

HB

156

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: CSSSHR 156(I)M  
(H) Publish Date: 3-4-92

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
Title: An Act providing that communications BRU: Domestic Violence & Sexual Assault  
are privileged. Component: Domestic Violence & Sexual Assault  
Sponsor: Brown, et al  
Requestor: House Judiciary Committee COMPONENT SERIAL NO. 

5	2	1
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Marcia Lynn McKenzie Phone: 465-4356  
Division: Council on Domestic Violence & Sexual Assault Date: 1-15-92  
Approved by Commissioner: Richard L. Burton  
Agency: Department of Public Safety Date: 1-15-92

FISCAL NOTE

NO. 2

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: CSSS HB 156 (JUD

(H) Publish Date: 3-4-92

Revision Date: \_\_\_\_\_

Department Affected: Department of Law

Title: "...communications between victim and...  
counselor are privileged..."

BRU: Prosecution

Sponsor: Representative Brown

Component: All

Requestor: House Judiciary Committee

COMPONENT SERIAL 

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services

Phone: 465-3672  
Date: February 21, 1992

Approved by Commissioner: Richard I. Peques/HRK  
Agency: Department of Law

Date: February 21, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agencies).

1992 LEGISLATIVE SESSION

NO. \_\_\_\_\_  
 Bill Version: CSSS HB 156 (JUD)  
 (H) Publish Date: 3-4-92

Revision Date: \_\_\_\_\_  
 Title: Confidentiality/Domestic Violence Counselors  
 \_\_\_\_\_  
 Sponsor: Brown  
 Requestor: House Judiciary

Department Affected: Administration  
 BRU: Public Defender  
 Component: Public Defender

COMPONENT SERIAL NO. 

1	5	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Kevin Brooks  
 Division: Administrative Services

Phone: 465-2277  
 Date: February 21, 1992

Approved by Commissioner: Nancy Bear Usery  
 Agency: Administration

Date: \_\_\_\_\_

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

# Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office  
3111 C Street #435  
Anchorage, Alaska 99503  
(907) 561-7627

During Session  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4998

TO: Senator Arliss Sturgulewski, Chair  
Senate Health and Social Services Committee

FROM: Representative Kay Brown

DATE: March 27, 1992

SUBJ: CS SS HB 156 (Judiciary)  
Confidentiality in Cases of Domestic Violence & Sexual Assault

In reference to the upcoming Committee hearing on CS SS HB 156 (Judiciary), please find attached the following materials for inclusion in the committee packet:

- 1) CS SS HB 156 (Judiciary)
- 2) Sponsor Statement
- 3) Sectional Analysis
- 4) Fiscal Notes
  - Department of Public Safety (0.0)
  - Administrative Services (0.0)
  - Department of Law (0.0)
- 5) *Annual Report to Governor Hickel and the Alaska Legislature*  
Council on Domestic Violence & Sexual Assault (January 1991)
- 6) *President's Task Force on Victims of Crime, Final Report* (1982)
- 7) Alaska Network on Domestic Violence and Sexual Assault  
Position Paper on HB 156  
"National Organizations Supporting Victim/Counselor Privilege"  
"Some States with Victim/Counselor Privilege"
- 8) Letters of Support
- 9) *Anchorage Daily News* Editorial (May 9, 1991)

If you have any questions, please let me know or contact Sudy Sanders of my staff at 465-4998.

DISTRICT 12

Downtown • Fairview • City View • Bootleggers Cove • Inlet View • South Addition • Thunderbird Terrace  
Eastridge • Penland Park • Airport Heights • Government Hill

# Representative Kay Brown

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3111 C Street #435  
Anchorage, Alaska 99503 -  
(907) 561-7627

During Session  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4998

TO: Senator Arliss Sturgulewski, Chair  
Senate Health and Social Services Committee

FROM: Representative Kay Brown

DATE:: March 23, 1992

SUBJ: CS SS HB 156 (Judiciary)  
Confidentiality in Cases of Domestic Violence & Sexual Assault

The purpose of this memorandum is to request that you schedule CS SS HB 156 (Judiciary), Confidentiality/Domestic Violence Counselors, at your earliest possible convenience.

I understand Cindy Smith of the Alaska Network on Domestic Violence and Sexual Assault has talked to Melissa on your staff about definition changes the Council and Network recommended. These changes are agreeable to me. The Alaska Council on Domestic Violence/Sexual Assault and the Alaska Network on Domestic Violence and Sexual Assault have been very involved in the progress of this bill, and I understand they will be available to testify in your committee.

If you have questions about this legislation, please let me know or contact Sudy Sanders of my staff at 465-4998.

enclosure

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Eastridge • Penland Park • Airport Heights • Government Hill

3/27/92 Rep. Kay Brown

## SPONSOR STATEMENT

CS SS HB 156 (Judiciary)

### Providing for Privileged Communications in Cases of Domestic Violence & Sexual Assault

Domestic violence and sexual assault are growing problems in Alaska. Communities throughout the state have established shelters and safe homes in an effort to provide counseling and safety to victims of these crimes. Since FY 87, the number of nights of safety provided by funded shelters has increased by 44 percent.

As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for their emotional trauma. In order to fully recover from domestic violence and sexual assault crimes, it is necessary for victims to discuss thoughts and feelings with someone who is trained to address these issues. Domestic violence/sexual assault counselors provide this assistance. The relationship that develops between a victim and counselor is fragile and requires trust.

#### Need for Legislation

Current Alaskan law discourages some victims from coming forward by allowing the court system to subpoena records that disclose all information, given in trust, between a sexual assault counselor and victim. At the request of the Alaska Network on Domestic Violence and Sexual Assault, I have introduced CS SS HB 156 (Judiciary) to make changes to the state laws and establish a general rule that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged and confidential. The bill allows for exceptions to the privileged communication rule in certain instances, for example, such as cases of child abuse or neglect or if the victim is deceased.

CS SS HB 156 (Judiciary) is necessary to encourage and protect the trust relationship between victim and counselor. Victims of domestic violence and sexual assault should be allowed to choose if and when deeply personal information is to become a matter of public record. CS SS HB 156 (Judiciary) would provide confidentiality for these highly personal, private and confidential communications.

CS SS HB 156 (Judiciary) would provide that the communications between a victim of domestic violence and/or sexual assault and a domestic violence/sexual assault counselor are privileged and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the appropriate consent of the victim.

CS SS HB 156 (Judiciary) would extend to all victims of domestic violence and sexual assault a testimonial privilege encompassing the contents of communication with a domestic violence or sexual assault counselor and to render immune from discovery or legal process the records of the communications maintained by the domestic violence or sexual assault program.

CS SS HB 156 (Judiciary) would make amendments to AS 09.25 (Civil Evidence) and AS 12.45 (Criminal Trial) each adding a new language to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

CS SS HB 156 (Judiciary) also amends and adds new sections to AS 25.35 (Domestic Violence) to establish a general prohibition, with certain exceptions, regarding compulsory disclosure of confidential communications between domestic violence and sexual assault victims and their counselors.

Exceptions to this general standard of privileged communications include cases involving:

- 1) reports of child abuse or neglect;
- 2) evidence that the victim is about to commit a crime;
- 3) a proceeding where the victim is deceased;
- 4) a communication relevant to an issue of breach by the victim or victim counselor of a duty arising out of the victim-counselor relationship;
- 5) a communication that is determined to be admissible hearsay as an excited utterance under the Alaska Rules of Evidence;
- 6) a children-in-need-of-aid proceeding under AS 47.10;

- 7) a communication made during the victim-counselor relationship if the services of the counselor were sought, obtained, or used to enable anyone to commit or plan a crime; or
- 8) a criminal proceeding concerning criminal charges against a victim of domestic violence or sexual assault where the victim is charged with a crime under AS 11.41 against a minor.

Further, the legislation provides that the location of a safe house of the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

#### Discussion

Confidentiality for victims working with domestic violence and sexual assault counselors and shelters serves both the needs of victims and the needs of society to help reduce the damage done by domestic violence and sexual assault crimes.

- As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for the emotional injuries resulting from the crime.
- Without adequate psychological support, many of these victims fail to report the crime and cooperate with the criminal justice system.
- Domestic violence and sexual assault counselors are specifically trained to help victims recover from an assault; skills and techniques employed by counselors are designed to encourage the victim to discuss the emotional aftermath of an assault and thereby normalize the life of the victim.
- Full recovery from an assault requires that victims discuss thoughts and feelings that a victim is unlikely to discuss without the assurance of confidentiality, and this confidentiality should be accorded to all assault victims who desire services whether or not they are able to afford the services of private psychiatrists and psychologists.

- These victims hesitate to turn to friends and family because of the social stigma attached to domestic violence and sexual assault.

### Questions and Answers

- Why is legislation needed?

Because of the stigma and fear involved in sexual assault and domestic violence, victims simply will not talk to anyone if they think that their confidentiality will not be respected.

In one case in Pennsylvania, when a rape crisis program was forced to turn over counseling records in a rape trial. The numbers of callers to that center's hotline who would even identify themselves on the phone decreased by over 1/3rd. That resulted in the Pennsylvania legislature passing a privilege statute in its next session. We shouldn't wait for that to happen here.

In Alaska's small communities this protection is essential. By offering confidential services these programs have been able to increase the numbers of victims who prosecute which has provided a great benefit to society in terms of convicting known offenders.

- Aren't these records already protected?

Currently records are protected only through state regulation and to some extent because of federal funding requirements. Neither of these have the same force that a statutory change will provide.

- What if the victim wants to release this information? Does this mean she can't do it?

In Alaska privilege belongs to the client. So if the victim wants to release her records to anyone, she can do that. The point of this bill is to ensure that victims can have some control over this issue.

In developing this legislation, I have worked very closely with the Alaska Council on Domestic Violence/Sexual Assault, the Department of Public Safety and the Alaska Network on Domestic Violence and Sexual Assault.

# SECTIONAL ANALYSIS

## CS SS HB 156 (Judiciary) Confidentiality Regarding Domestic Violence & Sexual Assault

### Section 1

Amends AS 09.25 (Code of Civil Procedure) adding a new section to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

### Section 2

Amends AS 12.45 (Code of Criminal Procedure) adding a new section to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

### Section 3

Amends AS 25.35 to provide that communications between a domestic violence or sexual assault counselor and a domestic violence and sexual assault victim are privileged. Compulsory disclosure of these communications is generally prohibited, with certain exceptions, and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the "appropriate consent" of the victim or the victim's parent, legal guardian, or guardian ad litem. Provision is made to allow a minor the opportunity to knowingly waive the confidentiality privilege established under this section if a court determines that the minor is capable of knowingly waiving the privilege. This section provides for exceptions to the general rule of confidentiality in certain instances, including among others, cases involving child abuse or neglect under AS 47.17 or if the victim is deceased.

This section also provides that the location of a safe house or the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

7-LS0578S ✓  
Lauterbach  
3/30/92

*Assigned*

**SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 156 (HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

Offered:  
Referred:

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 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 victim  
15           counseling resulting from a sexual assault or domestic violence;

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

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

21           (4) "victim counseling" means support, assistance, advice, or treatment to alleviate  
22           the adverse effects of a sexual assault or domestic violence on the victim;

23           (5) "victim counseling center" means a private organization or a local government  
24           agency that

25                   (A) has as one of its primary purposes the provision of direct services to  
26           victims for trauma resulting from a sexual assault or domestic violence;

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

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

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

- 1 (A) who has undergone a minimum of 40 hours of training in domestic
- 2 violence or sexual assault, crisis intervention, victim support, treatment and related areas;
- 3 or
- 4 (B) whose duties include victim counseling.

## *Support for . . .*

### House Bill 156

#### Confidentiality in Cases of Domestic Violence & Sexual Assault

Council on Domestic Violence and Sexual Assault  
Alaska Network on Domestic Violence and Sexual Assault  
Alaska Women's Lobby (Statewide)  
Abused Women's Aid in Crisis (AWAIC), Anchorage  
Advocates for Victims of Violence (AVV), Valdez  
Aiding Women in Abuse & Rape Emergencies (AWARE), Juneau  
Alaska Women's Resource Center (AWRC), Anchorage  
Emmonak Women's Shelter  
Arctic Women in Crisis (AWIC), Barrow  
Bering Sea Women's Group (BSWG), Nome  
Kodiak Woman's Resource & Crisis Center (KWRCC)  
Maniilaq Regional Women's Crisis Program, Kotzebue  
Tongass Community Counseling Center, Juneau  
Parent Aid Family Support Center, Juneau  
Safe & Fear-Free Environment (SAFE), Dillingham  
Sitkans Against Family Violence (SAFV)  
Seward Life Action Council (SLAC)  
South Peninsula Women's Services (SPWS), Homer  
Standing Together Against Rape (STAR), Anchorage  
Tundra Women's Coalition (TWC), Bethel  
Unalaskans Against Sexual Assault & Family Violence (USAFV)  
Valley Women's Resource Center (VWRC), Palmer  
Women in Crisis Counseling & Assistance (WICCA), Fairbanks  
Women in Safe Homes (WISH), Ketchikan  
Women's Resource & Crisis Center (WRCC), Kenai  
Center on Women in Family Law, New York, New York

POSITION PAPER / COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Bill No: CSSH B 156 (JUD)

Date: March 5, 1992  
Contact: Joanne F. Lopez  
Executive Director  
465-435

Title: "An act providing that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged ... "

The Council on Domestic Violence and Sexual Assault supports CSSH B 156 (JUD) which provides that communications between a victim and a domestic violence or sexual assault counselor are privileged.

Confidentiality is essential to assure victim safety. The Council on Domestic Violence and Sexual Assault requires that Council-funded programs assure that confidential communications are kept confidential, and that the programs will not provide information to anyone outside their agency without the consent of the victim.

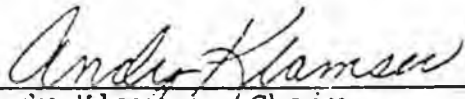
Protection for these communications is available in 20 states for victims of sexual assault and in 24 states for counseling of domestic violence victims. Five other states have covered all victim counseling as recommended by the President's Task Force on Victims of Crime.

Victims often speak to their counselors about their fears and feelings arising from the crime, and believe that they are revealing such information in a confidential environment. To betray that trust would undermine the client-counselor relationship. Victims who realize that their communications may be subject to disclosure may avoid counseling altogether.

Some victims can afford to seek help from private therapists, to whom communications are privileged under other laws, but many victims are not able to afford such services. CSSH B 156 (JUD) would extend the victim-counselor privilege to all victims, regardless of their economic status.

Victim reporting of sexual assault and domestic violence crimes and willingness to cooperate with the criminal justice system has increased considerably in Alaska over the past 12 years. This is due in part to the victims' belief that their communications would remain confidential. Client-counselor privilege should be protected by law.

The Council on Domestic Violence and Sexual Assault supports this legislation.

  
Andy Klamsner, Chair  
Council on Domestic Violence and  
Sexual Assault

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);  
Advocates for Victims of Violence (AVV);  
Aiding Women in Abuse and Rape Emergencies (AWARE);  
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);  
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;  
Kodiak Women's Resource & Crisis Center (KWRC);  
Manitok Regional Women's Crisis Program;  
Tongass Community Counseling Center; Parent Aid Family Support Center;  
Safe & Fear-Free Environment (SAFE); Sitka Against Family Violence (SAFV);  
Seward Life Action Council (SLAC); Southwestern Alaska Council  
for the Prevention of Child Sexual Assault (SWACPCSA);  
South Peninsula Women's Services (SPWS);  
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);  
Unalaskans Against Sexual Assault & Family Violence (USAFV);  
Valley Women's Resource Center (VWRC);  
Women in Crisis Counseling & Assistance (WICCA);  
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

## NATIONAL ORGANIZATIONS SUPPORTING VICTIM/COUNSELOR PRIVILEGE

- \* President's Task Force on Victims of Crime (1982)
- \* The National Center on Women & Family Law
- \* The National Organization for Victim Assistance
- \* National Victim Center
- \* National Coalition Against Domestic Violence
- \* National Coalition Against Sexual Assault
- \* National Network for Victims of Sexual Assault
- \* National Woman Abuse Prevention Project

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);  
Advocates for Victims of Violence (AVV);  
Aiding Women in Abuse and Rape Emergencies (AWARE);  
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);  
Barrow Sea Women's Group (BSWG); Emmonak Women's Shelter;  
Kodiak Women's Resource & Crisis Center (KWRC);  
Maniilaq Regional Women's Crisis Program;  
Tongass Community Counseling Center, Parent Aid Family Support Center;  
Safe & Fear-Free Environment (SAFE); Sakas Against Family Violence (SAFV);  
Seward Life Action Council (SLAC); Southwestern Alaska Council  
for the Prevention of Child Sexual Assault (SWACPCSA);  
South Peninsula Women's Services (SPWS);  
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);  
Unalashans Against Sexual Assault & Family Violence (USAFV);  
Valley Women's Resource Center (VWRC);  
Women In Crisis Counseling & Assistance (WICCA);  
Women's Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

## SOME STATES WITH VICTIM/COUNSELOR PRIVILEGE\*

Alabama  
California  
Connecticut  
Florida  
New Hampshire  
Illinois  
Indiana  
Iowa  
Maine  
Massachusetts  
Minnesota  
New Jersey  
New Mexico  
North Dakota  
Pennsylvania  
Utah  
Washington  
Wyoming

\*Primarily limited to victims of sexual assault and/or domestic violence, although some states include victims of all violent crimes. So, federal statute under the Victims of Crime Act requires confidentiality of victim records for organizations receiving VOCA funding. About half of Alaska's dv/sa programs receive VOCA funds.



# Alaska Women's Resource Center

111 W. 9th Ave., Suite 4 • Anchorage, Alaska 99501 • (907) 276-0528

February 28, 1992

Rep. Kay Brown  
Alaska State House

Dear Kay,

Please accept these comments in support of HB 156. Domestic Violence counseling on an outpatient basis is one of four program specialities at AWRC and represents our second largest program in terms of allocated budget. We have three domestic violence counselor advocates on staff and an ever-growing demand for services in this area.

We support HB 156's efforts to extend protection to communications between domestic violence victims and their counselors. Such communications are frequently the same kinds of discussion which might occur between doctor and patient or between lawyer and client. But experience has shown that the successful treatment of domestic violence does not necessarily require the services of a psychiatrist or a psychologist. Consequently, domestic violence counselors do not have the same protection we accord, without debate, to communications with a doctor or with a lawyer.

We have been fortunate at AWRC to avoid unfortunate incidents over the subject because we are also subject to federal confidentiality requirements (as a result of our alcoholism & substance abuse program) which prohibit the release of information without a court order. We urge you to support HB 156 and the important protection it provides to victims of domestic violence.

Sincerely,

Theda Pittman  
Executive Director

Marion Brown  
Program Director

Donna Knight  
Counselor Advocate

do not feel stigmatized by the crime. In the meantime, victims should not routinely be forced to surrender their privacy.

But that's not the only concern in the equation. A careful balancing against the public's right to know is needed. It's a difficult task, one that is best not dictated by state legislators.

## But . . .

### Legislature has other ways to help

The proposed rape shield law described above goes too far, but the legislature has other ways to help victims of rape and domestic violence.

First and foremost is money. The state offers grants to 23 agencies that help prevent and treat sexual assault and domestic violence. Vetoes inflicted by outgoing Gov. Steve Cowper, together with new cuts proposed by Gov. Wally Hickel, would reduce those grants by 13 percent.

The House has voted to restore both sets of cuts. But even so, the \$5.9 million is barely adequate to help everyone who turns to rape crisis lines and shelters for battered women. And the Senate's figure falls \$400,000 short of the House mark.

In addition to spending money, legislators can act on several bills.

One would help victims who need court orders to protect themselves against domestic violence. The right to get an order would be extended to someone whose dating partner becomes threatening. As the murder of Sandra Pogany last summer shows, a spurned lover can turn dangerous even when the relationship falls short of marriage or living together.

Another change would extend the legal privilege of confidentiality to domestic violence and rape counselors. Victims are less likely to seek help if they fear that what they tell a counselor may be aired out in court.

A final worthwhile change would allow shorter presumptive prison terms for victims of domestic violence who turn on their assailants. Enduring abuse doesn't legally excuse assault or murder, but it could justify a lighter sentence.

The House has either passed or is making good progress on these proposals. Work on the Senate side has been slower. If lawmakers are serious about helping those who suffer sexual assault and domestic violence, they'll pass these measures — and restore full funding for agencies serving victims — before the session ends.

## QUOTABLE

"This stuff has been used for 4,000 years before the birth of Christ. All of us farmers are conservationists and environmentalists to a point, and if it was harmful I sure wouldn't be doing it."

— Byron Hollembeak, on his plan to use sewage sludge from Fairbanks as fertilizer on his Delta Junction farm.

"The question for us is: Fertilizer or bioenergy?"

finer. Nobody much asks for money without giving something.

The man with the tongue was on Bourbon Street and right out of a David Lynch movie. He wore a stocking cap, three days of beard and a drab olive jumpsuit.

First he did a mock strip, with a slow teasing roll of his nylon socks, taking ad-

When he passed revelers pressed for fill it. His overhead than most.

Mimes, for instance those elaborate costumes that, considering sult Orleans, must need cleaning every no then.

Street musicians a ferent species of the

## Rioters suffered no

WASHINGTON — Before I became a columnist, I was a reporter — a riot reporter too. I covered riots in Washington, D.C., Harlem, Brooklyn and one of the very worst (26 dead) in Newark. It was in Newark that I got religion — converted to a mild form of Richard Daleyism. It was the late Chicago mayor who suggested busting some heads.

I would not go anywhere near that far. But Washington, D.C., which had itself a fine little riot in a mixed Latino neighborhood for two nights, seemed to go as far as possible in the other direction. In full view of television viewers, stores were looted, cars torched, city buses attacked and the police — well, the police did little. It was not until after the midnight curfew on the second night of the riot that significant arrests were made. Washington had permitted unpardonable no-fault rioting.

Some would disagree. There was "fault," and it was linked to something called "grievances" — lack of housing, jobs and, of course, the cultural differences between Latino immigrants and the local constabulary. (The shooting of a Latino by a police officer triggered the riot.) But in



**RICHARD COHEN**

Newark I learned matter how legitimate underlying grievance is a chance to have time and to get some summer goods on the all terms.

Once, I had thought wise. I had read that Watts rioters of 1965 exercised some discretion what they trashed: Only the stores of who lived out of the neighborhood were hit.

But in Newark, door-to-door after trying to find out who owned the looted stores. I was of — good people, kind. The residents shook heads in disbelief. What had happened in that neighborhood.

## DOONESBURY



COUNCIL ON  
DOMESTIC VIOLENCE  
AND SEXUAL ASSAULT

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ANNUAL REPORT  
TO  
GOVERNOR HICKEL  
AND THE  
ALASKA LEGISLATURE

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JANUARY 1991

COUNCIL MEMBERS AND STAFF

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Paula Haley, Anchorage (Public Member)  
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## INTRODUCTION

"We found that the perception you shared when you gave us our charge is unfortunately true. The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds - personal, emotional and financial - have gone unattended."

In a letter to President  
Ronald Reagan from the  
President's Task Force  
on Victims of Crime, 1982

"The problem of family violence has existed for generations, yet it is only recently that this phenomenon has begun to receive the attention it deserves."

Chief William L. Hart  
Chairman, U.S. Attorney  
General's Task Force on  
Family Violence

Societies and shelters for the protection of animals existed in the United States before there was legislation to protect children who were abused. We have made progress since then. As a country, we have developed legislation and programs to protect children and adults who are victims of family violence. As a state, Alaska has programs and policies that are models for the rest of the country. However, much still needs to be accomplished. According to data compiled by the staff of the U.S. Senate Judiciary Committee, there are three times as many animal shelters in the United States as there are shelters for battered women.

Domestic violence and sexual assault continue to be major problems in our country and our state. People continue to be killed, beaten and raped in record numbers. Although violent crime in general is declining, violent crimes against women (including domestic violence) are increasing. Since 1974, the rate of assaults against young women (ages 20 - 24) has risen almost 50%; for young men it has decreased. Data from the National Crime Survey shows that women are the victims of violent crime committed by family members at a rate three times that for men. Also, according to the Survey, spouses or ex-spouses commit more than half of all violent crimes committed by relatives against women.

A woman is beaten every 18 seconds and 4,000 battered women are killed every year in the United States. Nationwide, more than one million abused women each year seek medical assistance for injuries caused by battering. In Alaska, 26% of adult women have been physically abused by a spouse sometime during their lives and most of the battered women were abused at least once a month. It is estimated that a minimum of 13,200 women living in Alaska have required medical treatment by a doctor or hospital for injuries sustained by abuse at some time in their life. In 1988, fifty

percent of female murder victims in Alaska were killed by their husbands or boyfriends.

Children raised in violent homes suffer the effects of living in this environment and are at higher risk for physical and sexual abuse. Children raised in violent homes are 1500% more likely to be physically abused or seriously neglected. Nearly fifty percent of abusive husbands batter their wives when they are pregnant, making these battered women four times more likely to bear infants of low birth weight. These women had twice as many miscarriages as non-battered women.

Former U.S. Surgeon General Dr. C. Everett Koop identified domestic violence as the number one health threat to women and declared it to be a public health issue. In one of his final speeches as U.S. Surgeon General, Koop stated: "The mind set that any type of violence that results in physical and mental damage is a private or family matter or a tradition should be abhorrent to us all. Battery is the single most significant cause of injury to women in this country." Dr. Koop went on to note that in the United States, an estimated 40% of all women have experienced some type of sexual abuse as children and as many as 44% of adult women report completed or attempted rape, including rape by their husbands or other family members.

People from all walks of life have come to recognize the seriousness of the problems and the need for a comprehensive and coordinated response to domestic violence and sexual assault. A study by the National Council of Juvenile and Family Court Judges recommends that courts treat family violence as a serious crime. The Honorable Stephen B. Herrell, Chairman of the group and a judge from Portland, Oregon, says that violence against women and children has created a generational cycle of violence that cannot be broken without strong intervention by the courts.

Responses to sexual assault have been improved, but sexual violence against women continues to rise. During the past ten years, rape rates have risen nearly four times as fast as the total crime rate. According to data provided by a criminological study conducted in 1990, rape remains the most under-reported of all major crimes; only 7% of all rapes are reported to police. One in five adult women will be raped at some time in their lives and one in four women now in college will be attacked by a rapist. Alaska continues to have one of the highest incidences of rape in the country. In 1989 in Alaska, there were 53 reported cases of forcible rape against adult women per 100,000 population compared to the national rate of 38 cases per 100,000.

Services for victims of domestic violence and their children are crucial in order to save lives and reduce the pain and suffering caused by these crimes. Victims of sexual assault must receive crisis intervention services so they can overcome the trauma. Without assistance, they may continue to relive the event and live in fear for their life and safety. The report from the U.S. Attorney General's Task Force on Family Violence states that "Shelters are an important resource for a diverse group of victims of family violence who must leave home to escape life-threatening

abuse and have nowhere else to go. Among the most important services shelters offer for battered women and their children are immediate safety, counseling, referrals to alcohol and drug treatment programs and assistance in seeking employment and permanent housing.

Services for child victims must be available to help them cope with the horrors they have encountered. Children from violent homes suffer emotional and physical disorders as a result of their family situations. Many of these children are victims of physical and sexual abuse, who need to be protected and helped. Helping these children will not only ease the pain, but also prevent future problems. Alcohol and other drug abuse, suicide and criminal behavior are often caused by abuse suffered in childhood. Services for children are important to stop the cycle of abuse.

Treatment for batterers is an integral part of the system to protect victims. Experience has shown that most battered women return to the violent relationships. This happens for many reasons, including the lack of financial resources to allow them to live independently. Without counseling and treatment for batterers, violence in these relationships generally becomes more frequent and severe, often resulting in death.

Alaska is fortunate to have a comprehensive, coordinated system for addressing the pain and suffering caused by family violence. In FY91, the Council on Domestic Violence and Sexual Assault is funding 23 community-based programs to provide services to victims of domestic violence and their families. These programs also provide important educational services to their communities as well as outlying communities. Without an all-out effort by community members, family violence will not be stopped. In FY90, Council-funded programs served 9,729 clients. Almost 8,000 of these clients were victims of domestic violence and their children. These victims and their children were provided almost 53,000 nights of safety in shelters or safe homes. The need for these services can be seen in the numbers of clients as well as the tremendous increases in demand for services. Since FY87, the number of nights of safety has increased by 44%.

The mission of the Council on Domestic Violence and Sexual Assault is to provide immediate safety and support to victims of domestic violence and sexual assault in life-threatening situations and to reduce the incidence of domestic violence and sexual assault in Alaska. The Council accomplishes this through serving as a funding agency for community-based programs. The Council processes applications for funding and monitors programs that receive grants and provides technical assistance to programs and other community groups. It also serves as a planning and coordinating agency for domestic violence and sexual assault services provided by various agencies. This report presents major Council initiatives in 1990, describes programs funded by the Council, presents statistical data gathered from programs in FY90 and identifies issues of concern and possible solutions.

obtain injunctive relief orders in cases of domestic violence as well as other protections provided to victims of domestic violence be expanded to include people in dating relationships. Police officers may arrest for domestic violence misdemeanor assaults even if it was not committed in their presence; it is also important that this protection be provided in dating relationships.

## 2. Teen Violence, an Issue for Legislative Consideration

In December, 1989, the Council held a statewide teleconference on teen violence. After hearing from the people testifying, the Council agreed the problem merited the attention of the Legislature and requested that the House and/or Senate Health, Education and Social Services Committees hold hearings on the topic of teen violence. Many people who testified at the Council's teleconference wanted to address their concerns to legislators, and had suggestions for legislation and for needed services.

People who testified work with teens either through domestic violence programs, youth-serving agencies, or schools. Many people testified to the growing trend toward violence among youth and observed that young people state that "violence is a way to have fun". A clinical psychologist in Fairbanks stated that he feels teen violence is symptomatic of societal breakdown.

Many teens are victims of violence. One participant who works with pregnant teenagers spoke of the many young women who are either present or past victims of abuse, as well as some who are abusive to their own child. For some, violence begins in the womb.

A representative from the Division of Public Health, Department of Health and Social Services, testified that violence has replaced infection as the major cause of death for adolescents in the United States, with violent deaths accounting for 77% of all adolescent deaths. Accidents are the highest causal factor, with alcohol being implicated in over half the accidental deaths. Homicide is the second leading cause of teenage fatality in the U.S.; with a 300% increase of teenage homicide between 1950 and 1980. The third leading cause of teenage death is suicide, quadrupling since 1950.

## 3. Confidentiality of Victim Counseling

Domestic violence and sexual assault programs have identified the need to develop legislation that makes victim counseling legally privileged and not subject to defense discovery or subpoena. This type of legislation is important because it protects victims from further abuse by the system. If the confidential communications exchanged between victims and counselors during treatment can be used as evidence in criminal proceedings, counseling may not benefit victims, and, in fact, may add to their trauma. Victims often speak to their counselors about fears and feelings arising from the crime. Those who are

under the impression that they are revealing such information solely for therapeutic purposes often feel betrayed when their counselors are compelled to disclose their communication before the public at an open trial. Victims who realize in advance that their communications may be subject to disclosure may avoid counseling altogether. The President's Task Force on Victims of Crime recommended that legislation be enacted making designated victim counseling legally privileged.



**PRESIDENT'S  
TASK FORCE ON  
VICTIMS OF CRIME**

**FINAL REPORT**

**DECEMBER 1982**

*I was upset when I was asked about my new location where I lived, and when I had to give my children's names, the man who had caused these problems was sitting in the courtroom and I was telling him how he or someone else could find me.—a victim*

*This experience brought me closer to death than one could ever imagine, not only because of the gun, but because of the rape itself. I felt ashamed, and I thought I wanted to die. My heart felt like it was going to burst. Crying and talking with people I could trust helped to relieve the pressures. I needed to share feelings with people who would keep my secret for however long I needed them to.—a victim*

When victims or witnesses testify, they are frequently asked for their home address, sometimes by the prosecutor. Prosecutors should stop soliciting this sensitive information and should object to defense efforts to obtain it. Only when the defense is able to establish that the address is clearly relevant to credibility or to the facts of the case should the question be allowed.

**Executive and Legislative Recommendation 2:**  
Legislation should be proposed and enacted to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena.

A number of organizations and victim/witness units provide psychological crisis counseling to ease the real and profound psychological trauma of victimization. Since the development of rape crisis centers, the need for and benefits derived from counseling for rape victims has become well established. Testimony before the Task Force confirms that counseling is necessary for many violent crime victims as well as their families. Such counseling has proven extremely beneficial and should be strongly encouraged at all levels.

Although some centers have made psychiatrists or psychologists available, the vast majority of the work has been done by social workers, nurses, or by people who have been victims themselves. During the counseling process, victims speak of their fears and feelings arising from the crime; these reactions are often related to their personal history and psychological makeup.

Failure to extend confidentiality to crisis counseling incurs the risk of undermining the effectiveness of the counseling. Some victims who need this kind of help now fear to seek it. Without the protection of confidentiality, victims have found their files subpoenaed by the defense, and feel betrayed when thoughts and feelings that they considered private are opened to public scrutiny in a courtroom.

Statutes that were passed before the importance of victim counseling became recognized extend confidentiality only to counseling by psychologists and psychiatrists. These statutes protect only those who

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can afford private treatment by these professionals; they do not shield the vast majority of victims.

At least one state has enacted a statute making rape victims' communications to counselors legally privileged.<sup>1</sup> While this is a step in the right direction, we believe that the privilege should encompass the counseling of all crime victims. Because of the responsibility of the prosecutor to afford discovery to the defendant, it is not contemplated that this counseling privilege extend to the prosecutor's office.

*It was a great relief to have someone to talk to, who would in no way pass onto others what I thought, felt, or did at that confusing time.—a victim*

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## Notes

1. The State of Pennsylvania has codified this privilege in 42 Pa. C.S.A. § 5945.1, "Confidential communications to sexual assault counselors."