

HB

112

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112</SUBJECT><COMM>HSTA30</COMM></TARGET>



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919
Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

House Bill 112 Sponsor Statement

An act to expand sexual assault protection.

House Bill 112 adds specific language to AS 11.41.425 and AS 11.41.427 criminalizing sexual penetration and sexual contact with victims, witnesses, or defendants under active investigation by a law enforcement officer, effectively clearing up a gray area in the law. Current law criminalizes police sexual misconduct through two mechanisms: 1. coercion—it is considered sexual assault if an individual is coerced into sexual contact or intercourse by threat of arrest, or, 2. in custody—it is considered sexual assault for law enforcement to have sexual contact with a person who is in their custody or apparent custody. Neither of these instances addresses the use of sexual contact as an investigative tool. There have been reports of law enforcement officers engaging in sexual contact prior to arrest, especially in instance of undercover operations, without repercussion.

A research study at the University of Alaska Fairbanks surveyed a diverse group 40 people who had worked in Alaska's sex trade. Of those individuals, 26% said they had been sexually assaulted by a law enforcement officer. 60% of those who had been coerced or manipulated, and 50% of those who had been forced had been sexually assaulted by an officer.

The public has shown overwhelming support for passing this bill; over 67,000 people have signed a Care2 petition asking for this legislation. In addition, a Hays Research Group survey of 900 Alaskans showed that 92.9% were unaware that police were allowed to have sex during prostitution stings and 90.2% felt that it should be against the law for law enforcement to have sexual contact with people they are investigating.

The goal in passing House Bill 112 is clarifying a gray area regarding misconduct to protect law enforcement and the public alike. This bill serves to protect potential victims of sexual assault, and provide clear guidelines to law enforcement to ensure integrity and public confidence.



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 405 Juneau, AK 99801 Phone: 465-4919
Interim: 716 W. 4th Ave, Rm 312 Anch, AK 99501 Phone: 269-0130

To: Representative Jonathan Kreiss-Thompkins, Chair
House State Affairs Committee

From: Representative Matt Claman
HB 86 Prime Sponsor

A handwritten signature in blue ink, appearing to read "Matt Claman".

Subject: Hearing Request for HB112

Date: February 28, 2017

I respectfully request that you calendar HB 112 for a hearing in the House State Affairs Committee. You have received a copy of the most recent version of the bill, the sponsor statement, and additional support material.

House Bill 112 serves to protect potential victims of sexual assault, and provide clear guidelines to law enforcement to ensure integrity and public confidence by clarifying a gray area regarding misconduct.

The staff assigned to this bill is Owen Phillips who can be reached at 465-4919. Please do not hesitate to contact my office if we can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Claman".

Matt Claman

Dear Alaskan legislators,

My name is Lily and I am writing to voice my support of house bill 112.

On one occasion, I had a police officer initiate sexual contact with me before there was a knock on the door and I was arrested for "solicitation".

On another occasion, an officer let me go only after we made a deal that I would exchange sex for my freedom.

I was addicted to heroin at the time and afraid of withdrawal symptoms if he locked me up.

I felt very taken advantage of and violated.

I still have PTSD symptoms when I see police cars because of these sexual assaults and rape that have taken place in my life as a sex worker.

Having had the chance to speak with many other workers at this point in my life, I have learned that this behavior is sadly very commonplace and not out of the ordinary. Sex workers are always being targeted for sexual assault by police officers which endangers their wellbeing and welfare and makes it unlikely for them to ever go to the police when they've been raped, assaulted, robbed, etc when that trust is broken repeatedly.

Please vote yes on house bill 112 to prevent these horrendous occurrences from happening.
Thank you for your time, Lily

Dear Lawmakers,

I'm writing in support of House Bill 112.

Sex is not an investigative tactic. The possible use if it erodes public trust. Please close this loophole.

Please vote yes on House Bill 112.

Thankyou,

Jennifer Andrews.

Dear Alaska State Legislators:

I am writing in support of house bill 112.

Our state has appalling rates of sexual abuse, child molestation, rape and domestic violence. Sex trafficking contributes to and capitalizes on this violence, yet the law has made sex workers the criminals and used that vulnerability to justify further violation and distrust. This needs to stop.

Police should not be allowed to use their power and position to have sex with sex workers. Period.

Like many women, I am very aware of the short and long-term impact of sexual violence on those who experience it. What police are now allowed to do is exactly the kind of power-based violation and manipulation that has harmed Alaskans across our state.

Please vote yes on house bill 112.

Thank you,

Ruth Carter
Anchorage, AK

Alexandria Glass

Dawnell Smith

Dear Representative Claman -

Thank you for drafting Alaska H.B. 112, an effort to end allowing sexual interaction between police and sex trafficking victims and/or prostitutes during on going investigations and sting operations related to sex trafficking and prostitution.

For those of us who have lived the sex trade, especially those of us who have also worked in Alaska, the understanding of how empty it feels to be disqualified from equal protection under the law, along with being disqualified from fair and ethical treatment during investigations, is beyond disheartening -

I commend your effort to have law enforcement find more intelligent, ethical and humane ways to determine proof of coercion when investigating sex work and sex trafficking. Police should not be having sexual contact with prostitutes during investigations, nor should they be able to lie about being affiliated with law enforcement if asked direct while engaging in sexual contact with the intention of arrest.

In remembrance of the 1980s "Lower 48" Donna Gentile cold case murder / NHI file, a case that touches my heart and community, and also from my own personal experiences, I thank you for your compassion and dedication to humane ethics and fair policy.

Melanie (Goodman) Dante
Community United for Safety and Protection www.BDC-Lancaster.net

February 13, 2017

I am writing in support of HB 112.

In the mid-1990s, I was employed in the mental health profession, as a mental health clinician/counselor, and was then licensed as an LCSW (licensed clinical social worker) and as an LMFT (licensed marriage and family therapist).

During that time, I worked with a number of individuals, groups, and families.

One individual for whom I provided (primarily) individual services, as well as limited family services, was a police officer in a rural community I served at that time.

At one point, the Officer in question reported to me, during individual therapy, that he was once on loan to another police agency in Alaska, specifically related to, and engaged in, a sting operation regarding sex workers, or 'prostitutes.'

In his relating of a specific encounter, he chuckled, laughed, and appeared to boast about having engaged in sexual act(s) with a woman he immediately after, facilitated the arrest of, for offenses related to her profession as a sex worker.

The obvious ethics infractions involved in such misuse of a community relationship and unequal power, or compromising of the standards of policing in Alaska in general, by engaging in or permitting such behavior, or even simply tolerating those officers who would engage in such antics, brings to mind such terms as 'reprehensible,' 'outrageous,' and even 'criminal.'

While I am bound by confidentiality regarding the identity of the Officer in question, and even his departmental affiliation(s) at that time, I feel compelled to bring this case forward, as it relates to what I understand are current deliberations regarding legislation, HB 112, that I understand would criminalize such actions by law enforcement, and bring a greater balance of deserved trust and obligation to our law enforcement community in Alaska as a whole.

I am told that both the Department of Public Safety and APD have claimed that such incidents do not occur. While I cannot accurately report the frequency of such incidents, I can report that I have had at least one officer admit to such behavior, while meeting with me in a professional mental health setting. And I have no reason to assume this is a completely unique and isolated incident, considering human behaviors and motives, as a whole.

But for sake of playing devil's advocate, thus entertaining the apparently specious argument that such behavior doesn't exist, let us, consider the implications of passing such a bill into law.

Even if it were true, the assertion that such behaviors don't occur, what would be the harm in the State of Alaska making a formal statement, via legislation, bringing greater definition to this poorly addressed issue, stating clearly and plainly, that such behavior by law enforcement officers is -not- acceptable, and, in fact, is criminal in nature?

To grant tacit approval to some of the most empowered persons in our communities to prey on the least empowered, is to exacerbate the injurious inequity and injustice that already exists in so many ways, in a Country that boasts 'equal treatment under the law.'

If you have any further questions of me, please feel free to contact me at the mailing address, e-mail address or telephone number below.

Again, I urge you to support HB 112.

Sincerely,

Dirk R. Nelson
Ester, Alaska, 99725-0283

Hello,

I am a current Sex Worker who has lived and worked in Alaska and I am in support of HB 112. I'd like to remain anonymous due to the risk of retaliation and anonymity. Please consider the importance of the bill and do the right thing. Won't you vote for HB 112? Thank you for your time.

Sincerely, "Jane"

To whom it may concern,

My name is Kim Whitaker. I am a 25 year resident of Alaska. My employment is running my own Child Day Care also I am the President of a nonprofit REAL About Addiction.

I am writing this letter in support of HB112 First of all I can't believe that it's not already a prosecutable law for a person in described words of HB112 "peace officer" to have sex with a victim, witness or perpetrator.

I help and voluntarily work for and with many sex workers that are in the horrible cycle of drug addiction. Most everyone of these precious people are in a very bad situation they are sex workers to provide an addiction. I've never met one yet that isn't an addict because of being sexually molested as a child they are traumatized and have PTSD. They learned young not to respect their bodies and to be used they become a victim.

I have spoken with many police officers, they are very good kind people that respect the fact that sex workers are victims they are kind and compassionate I would like to think none of them are the type of a peace officer that we're talking about.

I also would like to add that if a person is a sex worker out of choice and are mentally sound they should not be subject to being arrested by a peace officer that has had sex with them.

Thank you for your time

Kim Whitaker



PO Box 672069, Chugiak, AK 99567

907-688-0163

907-388-2866-cell

February 11, 2017

Representative Matt Claman
State Capitol Room 118
Juneau AK, 99801

Re: HB112

This is to indicate my support for HB112 and to thank you for sponsoring this bill. I am particularly happy that (in spite of my mailing address) I am a constituent of yours.

As you well know, HB112 addresses a shortcoming in the statute that addresses law enforcement officers having sex with a victim, witness or perpetrator of a crime. The Alaska State Troopers did the right thing ethically and morally when they fired an officer who had "consensual" sex with a victim of domestic violence. I can only imagine how demoralizing it was to have that dismissal overturned.

In my work over the past 30 years in the area of child sexual abuse I have been fortunate to know and work with many outstanding, kind and ethical law enforcement officers. Sadly, I have also been exposed to those who bring shame to their discipline – child molesters, rapists and murders. In fact, years ago a Detective Sergeant told me, as I was bemoaning the recent spate of criminal behavior among the ranks of law enforcement in Alaska, "It's a fine line between a cop and a criminal." Of course no profession is free from criminals in their midst. In fact I can't think of a single career field, economic or educational level, in which I haven't worked with a case of the sexual abuse of a child.

Law enforcement officers literally put their life on the line every day. They save people's lives, they protect our communities, and they help make the world a safer place for our children. They deserve to be trusted by ALL citizens, even those who break the law. Sex workers often witness and have knowledge of many crimes, including child abuse, child pornography, child sex trafficking, assault, etc. Hopefully HB112 will help change, over time, the well-merited climate of distrust. All of the committed and dedicated law enforcement officers in our state deserve no less. Victims, witnesses, and yes – even perpetrators – of crime deserve no less.

Sincerely,

Pam Karalunas



To: Rep. Matt Claman, Chair of the House Judiciary Committee

15-02-2017

Re: A Letter in Support House Bill 112

Dear Representative Claman and members of the House State Affairs Committee,

Please accept this letter as a **testament of our strong support of House Bill 12** introduced on February 8 2017. Expanding Alaska's sexual assault statute to prohibit police officers from engaging in sex with sex workers while undercover is a critical step in protecting individuals from sexual assault by peace officers, and one that should be moved forward quickly. Sex workers who may be victims, witnesses, or perpetrators of a crime have an inalienable right to their bodily autonomy and to be safe from assault - particularly assault sanctioned by the state.

As an international organisation that opposes the legal oppression, discrimination and stigmatization of sex work, we urge you to listen to the individuals and communities most impacted by problematic legislation and policy around sex work in Alaska.

We then urge you to vote yes on HB 112.

Thank you so much for your time and consideration, and for moving forward with HB112. Should you have any questions about our position, please contact me by e-mail directly at louise@redumbrellafund.

Best,

A handwritten signature in black ink, appearing to read "Louise LaFleur", with a long horizontal flourish extending to the right.

Louise LaFleur
Programme Associate
Red Umbrella Fund

February 15th 2017

In Support of HB 112

Honorable Representative Matt Claman:

My name is Bella Robinson. I am the executive director of Coyote RI (Call Off Your Old Tired Ethics) We are a group of current and former sex workers, sex trafficking victims, and our allies, working towards safety and protection in New England's sex industry.

I am writing you today to support HB 112 for the following reasons.

Coyote RI and the [Center for the Study of Slavery and Justice \(CSSJ\)](#) at Brown University, conducted action research on 62 Rhode Island sex workers from 2014-2016. Our goal was to measure the effects of the 2009 criminalization of prostitution in RI.

Our findings revealed that 11% of Rhode Island sex workers reported being sexually assaulted by a police officer and 15% reported being robbed or assaulted by a police officer. Police officers get away with this behavior because prostitution is criminalized. If a sex worker were to come forward about a police officer who coerced them into sex under threat of arrest, it would be the word of a marginalized, criminalized person against the word of a police officer - and the worker would of course be risking arrest to come forward. While that may be only a quarter of Rhode Island sex workers who have been traumatized at the hands of police officers, people in the sex work community talk to each other. We know about each others' experiences and we don't feel safe going to the police to report crimes like assault or sex trafficking. Those who oppose the decriminalization of our industry are supporting human rights violations like the institutionalized, state sponsored sexual and physical assault of sex workers and sex trafficking victims.

77% of Rhode Island sex workers reported to the Brown researchers that they had been the victim or witness of a crime they didn't report to police. This could be because they'd heard from their colleagues who had been assaulted by police officers, or maybe they had heard of colleagues who had tried to report crimes to police: 4% reported being arrested while trying to report a crime and 26% reported being threatened while trying to report a crime. One research participant explained, "they made fun of me, called me names and asked me "what did I expect." They told me that if I want to report a client who raped me that they would arrest me for prostitution."

28% of sex workers reported being arrested and 20% reported being detained for questioning. When sex workers are arrested and classified as criminals it means that they face discrimination and sometimes extreme difficulty in finding other employment and housing. This can keep sex workers trapped in the underground economies and reliant on other people to access housing.

14.52% of the sex workers reported having been to graduate school and only 1 sex worker reported not obtaining their high school diploma or GED.

In light of this I ask you to vote yes on HB 112

Thank You

Bella Robinson
Bella@Coyoteri.org
<http://coyoteri.org/wp/>

Elena Shih, Assistant Professor of Women's and Gender Studies, American Studies for the Study of Slavery and Justice at Brown University
Elena_shih@brown.edu

XXX

To Whom It May Concern:

February 14, 2017

My name is Terria Walters. I am writing this letter in support of HB 112. I am a former sex worker and heard about the bill and the reason why the bill was submitted. I am asking for this bill to be passed due to what is morally right and to protect sex workers from being manipulated and legally raped by law enforcement. In my personal opinion it is unjust to think officers can just sexually violate sex workers while doing a sting and then turn around and arrest them right after they rape the woman.

I am a woman who is formally incarcerated and while I was incarcerated I watched correctional officers rape inmates by using their status and power to do it. These correctional officers are held to a standard to not cross that line and if they do they are held accountable for their conduct and abuse of power. They are arrested, charged and convicted of rape EVEN if the sex was consensual; this is due to the position they hold. It should be no different for any law enforcement officer that is supposed to protect and serve our communities, people and those that may be suspects in cases or stings.

I am asking the House and Senate to pass HB 112 to protect sex workers from sexual assault by law enforcement and so that if sexual assault does happen by law enforcement these officers are held accountable. Rape should NEVER be legal under a loop hole in the system. Thank you for your consideration.

Sincerely,

Terria Walters
Fallen Up Ministries
President
907.748.0316



Alaska State Legislature

Representative Matt Claman

March 2017 Community Council Update:

1. **Budget** – Establishing a responsible action plan for Alaska continues to be our highest priority this session. We are carefully looking at the budget, reviewing different proposals to use a portion of Permanent Fund earnings to support state government, considering options for new revenue, and contemplating continued cuts. There are several options on the table, and Alaskans agree that we must carefully consider all options.

1) **Restructuring the PFD** - Changing the structure of State cash flows is a critical component to any responsible action plan for Alaska. Governor Walker has said repeatedly that restructuring the Permanent Fund is “the most significant piece of fixing the hole.” The House and the Senate have both introduced bills that restructure the fund with varying degrees of withdrawal of earnings. We’re looking at bills that would use between 4.5% and 5.25% of total value of the fund. The Trustees of the Alaska Permanent Fund Corporation advocates that a sustainable yield for the fund is five percent each year and that withdrawals greater than 5 percent would shrink the fund.

2) **New Revenue Proposals** – The House has proposed legislation that would create new revenue measures. Earlier this month the House Resources chairs introduced House Bill 111, which restructures the state’s oil and gas tax credits. The legislation increases the minimum tax rate oil companies would pay and caps the annual cash subsidy at half the rate from previous years. House Bill 115, introduced by House Finance Chairs Rep. Seaton and Rep. Foster, proposes a broad based income-tax. Additionally I’ve introduced House Bill 146 that would institute a school tax where proceeds go directly towards funding education.

3) **Continued Cuts** – We’re continuing to have to make tough choices this session. This last week Rep. Seaton proposed cutting school bond debt reimbursement as an alternative to the proposed \$65 million cut to classroom funding put forward by the Senate. I also recently proposed steps to improve public safety by reallocating funds from the Office of Victims’ Rights to the Department of Law to hire more prosecutors without increasing the overall state budget.

2. **Constituent Surveys** – We’ve been receiving completed constituent surveys from many of you. We will be releasing the results of the survey in an upcoming newsletter.
3. **Constituent Meeting and Anchorage Caucus** – Thank you to those of you who showed up at last weekend’s constituent meeting and at Anchorage Caucus.
- 1.) **Contacting Our Office** – During the session, please feel free to call or write our Juneau office.

Phone: 907-465-4919 [Email: Representative.Matt.Claman@akleg.gov](mailto:Representative.Matt.Claman@akleg.gov)

State Capitol Juneau, Alaska 99801
Phone: (907) 465-4919 Email: Representative.Matt.Claman@akleg.gov

Serving the Sand Lake, Spenard, and Turnagain Communities

Representative Matt Claman
State Capitol Room 118
Juneau, AK 99801

1 March 2017

SUPPORT FOR ALASKA HOUSE BILL 112

Dear Representative Claman,

We are writing to support House Bill 112 which seeks to amend Alaska's sexual assault statute to prohibit police officers from sexually penetrating or having sexual contact with individuals who are involved in active criminal investigations as victims, witnesses or defendants, to the extent that it amounts to an abuse of authority. At present, police officers in Alaska are only prohibited from sexually penetrating people in their custody and sources indicate that police are using sexual intercourse or sexual contact as an 'investigative tool' to determine whether an individual is a sex worker or a victim of human trafficking.¹ Such conduct is an abuse of authority and in some instances amounts to rape and/or entrapment.

International human rights law guarantees everyone's right to be free from torture and other ill-treatment, health, liberty and security of the person, access to justice, a fair trial (including pre-trial due process rights) equality and non-discrimination, and remedies for abuses, among other things. Significantly, rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals,² as well as by UN and regional human rights bodies.³ These bodies have recognized that rape by a state agent is an exertion and abuse of power that gives rise to pain and suffering, physical or mental, justifying characterization as an act of torture. Sexual violence by state officials in the course of their official duties also violates the right to bodily integrity as protected, in part, by the constitutional right to due process and equal protection under the law.⁴

Those involved in criminal investigations do not relinquish their human rights simply because they are suspected of committing a crime or being involved in or associated with criminal actions. Additionally, state officials such as police officers should not be permitted to abuse their authority and commit sexual violence with impunity.

The human rights of sex workers and human trafficking victims are particularly at stake under HB 112. These individuals suffer high rates of violence and abuses and are highly vulnerable to human rights

¹ See Community United for Safety and Protection, *Expanding protection for sexual assault victims: A report in support of AK House Bill 112, 2017*; see also KTVA Alaska, Liz Raines, 'Legal loophole lets undercover officers have sex with prostitutes, group alleges', 31 January 2017, available at: <http://www.ktva.com/legal-loophole-lets-undercover-officers-sex-prostitutes-group-alleges-365/>.

² See for instance *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; *Prosecutor v. Zejnir Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras. 475-496, 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.

³ See for instance *Interim Report of the Special Rapporteur on torture to the General Assembly*, UN Doc A/55/290 (2000), para. 5; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/7/3, 15 January 2008, paras. 34-6; *Aydin v. Turkey*, European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; *Fernando and Raquel Mejia v. Peru*, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3)(a); *Almonacid Arellano et al. v. Chile*, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.

⁴ See U.S. Const. amend. XIV, *United States v. Contreras*, 950 F.2d 232, 236, 244 (5th Cir. 1991); see also Andrew J. Simons, *Being Secure in One's Person: Does Sexual Assault Violate a Constitutionally Protected Right?*, 38 Boston College Law Review 1011, 1997.

violations. All too often, this violence occurs at the hands of law enforcement. Amnesty International recently conducted research on sex work in Norway, Argentina, Hong Kong, and Papua New Guinea.⁵ In the latter three, we documented violence by police against sex workers, in some cases amounting to torture. Most sex workers that we spoke to did not, or were reluctant to, seek police protection from, or redress for, violence and crime.

- In some situations, police were the perpetrators of violations against sex workers.
- Often sex workers reported that the police treat them like criminals, and as a result they fear prosecution or penalization if they go to police. In some cases, sex workers felt the police will not take them seriously if they report a crime.
- In Papua New Guinea, sex workers said they are afraid to report crimes to the police, who are often the perpetrators of abuses against them. They believed it was pointless to seek equal protection of the law as sex work is, in effect, illegal.⁶
- In Buenos Aires, sex workers reported often facing violence at the hands of police and law enforcement officials more than from clients, making them reluctant to report abuses to the police.⁷
- In Norway, many women we interviewed expressed reluctance to report incidents of violence to the police unless it was severe and life threatening. Reasons included fear of negative consequences such as being evicted; arrest or detention; deportation; surveillance leading to clients' arrest and subsequent loss of livelihood; fines; confiscation of money; discrimination; and exposure of their identity.⁸
- Sex workers in Hong Kong told us that if they are victims of crime, they are unlikely to seek police help. Sex worker organizations told us that police rarely follow up on reports from sex workers and instead typically blame or insult them.⁹ Additionally, police, in some circumstances, 'receive sexual services' in the course of their investigations.¹⁰

Our research made it clear that, in general, sex workers feel unable to seek state protection from violence and crime, making them extremely vulnerable to violence, entrapment, extortion and harassment by state officials. While our research primarily focused on sex work, this analysis also applies to human trafficking victims who are also often investigated and punished under laws that criminalize commercial sex and anti-trafficking measures.

Notably, violence against sex workers and others presumed to be involved in unlawful commercial sex is compounded by criminal and other punitive laws and policies against sex work which inhibit individual's ability to seek state protection from violence and and/or compel them to operate in covert ways that compromise their safety. In most countries, including the USA (and US states), law enforcement is not adequately focused on the protection of sex workers and trafficking victims from violence but instead on prohibition of commercial sex through enforcement of criminal law. This creates an adversarial relationship between sex workers, trafficking victims and law enforcement

⁵ See Amnesty International reports: Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016); "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (Index: AMR 13/4042/2016); The human cost of crushing the market: Criminalization of sex work in Norway (Index: EUR/36/4034/2016).

⁶ Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016).

⁷ "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (Index: AMR 13/4042/2016).

⁸ The human cost of crushing the market: Criminalization of sex work in Norway (Index: EUR/36/4034/2016).

⁹ Amnesty International, Sex workers at risk: A research summary on human rights abuses against sex workers, 2016, p. 12-13.

¹⁰ Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016), p. 22-23.



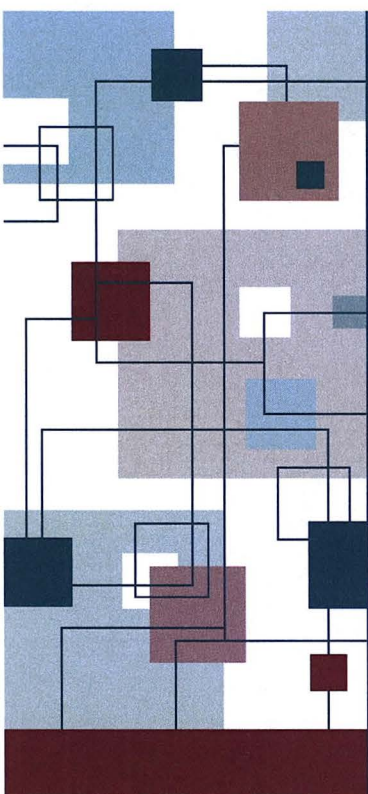
officials that compromises the safety of sex workers and trafficking victims and offers impunity to perpetrators, including law enforcement officials themselves, of violence and abuse against sex workers and trafficking victims.

Alaska's current sexual assault statute appears to entrench an individual's vulnerability to violence, allowing such violence to go unpunished. This implicates a wide range of human rights, infringes on ethical principles of policing, and runs afoul of Alaska's legal 'due diligence' obligations to prevent, investigate, prosecute and punish violence. Instead of protecting people from violence, the legal framework enables violence against individuals who likely face a range of stigma and discrimination in society, and who may already be reluctant to seek police protection from violence and crime.

Amnesty International therefore supports HB 112 and its objective to prevent unlawful violence by police officers against those involved in criminal investigations. We call on the Alaska state legislature to ensure that sex workers, human trafficking victims and all people under police investigation can enjoy full and equal protection under the law, as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, entrapment, extortion and all other crimes.

Yours sincerely,

Tarah Demant
Senior Director, Identity and Discrimination Unit
Amnesty International USA



Addressing Sexual Offenses and Misconduct by Law Enforcement:

EXECUTIVE GUIDE

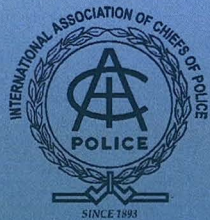


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IACP National Working Group on Sexual Offenses by Police Officers

Carrie Abner, Project Director

Council of State Governments
American Probation & Parole Association

Dan Clark, Director of Professional Training

Cleveland Rape Crisis Center

Tracy Dahmer Farris, Director

Domestic Violence and Sexual Assault Project
LA Dept of Justice, Office of Attorney General

Chief Bernadette DiPino

Ocean City Police Department

Chief Judge Arthur Gamble

Polk County Courthouse

Lieutenant Terence M. Gibbs

Philadelphia Police Department

Professor Roger Goldman

Saint Louis University School of Law

Dr. Lorraine W. Greene, Psychologist

Metropolitan Nashville Police

Chief Kimberly S. Lettner

Virginia Division of Capitol Police

Rachel Lloyd, Executive Director

Girls Educational and Mentoring Services

Timothy Maher, Director

Outreach Program, University of Missouri-St Louis

Chief Russell Martin

Delaware Police Department

Susan Nichols, Director

ILETSB Executive Institute, Western Illinois University

Chief David W. Nye

Fredericksburg Police Department

Susan D. Reed, Criminal District Attorney

Bexar County District Attorney's Office

Major Charles Skurkis

Pennsylvania State Police Department

Patsy Taylor, Director

Louisiana Protective Order Registry

Major Hector Velez

Prince George's County Police Department

Professor Samuel Walker

School of Criminology, University of Nebraska

Susan Weinstein, Writer/Researcher

Grand Strategies, Inc

IACP Fellows

Jeffrey Ebersole

Captain – Loudoun County Sheriff's Office
Fellow – IACP Research Directorate

Charles Hoffman

Lieutenant – Prince William County Police Department
Fellow – IACP Research Directorate

IACP Project Staff

Deborah Chandler,

Former Policy and Training Coordinator

Aviva Kurash, Program Manager

Michael Rizzo, Project Manager

Nancy Turner, Sr. Program Manager

IACP Executive Staff

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Every effort has been made to ensure that this document reflects current and comprehensive information. A wide array of feedback was solicited, and many subject matter experts contributed their knowledge.

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“It is imperative to the protection of citizens’ civil rights and the trust communities place in law enforcement that policies be adopted as part of a clear statement that sexual misconduct will not be tolerated.”

—Chief David Nye, Fredericksburg Police Department, VA

Introduction

The problem of sexual misconduct by officers warrants the full attention of law enforcement leadership. It represents a grave abuse of authority and a violation of the civil rights of those victimized.* Law enforcement agencies and executives have a duty to prevent sexual victimization, to ensure it is not perpetrated by their officers, and to take every step possible to ensure the safety and dignity of everyone in the community.

When an incident of sexual misconduct involving a law enforcement officer is reported, it presents one of the most difficult challenges a law enforcement executive can face. Therefore, it is imperative that executives prepare through agency mission, policy, and training to proactively address and prevent incidents. Leaders must demonstrate to their officers and their community a consistent, focused effort to identify and eliminate misconduct through the institutionalization of a zero tolerance position.

Sexual misconduct within an agency may be indicative of a need for systemic and cultural changes. Creating and implementing a policy are key steps to ensure an agency is prepared to respond to allegations, reinforce officer accountability, and ultimately prevent abuses of power.

Accountability of Law Enforcement: Under the ‘Color of Law’

* According to 18 U.S.C. § 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten or intimidate another person in the free exercise of any right or privilege provided to another by the Constitution or laws of the United States. Similarly, 18 U.S.C. § 242 makes it a crime for a person who is acting under the color of law to willfully deprive another person of any right or privilege provided to another by the Constitution or laws of the United States. Under § 242, acts performed under the “color of law” include those conducted by federal, state, and local law enforcement officials within their lawful authority and any act conducted while the official is pretending to act in accordance with his or her official duties. The types of misconduct covered by these laws include: excessive force, sexual assault, intentional false arrest, and the intentional fabrication of evidence resulting in a loss of liberty to another. Enforcement of these provisions does not require that any racial, religious, or other discriminatory motive exists.

How to Use this Guide

This guide has been created to promote an understanding of the complexities of sexual offense and misconduct cases involving officers and to encourage the proactive adoption of policy and prevention efforts within law enforcement agencies.

Within this guide, references to misconduct are intended to encompass criminal offenses as well as non-criminal sexual conduct that is inappropriate, unprofessional, and damaging to the public confidence in the department.

This guide’s reference to officers is intended as an inclusive term for all sworn agency employees. Departments are encouraged to apply these strategies to all employees, civilian and sworn, as appropriate.



Background

Recurring accusations of sexual offenses implicating law enforcement officers were noted with concern by the Office on Violence Against Women of the U.S. Department of Justice which funded the IACP to examine the problem of sexual offenses and misconduct and to develop resources to assist law enforcement leaders in investigating and preventing incidents.

IACP's work in the 1990's to address domestic violence committed by law enforcement officers uniquely situated the Association to explore this serious problem and issue recommendations to the field. In 2007 the IACP hosted a roundtable discussion during the Association's 114th Annual Conference in New Orleans to learn from department leaders about situations they confronted and the resulting problems. Over seventy executives chose to attend this moderated discussion that was closed to the media. The range of concerns and incidents many had faced in their own agencies made it clear that sexual offenses and sexual misconduct committed while officers were on or off duty necessitated focused attention and a proactive response.

As a leadership organization with a history of addressing difficult issues in law enforcement including civil rights, racial profiling, immigration, and the use of force, the IACP took on the work of addressing sexual offenses and sexual misconduct committed by officers with an intent to develop tools to assist the profession and prevent abuses of power. Building from a variety of tools created to address the crime of sexual assault including Sexual Assault Investigative Guidelines, a Model Policy on Sexual Assault, and a roll call training video on preparing sexual assault cases for effective prosecution, the IACP assembled a multidisciplinary working group to guide efforts to examine sexual offenses committed by law enforcement officers. Through a process of study and discussion, the working group drafted this guide to assist executives. Following outside review by victim advocacy and criminal justice professionals, including some law enforcement leaders who attended a 2007 roundtable discussion on this matter and others who are alumni of the IACP's National Law Enforcement Leadership Institute on Violence Against Women, recommendations were explored and this guide finalized.

Overview

The Reality Facing Law Enforcement

While the vast majority of law enforcement personnel perform honorable and conscientious work on a daily basis, the reputation of their respected profession is tarnished by just one incident of sexual misconduct.

Cases of sexual misconduct committed by law enforcement grab the attention of the public and media because such offenses are particularly egregious violations of trust and authority. Situations where officers engage in sexual misconduct and victimize those they are sworn to protect and serve amount to civil rights violations. Reported and investigated cases of sexual misconduct by officers appear all too frequently in the news. Regardless of the rate of occurrence, the problem is real.

Headlines

The following sample of 2009 and 2010 cases in the news highlights the variety of ways sexual misconduct by law enforcement can manifest itself.

- After a sheriff from an agency in a great plains state was sentenced to 79 years in prison for sexually abusing numerous female inmates and drug court defendants, the municipality was found liable for \$10 million in damages.
- A police chief and assistant chief from a small department in the midwest were each sentenced to 25 years in prison for raping a woman in a bar after hours while off duty. The convictions, which

were supported by evidence including admissions, require them to serve at least 14 years before being eligible for parole, and they will be on the state sex offender registry for the rest of their lives.

- Following an investigation by the FBI, an officer with a west coast agency received a nine year federal prison sentence for sexually assaulting a motorist and violating her civil rights. The officer admitted in court that he took the victim in his patrol car to an isolated parking lot away from the traffic stop and assaulted her while armed and in his full police uniform. The victim left her job after the officer twice went to her workplace to warn her he was watching her.
- A police officer from an agency in the west received one year in jail for fondling a woman he had in custody and was transporting to a hospital for a psychiatric evaluation. The department had previously received a complaint that this officer made sexual comments to a woman during a traffic stop.
- A major city police department in the eastern United States settled a lawsuit alleging that an off-duty officer who was in uniform working security at a nightclub lifted a woman's skirt and "offensively touched" and assaulted her while escorting her from the club.
- A small western department suspended an officer for inappropriate conduct after he sent text messages and a picture of himself to a rape victim. Prior to being suspended, he had been assigned to investigate sex crimes and was demoted for having an intimate relationship with a victim.

This list of cases is troubling and indicates that this problem can and does occur in every section of the country.

Definitions

Sexual misconduct by law enforcement is defined as any behavior by an officer that takes advantage of the officer's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person. It also includes any communication or behavior by an officer that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming an officer and violates general principles of acceptable conduct common to law enforcement.¹

The limited research to date has focused on criminal sexual misconduct committed by officers while on duty. However, in recent years concern has extended to additional forms of sexual misconduct that include adult consensual sexual contact while on duty, voyeuristic behavior, and non-sexual contacts (e.g., unnecessary call backs to crime victims and witnesses).

The various forms of sexual misconduct by law enforcement, some of which are criminal acts, may be directed at colleagues, citizens, detainees, juveniles, and crime victims or witnesses.² Forms may include, but are not limited to, the following:

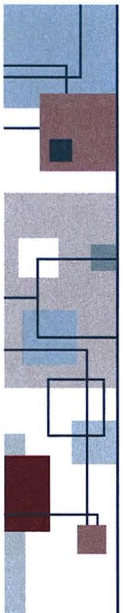
1. sexual contact by force (e.g., sexual assault, rape);
2. sexual shakedowns (e.g., extorting sexual favors in exchange for not ticketing or arresting a citizen);

¹ This definition is adapted from one developed by Timothy M. Maher, professor of criminology and criminal justice at the University of Missouri at St. Louis.

² In 1994, researcher Allen Sapp developed seven individual categories of police sexual offenses (Sapp, Allen, D., "Sexual Misconduct by Police Officers," *Police Deviance*, Cincinnati, OH: Anderson Publishing, 1994), and Timothy Maher added an eighth based on his research. (Maher, Timothy M., "Police Sexual Misconduct," *Contemporary Policing: Controversies, Challenges and Solutions*, Los Angeles, CA, Roxbury Publishing Company, 2004, pp. 327-338).

"There are hundreds of thousands of police officers doing a wonderful job out there, and to protect them, we need to respond aggressively when officers violate the community's trust."

**— Chief Bernadette DiPino,
Ocean City Police Department, MD**

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3. gratuitous physical contact with suspects (e.g., inappropriate or unnecessary searches, frisks or pat-downs);
 4. officer-initiated sexual contacts while on duty;
 5. sexual harassment of colleagues/co-workers;
 6. engaging in citizen-initiated sexual contact while on duty;
 7. sexual behavior while on duty (e.g., masturbation, viewing and/or distributing pornographic images, sexting);
 8. voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons);
 9. unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-professional reasons); and
 10. inappropriate and unauthorized use of department resources and/or information systems for other than legitimate law enforcement purposes.

Further complicating a full understanding of the scope of the problem is due in part to the reluctance of victims to report to authorities. In addition to experiencing the trauma of the violation, victims struggle with feelings of humiliation and fear retaliation or not being believed. Another reason it is difficult to gauge the extent of the problem is because accused officers will resign, expecting to avoid a complete administrative investigation. These officers might then be hired by another agency where they may continue to commit offenses against colleagues and/or citizens. Therefore, it is imperative that a complete investigation is carried out whether or not the accused officer resigns.

Putting the scope of the problem aside, it is certainly clear that sexual misconduct by officers requires the attention of law enforcement leaders. Law enforcement executives are responsible for establishing and maintaining a healthy culture within their agencies and need to recognize that elements of law enforcement culture can contribute to the proliferation of sexual misconduct and its subsequent minimization. This requires leaders to consistently look to identify and prevent even the most subtle forms of misconduct which left unchecked can encourage widespread abuses and adversely affect the law enforcement agency and profession. Through their own words and actions, leaders must embody the highest standard of professionalism for their officers.

The Culture of Law Enforcement

Within the policing profession some conditions of the job may inadvertently create opportunities for sexual misconduct. Law enforcement officers (1) have power and authority over others; (2) work independently; (3) sometimes function without direct supervision; (4) often work late into the night when their conduct is less in the public eye³; and (5) engage with vulnerable populations who lack power and are often perceived as less credible (e.g., juveniles, crime victims, undocumented people, and those with addictions and mental illness). Furthermore, some people are so impressed by and attracted to the authority the uniform and badge represent that they will seek to engage officers in sexual relations in order to have a vicarious connection to the power of the profession.⁴

“It is the agency executive’s responsibility to foster an environment in which ethical behavior is expected and each member of the department is held accountable for meeting those standards.”

**—Chief Russ Martin,
Delaware Police Department, OH**

³ Lettner, Kimberly S., “Developing Policies to Address Police Sexual Misconduct,” Richmond, VA, University of Richmond, 2004, pp. 12-13; and Maher, Timothy M., “Police Sexual Misconduct: Female Police Officers’ Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, pp. 263-282.

⁴ Discussion at IACP Focus Group, Alexandria, VA, March 15, 2010.

Within the profession, the existence of a law enforcement culture of allegiance and loyalty forms an important backdrop against which officers risk personal safety to protect and serve the public. While admirable in circumstances that are legitimate to effective policing, these principles may lead to the belief that fellow officers will protect or provide cover in questionable circumstances. This could result in situations where unprofessional and even illegal behavior is tolerated out of a misplaced sense of loyalty. Over the past decade, work by professional leadership organizations, including the IACP, with law enforcement officials on ethics, accountability, and peer-to-peer mentoring have done much to mitigate this potential.

Sexual misconduct within the ranks must be recognized so agencies can then take appropriate administrative and criminal actions to deter and prevent future incidents⁵, promote healthy environments and build community trust. Failure to identify misconduct and enforce accountability for even seemingly minor indiscretions may not only empower the officer, but may also encourage those who have knowledge of, or were witness to, the behavior to commit similar or more serious offenses. Tolerance at any level will invite more of the same conduct. Therefore, it is critical that law enforcement executives ensure that every reported incident of sexual misconduct is investigated thoroughly and all employees with knowledge of sexual offense(s) who fail to report it are held accountable.

Sexual Harassment in the Ranks

Historically law enforcement has been a male-dominated profession; today women comprise just 18% of state and local law enforcement (LEMAS, 2007). As a minority within the profession, women are sometimes subjected to sexually harassing behavior from colleagues that seems designed to challenge their right to work in law enforcement. Legal liability for sexual harassment in the workplace was established in the 1980's and, as a result, once an employer is informed about actions of an employee, they can be held accountable if they fail to stop such behavior or allow the creation of a hostile work environment. Agency leadership needs to be aware of subtle as well as overt aspects of internal agency culture directed at those in the minority, whether along the lines of gender, race, religion, sexual orientation, or nationality, that may negatively shape the job climate. The potential for these attitudes to spill over and affect the perception and treatment of members of the public should also be recognized and addressed. In addition to shaping the culture with their priorities, standards, and expectations, leaders need to proactively monitor the culture within their agencies and establish employee reporting mechanisms that provide protections from retaliation.

Leadership Actions

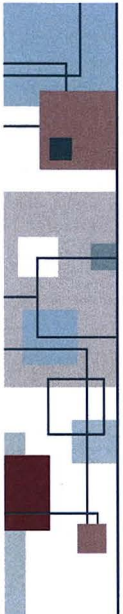
Considering a Policy

Any type of officer misconduct erodes trust in, and respect for, the profession. When a leader fails to ensure the adequate monitoring of officer actions or disregards complaints or concerns about officer conduct, the department in effect condones the misconduct and enables it to proliferate. It is the leader's responsibility to ensure that policies to address and prevent sexual offenses are implemented; that all employees regularly receive effective training (*see page 11*); and that roles, responsibilities, and professional standards are communicated clearly and reinforced consistently throughout the department.⁶ Through strong leadership and policies, agency employees at all levels can be held accountable for their actions.

While strong policies prohibiting sexual harassment are necessary, relying on existing sexual harassment policies to cover matters of sexual misconduct involving members of the public is

⁵ Maher, "Police Sexual Misconduct" pp. 327-338, citing Sapp.

⁶ Walker, Samuel and Dawn Irlbeck, "Driving While Female: A National Problem in Police Misconduct," Omaha, NE, University of Nebraska, 2002, p. 3



completely inadequate. Similarly, provisions covering conduct unbecoming an officer are generally insufficient, for example, to address the full range of predatory or stalking behaviors that can be precursors to assaults but may appear to be reasonable surveillance actions as part of an investigation.

Two reasons are commonly offered by executives as to why they would resist instituting a sexual misconduct policy or program. First, they report that there is no sexual misconduct problem in their agency. This may be an indicator of an undetected or denied problem. Leaders must be aware of the potential and willing to implement policy and procedures for monitoring and intervening proactively. Second, because policies are typically "incident driven," they admit they are unlikely to develop a policy until one is absolutely necessary.⁷ To merely address issues and behaviors after they arise is an ineffective operating model and a lapse in critical oversight that can create significant liability while risking the public's trust and confidence.

As the profession has learned through community policing, proactive problem solving is much more effective than reactive problem solving. Therefore, it is incumbent on law enforcement leaders to pro-actively implement a well-crafted policy and clear plan to ensure that everyone understands the agency's position and their specific roles and responsibilities. An agency leader may choose to make a public statement about the agency's position by posting the policy on the department website as part of a transparency effort that will serve to reinforce a commitment to accountability.

Law Enforcement Authority

In order to combat the abuse of authority by employees, the community corrections field has adopted the principle that no on-duty sexual activity by corrections staff is permissible. All 50 states, the District of Columbia, Guam, and Puerto Rico have laws criminalizing sexual contact between corrections staff and jailed/imprisoned individuals, and many community corrections agencies have implemented internal policies on the subject.⁸

Given law enforcement's authority to detain and arrest citizens, a profession-wide position prohibiting on-duty sexual activity seems fundamental. Agencies already addressing this problem specifically prohibit all on-duty sexual conduct. In addition, agencies should also restrict consensual off-duty sexual activity from occurring on department property (e.g., within buildings or vehicles). A number of departments, including the Colorado State Patrol, Maryland State Police, Pennsylvania State Police, and Virginia Capitol Police, have instituted comprehensive policies that prohibit employees from engaging in any on-duty sexual behavior or off-duty sexual behavior on workplace premises.

Because off-duty conduct by officers can potentially undermine the efficiency and effectiveness of an agency and lead to abuse of authority, agency leaders have a vested interest in setting parameters and managing agency risk. Court rulings support reasonable and appropriate efforts to regulate off duty behavior and activities.

Agency Authority

Law enforcement leaders should directly address the problem of sexual misconduct by instituting a zero-tolerance standard and demonstrating that allegations will be promptly and thoroughly investigated. Any meaningful policy addressing sexual misconduct and offenses should state that an abuse of authority is grounds for disciplinary action, up to and including termination.⁹ In keeping with efforts undertaken by the corrections field, local law enforcement executives should establish an agency wide culture of accountability and seek commitments from key stakeholders, including their governing body, police unions and their members, to support this standard.

⁷ Maher, Timothy M., "Police Chiefs' Views on the Nature, Extent and Causes of Police Sexual Misconduct," *Police Practice and Research: an International Journal*, Vol. 9, 2008, pp. 239-250.

Maher, Timothy M., "Police Sexual Misconduct: Female Police Officers' Views Regarding its Nature and Extent," *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, p. 265.

⁸ *Preventing and Responding to Corrections-based Sexual Abuse: A Guide for Community Corrections Professionals*, Washington, DC, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2009, p. 10.

⁹ Lonsway, Kimberly A., "Preventing and Responding to Police Sexual Misconduct," *Law and Order*, Herndon Publishing Co., 2009, p. 8.

An agency's policy should be written with input from the state licensing board or Peace Officer Standards and Training Board (POST), a local prosecutor, CALEA, and victim service providers in the community.

An effective department policy aimed at deterring sexual misconduct should include:

1. the reason for the written policy;
2. definitions of various sexual offenses;
3. strategies to prevent sexual misconduct (e.g., applicant screening and accountability standards);
4. specific measures the agency will take to foster professional behavior (e.g., supervision and training);
5. a structured process for accepting, documenting, and responding to reported incidents and conducting administrative and criminal investigations; and
6. the range of possible disciplinary sanctions, should allegations of sexual misconduct be sustained.¹⁰

A written policy should include provisions to protect employees who report allegations from any retaliation. It also should stipulate disciplinary action for any employee who has knowledge of and fails to report sexual misconduct by a member of the department, except when the officer is the victim. The policy should affirm the department's intent to conduct a thorough investigation of every reported allegation even when the victim is reluctant to participate.

Agency policy can be augmented with specific preventive/protective strategies that can serve as deterrents. For example, some agencies require that traffic stops be recorded or videotaped and that officers provide dispatch with timing for the start and finish when transporting a citizen/arrestee. Additionally, a policy should specify that employee electronic communication and internet postings, which affect professional credibility, will be regularly conducted.¹¹

Prison Rape Elimination Act and Custodial Situations

Because offenses often occur when an individual is in custody, it is essential that police agencies, especially those with holding facilities, be aware of the 2003 Prison Rape Elimination Act (PREA). PREA was enacted to address sexual misconduct in all custodial settings, including police lock-ups, holding facilities and jails*. According to recent statistics, "25 percent of local police departments operate temporary lockup facilities for overnight detention of adults in a location separate from a jail, 13 percent operate juvenile lockups, and 9 percent of local police departments are responsible for operating a jail."** Under PREA, numerous national standards have been drafted for the prevention, detection, response, and monitoring of sexual misconduct in lock-ups. These standards, when finalized, will apply to law enforcement. It is critical that all law enforcement executives are cognizant of the standards and aware of the implications of PREA for their agencies.

* For more information, log on to www.ojp.usdoj.gov/programs/prisonrapeelimination.htm.

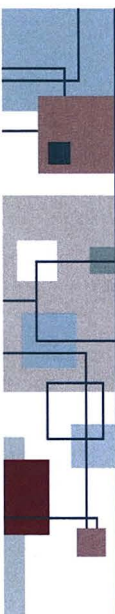
** McCampbell, Michael S., "Update and on the Prison Rape Elimination Act," *The Police Chief Magazine*, International Association of Chiefs of Police, Alexandria, VA, March 2011.

Hiring

Through a rigorous selection process, law enforcement agencies should recruit and hire individuals who demonstrate high standards of integrity by screening out those who do not exhibit the ethical characteristics necessary for the profession. This can be achieved through a combination of (1) medical, psychiatric, psychological, polygraph and integrity testing; (2) detailed personal interviews; and (3) thorough background investigations that include a review of social networking websites.

¹⁰ Lettner, "Developing Policies to Address Police Sexual Misconduct," pp. 8-9.

¹¹ For more information, log on to www.theiacp.org and see IACP Social Media Project and Model Policy.



The professionals conducting the examinations and interviews should be knowledgeable about and specifically screen for patterns of inappropriate behavior or attitude as well as prior sexual offenses. Any candidate found through these processes to have a history of sexual misconduct or unacceptable sexual activities should be deemed ineligible for employment.

When considering experienced personnel for hire from other agencies, the hiring agency should require candidates to sign a full-disclosure waiver that enables previous places of employment to provide in-depth references and copies of the officer's complete internal affairs file and all employment files, including details contained in any non-disclosure agreement and circumstances surrounding separations from service. This practice can prevent experienced officers who are facing potential charges from moving to another agency prior to being disciplined or terminated. Additionally, agencies should contact the state licensing boards or POSTs¹² in the states where the officers previously worked to determine whether the officer had been disciplined.

Forty-four state POSTs have the authority to revoke peace officer certification due to misconduct. In some states, there must be a criminal conviction in order to revoke; in others, certification may be revoked for misconduct after a hearing before an administrative law judge. Issues arise when an accused officer who has engaged in misconduct is either terminated or allowed to resign from his or her current agency, and that department does not report the reasons for the termination or resignation. The result is that the officer may be hired by another agency in the state that is unaware of the problems in the prior department. Also, these officers may seek employment in other states, which raises the problem of interstate movement of unfit officers. Currently, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) operates the National Decertification Index (NDI). The NDI includes the names of officers who have been decertified. Currently only twenty-nine state POSTs contribute names to the NDI. All state POSTs may query the NDI, and POST directors may authorize law enforcement executives to query the NDI. Since the NDI only gathers information concerning de-certifications, information on discipline of a less serious nature, such as a suspension of the certificate, must be gathered by contacting the state POST directly. Some states, like Florida, publish quarterly the names of the officers and any disciplinary action taken by POST against the officer. This allows other jurisdictions to check the list before hiring an officer from Florida.

Training

Ethical considerations should be woven into all aspects of training, education, policies, and procedures, along with law enforcement's role in upholding civil rights. Initial academy instruction on the ethics of appropriate conduct should be reinforced at in-service opportunities and training for new supervisors and field training officers (FTO).

It is the responsibility of law enforcement leadership to ensure that training, including academy curricula, covers the definition of sexual misconduct to include criminal and non-criminal behavior. Department-specific training should cover a review of the policy, response to sexual misconduct, and information on behaviors that are prohibited by the policy. Discussions using hypothetical scenarios and role-playing exercises can help officers anticipate and think through situations that warrant an ethical response and understand when their responsibilities under agency policy come into play. The administration of pre- and post-training tests will help the agency gauge the increased knowledge and understanding imparted through the training.

“Training in ethics, integrity and discretion should begin in the police academy and continue on a regular basis until the officer retires.”

—International Association of Chiefs of Police,
“Building Trust between the Police and the Citizens they Serve: An Internal Affairs Promising Practices Guide for Law Enforcement,” Washington, DC, U.S. Department of Justice, Office of Community Oriented Policing Services, 2010, p. 11

¹² For the name of the licensing body or POST in any state, logon to www.iadlest.org.

Because FTOs help shape the character of individual officers, each FTO must receive in-depth training on: (1) the agency policy, procedures, and discipline related to sexual misconduct; (2) indicators of sexual misconduct; (3) how to support the department's zero-tolerance stance on sexual misconduct; and (4) how to respect boundaries and confront challenging circumstances that may be encountered on the job.

When under consideration for a promotion, an officer's direct supervisor and the agency's human resources staff should be consulted for input. With supervisory positions, including Field Training, newly promoted employees must receive training on: (1) the department's sexual misconduct policy; (2) guidelines for how to respond to sexual misconduct by employees;¹³ (3) criminal and civil liability for the department and governing body; (4) public relations and protocol for dealing with the media; and (5) criminal and administrative investigations.

Evaluations and Early Intervention Systems

Supervisors are in a unique position to detect warning signs and patterns of sexual misconduct by officers. Specific training on indicators of sexual misconduct and strategies for effective oversight of officer conduct should be provided to those with supervisory responsibilities. Consistent employee reviews and follow-up are essential to monitoring behavior. However, if an officer is demonstrating problematic behavior, the supervisor should not wait for the officer's scheduled review to address the situation. The supervisor must act immediately to address the behavior in question, offer support and/or referrals, fully document the situation, and provide required notification up the chain of command. Supervisors should periodically remind officers of their professional obligation to report knowledge of sexual misconduct by a member of the department.

Since part of the authority with which law enforcement is entrusted involves access to systems of information, supervisors should be tasked with monitoring officer access for non-professional, personally-motivated reasons. Additionally, periodic audits of each officer's traffic stops and final call dispositions are essential for identifying problematic patterns. Random checks of department-issued cell phones and computers should be built into oversight plans in accordance with contracts governing officer rights. Agencies can incorporate into existing systems newly available software designed to identify pornographic images on electronic devices, as feasible, and assign monitoring responsibilities to internal investigations. Periodic reviews of personal information and pages on social networking websites should be conducted to ensure nothing potentially compromising or questionable is posted on the internet.

Early intervention systems are helpful for monitoring, identifying, and preventing problem behavior and electronic communications (e.g., email, text messaging). These systems come in many forms, but generally they collect, review, and analyze data on each officer, thereby enabling the identification of troubling patterns of behavior or suspicious trends that might otherwise go undetected. Such was the case in a midwestern state capital city where a police officer was disciplined and received special training after a review of his traffic stops revealed that 89 percent over a four-month period were of female drivers.¹⁴

When an officer demonstrates any inappropriate or suspicious behavior (*see ten forms of sexual misconduct and offenses, pp. 3-4*), a psychological fitness-for-duty examination should be required and arranged promptly. This is particularly important when the conduct does not rise to the level of termination or criminal conduct but for which sufficient cause for concern exists. Examination conclusions will need to be addressed in terms of the officer's assignments and supervision.

¹³ Lonsway, "Preventing and Responding to Police Sexual Misconduct," p. 3.

¹⁴ Walker and Irlbeck, "Driving While Female," p. 3



Incidents and Investigations

Any and all allegations or suspicions of sexual misconduct must be accepted by the designated authority within the agency and investigated in a timely fashion. Dispatchers along with all members of the department need specific direction and training on protocols for accepting, documenting, forwarding, and processing reports or complaints against an officer. Officers approached with complaints should be required by department policy to provide citizens with complaint forms, document the information received, and pass the complaint through proper channels.

“[S]exual misconduct that is not documented, investigated and adjudicated often escalates.”

—Lonsway, Kimberly A., “Preventing and Responding to Police Sexual Misconduct,” Law and Order, Herndon Publishing Co., 2009, p. 2

Reports or Complaints

It is imperative to have procedures in place in order to effectively handle incident reports or complaints concerning officers. The process¹⁵ must be:

1. comprehensive, where an agency investigates all complaints received, including those that are anonymous or from third parties;
2. accessible, where the procedures for making a report or filing a complaint are streamlined and not burdensome to the individual complainant and information about the rights of law enforcement personnel and the public to file a complaint and the procedures for doing so are widely available;
3. fair, where the officer accused of misconduct is treated respectfully and receives a detailed investigation into the allegation;
4. thorough, where the investigation is complete enough to determine validity of complaints and identify and unfound those that are false; and
5. transparent, where a formal process to accept complaints exists, and all personnel know how to handle a complaint.

Once a report or complaint is received, it should be documented (preferably electronically) and protected in a secure file, apart from regular personnel records.¹⁶ Documentation and preservation of findings in personnel and internal affairs files, even with unfounded or exonerated outcomes, is necessary for future investigations in order to support the identification of patterns of behavior and progressive discipline as necessary.

Having comprehensive cross-jurisdictional memoranda of understanding in place with surrounding agencies will ensure timely notification of an incident involving a department employee in another jurisdiction. It will also provide guidance to officers responding to reports involving employees from other departments, including provisions for notifying the employing agency.

With transparency as a goal, the subject officer should be notified promptly of the complaint either in writing or by other means of communication unless the criminal investigation would prohibit it or be compromised. This notification should include the nature of the allegation, a copy of the complaint, and the name and contact information of the assigned investigator. The confidentiality of the victim’s information should be protected to the maximum extent possible by law and department policy. All parties who are interviewed, including witnesses, as part of the investigation should be cautioned about the potential for retaliation and instructed how to report such actions to the department.

¹⁵ Adapted from the following: Commission on Accreditation for Law Enforcement Agencies’ (CALEA) Standard No. 52.1.1; CALEA Accreditation Standard No. 52.1.4; *Preventing and Responding to Community Corrections Based Sexual Abuse*, p. 48; and IACP, “Building Trust between the Police and the Citizens they Serve,” p. 21.

¹⁶ CALEA Accreditation Standard No. 52.1.2.

The Investigation

Complaints of officer sexual misconduct will be received directly or tracked into the Internal Investigations Unit or to a member of the command staff who handles internal investigations. Upon initial assessment, if it is evident that criminal allegations are involved, an immediate referral should be made to the criminal investigations unit or lead criminal investigator.

Reports of incidents or crimes alleging officer sexual misconduct may come to the agency through communications (e.g., 9-1-1 or non-emergency systems) and should result in immediate notification of criminal investigations and internal investigations by the supervisor in charge.

All criminal cases will require an administrative investigation also be conducted. In order to preserve the integrity of investigations, especially in high-profile cases, the chief may want to seek the services of a neighboring department or state police to conduct either the administrative or criminal investigation. The propriety of the investigation is less likely to be questioned when an outside investigative agency is involved. The administrative and criminal investigations can be conducted simultaneously as separate, parallel investigations. The agency leader should ensure a firewall is maintained between the administrative and criminal investigations and that the accused officer's rights are upheld especially in accordance with *Garrity v. New Jersey*.¹⁷

The investigative process should be transparent to both the complainant and the accused officer. All procedures should be victim-centered and include periodic updates, and uphold the accused officer's rights set forth in collective bargaining agreements. A member of the command staff should serve as the principal point of contact for the complainant to share information and respond to questions.

Victims may be reluctant to report an incident and/or participate in the investigation for a variety of reasons, including trauma of the incident; fear of not being believed; retaliation from the perpetrator or other officers; and previous bad experiences with law enforcement. These same reasons may account for why a victim recants or seeks to withdraw a complaint. A victim's reluctance to participate in an investigation is neither indicative of a false allegation nor reason to forego a thorough investigation. A detailed investigation should uncover unethical or illegal conduct just as it will reveal unfounded claims.

As part of the investigation, efforts should be made to identify and interview any additional victims. Following the initial filing of criminal charges against the accused officer, an agency can seek to identify additional victims through the use of media outlets. All subsequent reports of incidents will require documentation and investigation.

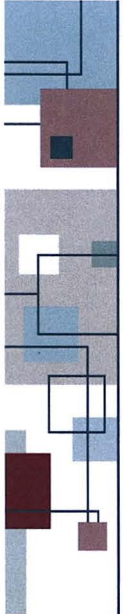
The agency leader must monitor the investigation for signs of retaliation and harassment directed against a complainant or an employee who reported knowledge of sexual misconduct, including abuse of the complaint procedure and violations of confidentiality guidelines.¹⁸ Parties to the case must be cautioned about the possibility of intimidation, retaliation, and/or coercion and advised on steps to take to report such actions (e.g., immediate notification of the department, preservation of evidence). Within a designated time period (usually after a few weeks and again after 60 days), the complainant should be asked by the point of contact about any intimidation or retaliation. Victims should be provided with information and referrals to the court to petition for orders of protection as needed.

If the accused officer is not placed on administrative leave pending the outcome of the administrative and/or criminal investigations, the officer's assignments should be considered carefully. In the event of administrative leave, a transfer of the accused officer's case knowledge will be important to the continuation of official agency business. Arrangements should be undertaken to reassign the subject officer's cases.

Law enforcement executives have a range of administrative options and tools available to reduce the likelihood of further sexual misconduct or retaliation. Employing these options in a consistent

¹⁷ 385 U.S. 493 (1967).

¹⁸ Lonsway, "Preventing and Responding to Police Sexual Misconduct," p. 8.



and timely manner is crucial to victim safety and community confidence, as well as the well-being of the officer and the efficient operation of the department. The executive should consider issuing an Administrative Order of Protection¹⁹ to support clear communication with the accused officer(s) and reinforce accountability.

If an employee resigns during the investigation, the investigation must still be completed and decisions regarding the findings and administrative sanctions that would have otherwise been imposed should be documented in the employee's personnel and internal affairs files.

The agency leader should track the complaint through to its conclusion(s).

Dispositions

Affirming the findings of the investigations is the responsibility of the law enforcement executive. When an administrative investigation is sustained, even if the misconduct was not determined to have been criminal or the criminal outcome has not yet been determined, the accused officer should be informed in person and in writing and offered the opportunity to respond to the administrative findings.

Following the officer's response to the administrative findings, the executive should consider the full range of sanctions for the officer found to have violated department policy. Before deciding how to address the issue with the officer, an examination of human resource policies, state and local laws, and collective bargaining agreements that may be in effect should ensure compliance with legal and contractual rights. It is important to understand in determining discipline that the confidence in the officer may have been severely compromised by a violation of department policy and, therefore, termination may be the most appropriate option. Disciplinary decisions should be communicated to the officer in person and in writing.

When an allegation of sexual misconduct is sustained but termination is not warranted, demotions, re-assignment, and/or unpaid leave are possible administrative sanctions the law enforcement executive can impose. Sanctions should be severe enough to reinforce the agency's zero-tolerance position. Discipline short of termination should include a warning of termination for any subsequent misconduct and be referenced in writing as part of an employee's regularly scheduled review.

Criminal investigation findings should conform to one of the following determinations in keeping with the FBI's Uniform Crime Report:

1. Unfounded: the allegation was investigated and found devoid of fact or false;
2. Exonerated: the act occurred but was lawful and consistent with policy;
3. Not sustained: the evidence was insufficient to either prove or disprove the allegation; or
4. Sustained: the evidence was sufficient to prove the allegation.

Once a finding concerning the criminal investigation is reached, the agency leader or designated principal point of contact should ensure the complainant is notified. The accused officer should be notified in writing.²⁰ If the criminal allegation is upheld through the investigation, the prosecutor will need to be consulted concerning charging actions.

“Behavior that violates power, authority and ethical standards generally associated with law enforcement undermines the criminal justice system and betrays the public trust.”

—Timothy M. Maher,

“Police Sexual Misconduct: Female Police Officers' Views Regarding its Nature and Extent,” *Woman and Criminal Justice*, Vol. 20, Issue 3, 2010, pp. 263-282

¹⁹ Valle, Glenn, Chief Counsel, New York State Police, Albany, NY, “Administrative Orders of Protection: A Chief's Best Tool for Victim Safety”, *The Police Chief Magazine*, November 2000, <http://www.theiacp.org/LinkClick.aspx?fileticket=RNf31dlKLFk%3d&tabid=372>

²⁰ CALEA Standard 52.2.8.

Any officer who has been found guilty of committing a sexual offense must be terminated immediately. In the event of a termination, the officer should be notified by the executive in person and in writing. Because of the heightened risk for violence at the point of termination, the department should ensure a lethality assessment is conducted and adequate precautions taken to protect against violence in the workplace or retaliatory violence against those who reported the allegations. It is critical that the officer be given information and referrals on available support services.

Some states may require reporting to the state licensing board or POST even when the officer is not terminated but has resigned or been given discipline short of termination. To prevent the officer from continuing in law enforcement, the state licensing board or POST should be notified promptly about the officer's termination to pursue decertification, as applicable.²¹

Victims

All levels of law enforcement should treat anyone who alleges sexual misconduct with professionalism and dignity. From the onset, it is essential that citizens making reports or filing complaints are shown respect and their allegations are taken seriously throughout the investigative process. The way an agency receives and responds to each complaint or report will impact the willingness of other crime victims to come forward and will be noted by members of the department.

The reasons why authority figures may engage in inappropriate and sometimes criminal behavior are varied, and each case is unique. Predators select victims based on vulnerabilities and a perceived lack of credibility, and therefore, victimization is often higher among certain populations including: (1) minors; (2) individuals in prostitution and/or the commercial sex industry; (3) individuals under the influence of drugs or alcohol; (4) immigrants and undocumented persons; (5) individuals with limited English proficiency; (6) people with mental illness or developmental challenges; (7) individuals with physical disabilities; and (8) those who have been victimized previously. Agencies should not query the criminal history of the complainant, and references about the complainant's criminal history should not be included in internal agency reports.

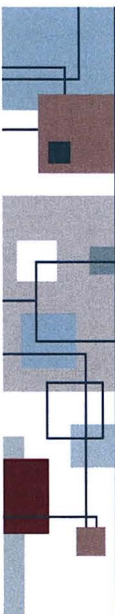
It is important to note that although a majority of the victims are female, men and boys are also victimized. Some victims of sexual offenses may not view themselves as victims. Conduct that a victim may deem to be flattering attention or empathetic concern may be inappropriate, nonetheless. A 16-year-old in an Explorer Program may not think that a "romantic relationship" with the 25-year-old sworn officer who oversees the program is inappropriate. Whether or not a minor feels that the interaction is consensual, a state's statutory rape laws may make any sexual contact illegal. A victim who is compromised due to alcohol, drugs, mental illness, or disability may under state law be unable to give consent for sexual contact. In every case, the investigator must actively attempt to engage the victim in the investigation and offer contacts and referrals for services available in the community. It should also be recommended to a victim that an order of protection be sought from the court if safety concerns exist.

The law enforcement executive should designate a principal point of contact to address the needs and concerns of the victim. These include: (1) Safety: law enforcement must protect victims from intimidation and educate them on how to decrease their likelihood of re-victimization; (2) Support: law enforcement must ensure that victims receive current and accurate referral information about victims' services; (3) Information: law enforcement must provide victims with information about their

"I feel that I have been given a life sentence... I frequently have intrusive memories of the assault... I cringe every time I see... a male officer in uniform, or a law enforcement vehicle. I am not the same person I was before the assault and I might never be that person again."

—Survivor of Sexual Assault by Law Enforcement

²¹ For more information about POSTs or decertification, see Resources section of this publication.



rights, the criminal justice process, and resources available to them; (4) Access: law enforcement agencies must ensure that information is readily available in languages that represent the populations in the community and attend to the special needs and circumstances of various victims; (5) Continuity: law enforcement must have sustained partnerships with victim service providers and allied criminal justice professionals; (6) Voice: law enforcement must empower victims by encouraging a dialogue with them; and (7) Justice: law enforcement must work in the best interests of victims to protect their safety and rights.²²

The zero-tolerance sexual offense policy should set forth clear guidelines of how to support victims and provide a setting/environment in which a victim can feel safe reporting the victimization. Some victims have reported that although his or her complaint was taken by a compassionate officer, the environment of the cubicle in which the information was taken was uncomfortable due to the close proximity of others or the presence of pornographic images. Another victim complained that while she was being taken into custody and handcuffed, she was asked out on a date by a member of the department. A good example of how to educate officers in these and other important areas is the "Tools for Tolerance for Law Enforcement" (Simon Wiesenthal Center- www.toolsfortolerance.com) curriculum which is designed to train officers on how to deliver a more effective level of service to members of the public. Awareness training such as TTLE enables law enforcement to identify and address problems before they may become criminal in nature. Nonetheless, in order to establish an environment in which a victim feels secure enough to report mistreatment, law enforcement should receive ethics and sensitivity training as a matter of course.

Collaboration

Criminal Justice System Collaboration

Collaboration among criminal justice system partners and allied professionals is of utmost importance. Following the adoption of a policy to address sexual misconduct, agency leaders should reach out to prosecutors and victim assistance personnel to inform them of the agency's position of zero tolerance and plan for responding to reported incidents and complaints.

One of the most important criminal justice partnerships is between law enforcement and victim assistance representatives who work within the criminal justice system. These representatives can include victim-witness coordinators, victim advocates, or department-based victim service personnel. Although department advocates cannot provide confidentiality to victims because they are required to discuss relevant information obtained from the victims with investigators, these advocates can provide much needed services to victims by guiding them through the maze of the criminal justice system, securing resources they need, and providing counseling referrals. Specifically, the department's victim advocates not only help victims navigate the process of filing a complaint and ensure follow-up, but they can also act as liaisons between victims and the agency and educate officers about the impact of trauma on crime victims. Departments that cannot afford to employ advocates should work closely with community-based victim service agencies.

Additionally, during any criminal investigation of an officer, the agency should appoint a liaison to work closely with the prosecutor's office and follow processes established for working on any high-profile case (*see p. 11 for cross-jurisdictional assistance with case investigation*).

²² IACP, "Enhancing Law Enforcement Response to Victims: A 21st Century Strategy," Washington, DC, U.S. Department of Justice, Office for Victims of Crime, 2008, pp. 23-24.

Community Collaboration

Once a policy has been implemented, law enforcement leadership should support continuous dialogue and working relationships with victim service agencies in order to promote an understanding of the department's zero-tolerance position. Collaboration with victim service agencies in the community can encourage the reporting of incidents. Victim advocates need to know that the department takes allegations seriously and wants to receive information about any incidents or offenses, with the consent of the victim, even if communicated through a third party.

Although confidentiality laws may prohibit the sharing of information, community-based advocates can provide long-term counseling and support for victims, as necessary. When working with these advocates, whether or not a department has its own victim advocates, it is recommended that the department establish a memorandum of understanding with each organization to which it subsequently refers victims.

Law enforcement personnel and allied professionals should seek opportunities for cross training and other types of information exchanges. For example, prosecutors, sworn personnel, and victim advocates should participate in one another's specialized trainings (e.g., statewide conferences) and meetings (e.g., roll calls) to obtain a broader perspective on the issues of sexual assault, harassment, and misconduct. Additionally, they should spend time with one another on their respective "turfs." In order to understand the intense nature of police work, victim advocates should accompany officers on ride-alongs. In turn, officers can use this extended time with the advocate to obtain information about the advocate's role in assisting victims. When possible, officers should be involved in training victim service agency staff and volunteers, and they should be included in the drafting of a department's position and policy addressing sexual misconduct.

To get out the message that a law enforcement department takes incidents of sexual misconduct seriously and encourages those with information about offenses to come forward, agency leaders need to actively engage the community. Law enforcement leaders should build awareness of the department's policy and zero-tolerance position, including the posting of the policy on the agency's website. Information shared should include the methods and procedures for reporting an incident and filing a complaint (*see pg. 10*). Proactive outreach can happen through multiple avenues, including citizen academies, town hall meetings, and public relations efforts. These efforts at transparency will not only combat inappropriate behavior but also contribute to building community trust and confidence.

Conclusion

Members of law enforcement are in a unique and visible position in the communities they serve. They are entrusted with the authority to enforce laws and protect citizens' civil rights. Central to the executive's responsibility to the community is the proactive enforcement of ethical standards of conduct and officer accountability. Leaders must establish zero-tolerance policies to address and prevent sexual misconduct and reinforce the expectation of integrity through meaningful training and effective supervision.

"Along with effective supervision, agency guidelines can reinforce standards of conduct and accountability and provide necessary safeguards."

—Major Charles J. Skurkis, Pennsylvania State Police, PA Director, Bureau of Integrity and Professional Standards

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Rape, Sexual Assault, & Sexual Harassment, INCITE! Women of Color Against Violence

http://www.incite-national.org/media/docs/7715_toolkitrev-sexualassault.pdf

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Websites/Resources

International Association of Directors of Law Enforcement Standards and Training (IADLEST)
www.iadlest.org

National Decertification Index (NDI)
<https://www.pocis.net/NDI/default.php>

Prison Rape Elimination Act (2003)
<http://www.ojjdp.gov/about/PubLNo108-79.txt>

IACP Tools and Policies

Sexual Assault Incident Reports: Investigative Strategies
<http://www.theiacp.org/LinkClick.aspx?fileticket=PxEJMvQbU7c%3d&tabid=392>

Sexual Assault Supplemental Report Form
<http://www.theiacp.org/LinkClick.aspx?fileticket=CHt0qVEWYus%3d&tabid=392>

Sexual Assault Model Policy
<http://www.theiacp.org/tabid/299/Default.aspx?id=1133&v=1>

Domestic Violence by Police Officers Model Policy
<http://www.theiacp.org/tabid/299/Default.aspx?id=1130&v=1>

Enhancing Law Enforcement Response to Victims: A 21st Century Strategy
www.responsetovictims.org

Guidelines to Address Officers Under Orders of Protection
<http://www.theiacp.org/LinkClick.aspx?fileticket=IABVVd%2bgJNw%3d&tabid=87>

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Community United
For
Safety And Protection
Advocating Safety and Protection for all people in Alaska's Sex Trade
[www.sextraffickingalaska.com.](http://www.sextraffickingalaska.com)

Expanding Protection for Sexual Assault Victims

A Report in Support of AK House Bill 112

2/23/17

The Community United for Safety and protection is asking Alaskan legislators to close a loophole that allows police to have sexual contact and sexual penetration with people who are under active criminal investigation as victims, witnesses, or defendants. In prostitution sting operations that are conducted under the guise of rescuing sex trafficked victims, police are able to have penetrative sex and other sexual contact with sex workers and sex trafficked victims.

This is especially alarming when youth are targeted for "rescue." It is time for Alaskan legislators to take the lead in drawing a line in the sand and saying this behavior is not acceptable and it is a criminal act.

Index of Supporting Documents:

Rachel's story:

<http://sextraffickingalaska.com/rachels-story/>

Vivian's story:

<http://sextraffickingalaska.com/groped-during-a-prostitution-sting/>

Michelle's story:

<http://sextraffickingalaska.com/michelle-police-officer-coerces-sex-from-16-year-old/>

Recording and transcript of State Troopers interacting with a woman who had reported to them that she was a sex trafficking victim:

<http://sextraffickingalaska.com/alaska-state-troopers-sting-sex-trafficking-victim/>

Description of Detective Detective Dojaque receiving a hand job during a prostitution sting operation at a massage parlour:

Page 9

Research findings that 26% of Alaskan sex workers and 60% of Alaskan sex trafficking victims reported being sexually assaulted by police officers:

<http://sextraffickingalaska.com/pdfs/AKSWR.pdf>

Alaska State Trooper's Reality Show, S2, E12, showing police wiping something from a handcuffed women's hands after she interacted with an undercover officer during a prostitution sting operation (start watching at 15m):

<https://www.youtube.com/watch?v=fx6z1nxBmrY&t=1706s>

Alaska Supreme Court finding that sexual contact during a prostitution sting is not a due process violation:

Municipality of Anchorage v Flanagan, 1982

APD Officer Eric Frank Feitchinger's successful defense of producing BDSM themed child pornography as an investigative technique:

3AN-90-8896 CI

Supreme Court rules Alaska State Trooper should not have been fired for sex with crime victim:

<https://www.adn.com/anchorage/article/supreme-court-trooper-shouldnt-have-beenfired-sex-domestic-violence-victim/2014/05/08/>

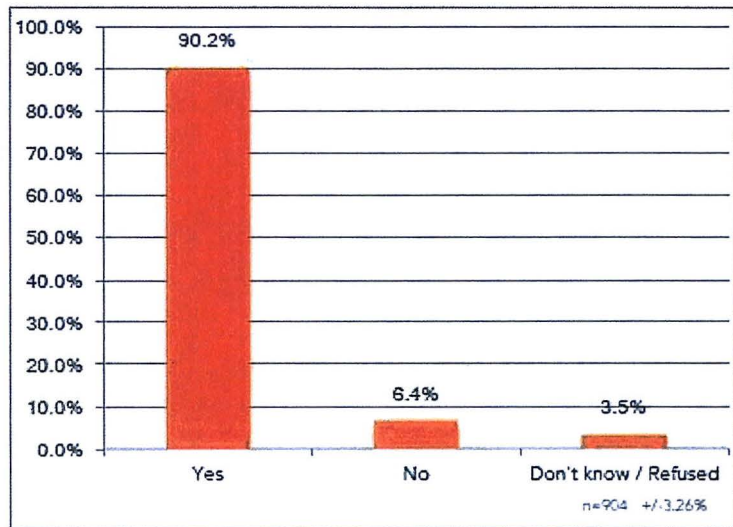
State v PSEA, 2014

Currently police sexual misconduct in Alaska is criminalized in two specific ways:

1. Coercion – if a police officer, probation officer, etc., uses the threat of arrest or return to jail to coerce someone into sexual contact or intercourse, it is not sexual assault under Alaska state law but it is coercion. This was decided in 2012 in the case of probation officer James Stanton, who was convicted of coercing 14 women in his care into having sexual contact with him to avoid going to jail.
2. In Custody – it is sexual assault for a police officer to have sexual intercourse or sexual contact with a person who is in their custody or apparent custody. This statute came into being after the Henry Rollins case via a Governor’s bill in 2013.

The problem:

It is NOT illegal in Alaska for police officers to use sexual intercourse or sexual contact as an investigative tool, or for police officers to have sexual intercourse or contact with victims, witnesses, or alleged perpetrators of crimes they are actively investigating. 26% of Alaskan sex workers and 60% of Alaskan sex trafficking victims reported having been sexually assaulted by a police officer. It also seems that police having sex with assault victims after “rescuing” them is something that has occurred to some extent in Alaska. This damages the capacity of Alaska police agencies to act in the interest of public safety.



Currently well over 67,000 people have signed a Care2 petition asking Alaskan lawmakers to make this illegal. A December 2016 survey performed by Hays Research Group found that 92.9% of Alaskans were not aware that police are able to have sex during prostitution stings and 90.2% of Alaskans think it should be illegal for police to have sex with prostitutes during prostitution stings.

The solution:

Sexual assault by those acting as peace officers needs to be brought out of the personnel realm and into the realm of criminal law. Specific language to address sexual

penetration and sexual contact with victims, witnesses, or defendants under active investigation by an officer should be added to the sexual assault statute.

CUSP proposes adding the underlined language to AS 11.41.425 and AS.41.427:

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in custody or the apparent custody of the offender, [OR] is committed to the custody of a law enforcement agency, or the person is the victim of or witness to a crime under investigation by the peace officer;

Common Questions

But the police say this doesn't really happen?

The overwhelming evidence says that it does – in research done at UAF in 2014 26% of Alaskan sex workers and 60% of Alaskan sex trafficking victims reported being sexually assaulted by a police officer. Additionally, some charging documents have reported police officers getting hand jobs and Season 2, Episode 12 of the Alaska State Troopers Reality show showed officers wiping what appeared to be semen from a woman's hand while she was in handcuffs – the officer was still in his underwear. That woman is available to speak with law makers upon request.

You can listen to Rachel's story of police having sex with her during a prostitution sting here: <http://sextraffickingalaska.com/rachel-another-victim-of-state-sponsored-rape/>

And Michelle's story of being coerced into performing oral sex on an Anchorage police officer as a juvenile here:

<http://sextraffickingalaska.com/michelle-police-officercoerces-sex-from-16-year-old/>

And you can listen to a recording made by Alaska State Troopers of their follow up with a woman who had reported being a victim of sex trafficking or read a transcript here: <http://sextraffickingalaska.com/alaska-state-troopers-sting-sex-trafficking-victim/>

"[After being sexually assaulted by "I myself have had them pose as an officer] I never thought of the customers and actually complete a police as someone I could go to for sexual act with me and then try to help, because more than likely arrest me however I didn't touch the they're going to bust you or want money so they couldn't arrest me you to do them a favor. One way and, um... I felt raped after. or another you were gonna end up Completely raped." in a bad place."

In a letter to state officials, a former mental health counselor described what a client who had been a police officer told him about prostitution stings: “the officer in question reported to me, in an individual therapy setting, that he had been on loan to another police agency in Alaska, (the Anchorage Police Department), engaged in a sting operation regarding sex workers, or ‘prostitutes.’ In his relating of a specific encounter, he chuckled, laughed, and appeared to brag about having engaged in sexual act(s) with a woman he soon after arrested for offenses related to her profession as a sex worker.”

Essentially this is a question of epistemology – how do you know what you know? – do you believe a person in authority who tells you that it never happens, or do you believe the overwhelming evidence and testimony of those it has happened to? Besides, if it never happened why would making it illegal be a problem?

But the police told me that if police did have sexual intercourse or contact with a crime victim, witness, or defendant they were investigating the officer would be arrested?

In charging documents against Yin Mei Tran Lau (3AN-14-8995CR) Detective Dawn Neer of the Anchorage Police Department describes Detective Dojaque receiving a hand job from an alleged sex trafficking victim, but Detective Dojaque was not arrested.

An Alaska State Trooper had sex with a victim after arresting her assailant, but he was not arrested. He was fired, but in *State v Public Safety Employees Association* in 2014 the Alaska Supreme Court determined that he had not broken any rules or laws and should not have been fired, saying: "Blinkered to the breadth of the allowable inquiry, the court today looks for—and fails to find—“any explicit, well-defined, and dominant public policy requiring termination, rather than suspension, as the only proper discipline for a trooper’s consensual and noncriminal sexual misconduct.”

(<https://www.adn.com/anchorage/article/supreme-court-trooper-shouldnt-have-beenfired-sex-domestic-violence-victim/2014/05/08/> or find the case here: <https://govt.westlaw.com/akcases/Search/Template/Party>)

Season 2, episode 12 of the Alaska State Troopers Reality Show showed the aftermath of a police officer having a hand job, but that officer was not arrested.

In 2014 the Alaska State Troopers Special Crimes Investigative Unit followed up with a woman who had reported being a victim of sex trafficking via a prostitution sting, and although the recording (listen here: <http://sextraffickingalaska.com/alaska-statetroopers-sting-sex-trafficking-victim/>) features the officer moaning, saying he’s never had that before, and asking if she can feel his heartbeat, he was not arrested.

Why don’t you just report the police to the police?

We have! In 2015 we made a complaint to the state Office of Professional Standards about the State Trooper’s own recording of a prostitution sting during which a trooper

can be heard moaning and saying he's never had that before and asking the sex trafficking victim if she can feel his heartbeat down there, but the Department of Public Safety asserted that no contact had taken place and that this was a standard way of building rapport with crime victims.

Also in 2015, with the assistance and urging of Ms. Wilcox and Mr. Williams (both, at the time, special assistants to Governor Walker), we tried to report an officer who had sex with Rachel to completion during a prostitution sting (<http://sextraffickingalaska.com/rachel-another-victim-of-state-sponsored-rape/>) but Captain McCoy (at the time Sergeant of Internal Affairs) informed us that if there had been no coercion and she had not been under arrest at the time, it would not be a criminal investigation but a personnel issue. As a personnel issue, there would be no

privacy or protections for Rachel and the officer would be notified of Rachel's name and address within four days of her complaint.

We believe we have done more than our due diligence in attempting to address these matters through the means available with the respective police agencies and now it is time for law makers to act to bring this behavior out of the personnel realm and into the criminal courts. It is time to bring the sexual assault statute in line with Alaskan values and the wishes of Alaskan voters.

Is it a due process violation?

In 1982 in *Flanagan vs Municipality of Anchorage*, Flanagan claimed a due process violation because a police officer had gotten a hand job from her. The Alaska Supreme Court ruled that "Any case involving a

potentially tenable due process claim would require the existence of outrageous police conduct, shocking the universal sense of justice and violating the concept of fundamental fairness... We do not think that Chandler's [the officer's] conduct approaches this level of seriousness."

However, as the universal sense of justice has evolved, other courts have found that it is a due process violation. In *State of Minnesota v. Betsey Lou Burkland* (2009), the court ruled that "when a police officer's conduct in a prostitution investigation involves the initiation of sexual contact that is not required for the collection of evidence to establish the elements of the offense, this conduct, initiated by the investigating officer, is sufficiently outrageous to violate the 'concept of fundamental fairness inherent' in the guarantee of due process."

"I had just touched the cop's penis right before they busted in and cuffed me... I asked over and over again to wipe it off. The idea of icky oil with dick germs on it just sitting on my hands grossed me out. Had the session gone normally I would have been able to wash up on my own accord. Not being free to wash that oil off my hands really pissed me off. They were trying to 'save' me but they didn't care what kind of germs they were allowing to sit on my skin."

A little history of police sexual misconduct in Alaska:

1990: Anchorage Police Officer Eric Frank Feitchinger successfully demonstrated that he did not violate any Anchorage PD policies in using juvenile Eagle Scout volunteers to make master/slave BDSM themed child pornography. Because he could demonstrate this, he was acquitted of criminal charges and received a judgement against APD for firing him in 3AN-90-8896CI.

2005: Anchorage PD treated rape allegations against Officer Anthony Rollins as a personnel rather than criminal issue for way too long and in 2012 was ordered to pay \$5.5 million dollars to victims. 2013's SB22, which made it illegal for police to sexually penetrate or have sexual contact with people in their custody was an attempt to make criminal behavior like Rollins', but the new law would not apply to all of Rollins' rapes.

<https://www.adn.com/alaskanews/article/lawsuits-rollins-rape-case-cost-anchorage-55-million/2012/09/04/>

2007: Alaska Supreme Court found that a state trooper should not have been fired for sex with a domestic violence victim after arresting her assaulter because he had not broken any rules or laws. It was treated entirely as a personnel

issue. <https://www.adn.com/anchorage/article/supreme-court-trooper-shouldnt-have-beenfired-sex-domestic-violence-victim/2014/05/08/>

2012: In the James Stanton case a judge found that the sexual assault statute is too narrow to apply to law enforcement officers who use their badge to extort sex: "In 2012, an Anchorage judge dismissed the sexual assault charges, saying if the women agreed to sex to avoid or hide drug tests the acts were, by law, consensual."

<https://www.adn.com/crimejustice/article/lawsuit-against-fired-probation-officer-details-years-job-sexual-abusetroubled/2014/08/24/>

2012: Prosecutorial issues with police sexual assault cases:

<http://juneauempire.com/local/2012-02-10/judge-accepts-plea-deal-brian-erwin-finds-sexabuse-victim-credible>

2015: a Selawick VPSO was charged with providing alcohol to a 13-year-old. Investigators apparently didn't investigate enough and HR didn't successfully address the issue either, because while awaiting trial in that case, Mr. Norton provided alcohol to and then raped a 16year-old who then stopped breathing and died.

<http://www.ktuu.com/news/news/selawikteen-dies-after-substitute-village-patrol-officer-supplies-alcohol/36548648>

2015: the new sexual assault statute was successful in this case:
ktuu.com/news/news/formerbethel-police-officer-charged-with-attempted-sexual-assault/36289998

A 2016 Associated Press review of 1000 officers who've recently lost their licenses for sexual misconduct, much of it involving children, and police department responses: <http://bigstory.ap.org/article/fd1d4d05e561462a85abe50e7eaed4ec/ap-hundredsofficers-lose-licenses-over-sex-misconduct>

Case 3ANS-14-8995, page 14-15:

“After KONG finished massaging his back and arms, he turned onto his back, facing up on the massage table. When KONG was standing by his right side, he pulled down the towel and looked at KONG. He pointed to his penis with his left hand and motioned like having being manually masturbated with his right hand. KONG looked at the door that was ajar to the room and then looked back down over Det DOJAQUE’S penis and reached her hand under the towel, touching his penis. At that time, Det DOJAQUE gave the predetermined take down signal and the entry team entered the business”

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 112
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB112-LAW-CRIM-03-03-17
Title: SEXUAL ASSAULT BY PEACE OFFICERS
Sponsor: CLAMAN
Requester: House State Affairs

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division: Administrative Services Division	Date: 03/03/2017 09:08 AM
Approved By: Jahna Lindemuth, Attorney General	Date: 03/03/17
Agency: Department of Law	

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2017 LEGISLATIVE SESSION**

BILL NO. HB 112

Analysis

HB 112 would amend the crimes of sexual assault in the third and fourth degrees to include sexual conduct between peace officers and the victim, witness, or perpetrator of a crime under investigation by the peace officer. The legislation includes an affirmative defense if the peace officer and the victim, witness, or perpetrator had a prior dating or sexual relationship that had continued until the person became the victim, witness, or perpetrator of a crime under investigation by the peace officer.

The Department of Law does not anticipate a fiscal impact.

Anchorage

Supreme Court: Trooper shouldn't have been fired for sex with domestic violence victim

✍ Author: Michelle Theriault Boots ⓘ Updated: September 28, 2016 📅 Published May 7, 2014

A state trooper who had sex with a domestic violence victim hours after helping to arrest her husband should not have been fired for the offense, the Alaska Supreme Court said in a decision last week.

The court's opinion upheld the results of a 2010 arbitration between the Alaska State Troopers union and the Department of Public Safety, as well as the state's subsequent appeal to the Superior Court.

In a 3-2 majority opinion released on May 2, justices Dana Fabe, Joel Bolger and Daniel Winfree said that if they were deciding the case instead of the arbitrator they would have likely concluded that the state had just cause to fire the officer.

"Engaging in sexual conduct with a victim shortly after responding to her call for help, even if consensual, is inappropriate behavior for a state trooper," the justices wrote.

But because there's no "zero-tolerance" public policy in Alaska that makes off-duty sex with a crime victim a firing offense, the court had to defer to the arbitrator's conclusion that the trooper should have been disciplined but not fired.

The Department of Public Safety, the court found, regularly punishes other instances of sexual misconduct with consequences that fall short of firing.

In a dissent, justices Craig Stowers and Peter Maassen said the state had reason to fire the trooper because his conduct was clearly "serious and reprehensible" even if it didn't violate a specific sexual misconduct policy.

The trooper (who was not named in the court documents in order to protect the victim's privacy and the state-mandated confidentiality of personnel records) lost his police certification in a separate process in 2011. He is no longer employed by the Alaska State Troopers.

The union's position has been that the state treated the trooper differently than others accused of similar misconduct.

"We've never said the conduct was correct. What we want to make sure is applied is overall fairness. We didn't believe (the trooper) was treated fairly," said Jake Metcalfe, executive director of the Public Safety Employees Union.

The case mixes employment law with issues of power and sexual misconduct in law enforcement.

On April 19, 2009, a trooper who had been on the job for two months responded to a domestic violence call involving a husband and wife. Another trooper on the scene had called for backup after the husband, who was drunk, became physical and aggressive toward him.

When the trooper arrived on scene he helped to restrain the husband. He also watched as another trooper interviewed the wife, who said she was in fear of her husband because he had verbally threatened her.

When the trooper's shift was over, he went home to sleep. When he woke up, he got the woman's cell phone number from his work notebook and sent her a text message.

Out of uniform, the trooper, who was 24 at the time, drove to the woman's house at 6 a.m., the court documents said.

She was "still upset" about the night's events, court documents said. She and the trooper had consensual sex.

The trooper's bosses at the Alaska State Troopers found out about the sexual encounter after the woman told her estranged husband, who forwarded information to his attorney.

His direct supervisor recommended that he be suspended. But the then-director of the Alaska State Troopers, Col. Audie Holloway, overruled the recommendation, deciding the trooper should be fired.

"Despite your knowledge of this woman's vulnerable condition after her recent domestic violence victimization, you put yourself, this agency, the District Attorney's Office and the criminal prosecution of this case in jeopardy by surrendering to the temptations of a sexual encounter," the termination letter said, according to court documents.

After the trooper was fired, the Public Safety Employees Association filed a grievance under its collective bargaining agreement.

An arbitrator found the trooper should have been given an opportunity for "progressive discipline" and ordered he be reinstated with back pay after a three-day suspension.

A Superior Court judge agreed, but by that time the trooper's police certificate had been revoked by the Alaska Police Standards Council, a decision the union did not challenge.

The State of Alaska eventually appealed to the Supreme Court, saying the arbitrator decision was a "gross error."

But the Supreme Court, in its decision, said there is no public policy that says a trooper having consensual sex with a crime victim is a zero-tolerance firing offense. It also found that other cases of sexual misconduct among the trooper

ranks had been dealt with using "less severe discipline" than firing, including short suspension.

Instances cited by the justices included a time when a trooper signed a woman's breast at a bar in front of other recruits, a trooper's sexual relationship with a 19-year-old while the trooper was supposed to be investigating her criminal complaint of sexual abuse by her stepfather, and a sexual relationship one trooper had with the daughter of a murder victim during an ongoing investigation of that crime.

The troopers' union has lobbied to better define vague rules governing "moral conduct" for officers, Metcalfe said.

Would the union support a zero-tolerance policy for a trooper having off-duty, consensual sex with a crime victim?

If there were clear and communicated standards, a fair due process system and consideration of mitigating circumstances, "there is no reason not to support something like that," he said.

Reach Michelle Theriault Boots at mtheriault@adn.com or 257-4344.

By MICHELLE THERIAULT BOOTS

mtheriault@adn.com

About this Author

Michelle Theriault Boots

Michelle Theriault Boots is a reporter for Alaska Dispatch News.





Planned Parenthood Votes Northwest and Hawaii

Representative Claman
Alaska State Capitol
Juneau, AK 99801

Re: House Bill 112

March 2nd, 2017

Dear Representative Claman,

On behalf of Planned Parenthood Votes Northwest and Hawaii, I write today to thank you for sponsoring HB 112, which would hold law enforcement in our state accountable and put in place commonsense protections by expanding Alaska's current sexual assault statute. As a health care provider that serves thousands of Alaskans annually, Planned Parenthood is committed to advocating for the safety and health of all victims of sexual assault. This bill is an important step towards justice for all victims.

Alaska is in the midst of a public health crisis. Alaska has the highest rate of reported rape in the country, almost three times the national average, and our child sexual assault rate is six times the national average. By extending important sexual assault protections to crime victims, witnesses, and those under active investigation, this bill will put us one step closer to ensuring that all Alaskans can live safely and without fear of sexual assault.

All people tasked with protecting public safety, including peace officers, should be held accountable under state law for sexually assaulting or abusing a person who is in their custody or under investigation. These actions are not only deplorable in their own right: they are also detrimental to public safety and public trust. It is appalling and unjust that current state law allows police officers to abuse their position of power and take advantage of vulnerable populations, rather than being held to the same standards as the people they are employed to protect. Alaskans depend on police officers to protect public safety, and this bill will hold officers accountable and promote public trust.

All people deserve to be protected from the threat of sexual violence, and law enforcement must be held accountable to reach our shared goal of creating communities that are safe for all. We appreciate your leadership to promote healthy communities in Alaska and look forward to supporting your efforts.

Sincerely,

A handwritten signature in black ink that reads 'Alyson Currey'.

Alyson Currey
Regional Field Organizer and Legislative Liaison

Planned Parenthood Votes Northwest and Hawaii
3231 Glacier Hwy, Juneau, AK 99801
907.957.8708 | Alyson.Currey@ppvnh.org



Representative Matt Claman
State Capitol Room 118
Juneau, AK 99801

1 March 2017

SUPPORT FOR ALASKA HOUSE BILL 112

Dear Representative Claman,

We are writing to support House Bill 112 which seeks to amend Alaska's sexual assault statute to prohibit police officers from sexually penetrating or having sexual contact with individuals who are involved in active criminal investigations as victims, witnesses or defendants, to the extent that it amounts to an abuse of authority. At present, police officers in Alaska are only prohibited from sexually penetrating people in their custody and sources indicate that police are using sexual intercourse or sexual contact as an 'investigative tool' to determine whether an individual is a sex worker or a victim of human trafficking.¹ Such conduct is an abuse of authority and in some instances amounts to rape and/or entrapment.

International human rights law guarantees everyone's right to be free from torture and other ill-treatment, health, liberty and security of the person, access to justice, a fair trial (including pre-trial due process rights) equality and non-discrimination, and remedies for abuses, among other things. Significantly, rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals,² as well as by UN and regional human rights bodies.³ These bodies have recognized that rape by a state agent is an exertion and abuse of power that gives rise to pain and suffering, physical or mental, justifying characterization as an act of torture. Sexual violence by state officials in the course of their official duties also violates the right to bodily integrity as protected, in part, by the constitutional right to due process and equal protection under the law.⁴

Those involved in criminal investigations do not relinquish their human rights simply because they are suspected of committing a crime or being involved in or associated with criminal actions. Additionally, state officials such as police officers should not be permitted to abuse their authority and commit sexual violence with impunity.

The human rights of sex workers and human trafficking victims are particularly at stake under HB 112. These individuals suffer high rates of violence and abuses and are highly vulnerable to human rights

¹ See Community United for Safety and Protection, Expanding protection for sexual assault victims: A report in support of AK House Bill 112, 2017; see also KTVA Alaska, Liz Raines, 'Legal loophole lets undercover officers have sex with prostitutes, group alleges', 31 January 2017, available at: <http://www.ktva.com/legal-loophole-lets-undercover-officers-sex-prostitutes-group-alleges-365/>.

² See for instance Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; Prosecutor v. Zejnir Delalic, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras. 475-496, 943, 965; Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.

³ See for instance Interim Report of the Special Rapporteur on torture to the General Assembly, UN Doc A/55/290 (2000), para. 5; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/7/3, 15 January 2008, paras. 34-6; Aydin v. Turkey, European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; Fernando and Raquel Mejia v. Peru, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3)(a); Almonacid Arellano et al. v. Chile, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.

⁴ See U.S. Const. amend. XIV, United States v. Contreras, 950 F.2d 232, 236, 244 (5th Cir. 1991); see also Andrew J. Simons, Being Secure in One's Person: Does Sexual Assault Violate a Constitutionally Protected Right?, 38 Boston College Law Review 1011, 1997.



violations. All too often, this violence occurs at the hands of law enforcement. Amnesty International recently conducted research on sex work in Norway, Argentina, Hong Kong, and Papua New Guinea.⁵ In the latter three, we documented violence by police against sex workers, in some cases amounting to torture. Most sex workers that we spoke to did not, or were reluctant to, seek police protection from, or redress for, violence and crime.

- In some situations, police were the perpetrators of violations against sex workers.
- Often sex workers reported that the police treat them like criminals, and as a result they fear prosecution or penalization if they go to police. In some cases, sex workers felt the police will not take them seriously if they report a crime.
- In Papua New Guinea, sex workers said they are afraid to report crimes to the police, who are often the perpetrators of abuses against them. They believed it was pointless to seek equal protection of the law as sex work is, in effect, illegal.⁶
- In Buenos Aires, sex workers reported often facing violence at the hands of police and law enforcement officials more than from clients, making them reluctant to report abuses to the police.⁷
- In Norway, many women we interviewed expressed reluctance to report incidents of violence to the police unless it was severe and life threatening. Reasons included fear of negative consequences such as being evicted; arrest or detention; deportation; surveillance leading to clients' arrest and subsequent loss of livelihood; fines; confiscation of money; discrimination; and exposure of their identity.⁸
- Sex workers in Hong Kong told us that if they are victims of crime, they are unlikely to seek police help. Sex worker organizations told us that police rarely follow up on reports from sex workers and instead typically blame or insult them.⁹ Additionally, police, in some circumstances, 'receive sexual services' in the course of their investigations.¹⁰

Our research made it clear that, in general, sex workers feel unable to seek state protection from violence and crime, making them extremely vulnerable to violence, entrapment, extortion and harassment by state officials. While our research primarily focused on sex work, this analysis also applies to human trafficking victims who are also often investigated and punished under laws that criminalize commercial sex and anti-trafficking measures.

Notably, violence against sex workers and others presumed to be involved in unlawful commercial sex is compounded by criminal and other punitive laws and policies against sex work which inhibit individual's ability to seek state protection from violence and and/or compel them to operate in covert ways that compromise their safety. In most countries, including the USA (and US states), law enforcement is not adequately focused on the protection of sex workers and trafficking victims from violence but instead on prohibition of commercial sex through enforcement of criminal law. This creates an adversarial relationship between sex workers, trafficking victims and law enforcement

⁵ See Amnesty International reports: Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016); "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (Index: AMR 13/4042/2016); The human cost of crushing the market: Criminalization of sex work in Norway (Index: EUR/36/4034/2016).

⁶ Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016).

⁷ "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (Index: AMR 13/4042/2016).

⁸ The human cost of crushing the market: Criminalization of sex work in Norway (Index: EUR/36/4034/2016).

⁹ Amnesty International, Sex workers at risk: A research summary on human rights abuses against sex workers, 2016, p. 12-13.

¹⁰ Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016), p. 22-23.



officials that compromises the safety of sex workers and trafficking victims and offers impunity to perpetrators, including law enforcement officials themselves, of violence and abuse against sex workers and trafficking victims.

Alaska's current sexual assault statute appears to entrench an individual's vulnerability to violence, allowing such violence to go unpunished. This implicates a wide range of human rights, infringes on ethical principles of policing, and runs afoul of Alaska's legal 'due diligence' obligations to prevent, investigate, prosecute and punish violence. Instead of protecting people from violence, the legal framework enables violence against individuals who likely face a range of stigma and discrimination in society, and who may already be reluctant to seek police protection from violence and crime.

Amnesty International therefore supports HB 112 and its objective to prevent unlawful violence by police officers against those involved in criminal investigations. We call on the Alaska state legislature to ensure that sex workers, human trafficking victims and all people under police investigation can enjoy full and equal protection under the law, as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, entrapment, extortion and all other crimes.

Yours sincerely,

Tarah Demant
Senior Director, Identity and Discrimination Unit
Amnesty International USA