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March 22, 2016

The Honorable Cathy Muñoz
Representative
Alaska State Legislature
State Capitol Room 501
Juneau, Alaska 99801

Dear Representative Muñoz;

I write to you today on behalf of the 23 members and affiliated members who constitute this network of agencies working on the response and prevention of domestic violence and sexual assault. As you may know, ANDVSA has a Legal Program and has worked with thousands of victims of violence involved in custodial litigation. We would like to share with you our grave concerns with the language included in HB 334 that changes the original language in AS 25.24.150(g)-(k) from requiring a history of perpetrating domestic violence to invoke the presumption, to requiring a conviction for a crime of domestic violence.

The “rebuttable presumption” against awarding a parent joint or sole custody, found in AS 25.24-150(g)-(k) and passed in 2004, has been successfully used to protect Alaska children in households where there is domestic violence. The Legislature wisely passed this law to ensure that courts made consideration of domestic violence a top priority in deciding custody of children. Hundreds of Alaskan’s victims of domestic abuse have relied upon this law to protect their children, and have only supervised visitation awarded to the abuser. The Network respectfully opposes changes to the standard because we believe it would have devastating consequences for Alaskan families.

The rebuttable presumption law was passed by the Legislature to curb the effects of domestic abuse on Alaskan children. For the past several years Alaska has ranked in the top rates for domestic violence and sexual assault nationwide. Children who grow up in homes with domestic violence are at grave risk for being directly abused themselves. Additionally, when children witness violence in their home, they are at risk that they will be killed or injured by the violence and that their emotional, physical and mental health will be detrimentally affected. The effects of this violence include a wide range of physical, social, mental and educational deficits which take a heavy financial and emotional toll on society. Children who grow up in homes with violence are likely to repeat these patterns in future relationships leading to inter-generational cycles of abuse. And we know that violence does not end when the relationship ends. Separation is often the highest time of lethality for victims and their children as abusers struggle to maintain control. Abusers often continue their tactics of coercive control in future relationships until they learn healthier ways of interacting.

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The current law, AS 25.24.150 (g)-(k), requires a history of perpetrating domestic violence to invoke the rebuttable presumption which is defined as one act which causes serious physical injury or more than one act of domestic violence, found by a preponderance of the evidence. We are concerned that changing the language to a criminal standard will prevent many needy Alaskan parents from accessing the protections in this law because domestic violence is both an under-reported and under-prosecuted crime. Victims do not report crimes for myriad reasons – they are concerned about retribution from the abuser, they have not historically been supported by law enforcement, they face cultural or language barriers, they are geographically isolated and/or they rely financially on the abuser and do not want him/her incarcerated. If a victim does report, there is no guarantee of prosecution as many offenses are dismissed or pled down by an over-taxed criminal justice system. The reasons for this often have more to do with state resources than with whether the violence actually occurred. We anticipate that this situation will be exacerbated as the state continues to lay off prosecutors in our rural areas due to budget constraints.

In order to best protect Alaska children, civil courts need to have full discretion to make custody decisions. The law as currently written gives them that discretion. It properly vests the judge who will be deciding custody with the task of deciding whether a history of domestic violence has occurred after hearing all the evidence regarding the family. Custody courts have tools such as a custody investigator or a guardian *ad litem* to ferret out the facts of the abuse. The current law allows the court to award unsupervised visitation if the abuser does pose a risk of harm to the children or to overcome the presumption by completing a rehabilitative program if it is reasonably available. And it properly places the role of proving or disproving the violence with these individuals who have the greatest stake in their children's lives – the parents.

We welcome the opportunity to talk more with you about our concerns and to provide you cases where the presumption has been appropriately used and would not have been available if a conviction had been required. Please let us know how we may assist.

Thank you,

Carmen Lowry, Executive Director

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