

ALASKA STATE LEGISLATURE



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REPRESENTATIVE ANDY JOSEPHSON

April 3, 2016

Members of the House Health & Social Services Committee
Attn: Chair Paul Seaton
State Capitol
Juneau, Alaska 99801

Re: House Bill 334 (An Act Relating to Visitation and Child Custody)

Dear Chairman Seaton:

I write today out of concern with House Bill 334 (An Act Relating to Visitation and Child Custody).

I have not written a letter of this kind since my service in the Legislature began in January, 2013. Nor have I appeared before any committee as a testifying witness during that time frame.

I write this letter because my legal career from 2003-2012 was enveloped in child custody cases at every level. This includes evidentiary hearings, trials, appeals, and Title 18 restraining order applications. As private counsel, I represented both clients accused of domestic violence and clients alleging that they, or others, were victims of domestic violence. It was an all-consuming part of my professional life for nine (9) years without interruption.

While I haven't considered every nuance of the bill before you, it is self-evident that the intent of the legislation is to raise the bar as to a claim of domestic violence in custody situations, requiring proof of conviction rather than mere "evidence".

Although there were times when I found the interplay between allegations of domestic violence and Title 25 (Family Law Code) frustrating, I believe that overall, previous legislatures were wise to place heightened scrutiny and attention on domestic violence in family situations. Further, they were equally wise to make a policy decision that there was no place for domestic violence within the family and that certain rebuttal presumptions might be created that reflected that policy decision. Do note, however, that AS 25.24.150(h) requires a finding that there have been two (2) such acts before a "history of perpetrating domestic violence" can be made, and a rebuttable presumption comes into play and is activated.

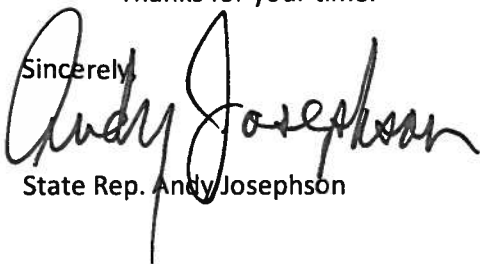
* Alternate

Here is my larger concern: by requiring actual evidence of conviction, this bill would put powerless women (frightened by their economic dependence as well as their psychological and social dependence, and out of a false belief that they did something wrong and deserved physical punishment or physical threat as a consequence) at a greater disadvantage. I saw countless examples of battered and threatened women (with incidents frequently observed by shared children), who did not seek convictions of their spouses out of fear of them or, alternatively, out of a disingenuous promise that it would never occur again. Do know, further, that in each evidentiary custody dispute, trial judges are quick to ensure that due process is afforded and that evidence be put before the trier-of-fact, ensuring that, by a preponderance of the evidence, the report of domestic violence is justifiable and proven.

In summary, please approach your work with great caution. We lead the nation in domestic violence. Much of it is un-convicted domestic violence. Should a showing of conviction really be a requirement?

Thanks for your time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andy Josephson". The signature is fluid and cursive, with a large initial "A" and "J".

State Rep. Andy Josephson