

H B

104

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: An Act relating to confidential BRU: Council on Domestic Violence  
communications between victims etc. and Sexual Assault  
 Sponsor: Davidson, Barnes, et.al. Components: \_\_\_\_\_  
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

*Handwritten initials: JME 11/25/88*

Prepared by: Barbara Miklos, Executive Director *BAM* Phone: 465-4356  
 Division: Council on Domestic Violence & Sexual Assault Date: 1/20/88  
 Approved by Commissioner: David O. Hartke, Dep. Comm. Date: 1-28-88  
 Agency: Public Safety

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)

# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V  
Juneau, Alaska  
99811  
(907)465-3744 or 4991

COMMITTEES:  
Transportation  
HESS  
Telecommunications  
Fisheries  
International Trade

February 5, 1987

Representative Koponen  
Representative Ellis  
Co-Chair - House Health, Education  
and Social Services Committee  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Representatives Koponen and Ellis:

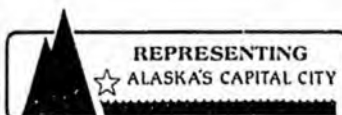
Enclosed is a copy of a letter from Mr. Jon B. Wolfe, Executive Director of the Older Alaskans Commission, in which he suggests an amendment to HB 104.

I submit the suggestion to you for the Committee's consideration.

Respectfully yours,

  
Bill Hudson

Enclosure





society deems worthy of protecting; and (4) disclosure must injure the relationship more than it benefits the litigation. Using Wigmore's test, considerable arguments can be made for protecting counselor-victim communications through passage of HB 104.

Counselor-victim communications originate in confidence. Counseling generally takes place in private, one-on-one meetings between the counselor and victim. Some clients are informed that their communications will remain confidential; others assume such confidentiality.

Confidentiality is essential to the proper maintenance of the counselor-victim relationship. Counseling requires a trusting, supportive relationship to be effective, and confidentiality is an essential feature of this relationship. Without it, few victims would discuss fully sensitive and intimate matters essential for successful treatment.

The counselor-victim relationship is one society deems worthy of protection. At least 15 states already extend a privilege of confidentiality to sexual assault counselors and six states to family violence counselors. Many states and local communities support counseling programs for crime victims. In addition to benefiting victims directly, these programs benefit society when they result in shorter term welfare, disability, and unemployment payments to victims whose psychological injuries inhibit their return to a productive life. Other benefits include increased victim participation and cooperation in reporting and prosecuting crime.

Disclosure injures the counselor-victim relationship more than it benefits litigation. On the one hand, the potential of disclosure is likely to deter victims from seeking assistance or from being as open with their counselors as effective counseling requires. The sense of betrayal of those victims who do undertake counseling and find their confidences subsequently disclosed by their counselors may negate or significantly set back their treatment. On the other hand, there is little relevant information which disclosure could produce. Much of the information counselors could provide would be hearsay and thus inadmissible as evidence. Moreover, since detailed factual information about the crime is generally not germane to the treatment process and is therefore not pursued during counseling, the counselor's knowledge about the facts and circumstances of the crime is likely to be incomplete and more reflective of the victim's fears than the realities of the situation. Finally, because the privilege only protects the communication of facts, but not the underlying facts, admissible evidence which the counselor could provide (e.g., independently observable facts) can usually be furnished by other witnesses.

The Council on Domestic Violence and Sexual Assault, Department of Public Safety, supports HB 104.



---

William R. Nix  
Acting Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 104  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to confidential communications between victims etc.  
Sponsor: Davidson, Barnes, etc.  
Requestor: House HESS

Agency Affected: Public Safety  
BRU: Council on Domestic Violence and Sexual Assault  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANT <sup>s</sup> , CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director *BGM* Phone: 465-4356  
 Division: Council on Domestic Violence & Sexual Assault Date: 2/17/87  
 Approved by Commissioner: [Signature] Date: 2/17/87  
 Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

*JMR*  
*2/17/87*

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 104  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to confidential communication between victims..."  
Sponsor: Representative Davidson  
Requestor: House HESS Committee

Agency Affected: Department of Law  
BRU: Prosecution  
Legal Services  
Components: Prosecution -- All  
Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegus, Director Phone: 465-3672  
Division: Administrative Services Date: February 27, 1987  
Approved by Commissioner: Grace Berg Schaible, Attorney General Date: Feb. 27, 1987  
Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 104

This bill amends AS 12.61 by adding a new section that provides for the confidentiality of communications between the victims of domestic violence and sexual abuse and victim counselors. The bill is intended to prevent the prolongation of the harmful psychological trauma experienced by victims that sometimes occurs when the personal feeling of victims, expressed during abuse counseling, are later recited during the trials of abusers.

The bill will probably affect the admissibility of evidence that the state uses in abuse cases, sometimes making it more difficult to obtain convictions in criminal prosecutions. Child in Need of Aid proceedings, where the victim is a young child, and where the evidence provided by a counselor is useful in corroborating the child's testimony, will also be affected. On the other hand, prohibiting counselor testimony will limit otherwise extraneous personal information that the defense sometimes attempts to get into evidence that can have a detrimental effect on a victim's willingness and ability to testify. Consequently, it is our view that this bill will not cause a marked increase or decrease in the resources needed by the Department of Law to prosecute abuse cases, although it may result in fewer criminal convictions and fewer CINA proceedings being brought due to insufficient evidence.

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### OLDER ALASKANS COMMISSION

STEVE COWPER, GOVERNOR

POUCH C, M.S. 0209  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3250

February 3, 1987

Representative Bill Hudson  
Alaska State Legislature  
Post Office Box V  
Juneau, Alaska 99811

Dear Representative Hudson:

I am writing to you as a member of the House Health Education and Social Services Committee in regard to HB 104. This bill will establish confidentiality requirements for counselors of the victims of domestic violence and sexual assault. We believe this is a very important bill but are concerned that an unintended result may be that persons required to report elder abuse under AS 47.24 may not report due to their belief that to do so would violate this proposed legislation.

This potential problem was apparently considered in the case of child abuse. Page two line 19 paragraph (c) states, "This section does not relieve victim counselors of the duty to report suspected child abuse or neglect under AS 47.17.020 or any evidence that the victim is about to commit a crime." We would like to offer as a simple amendment to this paragraph the following insertion following line 20; "AS 47.17.020 or the duty of persons mandated to report elder abuse under AS 47.24 or any evidence that the victim is about to commit a crime..."

With this amendment or one of similar impact, the Older Alaskans Commission would offer their support for HB 104.

Thank you for your consideration.

Sincerely,



Jon B. Wolfe  
Executive Director

cc: Representative Cliff Davidson  
Peggy Burgin, OAC Chair

ALASKA COURT SYSTEM  
FISCAL OPERATIONS

TELEFACSIMILE TRANSMITTAL SHEET

TO: LISA MCLAREN

DATE: 2/25/87

FROM: BOB FISHER

TOTAL NUMBER OF PAGES: \_\_\_\_\_  
(Not including cover sheet)

MESSAGE: PLEASE DELIVER TO LISA MCLAREN  
(~~WAS NOT COMMITTED~~)

HR 104

If you do not receive the above document(s), please call 264-8215.  
Alaska Court System telecopier phone number 276-6342.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 104  
Publish Date:

REQUEST:

Revision Date:  
Title: Confidential communications  
between victims and victim counselors  
Sponsor: Davidson, Barnes ...  
Requestor: House HESS Committee

Agency Affected: Alaska Court System  
BRU: Trial Courts  
Components:

<u>EXPENDITURES/REVENUES:</u>		(Thousands of Dollars)					
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
<hr/>							
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
<hr/>							
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	

<u>FUNDING:</u>		(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

<u>POSITIONS:</u>							
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel  
Division: Alaska Court System  
Approved by: *Stephanie J. Cole*  
Stephanie J. Cole, Deputy Director  
Agency: Alaska Court System

Phone: 264-8230  
Date: 2-25-87  
Date: 2-25-87

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management & Budget  
Impacted Agency(ies)  
Senate Secretary

A M E N D M E N T

FEB 05 1987

Offered in the HOUSE

By ELLIS

TO: HB 104

Page 2, line 20, following "AS 47.17.020":

Insert ", suspected harm to an elderly person under AS 47.24.010,"

HB 104 - An Act relating to confidential communications between victims and victim counselors; and amending Alaska Rules of Evidence 504 and 510.

FILE CONTENTS

1) HB 104

*HB 104*

1 IN THE HOUSE

BY DAVIDSON

2 HOUSE BILL NO.

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

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.  
29

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST:

Bill Version: HB 104  
Publish Date:

Revision Date:  
Title: Confidential communications  
between victims and victim counselors  
Sponsor: Davidson, Barnes ...  
Requestor: House HESS Committee

Agency Affected: Alaska Court System  
BRU: Trial Courts  
Components:

<u>EXPENDITURES/REVENUES:</u>		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

<u>FUNDING:</u>		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

<u>POSITIONS:</u>						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel  
Division: Alaska Court System

Phone: 264-8230  
Date: 2-25-87

Approved by: *Stephanie J. Cole*  
Stephanie J. Cole, Deputy Director  
Agency: Alaska Court System

Date: 2-25-87

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management & Budget  
Impacted Agency(ies)  
Senate Secretary

