

Introduced: 1/22/86  
Referred: Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 498

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the introduction of evidence in  
7 prosecutions for certain sexual offenses; and having  
8 the effect of changing Rule 404, Alaska Rules of  
9 Evidence."

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

11 \* Section 1. AS 12.45.045 is repealed and reenacted to read:

12 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF  
13 CERTAIN SEXUAL OFFENSES. (a) In prosecutions for the crimes of  
14 sexual assault in any degree, sexual abuse of a minor in any degree,  
15 or unlawful exploitation of a minor, or an attempt to commit any of  
16 these crimes, evidence of the complaining witness' previous sexual  
17 conduct may not be admitted, nor may reference be made to it in the  
18 presence of the jury, except as provided in this section.

19 (b) Evidence of specific instances of the complaining witness'  
20 sexual conduct may not be admitted, except

21 (1) evidence of the complaining witness' past sexual con-  
22 duct with the defendant; or

23 (2) evidence of specific instances of sexual activity  
24 showing the source or origin of semen, injury, pregnancy, or disease.

25 (c) Evidence that meets the requirements of (b)(1) or (2) of  
26 this section may be admitted only if the court finds that the evidence  
27 is material to a fact at issue in the case, and that the probative  
28 value of the evidence offered is not outweighed by the probability  
29 that its admission will create undue prejudice, confusion of the

1 issues, or unwarranted invasion of the privacy of the complaining  
2 witness.

3 (d) If the defendant seeks to introduce evidence regarding the  
4 complaining witness' sexual conduct, the defendant shall file a writ-  
5 ten motion and offer of proof before the trial or preliminary hearing  
6 begins. The motion must specify the evidence that the defendant seeks  
7 to introduce and the purpose for which the defendant seeks to intro-  
8 duce it. A motion may be filed after the trial or preliminary hearing  
9 has begun only if the defendant demonstrates that, despite the exer-  
10 cise of due diligence, the defendant did not possess the necessary  
11 factual information upon which the motion is based before the trial or  
12 preliminary hearing. After an application is made, the court shall  
13 conduct an in camera hearing to determine the admissibility of the  
14 evidence. If the court finds that the evidence offered by the defend-  
15 ant regarding the sexual conduct of the complaining witness meets the  
16 requirements of (b) and (c) of this section, the court shall issue a  
17 written order stating what evidence may be introduced and the nature  
18 of the questions that will be permitted. The defendant may then offer  
19 evidence in accordance with the order of the court.

20 (e) In the absence of a persuasive showing to the contrary,  
21 evidence of the complaining witness' sexual conduct occurring more  
22 than one year before the date of the offense charged is presumed to be  
23 inadmissible under this section.

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

27 \* Sec. 2. AS 12.45.045, as repealed and reenacted in sec. 1 of this  
28 Act, has the effect of changing Rule 404, Alaska Rules of Evidence, by  
29 specifying in detail the limited circumstances under which evidence of the

1 complaining witness' previous sexual conduct may be admitted in a prosecu-  
2 tion of certain sex crimes.