

**SENATE BILL NO. 351**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 3/9/94**  
**Referred: STA, JUD**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act amending Alaska Rule of Evidence 404, relating to the admissibility of  
2 certain character evidence in court proceedings."

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

4 \* **Section 1. FINDINGS AND PURPOSE.** The legislature finds that, in far too many cases  
5 of sexual assault, attempted sexual assault, domestic violence, and child sexual abuse, Alaska's  
6 victims are often themselves "put on trial" in the course of criminal proceedings. The  
7 legislature further finds that the emotional trauma that such crime victims can suffer in the  
8 criminal justice system can in some cases be nearly as traumatic as the crime itself. In an  
9 effort to address these problems, the legislature finds that the amendments to Alaska Rule of  
10 Evidence 404 made by this Act are necessary. First, the legislature finds that in cases of  
11 domestic violence and other violent crimes in which the defendant claims that the victim was  
12 the initial aggressor, an amendment is necessary to permit the prosecutor to rebut this claim  
13 by introducing evidence of the defendant's own past violence. Second, in cases of child abuse  
14 or child sexual abuse, a further amendment is essential to remove the confusion in some

1 Alaska courts caused by the unnecessary inclusion in Alaska Rule of Evidence 404(b)(2) of  
2 the phrase "to show a common scheme or plan." Finally, in sexual assault and attempted  
3 sexual assault cases in which the defendant claims that the victim voluntarily "consented" to  
4 the sexual activity, further amendment is necessary to permit the prosecution to rebut this  
5 claim by introducing evidence of other sexual assaults or attempted sexual assaults by the  
6 defendant.

7 \* Sec. 2. Alaska Rule of Evidence 404 is amended to read:

8 Rule 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE  
9 CONDUCT -- EXCEPTIONS -- OTHER CRIMES. (a) CHARACTER EVIDENCE  
10 GENERALLY. Evidence of a person's character or a trait of his character is not  
11 admissible for the purpose of proving that he acted in conformity therewith on a  
12 particular occasion, except:

13 (1) Character of Accused. Evidence of a relevant trait of his character  
14 offered by an accused, or by the prosecution to rebut the same;

15 (2) Character of Victim. Evidence of a relevant trait of character of  
16 a victim of crime offered by an accused, or by the prosecution to rebut the same, or  
17 evidence of a relevant character trait of an accused or of a character trait for  
18 peacefulness of the victim offered by the prosecution in a [HOMICIDE] case to rebut  
19 evidence that the victim was the first aggressor, subject to the following procedure:

20 (i) When a party seeks to admit the evidence for any purpose,  
21 he must apply for an order of the court at any time before or during the trial  
22 or preliminary hearing.

23 (ii) The court shall conduct a hearing outside the  
24 presence of the jury in order to determine whether the probative value  
25 of the evidence is outweighed by the danger of unfair prejudice,  
26 confusion of the issues, or unwarranted invasion of the privacy of the  
27 victim. The hearing may be conducted in camera where there is a  
28 danger of unwarranted invasion of the privacy of the victim.

29 (iii) The court shall order what evidence may be  
30 introduced and the nature of the questions which shall be permitted.

31 (iv) In prosecutions for the crime of sexual assault in

1 any degree and attempt to commit sexual assault in any degree,  
2 evidence of the victim's conduct occurring more than one year before  
3 the date of the offense charged is presumed to be inadmissible under  
4 this rule, in the absence of a persuasive showing to the contrary.

5 (3) Character of Witness. Evidence of the character of a  
6 witness, as provided in Rules 607, 608, and 609.

7 (b) OTHER CRIMES, WRONGS, OR ACTS. (1) Evidence of other crimes,  
8 wrongs, or acts is not admissible if the sole purpose for offering the evidence is to  
9 prove the character of a person in order to show that the person acted in conformity  
10 therewith. It is, however, admissible for other purposes, including, but not limited to,  
11 proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence  
12 of mistake or accident.

13 (2) In a prosecution for a crime involving a physical or sexual assault  
14 or abuse of a minor, evidence of other acts by the defendant toward the same or  
15 another child is admissible [TO SHOW A COMMON SCHEME OR PLAN] if  
16 admission of the evidence is not precluded by another rule of evidence and if the prior  
17 offenses

18 (i) occurred within the 10 years preceding the date  
19 of the offense charged [ARE NOT TOO REMOTE IN TIME];

20 (ii) are similar to the offense charged; and

21 (iii) were committed upon persons similar to the  
22 prosecuting witness.

23 **(3) In a prosecution for a crime of sexual assault in any degree or**  
24 **attempt to commit sexual assault in any degree, evidence of other sexual assaults**  
25 **or attempted sexual assaults by the defendant against the same or another person**  
26 **is admissible if the defendant relies on a defense of consent.**

27 \* Sec. 3. The provisions of secs. 1 and 2 of this Act take effect only if they receive the  
28 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State  
29 of Alaska.