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ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

P.O. BOX 809

JUNEAU, ALASKA 99802

586-3650

POSITION PAPER

HB87: An Act prohibiting publication of the identity of persons charged with certain sexual offenses

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit corporation composed of twenty-one programs statewide that provide domestic violence, sexual assault, and adult crisis intervention services to members of their respective communities. Network programs are funded in part through grants and contracts awarded by the Council on Domestic Violence and Sexual Assault.

The Network was established in 1978, and has as one of its primary focuses the elimination of domestic violence and sexual assault through provision of shelter, advocacy, and education/prevention services.

The Network supports the intent of HB87 to protect the privacy of the victim and reduce the potential for additional trauma.

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 3, 1983

SUBJECT: Publication of identity of certain sex offenders (Work Order #13-0213)

TO: Representative Robert H. Bettisworth

FROM: James H. Lear
Legislative Counsel *JHL*

You have requested this office to draft a bill that would withhold names of individuals from public access in the case of certain sexual offenses such as incest in an effort to protect the victim from adverse publicity.

Your request could be satisfied by closing the criminal proceedings and records surrounding those proceedings similar to the methods employed in children's proceedings (AS 47.10). However, such a statutory scheme would in all likelihood be found violative of the right of the accused to a public trial guaranteed by Article I, sec. 11 of the Alaska Constitution. Additionally, the due process clause of the 14th Amendment to the U.S. Constitution prohibits secret trials in criminal proceedings according to the Alaska Supreme Court decision in RLR v. State, 487 P.2d 27 (1971). It might also present some problems with respect to Article 1, sec. 5 of the Alaska Constitution and the First Amendment of the U.S. Constitution (freedom of speech).

Although the absolute closing of trial proceedings and surrounding records would not be constitutionally permissible, a good argument can be made in support of prohibiting the press from identifying the defendant in conjunction with prosecution of incest charges. One could assert that the state has a compelling interest in such a limited protection

Representative Bettisworth
Page 2
January 3, 1983

of the victim without affecting the right of the accused to a public trial or the right of the press to otherwise monitor the criminal proceedings.

Accordingly, I have drafted a bill that would subject the news media to misdemeanor charges if they reveal the identity of such a criminal defendant and would impose the same penalty as that provided in AS 47.10.090(b) and (c) pertaining to publication of identity in conjunction with juvenile delinquent status.

I would be willing to elaborate upon the legal principles and court decisions that underly the above conclusions if you so desire. Please feel free to contact me at 465-2450.

JHL:csh

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 87 Date on Bill: 1-20-83
 Title: An Act prohibiting publication of the identity of persons charged with certain sexual
 Sponsor: Rep. Bettisworth offenses
 Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue				
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2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

NO FISCAL IMPACT

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338
 Date: 3-4-83

Approved by Commissioner: *[Signature]*
 Department: Public Safety

Date: 2/8/83

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

Bill/Resolution No. HB 87
 Title "An Act prohibiting publication of the identity of persons charged
 Requested by House Judiciary Committee Date 2/3/83
 with certain sexual offenses; and changing Rule 6(1), Rules of Criminal
 Procedure."

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item
 amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The Department of Law believes that this bill has serious constitutional problems and in light of those problems the department does not believe there will be any fiscal impact.

RECEIVED

FEB 8 1983

LEGISLATIVE FINANCE

IV. DATE February 4, 1983

PREPARED BY Richard I. Pegues, Mr. Adm. Svcs.

AGENCY Department of Law

Original: Legislative Finance

PHONE 465-3672

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Guy Bell *GB*

FISCAL NOTE

Expenditure Type
 Revenue Type

I. REQUEST
Bill/Resolution No. HB 87
Title Act prohibiting publication of identity of persons
Requested by House Judiciary Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Crime ID and Apprehension
BRU, Program, Or Subprogram(s) Affected Troopers & Council on Domestic Violence
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

NO FISCAL IMPACT

RECEIVED

FEB 9 1983

LEGISLATIVE FINANCE

IV. DATE 2-2-83 PREPARED BY Paul Conger Phone 465-4338

Original: Legislative Finance DIVISION Admin Services Initials
cc: Budget and Management DEPARTMENT OF PUBLIC SAFETY Initials *[Signature]*
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10-82) OMB Reviewed by: Eric Laschauer *[Signature]*