

HB

532

*News Miner Jan 30, 1980*

## *Bill would let some victims of sex crimes testify on tape*

News-Miner Bureau

JUNEAU—A bill to allow children who are victims of sex offenses to give testimony on videotape got a hearing Tuesday.

After a few minor amendments, House Bill 532 was ordered re-drafted as a committee substitute bill, with a fiscal note to be attached.

The bill would allow young victims of sex offenses, under age 16, to give testimony on videotape rather than in court.

Rep. Charlie Parr's House Judiciary Committee examined several legal questions regarding the procedure.

Parr, a Fairbanks Democrat, said the bill is modeled after a recent Florida law.

The thrust of the bill is to protect young victims from the trauma of appearing in a courtroom, and from having to repeat testimony.

By videotaping the testimony, the tape could be played to a jury, and the testimony preserved.

A key to the bill is that the defendant and defense attorney would be present during the videotaping and have full

opportunity to cross examine.

The victim could be called back to give additional testimony, but the original videotaping could help cut the number of times a child is questioned about the incident, the committee was told.

At one point, during a variety of arguments on legal questions, Parr said that while this is a novel approach, "the mere fact that we didn't have TV when bar rules were established" shouldn't preclude videotaping.

The videotaping would be restricted to the judge, the prosecutor the victim, the defendant and the defense attorney.

Among amendments the committee agreed to Tuesday were to increase the age limit to 16, instead of 11 as originally written, and to include sexual abuse of a minor.

That latter amendment would allow children who are sexually molested, but not raped, to testify on videotape.

Representatives from the state Department of Health and Social Services and AWARE, a sex-offense crisis intervention agency, both testified in support of the bill.



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT  
415 MAIN STREET, ROOM 402  
KETCHIKAN, ALASKA 99901

January 23, 1980

Chambers of  
THOMAS E. SCHULZ, Judge

Hon. Charles Parr  
Chairman, Judiciary Committee  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

Re: H.B. 532

Dear Representative Parr:

I have received a copy of H. B. 532 which authorizes the videotaping of testimony of young sexual assault victims. I think the Bill is an excellent idea and hopefully it can be passed by the Legislature this Session so that Rule 804 of the Rules of Evidence can be changed. I am wondering, however, if Sec. 12.45.047 (c) could be changed to allow the videotaping of the evidence prior to trial. I don't know why the Bill as presently written authorizes the videotaping of such evidence only after the trial has begun, and there may well be valid reasons for that, but trials, despite the best of planning give frequent interruptions in any event, and it seems to me that if we could videotape this evidence prior to trial, it could be presented to the jury in the normal course of events without having another built in interruption. Certainly, it would be more convenient to the jurors involved and probably other witnesses if a hearing could be held sometime shortly before trial to determine whether the videotaping was necessary, and if so, simply do it then, and have the evidence ready for the trial. Other than that, I would urge the Legislature to take affirmative action on this measure.

Very truly yours,

Thomas E. Schulz  
Superior Court Judge

TES:ri

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

Sally  
53839  
Requested  
to put in  
final form


POUCH Y. STA. E CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

MEMORANDUM

December 19, 1979

SUBJECT: Bill permitting the use of video-taped testimony of young victims of sexual assault (Work Order Number 7548)

TO: Representative Charles H. Parr, Chairman House Judiciary Committee

FROM: Donna Spragg Pegues  3525  
Co-Revisor of Statutes

Attached is a draft of the bill requested for the Judiciary Committee relating to the video-taping of the testimony of young victims of sexual assault. I have drafted the bill as an amendment to the Code of Criminal Procedure and have included the required references to the Rules of Court identifying this bill as a change to Rule 804, Rules of Evidence (exceptions to the hearsay rule).

As I noted in my memo of December 5, I am not really certain whether this bill involves a "change" to a rule or the adoption of a "new" rule. As you know, the legislature may change an existing court rule of practice and procedure by a two-thirds vote. (Art. IV, sec. 15, Alaska Constitution). However, the legislature may not adopt a new rule for the court. This request might be construed as initiating an entirely new rule.

However, I am have become convinced that the bill simply "changes" the exceptions to the hearsay rule and this conviction is supported by the language of Rule 802, Alaska Rules of Evidence which provides:

"Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Alaska Supreme Court, or by enactment of the Alaska Legislature."  
(Emphasis added.)

DSP:ljb

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 5, 1979

SUBJECT: Bill permitting the use of video-taped testimony of young victims of rape. (Work Order Number 7548)

TO: Representative Charles H. Parr, Chairman House Judiciary Committee  
Attn: Margaret W. Berck  
Counsel to the House Judiciary Committee

FROM: Donna Spragg Pegues *[Signature]*  
Co-Revisor of Statutes

This request has been assigned to me for drafting. I am writing to inform you that I believe the request involves a matter which is subject to court rule.

The manner of taking, preserving and presenting evidence of a witness in a criminal trial is a matter of practice and procedure which would properly be included either in the new court rules of evidence or in the court rules of criminal procedure.

As you know, the legislature may change an existing court rule of practice and procedure by a two-thirds vote. (Art. IV, sec. 15, Alaska Constitution). However, the legislature may not adopt a new rule for the court. This request apparently involves initiating an entirely new rule. See City of Valdez v. Valdez Development Co., 506 P.2d 1279, 1282 (1973), Leege v. Martin, 379 P.2d 447, 450 (1963).

I will not proceed further with this request until I hear from you. If you wish the bill prepared even though it involves court rule, we could consider whether it could be added to Rule of Evidence 804(b) (exceptions to hearsay rule) as a "change" to that rule. (*[Signature]* 2/3 vote of the legislature)

DSP:ljb

*Charlie, I will request this on Dec. 7, 1979. MMB*

POSITION PAPER

HOUSE BILL NO. 532

"An Act permitting the videotaping of testimony of young victims of sexual assault; and changing Rule 804, Alaska Rules of Evidence relating to exceptions to the hearsay rule."

House Bill No. 532 allows for victims of sexual assault who are 11 years of age or younger to provide testimony out of court through videotape means when there is likelihood the child will suffer severe emotional distress if required to testify in open court. It further specifies that the trial judge shall preside at the videotape proceedings and shall rule on all questions as if at trial, and specifies at what point testimony will take place, if granted. In addition, this Bill changes Rule 804, Alaska Rules of Evidence, specifying this as an exception to the hearsay rule.

For young children to provide testimony in open court can be a very trying experience, with the potential for long-lasting emotional harm. The provisions of this Bill would enable a child to avoid some of the more traumatic elements of providing testimony. Therefore, the Department of Health and Social Services is supportive of House Bill No. 532.

RECOMMENDED BY: Art Holmberg DATE: 1/23/80  
Art Holmberg, Director  
Division of Social Services

APPROVED BY: Helen D. Beirne DATE: 1-29-80  
Helen D. Beirne, Commissioner  
Department of Health and Social Services

RECEIVED  
JAN 24 1980

Management and Budget Section

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 532  
 Title An Act permitting the videotaping of testimony of young victims of sexual assault:...  
 Requested by \_\_\_\_\_ Date January 23, 1980

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected Social Services  
 BRU, Program, or Subprogram(s) Affected Social Services  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0
	0	0	0	0	0	0
	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This Bill has no fiscal impact on the Department of Health and Social Services.

IV. DATE January 23, 1980 PREPARED BY Art Holmberg Art Holmberg  
 AGENCY Dept. of Health & Social Services/ Div. Soc. Svcs.  
 PHONE 465-3170

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

*Reviewed by Michael Ouelo  
 Division of Mgt & Budget  
 DHSS 1/24/80*

? Comment  
Corrections  
? - Comment

Introduced: 1/15/80  
Referred: Judiciary

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 HOUSE BILL NO. 532  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 ELEVENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act permitting the videotaping of testimony of  
7 young victims of sexual assault; and changing Rule 804,  
8 Alaska Rules of Evidence relating to exceptions to the  
9 hearsay rule."

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. 12.45.047. OUT-OF-COURT TESTIMONY BY YOUNG VICTIM OF SEXUAL  
13 ASSAULT. (a) After notice to the defendant, the state may apply to the  
14 court for an order allowing out-of-court videotaping of the testimony of  
15 a child who is the alleged victim of sexual assault, in any degree. The  
16 order may be granted if the court finds that

17 (1) the child was 11 years of age or younger at the time of  
18 the sexual assault; and

19 (2) there is a substantial likelihood that the child will  
20 suffer severe emotional distress if required to testify in open court at  
21 the trial.

22 (b) If the order is granted, the trial judge shall preside at the  
23 out-of-court proceeding and shall rule on all questions as if at trial.

24 (c) Videotaped evidence taken in accordance with this section may  
25 be taken only after the trial has begun and is admissible in evidence in  
26 the criminal trial for sexual assault in any degree.

27 \* Sec. 2. Section 1 of this Act has the effect of changing Rule 804,  
28 Alaska Rules of Evidence by adding the out-of-court videotaped evidence of a  
29 young victim of sexual assault to the list of exceptions to the hearsay rule.


SEXUAL OFFENSES

CRIME	FORCE	AGE, CAPACITY OR RELATIONSHIP	PENALTY
Sexual Assault I 11.41.410	"Sexual penetration" "without consent"		"A" felony  0-20
	(a) (1) -----		
	(a) (2) Attempted "sexual penetration" "without consent" and "serious physical injury"		
	(a) (3) -----	"Sexual penetration" between defendant 16 or older and victim under 13	
(a) (4)		"Sexual penetration" between defendant 18 or older with victim under 18 who is son or daughter or under his care by law	
Sexual Assault II 11.41.420	"Sexual contact" by threat of, or causing death, "physical injury" or kidnapping or threat to kidnap anyone, regardless of whether victim resists		"B" felony  0-10
Sexual Assault III 11.41.430		Sexual penetration with person "known" to be suffering from mental disorder or defect or is "incapacitated"	"C" felony  0-5
Sexual Abuse of a Minor 11.41.440		"Sexual penetration" between defendant 16 or older with victim 13-16 or "sexual contact" between defendant 16 or older with victim under 13	"C" felony  0-5
Contributing to Delinquency of Minor 11.51.130		"Sexual contact" between def- endant 19 or older with victim 13-16	A Misdemeanor  0-1

**BILL ANALYSIS**

ASSIGNMENT DATE \_\_\_\_\_

UNASSIGNED \_\_\_\_\_

DEPARTMENT Public Safety	SPONSOR (PRINCIPAL) Judiciary Committee	BILL NO. HB 532
DEPARTMENT POSITION  Support		
DIVISION DIRECTOR Col. Tom Anderson	DATE 1-23-80	COMMISSIONER for William R. Nix
		DATE 1-23-80
GOVERNOR'S OFFICE USE		
<input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED		
BY: _____ DATE: _____		
SUMMARY		
(1) RELATED BILLS (SIMILAR OR CONFLICTING)		
(2) OTHER AGENCIES AFFECTED BY BILL		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unk.		Unk.
(3) PROGRAM EFFECTS OF BILL		
None		
(4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED:		
None		

(6) COMMENTS:

This bill will alleviate some of the emotional distress on the part of the child when testifying and will probably result in a higher degree of cooperation on the part of the parents, knowing that the testimony will not be taking place in open court.



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Legislative Affairs Agency  
FROM: Margaret W. Berck, Staff *MMB*  
DATE: February 4, 1980  
RE: Request for (H) Judiciary Committee CS for HB 532 (Final Version)  
-----

Please provide a House Judiciary Committee CS for HB 532 in accordance with the attached mark-up.

Additionally, the Committee has one question for the drafter. The Committee noted that the bill speaks in terms of "out-of-court" testimony and it was pointed out to the Committee that since the testimony would be given in the presence of the judge, that in effect is in-court testimony. Although the Committee determined not to submit an amendment on this point, it did request me to bring this to the attention of the drafter. Should the drafter conclude that this is a problem, the drafter is requested to resolve it in the requested CS. (Feel free to call me if I have not made myself clear on this point.)

*Note to file:  
need to prepare  
"O" fiscal  
note from  
court system.*

Introduced: 1/15/80  
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 532

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting the videotaping of testimony of  
7 young victims of sexual assault; and changing Rule 804,  
8 Alaska Rules of Evidence relating to exceptions to the  
9 hearsay rule."

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. 12.45.047. OUT-OF-COURT TESTIMONY BY YOUNG VICTIM OF SEXUAL  
13 ASSAULT. (a) After notice to the defendant, the state may apply to the  
14 court for an order allowing out-of-court videotaping of the testimony of  
15 a child who is the alleged victim of sexual assault in any degree. *or who is the Alleged victim of sexual abuse of a minor.* The  
16 order may be granted if the court finds that

17 (1) the child was <sup>16</sup> ~~11~~ years of age or younger at the time of  
18 the sexual assault; and

19 (2) there is a substantial likelihood that the child will  
20 suffer severe emotional distress if required to testify in open court at  
21 the trial.

22 (b) If the order is granted, the trial judge shall preside at the  
23 out-of-court proceeding and shall rule on all questions as if at trial.

24 (c) Videotaped evidence taken in accordance with this section ~~may~~  
25 ~~be taken only after the trial has begun and is~~ admissible in evidence in  
26 the criminal trial for sexual assault in any degree.

27 \* Sec. 2. Section 1 of this Act has the effect of changing Rule 804,  
28 Alaska Rules of Evidence by adding the out-of-court videotaped evidence of a  
29 young victim of sexual assault to the list of exceptions to the hearsay rule.

Introduced: 1/15/80  
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 532

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting the videotaping of testimony of  
7 young victims of sexual assault; and changing Rule 804,  
8 Alaska Rules of Evidence relating to exceptions to the  
9 hearsay rule."

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. 12.45.047. OUT-OF-COURT TESTIMONY BY YOUNG VICTIM OF SEXUAL  
13 ASSAULT. (a) After notice to the defendant, the state may apply to the  
14 court for an order allowing out-of-court videotaping of the testimony of  
15 a child who is the alleged victim of sexual assault in any degree. The  
16 order may be granted if the court finds that

17 (1) the child was 11 years of age or younger at the time of  
18 the sexual assault; and

19 (2) there is a substantial likelihood that the child will  
20 suffer severe emotional distress if required to testify in open court at  
21 the trial.

22 (b) If the order is granted, the trial judge shall preside at the  
23 out-of-court proceeding and shall rule on all questions as if at trial.

24 (c) Videotaped evidence taken in accordance with this section may  
25 be taken only after the trial has begun and is admissible in evidence in  
26 the criminal trial for sexual assault in any degree.

27 \* Sec. 2. Section 1 of this Act has the effect of changing Rule 804,  
28 Alaska Rules of Evidence by adding the out-of-court videotaped evidence of a  
29 young victim of sexual assault to the list of exceptions to the hearsay rule.

Original sponsor: Judiciary Committee

Offered: 2/11/80  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 532

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting the videotaping of testimony of  
7 young victims of sexual assault or sexual abuse of a  
8 minor; and changing Rule 804, Alaska Rules of Evidence  
9 relating to exceptions to the hearsay rule."

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. 12.45.047. VIDEOTAPING OF TESTIMONY BY YOUNG VICTIM OF SEXUAL  
13 ASSAULT OR SEXUAL ABUSE. (a) After notice to the defendant, the state  
14 may apply to the court for an order allowing videotaping of the testi-  
15 mony of a child who is the alleged victim of sexual assault in any  
16 degree or who is the alleged victim of sexual abuse of a minor. The  
17 order may be granted if the court finds that

18 (1) the child was 16 years of age or younger at the time of  
19 the sexual assault; and

20 (2) there is a substantial likelihood that the child will  
21 suffer severe emotional distress if required to testify in open court at  
22 the trial.

23 (b) If the order is granted, the trial judge shall preside at the  
24 videotaping proceeding and shall rule on all questions as if at trial.

25 (c) Videotaped evidence taken in accordance with this section is  
26 admissible in evidence in the criminal trial for sexual assault in any  
27 degree or for sexual abuse of a minor.

28 \* Sec. 2. Section 1 of this Act has the effect of changing Rule 804,  
29 Alaska Rules of Evidence by adding the videotaped evidence of a young victim

1 of sexual assault or sexual abuse of a minor to the list of exceptions to the  
2 hearsay rule.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29