

H B

565

INTENT OF LEGISLATION

HB 565 - "An Act relating to hearsay evidence in prosecutions for sexual abuse of a minor; and amending Rules 803 and 804, Alaska Rules of Evidence."

This legislation will allow hearsay evidence of statements made by children under the age of 10 relating to sexual abuse of that child if:

- 1) The court determines that the circumstances indicate the statement would be reliable, and
- 2) The child either testifies in person or, if the child is unavailable as a witness, there is additional evidence to corroborate the statement.

We have been advised by troopers that they have videotapes of children 2½ or 3 years old where the sexual abuse is articulated clearly. However, they are unable to proceed with the grand jury indictment because these very young children often block out the experience before they are questioned in court. The sworn statement of the professional who interviewed the child, along with the videotapes, would be admissible under this act.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

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HB 565

"An Act relating to hearsay evidence in prosecutions for sexual abuse of a minor and amending Rules 803 and 804, Alaska Rules of Evidence."

The Council on Domestic Violence and Sexual Assault supports the admission of hearsay evidence in child sexual assault trials. Many victims of child sexual assault are too young to withstand the rigors of a trial or to be effective witnesses. Yet their disclosure of sexual assault to police officers and other professionals in less threatening circumstances should be available to juries for consideration.

Children often block out their very negative experiences and cannot remember specifics of the experience, particularly under the pressures of a trial. These children deserve the protection of the criminal justice system as much as older, more articulate individuals.

Although the admittance of hearsay evidence is not traditional in court, there are many exceptions to the rule. This circumstance, child sexual assault, warrants another exception.

  
Robert Q. Sundberg  
Commissioner

DEPARTMENT OF PUBLIC SAFETY

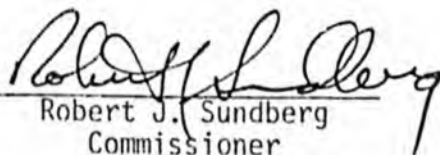
POSITION PAPER - HB 565

Support

February 7, 1984

HB 565 - "An Act relating to hearsay evidence..."

Passage of this legislation will make prosecution of cases involving sexual abuse of a minor less difficult and may reduce the emotional distress to the victim.

  
Robert J. Sundberg  
Commissioner

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

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HB 565

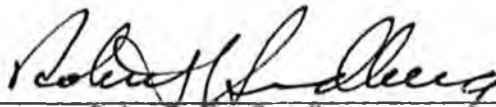
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Robert U. Sundberg  
Commissioner

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

110 SEWARD #13 JUNEAU ALASKA 99801  
(907)585-3550

## POSITION PAPER

HB 565: An Act relating to hearsay evidence in prosecutions for sexual abuse of a minor; and amending Rules 803 and 804, Alaska Rules of Evidence

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation representing 20 programs statewide that provide services to victims of domestic violence and sexual assault, supports HB565, which would facilitate the prosecution of cases of child sexual assault.

As you may be aware, the Network several years ago supported legislation that permitted the videotaping of testimony of young victims (aged 16 and under) of sexual assault in order to spare them the added trauma of testifying in open court. Since its passage, that legislation has worked successfully in cases of sexual assault involving children ages 5 and over, but has had little impact on the successful prosecution of sexual assault involving very young children.

Because there has been a dramatic increase in the number of cases of child sexual assault reported to the Division of Family and Youth Services, there is a real need to address the issue of prosecution of these crimes.

A very young victim of sexual assault will often tell the non-offending parent or day care worker about the assault, but they most often will not repeatedly relate the details of the incident. Consequently, it is the parent or day care worker who reports the crime to the Division of Family and Youth Services, a sexual assault program, or a law enforcement agency.

However, because prosecutors generally do not feel that a very young child is a reliable witness and because there is rarely a witness to the crime, the testimony of the adult person to whom the child disclosed the incident is the most reliable testimony available. Since that testimony is considered hearsay evidence and is not admissible in court, these cases are not being prosecuted but are, in fact, being dropped.

Washington State has enacted legislation similar to the bill that has been introduced. It is the Network's position that an exception to the hearsay rule is more than justified in order to facilitate prosecution of these cases.

In order to protect child victims from further harm, the Network urges your support for and passage of this bill.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 565  
 Title: "An act relating to hearsay evidence...."  
 Sponsor: Representative Lacher  
 Requestor: House HESS  
 Date of Request: 2-14-84

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan *F.C.A.* *MD* Phone: 269-5691  
 Division: Alaska State Troopers Date: 02/07/84  
 Approved by Commissioner: Robert J. Sundberg *RJS* Date: 2/14/84  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

# IS THE CHILD VICTIM OF SEXUAL ABUSE TELLING THE TRUTH?

by

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## I. INTRODUCTION

A question asked of child welfare workers and mental health experts in cases of child sexual abuse is whether or not a child's statement that he/she has been sexually mistreated can be taken at face value or believed. The implications for action if the child's story is trusted are far reaching for both the child and the family. Likewise, if professionals decide not to believe the child (and the allegation is true) the effect on the child will almost surely be devastating. Because of these implications, mental health professionals need guidance in assessing allegations of sexual mistreatment. For the most part, this article will focus on sexual abuse with female victims and male perpetrators and will pay special attention to the problem of substantiating allegations by young children.

## II. THE PROFESSIONAL'S PROPENSITY TO DISBELIEVE

When a child reports he/she has been physically abused or neglected by a parent, (or by someone else), professionals spend little time querying whether the child is telling the truth. Not so in a case of sexual abuse. With sexual abuse reports, professionals may agonize for a very long time over whether the allegation is true or not. While the lack of physical evidence may contribute to this caution, the major obstacle for professionals and lay people alike is difficulty in coping with the fact that some adults have sexual involvement with children. For many people human sexuality in general, is an anxiety producing topic, and sexual encounters with children invoke even more psychological stress.

However, it is not sufficient for professionals who work with sexual abuse to understand these dynamics and take them into account in evaluating their own responses to a case. They still must persuade others, be they lawyers, police, judges, or treatment personnel of the veracity of the child's story.

## III. WHO HAS THE MOST TO LOSE?

It is useful to frame an understanding of an allegation of sexual abuse in terms of various parties vested interest in the story being true or not true.

For the victim, she (and most reported cases are of female victims) may suffer significant losses as a result of telling. She may be rejected and ostracized by the perpetrator and also by her family. She may be "punished" by placement in foster care or an institution. The family may be torn apart and the victim may see herself as responsible for its demise. She will have to tell the intimate details of her story to many people. She frequently must tell it in the court room, to strangers and with the perpetrator facing her, and she may be subjected to harsh cross-examination by the perpetrator's attorney. Often the perpetrator will warn the victim of these consequences and tell her not to tell. In such a situation the child feels helpless in the face of a powerful adult. Because of the anticipated consequences, victims may keep the secret for months and sometimes years.

Therefore a delay in the report of sexual abuse, particularly when there is a close personal relationship between the victim and the perpetrator, is to be expected rather than seen as a reason to question the veracity of the allegation. Similarly, it is quite common for a child to reveal that she was molested and later retract her story as she experiences the negative effects on herself and her family of telling.

In contrast, the perpetrator has everything to lose if the child's story is believed and thus in most cases will deny the allegations. The perpetrator may be rejected and extruded from the family because of the abuse. In father-daughter incest cases, divorce may ensue. The extended family may ostracize him. In some cases, his employment may be in jeopardy. He has reason to fear the Juvenile Court who may deprive him of his child, impose treatment, and intrude in other ways into the family. He has even more cause to fear the Criminal Court where he may be tried for Criminal Sexual Conduct, sent to prison, or at least placed on probation.

Because a substantial percentage of sexual abusers are to some extent character disordered, they may lie and lie convincingly, and they may lie persistently over a period of months and even years. It is not uncommon for them to continually call the caseworker insisting upon their innocence and to enlist the help of others, family and friends, in this endeavor.

Mothers, in father-daughter incest cases as well as in other types of in-household sexual abuse, may also have a lot to lose if the child's allegation is believed. Incest often develops when the sexual relationship between the perpetrator and spouse is not good, and this may happen because the mother does not wish a sexual relationship with the perpetrator. The child victim relieves the mother of that sexual responsibility, and therefore there may be costs for the mother if the incest relationship ends.

More concrete and practical problems may arise for the mother. She may be financially dependent upon the perpetrator. Therefore, if she has to expell him or he goes to prison, she must seek other means of support. This may mean going on ADC or seeking employment when she has never worked or has not worked for years.

Finally she loses the emotional support of her spouse when he leaves or is incarcerated. While he may not seem to the outsider as very supportive, frequently he is all the mother has, and she cannot imagine life without him. Often mothers of incest victims are very dependent upon their spouses, suffer from low self-esteem, and may choose their spouses over their children when they must take one side or the other.

Therefore, it is not uncommon for mothers to disbelieve their daughters allegations, to ignore them when they are made, or to try to deal with the problem without bringing in outside help. Alternatively, mothers may initially side with the child, but as they experience the practical consequences of the spouse's anger and/or loss of the spouse, may switch their loyalties and side with the perpetrator.

#### IV. EXAMINING THE CHILD'S STORY

We know for the reasons stated already that children do not make up stories asserting they have been sexually molested. It is not in their interests to do so. The only cases where that possibility should be considered is where an adolescent who is making an allegation appears character disordered. An angry acting-out adolescent who does not invest in people might possibly make up such a story in order to gain some immediate goal (getting back at the perpetrator, getting out of the house). However, even such cases as these reports should be taken very seriously because difficult adolescence is the frequent outcome of an experience of sexual abuse. Thus the victim in adolescence may be belligerent and aggressive, may truant from school and violate curfew, and may be sexually provocative and promiscuous.

For a long time some mental health professionals attributed children's allegations of sexual molestation to oedipal fantasies. It is easier to believe that these assertions are fantasies rather than the truth. If the report is to fit the oedipal fantasy conceptualization, it should be placed in time when the child would be four or five, and we expect the memory to be shadowy or repressed. However, today many professionals question whether there is such a phenomenon as an oedipal fantasy, and query whether we are not dealing with instances of molestation even in cases which fit the description above.

Reports of sexual abuse can usually be differentiated from fantasy by the victim's ability to report specific details (if they are willing to discuss the incident(s)). The best way to get information in cases where the child is verbal is to ask about the last time it happened. Usually considerable detail can be elicited about surrounding events so that the idiosyncratic nature of the incident is quite clear. (E.G., "It was raining and I thought my daddy was asleep so I was playing in my brother's room where I'm not supposed to play. My dad came in and I thought he would be mad at me, but he said he wouldn't be mad if I laid on the bed with him".) The child may be much more reticent about giving the detail of the sexual abuse, and may get embarrassed or agitated in answering questions about the abuse, than in giving specific events surrounding the incident.

18 THE CHILD VICTIM OF SEXUAL ABUSE: SETTING THE PAST IN PERSPECTIVE 4

It is important to get this specific detail if possible. Sometimes this can be effected by asking question "did he do this", "did he do that", or by relating what you think happened and asking the child to respond "yes" or "no" to each statement.\* It is preferable however, to get a spontaneous statement if this is possible.

A young child may become somewhat confused about the exact sequence of events, or may forget certain parts of the story at certain times, but this should not call into question the veracity of the story. Further, children, depending upon their age, may not be able to afix dates or exact times but will be able to locate incidents of molestation in relation to significant events (E.G., birthday, the day it rained, about supper time).

Another important finding may be that he child has knowledge about sexual matters which go well beyond what can be expected of the child's age or indicates sexual information for which the family cannot explain the source (E.G., a child of four may know a penis gets big and white juice comes out of it). While it is possible that the child gained this knowledge from observation of sexual acts, it is not likely. If the observation is the source of the victim's information, there is cause to be concerned about children being exposed to sexual activity.

It is important to go beyond eliciting information about the most recent incident of sexual abuse and query whether it happened before and how often. Does the victim know whether the perpetrator ever did this kind of thing with anyone else? Thus the goal of the interview is to elicit specific detail but also to get a broader picture of the perpetrator's sexual activity.

\* Note: The suggestion of the author to ask the child whether certain things have happened is not endorsed. There are many problems with this technique of gathering information. Generally, specific, narrow questions tend to mislead the respondent into believing you only want to hear about the things you ask about, so the respondent will not add other information. More specific to sexual abuse of young children, there are two risks. First, one important way of establishing the likelihood that abuse occurred is by showing that the child described sexual events that childrens of his or her age seldom know about unless they have been victimized. If you describe the event, the child's credibility may later be attacked by someone alleging that you planted the idea. Secondly, if the child has not experienced the activity you describe, you are further adding to whatever experiences he or she has had. This information can be very frightening to the child, even when dealt with matter-of-factly.

Myra M. Munson  
Division of Family and Youth Services  
Staff Development Training Center  
December, 1981

V. STRATEGIES FOR CORROBORATING DIRECT STATEMENTS BY THE CHILD TO THE INTERVIEWER

A. The Child's Statement to Significant Others

As a rule a case of sexual abuse comes to professional attention because the child has made a statement to someone (other than the evaluator) about the molestation. The interviewer should talk directly with those persons to get all the information they have and to assess the reliability of these reports. Often a child will be candid with a parent or relative but will be quite reticent with a professional.

Having those persons whom the child has told tape record the child's statements can be useful. If the child has not been forthcoming during the evaluation but later talks about the incidents sometimes a parent or relative can call the evaluator on the phone and get the child to make statements over the phone. Therefore at the end of the interview, the professional should tell the caretaker to call if the child says or does anything related to the abuse after the interview.

B. Indirect Methods of Assessment

There are certain child behaviors indicative of molestation which can be used to substantiate a report of sexual abuse. One type are indirect indicators which can be elicited in doll play, drawing, story telling, and other projective techniques. Such indirect methods are much less threatening to the child, and with children who are reticent, may be the only data which can be elicited from the child in a formal evaluation. The interviewer must be patient and willing spend a fair amount of time and sometimes several sessions gathering information.

What one looks for are sexual themes in play, pictures, or stories. The interviewer allows the child to use these media in whatever way he/she wants to for a period of time, but may later structure the interaction so it focuses on the context in which the interviewer thinks the molestation took place.

For example, if a doll house and doll play are used, the interviewer will begin by allowing the child to play with the dolls in the doll house. Sometimes sexual concerns may immediately emerge. For instance, the child undresses all the dolls and looks between their legs. The worker may nevertheless want to structure the situation by focussing on the daddy doll and the little girl doll and asking "what do daddies and little girls do together?" or "what does the daddy doll do with the little girl doll?" If sexual content is elicited, for example the child puts the two dolls in the bed with the daddy doll on top of the little girl doll, it is important to then ask what the child does with her own daddy. A potential disadvantage of indirect methods of

assessment is that the evaluator may get sexual themes in play but may not be able to tie what occurs in play to the allegations. By moving gradually in play closer to the actual allegation, it is possible to make the link between the general sexual content and the reported sexual abuse. Similar strategies can be employed with picture drawing, and story telling.

We must also understand why certain children are not forthcoming about the molestation. First, most interviewers are relatively unknown to the child and usually less wellknown than the perpetrator. The child may admit the abuse to someone he/she trusts, the mother, an aunt, or friend of the family, but be much less willing to make the revelation to a stranger. A related point is that in many cases even though the child has been molested by the perpetrator, the child may be attached to him and will not want to cause him trouble. Alternatively as noted earlier, the child may fear negative consequences for the family or retribution by the perpetrator if she reveals the sexual abuse.

### C. Sexual Behavior

Another source of corroborative data is sexual behavior by the child. This is somewhat different from information elicited in a structured interaction with the interviewer. It is more spontaneous and may occur in the context of the interview or in other settings. These sexual behaviors will vary with the age of the child.

Excessive masturbation is one kind of behavior to ~~look~~ look for in young children. While all children masturbate, molested children may do so to a marked degree. Thus, they may masturbate when they are upset or when they are questioned about the sexual abuse. They do so even though an adult requests they not masturbate in public or they may injure their genitals in the course of repeated masturbation.

Young children who have been sexually molested may also initiate sexual encounters with others. In a day care or hospital setting, they may sexually accost other children. In such a context, they may take on the role of the aggressor and victimize other children, or they may persist in their victim role. They may also attempt to elicit sexual responses from adults for whom they have some affection, assuming that is the way adults and children who like one another interact. Thus, a little girl may rub a male worker's penis or wriggle her bottom on his lap. A boy who has been a victim of a female perpetrator may attempt to squeeze a nurse's breast.

Latency aged victims are often described as seductive and extremely concerned with their physical appearance. They may appear unusually feminine and coy. As they grow older and reach early adolescence, they are likely to be sexually quite active and to be described as promiscuous. The sexual encounters may be with peers or with older men. In later years victims may develop lesbian relationships. Because their heterosexual experiences have been exploitative, they look for more nurturing relationships with other women.

D. Other Behavioral Indicators

Additional supportive evidence which can complete the picture may be behaviors which indicate the child anxiety or mental state arising from the sexual abuse.

With young children regression is frequently seen as a result of the onset of sexual abuse. A child who previously was toilet trained may begin to wet the bed or may become fearful of the dark and refuse to go to bed without a trusted adult in the room when previously bedtime was not problematic. Nightmaring and night waking may also occur.

A child's fear of the perpetrator may generalize to all men (assuming the perpetrator is a man). Sometimes this fear is more apparent with other men than with the perpetrator. Often observers note a personality change in the victim, which seems to coincide with the onset of the abuse. Alternatively the symptoms occur around the incident, then diminish, and recur when another incident occurs. Thus, one victim's mother stated her daughter used to be "a motor mouth" before the molestation began but now appears shy and worried. Children may appear depressed and become withdrawn. Victims who previously did well in school sometimes present with school problems.

Adolescents may present with acting out or self-destructive behavior. Thus, the adolescent victim may run away, be aggressive toward others, be incorrigible, hating both parents, but often mother more than father, steal and shoplift, and in general appear out of control. In general, the intensity of the adolescent victim's acting out is greater than the typical adolescent rebelliousness. Professionals often suggest institutional treatment for these victims because their deviance is so severe, (frequently without comprehending the underlying cause). Self destructive patterns found in adolescent are alcoholism, drug use and addiction, self mutilation, and attempts to suicide (or success).

CONCLUSION:

If the professional takes together a child's statements which may have been made to others but not to the professional or were made at one point and later retracted and buttresses these with other information a clear picture will evolve. Supplementary data may be sexual themes in play, in picture drawing or story telling elicited in an interview, sexual behavior by the child, or non-sexual behavioral indicators that the child is under stress. Obviously, the more information from the range of areas described the evaluator has, the more convinced the evaluator will be and the more persuasive the report will be to others. However, the only information which should not be taken by itself as a sign there has been sexual abuse is the non-sexual behavioral indicators. These indicators can also be a result of problems other than sexual ones.

**Rule 803. Hearsay Exceptions — Availability of Declarant Immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) **Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) **Then Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health) offered to prove his present condition or future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) **Statements for Purposes of Medical Diagnosis or Treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Business Records.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from

information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) **Absence of Record.** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) **Public Records and Reports.** (a) To the extent not otherwise provided in (b) of this subdivision, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(b) The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the state in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness. Any writing admissible under this subdivision shall be received only if the party offering such writing has delivered a copy of it or so much thereof as may relate to the controversy, to each adverse party a reasonable time before

the trial, unless the court finds that such adverse party has not been unfairly surprised by the failure to deliver such copy.

(9) **Records of Vital Statistics.** Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) **Absence of Public Record or Entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) **Records of Religious Organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Marriage, Baptismal, and Similar Certificates.** Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) **Family Records.** Statements of fact concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings and urns, crypts, or tombstones, or the like.

(14) **Records of Documents Affecting an Interest in Property.** The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable

statute authorizes the recording of documents of that kind in that office.

(15) **Statements in Documents Affecting an Interest in Property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) **Statements in Ancient Documents.** Statements in a document in existence twenty years or more the authenticity of which is established.

(17) **Market Reports, Commercial Publications.** Market quotations, tabulations, lists, directories, codes, standards, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) **Learned Treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) **Reputation Concerning Personal or Family History.** Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) **Reputation Concerning Boundaries or General History.** Reputation in a community, arising before controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) **Reputation as to Character.** Reputation of a person's character among his associates or in the community.

(22) **Judgment as to Personal, Family, or General History, or Boundaries.** A judgment as proof of a matter of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(23) **Other Exceptions.** A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant. (Added by Supreme Court Order 364 effective August 1, 1979)

**Rule 804. Hearsay Exceptions — Declarant Unavailable.**

(a) **Definition of Unavailability.** Unavailability as a witness includes situations in which the declarant

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) establishes a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) **Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement Under Belief of Impending Death.* A statement made by a declarant while believing that his death was

imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of Personal or Family History.* (A) A statement concerning the declarant's own birth, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant. (Added by Supreme Court Order 364 effective August 1, 1979)

Changes made - CS HB565

- 1) Change in title from "prosecution for sexual abuse of minors" to "prosecution for certain sexual offenses."
- 2) Line 12 from "prosecution for the crime of sexual abuse of a minor in any degree" to "prosecution for an offense under AS 11.41.410-11.41.440 or 11.41.455."
- 3) Line 14 from "a child under the age of 10 describing an act of sexual contact with the child" to "a child under the age of 10 who is the alleged victim of the offense describing the conduct establishing the offense."
- 4) Line 24 inserts (3) "the prosecutor informs the defendant of the intention to offer the statement and the contents of the statement sufficiently before the proceedings to give the defendant a fair opportunity to respond to the statement."
- 5) Line 28 - defines "unavailable" and "statement"