

SENATE BILL NO. 176

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATOR GARDNER

Introduced: 2/10/16

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to the admissibility of prior reports of sexual assault, sexual abuse of a minor, or unlawful exploitation of a minor in prosecutions of sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, or an attempt to commit any of those crimes; and amending Rule 404(a), Alaska Rules of Evidence."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 12.45 is amended by adding a new section to read:

Sec. 12.45.044. Evidence of prior reports of sexual assault or sexual abuse of a minor in trials of certain sexual offenses. (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse of a minor in any degree, unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence that the complaining witness has made a prior report of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor may not be admitted nor may reference be made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any

1 purpose, the defendant shall apply for an order of the court not later than five days
2 before trial or at a later time as the court may, for good cause, permit. After the
3 application is made, the court shall conduct a hearing in camera to determine the
4 admissibility of the evidence. The court may admit the evidence only if the court finds
5 that the

6 (1) evidence offered by the defendant regarding the prior report of
7 sexual assault, sexual abuse of a minor, or unlawful exploitation of a minor made by
8 the complaining witness is relevant;

9 (2) probative value of the evidence offered is not outweighed by the
10 probability that its admission will create undue prejudice, confusion of the issues, or
11 unwarranted invasion of the privacy of the complaining witness;

12 (3) evidence otherwise complies with all laws, regulations, and rules
13 governing the admission of evidence; and

14 (4) defendant has proved by clear and convincing evidence that the

15 (A) complaining witness has made a prior report of sexual
16 assault, sexual abuse of a minor, or unlawful exploitation of a minor;

17 (B) report was false; and

18 (C) complaining witness knew the report was false.

19 (b) A prior report of sexual assault in any degree, sexual abuse of a minor in
20 any degree, or unlawful exploitation of a minor is false for purposes of this section if
21 the evidence presented to the court establishes that the reported sexual assault, sexual
22 abuse of a minor, or unlawful exploitation of a minor did not, in fact, occur.
23 Recantation, delayed reporting, or noncooperation with law enforcement by the
24 complaining witness or lack of evidence corroborating the complaining witness' prior
25 report is not sufficient to show a prior report was false under this section.

26 (c) In the absence of a persuasive showing to the contrary, evidence of the
27 complaining witness' prior report of sexual assault, sexual abuse of a minor, or
28 unlawful exploitation of a minor occurring more than five years before the date of the
29 offense charged is presumed to be inadmissible under this section.

30 (d) In this section, "complaining witness" has the meaning given in
31 AS 12.45.045.

1 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 INDIRECT COURT RULE AMENDMENT. AS 12.45.044, enacted by sec. 1 of this
4 Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by requiring a
5 defendant, with some exceptions, to request five days before trial that certain evidence about a
6 complaining witness be admitted into evidence.

7 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 APPLICABILITY. AS 12.45.044, enacted by sec. 1 of this Act, applies to offenses
10 committed before, on, or after the effective date of this Act.

11 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 CONDITIONAL EFFECT. AS 12.45.044, enacted by sec. 1 of this Act, takes effect
14 only if sec. 2 of this Act receives the two-thirds majority vote of each house required by art.
15 IV, sec. 15, Constitution of the State of Alaska.