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Representative Cathy Munoz
Alaska State Capitol, Room 501
Juneau, Alaska 99801

Re: Support for HB 334

Dear Representative Munoz:

I write in strong support of HB 334. As a private practice lawyer with extensive experience in custody litigation, it has been my observation that the domestic violence provisions of AS 25.24.150 (g) *et seq.* are often used not for their intended purpose, the protection of children from harm, but rather to gain a tactical advantage in custody disputes. It has been my further observation that "the presumption" is very often applied in cases in which there has been absolutely no documented harm to the child, but only situational or technical violations of the law having no possible bearing on the safety or best interests of the child.

As an example, let me cite a hypothetical case – but one that is very similar to cases in which I have been involved.[1] The father, during an argument with mother, slammed a door, causing damage to the door frame. The father was never charged with a crime. Their child was in the house but there is no evidence the child actually witnessed the incident (he may have heard the argument). The mother obtained a domestic violence restraining order, claiming that the door slam was an assault, and

[1] I have used hypotheticals to protect the privacy of clients. The examples are very close to the facts of actual cases.

also that the door damage was malicious destruction of property (both "crimes of domestic violence" within the meaning of AS 24.25.150). Subsequently, the father inadvertently violated the protective order by attempting to speak with the mother when he encountered her in the grocery store. Since no conviction of a crime is required under the statute, the father was now guilty of two incidents of domestic violence, and in the ensuing custody case, the court had no option but to apply the presumption of domestic violence. The father was reduced to minimal supervised visits with his son. Unfortunately, the only visitation supervisors he could find charged $75 per hour for supervision services. Because he was paying full child support, he simply could not afford to see his son, and consequently that relationship has been largely destroyed.

What is remarkable about this very common scenario is that there was absolutely no demonstrated harm to the child caused by the supposed two acts of domestic violence. There was no physical violence directed at any person involved. There was no nexus between the acts of the father and the best interests of the child. Yet, on this flimsy showing, the strong relationship between the father and his son has been functionally destroyed. The provisions of HB 334 requiring actual <u>conviction</u> of crimes of domestic violence, rather than just "preponderance of evidence" allegations, will go a long way toward remedying these abuses.

Another admirable feature of the bill is that it confines consideration of convictions to a reasonable 5 year period under AS 25.20.061. However, I would suggest that the 5 year limitation set out in AS 25.20.061 be included also in AS 25.24.150. This would clarify the legislature's intent to limit consideration of domestic violence allegations to a reasonable time period.

As interpreted currently by the Supreme Court, because there is no time limitation imposed under AS 25.24.150, the courts are required to consider allegations of domestic violence that have not been actively litigated, no matter how old, and no matter if the parties settled their custody dispute. Here is an example

that shows the unjust results that can flow from this rule. I recently completed a six day trial in a custody modification case that was largely based on allegations of domestic violence that were 8 to 10 years old. The parties had settled their case without litigating the DV allegations in 2009. The mother now sought to have the court impose the DV presumption even though the parties had shared physical and legal custody since their separation in 2008. As you can imagine, the difficulty of disproving allegations that are ten years old is tremendous. Fortunately the mother was found not to be credible and the motion was denied; however, the parties spent six days of the court's valuable time getting to that result. Had there been a statute of limitations on allegations which might trigger the presumption in AS 25.24.150, the case would never have been brought.

A final thought on the bill is this, and I recognize that it may be controversial. It seems to me that the current legislation conflates protection of the child with protection of the former spouse. In theory, there is no reason that the former spouse needs protection; to the extent that it is used that way without considering the negative impact on the relationship of the child to the alleged perpetrator, it can actually do harm to the child. I believe that there should be some consideration given to narrowing the list of triggering crimes of domestic violence to ones in which the petitioner/plaintiff can demonstrate a direct impact on the well-being of the actual children involved (rather than a hypothetical or theoretical impact on children in general, or an impact on the other parent). I would like to see the bill amended to require both conviction and a showing that harm occurred or is likely to occur to the child involved in the actual case before the court.

With these minor qualifications, I heartily applaud the legislation. This is a set of statutes that has been misused for far too long. Many parental relationships (usually, though not always of fathers to their children) have been destroyed based on completely hypothetical and theoretical harms that simply do not exist in the

particular case before the court. HB 334 is a great step toward remedying the situation.

Best regards,

Paul H. Grant