

SB

26/Am

"An Act relating to the evidence in prosecutions for rape and assault with intent to commit rape; changing Rule 43(g)(11), Rules of Civil Procedure; and providing for an effective date."

### COMMITTEE REPORT

4/11/75

HOUSE

JUDICIARY

Mr. Speaker:

Date 4/14/75

The Committee on HESS has had SB 261 am

under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS
- "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

[Signature] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Signature] \_\_\_\_\_

Members NOT concurring in the Majority report:

[Signature] recommends:

[Signature] recommends:

[Signature] recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

[Signature] Chairman

POSITION PAPER  
ON  
SENATE CONCURRENT RESOLUTION # 16

A concurrent resolution relating to the medical and psychological care required of victims sexually assaulted.

This resolution expresses the sense of the Legislature that victims of sexual assault merit maximum help in the form of sensitive care and skilled professional help and urges training for personnel of medical facilities in these areas.

The resolution of itself would not affect the Department of Health & Social Services but would probably generate increased calls for service by some agencies of the Department.

This appears to be a very desirable resolution.

Training for personnel dealing with victims of sexual assault probably should encompass also both public safety and correctional officials.

The Department favors this concurrent resolution.

Recommended By: David T. [Signature]  
Division Director

2/28/74  
Date

Approved By: Frederick McGinnis  
Deputy Commissioner

3/5/75  
Date

Comments by Governor's Office

By: X

\_\_\_\_\_  
Date



JUNEAU ALASKA

# Alaska State Legislature House

HESS COMMITTEE MEETING

April 14, 1975

Members Present:

All members

Chairman Sullivan called the meeting to order at 3:00pm.

SB 261am

Senator Chance, Sponsor of the bill, gave briefing. Bill relates to the project of the year for the American Women's Club and is endorsed by American Bar Association.

Parr There is a house bill by Bradner on the same subject with more specifics.

Hackney I am in favor of the bill.

Ostrosky I Move and ask unanimous consent for a 'do pass' recommendation.

Parr Objection, I would ask for individual recommendations.

Ose Yes, I would vote no rec.

Chairman Sullivan counted the votes and the majority of the members voted do pass.

HB 12

Rep. Beirne gave briefing of the bill and recommended that since it doesn't pertain to this Committee any further, that the bill be passed out as 'no rec' and sent on to Finance where it can be studied in depth.

Hackney I would rather sit on it until next year than to pass it out, that is like saying the bill has our endorsement.

Parr I am in favor of the concept but if the figures on those pages submitted by the Dept. are correct, they are highly incorrect!

Swanson I am not in support of this bill either. I think we should move it out with individual recommendations.

Ostrosky If that is a motion Mr. Swanson, I will second it.

It was voted on that the bill be sent on to the Finance Committee with 'individual recommendations.'

HB 225 Beirne gave briefing of the bill. The same wording which includes the concept of HB 13 is in this bill. It is requesting that all architectural barriers be eliminated over a 10 year period in all government buildings.

Bob McGuire Deputy Commissioner/Public Work  
see page two.

McGuire Spoke of the possibilities of the bill.

John Steinman - Chief Architect/Div. of Buildings.  
Should clarify that some of our people have gone through these matters and placed priorities which is not what we're suppose to do and I wish to apologise for this. A question I would raise is whether or not this can be our perogative to make judgments on the barriers rather than making it mandatory?

Beirne I am wondering where you got the idea that a handicapped person is one in a wheelchair only?

McGuire This was over simplified abit.

Beirne This is already being mandated on a Federal level. I think you're addressing this in a very small scope. This information you have submitted to Rep. Sullivan is totally irresponsible. I can assure you that unless the State does this now, they will be subject to suits and higher costs to the State at a later date.

Swanson Have we ever been sued in your knowledge with something like this?

McGuire No, not to my knowledge.

Beirne In Anchorage it is a group of handicapped students suing the State. This is a State responsibility that we put this into law. The Federal laws are based on the US Standards.

Steinman I don't think it is the intent here that is in question, it is the way in which we will have to carry it out.

Beirne I think the bill is very lenient.

Osterback We should start working in the rural areas first where, as you said, the majority of the handicapped people are.

Hackney How would HB 225 affect leased buldings?

McGuire I don't interpret that we would be changing the present buildings already in use. The Dept. of Adain. handles all leasing procedures. We've made requests and they're willing to do anything that we're willing to pay for. These costs to handl the handicapped are considerably higher than the average costs of construction. An expensive proposition!

Steinman In Sec. 4 I would like to suggest an amendment.

Page 2 Line 25 delete 'be planned, designed, financed, constructed, opened to public use, or otherwise placed in operation' and add after be "initiated for planning, design, finance, and construction" unless...

Ostroaky I Move for adoption of the proposed amendment.

Beirne Second

Chairman Without hearing objection, amendment passes.

Beirne Proposed amendments: Pg 1 Line 8, add "ed" to infirm

Pg 1 Line 19, "oooooooooooooooooooo"

Pg.1 Line 17, after the word 'federal' add 'state or

other public funds.'



SENATOR GENIE CHANCE

SEXUAL ASSAULT LEGISLATION

SENATE CONCURRENT RESOLUTION NO. 15 - ASSIGNMENT OF POLICEWOMEN TO REPORTED INCIDENTS OF RAPE

Rape victims believe that female officers would be more sensitive to their needs and that more policewomen should be available to respond to calls from rape victims. This concurrent resolution recommends that local law enforcement agencies undertake an affirmative assignment program to place more policewomen in positions which will enable them to respond to rape victims. It states that special efforts should be made to assign female officers to night duty when most rapes occur.

SENATE CONCURRENT RESOLUTION NO. 16 - MEDICAL EXAMINATIONS OF VICTIMS  
SEXUAL ASSAULT

Emergency medical facilities provide inadequate treatment for rape victims. A woman who has been raped is often beaten and traumatized. The extent of the medical treatment is frequently limited to a vaginal examination for the purpose of gathering potential evidence.

This concurrent resolution recommends to the director of each public medical facility in the state and to each private medical emergency facility in the state having a contractual relationship with the state or local political subdivision that each victim of sexual assault who is treated by them should be given a thorough examination for both physical and emotional trauma. The staff of such facilities should be instructed on the appropriate care and treatment of victims of sexual assault. In addition, such facilities, as standard operating procedure should inform the victim of venereal disease, pregnancy, and psychiatric services, of the possibility of financial aid from the Violent Crimes Compensation Board, and of any other services or aids available in the community which could serve to alleviate the eventual trauma occasioned by a sexual assault.

SENATE CONCURRENT RESOLUTION NO. 17 - PEACE OFFICER TRAINING PROGRAMS  
RELATED TO TREATMENT OF RAPE  
VICTIMS

The training and instruction police officers receive generally emphasizes the legal elements of the crime of rape. Little, if any, training time is spent discussing the psychological and emotional needs of the rape victim. Consequently, peace officers often display a significant lack of sensitivity in their handling of rape victims.

This concurrent resolution recommends that Alaska Police Standards Council, in conjunction with local community women's organizations and representatives of local medical professions, develop courses of instruction for law enforcement personnel regarding the proper investigation of rape cases, with emphasis on the psychological and emotional effects on the victim.

SENATE CONCURRENT RESOLUTION NO. 18 - TRAINING IN NONAGGRESSIVE SELF-  
DEFENSE IN SECONDARY SCHOOLS OF  
THE STATE

With the high incidence of violent crimes against individuals, there is a need for public high schools to include as part of their physical education program training in nonaggressive self-defense. If persons were better able to defend themselves, they would be less vulnerable to rape and other violent bodily assault.

This concurrent resolution requests that each school district ascertain the need for offering physical education classes in nonaggressive self-defense and if a need exists to report to the Department of Education by July 1, 1976. It further requests that the Department of Education work with and assist school districts, including the state operated school system, in developing programs in nonaggressive self-defense and that the Department should submit a summary and evaluation of its findings to the Tenth Legislature - First Session.

SENATE CONCURRENT RESOLUTION NO. 19 - SPECIAL INVESTIGATIVE UNITS FOR  
CASES INVOLVING SEXUAL OFFENSES

Most law enforcement agencies have inadequately staffed and trained investigative units for sexual offenses. Special rape investigative units which have been established by a few departments provide more thorough and effective investigation of rape reports.

This concurrent resolution requests the Alaska Police Standards Council to develop a plan for the training of specialists to investigate charges of rape and other sexual assaults and to encourage local law enforcement agencies to develop special investigative units for cases involving sexual assaults.

SENATE BILL NO. 261 - PROVIDING FOR AN INCAMERA HEARING TO DETERMINE THE  
RELEVANCY OF THE PROSECUTING WITNESS' PREVIOUS  
SEXUAL CONDUCT

Many times the victim of sexual assault is extensively questioned about his/her sexual history in open court, without a showing that such questioning is relevant to the innocence or guilt of the accused. The fear of such detailed examination about a very personal aspect of an individual's life may deter victims from bringing criminal complaints, and may be a significant factor in the low percentage of reported rapes.

Senate Bill 261 requires that the defense attorney be required, by specified procedures and out of the hearing of the jury, to "lay a foundation" as to the relevancy of the victim's prior sexual history; and that the judge make a determination of the relevancy of the prior history before such evidence is admissible. A showing of relevancy should not be required when the prior sexual activity occurred with the accused. In no event may evidence of previous sexual conduct of the prosecuting witness committed more than one year before the date of the alleged crime be admissible, except previous conduct with the defendant.

SENATE BILL NO. 262 - JURY INSTRUCTIONS IN RAPE CASES

During the last few years there has been great disagreement in various states with regard to the types and content of jury instructions in criminal prosecutions for rape, attempted rape, and assault with intent to commit rape.

There is little doubt that the charge of sexual assault is difficult to defend and to prosecute. The law requires that the jury be informed that the charge is difficult to defend and that the jury must examine the testimony of the prosecution's witness with caution. The question in most cases of sexual assault is whether or not the victim consented to the sexual act.

The jury should not be permitted to draw an inference that a woman who has previously consented to sexual intercourse would be more likely to consent again, except where the previous sexual intercourse occurred with the accused. The jury should be permitted to consider the prior sexual history of the victim, if relevant, only on the issue of whether the victim consented to the alleged rape, and not be permitted to consider such acts in judging her credibility regarding other facts in dispute. The issue of chastity should not be confused with the issue of veracity.

Senate Bill 262 states that a jury may not be instructed that the prior sexual conduct of the complaining witness, in and of itself, may be considered in determining the credibility of the complaining witness. In addition, the Bill states that the jury may not be instructed that it may be inferred that a victim who has previously consented to sexual intercourse with a person other than the defendant is more likely to have consented to sexual intercourse with the defendant.

SENATE BILL NO. 273 - MEDICAL TREATMENT AND COSTS INCURRED BY A VICTIM OF SEXUAL ASSAULT

Often emergency medical facilities provide inadequate treatment for rape victims. A person who has been sexually assaulted is often beaten and traumatized. The extent of the medical treatment is frequently limited to a vaginal examination for the purposes of gathering potential evidence. Many physicians on duty at emergency medical facilities are not experienced in the examining procedures necessary to gather evidence from victims of sexual assault. Cases are dropped for insufficient evidence as a result of inadequate examinations which ignored valuable evidence. Hospital and emergency medical facilities charge victims of rape for costs of the medical examination necessary to compile evidence for possible prosecution. Victims of sexual assault oftentimes go without necessary medical treatment because of its high cost.

Senate Bill 273 requires the Department of Health and Social Services to provide within each organized borough and city that a person experienced in the examination of victims of criminal sexual assaults is available on call 24 hours each day for the examination of reported victims of these offenses.

Each reported victim shall be given a thorough examination for both physical and emotional trauma, shall be provided all treatment indicated as a direct result of either the physical or emotional trauma and shall be informed of available venereal disease, pregnancy, and psychiatric services and of the Violent Crimes Compensation Board.

All incurred costs of examination, treatment and where required to obtain treatment not adequately available locally, costs of transportation to another place where treatment is adequately available and return transportation shall be paid directly by the state.

All costs of treatment shall not exceed the normal charges for the service in the locality in which the service is rendered.

#### SENATE BILL NO.305 - REVISION OF STATUTES INCLUDING RAPE AND SODOMY

With the continual revision of statutes involving crimes of sex and the changing morality of the society, the Alaska statutes pertaining to sex are outmoded and confused.

Sexual acts involving force, specifically forced oral copulation, have recently gone unprosecuted because of this confusion. To remedy this problem and many others, this Senate Bill revises Chapter 11.

Throughout Chapter 11, "rape" is deleted and aggravated sexual assault is inserted in the following sections:

Sec. 11.05.150. Imposing Less than Prescribed Penalties

Sec. 11.15.010 First Degree Murder

Sec. 11.15.160. Assault with Intent to Kill or Commit Rape or Robbery

Sec. 11.15.295 Use of Fire Arms during the Commission of Certain Crimes

Sec. 11.30.040(b)

Chapter 11 is amended by adding two new sections. Section 11.15.125 Petty Sexual Assault and 11.15.127 Aggravated Sexual Assault. The purpose of these new sections is to define categories of sexual contact or sexual intercourse where one of the parties is unable to consent or does not consent to the sexual act.

Sec. 11.15.125 Petty Sexual Assault defines a situation in which a person who has sexual contact with another, not his spouse, or causes the other to have sexual contact with him, without consent, is guilty of petty sexual assault if (1) he knows that the contact is offensive to the other person; (2) he knows that the other person suffers from a mental disease or defect rendering him incapable of appraising the nature of his conduct; (3) he knows that the other person is unaware that a sexual act is being committed; (4) the other person is less than 16 years old; (5) he has substantially impaired the other person's power to appraise or control his conduct by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or (6) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him. The offense of petty sexual assault is a misdemeanor. In this section "sexual contact" is any touching of the genitals of the person for the purpose of arousing or gratifying sexual desire.

Sec. 11.15.127 Aggravated Sexual Assault defines a situation in which a person who has sexual intercourse with another person, not his spouse, is guilty of aggravated sexual assault if (1) the other person is compelled to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; (2) the person substantially impairs the other's person's power to appraise or control his conduct by administering or employing without his knowledge or consent drugs, intoxicants or other means for the purpose of preventing resistance; (3) the other person is unconscious; or (4) the other person is less than 16 years old. Aggravated sexual assault is a felony. For the purpose of this section, sexual intercourse includes intercourse by means of the mouth, vagina, or rectum, with some penetration however slight; emission is not required.

Chapter 11 is amended by repealing AS 11.14.120 - 11.14.134 and AS 11.40.120. These amendments create a category of crime called "sexual assault". There are two degrees of crime under sexual assault: Petty Sexual Assault and Aggravated Sexual Assault. Victims of these crimes either do not consent to the sexual act described under the sections or are incapable of consenting to the act. Sexual acts between consenting adults are legal regardless of whether they are for the purposes of arousal or intercourse and involve either oral, anal, or vaginal sex.

Superior Court  
State of Alaska  
THIRD JUDICIAL DISTRICT  
303 K STREET  
ANCHORAGE, ALASKA 99501

SB 261

CHAMBERS OF  
EBEN H. LEWIS

February 11, 1975

TELEPHONE: (907) 274-8511

Hon. Helen Fischer  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

Dear Helen:

Our efforts last year at obtaining some legislation attacking the criminal problem in our state had only moderate success, you will recall. However, the introduction of the legislation served to get the attention of both legislature and the community in general to the magnitude of the problem. I have another suggested piece of legislation directed toward the various serious crime of rape, of which there have been a great many instances in our community during the past year.

I have presided over four rape or attempted-rape trials since December 1973. Only one has resulted in a conviction. The jury found the defendant not guilty in two of the other cases and in the fourth the jury was unable to agree and was dismissed. That case was set for retrial but the victim refused to undergo the ordeal of testifying the second time around and the state reluctantly dismissed the indictment. Since that time the defendant has left the state and has been involved in a sex crime in Oklahoma, according to information I have received.

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In each of the acquittals, I am convinced that the jury reached its verdict, not because the defendant was innocent, but because the victim, under existing rules of evidence, was permitted to be presented to them, through cross examination by defense counsel, as a tarnished tart. Probably the jury felt her to be deserving of the treatment she got from her assailant. This is so, because under existing rules of evidence in Alaska, and in most of the states up to this time, it is required that the trial judge allow defense counsel to examine the prosecuting witness as to her prior sexual conduct with other men, even though such conduct has no bearing on the case. Since she then is seriously compromised, in the view of some of the more virtuous-minded jurors, she becomes accordingly less believable and the case simply does not get proven "beyond a reasonable doubt". Of the rape and attempted rape cases I tried last year, had there been no jury, all would have resulted in conviction, based upon the evidence I heard. Thus, justice is being defeated

Hon. Helen Fischer  
February 11, 1975  
Page 2.

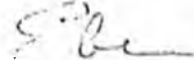
by the existence of this archaic rule which was more appropriate to Victorian morality. At present, the courts in this state allow evidence of moral character of the prosecuting witness and as to her reputation for chastity and virtue "to aid the jury in determining whether her story is true or false, and the act of intercourse voluntary or against her will".

This is upon the theory that "a woman who is chaste and virtuous will be less likely to consent to an act of illicit carnal intercourse than one who is unchaste". (quote from our present jury instructions).

Having personally observed in these trials that the young women who were the victims of the rapes charged were, beyond my reasonable doubt raped, notwithstanding evidence of their rather easy sexual life style, it is my view that such evidence should no longer be allowed in rape prosecutions except in those rare instances where it would be directly relevant to the crime charged. The legislatures of California, Iowa and Michigan, and several other states took it upon themselves in 1974 to abolish this anachronism in the law in order to accomplish necessary justice.

I am concerned that the Supreme Court of this state may not be prepared at this time to accept an appeal from a trial under existing law where the trial judge declined to permit evidence of the prosecuting witness' "virtue" to be scrutinized. The legislature can take this step. It is time Alaska stopped putting the victim in rape cases on trial. I am enclosing xerox copies of the California, Iowa and Michigan Statutes in addition to a draft proposed statute I prepared for your convenience should you wish to file such a bill in the Alaska House. I will be pleased to discuss the matter further with you at any time convenient to you.

Sincerely,



Eben H. Lewis  
Superior Court Judge

EHL:b  
Encl.  
✓cc: Hon. Genie Chance