

SB

349-  
353

**MEMORANDUM**

STATE OF ALASKA

**DATE:** March 23, 1994

**TO:** Senator Robin Taylor, Chairman  
Senate Judiciary Committee

**FROM:** Barbara Brink, Deputy Public Defender  
Public Defender Agency

**SUBJECT:** SB 349 - "An Act Amending Alaska Rule of Criminal Procedure 6(r) Relating to Admissibility of Hearsay Evidence by Peace Officers Before the Grand Jury"

The Alaska Public Defender Agency is opposed to passage of SB 349 as it interferes with the constitutional right of the citizens of Alaska to a fair and reliable grand jury.

The Alaska Constitution, Article 1, Section 8 guarantees the right to grand jury. It provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

The purpose of this constitutional provision is to serve as a safety check for the citizens of Alaska. The grand jury exists to control abuses by the government and to protect the interests of the accused. The grand jury protects the innocent from unjust prosecution and provides due process of law. People with power, whether they be prosecutors, police or judges, cannot force someone to suffer all the serious consequences of a felony trial unless there has been a fair determination by a group of citizens that there is enough evidence. This group of citizens, the grand jury, can only make such a determination by examining the evidence, listening to what the witnesses have to say, and deciding whether or not they want to believe the witnesses. Critical to the decision of what to believe is assessing a witness' demeanor on the witness stand.

In a trial, jurors are told to consider:

the witness' attitude, behavior and appearance on the stand and the way the witness testifies;

the witness' intelligence;

the witness' opportunity and ability to see or hear the things about which the witness testifies;

the accuracy of the witness' memory;

any motive of the witness not to tell the truth;

any interest that the witness has in the outcome of the case;

any bias of the witness;

any opinion or reputation evidence about the witness' truthfulness;

any prior criminal convictions of the witness relating to honesty or veracity; and

the consistency of the witness' testimony and whether it is supported or contradicted by other evidence.

Many of these considerations can only be accomplished by physically requiring the presence of the witness on the stand. A grand jury cannot make a fair and reliable determination of the credibility of a witness without seeing the witness.

It is also important to remember why hearsay evidence is usually excluded--because it is unreliable. Like the child's game of "telephone", information is distorted even unintentionally when received second- or third-hand.


Some exceptions for allowing hearsay testimony have been developed, for example, for lab personnel who have conducted objective tests. When hardship or distance prevents personal presence, witnesses may testify by telephone. However, this bill, which basically eliminates the possibility of the grand jury being able to assess the credibility of police officer witnesses, and allowing for possible distortions of information is unnecessarily broad and guts the grand jury function. Such a legislative determination prevents the grand jury from doing its constitutionally mandated job, and is unfair to the citizens of Alaska.

BKB:sh

## M E M O R A N D U M

DATE: 3-24-94

TO: Senator Robin Taylor, Chairman  
Senate Judiciary Committee

FROM:  John Salemi, Director, Alaska Public Defender Agency

RE: Position Paper\SB350: "An Act Relating to A Defendant's Violation of Conditions of Release"

This bill is premised on the assumption that the procedure for returning defendants to custody who have violated conditions of release is unwieldy and too time consuming.

In fact, with 24-hour magistrates, and daily arraignments in both district and superior court, most urban areas in the state can process these alleged violations in the context of a court proceeding within hours of the reported violation. In the rural areas of Alaska, law enforcement typically contact magistrates directly in order to obtain warrants of arrest for bail violations. This can even occur by telephone with a fax order issued based on said telephonic communications.

While it is desirable to enact statutory provisions which enhance public safety, a balance must be achieved in terms of insuring due process guarantees, especially if the result is a loss of liberty. The present system permits a detached, objective assessment of alleged violation by a court officer.

Under current law, it is not difficult for the police to obtain a warrant to arrest based on violations of conditions of release. The hearing which follows typically is scheduled within 24 hours of arrest, and in many cases, sooner.

Furthermore, nothing in present law or procedure prevents an officer from contacting the alleged violator and taking other appropriate action. For example, if someone is violating a domestic violence order, that person can be immediately arrested and charged with a separate offense based on that violation. In some cases these "violations" are more on the order of misunderstandings between individuals which can be successfully mediated by a peace officer.

Finally, it should be pointed out that in some cases individuals use the power of the police and courts to manipulate situations. It is not unheard of for an individual to falsely report an alleged violation in order to attempt to have someone arrested and jailed. The present system interposes some safeguards which minimize such manipulations.

**MEMORANDUM**

STATE OF ALASKA

**DATE:** March 24, 1994

**TO:** Senator Robin Taylor, Chairman  
Senate Judiciary Committee

**FROM:** Barbara Brink, Deputy Public Defender <sup>RKS</sup>  
Public Defender Agency

**SUBJECT:** SB 351 - "An Act Amending Alaska Rule of Evidence 404, Relating to the Admissibility of Certain Character Evidence in Court Proceedings"

This bill proposes three very specific changes to the rules about what evidence is admissible at trial. First, in a violent crime where the accused asserts s/he was acting in self-defense and that the victim was the first aggressor, evidence of any past history of violence of the accused may be offered. Second, in a prosecution with a minor victim, evidence of other acts by the accused toward any child in the last ten years may be offered. Third, in a prosecution for sexual assault where the defense is consent, evidence of other sexual assaults by the accused are admissible.

This bill is opposed by the Public Defender Agency. Opening trials too broadly to other claims of bad acts risks depriving the citizens of Alaska of the constitutionally required presumption of innocence and due process of law. Additionally these changes would result in delay, expense and time-consuming mini-trials as each time such evidence is offered a separate hearing outside the presence of the jury will need to be held. Finally, this bill does nothing to accomplish its stated goals of reducing evidence about and trauma to a victim.

#### 1. Due Process

The current rules of evidence guard against convicting innocent people. Guilty verdicts are based upon evidence that proves a person committed the specific crime with which they are charged. Verdicts are not based upon evidence that the person is a "bad" person, has acted badly in the past, or has been accused of acting badly in the past. This bill proposes to change that. This bill will make it easier to convict people based upon their past history, as opposed to whether or not they are actually guilty.

An example better illustrates this. After a hard day at the capitol, a legislator retires to the Baranof for a well-earned chance to relax. A drunk constituent, unhappy with some pending legislative matter, verbally and then physically attacks. The legislator is required to use force

to defend himself. Unfortunately the drunk is severely injured by broken glass which he claims was wielded by the legislator. Unable to get a clear picture of the melee, the prosecutor charges assault. At trial, the jury is not told to decide the case solely based upon the testimony of people who were there, but is also permitted to consider two incidents from the past. A former girlfriend claims that years ago in an argument she was slapped by the accused. Even though he vigorously denies the incident and there is absolutely no physical evidence to corroborate it, the jury is permitted to hear that claim. Secondly, years ago the legislator had been forced to shoot at an intruder who had broken into his home. Even though no charges had been filed and the shooting was deemed "justifiable" by the police at the time, the jury is permitted to hear all the gruesome details. The jury, understandably affected by these allegations of violence in the past, wrongly convicts.

## 2. Separate Hearings

Before admitting evidence that is not directly relevant to the charge at hand, the court must hold a hearing to determine if the proffered evidence has any relevant purpose and if the evidence's probative value outweighs any prejudicial impact it may have on the jury. This is a particularly critical question under this bill which allows any evidence of these prior claims to be used--no matter how old, how unsubstantiated, how unlikely, or even how untrue. Such hearings will require the presentation of the evidence in total in order for the judge to be able to decide if the information is cumulative, irrelevant, distracting, prejudicial, confusing or misleading. This hearing will be time-consuming but necessary.

## 3. Purpose

Section 1 of the bill finds that victims are often "put on trial" in the course of criminal proceedings. This bill changes nothing about evidence of the victim, and in fact does not even address that issue. That issue is already covered by Alaska's Rape Shield Law (A.S. 12.45.045) which provides in most cases that evidence of a complaining witness' previous sexual conduct may not be admitted at trial. Therefore, it is impossible to understand why this bill is made "necessary" by concerns of putting the victim on trial .

Section 1 of the bill also finds that emotional trauma can be suffered by victims in the criminal justice system that "can in some cases be nearly as traumatic as the crime itself". This bill does nothing for the trauma of victims. This bill only makes it easier to convict people of crimes based upon past history, suspicion, innuendo, and speculation. This bill makes it easier to convict people who are not guilty of the crime with which they are charged. It is impossible to understand how convicting an innocent person would lessen the victim's trauma.

Instead of honoring the presumption of innocence and the requirement that a person be proven guilty beyond a reasonable doubt, this bill advocates justice based upon character assassination, "where there's smoke, there's fire," and the suspicion that "if he did something bad before, he probably did it again." This is not justice, and does not serve any of the citizens of Alaska, be they accused or victims.

BKB:sh

# MEMORANDUM

STATE OF ALASKA

DATE: March 21, 1994

TO: Senator Robin Taylor, Chairman  
Senate Judiciary Committee

FROM: John Salemi, Director  
Public Defender Agency

SUBJECT: SB 353 - "An Act Amending Alaska Rule of Criminal Procedures 24(d) Relating to Peremptory Challenges of Jurors

## Introduction

The Alaska Public Defender Agency is opposed to passage of SB 353. The current system of providing for ten defense peremptory challenges and six prosecution peremptory challenges has been reviewed exhaustively by the state judiciary. This very proposal was rejected by the Alaska Criminal Rules Committee in 1987.

The reasons for rejection of this proposal are both practical and philosophical. It is interesting that even judges and former prosecutors favor maintaining the present system. (This is not to say that there is no support for this legislative proposal).

This proposal has been promoted as a way of saving time and money in jury selection and a means to "level the playing field". Careful consideration of this issue will demonstrate that neither objective is achieved by changing the system of peremptory challenges in criminal cases.

## Argument

The system of permitting more defense peremptory challenges than prosecution challenges is based on the fact that most individuals who are called in for jury service already have an established bias favoring prosecution and conviction. Individual citizens are increasingly sensitized to the issues of violence and crime in their communities. They feel threatened and vulnerable. The perception of the vast majority of citizens who are called for jury service in criminal cases can be summed up thusly: The defendant probably wouldn't be in court if he/she hadn't done something wrong. In fact, this is a common response made by prospective jurors during the course of jury selection. This of course cuts severely against

the presumption of innocence and the obligation that the prosecution prove the case beyond a reasonable doubt through competent evidence. Put another way, many citizens who are called as prospective jurors presume criminal defendants guilty.

The peremptory challenge, when used by defense attorneys, often is merely a shortcut for challenging jurors who have established that they are not sufficiently objective to sit on a criminal case. The defense lawyer can either ask a long series of questions calculated to expose that lack of objectivity--a very time-consuming process--or can elect to use a peremptory challenge. Choosing the later method for excusal is much less time consuming. For those who suggest that reducing the number of peremptory challenges will save time, it should be noted that the most time-consuming portion of jury selection occurs when the first twelve jurors are questioned by prosecution and defense. This process occurs before the peremptory challenge mechanism comes into play. It is during this process that attorneys begin to identify those who will be challenged by preemption. If the number of challenges are reduced for the defense, the examination of the first twelve jurors will be even more time consuming, because fewer people will be removed through the peremptory challenge mechanism.

Rather than elaborate on these points I am attaching letters from Peter Michalski, Superior Court Judge (and former head of the Office of Special Prosecutions and Appeals) and Jeffrey Feldman, who fairly summarizes the position of the Criminal Rules Committee at the time the proposal was considered for court rule change. These balanced monographs will provide you the perspective you need to make a decision regarding this issue.

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Attachments

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# Memorandum

RECEIVED

Alaska Court System

OCT 09 1986

TO:  William T. Cotton  
Court Rules Attorney

Court Rules Attorney

FROM:   
Peter A. Michalski  
Superior Court Judge

DATE : October 8, 1986

SUBJECT: Reducing peremptory  
challenges in felony  
cases

In response to your memorandum of 29 August 1986, received in this office 9 September 1986, let me reiterate my oral comments to you generally disfavoring the reduction in peremptory challenges and specifically opposing the use of five peremptory challenges for each party as proposed by the court.

As you are aware the selection of juries varies in practice from court to court probably as much as from district to district. The stated reasons for changing the number of peremptory challenges are to save time, money, and maintain "representativeness". It is my impression that more education of courts and counsel would accomplish these goals just as effectively and leave the procedural apparatus that presently exists and its beneficent effects.

Time and money are limited resources and if wasted draw on the political strength of the court system within society. Without belittling the real importance of being responsible caretakers of the financial assets of the community and political assets of the court system, it is also important to preserve the treasure of our system: the jury trial. It is very difficult to balance these kinds of factors upon an objective scale and find precisely how such change will operate on these relative values.

The present 6-10 balance for peremptory challenges is rooted in tradition and the same goal stated for the changed number, i.e., obtaining a fair jury. Presently, the defendant is given a greater number of challenges because of the belief -- founded upon experience -- that in spite of the presumption of innocence, people still know the meaning of the saying "where there's smoke, there's fire", and most of our community is not at all sympathetic toward defendants. Given the very large amount of publicity about the harm of drugs to society, and the serious lasting harm caused by sexual assault (to both adult and child victims), more and more of our panel members are subject to "cause" challenges. Removing jurors who recognize they cannot be fair is one thing. It satisfies society that it is

providing a fair trial. It is also important to provide parties with that feeling. A defendant who feels "wrong" about a panel member should have substantial opportunity to simply challenge the juror without stating any reason, or trying to show that a panel member's "impartiality might reasonably be questioned." It may be trying to grasp a "will-o-the-wisp" to try to satisfy all defendants that they are not being railroaded, yet it seems to me the availability of 10 challenges is a good beginning to such an effort at trial. A sense of fairness is often as important as actual fairness.

The normal procedure for the exercise of challenges is to alternate them 1-2-1, etc. Thus, I do not understand your statement that the "procedure" would not change. The present procedure provides the state with the first and last challenge, if all are utilized. With 5 and 5, there would have to be modifications. This "advantage" of the last challenge is the protection against getting the obvious ringer who is not subject to challenge for cause. This is important to the government -- and the society it is instituted to protect -- because of the high burden of obtaining a unanimous verdict in criminal matters.

Just a brief comment on the proposed change to Cr. Rule 24(c): Judging whether a person's impartiality might reasonably be questioned may be substantially more difficult than determining bias as currently defined. And, if anybody whose impartiality might be questioned is excused, might we not be using even more, rather than fewer panel members?

PAM/dn

JAMES D. GILMORE  
JEFFREY M. FELDMAN  
SUSAN E. STEWART  
STUART A. OLLANIK

GILMORE & FELDMAN  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
310 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2095

TELEPHONE  
(907) 279-4508

September 8, 1986

The Honorable Jay A. Rabinowitz  
Chief Justice  
Alaska Supreme Court  
604 Barnette Street  
Room 418  
Fairbanks, Alaska 99701

RECEIVED  
SEP 11 1986

Court Rules Attorney

Re: Proposed Reduction in  
Peremptory Jury Challenges

Dear Chief Justice:

I am writing to you in my capacity as Chairman of the Standing Committee on Criminal Rules. I know that the Court Rules Attorney, William T. Cotton, has already forwarded to you the committee's view on the proposal to reduce the number of peremptory jury challenges in criminal cases. Because all of the members of the Criminal Rules Committee have strong views concerning this proposal and because the view that the existing rule on peremptory challenges should not be changed was unanimously held by all members of the committee, I felt that some additional comment and explanation was appropriate.

The committee gave careful consideration to the proposal to reduce the number of peremptory disqualifications. Each of the arguments in support of the reduction was explored during the course of a review and discussion that lasted a considerable period of time. As I am sure you can appreciate, a committee such as ours, which is comprised of judges, prosecutors, and defense lawyers, is often times fragmented in its view of particular rule changes. Each of us brings a perspective and, perhaps, a bias that shapes our views of issues that we are required to consider. During the course of my tenure as chairman of this committee, I cannot recall any other instance in which the views of the members of the committee were so uniformly held. The fact that all members of the committee, regardless of their perspective in the criminal justice system, were united in the view that the existing peremptory disqualification rule should not be challenged has significance in and of itself.

The justifications expressed for reducing the number of peremptory disqualifications are the perceived reduction in jury

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selection time, cost savings, and prevention of skewing of jury panels. The Criminal Rules Committee was strongly of the view that none of these supposed justifications has validity sufficient to merit changing the existing rule.

Most members of the committee believe that reduction of peremptory disqualifications will actually increase jury selection time, not decrease it. Judges on the committee commented that it was their experience that the early phases of jury selection sometimes consume time, but as the initial panel of jurors is questioned and the early rounds of peremptory disqualifications are exercised, the later rounds tend to go very quickly. The conclusion expressed, and I think everyone on the committee agreed with it, was that by and large, in most cases, the last four or five peremptory disqualifications are exercised rather quickly. By that point in the proceedings, counsel have been through their array of questions with a large number of jurors, the panel has already heard the questions a significant number of times, and most attorneys are sensitive about boring the prospective jurors to tears by unduly delaying the selection process. Thus, in most cases eliminating the last several peremptory challenges will not save substantial time.

Moreover, defense attorneys observed that if peremptory disqualifications were reduced, it is predictable that defense lawyers will likely take more time questioning individual jurors to attempt to develop a better and fuller record for exercising challenges for cause. Often times counsel identify a juror who is perceived to suffer some latent bias, but counsel will make the tactical decision to exclude that juror by simple exercise of peremptory disqualification rather than extensive voir dire aimed at exploring the perceived bias. If the number of peremptory disqualifications is reduced substantially, as is the proposal, counsel will have no alternative but to attempt to develop the challenges for cause in as much detail as possible. The proposed alteration in the standard for challenges for cause is not perceived as being likely to speed up this process much, nor result in any significant increase in the number of actual jurors who are successfully challenged for impartiality.

The predicted consequence is that trial judges will have to spend more time questioning more jurors aimed at establishing challenges for cause and it is also predictable that when those challenges are rejected, the appellate courts will be saddled with a larger number of appeals in which jury qualification and challenge issues are raised and litigated. If the belief is that

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reducing the number of peremptory disqualifications from ten to five will save the system substantial time, the rules committee strongly disagrees with the belief. The trial judges and the attorneys on the committee were in uniform agreement that the place where savings and time can be best accomplished is in reasonable controls set by trial judges on the length and scope of voir dire questioning. All members of the committee believe that avoiding an unduly protracted jury selection process is best addressed in that fashion, rather than in reducing the number of peremptory disqualifications.

The committee has no additional information to present on the view that reducing the number of peremptory disqualifications will result in a savings of money by allowing for smaller jury pools. It is apparent, however, that the proposal would only reduce the size of the jury pools by six prospective jurors and the committee questions whether the cost of summoning those six extra jurors is of overriding significance. Moreover, one of the trial judges on the committee commented that it was his experience that the court system almost always summons more jurors for a panel than is really required and, as a result, extra jurors are always left over. If that is the case, it seems that the cost savings could be better achieved by closer monitoring by the jury clerk of the actual numbers of jurors that are required, rather than by arbitrarily limiting the number of peremptory disqualifications.

All members of the committee are of the view that there are few procedural rights more integral and important to the perceived fairness of a trial than that of peremptory disqualification of jurors. While there may not be any constitutional or God given right to a certain number of peremptory disqualifications, all members of the committee feel that the existing procedure serves to strongly enhance the perceived fairness of the proceedings. The committee does not believe that the cost of summoning an extra six jurors for each felony trial can legitimately outweigh the enhancement of the perceived fairness of the proceedings and the administration of justice in these important cases.

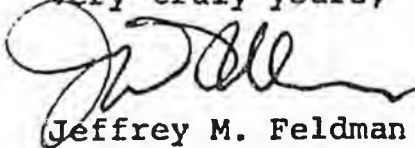
The last argument in support of reduction of the number of peremptory disqualifications suggests that the reduction would prevent "skewing the representativeness of the jury in relation to the general population". The committee is unaware of any evidence that would suggest that such "skewing" is actually occurring. The committee would be very interested in learning

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what data or information has been generated or made available that would suggest this kind of "skewing".

The committee has asked that the court hear and consider the committee's views on this important matter by allowing the committee, either collectively or through its chairman, to discuss this matter further with the court at an appropriate time. I hope that the court will consider that request as it is a sincere reflection of the committee's view that modification of the existing peremptory disqualification procedure would be an unwise policy choice. Thank you very much for considering the matters contained in this letter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. Feldman", written over the typed name.

Jeffrey M. Feldman

JMF:jd

cc: William T. Cotton  
Criminal Rules Committee Members

**BEFORE THE SENATE JUDICIARY COMMITTEE**

(Friday, March 25, 1994 -- 1:30 p.m.)

**FIVE NEW LAWS TO**  
**COMBAT VIOLENCE AGAINST ALASKA'S WOMEN AND CHILDREN**

In the State of the State Address, the Governor launched a new initiative designed to combat the crimes that most threaten the safety of Alaska's women and children -- domestic violence, stalking, rape, and child abuse.

At the core of this initiative are six new bills designed to level the playing field. (While all six were filed in the House, only five were filed in the Senate because Sen. Donley has already filed a bill to extend probation, SB 24.) All told, four of the six proposals will work directly to help protect the victims of domestic violence, stalking, rape, and child abuse -- and in many cases, to prevent new crimes from actually occurring.

These four bills would:

- SB 351      Amend the Rules of Evid. so that Rape Victims Aren't Put on Trial
- SB 350      Help to Promptly Arrest Stalkers and Wife Beaters Who Violate Bail
- SB 352      Make DMV Info Private so that Stalkers Can't Use it to ID Victims
- SB 24        Increase Probation to Protect Abused Kids for 10 Years -- Not Just 5

In addition, two additional bills would serve to provide new protections for all victims of crime -- including, of course, victims of domestic violence, rape and child abuse.<sup>1</sup>

These two additional bills would:

- SB 349      Put More Police and Troopers on the Street by Allowing Police Hearsay Testimony in the Grand Jury
- SB 353      Give Prosecutors and Defendants an Equal Number of Jury Challenges

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<sup>1</sup> **A Two-Thirds Vote:** Three of the six proposals involve Court Rules changes, which, under the law, would require a two-thirds vote in each house in order to pass. The three bills which would require a two-thirds vote are SB 351, amending the Rules of Evidence so that rape victims aren't put on trial; SB 349, putting more cops on the street by allowing police hearsay in the grand jury; and SB 353, giving prosecutors and defendants an equal number of peremptory challenges during jury selection.

## THE PROBLEM: RAPE. DOMESTIC VIOLENCE. AND CHILD ABUSE

On a per capita basis, Alaska has one of the highest rates of rape, domestic violence, child abuse and sexual abuse in the nation. Not only are these cases among the most difficult and sensitive that we prosecute, they are also among the most devastating in terms of the outrage, grief and emotional trauma they inflict on victims, families and entire communities.

The offenders in these cases are some of the most deserving of aggressive prosecution. They are cowards who prey on Alaska's most vulnerable victims: children, the elderly, and women who are incapacitated or impaired by fear, physical disability, alcohol, family relationship or other factors.

The problem of domestic and sexual violence in Alaska cuts across all boundaries of race, culture, economic status, educational background and other demographic factors. It is acute both in urban Alaska and in remote, rural areas.

## THE SOLUTION:

### SIX NEW LAWS TO FIGHT SEXUAL. FAMILY & DOMESTIC VIOLENCE

Alaska needs to give our police and prosecutors the tools they need to do the job. The recent passage of the Anti-Stalking law, the law permitting HIV Testing for accused sex offenders, and Speaker Barnes' Sex Offender Registration law all demonstrate that there is broad legislative support for new laws to combat violence against women and children.

Here are the six new proposals:

(1) SB 351: AMEND THE RULES OF EVIDENCE  
SO THAT RAPE VICTIMS AREN'T PUT ON TRIAL

The draft legislation seeks to level the playing field by amending the rules of evidence so that rape victims aren't put on trial.

Here's the problem:

It used to be more common that, in rape cases, the defendant often claimed that the rape simply didn't happen -- that no sexual contact took place. Thankfully, today, scientific advances in both the gathering and analysis of forensic evidence such as human hair, blood, semen, skin scrapings, and DNA have often made it much more difficult for accused rapists to use the "we never had sex" defense.

Among other effects, this may have contributed to the apparent increase in the number of rape cases in which the defendant -- while perhaps conceding that sexual contact did take place -- attempts to put the rape victim on trial by claiming that the woman "consented" to sex.

In cases such as this -- when the rapist claims the defense of "consent" -- the rules should permit the State to stand up for the victim, and to rebut this claim by introducing evidence of the defendant's prior sexual assaults.

#### The Case of Leo Hoffman

Consider, for example, the recent case of Leo Hoffman, a vicious serial rapist who was convicted of raping two women in California. He served hard time for rape in San Quentin. Then, not long after his release, he moved to Alaska and began to prey on women here.

He was charged in Alaska with kidnapping a local woman, forcibly injecting her with drugs, and repeatedly raping her in a horrifying, 12-hour ordeal. She finally escaped, donning her attacker's clothes, and fled ragged and in tears to a nearby business, where she immediately reported the rape to police.

As with many rape victims -- who are often selected by sexual predators precisely because of their vulnerability -- Hoffman's first Alaska victim was especially vulnerable due to suffering from chemical dependency. Hoffman declared that he would put the victim on trial by claiming that she had voluntarily participated in consensual sex -- a claim that could easily have been refuted by evidence of his convictions for past rapes.

Unfortunately, under current Alaska law, the jury would never learn the truth about Hoffman's prior rapes. Instead, Hoffman successfully hid behind the loophole in Alaska law that keeps prior rapes out, even where the defendant claims "consent."

Ultimately, Hoffman was convicted by a jury only of the one charge to which he had, in essence, confessed: possession of the cocaine that he was accused of injecting into his victim. Incredibly -- even after his conviction for this Class C felony -- the judge allowed Leo Hoffman out on bail, pending his appeal.

And last year, while out on bail, Leo Hoffman was again arrested, and charged with assaulting not one but two more innocent Alaska women.

To protect Alaska's women, it's long past time to close this dangerous legal loophole.

#### Abused Women Need Protection, Too

Similarly, in cases of domestic violence and other violent assaults -- such as cases involving a self-defense claim in which the defendant himself places the victim's character in issue -- a level playing field means that the State should also be permitted to introduce evidence of the defendant's own reputation for violence.

The attached draft proposes a pair of amendments to Evidence Rule 404 that can protect not only victims of rape, but also victims of domestic violence, in the kinds of situations described above.

### Protecting Alaska's Kids from Serial Predators

The Administration has also proposed that we delete the unnecessary language in Rule 404 that has made it difficult to prosecute repeat child molesters. As it reads now, the Rule has been erroneously interpreted by some judges to indicate that the jury can learn that an accused molester has abused other children only if the court finds that it was part of a particular "common scheme or plan."

Let's say, for example, that a child molester was convicted in Seattle of sexually abusing his own foster children. Then after getting out of prison, he comes to Alaska and takes a job at a day care center, where he again abuses the children in his care.

It may seem self-evident to some that having sex with children, whether one's own kids or whether children left in Day Care, would be part of a "common scheme or plan." But the rulings of some Alaska courts suggest otherwise. They would suggest that, on facts such as those presented in this example, there is actually evidence of two different schemes -- one designed to have sex with one's own children, and one designed to have sex with other people's children.

Erroneous interpretations such as these have prevented Alaska juries from learning the true facts about accused child molesters. The language in the Rule is confusing and has placed unnecessary constraints on sex abuse cases in many Alaska courts. Therefore, the phrase "common scheme or plan" should be deleted from Rule 404(b)(2).

### (2) SB 350: ARRESTING STALKERS AND WIFE BEATERS WHO THREATEN THEIR VICTIMS WHILE OUT ON BAIL

As the new anti-stalking law has proved, it's simply not enough to put laws on the books that only allow police to come in and mop up after a woman has already been victimized.

Protecting Alaska's women from stalkers and domestic violence means that police have to have the ability to act -- to intervene -- and to do so immediately.

Here's the problem:

In domestic violence cases, the accused often is released on bail. In many cases this is appropriate: often the defendant is a first-time offender, the conduct alleged is only a misdemeanor violation, and, quite obviously, the State simply doesn't have the prison space to lock up every man who is accused of domestic violence before he is even found guilty.

Nevertheless, when her attacker is out on bail, the abused woman is often at risk. Tragically, inevitably, what often happens is this:

Despite the order by the Court that he have no contact with the victim, the defendant returns to the home of the wife or girlfriend he's accused of attacking. Often it is late at night. Often, both alcohol and anger are involved.

There's a knock or a shout or a broken window. Words are exchanged. Terrified, the abused woman desperately calls 911. The police race to respond. Sirens blare. But by the time they arrive, predictably, the defendant has fled the scene. And since the police didn't see him violate bail with their own eyes, they can only make an arrest if, in the middle of the night, they are able to reach a prosecutor and a judge to issue the appropriate warrant.

This can take hours. And in the meantime, an accused criminal, angry and often drunk, remains at large. And one frightened woman will have a terrifying night as she is told, once again, that there is little that the police can do.

That's not good enough. Alaska's police need the ability to act.

The Governor's proposal would permit police to promptly arrest accused stalkers and other offenders who return to confront their victims. The draft amendment to AS 12.25.030 would authorize the warrantless arrest of persons who have violated conditions of release in domestic violence and rape cases, to the same extent that warrantless arrests are already authorized under existing Alaska law for the initial commission of these same offenses.

(3) **SEN. DONLEY'S SB 24: INCREASE PROBATION TO PROTECT ABUSED KIDS FOR 10 YEARS -- NOT JUST 5**

Among other benefits, this simple proposal would help protect Alaska's children and others from family violence. For example, right now many convicted child abusers or molesters finish serving their prison sentences while their own young children (who are most at risk from repeat violence) are still children. Because current law limits probation to only five years, the courts only have a maximum of five years of "control" over a released felon.

Our prisons don't have enough money to lock up all these offenders forever. But by simply extending the allowable period of probation to up to 10 years for all felony offenses, we can give the courts the tool they need to "hang a hammer" over the head of released child abusers for a long, long time -- long enough for most of their kids to grow up and become safe, independent adults -- and do so without the more expensive costs of full-time incarceration. In property crimes cases, extending probation can also be revenue positive by increasing the State's ability to collect restitution.

Proposals like this have been pending in the legislature during the past several years, sponsored by Sen. Donley and others. It is supported by both prosecutors and defense lawyers, and should be acted upon this Session.

(4) SB 352: MAKE D.M.V. INFORMATION PRIVATE  
SO THAT STALKERS CAN'T USE IT TO I.D. VICTIMS

California passed this legislation after DMV information was used in the stalking murder of actress Rebecca Schaeffer.

Here in Alaska, a convicted murderer, Jon Woodard, used public DMV information and license plate data in 1992 to identify the names of senior employees of Chilkoot Charlie's before robbing the establishment at gunpoint. (Woodard was convicted of murder in the subsequent shooting of the Loomis Armored Car guard at Carr's).

Another would-be killer, Laverne Brooks, tried to hire an ex-con to do a contract murder on former Superior Court Judge Victor Carlson and his (Brook's) ex-wife. Brooks used public DMV information to track down his ex-wife's new address for the hit man he had hired, and to identify the color and make of the car she was driving.

As it stands now, if they know the license plate of a particular car, members of the public can obtain the name, address and telephone number of the car owner from DMV. In order to protect the public -- and in keeping with Alaska's tradition of protecting the privacy of its citizens -- the Administration's draft amendment to AS 28.05.061 would make the addresses and telephone numbers confidential.

CLOSING THE LOOPHOLES:  
TWO ADDITIONAL LAWS TO COMBAT ALL VIOLENT CRIME

(5) SB 349: PUT COPS BACK ON THE STREET -- PERMIT THE  
USE OF POLICE HEARSAY TESTIMONY BEFORE THE GRAND JURY

In Alaska's federal courts, the case agent on a particular case simply comes before the grand jury, and testifies about the full scope of what was learned during the course of an investigation. If 12 agents were involved, they don't call all 12 in before the grand jury. They just call in one case agent -- and leave the other 11 free to be out on the street fighting crime.

Not so in Alaska's state courts. Because hearsay is generally not allowed in the grand jury, the lead police or trooper investigator cannot simply testify about what he or she learned from fellow cops. They can't even tell the grand jury about what they heard over the radio --the police dispatcher has to be called off the job and into court to testify about it in person.

As the federal courts in Alaska routinely prove, this expensive and unnecessary rule does absolutely nothing to protect the constitutional rights of Alaska's citizens. All it does is pull dozens of cops and troopers off patrol every month. They cool their heels in the D.A.'s office or the courthouse, invariably spending many wasted hours simply waiting around to testify.

The language in Criminal Rule 6(r)(1), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard. Even without additional police funding, this simple, constitutional rule change can reduce grand jury costs to the state -- and at the same time free up more police. Let's save money and put Alaska's police and troopers back out on the street, fighting crime.

(6) **SB 353: LEVEL THE PLAYING FIELD: GIVE PROSECUTORS AND DEFENDANTS AN EQUAL NUMBER OF JURY CHALLENGES**

During jury selection -- in all rape, domestic violence and other felony trials -- criminal defense lawyers are permitted to pre-empt ten jurors they consider unfavorable to their case, while prosecutors only are permitted to challenge six.

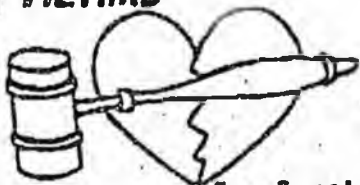
It's time to level the playing field. Alaska's laws should be brought in keeping with national standards -- and, at least initially, provide both sides with the same number of challenges. Acting to level the playing field in this way would not serve to deprive any defendant of the protections already afforded under Alaska law. Under the proposed Rule, Alaska's courts would continue to have the option of granting defendants additional challenges in cases where it is merited.

---

Taken together -- and taken in conjunction with other landmark legislation such as the sex offender registration bill, the HIV testing bill, the conspiracy bill, and the juvenile waiver bill -- these six proposals can provide the Legislature with a unique opportunity to strike a real blow against crime, as well as to protect Alaska's most vulnerable citizens.

We urge the Chairmen of the designated Committees to schedule hearings on these new bills at the earliest opportunity -- and we urge favorable consideration by the members of both Houses.

**VICTIMS**



**for Justice**

March 7, 1994

The Honorable Walter J. Hickel  
Office of the Governor  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Dear Governor Hickel,

The goal for all victims of violent crime is to eliminate victims of crime. The theme of the 1994 National Victims Rights Week is "Facing Violence Today; Fewer Victims Tomorrow". The six new laws to combat violence against Alaska's women and children that you have introduced is putting the teeth into this goal of fewer victims. How appropriate for your crime ideals to coincide with the concerns of the whole nation. Thank you for caring. Now it is time for the legislators to pass this very important legislation we can prevent further victimization of women and children.

Sincerely,

A handwritten signature in cursive script that reads "Janice Lienhart".

Janice Lienhart



# ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99501

TELEPHONE (907) 786-8500



Service since 1921

Tom Fink, Mayor

March 11, 1994

To The Alaska State Legislature:

Those of us in the law enforcement community for many years have felt that the rights of victims are overlooked in our legal system. Too often, the victims are helpless not only during the crime itself, but are again victimized by loopholes that prevent aggressive prosecution. The Anchorage Police Department supports the four new laws proposed by Governor Hickel aimed at protecting women and children because many of these injustices would be corrected.

We additionally can find no argument against modifying the use of police hearsay testimony in state trials to be consistent with that allowed in federal trials. This modification should make a significant impact in lowering Anchorage Police Department overtime costs for court appearances.

The State of Alaska should also conform with national standards in both the prosecution and defense having the same number of jury challenges. The current law only reinforces the belief that the courts offer more protection to the criminal than the victim.

We feel that these six proposed laws will help to balance a system that has traditionally focused on protecting the rights of wrongdoers, rather than the innocent.

Sincerely,

Duane S. Udland  
Deputy Chief of Police

# ALASKA PEACE OFFICERS ASSOCIATION



Anchorage Chapter  
P. O. Box 103824  
Anchorage, AK 99510  
Phone \_\_\_\_\_

March 7, 1994

The Honorable Walter J. Hickel  
Office of the Governor  
P.O. Box 110001  
Juneau, Ak. 99811-0001

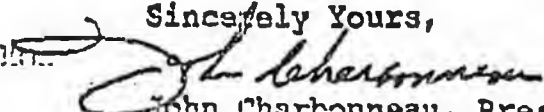
Dear Governor Hickel:

On behalf of the Anchorage Chapter of Alaska Peace Officers Association I would like congratulate you for introducing the new Anti-crime initiative which will combat violence against women and children in Alaska.

The new initiative is a tool which will greatly aide police officers in preventing domestic violence and sexual assault, and will give prosecutors the necessary means to prosecute offenders to the full extent of the law.

Any anti-crime bill that will help protect our women and children will be an asset to law enforcement in the state and the Anchorage Chapter of A.P.O.A. is glad to lend our support.

Sincerely Yours,

  
John Charbonneau, President  
(907) 277-8638

M. W. HICKEL  
GOVERNOR  
STATE OF ALASKA  
JUNEAU, ALASKA

**GOVERNOR HICKEL'S  
BILL TO PUT POLICE BACK ON THE STREET  
(SB 349 & HB 523)**

This bill will put Alaska's police back on the street by amending Criminal Rule 6(r) to allow one police officer to testify at grand jury as to what their fellow officers heard, said, or did in the course of a criminal investigation. This will reduce the number of officers that are routinely tied up in court when a case is presented to a grand jury.

In Alaska's federal courts, the lead agent on a particular case simply comes before the grand jury, and testifies about the full scope of what was learned during the course of an investigation. If twelve FBI agents were involved, they don't call all twelve agents in before the grand jury. They just call in the lead agent--and leave the other eleven free to be out on the street fighting crime.

Not so in Alaska's state courts. Because hearsay is generally not allowed in the grand jury, the lead police or trooper investigator cannot simply testify about what he or she learned from fellow cops. They can't even tell the grand jury about what they heard over the radio--all of their fellow cops have to be called off the job and into court to testify about it in person.

As the federal courts in Alaska routinely prove, this expensive and unnecessary rule does absolutely nothing to protect the constitutional rights of Alaska's citizens. All it does is pull dozens of cops and troopers off patrol week in and week out. They cool their heels in the D.A.'s office or the courthouse, invariably spending many wasted hours simply waiting around to testify.

The language in Criminal Rule 6(r)(1), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard. This simple, constitutional rule change can reduce grand jury costs to the State--and at the same time free up more police. Let's save money and put Alaska's police and troopers back out on the street where they belong--fighting crime.

*to file*  
*Good copy of [unclear]*

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Law 0033  
P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

SB 349

March 9, 1994

*The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Mr. President:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends Alaska Rule of Criminal Procedure 6(r) to allow one peace officer, such as an Alaska state trooper or police officer, to testify at grand jury as to what another peace officer heard, said, or did in the course of a criminal investigation. This will reduce the number of peace officers that must be involved and required to testify when a case is presented to a grand jury, especially when the peace officers may have only played a minor role in the investigation.*

*In federal courts in Alaska, the lead case agent on a particular investigation simply comes before the federal grand jury and testifies about the entire scope of what was learned during the course of an investigation. If 12 law enforcement agents were involved, the federal court rules do not require all 12 agents to personally appear and testify before the grand jury. The federal rules allow for just one case agent to appear and testify before the grand jury -- leaving the other 11 agents available on the street to fight crime.*

*This is not the situation in Alaska's state courts. Because hearsay evidence is generally not allowed to be presented before the grand jury in criminal cases, the lead peace officer investigating the case cannot simply testify about what that officer learned from fellow officers conducting the investigation. The lead officer cannot even testify before the grand jury about what that officer heard over police radio -- the police dispatcher who made the particular radio transmission must be called into court to testify about the statement in person. It frequently takes many work hours to prepare, and to be present, to testify.*

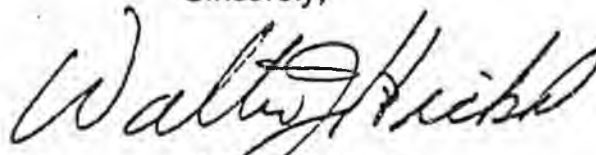
The Honorable Rick Halford  
March 9, 1994  
Page 2

As the federal courts in Alaska routinely prove, Alaska's hearsay rule does not provide any greater protection of the constitutional rights of Alaskans than does the federal practice. The present state court rule unnecessarily pulls dozens of peace officers off patrol every month simply to wait around to testify.

The language in Alaska Rule of Criminal Procedure 6(r), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard -- for example, as to the contents of their fellow officers' official police reports. The state is presently facing a projected decline in revenue. This simple, constitutional, rule change can reduce grand jury costs to the state by allowing one officer, rather than many, to present the relevant evidence, at the same time freeing up nontestifying officers to do essential public protection duties. If this bill is enacted, we could save money and keep Alaska's police and troopers out on the street fighting crime, without affecting the quality of evidence presented to the grand jury.

I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel  
Governor

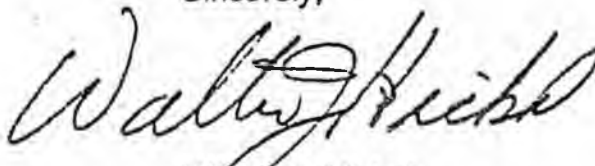
The Honorable Rick Halford  
March 9, 1994  
Page 2

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I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel  
Governor

**GOVERNOR HICKEL'S  
BILL TO ARREST STALKERS AND WIFE  
BEATERS  
(SB 350 & HB 524)**

As the new anti-stalking law has proved, it's simply not enough to put laws on the books that only allow police to come in and mop up after a woman has already been victimized. Protecting Alaska's women from stalkers and domestic violence means that police have to have the ability to act--to intervene--and to do so immediately.

Here's the problem: When an attacker is out on bail, the victim is often at risk. Tragically, inevitably, what often happens is this:

Despite the order by the Court that he have no contact with the victim, the defendant returns to the home of the wife or girlfriend he's accused of attacking. Often it is late at night. Often, both alcohol and anger are involved.

There's a knock or a shout or a broken window. Words are exchanged. Terrified, the abused woman desperately calls 911. The police race to respond. Sirens blare. But by the time they arrive, predictably, the defendant has fled the scene. And since the police didn't see him violate bail with their own eyes, they can only make an arrest if, in the middle of the night, they are able to reach a prosecutor and a judge to issue the appropriate warrant.

This can take hours. And in the meantime, an accused criminal, angry and often drunk, remains at large. And one frightened woman will have a terrifying night as she is told, once again, that there is little that the police can do.

That's not good enough. Alaska's police need the ability to act.

The Governor's proposal would permit police to promptly arrest accused stalkers and other offenders who return to confront their victims. The draft amendment to AS 12.25.030 would authorize the warrantless arrest of persons who have violated conditions of release in domestic violence and rape cases, to the same extent that warrantless arrests are already authorized under existing Alaska law for the initial commission of these same offenses.

~~County Court~~  
~~file X.~~

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

Law 0034

SB 350

March 9, 1994

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. President:

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would allow peace officers to make warrantless arrests when they have reasonable cause to believe that a defendant is violating the conditions of release imposed by a court in certain types of cases, including stalking, assault, sexual assault, and domestic violence cases. The bill would allow peace officers to take immediate action to protect the public, rather than requiring that they contact a prosecutor and a judge before arresting the defendant.*

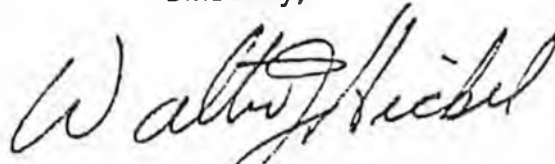
*For example, if a person accused of stalking, domestic violence, assault, or sexual assault confronts the victim while the person is released on bail, or violates another condition of release, peace officers are rarely able to protect the victim or the public in general by making an immediate arrest. Typically, the peace officer must first meet with a prosecutor, go into court to file a motion, and obtain a court order before they can act to put the defendant back in jail. Since a large percentage of these incidents occur late at night and often involve alcohol or drug use by the defendant, these situations are particularly dangerous for victims -- and challenging for peace officers, prosecutors, and judges.*

*The bill authorizes the warrantless arrest of defendants who have violated conditions of release imposed by the court for certain offenses to the same extent that warrantless arrests are already authorized under existing law for the initial commission of these same offenses. The bill would permit peace officers to promptly arrest accused stalkers and other offenders who confront their victims, or otherwise violate conditions of release, while on bail.*

The Honorable Rick Halford  
March 9, 1994  
Page 2

*Protecting Alaskans from stalkers and domestic violence requires giving peace officers the tools to act -- to intervene -- and to do so immediately. I urge your favorable action on this bill.*

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name.

Walter J. Hickel  
Governor

**GOVERNOR HICKEL'S  
BILL TO PROTECT VICTIMS OF RAPE,  
DOMESTIC VIOLENCE, AND CHILD ABUSE  
(SB 351 & HB 525)**

In far too many cases of rape, domestic violence, and child sexual abuse, Alaska's victims are often themselves "put on trial" in the course of criminal proceedings. The emotional trauma which such crime victims routinely suffer in the criminal justice system can in some cases be nearly as traumatic as the crime itself.

This legislation seeks to help solve these problems in several ways. First, it levels the playing field by amending the rules of evidence so that victims can't be "put on trial" by the accused rapist.

Defendants in rape cases used to claim that the rape simply didn't happen--that no sexual contact took place. Thankfully, today, scientific advances in both the gathering and analysis of forensic evidence such as human hair, blood, semen, skin scrapings and DNA have often made it much more difficult for accused rapists to use the "we never had sex" defense. The new defense is--while perhaps conceding that sexual contact did take place--attempting to put the rape victim on trial by claiming that the woman "consented" to sex.

In cases such as this--when the rapist claims the defense of "consent"--the rules should permit the State to stand up for the victim, and to rebut this claim by introducing evidence of the defendant's prior rapes.

Similarly, in cases of domestic violence and other violent assaults--such as cases involving a self-defense claim in which the defendant places the victim's character in issue--a level playing field means that the State to stand up for the victim, and to rebut this claim by introducing evidence of the defendant's prior rapes.

This proposed legislation also deletes the unnecessary language in Rule 404 that has made it difficult to prosecute repeat child molesters. As it reads now, the Rule has been erroneously interpreted by some judges to indicate that the jury can learn that an accused molester has abused other children only if the court finds that it was part of a very specific "common scheme or plan." This bill would fix that problem by simply eliminating this confusing phrase.

file # \_\_\_\_\_  
WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Jaw 0035  
P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

SB 351

March 9, 1994

*The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Mr. President:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends Alaska Rule of Evidence 404 in several respects to help protect the victims of crimes in this state.*

*In far too many cases of sexual assault, domestic violence, and child sexual abuse, Alaska's victims are often themselves "put on trial" in the course of criminal proceedings. The emotional trauma that such crime victims routinely suffer in the criminal justice system can in some cases be nearly as traumatic as the crime itself.*

*Therefore, in order to address these problems and to better protect Alaska's citizenry, especially women and children who are frequently the victims of these crimes, we have proposed three changes to Rule of Evidence 404 which are intended to accomplish the following three goals.*

*The first goal is to reduce the number of times a sexual assault victim is "put on trial" by authorizing the admission into evidence of other sexual assaults or attempted sexual assaults by the defendant if the defendant claims that the victim voluntarily "consented" to the sexual activity. When a defendant argues that the victim consented, the prosecution should be permitted to stand up for the victim and rebut this claim by introducing evidence to the jury that the defendant has sexually assaulted or attempted to sexually assault other victims in the past.*

*The second goal is to similarly protect Alaska's sexually abused children. Rule of Evidence 404(b) was intended to prevent sexual predators and other child abusers from manipulating juries by hiding their past crimes of this type. Unfortunately, a confusing and unnecessary phrase -- "to show a common scheme or plan" -- has*

The Honorable Rick Halford  
March 9, 1994  
Page 2

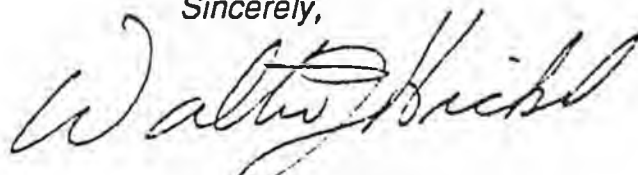
been misinterpreted by several Alaska courts to exclude evidence meant to be allowed under the rule. This bill would fix that problem by simply eliminating this confusing phrase. Evidence of other sexual assaults or sexual abuse by the defendant toward the same or another child should be admissible if those acts are similar to the offense charged, whether or not the evidence demonstrates a "common scheme or plan." This bill also specifies a 10-year time period as being not too remote for the admissibility of evidence of prior similar sexual assaults or sexual abuse offenses committed by the defendant against children.

The third goal relates to evidence of past violence on the part of the defendant. In cases of domestic violence and other violent crimes, the defendant often claims that the victim was the initial aggressor. The defendant claims, in essence, that "the victim hit me first" and that therefore the victim "had it coming." Under the existing rule of evidence, the defendant is then permitted to introduce all sorts of evidence about the victim's past reputation for violence -- and hide the fact that the defendant's own past contains an even more violent record. This bill would fix the rule by permitting the prosecution to stand up for the victim, and to rebut these claims by introducing evidence of the defendant's own past violence.

A defendant who claims that the victim was the aggressor should not be able to hide behind Rule 404 to keep a jury from learning that the defendant has an even greater reputation for violence in the community. The most common "relevant character trait of the accused" contemplated in this proposed amendment to Rule of Evidence 404(a) is the accused's reputation for violence or aggression.

The changes proposed in this bill will help level the playing field for the state in its efforts to combat crime. I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel  
Governor

**GOVERNOR HICKEL'S  
FAIR JURY SELECTION BILL  
(SB 353 & HB 528)**

The American Bar Association (ABA) Standard No. 15-2.6 provides that--in trials involving just one defendant (as is the case in the vast majority of Alaska trials)--the prosecution and the defense should have the same number of jury challenges.

This bill would bring Alaska into conformity with those national standards.

At present, during jury selection in all rape, domestic violence and other felony trials, criminal defense lawyers are permitted to preempt ten jurors they consider unfavorable to their case, while prosecutors only are permitted to challenge six. This balances the scales unfairly, tilting jury selection in favor of criminal defendants.

Governor Hickel's proposed legislation would amend Alaska Rule of Criminal Procedure 24(d) to equalize the number of peremptory challenges that prosecutors and defendants have in jury trials. This legislation can help level the playing field in criminal prosecutions, reduce the cost of criminal trials, and give the State a reasonable chance to do its job to protect the public.

Alaska's laws should be brought in keeping with national standards--and, at least initially, provide both sides with the same number of challenges. Acting to level the playing field in this way would not serve to deprive any defendant of the protections already afforded under Alaska law. Under the proposed Rule, Alaska's courts would continue to have the option of granting defendants additional challenges in cases where it is merited (such as trials involving multiple defendants).

*Walter J. Hickel*  
WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

*Law 0038*  
P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

*SB 353*

March 9, 1994

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to peremptory challenges of jurors in felony criminal proceedings. During jury selection for felony trials, such as for murder, sexual assault, domestic violence, or child abuse, peremptory challenges are used by both prosecutors and defense lawyers to remove potential jurors from the case in an effort to obtain a fair jury to hear the case. But current court rules allow criminal defendants to peremptorily challenge 10 jurors without stating a cause, while prosecutors are only permitted to challenge six on this basis. This difference in the court rules balances the scales unfairly, tilting jury selection in favor of criminal defendants.

This bill will amend Alaska Rule of Criminal Procedure 24(d) to give prosecutors and defendants the same number of peremptory challenges in jury trials in felony criminal cases. This bill will help level the playing field in criminal prosecutions when trying to pick a fair jury to hear a criminal case. Also, allowing both sides six peremptory challenges may reduce the cost of criminal trials by reducing the time needed for jury selection.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel  
Governor