

**SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 156 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 5/4/92  
Referred: Rules**

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

**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 under 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

20 (A) under AS 11.41 against a minor; or

21 (B) in which the physical, mental, or emotional condition of the victim is  
22 raised in defense of the victim.

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

31 (b) A victim counselor may not waive the protections afforded to a victim under

1 AS 25.35.052 without the consent of the victim or the consent of a parent, legal guardian, or  
2 guardian ad litem authorized to give consent under AS 25.35.052.

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

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

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

13 Sec. 25.35.059. DEFINITIONS. In AS 25.35.052 - 25.35.059,

14 (1) "confidential communication" means information exchanged between a victim  
15 and a victim counselor in private or in the presence of a third party who is necessary to facilitate  
16 communication or further the counseling process and that is disclosed in the course of victim  
17 counseling resulting from a sexual assault or domestic violence;

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

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

23 (4) "victim counseling" means support, assistance, advice, or treatment to alleviate  
24 the adverse effects of a sexual assault or domestic violence on the 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 provision of direct services to  
28 victims for trauma resulting from a sexual assault or domestic violence;

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

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

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

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

5 or

6 (B) whose duties include victim counseling.