

Introduced: 1/16/85
Referred: Health, Education & Social
Services, Judiciary and Finance

1 IN THE HOUSE

BY PHILLIPS

2

HOUSE BILL NO. 67

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to hearsay evidence in prosecutions
7 for certain sexual offenses; and amending Rules 803
8 and 804, Alaska Rules of Evidence, and Rule 6(r),
9 Alaska Rules of Criminal Procedure."

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

11 * Section 1. AS 12.40 is amended by adding a new section to read:

12 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
13 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -
14 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise
15 admissible, made by a child under the age of 10 who is the victim of
16 the offense describing the conduct establishing the offense may be
17 admitted into evidence before the grand jury if

18 (1) the circumstances of the statement indicate its relia-
19 bility; and

20 (2) the child

21 (A) testifies at the grand jury proceeding; or

22 (B) is unavailable as a witness and there is addi-
23 tional evidence introduced to corroborate the statement.

24 (b) In this section,

25 (1) "statement" means an oral or written assertion or
26 nonverbal conduct if the nonverbal conduct is intended as an asser-
27 tion;

28 (2) "unavailable" means the child

29 (A) has a lack of memory of the subject matter of the

1 statement being offered;

2 (B) is unable to attend or testify at the hearing
3 because of death or then existing physical or mental illness or
4 infirmity;

5 (C) is declared incompetent to testify by the judge;
6 or

7 (D) is absent from the hearing and the proponent of
8 the statement has been unable to procure the child's attendance
9 by reasonable means.

10 (c) A child is not unavailable under this section if the un-
11 availability is due to the procurement or wrongdoing of the proponent
12 of the statement to prevent the child from attending or testifying.

13 * Sec. 2. AS 12.45 is amended by adding a new section to read:

14 Sec. 12.45.049. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
15 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -
16 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise
17 admissible, made by a child under the age of 10 who is the victim of
18 the offense describing the conduct establishing the offense may be
19 admitted into evidence at trial if

20 (1) the court determines in a hearing outside the presence
21 of the jury that the circumstances of the statement indicate its
22 reliability;

23 (2) the child

24 (A) testifies at the trial; or

25 (B) is unavailable as a witness and there is addi-
26 tional evidence introduced to corroborate the statement; and

27 (3) the proponent of the statement informs the adverse
28 party of the intention to offer the statement and the contents of the
29 statement sufficiently before the proceedings to give the adverse

1 party a fair opportunity to respond to the statement.

2 (b) In this section,

3 (1) "statement" means an oral or written assertion or
4 nonverbal conduct if the nonverbal conduct is intended as an asser-
5 tion;

6 (2) "unavailable" means the child

7 (A) has a lack of memory of the subject matter of the
8 statement being offered;

9 (B) is unable to attend or testify at the hearing
10 because of death or then existing physical or mental illness or
11 infirmity;

12 (C) is declared incompetent to testify by the judge;
13 or

14 (D) is absent from the hearing and the proponent of
15 the statement has been unable to procure the child's attendance
16 by reasonable means.

17 (c) A child is not unavailable under this section if the un-
18 availability is due to the procurement or wrongdoing of the proponent
19 of the statement to prevent the child from attending or testifying.

20 * Sec. 3. AS 12.40.110, added by sec. 1 of this Act, has the effect of
21 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain
22 hearsay evidence admissible in grand jury proceedings for certain sexual
23 offenses without requiring compelling justification.

24 * Sec. 4. AS 12.45.049, added by sec. 2 of this Act, has the effect of
25 amending Rules 803 and 804, Alaska Rules of Evidence, by allowing admission
26 at trial of hearsay evidence of certain statements made by certain victims
27 of certain sexual offenses.