SB
547

Introduced: 5/5/81
Referred: Judiciary

BY ~~BRADLEY, DANKWORTH, ELIASON, FISCHER, GILMAN, KELLY AND STIMSON.~~ DYER AND FISHER

IN THE SENATE

SENATE BILL NO. ~~547~~ 446 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 12.45 is amended by adding new sections to read:

Sec. 12.45.047. VIDEOTAPING OF TESTIMONY BY YOUNG VICTIM OF SEXUAL ASSAULT OR SEXUAL ABUSE. (a) After notice to the defendant, the state may apply to the court for an order allowing videotaping of the testimony of 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 order may be granted if the court finds that

(1) the child was 16 years of age or younger at the time of the ~~sexual assault; and~~ THAT TESTIMONY IS GIVEN;

(2) there is a substantial likelihood that the child will suffer severe emotional distress if required to testify in open court ~~at the trial~~; there is a presumption that a child who is under the age of 16 at the time of an alleged sexual assault or sexual abuse will suffer severe emotional distress if required to testify in open court, which may only be overcome by the presentation of evidence to the contrary at the time the application for an order excluding the public is considered.

(b) If the order is granted, the trial judge shall preside at the

INCEST 11.41.450 i 11.41.455 UNLAWFUL EXPLOITATION OF A MINOR

VIDEOTAPING

Judge. Rules which individuals are present besides Δ and Δ's Attorney

videotaping, proceeding and shall rule on all questions as if at trial. The defendant shall be afforded all rights applicable to defendants during trial, including the right to an attorney and the right to confront and cross-examine the witness.

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

Sec. 12.45.048. EXCLUSION OF PUBLIC FROM TRIAL DURING TESTIMONY BY YOUNG VICTIM OF SEXUAL ASSAULT OR SEXUAL ABUSE. (a) After notice to the defendant, the state may apply to the court for an order excluding the public from the courtroom during the testimony of 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 order may be granted if the court finds that

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

(2) there is a substantial likelihood that the child will suffer severe emotional distress if required to testify in open court at the trial; there is a presumption that a child who is under the age of 16 at the time of the alleged sexual assault or sexual abuse will suffer severe emotional distress if required to testify in open court, which may only be overcome by the presentation of evidence to the contrary at the time the application for an order excluding the public is considered.

(b) In this section "public" means all persons except

(1) the judge presiding over the trial;

(2) the members of the jury;

(3) the defendant and his counsel;

(4) counsel for the state;

Is it possible to require the court to videotape the testimony uninterrupted and then rule on which sections will be admitted?

(5) counsel for the child;

(6) the parents or legal guardians of the child; and

(7) court personnel essential for the taking of the testimony.

* Sec. 2. AS 12.45.047 added by sec. 1 of this Act has the effect of changing Rule 804, Alaska Rules of Evidence by adding the videotaped evidence of a young victim of sexual assault or sexual abuse of a minor to the list of exceptions to the hearsay rule.

VIDEOTAPE IS TRANSCRIBED AT THE CONCLUSION OF THE APPELLATE PROCESS AND DESTROYED

COMMITTEE REPORT

SENATE

FURTHER: None

5/5/81

Date: Jan. 29 19 82

Mr. President:

The Committee on JUDICIARY has had SB 547 permitting videotaping of, or the exclusion of the public during, testimony of young victims of sexual assault

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB547 [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATION

_____

CHAIRMAN

S 60 (Rev. 12/78)

SB485, SB547

3460 Barry Stern / Vic Krumm – Attorney General's
3030 Nina Kinney – Dept. HSS
586-6623 Karen Robinson – Women's Shelter
Jana Varrati – ~~Women~~ AWAIC
586-2977 ~~Victoria Wheeler~~ – Women's Resource Center
Deborah Keller
4338 Paul Conger – Dept. of Public Safety
279-7541 Bob Stokes – Public Defender

SB 535

3460 Barry Stern – Dept. of Law
4338 Paul Conger – Dept. Public Safety
Gordon Evans – Birch-Horton
279-7541 Bob Stokes – Public Defender
279-2526 Nick Marcoules – AK Sudden Council
264-0550 Dick Deplanplane (sp?) – Alaska Court System
called for info 1-18-82

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

JANUARY 29, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 535 - "An Act relating to the criminal laws of the state."

SB 485 - "An Act permitting the videotaping of testimony of young victims of sexual assault or sexual abuse of a minor; and changing Rule 804, Alaska Rules of Evidence relating to exceptions to the hearsay rule."

SB 547 - "An Act permitting the videotaping of, or the exclusion of the public during, testimony of young victims of sexual assault or sexual abuse of a minor; and changing Rule 804, Alaska Rules of Evidence relating to exceptions to the hearsay rule."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Ray, and Parr. Senators Hohman and Bennett were absent.

The first item on the agenda was CSSB 485. Mr. Bruce explained the committee substitute draft. Mr. Victor Krumm, Department of Law testified in favor of this committee substitute.

Senator Ray moved that CSSB 485 pass from committee with a do pass. There was not objection and the bill was signed out of committee.

Chairman Rodey next brought CSSB 547 before the committee. Mr. Bruce explained the committee substitute. Mr. Victor Krumm, Department of Law testified in favor of CSSB 547.

Senator Ray moved to make the following amendment: Pg. 1, Line 15, add "under" before the word "16"; delete "or younger" between the words "age" and "at". On Pg. 2, Line 5, add "including those" before the word "essential". There was not objection to the amendment and it was adopted.

Victor Krumm suggests having the bill include court discretion to exclude the public from testimony of minors who are testifying.

Senator Bennett enters the room and his presence was noted for the record.

Senator Ray refers to Mr. Krumm's suggestion and suggests putting it in another bill to avoid any problems.

Chairman Rodey next called Ms. Paula Haley, testifying for the Alaska Network on Domestic Violence, before the committee. She stated that the Network was in support of CSSB 547.

Senator Ray moved that CSSB 547, as amended, be moved from committee. There was no objection and the bill was signed from committee.

Chairman Rodey next brought CSSB 485 before the committee for reconsideration. Senator Ray moved that on Pg. 1, Line 16, the word "under" be added before the word "16" and "or younger" between the words "age" and "at" be deleted. There was no objection to the amendment and it was adopted.

Senator Ray moved that CSSB 485, as amended, be passed from committee. There was no objection and the bill was passed.

The last item on the agenda was CSSB 535.

Testimony was heard from Barry Stern, representing the Department of Law. He relayed to the committee the Department's recommendations.

After having discussion on the bill, Chairman Rodey held CSSB 535 over and adjourned the meeting at 2:35 P.M.

Should Minor's Testimony Be Secret?

Court Faces Rape Victim Privacy Issue

By David Lauter
National Law Journal Staff Reporter

WASHINGTON — The issue of how much privacy to give the victims of rape — one of the most onerous questions a newspaper editor faces — has been placed before the Supreme Court.

The court has agreed to hear a challenge to a Massachusetts law that mandates closed courts during the testimony of rape victims who are minors. The case gives the court an opportunity to clear up what many lawyers consider serious contradictions between two earlier press freedom cases.

As interpreted by the Massachusetts Supreme Judicial Court, the commonwealth's law mandates closure of the court to press and public during testimony of a minor in rape cases and gives the trial judge discre-

More Supreme Court News: See Page 20

on to close the rest of the trial and to seal the trial transcript. The Supreme Court has agreed to take jurisdiction on an appeal by the Globe Newspaper Co., publisher of the Boston Globe, from a decision by the Massachusetts high court upholding the constitutionality of the law. *Globe Newspaper Co. v. Superior Court for the County of Norfolk*, 81-611.

In two recent cases, the Supreme Court has ruled that the Sixth Amendment does not guarantee press access to pretrial hearings but that the First Amendment may guarantee access to trials. The Globe maintains that both amendments should be read to forbid a law that orders courts closed without hearing [illegible]

that the two decisions are hard to reconcile.

Although *Gannett* concerned only pretrial proceedings, many reporters and attorneys have concluded that the court's ruling eliminated any hope that the press could sustain a Sixth Amendment claim of access to trials. But Globe attorney James F. McHugh of Boston's Bingham, Dana & Gould, said he disagreed with that impression, and the Globe has pressed both First and Sixth Amendment claims.

Press attorney Floyd Abrams of New York's Cahill Gordon & Reindel agreed with Mr. McHugh's decision. "The jurisprudential underpinnings of *Gannett* have been so eroded by *Richmond* that I think it was a sound decision," Mr. Abrams said.

Mr. Abrams ascribed the apparent contradictions in the court's opinions to the lack of "a perfect fit under either the Sixth Amendment or the First Amendment." On the other hand, he said, the justices appear to agree that "the notion that courts may routinely be closed is anathema to our history and is unacceptable in practical terms."

The nature of the Globe's arguments should allay the fears of many in the press that in appealing to the current Supreme Court the Globe may be jeopardizing the rights the press already has established, Mr. Abrams said.

The Globe has not challenged a judge's right to close rape trials in some cases, but has concentrated its argument on the mandatory nature of the Massachusetts law, arguing that the law must at least provide for a hearing to consider whether other methods short of closing the court could be used to protect victims' privacy and further the state's interest in encouraging rape victims to testify.

The Massachusetts high court accepted state arguments that hearings inevitably would become detailed "side trials" that would subject the potential witnesses to exactly the sort of pressure the law was designed to avoid. The Globe has argued that such extensive hearings would not be required in all cases. Mr. McHugh conceded that the nature of the hearings the Globe would consider sufficient will need more clarification.

County of Norfolk, 81-611.

In two recent cases, the Supreme Court has ruled that the Sixth Amendment does not guarantee press access to pretrial hearings but that the First Amendment may guarantee access to trials. The Globe maintains that both amendments should be read to forbid a law that orders courts closed without a hearing regardless of whether the defendant or the victim desires closure. Attorneys for both the Globe and the state agree that the mandatory aspect of the Massachusetts law appears to be unique.

In the case that gave rise to the Globe's challenge, Albert T. Aladjem Jr. was charged with raping and sodomizing three high school girls, aged 15, 16 and 17, in Wellesley, Mass. *Commonwealth v. Aladjem*, 73102-9. The entire trial, in which Mr. Aladjem was acquitted, was closed by Judge Robert V. Mulkern. Defense counsel noted exceptions to the judge's order excluding the public, and the district attorney in the case said, after consulting with the alleged victims, that the state would waive its rights to exclude the press.

A Personal Right

Exactly what rights the press and public have to attend trials has remained unclear despite two previous Supreme Court rulings. In 1979, in *Gannett v. DePasquale*, 443 U.S. 368, the court held that the Sixth Amendment's guarantee of a "public trial" is a personal right of the defendant that can be waived and that the press cannot invoke to gain access to pretrial hearings. But in 1980, in *Richmond Newspapers v. Virginia*, 448 U.S. 555, the court ruled that the right to attend criminal trials was, at least in most cases, guaranteed by the First Amendment.

No opinion commanded a majority in the Richmond case, and the court did not clarify the circumstances under which a judge could close a trial. Moreover, although *Richmond*, which concerned trials, did not overrule *Gannett*, which concerned pretrial hearings, many press attorneys find

Alaska Network on Domestic Violence and Sexual Assault
P.O. Box 3356, ANCHORAGE, ALASKA 99510

POSITION PAPER: Senate Bills 547 and 485

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit corporation composed of 17 domestic violence, sexual assault, and adult crisis intervention programs throughout the State. Network programs are funded in part through grants and contracts awarded by the recently established Council on Domestic Violence and Sexual Assault in the Department of Public Safety.

Network programs have had extensive experience dealing with the issue of sexual assault: programs are usually contacted directly by the victim after an assault, and program counselors and advocates participate in the entire reporting and judicial process. Additionally, some programs have established court monitoring programs in order to evaluate both judges' sentencing practices and convictions by jurors. Network programs also provide services to victims who choose not to report sexual assaults.

Based on experience with the issue and concern for the treatment of sexual assault victims and experience with the criminal justice system, the Network offers the following remarks regarding SB 547 and SB 485.

A. SB 547

1. The Network supports the purpose and principle of SB 547 to protect young victims of sexual assault or sexual abuse of a minor from the emotional distress of repeated or public testimony regarding the crime committed against her or him for the following reasons:

   a. Legislation of this kind protects a young victim of sexual assault from having to repeatedly re-live the experience of the sexual assault;

   b. This type of legislation protects the victim from suffering the initial feelings of shock experienced after the assault;

   c. Legislation of this kind generally mitigates the increased suffering from rape trauma syndrome which occurs as a result of the telling and re-telling of the story of the assault; and

   d. This kind of legislation makes the criminal proceedings less of a public humiliation and ordeal for the victim.

2. The Network also believes that such legislation fairly and intelligently balances the rights of the defendant and the rights of the victim. It offers a degree of protection to the victim of the assault, while leaving intact the defendant's rights to cross-examine and confront the victim.

3. This legislation will facilitate reporting and prosecution of sexual assault by providing the victim with necessary protection and lessening the trauma associated with criminal proceedings.

4. The Network believes that SB 547 is timely legislation which will be found to be constitutional. Other states have enacted similar legislation:

i. New Mexico
ii. Florida; and
iii. Massachusetts

Although the Massachusetts statute is presently being constitutionally challenged, SB 547 is distinguishable since it does not require mandatory closed hearings as the Massachusetts statute does.

5. Although the Network supports the concept behind SB 547, there are certain specific areas requiring further legislative attention. These include:

a. The crime of Incest (AS 11.41.450), a class C felony, is not included in either the videotaping of the exclusion of the public sections of the bill. Incest victims are often children and they should be afforded the same protection as sexual assault and sexual abuse of a minor victim.

b. SB 547 uses, as part of the standard for exclusion of the public or for videotaping testimony, the age of the child at the time of the assault. The Network suggests that the age of the victim at the time of testimony at the criminal proceedings be determinative, since this is the time when the victim will be subjected to the trauma and invasion of privacy associated with testimony. Further, we recommend that the age limit should be 18 years of age, rather than 16 years, since 18 years is the age of majority.

c. The Network would like to see a definition of "severe emotional distress" included in SB 547 since this is an amorphous concept and is used as part of the standard for both exclusion of the public and for videotaping testimony and we would be happy to work with committee staff to develop such a definition, if you so desire.

d. The presumption in Secs. 12.45.047 (a) (2) and 12.45.048 (a) (2) that a child who is under age 16 will suffer severe emotional distress if required to testify in open court should be omitted. Instead, the decision should be within the judge's discretion. This will lessen the possibility of constitutional challenges and still protect the victim.

e. Sec. 12.45.047 (a) (2) concerns videotaping, yet it appears that it also deals with exclusion of the public (page 1, line 27). Is there a dual purpose in this section? Does the bill give the judge the flexibility to order videotaping plus a closed courtroom or simply videotaping a victim's testimony which will be shown later in an open courtroom? The Network suggests the following persons be present during the videotaping and trial:

i. Judge;
ii. Defendant and counsel;
iii. Counsel for the state;
iv. Advocate for the child (i.e., victim-witness assistance person, attorney or rape crisis center staff person);
v. Parents or guardian of child; and
vi. Court personnel essential for taking of the testimony.
VII. Jury

TAKE UP AT END OF STATUTE W.

f. Because SB 547 may be subject to a successful constitutional challenge, the Network advocates addition of a severability clause to the bill, which would provide that if one section of the statute were found unconstitutional, it could be eliminated, while the rest of the statute would remain in effect. The severability clause is especially important if the presumption language in Secs. 12.45.047 (a) (2) and 12.45.048 (a) (2) is retained.

g. Regarding Sec. 12.45.048 Exclusion of Public, (b) on line 25. The Network suggests that the definition of "public" be expanded to include the advocate for the child as stated earlier in this testimony regarding videotaping. We believe it is especially important for child victims of sexual assault to have emotional support throughout the criminal proceedings. Their advocates from rape crisis centers or victim-witness assistance programs who have worked with them throughout the crisis should be present during the proceedings. This is very important in incest situations where the non-offending parent is often suffering from tremendous personal stress and trauma and may be unable to adequately support their child.

h. Concern has been expressed within the Network over disposition of the videotape. To mitigate the invasion of privacy the victim suffers, we recommend that the tape be transcribed into a written record and be destroyed after the defendant has exhausted the appeals process; or that the tape be ordered sealed by the judge.

- B. SB 485

1. The comments regarding SB 547 are applicable to SB 485, the only difference in the bills being that the exclusion factor is not present in SB 485.

30-9-16. Testimony; limitations; in camera hearing.

Section is not unconstitutional on its face. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

The fact that this section attempts to regulate practice and procedure in district courts in regard to a victim's past sexual conduct does not mean that the legislation is unconstitutional in that it violates the provisions for separation of governmental power. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

Section not in conflict with rules. — The procedures in this section do not conflict, but rather are consistent, with Rule 36, N.M.R. Crim. P., regarding pretrial hearings. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

The balancing approach to be applied in admitting evidence concerning past sexual conduct under this section does not conflict, but rather is consistent, with Rule 403, N.M.R. Evid. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

Once a showing sufficient to raise an issue as to relevancy of past sexual conduct is made, the balancing test of this section and of Rule 403, N.M.R. Evid. is to be applied in determining admissibility. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

There is no conflict between this section and Rule 405, N.M.R. Evid., regarding methods of proving character, because the balancing approach of Rule 403, N.M.R. Evid. is also applicable to evidence admissible under Rule 405, N.M.R. Evid. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

Section is not limited to sex by consent; rather, its unlimited wording applies to all forms of past sexual conduct, so that a prior rape is past sexual conduct within the meaning of this section. State v. Montoya, 91 N.M. 752, 580 P.2d 973 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

Victim's past sexual conduct in itself indicates nothing concerning consent in particular case. State v. Herrera, 92 N.M. 7, 582 P.2d 384 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

Am. Jur. 2d, A.L.R. and C.J.S. references.

Modern status of admissibility, in forcible rape prosecution, of complainant's prior sexual acts, 94 A.L.R.3d 257.

Modern status of admissibility, in forcible rape prosecution, of complainant's general reputation for unchastity, 95 A.L.R.3d 1181.

30-9-17. Videotaped depositions of alleged victims who are under sixteen years of age; procedure; use in lieu of direct testimony.

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of Rule 611 of the New Mexico Rules of Evidence. Any videotaped deposition taken under the provisions of this act [this section] shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act [this section].

D. The cost of such videotaping shall be paid by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: 1953 Comp., § 40A-9-27, enacted by Laws 1978, ch. 98, § 1.

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and provided further, that the defendant in such trial by a written statement waives his right to a public trial for those portions from which spectators are so excluded.

Added by St.1978, c. 316.

1978 Enactment. St.1978, c. 316, was approved June 30, 1978.

Library References
Criminal Law ⇐635.
C.J.S.Criminal Law § 963.

§ 17. Repealed by St.1979, c. 344, § 43B

St.1979, c. 344, § 43B, an emergency act, repealing this section, was approved June 30, 1979, and by section 51 made effective July 1, 1979.

Prior to repeal, this section was amended by St.1978, c. 478, § 301.

See, now, c. 277, § 47A; Mass.R.Crim.P. Rule 13.

§ 18. Appeals in criminal cases to jury-of-six sessions; recognizance

Whoever is found guilty of a crime before a justice in a district court, or in the municipal court of the city of Boston, having filed the written waiver of trial by jury in the first instance provided by section twenty-six A of chapter two hundred and eighteen, may appeal the finding of guilty or the sentence imposed thereon to a jury-of-six session in accordance with section twenty-seven A of chapter two hundred and eighteen, and at the time of such finding of guilty or sentencing shall be notified of his right to take such appeal. The case shall be entered in the jury-of-six session on the return day next after the appeal is taken, and the appellant shall be released on personal recognizance or committed, in accordance with the procedures set forth in section fifty-eight of chapter two hundred and seventy-six, until he recognizes to the commonwealth, in such sum and with such surety or sureties as the court requires, with condition to appear at said jury session on said return day and at any subsequent time to which the case may be continued, if not previously surrendered and discharged, and so from time to time until the final sentence, order or decree, and not depart without leave, and in the meantime to keep the peace and be of good behavior. If the appellant is not released on personal recognizance and is committed for failure to recognize, the superior court shall thereupon have jurisdiction of the case only for the purpose of revising the amount of bail required as aforesaid. The appellant shall not be required to advance any fee upon claiming his appeal or in prosecuting the same. Notwithstanding any other provision of law, a defendant after a finding of guilty, jury-waived, in a district court, or the municipal court of the city of Boston, may appeal therefrom and shall thereafter be entitled to a trial de novo in a jury-of-six session in accordance with said section twenty-seven A.

Amended by St.1973, c. 657; St.1974, c. 161; St.1978, c. 478, § 302.

1973 Amendment. St.1973, c. 657, approved Aug. 20, 1973, in the first sentence, inserted "the finding of guilty or the sentence imposed thereon" and "or may appeal to and claim a jury of six in a district court in accordance with section twenty-seven A of chapter two hundred and eighteen"; in the second sentence, substituted "released on personal recognizance or committed, in accordance with the procedures set forth in section fifty-eight of chapter two hundred seventy-six" for "committed to abide the sentence of said court"; in the third sentence, inserted "is not released on personal recognizance and"; deleted the former fourth sentence; and added the last sentence.

1974 Amendment. St.1974, c. 161, approved May 2, 1974, substituted "found guilty" for "convicted" and "such finding of guilt or sentencing" for "conviction" in the first sentence.

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Superior Court (1980) 401 N.E.2d 360, 1980 Mass.Adv.Sh. 485.

5. Public trial

In prosecution for four counts of rape of a child under 16 years of age, where defendant claimed that he was denied his right to public trial because judge excluded public from his entire trial, burden was on defendant to demonstrate that public was excluded from trial after minor victims testified, but defendant was not obligated to demonstrate that he was prejudiced by closing of balance of his trial. Com. v. Williams (1980) 401 N.E.2d 376, 1980 Mass. Adv.Sh. 515.

Defendant did not demonstrate his trial on four counts of rape of a child under 16 years of age was improperly closed, but remand was necessary for a determination of extent to which trial was closed to public, and, if it was, for consideration whether defendant properly waived his right to public trial, through his actions or actions of his counsel. Id.

7. Stage of proceedings

This section providing for exclusion of public from trial for sex offenses involving minors under age of 18 mandatorily requires closure of trial during victim's testimony. Globe Newspaper Co. v. Superior Court (1980) 401 N.E.2d 360, 1980 Mass. Adv.Sh. 485.

In sex offenses involving minors under age of 18, Commonwealth bears burden of showing necessity for a closure of parts of trial other than victim's testimony or foreclosure of entire trial. Id.

In case in which this section providing for exclusion of public from trial for sex offenses involving minors under age of 18 applies, Commonwealth may move for closure of parts of trial other than victim's testimony or foreclosure of entire trial. Id.

This section providing for exclusion of public from trial for sex offenses involving minors under age of 18 relates to closure of trial only during victim's testimony. Id.

8. Objections

Public need not receive prior notice of closure hearing for sex offenses involving minors under age of 18; however, court should hear a person who in timely fashion informs court of his desire to object to closure. Globe Newspaper Co. v. Superior Court (1980) 401 N.E.2d 360, 1980 Mass. Adv.Sh. 485.

Any person to be excluded from the trial of sex offenses involving minors under age of 18 other than during victim's testimony should have opportunity to state objections to order; such person need not file formal motion to intervene. Id.

9. Findings

On conclusion of hearing requesting exclusion of public from trial for sex offenses involving minors under age of 18 during other than victim's testimony, judge should make findings of fact as appropriate and should rule on necessity for closure. Globe Newspaper Co. v. Superior Court (1980) 401 N.E.2d 360, 1980 Mass.Adv.Sh. 485.

§ 16B. Exclusion of public from trial of criminal proceeding involving husband and wife

1. In general

Only in most extreme situations, if at all, may state court constitutionally forbid newspaper or anyone else to report or comment on happenings in and about proceedings which have been held in open court; a similar rule applies to court files otherwise unrestricted. Ottaway Newspapers, Inc. v. Appeals Court (1977) 362 N.E.2d 1189, 372 Mass. 539.

"General principle of publicity" is applicable in regard to record in a case; it is only in a clearly meritorious case that impoundment can be contemplated. Id.

Statutes which limit or authorize limitation of access to court proceedings and official records do not preclude exercise by judges of a sound discretion to impose reasonable cloture, including impoundment, in other cases when found necessary. Id.

§ 16C. Exclusion of public from trial involving crime of incest or rape

To protect the parties involved at a trial arising from a complaint or indictment for incest or rape, the trial judge may exclude all spectators from the courtroom in which such trial is being held, or from said courtroom during those portions of such trial when direct testimony is to be presented; provided, that either of the parties requests that all spectators be so excluded at the trial or portions thereof;

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dicts finding defendant guilty of murder in the second degree and not guilty of armed robbery were not inconsistent. Id.

12.5 Instructions

Evidence in prosecution for armed robbery, did not require instruction on issue of defendants' guilt of lessor included offenses of unarmed robbery, larceny, or assault. Com. v. Hoge (1974) 311 N.E.2d 63, 365 Mass. 290.

Evidence in prosecution for, inter alia, larceny of a motor vehicle did not require instruction on issue of defendant's guilt of lesser included offense of use of motor vehicle without authority. Id.

Where defendant was charged with forcible rape of female under 16, but judge considered that evidence would have permitted finding either of forcible rape or of statutory rape as lesser included offense and instructed accordingly, he should have further instructed jury to specify offense should they find defendant guilty. Com. v. Franks (1976) 309 N.E.2d 879, 365 Mass. 74, appeal after remand 341 N.E.2d 660, 369 Mass. 601, appeal after remand 362 N.E.2d 895, 372 Mass. 866.

§ 16A. Exclusion of public from trial for sex offenses involving minors under age of eighteen

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2. In general

If closing all or part of trial for sex offenses involving minors under age of 18 were necessary to assure availability of evidence of fresh complaint, judge would be justified in ordering closure. Globe Newspaper Co. v. Superior Court (1980) 401 N.E.2d 360, 1980 Mass.Adv.Sh. 485.

Although this section providing for exclusion of public from trial for sex offenses involving minors under age of 18 is mandatory only as to victim's testimony, it is possible that trial judge might close other parts of trial; such decision to close any part of trial other than victim's testimony or to close entire trial is matter within judge's sound discretion. Id.

Because of the policy favoring publicity, an agreement between prosecution and defense to close a trial should not justify closure or even be relevant to judge's determination of necessity for a closure of trial for sex offenses involving minors under age of 18. Id.

Issue at a hearing on Commonwealth's motion to close parts or all of trial for sex offenses involving minors under age of 18 shall be whether such closure is necessary to preserve evidence required for just conviction. Id.

Only in most extreme situations, if at all, may state court constitutionally forbid newspaper or anyone else to report or comment on happenings in and about proceedings which have been held in open court; a similar rule applies to court files otherwise unrestricted. Ottaway Newspapers, Inc. v. Appeals Court (1977) 362 N.E.2d 1199, 372 Mass. 539.

"General principle of publicity" is applicable in regard to record in a case; it is only in a clearly meritorious case that impoundment can be contemplated. Id.

Statutes which limit or authorize limitation of access to court proceedings and official records do not preclude exercise by judges of a sound discretion to impose reasonable cloture, including impoundment, in other cases when found necessary. Id.

2.5 Purpose of law

Main purpose of this section, which provides for exclusion of general public from courtroom in trials involving sex crimes if the victim is under 18 years of age, is to assure that Commonwealth's case will not be destroyed by reason of witnesses' reluctance to testify before a miscellaneous audience. Com. v. Leo (1979) 393 N.E.2d 410, 1979 Mass.Adv.Sh. 2245.

Defendant, who was convicted of committing sexual offenses against 14-year-old girl, could not complain of an alleged violation of this section, in light of fact that such statute was not intended to benefit criminal defendants. Id.

3. Requisites of proceedings

Judge should hold hearing before entering order closing parts of trial other than victim's testimony under this section providing for exclusion of public from trial for sex offenses involving minors under age of 18. Globe Newspaper Co. v. Superior Court (1980) 401 N.E.2d 360, 1980 Mass. Adv.Sh. 485.

4. Persons with a direct interest

The press does not have a sufficiently "direct interest" to be exempt from this section providing for exclusion of public from trial for sex offenses involving minors under age of 18. Globe Newspaper Co. v.

SB 5407

under 18 years of age, quoted phrase must be interpreted broadly and is not limited to parties, but includes counsel, witnesses, stenographers and usual court attendants; and it does not exclude a parent, husband, wife or guardian of defendant, or even a friend, whose presence defendant desires and who might give him legitimate assistance or comfort without interfering with trial. Com. v. Blondin (1949) 87 N.E.2d 435, 324 Mass. 564.

5. Public trial

The guarantee to an accused of "public trial" is a safeguard against any attempt to employ courts as instruments of persecution, and knowledge that every criminal trial is subject to contemporaneous review in the form of public opinion is an effective restraint on possible abuse of judicial power. In re Oliver (1948) 68 S.Ct. 499, 333 U.S. 257, 92 L.Ed. 682.

Defendant whose counsel had requested that witnesses be sequestered and who had not asked his counsel to arrange to have particular available persons, friends, or relatives present at trial was not entitled to new trial on theory that he had been denied right to public trial. Com. v. Wells (1971) 274 N.E.2d 452, — Mass. —.

Excluding mother, sister, brother, and friend of defendant during trial for sex crimes was violation of Sixth Amendment which provides that in all criminal prosecutions accused shall enjoy the right to a speedy and public trial. Com. v. Marshall (1969) 253 N.E.2d 333, 356 Mass. 432, 39 A.L.R.3d 848.

Under Fourteenth Amendment, Sixth Amendment right to a public trial was applicable to defendant's trial for sex crimes in state court. Id.

6. Habeas corpus

On petition for writ of habeas corpus brought by a petitioner who had been convicted in Massachusetts court of rape and carnal abuse of a female child, evidence did not establish that commonwealth prevented petitioner's wife from testifying in behalf of petitioner at petitioner's trial. Melanson v. O'Brien (C.A.1953) 203 F.2d 934.

§ 16B. Exclusion of public from trial of criminal proceeding involving husband and wife

The presiding justice of a district court may exclude the general public from the court room during the trial of any criminal proceeding involving husband and wife.

Added by St.1949, c. 302.

Library References

Criminal Law ⇐635.
C.J.S. Criminal Law § 963.
Comments.
Exclusion of the public from certain trials, see M.P.S. vol. 30, Smith, § 1031.
Sequestration of witnesses, see M.P.S. vol. 10, Hughes, § 109.

Notes of Decisions

1. In general

Section 16A of this chapter providing that court may exclude general public admitting only such persons as may have a direct interest in trial, is to be strictly construed in favor of general principle of publicity. Com. v. Blondin (1949) 87 N.E.2d 435, 324 Mass. 564.

§ 16A. Exclusion of public from trial for sex offenses involving minors under age of eighteen

At the trial of a complaint or indictment for rape, incest, carnal abuse or other crime involving sex, where a minor under eighteen years of age is the person upon, with or against whom the crime is alleged to have been committed, or at the trial of a complaint or indictment for getting a woman with child out of wedlock, or for the non-support of an illegitimate child, the presiding justice shall exclude the general public from the court room, admitting only such persons as may have a direct interest in the case.

Historical Note

St.1923 c. 251. St.1931 c. 205.

Law Review Commentaries

Right to public trial. 17 Annual Survey of Mass.Law, Boston College, p. 263 (1970).

Library References

Criminal Law ⇐635.
C.J.S. Criminal Law § 903.
Comments.
Exclusion of public from certain trials, M.P.S. vol. 30, Smith, § 1031.
Sequestration of witnesses, see M. P.S. vol. 19, Hughes, § 100.

Notes of Decisions

In general 2
Habeas corpus 6
Persons with a direct interest 4
Public trial 5
Requisites of proceedings 3
Validity 1

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1. Validity

This section does not violate due process of law clause of federal Constitution. U.S.C.A.Const. Amend. 14. Melanson v. O'Brien (C.A.1951) 191 F.2d 963.

This section does not violate the provision of the state constitution prohibiting defendant from being deprived of his life, liberty or estate but by law of the land. Com. v. Blondin (1949) 87 N.E.2d 455, 324 Mass. 564.

2. In general

This section is to be strictly construed in favor of general principle of publicity. Com. v. Marshall (1969) 253 N.E.2d 333, 356 Mass. 432, 39 A.L.R.3d 843; Com. v. Blondin (1949) 87 N.E.2d 455, 324 Mass. 564.

3. Requisites of proceedings

Trial in chambers of three defendants for rape and abuse of female child under 16 years of age, by jury, with testimony taken in their presence and complete stenographic record available to them and without exclusion of any person whom any defendant desired to have present did not deny defendants any rights under the state constitution. Com. v. Blondin (1949) 87 N.E.2d 455, 324 Mass. 564.

4. Persons with a direct interest

Under this section providing that court may exclude general public, admitting only such persons as may have a "direct interest" in trial for crime involving sex, committed against minor

918.14 Tampering with witnesses

(1) It is unlawful for any person, knowing that a criminal trial, an official proceeding, or an investigation by a duly constituted prosecuting authority, a law enforcement agency, a grand jury or legislative committee, or the Judicial Qualifications Commission of this state is pending or knowing that such is about to be instituted, to endeavor or attempt to induce or otherwise cause a witness to:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document, or thing.

Amended by Laws 1975, c. 75-208, § 44, eff. Oct. 1, 1975.

[See main volume for text of (2) and (3)]

Laws 1975, c. 75-208, rewrote subsec. (1).

Index to Notes

In general 1
Indictment and information 2

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1. In general

There was no such crime as attempted tampering with a witness. Hester v. State, App., 363 So.2d 20 (1978).

Witnesses have personal right to either invoke or not invoke Fifth Amendment and may waive such right. Lawley v. State, App., 330 So.2d 784 (1976).

Coercing two codefendants, as part of plea bargain, to invoke Fifth Amendment rights and not give testimony, which might have been exculpatory, if subpoenaed by defendant under threat of imposition of greater sentences by court in pending cases against codefendants and under threat of prosecution for other crimes if they testified amounted to suppression of evidence by State and required reversal of defendant's conviction and defendant's discharge since improper plea bargain would infect new trial to same degree that it infected first one. Id.

2. Indictment and information

Charge of causing witness to be placed in fear was not required to allege that defendant knew that trial proceeding or investigation was pending but was defective for failure to allege that defendant knew that victim was a witness and to allege some connection between defendant's actions and victim's status as witness. State v. Murray, App., 349 So.2d 707 (1977).

Information charging conspiracy to tamper with witness was not insufficient because alleged material time was period between September 9 and September 23, nor because nature and description of the "official proceeding or investigation" in which named witness was to testify were not set forth. State v. Burkett, App., 344 So.2d 868 (1977).

918.15 Repealed by Laws 1980, c. 80-75, § 4, eff. July 1, 1980.

Laws 1980, c. 80-75, § 4, repealed provisions designated in Fla.St.1979 as § 918.15(4) as well as Fla.St.1979, § 918.15 as amended by Laws 1979, c. 79-330 and c. 79-400. Section 918.15 was added by Laws 1977, c. 77-312, § 4.

For provisions pertaining to mental competence to stand trial, see, now, § 916.12.

918.16 Sex offenses; testimony of person under age 16; courtroom cleared; exceptions

In the trial of any case, civil or criminal, when any person under the age of 16 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, and court reporters.

Laws 1977, c. 77-312, § 28, eff. July 1, 1977.

Law Review Commentaries

Raising issue of competency to stand trial: Procedures and consequences. Marshall D. Rapp, 52 Fla.Bar J. 49 (1978).

Library References

Criminal Law ⇐636.
C.J.S. Criminal Law § 964.

918.17 Sexual battery or child abuse cases; videotaping of testimony of victims under age 12 permitted

(1) Upon application to the court and reasonable notice to the defendant, the state may apply for an order to videotape out of open court the testimony of a child 11 years of age or younger who has been the victim of a sexual battery under s. 794.011 or to videotape the testimony of a child 11 years of age or younger who has been the victim of aggravated child abuse under s. 827.03 or child abuse under s. 827.04. The court may grant an order to videotape testimony as provided herein only if it finds that:

(a) The victim of the offense is a child 11 years of age or younger; and

(b) There is a substantial likelihood that such child will suffer severe emotional or mental strain if required to testify in open court.

(2) The trial judge shall preside at such proceeding and shall rule on all questions as if at trial.

(3) The application referred to in subsection (1) shall be made prior to trial, and the videotaping of the testimony shall be made only after the trial has commenced. The videotaped testimony shall be admissible as evidence in the trial of the cause.

Laws 1979, c. 79-69, §§ 1 to 3, eff. May 22, 1979.

Laws 1979, c. 79-69, § 3, provides: "Rule 3.190(j), Florida Rules of Criminal Procedure, is hereby repealed insofar as it is inconsistent with the provisions of this act."

Cross References

Motion to take deposition to perpetuate testimony, see Criminal Procedure Rule 3.190(j).

CHAPTER 919. CONDUCT OF JURY

919.01 to 919.22 Repealed by Laws 1970, c. 70-339, § 189

For superseding provisions contained in 1971 Florida Rules of Criminal Procedure, see, now, Rules 3.370, 3.381 et seq.

CHAPTER 921. SENTENCE

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence

(1) Separate proceedings on issue of penalty.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) Advisory sentence by the jury.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

'918.17 Sexual battery or child abuse cases; videotaping of testimony of victims under age 12 permitted.—

(1) Upon application to the court and reasonable notice to the defendant, the state may apply for an order to videotape out of open court the testimony of a child 11 years of age or younger who has been the victim of a sexual battery under s. 794.011 or to videotape the testimony of a child 11 years of age or younger who has been the victim of aggravated child abuse under s. 827.03 or child abuse under s. 827.04. The court may grant an order to videotape testimony as provided herein only if it finds that:

(a) The victim of the offense is a child 11 years of age or younger; and

(b) There is a substantial likelihood that such child will suffer severe emotional or mental strain if required to testify in open court.

(2) The trial judge shall preside at such proceeding and shall rule on all questions as if at trial.

(3) The application referred to in subsection (1) shall be made prior to trial, and the videotaping of the testimony shall be made only after the trial has commenced. The videotaped testimony shall be admissible as evidence in the trial of the cause.

History.—ss. 1, 2, ch. 79-69.

'Note.—Section 3, ch. 79-69, repeals Rule 3.190(j), Florida Rules of Criminal Procedure, ". . . insofar as it is inconsistent with the provisions of this. . . ." section.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 547
Title Videotaping of Testimony of Young Victims of Sexual Assault
Requested by Senators Parr and Fischer Date 4/20/81

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Detachment and CIB
(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		.1	.1	.1	.1	.2
500 EQUIPMENT		36.0				10.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		36.1	.1	.1	.1	10.2

FUNDING (Thousands of Dollars)

GENERAL FUND		36.1	.1	.1	.1	10.2
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

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

The Division's review of the potential impact of this Bill upon its operations indicates the need to provide videotape equipment in each of the five Alaska State Trooper detachments located throughout the State. Each location would require a portable color camera and recorder, plus accessories totalling approximately $7,200.00. Partial replacement of the equipment would be estimated to be needed by FY'86 assuming the bill became effective in FY'82. The commodities noted above would cover the estimated cost of the video cassette tapes.

DATE May 12, 1981 PREPARED [illegible] Francis Allen
AGENCY [illegible]

MSG 82-00002152 PRTY 1 01/19/82 16:42:53 ORIG: LA0G IN= 0023 OUT= 0152
FROM: CINDY, ANCH TO: JUNEAU INFO
TARGET: LJH2 SUBJ: FOM PAGE 0001

TO: SENATORS RODEY, BENNETT, HOHMAN, PARR AND RAY

FROM: ANGELA RINALDO, EXECUTIVE DIRECTOR, S.T.A.R, P.O. BOX 3356, ANCH. 995L0 (276-7279)

SENATE BILL 547, WHILE RECOGNIZING THE RIGHTS OF DEFENDANTS, WILL PROTECT THE MINOR VICTIM OF SEXUAL ASSAULT FROM THE TRAUMA OF TESTIFYING IN OPEN COURT.

THIS BILL WILL ALSO: REDUCE INDIVIDUAL'S RELUCTANCE TO REPORT THE SEXUAL ASSAULT TO AUTHORITIES AND FACILITATE PROSECUTION.

"STANDING TOGETHER AGAINST RAPE" SUPPORTS SB 547

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 547

"An Act permitting the videotaping of, or the exclusion of the public during, testimony of young victims of sexual assault or sexual abuse of a minor; and changing Rule 804, Alaska Rules of Evidence relating to exceptions to the hearsay rule."

Senate Bill No. 547 provides that a child 16 years of age or younger who is a victim of sexual assault or sexual abuse could provide testimony by videotape rather than having to appear in open court. The Bill provides a presumption that a child under the age of 16 will suffer severe emotional distress if required to testify in open court. The judge presides at the videotaping proceeding and rules on all questions as if at trial, and the defendant has the right to an attorney and to confront and cross-examine the witness. In addition, this Bill provides that the public may be excluded from the courtroom while the testimony of a child is taken.

The Department has seen an increase in reporting of sexual abuse cases over the last year, including a 300% increase in Anchorage and a 240% increase in Fairbanks. Cases of sexual assault often have sensational aspects which bring curiosity-seekers and the press to the courtroom. To testify before a crowded courtroom can be emotionally harmful to a child who has already suffered trauma from the assault or abuse. This Bill would provide protection for the child from some of the more harmful aspects of such testimony. Therefore, the Department is in full support of Senate Bill No. 547. However, the following recommendations are made:

1. the Department recommends raising the age to 18 to be consistent with age of majority; and

2. including incest and sexual exploitation to the crimes for which this option applies.

RECOMMENDED BY: John R. Pugh

John R. Pugh, Director
Division of Family and
Youth Services

DATE: 5/13/81

APPROVED BY: Helen D. Beirne

Helen D. Beirne
Commissioner

DATE: 5/19/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SENATE BILL NO. 547
Title videotaping testimony of young victims of sexual assault/abuse, changing Rule 804...
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
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)

Senate Bill No. 547 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 5/13/81 PREPARED BY John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) M&B Approval _____ Date _____

33-001 (Rev. 12/80

'918.17 Sexual battery or child abuse cases; videotaping of testimony of victims under age 12 permitted.—

(1) Upon application to the court and reasonable notice to the defendant, the state may apply for an order to videotape out of open court the testimony of a child 11 years of age or younger who has been the victim of a sexual battery under s. 794.011 or to videotape the testimony of a child 11 years of age or younger who has been the victim of aggravated child abuse under s. 827.03 or child abuse under s. 827.04. The court may grant an order to videotape testimony as provided herein only if it finds that:

(a) The victim of the offense is a child 11 years of age or younger; and

(b) There is a substantial likelihood that such child will suffer severe emotional or mental strain if required to testify in open court.

(2) The trial judge shall preside at such proceeding and shall rule on all questions as if at trial.

(3) The application referred to in subsection (1) shall be made prior to trial, and the videotaping of the testimony shall be made only after the trial has commenced. The videotaped testimony shall be admissible as evidence in the trial of the cause.

History.—ss. 1, 2, ch. 79-69.

'Note.—Section 3, ch. 79-69 repeals Rule 3.190(j), Florida Rules of Criminal Procedure, ". . . insofar as it is inconsistent with the provisions of this . . ." section.

*Ray (Direct Statement See Below)

Bendick - Gives case example of problem w/ 14 year old
Details differences

Ray - His question in Sec 048
Asks age of 16 years as technical defect.
Steen Replies

Page - Gives overview of Bill - History of Bill
Explains differences between Bills

Ray - Seems we could extend to all victims

Steen - Speaks to Public Exclusion - Globe newspaper case
1.) Videotaping - should be automatic Storris
2.) Speaks only to Assault - should speak to any Penetration
3. Expanding to young witnesses

Ray - Use of testimony is good idea

Page - calls attention to May 8 1981 memo
questions whether the videotaping of witnesses
would not be open to attack

Ray - What about calling victim back for more testimony

Bendick - Priority of sexual cases in court

Jim Sterling - Appeal - 100% in support
would like to see this provision applied to all persons.

Deborah Keller - Parent of abused child
wants to eliminate presence of perpetrator
Did not prosecute her own rapist because of court Difficulty

John Pugh - Ass. - Supports both bills - likes exclusion provision
Definite who can be in room during videotaping

Page - don't trust Judge decide who sits in videotape session

*Ray - shouldn't the child be able to tell his own story without interruption.

Sara Feldy - Aware Attorney - Attached position paper