

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

April 27, 2021

3:06 p.m.

**MEMBERS PRESENT**

Representative Jonathan Kreiss-Tomkins, Chair  
Representative Matt Claman, Vice Chair  
Representative Geran Tarr  
Representative Andi Story  
Representative Sarah Vance  
Representative James Kaufman  
Representative David Eastman

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 163

"An Act relating to vehicle title applications."

- HEARD & HELD

HOUSE BILL NO. 102

"An Act relating to the state insurance catastrophe reserve account; and providing for an effective date."

- MOVED HB 102 OUT OF COMMITTEE

HOUSE BILL NO. 157

"An Act requiring the disclosure of the identity of certain persons, groups, and nongroup entities that expend money in support of or in opposition to an application filed for a state referendum or recall election; and providing for an effective date."

- MOVED HB 157 OUT OF COMMITTEE

HOUSE BILL NO. 118

"An Act relating to state identifications and driver's licenses for persons in the custody of the Department of Corrections; relating to the duties of the commissioner of corrections; relating to living conditions for prisoners; 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: HB 163

SHORT TITLE: FORM OF SIGNATURE ON VEHICLE TITLE

SPONSOR(s): REPRESENTATIVE(s) SCHRAGE

04/05/21	(H)	READ THE FIRST TIME - REFERRALS
04/05/21	(H)	CRA, STA
04/13/21	(H)	CRA AT 8:00 AM BARNES 124
04/13/21	(H)	Heard & Held
04/13/21	(H)	MINUTE(CRA)
04/15/21	(H)	CRA AT 8:00 AM BARNES 124
04/15/21	(H)	Moved HB 163 Out of Committee
04/15/21	(H)	MINUTE(CRA)
04/16/21	(H)	CRA RPT 6DP
04/16/21	(H)	DP: MCCABE, PRAX, MCCARTY, DRUMMOND, SCHRAGE, HANNAN
04/27/21	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 102

SHORT TITLE: STATE INSUR. CATASTROPHE RESERVE ACCT.

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, FIN
04/08/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/08/21	(H)	Heard & Held
04/08/21	(H)	MINUTE(STA)
04/27/21	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 157

SHORT TITLE: APOC; REPORT REFERENDA/RECALL CONTRIBUTOR

SPONSOR(s): RASMUSSEN

03/31/21	(H)	READ THE FIRST TIME - REFERRALS
03/31/21	(H)	STA, JUD

04/17/21 (H) STA AT 3:00 PM GRUENBERG 120  
04/17/21 (H) Heard & Held  
04/17/21 (H) MINUTE (STA)  
04/27/21 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 118

SHORT TITLE: EXPANDING PRISONER ACCESS TO COMPUTERS  
SPONSOR(s): KREISS-TOMKINS

03/01/21 (H) READ THE FIRST TIME - REFERRALS  
03/01/21 (H) STA  
03/18/21 (H) STA AT 3:00 PM GRUENBERG 120  
03/18/21 (H) Heard & Held  
03/18/21 (H) MINUTE (STA)  
03/23/21 (H) STA AT 3:00 PM GRUENBERG 120  
03/23/21 (H) Heard & Held  
03/23/21 (H) MINUTE (STA)  
04/01/21 (H) STA AT 3:00 PM GRUENBERG 120  
04/01/21 (H) Heard & Held  
04/01/21 (H) MINUTE (STA)  
04/27/21 (H) STA AT 3:00 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

**WITNESS REGISTER**

REPRESENTATIVE CALVIN SCHRAGE  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** As the prime sponsor, introduced HB 163.

LAUREN MACVAY, Chief Executive Officer

True North Federal Credit Union

Juneau, Alaska

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 163.

JEFFERY SCHMITZ, Director

Division of Motor Vehicles

Department of Administration

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions pertaining to HB 163.

PALOMA HARBOUR, Fiscal Management Analyst

Office of Management & Budget

Office of the Governor

Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 102.

CRYSTAL KOENEMAN, Staff

Representative Sara Rasmussen

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 157, answered questions on behalf of Representative Rasmussen, prime sponsor.

HEATHER HEBDON, Executive Director

Alaska Public Offices Commission

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions pertaining to HB 157.

LAURA BROOKS, Division Operations Manager

Division of Health and Rehab Services

Department of Corrections

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 118.

JAMES STINSON, Director

Office of Public Advocacy

Department of Administration

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 5.

JOHN SKIDMORE, Deputy Attorney General  
Office of the Attorney General  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 5.

RENEE MCFARLAND, Deputy Public Defender  
Alaska Public Defender Agency  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 5.

### **ACTION NARRATIVE**

[3:06:48 PM](#)

**CHAIR JONATHAN KREISS-TOMKINS** called the House State Affairs Standing Committee meeting to order at 3:06 p.m. Representatives Tarr, Story, Claman, Vance, Kaufman, and Kreiss-Tomkins were present at the call to order. Representative Eastman arrived as the meeting was in progress.

### **HB 163-FORM OF SIGNATURE ON VEHICLE TITLE**

[3:08:15 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 163, "An Act relating to vehicle title applications."

[3:08:43 PM](#)

REPRESENTATIVE CALVIN SCHRAGE, Alaska State Legislature, as prime sponsor, introduced HB 163. He paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

House Bill 163 eliminates the current requirement for ink signatures on applications for titles and title transfers within the Department of Motor Vehicles. HB 163 gives flexibility to the DMV to begin using electronic signatures.

HB 163 does not force the use of electronic signatures. AS 28.10.211(b) states that "applications

for title or transfer of title must contain the signature in ink of the owner, or if there is more than one owner, the signature in ink of at least one of the owners and the name of each owner stated in the conjunctive or in the disjunctive." HB 163 deletes the words "in ink" in both places.

Under the Uniform Electronic Transactions Act of 2004 (AS 09.80.010-09.80.195) electronic signatures satisfy the general definition of a signature unless otherwise prohibited. Since the current statute explicitly requires "ink" signatures for title applications, the DMV cannot accept electronic signatures.

HB 163 will give the Department the latitude to determine for itself if it wants to accept electronic signatures in the cases of title transfers and title applications. Covid has taught us that electronic signatures can provide extra convenience to Alaskans in remote or rural parts of the state and can provide long-term efficiencies for the DMV.

[The committee heard invited testimony.]

[3:11:42 PM](#)

LAUREN MACVAY, Chief Executive Officer, True North Federal Credit Union, said she was speaking in favor of HB 163. She stated that although simple, the bill would open the door to a significant amount of progress. She explained that the option to provide an electronic signature was used for many important things in Alaska; however, vehicle titling required a "wet" signature. She reported that a growing number of other states were implementing electronic lien and titling solutions to various degrees, but the "in ink" language in AS 28.10.211(b)(1) was preventing Alaska from exploring the benefits of modern technology, which had impacts on the Division of Motor Vehicles (DMV) and its operation, as well as True North and its members. She explained that "ESign" had enabled True North to acquire members throughout the state, despite its branches being in Juneau and Anchorage. Further, True North could open new memberships and close consumer and home equity loans electronically, which was a huge benefit when the pandemic hit. She emphasized that the credit union could not, however, complete any loan electronically that required a title application to secure the lien. When that occurred, the loan was held up until the original signatures were obtained.

MS. MACVAY shared that another option was to put the burden of securing the title work back on the borrower, then closing the loan and providing the borrower with the title application, from which point that individual would be required to go through the DMV process. She added that in that scenario, the title would be forwarded back to the credit union at the end. She said neither scenario was a good option, and both created inconveniences for everyone involved. She stated that if True North was able to secure electronic signatures for title paperwork, the process would be far more convenient for members and more efficient for the credit union. She reiterated that by removing the words "in ink" from statute, the proposed legislation would remove the critical first barrier to progress. She encouraged the committee to move the bill forward for that reason.

[3:14:55 PM](#)

REPRESENTATIVE TARR sought to understand the relationship between the DMV component and the bank component. She specifically inquired about a scenario involving a cash transaction at the DMV.

[3:15:40 PM](#)

JEFFERY SCHMITZ, Director, Division of Motor Vehicles, Department of Administration, stressed that the proposed legislation would only remove the impairment created by the "in ink" requirement; further, the business procedures that would be implemented after changing the language had not been vetted in detail due to the current statutory language. He reiterated that there had been no evaluation on how a title transfer or cash transaction would actually transpire; therefore, he declined to comment on that scenario. He maintained that the proposed legislation would simply "open the door" to vetting the process. He surmised that a customer-to-customer transaction would likely be completed via portal and the DMV would be informed that the transfer occurred.

[3:18:57 PM](#)

REPRESENTATIVE CLAMAN understood that in order to borrow money from True North to buy a car, the loan could be completed electronically; however, the title transfer would require physical presence at the DMV for a signature. He asked if that was correct.

MS. MACVAY answered, "Yes." She explained that the loan note could be signed electronically, but the loan would not be disbursed until the title application was received with the signed title in hand.

REPRESENTATIVE CLAMAN understood that the next step in borrowing involved placing a lien on the title, which would be released after the loan was paid off entirely. He questioned how that process would change if electronic signatures were allowed.

MS. MACVAY said currently, when a borrower paid off a car loan, the lien on the title would be signed off and released. The title would then be mailed back to the borrower. However, she noted that people did not always open their mail from financial institutions, which had resulted in titles being thrown away.

REPRESENTATIVE CLAMAN asked how electronic signature would change that process.

MS. MACVAY indicated that there were many answers to that question depending on the type of system the [DMV] would set up and how [True North] would interface with it. She explained that there were purely electronic lien and titling systems through which the lien could be released. That type of paperless system would be much faster and more efficient, she said; consequently, she believed that the end game should be an entirely paperless method.

[3:23:21 PM](#)

REPRESENTATIVE CLAMAN considered a scenario in which the borrower sold the car before the loan was paid off. He asked how electronic signature would allow the old owner to get his/her lien released and allow the new owner to receive the title as expeditiously as possible.

MS. MACVAY believed electronic signature would be beneficial because True North would be able to note that the lien had been satisfied, which would allow the owner and the buyer to complete the transaction.

[3:25:07 PM](#)

REPRESENTATIVE SCHRAGE expressed his appreciation for the opportunity to present HB 163. He said he looked forward to seeing the bill advance in the near future, as it would provide

flexibility to the DMV and help Alaskans better conduct their businesses, as well as modernize state statute.

CHAIR KREISS-TOMKINS announced [that HB 163 was held over.]

**HB 102-STATE INSUR. CATASTROPHE RESERVE ACCT.**

[3:25:58 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 102, "An Act relating to the state insurance catastrophe reserve account; and providing for an effective date."

[3:26:59 PM](#)

CHAIR KREISS-TOMKINS opened public testimony on HB 102. After ascertaining the no one wished to testify, he closed public testimony and invited questions from the committee.

[3:27:15 PM](#)

REPRESENTATIVE EASTMAN asked whether the funds in the State Insurance Catastrophe Reserve Account were available for appropriation by the legislature.

[3:27:37 PM](#)

PALOMA HARBOUR, Fiscal Management Analyst, Office of Management & Budget, Office of the Governor, answered yes. She said the legislature could appropriate this funding for any purpose, as there was no such thing as a dedicated fund [in this regard].

REPRESENTATIVE EASTMAN assumed that the funds were swept into the constitutional budget reserve (CBR) at the end of the fiscal year. He asked if that was correct.

MS. HARBOUR replied, "That is not correct." She stated that just because the funding could be appropriated did not mean it required further appropriation to spend. For that reason, it was not subject to the sweep, she said.

REPRESENTATIVE EASTMAN questioned whether Legislative Legal Services was of the same opinion as Ms. Harbour.

CHAIR KREISS-TOMKINS invited closing comments from committee members on HB 102.

[3:29:28 PM](#)

REPRESENTATIVE TARR pointed out that if legislators could find additional bills like HB 102 that saved the state millions of dollars, their work would be easier.

REPRESENTATIVE VANCE agreed. She believed that the proposed legislation exemplified the wise financial decisions that Alaskans had been waiting for. She added that she was happy to support this bill.

REPRESENTATIVE CLAMAN agreed that there were many positive aspects of the bill and stated his support for it; however, he indicated that it would not come without risk because "when everyone self-insures, it only takes a couple of catastrophic losses for somebody to come back and say, 'What were you all thinking?'" He said he would be remiss not to recognize that the decision came with some degree of risk, but it would be a risk worth taking.

REPRESENTATIVE STORY thanked the bill sponsor for providing the 10-year history of [state property premiums and losses]. Additionally, she thanked Representative Claman for addressing the potential risk.

REPRESENTATIVE EASTMAN appreciated the administration's effort in bringing down costs, as reflected in the proposed legislation. Nonetheless, he believed that per the Constitution of the State of Alaska, the money would be swept from the CBR, which would allow the legislature to "make proposals like this bill in the form of a permanent fund that isn't subject to that penalty." He said he would be inclined to create a dedicated fund for this purpose because it would make sense financially and legally. He cautioned that the legislature was "trying to have [its] cake and eat it too." For that reason, he stated that he would be hesitant to support the bill at this time.

[3:33:26 PM](#)

REPRESENTATIVE KAUFMAN, in response to Representative Eastman, suggested amending the bill.

CHAIR KREISS-TOMKINS echoed the initial comments. He characterized the bill as "terrific policy" and said he was very glad to see the administration bring it forward. He acknowledged the risk but believed the legislature would be

paralyzed if it allowed the sweep to dictate its every decision. He pointed out that the sweep had been reversed almost always without fail. Further, he opined that failing to reverse the sweep did not serve a productive purpose.

[3:35:28 PM](#)

REPRESENTATIVE CLAMAN moved to report HB 102 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 102 was reported out of the House State Affairs Standing Committee.

**HB 157-APOC; REPORT REFERENDA/RECALL CONTRIBUTOR**

[3:36:02 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 157, "An Act requiring the disclosure of the identity of certain persons, groups, and nongroup entities that expend money in support of or in opposition to an application filed for a state referendum or recall election; and providing for an effective date."

CHAIR KREISS-TOMKINS opened public testimony on HB 157. After ascertaining that no one wished to testify, he closed public testimony.

[3:36:46 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sara Rasmussen, Alaska State Legislature, on behalf of Representative Rasmussen, prime sponsor of HB 157, stated that additional documents had been disbursed to the committee in response to questions from the previous bill hearing. She specifically referenced the flow chart, which outlined the various reporting requirements for candidates, initiatives, recalls, and referendums.

[3:37:46 PM](#)

CHAIR KREISS-TOMKINS welcomed questions from the committee.

[3:38:29 PM](#)

MS. KOENEMAN, in response to Representative Kaufman, provided an overview of the flow chart on page 4 of the document titled, "Additional Info - Response to STA" [included in the committee packet]. She explained that for candidates, the expenditures

and contribution tracking began when they declared their candidacy and paid the initial fee to the Division of Elections (DOE). Similarly, for initiatives, the expenditures and contribution tracking began when the initial application was properly filed with the lieutenant governor through DOE. For recalls, the expenditures and contributions began if and when a special election were called - the final step in the process. For referendums, the expenditures and contribution tracking began when it appeared on the ballot of the first statewide primary, general, or special election held more than 180 days after adjournment of the legislative session at which the act was passed. Consequently, she pointed out that if the funding gathered for a recall or referendum was expended prior to certification, it would never be reported.

[3:42:05 PM](#)

REPRESENTATIVE CLAMAN, in reference to the last step of the referendum process, sought to clarify what "180 days after adjournment of the legislative session" meant specifically.

MS. KOENEMAN said she was unsure.

[3:43:28 PM](#)

HEATHER HEBDON, Executive Director, Alaska Public Offices Commission (APOC), explained that the process of getting a recall or referendum on the ballot was not overseen by APOC; therefore, she could not offer further clarity.

MS. KOENEMAN surmised that it was at the end of the full legislative session. Nonetheless, she offered to verify with DOE.

[3:44:30 PM](#)

REPRESENTATIVE VANCE, in reference to the flow chart, sought to confirm that the proposed legislation would move the reporting requirements from the final step to the first step for recalls and referendums.

MS. KOENEMAN confirmed that is correct. She said the bill would align the reporting requirements for recalls and referendums with that of candidates and initiatives; therefore, the reporting would commence at the beginning.

[3:44:59 PM](#)

REPRESENTATIVE EASTMAN referred to the language on page 6, lines 15-16, which read, "(iii) a recall application under AS 15.45.480 or who file a recall application under AS 15.45.480;". He opined that the language appeared duplicative and asked why it was drafted in that way.

MS. KOENEMAN explained that the language was referencing any group of two or more individuals who organized [for] the purpose of filing a recall or those who had filed a recall application. She noted that it was conforming language, as recommended by the drafters.

REPRESENTATIVE EASTMAN questioned whether this language would apply to "anyone who files a group to put forward a recall application."

MS. KOENEMAN answered yes. She expounded that any groups, non-group entities, individuals, persons, and etcetera that this language applied to would be subject to the modified reporting requirements.

[3:47:40 PM](#)

MS. KOENEMAN, in response to a question from Representative Eastman, explained that current statute specified a threshold of \$500. She elaborated that the reporting requirements would commence when the initiative, committee, person, group, or non-group entity received contributions exceeding \$500 or expended more than \$500. Additionally, she said there was a threshold of \$5,000 for candidates.

REPRESENTATIVE EASTMAN asked whether the bill sponsor had considered bringing the \$500 threshold up to \$5,000.

MS. KOENEMAN answered that the bill sponsor was not interested in modifying the existing structure. She indicated that the goal was to align statutes so the requirements would be identifiable across the board.

CHAIR KREISS-TOMKINS informed the committee that an amendment had come in after the deadline due to an administrative error. Given that the sponsor of the amendment was on the next committee of referral, he said his preference was not to consider the amendment. Nonetheless, he invited Representative Vance to highlight any themes or policy issues that members

should be aware of, given that many of them would also be in the next committee of referral.

3:50:48 PM

REPRESENTATIVE VANCE explained that she had spoken with the bill sponsor about adding municipalities to the statute, so that there would be consistent transparency statewide. She conveyed that municipalities could choose to follow statutory reporting requirements or not; therefore, this would not impose the requirements on a municipality that had not already elected to follow the statutory guidelines. She believed the amendment would merit a conversation.

CHAIR KREISS-TOMKINS said he looked forward to potentially having that conversation in the near future.

3:52:21 PM

REPRESENTATIVE EASTMAN opined that the bill would "[lump] a lot of things together into one basket." He shared his understanding that recalls were of a different nature because there had not been a successful recall from office. He believed that the reporting requirements for recalling a governor or lieutenant governor would not make sense for the recall of a local official, for example, because there were less resources available for those efforts. He indicated that he was hesitant to move forward with the proposed legislation. He concluded that citizens should be able to organize the recall of a local official without involving attorneys with deep pockets.

3:54:56 PM

REPRESENTATIVE KAUFMAN inquired about the relative dollar amounts and questioned putting them in statute due to inflation. He believed that political issues related to money were associated with larger amounts than \$500 or \$5,000. Therefore, he suggested reconciling the financial thresholds to allow grassroots efforts to organize without being "bogged down" with higher level accounting.

CHAIR KREISS-TOMKINS said he appreciated the legislation; further, he acknowledged the comments from Representatives Eastman and Kaufman, adding that there were good conversations to be had about the appropriate level of reporting and regulation for small, grassroots political efforts.

[3:56:30 PM](#)

REPRESENTATIVE CLAMAN moved to report HB 157 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 157 was reported out of the House State Affairs Standing Committee.

**HB 118-EXPANDING PRISONER ACCESS TO COMPUTERS**

[3:56:58 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 118, "An Act relating to state identifications and driver's licenses for persons in the custody of the Department of Corrections; relating to the duties of the commissioner of corrections; relating to living conditions for prisoners; and providing for an effective date."

CHAIR KREISS-TOMKINS, as prime sponsor of HB 118, reminded the committee that the proposed legislation had been amended [with the adoption of Amendments 1 and 2] during the committee's previous meeting [4/1/21]; however, after conversations with committee members and additional collaboration between his and Representative Vance's offices, he would be [continuing] the amendment process.

[3:57:57 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 3 to HB 118, as amended, labeled 32-LS0024\B.6, Radford, 4/19/21, which read:

Page 6, line 26, following "care":

Insert "**but may not be used to directly access the Internet by computer terminal or other automated means not requiring the assistance of or intervention by another person**"

REPRESENTATIVE CLAMAN objected.

[3:58:01 PM](#)

REPRESENTATIVE VANCE thanked the chair for accommodating her questions and concerns. She conveyed that she had spoken with the Department of Corrections (DOC) about its intention for providing access to computers. She explained that the proposed amendment specified that inmates may not directly access the Internet, indicating that the computers would only be utilized

for rehabilitation and the purposes specifically outlined in the bill.

CHAIR KREISS-TOMKINS attested to Representative Vance's work with the department on Amendment 3.

[3:59:27 PM](#)

The committee took a brief at-ease.

[3:59:40 PM](#)

CHAIR KREISS-TOMKINS noted that the department would be available shortly. He said he could relay both written and verbal correspondence that confirmed that the department was aware of Amendment 3 and had no objection to it.

[4:00:17 PM](#)

REPRESENTATIVE CLAMAN directed attention to Section 4, subparagraph (I), on page 6 of HB 118, which addressed prisoners' access to computers and specified the rules of compliance. He asked why that subsection needed further clarification.

REPRESENTATIVE VANCE indicated that the goal of Amendment 3 was to establish consistency across every correctional agency rather than each facility abiding by different criteria.

REPRESENTATIVE CLAMAN expressed concern that different facilities would have different needs and that the proposed language would restrict their ability to make reasonable decisions regarding the appropriate access for each facility.

[4:01:53 PM](#)

REPRESENTATIVE VANCE relayed that the language in Amendment 3 was written by [DOC] to capture the department's intent for providing computer access, such as [for seeking] employment and education. She understood that the proposed language would not prohibit "the activities that they feel that they need moving forward."

CHAIR KREISS-TOMKINS inquired about the agency's position on Amendment 3.

[4:03:24 PM](#)

LAURA BROOKS, Division Operations Manager, Division of Health and Rehab Services, Department of Corrections, explained that concerns had been raised about how inmates might access the Internet; therefore, the language in Amendment 3 was intending to clarify that there may be occasions in which an offender could access the Internet, but only with staff supervision. She considered the example of the electronic Medicaid application process, adding that an inmate would be eligible to do that only under the direct supervision of a staff member. Otherwise, the computers/tablets would be channeled through a secure platform that would not allow direct access to the Internet.

[4:04:57 PM](#)

REPRESENTATIVE CLAMAN understood that the existing language in subparagraph (I) provided DOC with the authority to regulate the allowable access. He asked whether Ms. Brooks agreed.

MS. BROOKS replied, "That's correct."

REPRESENTATIVE CLAMAN concluded that in the past, the goal was to limit computer access in prisons; however, as time went on, the lack of computer access in prisons hurt the inmates' ability to engage in reform programs. He maintained his concern that the language in the proposed amendment regarding staff supervision may not be necessary in the future due to advances in technology. He said he could understand some of the interest in this precaution today but given the slowness with which the legislature made adaptations to realities on the ground, he believed the language in Amendment 3 would be overly restrictive going forward. He opined that presently, staff supervision was an appropriate inclusion under subparagraph (I); however, by requiring it in statute, DOC would not be able to easily dispense with it.

MS. BROOKS acknowledged Representative Claman's concern about tying the department's hands. However, she said she could not foresee a time when DOC would provide inmates with access to the Internet due to the potential of them accessing victims. She believed that given the anticipated programming, the language in Amendment 3 was appropriate because it would allow the department to provide supervision when an inmate needed access to something that required Internet access.

REPRESENTATIVE CLAMAN questioned what would happen if an application for benefits required Internet access. He surmised

that the language in Amendment 3 would require that the inmate be supervised while filling out the application.

MS. BROOKS confirmed that it would require that level of supervision.

[4:08:50 PM](#)

REPRESENTATIVE EASTMAN asked why DOC would object to an inmate having access to the Internet aside from the concern about contacting victims.

MS. BROOKS said there were many security concerns that she did not want to mention publicly. She conveyed that primarily, allowing Internet access would be a serious breach of security due to the massive amount of information available online.

REPRESENTATIVE EASTMAN asked whether the department was concerned that in five years, inmates would have increased tools and techniques for hacking and could misuse the Internet access should they ever achieve it.

MS. BROOKS replied, "That's probably always a concern." She reiterated that the department wanted to ensure that if the tablets were used for accessing the Internet, the access would be well supervised.

REPRESENTATIVE EASTMAN inquired about "the intervention" referenced in Amendment 3.

MS. BROOKS stated that the intervention would be a "side-by-side review," meaning that a medical social worker or institutional probation officer would sit with the inmate while he/she completed the paperwork.

[4:11:02 PM](#)

REPRESENTATIVE KAUFMAN asked whether the language "intervention by another person" was too broad.

MS. BROOKS acknowledged that possibility. She reiterated that the department's goal was to make the proposed legislation safe; therefore, if the committee felt that the wording needed to be adjusted, DOC would not object. She explained that the department wanted to ensure that the use [of tablets] would be available for the intended purpose of rehabilitation and that they would be protected and confined to only that purpose.

[4:12:14 PM](#)

CHAIR KREISS-TOMKINS expressed his surprise that there seemed to be a sense that DOC did not recognize the obvious: no one wanted inmates contacting victims. He assured the committee that if a victim were to be contacted, the commissioner would be replaced, as it would be a career-ending public relations (PR) story. He emphasized that Ms. Brooks and Commissioner Dahlstrom knew that, and the committee should know that too. He pointed out that the verbiage could be endlessly litigated, but the commonsense understanding should be the accepted assumption that there would be no circumstance under which DOC would allow prisoners to freely communicate with victims or anyone else via the Internet.

REPRESENTATIVE KAUFMAN said he had no distrust in his heart. He explained that he had wanted to know whether additional wording would clarify the amendment.

[4:14:08 PM](#)

REPRESENTATIVE TARR referenced a letter from the American Civil Liberties Union (ACLU) of Alaska [included in the committee packet], which read [original punctuation provided]:

Providing meaningful access to technology is arguably more important than establishing statutory permission to do so. There is, for instance, nothing in HB 118 to require DOC to meet certain standards for computer access, and nothing to permit DOC from arbitrarily restricting access to computers.

REPRESENTATIVE TARR highlighted the importance of reentry services for successful reintegration in the community; further, she said [reentry services] were deeply meaningful for the continuation of addiction treatment, for example. She shared her understanding that the proposed legislation would provide a critical service. She believed that on one end, access should be restricted to protect victims, while on the other end, there should be meaningful access to allow for the provision of services and the best opportunity for success upon release into the community.

CHAIR KREISS-TOMKINS concurred.

[4:15:58 PM](#)

REPRESENTATIVE VANCE thanked DOC for collaborating on the language in Amendment 3. She explained that her goal was to clarify the statutory intent for legal matters and to "maintain the public trust." She believed that the legislature's primary obligation was to ensure the public's safety and that providing rehabilitation came second to that; further, she said that the legislature lived in the middle ground of providing both. She stated that she wanted to make it clear to the public that the intent was not to allow unbridled access to the Internet and that computer access would be specific to reentry needs.

[4:17:25 PM](#)

REPRESENTATIVE CLAMAN opposed the language in Amendment 3. He believed that the intent was well-taken but that the language was confusing. He said he had great confidence that DOC would approve only what was appropriate and that the existing language in HB 118 provided all the necessary direction. He added that he completely agreed with the chair's comments and believed that it would be a mistake to include restrictions that would hinder the already challenging efforts of rehabilitation. He reiterated that he did not support Amendment 3 because DOC had all the necessary authority to restrict access; further, the department already did that exceptionally well. He further noted that under the Constitution of the State of Alaska, one purpose for criminal justice administration was not higher than other. He added that rehabilitation was one of several goals, all of which were to be balanced equally or appropriately depending on the circumstances of the person, victim, or crime.

CHAIR KREISS-TOMKINS considered the scenario posed by Representative Claman in which the platform would allow access to only one uniform resource locator (URL), such as the Medicaid enrollment website, and there would be zero percent chance of contacting a victim or performing other nefarious activity. He asked Ms. Brooks whether an inmate would be directly supervised in that scenario if accessing that one URL was in was in the best interest of his/her rehabilitation or reform.

MS. BROOKS believed that it was the department's first duty to protect the public and that rehabilitation and reentry fell below that. She said if the committee wanted to make changes to the wording it would be a policy call. She reemphasized that DOC would protect the public to the best of its ability while providing this computer access.

CHAIR KREISS-TOMKINS pointed out that in the aforementioned scenario there would be a zero percent chance of jeopardizing public safety because of the technical platform being utilized. He asked whether direct supervision would be ideal if the inmates were doing something for their reform or rehabilitation and the risk was mitigated to zero.

MS. BROOKS said having staff supervise that type of access would be the safest route. She said she did not know if there could ever be a zero percent chance [of risk]; therefore, staff supervision would be required to mitigate as much risk as possible.

[4:22:22 PM](#)

REPRESENTATIVE EASTMAN, recalling his previous experience in law enforcement, said he didn't know that there would ever be a warden or prison supervisor who would be able to make an affirmation of zero percent risk. He said that level of certainty was not realistic with today's technology.

[4:23:54 PM](#)

CHAIR KREISS-TOMKIN believed that ultimately, it came down to how much [the legislature] trusted DOC to do its job well. He added that he trusted the department's personnel to evaluate those risks.

CHAIR KREISS-TOMKINS announced that HB 118, [as amended], was held over, [with the motion to adopt Amendment 3 pending, with objection].

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

[4:24:30 PM](#)

CHAIR KREISS-TOMKINS 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."

[4:25:25 PM](#)

REPRESENTATIVE Tarr, as prime sponsor of SSHB 5, noted that additional support documents [included in the committee packet]

had been distributed to the committee. The material addressed the rape by fraud provisions and included the 2019 Felony Sex Offense Report. She concluded by quoting an attorney, who said, "Rape is like a murder where the victim doesn't die." She believed that statement captured the severity of the crimes being considered under SSHB 5.

[4:26:59 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 1 to SSHB 5, labeled 32-LS0065\G.1, Radford, 4/20/21, which read:

Page 3, following line 2:

Insert new bill sections to read:

**\* Sec. 3.** AS 11.41.432(b) is amended to read:

(b) Except as provided in **(d) - (f)** [(d) OR (e)] of this section, in a prosecution under AS 11.41.410 - 11.41.427, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

**\* Sec. 4.** AS 11.41.432 is amended by adding a new subsection to read:

(f) It is a defense to a crime charged under AS 11.41.410(a)(5) or 11.41.420(a)(5) that the offender is married to the person and neither party has filed with the court for separation, divorce, or dissolution of the marriage."

Renumber the following bill sections accordingly.

Page 6, line 19:

Following "Act,":

Insert "AS 11.41.432(b), as amended by sec. 3 of this Act, AS 11.41.432(f), enacted by sec. 4 of this Act,"

Delete "sec. 3"

Insert "sec. 5"

Page 6, line 20:

Delete "sec. 4"

Insert "sec. 6"

Page 6, lines 20 - 21:

Delete "sec. 5"

Insert "sec. 7"

Page 6, line 21:

Delete "sec. 6"  
Insert "sec. 8"

Page 6, line 22:  
Delete "sec. 7"  
Insert "sec. 9"  
Delete "sec. 8"  
Insert "sec. 10"

Page 6, line 23:  
Delete "sec. 9"  
Insert "sec. 11"

Page 6, line 24:  
Delete "sec. 11"  
Insert "sec. 13"

Page 6, line 25:  
Delete "secs. 1 - 9 and 11"  
Insert "secs. 1 - 11 and 13"

Page 6, line 26:  
Delete "Section 10"  
Insert "Section 12"

REPRESENTATIVE CLAMAN objected.

REPRESENTATIVE EASTMAN, in explanation of Amendment 1, opined that two individuals who were married and engaging in sexual relations should not be prosecuted "under these kinds of situations." He believed that spouses should be exempt from the criminal sanctions [in the rape by fraud provisions].

REPRESENTATIVE TARR stated that she did not support Amendment 1 because it would be applied to the rape by fraud section. She explained that the rape by fraud provisions were intended to apply to a circumstance in which the offender misrepresented his/her physical identity and recklessly disregarded that the victim would not have consented to engaging in a sexual relationship had the offender's real identity been known. Moreover, she said she could not think of a circumstance in which [rape by fraud] would apply to a married couple.

CHAIR KREISS-TOMKINS asked Representative Eastman to provide a scenario that he was attempting to solve or prevent with the proposed amendment.

REPRESENTATIVE EASTMAN remarked:

There have been situations where, you know, a spouse is thinking that their partner is having an affair, and as part of catching their partner in the act they switch places and pretend to be the person that ... they think their spouse is having an affair with.

REPRESENTATIVE EASTMAN claimed that these kinds of situations had happened and would continue to happen. He continued by recounting the story line from a Shakespeare play, titled All's Well That Ends Well. He believed it was not possible to conceive of all the situations in which [the rape by fraud provisions] could be used against an innocent spouse. Further, he believed that charging a spouse with rape for having slept with [his/her spouse] would be wrong.

CHAIR KREISS-TOMKINS asked Mr. Stinson whether he had encountered a scenario that Amendment 1 would apply to during his time in criminal law.

[4:33:01 PM](#)

JAMES STINSON, Director, Office of Public Advocacy, Department of Administration, said he had not encountered that scenario. He understood that the rape by fraud provisions were trying to capture a person who had impersonated a different actual person that was in a relationship with someone. Ultimately, he believed that the proposed amendment would come down to a policy call on whether it should be considered rape in the event of a spousal relationship wherein one of the individuals thought that he/she was having an affair with somebody but was actually sleeping with his/her spouse.

[4:34:49 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Department of Law, said in his 22 years of experience he had never encountered a case that was similar to what Representative Eastman had laid out in his hypothetical. He shared his understanding that Representative Eastman was proposing that a person had engaged in sexual relations with his/her spouse while believing that the spouse was a third person; further, that person would not have actually consented to having sex with the actual spouse. He said despite what Shakespeare wrote, it did not seem like a realistic case that would be referred for prosecution. Nonetheless, if

hypotheticals could be strained to the point that it would be [referred to prosecution], he asked why the legislature would be interested in passing a law that protected an individual who could have sexual relations with another person only by trickery. He said he was having difficulty understanding that concept, and that it would be up to the committee to make the policy call.

[4:36:38 PM](#)

REPRESENTATIVE CLAMAN echoed Mr. Skidmore's observations. He said he was having a hard time conceiving the circumstance described by Representative Eastman; further, he opined that the application to marriage defense in that scenario was used inappropriately. He explained that in the last few years, the legislature had spent a lot of time looking in detail at AS 11.41.432(b), which was the provision relating to the marriage defense, as well as other subsections on defenses in AS 11.41.432. He believed that Amendment 1 was proposed in reference to a narrow and "somewhat bizarre" set of circumstances that were hard to imagine. Further, he pointed out that [the legislature] had worked hard to try to eliminate the marriage defense except in limited circumstances, such as the Alzheimer's scenario. He concluded by reiterating his opposition to the proposed amendment.

[4:38:08 PM](#)

REPRESENTATIVE VANCE inquired about the flexibility in statute when considering Alzheimer's cases pertaining to consent.

MR. SKIDMORE relayed that AS 11.41.432 described that "the marriage defense is an affirmative defense when the offender was married to the person, neither party has filed for divorce or separation or dissolution. The the victim in that case is capable of consenting and does, in fact, consent while capable of understanding the nature of consequences." He recalled that the concerns that had been raised during the legislative testimony were related to the difficult situations in which a person was capable of consenting on Monday but on Tuesday, because of the nature of Alzheimer's disease, was not capable of consenting. He opined that from that standpoint, there was an affirmative defense; further, that prosecutors had discretion in any case that was presented to them to determine whether it appropriately met the elements and could be proven beyond a reasonable doubt. He believed that the statute contained all the necessary flexibility as written.

REPRESENTATIVE VANCE questioned how the proposed amendment would affect that discretion in those types of scenarios.

MR. SKIDMORE clarified that Amendment 1 did not pertain to Alzheimer's. Instead, he explained that the amendment was trying to look at a scenario in which one spouse was trying to commit a fraud on the other spouse by impersonating someone else. He said he struggled with the concept that a spouse wouldn't recognize his/her own spouse. He remarked:

But assuming for argument's sake that ... I can change my appearance in some capacity that I can actually fool the person with whom I have the most intimate relationship on the planet with, my spouse - I can fool that person into thinking that I'm another person - in that scenario, this amendment would say ... the spouse that is the victim didn't want to engage in a sexual act with their actual spouse but was only willing to engage in that sexual act with a third person outside of the marriage. And in that circumstance now, ... if you really have a relationship that's dissolved that significantly and they are incapable of recognizing who their own spouse is, and they engage in a sexual act with them and they only did it because of fraud, this amendment would now say that's going to be protected.

MR. SKIDMORE concluded that the policy question for the committee was whether to protect the conduct of the spouse that committed that fraud.

[4:43:35 PM](#)

REPRESENTATIVE CLAMAN asked if Amendment 1 were to pass, what the impact would be of making "this" a defense rather than an affirmative defense.

MR. SKIDMORE believed that the difference was that an affirmative defense required the defendant to put forth some evidence that established that scenario; alternatively, a defense didn't require the defendant to put forward anything affirmatively but required the prosecution to disprove it.

[4:45:03 PM](#)

REPRESENTATIVE EASTMAN inquired about the statute of limitations that would apply to the rape by fraud provisions should the bill pass into law.

MR. SKIDMORE stated that sexual assault did not have a statute of limitations.

REPRESENTATIVE EASTMAN pointed out that Mr. Skidmore had mentioned that [the rape by fraud provisions] would only apply when a spouse would not have consented to sexual relations [had he/she known the true identity of the offender]; however, as he understood it, that concept was not clearly stated in the bill. Additionally, he recalled testimony from a previous hearing that had indicated that a person's prior behavior did not equate to consent. He asked for further clarification.

MR. SKIDMORE confirmed that previous conduct did not necessarily equate to consent for a particular incident. Nonetheless, he explained that as a prosecutor, his obligation would be to prove that the victim did not consent. He anticipated that if Amendment 1 were adopted, in any case in which he/she would try to bring a charge under the [rape by fraud provision], the defense attorney would argue: "This was their spouse; you're telling me they weren't considering [having] sex with their spouse?" He believed that was the consent issue that the prosecution would be faced with under this subsection. He explained that identity was the factor in question under this provision and whether the victim truly did not perceive the actual identity of the offender. He added that dressing up as someone else would not be enough. He continued:

I could try and make myself look like Brad Pitt ... and so, if I attempted to do that, I don't think my wife would ever be fooled into thinking that I was Brad Pitt. And so, the question is if I was pretending to be him, and I tried to engage in some sort of sexual act with my wife ... did she consent to that sex with me or was she truly fooled...

REPRESENTATIVE EASTMAN maintained his concern about criminalizing conduct that was taking place within the [confines] of marriage, which he believed shouldn't be criminal.

[4:53:33 PM](#)

REPRESENTATIVE CLAMAN maintained his objection to the motion to adopt Amendment 1.

[4:54:01 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of Amendment 1. Representatives Tarr, Story, Claman, Vance, Kaufman, and Kreiss-Tomkins voted against it. Therefore, Amendment 1 failed by a vote of 1-6.

[4:54:56 PM](#)

REPRESENTATIVE VANCE moved to adopt Amendment 2 to SSHB 5, labeled 32-LS0065\G.4, Radford, 4/26/21, which read:

Page 5, line 6:  
Delete "person"  
Insert "victim"  
Delete "defendant"  
Insert "offender"

Page 5, line 12:  
Delete "defendant"  
Insert "offender"

Page 5, line 14:  
Delete "defendant's"  
Insert "offender's"

Page 5, line 15:  
Delete "defendant"  
Insert "offender"

CHAIR KREISS-TOMKINS objected for the purpose of discussion.

[4:55:00 PM](#)

REPRESENTATIVE VANCE explained that Amendment 2 would provide consistency in the bill language by replacing "person" with "victim" and replacing "defendant" with "offender" on page 5.

CHAIR KREISS-TOMKINS questioned whether the inserted language differed from other criminal law statutes. Additionally, he asked why the bill was not originally drafted with the proposed language in Amendment 2.

REPRESENTATIVE VANCE said she did not know the answer.

CHAIR KREISS-TOMKINS asked Mr. Stinson whether the language proposed in Amendment 2 was consistent with other criminal law statutes.

[4:57:32 PM](#)

MR. STINSON said he was unsure whether there would be a legal significance. He explained that the person being charged was designated as the "defendant" whereas the victim witness was referred to as the "victim" or "alleged victim" during the course of the proceedings.

REPRESENTATIVE CLAMAN, after a quick perusal through AS 11.41.410, AS 11.41.420, and AS 11.41.425, noted that the statutory language referred to the "offender" rather than the "defendant". Therefore, he believed that changing "defendant" to "offender", as proposed in Amendment 2, would be more consistent with the language in AS 11.41.410. However, he said he was fairly certain that the use of the word "victim" was unusual because it would imply a conviction. He shared his belief that deleting "person" and inserting "victim", as proposed in Amendment 2, would draw the conclusion that a crime had been committed.

REPRESENTATIVE EASTMAN pointed out that referring to a party as a "petitioner" did not necessarily mean that their petition was valid. Nonetheless, he agreed with Representative Claman that to decide that a crime had been committed ahead of time would prejudice the entire process.

[5:01:27 PM](#)

RENEE MCFARLAND, Deputy Public Defender, Alaska Public Defender Agency, noted that sexual assault and sexual abuse of a minor statutes used the word "offender" in reference to the defendant. Further, sexual abuse of a minor statutes used the word "victim" in provisions pertaining to individuals being charged with conduct involving their children or people in positions of authority. She also noted under AS 11.41.470, "victim" was defined as "the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree." Additionally, the current definition of "without consent" used the word "defendant". Ultimately, she concluded, the statutory language used "offender" in reference to the offense at issue, "defendant" when addressing consent, and "victim" when discussing certain aspects of sexual abuse of a minor.

5:03:00 PM

REPRESENTATIVE TARR pointed out that in "common language" there was an ongoing effort to transition the verbiage from "victim" to "survivor". She acknowledged that the effort was outside of the law; nonetheless, it was part of the cultural change around these issues. Regarding the use of "offender" instead of "defendant", she said she was comfortable with the change if it would maintain consistency.

CHAIR KREISS-TOMKINS asked Mr. Skidmore whether the Department of Law (DOL) had a position on Amendment 2.

MR. SKIDMORE reported that the word "victim" was used in AS 11.41.410(a)(4)(B) and AS 11.41.420, as well as subsequently defined under AS 11.41.470(7). He said DOL had no objection to the use of the word "victim". He submitted that the statutes were somewhat inconsistent in their use of "person" versus "victim". He said he understood Amendment 2 to be an attempt at clarifying the definition of consent in terms of who was being discussed. He believed it would be a policy call for the committee.

5:06:14 PM

REPRESENTATIVE KAUFMAN surmised that the ideal statutory language would be the most neutral wording that correctly identified the "players." He asked Mr. Skidmore whether there was a benefit to using the terms "person" or "defendant", which were more neutral, as opposed to "victim" and "offender."

MR. SKIDMORE agreed with the concept of using the most neutral terms in statute in addition to providing clarity. He continued to defer to the committee on whether Amendment 2 would provide clarity.

CHAIR KREISS-TOMKINS maintained his objection. He said he was in favor of using neutral legal language and that it was up to the defense and the prosecution to make their case, as opposed to the statutory language. Further, he pointed out that there had been no confusion around the existing language.

5:09:06 PM

REPRESENTATIVE VANCE stated that the purpose of Amendment 2 was to clarify who was being described in the definition of consent. She pointed out that the terms "victim" and "offender" were used

in Section 4 of SSHB 5; therefore, she believed the proposed amendment would create consistency. Nonetheless, she deferred to the will of the committee.

REPRESENTATIVE STORY inquired about the bill sponsor's position on Amendment 2.

REPRESENTATIVE TARR said she was opposed at this time. She expressed interest in continuing to work with Representative Vance on the language as the bill moved forward.

[5:11:09 PM](#)

REPRESENTATIVE VANCE [moved to withdraw] Amendment 2. [There being no objection, Amendment 2 was withdrawn.] Representative Vance announced that Amendment 3 would not be offered at this time.

[5:12:37 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 4 to SSHB 5, labeled 32-LS0065\G.6 Radford, 4/26/21, which read:

Page 2, line 9:

Delete "who is"

Insert "whom the offender has"

Page 2, line 11, following "person":

Insert "based on the offender's physical identity, not on characteristics, traits, or accomplishments of or similar facts about the offender, with reckless disregard that the person would not have consented to the sexual penetration if the person knew the offender's real identity"

Page 2, following line 11:

Insert a new bill section to read:

"\* **Sec. 2.** AS 11.41.410(b) is amended to read:

(b) Sexual assault in the first degree,  
(1) under (a)(1) - (4) of this section, is an unclassified felony and is punishable as provided in AS 12.55;  
(2) under (a)(5) of this section, is a class A felony and is punishable as provided in AS 12.55."

Renumber the following bill sections accordingly.

Page 2, line 31:

Delete "who is"

Insert "whom the offender has"

Page 3, line 2, following "person":

Insert "based on the offender's physical identity, not on characteristics, traits, or accomplishments of or similar facts about the offender, with reckless disregard that the person would not have consented to the sexual contact if the person knew the offender's real identity"

Page 6, line 19, following "AS 11.41.420(a), ":

Insert "AS 11.41.420(b), as amended by sec. 2 of this Act,"

Delete "sec. 2"

Insert "sec. 3"

Delete "sec. 3"

Insert "sec. 4"

Page 6, line 20:

Delete "sec. 4"

Insert "sec. 5"

Page 6, lines 20 - 21:

Delete "sec. 5"

Insert "sec. 6"

Page 6, line 21:

Delete "sec. 6"

Insert "sec. 7"

Page 6, line 22:

Delete "sec. 7"

Insert "sec. 8"

Delete "sec. 8"

Insert "sec. 9"

Page 6, line 23:

Delete "sec. 9"

Insert "sec. 10"

Page 6, line 24:

Delete "sec. 11"

Insert "sec. 12"

Page 6, line 25:  
Delete "secs. 1 - 9 and 11"  
Insert "secs. 1 - 10 and 12"

Page 6, line 26:  
Delete "Section 10"  
Insert "Section 11"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

[5:12:44 PM](#)

REPRESENTATIVE TARR stated that Amendment 4 was designed to "tighten" up the language in the rape by fraud provisions. Additionally, she said it would reclassify the crime. She relayed that lines 5-9 of Amendment 4 were intended to clarify that rape by fraud would apply to situations in which people misrepresented their physical identity to gain consent for sexual penetration or sexual contact, as opposed to circumstances wherein someone was dishonest about his/her education status or income, for example. She said the second part of the amendment addressed the sentencing provisions. She noted that sexual assault in the first degree was an unclassified felony with a 15-20-year prison sentence for the first offense. Amendment 4, she explained, would make rape by fraud a class A felony, whereas sexual contact by fraud would be a class B felony. She reasoned that the crime of rape by fraud involved some premeditation, so situating it as a class A felony would differentiate it between sexual assault involving use of force and other circumstances.

[5:20:34 PM](#)

REPRESENTATIVE EASTMAN asked, "Should the ... meaning of the amendment basically be 'with reckless disregard for the fact that'?"

REPRESENTATIVE TARR stated that the offender would act with reckless disregard that the person would not have consented had the offender not concealed his/her physical identity.

REPRESENTATIVE EASTMAN questioned whether it was "reckless disregard that it might be possible."

REPRESENTATIVE TARR believed that was correct.

REPRESENTATIVE EASTMAN asked whether "non-consent" would become an element of the crime.

REPRESENTATIVE TARR understood that consent would be in question in addition to whether the person acted with reckless disregard to the sexual assault that took place.

REPRESENTATIVE EASTMAN, regarding the statement, "the person would not have consented," asked to what extent that would need to be established as part of the crime.

[5:24:06 PM](#)

MR. SKIDMORE said from DOL's perspective, the lack of consent would absolutely be an element of the crime. He pointed out that sexual conduct between two adults was not in and of itself illegal - only the lack of consent made it illegal. He explained that the lack of consent in this case was determined by the fact that a fraud had occurred, and the fraud meant that there wouldn't have been consent had the person known the other individual's true identity.

REPRESENTATIVE EASTMAN expressed his confusion. He asked whether rape by fraud was a situation in which the act of fraud had deprived the victim of being able to consent or "if they had wanted to consent if they knew the offender's real identity, does that negate the crime?"

MR. SKIDMORE sought to verify that Representative Eastman was asking whether it was a crime if [the victim] didn't consent because of the fraud and would it not have been a crime if [the victim] knew the person's real identity.

REPRESENTATIVE EASTMAN answered yes. He asked, if the victim had known the real identity and would have consented under those circumstances, whether the crime of rape by fraud would have not occurred.

MR. SKIDMORE replied:

Yes, I think if they actually know the person's real identity, or if they had known the person's real identity and they would have consented had they known the real person's identity, then I don't think you have a crime of sexual assault because they were still consenting to the sexual conduct. What the crime of sexual assault under this particular subsection is

trying to get at is the circumstance in which a person did not want to consent to that conduct with that person, but if they were consenting under some other circumstance, that's kind of what we talked about for the earlier amendment. How in the world would that ever get reported to law enforcement? If they're consenting to it, then what is it that law enforcement's investigating?

CHAIR KREISS-TOMKINS observed that there were "dimensions upon dimensions" of hypotheticals with this particular section of statute. For that reason, he said he found it discomfoting in terms of [the legislature's] ability to anticipate all scenarios and consequences, intended or otherwise. Nonetheless, he said he appreciated that Amendment 4 was trying to narrow and refine [the language].

[5:28:46 PM](#)

REPRESENTATIVE KAUFMAN inquired about the term "physical identity", as opposed to "identity". He questioned whether "physical" was the appropriate wording.

REPRESENTATIVE TARR reported that she had discussed that wording with Legislative Legal Services in an attempt to carefully select the language. She explained that the bill drafter believed that adding "physical" would help clarify the intent. She addressed the built-in protections in the criminal justice system, explaining that the police would have to investigate and feel that they found sufficient evidence to prove beyond a reasonable doubt that a crime had occurred; further, it would have to get "screened in" by the prosecutors. Consequently, she stated that many of the "what if" scenarios would never come to fruition because of the built-in protections along the way.

REPRESENTATIVE KAUFMAN asked Mr. Skidmore to comment on the use of "physical" versus "actual" or some other adjective.

MR. SKIDMORE acknowledged that in reading Amendment 4, he had the same concern about how to differentiate "physical identity" from "characteristics, traits, or accomplishments", as some of those could be physical. He suggested that "actual" or "true" could be an appropriate replacement and provide the type of clarity that the committee was looking for.

[5:34:09 PM](#)

REPRESENTATIVE VANCE believed that the language in Amendment 4 was getting closer to capturing the intent. She asked for the bill sponsor's perspective on replacing "physical" with "actual". Additionally, she asked Mr. Skidmore whether "actual identity" would provide more flexibility for the prosecution.

MR. SKIDMORE was unsure whether it would broaden opportunity. He did, however, believe that it would provide clarity as to the committee and the sponsor's intent.

CHAIR KREISS-TOMKINS asked for Mr. Stinson's perspective on the relative merits of "actual" versus "physical" and the clarity afforded by one versus the other.

MR. STINSON said he could understand the tension with either word. He shared his understanding that the legislative intent was to prevent a situation where a person was impersonating someone's girlfriend, boyfriend, spouse, significant other, et cetera. He believed that Amendment 4 was closer to capturing that intent; however, he pointed out that it could still allow for a situation in which an individual impersonated a celebrity to gain consent to engage in sexual relations with another person. Nonetheless, he noted that there would still be obvious protections built in to whether that would get reported, charged, and so forth.

[5:39:59 PM](#)

REPRESENTATIVE CLAMAN suggested allowing more time for Representative Vance and Representative Tarr to discuss and come to an agreement on the issue before moving forward with the amendment.

[5:40:21 PM](#)

CHAIR KREISS-TOMKINS announced that SSHB 5, with Amendment 4 pending, with objection, was held over.

[5:41:07 PM](#)

CHAIR KREISS-TOMKINS provided closing remarks and reviewed the upcoming schedule.

[5:41:40 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 5:41 p.m.