

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 156 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/4/92

Referred: Finance

Sponsor(s): REPRESENTATIVES BROWN, Ulmer, G.Phillips, Navarre, Ellis, B.Davis

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, with exceptions;
3 and prohibiting compelled testimony that would give identifying information about counselors
4 and certain types of facilities used by victims of domestic violence or sexual assault, with
5 exceptions."

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

7 * Section 1. AS 09.25 is amended by adding a new section to read:

8 Sec. 09.25.230. PRIVILEGE RELATING TO DOMESTIC VIOLENCE AND SEXUAL
9 ASSAULT COUNSELING. Confidential communications between a victim of domestic violence
10 or sexual assault and a victim counselor are privileged under AS 25.35.052 - 25.35.059.

11 * Sec. 2. AS 12.45 is amended by adding a new section to read:

12 Sec. 12.45.049. PRIVILEGE RELATING TO DOMESTIC VIOLENCE AND SEXUAL
13 ASSAULT COUNSELING. Confidential communications between a victim of domestic violence

1 or sexual assault and a victim counselor are privileged under AS 25.35.052 - 25.35.059.

2 * Sec. 3. AS 25.35 is amended by adding new sections to read:

3 Sec. 25.35.052. COMPULSORY DISCLOSURE OF COMMUNICATIONS
4 PROHIBITED. (a) Except as provided in AS 25.35.054 or 25.35.056, a victim or victim
5 counselor may not be compelled, without appropriate consent, to give testimony or to produce
6 records concerning confidential communications for any purpose in a criminal, civil, legislative,
7 or administrative proceeding. In this subsection, "appropriate consent" means

8 (1) the consent of the victim with respect to the testimony of

9 (A) an adult victim; and

10 (B) a victim counselor when the victim is an adult;

11 (2) the consent of the victim's parent, legal guardian, or guardian ad litem with
12 respect to the testimony of a

13 (A) victim who is a minor or incompetent to testify; and

14 (B) victim counselor when the victim is a minor or incompetent to testify.

15 (b) Either party may apply for appointment of a guardian ad litem for purposes of (a)(2)
16 of this section.

17 (c) A victim or victim counselor may not be compelled to provide testimony in a civil,
18 criminal, or administrative proceeding that would identify the name, address, location, or
19 telephone number of a safe house, abuse shelter, or other facility that provided temporary
20 emergency shelter to the victim of the offense or transaction that is the subject of the proceeding,
21 or the name, address, or telephone number of a victim counselor, unless the court or hearing
22 officer determines that the information is necessary and relevant to the facts of the case.

23 (d) Notwithstanding (a) of this section,

24 (1) a minor may waive the privilege provided under (a) of this section and testify
25 or give consent for a victim counselor to testify if the court determines that the minor is capable
26 of knowingly waiving the privilege;

27 (2) a parent or legal guardian may not, on behalf of a minor, waive the privilege
28 provided under (a) of this section with respect to the minor's testimony or the testimony of a
29 victim counselor if

30 (A) the parent or legal guardian has been charged with a crime against the
31 minor;

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

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

5 Sec. 25.35.054. EXCEPTIONS. The privilege provided under AS 25.35.052 does not
6 apply to

7 (1) reports of suspected child abuse or neglect under AS 47.17;

8 (2) evidence that the victim is about to commit a crime;

9 (3) a proceeding that occurs after the victim's death;

10 (4) a communication relevant to an issue of breach by the victim or victim
11 counselor of a duty arising out of the victim - victim counselor relationship;

12 (5) a communication that is determined to be admissible hearsay as an excited
13 utterance under the Alaska Rules of Evidence;

14 (6) a child-in-need-of-aid proceeding der AS 47.10;

15 (7) a communication made during the victim-victim counselor relationship if the
16 services of the counselor were sought, obtained, or used to enable anyone to commit or plan a
17 crime or to escape detection or apprehension after the commission of a crime; or

18 (8) a criminal proceeding concerning criminal charges against a victim of
19 domestic violence or sexual assault where the victim is charged with a crime under AS 11.41
20 against a minor.

21 Sec. 25.35.056. WAIVER. (a) A victim does not waive the protections provided in
22 AS 25.35.052 by testifying except that, if the victim partially discloses the contents of a
23 confidential communication in the course of testifying in a civil, criminal, or administrative
24 proceeding, then either party may request the court or hearing officer to rule that justice requires
25 the protections of AS 25.35.052 to be waived to the extent they apply to that portion of the
26 communication. A waiver under this subsection applies only to the extent necessary to require
27 a witness to respond to counsel's questions concerning the confidential communications that were
28 disclosed and only to the extent that they are relevant to the facts of the case.

29 (b) A victim counselor may not waive the protections afforded to a victim under
30 AS 25.35.052 without the consent of the victim or the consent of a parent, legal guardian, or
31 guardian ad litem authorized to give consent under AS 25.35.052.

1 **Sec. 25.35.058. INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION. (a)**
2 **The claim of a privilege under AS 25.35.052, whether in a present proceeding or upon a prior**
3 **occasion, is not a proper subject of comment by a judge, hearing officer, legislator, or counsel.**
4 **An inference may not be drawn from the claim of privilege.**

5 **(b) In jury cases, proceedings shall be conducted, to the extent practicable, so as to**
6 **facilitate the making of a claim of privilege under AS 25.35.052 without the knowledge of the**
7 **jury.**

8 **(c) Upon request, a party against whom a jury might draw an adverse inference from a**
9 **claim of privilege under AS 25.35.052 is entitled to an instruction that an inference may not be**
10 **drawn from the claim of privilege.**

11 **Sec. 25.35.059. DEFINITIONS. In AS 25.35.052 - 25.35.059,**

12 **(1) "confidential communication" means information exchanged between a victim**
13 **and a victim counselor in private or in the presence of a third party who is necessary to facilitate**
14 **communication or further the counseling process and that is disclosed in the course of the**
15 **counselor's treatment of the victim for an emotional or psychological condition resulting from**
16 **a sexual assault or domestic violence;**

17 **(2) "sexual assault" means an offense under AS 11.41.410 - 11.41.470 or an**
18 **offense in another jurisdiction whose elements are similar to the elements of an offense under**
19 **AS 11.41.410 - 11.41.470;**

20 **(3) "victim" means a person who consults a victim counselor for assistance in**
21 **overcoming adverse emotional or psychological effects of a sexual assault or domestic violence;**

22 **(4) "victim counseling" means assessment, diagnosis, and treatment to alleviate**
23 **the adverse emotional or psychological effect of a sexual assault or domestic violence on the**
24 **victim;**

25 **(5) "victim counseling center" means a private organization or a local government**
26 **agency that**

27 **(A) has as one of its primary purposes the treatment of victims for**
28 **emotional or psychological conditions resulting from a sexual assault or domestic**
29 **violence;**

30 **(B) is not affiliated with a law enforcement agency or a prosecutor's**
31 **office; and**

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(C) is not on contract with the state to provide services under AS 47;

(6) "victim counselor" means an employee or supervised volunteer of a victim counseling center that provides counseling to victims

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

(B) whose duties include treating victims for emotional or psychological conditions resulting from a sexual assault or domestic violence.