

COMMITTEE REPORT

SENATE

FURTHER:

5/4/89

Date 5-15-89

Mr. President

The Committee on FINANCE considered CSHB 67(F10) admissibility of hearsay evidence of certain statements by children before grand juries; and amending Rule 6(r), Alaska Rules of Criminal Procedure.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECCMMENDATIONS

Chairman

Chairman recommendation

Offered: 5/2/85
Referred: Rules

Original sponsor: Phillips

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 67 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the admissibility of hearsay
7 evidence of certain statements by children before
8 grand juries; and amending Rule 6(r), Alaska Rules of
9 Criminal Procedure."

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

11 * Section 1. AS 12.40 is amended by adding a new section to read:

12 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
13 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -
14 11.41.440 or 11.41.455, hearsay evidence of a statement related to the
15 offense, not otherwise admissible, made by a child under the age of 10
16 who is the victim of the offense may be admitted into evidence before
17 the grand jury if

18 (1) the circumstances of the statement indicate its relia-
19 bility;

20 (2) additional evidence is introduced to corroborate the
21 statement; and

22 (3) the child testifies at the grand jury proceeding or the
23 child will be available to testify at trial.

24 (b) In this section "statement" means an oral or written asser-
25 tion or nonverbal conduct if the nonverbal conduct is intended as an
26 assertion.

27 * Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of
28 amending Rule 6(r), Alaska Rules of Criminal Procedure, by changing the
29 circumstances under which hearsay evidence may be introduced in grand jury

1 proceedings for certain sexual offenses.

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P/B

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

CC
4/3

710-2

Revision Date: _____

REQUEST
Bill/Resolution No.: HB No. 67
Title: An Act relating to heresay evidence.
Sponsor: Rep Phillips
Requestor: _____
Date of Request: 2/4/85

FISCAL DETAIL
Agency Affected: Health and Social Services
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Social Services BRU

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUNDS | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

N/A

Prepared By: Michael L. Price Phone: 465-3170
Division: Family and Youth Services Date: 2/4/85

Approved by Commissioner: Jan R. G. Date: 2/5/85 JCC
Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

*Accompanied with
Title Page & Form*

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS HB No. 67
Title: An Act relating to.....
hearsay evidence
Sponsor: HESS
Requestor: _____
Date of Request: 4/3/85

FISCAL DETAIL

Agency Affected: Health and Social Services
Program Category Affected: _____
Social Services
BRU, Program or Subprogram(s) Affected: _____
Social Services, Juvenile Custody BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | -0- | -0- | -0- | -0- | -0- |
| REVENUE | | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|-----|-----|-----|-----|-----|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

N/A

Prepared By: Michael L. Price
Division: Family and Youth Services

Phone: 465-3170
Date: 4/11/85

Approved by Commissioner: *John R. Boy*
Agency: Health & Social Services

Date: 4-16-85 *JCC*

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agencies

11/16

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL 67

For an Act entitled "an Act relating to the admissibility of hearsay evidence of certain statements by children before grand juries; and amending Rule 6(r), Alaska Rule of Criminal Procedure".

This bill would allow admission at grand jury proceedings of hearsay statements of children under 12 years of age relating to any offense.

The department supports legislation that will increase the protection of children from harm. Initially HB 67 covered hearsay exceptions relating only to sexual offenses, both at grand jury and at trial. The department supported portions of hearsay exception relating to sexual offenders at grand jury but not at trial due to the potential constitutional issues.

RECOMMENDED:

Michael L. Price
Michael L. Price, Director
Division of Family
and Youth Services

DATE:

April 15, 1985

APPROVED:

John R. Pugh
John R. Pugh, Commissioner
Department of Health
and Social Services

DATE:

4-16-85

H+SS

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 67
 Title: "...admissability of certain hearsay evidence..."
 Sponsor: Phillips
 Requestor: House HFSS
 Date of Request: 1-29-85

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attachment.

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers Date: 1/23/85
 Approved by Commissioner [Signature] Date: 1-30-85
 Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

HB 67
Fiscal Note Attachment
01/23/85

No additional costs are directly associated with passage of this legislation. However, it should be noted that the Governor's Requested CIP budget contains a \$59,700 Sexual Assault Investigation Equipment Purchase project. This project was submitted in anticipation of passage of this type legislation.

The project involves the purchase of video taping equipment to record interviews with victims. This equipment would be located in the eleven Alaska State Troopers posts throughout the state.

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SECTIONAL ANALYSIS FOR CS HOUSE BILL 67 (Fin)

An Act relating to the the admissibility of hearsay evidence of certain statements by children before grand juries; and amending Rule 6 (r), Alaska Rules of Criminal Procedure

Section 1

Amends AS 12.40 by adding a new section that allows for the admissibility of hearsay evidence for sexual abuses. The hearsay evidence is restricted and only applies if made by a child victim under the age of ten and only admissible at the grand jury level. Further, it must be shown that the circumstances of the statement indicate reliability, additional evidence to corroborate the statement is introduced and the child testifies at the grand jury proceeding or the child will be available to testify at the trial.

Hearsay evidence of a statement related to the offense means an oral or written assertion or non-verbal conduct if it is intended as a statement.

Section 2

Section 1 has the affect of amending Rule 6 (r) of the Alaska Rules of Criminal Procedure.

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSHB 67 (Jud)

Support

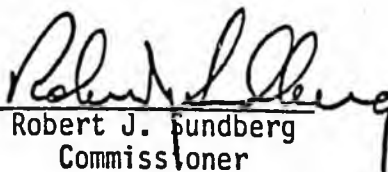
April 30, 1985

CSHB 67(Jud) - "An Act relating to the admissibility of hearsay evidence of certain statements by children before grand juries; and amending Rule 6(r), Alaska Rules of Criminal Procedure."

This Bill will allow the use of hearsay evidence from sexually abused children in grand jury proceedings. It is an attempt to shield victims from additional emotional trauma.

House Bill 67 will allow an individual trained in child abuse cases who has interviewed the victim to testify in his or her place or it will allow the submission of a video tape of the interview. Courtroom atmosphere often inhibits and intimidates the young victims - particularly one who may be discussing a sexual encounter with a parent or relative.

This legislation will not result in abuse of the grand jury system and only addresses cases of sexual abuse of minors. Although the admittance of hearsay evidence is not traditional in grand jury proceedings in Alaska, cases of this type warrant an exception to protect the victims.


Robert J. Sundberg
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 5, 1984

SUBJECT: Hearsay evidence in sexual
abuse prosecutions
(Work Order No. 14-0131)

TO: Representative Randy Phillips

FROM: Michael F. Ford *M.F.*
Legislative Counsel

As you know, last year the legislature considered a similar bill to the one you have requested, concerning prosecution of sexual abuse crimes and the use of hearsay evidence. At that time, the possibility that the constitution would prohibit use of such evidence was raised. This memo addresses section two of this bill, relating to introduction of hearsay evidence at trial. The first section of the bill deals only with grand jury proceedings, and does not raise a constitutional question.

This bill is based on Washington Criminal Code sec. 9A.44.120. I have been informed by the Department of Law that the Washington statute has been challenged a number of times and upheld in the trial courts, but it has yet to be ruled on by the state's highest court. Therefore the Washington law is of little help in determining the validity of this bill.

In prosecutions for sexual abuse of a minor in any degree, this bill allows the prosecutor to introduce at trial, "hearsay evidence of a statement made by a child under the age of 10 describing an act of sexual contact with the child" if certain criteria are met (AS 12.45.049). Before the hearsay evidence may be introduced, the court must determine that the circumstances of the child's statement indicate its reliability, and the child must either testify at the proceeding, or be unavailable as a witness. If the evidence is admitted on the basis that the child is

unavailable, there must be some further evidence introduced to corroborate the child's statement.

Existing Rules of Evidence provide that hearsay is inadmissible, but provide for certain exceptions (Rules of Evidence 803 and 804). The apparent purpose of the bill is to make it easier to prosecute sexual abuse cases by allowing in evidence that the jury would otherwise not be permitted to consider. For example, under present law, if a child tells a teacher that the child's parent is sexually abusing the child, but the child refuses or is emotionally unable to repeat the story at the parent's sexual abuse trial, the teacher would not be permitted to repeat the child's story at the trial because it would be hearsay and does not fall under one of the existing exceptions. The bill would allow the teacher to testify if (1) the court determines that the child's statement appears reliable, and (2) the child either testifies (on some other matter) or is unavailable and there is some further evidence that the child's statement is true.

The sixth amendment to the United States Constitution and Article I, sec. 11 of the Alaska Constitution both provide that a defendant in a criminal trial may not be denied the right "to be confronted with the witnesses against him." This bill is in potential conflict with this constitutional right because it permits the statements of a child to be used against a criminal defendant without giving the defendant the opportunity to cross-examine the child.

The Alaska Supreme Court has summarized the right to confrontation as follows:

This right of confrontation protects two vital interests of the defendant. First, it guarantees him the opportunity to cross-examine the witnesses against him so as to test their sincerity, memory, ability to perceive and relate, and the factual basis of their statements. Second, it enables the defendant to demonstrate to the jury the witness' demeanor when confronted by the defendant so that the inherent veracity of the witness is displayed in the crucible of the courtroom. (Footnotes omitted).

Lemon v. State, 514 P.2d 1151, 1153 (Alaska 1973). The Court in Lemon analyzed the United States Supreme Court decisions on the right to confrontation as it relates to the introduction of hearsay evidence and concluded that

Representative Randy Phillips
December 5, 1984
Page 3

...while the demeanor interest of the right of confrontation is not a crucial element, the right to effective cross-examination is essential unless the testimony falls within certain established exceptions to the hearsay rule. (Footnote omitted).

Lemon, supra, at 1154. The Court ruled that Lemon had been denied the right of confrontation because of the admission of a hearsay statement against him that did not fall within the established exceptions to the hearsay rule.

This bill does contain certain protections for the defendant, but these may not be enough to survive a constitutional challenge. Since the bill permits the prosecution to use hearsay evidence that does not fall within one of the established exceptions to the hearsay rule against the defendant, the Lemon case seems to prohibit it. Even if the criteria for the admission of the hearsay evidence contained in the bill are met, a court could still find that the defendant has been denied the right to confrontation. Although the question is an open one, there is a strong possibility that the bill could be found unconstitutional if challenged.

If you have further questions, please contact me.

MFF:ojb
J9/095

FISCAL NOTE SUMMARY BY DEPARTMENT

| <u>Department</u> | <u>Original Request</u> | <u>Passed House</u> | <u>Bill #</u> |
|----------------------------|-------------------------------|---------------------|---------------|
| Health and Social Services | 0 | 0 | HB 67 |
| | 1966.3 | 1582.1 | HB 88 |
| | 0 | 0 | HB 92 |
| | 128.0 | ----- | SB 21 |
| | 0 | | SB 219 |
| TOTALS | <u>2094.3</u> | <u>1582.1</u> | |
| <hr/> | | | |
| Public Safety | 0 | 0 | HB 67 |
| | 200.0 | 20.0 | HB 88 |
| | 81.2 | ----- | SB 21 |
| | 1478.9 | ----- | SB 219 |
| TOTALS | <u>1760.1</u> | <u>20.0</u> | |
| <hr/> | | | |
| Law | 1160.6 | 515.8 | HB 88 |
| | 0 | 0 | HB 92 |
| TOTALS | <u>1160.6</u> <i>359.5</i> | <u>515.8</u> | |
| <hr/> | | | |
| Administration | 733.3 | 535.7 | HB 88 |
| <hr/> | | | |

*GF 6+ million
House - 4.117.4*

| | | | |
|--------------|--------|--------|--------|
| Court System | 145.9 | 51.3 | HF 88 |
| <hr/> | | | |
| Commerce | 3.3 | ----- | SB 263 |
| <hr/> | | | |
| Revenue | (69.6) | (69.6) | HB 92 |
| | + 2.5 | ----- | SB 263 |
| | <hr/> | <hr/> | |
| TOTALS | (67.1) | (69.6) | |

FISCAL NOTE SUMMARY FOR CHILD ABUSE LEGISLATION

| <u>Bill #</u> | <u>Dept</u> | <u>Original Agency Request</u> | <u>Passed by House</u> | <u>Senate #'s</u> | <u>New Postions</u> |
|---------------|-----------------------|--------------------------------|---------------------------|------------------------|--|
| HB 67 | Public Safety DHSS | 0 <u>0</u> | 0 <u>0</u> | no change no change | none none |
| | TOTALS | 0 | 0 | | |
| HB 88 | DHSS | 1966.3 | 1582.1 | ??????? | 31 FT (Agency) 8 PT (Agency) 31 FT (House) 8 PT (House) House funded 10 months instead of 12 |
| | Law | 1160.6 (GF) 145.2 (IAR) | 515.8 (GF) 108.9 (IAR) | ??????? | 19 FT (Agency) 3 PT (Agency) 9 FT (House) 2 PT (House) |
| | Public Defender | 437.2 | 317.4 | ??????? | 6 FT (Agency) 5 FT (House) |
| | Public Advocate | 296.1 | 218.3 | ??????? | 4 FT (Agency) 4 FT (House) House funded at 10 months |
| | Domestic Violence | 200.0 | 20.0 | 200.0 | 3 (Agency) 2 (House) |
| | Court System | 145.9 | 51.3 | ??????? | 3 FT (Agency) 1 FT (House) 1 PT (House) |
| | Troopers | <u>0</u> | <u>0</u> | 0 | none |
| | TOTALS | 4206.1 145.2 (IAR) | 2704.9 108.9 (IAR) | ??????? | |

| | | | | | |
|--------|---------------|-------------|----------|-----------|----------------------------|
| HB 92 | Revenue | (69.6) | (69.6) | no change | none |
| | Law | 0 | 0 | no change | none |
| | DHSS | <u>0</u> | <u>0</u> | no change | none |
| | TOTALS | (69.6) | (69.6) | | |
| SB 21 | DHSS | 128.0 | ----- | ????????? | 1 full-time 2 part-time |
| | Public Safety | <u>81.2</u> | ----- | ????????? | 2 full-time |
| | TOTALS | 209.2 | | | |
| SB 219 | Public Safety | 1478.9 | ----- | 918.2 | 18 FT (Agency) |
| | Law | 359.5 | ----- | ?????? | 10 FT (SFC) |
| | Corrections | 0 | ----- | ?????? | 5 FT (Agency) |
| | DHSS | <u>0</u> | ----- | 0 | 1 PT (Agency) |
| | TOTALS | 1838.4 | | 0 | none |
| | | | | 918.2? | none |
| SB 263 | Commerce | 3.3 | ----- | 0 | none |
| | Revenue | <u>+2.5</u> | ----- | +2.5 | none |
| | TOTALS | .8 | | +2.5 | |