

SB

351

WALTER J. HICKEL
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1994

351

*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
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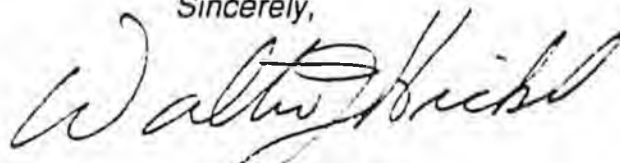
been misinterpreted by several Alaska courts to exclude evidence meant to be allowed under the rule. This bill would fix that problem by simply eliminating this confusing phrase. Evidence of other sexual assaults or sexual abuse by the defendant toward the same or another child should be admissible if 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,

A handwritten signature in cursive script, reading "Walter J. Hickel".

Walter J. Hickel
Governor

* Need 2/3 vote - Court Rule Change

8-GS2035.A

2/3 VOTE

SENATE BILL NO. 351

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/9/94
Referred: STA, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act amending Alaska Rule of Evidence 404, relating to the admissibility of
2 certain character evidence in court proceedings."

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

4 " Section 1. FINDINGS AND PURPOSE. The legislature finds that, in far too many cases
5 of sexual assault, attempted sexual assault, domestic violence, and child sexual abuse, Alaska's
6 victims are often themselves "put on trial" in the course of criminal proceedings. The
7 legislature further finds that the emotional trauma that such crime victims can suffer in the
8 criminal justice system can in some cases be nearly as traumatic as the crime itself. In an
9 effort to address these problems, the legislature finds that the amendments to Alaska Rule of
10 Evidence 404 made by this Act are necessary. First, the legislature finds that in cases of
11 domestic violence and other violent crimes in which the defendant claims that the victim was
12 the initial aggressor, an amendment is necessary to permit the prosecutor to rebut this claim
13 by introducing evidence of the defendant's own past violence. Second, in cases of child abuse
14 or child sexual abuse, a further amendment is essential to remove the confusion in some

1 Alaska courts caused by the unnecessary inclusion in Alaska Rule of Evidence 404(b)(2) of
2 the phrase "to show a common scheme or plan." Finally, in sexual assault and attempted
3 sexual assault cases in which the defendant claims that the victim voluntarily "consented" to
4 the sexual activity, further amendment is necessary to permit the prosecution to rebut this
5 claim by introducing evidence of other sexual assaults or attempted sexual assaults by the
6 defendant.

7 * Sec. 2. Alaska Rule of Evidence 404 is amended to read:

8 Rule 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE
9 CONDUCT -- EXCEPTIONS -- OTHER CRIMES. (a) CHARACTER EVIDENCE
10 GENERALLY. Evidence of a person's character or a trait of his character is not
11 admissible for the purpose of proving that he acted in conformity therewith on a
12 particular occasion, except:

13 (1) Character of Accused. Evidence of a relevant trait of his character
14 offered by an accused, or by the prosecution to rebut the same;

15 (2) Character of Victim. Evidence of a relevant trait of character of
16 a victim of crime offered by an accused, or by the prosecution to rebut the same, or
17 evidence of a relevant character trait of an accused or of a character trait for
18 peacefulness of the victim offered by the prosecution in a [HOMICIDE] case to rebut
19 evidence that the victim was the first aggressor, subject to the following procedure:

20 (i) When a party seeks to admit the evidence for any purpose,
21 he must apply for an order of the court at any time before or during the trial
22 or preliminary hearing.

23 (ii) The court shall conduct a hearing outside the
24 presence of the jury in order to determine whether the probative value
25 of the evidence is outweighed by the danger of unfair prejudice,
26 confusion of the issues, or unwarranted invasion of the privacy of the
27 victim. The hearing may be conducted in camera where there is a
28 danger of unwarranted invasion of the privacy of the victim.

29 (iii) The court shall order what evidence may be
30 introduced and the nature of the questions which shall be permitted.

31 (iv) In prosecutions for the crime of sexual assault in

1 any degree and attempt to commit sexual assault in any degree,
2 evidence of the victim's conduct occurring more than one year before
3 the date of the offense charged is presumed to be inadmissible under
4 this rule, in the absence of a persuasive showing to the contrary.

5 (3) Character of Witness. Evidence of the character of a
6 witness, as provided in Rules 607, 608, and 609.

7 (b) OTHER CRIMES, WRONGS, OR ACTS. (1) Evidence of other crimes,
8 wrongs, or acts is not admissible if the sole purpose for offering the evidence is to
9 prove the character of a person in order to show that the person acted in conformity
10 therewith. It is, however, admissible for other purposes, including, but not limited to,
11 proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence
12 of mistake or accident.

13 (2) In a prosecution for a crime involving a physical or sexual assault
14 or abuse of a minor, evidence of other acts by the defendant toward the same or
15 another child is admissible [TO SHOW A COMMON SCHEME OR PLAN] if
16 admission of the evidence is not precluded by another rule of evidence and if the prior
17 offenses

18 (i) occurred within the 10 years preceding the date
19 of the offense charged [ARE NOT TOO REMOTE IN TIME];

20 (ii) are similar to the offense charged; and

21 (iii) were committed upon persons similar to the
22 prosecuting witness.

23 (3) In a prosecution for a crime of sexual assault in any degree or
24 attempt to commit sexual assault in any degree, evidence of other sexual assaults
25 or attempted sexual assaults by the defendant against the same or another person
26 is admissible if the defendant relies on a defense of consent.

27 * Sec. 3. The provisions of secs. 1 and 2 of this Act take effect only if they receive the
28 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State
29 of Alaska.

FISCAL NOTE

No. 4
 Bill Version: SB.351
 (S) Publish Date: 3-9-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: *An Act Relating to Evidence in Sexual BRU: Office of Public Advocacy
Assault Cases... Component: Office of Public Advocacy
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____
 Approved by Commissioner: Nancy Bear Usura Date: 2/17/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

No. 3

Bill Version: 9B.351

(S) Publish Date: 3-9-94

Revision Date: _____ Dept. Affected: Public Safety

Title: Evidence in Sexual Assault Cases BRU: Alaska State Troopers

Component: Detachments

Sponsor: Rules by Request

Requestor: Governor COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Lee Ann Lucas Phone: 465-4322

Division: Office of the Commissioner Date: 2/16/94

Approved by Commissioner: [Signature] Date: _____

Agency: Richard L. Burton, Dept. of Public Safety

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Handwritten:
2/16/94

FISCAL NOTE

No. 2

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 351

(S) Publish Date: 3-9-94

Revision Date: February 15, 1994
Title: "...amending Alaska Rule of Evidence 404...
admissibility of certain character evidence..."
Sponsor: Rules/Request of Governor
Requestor: Governor's Office

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard T. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 15, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: February 15, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION:

This bill amends Alaska Rule of Evidence 404 in several important respects. First, the bill would help reduce the number of times a rape victim is "put on trial" by authorizing the admission into evidence of other sexual assaults by the defendant against the same or another person when the defendant relies on the defense of consent. A defendant who argues that the victim consented should not be able to hide behind Rule of Evidence 404(b) to keep the jury from learning that the defendant has assaulted other victims.

Second, with respect to sexual abuses or assaults against a minor, this bill removes from Rule of Evidence 404(b) confusing language -- "to show a common scheme or plan" -- that has been misinterpreted by several courts to exclude evidence meant to be allowed under the rule. The bill also specifies a 10-year time period as being not too remote for the admissibility of evidence of prior similar assaults or sexual abuse offenses committed by the defendant against minors.

Finally, this bill amends Rule of Evidence 404(a) to allow evidence of a defendant's reputation for aggression or violence when the defendant places the victim's character for violence in issue by claiming self-defense. 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.

Because the bill modifies the rules of evidence in a manner that will help level the playing field for state prosecutors, and does not add to or otherwise increase our workload, there will not be a fiscal impact.

FISCAL NOT

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 351

(S) Publish Date: 3-9-94

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act Relating to Evidence in Sexual BRU: Public Defender Agency
Assault Cases..." Component: Public Defender Agency
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 264-4400
 Date: _____

Approved by Commissioner: Nancy Bear Usara
 Agency: Administration

Date: 2/17/94

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Rape report

Statistics, attitudes need examination

Rape. It's an ugly word about an ugly subject. It's a crime that too many victims would rather not talk about. And it's a crime that's under-reported.

So says a survey by the National Victim Center in a rape report released Thursday.

The report's statistics are stark and unsettling:

One out of every eight American women has been raped.

84 percent of victims don't file a police report.

61 percent said they were age 17 or younger when they were raped.

Moreover, says the study, 4 out of 5 victims knew their attackers. And 3 out of 4 are fearful of being blamed by others for causing the rape.

The study, though, focuses solely on women as victims. Mary Western, director of education at Standing Together Against Rape, says she would rather see a "society against rapists" attitude instead of the usual "male pitted against female" precisely because men can be victims, too.

Clearly, society needs to change its attitudes toward rape victims.

In the case of marital rape, for example, husbands oftentimes see their wives as property. "How can I rape her, she's my wife?" is their argument. Attitudes are slowly changing, but a recent case involving a South Carolina couple may set back the clock for some.

That state's marital rape law allows testimony about the accuser's past sexual conduct, but not the defendant's. In the first test case, a jury acquitted a husband — who tied up his wife and taped her eyes and mouth — of marital rape.

It is such cases and such manipulation of law by mostly male legislators that give women (who make up the majority of accusers) pause.

When we examine our unspoken words and our unconscious attitudes about what constitutes rape and who is a victim, then we will have made progress that victims can build on. From there, they can grit their teeth and file that police report. If the accused is found and arrested, a case can be constructed. And if he or she is convicted, there's one less rapist looking for victims. And one less victim who feels powerless.