

Original sponsor: Chance, Poland
and Rodey

Offered: 4/21/75
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 261

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the admissibility of evidence
7 in prosecutions for rape and related offenses; changing
8 Rule 43(g)(11), Rules of Civil Procedure; and providing
9 for an effective date."

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

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

12 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF RAPE
13 AND ASSAULT WITH INTENT TO COMMIT RAPE. (a) In a prosecution for rape
14 under AS 11.15.120(2), or for an attempt or assault with intent to
15 commit rape, evidence of sexual conduct of the complaining witness
16 before or after the act charged is admissible only

17 (1) when that evidence relates to expert medical testimony
18 on the issue of whether the complaining witness had sexual intercourse
19 at the time of the act charged; or

20 (2) to rebut statements made by the complaining witness
21 under oath upon direct examination as a witness for the state relating
22 to immediate prior or subsequent sexual conduct.

23 (b) In a prosecution for forcible rape under AS 11.15.120(1), or
24 for an attempt or assault with intent to commit rape, evidence of
25 sexual conduct of the complaining witness before or after the act charged
26 is admissible only

27 (1) when that evidence relates to expert medical testimony
28 on the issue of whether the complaining witness had sexual intercourse
29 at the time of the act charged;

1 (2) to rebut statements made by the complaining witness
2 under oath upon direct examination as a witness for the state relating
3 to prior or subsequent sexual conduct; or

4 (3) when the defendant claims that the complaining witness
5 consented to the act charged, for the purpose of showing that the com-
6 plaining witness engaged in prior or subsequent consensual sexual acts
7 with the defendant.

8 (c) Evidence of previous sexual conduct of the complaining
9 witness committed one year or more before the date of the alleged crime
10 is not admissible for any purpose, except that previous sexual conduct
11 by the complaining witness with the defendant may be admitted if other-
12 wise admissible under this section.

13 (d) If evidence of sexual conduct of the complaining witness
14 is offered to attack her credibility, the following procedure shall
15 be followed:

16 (1) The defendant shall make a written motion offering to
17 prove sexual conduct of the complaining witness relevant in attacking
18 the credibility of the complaining witness.

19 (2) The written motion shall be accompanied by an affidavit
20 in which the offer of proof shall be stated.

21 (3) If the court finds that the offer of proof is sufficient,
22 the court shall order a hearing out of the presence of the jury, if any,
23 and at the hearing allow the questioning of the complaining witness
24 regarding the offer of proof made by the defendant.

25 (4) At the conclusion of the hearing, if the court finds
26 that evidence offered by the defendant regarding the sexual conduct of
27 the complaining witness is relevant in determining the credibility of
28 the complaining witness, and the probative value of the evidence offered
29 is not outweighed by the probability that its admission will create

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undue prejudice, confusion of the issues, or undue consumption of time, the court shall make an order stating what evidence may be introduced and the nature of the questions which shall be permitted. The defendant may then offer evidence under the order of the court.

(e) In this section "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

* Sec. 2. Section 1 of this Act has the effect of changing Rule 43(g)(11) Rules of Civil Procedure, by requiring certain procedures to be followed in order for the defendant to offer evidence of sexual conduct of the complaining witness under AS 11.15.120.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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