

H B

1 5 6

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 2
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	6	3	1
---	---	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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.)

Changes in CSSS HB 156 (JES) have no fiscal impact. This fiscal note is appropriate.

31 Mac 92 date MAF Comte Aide (initial)

Prepared by: Kevin Brooks
Division: Administrative Services

Phone: 465-4411
Date: February 21, 1992

Approved by Commissioner: Nancy Bear Usua
Agency: Administration

Date: _____

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

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 4
Bill Version: CSSSHB 156 (JUD)
(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
---	---	---

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-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
FUND SOURCE:						

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

<p>ANALYSIS: (Attach a separate page if necessary.) No fiscal impact is anticipated.</p>	<p>Changes in <u>CSSSHB 156 (JUD)</u> have no fiscal impact. This fiscal note is appropriate. <u>3/16/92</u> <u>McKenzie</u> date Comte Aide (initial)</p>
--	--

Prepared By: Marcia Lynn McKenzie Phone: 465-4356
1/16/92 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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: "...communications between victim and...
counselor are privileged..."
Sponsor: Representative Brown
Requestor: House Judiciary Committee

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL

--	--	--	--

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						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

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.

Changes in CSSS HB 156(J) have no fiscal impact. This fiscal note is appropriate.

3/14/92 date LD Four Comce Aide (initial):

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

Phone: 465-3672
Date: February 21, 1992

Approved by Commissioner: Charles E. Cole Attorney General
Agency: Department of Law

Date: February 21, 1992

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 156

This bill amends AS 18.66 to add a section which provides that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged. In addition to making these communications privileged, the bill prohibits the disclosure of the location of certain types of facilities used by the victims of these crimes, and prohibits the disclosure of the identities of domestic violence or sexual abuse counselors. The bill also provides several exceptions to these privileged communications, primarily dealing with information regarding child abuse or neglect, and when failure to disclose a privileged communication is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Similarly, these communications would no longer be privileged if they caused the failure of a person to testify as a witness and resulted in an inference unfavorable to the state's cause or the cause of a domestic violence or sexual assault victim. We do not believe that the bill will have a fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SCSCSSSHB 156 (HESS)

Revision Date: _____

Department Affected: Administration

Title: Confidentiality/Domestic Violence Counselors

ERU: Office of Public Advocacy

Sponsor: Brown

Component: Office of Public Advocacy

Requestor: _____

COMPONENT SERIAL NO.

		4	3
--	--	---	---

Expenditures/Revenue.s: (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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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: Brant McGee

Phone: 274-1684

Division: Office of Public Advocacy

Date: April 6, 1992

Approved by Commissioner: Nancy Bear Usera

Agency: Administration

Date: 4/14/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SCSCSSHB 156 (HESS)

Revision Date: _____

Department Affected: Administration

Title: Confidentiality/Domestic Violence Counselors

BRU: Public Defender

Sponsor: Brown

Component: Public Defender

Requestor: _____

COMPONENT SERIAL NO.

1	6	3	1
---	---	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

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: John Salemi

Phone: 279-7541

Division: Public Defender

Date: April 6, 1992

Approved by Commissioner: Nancy Bear Usara

Agency: Administration

Date: 4/14/92

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

SPONSOR STATEMENT

SCS CS SS HB 156 (HES)

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%.

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 sponsored SCS CS SS HB 156 (HES) to make changes to state law 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.

SCS CS SS HB 156 (HES) 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. SCS CS SS HB 156 (HES) would provide confidentiality for these highly personal, private and confidential communications.

SCS CS SS HB 156 (HES) 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.

SCS CS SS HB 156 (HES) 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.

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

SCS CS SS HB 156 (HES) 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 one third. 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 their cases 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 a person can't do it?*

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

4/3/92 Rep. Kay Brown

SPONSOR STATEMENT

Sen CS for CS SS HB 156 (HES)

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

Sen CS for CS for SS HB 156 (HES) 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.

SENATE COMMITTEE REPORT

Handwritten initials

DATE: 3/18/92

FURTHER: Judiciary

DATE TURNED INTO OFFICE: 01 APR 92

HES Committee considered CS SSB 156 (JUDICIARY)

"An Act providing that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged, with exceptions; and prohibiting compelled testimony that would give identifying information about counselors and certain types of facilities used by victims of domestic violence or sexual assault, with exceptions."

and recommends it be replaced with

and recommends:

- replace with S CS CS SSB 156 (HES)
- or adopt previous CS ()
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

and do pass

adopts _____ Letter of Intent

further referral to the _____

- do pass
- do not pass
- no recommendation
- individual recommendations

Handwritten note: PWD/1/2/1's

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

~~PREVIOUS FISCAL NOTES~~

DPS 1.15.92

LAW 2.21.92

Admin 2.21.92

DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures and initials:

[Signature] *Mund*

[Signature] *Ho*

[Signature] *Cot*

[Signature] *Fish*

[Signature]

Chair: Signature and

Alaska State Legislature



Official Business

Senator Al Adams

WHILE IN SESSION
State Capitol
Juneau, Alaska 99801-1187
(907) 465-3707
Fax 465-4867

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

TO: Senator Rick Halford
FROM: Senator Al Adams *APA*
RE: Amendment to House Bill 156
DATE: May 2, 1992

Attached is an amendment I would like considered to House Bill 156 in committee today.

My first comment is that I am in support of this legislation and can find value in maintaining a certain level of confidentiality in the communications between victim of domestic violence/sexual assault and their counselors.

The amendment adds an exception to the privileges granted in this bill. The exception brings the privilege granted to counselors of domestic violence victims closer in line with the privilege granted to physicians and psychotherapists. Attached is Evidence Rule 504 from the Alaska Rules of Court and the accompanying commentary on the rule. Please refer to exception (d) (1) for the exception on "Condition an Element of Claim or Defense". The concept here parallels with the proposed amendment.

I cannot find justification for the grant of a privilege to counselors of domestic violence/sexual assault that is broader than the privilege granted to psychotherapists. Sufficient possibility exists for circumstances in which this information would be critical and suppression could well lead to untoward and unbalanced decisions. I believe the Department of Law can articulate its concerns before the committee today and I urge your consideration.

Amendment to Senate HES CS for CS for Sponsor Substitute for House Bill
156

Page 3, line 9 insert:

"(3) a communication relevant to the physical, mental, or emotional condition of the victim in a proceeding where the condition of the victim is an element of a claim or defense of

(A) the victim;

(B) a party claiming through or under the victim;

(C) a person claiming as a beneficiary of the victim through a contract to which the victim is or was a party;"

Re-number accordingly.

Annotations

Cases

Defendant was a "client" within the meaning of the attorney-client privilege when she communicated with an employee of a law firm in order to obtain legal advice, notwithstanding that the law firm had not yet accepted her case and that only raw facts, not legal points, were discussed. *Amer. Nat. Watermattress Corp. v. Manville*, Op. No. 2477, 642 P2d 1330 (Alaska 1982).

In drunk driving prosecution in which the defendant had an independent blood test performed, by hospital personnel at his request to verify the accuracy of the police intoximeter examination, admission of expert testimony regarding the blood test did not violate the attorney-client privilege, since no lawyer participated in defendant's decision to take the blood test, nor did it violate the physician-patient privilege, since the physician-patient privilege does not apply in criminal cases. *Russel v. Municipality of Anchorage*, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Statements made by an insured to an insurer are not protected by the attorney-client privilege unless it can be shown that the insurer, in receiving such communications, was acting at the express direction of counsel for the insured. *Langdon v. Champlon*, Op. No. 3291, 752 P2d 999 (Alaska 1988).

While the attorney-client privilege protects communications regarding acts which the client may have committed prior to seeking representation, it will not protect communications which pertain to ongoing or future wrongdoing. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

An attorney for a party is no more entitled to withhold information than any other potential witness, and may be required to testify at a deposition or trial as to material, nonprivileged matters. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

Plaintiff would be entitled to depose defendant's attorney if plaintiff could present a prima facie case that defendants consulted the attorney for the purpose of interfering with plaintiff's employment relationship, since such conduct comes within the civil fraud exception to the attorney-client privilege; accordingly, trial court erred in quashing plaintiff's notice and subpoena for the taking of the deposition without considering whether he had made a prima facie showing that the information sought was not protected by the attorney-client privilege. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

Services sought by a client from an attorney in aid of any crime or a bad faith breach of a duty are not protected by the attorney-client privilege. *Central Const. Co. v. Home Indem. Co.*, Op. No. 3606, 794 P2d 595 (Alaska 1990).

Before engaging in an in camera review to determine the applicability of the "crime of fraud" exception to the attorney-client privilege, the judge should require a showing of a factual basis adequate to support a good faith belief by reasonable person that in camera review of the materials may review evidence to establish the claim that the crime-fraud exception applies. *Central Const. Co. v. Home Indem. Co.*, Op. No. 3606, 794 P2d 595 (Alaska 1990).

In action by tort claim obligee against insurance company for bad faith inaction by the insurance company as surety on performance and payment bonds, trial court erred in denying the obligee discovery of the existence and amount of any loss reserve the insurance company may have established regarding the claims; the existence and amount of a loss reserve is not a protected confidential communication made for the purpose of facilitating the rendition of professional legal services nor is it prepared in anticipation of litigation. *Loyal Order of Mosse v. Inter. Fidelity*, Op. No. 3626, 797 P2d 622 (Alaska 1990).

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) Definitions. As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient to so be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, by his guardian, guardian ad litem or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) Exceptions. There is no privilege under this rule:

(1) Condition an Element of Claim or Defense. As to communications relevant to the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, of any party claiming through or under the patient, of any person raising the patient's condition as an element of his own case, or of any person claiming as a beneficiary of the patient through a contract to which the patient is or was party; or after the patient's death, in any proceeding in which any party puts the condition in issue.

(2) Crime or Fraud. If the services of the physician or psychotherapist were sought, obtained or used to enable or aid anyone to commit or plan a crime or fraud or to escape detection or apprehension after the commission of a crime or a fraud.

(3) Relation issue of apist, o. physicia ship.

(4) cations r ize the p if the pi diagnos is in nee

(5) F physician to repor required or recor mation o a report informat tent, unl the ident ests of ju

(6) E nications dered by conditor purpose the judge apply wh upon the criminal p informati dant whe present a condition

(7) Cr communic tion does ilege.

(Added by by SCO 8:

Cases The state abrogate the State v. R.H., Child abu not within the information r public inspect 1984).

Where co pertained to a chotherapist/ did not apply charge against

(3) *Breach of Duty Arising Out of Physician-Patient Relationship.* As to a communication relevant to an issue of breach, by the physician, or by the psychotherapist, or by the patient, of a duty arising out of the physician-patient or psychotherapist-patient relationship.

(4) *Proceedings for Hospitalization.* For communications relevant to an issue in proceedings to hospitalize the patient for physical, mental or emotional illness, if the physician or psychotherapist, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization.

(5) *Required Report.* As to information that the physician or psychotherapist or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection, or as to information or matters contained in or reasonably raised by a report submitted under AS 08.64.336, other than information that would establish the identity of a patient, unless the court finds that it is necessary to admit the identifying information in order to serve the interests of justice.

(6) *Examination by Order of Judge.* As to communications made in the course of an examination ordered by the court of the physical, mental or emotional condition of the patient, with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise. This exception does not apply where the examination is by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he may advise the defendant whether to enter a plea based on insanity or to present a defense based on his mental or emotional condition.

(7) *Criminal Proceeding.* For physician-patient communications in a criminal proceeding. This exception does not apply to the psychotherapist-patient privilege.

(Added by SCO 364 effective August 1, 1979; amended by SCO 850 effective January 15, 1988)

Annotations

Cases

The state enactment of the child abuse reporting statute did not abrogate the psychotherapist/patient privilege in child abuse cases. *State v. R.F.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

Child abuse reports are not open to the public and therefore are not within the exception to the psychotherapist/patient privilege for information required to be recorded in a public office and open to public inspection. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

Where court-ordered psychiatric examination of defendant clearly pertained to a child protection proceeding, the exception to the psychotherapist/patient privilege for certain court-ordered examination did not apply to testimony before a grand jury investigating a criminal charge against defendant, since preparing evidence for the grand jury

was not the purpose for which the psychiatric examination was ordered. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

In drunk driving prosecution in which the defendant had an independent blood test performed by hospital personnel at his request to verify the accuracy of the police intoximeter examination, admission of expert testimony regarding the blood test did not violate the attorney-client privilege, since no lawyer participated in defendant's decision to take the blood test, nor did it violate the physician-patient privilege, since the physician-patient privilege does not apply in criminal cases. *Russell v. Municipality of Anchorage*, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Defense counsel in a personal injury action may engage in informal ex parte interviews with a plaintiff's treating physician, but the physician cannot be compelled to submit to such interviews. *Langdon v. Champlon*, Op. No. 3249, 745 P2d 1371 (Alaska 1987).

The psychotherapist-patient privilege is waived unless someone acts at trial to exercise the privilege. *Clifton v. State*, Op. No. 826, 758 P2d 1279 (Alaska App. 1988).

Rule 505. Husband-Wife Privileges.

(a) Spousal Immunity.

(1) *General Rule.* A husband shall not be examined for or against his wife, without his consent, nor a wife for or against her husband, without her consent.

(2) *Exceptions.* There is no privilege under this subdivision:

(A) In a civil proceeding brought by or on behalf of one spouse against the other spouse; or

(B) In a proceeding to commit or otherwise place his spouse, the property of his spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse; or

(C) In a proceeding brought by or on behalf of a spouse to establish his competence; or

(D) In a proceeding in which one spouse is charged with:

(i) A crime against the person or the property of the other spouse or of a child of either, whether such crime was committed before or during marriage.

(ii) Bigamy, incest, adultery, pimping, or prostitution.

(iii) A crime related to abandonment of a child or nonsupport of a spouse or child.

(iv) A crime prior to the marriage.

(E) In a proceeding involving custody of a child.

(F) Evidence derived from or related to a business relationship involving the spouses.

(b) Confidential Marital Communications.

(1) *General Rule.* Neither during the marriage nor afterwards shall either spouse be examined as to any confidential communications made by one spouse to the other during the marriage, without the consent of the other spouse.

of clients with a common interest who retain different lawyers. See subdivision (b) (3) of this rule *supra*.

less refined distinctions concerning what is and what is not the practice of psychiatry.

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) **Definitions.** (1) "Patient" means a person who consults a physician for the purpose of diagnosis or treatment.

There seems to be little reason to perpetuate the distinction made between consultations for the purpose of diagnosis and consultations for the purpose of treatment. Persons do not ordinarily consult physicians from idle curiosity. They may be sent by their attorney to obtain a diagnosis in contemplation of some legal proceeding — in which case the attorney-client privilege will afford protection. They may submit to an examination for insurance purposes — in which case the insurance contract will contain appropriate waiver provisions. They may seek diagnosis from one physician to check the diagnosis made by another. They may seek diagnosis from one physician in contemplation of seeking treatment from another. Communications made under such circumstances are as deserving of protection as are communications made to a treating physician. See Cal. Evid. Code § 991 (West 1966).

The definition of "patient" does not include a person submitting to examination for scientific purposes.

(2) The definition of "physician" is extended to include not only a licensed physician, but a person who the patient has reasonable grounds to believe is a physician, a psychotherapist or psychologist. The patient should be protected from reasonable mistakes as to unlicensed practitioners. The burden is placed on the patient to satisfy the court that he in fact had reasonable grounds to believe that the person he made the communication to or disclosed information to was a physician before the patient can invoke the privilege.

The privilege also should be applicable to communications made to a physician authorized to practice in any state or nation. When an Alaska resident travels outside the state and has occasion to visit a physician during such travel, or when a physician from another state or nation participates in the treatment of a person in Alaska, the patient should be entitled to assume that his communications will be given as much protection as they would be if he consulted an Alaska physician in Alaska. A patient should not be forced to inquire about the jurisdictions where the physician is authorized to practice medicine and whether such jurisdictions recognize the physician-patient privilege before he may safely communicate with the physician.

(3) The definition of psychotherapist embraces a medical doctor while engaged in the diagnosis or treatment of mental or emotional conditions, including alcohol and drug addiction, in order not to exclude the general practitioner and to avoid the making of need-

Medical doctors are generally covered under the definition in (2) above. When treating mental or emotional conditions, medical doctors are included under the definition of "psychotherapist" for purposes of the criminal proceeding exception. See subdivision (d) (7) *infra*.

A psychotherapist-patient privilege was recognized in *Allred v. State*, 554 P.2d 411 (Alaska 1976), although the supreme court divided on the source of the privilege and its scope. Since the court has power under the Alaska Constitution to create testimonial privileges, the source of power to create Rule 504 is beyond question. Defining the proper scope presents greater difficulty, however. While it is impossible to fashion a perfect rule because we will never know exactly how much of a return we get from a privilege — e.g., how much better is psychiatric care because of the privilege — and because we cannot be certain of either the optimal return or the marginal return for any expansion of a privilege, it is both necessary and practicable to establish a scope that appears to be as consistent as possible with the aims of the privilege.

Because the psychotherapist-patient privilege is designed to encourage those with mental or emotional problems to seek help, Rule 504(a) (3) provides that the privilege will attach if a patient sees someone reasonably believed by the patient to be licensed to practice medicine. Given the facts that Allred asked to see either one of two persons and that he apparently knew that one of them was a psychiatrist, it is probable that he believed that the person with whom he spoke was also licensed to practice medicine. If Allred was asking for psychiatric help, his communications would have been protected under the views of all members of the court. In fact Rule 504 (a) (3) satisfies both the concerns of the two members of the court who wished to prevent the privilege from attaching to all counseling and the two members of the court who wished to ensure that the patient who relies upon an apparent confidential relationship is not disappointed. Moreover, the social worker might have qualified under Rule 504 (a) (4) as a person reasonably necessary for the transmission of information, depending on the precise facts, without threatening the competing interest identified in the various opinions in *Allred*:

Because this rule focuses on the reasonable belief of the patient, it assumes throughout that the patient is capable of making the necessary choices to create and destroy the privilege. The question whether there are instances in which fairness requires a recognition of a right in the psychotherapist to claim the privilege for a patient who is not inclined to seek the benefits of non-disclosure is left for adjudication. See *Allred v. State*, 554 P.2d 411, 428 (Alaska 1976) (Dimond, J., concurring).

COMMENTARY
012

(4
terms
dege-
differ
to Ru
as cor
or ps
partic
direc
mem
from
broac
presu
dence
Comr

Pe
ence
defin
Privi
Grou

(1
Clair
of pr
claim
lege
the
Alas.
sion,
to ps

(1
or De
the
proc
of th
patie
shou
the
tient
the
fairn
416
Droi
thro
purp
poli
info
a de
the
pati
cep
100

(
corr
sion
(1)

(
Rel

(4) Confidential communication is defined in terms conformable with those of the lawyer-client privilege, Rule 503 (a) (5), with changes appropriate to the difference in circumstance. See Reporter's Comment to Rule 503 (a) (5). In addition, Rule 504(a) (4) treats as confidential communications made to the physician or psychotherapist in the presence of those "who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family." "Communications from members of the family . . . should be given broad protection . . . because effective treatment presupposes family participation." 2 Weinstein's Evidence § 504[05]. See *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469 (Alaska 1977).

Participants in group therapy programs in the presence of a psychotherapist may be covered under the definition of "confidential communication." See *Cross, Privileged Communications Between Participants in Group Psychotherapy*, 1970 L. & Soc. Order 191.

(b) and (c) General Rule of Privilege — Who May Claim the Privilege. The phrasing of the general rule of privilege and the determination of those who may claim it draws heavily upon the attorney-client privilege rule. See Rule 503(b) & (c). Rule 504 supersedes the physician-patient privilege of Rule 43(h) (4), Alaska Rules of Civil Procedure. For a related provision, see AS 08.86.200 (confidential communications to psychologists).

(d) Exceptions. (1) *Condition or Element of Claim or Defense*. The patient-litigant exception provides that the physician-patient privilege does not exist in any proceeding in which an issue concerning the condition of the patient has been tendered by the patient. If the patient himself tenders the issue of his condition, he should not be able to withhold relevant evidence from the opposing party by the exercise of the physician-patient privilege. By injecting his condition into litigation, the patient must be said to waive the privilege, in fairness and to avoid abuses. See *Mathis v. Kilderbrand*, 416 P.2d 8 (Alaska 1966); *Trans-World Investments v. Drobny*, 554 P.2d 1148 (Alaska 1976). Those who claim through the patient stand in the patient's shoes for purposes of this Rule. After the patient's death, the policies of confidentiality give way to a party's need for information and any party may place the condition of a deceased patient in issue and obtain the benefits of the exception. Only information relevant to the patient's condition should be disclosed under this exception. See *Arctic Motor Freight Inc. v. Stover*, 571 P.2d 1006 (Alaska 1977).

(2) *Crime or Fraud*. The crime or fraud exception corresponds to, but is broader than, the similar provision under attorney-client privilege. See Rule 503(d) (1) and Reporter's Comment.

(3) *Breach of Duty Arising Out of Physician-Patient Relationship*. The breach of duty exception also corre-

sponds to a similar attorney-client privilege provision. See Rule 503(d) (3) and Reporter's Comment.

(4) *Proceeding for Hospitalization*. The interests of both patient and public call for a departure from confidentiality in commitment proceedings. Since disclosure is authorized only when the physician or psychotherapist determines that hospitalization is needed, control over disclosure is placed largely in the hands of a person in whom the patient has already manifested confidence. Hence damage to the relationship is unlikely. Usually, this exception will rise in psychotherapist-patient situations. Court-ordered appointments are treated in subdivision (d) (6) *infra*.

(5) *Required Report*. The required report exception enables a physician or psychotherapist to testify as to the contents of reports required by statute or administrative rule to be made to public officials. No valid purpose is served by preventing the use of relevant information when the law or rule requiring the information to be reported to a public office does not restrict disclosure.

(6) *Examination by Order of Judge*. In a court ordered examination, the relationship is likely to be an arm's length one, though not necessarily so. In any event, an exception is necessary for the effective utilization of this important and growing procedure. When the psychotherapist is appointed by the court, it is most often for the purpose of having the psychotherapist testify concerning his conclusions as to the patient's condition. It would be inappropriate to have the privilege apply in this situation. The exception, it will be observed, deals with a court ordered examination rather than with a court appointed physician or psychotherapist. Also, the exception is effective only with respect to the particular purpose for which the examination is ordered. The final sentence of the exception provides that an accused in a criminal case may have the benefits of private counseling with a psychotherapist. Of course, if the accused does place mental condition in issue, exception (1) will govern.

(7) *Criminal Proceeding*. Under the superseded Alaska Rules of Court concerning privileges (Rule 43(h), Alaska R. Civ. P., and Rule 26(b), Alaska R. Crim. P.), a physician-patient privilege was recognized in civil cases (Civil Rule 43 (h) (4)), but not in criminal cases. This distinction is followed here. However, the psychotherapist-patient relationship, with its more compelling need for confidential communication, demands that the privilege apply to criminal proceedings as well as civil cases, see *Schade v. State*, 512 P.2d 907, (Alaska 1973), although exception (5) will govern some aspects of the use of psychotherapists in criminal cases. Rule 13, Alaska R. Children's P., governs juvenile proceedings.

POSITION PAPER / COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Bill No: CSSSHB 156 (JUD)

Date: March 5, 1992
Contact: Joanne F. Lopez
Executive Director
465-4356

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 CSSSHB 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. CSSSHB 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 Klamser (Signature)
Andy Klamser, 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);
Mankier 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);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Mantlaq Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sakans 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);
Unalaskan 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)

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 VUCA funding. About half of Alaska's dv/sa programs receive VUCA funds.

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



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,

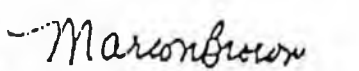
Please accept these comments in support of HB 156. Domestic Violence counseling on an outpatient basis is one of four program specialities at AWRC and represents our second largest program in terms of allocated budget. We have three domestic violence counselor advocates on staff and an ever-growing demand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

ALASKA WOMEN'S LOBBY

P.O. BOX 22156, JUNEAU, ALASKA 99802

April 22, 1992

Senator Rick Halford
Chairman
Senate Judiciary
P.O. Box V
Juneau, Alaska 99811

Dear Senator Halford:

We would like to request a hearing for HB 156, a bill providing for the confidentiality of communications between victims of domestic violence and sexual assault and their counselors.

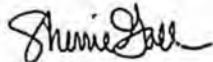
The current committee substitute meets the needs of the Department of Law while providing victims with the assurance that they may express themselves in confidence when they turn to a rape crisis center or a domestic violence shelter for help.

Similar protections have been adopted in many other states in the past few years.

We urge you to review the bill and hope that you will support it and schedule it for a hearing soon so that passage of this important legislation will be possible.

Thank you.

Sincerely,



Sherrie Markin Goll



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

FINAL REPORT

DECEMBER 1982

fre-
es by
g this
se ef-
to es-
dibil-
on be

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.¹ 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

Notes

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

COUNCIL ON
DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

ANNUAL REPORT
TO
GOVERNOR HICKEL
AND THE
ALASKA LEGISLATURE

JANUARY 1991

COUNCIL MEMBERS AND STAFF

COUNCIL MEMBERS:

Mary Pete, Chair, Bethel (Public Member)

Paula Haley, Anchorage (Public Member)

Andrew Klamser, Homer (Public Member)

Karen Crane, Department of Education

Gayle Horetski, Department of Public Safety

Vacant, Department of Health and Social Services

Vacant, Department of Law

COUNCIL STAFF:

Barbara Miklos, Executive Director

Marcia Lynn McKenzie, Program Coordinator

Wil Coloma, Statistical Technician

Susan King, Secretary

Council on Domestic Violence
and Sexual Assault
Department of Public Safety
P.O. Box N
Juneau, AK 99811-1200
Phone: (907) 465-4356

Location:

Public Safety Building
450 Whittier Street
Room 204
Juneau, Alaska

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.

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.

to not see. Shamed 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 Hollebeak, on his plan to use sewage sludge from Fairbanks as fertilizer on his Delta Junction farm.

"The question for us is: Is it fertilizer or hazardous?"

lined. 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 such Orleans, must be cleaning every night then.

Street musicians of different 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 borough were hit.

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

DOONESBURY

