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Referred: Health, Education &  
Social Services and Judiciary

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1 IN THE HOUSE

2 HOUSE BILL NO. 104

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 confidential communications  
7 between victims and victim counselors; and amending  
8 Alaska Rules of Evidence 504 and 510."

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

10 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that:

11 (1) the emotional and psychological injuries that are inflicted  
12 on victims of domestic violence and sexual assault are often more serious  
13 than the physical injuries suffered;

14 (2) counseling is often a successful treatment to ease the real  
15 and profound psychological trauma experienced by these victims and their  
16 families;

17 (3) in the counseling process, victims of domestic violence and  
18 sexual assault openly discuss their emotional reactions to the crime; these  
19 reactions are often highly intertwined with their personal histories and  
20 psychological profiles;

21 (4) counseling of domestic violence and sexual assault victims  
22 is most successful when the victims are assured their thoughts and feelings  
23 will remain confidential and will not be disclosed without their permis-  
24 sion; and

25 (5) confidentiality should be accorded all victims of domestic  
26 violence and sexual assault who require counseling whether or not they are  
27 able to afford the services of private psychiatrists or psychologists.

28 (b) The purpose of this Act is to extend to all victims of domestic  
29 violence and sexual assault a testimonial privilege encompassing the  
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1 contents of communications with a victim counselor and to render immune  
2 from discovery or legal process the records of such communications main-  
3 tained by the counselor.

4 \* Sec. 2. AS 12.61 is amended by adding new sections to read:

5 ARTICLE 2. VICTIM/COUNSELOR CONFIDENTIALITY.

6 Sec. 12.61.100. COMPULSORY DISCLOSURE OF COMMUNICATIONS PRO-  
7 HIBITED. (a) A victim, victim counselor without the consent of the  
8 victim, or a minor or incapacitated victim without the consent of a  
9 custodial guardian or a guardian ad litem appointed upon application  
10 of either party, may not be compelled to give testimony or to produce  
11 records concerning confidential communications for any purpose in a  
12 criminal, civil, legislative, or administrative proceeding.

13 (b) A victim or victim counselor may not be compelled to provide  
14 testimony in a civil or criminal proceeding that would identify the  
15 name, address, location, or telephone number of a safe house, abuse  
16 shelter, or other facility that provided temporary emergency shelter  
17 to the victim of the offense or transaction that is the subject of the  
18 proceeding, unless the facility is a party to the proceeding.

19 (c) This section does not relieve victim counselors of the duty  
20 to report suspected child abuse or neglect under AS 47.17.020 or any  
21 evidence that the victim is about to commit a crime. This section is  
22 not intended to limit any other testimonial privilege available under  
23 law.

24 Sec. 12.61.110. WAIVER. (a) A victim does not waive the pro-  
25 tections provided in AS 12.61.100 by testifying in court about the  
26 crime except that, if the victim partially discloses the contents of a  
27 confidential communication in the course of testifying, then either  
28 party may request the court to rule that justice requires the protec-  
29 tions of AS 12.61.100 be waived, to the extent they apply to that

1 portion of the communication. A waiver under this subsection applies  
2 only to the extent necessary to require a witness to respond to  
3 counsel's questions concerning the confidential communication that are  
4 relevant to the facts and circumstances of the case.

5 (b) A victim counselor may not waive the protections afforded to  
6 a victim under AS 12.61.100 without the consent of the victim. How-  
7 ever, if a victim brings suit against a victim counselor or the facil-  
8 ity in which the victim counselor was employed or served as a volun-  
9 teer at the time of the counseling relationship and the suit alleges  
10 malpractice during the counseling relationship, the victim counselor  
11 may testify or produce records regarding confidential communications  
12 with the victim and is not liable for doing so.

13 Sec. 12.61.120. DEFINITIONS. In AS 12.61.100 - 12.61.120,

14 (1) "confidential communication" means information ex-  
15 changed between a victim and a victim counselor in private or in the  
16 presence of a third party who is necessary to facilitate communication  
17 or further the counseling process and that is disclosed in the course  
18 of the counselor's treatment of the victim for an emotional or psycho-  
19 logical condition resulting from a sexual assault or domestic vio-  
20 lence;

21 (2) "domestic violence" has the meaning given in AS 25.-  
22 35.060;

23 (3) "sexual assault" means an offense under AS 11.41.410 -  
24 11.41.470;

25 (4) "victim" means a person who consults a victim counselor  
26 for assistance in overcoming adverse emotional or psychological  
27 effects of a sexual assault or domestic violence;

28 (5) "victim counseling" means assessment, diagnosis, and  
29 treatment to alleviate the adverse emotional or psychological impact

1 of a sexual assault or domestic violence on the victim, including  
2 crisis intervention;

3 (6) "victim counseling center" means a private organization  
4 or unit of a government agency that has as one of its primary purposes  
5 the treatment of victims for emotional or psychological conditions  
6 resulting from a sexual assault or domestic violence;

7 (7) "victim counselor" means an employee or supervised  
8 volunteer of a victim counseling center or other facility that pro-  
9 vides counseling to victims who is not affiliated with a law enforce-  
10 ment agency or a prosecutor's office and whose duties include treating  
11 victims for emotional or psychological conditions resulting from a  
12 sexual assault or domestic violence.

13 \* Sec. 3. (a) AS 12.61.100 and 12.61.120, added by sec. 2 of this Act,  
14 have the effect of amending Alaska Rule of Evidence 504 by extending an  
15 evidentiary privilege to certain individuals who would not be entitled to  
16 the privilege under Rule 504. Alaska Rule of Evidence 504(a)(3) limits the  
17 psychotherapist-patient privilege to persons authorized to practice medi-  
18 cine, while engaged in diagnosis or treatment of a mental or emotional  
19 condition, or persons licensed or certified as a psychologist or psycho-  
20 logical examiner. AS 12.61.100 and 12.61.120 extend the privilege to  
21 employees or supervised volunteers of certain counseling centers if the  
22 person's duties include counseling, even if the person is not licensed or  
23 certified as a physician or counselor.

24 (b) AS 12.61.110, added by sec. 2 of this Act, has the effect of  
25 amending Alaska Rule of Evidence 510 by providing that, by testifying in  
26 court, a patient does not waive the evidentiary privilege provided for in  
27 AS 12.61.100, added by sec. 2 of this Act, unless the court orders that  
28 there be a waiver.