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282

**ALTERNATIVE APPROACHES IN FACILITATING
CHILDREN'S TESTIMONY**

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In recent years, a growing number of states have turned to technological means to facilitate the testimony of child victims and witnesses in criminal prosecutions. Procedures for using videotapes or closed circuit television are statutorily authorized in a majority of states, though they differ substantially on such crucial questions as whether the defendant is permitted to confront a child witness face-to-face. The motivation for the procedures has been the belief that children will be able to testify more freely and accurately if they are removed from the forbidding setting of the public courtroom, which is designed for adults, and that juries thus will hear more of the facts of a case.

But more and more experts are questioning the need and efficiency of such procedures and pointing out the dangers inherent in their use. Some have come to believe that careful, humane treatment of child victims, from the time a complaint is registered until the child actually testifies, can help significantly to prevent further trauma to the child, as well as ensure that the best testimony - live testimony - will be heard in court. Thorough multidisciplinary coordination among police, prosecutors, social workers, protective service workers, and medical personnel is necessary to achieve that result, and must involve limiting the number of interviews, providing appropriate therapy, and taking steps to reduce fears of appearing in court. Prosecutors in Huntsville, Alabama, for example, where such a multidisciplinary program is in place, state that though they have a videotape statute on the books they have yet to make use of it.

One way to look at videotaping and closed circuit procedures is to treat them as tools to be used when necessary, weapons in the arsenal of prosecutors that may not be required but should always be at hand. We need both technological and human approaches to the problems of child victims, and in this spirit, an examination of some of the alternatives for taking or enabling the testimony of children follows. Included are discussions of videotaping, closed-circuit TV (including two-way closed-circuit), hearsay exceptions, and the multidisciplinary non-technological approach. Since most of the statutes examined are relatively new, the constitutionality of some of their provisions has not been completely determined by the courts yet. States considering enacting any of these reforms will have to respond to the concerns of judges as more issues involving these procedures are tested in future cases.

An Overview of the Problem

Testifying in court can be an extremely traumatic experience for the child victim or witness. Weeks, months, or even years after a victimization that in itself may be seriously traumatizing, the child is forced to relive in public the details of the offense, and undergo the intense scrutiny of a vigorous cross-examination by defense counsel. The child may be intimidated by the presence of the defendant or a large number of adult strangers, or by the formality of the process itself. Added pressure occurs if the defendant is a member of the victim's family. Still

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unavailable to the defendant under federal criminal procedure rules), as well as to intimidate the witness, the suit "is exactly the kind of harassment the Act was designed to eliminate," according to the court. Even if the suit might have a legitimate purpose, its timing, coming just before criminal proceedings, can deprive it of that purpose.

Bail Reform Act Constitutional Despite Absence of Time Limit

Although the Federal Bail Reform Act of 1984 (18 U.S.C. 3141, et seq.) places no limit on the length of time a defendant can be detained without bail before trial, the Act remains constitutional, the Third Circuit has held. U.S. v. Accetturo, 38 CrL (BNA) 2390 (2/14/86).

The defendants in the case claimed that the Act was unconstitutional since it did not require the judicial officer initially making the determination to consider the likely length of pretrial detention for defendants. The court disagreed, however, ruling that The Speedy Trial Act (18 U.S. 3161, et seq.) regulates the length of pretrial delay for both detained and undetained defendants and the detention hearing is too early a stage to consider potential delay problems.

CONFERENCES

Child Sex Abuse Prosecution Symposium

The multidisciplinary approach to child sex abuse prosecutions that has worked so effectively in Huntsville, Alabama will be explored during a three-day symposium sponsored by the National Children's Advocacy Center in Huntsville, April 6-8, 1986. The symposium, presented in conjunction with the U.S. Department of Justice and the National District Attorneys Association's National Center for the Prosecution of Child Abuse, will cover evidentiary issues, interviewing and investigative techniques, and roles that police, prosecutors, victim witness assistants, protective services workers, and medical professionals can play in working together effectively to prosecute child sex offenses while providing more humane treatment for the victim. Contact NCAC at 106 Lincoln Street, Huntsville, Alabama 35801; (205) 533-KIDS.

12th Annual NOVA North American Victim Assistance Conference

The National Organization for Victims Assistance will hold its 12th annual conference September 8-12, 1986, in Denver, Colorado. The conference brings together hundreds of victim activists, service providers, legislators, government officials, and criminal justice professionals from across the country to discuss a wide variety of topics. Contact NOVA at (202) 393-6682 for further information.

Child Support Enforcement

The National Governors' Association and the American Public Welfare Association are sponsoring a Southeastern Regional Conference on "Making Cents for Kids: Investing in Children's Programs with Child Support Enforcement," April 23-25, in New Orleans, Louisiana. The goals of the conference are to increase awareness of the relationship of non-support to other children's needs and programs, highlight exemplary state child support programs, explore new financing strategies for children's services through child support revenues, and learn how effective automation techniques can increase program efficiency. For further information, contact Lynne Fender, NGA, (202) 624-7722; or Deborah Dale, APWA, (202) 793-7550.

another consideration, particularly for smaller children, is that the possible remoteness in time of the trial from the offense may make full and accurate testimony more difficult.

Some child psychiatrists believe that the degree of psychic trauma suffered by a criminally victimized child is much dependent on the way the child is treated after discovery of the offense as it is on the actual victimization. 1/ One study of a random sample of child sex victims found that those who participated in judicial proceedings showed more psychic harm than those who did not. 2/ Many parents, realizing how gruelling the criminal process can be, fail to report sexual assaults in order to protect their children from courtroom trauma. 3/ In fact, some estimate that the actual incidence of sexual abuse of children is from two-to-fifty times higher than the 100,000 cases reported nationally each year, at least in part because of the trauma of trial and pretrial procedures. 4/

Reforms such as videotaping and closed-circuit television are departures from standard procedures used for taking testimony in criminal cases. But if the goal of the prosecutorial process ultimately is to seek the truth concerning a given accusation, and if the evidence of a child is necessary to establish that truth, then some accommodation to the characteristics and needs of the child may have to be made. The challenge in that effort, of course, is to safeguard at the same time the constitutional rights of the accused.

Testifying Through Videotape or Closed-Circuit Television

One proposed solution to the difficulties children have in testifying in open court makes use of the technologies of videotape or closed-circuit television. The child is removed from the courtroom during the child's examination, and the child's testimony either is recorded and played back later to the court or broadcast live through a television hookup. The advantage of these procedures is that the child does not have to face a courtroom full of adult strangers and may feel less frightened or embarrassed about testifying. Some statutes provide further protection to the child by stipulating that the defendant cannot be present physically in the same room as the child while the child testifies. The child is thus also free of the potentially intimidating presence of the defendant.

Presenting a child's testimony through a videotape made prior to a trial is an option now authorized by legislation in at least 28 states. 5/ Nearly a third of these statutes were enacted in 1985, and most of the others were passed within a few years prior to that. Differences exist among the statutes with regard to the circumstances under which the procedures can be used, but most require some demonstration that the child will suffer severe mental or emotional harm if required to testify in open court. This conclusion can be supported by allegations that the defendant has threatened the child with physical injury or, in a case of intrafamilial abuse, warned the child that the abuser will go to prison or that the child will be removed from the home. If it is determined that the child will be severely traumatized if forced to testify in court, the child may be declared unavailable as a witness. The videotape or closed-circuit procedure is then justified as a means of ensuring that the child's testimony will be heard.

The major controversy that has arisen with regard to videotape and closed-circuit procedures is with regard to the defendant's right to be confronted with the witnesses against him, as guaranteed by the Sixth Amendment to the United States Constitution. 6/ Whether the state statutes that stipulate the defendant cannot be in the same room as the child when the child testifies violate the confrontation right has not been settled by the courts at present. 7/ The U.S. Supreme Court, though it has not ruled on a child videotape or closed-circuit statute yet,

has said that the purposes of the confrontation right are to ensure that the witness will be placed under oath and cross-examined, and that the jury will be permitted to observe the witness' demeanor. 8/ It can be argued, in light of the Supreme Court's pronouncement, that the face-to-face presence of the defendant during a witness' testimony is not an essential or even important purpose of the right. It further can be argued that no constitutional right is absolute, and that ensuring a child witness' well-being and ability to testify should override a defense prerogative to "eyeball" an accuser. The established hearsay exceptions recognized in all jurisdictions are, of course, exceptions to the confrontation right, since they allow for the admission of testimony from witnesses not present at trial. 9/ The trustworthiness of the hearsay evidence and the need for its introduction outweigh other considerations, including the confrontation right. 10/

Two of the most comprehensive videotape and closed-circuit statutes have been adopted by Kentucky and Texas. 11/ The statutes are identical, and provide for the taking of children's testimony in three different ways. The first is when the child is interviewed in a nonadversarial setting prior to trial. In most instances, this would occur in an interview between the victim and a criminal justice, mental health, or social work professional shortly after the offense. For this tape to be introduced in evidence, the child must be available to testify at trial. If the child is unable to testify when put on the stand, the evidence can still be received. This pretrial interview tape also can be very useful in persuading defendants to plead guilty, obviating the need for a trial. The second way is to take the child's testimony in a room other than the courtroom, and televise the examination by closed-circuit equipment to the court and the jury. Attendance in the room is limited to the attorneys for the defendant and the state, to persons necessary to operate the television equipment, and to any person whose presence would contribute to the well-being of the child. Full cross-examination is allowed, but the defendant is not allowed in the presence of the child. The third way is similar to the second, except that the testimony is recorded and shown later in court, rather than broadcast simultaneously.

The constitutionality of both states' statutes is now in question because of successful confrontation right challenges in lower courts. Review by appellate courts is not complete. Videotape statutes in other states, such as Arizona, do not restrict the defendant's presence during examination of the child, and thus do not face these constitutional problems. 12/

Videotaping is not a panacea, and in fact its use can cause as well as solve problems for the child and the prosecutor. Depositions normally take place in small rooms, and if the videotape statute does not call for the removal of the defendant from the presence of the child during a videotaped deposition, the actual effect of the procedure is to bring the child and the defendant in much closer physical proximity than would occur in a courtroom. This may make it more difficult for the child to testify by videotape than in open court. Another problem may arise by a requirement that the child be demonstrated to be unavailable due to the risk of severe emotional or mental harm, because to prove unavailability the child may be subjected to a battery of medical and/or psychiatric tests that add more stress to the child's involvement in the case. In addition, sometimes videotapes of child interviews may be subpoenaed by the defense and used to discredit the child at trial if the child testifies inconsistently on certain details.

Two-Way Closed-Circuit Television Testimony

One method that may prove useful in avoiding confrontation clause controversies, while still removing the child from the physical presence of the defendant, is the use of two-way closed-

circuit television. Not only is the child's image and voice broadcast live to the courtroom, but the defendant's image also is transmitted to a monitor the child can view. Both New York and California passed laws in 1985 authorizing two-way closed-circuit television for child victims or witnesses of sexual offenses. 13/ The statutes are extremely similar procedurally, and both are intended to be used only in extraordinary circumstances, when the mental or emotional well-being of the child is severely at risk.

New York allows its closed-circuit procedure to be used in the judge's discretion, if by clear and convincing evidence it is shown that it is likely, "as a result of extraordinary circumstances," that a child witness 12 years of age or younger "will suffer severe mental or emotional harm" if required to testify other than through closed-circuit television. In making its determination, the court may consider any of 12 factors listed in the statute, most of them focusing on the age and psychological makeup of the child, the relationship between the child and the accused, the circumstances of the crime, including whether the child was injured, and whether any threats of physical violence or warnings that a parent will be incarcerated or the child removed from the home have been made. The court must make a specific finding that the presence of the defendant in the same room with the child will contribute to the likelihood of the child's suffering severe emotional or mental harm. The image of the jury as well as that of the defendant must be transmitted to a monitor the child can view.

For California's law to be used, the child witness must be 10 years of age or younger, and the impact on the child of one or more of the following circumstances must be shown by clear and convincing evidence to be so substantial as to make the child unavailable as a witness unless closed-circuit procedures are used:

- ° Threats of serious bodily injury to be inflicted upon a minor or a family member, or of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in the criminal prosecution;
- ° Use of a firearm or any other deadly weapon during the commission of the crime;
- ° Infliction of great bodily injury upon the victim during the commission of the crime;
- ° Conduct on the part of the defendant or defense counsel during the hearing or at trial which renders the minor unable to continue his or her testimony.

In making its determination, the court shall consider the age of the minor, the relationship between the minor and the defendant, any handicap or disability of the minor, and the nature of the acts charged. The mere refusal of the minor to testify is not sufficient evidence that the procedure should be employed.

Both New York's and California's closed-circuit laws entail potentially intricate and expensive procedures. Camera operators and technicians must be hired, equipment must be leased or purchased, and special court hearings must be held to make the required determinations of witness vulnerability. In deciding whether to adopt similar statutes, jurisdictions must determine whether they are willing and able to make the commitment of time and resources necessary to carry out these procedures.

Hearsay Exceptions For Out-of-Court Statements of Child Witnesses

It doesn't involve machines, but legal "technology" has been used to create another new means of facilitating child evidence. Hearsay - out of court statements repeated in court by a witness other than the person who made the statement - can help solve the problem of the child who cannot testify effectively in court, even with the aid of electronic technologies. It also can enable a prosecution to go forward when the not uncommon situation arises of a child retracting a true report of sexual abuse because of pressure from a family member, feelings of guilt, fear of reprisal, or anxiety that the offender, who may be a father or close relative, will be sent to prison. If another person, such as a mother or a professional who has talked with the child, is allowed to testify as to what the child told the person, then the court may hear evidence it otherwise would not. The danger - and the reason for the general prohibition against admitting hearsay - is that the statement will not be accurate, and the child's truthfulness cannot be tested.

The confrontation right embodied in the Sixth Amendment of the United States Constitution generally precludes the use of out-of-court statements at trial. The right to confrontation is not absolute, however, and there are many exceptions to the rule against hearsay, most of them codified in state and federal evidence rules. (The Federal Rules of Evidence list 20 hearsay exceptions. 14/) The exceptions come into play when the trustworthiness of the statement can be inferred from the circumstances in which it was made, and there is a definite need for the evidence. 15/ Further, the out-of-court declarant either must be produced at trial or there must be a demonstration by the party offering the statement that the declarant is unavailable to testify. 16/

Nine states recently have enacted legislation codifying a special hearsay exception for child victims. 17/ Washington was among the first, and the statutes in Indiana, Minnesota, South Dakota, and Utah are essentially identical to it. Kansas and Colorado have statutes similar to each other, but differing in important respects from the Washington law. An examination of these differences may prove useful, using the Washington and Kansas statutes as models. The highest courts in Kansas and Washington both have upheld the constitutionality of their states' child-victim hearsay exceptions, 18/ relying on the general tests for the admissibility of hearsay enunciated by the U.S. Supreme Court. 19/

The Washington statute requires that the child victim be under 10 years of age and applies only to incidents of sexual abuse. The Kansas statute includes other forms of abuse, and has no age limit except those specified in the statute defining a particular offense. The Washington model requires that if the child does not testify at the trial where the hearsay statement is introduced, there must be corroborative evidence of the crime. This corroboration could come from physical evidence of the abuse or the testimony of other witnesses. The Kansas model requires no corroboration for the hearsay statement to be introduced, but necessitates a special instruction to the jury explaining the factors relevant in weighing the child's statement, such as the age and maturity of the child and the circumstances under which the statement was made.

In the Washington model, the out-of-court statement can only be admitted after the court makes a determination that the time, content, and circumstances of the statement indicate sufficiently that it is reliable. This determination must be made at a hearing outside the presence of the jury, a procedure that protects the defendant against the potentially prejudicial practice of asking a witness preliminary questions that suggest to the jury what the evidence

will be, prior to the judge's ruling on its admissibility. In addition, the defense must be given ample time to prepare a response to the statement after being informed of its content and impending use at trial. Kansas also requires a hearing, at which the court must make a determination of apparent reliability, but does not stipulate by statute that the defense be given any notice regarding planned use of the statement.

Courts in other states have admitted hearsay statements of child victims under spontaneous exclamation or excited utterance exceptions to the rule against hearsay, 20/ "tender years" exceptions specifically applicable to child sex-crime victims, 21/ and residual exceptions covering any statement possessing circumstantial guarantees of trustworthiness comparable to the established categories of exceptions. 22/ For various reasons, these exceptions fail to adequately address the problem and have met with varying degrees of success. 23/ A statutory solution that directly confronts the specific problems inherent in child sex-offense cases should be a more workable alternative.

The Multidisciplinary Approach

There are some prosecutors who are convinced that videotaping is unnecessary when an abused child is handled correctly and with sensitivity by all concerned parties in the justice and social service systems, working together. One model for such a community approach exists in Huntsville, Alabama, where child victims are handled through a children's advocacy center. 24/ A team including members from child protective service and law enforcement handles each case, which is carefully managed from start to finish to ensure that the child receives appropriate treatment and that prosecution, if warranted, proceeds efficiently and with a minimum of stress to the child.

After a report of abuse is received by any law enforcement or social service agency, the child is sent to the center for a first interview with a specialist in child behavior. All further contact by police or prosecutors with the child takes place through the center and is coordinated by the specialist there. Interviews are limited in number as much as possible. The center is located in a "house" rather than an office building, and different rooms have been furnished and decorated for different age groups, i.e., five-year olds are interviewed in a room with chairs and toys that fit their size and interests, and 13-year olds are interviewed in a room similarly appropriate to their age.

At the completion of the interview, the child is referred for therapy, and the team of professionals meets to consider appropriate action. The child's therapist becomes part of the team. In cases that are referred for criminal prosecution, a victim-witness coordinator from the district attorney's office is brought in to work with the child, introduce him or her to the prosecutor, familiarize the child with the courtroom, and accompany the child while in court. A diversion program can be recommended in certain cases if the offender admits guilt and accepts conditions such as submitting to psychological examination and, if necessary, remaining away from the child. Criminal charges are suspended until successful completion of the program, upon which the offender must plead guilty to a misdemeanor sexual offense.

The Huntsville experience has resulted in increased efficiency through coordination of all the professionals involved in the case, and better treatment for the child, who is not shuffled from one professional to another for substantially similar purposes. Ultimately, prosecutions have improved, because the children are better able to testify in court.

Conclusion

Technological and human options should be explored by all concerned professionals in dealing with cases involving child victims. What works in one instance may be unnecessary or inappropriate in another, depending on the particular needs and nature of specific victims. The rights of the accused also are a factor in determining the means with which child testimony can be facilitated, and courts will continue to wrestle with constitutional concerns raised by technological solutions. As the number of prosecutions involving child victims grows, and public concern increases, prosecutors and other criminal justice professionals will have to become more sensitive to the special problems child victims present. This challenge can be met only by remaining open to a wide variety of approaches in handling child victims, and by a willingness to be flexible in their application.

A number of other reforms can facilitate child testimony as well, and should be noted here. Some of the more important include expediting proceedings so that children are not forced to spend an extended amount of time in the criminal justice process; ensuring that children are allowed to testify by removing special competency qualification requirements; closing courtrooms to the public during a child's testimony; using anatomically correct dolls so that children can "show" what happened to them; ensuring that a support person of the child's choice is permitted to remain with the child in court throughout all proceedings; and increasing the statute of limitations for child offenses, so that prosecutions can commence in cases where the child is under the domination of an abusing family member and is unable to make an immediate report, or when children don't realize certain acts are crimes, or that they can and should report them, until a number of years have passed. Many examples of statutes to accomplish these objectives exist; copies can be obtained by contacting Dan Eddy at (202) 628-0435.

Footnotes

- 1/ Libai, The Protection of the Child Victim of a Sexual Offense in the Criminal Justice System, 15 Wayne L. Rv.977, 981 (1969).
- 2/ S. Katz and M. Mazur, Understanding the Rape Victim 200 (1979).
- 3/ J. MacDonald, Rape Offenders and Their Victims 128 (1971).
- 4/ DeFrancis, Protecting the Child Victim of Sex Crimes Committed by Adults, 35 Fed. Prob. 15, 17 (Sept. 1971).
- 5/ Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, Oklahoma, South Carolina, Tennessee, Texas, Utah and Wisconsin.
- 6/ U.S. Const. Amend. VI: "In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him."
- 7/ The Arizona Court of Appeals upheld the removal of the defendant from the presence of the child witness in In Re Appeal in Pinal County Juvenile Action (1985). In State v. Sheppard, 197 N.J. Super, 411, 484 A.2d (1330 (1984), the New Jersey Superior Court

approved the videotaping of a child sex-abuse victim, without the defendant present, but with the defense attorney able to cross-examine the witness and communicate with the defendant. But in a criminal case in California involving a child victim of physical abuse, it was held that the right of confrontation means the "right to see one's accusers face-to-face." Herbert v. Superior Court, 117 Cal. App. 3d 661, 172 Cal. Rptr. 850 (1981). The child victim in that case had been told by the defendant, her stepfather, that she should tell no one about what he had done to her, and she had evinced a reluctance to testify in his presence. The defendant was thereupon seated so he could hear but neither see nor be seen by the victim as she testified. The appeals court ruled that this violated the defendant's confrontational right, but it is unclear whether his being able to see the witness by some means without her seeing him would have been viewed by the court as abridging his right. The court did admit that Confrontation Clause cases arise most frequently in the application of hearsay rules of a trial situation, and quoted the U.S. Supreme Court's decision in California v. Green, 399 U.S. 149, 158 (1970), to the effect that the purposes of the confrontation right are to guarantee that the witnesses will be placed under oath and cross-examined, and that the jury will be permitted to observe the witness' demeanor.

- 8/ California v. Green, supra note 7.
- 9/ The Supreme Court has approved the admission into evidence of prior testimony of a witness presently unavailable. Barber v. Page, 390 U.S. 719 (1968); Mancusi v. Stubbs, 408 U.S. 204 (1972).
- 10/ See 5 Wigmore, Evidence (J. Chadbourne rev. 1974) at 252-253.
- 11/ Kentucky Rev. Stat. §421.350; Texas Code of Crim. Proc. Art. 38.071.
- 12/ Ariz. Rev. Stat. Ann. §§ 12-2311-12. In State v. Melendez, 135 Ariz. 390, 661 P.2d 654, 657 (Ariz. App. 1982), the use of a videotaped deposition of a seven-year-old victim of a sexual offense was upheld, when the defendant and his counsel were present:

The victim's age poses obvious problems in her testifying. The videotape is one way of handling the problem, and speculation as to possible reactions [of the jury] need not foreclose use of this method. Defendant and his counsel were present during the videotaping and the opportunity to cross-examine the victim was made available at that time. We do not believe that the defendant was prejudiced, and the circumstances justified the trial court's invocation of modern technology to meet the special needs of a witness and to afford the defendant his constitutional right to confrontation.

- 13/ New York Crim. Proc. Art. 65; California Penal Code §1347. *2 way TV*

14/ Federal Rules of Evidence 803 and 804. Also see 5 Wigmore, supra note 10, at 158.

15/ See 5 Wigmore, supra note 10, at 252-253; Fed. R. Evid. art. VIII Advisory Committee note ("[W]hen the choice is between evidence which is less than best and no evidence at all, only clear folly would dictate an across-the-board policy of doing without.")

- 16/ Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d597 (1980).
- 17/ Ariz. Rev. Stat. §13-1416; Colo. Rev. Stat. §13-25-129; ILL Code of Crim. Proc. §115-10, ILL Stat. Ann. Ch. 37 §704-6(4)(c); Ind. Crim. Law and Proc. §35-37-4-6; Kan. Stat. Ann. §60-604(dd); Minn. Stat. §595.02(3); S.D. Codified Laws Ann. §19-16-38; Utah Code Ann. §76-5-411; Wash. Rev. Code Ann. §9A.44.120.
- 18/ State v. Ryan, 103 W.2d 165, p.2d 197 (1984); State v. Myatt (Kansas Supreme Court, 1985).
- 19/ Supra note 16.
- 20/ See State v. Boordry, 96 Ariz. 259, 394 P.2d 196, cert. denied, 379 U.S. 949 (1964); People v. Miller, 58 Ill. App. 3d 156, 373 N.E.2d 1077 (1978); State v. Wilson, 20 Or. App. 553, 559-60, 532 P.2d 825, 828 (1975); State v. Pace, 301 So.2d 323, 326 (La. 1974); Haley v. State, 157 Tex. Crim. 150, 151-52, 247 S.W.2d 400, 401 (1952); Smith v. State, 6 Md. App. 581, 252 A.2d 277 (1969).
- 21/ People v. Turner, 112 Mich. App. 381, 316 N.W.2d 426 (1982), vacated, 332 N.W.2d 150 (Mich. 1983); People v. Dermartzex, 29 Mich. App. 213, 185 N.W.2d 33 (1970), aff'd, 390 Mich. 410, 213 N.W.2d 97 (19973); People v. Gage, 62 Mich. 271, 275, 28 N.W. 835 (1886).
- 22/ Many of the state residual exceptions are based on Federal Rules of Evidence 803(24) and 804(6)(5). The language of both rules is the same. Rule 803 is applied when the availability of the declarant is immaterial. Rule 804 is used when the declarant is unavailable. The exceptions allow admission of the following:
- A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.
- 23/ See Skoler, New Hearsay Exceptions for a Child's Statement of Sexual Abuse, 18 John Marshall L. Rev. 1 (1984), and Note, A Comprehensive Approach to Child Hearsay Statements in Sex Abuse Cases, 83 Columbia L. Rev. 1745, 1755-63 (1983). Spontaneity in reporting sex abuses can be inhibited by the often close relationship between the offender and the victim, the victim's relative ignorance or confusion concerning sexual matters, and threats against the victim by the defendant. Nevertheless, courts have attempted to stretch the excited utterance exception to admit statements made days, weeks, and even months after the event. The "tender years" exception, though employed in Michigan, has been rejected recently by a Pennsylvania appeals court that further criticized the statutory child-hearsay exception as politically expedient but legally disastrous. Commonwealth v. Haber, 38 CrL (BNA) 2420 (Pa. Super. Ct., Feb. 11, 1986).

- 24/ Cramer, the District Attorney as a Mobilizer in a Community Approach to Child Sexual Abuse, printed in Papers from a National Policy Conference on Legal Reforms in Child Sexual Abuse Cases, a report of the American Bar Association Child Sexual Abuse Law Reform Project (1985), pp. 111-117.

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There is a need in child sexual abuse cases to recognize the special needs of a child victim/witness in a criminal courtroom proceeding. As the U.S. Department of Justice points out in their publication When The Victim is a Child, "Child victims of crime are specially handicapped. First, the criminal justice system distrusts them and puts special barriers in the path of prosecuting their claims to justice. Second, the criminal justice system seems indifferent to the legitimate special needs that arise from their participation."

According to James K. Stewart of The National Institute of Justice, "More than 90 percent of all child abuse cases do not go forward to prosecution. In many of these cases, the decision not to proceed is based on concerns about the child's possible performance on the witness stand or the impact of the court process on the child victim's recovery. The unfortunate result is that many suspects are released without the imposition of justice. They not only escape any penalty but have the opportunity for further abuse of their initial victim or other children."

It is commonly believed (and supported by recent studies) that a child victim may be intimidated and traumatized by having to testify in open court before the defendant. This difficulty is compounded by the courtroom presence of the public, judge, jury, attorneys, press and court personnel. The formal and unfamiliar courtroom setting may compound the stress upon a child who must endure the rigors of direct and cross examination.

We feel that legislation that helps to get the child's testimony before the jury is essential to justice in child abuse cases. The most recent data shows that between one-in-three and one-in-four children will become the victims of sexual abuse. Research statistics show that the average pedophile molests upwards of eighty victims during his or her offending career. There is currently no known specific cause for pedophilia and therefore no certain "cure". Treatment consists of behavior modification techniques.

There will be concern regarding the Sixth Amendment's "Right of Confrontation". This confrontation is often interpreted by the state supreme courts to mean physical "face-to-face" confrontation in the courtroom. We feel that in the interest of justice this interpretation needs to be closely examined in cases where the victim providing testimony is a child under the age of thirteen who has suffered a sexual crime. Theoretically, looking the defendant in the eye as one accuses him or her of a crime provides an acid test of the truth. But when the accuser is a child, the right of confrontation may offer a convenient means of intimidating the witness, resulting in serious, damaging effects on the child's testimony. According to the National Institute of Justice, as early as 1969 David Libai called for the development of "children's courtrooms", in which defendants and spectators would observe the child's testimony from behind a one-way mirror. Defendants could communicate with their attorneys via headphones. This recommendation was resurrected in 1982 by Jacqueline Parker, and echoed in 1983 by the National Conference of the Judiciary on the Rights of Victims of Crime: "Judges...may consider...encouraging specially designed or equipped courtrooms to protect sensitive victims, provided that the right of confrontation is not abridged".

The question of potential psychological harm to a child victim/witness, and the question of unavailability of a child witness due to fear of the defendant, was dealt with in the New Jersey State Supreme Court in the case of State v. Sheppard (197 NJ Super, 411, 484 A. 2d 1330--1984). "There, a forensic psychiatrist had examined the child and testified as to the probable effect of her in-court testimony (which included 'nightmares, depression, eating/sleeping/school problems, behavioral difficulties--including acting out and sexual promiscuity'). The expert further testified that avoiding an in-court appearance would improve the accuracy of the child's testimony. He stated that, while an adult testifying in a courtroom atmosphere is more likely to be truthful, the opposite is true of a child testifying against a relative

SPEC/Commentary on Legislation
page three

in a sexual abuse case. A child will become fearful, guilty, anxious and traumatized; these feelings tend to mitigate the truth and produce inaccurate testimony. Also testifying for the state were two prosecutors with extensive experience with child victims, and a technical expert who demonstrated the use of the proposed closed circuit television equipment for the court."

The serious constitutional issue of right to confrontation will not be abridged with two-way closed circuit testimony. The right to a public trial is preserved, as is the right to cross-examine. The primary means of protecting the right of confrontation is said to be cross-examination of the witness. The hallmark of the inability of a child to testify is their fear of physical harm from the perpetrator. The child has a right to remain free from this fear and intimidation. The use of closed-circuit television with child victim testimony preserves the defendant's basic right to confront and cross-examine while still enabling the victim to tell his or her story to the jury.

The Fairbanks Child Sexual Abuse Task Force

1423 Peger Road
Fairbanks AK 99709

February 22, 1988

House Judiciary Committee Members

Representatives Barnes, Cotten, Gruenberg, Navarre, Sund,
Taylor and Ulmer

Interior Delegation Members

Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz
Senators Coghill, Fahrenkamp, Fanning

P.O. Box V
Juneau, AK 99811

Re: House Bill 323

Dear Legislators,

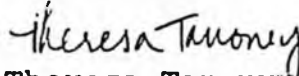
We are writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse. The CSATF wants to express its views on subsection (2) of House Bill 323, which repeals AS 12.45.047 and 12.45.048.

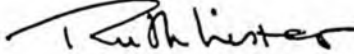
The first statute provides for videotaping of testimony by young victims of sexual offenses, and is apparently not used extensively. The second allows the court to exclude the public during certain portions of the trial, and is used quite often. The Task Force feels that both statutes should remain on the books.

The new statute added by HB 323, allowing for closed-circuit testimony, we continue to support. However, the facilities for such closed-circuit testimony will probably not be available in many areas for quite some time. This makes it all the more important that the already-existing statutes stay in effect.

We would urge deletion of the repealer section of HB 323. Thank you for your consideration.

Sincerely,


Theresa Tanoury
Coordinator


Ruth Lister
Chair

March 10, 1988

MEMORANDUM

TO: Rep. John Sund, Chair,
House Judiciary Committee

FROM: John Hartle, PA, *JH*
House Judiciary Committee Staff

RE: CSHB 323 (Judiciary)

After the Committee marked up HB 323, I spoke with Dana Fabe, Director, Public Defender Agency about the proposed changes. I believe I have come up with a proposal that meets the concerns expressed at the meeting as well as the concerns of the Public Defender. It replaces "reasonably communicate" with "effectively communicate" and provides more flexibility for the courts in changing the courtroom to meet the special needs of child witnesses. Also added is the guardian ad litem language. Chenoweth may need to change the specific wording for proper drafting style.

Changes to 3/10 draft:

Page 2, line 2: after "to" delete "reasonably" and replace with "effectively"

Page 2, line 14: after "to" delete "reasonably" and replace with "effectively"

Page 3, line 13: after "to" delete "reasonably" and replace with "effectively"

Page 3, line 21: after "to" delete "reasonably" and replace with "effectively"

Page 2, line 2: Add: "The court may appoint a guardian ad litem for the child."

Page 2, line 25 insert before line: "in addition, the court may admit"

Page 3, line 26: insert at beginning of line "In addition to other procedures it finds appropriate"

Page 4, before line 6, add a new bill section ³~~A~~:

* Sec. ~~3A~~ AS 44.21.410 is amended by adding a new subsection to read:

(6) provide guardian ad litem services in proceedings under AS 12.45.046.

cc Rep. Swackhammer

Original sponsor: Swackhammer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to testimony of children in ce tain
7 criminal proceedings; and providing for an effective
8 date."

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

10 * Section 1. AS 12.45 is amended by adding a new section to read:

11 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

12 (a) In a criminal proceeding ^{Under AS 11.41} involving the prosecution of an offense
13 committed against a child under the age of 13, or witnessed by a child
14 under the age of 13, the court, ^{ON its own motion or} on motion of the ^{Prosecution} prosecution or guard-
15 ian ad litem of the child, may order that the testimony of the child
16 be taken by closed circuit television or through one-way mirrors if
17 the court determines that the testimony by the child victim or witness
18 under normal court procedures would result in the child's ^{inability to} ~~suffering~~
19 ~~serious emotional distress so that the child cannot~~ reasonably commu-
20 nicate.

21 (b) In making a determination under (a) of this section, the
22 court shall consider

- 23 (1) the child's chronological age;
- 24 (2) the child's level of development;
- 25 (3) the child's general physical health;
- 26 (4) any physical, emotional, or psychological injury ex-
27 perienceed by the child; and
- 28 (5) the mental or emotional strain that ^{may} will be caused by
29 requiring the child to testify under normal courtroom procedures.

1 (c) If the court determines under (a) of this section that the
2 testimony by the child victim or witness under normal court procedures
3 would result in the child's ~~suffering serious emotional distress so~~
4 ^{inability to} ~~that the child cannot~~ reasonably communicate, the court may order that
5 the testimony of the child be taken in a room other than the courtroom
6 and be televised by closed circuit equipment in the courtroom to be
7 viewed by the defendant, the court, and the finder of fact in the
8 proceeding. If the court authorizes use of closed circuit televised
9 testimony under this subsection, each of the following may be in the
10 room with the child when the child testifies:

- 11 (1) the prosecuting attorney;
12 (2) the attorney for the defendant;
13 (3) operators of the closed circuit television equipment;

14 and

15 (4) a person whose presence, in the opinion of the court,
16 contributes to the well-being of the child.

17 (d) When a child is to testify under (c) of this section, only
18 the ^{Court and Counsel} ~~attorneys~~ may question the child. The persons operating the
19 equipment shall be confined to ~~an adjacent room~~ or behind a partition
20 that permits them to see and hear the child's testimony but does not
21 permit the child to see or hear them. The court shall excuse the
22 defendant from the courtroom and permit the defendant to attend in
23 another location, and shall afford the defendant a means of viewing
24 the child's testimony and of communicating with the defendant's attor-
25 ney throughout the proceedings. Upon request of the defendant or the
26 defendant's attorney, the court shall permit a recess to allow them to
27 confer. The court shall provide a means of communicating with the
28 attorneys during the questioning of the child. Objections made by the
29 attorneys to questions of a child witness may be resolved in the

1 courtroom if the court finds it necessary.

2 (e) If the court determines under (a) of this section that the
3 testimony by the child victim or witness under normal court procedures
4 would result in the child's ~~[suffering serious emotional distress so~~
5 ^{inability to} ~~that the child cannot]~~ reasonably communicate, the court may authorize
6 the use of one-way mirrors in conjunction with the taking of the
7 child's testimony. The attorneys may pose questions to the child and
8 have visual contact with the child during questioning, but the mirrors
9 shall be placed to provide a physical shield so that the child does
10 not have visual contact with the defendant and jurors.

11 (f) If the court does not find under (a) of this section that
12 the testimony by the child victim or witness under normal court proce-
13 dures will result in the child's ~~[suffering serious emotional distress so~~
14 ^{inability to} ~~that the child cannot~~ reasonably communicate, the court may, after
15 taking into consideration the factors specified in (b) of this sec-
16 tion, supervise the spatial arrangements of the courtroom and the
17 location, movement, and deportment of all persons in attendance so as
18 to safeguard the child from emotional harm or stress. The court may

19 (1) allow the child to testify while sitting on the floor
20 or on an appropriately sized chair;

21 (2) schedule the procedure in a room that provides adequate
22 privacy, freedom from distractions, informality, and comfort appropri-
23 ate to the child's developmental age; and

24 (3) order a recess when the energy, comfort, or attention
25 span of the child warrants.

26 * Sec. 2. AS 12.45.047 and 12.45.048 are repealed.

27 * Sec. 3. Section 1 of this Act is retroactive and applies in criminal
28 proceedings involving the prosecution of an offense committed before the
29 effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

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Original sponsor: Swackhammer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to testimony of children in certain
7 criminal proceedings; and providing for an effective
8 date."

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

10 * Section 1. AS 12.45 is amended by adding a new section to read:

11 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

12 (a) In a criminal proceeding ^{Under AS 11.41} involving the prosecution of an offense
13 committed against a child under the age of 13, or witnessed by a child
14 under the age of 13, the court, ^{on its own motion or} on motion of the prosecution or guard-
15 ian ad litem of the child, may order that the testimony of the child
16 be taken by closed circuit television or through one-way mirrors if
17 the court determines that the testimony by the child victim or witness
18 under normal court procedures would result in the child's ^{inability to} ~~suffering~~
19 ~~serious emotional distress so that the child cannot~~ reasonably commu-
20 nicate.

21 (b) In making a determination under (a) of this section, the
22 ^{in addition to} ~~the~~ other circumstances the court finds relevant
court shall consider

- 23 (1) the child's chronological age;
- 24 (2) the child's level of development;
- 25 (3) the child's general physical health;
- 26 (4) any physical, emotional, or psychological injury ex-
27 perienceed by the child; and
- 28 (5) the mental or emotional strain that will be caused by
29 requiring the child to testify under normal courtroom procedures.

1 (c) If the court determines under (a) of this section that the
2 testimony by the child victim or witness under normal court procedures
3 would result in the child's ~~suffering serious emotional distress so~~
4 ^{inability to} ~~that the child cannot~~ reasonably communicate, the court may order that
5 the testimony of the child be taken in a room other than the courtroom
6 and be televised by closed circuit equipment in the courtroom to be
7 viewed by the defendant, the court, and the finder of fact in the
8 proceeding. If the court authorizes use of closed circuit televised
9 testimony under this subsection, each of the following may be in the
10 room with the child when the child testifies:

- 11 (1) the prosecuting attorney;
12 (2) the attorney for the defendant;
13 (3) operators of the closed circuit television equipment;
14 and

15 (4) a person whose presence, in the opinion of the court,
16 contributes to the well-being of the child.

17 (d) When a child is to testify under (c) of this section, only
18 the ^{court and counsel} ~~attorneys~~ may question the child. ~~The persons operating the~~
19 equipment shall ^{do so in as unobtrusive a manner as practicable} be confined to an adjacent room or behind a partition
20 that permits them to see and hear the child's testimony but does not
21 permit the child to see or hear them. } The court shall excuse the
22 defendant from the courtroom and permit the defendant to attend in
23 another location, and shall afford the defendant a means of viewing
24 the child's testimony and of communicating with the defendant's attor-
25 ney throughout the proceedings. Upon request of the defendant or the
26 defendant's attorney, the court shall permit a recess to allow them to
27 confer. The court shall provide a means of communicating with the
28 attorneys during the questioning of the child. Objections made by the
29 attorneys to questions of a child witness may be resolved in the

1 courtroom if the court finds it necessary.

2 (e) If the court determines under (a) of this section that the
3 testimony by the child victim or witness under normal court procedures
4 would result in the child's ~~[suffering serious emotional distress so~~
5 ~~that the child cannot]~~ ^{inability to} reasonably communicate, the court may authorize
6 the use of one-way mirrors in conjunction with the taking of the
7 child's testimony. The attorneys may pose questions to the child and
8 have visual contact with the child during questioning, but the mirrors
9 shall be placed to provide a physical shield so that the child does
10 not have visual contact with the defendant and jurors.

11 (f) If the court does not find under (a) of this section that
12 the testimony by the child victim or witness under normal court proce-
13 dures will result in the child's ~~[suffering serious emotional distress so~~
14 ~~that the child cannot]~~ ^{inability to} reasonably communicate, the court may, after
15 taking into consideration the factors specified in (b) of this sec-
16 tion, supervise the spatial arrangements of the courtroom and the
17 location, movement, and deportment of all persons in attendance so as
18 to safeguard the child from emotional harm or stress. The court may

19 (1) allow the child to testify while sitting on the floor
20 or on an appropriately sized chair;

21 (2) schedule the procedure in a room that provides adequate
22 privacy, freedom from distractions, informality, and comfort appropri-
23 ate to the child's developmental age; and

24 (3) order a recess when the energy, comfort, or attention
25 span of the child warrants.

26 * Sec. 2. AS 12.45.047 and 12.45.048 are repealed.

27 * Sec. 3. Section 1 of this Act is retroactive and applies in criminal
28 proceedings involving the prosecution of an offense committed before the
29 effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

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MEMORANDUM**State of Alaska**

TO: Representative C.E. Swackhammer

DATE: February 8, 1988

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: House Bill 323

FROM:


Dana Fabe
Public Defender

I have drafted some suggested language for our work session on HB 323 on Wednesday, February 10, 1988. It is based in large part on your original bill, although I have borrowed from Maryland's statute, attached, which was recently upheld in Wildermuth v. State, 530 A.2d 275 (Maryland 1987). I have also incorporated some of Jay McCarthy's factors and options into this draft.

I look forward to working with you on Wednesday. I am unsure of the time of the meeting, so perhaps someone on your staff could give me a call to let me know if it has been scheduled.

Thank you.

DF:sh
Attachments

HOUSE BILL NO. 323
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to testimony of children in certain criminal proceedings; and providing for an effective date."

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

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

Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

(a) In a criminal proceeding involving the prosecution of an offense committed against a child under the age of 13, or witnessed by a child under the age of 13, the court, on motion of the prosecution or guardian ad litem for the child, may order that the testimony of the child may be taken by closed circuit television or through one-way mirrors if:

- (1) The testimony is taken during the proceeding; and
- (2) The judge determines that the testimony by the child victim or witness under normal court procedures will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

(b) In making a determination of the necessity of using closed circuit television or one-way mirrors under Section (a) of this statute, the judge shall consider the following factors:

- (1) The child's chronological age.
- (2) The child's level of development.

(3) The child's general physical health.

(4) Any physical, emotional or psychological injury experienced by the child.

(5) The mental or emotional strain which will be caused by requiring the child to testify under normal courtroom procedures.

(c) Where a finding under Section (a)(2) of this statute has been made, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the defendant, the court, and the finder of fact in the proceeding. If closed circuit testimony is determined to be necessary under this section, the following persons may be in the room with the child when the child testifies by closed circuit television.

(1) Prosecuting attorney.

(2) Attorney for defendant.

(3) Operators of closed circuit television equipment.

(4) A person whose presence, in the opinion of the court, contributes to the well being of the child.

Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a partition that permits them to see and hear the child's testimony but does not permit the child to see or hear them. The defendant shall be permitted to be absent from the courtroom in another location and shall be afforded a means of viewing the child's testimony and communicating with the defendant's attorney throughout the proceedings. Upon request of the defendant or the defendant's attorney, recesses shall be permitted to allow them to confer. The

judge will have a means of communicating with the attorneys during the questioning. Objections to questioning of a child witness may be made by attorneys and may be resolved in the courtroom if the judge finds it necessary.

(d) Where a finding under Section (a)(2) has been made, the court may authorize the use of one-way mirrors whereby the attorneys may pose questions to the child but the mirrors provide a physical shield of the child's visual contact with the defendant and jurors so as to safeguard the child from further emotional harm or stress, while preserving the ability of the factfinders to observe the child's demeanor during the testimony. Both the prosecuting attorney and attorney for the defendant may have visual contact with the child during questioning.

(e) When the court does not find the requirements of Section (a)(2) are met, the court, based on factors contained in Section (b), may still supervise the spacial arrangements of the courtroom and the location, movement and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. The court may allow the child to testify while sitting on the floor or an appropriately sized chair. The court may schedule the procedure in a room which provides adequate privacy, freedom from distractions, informality and comfort appropriate to the child's developmental age and may order a recess whenever the energy, comfort or attention span of the child warrants.

JUDICIAL PROCEEDINGS

4. Penalties.

the grand jury. Appropriate action may be taken after a violation of grand jury secrecy taken place. In re Special Investigation No. 244, 296 Md. 80, 459 A.2d 1111 (1983).

WITNESSES

TITLE 9.

WITNESSES.

Subtitle 1. Competence, Compellability, and Privilege.

Subtitle 2. Attendance and Penalties.

- Sec. 9-102. Testimony of victim in child abuse case by means of closed circuit television.
- 9-103. Testimony by child in criminal case.
- 9-112. Press, radio, television news agency, or wire service employees.
- 9-122. Subpoenas of members of the General Assembly in civil or administrative actions.

- Sec. 9-205. Depriving witnesses of employment penalty.
- Subtitle 5. Victims and Witnesses—of Addresses and Telephone Numbers.
- 9-501. Judge may prohibit release of or phone number of victim on party motion.

Subtitle 1. Competence, Compellability, and Privilege.

§ 9-101. In general.

To validly waive right to testify, the defendant must know who will and who will not testify on his behalf. *Mayfield v. State*, App. 541, 468 A.2d 400 (1983).

§ 9-102. Testimony of victim in child abuse case by means of closed circuit television.

(a) (1) In a case of abuse of a child as defined in § 5-901 of the Family Article or Article 27, § 35A of the Code, a court may order that the testimony of a child victim be taken outside the courtroom and shown in the courtroom by means of closed circuit television if:

- (i) The testimony is taken during the proceeding; and
- (ii) The judge determines that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress that the child cannot reasonably communicate.

(2) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child.

(3) The operators of the closed circuit television shall make every effort to be unobtrusive.

(b) (1) Only the following persons may be in the room with the child when the child testifies by closed circuit television:

- (i) The prosecuting attorney;
- (ii) The attorney for the defendant;
- (iii) The operators of the closed circuit television equipment;
- (iv) Unless the defendant objects, any person whose presence, in the opinion of the court, contributes to the well-being of the child, including a person who has dealt with the child in a therapeutic setting concerning the child's abuse.

(2) During the child's testimony by closed circuit television, the judge and the defendant shall be in the courtroom.

§ 9-103

COURTS AND JUDICIAL PROCEEDINGS

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.

(c) The provisions of this section do not apply if the defendant is an attorney pro se.

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time. (1985, chs. 495, 499.)

Editor's note. — Section 2, chs. 495 and 499, Acts 1985, provide that "this act shall be construed only prospectively and may not be applied or interpreted to have any effect upon or application to any case filed prior to June 1, 1985."

Law Forum. — For discussion of special

provisions made for the taking of testimony of child abuse victims and constitutionality thereof, see 16, No. 3 Law Forum 18 (1986).

For discussion of the need for an exception to the hearsay rule which would admit a child abuse victim's out-of-court statements to be admitted, see 17, No. 1 Law Forum 24 (1986).

§ 9-103. Testimony by child in criminal case.

In a criminal trial, the age of a child may not be the reason for precluding a child from testifying. (1985, ch. 498.)

Editor's note. — Chapter 498, Acts 1985, designated this section as § 9-102 had previously been designated as chs. 495

and 499. Acts 1985, the section added by ch. 498 has been herein designated as § 9-103.

§ 9-104. Convicted perjurer.

Conviction of perjury is necessary to disqualify witness, etc. In accord with original. See Waldron v. State, 304 Md. 487, 499 A.2d 595, cert.

denied, — U.S. —, 106 S. Ct. 3310, 92 L. Ed. 2d 722 (1986).

Cited in Howell v. State, 62 Md. App. 278, 489 A.2d 55, cert. denied, — U.S. —, 106 S. Ct. 412, 86 L. Ed. 2d 362 (1985).

§ 9-105. Testimony by spouses — Confidential communications occurring during marriage.

Cited in Mayfield v. State, 56 Md. App. 541, 468 A.2d 400 (1983).

§ 9-108. Attorney-client privilege.

Once confidential matter has been disclosed, etc.

In accord with original. See Waldron v. State, 62 Md. App. 686, 491 A.2d 595 (1985).

Only client may waive.

In accord with original. See Waldron v. State, 62 Md. App. 686, 491 A.2d 595 (1985).

§ 9-109. Communication or psycho

"Incompetent" encompasses per se disability. — While the statute defines "incompetent," it is broad enough to encompass one under disability, as that generally understood. Nagle v. Hooks, 123, 460 A.2d 49 (1983).

Exercise of nondisclosure privilege by minor. — When a minor is too young to personally exercise the privilege of nondisclosure, the court must appoint a guardian to be guided by what is in the best interests of the child. Nagle v. Hooks, 296 Md. 123, 460 A.2d 49 (1983).

The parents, jointly or severally, may agree or refuse to waive the privilege of nondisclosure on their minor child. Nagle v. Hooks, 296 Md. 123, 460 A.2d 49 (1983).

Privilege does not prohibit testimony of witness's credibility. —

§ 9-110. Accountants.

Privilege inapplicable to grand jury. — The accountant-client privilege under this section is not applicable to grand jury proceedings.

§ 9-112. Press, radio, or television news or information; vice empl

A person engaged in gathering news or information for any radio station, television station, or wire service may not be compelled to testify in a trial or before any committee or before any news or information gathering station in a newspaper or journal, magazine, television station, or radio station where the person is engaged in such activity. § 2; 1985, 1st Sp. Sess.

Effect of amendment. — The amendment, effective July 1, 1987, substitutes "radio station, television station, press news agency, or wire service" for "radio station" twice.

This section makes inviolable the identity of news sources and the information obtained from them. See Waldron v. State, 62 Md. App. 686, 491 A.2d 595 (1985).

Scope of protection. — The amendment afforded a newsgatherer against the "disclosure" of a news source goes to the

5-1233L
Chenoweth
3/7/88

Original sponsor: Swackhammer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to testimony of children in certain
7 criminal proceedings; and providing for an effective
8 date."

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

10 * Section 1. PURPOSE. It is the purpose of this Act that, in providing
11 alternative methods for taking the testimony of a child in certain criminal
12 proceedings in which that child was the victim or is to be a witness, the
13 legislature is acting

14 (1) to balance the need for the victim's or witness's testimony
15 against the right of the defendant to confront witnesses;

16 (2) to mitigate the mental and emotional distress that may arise
17 as the child is required to testify; and

18 (3) to minimize possible victim harassment by limiting the
19 opportunities for unnecessary examination of the child by the parties'
20 counsel.

21 * Sec. 2. AS 12.45 is amended by adding a new section to read:

22 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

23 (a) In a criminal proceeding under AS 11.41 involving the prosecution
24 of an offense committed against a child under the age of 13, or wit-
25 nessed by a child under the age of 13, the court, on its own motion or
26 on the motion of a party or the guardian ad litem of the child, may
27 order that the testimony of the child be taken by closed circuit
28 television or through one-way mirrors if the court determines that the
29 testimony by the child victim or witness under normal court procedures

1 would result in the child's inability to reasonably communicate.

2 (b) In making a determination under (a) of this section, the
3 court shall consider factors it considers relevant, including

4 (1) the child's chronological age;

5 (2) the child's level of development;

6 (3) the child's general physical health;

7 (4) any physical, emotional, or psychological injury ex-
8 perience by the child; and

9 (5) the mental or emotional strain that will be caused by
10 requiring the child to testify under normal courtroom procedures.

11 (c) If the court determines under (a) of this section that the
12 testimony by the child victim or witness under normal court procedures
13 would result in the child's inability to reasonably communicate, the
14 court may order that the testimony of the child be taken in a room
15 other than the courtroom and be televised by closed circuit equipment
16 in the courtroom to be viewed by the defendant, the court, and the
17 finder of fact in the proceeding. If the court authorizes use of
18 closed circuit televised testimony under this subsection, each of the
19 following may be in the room with the child when the child testifies:

20 (1) the prosecuting attorney;

21 (2) the attorney for the defendant;

22 (3) operators of the closed circuit television equipment;

23 and

24 (4) a person whose presence, in the opinion of the court,
25 contributes to the well-being of the child.

26 (d) When a child is to testify under (c) of this section, only
27 the court and counsel may question the child. The persons operating
28 the equipment shall do so in as unobtrusive a manner as possible. ^{upon the defendant's request} The
29 court shall excuse the defendant from the courtroom and permit the

1 defendant to attend in another location, and shall afford the defen-
2 dant a means of viewing the child's testimony and of communicating
3 with the defendant's attorney throughout the proceedings. Upon re-
4 quest of the defendant or the defendant's attorney, the court shall
5 permit a recess to allow them to confer. The court shall provide a
6 means of communicating with the attorneys during the questioning of
7 the child. Objections made by the attorneys to questions of a child
8 witness may be resolved in the courtroom if the court finds it neces-
9 sary.

10 (e) If the court determines under (a) of this section that the
11 testimony by the child victim or witness under normal court procedures
12 would result in the child's inability to reasonably communicate, the
13 court may authorize the use of one-way mirrors in conjunction with the
14 taking of the child's testimony. The attorneys may pose questions to
15 the child and have visual contact with the child during questioning,
16 but the mirrors shall be placed to provide a physical shield so that
17 the child does not have visual contact with the defendant and jurors.

18 (f) If the court does not find under (a) of this section that
19 the testimony by the child victim or witness under normal court proce-
20 dures will result in the child's inability to reasonably communicate,
21 the court may, after taking into consideration the factors specified
22 in (b) of this section, supervise the spatial arrangements of the
23 courtroom and the location, movement, and department of all persons in
24 attendance so as to safeguard the child from emotional harm or stress.
25 The court may

26 (1) allow the child to testify while sitting on the floor
27 or on an appropriately sized chair;

28 (2) schedule the procedure in a room that provides adequate
29 privacy, freedom from distractions, informality, and comfort

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appropriate to the child's developmental age; and

(3) order a recess when the energy, comfort, or attention span of the child warrants.

* Sec. 3. AS 12.45.047 and 12.45.048 are repealed.

* Sec. 4. Section 2 of this Act is retroactive and applies in criminal proceedings involving the prosecution of an offense committed before the effective date of this Act.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

5-1233L
Chenoweth
3/8/88

Original sponsor: Swackhammer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to testimony of children in certain
7 criminal proceedings; and providing for an effective
8 date."

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

10 * Section 1. PURPOSE. It is the purpose of this Act that, in providing
11 alternative methods for taking the testimony of a child in certain criminal
12 proceedings in which that child was the victim or is to be a witness, the
13 legislature is acting

14 (1) to balance the need for the victim's or witness's testimony
15 against the right of the defendant to confront witnesses;

16 (2) to mitigate the mental and emotional distress that may arise
17 as the child is required to testify; and

18 (3) to minimize possible victim harassment by limiting the
19 opportunities for unnecessary examination of the child by the parties'
20 counsel.

21 * Sec. 2. AS 12.45 is amended by adding a new section to read:

22 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

23 (a) In a criminal proceeding under AS 11.41 involving the prosecution
24 of an offense committed against a child under the age of 13, or wit-
25 nessed by a child under the age of 13, the court, on its own motion or
26 on the motion of a party or the guardian ad litem of the child, may
27 order that the testimony of the child be taken by closed circuit
28 television or through one-way mirrors if the court determines that the
29 testimony by the child victim or witness under normal court procedures

1 would result in the child's inability to reasonably communicate.

2 (b) In making a determination under (a) of this section, the
3 court shall consider factors it considers relevant, including

4 (1) the child's chronological age;

5 (2) the child's level of development;

6 (3) the child's general physical health;

7 (4) any physical, emotional, or psychological injury ex
8 perienceed by the child; and

9 (5) the mental or emotional strain that will be caused by
10 requiring the child to testify under normal courtroom procedures.

11 (c) If the court determines under (a) of this section that the
12 testimony by the child victim or witness under normal court procedures
13 would result in the child's inability to reasonably communicate, the
14 court may order that the testimony of the child be taken in a room
15 other than the courtroom and be televised by closed circuit equipment
16 in the courtroom to be viewed by the defendant, the court, and the
17 finder of fact in the proceeding. If the court authorizes use of
18 closed circuit televised testimony under this subsection, each of the
19 following may be in the room with the child when the child testifies:

20 (1) the prosecuting attorney;

21 (2) the attorney for the defendant;

22 (3) operators of the closed circuit television equipment;

23 and

24 (4) a person whose presence, in the opinion of the court,
25 contributes to the well-being of the child.

26 (d) When a child is to testify under (c) of this section, only
27 the court and counsel may question the child. The persons operating
28 the equipment shall do so in as unobtrusive a manner as possible. If
29 the defendant requests, the court shall excuse the defendant from the

1 courtroom, shall permit the defendant to attend in another location
2 and shall afford the defendant a means of viewing the child's testi
3 mony and of communicating with the defendant's attorney throughout th
4 proceedings. Upon request of the defendant or the defendant's attor
5 ney, the court shall permit a recess to allow them to confer. Th
6 court shall provide a means of communicating with the attorneys during
7 the questioning of the child. Objections made by the attorneys to
8 questions of a child witness may be resolved in the courtroom if the
9 court finds it necessary.

10 (e) If the court determines under (a) of this section that the
11 testimony by the child victim or witness under normal court procedures
12 would result in the child's inability to reasonably communicate, the
13 court may authorize the use of one-way mirrors in conjunction with the
14 taking of the child's testimony. The attorneys may pose questions to
15 the child and have visual contact with the child during questioning,
16 but the mirrors shall be placed to provide a physical shield so that
17 the child does not have visual contact with the defendant and jurors.

18 (f) If the court does not find under (a) of this section that
19 the testimony by the child victim or witness under normal court proce-
20 dures will result in the child's inability to reasonably communicate,
21 the court may, after taking into consideration the factors specified
22 in (b) of this section, supervise the spatial arrangements of the
23 courtroom and the location, movement, and deportment of all persons in
24 attendance so as to safeguard the child from emotional harm or stress.
25 The court may

26 (1) allow the child to testify while sitting on the floor
27 or on an appropriately sized chair;

28 (2) schedule the procedure in a room that provides adequate
29 privacy, freedom from distractions, informality, and ---

1 appropriate to the child's developmental age; and

2 (3) order a recess when the energy, comfort, or attention
3 span of the child warrants.

4 * Sec. 3. AS 12.45.047 and 12.45.048 are repealed.

5 * Sec. 4. Section 2 of this Act is retroactive and applies in criminal
6 proceedings involving the prosecution of an offense committed before the
7 effective date of this Act.

8 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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5-1233L
Chenoweth
3/10/88

Original sponsor: Swackhammer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to testimony of children in certain
7 criminal proceedings; and providing for an effective
8 date."

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

10 * Section 1. PURPOSE. It is the purpose of this Act that, in providing
11 alternative methods for taking the testimony of a child in certain criminal
12 proceedings in which that child was the victim or is to be a witness, the
13 legislature is acting

14 (1) to balance the need for the victim's or witness's testimony
15 against the right of the defendant to confront witnesses;

16 (2) to mitigate the mental and emotional distress that may arise
17 as the child is required to testify; and

18 (3) to minimize possible victim harassment by limiting the
19 opportunities for unnecessary examination of the child by the parties'
20 counsel.

21 * Sec. 2. AS 12.45 is amended by adding a new section to read:

22 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

23 (a) In a criminal proceeding under AS 11.41 involving the prosecution
24 of an offense committed against a child under the age of 13, or wit-
25 nessed by a child under the age of 13, the court, on its own motion or
26 on the motion of (1) the party presenting the witness or (2) the
27 guardian ad litem of the child, may order that the testimony of the
28 child be taken by closed circuit television or through one-way mirrors
29 if the court determines that the testimony by the child victim or

1 witness under normal court procedures would result in the child's
2 inability to reasonably communicate.

3 (b) In making a determination under (a) of this section, the
4 court shall consider factors it considers relevant, including

- 5 (1) the child's chronological age;
6 (2) the child's level of development;
7 (3) the child's general physical health;
8 (4) any physical, emotional, or psychological injury ex-
9 perienceed by the child; and

10 (5) the mental or emotional strain that will be caused by
11 requiring the child to testify under normal courtroom procedures.

12 (c) If the court determines under (a) of this section that the
13 testimony by the child victim or witness under normal court procedures
14 would result in the child's inability to reasonably communicate, the
15 court may order that the testimony of the child be taken in a room
16 other than the courtroom and be televised by closed circuit equipment
17 in the courtroom to be viewed by the defendant, the court, and the
18 finder of fact in the proceeding. If the court authorizes use of
19 closed circuit televised testimony under this subsection, each of the
20 following may be in the room with the child when the child testifies:

- 21 (1) the prosecuting attorney;
22 (2) the attorney for the defendant;
23 (3) operators of the closed circuit television equipment;
24 and

25 (4) a person whose presence, in the opinion of the court,
26 contributes to the well-being of the child.

27 (d) When a child is to testify under (c) of this section, only
28 the court and counsel may question the child. The persons operating
29 the equipment shall do so in as unobtrusive a manner as possible. If

1 the defendant requests, the court shall excuse the defendant from the
2 courtroom, shall permit the defendant to attend in another location,
3 and shall afford the defendant a means of viewing the child's testi-
4 mony and of communicating with the defendant's attorney throughout the
5 proceedings. Upon request of the defendant or the defendant's attor-
6 ney, the court shall permit a recess to allow them to confer. The
7 court shall provide a means of communicating with the attorneys during
8 the questioning of the child. Objections made by the attorneys to
9 questions of a child witness may be resolved in the courtroom if the
10 court finds it necessary.

11 (e) If the court determines under (a) of this section that the
12 testimony by the child victim or witness under normal court procedures
13 would result in the child's inability to reasonably communicate, the
14 court may authorize the use of one-way mirrors in conjunction with the
15 taking of the child's testimony. The attorneys may pose questions to
16 the child and have visual contact with the child during questioning,
17 but the mirrors shall be placed to provide a physical shield so that
18 the child does not have visual contact with the defendant and jurors.

19 (f) If the court does not find under (a) of this section that
20 the testimony by the child victim or witness under normal court proce-
21 dures will result in the child's inability to reasonably communicate,
22 the court may, after taking into consideration the factors specified
23 in (b) of this section, supervise the spatial arrangements of the
24 courtroom and the location, movement, and deportment of all persons in
25 attendance so as to safeguard the child from emotional harm or stress.
26 The court may

27 (1) allow the child to testify while sitting on the floor
28 or on an appropriately sized chair;

29 (2) schedule the procedure in a room that provides adequate

1 privacy, freedom from distractions, informality, and comfort appropri-
2 ate to the child's developmental age; and

3 (3) order a recess when the energy, comfort, or attention
4 span of the child warrants.

5 * Sec. 3. AS 12.45.047 and 12.45.048 are repealed.

6 * Sec. 4. Section 2 of this Act is retroactive and applies in criminal
7 proceedings involving the prosecution of an offense committed before the
8 effective date of this Act.

9 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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5-1233L
Chenoweth
3/11/88

Original sponsor: Swackhammer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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7 criminal proceedings; and providing for an effective
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11 alternative methods for taking the testimony of a child in certain criminal
12 proceedings in which that child was the victim or is to be a witness, the
13 legislature is acting

14 (1) to balance the need for the victim's or witness's testimony
15 against the right of the defendant to confront witnesses;

16 (2) to mitigate the mental and emotional distress that may arise
17 as the child is required to testify; and

18 (3) to minimize possible victim harassment by limiting the
19 opportunities for unnecessary examination of the child by the parties'
20 counsel.

21 * Sec. 2. AS 12.45 is amended by adding a new section to read:

22 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

23 (a) In a criminal proceeding under AS 11.41 involving the prosecution
24 of an offense committed against a child under the age of 13, or wit-
25 nessed by a child under the age of 13, the court

26 (1) may appoint a guardian ad litem for the child;

27 (2) on its own motion or on the motion of the party presenting
28 the witness or the guardian ad litem of the child, may order that the
29 testimony of the child be taken by closed circuit television or

1 through one-way mirrors if the court determines that the testimony by
2 the child victim or witness under normal court procedures would result
3 in the child's inability to effectively communicate.

4 (b) In making a determination under (a)(2) of this section, the
5 court shall consider factors it considers relevant, including

- 6 (1) the child's chronological age;
7 (2) the child's level of development;
8 (3) the child's general physical health;
9 (4) any physical, emotional, or psychological injury ex-
10 perienceed by the child; and
11 (5) the mental or emotional strain that will be caused by
12 requiring the child to testify under normal courtroom procedures.

13 (c) If the court determines under (a)(2) of this section that
14 the testimony by the child victim or witness under normal court proce-
15 dures would result in the child's inability to effectively communi-
16 cate, the court may order that the testimony of the child be taken in
17 a room other than the courtroom and be televised by closed circuit
18 equipment in the courtroom to be viewed by the defendant, the court,
19 and the finder of fact in the proceeding. If the court authorizes use
20 of closed circuit televised testimony under this subsection,

21 (1) each of the following may be in the room with the child
22 when the child testifies:

- 23 (A) the prosecuting attorney;
24 (B) the attorney for the defendant; and
25 (C) operators of the closed circuit television equip-
26 ment;

27 (2) the court may, in addition to persons specified in (1)
28 of this subsection, admit a person whose presence, in the opinion of
29 the court, contributes to the well-being of the child.

1 (d) When a child is to testify under (c) of this section, only
2 the court and counsel may question the child. The persons operating
3 the equipment shall do so in as unobtrusive a manner as possible. If
4 the defendant requests, the court shall excuse the defendant from the
5 courtroom, shall permit the defendant to attend in another location,
6 and shall afford the defendant a means of viewing the child's testi-
7 mony and of communicating with the defendant's attorney throughout the
8 proceedings. Upon request of the defendant or the defendant's attor-
9 ney, the court shall permit a recess to allow them to confer. The
10 court shall provide a means of communicating with the attorneys during
11 the questioning of the child. Objections made by the attorneys to
12 questions of a child witness may be resolved in the courtroom if the
13 court finds it necessary.

14 (e) If the court determines under (a)(2) of this section that
15 the testimony by the child victim or witness under normal court proce-
16 dures would result in the child's inability to effectively communi-
17 cate, the court may authorize the use of one-way mirrors in conjunc-
18 tion with the taking of the child's testimony. The attorneys may pose
19 questions to the child and have visual contact with the child during
20 questioning, but the mirrors shall be placed to provide a physical
21 shield so that the child does not have visual contact with the defen-
22 dant and jurors.

23 (f) If the court does not find under (a)(2) of this section that
24 the testimony by the child victim or witness under normal court proce-
25 dures will result in the child's inability to effectively communicate,
26 the court may, after taking into consideration the factors specified
27 in (b) of this section, supervise the spatial arrangements of the
28 courtroom and the location, movement, and deportment of all persons in
29 attendance so as to safeguard the child from emotional harm or stress.

1 In addition to other procedures it finds appropriate, the court may

2 (1) allow the child to testify while sitting on the floor
3 or on an appropriately sized chair;

4 (2) schedule the procedure in a room that provides adequate
5 privacy, freedom from distractions, informality, and comfort appropri-
6 ate to the child's developmental age; and

7 (3) order a recess when the energy, comfort, or attention
8 span of the child warrants.

9 * Sec. 3. AS 44.21.410(a) is amended by adding a new paragraph to read:

10 (6) provide guardian ad litem services in proceedings under
11 AS 12.45.046.

12 * Sec. 4. AS 12.45.047 and 12.45.048 are repealed.

13 * Sec. 5. AS 12.45.046, enacted by sec. 2 of this Act, is retroactive
14 and applies in criminal proceedings involving the prosecution of an offense
15 committed before the effective date of this Act.

16 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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HOUSE COMMITTEE REPORT

(7)

Date referred: 5/15/87

FURTHER REFERRALS: Finance

DATE: March 11, 1988

The Judiciary Committee has considered HB 323

"An Act relating to testimony of children in certain criminal proceedings; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 323 (JUL) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 323 (Judiciary)

Page 2, line 2, after "communicate.":

Insert "The court may appoint a guardian ad litem to help make the determination under this subsection." ~~the hearing shall be~~

~~Nothing in this~~ The cr shall not require
* the child to testify at or attend the hearing, nor to submit to any examination of his or her mental or emotional condition solely for this purpose.

*what grounds or rationale
Threshold showing*

1 IN THE HOUSE

BY SWACKHAMMER

2

HOUSE BILL NO. 323

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to testimony of children in certain
7 criminal proceedings; and providing for an effective
8 date."

9

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

10

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

11

Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.

12

In a criminal proceeding involving the prosecution of an offense

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committed against a child under the age of 13, or witnessed by a child

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under the age of 13, the court, on motion of the prosecution, may

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order that the testimony of the child be taken in a room other than

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the courtroom and be televised by closed circuit equipment in the

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courtroom to be viewed by the defendant, the court, and the finder of

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fact in the proceeding. Only the attorneys for the defendant and for

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the state, persons necessary to operate the equipment, and any person

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whose presence would contribute to the welfare and well-being of the

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child may be present in the room during the child's testimony. Only

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the attorneys may question the child. The persons operating the

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equipment shall be confined to an adjacent room or behind a partition

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that permits them to see and hear the child's testimony but does not

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permit the child to see or hear them. The defendant shall be afforded

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a means of communicating with the defendant's attorney throughout the

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proceedings, and, upon request of the defendant or the defendant's

28

attorney, recesses shall be permitted to allow them to confer.

29

* Sec. 2. AS 12.45.047 and 12.45.048 are repealed.

*vides Page Department
deletion*

Delet

NOT OFFERED

A M E N D M E N T

Offered in the HOUSE

By Rieger

TO: CSHB 323 (Judiciary)

Page 1, line 7, after "proceedings;":

Insert "amending Rule 403 of the Alaska Rules of Evidence;"

Page 4, after line 8:

Insert a new subsection to read:

"(g) The court may not admit into evidence the testimony of a minor if the court reasonably believes that the minor's response to the questions of an attorney was influenced by the person whose presence in the room during closed circuit televised testimony was permitted by the court under (c)(2) of this section."

Page 4, following line 15:

Insert a new bill section to read:

"* Sec. 6. AS 12.45.046(g), added by sec. 2 of this Act, amends Rule 403 of the Alaska Rules of Evidence by barring the admission of the testimony of a child victim or witness in a criminal proceeding when that testimony was influenced by another, thereby restricting the discretion of the court to consider admission or exclusion of the evidence."

Re-number remaining bill section accordingly.

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Bill Version: CSHB 323
 Publish Date: _____

Revision Date: 03/14/88 Agency Affected: Alaska Court System
 Title: An act relating to testimony BRU: Trial Courts
 of children in certain criminal cases
 Sponsor: Swackhammer Components:
 Requestor: _____

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	
Personal Services	
Travel	
Contractual	
Supplies	
Equipment	
Land & Structures	
Grants & Claims	
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
CAPITAL	
REVENUE	
FUNDING:		(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	
Other	
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	
POSITIONS:							
Full-time	
Part-time	
Temporary	
ANALYSIS:		(Attach a separate page if necessary)					

No fiscal impact. See attached analysis.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 03/14/88

Approved by: *Stephanie Cole, for -* Arthur H. Snowden, II, Administrative Director Date: 03/14/88
 Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEM
CSHB 323 - FISCAL ANALYSIS

Because the video equipment and operators necessary to implement this bill are to be provided by the Department of Law, the court system's fiscal note for this committee substitute is zero.

BILL NO: CS for HB323

DATE: March 10, 1988

TITLE: An Act relating to testimony of children in certain criminal proceedings; and providing for an effective date.

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence and Sexual Assault

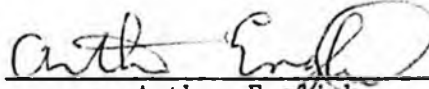
DEPARTMENT OF PUBLIC SAFETY

CS for HB323 (Judiciary) has a very important purpose; to provide alternative methods for taking the testimony of child victims or witnesses in certain criminal proceedings. It is recognized that testifying in court can be very traumatic for a child unless modifications are made in current court procedures. While the Council supports the intent of this bill, there are two problems which need to be addressed before the Council could support this bill.

1) In (a) of proposed Section 12.45.046 (page 1, line 26) any party to the case may move to have the child's testimony taken by closed circuit television or through one-way mirrors if the court determines that taking testimony under normal court procedures would result in the child's inability to reasonably communicate. While the section is intended to provide protection for child victims, it has the potential for abuse as it would allow the defendant to move to have the child's testimony taken in private in instances when the child is able to testify and the testimony would have great impact on the jury and the court. This section should be changed to limit the motion to the party who presents the child as a witness or the child's guardian ad litem.

2) In subsection (f) (page 3, lines 18+) the court may allow changes in the spatial arrangements of the courtroom and the location, movement and deportment of all persons in attendance. Three options the court may pursue are presented. The Council recommends adding another subsection stating "and other measures the court determines appropriate." The Council is concerned that the options presented might be viewed as limiting the court's options in tailoring the courtroom setting to fit the circumstances. It is important that this legislation does not close existing avenues or prevent innovations not considered which would reduce trauma to the child.

The Council on DVSA would support CS for HB323 (Judiciary) if the amendments recommended above were made.


Arthur English
Commissioner

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to testimony of children in certain...proceedings
Sponsor: Swackhammer
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault Date: 3/9/88
Approved by Commissioner: Wayle A. Horvath, Dep. Comm. Date: 3-10-88
Agency: Public Safety

Distribution (by preparer):

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

March 10, 1988

MEMORANDUM

TO: Rep. John Sund, Chair,
House Judiciary Committee

FROM: John Hartle, PA, *JH*
House Judiciary Committee Staff

RE: CSHB 323 (Judiciary)

Adopted
3/11
H. Jud

After the Committee marked up HB 323, I spoke with Dana Fabe, Director, Public Defender Agency about the proposed changes. I believe I have come up with a proposal that meets the concerns expressed at the meeting as well as the concerns of the Public Defender. It replaces "reasonably communicate" with "effectively communicate" and provides more flexibility for the courts in changing the courtroom to meet the special needs of child witnesses. Also added is the guardian ad litem language. Chenoweth may need to change the specific wording for proper drafting style.

Changes to 3/10 draft:

Page 2, line 2: after "to" delete "reasonably" and replace with "effectively"

Page 2, line 14: after "to" delete "reasonably" and replace with "effectively"

Page 3, line 13: after "to" delete "reasonably" and replace with "effectively"

Page 3, line 21: after "to" delete "reasonably" and replace with "effectively"

Page 2, line 2: Add: "The court may appoint a guardian ad litem for the child."

Page 2, line 25 insert before line: "in addition, the court may admit"

Page 3, line 26: insert at beginning of line "In addition to other procedures it finds appropriate"

Page 4, before line 6, add a new bill section ³~~4~~:

* Sec. ~~34~~. AS 44.21.410 is amended by adding a new subsection to read:

(6) provide guardian ad litem services in proceedings under AS 12.45.046.

cc Rep. Swackhammer

STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY

STEVE COWPER, GOVERNOR

900 W. 5TH AVENUE
SUITE 525
ANCHORAGE, ALASKA 99501
PHONE: (907) 274-1684

February 10, 1988

The Honorable Fran Ulmer
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

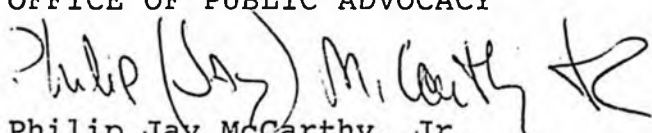
Re: HB 323

Dear Representative Ulmer:

Pursuant to the February 2, 1988 work session conducted by Representative Swackhammer on House Bill 323, enclosed is a copy of the draft position paper and recommended changes to HB 323, which I discussed at the work session. I have enclosed these documents for your review and hope that they will prove beneficial for our future meetings. Please do not hesitate to contact me if you have any questions. Thank you for your dedication and sincere interest in this matter.

Sincerely,

OFFICE OF PUBLIC ADVOCACY


Philip Jay McCarthy, Jr.
Assistant Public Advocate

PJM:mar

Enclosures

cc: Brant McGee, Public Advocate

HB

327

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

1-15-88

WORLD

452-2684

ALL DOWN PARKA, \$125.

MARK GAS & diesel heaters for interior & engine cooling systems of cars & trucks. Full repair & service on all types of gas heaters. Roger Lane's Volkswagen Shop. 479-2748.

MOVING - NEW BROWN plaid loveseat with oak trim; 1 year old brown naugahyde couch with pine trim, both good condition. 488-0101.

MUST SELL!! 1970 C-1-S, \$600 or best offer. 3 1974 Ski-Doo snowmobiles, \$600 or best offer. 1,000 for all. 456-7762. Ask for Luann Berkley.

NEW TORO ELECTRIC power snow shovel, 100' cord included. \$75. Call 479-7674.

OWATONNA SKID LOADER (like Bob Cat), V-4 Ford propane engine. Gas or propane. Good running condition. \$4,500. 488-3967.

PIONEER VIDEO DISC player w/ remote control, 70 movies. \$3,600 value. Must sell. \$1,000. 457-1912 after 5pm.

POOL TABLE, \$75. New Scandia jacuzzi, 8'x8'x3'. Pump, filter, used boiler. \$4,000 or best. 457-8318.

POOL TABLE WITH accessories, \$225. 2 chrome mag wheels with fair tires. 10x15 Chevy, \$125. 479-4605.

POOL TABLE, 8 sticks, accessories, 3 1/2'x7'. New cover, \$500. Wood typewriter desk, 22x60, \$50. 488-2691.

PORTABLE CIRCULAR SAW MILL. Bandsaw arbor, 30" and 42" diameter blades. Best offer. 451-8845.

REDUCE YOUR HEATING BILLS. Save on your heating bills. Purchase a wood press for your own wood. Savings. Call 452-4154.

REWARD FOR INFORMATION on location of intact World War II aircraft: P-39, P-40, P-47, P-51 or P-53. Dave, 209-638-5406 collect.

SALE

ARCTIC CAT PANTHER 440

\$2,850

REGULARLY \$3,499

See at

NORTHERN POWER

433 3rd St., Gr 26

452-2748

SATOH BEAVER
4x4, under 1000 lbs
blade and
650 Yamaha
Cub, fuel

SHEEP
12
100
100

REBU
Miscellaneous

WARN WINCHES
Snowblows, sales, rental, 488-7674

December 1,
Marshall Drive off
P... and Skyline.

LEAVING ALASKA, like new winter clothes sizes 10-12, boots and miscellaneous. Saturday, 12/1, 9am-12pm. 4953 Darimouth #2.

MOVING SALE: Saturday, 12/1, 10am-3pm. Mary Kay sell-out plus lots of goodies. Everything priced to go. 100 10th Avenue, 2CA.

MOVING SALE, furniture, household items, some tools, lawn furniture. 1228 Denali Way. Saturday only, 9am-3pm, December 1.

A MOVING SALE. Plants, Christmas toys, exercise bicycle, desks, shelves, microwave, new bicycle, TV, stereo, collector albums. 452-4855.

TV, STEREO, sewing machine, hexagon aquarium, mirrored plant stands, beds, desk, wicker, clothes. Saturday & Sunday, 10am to 4pm. 229 Well St.

2 APT. SALE: Christmas tree, \$9,000 BTU Sears furnace, hand-crafted items, antique sewing machine, 1453 Eielson St. Apt. A & C. 451-0163.

160 Aircraft & Equipment

ALASKA'S WING SPECIAL

LIMITED TIME OFFER

456-4706, Metro Field.

CESSNA 170B, 180 Lycoming, C5 prop, Avcon conversion. Leaving state and MUST sell this super clean, well-equipped bird. See at Fair International. Call for details: (in Delta) at noon, or after.

FLIGHT INSTRUCTION for yours. FAA design flight test exam. 488-2649.

FLIGHT

ALASKA

Cut rate

OR

18

166

50 HP EVENRUDE outboard
Completely rebuilt. Bored .020 size \$1,500. Pierce Enterprises 3726 evenings.

170 Motorcycles—See 13

ALASKA FUN CENTER

Your motorcycle headlighters. Parts and accessories for all makes.

Yamaha
Honda
Kawasaki
Suzuki

THREE WHEELS

1817 COLLEGE RD

ALI

Professor decries artifact marketing

FAIRBANKS (AP) — An Anchorage anthropology professor says something must be done about what he calls the massive and growing problem of unauthorized collecting of valuable relics and artifacts in Alaska.

"It involves truly impressive amounts of money, income for depressed areas that sometimes have little else going for them, issues involving the rights and responsibilities of contemporary Alaska natives, and many another can of worms," William Workman of the University of Alaska-Anchorage told his colleagues Friday in remarks at the 13th annual conference of the Alaska Anthropological Association.

Workman called for stronger legislation and an extensive public-education cam-

paign to make artifact collecting by both the average person and "affluent white art collectors" socially unacceptable behavior.

Academics from across Canada and the United States gathered at the Travelers Inn in downtown Fairbanks for the conference. Papers were to be presented on Russian-America history, Alaska archaeological discoveries, subsistence, cross-cultural education, native languages, Alaska art and history.

"The history of Alaska does not begin with 1867, as it does as far as Europeans are concerned," said Lydia Black, professor of anthropology at the University of Alaska-Fairbanks.

"As far as the native population is concerned, it begins 10,000 years ago," she said.

Anthropologist urges action on unauthorized collecting of artifacts

The Associated Press

FAIRBANKS — An Anchorage anthropology professor said last week something must be done about what he called the massive and growing problem of unauthorized collecting of valuable relics and artifacts in Alaska.

"It involves truly impressive amounts of money, income for depressed areas that sometimes have little else going for them, issues involving the rights and responsibilities of contemporary Alaska Natives, and many another can of worms," William Workman of the University of Alaska-Anchorage told his colleagues Friday at the 13th annual conference of the Alaska Anthropological Association.

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— Professor William Workman

presented on Russian-America history, Alaska archaeological discoveries, subsistence, cross-cultural education, Native languages, Alaska art and history and other topics.

"The history of Alaska does not begin with 1867, as it does as far as Europeans are concerned," said Lydia Black, professor of anthropology at the University of Alaska-Fairbanks.

"As far as the Native population is concerned, it begins 10,000 years ago," she said. "Alaska was also part of the Russian empire for 100 years, which left an impression on Alaska."

Fairbanks Daily News-Miner
3/11/86

3/11/86

* Anchorage Daily News

Protecting the heritage of aviation in Alaska

We are losing part of our aviation and state heritage. Artifacts of Alaska's aviation history are continually scavenged by Outside private interests. It's unfortunate, but aviation artifacts have become something of value.

Three public, nonprofit organizations are concerned with keeping Alaska's aviation heritage in Alaska. They are the Museum of Alaska Transportation and Industry in Palmer, The Alaskan Historical Aircraft Society in Anchorage, and the Interior and Arctic Alaska Aeronautical Foundation in Fairbanks.

Other organizations also are concerned with recovery of historic aircraft, but their efforts are structured to private use or gain.

The United States Historical Aircraft Preservation Museum, with Paul A. Fox as president, has interfered considerably with other legitimate recovery and preservation efforts.

Fox issued public notices claiming ownership to all downed military aircraft that were no longer claimed by the military. He then issued threats of legal action against any other organization that tried to salvage these aircraft. The notice was published in the Western Flyer, a Tacoma, Wash., aviation newspaper.

Fox's claim was denied by The U.S. Department of the Interior, which wrote, "We have reviewed those public notices and find them legally insufficient to establish any claim of ownership to the downed aircraft. Under any interpretation of applicable law, mere publication of claimed ownership is not sufficient to establish ownership of downed aircraft. Consequently, we are of the opinion that public notices may simply be ignored as legally innocuous."

The problems have not stopped with the Department of Interior's decision. Seven Curtis P-40 crash sites have been scavenged in recent months; the Nome site was allegedly picked over by a member of Fox's organization.

The P-40 is a World War II fighter that was staged in Alaska during the war years. Like most WWII fighters, the P-40 is a rare airplane, worth about \$400,000 in flying condition. The destination of its recovered parts is Texas, not Alaska.

Site locations include federal, Native lands and land still in question. Alaska's state Department of Natural Resources and the U.S.

Everett Long

Pilot's
Corner



Commentary

"We are investigating (the theft or trespass) because two wrecks were on federal land," said Larry Hood, an agent with the USFWS. The fine is \$250 to \$500. A wrecked P-40 is worth over \$100,000.

"It's a big question of ownership after the fines have been paid," Hood said. The state and the three legitimate aircraft museum organizations are trying to have the P-40 seized and kept in Alaska. There are enough parts to make three complete restored aircraft. They would become part of the air museum displays in Fairbanks, Palmer, and Anchorage.

Paul Chattey, who represents the Department of Natural Resources' Office of History and Archeology, is among those who'd like to see more cooperation among the various preservation groups.

"We are concerned with aircraft that are covered by the Alaska Historic Preservation Act," Chattey said. "But that only applies to aircraft on state land. At the moment we need the cooperation of all groups, like the IAAAF, the museum in Palmer, and the Alaskan Historical Aircraft Society."

"Our position is this: If those P-40 parts are seized, they would be moved to storage at Palmer—and used for all Alaskans."

The Palmer museum has contacted U.S. Sen. Ted Stevens for help in seizing and keeping these aircraft in Alaska. The IAAAF and the AHAS support these efforts, and encourage people to express their views to Sen. Stevens. Locally, Rep. Mike Davis also is working to assist the effort.

It looks grim concerning saving the P-40s. Most of the salvaged parts are presently stored at Unalaska and Unnak Island. This "Gold Rush" on irreplaceable historic aircraft has got to be stopped. If not stopped, nothing will remain for educational and exhibit value

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he Alas. Trapper. is author of "Wager d "The Red Snow."

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Sunday, January 12, 1986—

OUR WORLD

ly News-Miner, Fairbanks, Alaska

Lawmaker is out to stem loss of aviation heritage

Preserving Alaska's aviation heritage is not simple, and competition for artifacts can be fierce.

The Alaska Historic Preservation Act was designed to protect historic, prehistoric and archeological resources. But its penalty of 'up to \$1,000 and/or six months in

jail" has not been effective in protecting rare aircraft.

State Rep. Mike Davis, District 19, Fairbanks, plans to change that law.

Davis' proposed amendment will change it from a \$1,000 penalty and six months in jail, to \$5,000 with up

to one year in jail. In addition a civil penalty of \$100,000 per violation will be charged. The responsibility is also broadened to include those people who assist a person who violates the Alaska Historic Preservation Act.

"Something has to be done to stem the tide of our Alaskan heritage from leaving the state," Davis said. "The recent, and ongoing, issue of the P-40s is a good example of needed legislation."

The intent of the amendment is take the profit out of stealing our Alaskan heritage. And stop those who are willing to claim rewards and make a profit out of finding artifacts for Outside interests.

Presently the charges are only a misdemeanor—still a minor criminal charge. Judith Bittner, Chief of the Office of History and

Everett Long

Pilot's Corner



Archaeology DNR recommends changing that to a felony charge. I share that recommendation, and Davis is seeking input on recommended charges in the amendment.

The objective is usually World War II fighters found in isolated areas of the state. They are rare, which dulls the effect of a \$1,000 fine, and isolated, which makes it difficult to catch a thief.

Within the last three or four

years, two P-51 Mustangs disappeared from a lake near Selawik north of the Seward Peninsula. When asked, nobody in Kotzebue or Nome knew who took them. Nor did anyone working with state or federal agencies know anything about the missing aircraft.

Threatened aircraft in the Interior are P-39 Aircobras. The Interior and Arctic Alaska Aeronautical Foundation wishes to retrieve some of these rare WWII fighters for display in the Alaska Pioneer Air Museum.

The air museum's efforts are for public use and preservation of aviation heritage. Anyone who knows of crashed or submerged WWII aircraft are encouraged to assist.

John Cooper, director of the Alaska Historical Transportation Museum in Palmer, says he supports Davis's amendment "100 percent."

People throughout Alaska are concerned about the loss of our history. The P-40s and Mustangs are only a part of the problem. Native artifacts on the coast are often raided by people with boat access. Archaeological sites are indiscriminately robbed. It isn't just a problem involving WWII aircraft.

"I don't anticipate any opposition to this amendment," Davis said. "But it will take a concentrated effort by me and other interested people. I would certainly welcome any letters of support sent to me, or to your respective Legislators."

Send letters of support to Rep. Mike Davis, Pouch V, Juneau, AK 99811. Anyone interested in protecting Alaska's treasures should support this amendment.

Aviation Happenings

Aviation organizations can have their meetings and activities listed if they will send a schedule to the Pilot's Corner.

Jan. 20—Monday, 7:30 p.m., General membership meeting. Yukon Squadron Civil Air Patrol, CAP hangar, East Ramp.

Jan. 21—Tuesday 7:30 p.m., Interior & Arctic Alaska Aeronautical Foundation meeting. Alaska Room Fairbanks International Airport terminal. Topics: Move meeting location for accessible parking; proposed amendments to the Alaska Historic Preservation Act.

A private pilot, Everett Long is a board member of the Interior and Arctic Alaska Aeronautical Foundation.



Alaska State Legislature

Representative Mike Davis

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

House Judiciary Committee
TO: Members of House Judiciary Committee
FROM: Rep. Mike Davis
DATE: January 11, 1988
RE: HB 327: An Act relating to penalties for violating the Alaska Historical Preservation act; and providing for an effective date.

The Alaska Historic Preservation Act protects historic, prehistoric and archeological resources, including deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of the people in the state as well as the state's natural history. This protection exists only on state land. The act does not pertain to federal or private land. HB 327 provides a higher level of protection for historical resources by increasing the penalties for violating the act.

Alaska has an unusually rich and largely undisturbed reserve of historic objects. These resources are often sought by collectors undeterred by current penalties or the need to preserve these objects for the public good. It is no exaggeration that ivory and bone tools used by Eskimos, great wood carvings of the Tlingits, dinosaur bones found on the North Slope and World War II relics strewn around the state and across the Aleutians are priceless.

Current law provides penalties of a \$1,000 fine, six months imprisonment or both for violating the act--penalties inadequate to protect the state's historical resources. HB 327 would increase the criminal penalties for violation of existing law to those of a Class A misdemeanor, no more than a \$5,000 fine, one year imprisonment, and adds civil penalties of up to \$100,000.

Passage of HB 327 would provide an effective deterrent against unauthorized destruction or theft of historic objects protected by the Alaska Historic Preservation Act on state lands and would heighten awareness among Alaskans and visitors of the value of these unique and diverse resources.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

January 14, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
State House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

Subject: HB 327 relating to penalties for violating
the Alaska Historic Preservation Act.

Background

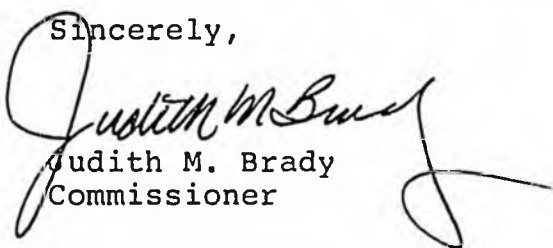
HB 327 increases criminal penalties for appropriating, destroying or otherwise harming any historic, prehistoric or archeological resources of the state. HB 327 provides that violations will be a Class A misdemeanor and provides for a civil penalty of up to \$100,000.

Introduction of a civil penalty will provide a substantial monetary deterrent which does not exist under present law, as archeological artifacts and items such as historic aircraft parts often have substantial monetary value.

Recommendation

The Department of Natural Resources supports HB 327 and recommends its passage out of the House Judiciary Committee.

Sincerely,



Judith M. Brady
Commissioner

cc: Rod Swope
Bob Evans
Bill Sponsors
Committee Members
Department of Law

MEMORANDUM

State of Alaska

Department of Natural Resources, Division of Parks and Outdoor Recreation

TO: Tom Moyer
Legislative Aide
Representative Davis' Office
Alaska State Legislature

FROM: Judith E. Bittner ^{JB}
Chief, Office of History & Archaeology
Department of Natural Resources

REF: Changes to
ACC.11.16

APR 24 REC'D

The Alaska Historic Preservation Act, (AS 41.35.010) formulates as state law the preservation and protection of Alaska's historic, prehistoric and archaeological resources from loss, desecration and destruction. Title 11, Chapter 16 of the Alaska Administrative Code, establishes implementing regulations to deal with jurisdiction, title to collected items, the permitting process, reports, etc. related to these resources.

It is unlawful for a person to appropriate, excavate, remove, injure, or destroy without a permit from the Commissioner, any historic, prehistoric or archaeological resources of the state. There is, quite properly, a broad definition given to "historic, prehistoric and archaeological resources" under 41.35.230 ("deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in this state as well as to the natural history of the state.") Penalties are established under Section 41.35.200 for possessing, selling, buying or transporting within the state, or offering to sell, buy or transport within the state, historic, prehistoric or archaeological resources taken or acquired in violation of this section. Violators are guilty of a misdemeanor and, upon conviction, are punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (AS 41.35.210)

I am certain that aircraft and parts thereof are adequately covered under AS 41.35.230. Alaskan historic aircraft have been accorded recognition as historic artifacts and/or objects of antiquity by the Governor's Historic Sites Advisory Committee (established under AS 41.35.110) in nominations to the National Register of Historic Places and by award of grants to recover rare, endangered aircraft. I would suggest that changes should not be made to Section 11.16.110, a portion of the implementing regulations that define administrative responsibility for historic sites as being within the Division of Parks and Outdoor Recreation. Any changes in State law should, more appropriately, be made to AS 41.35.200. Mr. Long's efforts are in the right direction; as State Historic Preservation Officer I would support efforts to increase the penalty for violation of 41.35.200 from a misdemeanor to a felony.

MOYER.REP

BENJAMIN B. TALLEY
BRIG. GEN. U. S. ARMY, RETIRED
STAR ROUTE BOX 600
ANCHOR POINT, AK 99556
(907) 235-7473

3 February 1986

The Honorable Mike Davis
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

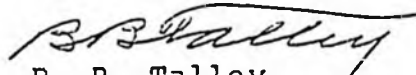
Dear Representative Davis:

I have just learned through Admiral James S. Russell that you have introduced legislation to protect World War II artifacts in Alaska.

There is a dire need for such protection, and I give this legislation my whole hearted support.

It would be appreciated if you would send me a copy of your bill so that I may discuss it with others.

Most sincerely,



B. B. Talley
Officer in Charge of Army and
Air Corps Construction in Alaska
during WWII

cc: Admiral James S. Russell



North Star Flying Lions, Inc.

F.O. Box 31301, Fairbanks, Alaska
99708

January 16, 1986

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Mike:

The twenty five members of the North Star Flying Lions wish to lend their support to the proposed amendments of the Alaska Historic Preservation Act. We are deeply concerned regarding the removal of historical artifacts from Alaska.

We appreciate being made fully aware of this problem through Everett Long's recent Pilot's Corner column in the Fairbanks Daily News-Miner. The tragic loss of the planes mentioned in the column diminishes Alaska's aviation heritage, which we feel is incumbent on all of us to protect and preserve.

The proposed legislation to increase the civil penalty from \$1,000 to \$100,000 is a good start in getting the kind of attention that is apparently necessary to stem further acts of criminal removal (theft, if you will) of these rare planes.

Please include our organization as being 100% in favor of your proposed amendment. Members names will be sent on request.

Sincerely yours,

L. Stanley Zielinski
President, 1985-86

LSZ:mv

CC: Letter to the Editor
Fairbanks Daily News-Miner

ADMIRAL JAMES S. RUSSELL, USN (RETIRED)

7734 WALNUT AVENUE SOUTHWEST
TACOMA, WASHINGTON 98498

29 January 1986

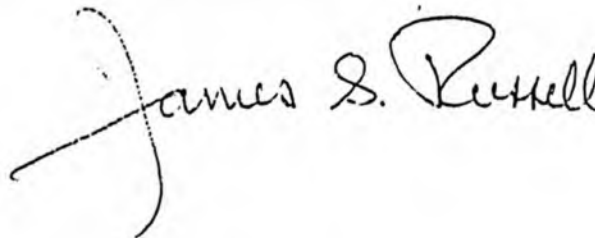
The Honorable Mike Davis
Member of the State Legislature
Representative of the 19th District
Juneau, Ak., 99801

Dear Representative Davis

From one who flew and fought in Alaska in WW II,
please accept my hearty endorsement of your effort to
preserve for Alaskans those historic airplanes which,
due to enemy action or weather, were wrecked and
abandoned in the State of Alaska.

With all good wishes for your success.

Sincerely,

A handwritten signature in cursive script that reads "James S. Russell". The signature is written in dark ink and is positioned below the word "Sincerely,".

Enclosure: News clip from Fairbanks paper

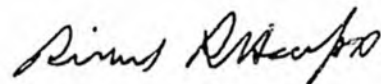
CC; Brig.Gen. Benjamin B. Talley, USA (retired)
Anchor Point, AK.

Representative Mike Davis
Interior House Delegation Office
542 4th Ave, Suite C
Fairbanks, Alaska 99701

Dear Mr. Davis

This is to express strong support for House Bill 438. It is absolutely essential that the plundering of Alaska's valuable artifacts, in particular historical aircraft or their parts, be stopped. Maximum felony penalties should be imposed on those who would illegally remove or assist in the removal of the artifacts. They are of great and increasing value both historically and monetarily to the people of Alaska. Even a penalty of \$100,00 might not deter the theft of, for example, a World War II airplane with a value of 1/4 to 1/2 a million dollars.

Sincerely yours,



Richard R. Hoopes, President IAAAF
120 Concordia Drive
Fairbanks, AK 99709

479-6669



KETCHIKAN
HISTORICAL
COMMISSION

POST OFFICE BOX 7055
KETCHIKAN, ALASKA 99901
907-225-6166

7

March 10, 1986

Representative Mike Davis
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Davis:

The Ketchikan Historical Commission met on March 5, 1986 and voted to give support to HB 283 regarding historic preservation.

We have worked diligently in our programs to educate and promote historic preservation and restoration in the Ketchikan area. With the passage of HB 283, additional incentive would be given to those persons wishing to preserve their historic properties throughout Alaska.

We encourage you and your legislative counterparts to give total support to HB 283 during the current session.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Lattin".

BILL LATTIN
Chairman

cc: Governor Bill Sheffield

Paul Chatty
Division of Parks & Recreation



ALASKA HISTORICAL and TRANSPORTATION MUSEUM

Box 920 • Palmer, Alaska 99645 • Tel: (907) 745-4493

Exhibit #3

Honorable Ted Stevens
United States Senator
147 Russell Office Building
Washington, D.C. 20510

11/14/85

Dear Senator Stevens,

We need your help!!! We have been working with the State of Alaska Office of History and Archeology, the Governors Office, The Army Corps of Engineers and aviation historical groups across Alaska to formulate and expedite a rational plan for the assessment, recovery and exhibit placement, in Alaska, of World War II aircraft wrecks.

It has been a difficult process, but substantial progress has been made. The Governor of Alaska requested a plan dealing with the W.W. II aircraft recovery and exhibit from a coalition of groups in October of this year and the plan was produced and submitted on time. In cooperation with the mentioned state or federal agencies initially the coalition of non profit groups included this museum, as an established " physical " museum facility in Palmer, the Alaskan Aviation Committee of Anchorage and has expanded to include the Interior Alaska and Arctic Aeronautical Foundation of Fairbanks, which at this time is developing an aviation collection within the Gold Dome at Alaskaland.

At this critical time when we are getting an " Alaskans for Alaska " effort well underway a potentially major disaster is in the making. A combined group of in state and " outside " salvors has gone to both Unalaska and Umnak Islands and gathered up the remains of at least seven P-40 W.W.II fighter aircraft for shipment to the Lower 48 states. This involves federal lands and has been done without the necessary federal permits which should have been obtained from the U.S. Fish and Wildlife Service. It is also the second violation by the same group within several months as similar violations recently occurred on Amchitka Island and were documented by the U.S. Fish and Wildlife Service.

Our concern arises from the fact that the U.S. Fish and Wildlife Service has been forming a position on this particular instance which maintains that the violators will be fined (\$250) for their trespass, but that they can have these historically important aircraft!!! For your information a rock bottom price for a flyable P-40 at this time is in the range of \$400,000. As useful parts alone the assembled wrecks represent, we estimate , a figure substantially in excess of \$400,000. Not a bad return for a couple of \$250 fines!!!

762-

Per Dave Olson of the U.S. Fish and Wildlife Office in Anchorage his agency is about to claim ownership of all other documented wrecks on their lands, but as these particular wrecks have been moved it would be difficult to prove ownership.

This is an indefensible position!! We have photographs of the wrecks in question as they were in place on federal lands, and this documentation has existed for years, these wrecks were included in our plan which was requested by the Governor of Alaska and the helicopter pilot in Dutch Harbor who actually airlifted these wrecks for the salvors has pointed out the origin points to Alaska State Troopers.

Is the U.S. Fish and Wildlife Service acting in an ethical, professional and non biased manner on this issue?? We believe not particularly when their past performance, please see the enclosed information, indicates that at least some U.S. Fish and Wildlife personnel in Alaska seem to have played favorites with Lower 48 collectors in the past. An Alaskan group long on the field definitely came out second best to the Confederate Airforce, in Texas. Does perhaps someone or a number of people in Alaskas U.S. Fish and Wildlife Service have a vested interest in the outside sale of these materials? Perhaps this question should also be examined.


What we want at this time is your help in stopping the drain of historical materials from Alaska which in turn will help us get in place an Alaskan system for dealing with these materials. We want the authority for collection or disposal of W.W.II aircraft, or any important aviation materials, on federal lands to be turned over to the State of Alaska Office of History and Archeology. At this moment we specifically want authority for the P-40s in question to be turned over to the State of Alaska Office of History and Archeology. That agency can then in turn work with our museum and its allied preservation groups to insure quality exhibits within Alaska and perhaps a funding base, via sales of aviation materials deemed surplus, for other important aviation history preservation activities.

We have included a letter we wrote to another historical group recently as part of our effort to include Alaskan interests in the current Army Corps of Engineers Aleutians/W.W.II cleanup impact study. It should clearly illustrate our position on historical aviation preservation in Alaska.

In closing I would like to add that after a great deal of effort and real pain on the part of Alaskans the proposed U.S. Fish and Wildlife stand on the P-40s in question will set a precedent which will virtually open Alaska up to a salvors "Gold Rush". Irreplaceable historical aircraft remains of high educational and exhibit value, worth virtually millions of dollars, will disappear and what will be left for our people, our children?

Please contact us for whatever additional information you might need.

Sincerely,


John Cooper
Director

THE ALASKAN
HISTORICAL AIRCRAFT
SOCIETY

2397 East 47th Court
Anchorage, Alaska 99507
907-276-1807

June 7, 1979

Dear Sir:

The Alaskan Historical Aircraft Society would like to ardently protest the occurrence of a situation and the conduct of certain federal agencies. During April and May a group of gentlemen representing the Confederate Air Force of Harlingen Texas arrived in Alaska with a DC-3 cargo aircraft and a helicopter. Their intent was to salvage as much WWII aircraft or aircraft parts as was feasible. Their journeys took in the Alaskan Peninsula (King Salmon - Cold Bay - Chernofski) and eventually to Adak, a restricted entry Navy base in the Aleutians. There they spent five days and flew on government O.A.S. aircraft in the company of FWS personnel to areas containing actual or reported WWII aircraft wreckage. The survey aircraft was originally chartered to serve the native population at Atka Village, through the BIA. In questioning John Moore, Director of BIA in Juneau, he claims that BIA did not authorize the flying excursions by Confederate Air Force people. He indicates that the flights were FWS authorized as "refuge survey flights." He feels that the "truth" would never have come to light except that the aircraft got stuck in the sand at Tanaga Bay (a rich historical area) and was 18 hours overdue for doing BIA work. The Coast Guard was called out for a search mission.

The FWS refuge manager in Adak, Mr. John Martin, indicates he thought that the flights had been authorized by BIA and the Office of Aircraft Services claims it doesn't know exactly what went on or who paid for the flights. All they did was fly the airplane and land it where ever the CAF indicated. The Confederate Air Force maintains the largest

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

2397 East 47th Court
Anchorage, Alaska 99507
907-276-1807

Page 2

group flying WWII aircraft in the world and is a major salvager of aircraft, world wide.

The Alaskan Historical Aircraft Society has been working long and hard in a volunteer effort to preserve WWII aircraft in Alaska as valuable historic objects. These machines relate to an important stage of Alaska's development, not to mention the commendable services and events of human courage and sacrifice during the Aleutian Campaign. We're up against the fact that these museum objects are worth tens of thousands of dollars each on vintage aircraft market. Our complaint is this: why is a major aircraft salvager from the states afforded an expeditious tour of Aleutian wreckage sites apparently with government assistance and at government expense when the Alaskan Historical Aircraft Society cannot get similar accommodation when seeking to do the federal mandated task of gathering information for the National Register of Historic Places. This nomination work is necessary to get recognition of these aircraft as historic objects and thus cause them to be preserved in the interest of future generations of Alaskans. It is reflected in Executive Order 11593, and 36 CFR800 _____, that the various federal agencies have a responsibility to do this work. These machines are rare and are historic in the finest sense of historic value. We have established this with the submission and acceptance by the State of Alaska of our nominations of the P-38 on Attu and B-24D at Atka...nominations we put together from photos gleaned from private citizens in Nevada and Massachusetts; information that should have been provided by the federal government in light of Executive Order No. 11593 and 36 CFR800. The work is recognized and endorsed by the Manager of Federal Antiquities of the Heritage Conservation Recreation Service in Wash. D.C. Even though the nomination work is the responsibility of the federal agencies, our small group has endeavored to do it out of pocket and in spare time. We do this because the FWS Service in particular claims to have no time, manpower or funds to conduct such a survey and furthermore cannot offer us any assistance whatsoever in doing their job. They say only that they will issue us a special use permit. They cannot spare any people to assist or accompany us. When we ask what assurance we have that the machines are properly protected until a proper evaluation is done, the FWS claims no one can get into Adak without security clearance and must have legitimate interest there and that, according to Mr. Owen Vivian of the FWS, no salvage

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

2397 East 47th Court
Anchorage, Alaska 99507
907-276-1807

Page 3

personnel would have entry to refuge lands. Yet the people with FWS in Adak can get aircraft together and find time to visit sites with prominent aircraft salvagers.

We feel this historical resource is being compromised by someone in the federal government. Aviation represents a fourth of Alaska's 20th Century development and not much has been done to save it in a heritage sense. The Alaska Historical Aircraft Society is trying desperately to preserve this history. Would you please earnestly investigate this matter? What we want to know is this:

1. Who sponsored the Confederate Air Force with the Navy at Adak.
2. Who paid for the accommodations and the government aircraft for the CAP survey team. Who authorized the aircraft's use. (FWS; USN; BIA; OAS) (aircraft costs: \$324/day + \$247/hr. for fuel + Misc.
3. Where exactly did the crew from the CAF fly to and what did they take away.
4. Why does FWS personnel have time to accompany the people on permit (#A1-179-9 for Max Hoffman; CAF 116-S Ridge Ct. Ft. Collins, Col) and cannot assist the Alaskan Historical Aircraft Soc. personnel trying to perform federal mandated duties.
5. What part did the OAS play in this and what did pilot Dave Macelroy experience during the flights (i.e. log books)
6. Why cannot the AHAS get similar cooperation in their efforts to save this resource for Alaska.
7. Why are efforts to do nominations on valuable WWII aircraft being blocked by federal apathy.

If we cannot get some assistance, soon these historic aircraft will be scattered and broken down for parts and used to line the pockets of a few entrepreneurs. It's going to look bad if it is done with government assistance. Thank you for your time and energy concerning this situation. We know that you are busy.

Sincerely,

Dale Jackson

Sheila Dewey

Ted Spencer
President

Vice President

Treasurer

HOUSE COMMITTEE REPORT

(7)
Date referred 5/16/87

FURTHER REFERRALS: Finance

DATE: 1-15-88

The Judiciary Committee has considered HB 327

"An Act relating to penalties for violating the Alaska Historic Preservation Act; an providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

Mike Havane

SIGNING OTHER RECOMMENDATIONS:

Vernon Barnes (Vote)

John I. Taylor (No Rec)

[Signature]

 Chairman's signature

Offered: 3/21/86
Referred: Finance

Original sponsors: Davis, Koponen
and Harley

1 IN THE HOUSE 327 BY THE JUDICIARY COMMITTEE
 2 ON THE HOUSE BILL NO. 10 (AS AMENDED) FOR
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 CONCERNING THE STATE OF ALASKA
 5 A BILL
 6 For an Act entitled "An Act relating to the State of Alaska
 7 Alaska Workers' Compensation Act and providing for
 8 an effective date."
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
 10 Section 1. AS 23.210 is amended to read:
 11 Sec. 23.210. ORIGINAL OFFENSES. A person who is convicted
 12 of violating a provision of AS 23.210 shall be punished in the
 13 manner:
 14 a. sec. 2. AS 23.210 is amended to read:
 15 Sec. 23.210. ORIGINAL OFFENSES. A person who is convicted
 16 and receives parole for this offense shall be fined not more than
 17 this amount is subject to a maximum of \$1000 for each
 18 each violation.
 19 a. sec. 3. This Act shall be effective July 1, 1986.

*As in Title of the Bill 1986
 as a gift and hope the law, we shall do
 Every thing in our power to change
 The Statute on Workers' Compensation.*

W. H. [Signature]

(2)

Offered: 3/21/86
Referred: Finance

Original sponsors: Bay, J. Hopson
and Husley

1 IN THE HOUSE

327

OF THE LEGISLATURE

2

OF THE HOUSE OF REPRESENTATIVES

3

IN THE SENATE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska

7

Alaska Highway Authority and providing for

8

its effective date."

9

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

10

§ 1. Section 1. AS 41.25.010 is amended to read:

11

Sec. 41.25.010. Any person who violates any provision

12

of this chapter is guilty of a misdemeanor.

13

meanor.

14

§ 2. Section 2. AS 41.25.010 is amended to read:

15

Sec. 41.25.010. Any person who violates any provision

16

of this chapter is guilty of a misdemeanor.

17

This chapter is subject to chapter 4, § 2.01, AS 41.25.010.

18

each violation.

19

§ 3. Section 3. AS 41.25.010 is amended to read:

Robert Miller, born and raised in Fairbanks, Alaska for 70 years. He has been active in community for over 45 years and was one of the organizers of the organized Northern Law Center and later joined various business and professional groups in support of various community projects.

3

Offered: 3/21/86
Referred: Finance

Original sponsors: Davis, Koponen
and Harley

1 IN THE HOUSE

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6 For an Act entitled: "An Act relating to the regulation of the

7 Alaska Wildlife Troopers, and providing for

8 an effective date."

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

10 * Section 1. AS 17.05.010 is amended to read:

11 Sec. 17.05.010. (a) The Alaska Wildlife Troopers shall be

12 a part of the Department of Fish and Game, and shall be

13 headed by a commissioner.

14 * Sec. 2. AS 17.05.010 is amended to read:

15 Sec. 17.05.010. (a) The Alaska Wildlife Troopers shall be

16 a part of the Department of Fish and Game, and shall be

17 headed by a commissioner. Any violation of this section is a

18 criminal violation.

19 * Sec. 3. This Act shall take effect on the date of its

*Handbook submitted 1/22/86
STANDARD SUPPLIES 1/23/86
DICK HARLEY*

4

Offered: 3/21/86
Referred: Finance

Original sponsors: Davis, Koponen
and Harley

1 IN THE HOUSE

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3

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6 For an Act entitled: "An Act relating to the regulation of the

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10 * Section 1. AS 17.05.010 is amended to read:

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18 criminal violation.

19 * Sec. 3. This Act shall take effect on the date of its

*be attached 100%
State bank
Lep 4/5*

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See floor
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1	IN THE HOUSE
2	AS FOR HOUSE BILL NO. 1000
3	IN THE HOUSE
4	FOR AN ACT ENTITLED
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15	"A BILL
16	FOR AN ACT ENTITLED
17	"A BILL
18	FOR AN ACT ENTITLED
19	"A BILL

Original sponsors: [Name] and [Name]

Ordered: 3/21/86
Referred: Finance

(2) cooperate with the department in formulating and administering a statewide historic sites survey under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(4) provide necessary assistance to the governor and the legislature for achieving balanced and coordinated state policies and programs for the preservation of the state's historic, prehistoric and archeological resources;

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.55.010 — 29.55.020 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.55.020(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98. (§ 1 ch 130 SLA 1971; am § 7 ch 112 SLA 1974; am § 4 ch 139 SLA 1977; am § 66 ch 74 SLA 1985)

Effect of amendments. - The 1985 29.48.108 — 29.48.110" and "AS amendment in paragraph (5) substituted 29.55.020(b)" for "AS 29.48.110(b)." "AS 29.55.010 — 29.55.020" for "AS

Sec. 41.35.210. Penalties. A person who violates a provision of AS 41.35.010 — 41.35.240 is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 130 SLA 1971)

Editor's notes. — This section is set out above to substitute "AS 41.35.010 — 41.35.240" for "this chapter." This change takes into account the addition of sections to AS 41.35 in 1987.

Sec. 41.35.220. Enforcement authority. The following persons are peace officers of the state and shall enforce AS 41.35.010 — 41.35.240:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

Editor's notes. — out above to substitute 41.35.240" for "this cha

Sec. 41.35.230. the context other
 (1) "commissioner"
 (2) "committee"
 (3) "department"
 (4) "historic, pr
 posits, structures,
 other objects of an
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 the natural histo

Editor's notes. — out above to substitute 41.35.240" for "this cha

Sec. 41.35.240. cited as the Alaska

Editor's notes. — out above to substitute 41.35.240" for "this cha

Article

- Section
- 300. Creation
 - 310. Composition
 - 320. Appointment
 - 330. Terms of office
 - 340. Compensation

Editor's notes. — Se Order No. 63 provided ship of the Alaska Histo and contracts and pr

Sec. 41.35.300. (Natural Resources § 2 (1987))

FISCAL NOTE

REQUEST:

Revision Date: 05/17/87
Title: An act relating to penalties for violating the AHPA
Sponsor: Davis, Koponen
Requestor: House Judiciary

Agency Affected: Natural Resources
BRU: Parks and Recreational Management
Components: Historic Resource Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Because HB 327 is an upgrade in existing penalties, there should be no additional costs incurred by the Department of Natural Resources.

Prepared by: Lawrence Ostrovsky, Special Assistant Phone: 465-2400
Division: Commissioner's Office Date: 01/14/88

Approved by Commissioner: *Judith R. B...* Date: 01/14/88
Agency: Department of Natural Resources

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Corrections
 Title: "An Act relating to penalties for
violating the Alaska Historic Preservation Act" BRU: _____
 Sponsor: Representative Davis & Koponen Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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 FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This legislation would have minimal impact on the Department of Corrections.

Susan E. Knight

Prepared by: Susan Knighton Phone: 465-3376
 Division: Director of Administrative Services Date: 1-15-88
 Approved by Commissioner: Susan Humphrey-Barnett Date: 1/15/88
 Agency: Department of Corrections

Distribution (by preparer):

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