

**SPONSOR SUBSTITUTE FOR SENATE BILL NO. 176**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATOR GARDNER

Introduced: 2/22/16

Referred: Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the admissibility of prior reports of sexual assault, sexual abuse of a**  
2 **minor, or unlawful exploitation of a minor in prosecutions of sexual assault, sexual**  
3 **abuse of a minor, unlawful exploitation of a minor, or an attempt to commit any of those**  
4 **crimes; and amending Rule 404(a), Alaska Rules of Evidence."**

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

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

7 **Sec. 12.45.044. Evidence of prior reports of sexual assault or sexual abuse**  
8 **of a minor in trials of certain sexual offenses.** (a) In prosecutions for the crimes of  
9 sexual assault in any degree, sexual abuse of a minor in any degree, unlawful  
10 exploitation of a minor, or an attempt to commit any of these crimes, evidence that the  
11 complaining witness has made a prior report of sexual assault in any degree, sexual  
12 abuse of a minor in any degree, or unlawful exploitation of a minor may not be  
13 admitted nor may reference be made to it in the presence of the jury except as  
14 provided in this section. When the defendant seeks to admit the evidence for any

1 purpose, the defendant shall apply for an order of the court not later than five days  
 2 before trial or at a later time as the court may, for good cause, permit. After the  
 3 application is made, the court shall conduct a hearing in camera to determine the  
 4 admissibility of the evidence. The court may admit the evidence only if the court finds  
 5 that the

6 (1) probative value of the evidence offered is not outweighed by the  
 7 probability that its admission will create undue prejudice, confusion of the issues, or  
 8 unwarranted invasion of the privacy of the complaining witness;

9 (2) evidence otherwise complies with all laws, regulations, and rules  
 10 governing the admission of evidence; and

11 (3) defendant has proved by clear and convincing evidence that the

12 (A) complaining witness has made a prior report of sexual  
 13 assault, sexual abuse of a minor, or unlawful exploitation of a minor;

14 (B) report was false; and

15 (C) complaining witness knew the report was false.

16 (b) A prior report of sexual assault in any degree, sexual abuse of a minor in  
 17 any degree, or unlawful exploitation of a minor is false for purposes of this section if  
 18 the evidence presented to the court establishes that the reported sexual assault, sexual  
 19 abuse of a minor, or unlawful exploitation of a minor did not, in fact, occur.  
 20 Recantation, delayed reporting, or noncooperation with law enforcement by the  
 21 complaining witness or lack of evidence corroborating the complaining witness' prior  
 22 report is not sufficient to show a prior report was false under this section.

23 (c) In the absence of a persuasive showing to the contrary, evidence of the  
 24 complaining witness' prior report of sexual assault, sexual abuse of a minor, or  
 25 unlawful exploitation of a minor occurring more than one year before the date of the  
 26 offense charged is presumed to be inadmissible under this section.

27 (d) In this section, "complaining witness" has the meaning given in  
 28 AS 12.45.045.

29 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
 30 read:

31 **INDIRECT COURT RULE AMENDMENT.** AS 12.45.044, enacted by sec. 1 of this

1 Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by requiring a  
2 defendant, with some exceptions, to request five days before trial that certain evidence about a  
3 complaining witness be admitted into evidence.

4 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6 APPLICABILITY. AS 12.45.044, enacted by sec. 1 of this Act, applies to offenses  
7 committed before, on, or after the effective date of this Act.

8 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

10 CONDITIONAL EFFECT. AS 12.45.044, enacted by sec. 1 of this Act, takes effect  
11 only if sec. 2 of this Act receives the two-thirds majority vote of each house required by art.  
12 IV, sec. 15, Constitution of the State of Alaska.