

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 6, 2022

10:43 a.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

OTHER LEGISLATORS PRESENT

Representative Sara Rasmussen
Representative Geran Tarr

COMMITTEE CALENDAR

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."

- MOVED CSSSHB 5 (JUD) OUT OF COMMITTEE

HOUSE BILL NO. 325

"An Act relating to domestic violence."

- MOVED HB 325 OUT OF COMMITTEE

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
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
05/02/22	(H)	Heard & Held
05/02/22	(H)	MINUTE(JUD)

05/04/22 (H) JUD AT 1:00 PM GRUENBERG 120
05/04/22 (H) Heard & Held
05/04/22 (H) MINUTE(JUD)
05/06/22 (H) JUD AT 10:30 AM GRUENBERG 120

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
05/02/22 (H) Heard & Held
05/02/22 (H) MINUTE(JUD)
05/06/22 (H) JUD AT 10:30 AM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: Presented amendments during the hearing on SSHB 5, on behalf of Representative Claman, prime sponsor.

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SSHB 5, as the prime sponsor.

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

POSITION STATEMENT: Answered questions during the hearing on SSHB 5.

REPRESENTATIVE SARA RASMUSSEN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered closing comments during the hearing on HB 325, as the prime sponsor.

ACTION NARRATIVE

[10:43:30 AM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting back to order at 10:43 a.m. Representatives Kurka (via teleconference), Vance, Drummond, Snyder (via teleconference), Kreiss-Tomkins (via teleconference), Eastman, and Claman were present at the call to order.

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

[10:44:12 AM](#)

CHAIR CLAMAN announced that the first 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, adopted as the work draft on 5/2/22, was the proposed committee substitute (CS) for SSHB 5, Version 32-LS0065\R, Radford, 5/2/22, ("Version R").]

CHAIR CLAMAN gave Legislative Legal Services permission to make technical and conforming changes to the bill.

[10:45:03 AM](#)

CHAIR CLAMAN moved to adopt Amendment 1 to SSHB 5, Version R, labeled 32-LS0065\R.1, Radford, 5/3/22, which read:

Page 4, line 5:

Delete "AS 11.41.410 - 11.41.440"

Insert "AS 11.41.410 - 11.41.427"

REPRESENTATIVE DRUMMOND objected for the purpose of discussion.

[10:45:25 AM](#)

EMMA POTTER, Staff, Representative Matt Claman, Alaska State Legislature, on behalf of Representative Claman, prime sponsor, explained that Amendment 1 would clean up the bill by changing the reference to [prosecutions where consent is at issue]. More specifically, the proposed amendment would remove the statutory reference to sexual abuse of a minor crimes on page 4, line 5 of Version R, as consent was not a contributing factor.

REPRESENTATIVE DRUMMOND removed her objection. There being no further objection, Amendment 1 was adopted.

[10:46:16 AM](#)

CHAIR CLAMAN moved to adopt Amendment 2 to SSHB 5, Version R, labeled 32-LS0065\R.3, Radford, 5/5/22, which read:

Page 4, lines 19 - 20:

Delete all material and insert:

"(11) "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."

Page 4, lines 25 - 27:

Delete all material.

Renumber the following bill sections accordingly.

Page 5, line 22:

Delete "AS 26.05.890(h)(2), as amended by sec. 8 of this Act,"

Page 5, line 23:

Delete "sec. 9"
Insert "sec. 8"

Page 5, line 24:

Delete "sec. 11"
Insert "sec. 10"

Page 5, line 25:

Delete "secs. 1 - 9 and 11"
Insert "secs. 1 - 8 and 10"

Page 5, line 26:

Delete "Section 10"
Insert "Section 9"

REPRESENTATIVE DRUMMOND objected for the purpose of discussion.

MS. POTTER said Amendment 2 would change the definition of consent in Version R to the previous definition in Version W [CSSSHB 5(STA)], which contained the "freely given" definition

of consent. The change was based on the explanation from invited testifiers that a definition of consent containing the phrase "freely given" was more protective of victims in the prosecution of these cases.

[10:46:58 AM](#)

REPRESENTATIVE EASTMAN suggested that the proposed amendment would define the lack of affirmative expressed action as the absence of consent, which would criminalize socially permissible conduct. He believed that the proposed definition of consent would protect some victims at the expense of creating new victims.

[10:49:52 AM](#)

REPRESENTATIVE GERAN TARR, Alaska State Legislature, as prime sponsor of SSHB 5, emphasized the importance of including the phrase "word or action" in the definition of consent to capture healthy, typical, consenting behavior by two partners.

[10:52:28 AM](#)

CHAIR CLAMAN asked how the definition of "freely given" [on lines 4-5 of Amendment 2] would assist in the "frozen fear" response, which was documented to be a real issue in sexual assaults.

REPRESENTATIVE TARR shared her understanding that Section 4 of Version R, which outlined the elements of consent, captured the freeze response.

REPRESENTATIVE EASTMAN pointed out that Amendment 1 had been adopted by a passive response, [in other words, no objection] from the committee. He asked whether the legislature's code of conduct should be reformed in line with the new definition of consent for the purpose of consistency.

REPRESENTATIVE TARR said Representative Eastman's suggestion went far beyond the scope of the legislation.

CHAIR CLAMAN, in response to Representative Eastman, pointed out that Alaska was faced with the highest sexual assault rates in the country, which he characterized as "beyond embarrassing." He commented on the notion of treating consent to sexual conduct in the same way as consenting to a legislative motion. He

shared his belief that the proposed definition would be an improvement to the existing statutory language.

[10:58:02 AM](#)

CHAIR CLAMAN sought questions from committee members.

[10:58:40 AM](#)

REPRESENTATIVE VANCE referenced the cultural perception that "silence is consent." She shared an example and pondered how to convey that silence is no longer consent. She asked, "Which comes first, society or the law?"

CHAIR CLAMAN asked whether Representative Vance was suggesting that the second phrase of the consent definition went too far by defining ["freely given"] as affirmative consent.

REPRESENTATIVE TARR defined the "FRIES" acronym as freely given, reversible, informed, enthusiastic, specific. She said she believed that the phrase "positively expressed through word or action" captured the FRIES concept.

[11:03:31 AM](#)

REPRESENTATIVE KURKA considered a scenario in which a claim of rape was manufactured against a former romantic partner after the relationship soured. He asked how that situation would be resolved.

REPRESENTATIVE TARR pointed out that the prosecution was tasked with evaluating whether the crime could be proved beyond a reasonable doubt. The process, she said, was effectually a layer of protection against frivolous crimes and misapplication of the law.

CHAIR CLAMAN invited Ms. Schroeder to comment on the impact of deleting the phrase "'freely given' means agreement to cooperate in the act was positively expressed by word or action."

[11:08:37 AM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law (DOL), said the definition of "freely given" provided further guidance and clarity to the prosecutor. The importance of including "word or action," she added, was to capture normal behavior in healthy relationships. She noted

that the descriptors in Section 4 added further context on how it would be applied. She referred the committee to page 4, line 10 and addressed the totality of the circumstances. She continued to explain that the prosecutor must prove that the defendant was reckless as to the lack of consent. She read the legal definition of "reckless."

[11:12:10 AM](#)

REPRESENTATIVE EASTMAN proposed Conceptual Amendment 1 to Amendment 2 to SSHB 5, Version R, such that the phrase "specific to the conduct at issue" would be deleted on page 1, lines 3-4.

REPRESENTATIVE DRUMMOND objected for the purpose of discussion.

[11:12:42 AM](#)

REPRESENTATIVE EASTMAN opined that Amendment 2 was "doing too much" by effectively introducing chronology into the definition of consent with the phrase "specific to the conduct at issue". He opined that the language drew a distinction between consenting to previous conduct and consenting to the conduct at issue, which effectively criminalized activity that was consensual. He provided an example.

MS. SCHROEDER contended that Amendment 2 captured the concern described by Representative Eastman. She explained that as drafted, Amendment 2 provided that the conduct must be consented to at the time and must be a type of conduct that the individual wants to engage in. She argued that the example provided by Representative Eastman would support a reckless mental state. Ultimately, she believed that the language in Amendment 2 was appropriate as drafted.

[11:16:39 AM](#)

REPRESENTATIVE DRUMMOND spoke in opposition to Conceptual Amendment 1 to Amendment 2 based on invited testimony from the previous bill hearing. She opined that "specific to the conduct at issue" should be retained.

CHAIR CLAMAN opined that removing the phrase "specific to the conduct at issue" would invite additional problems in terms of the timing of consent and whether it could be revoked at a later time. He shared an example.

REPRESENTATIVE EASTMAN shared his belief that individuals could get "caught up" in the legal definition [of consent]. He opined that the committee was unnecessarily focused on prosecutions and convictions while overlooking other implications.

[11:21:24 AM](#)

A roll call vote was taken. Representatives Kurka and Eastman voted in favor of Conceptual Amendment 1 to Amendment 2. Representatives Vance, Drummond, Snyder, Kreiss-Tomkins, and Claman voted against it. Therefore, Conceptual Amendment 1 to Amendment 2 failed by a vote of 2-5.

[11:22:13 AM](#)

REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 2 to Amendment 2, which would replace the semi-colon [on page 1, line 4] with a period and delete the words that followed [on lines 4-5].

CHAIR CLAMAN sought to confirm that the proposed conceptual amendment would remove the definition of "freely given".

REPRESENTATIVE EASTMAN answered yes.

REPRESENTATIVE DRUMMOND objected.

REPRESENTATIVE EASTMAN observed that the committee was focusing all of its attention on current victims. He argued that Conceptual Amendment 2 to Amendment 2 would expand the focus to those "who were not yet victims," meaning people who believe that the absence of an expressed positive action does not mean a failure of consent. He argued that there were many circumstances where consent was not positively expressed by word or action and expressed concern that the definition of consent in Amendment 2 could be used as leverage.

REPRESENTATIVE DRUMMOND maintained her objection.

[11:26:18 AM](#)

A roll call vote was taken. Representatives Kurka and Eastman voted in favor of Conceptual Amendment 2 to Amendment 2. Representatives Vance, Drummond, Snyder, Kreiss-Tomkins, and Claman voted against it. Therefore, Conceptual Amendment 2 to Amendment 2 failed by a vote of 2-5.

CHAIR CLAMAN sought final comment from committee members on Amendment 2.

[11:27:17 AM](#)

REPRESENTATIVE DRUMMOND pointed out that the committee had not addressed Amendment 2 in its entirety. She inquired about the language following lines 1-5.

MS. POTTER said the rest of the proposed amendment provided conforming changes to implement the new definition of consent.

[11:29:32 AM](#)

REPRESENTATIVE VANCE expressed her hope that the new definition of consent would better balance "the scales of justice," help prosecutors clearly articulate the conduct, and bring justice to both parties involved in these cases.

[11:31:04 AM](#)

REPRESENTATIVE EASTMAN expressed his strong opposition to Amendment 2 due to his belief that it would introduce a coercive element into relationships. He opined that the proposed definition of consent could be used as leverage against the individual who initiated the sexual act and be used as a tool of discord. Further, he suggested that redefining the word "consent" would not offer a solution to the problem with rape in Alaska, as it was not the cause of the issue to begin with.

CHAIR CLAMAN stated his belief that implementing an affirmative consent model would place more focus on the victim and less focus on the defendant while giving additional tools to the defense team. Ultimately, he opined that the new definition would provide a basis upon which victims of crime could come forward with their claim.

[11:34:57 AM](#)

A roll call vote was taken. Representatives Vance, Drummond, Snyder, Kreiss-Tomkins, and Claman voted in favor of Amendment 2. Representatives Kurka and Eastman voted against it. Therefore, Amendment 2 was adopted by a vote of 5-2.

[11:35:38 AM](#)

CHAIR CLAMAN moved to adopt Amendment 3 to SSHB 5, Version R, labeled 32-LS0065\R.2, Radford, 5/5/22, which read:

Page 4, line 16:
Delete ";"
Insert "."

Page 4, line 17:
Delete all material.

REPRESENTATIVE DRUMMOND objected for the purpose of discussion.

[11:36:01 AM](#)

MS. POTTER indicated that Amendment 3 would delete [paragraph] (5) on page 4, line 15 of Version R, which stated that consent is ineffective if induced by force, duress, or deception.

REPRESENTATIVE DRUMMOND removed her objection. There being no further objection, Amendment 3 was adopted.

CHAIR CLAMAN sought final comment from committee members on SSHB 5, Version R, as amended.

[11:37:13 AM](#)

REPRESENTATIVE KREISS-TOMKINS said he felt much more comfortable with the proposed legislation, as amended.

REPRESENTATIVE SNYDER remarked that she was glad for the evolution of the bill and happy for the opportunity to move it forward.

REPRESENTATIVE DRUMMOND stated that she was more comfortable with the proposed legislation, as amended.

REPRESENTATIVE VANCE said she would let her previous comments stand.

REPRESENTATIVE EASTMAN expounded on his objection to the bill, citing "a crucial area" of conflict that had yet to be resolved. He opined that the committee was "equivocating" by attempting to change society by redefining the fundamental definition of consent and thereby the definition of rape. He further believed that the bill criminalized conduct that was not criminal at present. He reiterated his belief that changing the definition

of consent would be felt across "the spectrum" and impact relationships both positively and negatively.

REPRESENTATIVE KURKA said he would be objecting to the bill moving forward, citing "conflict" in the legislation.

[11:41:39 AM](#)

REPRESENTATIVE TARR, in response to Representative Eastman's comments, pointed out that the bill was attempting to more effectively define the standard for acceptable behavior. She highlighted the prevention and education opportunities that could come from the bill and expressed her hope that the end goal would be a reduction of incidents of sexual violence in Alaska.

[11:43:39 AM](#)

REPRESENTATIVE DRUMMOND moved to report CSSSHB 5, Version 32-LS0065\R, Radford, 5/2/22, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[11:44:03 AM](#)

A roll call vote was taken. Representatives Vance, Drummond, and Claman voted in favor of the motion. Representative Eastman voted against it. Therefore, CSSSHB 5(JUD) was reported out of the House Judiciary Standing Committee by a vote of 3-1.

[11:44:43 AM](#)

REPRESENTATIVE KREISS-TOMKINS suggested that the committee take an at-ease.

[11:44:47 AM](#)

The committee took an at-ease at 11:44 a.m.

[11:46:17 AM](#)

CHAIR CLAMAN advised that the committee would take another brief at-ease.

[11:46:26 AM](#)

The committee took a brief at-ease.

HB 325-DOMESTIC VIOLENCE

[11:46:32 AM](#)

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

CHAIR CLAMAN sought final comment from committee members.

[11:47:12 AM](#)

REPRESENTATIVE VANCE expressed concern about classifying acts of harassment, such as revenge porn, as domestic violence for fear of minimizing [the severity] of physical assault. Ideally, she said, she would want to create a separate section for this egregious conduct; in the meantime, however, she acknowledged the need to provide a tool for individuals dealing with this type of harassment.

REPRESENTATIVE EASTMAN said he would be objecting to passing HB 325 from committee because the bill would create a new crime of domestic violence for a non-violent act.

REPRESENTATIVE KURKA said he identified with the remarks shared by the two previous speakers. He agreed that revenge porn should be stiffly penalized; however, he disagreed with how the bill classified the conduct as domestic violence.

[11:53:14 AM](#)

CHAIR CLAMAN characterized the rates of domestic violence in Alaska as appalling. He expressed his support for the bill; however, he cautioned the legislature from viewing it as a solution to the problem. He opined that there would be few changes without changed behavior.

[11:54:56 AM](#)

The committee took an at-ease at 11:54 a.m.

[11:55:15 AM](#)

CHAIR CLAMAN asked the bill sponsor, on behalf of Representative Vance, to speak to the intent of the bill.

[11:55:51 AM](#)

REPRESENTATIVE SARA RASMUSSEN, Alaska State Legislature, as prime sponsor, explained that with the prevalence of electronic images and revenge porn, the state needed a tool for Alaskans experiencing this type of domestic violence to obtain a restraining order against the perpetrator. She expressed her hope that the cases would be handled seriously by law enforcement without overextending resources from cases involving physical violence.

[11:57:09 AM](#)

REPRESENTATIVE DRUMMOND moved to report HB 325 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[11:57:57 AM](#)

A roll call vote was taken. Representatives Vance, Drummond, and Claman voted in favor of HB 325. Representative Eastman voted against it. Therefore, HB 325 was reported out of the House Judiciary Standing Committee by a vote of 3-1.

[11:58:34 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 11:58 a.m.