

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 156
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY REPRESENTATIVES BROWN, Ulmer, G.Phillips, Navarre, Ellis

Introduced: 4/8/91

Referred: Health, Education & Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act providing that communications between a domestic violence or sexual assault
2 victim and a domestic violence or sexual assault counselor are privileged and may not be
3 disclosed, with certain exceptions; prohibiting the disclosure of the location of certain types
4 of facilities used by victims of domestic violence or sexual assault and the identities of
5 domestic violence or sexual assault counselors; and providing for an effective date."

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

7 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

8 (1) as a result of the fear and stigma associated with domestic violence and sexual
9 assault, many victims fail to seek needed medical care and counseling for the emotional injuries resulting
10 from the crime;

11 (2) without adequate psychological support, many of these victims fail to report the crime
12 and cooperate with the criminal justice system;

13 (3) these victims hesitate to turn to friends and family because of the social stigma

1 attached to domestic violence and sexual assault;

2 (4) domestic violence and sexual assault counselors are specifically trained to help
3 victims recover from an assault; skills and techniques employed by counselors are designed to encourage
4 the victim to discuss the emotional aftermath of an assault and thereby normalize the life of the victim;

5 (5) full recovery from an assault requires that victims discuss thoughts and feelings that
6 a victim is unlikely to discuss without the assurance of confidentiality, and this confidentiality should
7 be accorded to all assault victims who desire services whether or not they are able to afford the services
8 of private psychiatrists and psychologists;

9 (6) confidentiality for victims working with domestic violence and sexual assault
10 counselors and shelters serves the needs of victims and the needs of society to reduce the damage done
11 by these crimes.

12 (b) The purpose of this Act is to extend to all victims of domestic violence and sexual assault
13 a testimonial privilege encompassing the contents of communication with a domestic violence or sexual
14 assault counselor and to render immune from discovery or legal process the records of the
15 communications maintained by the domestic violence or sexual assault program.

16 * Sec. 2. AS 18.66 is amended by adding a new section to read:

17 Sec. 18.66.070. PRIVILEGED COMMUNICATIONS OF DOMESTIC VIOLENCE AND
18 SEXUAL ASSAULT VICTIMS. (a) A confidential communication made to a domestic violence
19 or sexual assault counselor by a domestic violence or sexual assault victim may not be disclosed
20 in a civil, criminal, legislative, or administrative proceeding without the written consent of the
21 victim except in cases when

22 (1) the issue for which disclosure is relevant is whether a child is a victim of
23 child abuse or neglect;

24 (2) the domestic violence or sexual assault victim is deceased.

25 (b) A domestic violence or sexual assault counselor may not knowingly disclose a
26 confidential communication in violation of this section except when

27 (1) the counselor has reasonable cause, because of the confidential
28 communication, to suspect that a child has suffered harm as a result of child abuse or neglect;
29 under these circumstances, the counselor shall report that suspicion to the nearest office of the
30 Department of Health and Social Services; if the counselor cannot reasonably contact the nearest
31 office of the department and immediate action is necessary for the well-being of the child, the

1 counselor shall make the report to a peace officer; or

2 (2) failure to disclose is likely to result in a clear, imminent risk of serious
3 physical injury or death of the victim or another person.

4 (c) The location of a safe house or the identity of a domestic violence counselor may not
5 be disclosed in a civil, criminal, legislative, or administrative proceeding.

6 (d) A minor may knowingly waive the privilege established under this section. If the
7 minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent
8 or guardian of the minor may waive the privilege on behalf of the minor except when

9 (1) the parent or guardian has been charged with a violent crime against the
10 minor;

11 (2) a protective order or restraining order has been entered against the parent or
12 guardian on request of or on behalf of the minor; or

13 (3) the parent or guardian otherwise has an interest adverse to that of the minor
14 with respect to the waiver of the privilege.

15 (e) If a minor is incapable of knowingly waiving the privilege established under this
16 section and the parent and guardian of the minor are disqualified from waiving the privilege
17 under (d) of this section or are otherwise incapable of waiving the privilege, the court may
18 appoint a guardian ad litem who may determine whether to waive the privilege for the minor.

19 (f) The failure of a party to testify as a witness under the provisions of this section may
20 not result in an inference unfavorable to the state's cause or the cause of a domestic violence or
21 sexual assault victim.

22 (g) In this section,

23 (1) "child abuse or neglect" has the meaning given in AS 47.17.290;

24 (2) "confidential communication" means information transmitted by a domestic
25 violence or sexual assault victim to a domestic violence or sexual assault counselor in confidence
26 for the purpose of seeking advice, assistance, or advocacy related to alleged or actual domestic
27 violence or sexual assault and all information received by, and advice, reports, or working papers
28 given or made by the counselor in the course of the relationship with the victim; the confidential
29 nature of a communication is not waived by the presence at the time of the communication of
30 a third person to further express the interests of the victim or by disclosure to a third person with
31 the consent of the victim when reasonably necessary to accomplish the purpose for which the

1 counselor is consulted;

2 (3) "domestic violence or sexual assault counselor" means a person who

3 (A) has undergone a minimum of 40 hours of training in domestic
4 violence or sexual assault advocacy, crisis intervention, and related areas; and

5 (B) provides services to victims through a domestic violence or sexual
6 assault program on either an employed or volunteer basis;

7 (4) "domestic violence or sexual assault victim" means a person who consults a
8 domestic violence or sexual assault counselor for the purpose of securing advice, assistance, or
9 advocacy related to one or more alleged incidents of domestic violence or sexual assault in which
10 the person was the alleged victim;

11 (5) "safe home" means a place, the location of which is not known generally by
12 the public, where a domestic violence or sexual assault victim may reside while receiving the
13 services of a domestic violence or sexual assault program.

14 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).