary's definition or the common knowledge definition.

[1:55:27 PM](#)

KATIE TEPAS, Program Coordinator, AST, DPS, informed the committee that she was responsible for training all law enforcement officers across the state on domestic violence and sexual assault investigations. She stated her support for HB 325, noting that she was considered a subject matter expert, as she had worked in the field for over 20 years. She anecdotally reported on the prevalence of sextortion as a means of control with the expansion of online technology. She pointed out that per Title 18, domestic violence crimes "shall" result in mandatory arrest within 12 hours. If more time has passed, Title 12 provided that officers "may" make an arrest with probable cause. She emphasized that most domestic violence offenders do not stop the violence when the relationship ends.

[1:58:44 PM](#)

JAYNE ANDREEN, Alaska Public Health Association, opined that the bill would add another method for catching and holding offenders accountable as early and as often as possible with the ever-expanding technology.

[1:59:39 PM](#)

CHAIR CLAMAN, after ascertaining there was no one else who wished to testify, closed public testimony on HB 325.

CHAIR CLAMAN announced HB 325 was held over.

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

[1:59:55 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).]

[2:00:23 PM](#)

EMMA POTTER, Staff, Representative Matt Claman, Alaska State Legislature, on behalf of Representative Claman, presented a summary of changes [included in the committee packet] in the proposed committee substitute (CS) for SSHB 5, Version 32-LS0065\R, Radford, 5/2/22, ("Version R"), which read as follows [original punctuation provided]:

Version R incorporates provisions found in the Model Penal Code: Sexual Assault and Related Offenses (MPC), certain provisions in Senate Bill 187 (2022) that was put forward by the Department of Law, and the Montana statute pertaining to consent.

Sections 1-3

Version R grades sexual assault in the first, second, and third degree by including a use of force element in the description of sexual assault in the first degree (sexual penetration) and excluding the use of force element from sexual assault in the second degree (sexual penetration). This approach is based on the grading used in Senate Bill 187. Including this grading allows sexual assault with the use of force to be more easily prosecuted while maintaining the use of aggravating factors.

With this change reflected in Version R, sexual assault in the first degree is amended to include sexual penetration without consent by use or threat of force. Sexual assault in the second degree is amended to include sexual contact without consent by use or threat of force and sexual penetration without consent. Sexual assault in the third degree is amended to include sexual contact without consent.

Section 4

The use of the word consent in Version R is based on the updated MPC. Section 4 aligns with the most recent proposal under consideration by the American Law Institute in their work related to sexual assault offenses. An expression of lack of consent through words or conduct is expressly established in Version R as meaning there is no consent. The requirement of a use of force is removed from statute and the absence of verbal or physical resistance is established as not establishing consent. This provision encompasses what is frequently referred to as the "frozen fear victim," the victim who reacts to the experience of being sexually assaulted by freezing when experiencing a sexual assault. This response is an observed and frequent psychological response.

Section 5

Section 5 establishes consent as willingness to engage in the conduct at issue. The definition of consent is amended in Version R to use the word "willingness" rather than "freely given" because "willingness" better captures the concept that a person wants a specific act, rather than just agrees to it. Assent can be tainted or made ineffective based on a variety of factors including the use of force, use of deception, and an individual's incapacity as a result of an act of the defendant. Distributed by the Office

Version R does not require the use of force to establish a lack of consent. Version R addresses rape by fraud differently than Version W. Montana and other states address "rape by fraud" by making consent ineffective if induced by force, duress, or deception. This phrasing, based on the language in Montana statute, is found in Version R.

Section 6

Section 6, which decreases the time allowed for laboratories to wait to test sexual assault examination kits, remain unchanged.

Version R removes sexual abuse of a minor in the first degree and sexual abuse of a minor in the second

degree, from the bill (previously found in Sections 3 and 4 of Version W).

[2:03:38 PM](#)

REPRESENTATIVE SNYDER inquired about the rationale for removing "knowingly causing a person to come into contact with semen" from the definition of sexual contact.

CHAIR CLAMAN provided the legislative history of the provision pertaining to the "contact with semen" without consent. He said the intent was to leave the law intact, such as it was when it was implemented by a prior legislature.

REPRESENTATIVE SNYDER asked how the offense was classified under current law.

[2:04:51 PM](#)

The committee took an at-ease from 2:04 p.m. to 2:06 p.m.

[2:06:29 PM](#)

CHAIR CLAMAN offered to follow up with the requested information.

[2:06:58 PM](#)

REPRESENTATIVE EASTMAN asked whether the definition of "deception" would be provided in the bill or elsewhere in statute.

CHAIR CLAMAN clarified that the definition of "deception" would be subject to common usage.

[2:07:54 PM](#)

REPRESENTATIVE SNYDER moved to adopt the proposed committee substitute (CS) for SSHB 5, Version 32-LS0065\R, Radford, 5/2/22, as the working document.

[2:08:10 PM](#)

REPRESENTATIVE EASTMAN objected.

A roll call vote was taken. Representatives Drummond, Snyder, Kreiss-Tomkins, Vance, and Claman voted in favor of the proposed

CS for SSHB 5, Version 32-LS0065\R, Radford, 5/2/22.
Representatives Eastman and Kurka voted against it. Therefore,
Version R was adopted by a vote of 5-2.

[2:08:55 PM](#)

CHAIR CLAMAN announced that SSHB 5 was held over.

[2:10:23 PM](#)

ADJOURNMENT

There being no further business before the committee, the House
Judiciary Standing Committee meeting was adjourned at 2:10 p.m.