

**HB**

**314**

# Alaska State Legislature

REPRESENTATIVE  
SEAN R. PARNELL



DEPARTMENT OF REVENUE  
ANCHORAGE, ALASKA 99501  
(907) 261-1100

WILKINSON  
STATE OFFICE  
JUNEAU, ALASKA 99801  
(907) 646-2200

## HOUSE OF REPRESENTATIVES

### SPONSOR STATEMENT

#### House Bill 314

HB 314 strengthens Alaska's domestic violence prevention and intervention laws by adopting new and uniform laws based on the Model Code on Domestic and Family Violence, which was developed by the National Council of Juvenile and Family Court Judges.

HB 314 adopts model code language on domestic violence protection to establish additional protective order provisions and crimes for violating a protective order. HB 314 enhances current domestic violence response procedures through improved laws, education, and training which are highlighted in the establishing of: (1) mandatory arrest policy in domestic violence situations, (2) training for police agencies as well as professionals in the justice system who interact with victims of domestic violence, and (3) a central protective order registry.

Additionally, HB 314 prohibits surreptitious taping of crime victims and witnesses by the defense or those working for the defense. The bill also protects domestic violence and sexual assault victims and witnesses by requiring defense attorneys or those working for the defense to identify themselves and gain written consent to an interview.

Recently, the Alaska Bar Association adopted a rule to permit surreptitious taping. This rule allowing taping, without a person's notice or consent, is an alarming encroachment on privacy and was passed by the Bar Association's Board of Governors over the dissent of the Bar Association's own ethics committee (Ethics Committee letter attached).

HB 314 will bring much needed protection to victims and witnesses of violent crimes. The bill provides effective tools for the continuing work of preventing domestic violence in our state. This legislation is strongly supported by the victims rights community. I respectfully request your support.

# Alaska State Legislature

REPRESENTATIVE  
SEAN R. PARNELL



718 WEST 4TH AVENUE, SUITE 102  
ANCHORAGE, ALASKA 99501  
(907) 263-8100

White Salmon  
STATE CAPITOL  
JUNEAU, ALASKA 99801  
(907) 463-2800 (907) 463-2200

## HOUSE OF REPRESENTATIVES

### HB 314 Summary

#### *Domestic Violence Prevention and Victim Protection Act of 1996*

1. The Act is based on the Model Code on Domestic and Family Violence developed by the National Council of Juvenile and Family Court Judges, and aligns current Alaska law with the code.

#### **Definitions**

2. The Act defines a crime involving domestic violence as one of the following offenses that is directed to a household member:

- crimes against a person under AS 11.41
- burglary under AS 11.46.300-11.46.310
- criminal trespass under AS 11.46.320-11.46.330
- arson or criminally negligent burning under AS 11.46.400-11.46.430
- criminal mischief under AS 11.46.480-11.46.486
- terroristic threatening under AS 11.56.810
- violating a protective order under AS 11.56.740
- harassment under AS 11.61.120(a)(2-4)
- or similar ordinances

3. The Act defines "household member" as including adults or minors who currently or formerly were married, lived together, dated, or have engaged in a sexual relationship; adults or minors related by blood or adoption, current or former marriage, who have a child in common, and minor children of persons described above.

#### **Protective Orders**

4. The Act provides the opportunity for victims to gain increased protection by expanding protective order provisions to include:

- prohibiting the abuser from threatening to commit domestic violence
- prohibiting the abuser from harassing, telephoning, or contacting the victim
- directing the abuser to stay away from the residence, school, or place of employment of the victim or any specified place frequented by the victim or any designated family member
- prohibiting the abuser from using or possessing a deadly weapon
- directing the abuser to surrender firearms owned or possessed by the abuser
- requesting a peace officer to accompany the victim to the petitioner's residence to ensure the victim safely obtains possession of the residence, vehicle or personal items
- prohibiting the abuser from consuming alcohol or controlled substances
- when considering arrangements for visitation of any minor child, the safety of the child and the victim must be ensured.

5. The Act provides for three types of protective orders that may be issued:

- a protective order issued after notice to the respondent and a hearing
- an *ex parte* protective order
- an emergency protective order

A court may grant a protective order after notice and hearing if it finds by a preponderance of evidence that the abuser committed a crime involving domestic violence. A protective order issued after notice and hearing is effective until further order of the court for items 1, 2, 4, & 5 (pg. 21, line 14); and, for up to one year for the other provisions.

If the petition establishes probable cause that a crime involving domestic violence has occurred, and the court finds it necessary to protect the petitioner it shall, without notice or hearing, issue the order *ex parte*. An *ex parte* order may not order all protections available in a protective order; rather, the protections available focus on the immediate safety of the victim. An *ex parte* order expires 20 days after it is issued unless extended or dissolved by the court.

An emergency protective order may be obtained by a peace officer on behalf of a victim. It may be obtained by a telephone call to a judicial officer, if there is probable cause to believe that a person is in imminent danger of domestic violence, based on the allegation of the recent

commission of domestic violence toward the petitioner. The protections available in the order concern the immediate safety of the victim. It expires 72 hours after issuance.

6. The Act rewrites the crime of violating a protective order. In the Act it is a class A misdemeanor to knowingly violate a condition of a protective order which:

- prohibits the abuser from committing further domestic violence
- prohibits the abuser from communicating with the victim
- removes the abuser from the home of the victim
- orders the abuser to stay away from the home, school, job, or other place where the victim may be found
- prohibits the abuser from entering a vehicle with the victim
- prohibits the abuser from possessing a deadly weapon
- requires the respondent to surrender a firearm

7. The Act creates a central protective order registry. The registry will assist both law enforcement and the court system in responding more effectively to violations of protective orders.

#### **Mandatory Arrest**

8. The Act provides for mandatory arrest if the violence has occurred within 12 hours of the call to law enforcement. AST and APD, as well as other law enforcement agencies in the state, have mandatory arrest protocols already in place. Placing mandatory arrest in statute provides for statewide consistency in responding to domestic violence.

9. The Act clarifies who is to be arrested--the primary aggressor, not a victim engaged in self-defense. A peace officer who does not make an arrest after a domestic violence incident, or who arrests more than one person from a single incident, must put in writing the reasons for the action.

#### **Courts and Victim Safety**

10. The Act adds domestic violence to the offenses where the court may decide that the threat to the victim prohibits the defendant, when representing himself or herself, from obtaining the address and telephone number of the victim.

11. The Act requires the court to consider the safety of the victim and the victim's family in addition to the safety of the public before releasing the defendant either before trial, pending sentencing, and/or pending appeal.

12. The Act requires prosecutors to make a reasonable effort to confer with all victims of domestic violence before entering into a plea agreement in a case.

13. The Act requires the court to consider the safety of the victim before ordering probation for a domestic violence offender.

#### **Corrections and Parole Board Responsibilities**

14. The Act allows the Commissioner of Corrections to release a domestic violence offender on prerelease and short-duration furloughs only under conditions which protect the victim and the victim's family.

15. The Act requires the Commissioner of Corrections to notify the victim and to accept and consider comments by a victim of domestic violence before deciding to release the prisoner on prerelease furlough. The victim must be notified of the decision to release the prisoner.

16. The Act requires the Department of Corrections to adopt standards for rehabilitation programs for perpetrators of domestic violence. The department must determine if a program meets the standards before a court may order a person to participate in the program.

17. The Act requires the Parole Board to inform a victim of domestic violence 30 days in advance of a hearing to consider discretionary parole for a prisoner. It also requires the board to inform the victim of its decision to grant or deny discretionary parole and to release the prisoner on mandatory parole. The victim must be informed of the area a parolee will reside and conditions on the parole of a prisoner, and of any changes in these conditions.

18. The Act addresses the factors which the Parole Board must consider in releasing the parolee from custody pending a decision on whether to revoke parole. It provides that if the person is on parole for a domestic violence crime, and the alleged violation is based on an act of domestic violence, the parolee may not be released pending the final revocation hearing.

19. The Act amends the definition of serious offense in the Criminal Justice Information Systems Security and Privacy Act by adding crimes involving domestic violence. This has the effect of allowing information about past convictions of domestic violence to be released to an interested

person, if the information is requested to help decide if a person should be given supervisory or disciplinary power over a child or dependent adult.

### **Prohibiting Surreptitious Taping**

20. The Act requires a defendant or a person acting on his behalf to obtain consent prior to recording statements of a victim or witness of an offense for which the defendant is or could be charged.

21. The Act requires the defendant or their representative to clearly inform the victim of (1) the person's identity and specific association with the defendant; (2) the victim does not have to talk to the person unless the victim wishes; 3) the victim may have a prosecuting attorney or other person present during an interview; 4) the statement will be recorded if consent is given; and, 5) the victim or witness may obtain a transcript or other copy of the recorded statement upon request.

22. The Act requires the person making the recording to indicate in the recording that the victim or witness has been clearly informed of their rights regarding the recording, and further requires that the victim or witness state in the recording that their consent has been given to the recording.

### **Witness and Victim Protection**

23. The Act prohibits the defendant accused of a sexual offense or anyone acting on his behalf to contact the victim or witness to the offense, if the victim or witness has informed the defendant or his counsel in writing or in person that the victim or witness does not wish to be contacted by the defense.

24. If a defendant or anyone acting on his behalf can contact the victim or witness of a sexual offense to obtain a statement, the Act requires written authorization for obtaining statements other than recorded statements which must have consent stated in the recording.

25. The Act provides for referring violators of this section of the bill to the Disciplinary Board of the Alaska Bar Association as a grievance.

26. The Act provides for a presumption of inadmissibility for statements obtained from a victim or witness in violation of this section.

## Continuing Education

27. The Act requires public employees who are required to report suspected child abuse or neglect to obtain continuing education in the dynamics of domestic violence which will include:

- lethality assessments
- nature, extent, and causes of domestic violence
- procedures designed to promote the safety of victims of family members
- resources available to victims and perpetrators of domestic violence

28. The Act amends the Alaska Police Standards Council statute on minimum standards for permanent appointment as a police officer to include at least 12 hours instruction in domestic violence issues.

29. The Act requires correctional, probation, and parole officers to be trained in domestic violence issues in order to be certified.

30. The Act requires the court system and the Department of Law to provide continuing education to their employees who come into contact with domestic violence victims and perpetrators.

31. The Act requires the Department of Health and Social Services to adopt standards and procedures for health care to victims.

## Divorce, Child Custody, and Visitation

32. Conditions which may be imposed on visitation where domestic violence occurred are provided, including supervised visitation.

33. The Act prohibits mediation in child custody cases where a domestic violence protective order is in effect.

34. The Act prohibits mediation in divorce actions if a protective order is in effect.

35. The Act allows mediation of child custody and divorce cases where domestic violence has occurred only when certain safeguards are met--the victim requests mediation, the mediator is trained in domestic violence cases, and the victim is allowed a supporting person to attend the mediation sessions.

36. The Act provides that a finding that domestic violence has occurred since the last child custody or visitation decision constitutes a change in circumstances. This allows for the modification of custody and visitation orders.

#### **Dissolutions**

37. The Act requires a petition for dissolution of marriage to state whether a criminal charge of domestic violence has been filed or whether a petition for a domestic violence protective order has been granted during the marriage. In such cases, the court must give heightened scrutiny to the dissolution agreement to ensure it is fair to both parties.

#### **DFYS**

38. The Act requires the Department of Health and Social Services to develop procedures for screening reports of child abuse and neglect for the presence of domestic violence. The procedures must include criminal record checks of the alleged abusive or neglectful person and inquiry into whether a domestic violence protective order has been issued to either parent. The department must take action to protect the child if it determines that the violence endangers the child whether directly or by exposure to domestic violence of another family member.

#### **Court Rules and Rules of Administration**

39. The Act amends Court Rules 3,4,65 (b)-(d), 100(a), 505(a)(2); Rules of Administration 9(b)(11), 9(c)(3), and 9(e)(6); and Alaska Rules of Evidence 613.

**DOMESTIC VIOLENCE PREVENTION AND  
VICTIM PROTECTION ACT OF 1996**  
Proposed SCS HB 314 (Jud) -- 4/13/96 draft

**SECTIONAL ANALYSIS**

**Section 1** names the Act.

**Section 2** adds crime involving domestic violence to the definition of serious criminal offense in AS 09.60.070(c). This allows a person to recover full attorney fees in a cause of action arising from the commission of a crime involving domestic violence.

**Section 3** is a conforming amendment. It amends stalking in the first degree so that it refers to protective orders issued under AS 18.66 and former AS 25.35.

**Section 4** is a conforming amendment. It changes the definition of "enter or remain unlawfully" in the burglary and criminal trespass statutes to refer to protective orders under AS 18.66 and former AS 25.35.

**Section 5** rewrites the crime of violating a domestic violence protective order. It is an A misdemeanor to knowingly violate a condition of a protective order which

- 1) prohibits the respondent from committing further domestic violence;
- 2) prohibits the respondent from communicating with the victim;
- 3) removes the respondent from the home of the victim;
- 4) orders the respondent to stay away from the home, school, job, or other place where the victim may be found;
- 5) prohibits the respondent from entering a vehicle with the victim;
- 6) prohibits the respondent from possessing a deadly weapon; or
- 7) requires the respondent to surrender a firearm.

In current law a person commits the crime of violating a domestic violence restraining order only if the person communicates with another after being ordered not to, after a court has made a factual finding that the person had committed domestic violence.

3) an emergency protective order.

The extent of protection available in the order depends on the type of protective order.

A court may grant a protective order after notice and hearing if it finds by a preponderance of evidence that the respondent committed a crime involving domestic violence. The protection available in such an order includes, for example, ordering the respondent to stay away from the petitioner, the petitioner's residence, place of employment or other place, removing the respondent from the residence of the petitioner, and other relief the court determines necessary to protect the victim. A protective order issued after notice and hearing is effective for a year or, if the condition is to stay away from the victim, until further order of the court. The authorized protections are more extensive and the effective period is longer than current law. Under present law a domestic violence injunction is effective for 90 days, with the possibility of one 45 day extension.

A victim of domestic violence may request a protective order and ask for *ex parte* relief. If the petition establishes probable cause that a crime involving domestic violence has occurred, and the court finds it necessary to protect the petitioner it shall, without notice or hearing, issue the order *ex parte*. An *ex parte* order may not order all protections available in a protective order after notice and hearing; rather, the protections available focus on the immediate safety of the victim. For example, an *ex parte* protective order may not order the respondent to participate in a program of rehabilitation for batterers. An *ex parte* order expires 20 days after it is issued unless extended or dissolved by the court.

An emergency protective order may be obtained by a peace officer on behalf of a victim of a crime involving domestic violence. It may be obtained by a telephone call to a judicial officer, if there is probable cause to believe that a person is in imminent danger of domestic violence, based on the allegation of the recent commission of domestic violence directed toward the petitioner. The protections available in the order concern the immediate safety of the victim. It expires 72 hours after issuance. There is no similar provision in existing law.

As with current law, either the petitioner or the respondent may request modification of a protective order. For an *ex parte* order, the court must schedule a hearing on 3 days notice, unless the court prescribes a shorter notice period. A hearing on a request to modify a protective order issued after notice and hearing must be scheduled within 20 days of the request, unless the court determines that the request to modify is meritless on its face.

If a protective order prohibits contact by the respondent with the petitioner, the initiation of contact by the petitioner does not excuse the contact, and does not

**Section 6** clarifies that it is not a defense that a respondent, if ordered not to communicate with the victim or be present at the residence or other place, did so at the invitation of the victim.

**Section 7** is a conforming amendment. It amends third degree misconduct involving weapons to include criminal trespass by violating a protective order under AS 18.66 and former AS 25.35.

**Section 8** amends AS 12.25.030, grounds for arrest without a warrant, to include the mandatory arrest with probable cause requirement in domestic violence cases (within 12 hours of offense) in the Act, and discretionary arrest without a warrant in other domestic violence situations. A more complete explanation of the arrest authority is found in section 29.

**Section 9** adds crimes involving domestic violence to the exceptions to the general rule that a peace officer may issue a citation for a misdemeanor or violation rather than arrest the offender. The Act requires a law enforcement officer to arrest a person when there is probable cause to believe the person has committed domestic violence within the previous 12 hours, with certain exceptions. This is explained more fully in section 29.

**Section 10** is a conforming, technical amendment to the existing statute setting conditions of release before trial in cases involving stalking that is necessitated by the amendment contained in section 11.

**Section 11** addresses release before trial, pending sentencing, and pending appeal of a person charged or convicted of a domestic violence offense. It requires the court to consider the safety of the victim and the victim's family in addition to the safety of the public before releasing the defendant. It provides additional conditions of release that may be imposed on a defendant in a domestic violence case; for example, no contact with the victim. It requires the prosecuting or arresting authority to make reasonable efforts to notify the victim when a domestic violence defendant is released from custody. Section 11 also requires a person who is arrested for domestic violence to appear personally or telephonically before a judicial officer before being released.

**Section 12** requires, as part of a sentence following a conviction for a crime involving domestic violence, that deadly weapons used or possessed by a defendant during the commission of a crime involving domestic violence be forfeited.

**Section 13** adds a new section to AS 12.55 (sentencing) to require the court to consider the safety of the victim before ordering probation for a domestic violence offender. It also provides additional conditions of probation in domestic violence cases, including the condition of a rehabilitation program for the offender if one is available where

the offender resides. Treatment must be paid for by the defendant if the defendant is not in custody.

**Section 14** is a conforming amendment. The mandatory 20 day term of imprisonment for conviction of assault in the fourth degree in violation of a protective order is applied to orders under AS 18.66 as well as former AS 25.35.

**Section 15** is a conforming, definitional amendment.

**Section 16** makes a conforming amendment to AS 12.61 (Victims' Rights), and adds the requirement that prosecutors make a reasonable effort to confer with all victims of domestic violence before entering into a plea agreement in a case.

**Section 17** adds domestic violence to the offenses (others are crimes against the person, burglary and criminal trespass, terroristic threatening, misconduct involving weapons in 1st through 4th degrees) where the court may decide that the threat to the victim prohibits the defendant, when representing him or herself, from obtaining the address and telephone number of the victim.

**Section 18** clarifies that the duty of defendants and their representatives to clearly identify themselves to victims extends to victims of offense with which the defendant is not yet, but could be, charged.

**Section 19** provides that defendants and their representatives who want to tape record statements of victims and witnesses, must obtain the consent of the victim or witness before recording the statement. It also allows victims and witnesses to obtain a copy of the statement that was taken.

**Section 20** provides that defendants charged with sex crimes, and their representatives, may not contact a victim or witness if the victim or witness informs the defendant in writing that the victim or witness does not wish to be contacted by the defense. If a victim or witness of a sex crime does consent to contact, written or tape recorded authorization for taking a statement must be obtained from the victim or witness. The section also provides that statements taken from a victim or witness in violation of the statute are presumed to be inadmissible, and provides a method for the defendant to overcome the presumption of inadmissibility.

**Section 21** sets out definitions that apply to sections 18-20.

**Section 22** amends the definition of serious offense in the Criminal Justice Information Systems Security and Privacy Act by adding crimes involving domestic violence. This has the effect of allowing information about past convictions of domestic violence to be released under AS 12.62.160(b)(11) to an interested person, if the

information is requested to help decide if a person should be given supervisory or disciplinary power over a child or dependent adult.

**Section 23** is a conforming, definitional amendment.

**Section 24** amends the Alaska Police Standards Council statute on minimum standards for permanent appointment as a police officer to include at least 12 hours instruction in domestic violence.

**Section 25** requires correctional, probation, and parole officers to be trained in domestic violence in order to be certified.

**Section 26** amends the requirements for domestic violence education in police training programs by adding training in investigating and report writing in domestic violence cases, the laws relating to domestic violence protective orders, and general information about the effects of domestic violence. The section also requires police training programs to consult with the Council on Domestic Violence and Sexual Assault in preparing domestic violence training programs.

**Section 27** adds to the duties of peace officers in domestic violence cases by requiring the officer to transport the victim and the victim's family to a shelter or safe home, assist in removing belongings from a residence, help the victim obtain medical care, and give notice of the victim's rights. It also allows a peace officer to seize a deadly weapon for protective purposes, and requires the weapon to be returned to the owner if it is not needed for evidence.

**Section 28** revises the notice required to be given by a peace officer to a domestic violence victim by expanding the information which must be provided. In addition to the information required in current law, a victim must be advised that the officer will assist in retrieving belongings from a residence, obtaining medical care, and obtaining an emergency protective order. The victim must also be advised concerning domestic violence protective orders and the protections which are available in an order.

**Section 29** requires a peace officer to arrest a person who the officer has probable cause to believe has committed domestic violence, violated a domestic violence protective order, or violated a condition of release in connection with a domestic violence charge within the last 12 hours. There are three exceptions to this mandate: first, if there is more than one domestic violence complaint arising from the same incident, the officer must evaluate which party is the principal aggressor and arrest that person. Second, arrest is not mandated in homicides. Homicide investigations require painstaking investigation; a hasty arrest would likely result in a weaker case. Further, since the victim is deceased the urgency to arrest the perpetrator to protect the victim is no longer present.

Third, a peace officer may request authorization from the prosecuting authority not to arrest.

This section also prohibits a peace officer from threatening to arrest all the persons present in an incident of domestic violence. The purpose is to encourage victims to report domestic violence rather than to discourage reporting because of fear of arrest.

A peace officer who does not make an arrest after a domestic violence incident, or who arrests more than one person from a single incident, must put in writing the reasons for the action.

Section 29 also establishes a central registry of domestic violence protective orders in the Department of Public Safety. It contains all protective orders issued in this state and those issued in other states and filed under AS 18.66.140. A petitioner or respondent under a protective order may challenge the accuracy of information in the registry by procedures provided. Protective orders should be entered in the registry within 24 hours of being issued or registered.

Section 30 adds crimes involving domestic violence to those misdemeanor convictions which would disqualify a person from obtaining a permit to carry a concealed weapon. The section also adds a conforming amendment, which adds the issuance of a protective order under AS 18.66 to those issued under former AS 25.35 as a basis for denial of a permit to carry a concealed weapon.

Section 31 is a conforming amendment, adding orders issued under AS 18.66 to those under former AS 25.35 as a basis for immediate suspension of a permit to carry a concealed weapon.

Section 32 adds new responsibilities to the Council on Domestic Violence and Sexual Assault. The council must consult with specific public entities throughout the state to provide expertise in training people who come in contact with victims of domestic violence and their families.

Section 33 adopts provisions for obtaining protective orders in domestic violence cases. A victim of domestic violence or the parent or guardian of a victim may apply to the courts for a domestic violence protective order. There are three types of protective orders that may be issued:

- 1) a protective order issued after notice to the respondent and a hearing;
- 2) an *ex parte* protective order; and

invalidate the order. Mutual protective orders are prohibited, and mediation may not be ordered for issues arising from the petition. As in present law, a protective order is in addition to any other civil or criminal remedy.

A protective order issued by another state may be filed with the courts of this state, and must be enforced as if they were issued by a court in this state.

The court system must prepare forms and instructions for applying for protective orders after consulting with the Council on Domestic Violence and Sexual Assault. Petitions must include a statement of pending litigation between the petitioner and the respondent. Procedures for service of process are the same as in current law, except that fees for service of process may not be charged in a case seeking only domestic violence protective relief.

When a court issues a protective order, it must send the order to the appropriate law enforcement agency. Law enforcement agencies must establish procedures to inform their officers, and peace officers must use every reasonable means to enforce the order.

The section also addresses health treatment for victims, education about domestic violence, and prevention. It requires the Department of Health and Social Services to adopt standards and procedures for health care to victims. It requires public employers of people who work with children and families to provide continuing education to their employees who are required by law to report abuse or neglect of children. It requires the court system and the Department of Law to provide continuing education to their employees who come into contact with domestic violence victims and perpetrators.

These agencies must consult with the Council on Domestic Violence and Sexual Assault in formulating continuing education programs. General standards for the subject matter to be included in the training are provided. Decisions regarding other particulars of the continuing education including length and form of training (whether oral or written) are left to the individual agency.

"Domestic violence" for purposes of the Act is defined as one of the following offenses, or a similar municipal ordinance violation, that is directed to a household member:

- crimes against a person under AS 11.41;
- burglary under AS 11.46.300 - 11.46.310;
- criminal trespass under AS 11.46.320 - 11.46.330;
- arson or criminally negligent burning under AS 11.46.400 - 11.46.430;
- criminal mischief under AS 11.46.480 - 11.46.486;
- terroristic threatening under As 11.56.810;

violating a protective order under AS 11.56.740; and harassment under AS 11.61.120(a)(2) - (4).

In present law domestic violence includes only crimes against the person under AS 11.41.

"Household member" is defined as including adults or minors who currently or formerly were married, lived together, dated, or have engaged in a sexual relationship; adults or minors related by blood or adoption, current or former marriage, who have a child in common, and minor children of persons described above.

**Section 34** is a conforming amendment which provides that a petition for a protective order under AS 18.66 may be filed in either the superior or district court. This is the same as present law.

**Section 35** is a conforming amendment adding protective orders under AS 18.66 to those issued under former AS 25.35 to the jurisdiction of the district court and providing that petitions for protective order under AS 18.66 may be filed in either superior or district court.

**Section 36** is a conforming amendment providing that magistrates and district court judges may issue protective orders under AS 18.66.

**Section 37** is a conforming amendment which substitutes AS 18.66.160 for AS 25.35.040 in regard to service of process for domestic violence protective orders.

**Section 38** adds a provision to the child custody statute to allow the address and telephone number of the victim of domestic violence to be kept confidential.

**Section 39** also addresses child visitation in cases where domestic violence has occurred. Conditions which may be imposed on visitation where domestic violence occurred are provided, including supervised visitation.

**Sections 40 and 41** amend the statute allowing mediation in child custody cases whenever a party petitions for mediation. The Act prohibits mediation in cases where a domestic violence protective order is in effect. If there is no order in effect but the court finds that domestic violence has occurred, mediation is allowed only when certain safeguards are met -- the victim requests mediation, the mediator is trained in domestic violence cases, and the victim is allowed a supporting person to attend. A mediator assigned to a child custody case is required to screen for domestic violence, and may not mediate where either party has committed a crime involving domestic violence unless the safeguards are met.

**Section 42** amends the provision concerning modification of a child custody or visitation award. Modification is allowed if the court determines there has been a change in circumstances. The Act provides that a finding that domestic violence has occurred since the last decision constitutes a change in circumstances.

**Sections 43 and 44** addresses mediation in divorce actions. It qualifies the provision that mediation may be ordered whenever a request for mediation is filed within a certain time limit. Mediation may not be ordered if a protective order under AS 18.66 is in effect. Mediation may not be ordered if a party objects based on domestic violence unless certain safeguards are present. These safeguards include the victim requesting mediation, the mediator being trained in domestic violence, and allowing a support person to attend with the victim. Additionally, when a mediator is appointed without an objection based on domestic violence, the mediator must screen for domestic violence, and may not continue mediation if either party has committed a crime involving domestic violence unless safeguards are present.

**Section 45** is a conforming amendment providing that protective orders under AS 18.66 may be ordered while a divorce case is pending.

**Sections 46 and 47** amend the statute allowing mediation or family counseling during the pendency of a divorce action by providing that mediation and family counseling may not be ordered if a protective order under AS 18.66 is in effect. Mediation or family counseling may not be ordered if a party objects based on domestic violence, unless the safeguards discussed in section 41 are provided.

**Sections 48 and 49** address the court's responsibilities in regard to a petition for dissolution of the marriage filed by both parties to a marriage. The petition must state whether a criminal charge of domestic violence has been filed or whether a petition for a domestic violence protective order has been filed by a member of the household during the marriage. In such cases, the court must give heightened scrutiny to the dissolution agreement to ensure it is fair to both parties. The court must also give heightened scrutiny to a dissolution agreement if there is any evidence of domestic violence during the marriage.

**Section 50** is a conforming, definitional amendment.

**Section 51** amends AS 33.16.120, which establishes victims' rights in connection to parole, by adding a requirement that the Parole Board inform a victim of domestic violence 30 days in advance of a hearing to consider discretionary parole for the prisoner. It also requires the board to inform the victim of its decision to grant or deny discretionary parole and to release the prisoner on mandatory parole. The victim must be informed of the area a parolee will reside and conditions on the parole of a prisoner, and of any changes in these conditions.

**Section 52** amends AS 33.16.150 to provide for conditions of parole in domestic violence cases, in addition to those conditions which may be imposed in other cases. These conditions parallel the conditions which may be imposed as bail or probation considerations for domestic violence offenders. It also requires the Parole Board to establish procedures for informing the victim of relevant information concerning the parolee and for responding to reports of noncompliance with release conditions by the parolee.

**Section 53** adds violation of the new conditions of release as a basis for revocation of parole.

**Section 54** addresses the factors which the Parole Board must consider in releasing the parolee from custody pending a decision on whether to revoke parole. It provides that if the person is on parole for a domestic violence crime, and the alleged violation is based on an act of domestic violence, the parolee may not be released pending the final revocation hearing.

**Section 55** is a conforming, definitional amendment.

**Section 56** allows a victim of domestic violence to request to be notified by the Parole Board of an application for executive clemency by the parolee, and allows the victim to comment in writing on the application to the board.

**Section 57** is a conforming, definitional amendment.

**Section 58** requires the Commissioner of Corrections to give notice of a status change of an offender to the victim of domestic violence.

**Section 59** allows the Commissioner of Corrections to release a domestic violence offender on prerelease and short-duration furloughs only under conditions which protect the victim and the victim's family.

**Section 60 and 61** require the Commissioner of Corrections to notify the victim and to accept and consider comments by a victim of domestic violence before deciding to release the prisoner on prerelease furlough. The victim must be notified of the decision to release the prisoner.

**Section 62** is a conforming, definitional amendment.

**Section 63** adds payment for court ordered rehabilitation programs under AS 12.55.101, AS 18.66.100(c)(15), AS 25.20.061(3), AS 33.16.150(c)(2) to those obligations where an exemption from levy on permanent fund dividends is not available.

**Section 64** amends the Office of Public Advocacy statute to allow appointment of a guardian ad litem for a minor under section 33.

**Section 65** requires the Department of Corrections to adopt standards for rehabilitation programs for perpetrators of domestic violence. The department must determine if a program meets the standards before a court may order a person to participate in the program.

**Section 66** is a conforming amendment correcting the statutory citation of definitions for domestic violence programs.

**Section 67** requires the Department of Health and Social Services to develop procedures for screening reports of child abuse and neglect for the presence of domestic violence. The procedures must include criminal record checks of the alleged abusive or neglectful person and inquiry into whether a domestic violence protective order has been issued to either parent. The department must take action to protect the child if it determines that the domestic violence is endangering the child either directly or by exposure to domestic violence of another family member, and must provide victims with a notice setting out their rights and services available to victims.

**Section 68** amends Rule 3, Alaska Rules of Civil Procedure, by setting the venue for petitions for domestic violence protective orders.

**Section 69** amends Rule 100(a), Alaska Rules of Civil Procedure, regarding mediation in cases where domestic violence has occurred.

**Section 70** amends Rule 505(a)(2), Alaska Rules of Evidence, to add an exception to spousal privilege in a case of a crime involving domestic violence.

**Section 71 and 72** describe the statutes repealed as a result of adopting the Act.

**Section 73** requests the Revisor of Statutes to move domestic violence related statutes from Title 25 to Title 18 so that domestic violence statutes are in the same Title, and requests the revisor to change statutory cross-references to these statutes.

**Section 74** provides that domestic violence injunctions in force on the effective date of the Act remain effective until they expire by their own terms or are dissolved by the court.

**Section 75** allows agencies with a duty to adopt regulations under the Act to begin formalizing regulations before the Act is effective.

**Sections 76 -- 79** describes changes in court rules that do not require a super majority vote.

**Section 80** describes changes in the bill which affect court rules and which require a 2/3 majority vote.

**Sections 81 -- 84** contain the effective dates.

# FISCAL NOTE

No. 4  
 Bill Version: CSHB 314(JUD)  
 (H) Publish Date: 2/2/96

STATE OF ALASKA  
 1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: An Act relating to domestic violence and to crime victims and witnesses  
 Sponsor: Rep. Pamell  
 Requestor: (H) JUD

Dept. Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
-------------------------------	---	---	---	---	---	---

**FUND SOURCE:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary.)**

There is no fiscal impact to the Public Defender Agency.

Prepared by John Salem, Director  
 Division Public Defender Agency

Phone 264-4400  
 Date \_\_\_\_\_

Approved by Commissioner Mark Boyer  
 Agency Department of Administration

Date \_\_\_\_\_

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

**COMMITTEE COPY**

# FISCAL NOTE

No. 3  
 Bill Version: CSHB 314(JUD)  
 (H) Publish Date: 2/2/96

STATE OF ALASKA  
 1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: An Act relating to domestic violence and to crime victims and witnesses  
 Sponsor: Rep. Parnell  
 Requestor: (H) JUD

Dept. Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	00	00	00	00	00	00

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

**FUND SOURCE:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

There is no fiscal impact to the Office of Public Advocacy.

Prepared by Brian McGee Public Advocate  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner Mark Boyer  
 Agency: Department of Administration

Date: 1/24/96

PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

# FISCAL NOTE

## STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: An Act relating to the crime of violating a BRU: Trial Courts  
domestic violence restraining order. Component: \_\_\_\_\_  
 Sponsor: Reps. Parnell, Robinson, Bunde, Elton, Toohey  
 Requester: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 96) cost: None

Positions

Full-Time					
Part-Time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Agency: Alaska Court System Date: 01/24/96

Approved by: Arthur H. Snowden, II, Administrative Director Date: 01/24/96  
 Agency: Alaska Court System

PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

# FISCAL NOTE

No. 1  
 Bill Version: CSHB 314(JHD)  
 (H) Publish Date: 2/2/96

**STATE OF ALASKA  
 1996 LEGISLATIVE SESSION**

Revision Date: 1/24/96 Dept. Affected: Department of Law  
 Title: "...relating to domestic violence...crime victims..." BRU: Criminal Division  
 witnesses...amending...Rule of Evidence 613." Component: Criminal Division  
 Sponsor: Representative Parnell  
 Requester: Representative Parnell COMPONENT SERIAL NO. 2085

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1005 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

This bill amends AS 11.56.740(a) so that the criminal prohibitions contained in this statute coincide with the civil prohibitions contained in a civil domestic violence restraining order issued under AS 23.35.010 or AS 23.35.020. Thus the bill clarifies the interplay between the civil and criminal laws dealing with domestic violence restraining orders, making these laws easier to enforce.

The bill also amends AS 12.61.120 to require that if a defendant or a person acting on behalf of a defendant wishes to make a recording of statements of the victim of an offense, or of a witness, the consent of the victim or witness must be obtained before a recording begins. The bill will not have a fiscal impact for the Department of Law.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 1/24/96  
 Date: 1/24/96

**COMMITTEE COPY** PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information, call the Governor's Legislative Office

April 18, 1996

Senator Robin Taylor  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Post-It® Fax No. 7671	Date 4/18/96	# of pages 1
To Senator Taylor	From S. Cattrell	
Co./Dept.	Co.	
Phone #	Phone # 274-7279	
Fax # 465-3922	Fax #	

Dear Senator Taylor:

I am writing to you to register my support for **HB 314** which addresses some important issues pertaining to domestic violence cases. I greatly appreciate the work that all members of the Senate, including yourself, are doing to end domestic violence and to stop violence against women in Alaska, but I am concerned about the mediation amendment to this bill. I support the bill, including the weapons amendment, but I oppose the mediation amendment. I urge you to support **HB 314** without the mediation amendment.

To stop domestic violence and end violence against women, we need to make abusers be held accountable, and including a provision for mediation does not hold the abuser accountable.

Mediation in domestic violence cases is inappropriate, because mediation would imply that the two parties involved are somewhat equal and open to reaching an agreement or reconciliation of some sort. This is impossible however, given the dynamics of domestic violence -- the victim has suffered emotional, verbal and or physical abuse and is likely to be intimidated by the abuser. This intimidation factor may lead the victim to agree to some unjust proposal simply to end the meeting which could only be uncomfortable for her. Also, due to the isolation imposed upon the victim by the abuser, the victim may be unfamiliar with the court system and with her rights, ensuring that justice will not be done in this situation. To propose that a victim and abuser must meet under these circumstances sends a strong message to the victim, the abuser and to the society at large, that abuse is unimportant, just an argument that got out of hand. Domestic violence is not an argument to be resolved. It will take intensive work and education to stop the cycle of violence and abuse.

If you must pass **HB 314** as it is, with the mediation amendment still present, I then request that you include a provision that mediators must be trained by one of the programs of the Alaska Network on Domestic Violence and Sexual Assault, who see the effects of domestic violence on Alaskan families daily and who understand the cycle of abuse and the issues involved.

I strongly urge you to oppose the amendment concerning mediation, but support **HB 314**.

Sincerely,

*Susan P. Cattrell*

Susan P. Cattrell  
7538 Stanley Drive  
Anchorage, AK 99518

Dr. Dorothy J. Shepard 4701 Gramman St. # 2 Anchorage, AK 99507 (907) 561-3875

April 18, 1996

Senator Robin Taylor  
Chairman, Senate Judiciary Committee

Re: Comments on SCS CSIB 314

Dear Senator Taylor:

It's important to me to let you know how very pleased I am with the contents of this bill relating to domestic violence and mediation. Here are some of the reasons I feel qualified to comment:

• In 1979, I started the Kotzebue women's shelter and sexual assault counseling program. I recruited the initial volunteers, ran the crisis line from my home, wrote the first funding proposals. I served as executive director of that program until the end of 1981.

• I left Kotzebue to serve as the first executive director of the domestic violence and sexual assault program in Valdez, leaving at the end of 1983 to work in Cordova with the same issues through the mental health program.

• In mid-1984, I became the executive director of the Anchorage based Conflict Resolution Center. We trained over 100 volunteers to serve as community mediators and arbitrators. That program lost funding in 1987. However, it still serves as the prototype for mediation and community dispute resolution in Alaska.

• I went into private practice as a Family and Divorce Mediator from 1986 through 1992. I was a Practitioner member of the Academy of Family Mediators from 1986 on, after training by Dr. John Haynes, the founder of that international organization.

• I finished my doctorate through AK Pacific University in 1994, in Human Resource Education.

• I am now the owner of Alpenglow Training and Mediation Associates, a Board member of the Alaska Dispute Settlement Association. I have trained over a hundred mediators in Alaska, and mediated countless family, divorce and custody disputes.

• I have been a victim of domestic violence in my own past.

I have thought deeply about the question of mediating family cases when domestic violence has occurred in the relationship. I have worked in both fields, and understand the concerns of people in the domestic violence movement as well as those in mediation.

It is true that those affected by domestic violence often make choices not in the best interest of their own personal safety. Battered women frequently return to the men who have abused them.

Sometimes they refuse to press charges, even right after they have been severely beaten. I have seen women beg the courts for temporary restraining orders, only to beg a few days later for the protective order to be dismissed.

Even so, professionals in the domestic violence arena have long supported the right of battered women to make these choices. Women leave shelters and return home, while their counselors are certain they will be brutalized again there. Professionals in this field speak often of "empowerment."

I have been puzzled, therefore, by the vehemence of their opposition to mediation in domestic violence cases. Then they say the law should prevent victims of domestic violence from using mediation, even when the last incident of violence may have occurred years before. This doesn't make sense to me.

Mediation may actually be the best option for many battered women, especially those who do not have the ability to hire expensive attorneys. An effective mediator will not let one of the parties dominate the other, or one party to give up important rights through intimidation. A good mediator sets up a safe, supportive environment, uses empowering and balancing strategies.

No one should be "mandated" to mediate. It is a voluntary process for good reason. When it is not, it can be used as a power tool by the unscrupulous. On the other hand, mediation should be available to any person who wants to use it. Parties deciding what process to use to settle important questions should have an opportunity to understand what mediation is before agreeing to it.

The present bill includes important safeguards for cases where domestic violence has been a factor. The language calling for a restriction on mediation when a protective order is in effect seems to me a reasonable compromise. A TRO is granted when the threat of violence is recent or imminent. It is asked for by a person alleging fear for personal safety. It is not too much to ask that negotiating important life decisions be put off for a few months under those circumstances.

In short, I feel the bill, as written, represents an excellent piece of legislation-- the kind of solution we might reach in mediation, in that it addresses the real needs of all concerned. Thank you for the opportunity to comment.

Sincerely,

Dr. Dorothy J. Shepard

April 12, 1996

VIA FAX

465-3922

Senator Robin Taylor, Chairman  
Senate Judiciary Committee  
State Capitol  
Juneau, AK 99801-1182

RE: Committee Substitute for House Bill No. 314 am

Dear Senator Taylor:

Please consider this to be public testimony to be considered at the hearing on the above-referenced bill.

I urge the Committee not to support this bill as written. The bill would amend the Alaska criminal laws concerning domestic violence and concerning disclosures to accused persons. Several reasons supporting my disfavor of this bill follows.

First, I would like to make the committee aware, from my experience in the past 10 years, that domestic violence orders are liberally issued by the courts upon receiving any testimony of conflict, however slight.

There is a "race to the courthouse" atmosphere during most situations where a dv restraining order might benefit a petitioner. Men are more often denied dv orders, for various reasons, including that the judicial officer does not believe a "man could be frightened of a woman". Also, men generally are reluctant to apply for domestic violence restraining orders and are less informed than women about how and when to apply for them.

At the initial stages, there is no attempt to verify the statements of a petitioner requesting a domestic violence restraining order. The petition is treated as an emergency and an order issued upon the mere allegation of the petitioner. Generally, a female petitioner's mere assertion of fearfulness (either past or prospective) suffices for issuance of an order.

The courts consider the dv petition as an opportunity to separate persons in a relationship during a period of discord - however slight or grave the discord may be. Therefore, the issuance of a domestic violence restraining order is often to provide a "cooling off period" and does not represent judicial determination as to the merit of facts represented.

House Bill 314 Section 1, which deals with domestic violence restraining orders, would amend AS 11.56.740(a) by adding 3 specific behaviors which would become Class A misdemeanors and by deleting the protection now in Subsection 740(a)(2).

These protection derive from the concurrent requirement that the Court must have found that the person being restrained had subjected another to domestic violence. Under the present law, a petitioner's fear of potential violence should be insufficient to raise violation of a dv order provision to the status of a crime. And the wisdom of a judge or magistrate tempers the potential use of the criminal system as a weapon by one person against the other.

As proposed, Section 1 would eliminate these protection, while adding criminal behavior.

The domestic violence restraining order process, a civil law procedure, should not become merged with criminal activity from the start. People do not always get along and all discord is not criminal. In the domestic violence arena, there is already a propensity to act "tit for tat" and to use police, the courts and children as weapons in power struggles between persons. Before making new crimes, there should be more protection against abuse of the criminal justice process, not less.

It is well established that war is fostered by unequal power and weaponry: domestic strife is like war. If the object is to quell domestic violence, then the focus should be on giving neither participant an advantage against the other and protecting both participants from increasing hostility by the other. Proposed Section 1 does just the opposite.

House Bill 314 Sections 2 through and including 5 would amend AS 12.61.120(c) dealing with disclosure of information to defendants accused of any crime, not merely crimes pertaining to domestic violence.

Section 2 proposes language which is overbroad. Any victim or witness could assert that anyone talking with he/she could be acting on behalf of a defendant. Such an assertion could be raised merely because a victim or witness did not like what the other person was stating or just to gain advantage over the another person.

More importantly, the scope of the new language would include subjects about which a person could be charged without limitation as to time or type of offense. The language is likely unenforceable. It muddies what currently is clear and adequate law. Please do not support this amendment.

Sections 3 and 4 proposes further additions which appear intended to prevent adequate defense against criminal charges. No person can have the expectation of privacy when speaking in public yet the proposed amending language would give special rights to persons prosecuting crimes, rights which would cripple the opportunity of accused persons to defend themselves. If we are a society interested in justice and truth finding, then the rules regarding privacy expectations should apply equally to all persons before they are convicted of a crime. The amendments proposed in Section 3 would curtail the ability of an accused to protect herself or himself from untruthfulness.

Furthermore, these sections, by encompassing witnesses are overbroad and chilling. A person becomes a witness, for purposes of law, when they are selected to provide evidence: anyone can become a witness. Who is not a witness to a crime which "could be charged"? How could the proposed amendments be enforced without impairing the constitutionally protected rights of free speech and due process under the law? The inclusion of "witness" in the proposed language should be deleted, at minimum.

Finally, subparagraph (c) of Section 4 proposes that any violation of the section by the defendant's attorney or agent of the defendant's attorney would act as an official grievance against the attorney. This is terribly chilling. Is the intent of this language to so frighten attorneys that they will be unwilling to represent the accused? It appears so.

Also, not even attorney's have perfect control over their agents, investigators, etc., or their client's "agents". (See definition in proposed Section 5) Not even attorney's can protect themselves, without substantial cost and interruption to their practices, from spiteful or untruthful allegations. Why does it seem necessary to threaten officers of the Court, who are sworn to abide by the law and Court Orders and who do so to the best of their abilities?

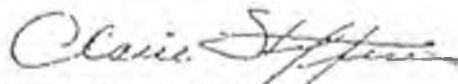
Subsection 5, the definition of "persons acting on behalf of a defendant", includes an "agent of the defendant". This includes for example, friends and family, as well as all others, who are connected with the defendant.

For domestic violence allegations, there would remain no avenues whereby reconciliation could possibly take place without potential criminal repercussions for the attempt. People don't live together without discord. People cannot suddenly cut themselves and their families off from each other in one quick decisive stroke simply because an offense has or could be charged. The proposals of House Bill 314 are anti-human and impracticable.

In conclusion, please do not adopt House Bill 314 as written. The purposes to be accomplished by this proposed legislation are unclear. What ills are sought to be remedied? Society should not become such a prisoner of our fears that we would destroy constitutionally protected rights and individual liberties in its quest for protection. There must be a better way.

Thank you for receiving my concerns.

Sincerely,



Ms. Claire Steffens

Post: # Fax Note 7671	Date 4/18/96	# of pages 1
To Senator-Taylor	From S. Catterall	
Co./Dept.	Co.	
Phone #	Phone # 276-7279	
Fax # 465-3922	Fax #	

April 18, 1996

Senator Robin Taylor  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Taylor:

I am writing to you to register my support for **HB 314** which addresses some important issues pertaining to domestic violence cases. I greatly appreciate the work that all members of the Senate, including yourself, are doing to end domestic violence and to stop violence against women in Alaska, but I am concerned about the mediation amendment to this bill. I support the bill, including the weapons amendment, but **I oppose the mediation amendment**. I urge you to support **HB 314** without the mediation amendment.

To stop domestic violence and end violence against women, we need to make abusers be held accountable, and including a provision for mediation does not hold the abuser accountable.

Mediation in domestic violence cases is inappropriate, because mediation would imply that the two parties involved are somewhat equal and open to reaching an agreement or reconciliation of some sort. This is impossible however, given the dynamics of domestic violence -- the victim has suffered emotional, verbal and or physical abuse and is likely to be intimidated by the abuser. This intimidation factor may lead the victim to agree to some unjust proposal simply to end the meeting which could only be uncomfortable for her. Also, due to the isolation imposed upon the victim by the abuser, the victim may be unfamiliar with the court system and with her rights, ensuring that justice will not be done in this situation. To propose that a victim and abuser must meet under these circumstances sends a strong message to the victim, the abuser and to the society at large, that abuse is unimportant, just an argument that got out of hand. Domestic violence is not an argument to be resolved. It will take intensive work and education to stop the cycle of violence and abuse.

If you must pass **HB 314** as it is, with the mediation amendment still present, I then request that you include a provision that mediators must be trained by one of the programs of the Alaska Network on Domestic Violence and Sexual Assault, who see the effects of domestic violence on Alaskan families daily and who understand the cycle of abuse and the issues involved.

I strongly urge you to oppose the amendment concerning mediation, but support **HB 314**.

Sincerely,

*Susan P. Catterall*

Susan P. Catterall  
7538 Stanley Drive  
Anchorage, AK 99518

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO:** CSHB 314(JUD) am

Revision Date: April 9, 1996  
 Title: Violating Domestic Violence Orders  
 Sponsor: Representative Parnell  
 Requestor: S. Judiciary

Dept. Affected: Public Safety  
 BRU: Alaska State Troopers  
 Component: Detachments  
**COMPONENT SERIAL NO.** 0799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b> Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary.)**

This bill will not have a fiscal impact on the Division of Alaska State Troopers. The troopers currently respond to complaints of violating a domestic violence restraining order, this bill will clarify violations of the order.

Prepared By: Lt. Dan Lowden Phone: 465-5505  
 Division: Alaska State Troopers Date: April 9, 1996  
 Approved by Commissioner: *Ronald I. Otte* Date: 4/9/96  
 Agency: Ronald I. Otte Department of Public Safety

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. Work draft SCS CSHB 314 -  
version W dated 4/13/96

Revision Date: \_\_\_\_\_  
Title: Domestic violence

Dept. Affected: Alaska Court System  
BRU: Trial Courts  
Component: \_\_\_\_\_

Sponsor: Reps. Parnell, Robinson, Bunde, Elton...  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	66.7	66.7	66.7	66.7	66.7	66.7
TRAVEL	25.7	25.7	25.7	25.7	25.7	25.7
CONTRACTUAL	0.9					
SUPPLIES	7.2					
EQUIPMENT	8.0					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>108.5</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES (						
----------------------	--	--	--	--	--	--

**Fund Source**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	108.5	92.4	92.4	92.4	92.4	92.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>108.5</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>

Estimate of any current year (FY 96) cost: None

**Positions**

Full-Time						
Part-Time	6.0	6.0	6.0	6.0	6.0	6.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel  
Agency: Alaska Court System

Phone: 264-8228  
Date: 04/15/96

Approved by: Arthur H. Snowden, II, Administrative Director  
Agency: Alaska Court System

Date: 04/16/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court SystemFiscal AnalysisWork draft SCS CSHB 314 - version W dated 4/13/96Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Sections 8, 11 &amp; 29 (In-Person Hearing)</u>			
Superior Court Judge Pro Tem, 50% vested, PPT, (25% of filings aff	\$5,737	\$3,537	\$9,274
In-Court Clerk, range 12A, PPT	2,725	1,236	3,961
(25% of current criminal filings will be affected by the bill, 1/2 of these will require 15 minute hearing)			
<u>Section 33 (Extended Orders)</u>			
Standing Master, range 24A, PPT	17,583	6,137	23,720
In-Court Clerk, range 12A, PPT	7,813	3,544	11,357
Court Clerk II, range 10A, PPT	554	265	819
(25% of current criminal filings will result in extended orders, 1/2 will require an additional 30 minutes of hearing)			
<u>Section 33 (Peace Officer Request)</u>			
Court Clerk II, range 10A, PPT	308	147	455
(Expecting 100 additional case filings, which will require 15 minutes of clerical processing time)			
<u>Section 33 (Prohibit Mutual Orders)</u>			
Standing Master, range 24A, PPT	2,816	983	3,799
In-Court Clerk, range 12A, PPT	1,251	568	1,819
Court Clerk II, range 10A, PPT	1,108	530	1,638
(Expecting 8% increase in case filings, which will require 15 minutes of courtroom time and clerical processing time)			
<u>Section 33 (Prohibit Mutual Orders (Respondent's Petition))</u>			
Standing Master, range 24A, PPT	1,408	491	1,899
In-Court Clerk, range 12A, PPT	626	284	910
Court Clerk II, range 10A, PPT	554	265	819
(Expecting 50% increase in orders on increased filings, which will require 15 minutes of courtroom time and clerical processing time)			
<u>Section 33 (Forms and Clerical Assistance)</u>			
Court Clerk II, range 10A, PPT	2,303	1,100	3,403
(Expecting additional clerical assistance on 25% of new filings, which will require 15 minutes of clerical time)			
<u>Section 49 (Heightened Scrutiny)</u>			
Standing Master, range 24A, PPT	1,408	491	1,899
In-Court Clerk, range 12A, PPT	626	284	910
(10% of current dissolutions will require a 30 minutes hearing)			
Estimated Total Personal Services			<u>66,882</u>

TravelSection 33 (Forms and Clerical Assistance)

This legislation will require a complete revision of all domestic violence forms and instructions. The court Forms Committee will have to meet twice to accomplish the revision of 12 existing forms. These forms are used in all superior and district courts.

5,400

This legislation requires continuing education of judicial officers and staff. The court will lengthen existing conferences for judges, magistrates and clerks to accomplish this requirement. The court will use experts to conduct annual training conferences.

20,300

Estimated Total Travel

25,700

Alaska Court SystemFiscal AnalysisWork draft SCS CSHB 314 - version W dated 4/13/96Contractual (one-time)

Postage for mailing new forms and instructions 5900

Supplies (one-time cost)

Paper and duplication supplies for new forms and instructions 7,200

Equipment (one-time cost)Section 33 (Peace Officer Request)

20 portable tape recorders for hearings 8,000

Estimated Total Cost

\$108,482

His

- Page 34, Line 20 after parties....delete all material thru  
page 35, Line 2
- Page 35, Line 21 after parties....delete all material thru Pg 36, Line 3
- Page 36, Line 31 after parties delete all material thru Pg 37, Line 14
- Page 45, Line 10 after parties insert a coma delete and  
Lines 11 & 12..delete all material thru 25.24.140  
insert may not be ordered

AMENDMENT

TO: SCS CSHB 314 (JUD)  
Work Draft 9-LS1091\W  
4/13/96

Page 34, lines 26 - 27 are amended to read:

(1) mediation is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;

Page 35, lines 27 - 28 are amended to read:

(1) mediation is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;

Page 37, lines 7 - 8 are amended to read:

(1) mediation or family counseling is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;

Attention R. Taylor:

Please give  
the Saragans,  
to

HB-314

Committee  
Members  
for 4-19-76  
Committee  
meeting

FAX TO: (907) 465-3922 12 pages; no original to follow.

18 April 1996

MEMO TO: R. Taylor - SENATE JUDICIARY COMMITTEE

FROM:

*Mary Ann Dearborn*  
 Mary Ann Dearborn, Mediator - Dearborn Family Mediation  
 3701 E. Tudor Rd., #208, Anchorage, AK 99507 562-6001

**Background:** Mary Ann is a resident of Palmer and professional mediator with an Anchorage-based practice (Dearborn Family Mediation) specializing in parenting arrangements. Mary Ann worked as a paralegal and civil procedure specialist in the field of Family Law for five Alaska law firms (7 years) and for the Alaska Court System at Anchorage (11 years), before opening her family mediation practice in 1993.

Mary Ann has a good academic background for her work as a professional family mediator (Sociology, Psychology, Social Work) and substantial training in mediation and violence issues. Approximately 10% of her annual case load reflects individuals who have a history of violence. Mary Ann provides a free, private domestic violence screening to each new client (see copy of tool, provided), and provides free orientations to the mediation process which include distribution of literature on available resources, such as information on the court's DV Petition process, A.W.A.I.C., S.T.A.R., Alaska Women's Resource Center, and the Male Awareness program.

Mary Ann is a lifetime member of the Academy of Family Mediators and adheres to AFM standards (copy attached). She was awarded practitioner status by the AFM and is listed in the Alaska Court's Directory of Mediators. Mary Ann teaches family mediation and divorce mediation for the University of Alaska Anchorage. She was appointed to the Alaska Supreme Court Mediation Task Force in 1996, following a year as president of the Alaska Dispute Settlement Association. She also acts as volunteer advisor, mentor, and mediator for the Community Dispute Resolution Center's Victim-Offender Mediation Program.

Mary Ann has been successful working on legislative committees, most recently for the HES committee, developing the current, amended version of SB 156, which provides mandated educational presentations about mediation in visitation and custody cases. A copy of SB 156 is provided.

**SUBJECT: House Bill No. 314 (Working Draft-9-LS1091/W Luckhaupt 4/13/96)  
 Proposed improvements to Sections 41 through 47. (See pages, attached)**

Thank you for this opportunity to share information regarding House Bill No. 314. I am offering my assistance to make improvements to the Bill. I support the majority of HB 314; however, Sections 41 through 47 need correction. My greatest concern is that through paternalistic and benevolent purposes, HB 314 wields *parens patriae* power to the detriment of civil liberties and further victimizes the victims of violence. In its current form, HB 314 re-victimizes victims of domestic violence by creating law which represents a loss of equal rights, loss of freedom, and loss of self-determination and autonomy. For instance, under Sections 41 through 47, a victim of domestic violence loses the right to request or choose mediation, and is forced to submit to a more controlling, high conflict, adversarial court process. See attached pages 34-37, with my interlineated improvements.

Please call 562-6001, if I can be helpful. I'm hoping improvements can be made so this bill can move forward.

PA08 TWO, Memo to Senate Judiciary Committee from Mary Ann Dearborn dated 18 April 1996. SEE proposed corrections interlined on pages 34-37 of ID 314, attached

### **HB 314 - Domestic Violence/Mediation Issues.**

#### **Rationale for Mary Ann Dearborn's requested improvements.**

- 1) Any party to a civil action, including parties who have experienced domestic violence, should be permitted to request mediation, pursuant to Civil Rule 100. No law should remove that right from any litigant. See proposed correction to Sec. 43 (a).
- 2) The court should be permitted to create or amend any order, including a protective order, to permit mediation between the parties to a civil suit. No law should remove that authority from the court. See proposed correction to Secs. 41(f), 44(f), and 47(d).
- 3) Any individual, including victims of domestic violence, should have the right to choose a nonadversarial process such as mediation to resolve civil disputes. No law should remove that choice from any individual. See proposed correction to Secs. 41(f), 44(f), and 47(d).
- 4) The court should not order mediation, if a *victim* objects (not "if a *party* objects"). In the scenario of letting any *party* object, a more powerful party could file the objection and force the weaker party to remain in an adversarial process in which the stronger are encouraged to wield power (time, money, influence) to "win." Mediation should be an option for every party to a civil action, especially for weaker opponents who have much more to lose and are less likely to gain from ongoing litigation. A trained, skilled mediator will recognize and put a stop to power plays, will work to balance power, will break through empasses, and will promote a fair solution. No law should be created that promotes abuse. See proposed correction to Secs. 41(f), 44(f), and 47(d).
- 5) Mediators should *screen for* (not "evaluate") whether domestic violence has occurred. "Evaluate" implies an ascertainment or fixing of value or worth. It is not a mediator's role to determine if a crime has value or worth. I believe what mediator's should do is simply screen whether a specific crime occurred. No laws should be created that require mediators to evaluate any act classified as a crime. See proposed correction to Secs. 41(g), 44(g), and 47(e).
- 6) Language regarding commission of any crime should be specific, such as, *domestic violence as defined under AS 18.66.100-180 has occurred between the parties* (not a vague reference such as *a party has committed a crime involving domestic violence*). No laws should be created that contain vague references to crime. See proposed correction to Secs. 42(c), 44(g), and 47(e).
- 7) It is impossible for a mediator to "protect any household member," unless said household member is a participant in the mediation. Mediators can only provide a safe environment for the participants within the mediation room and can only encourage each individual to act in a manner that will promote his or her safety outside of the mediation room. No laws should be created that impose duties on mediators which are so overbroad that they are impossible to keep. See proposed correction to Secs. 41(g)(2), 44(g)(2), and 47(c)(2).

APR-16-96 TUE 8:38 AM

3:24

WORK DRAFT

WORK DRAFT

WORK DRAFT

- 1 (4) the perpetrator shall abstain from possession or consumption of
- 2 alcohol or controlled substances during the visitation and for 24 hours before visitation;
- 3 (5) the perpetrator shall pay costs of supervised visitation as set by the
- 4 court;
- 5 (6) the prohibition of overnight visitation;
- 6 (7) the perpetrator shall post a bond to the court for the return and
- 7 safety of the child; and
- 8 (8) any other condition necessary for the safety of the child, the other
- 9 parent, or other household member.

10 \* Sec. 40. AS 25.20.080(a) is amended to read:

11 (a) Except as provided in (f) and (g) of this section, at [AT] any time within

12 30 days after a petition for child custody is filed under AS 25.20.060 the court may

13 order the parties to submit to mediation. Each party ~~has~~ [SHALL HAVE] the right to

14 challenge peremptorily one mediator appointed.

15 \* Sec. 41. AS 25.20.080 is amended by adding new subsections to read:

16 (f) ~~The court may not order or refer parties to mediation in a proceeding~~

17 <sup>No mediation may occur</sup> concerning custody or visitation of a child if a protective order issued or filed under

18 AS 18.66.100 - 18.66.180 is in effect, <sup>unless otherwise ordered by the court or the</sup> The court may not order or refer parties to

19 mediation if a <sup>victim</sup> ~~party~~ objects on the grounds that domestic violence has occurred

20 between the parties unless the court finds that the conditions of (g)(1) - (3) of this

21 section are met.

22 (g) A mediator who receives a referral or order from a court to conduct

23 mediation under (a) of this section shall <sup>screen for</sup> ~~evaluate~~ whether domestic violence has

24 occurred between the parties. A mediator may not engage in mediation when either

25 ~~the screening reveals that domestic violence has occurred~~ <sup>the screening reveals that domestic violence</sup> ~~as defined by~~ <sup>under</sup>

26 AS 18.66.190-190 ~~has occurred~~ <sup>has occurred</sup> between the parties.

27 (1) mediation is requested by the victim of the alleged domestic violence;

28 (2) mediation is provided by a mediator who is trained in domestic

29 violence in a manner that protects the safety of the victim and any ~~household member,~~ <sup>other participant in</sup>

30 ~~taking into account the results of an assessment of the potential danger posed by the~~

31 ~~perpetrator and the risk of harm to the victim, and~~

✓  
victim request

✓

✓  
the mediation

APR-16-96 TUE 3:39 AM P. 25

WORK DRAFT WORK DRAFT WORK DRAFT

1 (3) the victim is permitted to have in attendance a person of the  
2 victim's choice, including an attorney.

3 \* Sec. 42. AS 25.20.110 is amended by adding a new subsection to read:

4 (c) In a proceeding involving the modification of an award for custody of a  
5 child or visitation with a child, a finding that ~~a crime involving domestic violence~~ <sup>as defined under AS 18.66.100-180,</sup> has  
6 occurred, since the last custody or visitation determination is a finding of change of  
7 circumstances under (a) of this section.

8 \* Sec. 43. AS 25.24.060(a) is amended to read:

9 (a) ~~Except as provided in (f) and (g) of this section,~~ [AT] any time within  
10 30 days after a complaint or cross-complaint in a divorce action is filed, a party to the  
11 action may file a motion with the court requesting mediation, for the purpose of  
12 achieving a mutually agreeable settlement in termination of the marriage. ~~When a~~ <sup>When a</sup>  
13 ~~party moves for settlement mediation, the other party shall answer the motion on the~~ <sup>party requests mediation, pursuant to Civil Rule 100.</sup>  
14 ~~record, and the judge may order mediation.~~ When no request for mediation is made,  
15 the court may at any time order the parties to submit to mediation if it determines that  
16 mediation may result in a more satisfactory settlement between the parties.

17 \* Sec. 44. AS 25.24.060 is amended by adding new subsections to read:

18 (f) ~~The court may not order or refer parties to mediation~~ <sup>No mediation may occur</sup> in a divorce  
19 proceeding if a protective order issued or filed under AS 18.66.100 - 18.66.180 is in  
20 effect, ~~The court may not order or refer parties to mediation if a party objects on the~~ <sup>unless the court otherwise orders or the victim requests it.</sup>  
21 grounds that domestic violence has occurred between the parties unless the court finds  
22 that the conditions of (g)(1) - (3) of this section are met.

23 (g) A mediator who receives a referral or order from a court to conduct  
24 mediation under (a) of this section shall ~~evaluate~~ <sup>screen for</sup> whether domestic violence has  
25 occurred between the parties. A mediator may not engage in mediation when ~~either~~ <sup>the screening</sup>  
26 ~~party has committed a crime involving domestic violence unless,~~ <sup>reveals that domestic violence as defined under</sup>  
27 AS 18.66.100-180 has occurred between the parties.

28 (1) mediation is requested by the victim of the alleged domestic  
29 violence;

30 (2) mediation is provided by a mediator who is trained in domestic  
31 violence in a manner that protects the safety of the victim and any ~~household member~~ <sup>other participants in the mediation</sup>  
taking into account the results of an assessment of the potential danger posed by the

1110 317 *These are my proposed changes* M Dearborn

APR-16-96 TUE 3:40 AM

P. 26

WORK DRAFT

WORK DRAFT

WORK DRAFT

1 ~~perpetrator and the risk of harm to the victim, and~~

2 (3) the victim is permitted to have in attendance a person of the  
3 victim's choice, including an attorney.

4 \* Sec. 45. AS 25.24.140(b) is amended to read:

5 (b) During the pendency of the action, upon application, a spouse is entitled  
6 to necessary protective orders, including orders

7 (1) providing for the freedom of each spouse from the control of the  
8 other spouse;

9 (2) for protection under AS 18.66.100 - 18.66.180 (RESTRAINING  
10 EACH SPOUSE FROM SUBJECTING THE OTHER SPOUSE OR ANOTHER  
11 PERSON LIVING IN THE HOUSEHOLD TO DOMESTIC VIOLENCE,  
12 AS DEFINED IN AS 25.35.200);

13 (3) directing one spouse to vacate the marital residence or the home of  
14 the other spouse;

15 (4) restraining a spouse from communicating directly or indirectly with  
16 the other spouse;

17 (5) restraining a spouse from entering a propelled vehicle in the  
18 possession of or occupied by the other spouse; and

19 (6) prohibiting a spouse from disposing of the property of either spouse  
20 or marital property without the permission of the other spouse or a court order.

21 \* Sec. 46. AS 25.24.140(c) is amended to read:

22 (c) ~~Except as provided in (d) and (e) of this section, after [AFTER]~~ a  
23 *At any time ~~step~~ hearing - if both parties agree.* the court may also order that the parties <sup>to</sup> engage in  
24 personal or family counseling or mediation. In the order, the court shall provide for  
25 the payment of the costs of the counseling or mediation. ✓

26 \* Sec. 47. AS 25.24.140 is amended by adding new subsections to read:

27 (d) ~~The court may not order or refer parties to mediation or family counseling~~  
28 *The <sup>may not engage in</sup> court may not order or refer parties to mediation or family counseling*  
29 *unless, the court otherwise orders or the victim requests* it.  
30 under (c) of this section if a protective order issued or filed under AS 18.66.100 -  
31 18.66.180 is in effect. *The court may not order or refer parties to mediation or family*  
*counseling if a <sup>victim</sup> party objects on the grounds that domestic violence has occurred*  
between the parties unless the court finds that the conditions of (c)(1) - (3) of this

HB 314

these are my proposed changes

APR-16-96 TUE 3:40 AM

P. 2

WORK DRAFT

WORK DRAFT

WORK DRAFT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

section are met.

(e) A mediator or family counselor who receives a referral or order from a court to conduct mediation under (c) of this section shall <sup>screen</sup> evaluate whether domestic violence has occurred between the parties. A mediator or family counselor may not engage in mediation when ~~either party has committed a crime involving domestic violence as defined under AS 18.66.100-120~~ <sup>the screening reveals that domestic violence</sup> has occurred <sup>between</sup> ~~unless the parties~~.

✓  
violence between

(1) mediation or family counseling is requested by the victim of the alleged domestic violence;

(2) mediation or family counseling is provided by a mediator or family counselor who is trained in domestic violence in a manner that protects the safety of the victim and any <sup>other participant in the mediation</sup> ~~household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim, and~~

✓

(3) the victim is permitted to have in attendance a person of the victim's choice, including an attorney.

\* Sec. 48. AS 25.24.210(e) is amended to read:

(e) If the petition is filed by both spouses under AS 25.24.200(a), the petition must state in detail the terms of the agreement between the spouses concerning the custody of children, child support, visitation, spousal maintenance and tax consequences, if any, and fair and just division of property, including retirement benefits. Agreements on spousal maintenance and property division must fairly allocate the economic effect of dissolution and take into consideration the factors listed in AS 25.24.160(e)(2) and (4). In addition, the petition must state

- (1) the respective occupations of the petitioners;
- (2) the income, assets, and liabilities of the respective petitioners at the time of filing the petition;
- (3) the date and place of the marriage;
- (4) the name, date of birth, and current marital, educational, and custodial status of each child born of the marriage or adopted by the petitioners who is under the age of 19;
- (5) whether the wife is pregnant;
- (6) whether either petitioner requires medical care or treatment;

**CONFIDENTIAL VIOLENCE SCREENING FOR MEDIATION**

Have you or the other individual been named in a Petition for Domestic Violence?

When? \_\_\_\_\_ Where? \_\_\_\_\_ Current Protection Order(s)? \_\_\_\_\_  
 Expire? \_\_\_\_\_

What happens when the two of you disagree?

Do you have any concerns about meeting with the other person in this room, to discuss the issues?

What could be done to make you feel safer?

Some people do different things when they are angry. Do either of you do any of these things?

HIM	HER	WHEN HE/SHE IS ANGRY, DO YOU:
<input type="checkbox"/>	<input type="checkbox"/>	Discuss issues calmly, listening to the other and openly share information
<input type="checkbox"/>	<input type="checkbox"/>	Do nothing, avoid or ignore the other person
<input type="checkbox"/>	<input type="checkbox"/>	Use another person to carry messages to the other person (attorney, friend, etc.)
<input type="checkbox"/>	<input type="checkbox"/>	Withdraw, sulk or refuse to talk to the other person
<input type="checkbox"/>	<input type="checkbox"/>	Scream, insult, swear at the other person or call them names
<input type="checkbox"/>	<input type="checkbox"/>	Threaten the other person or other family members
<input type="checkbox"/>	<input type="checkbox"/>	Intentionally interrupt the other person's speaking, sleeping, eating, etc.
<input type="checkbox"/>	<input type="checkbox"/>	Threaten to hurt yourself, the other person, the children, other family members
<input type="checkbox"/>	<input type="checkbox"/>	Hurt the other person (hit/slap/bite/push/shove/throw/punch/use weapon)

HIM	HER	
<input type="checkbox"/>	<input type="checkbox"/>	Do either of you have a need to control the other person?
<input type="checkbox"/>	<input type="checkbox"/>	Do either of you get easily frustrated by the idea of not getting what is wanted?
<input type="checkbox"/>	<input type="checkbox"/>	Do either of you accept little or no responsibility for what is done?
<input type="checkbox"/>	<input type="checkbox"/>	Have you or the other person recently obtained or plan to obtain a weapon?
<input type="checkbox"/>	<input type="checkbox"/>	Have either of you ever used a weapon on others?
<input type="checkbox"/>	<input type="checkbox"/>	Have either of you been convicted of assault?
<input type="checkbox"/>	<input type="checkbox"/>	Do either of you have tendencies to be violently jealous?
<input type="checkbox"/>	<input type="checkbox"/>	Do either of you have fantasies or thoughts of hurting others or self (suicide)?
<input type="checkbox"/>	<input type="checkbox"/>	Have either of you hurt others in the past?

The Academy of Family Mediators  
1500 South Highway 100, Suite 355  
Golden Valley, MN 55416

## ACADEMY OF FAMILY MEDIATORS

### STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION

#### I. Preamble

Mediation is a family-oriented conflict resolution process in which an impartial third party assists the participants to negotiate a consensual and informed settlement. In mediation, whether private or public, decision-making authority rests with the parties. The role of the mediator includes reducing the obstacles to communication, maximizing the exploration of alternatives, and addressing the needs of those it is agreed are involved or affected.

Mediation is based on principles of problem solving that focus on the needs and interests of the participants; fairness; privacy; self-determination; and the best interest of all family members.

These standards are intended to assist and guide public, private, voluntary, and mandatory mediation. It is understood that the manner of implementation and mediator adherence to these standards may be influenced by local law or court rule.

#### II. Initiating the Process

**A. Definition and Description of Mediation.** The mediator shall define mediation and describe the differences and similarities between mediation and other procedures for dispute resolution. In defining the process, the mediator shall delineate it from therapy, counseling, custody evaluation, arbitration, and advocacy.

**B. Identification of Issues.** The mediator shall elicit sufficient information from the participants so that they can mutually define and agree on the issues to be resolved in mediation.

**C. Appropriateness of Mediation.** The mediator shall help the participants evaluate the benefits, risks, and costs of mediation and the alternatives available to them.

#### D. Mediator's Duty of Disclosure

**1. Biases.** The mediator shall disclose to the participants any biases or strong views relating to the issues to be mediated.

**2. Training and Experience.** The mediator's education, training, and experience to mediate the issues should be accurately described to the participants.

#### III. Procedures

The mediator shall reach an understanding with the participants regarding the procedures to be followed in mediation. This includes but is not limited to the practice as to separate meetings between a participant and the mediator, confidentiality, use of legal services, the involvement of additional parties, and conditions under which mediation may be terminated.

**A. Mutual Duties and Responsibilities.** The mediator and the participants shall agree upon the duties and responsibilities that each is accepting in the mediation process. This may be a written or verbal agreement.

#### IV. Impartiality and Neutrality

**A. Impartiality.** The mediator is obligated to maintain impartiality toward all participants. Impartiality means freedom from favoritism or bias, either in word or action. Impartiality implies a commitment to aid all participants, as

opposed to a single individual, in reaching a mutually satisfactory agreement. Impartiality means that a mediator will not play an adversarial role.

The mediator has a responsibility to maintain impartiality while raising questions for the parties to consider as to the fairness, equity, and feasibility of proposed options for settlement.

**B. Neutrality.** Neutrality refers to the relationship that the mediator has with the disputing parties. If the mediator feels, or any one of the participants states, that the mediator's background or personal experiences would prejudice the mediator's performance, the mediator should withdraw from mediation unless all agree to proceed.

**C. Prior Relationships.** A mediator's actual or perceived impartiality may be compromised by social or professional relationships with one of the participants at any point in time. The mediator shall not proceed if previous legal or counseling services have been provided to one of the participants. If such services have been provided to both participants, mediation shall not proceed unless the prior relationship has been discussed, the role of the mediator made distinct from the earlier relationship, and the participants given the opportunity to freely choose to proceed.

**D. Relationship to Participants.** The mediator should be aware that post-mediation professional or social relationships may compromise the mediator's continued availability as a neutral third party.

**E. Conflict of Interest.** A mediator should disclose any circumstance to the participants that might cause a conflict of interest.

#### V. Costs and Fees

**A. Explanation of Fees.** The mediator shall explain the fees to be charged for mediation and any related costs and shall agree with the participants on how the fees will be shared and the manner of payment.

**B. Reasonable Fees.** When setting fees, the mediator shall ensure that they are explicit, fair, reasonable, and commensurate with the services to be performed. Unearned fees should be promptly returned to the clients.

**C. Contingent Fees.** It is inappropriate for a mediator to charge contingent fees or to base fees on the outcome of mediation.

**D. Referrals and Commissions.** No commissions, rebates, or similar forms of remuneration shall be given or received for referral of clients for mediation services.

#### VI. Confidentiality and Exchange of Information

**A. Confidentiality.** Confidentiality relates to the full and open disclosure necessary for the mediation process. A mediator shall foster the confidentiality of the process.

**B. Limits of Confidentiality.** The mediator shall inform the parties at the initial meeting of limitations on confidentiality, such as statutory or judicially mandated reporting.

**C. Appearing in Court.** The mediator shall inform the parties of circumstances under which mediators may be compelled to testify in court.

**D. Consequences of Disclosure of Facts Between Parties.** The mediator shall discuss with the participants the potential consequences of their disclosure of facts to each other during the mediation process.

### C. Conciding Mediation

A. **Full Agreement.** The mediator shall discuss with the participants the process for formalization and implementation of the agreement.

B. **Partial Agreement.** When the participants reach a partial agreement, the mediator shall discuss with them options available to resolve the remaining issues. **Without Agreement Termination by Participants.** The mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason.

C. **Termination by Participants.** The mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason.

D. **Termination by Mediator.** If the mediator believes that participants are unable or unwilling to participate meaningfully in the process or that a reasonable agreement is unlikely, the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help.

E. **Impasse.** If the participants reach a final impasse, the mediator should not prolong unproductive discussions that would result in emotional and monetary costs to the participants.

### II. Training and Education

A. **Training.** A mediator shall require substantive knowledge and procedural skill in the specialized area of practice. This may include but is not limited to family and human development, family law, divorce procedures, family finance, community resources, the mediation process, and professional ethics.

B. **Continuing Education.** A mediator shall participate in continuing education and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.

III. **Advertising.** A mediator shall make only accurate statements about the mediation process, its costs and benefits, and the mediator's qualifications.

### III. Relationship with Other Professionals

A. **The Responsibility of the Mediator Toward Other Mediators/Relationship with Other Mediators.** A mediator should not mediate any dispute that is being mediated by another mediator without first endeavoring to consult with the person or persons conducting the mediation.

B. **Co-mediation.** In those situations where more than one mediator is participating in a particular case, each mediator has a responsibility to keep the others informed of developments essential to a cooperative effort.

C. **Relationships with Other Professionals.** A mediator should respect the complementary relationship between mediators and legal, mental health, and other social services and should promote cooperation with other professionals.

### IV. Advancement of Mediation

A. **Mediation Service.** A mediator is encouraged to provide some mediation service in the community for central or on-line.

B. **Promotion of Mediation.** A mediator shall promote the advancement of mediation by encouraging and participating in research, publishing, or other forms of professional and public education.

E. **Release of Information.** The mediator shall obtain the consent of the participants prior to releasing information to others. The mediator shall maintain confidentiality and render anonymous all identifying information when materials are used for research or training purposes.

F. **Causes.** The mediator shall discuss policy regarding confidentiality for individual causes. In the event that a mediator, on consent of the participants, speaks privately with any person not represented in mediation, including children, the mediator shall define how information received will be used.

G. **Storage and Disposal of Records.** The mediator shall maintain confidentiality in the storage and disposal of records.

H. **Full Disclosure.** The mediator shall require disclosure of all relevant information in the mediation process, as would reasonably occur in the judicial discovery process.

### VII. Self-Determination

A. **Responsibilities of the Participants and the Mediator.** The primary responsibility for the resolution of a dispute rests with the participants. The mediator's obligation is to assist the disputants in reaching an informed and voluntary settlement. At no time shall a mediator coerce a participant into agreement or make a substantive decision for any participant.

B. **Responsibility to Third Parties.** The mediator has a responsibility to promote the participants' consideration of the interests of children and other persons affected by the agreement. The mediator also has a duty to assist parents to examine, apart from their own desires, the separate and individual needs of such people. The participants shall be encouraged to seek outside professional consultation when appropriate or when they are otherwise unable to agree on the needs of any individual affected by the agreement.

### VIII. Professional Advice

A. **Independent Advice and Information.** The mediator shall encourage and assist the participants to obtain independent expert information and advice when such information is needed to reach an informed agreement or to protect the rights of a participant.

B. **Providing Information.** A mediator shall give information only in those areas where qualified by training or experience.

C. **Independent Legal Counsel.** When the mediation may affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel prior to resolving the issues and in cooperation with formalizing an agreement.

### IX. Parties' Ability to Negotiate

The mediator shall ensure that each participant has had an opportunity to understand the implications and ramifications of available options. In the event a participant needs either additional information or assistance in order for the negotiations to proceed in a fair and orderly manner or for an agreement to be reached, the mediator shall refer the individual to appropriate resources.

A. **Procedural Factors.** The mediator has a duty to ensure balanced negotiations and should not permit manipulative or intimidating negotiation techniques.

B. **Psychological Factors.** The mediator shall explore whether the participants are capable of participating in informed negotiations. The mediator may postpone mediation and refer the parties to appropriate resources if necessary.

X Ordered attendance at educational presentation or about mediation 94507541M

CS FOR SENATE BILL NO. 156(HES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/26/96  
Referred: JUD, FIN

Sponsor(s): SENATOR GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring a court to order parties involved in child custody or visitation  
2 matters to attend an educational presentation about mediation; and allowing the  
3 presentation to be through written materials when necessary."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 • Section 1. AS 25.20 is amended by adding a new section to read:

6 Sec. 25.20.075. MANDATORY ATTENDANCE AT EDUCATION COURSE  
7 RELATING TO MEDIATION. (a) After a petition for child custody is filed under  
8 AS 25.20.060, a petition to modify an award of custody or visitation is filed under  
9 AS 25.20.110, or an action for damages for failure to permit visitation is filed under  
10 AS 25.20.140, the court shall order the parties to attend an educational presentation  
11 approved by the court that explains the concept of mediation.

12 (b) When implementing (a) of this section, the court may not require that the  
13 parties attend the educational presentation at the same time.

14 (c) An educational presentation approved by the court under this section must

1 he a video cassette, audio cassette, or vocal presentation that includes an explanation that  
 2 (1) mediation is a conflict resolution process, usually engaged in  
 3 voluntarily, in which a trained impartial third party assists the parties to negotiate a  
 4 consensual and informed settlement;

5 (2) mediation is based on principles of problem solving that focus on the  
 6 needs and interests of the participants, fairness, safety, confidentiality, self-determination,  
 7 and the best interests of all parties and other persons who the parties agree are affected;  
 8 and

9 (3) the role of a mediator is not to make decisions for the parties or to  
 10 report to a court about the mediation process but does include reducing the obstacles to  
 11 communication, maximizing the exploration of alternatives, and addressing the needs of  
 12 the persons who the parties agree are affected.

13 (d) Notwithstanding other provisions of this section, a court, when necessary,  
 14 may provide written materials to a party instead of ordering the party to attend an  
 15 educational presentation under this section. Written materials provided under this  
 16 subsection must include the explanation required under (c)(1) - (3) of this section.

**MARY ANN DEARBORN****DEARBORN FAMILY MEDIATION**

Owned and operated by Mary Ann Dearborn since 1993

3701 E. Tudor Rd #208 - Anchorage, AK - 99507 (907) 662-6001

**EDUCATION:**University of Alaska-Anchorage  
University of Alaska-AnchorageMaster Social Work (Graduation May 1997)  
BA Sociology; Emphasis Family Life Cycle  
Minor Psychology**SPECIAL TRAINING: C=Certificate awarded**

Leinmon Mediation Institute, Oakland, CA	1993	C	Family and Family Business
Frickson Mediation Institute, Minneapolis, MN	1994	C	Divorce; Violence Issues
University of Alaska, Anchorage, AK	1993	C	A.D.R.; Violence Issues
Community Dispute Resolution Ctr, Anchorage, AK	1993	C	Victim-Offender Mediation
The Center for Social Gerontology, Ann Arbor, MI	1995		Adult Guardianship Mediation
State Special Education Hearing Officer Training, AK	1994-96		Due Process Law-Procedure
Supervision and Management, Anchorage, AK	1992-93		Supervision/Management

**REFERENCES (Personal and Professional): E=Education V/C=Volunteer/Community Service P=Professional**

**E** Dr. Sharon Arjll, Professor of Sociology and Expert in Violence Issues  
788-7814; University of Alaska Anchorage Dept. of Sociology, 3211 Providence Dr., Anchorage, AK 99508

**V/C** Dr. Patrick Cunningham, Professor of Social Work and Community Dispute Resolution Center Board Officer  
785-7824; University of Alaska Anchorage Dept. of Social Work, 3211 Providence Dr. Anchorage, AK 99508

**P** John E. Duggan, J.D., Master of Alaska Probate Court and Expert in Family Law  
264-0434; State of Alaska Court System, Probate Court, 303 K Street, Anchorage, AK 99501

**EMPLOYMENT HISTORY (Complete): FT=Full time PT=Part time OC=On call V=Voluntary**

Dearborn Family Mediation (AK)	1993-96	PT	Owner/Mediator/Trainer
AK Department of Education (AK)	1994-96	PT/OC	Special Ed. Hearing Officer
University of AK-Anchorage (AK)	1994-96	PT	Adjunct Instructor - Mediation
Mat-Su College-U.A.A. (AK)	1995	PT	Adjunct Instructor - Mediation
Dearborn Paralegal Services (AK)	1993-94	PT	Owner/Paralegal
Alaska Court System (AK)	1981-93	FT	Legal Technician II
Dearborn Paralegal Services (AK)	1981	FT	Owner/Paralegal
Henderson and Nogg (AK)	1978-81	FT	Office Manager/Paralegal
Gallagher Cranston & Snow (AK)	1977-78	FT	Legal Assistant
Croft, Thurlow & Duggan (AK)	1976-77	FT	Legal Assistant
Hughes, Thorsness, Gantz... (AK)	1975-76	FT	Legal Secretary
Community Mgt. Corporation (PA)	1974-75	FT	Production Coordinator/Editor
Gen'l Housing Industries (PA)	1971-72	FT	Personnel Secretary
J. Hillis Miller Health Center (FL)	1970-71	FT	Clerk Typist II
Altoona Hospital (PA)	1969-70	FT	Bactl. Lab Technician Trainee

**VOLUNTEER WORK (Alaska, only): V=Volunteer/Community Service P=Practicum/Master Social Work**

AK State Court Mediation Task Force	1998-97	V	Member (appointed)
Alaska Psychiatric Institute	1995-96	P	MSW Intern (selected)
AK Dispute Settlement Association	1996	V	Legislative Chair (appointed)
Alpha Kappa Delta (honor society)	1994-96	V	Coordinator (appointed)
Community Dispute Resolution Center	1994-96	V	Mediator/Mentor/Advisor
AK Dispute Settlement Association	1996	V	President of Board (elected)
Alaska Women's Conference	1995	V	Presenter (selected)
Domestic Violence/Mediation Lecture	1995	V	Chair/Coordinator
AK Dispute Settlement Association	1994	V	Coordinator (appointed)
Community Advocacy Project Alaska	1993-94	V	Board Member (selected)
AK State Assoc. Guardians/Advocates	1993-94	V	Board Member (selected)
AK Office of Public Advocacy	1993-94	V	Visitor-Wards of State
AK State Court Forms Committee	1990-93	V	Member (appointed)
AK Bar Association	1982-93	V	Instructor: Civil Procedure
AK Assoc. of Legal Assistants	1982-85	V	Instructor: Civil Procedure
AK Legal Secretaries Association	1982-84	V	Instructor: Civil Procedure
State Paralegal Committee	1982-85	V	Member (appointed)
AK Association of Legal Assistants	1977-85	V	Co-founder/Organizer/Agent
Anchorage School District	1980-81	V	Instructor/Guest Speaker



## NEWSLETTER

Association of Family and Conciliation Courts

An International Association of Judges, Counselors, Court Evaluators, Mediators, and Lawyers

Issue 14, Number 1  
Fall 1995

AFCC  
329 W. Wilson St.  
Madison, WI 53703  
(608) 251-4001  
FAX (608) 251-2231

# NEWS!

## Survey Finds California Family Courts Offer Wide Range of Services

In addition to California's mandatory mediation in child custody and visitation disputes, a large number of other ADR methods are also being provided by Family Court Services. These ADR methods are being provided not only to the family court, but also to juvenile, probate, and civil courts, according to *Survey of California Courts: Alternative Dispute Resolution (ADR) and Auxiliary Services*.

With more than 73,000 child custody mediation sessions a year, California's statewide mandatory child custody mediation program is the largest in the United States. This survey shows that in addition to this service, many of California's family courts have expanded mediation to resolve other family or domestic matters, such as guardianship, conservatorship, dependency, child support, or property settlement.

Among the survey's findings:

- Seventy-eight percent of the courts surveyed provide mediation for other disputes in addition to child custody;
- Seventy percent conduct mediation in guardianship cases;
- Twenty percent provide mediation for juvenile dependency cases;
- Twenty percent provide mediation for property disputes;
- Seventeen percent provide mediation for civil disputes;
- Eleven percent provide mediation for child support issues;
- Ninety-eight percent provide some type of evaluation or investigation services to the court;
- Seventy-six percent provide settlement conferences in family matters;

- Eighty percent of the courts provide auxiliary services, such as counseling, referrals, or assessments to the court.

Family Court Services conducted the statewide ADR study to determine the number and types of non-custody ADR forums operating in California courts. The study also identified the providers of the ADR services, the number of cases and the year each service was established. In addition, the study collected data on the types of settlement conferences, evaluations, assessments, investigations, counseling, and screening that are used to settle a matter out of court or to provide information to the court. Of 58 California superior courts, 48 participated in the study.

*A Survey of California Courts: Alternative Dispute Resolution (ADR) and Auxiliary Services* is available from the Statewide Office of Family Court Services. Contact: (415) 396-9153.

## Study Finds Mediation Contributes Toward Violence Reduction

An analysis of over 250 separating and divorcing parents in the Hamilton Unified Family Court Mediation Pilot Project found that "mediation makes a greater contribution toward preventing post-processing abuse of separated women by their ex-partners than lawyer negotiations."

The evaluation was designed to provide a comprehensive description and assessment of the Family Mediation Pilot Project to identify strengths and weaknesses of mediation, with particular attention to the risks mediation poses to women in comparison with the lawyer/court process.

The project studied a mediation model which addresses custody, access, support and property issues. Mediators in the project were assisted by a panel of family law practitioners who acted as consultants to the mediation service. Parents were interviewed before the lawyer/court process and the mediation process, and 12 months after completion of the process. Parents self-selected either mediation or lawyer/court processing of their dispute.

Among the research findings:

- The incidence of physical abuse is high among separating partners. Four out of every ten wives reported physical abuse to the mediators and lawyers who processed their separation.
- Mediation clients reported greater post-processing decreases in verbal and emotional abuse than clients of lawyers.
- Mediation makes a greater contribution towards decreasing post-processing physical and emotional abuse than does lawyer negotiations.
- Males and females in the mediation sample did not differ significantly with respect to power imbalances as measured in the study.
- Females in the mediation sample are more successful than female clients of lawyers in obtaining the amount of child support they want.
- Females in the lawyer sample are more successful than female mediation clients in obtaining sole custody.

- Settlement rates are poor predictors of satisfaction rates among clients of both lawyers and mediators.
- Mediation clients make more fully informed choices than lawyer clients.

Researchers caution that the mediation model used in Hamilton contained numerous safeguards to ensure safety and protection of clients. There was also rigorous adherence to detailed policies and procedures designed to detect abuse and power imbalances and to ensure the protection of clients' legal rights. These findings may differ when compared to other models of mediation.

For additional information about the study contact:

Professor Desmond Ellis  
LaMarsh Research Center  
York University  
217 York Lanes  
North York, Ontario M3J 1P3  
CANADA

## Adult Guardianship Mediation Project

As reported in the AFCC Newsletter (Summer, 1994) TCSG has been mediating guardianship disputes between parents and

TCSG will develop curriculum, materials and provide training for two trainers from each pilot site.

In obtaining sole custody.

## Adult Guardianship Mediation Project Funded

The Center for Social Gerontology (TCSG) in Ann Arbor, MI, in cooperation with the National Institute for Dispute Resolution (NIDR), has received funding from the Retirement Research Foundation to further the development of pre-trial mediation of adult guardianship disputes.

As reported in the AFCC Newsletter (Summer, 1994) TCSG has been mediating guardianship disputes between parents and adult children. The replication project will allow TCSG to help implement mediation of adult guardianship cases at four pilot sites: the Center for Conflict Resolution, Chicago, IL; Administrative Office of the Courts/Mediation and Diversion Services, Tampa, FL; New Mexico Center for Dispute Resolution, Albuquerque, NM; and Human Network Systems, Inc./The Cadence Group, Colorado.

TCSG will develop curriculum, materials and provide training for two trainers from each pilot site.

For information about the project contact:

Susan Hartman  
The Center for Social Gerontology  
2307 Shelby Avenue  
Ann Arbor, MI 48103-3803  
Tel: (313) 865-1128  
Fax: (313) 865-2071



368  
100

JUDICIARY COMMITTEE  
DELIVERY ACCEPTANCE LOG

MEETING DATE \_\_\_\_\_

BILL NUMBERS HP 1000

LEGISLATOR      ACCEPTED BY      TIME      DATE.....

SEN. GREEN.      James Green      8:50      4/15/96

SEN. MILLER.      [Signature]

SEN. ADAMS.      [Signature]

SEN. ELLIS      [Signature]

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 314(JUD) am

Revision Date: April 9, 1996

Dept. Affected: Public Safety

Title: Violating Domestic Violence Orders

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Parnell

Requestor: S. Judiciary

COMPONENT SERIAL NO. 0799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
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-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact \$ \_\_\_\_\_

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary )**

This bill will not have a fiscal impact on the Division of Alaska State Troopers. The troopers currently respond to complaints of violating a domestic violence restraining order, this bill will clarify violations of the order.

Prepared By: Lt. Dan Lowden

Phone: 365-5505

Division: Alaska State Troopers

Date: April 9, 1996

Approved by Commissioner: *Dee Smith*  
Agency: Ronald L. Oite, Department of Public Safety

Date: 4/9/96

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

Public Testimony HB 314  
April 15, 1996  
To: Senate Judiciary Committee Members  
From: Meghan Sullivan  
Box 1537  
Bethel, AK 99559

Although I was not able to get on-line during the teleconference, I would still like to share with you my views about HB 314. As a former legal advocate and the current community educator at the Tundra Women's Coalition in Bethel, I am pleased to see the inclusion of the expansion of protective orders and the increased training for public employees who interact with victims of domestic violence. Expanding protection orders allows victims more avenues towards safety. With increased training, public employees will gain a deeper understanding of the dynamics of violence, and in turn will be able to offer a stronger support network to victims. Both of these provisions promote the safety and support of domestic violence victims by telling them that they are not alone in their struggle to regain control of their own lives and to live free of violence and abuse.

Please look more closely into the issue of court ordered mediation when there is a finding of domestic violence. This provision is not consistent with the others that support victims of domestic violence. We know that in domestic violence, the abusive partner has considerable power and control, both physically and emotionally in the relationship. Many victims relate to us that they learned to shut their mouths in order to survive. This being the case, there is absolutely no balance of power and there can be no equality in mediation if one partner has been scared into silence.

The psychological and emotional damage done to victims of domestic violence is present long after the bruises heal. Asking them to participate in mediation with their abusive partner is like opening old wounds that are trying so desperately to heal.

I support your efforts in helping victims of violence and I hope you will look again at mediation and remove this part of the Bill.

Thank you.





# STATE of ALASKA

*Bethel Legislative Information Office*

PO Box 896  
Bethel, Alaska 99559  
(907) 543-3541  
Fax- 543-3542

## Written Testimony for the Record

TCN: 60746

Committee: Senate Judiciary

Date: 4/12/96

Bill Number(s): HB 314

Subject(s): Violating Domestic Violence Orders

**Please enter my testimony into the record.**

See attached  
Testifier's name (s):

T.W.C.  
Representing (opt.)

Address

543-2453  
Phone

## Public Testimony form HB314

Thank you for the opportunity to comment on this piece of legislation. My name is Carmen Lowry, and I am the Executive Director of Tundra Women's Coalition. We are an agency providing services to victims of domestic violence and sexual assault in the Yukon-Kuskokwim Delta Region. I believe that this comprehensive bill provides a thoughtful blueprint for protecting victims of domestic violence, and will, perhaps, be instrumental in shifting public perception of this crime. In particular, I commend you for placing more responsibility on Dept. of Corrections to inform victims when perpetrators will be released from incarceration or when a perpetrator is eligible for parole. Research tells us that women are more likely to be killed or injured *after* they leave an abusive relationship. Consequently, this type of notification is essential to ensure victim safety.

I want to encourage to look more thoughtfully at the provisions that require court ordered mediation. I entreat you to include language that would prohibit court ordered mediation in cases where domestic violence is present between the parties. Mediation is more than just inappropriate for battered women; in many situations, it is extremely dangerous. Cases where domestic abuse is the presenting problem should not be mediated because there is no mechanism to hold the abuser accountable for his prior actions or to prevent future abuse. In fact, failure to sanction the abuse will result in its perpetration.

Thank you for your time and energy.

Carmen Lowry  
Tundra Women's Coalition  
P.O. Box 1537  
Bethel, Alaska 99559



To: Senate Judiciary  
April 15, 1996

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. Work draft SCS CSHB 314 -  
version W dated 4/13/98

Revision Date: \_\_\_\_\_  
Title: Domestic violence

Dept. Affected: Alaska Court System  
BRU: Trial Courts

Sponsor: Reps. Parnell, Robinson, Bunde, Elton...  
Requestor: \_\_\_\_\_

Component: \_\_\_\_\_  
COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	66.7	66.7	66.7	66.7	66.7	66.7
TRAVEL	25.7	25.7	25.7	25.7	25.7	25.7
CONTRACTUAL	0.9					
SUPPLIES	7.2					
EQUIPMENT	8.0					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>108.5</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**Fund Source**

(Thousands of Dollars)

Fund Source	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 OF Match						
1004 OF	108.5	92.4	92.4	92.4	92.4	92.4
1005 OF/Program Receipts						
1037 OF/Mental Health						
Other						
<b>TOTAL</b>	<b>108.5</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>	<b>92.4</b>

Estimate of any current year (FY 96) cost: None

**Positions**

Positions	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Full-Time						
Part-Time	6.0	6.0	6.0	6.0	6.0	6.0
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel  
Agency: Alaska Court System

Phone: 264-8228  
Date: 04/15/98

Approved by: Arthur H. Snowden, II, Administrative Director  
Agency: Alaska Court System

Date: 04/16/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court SystemFiscal AnalysisWork draft SCS CSHB 314 - version W dated 4/13/96Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Sections 8, 11 &amp; 29 (In-Person Hearing)</u>			
Superior Court Judge Pro Tem, 50% vested, PPT, (25% of filings aff	\$5,737	\$3,537	\$9,274
In-Court Clerk, range 12A, PPT	2,725	1,236	3,961
(25% of current criminal filings will be affected by the bill, 1/2 of these will require 15 minute hearing)			
<u>Section 33 (Extended Orders)</u>			
Standing Master, range 24A, PPT	17,583	8,137	23,720
In-Court Clerk, range 12A, PPT	7,813	3,544	11,357
Court Clerk II, range 10A, PPT	554	265	819
(25% of current criminal filings will result in extended orders, 1/2 will require an additional 30 minutes of hearing)			
<u>Section 33 (Peace Officer Request)</u>			
Court Clerk II, range 10A, PPT	303	147	455
(Expecting 100 additional case filings, which will require 15 minutes of clerical processing time)			
<u>Section 33 (Prohibit Mutual Orders)</u>			
Standing Master, range 24A, PPT	2,816	983	3,799
In-Court Clerk, range 12A, PPT	1,251	568	1,819
Court Clerk II, range 10A, PPT	1,108	530	1,638
(Expecting 8% increase in case filings, which will require 15 minutes of courtroom time and clerical processing time)			
<u>Section 33 (Prohibit Mutual Orders (Respondent's Petition))</u>			
Standing Master, range 24A, PPT	1,408	491	1,899
In-Court Clerk, range 12A, PPT	626	284	910
Court Clerk II, range 10A, PPT	554	265	819
(Expecting 50% increase in orders on increased filings, which will require 15 minutes of courtroom time and clerical processing time)			
<u>Section 33 (Forms and Clerical Assistance)</u>			
Court Clerk II, range 10A, PPT	2,303	1,100	3,403
(Expecting additional clerical assistance on 25% of new filings, which will require 15 minutes of clerical time)			
<u>Section 49 (Heightened Scrutiny)</u>			
Standing Master, range 24A, PPT	1,408	491	1,899
In-Court Clerk, range 12A, PPT	626	284	910
(10% of current dissolutions will require a 30 minutes hearing)			
<b>Estimated Total Personal Services</b>			<b>66,882</b>

TravelSection 33 (Forms and Clerical Assistance)

This legislation will require a complete revision of all domestic violence forms and instructions. The court Forms Committee will have to meet twice to accomplish the revision of 12 existing forms. These forms are used in all superior and district courts.

5,400

This legislation requires continuing education of judicial officers and staff. The court will lengthen existing conferences for judges, magistrates and clerks to accomplish this requirement. The court will use experts to conduct annual training conferences.

20,300

Estimated Total Travel

25,700

Alaska Court System

Fiscal Analysis

Work draft SCS CSHB 314 - version W dated 4/13/98

Contractual (one-time)

Postage for mailing new forms and instructions 5900

Supplies (one-time cost)

Paper and duplication supplies for new forms and instructions 7,200

Equipment (one-time cost)

Section 33 (Peace Officer Request)

20 portable tape recorders for hearings 8,000

Estimated Total Cost \$108,482

---

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

---

130 Seward Street, No. 501 • 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)  
Bereng Sea Women's Group (BSWG), Eemmonak Women's Shelter  
Kodiak Women's Resource & Crisis Center (KWRC)  
Marine Regional Women's Crisis Program, Parent Aid Family Support Center  
Safe & Fear Free Environment (SAFE), Seward Life Action Council (SLAC)  
Sitka's Against Family Violence (SAFV), South Peninsula Women's Services (SPWS)  
Standing Together Against Rape (STAR)  
Tongass Community Counseling Center, Tundra Women's Coalition (TWC)  
Unalakleet Against Sexual Assault & Family Violence (USAASFV)  
Valley Women's Resource Center (VWRC)  
Women in Crisis Counseling & Assistance (WCCA)  
Women in Safe Homes (WSH), Women's Resource & Crisis Center (WRCC)

---

## Opposition to Mediation

There are no standards to guide the outcome of the mediation process.

Mediators are unlicensed and usually untrained.

There is no accountability of mediators to the public.

Mediation places issues outside the legal system, removing them from the source of enforcement power of the state.

Mediation trivializes family law issues by relegating them to a lesser forum.

Mediation diminishes the public perception of the relative importance of laws addressing women's and children's rights in the family by placing these rights outside society's key institutional system of dispute resolution-the legal system- while continuing to allow corporate and other "important" matters to have unfettered access to that system.

Mediation is a private, nonappealable, nonenforceable approach to resolving differences that is not required to be and does not attempt to be consistent with any set of laws, and is not required to have consistent outcomes.

# ALASKA NETWORK

ON

# DOMESTIC VIOLENCE

AND

# SEXUAL ASSAULT

419 6th Street, No. 118 • 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)  
Bereng Sea Women's Group (BSWG), Emmonak Women's Shelter  
Kodiak Women's Resource & Crisis Center (KWRC)  
Marshall Regional Women's Crisis Program, Parent Aid Family Support Center  
Safe & Fear-Free Environment (SAFE), Seeward Life Action Council (SLAC)  
Stands Against Family Violence (SAFV), South Peninsula Women's Services (SPWS)  
Standing Together Against Rape (STAR)  
Tongass Community Counseling Center, Tundra Women's Coalition (TW)  
Unsettlers Against Sexual Assault & Family Violence (USAFV)  
Valley Women's Resource Center (VWRC)  
Women in Crisis Counseling & Assistance (WCCA)  
Women in Safe Homes (WSH), Women's Resource & Crisis Center (WRCC)

## ENDING INCIDENTS OF DOMESTIC VIOLENCE.

The mediation process assumes that solutions and agreements reached will end violent behaviors by solving the problems that cause the behavior.

Proponents of mediation assess the causes of violence as family dysfunction, stress reaction, inadequate coping response due to health or mental health problems, anger, frustration, crises such as unemployment, and addiction problems.

Advocates for victims of domestic violence assert that all of these "causes" for violence against women are false. The "causes" are merely excuses or justification for violent behavior. Many people experience each or some of these and do not batter women.

In their attempts to reach agreement, mediators frequently direct discussion to these issues or causes that are susceptible to compromise and hope that by resolving them, the bigger problem will go away. Agreements may not even address the issue of violent behavior directly. Or worse, mediation can open the door to inappropriate mediation of violence as a "bargaining chip" i.e., "if you don't hit her you can see the kids on Tuesday."

The mediation process assumes that each party will accept mutual responsibility for problems in past relationships. Recognizing mutual responsibility for problems continues to perpetuate the myth that women are, in part or totally, responsible for their own abuse and that the violent party was in some way justified in applying the violence. In fact, nothing is further from the truth. Violence in any form is unacceptable.

**ALASKA NETWORK ON  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

***Opposition to Mediation as a dispute resolution process in cases involving domestic violence:***

*National organizations opposed to mediation in cases involving domestic violence:*

1. Nat'l Council of Juvenile & Family Court Jdgs
2. The American Bar Association
3. The Academy of Family Mediators
4. The National Center on Women and Family Law

*Why is mediation suggested as the better approach to dispute resolution for divorce and custody cases?*

Theoretically it is because the components of a mediated agreement are selected based on the needs of the participants, not on some third party; because there is no arbitrary imposition of terms and conditions by an external source that may create resistance and testing; and because the act of choosing to agree gives the parties greater ownership of the solutions derived.

*What are some elements necessary for successful mediation?*

Equality of power                      Cooperation                      Voluntariness

*Why is mediation inappropriate in cases involving domestic violence?*

1. There is no equality of power between batterers and their wives. Men batter their wives to achieve power and control over them. Research demonstrates that even in marriages in which overt violence is minimal, male control of dialogue through techniques of intimidation, monopolization of speaking time, and the use of interruptions is commonplace.<sup>1</sup> A substantial number of divorcing women report that they are fearful of their spouses and forfeit legal rights because of their fear of property destruction, psychological abuse, or violence.<sup>2</sup>

2. A batterer is not someone who can cooperate. Cooperation, in common practice, means to act or work together for mutual benefit. A batterer understands mutual benefit as being the same as his exclusive self-interest. His partner's interests must be subsumed in or subordinate to his own if they are to be recognized.<sup>3</sup> Men who batter, from the moment they use violence or other coercive tactics of control and domination, have relinquished the option of cooperation.

3. Battered women are not free to choose. They are not free to elect or reject mediation if the batterer prefers it, not free to identify and advocate for components essential for her autonomy and safety and that of her children, and not free to terminate mediation when she concludes it is not working. She is ultimately not free to agree or disagree with the language of the agreement. Her apparent consent is under duress.<sup>4</sup> Battered women experience responses similar to those of victims in hostage situations. One such response is the fear that any resistance to the demands of the abuser will be met with terrible, life-endangering retribution. Victims may experience numbness or paralysis of feelings, usually concentrate on the needs of the terrorist rather than their own, and carefully comply with the demands of their captors. Each and all of these hostage-imposed psychological responses can persist long after the victim has escaped from the terrorist.<sup>5</sup>

---

<sup>1</sup> Fishman, P.M. "Interaction: The Work Women do." In *Language, Gender, and Society*. Rowley, Mass.: Newbury House, 1983.

<sup>2</sup> Kurz, D., and Coughley, K. "The Effect of Marital Violence on the Divorce Process." Paper presented at the meeting of the American Sociological Association, August 1989.

<sup>3</sup> Dobash, R.E., and Dobash, R.P. *Violence Against Wives*. New York: Free Press, 1979.

<sup>4</sup> Sun, M., and Woods, L.A. *Mediator's Guide to Domestic Abuse*. New York: National Center on Women and Family Law, 1989.

<sup>5</sup> Graham, D.L., Rawlings, E., and Rimini, N. "Survivors of Terror: Battered Women, Hostages, and the Stockholm Syndrome." In K. Yllo and M. Bograd (eds.), *Feminist Perspectives on Wife Abuse*. Newbury Park, CA: Sage, 1988.

**ALASKA NETWORK ON  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

Safety During the Mediation Process

Incidents of domestic violence and abuse do not stop once a victim has taken steps to separate herself from her abuser. The mediation process will not assure the continued safety and protection of victims from further violence during the mediation process.

A pilot study indicated that wives who are abused prior to separation are more likely to be abused after separation and that those who consult conciliatory lawyers report more and more serious forms of abuse. Additionally, some women who were not victims of domestic violence prior to separation or divorce proceedings reported incidence of abuse during proceedings.

-paper presented at the International Society for the Study of Aggression,  
Chicago, Illinois, July 1986

*A gunman killed his estranged wife and brother-in-law and held his 14 month old daughter hostage in the Family Conciliation Services office, an agency that mediates domestic disputes. The gunman was then shot by a police deputy while still holding his daughter.*

-Cleveland Associated Press-

From a random sample of all divorcing mothers (141 women) in Philadelphia, the following data were generated:

- 66% reported their ex-husbands were violent during the marriage on at least one occasion
- 56.2% reported repeated violence during the marriage and separation
- 36.9% reported that their ex-husbands beat them up
- 11.3% reported that their ex-husbands used a knife or a gun in the acts of violence

The men who were physically violent toward their wives during marriage were significantly less likely to sign an agreement for child support. Litigation was required to achieve a support order. A substantial percentage of women were fearful during divorce negotiations: 33% stated they were fearful of their ex-husbands during negotiations for custody, 22% during negotiations for support, 27.7% during negotiations for property. At least 13% gave up claims to child support or property due to their fear of violence.

-paper presented at the American Sociological Association Meeting 8/9/89

The structure of the mediation process requires that parties meet in joint sessions to "discuss" problems. A victim of domestic violence is required to be in a face to face confrontation with her abuser. Should any further incidents of domestic violence occur during the mediation process or as a result of the process, the State, having required or referred the victim to attend mediation, should be liable for injuries she sustains including her death.

*ALASKA NETWORK ON  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT*

Equity in Mediation Processes

A basic tenet of the mediation process is that disputants have equal bargaining power and can reach agreements that are equitable to both parties.

Violence, however, distorts the balance of power in a relationship. Violent men physically and psychologically coerce women by domination and intimidation. Women who are severely intimidated and frightened of violence are not able to make independent decisions in their own best interests or the best interests of their children. To assume a victim of domestic violence can sit down across the table from her batterer and negotiate an equitable agreement is totally unrealistic.

The practice of mediating wife abuse is widespread in several jurisdictions in the United States. Since experts estimate that one in three women is battered by her spouse, the problem of mediating domestic violence cases is not insignificant. It is difficult to imagine a situation in which the power imbalance between the spouses is more pronounced and the potential consequences of mediation more disastrous. It is grossly unrealistic to assume that women who have been subjected to a pattern of abuse will suddenly be able to articulate their needs and defend their positions in a face-to-face confrontation with their abuser. Apparently, many mediation experts fail to perceive the threat to the woman posed by the very presence of her abuser, much less that the abused woman's difficulty is asserting herself against her abuser will have a profound impact on mediation.

-University of Toronto Faculty Law Review  
Volume 46, Number 1, Winter 1988-

Victims of domestic violence, despite appearances of functioning adequately in other arenas of their lives, cannot be assumed to be competent to safeguard their own self interests in person-to-person negotiations with their abusers. The fear, humiliation, and pattern of deference is often so ingrained in their relationships that they automatically yield any decision-making to the more powerful person. The abusers, on the other hand, are able to exert control and domination by signals recognizable only by the subordinate party: gestures such as a clenched jaw or fist, frown, subtle body language or certain phrases. **THIS IS VICTIM INTIMIDATION.** Even the most sensitized mediator cannot be expected to identify and interpret the subtle innuendo of threat or coercion exerted by an abuser.

-Dr. Mildred Daley Pagelow, Chair California Council on Family Relations

Imposing mediation on battered women indicates a failure to appreciate the unequal power relationship between a batterer and his victim. In a custody dispute, a battered woman, already susceptible to pressure to make economic concessions for favorable arrangements, comes to the negotiations with unequal bargaining power, and no legal representation, and is expected to negotiate with her batterer "at arms length" while the criminal nature of the batterer's conduct is overlooked.

- Hofstra Law Review, Hofstra School of Law

**ALASKA NETWORK ON  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

Opposition to Mediation in Cases Involving Domestic Violence

**THE ABILITY TO MEDIATE**

Fairness depends on the ability of both parties to mediate safely and effectively. Since abused women learn to accommodate their partners' wishes to avoid or reduce injury and abuse, they may continue that pattern in mediation to the point of acquiescing to an unfair settlement. An abuser is unlikely to be an appropriate candidate for mediation. His belief that he is entitled to control his partner and determine her needs can severely diminish his ability to mediate.

The Toronto Forum on Woman Abuse and Mediation suggests these questions be asked in deciding whether a victim could engage in mediation:

1. What is the level of fear the victim has and to what extent will it lead to coerced and unfair concessions?
2. What is the extent to which a victim routinely and historically defers to the abuser?
3. To what extent does the victim believe she should forego equity and economic claims in order to remain the primary caregiver of the children?
4. To what extent may the victim be willing to waive legal rights in an attempt to bargain for her safety and autonomy?
5. To what degree have the parties shared financial information and decision-making throughout the relationship?
6. What is the victim's cognitive and emotional capacity to identify and represent her own interests when confronted with the competing interests of the abuser?

The Toronto Forum on Woman Abuse and Mediation suggests these questions be asked in deciding whether a batterer could engage in mediation:

1. Have acts of intimidation and abuse, and particularly acts of physical and sexual abuse stopped?
2. What is the abuser's level of acknowledgment of the abuse, his acceptance of responsibility and willingness to recognize the woman's interests as valid?
3. What are his patterns of retaliation when the victim has resisted the demands his demands?
4. What is the extent to which the abuser has rejected attitudes of entitlement and ownership regarding the victim?
5. To what extent can the abuser differentiate and acknowledge the interests of the victim?
6. To what extent has the abuser repudiated victim-blaming?
7. What is his flexibility in thinking and ability to compromise and make concessions?
8. What is his motivation to mediate (access to the victim, desire for reconciliation, need to control the negotiation process and coerce concessions, delay of the legal process, etc )

The Toronto Forum on Woman Abuse and Mediation report dated June 1993 states: *The vital interests of abused women and their children and the integrity of the practice of mediation require an acknowledgment that mediation can jeopardize the safety and well-being of abused women and their children. A rebuttable presumption against the use of mediation in cases of domestic violence is affirmed and should shape all policies and protocols regarding the specialized use of mediation in cases of abuse. This rebuttable presumption should be held until such time as on-going scientific research and replicated empirical data demonstrate the contrary.*

---

# ALASKA NETWORK

ON

# DOMESTIC VIOLENCE

AND

# SEXUAL ASSAULT

---

419 6th Street, No. 116 • 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)  
Berling See Women's Group (BSWG), Emmonas Women's Shelter  
Kodiak Women's Resource & Crisis Center (KWRC)  
Mendocino Regional Women's Crisis Program, Parent Aid Family Support Center  
Safe & Fear Free Environment (SAFE), Seward Life Action Council (SLAC)  
Sitka's Against Family Violence (SAFV), South Peninsula Women's Services (SPWS)  
Standing Together Against Rape (STAR)  
Tongass Community Counseling Center, Tundra Women's Coalition (TWC)  
Unalakleet Against Sexual Assault & Family Violence (USAASF)  
Valley Women's Resource Center (VWRC)  
Women in Crisis Counseling & Assistance (WCCA)  
Women in Safe Homes (WISH), Women's Resource & Crisis Center (WRCC)

---

## MEDIATOR BIAS

The mediation process assumes the mediator be able to provide fair and impartial assistance to victims of domestic violence. Their role is to assist parties in reaching an agreement that does not favor one over the other. However, the content and process of mediation will vary depending on the mediator, their philosophical view, knowledge of the law, experiences in group processes and conflict management, standard of ethics, perspective of the appropriate role of the mediator, and issues being resolved.

If the mediator is unaware of the myriad of issues involved in domestic violence situations, a fair and equitable outcome cannot be assured.

If the mediator does not understand the pattern of power, control and dominance by the abusive party or the fear, dependence and weakness of the victim, not only will the outcome of the mediation be compromised but the victim may be placed in further peril. Even with extensive training in domestic violence issues, elimination of mediator bias cannot be assured.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

419 6th Street, No. 116 • 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),  
Berling Sea Women's Group (BSWG), Emotional Women's Shelter,  
Kodiak Women's Resource & Crisis Center (KWRC),  
Manley Regional Women's Crisis Program, Parent Aid Family Support Center,  
Safe & Fear-Free Environment (SAFE), Seeward Life Action Council (SLAC),  
Sitka Against Family Violence (SAFV), South Peninsula Women's Services (SPWS),  
Standing Together Against Rape (STAR),  
Tongass Community Counseling Center, Tundra Women's Coalition (TW),  
Unassaulted Against Sexual Assault & Family Violence (USAASFV),  
Valley Women's Resource Center (VWRC),  
Women in Crisis Counseling & Assistance (WCCA),  
Women in Safe Homes (WSH), Women's Resource & Crisis Center (WRCC)

## SUCCESS OF MEDIATION

Continued research on mediation indicates that mediation does not reduce relitigation, does not increase long-term compliance with child support agreements or other custody arrangements and does not produce equitable agreements for each party.

A study surveyed three counties in New York State comparing mediation, attorney negotiation and judicial assisted custody disputes. The study found that within three to eight months after a settlement was reached, a significantly higher proportion of mediated respondents who had agreed to joint legal and physical custody were not sharing child care taking responsibility equally between the parents; that a significantly higher proportion of mediated disputes did not provide for child support; that women who mediated their divorce agreements were more likely to have both caretaking and economic responsibility for their children and that distribution of assets from the marriage were awarded in inequitable male to female ratios.

-Finger Lakes Law and Social Policy Center-

A study on mediated child support in Delaware found the mediated support orders were for less than orders issued from the courts.

-Center for Policy Research-

A study in Arizona found that mediation participants were actually more likely to file postdecree complaints than those pursuing their claims in the traditional court process.

-State Court Journal, National Center for  
State Courts-

## 1996 LEGISLATIVE SESSION

Revision Date: 4/20/96 Dept. Affected: Public Safety  
 Title: Domestic Violence Prevention and Victim Protection Act of 1996 BRU: CDVSA  
 Component: CDVSA  
 Sponsor: Rep. Parnell  
 Requestor: S. Judiciary COMPONENT SERIAL NO. \_\_\_\_\_

## EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	50.0	60.0	30.0	30.0	30.0	30.0
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>55.0</b>	<b>65.0</b>	<b>35.0</b>	<b>35.0</b>	<b>35.0</b>	<b>35.0</b>
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

## FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MHTIA						
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of current year (FY 96) impact: \$ \_\_\_\_\_

## POSITIONS:

FULL TIME	1 (10 months)	1	0	0	0	0
PART-TIME	0	0	5	5	5	5
TEMPORARY	0	0	0	0	0	0

ANALYSIS (Attach a separate page if necessary) | See attached

Prepared By: Jayne E. Anderson Phone: 907 465 4356  
 Division: Council on Domestic Violence and Sexual Assault Date: 4 20 96  
 Approved by Commissioner: Ronald L. Otte Date: 4/22/96  
 Agency: Ronald L. Otte, Department of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

## FISCAL NOTE

State of Alaska  
1996 Legislative Session

### ANALYSIS CONTINUED:

The cost to the Council for implementing the Domestic Violence Prevention and Victim Protection Act of 1996 will total \$55.0 for the first fiscal year.

A project coordinator to oversee the implementation of batterers' standards as developed by the Council, beginning in September, 1996. Range 18 position with fringe for 10 months = \$50.0

10 on-site trips to evaluate compliance of batterers' programs with standards. \$500/trip x 10 = \$5.0

This fiscal impact is based upon the following assumptions:

Implementation of the Council's Batterers Intervention Program Standards. The Council has been concerned over the past several years with the growing inconsistency between programs available for domestic violence perpetrators. Within the domestic violence movement it is understood that the only effective domestic violence offender programs must be based on a commitment to ensuring victim safety. They must hold offenders accountable for their violence, regardless of other life issues. Because this philosophy is not incorporated by many programs in Alaska, the Council worked with victim and offender service providers to develop standards for batterer's intervention programs. These standards were approved in March, 1995. The standards, as they currently exist, meet the guidelines for standards proposed within the model code. At this time, only the two programs funded in part by the Council have any requirement to abide by these standards.

The current bill requires the Court and Corrections to use batterers' programs that meet the standards established by the Council. A key element to the effectiveness of batterers' programs will be the implementation of the standards for state-wide consistency. The Council will hire a range 18 project coordinator to oversee the standardization of batterers' programs. Based on information from victim services, the Council estimates that 20-25 programs currently exist. A process will be established to review compliance with the standards that will consist of policy and procedure review and on-site evaluation. The Council will produce a list of appropriate programs for use by Corrections and the court system for ordering offenders into programs. The Council estimates that the first two years of this component will entail greater oversight in implementing the standards and establishing the core group of standardized programs. Beginning in the third year the project will enter a maintenance level of oversight, thereby reducing the need for a full-time coordinator.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB314

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to domestic violence..... BRU: All  
 Component: \_\_\_\_\_  
 Sponsor: Senate Judiciary  
 Requester: Senate Finance COMPONENT SERIAL NO. #0894

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	50.0	60.0	30.0	30.0	30.0	30.0
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>55.0</b>	<b>65.0</b>	<b>35.0</b>	<b>35.0</b>	<b>35.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	55.0	65.0	35.0	35.0	35.0	35.0
1005 GF Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>55.0</b>	<b>65.0</b>	<b>35.0</b>	<b>35.0</b>	<b>35.0</b>	<b>35.0</b>

Estimate of any current year (FY96) cost: 0

**POSITIONS**

FULL-TIME	1	1				
PART-TIME			1	1	1	1
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

The primary effect of this bill on the DOC will be to allow the department to clearly delineate domestic violence cases from assault related cases. It will allow the department to improve responsiveness for victim services and security as well as to offender treatment and rehabilitation.

This bill gives the Council On Domestic Violence And Sexual Assault the responsibility to establish standards for training and treatment programs. To accomplish these requirements, CDVSA will require the services of a project coordinator for 10 months beginning 9:96 and for all of FY 98. Once fully implemented, maintenance level oversight will require only a half time position. 85.0 in travel funds is required for on site compliance evaluation.

DCC will transfer by RSA the full amount allocated for these services to the Department of Public Safety. Council On Domestic Violence and Sexual Assault.

Prepared by: \_\_\_\_\_ Phone: 465-4652  
 Division: Office of the Commissioner Date: 4/23/96  
 Approved by Commissioner: Margaret M. Pugh Date: 4/23/96  
 Agency: Department of Corrections

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information, call the Governor's Legislative Office

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), version "W"

*OK*

- 1 Page 38, line 2, following "been":
- 2       Insert "issued or"
  
- 3 Page 41, line 31, following "comments":
- 4       Insert ", if any,"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

OK

1 Page 15, line 16, following "weapon":

2 Insert "if your abuser used, possessed, or threatened to use a deadly weapon during  
3 your abuse"

4 Page 15, line 18, following "person":

5 Insert "if your abuser used, possessed, or threatened to use a firearm during the  
6 commission of your abuse"

7 ~~Page 22, line 5, following "weapon":~~

8 ~~Insert "if the respondent used, possessed, or threatened to use a deadly weapon during  
9 the commission of the domestic violence"~~

10 ~~Page 22, line 7, following "respondent":~~

11 ~~Insert "if the respondent used, possessed, or threatened to use a firearm in the  
12 commission of the domestic violence"~~

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96



- 1 Page 19, line 6:
- 2 Delete "[11.56.740]"
- 3 Insert "11.56.740"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

1 Page 23, line 22:

2 Delete "AS 18.66.100(c)(1) - (12)"

3 Insert "AS 18.66.100(c)(1) - (5), (8) - (12),"

4 Page 24, line 6:

5 Delete "AS 18.66.100(c)(1) - (8)"

6 Insert "AS 18.66.100(c)(1) - (5), (8)"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

*OK*

1 Page 6, line 11, following "court":

2 Insert ", including ordering the person to refrain from the consumption of alcohol"

3 Page 7, line 22:

4 Delete "and"

5 Page 7, following line 22:

6 Insert a new paragraph to read:

7 "(2) require the defendant to refrain from the consumption of alcohol;

8 and"

9 Renumber the following paragraph accordingly.

10 Page 15, line 28:

11 Delete "alcohol or"

12 Page 22, line 20:

13 Delete "alcohol or"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CS HB 314( ), "W" version, dated 4/13/96

1 Page 23, line 13, following "petition.":

2 Insert "In granting a protective order under this section, a court may refuse to grant  
3 the relief provided under (c)(3) and (6) - (16) of this section due to the lapse of time between  
4 the domestic violence and the filing of the petition."

*if more than a year  
has elapsed*

*N10*

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

*OK*

1 Page 14, lines 4 - 9:

2 Delete all material and insert:

3 "(b) If a peace officer investigating a crime involving domestic violence  
4 determines that it is necessary to protect the victim or the victim's family from  
5 domestic violence or to protect the officer or the public during the investigation, the  
6 officer may (1) seize a deadly weapon in plain view of the officer, and (2) if a deadly  
7 weapon was used or threatened to be used in the domestic violence, seize all deadly  
8 weapons owned, used, possessed, or within the control of the alleged perpetrator. If  
9 the weapon is not needed as evidence, *via a crim case.* the law enforcement agency having custody of  
10 the weapon, within 24 hours of making the determination that the weapon is not  
11 needed as evidence, *via a crim. case* shall make the weapon available for pickup by the owner of the  
12 weapon during regular business hours."

A M E N D M E N T

OK

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

1 Page 22, line 5, following "weapon":

2 Insert "if the court finds that the respondent used, or threatened to use, a weapon in  
3 the domestic violence or in future domestic violence"

4 Page 22, line 7, following "respondent":

5 Insert "if the court finds that the respondent used, or threatened to use, a firearm in  
6 the domestic violence or in future domestic violence"



# S. T. A. R.

Business 907/276-7279  
24 Hour Crisis 907/276-7273  
Toll Free 1-800-476-8999  
TTY 907/278-9983

DATE: April 2, 1996

TO: Senate Judiciary Members  
Senator Robin Taylor, Chair  
Senator Lyda Green  
Senator Mike Miller  
Senator Johnny Ellis  
Senator Al Adams

FROM: *Trisha Gentle*  
Trisha Gentle, Executive Director

SUBJECT: HB 314

I strongly support HB 314. It is vital for victims to be treated with respect and given full and accurate information prior to talking with anyone concerning their case. This Bill provides the protection and respect to victims that they so deserve.

Thank you for your consideration.

**STANDING TOGETHER AGAINST RAPE**

1057 W. Fireweed, Suite 230 • Anchorage, Alaska 99503



A United Way Agency





# Public Opinion Message

Anchorage Legislative Information Office (LIO)  
716 W. 41st Avenue, Suite 200 Anchorage, AK 99501 • Phone: 258-5\*11 Fax 258-1261

**From:** Print your name and address as it appears on your voter registration card.

MS #	First Name	Last Name	City, State, Zip
95	Candice	Miller	9254 Kaurik
City	Anch, Ak		Zip
City	Anch, Ak		99515
Phone Number	279-9581		

**To:** Write an H or an S in a Committee box; put a / in a Caucus or Member's box.

Committees (circle H or S)	House members	Senate members
<input type="checkbox"/> Community & Regional Affairs (ca)	<input type="checkbox"/> Austerman (aub)	<input type="checkbox"/> Adams (ada)
<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Barnes (bar)	<input type="checkbox"/> Conway (con)
<input type="checkbox"/> Health, Ed. & Social Services (hes)	<input type="checkbox"/> Brice (br)	<input type="checkbox"/> Duncan (dun)
<input checked="" type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Brown (bro)	<input type="checkbox"/> Ellis (eli)
<input type="checkbox"/> Labor & Commerce (lbc)	<input type="checkbox"/> Burns (bur)	<input type="checkbox"/> Frank (fra)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Dimes (dim)	<input type="checkbox"/> Green (gre)
<input type="checkbox"/> Rules (ru)	<input type="checkbox"/> Davis, B. (dab)	<input type="checkbox"/> Haggard (hag)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Davis, G. (dag)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Elton (el)	<input type="checkbox"/> Kelly, T. (kel)
<input type="checkbox"/> Other:	<input type="checkbox"/> Finkolstein (fk)	<input type="checkbox"/> Leman (lem)
<input type="checkbox"/> Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Lincoln (lin)
<b>Caucuses</b>	<input type="checkbox"/> Green (grn)	<input type="checkbox"/> Miller (mil)
<input type="checkbox"/> Anchorage (ago)	<input type="checkbox"/> Grossenclort (gra)	<input type="checkbox"/> Pearce (pear)
<input type="checkbox"/> Out (out) -	<input type="checkbox"/> Harley (har)	<input type="checkbox"/> Phillips, R. (phr)
<input type="checkbox"/> Fairbanks (injection) (fs)	<input type="checkbox"/> Han (han)	<input type="checkbox"/> Ryege (rye)
<input type="checkbox"/> Ketchikan (ket)	<input type="checkbox"/> James (jam)	<input type="checkbox"/> Sajo (saj)
<input type="checkbox"/> Majority (maj)	<input type="checkbox"/> Kelly, P. (kpl)	<input type="checkbox"/> Sharp (shp)
<input type="checkbox"/> Minority (min)	<input type="checkbox"/> Keating (kat)	<input type="checkbox"/> Taylor (tay)
	<input type="checkbox"/> Kot (kot)	<input type="checkbox"/> Torgerson (tor)
	<input type="checkbox"/> Kubisa (kub)	<input type="checkbox"/> White (whi)
		<input type="checkbox"/> Zaroff (zar)

**Subject:** Enter a bill number and check one box below OR enter a subject.

Bill #	Bill number	and check one:	<input checked="" type="checkbox"/> Support	OR	Subject
	314		<input type="checkbox"/> Oppose		
			<input type="checkbox"/> Amend		

**Message:** \* This form MUST be completed and returned with a phone number. You may phone, fax, or deliver your POM to any LIO. Please print. Your message cannot exceed 50 words per line, and cannot contain any vulgar language.

Please	pass	this	bill	out
of	your	Comm.	The	protections
this	bill	provides	are	essential
to	victims.			

# Public Opinion Message

Anchorage Legislative Information Office (LIO)  
716 W. 4th Avenue, Suite 200 Anchorage, AK 99501 • Phone: 258-8111 Fax 258-1261

**From:** Print your name and address as it appears on your voter registration card.

Name	Lynn	Last Name	Williams
Home/Work Address	18230 Frank St		City
Mailing Address	Anch, AK		Zip Code
System Access Number	279-9581		

**To:** Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

Committees (circle #)	HOUSE MEMBERS	SENATE MEMBERS
<input type="checkbox"/> Community & Regional Affairs (ca) <input type="checkbox"/> Finance (fin) <input type="checkbox"/> Health, Ed. & Social Services (hes) <input checked="" type="checkbox"/> Judiciary (jud) <input type="checkbox"/> Labor & Commerce (l&c) <input type="checkbox"/> Resources (res) <input type="checkbox"/> Rules (rls) <input type="checkbox"/> State Affairs (sta) <input type="checkbox"/> Transportation (tra) <input type="checkbox"/> Other: <input type="checkbox"/> Other:	<input type="checkbox"/> Austerman (aust) <input type="checkbox"/> Barnes (bar) <input type="checkbox"/> Erbe (er) <input type="checkbox"/> Brown (bro) <input type="checkbox"/> Bunde (bun) <input type="checkbox"/> Davies (dav) <input type="checkbox"/> Davis, B. (dab) <input type="checkbox"/> Davis, G. (dgg) <input type="checkbox"/> Elton (elt) <input type="checkbox"/> Finzelstein (fsh) <input type="checkbox"/> Foster (fos) <input type="checkbox"/> Green (grn) <input type="checkbox"/> Grubbinton (gro) <input type="checkbox"/> Hanley (han) <input type="checkbox"/> Nash (nsh) <input type="checkbox"/> James (jam) <input type="checkbox"/> Kelly, P. (kpl) <input type="checkbox"/> Kuching (kuc) <input type="checkbox"/> Kott (kot) <input type="checkbox"/> Kudina (kud)	<input type="checkbox"/> Long (lng) <input type="checkbox"/> Macke (mak) <input type="checkbox"/> Martin (mar) <input type="checkbox"/> Masak (mas) <input type="checkbox"/> Moses (mos) <input type="checkbox"/> Muder (mud) <input type="checkbox"/> Narabo (nar) <input type="checkbox"/> Nichols (nic) <input type="checkbox"/> Ogan (oge) <input type="checkbox"/> Pamela (pal) <input type="checkbox"/> Phillips, G. (phg) <input type="checkbox"/> Parker (par) <input type="checkbox"/> Robinson (rob) <input type="checkbox"/> Rosenberg (roa) <input type="checkbox"/> Sanders (sar) <input type="checkbox"/> Thomsen (thr) <input type="checkbox"/> Tooley (tol) <input type="checkbox"/> Veley (vel) <input type="checkbox"/> Williams (wil) <input type="checkbox"/> Wile (wile)
<b>Caucuses</b> <input type="checkbox"/> Anchorage (aga) <input type="checkbox"/> Bush (bus) <input type="checkbox"/> Fairbanks (fai) (for) (inc) <input type="checkbox"/> Kodiak (kod) <input type="checkbox"/> Kenai (ken) <input type="checkbox"/> Municipality (muv)		<input type="checkbox"/> Adams (ada) <input type="checkbox"/> Donley (don) <input type="checkbox"/> Duncan (dun) <input type="checkbox"/> Ellis (eli) <input type="checkbox"/> Frank (fra) <input type="checkbox"/> Green (gre) <input type="checkbox"/> Hallford (hal) <input type="checkbox"/> Hoffman (hof) <input type="checkbox"/> Kelly, T. (kel) <input type="checkbox"/> Leman (lem) <input type="checkbox"/> Lincoln (lin) <input type="checkbox"/> Miller (mil) <input type="checkbox"/> Pearce (pear) <input type="checkbox"/> Phillips, R. (phr) <input type="checkbox"/> Rieger (rie) <input type="checkbox"/> Selio (sel) <input type="checkbox"/> Sharp (shp) <input type="checkbox"/> Taylor (tay) <input type="checkbox"/> Torgerson (tor) <input type="checkbox"/> Zharof (zha)

**Subject:** Enter a bill number and check one box below OR enter a subject.

H.R. or S.B.	Bill number	and check one:	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Attend	OR	Subject
	314				

**Message:** \* This form MUST be complete filed by, including a phone number. You may photocopy or deliver your POM to any LIO. Please PRINT. Your message cannot exceed 30 words (including punctuation) and cannot contain any vulgar language.

This	is	an	important and
crucial	bill.	Please	consider it
carefully	and	expedite	it through
the	legislative	process.	



9-LS1091W  
Luckhaupt  
4/13/96

SENATE CS FOR CS FOR HOUSE BILL NO. 314( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES PARNELL, Robinson, Bunde, Elton, Toohy, Ivan, Nicholia

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to domestic violence and to crime victims and witnesses;  
2 amending Rules 3, 4, 65, and 100, Alaska Rules of Civil Procedure, Rules 505  
3 and 613, Alaska Rules of Evidence, and Rule 9, Alaska Rules of Administration;  
4 and providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. SHORT TITLE. This Act shall be known as the Domestic Violence  
7 Prevention and Victim Protection Act of 1996.

8 \* Sec. 2. AS 09.60.070(c) is amended to read:

9 (c) In this section, "serious criminal offense" means the following offenses:

- 10 (1) murder in any degree;
- 11 (2) manslaughter;
- 12 (3) criminally negligent homicide;
- 13 (4) assault in any degree;
- 14 (5) kidnapping;

- 1 (6) sexual assault in any degree;  
2 (7) sexual abuse of a minor in any degree;  
3 (8) robbery in any degree;  
4 (9) coercion;  
5 (10) extortion;  
6 (11) arson in any degree;  
7 (12) burglary in any degree;  
8 (13) criminal mischief in the first, second, or third degree;  
9 (14) driving while intoxicated or another crime resulting from the  
10 operation of a motor vehicle, boat, or airplane when the offender is intoxicated;  
11 (15) a crime involving domestic violence, as defined in  
12 AS 18.66.990.

13 \* Sec. 3. AS 11.41.260(a) is amended to read:

14 (a) A person commits the crime of stalking in the first degree if the person  
15 violates AS 11.41.270 and

16 (1) the actions constituting the offense are in violation of an order  
17 issued or filed under AS 18.66.100 - 18.66.180 or issued under former  
18 AS 25.35.010(b) or 25.35.020;

19 (2) the actions constituting the offense are in violation of a condition  
20 of probation, release before trial, release after conviction, or parole;

21 (3) the victim is under 16 years of age;

22 (4) at any time during the course of conduct constituting the offense  
23 the defendant possessed a deadly weapon;

24 (5) the defendant has been previously convicted of a crime under this  
25 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another  
26 jurisdiction with elements similar to a crime under this section, AS 11.41.270, or  
27 AS 11.56.740; or

28 (6) the defendant has been previously convicted of a crime, or an  
29 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,  
30 11.41.300 - 11.41.460, AS 11.56.810, AS 11.61.120, or (B) a law or an ordinance of  
31 this or another jurisdiction with elements similar to a crime, or an attempt or

1 solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460,  
2 AS 11.56.810, or AS 11.61.120, involving the same victim as the present offense.

3 \* Sec. 4. AS 11.46.350(a) is amended to read:

4 (a) As used in AS 11.46.300 - 11.46.350, unless the context requires otherwise,  
5 "enter or remain unlawfully" means to

6 (1) enter or remain in or upon premises or in a propelled vehicle when  
7 the premises or propelled vehicle, at the time of the entry or remaining, is not open  
8 to the public and when the defendant is not otherwise privileged to do so;

9 (2) fail to leave premises or a propelled vehicle that is open to the  
10 public after being lawfully directed to do so personally by the person in charge; or

11 (3) enter or remain upon premises or in a propelled vehicle in violation  
12 of a provision in an order issued or filed under AS 18.66.100 - 18.66.180 or issued  
13 under former AS 25.35.010(b) or 25.35.020.

14 \* Sec. 5. AS 11.56.740(a) is amended to read:

15 (a) A person commits the crime of violating a

16 (1) protective order if the person is subject to a protective order  
17 containing a provision listed in AS 18.66.100(c)(1) - (7) and knowingly commits  
18 or attempts to commit an act in violation of that provision;

19 (2) domestic violence restraining order if [(1)] the person knowingly  
20 violates a provision of an order issued before July 1, 1996, under AS 25.35.010(b) or  
21 25.35.020

22 (A) restraining the person from communicating directly or  
23 indirectly with another, and

24 (B) [(2)] at the time the restraining order was issued, the court  
25 made a finding that the person had subjected another to domestic violence.

26 \* Sec. 6. AS 11.56.740 is amended by adding new subsections to read:

27 (c) It is not a defense to a prosecution under (a) of this section that the person  
28 who obtained the order initiated the contact or invited the defendant into the residence  
29 of that person, regardless of ownership of the residence, or into a propelled vehicle in  
30 the possession of or occupied by that person.

31 (d) In this section, "protective order" means an order issued or filed under

1 AS 18.66.100 - 18.66.180.

2 \* Sec. 7. AS 11.61.200(a)(8) is amended to read:

3 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining  
4 unlawfully on premises or in a propelled vehicle in violation of a provision of an order  
5 issued or filed under AS 18.66.100 - 18.66.180 or issued under former  
6 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a  
7 defensive weapon or a deadly weapon, other than an ordinary pocketknife;

8 \* Sec. 8. AS 12.25.030(b) is repealed and reenacted to read:

9 (b) In addition to the authority granted by (a) of this section, a peace officer

10 (1) shall make an arrest under the circumstances described in  
11 AS 18.65.530;

12 (2) without a warrant may arrest a person if the officer has probable  
13 cause to believe the person has, either in or outside the presence of the officer

14 (A) committed a crime involving domestic violence, whether the  
15 crime is a felony or a misdemeanor; in this subparagraph, "crime involving  
16 domestic violence" has the meaning given in AS 18.66.990;

17 (B) committed the crime of violating a protective order in  
18 violation of AS 11.56.740; or

19 (C) violated a condition of release imposed under AS 12.30.025  
20 or 12.30.027.

21 (3) without a warrant may arrest a person when the peace officer has  
22 reasonable cause for believing that the person has

23 (A) committed a crime under or violated conditions imposed as  
24 part of the person's release before trial on misdemeanor charges brought under

25 (i) AS 04.16.050 or an ordinance with similar elements.

26 or

27 (ii) AS 11.41.270.

28 (B) violated AS 04.16.050, however, unless there is a lawful  
29 reason for further detention, a person who is under the age of 18 and who has  
30 been arrested for violating AS 04.16.050 shall be cited for the offense and  
31 released to the person's parent, guardian, or legal custodian, or

1 (C) violated conditions imposed as part of the person's release  
2 before trial on felony charges brought under AS 11.41.410 - 11.41.455.

3 \* Sec. 9. AS 12.25.180(a) is amended to read:

4 (a) When a person is stopped or contacted by a peace officer for the  
5 commission of a misdemeanor or the violation of a municipal ordinance, the person  
6 may, in the discretion of the contacting peace officer, be issued a citation instead of  
7 being taken before a judge or magistrate under AS 12.25.150, unless

8 (1) the person does not furnish satisfactory evidence of identity;

9 (2) the contacting officer has reasonable and probable cause to believe  
10 the person is a danger to self or others;

11 (3) the crime for which the person is contacted is one involving  
12 violence or harm to another person or to property; [OR]

13 (4) the person asks to be taken before a judge or magistrate under  
14 AS 12.25.150; or

15 (5) the peace officer has probable cause to believe the person  
16 committed a crime involving domestic violence; in this paragraph, "crime  
17 involving domestic violence" has the meaning given in AS 18.66.990

18 \* Sec. 10. AS 12.30.025 is repealed and reenacted to read:

19 Sec. 12.30.025. RELEASE BEFORE TRIAL IN CASES INVOLVING  
20 STALKING. (a) In determining the conditions of release under AS 12.30.020 in  
21 cases involving stalking but not domestic violence, the court shall consider the  
22 following conditions and impose one or more conditions it considers reasonably  
23 necessary to protect the alleged victim of the stalking, including ordering the defendant

24 (1) not to subject the victim to further stalking;

25 (2) not to contact the victim other than through counsel;

26 (3) to engage in counseling; if the court directs the defendant to engage  
27 in personal counseling, the court shall provide in the order that the counseling must  
28 propose alternatives to aggression if that type of counseling is available.

29 (4) to refrain from the consumption of alcohol or the use of drugs.

30 (b) As used in this section,

31 (1) "domestic violence" has the meaning given in AS 18.66.990.

1 (2) "stalking" means a violation of AS 11.41.260 or 11.41.270.

2 \* Sec. 11. AS 12.30 is amended by adding a new section to read:

3 Sec. 12.30.027. RELEASE IN DOMESTIC VIOLENCE CASES. (a) Before  
4 ordering release before or after trial, or pending appeal, of a person charged with or  
5 convicted of a crime involving domestic violence, the court shall consider the safety  
6 of the alleged victim or other household member. To protect the alleged victim,  
7 household member, and the public and to reasonably assure the person's appearance,  
8 the court may impose bail and any of the conditions authorized under AS 12.30.020,  
9 any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition  
10 necessary to protect the alleged victim, household member, and the public, and to  
11 ensure the appearance of the person in court.

12 (b) A court may not order or permit a person released under (a) of this section  
13 to return to the residence of the alleged victim or the residence of a petitioner who has  
14 a protective order directed to the person and issued or filed under AS 18.66.100 -  
15 18.66.150.

16 (c) If the court imposes conditions of release under (a) of this section, it shall  
17 (1) issue a written order specifying the conditions of release;  
18 (2) provide a copy of the order to the person arrested or charged; and  
19 (3) immediately distribute a copy of the order to the law enforcement  
20 agency that arrested the person.

21 (d) When a person is released from custody under (a) of this section,

22 (1) from a correctional facility, the correctional facility shall notify the  
23 prosecuting authority and the prosecuting authority shall make reasonable efforts to  
24 immediately notify the alleged victim of the release, and to furnish the alleged victim  
25 with a copy of the order setting any conditions of release;

26 (2) from other than a correctional facility, the arresting authority shall  
27 make reasonable efforts to immediately notify the alleged victim of the release, and  
28 to furnish the alleged victim with a copy of the order setting any conditions of release.

29 (e) A person arrested for a crime involving domestic violence may not be  
30 released from custody until the person has appeared in person before a judicial officer  
31 or telephonically for arraignment.

1 (f) A person may not bring a civil action for damages for a failure to comply  
2 with the provisions of this section.

3 (g) In this section, "crime involving domestic violence" has the meaning given  
4 in AS 18.66.990.

5 • Sec. 12. AS 12.55.015 is amended by adding a new subsection to read:

6 (g) Notwithstanding (a) of this section, the court shall order the forfeiture to  
7 the commissioner of public safety or a municipal law enforcement agency of a deadly  
8 weapon that was in the actual possession of or used by the defendant during the  
9 commission of a crime involving domestic violence.

10 • Sec. 13. AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.101. ADDITIONAL CONDITIONS OF PROBATION FOR  
12 DOMESTIC VIOLENCE CRIMES. (a) Before granting probation to a person  
13 convicted of a crime involving domestic violence, the court shall consider the safety  
14 and protection of the victim and any member of the victim's family. If a person  
15 convicted of a crime involving domestic violence is placed on probation, the court may  
16 order the conditions authorized in AS 12.55.100 and AS 18.66.100(c)(1) - (7) and (11),  
17 and may

18 (1) require the defendant to participate in and complete to the  
19 satisfaction of the court one or more programs for the rehabilitation of perpetrators  
20 of domestic violence that meet the standards set by the Department of Corrections  
21 under AS 44.28.020(b), if the program is available in the community where the  
22 defendant resides; and

23 (2) impose any other condition necessary to protect the victim and any  
24 members of the victim's family, or to rehabilitate the defendant.

25 (b) If the defendant is not in custody, the defendant shall pay the costs of an  
26 evaluation or a program of rehabilitation ordered under (a)(1) - (2) of this section. If  
27 the defendant is in custody, the responsibility for costs shall be as provided in  
28 AS 33.30.028.

29 • Sec. 14. AS 12.55.135(c) is amended to read

30 (c) A defendant convicted of assault in the fourth degree committed in  
31 violation of the provisions of an order issued or filed under AS 18.66.100 - 18.66.180

1 or issued under former AS 25.35.010 or 25.35.020 shall be sentenced to a minimum  
2 term of imprisonment of 20 days.

3 \* Sec. 15. AS 12.55.185(3) is repealed and reenacted to read:

4 (3) "domestic violence" has the meaning given in AS 18.66.990;

5 \* Sec. 16. AS 12.61.015(a) is amended to read:

6 (a) If a victim of a felony or a crime involving domestic violence  
7 [ASSAULT] requests, the prosecuting attorney shall make a reasonable effort to

8 (1) confer with the person against whom the offense has been  
9 perpetrated about that person's testimony before the defendant's trial;

10 (2) in a manner reasonably calculated to give prompt actual notice,  
11 notify the victim

12 (A) of the defendant's conviction and the crimes of which the  
13 defendant was convicted;

14 (B) of the victim's right in a case that is a felony to make a  
15 written or oral statement for use in preparation of the defendant's presentence  
16 report, and of the victim's right to appear personally at the defendant's  
17 sentencing hearing to present a written statement and to give sworn testimony  
18 or an unsworn oral presentation;

19 (C) of the address and telephone number of the office that will  
20 prepare the presentence report, and

21 (D) of the time and place of the sentencing proceeding;

22 (3) notify the victim in writing of the final disposition of the case  
23 within 30 days after final disposition of the case;

24 (4) confer with the victim of a crime involving domestic violence  
25 concerning a proposed plea agreement before entering into an agreement

26 \* Sec. 17. AS 12.61.120(b) is amended to read:

27 (b) If the defendant is proceeding without counsel in a case involving a  
28 charged violation of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, 11.56.810,  
29 AS 11.61.190 - 11.61.210, or a crime involving domestic violence, [AS 11.56.810,  
30 OR 11.61.190 - 11.61.210] and the court finds that the defendant may pose a  
31 continuing threat to the victim of or witness to the offense charged, the court shall

1 protect the address and telephone number of the victim or witness by providing the  
2 information only to a person specified by the court or by imposing other restrictions  
3 that the court considers necessary. When an address or telephone number is released  
4 to a person specified by the court under this subsection, that person, who shall be  
5 ordered not to disclose the information to the defendant, shall contact the victim or  
6 witness on behalf of the defendant, and the defendant shall meet or speak with the  
7 victim or witness only in the presence of that person.

8 \* Sec. 18. AS 12.61.120(c) is amended to read:

9 (c) If a defendant or a person acting on behalf of a defendant  
10 [REPRESENTING THE DEFENDANT, INCLUDING THE DEFENDANT'S  
11 ATTORNEY OR A PERSON SPECIFIED BY THE COURT UNDER (b) OF THIS  
12 SECTION,] contacts the victim of an offense with which the defendant is or could be  
13 charged, the person shall clearly inform the victim

14 (1) of the person's identity and specific association with the defendant;

15 (2) that the victim does not have to talk to the person unless the victim  
16 wishes; and

17 (3) that the victim may have a prosecuting attorney or other person  
18 present during an interview.

19 \* Sec. 19. AS 12.61.120 is amended by adding new subsections to read:

20 (d) If a defendant or a person acting on behalf of a defendant wishes to make  
21 a recording of statements of the victim of an offense with which the defendant is or  
22 could be charged in this or another jurisdiction, or of a witness, the person shall, before  
23 recording begins, obtain the consent of the victim or witness to record the statement by  
24 clearly informing the victim or witness (1) of the information set out in (c) of this  
25 section, (2) that the statement will be recorded if the victim or witness consents, and (3)  
26 that the victim or witness may obtain a transcript or other copy of the recorded statement  
27 upon request. When recording begins, the person making the recording shall indicate in  
28 the recording that the victim or witness has been informed as required by this subsection,  
29 and the victim or witness shall state in the recording that consent of the victim or witness  
30 to the recording has been given.

31 (e) If a victim or witness requests a transcript or other copy of a recorded  
32 statement taken under (d) of this section, the defense shall prepare the transcript or other

1 copy and provide it to the person whose statement was recorded.

2 (f) In this section, "recording" means capturing a statement of a person, whether  
3 by magnetic tape or other electronic or electromagnetic means.

4 \* Sec. 20. AS 12.61 is amended by adding new sections to read:

5 Sec. 12.61.125. VICTIMS AND WITNESSES OF SEXUAL OFFENSES. (a)  
6 The defendant accused of a sexual offense, the defendant's counsel, or an investigator  
7 or other person acting on behalf of the defendant, may not

8 (1) notwithstanding AS 12.61.120, contact the victim of the offense or  
9 a witness to the offense if the victim or witness, or the parent or guardian of the victim  
10 or witness if the victim or witness is a minor, has informed the defendant or the  
11 defendant's counsel in writing or in person that the victim or witness does not wish to  
12 be contacted by the defense; a victim or witness who has not informed the defendant or  
13 the defendant's counsel in writing or in person that the victim does not wish to be  
14 contacted by the defense is entitled to rights as provided in AS 12.61.120;

15 (2) obtain a statement from the victim of the offense or a witness to the  
16 offense, unless,

17 (A) if the statement is taken as a recording, the recording is taken  
18 in compliance with AS 12.61.120; or

19 (B) if the statement is not taken as a recording, written  
20 authorization is first obtained from the victim or witness, or from the parent or  
21 guardian of the victim or witness if the victim or witness is a minor; the written  
22 authorization must state that the victim or witness is aware that there is no legal  
23 requirement that the victim or witness talk to the defense; a victim or witness  
24 making a statement under this subparagraph remains entitled to rights as provided  
25 in AS 12.61.120.

26 (b) A defendant who is the parent or guardian of a minor victim or witness may  
27 not provide the authorization required under (a) of the section.

28 (c) If an attorney, or a person acting on behalf of the defendant for an attorney,  
29 violates this section, the court shall refer the violation to the Disciplinary Board of the  
30 Alaska Bar Association as a grievance.

31 (d) In this section,

32 (1) "recording" has the meaning given in AS 12.61.120;

1 (2) "sexual offense" means a violation of AS 11.41.410 - 11.41.470.

2 Sec. 12.61.127. INADMISSIBILITY OF STATEMENTS TAKEN IN  
3 VIOLATION OF AS 12.61.120 or 12.61.125. A statement obtained from a victim or  
4 witness in violation of AS 12.61.120 or 12.61.125 is presumed inadmissible in a  
5 prosecution of the defendant. To overcome the presumption of inadmissibility, the  
6 defendant must prove by clear and convincing evidence that

7 (1) the statement is reliable;

8 (2) similar evidence is unavailable from any other source; and

9 (3) failure to introduce the statement would substantially undermine the  
10 reliability of the fact-finding process and result in manifest injustice.

11 \* Sec. 21. AS 12.61.900 is amended by adding new paragraphs to read:

12 (3) "crime involving domestic violence" has the meaning given in  
13 AS 18.66.990;

14 (4) "person acting on behalf of a defendant" includes the defendant's  
15 attorney, an agent of the defendant or the defendant's attorney, or a person specified by  
16 the court under AS 12.61.120(b) or an agent of that person, but does not include the  
17 defendant;

18 (5) "witness" means a person contacted in connection with a criminal  
19 case because the person may have knowledge or information about the criminal case.

20 \* Sec. 22. AS 12.62.900(22) is amended to read:

21 (22) "serious offense" means a conviction for a felony offense, a crime  
22 involving domestic violence, or a violation or attempted violation of any of the  
23 following laws, or of the laws of another jurisdiction with substantially similar  
24 elements:

25 (A) AS 11.41.410 - 11.41.470;

26 (B) AS 11.51.130(a)(1), (3), or (5);

27 (C) AS 11.61.110(a)(7);

28 (D) AS 11.66.100 - 11.66.130; or

29 (E) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -  
30 11.40.420, if committed before January 1, 1980.

31 \* Sec. 23. AS 12.62.900 is amended by adding a new paragraph to read:

32 (24) "crime involving domestic violence" has the meaning given in

1 AS 18.66.990.

2 \* Sec. 24. AS 18.65.240(a) is amended to read:

3 (a) A person may not be appointed as a police officer, except on a  
4 probationary basis, unless the person (1) has satisfactorily completed a basic program  
5 of police training approved by the council, which includes at least 12 hours of  
6 instruction regarding domestic violence as defined in AS 18.66.990, and (2)  
7 possesses other qualifications the council has established for the employment of police  
8 officers, including [BUT NOT LIMITED TO] minimum age, education, physical and  
9 mental standards, citizenship, moral character, and experience. The council shall  
10 prescribe the means of presenting evidence of fulfillment of these requirements.

11 \* Sec. 25. AS 18.65.242(b) is amended to read:

12 (b) The council shall

13 (1) prescribe the means of presenting evidence of fulfillment of the  
14 requirements set out in (a) of this section; and

15 (2) issue a certificate evidencing satisfaction of the requirements of (a)  
16 of this section to an applicant who

17 (A) satisfies the requirements of (a)(1) of this section; and

18 (B) meets the minimum education standards of (a)(2) of this  
19 section by satisfactorily completing a training program for correctional,  
20 probation, or parole officers established under AS 18.65.230, including  
21 training regarding domestic violence that contains the subjects set out in  
22 AS 18.66.310(d), or a course of instruction in another jurisdiction equivalent  
23 in content and quality to that required by the council for approved correctional,  
24 probation, or parole officer education and training programs in this state.

25 \* Sec. 26. AS 18.65.510 is amended to read:

26 Sec. 18.65.510. DOMESTIC VIOLENCE TRAINING. (a) Each established  
27 police training program in the state shall provide training that acquaints police officers  
28 with

29 (1) laws relating to substantive crimes and rules of criminal procedure  
30 applicable in cases involving domestic violence;

31 (2) techniques for handling incidents of domestic violence that promote

1 the safety of the victim and the officer and that reduce the likelihood of recurrence;

2 (3) the investigation and management of cases involving domestic  
3 violence and report writing for those cases;

4 (4) organizations in the state that offer aid or shelter to victims of  
5 domestic violence;

6 (5) [(4)] procedures applicable in the prosecution of cases involving  
7 domestic violence;

8 (6) [(5)] orders that may be issued by or filed with a court under  
9 AS 18.66.100 - 18.66.180 [AS 25.35.010 AND 25.35.020]; [AND]

10 (7) [(6)] the notification to be given to victims of domestic violence  
11 under AS 18.65.520; and

12 (8) the subjects set out in AS 18.66.310(d).

13 (b) In providing a training program under this section, each agency or  
14 institution offering an established police training program shall consult with the  
15 Council on Domestic Violence and Sexual Assault and interested individuals and  
16 organizations providing assistance to victims of domestic violence.

17 \* Sec. 27. AS 18.65 is amended by adding a new section to read:

18 Sec. 18.65.515. DUTIES OF PEACE OFFICER IN A CRIME INVOLVING  
19 DOMESTIC VIOLENCE. (a) A peace officer investigating a crime involving  
20 domestic violence shall protect the victim and any member of the victim's family and  
21 prevent further violence by

22 (1) transporting an adult victim and any member of the victim's family  
23 from the place of the offense or the place of contact, to a location within the  
24 community where the offense occurred that is a shelter, a safe home, or another  
25 location in the community requested by the victim;

26 (2) assisting the victim in removing from the residence essential items  
27 belonging to the victim, such as clothing, vehicles, medication, personal records, and  
28 legal documents;

29 (3) assisting the victim and any member of the victim's family in  
30 obtaining medical treatment necessitated by the offense, by contacting emergency  
31 medical services or by transporting the victim to a local medical facility, if available

1 in the community where the offense occurred; and

2 (4) providing notice of the rights of victims and services available to  
3 victims of domestic violence as provided in AS 18.65.520.

4 (b) A peace officer investigating a crime involving domestic violence may  
5 seize a deadly weapon in plain view of the officer, or otherwise discovered in a legal  
6 search, if the officer determines that seizure is necessary to protect the victim or the  
7 victim's family from domestic violence, or to protect the officer or the public during  
8 the investigation. The weapon shall be returned to the owner no sooner than 24 hours  
9 after the peace officer determines it is not needed as evidence.

10 \* Sec. 28. AS 18.65.520(a) is repealed and reenacted to read:

11 (a) A peace officer investigating a crime involving domestic violence shall  
12 orally and in writing inform the victim of the rights of victims of domestic violence  
13 and the services available to them. The notice must be in substantially the following  
14 form:

15 If you are the victim of domestic violence and you believe that  
16 law enforcement protection is needed for your physical safety, you have  
17 the right to request that the officer assist in providing for your safety,  
18 including asking for an emergency protective order.

19 You may also request the officer to assist you in obtaining your  
20 essential personal belongings and locating and taking you to a safe  
21 place, including a designated meeting place or shelter, the residence of  
22 a household member or friend, or a similar place of safety. In some  
23 places in Alaska there are organizations that provide aid and shelter to  
24 victims of domestic violence. The nearest organization is located at ..  
25 \_\_\_\_\_

26 If you are in need of medical treatment, you may request that  
27 the officer assist you in obtaining medical treatment.

28 You may obtain information about whether the prosecuting  
29 attorney will file a criminal complaint about the domestic violence.  
30 Additionally, the victim/witness assistance program of the Department  
31 of Law may be able to help you. This information is available from the

1 district attorney's office, which is located at \_\_\_\_\_

2 You also have the right to file a petition in court requesting a  
3 protective order that may include any of the following provisions:

4 (1) prohibit your abuser from threatening to commit or  
5 committing further acts of domestic violence;

6 (2) prohibit your abuser from stalking, harassing,  
7 telephoning, contacting, or otherwise communicating with you, directly  
8 or indirectly;

9 (3) remove your abuser from your residence;

10 (4) order your abuser to stay away from your residence,  
11 school, place of employment, or any other specified place frequented by  
12 you or another designated household member;

13 (5) prohibit your abuser from entering your vehicle or  
14 a vehicle you occupy;

15 (6) prohibit your abuser from using or possessing a  
16 deadly weapon;

17 (7) direct your abuser to surrender any firearm owned  
18 or possessed by that person;

19 (8) request a peace officer to accompany you to your  
20 residence to ensure your safe possession of the residence, vehicle, or  
21 other items, or to ensure your safe removal of personal items from the  
22 residence;

23 (9) award temporary custody of a minor child to the  
24 petitioner and may arrange for visitation with a minor child if the safety  
25 of the child and the petitioner can be protected;

26 (10) grant you possession and use of a vehicle and other  
27 essential personal effects;

28 (11) prohibit your abuser from consuming alcohol or  
29 controlled substances;

30 (12) require your abuser to pay support for you or a  
31 minor child in your care if there is an independent legal obligation of

1 your abuser to support you or the child;

2 (13) require your abuser to reimburse you for your  
3 expenses caused by domestic violence, including medical bills, or for  
4 your costs in getting a protective order;

5 (14) order your abuser to participate in an intervention  
6 program for batterers; and

7 (15) other relief the court determines to be necessary for  
8 your safety.

9 The forms you need to obtain a protective order are available  
10 from the nearest court. It is not necessary to have an attorney to obtain  
11 a protective order, but you may consult an attorney if you choose. If  
12 you would like help obtaining a protective order, you may contact the  
13 nearest domestic violence program located at \_\_\_\_\_. The  
14 program can also tell you about other resources available in this  
15 community for information about domestic violence, treatment of  
16 injuries, and places of safety and shelter.

17 You may also qualify for compensation from the Violent Crimes  
18 Compensation Board. The board may be contacted at \_\_\_\_\_

19 \_\_\_\_\_  
20 \* Sec. 29. AS 18.65 is amended by adding new sections to article 6 to read:

21 Sec. 18.65.530. MANDATORY ARREST FOR CRIMES INVOLVING  
22 DOMESTIC VIOLENCE, VIOLATION OF PROTECTIVE ORDERS, AND  
23 VIOLATION OF CONDITIONS OF RELEASE. (a) Except as provided in (b) or (c)  
24 of this section, a peace officer, with or without a warrant, shall arrest a person if the  
25 officer has probable cause to believe the person has, either in or outside the presence  
26 of the officer, within the previous 12 hours,

27 (1) committed domestic violence, except an offense under  
28 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

29 (2) committed the crime of violating a protective order in violation of  
30 AS 11.56.740;

31 (3) violated a condition of release imposed under AS 12.30.027.

1 (b) If a peace officer receives complaints of domestic violence from more than  
2 one person arising from the same incident, the officer shall evaluate the conduct of  
3 each person to determine who was the principal physical aggressor. If the officer  
4 determines that one person was the principal physical aggressor, the other person or  
5 persons need not be arrested. In determining whether a person is a principal physical  
6 aggressor, the officer shall consider

7 (1) prior complaints of domestic violence;

8 (2) the relative severity of the injuries inflicted on each person;

9 (3) the likelihood of future injury from domestic violence to each  
10 person; and

11 (4) whether one of the persons acted in defense of self or others.

12 (c) A peace officer is not required to make an arrest under (a) of this section  
13 if the officer has received authorization not to arrest from a prosecuting attorney in the  
14 jurisdiction in which the offense under investigation arose.

15 (d) When investigating a crime involving domestic violence, a peace officer  
16 may not threaten or suggest the possible arrest of all persons involved in the same  
17 incident in a manner that would have a tendency to discourage requests for  
18 intervention by law enforcement in incidents involving domestic violence.

19 (e) In addition to the contents of any other report, a peace officer who does  
20 not make an arrest after investigating a complaint of domestic violence, or who arrests  
21 two or more persons based on the same incident, shall describe in writing the reasons  
22 for not making an arrest or for arresting more than one person.

23 (f) A person may not bring a civil action for damages for a failure to comply  
24 with the provisions of this section.

25 Sec. 18.65.540. CENTRAL REGISTRY OF PROTECTIVE ORDERS. (a)  
26 The Department of Public Safety shall maintain a central registry of protective orders  
27 issued by or filed with a court of this state under AS 18.66.100 - 18.66.180. The  
28 registry must include for each protective order the names of the petitioner and  
29 respondent, their dates of birth, and the conditions and duration of the order. The  
30 registry shall retain a record of the protective order after it has expired.

31 (b) A peace officer receiving a protective order from a court under

1 AS 18.66.100 - 18.66.180, a modified order issued under AS 18.66.120, or an order  
2 dismissing a protective order, must take reasonable steps to ensure that the order,  
3 modified order, or dismissal is entered into the central registry within 24 hours after  
4 being received.

5 (c) A petitioner or respondent who is the subject of a protective order may  
6 request the Department of Public Safety to correct information about the order in the  
7 central registry. The person requesting the correction has the burden of proving that  
8 the information is inaccurate or incomplete. The person may appeal an adverse  
9 decision to the court under applicable court rules for appealing the decision of an  
10 administrative agency. On appeal, the appellant has the burden of showing that the  
11 department's action was an abuse of discretion. An appeal filed under this subsection  
12 may not collaterally attack a protective order, challenge the grounds upon which the  
13 order was based, or challenge the evidence submitted in support of the order.

14 (d) The Department of Public Safety may adopt regulations to implement this  
15 section.

16 (e) A person may not bring a civil action for damages for a failure to comply  
17 with the provisions of this section.

18 Sec. 18.65.590. DEFINITION. In AS 18.65.510 - 18.65.590, "domestic  
19 violence" has the meaning given in AS 18.66.990.

20 - Sec. 30. AS 18.65.705 is amended to read:

21 Sec. 18.65.705. QUALIFICATIONS TO OBTAIN A PERMIT. A person is  
22 qualified to receive and hold a permit to carry a concealed handgun if the person

23 (1) is 21 years of age or older;

24 (2) is eligible to own or possess a firearm under the laws of this state  
25 and under federal law;

26 (3) has not been convicted of and is not currently charged under a  
27 complaint, information, indictment, or presentment with a felony under the laws of this  
28 state or a similar law of another jurisdiction;

29 (4) has not been convicted, within the five years immediately preceding  
30 the application, of, and is not currently charged under a complaint, information,  
31 indictment, or presentment with any of the following misdemeanor offenses or similar

1 laws of another jurisdiction:

2 (A) AS 11.41.230, 11.41.250, 11.41.270;

3 (B) AS 11.46.315, 11.46.320, 11.46.330, 11.46.430, 11.46.484;

4 (C) AS 11.51.130;

5 (D) AS 11.56.330, 11.56.340, former AS 11.56.350, 11.56.380,  
6 11.56.545, 11.56.700, 11.56.710, [11.56.740,] 11.56.780, 11.56.790, 11.56.800,  
7 11.56.805;

8 (E) AS 11.61.110, 11.61.120, 11.61.210, 11.61.220, 11.61.240;

9 [OR]

10 (F) AS 11.71.050, 11.71.060; or

11 (G) a crime involving domestic violence as defined in  
12 AS 18.66.990;

13 (5) has not been convicted of two or more class A misdemeanors of  
14 this state or similar laws of another jurisdiction within the five years immediately  
15 preceding the application;

16 (6) has not within the 10 years immediately preceding the application  
17 been adjudicated a delinquent for a felony offense of this state or another jurisdiction;

18 (7) is not now suffering, and has not within the five years immediately  
19 preceding the application suffered, from a mental illness as defined in AS 47.30.915;

20 (8) has not been adjudicated as mentally incapacitated by a court of this  
21 state, another state, territory, or jurisdiction, or of the United States, unless the  
22 guardianship or similar arrangement has been closed or terminated and five years have  
23 elapsed since the closure or other termination;

24 (9) is a resident of the state and has been for the one year immediately  
25 preceding the application for a permit;

26 (10) has not been discharged from the armed forces of the United  
27 States under dishonorable conditions;

28 (11) is not an alien who is residing in the United States illegally or a  
29 former citizen of the United States who has renounced the person's citizenship;

30 (12) is not an unlawful user of, or addicted to, a controlled substance;

31 (13) is not now the respondent in a protective order under

1 AS 18.66.100 - 18.66.180 or the subject of an injunction under former AS 25.35.010  
2 - 25.35.020 unless the protective order or injunction has been dissolved or has  
3 expired:

4 (14) is not now in and has not in the three years immediately preceding  
5 the application been ordered by a court to complete an alcohol treatment program;

6 (15) is not now in and has not in the three years immediately preceding  
7 the application entered a substance abuse treatment program; and

8 (16) has demonstrated competence with handguns as provided in  
9 AS 18.65.715.

10 • Sec. 31. AS 18.65.735(a) is amended to read:

11 (a) The department shall immediately suspend a permit to carry a concealed  
12 handgun if a permittee is arrested for or formally charged with a crime that would  
13 disqualify the permittee under AS 18.65.705(3) - (4) from being eligible for a permit  
14 to carry a concealed handgun, [OR] is the respondent in a protective order under  
15 AS 18.66.100 - 18.66.180, or is the subject of an injunction under former  
16 AS 25.35.010 - 25.35.020. A suspension of a permit remains in effect until the permit  
17 is revoked under AS 18.65.740, the department has been notified of a disposition  
18 favorable to the defendant or the defendant has been released from custody without  
19 being charged, or the protective order under AS 18.66.100 - 18.66.180 or the  
20 injunction under former AS 25.35.010 - 25.35.020 is dissolved or expires without  
21 being renewed. In this subsection, "disposition favorable to the defendant" means a  
22 dismissal by the prosecutor or an adjudication by a court other than a conviction or a  
23 suspended imposition of sentence.

24 • Sec. 32. AS 18.66.050 is amended by adding new paragraphs to read:

25 (12) consult with the Department of Health and Social Services in the  
26 formulation of standards and procedures for the delivery of services to victims of  
27 domestic violence by health care facilities and practitioners of healing arts and  
28 personnel in those facilities as required in AS 18.66.300.

29 (13) consult with the Alaska Police Standards Council and other police  
30 training programs in the state to develop training programs regarding domestic violence  
31 for police officers and for correction, probation, and parole officers.

1 (14) consult with public employers, the Alaska Supreme Court, school  
2 districts, and prosecuting authorities who are required by AS 18.66.300 - 18.66.310 to  
3 provide continuing education courses in domestic violence to employees.

4 \* Sec. 33. AS 18.66 is amended by adding new sections to read:

5 ARTICLE 2. PROTECTIVE ORDERS.

6 Sec. 18.66.100. PROTECTIVE ORDERS: ELIGIBLE PETITIONERS;  
7 RELIEF. (a) A person who is or has been a victim of a crime involving domestic  
8 violence may file a petition in the district or superior court for a protective order  
9 against a household member. A parent, guardian, or other representative appointed by  
10 the court under this section, may file a petition for a protective order on behalf of a  
11 minor. The court may appoint a guardian ad litem or attorney to represent the minor.

12 (b) When a petition for a protective order is filed, the court shall schedule a  
13 hearing, and provide at least 10 days' notice to the respondent of the hearing and of  
14 the respondent's right to appear and be heard, either in person or by an attorney. If  
15 the court finds by a preponderance of evidence that the respondent has committed a  
16 crime involving domestic violence against the petitioner, regardless of whether the  
17 respondent appears at the hearing, the court may order any relief available under (c)  
18 of this section. The provisions of a protective order issued

19 (1) under (1), (2), (4), or (5) of this section are effective until further  
20 order of the court;

21 (2) under (3) or (6) - (16) of this section are effective for one year  
22 unless earlier dissolved by court order.

23 (c) A protective order under this section may

24 (1) prohibit the respondent from threatening to commit or committing  
25 domestic violence;

26 (2) prohibit the respondent from stalking or harassing the petitioner or  
27 telephoning, contacting, or otherwise communicating directly or indirectly with the  
28 petitioner;

29 (3) remove and exclude the respondent from the residence of the  
30 petitioner, regardless of ownership of the residence;

31 (4) direct the respondent to stay away from the residence, school, or

1 place of employment of the petitioner or any specified place frequented by the  
2 petitioner or any designated household member;

3 (5) prohibit the respondent from entering a propelled vehicle in the  
4 possession of or occupied by the petitioner;

5 (6) prohibit the respondent from using or possessing a deadly weapon;

6 (7) direct the respondent to surrender any firearm owned or possessed  
7 by the respondent;

8 (8) request a peace officer to accompany the petitioner to the  
9 petitioner's residence to ensure that the petitioner

10 (A) safely obtains possession of the petitioner's residence,  
11 vehicle, or personal items; and

12 (B) is able to safely remove a vehicle or personal items from  
13 the petitioner's residence;

14 (9) award temporary custody of a minor child to the petitioner and may  
15 arrange for visitation with a minor child if the safety of the child and the petitioner can  
16 be protected, if visitation is allowed, the court may order visitation under the  
17 conditions provided in AS 25.20.061;

18 (10) give the petitioner possession and use of a vehicle and other  
19 essential personal items, regardless of ownership of the items;

20 (11) prohibit the respondent from consuming alcohol or controlled  
21 substances;

22 (12) require the respondent to pay support for the petitioner or a minor  
23 child in the care of the petitioner if there is an independent legal obligation of the  
24 respondent to support the petitioner or child;

25 (13) require the respondent to reimburse the petitioner or other person  
26 for expenses associated with the domestic violence, including medical expenses,  
27 counseling, shelter, and repair or replacement of damaged property;

28 (14) require the respondent to pay costs and fees incurred by the  
29 petitioner in bringing the action under this chapter.

30 (15) order the respondent, at the respondent's expense, to participate in  
31 (A) a program for the rehabilitation of perpetrators of domestic violence that meets the

1 standards set by the Department of Corrections under AS 44.28.020(b) or (B) treatment  
2 for the abuse of alcohol or controlled substances, or both;

3 (16) order other relief the court determines necessary to protect the  
4 petitioner or any household member.

5 (d) If the court issues a protective order under this section, it shall

6 (1) make reasonable efforts to ensure that the order is understood by  
7 the petitioner and by the respondent, if present; and

8 (2) have the order delivered to the appropriate local law enforcement  
9 agency for expedited service and for entry into the central registry of protective orders  
10 under AS 18.65.540.

11 (e) A court may not deny a petition for a protective order under this section  
12 solely because of a lapse of time between an act of domestic violence and the filing  
13 of the petition.

14 Sec. 18.66.110. EX PARTE AND EMERGENCY PROTECTIVE ORDERS.

15 (a) A person who is a victim of a crime involving domestic violence may file a  
16 petition under AS 18.66.100(a) and request an ex parte protective order. If the court  
17 finds that the petition establishes probable cause that a crime involving domestic  
18 violence has occurred, it is necessary to protect the petitioner from domestic violence,  
19 and if the petitioner has certified to the court in writing the efforts, if any, that have  
20 been made to provide notice to the respondent, the court shall ex parte and without  
21 notice to the respondent issue a protective order. An ex parte protective order may  
22 grant the protection provided by AS 18.66.100(c)(1) - (12) and (16). An ex parte  
23 protective order expires 20 days after it is issued unless dissolved earlier by the court  
24 at the request of either the petitioner or the respondent and after notice and, if  
25 requested, a hearing, or unless extended by the court at the request of the petitioner.  
26 If the order is extended, the court shall enter into the record the reasons for the  
27 extension. If a court issues an ex parte protective order, the court shall have the order  
28 delivered to the appropriate local law enforcement agency for expedited service and  
29 for entry into the central registry of protective orders under AS 18.65.540.

30 (b) A peace officer, on behalf of and with the consent of a victim of a crime  
31 involving domestic violence, may request an emergency protective order from a

1 judicial officer. The request may be made orally or in writing based upon the sworn  
2 statement of a peace officer, and in person or by telephone. If the court finds probable  
3 cause to believe that the victim is in immediate danger of domestic violence based on  
4 an allegation of the recent commission of a crime involving domestic violence, the  
5 court ex parte shall issue an emergency protective order. In an emergency protective  
6 order, the court may grant the protection provided by AS 18.66.100(c)(1) - (8), (10),  
7 (11), and (16). An emergency protective order expires 72 hours after it is issued  
8 unless dissolved earlier by the court at the request of the petitioner.

9 (c) A peace officer who obtains an emergency protective order under (b) of  
10 this section shall

11 (1) place the provisions of an oral order in writing on a form provided  
12 by the court and file the written order with the issuing court by the end of the judicial  
13 day after it was issued;

14 (2) provide a copy of the order to the petitioner;

15 (3) serve a copy of the order on the respondent; and

16 (4) comply with the requirements of AS 18.65.540 for ensuring that the  
17 order is entered into the central registry of protective orders under AS 18.65.540.

18 (d) A court may not deny a petition for an ex parte protective order filed under  
19 (a) of this section solely because of a lapse of time between an act of domestic  
20 violence and the filing of the petition.

21 Sec. 18.66.120 MODIFICATION OF PROTECTIVE ORDERS (a) Either  
22 the petitioner or the respondent may request modification of a protective order. If a  
23 request is made for modification of

24 (1) an ex parte protective order under AS 18.66.110(a), the court shall  
25 schedule a hearing on three days' notice or on shorter notice as the court may  
26 prescribe; the court shall hear and rule on the request in an expeditious manner; or

27 (2) a protective order after notice and hearing under AS 18.66.100(b),  
28 the court shall schedule a hearing within 20 days after the date the request is made,  
29 except that if the court finds that the request is meritless on its face, the court may  
30 deny the request without further hearing.

31 (b) If a request for a modification is made under this section and the

1 respondent raises an issue not raised by the petitioner, the court may allow the  
2 petitioner additional time to respond.

3 (c) If the court modifies a protective order under this section, it shall issue a  
4 modified order and shall

5 (1) make reasonable efforts to ensure that the order is understood by  
6 the petitioner and by the respondent, if present at the hearing; and

7 (2) have the order delivered to the appropriate local law enforcement  
8 agency for expedited service and for entry into the central registry of protective orders  
9 under AS 18.65.540.

10 Sec. 18.66.130. SPECIFIC PROTECTIVE ORDERS. (a) If a respondent in  
11 a protective order issued under AS 18.66.100 - 18.66.180 is prohibited from  
12 communicating with the petitioner, excluded from the residence of the petitioner, or  
13 ordered to stay away from the petitioner as provided in AS 18.66.100(c)(2) - (5), an  
14 invitation by the petitioner to communicate, enter the residence or vehicle, or have  
15 other prohibited contact with the petitioner does not waive or nullify any provision in  
16 a protective order.

17 (b) A court may not grant protective orders against the petitioner and the  
18 respondent in the same action under this chapter.

19 (c) A court may not order parties into mediation or refer them to mediation  
20 for resolution of the issues arising from a petition for a protective order under  
21 AS 18.66.100 - 18.66.180.

22 (d) In addition to other required information contained in a protective order,  
23 the order must include in bold face type the following statements:

24 (1) "Violation of this order may be a misdemeanor, punishable by up  
25 to one year of incarceration and up to a \$5,000 fine";

26 (2) "If you are ordered to have no contact with the petitioner or to stay  
27 away from the petitioner's residence, vehicle, or other place designated by the court,  
28 an invitation by the petitioner to have the prohibited contact or to be present at or enter  
29 the residence, vehicle, or other place does not in any way invalidate or nullify the  
30 order.".

31 (e) A protective order issued under this chapter is in addition to and not in

1 place of any other civil or criminal remedy. A petitioner is not barred from seeking  
2 an order under AS 18.66.100 - 18.66.180 because of the existence of another civil  
3 action between the petitioner and respondent.

4 Sec. 18.66.140. FILING AND ENFORCEMENT OF PROTECTIVE ORDERS  
5 ISSUED IN OTHER STATES. (a) A certified copy of an unexpired protective order  
6 issued in another jurisdiction may be filed with the clerk of court in any judicial  
7 district in this state.

8 (b) A protective order filed in accordance with (a) of this section has the same  
9 effect and must be enforced in the same manner as a protective order issued by a court  
10 of this state.

11 (c) When a protective order is filed with the court under this section, the court  
12 shall have the order delivered to the appropriate local law enforcement agency for  
13 entry into the central registry of protective orders under AS 18.65.540.

14 Sec. 18.66.150. FORMS FOR PETITIONS AND ORDERS; FEES. (a) The  
15 Alaska Court System, after consulting with the Council on Domestic Violence and  
16 Sexual Assault and other interested persons and organizations, shall prepare forms for  
17 petitions, protective order and instructions for their use by a person seeking a  
18 protective order under this chapter. The forms must conform to the Alaska Rules of  
19 Civil Procedure, except that information on the forms may be filled in by legible  
20 handwriting.

21 (b) In addition to other information required, a petition for a protective order  
22 must include a statement of pending civil actions or domestic violence criminal actions  
23 involving either the petitioner or the respondent. While a protective order is in effect  
24 or a petition for protective order is pending, both the petitioner and respondent have  
25 a continuing duty to inform the court of pending civil actions or domestic violence  
26 criminal actions involving either the petitioner or the respondent.

27 (c) The office of the clerk of each superior and district court shall make  
28 available to the public under AS 18.66.100 - 18.66.180 the forms a person seeking a  
29 protective order under AS 18.66.100 - 18.66.180 may need and instructions for the use  
30 of the forms. The clerk shall provide assistance in completing the forms and filing the  
31 forms.

1 (d) Filing fees may not be charged in any action seeking only the relief  
2 provided in this chapter.

3 Sec. 18.66.160. SERVICE OF PROCESS. (a) Process issued under this  
4 chapter shall be promptly served and executed. If process is to be served upon a  
5 person believed to be present or residing in a municipality, as defined in AS 29.71.800,  
6 or in an unincorporated community, process shall be served by a peace officer of that  
7 municipality or unincorporated community who has jurisdiction within the area of  
8 service. If a peace officer of the municipality or unincorporated community who has  
9 jurisdiction is not available, a superior court, district court, or magistrate may designate  
10 any other peace officer to serve and execute process. A state peace officer shall serve  
11 process in any area that is not within the jurisdiction of a peace officer of a  
12 municipality or unincorporated community. A peace officer shall use every reasonable  
13 means to serve process issued under this chapter.

14 (b) Service of process under (a) of this section does not preclude a petitioner  
15 from using any other available means to serve process issued under this chapter.

16 (c) Fees for service of process may not be charged in a proceeding seeking  
17 only the relief provided in this chapter.

18 Sec. 18.66.170. NOTIFICATION OF LAW ENFORCEMENT AGENCIES.  
19 When a court issues or accepts for filing a protective order under this chapter, it shall  
20 send a copy of the order to the appropriate local law enforcement agency. Each law  
21 enforcement agency shall establish procedures to inform peace officers of protective  
22 orders. Peace officers shall use every reasonable means to enforce a protective order  
23 issued or filed under this chapter.

24 Sec. 18.66.180. CIVIL LIABILITY. A person may not bring a civil action for  
25 damages against the state, its officers, agents, or employees, or a law enforcement  
26 agency, its officers, agents, or employees for any failure to comply with the provisions  
27 of this chapter.

### 28 ARTICLE 3. EDUCATION AND PREVENTION.

29 Sec. 18.66.300. STANDARDS AND PROCEDURES FOR HEALTH CARE  
30 IN DOMESTIC VIOLENCE CASES (a) The Department of Health and Social  
31 Services shall adopt standards and procedures for the delivery of services to victims

1 of domestic violence by health care facilities and practitioners of the healing arts and  
2 personnel in those facilities. The standards and procedures shall be formulated in  
3 consultation with the Council on Domestic Violence and Sexual Assault, the  
4 Department of Commerce and Economic Development, private agencies that provide  
5 services for victims of domestic violence, and persons with expertise in providing  
6 health care and other services to victims of domestic violence.

7 (b) The Department of Health and Social Services shall make available to  
8 health care facilities and practitioners of the healing arts and personnel in those  
9 facilities a written notice of the rights of victims of domestic violence and the services  
10 available to them. The notice shall be substantially similar to the notice provided in  
11 AS 18.65.520(a).

12 (c) The Department of Health and Social Services may adopt regulations to  
13 implement and interpret this section.

14 Sec. 18.66.310. CONTINUING EDUCATION FOR PUBLIC EMPLOYEES,  
15 COURT SYSTEM EMPLOYEES, AND FOR PROSECUTING AUTHORITIES. (a)  
16 Employers of state or local public employees, including employees of public schools,  
17 shall, in consultation with the Council on Domestic Violence and Sexual Assault,  
18 provide continuing education in domestic violence for the public employees who are  
19 required by law to report abuse or neglect of children under AS 47.17.020.

20 (b) The administrative director of the Alaska Court System shall, in  
21 consultation with the Council on Domestic Violence and Sexual Assault, provide  
22 continuing education in domestic violence for judicial officers and court clerks who  
23 have contact with parties involved in domestic violence.

24 (c) The Department of Law and other prosecuting authorities in the state shall,  
25 in consultation with the Council on Domestic Violence and Sexual Assault, provide  
26 continuing education in domestic violence for prosecuting attorneys and other  
27 employees who have contact with persons involved in domestic violence.

28 (d) The continuing education required under (a) - (c) of this section must  
29 include information on the following subjects:

30 (1) the nature, extent, and causes of domestic violence;

31 (2) procedures designed to promote the safety of the victim and other

1 household members;

2 (3) resources available to victims and perpetrators of domestic violence;

3 and

4 (4) the lethality of domestic violence.

5 ARTICLE 4. GENERAL PROVISIONS.

6 Sec. 18.66.990. DEFINITIONS. In this chapter,

7 (1) "council" means the Council on Domestic Violence and Sexual  
8 Assault;

9 (2) "crisis intervention and prevention program" means a community  
10 program that provides information, education, counseling, and referral services to  
11 individuals experiencing personal crisis related to domestic violence or sexual assault  
12 and to individuals in personal or professional transition, excluding correctional half-  
13 way houses, outpatient mental health programs, and drug or alcohol rehabilitation  
14 programs;

15 (3) "domestic violence" and "crime involving domestic violence" mean  
16 one or more of the following offenses or a law or ordinance of another jurisdiction  
17 having elements similar to these offenses, or an attempt to commit the offense, by a  
18 household member against another household member:

19 (A) a crime against the person under AS 11.41;

20 (B) burglary under AS 11.46.300 - 11.46.310;

21 (C) criminal trespass under AS 11.46.320 - 11.46.330;

22 (D) arson or criminally negligent burning under AS 11.46.400 -  
23 11.46.430;

24 (E) criminal mischief under AS 11.46.480 - 11.46.486;

25 (F) terroristic threatening under AS 11.56.810;

26 (G) violating a domestic violence order under AS 11.56.740; or

27 (H) harassment under AS 11.61.120(a)(2) - (4);

28 (4) "domestic violence program" means a program that provides  
29 services to the victims of domestic violence, their families, or perpetrators of domestic  
30 violence;

31 (5) "household member" includes

- 1 (A) adults or minors who are current or former spouses;  
2 (B) adults or minors who live together or who have lived  
3 together;  
4 (C) adults or minors who are dating or who have dated;  
5 (D) adults or minors who are engaged in or who have engaged  
6 in a sexual relationship;  
7 (E) adults or minors who are related to each other up to the  
8 fourth degree of consanguinity, whether of the whole or half blood or by  
9 adoption, computed under the rules of civil law;  
10 (F) adults or minors who are related or formerly related by  
11 marriage;  
12 (G) persons who have a child of the relationship; and  
13 (H) minor children of a person in a relationship that is described  
14 in (A) - (G) of this paragraph;  
15 (6) "local community entity" means a city or borough or other political  
16 subdivision of the state, a nonprofit organization, or a combination of these;  
17 (7) "judicial day" means any Monday through Friday that is not a state  
18 holiday and on which the court clerk's offices are officially opened to receive legal  
19 documents for filing;  
20 (8) "petitioner" includes a person on whose behalf an emergency  
21 protective order has been requested under AS 18.66.110(b);  
22 (9) "sexual assault" means a crime specified in AS 11.41.410 -  
23 11.41.450;  
24 (10) "sexual assault program" means a program that provides services  
25 to the victims of sexual assault, their families, or perpetrators of sexual assault.

26 \* Sec. 34. AS 22.10.020(a) is amended to read:

- 27 (a) The superior court is the trial court of general jurisdiction, with original  
28 jurisdiction in all civil and criminal matters, including probate and guardianship of  
29 minors and incompetents. Except for a petition for a protective order [INJUNCTIVE  
30 RELIEF] under AS 18.66.100 - 18.66.180 [AS 25.35.010 OR 25.35.020], an action that  
31 falls within the concurrent jurisdiction of the superior court and the district court may

1 not be filed in the superior court, except as provided by rules of the supreme court.

2 \* Sec. 35. AS 22.15.030 is amended to read:

3 Sec. 22.15.030. CIVIL JURISDICTION. (a) The district court has jurisdiction  
4 of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration  
5 proceedings under AS 09.43.170, as follows:

6 (1) for the recovery of money or damages when the amount claimed  
7 exclusive of costs, interest, and attorney fees does not exceed \$50,000;

8 (2) for the recovery of specific personal property, when the value of  
9 the property claimed and the damages for the detention do not exceed \$50,000;

10 (3) for the recovery of a penalty or forfeiture, whether given by statute  
11 or arising out of contract, not exceeding \$50,000;

12 (4) to give judgment without action upon the confession of the  
13 defendant for any of the cases specified in this section, except for a penalty or  
14 forfeiture imposed by statute;

15 (5) for establishing the fact of death of any person in the manner  
16 prescribed in AS 09.55.020 - 09.55.060;

17 (6) for the recovery of the possession of premises in the manner  
18 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage  
19 to the property does not exceed \$50,000;

20 (7) for the foreclosure of a lien when the amount in controversy does  
21 not exceed \$50,000;

22 (8) for the recovery of money or damages in motor vehicle tort cases  
23 when the amount claimed exclusive of costs, interest, and attorney fees does not  
24 exceed \$50,000;

25 (9) over civil actions for taking utility service and for damages to or  
26 interference with a utility line filed under AS 42.20.030;

27 (10) over cases involving protective orders [INJUNCTIVE RELIEF]  
28 for domestic violence under AS 18.66.100 - 18.66.180 [AS 25.35.010 AND 25.35.020].

29 (b) Insofar as the civil jurisdiction of the district courts and the superior court  
30 is the same, the jurisdiction is concurrent. Except for a petition for a protective order  
31 [INJUNCTIVE RELIEF] under AS 18.66.100 - 18.66.180 [AS 25.35.010 OR

1 25.35.020], an action that falls within the concurrent jurisdiction of the superior court  
2 and the district court may not be filed in the superior court, except as provided by  
3 rules of the supreme court.

4 \* Sec. 36. AS 22.15.100 is amended to read:

5 Sec. 22.15.100. FUNCTIONS AND POWERS OF DISTRICT JUDGE AND  
6 MAGISTRATE. Each district judge and magistrate has the power

7 (1) to issue writs of habeas corpus for the purpose of inquiring into the  
8 cause of restraint of liberty, returnable before a judge of the superior court, and the  
9 same proceedings shall be had on the writ as if it had been granted by the superior  
10 court judge under the laws of the state in such cases;

11 (2) of a notary public;

12 (3) to issue marriage licenses and to solemnize marriages;

13 (4) to issue warrants of arrest, summons, and search warrants according  
14 to manner and procedure prescribed by law and the supreme court;

15 (5) to act as an examining judge or magistrate in preliminary  
16 examinations in criminal proceedings; to set, receive, and forfeit bail and to order the  
17 release of defendant's under bail;

18 (6) to act as a referee in matters and actions referred to the judge or  
19 magistrate by the superior court, with all powers conferred upon referees by laws;

20 (7) of the superior court in all respects including but not limited to  
21 contempts, attendance of witnesses, and bench warrants;

22 (8) to order the temporary detention of a minor, or take other action  
23 authorized by law or rules of procedure, in cases arising under AS 47.10, when the  
24 minor is in a condition or surrounding dangerous or injurious to the welfare of the  
25 minor or others that requires immediate action; the action may be continued in effect  
26 until reviewed by the superior court in accordance with rules of procedure governing  
27 these cases;

28 (9) to issue a protective order [TEMPORARY ORDER FOR  
29 INJUNCTIVE RELIEF] in cases involving domestic violence as provided in  
30 AS 18.66.100 - 18.66.180 [AS 25.35.010 AND 25.35.020];

31 (10) to review an administrative revocation of a person's driver's

1 license or nonresident privilege to drive, and an administrative refusal to issue an  
2 original license, when designated as a hearing officer by the commissioner of public  
3 safety and with the consent of the administrative director of the state court system.

4 \* Sec. 37. AS 22.20.110 is amended to read:

5 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF  
6 APPEALS, THE SUPERIOR COURT, AND DISTRICT COURTS. When required  
7 by the supreme court, and except as otherwise provided in AS 18.66.160  
8 [AS 25.35.040], the commissioner shall serve and execute all process issued by the  
9 court of appeals, the superior court, and the district courts; attend to and wait upon  
10 grand and petit juries; maintain order; attend the sessions of the courts; and exercise  
11 the power and perform the duties concerning all matters within the jurisdiction of the  
12 courts as may be assigned. The commissioner is the executive officer of the court of  
13 appeals, the superior court, and district courts.

14 \* Sec. 38. AS 25.20.060 is amended by adding a new subsection to read:

15 (d) If the court finds that a parent or child is a victim of domestic violence,  
16 the court may order that the address and telephone number of the parent or child be  
17 kept confidential in the proceedings.

18 \* Sec. 39. AS 25.20 is amended by adding a new section to read:

19 Sec. 25.20.061. VISITATION IN PROCEEDINGS INVOLVING DOMESTIC  
20 VIOLENCE. If visitation is awarded to a parent who has committed a crime involving  
21 domestic violence within the five years preceding the award of visitation, the court  
22 may set conditions for the visitation, including

23 (1) the transfer of the child for visitation must occur in a protected  
24 setting;

25 (2) visitation shall be supervised by another person or agency and under  
26 specified conditions as ordered by the court;

27 (3) the perpetrator shall attend and complete, to the satisfaction of the  
28 court, a program for the rehabilitation of perpetrators of domestic violence that meets  
29 the standards set by the Department of Corrections under AS 44.28.020(b), or other  
30 counseling; the perpetrator shall be required to pay the costs of the program or other  
31 counseling;

1 (4) the perpetrator shall abstain from possession or consumption of  
2 alcohol or controlled substances during the visitation and for 24 hours before visitation;

3 (5) the perpetrator shall pay costs of supervised visitation as set by the  
4 court;

5 (6) the prohibition of overnight visitation;

6 (7) the perpetrator shall post a bond to the court for the return and  
7 safety of the child; and

8 (8) any other condition necessary for the safety of the child, the other  
9 parent or other household member.

10 \* Sec. 40. AS 25.20.080(a) is amended to read:

11 (a) Except as provided in (f) and (g) of this section, at [AT] any time within  
12 30 days after a petition for child custody is filed under AS 25.20.060 the court may  
13 order the parties to submit to mediation. Each party has [SHALL HAVE] the right to  
14 challenge peremptorily one mediator appointed.

15 \* Sec. 41. AS 25.20.080 is amended by adding new subsections to read:

16 (f) The court may not order or refer parties to mediation in a proceeding  
17 concerning custody or visitation of a child if a protective order issued or filed under  
18 AS 18.66.100 - 18.66.180 is in effect. The court may not order or refer parties to  
19 mediation if a party objects on the grounds that domestic violence has occurred  
20 between the parties unless the court finds that the conditions of (g)(1) - (3) of this  
21 section are met.

22 (g) A mediator who receives a referral or order from a court to conduct  
23 mediation under (a) of this section shall evaluate whether domestic violence has  
24 occurred between the parties. A mediator may not engage in mediation when either  
25 party has committed a crime involving domestic violence unless

26 (1) mediation is requested by the victim of the alleged domestic  
27 violence;

28 (2) mediation is provided by a mediator who is trained in domestic  
29 violence in a manner that protects the safety of the victim and any household member,  
30 taking into account the results of an assessment of the potential danger posed by the  
31 perpetrator and the risk of harm to the victim; and

1 (J) the victim is permitted to have in attendance a person of the  
2 victim's choice, including an attorney.

3 \* Sec. 42. AS 25.20.110 is amended by adding a new subsection to read:

4 (c) In a proceeding involving the modification of an award for custody of a  
5 child or visitation with a child, a finding that a crime involving domestic violence has  
6 occurred since the last custody or visitation determination is a finding of change of  
7 circumstances under (a) of this section.

8 \* Sec. 43. AS 25.24.060(a) is amended to read:

9 (a) Except as provided in (f) and (g) of this section, at [AT] any time within  
10 30 days after a complaint or cross-complaint in a divorce action is filed, a party to the  
11 action may file a motion with the court requesting mediation, for the purpose of  
12 achieving a mutually agreeable settlement in termination of the marriage. When a  
13 party moves for settlement mediation, the other party shall answer the motion on the  
14 record, and the judge may order mediation. When no request for mediation is made,  
15 the court may at any time order the parties to submit to mediation if it determines that  
16 mediation may result in a more satisfactory settlement between the parties.

17 \* Sec. 44. AS 25.24.060 is amended by adding new subsections to read:

18 (f) The court may not order or refer parties to mediation in a divorce  
19 proceeding if a protective order issued or filed under AS 18.66.100 - 18.66.180 is in  
20 effect. The court may not order or refer parties to mediation if a party objects on the  
21 grounds that domestic violence has occurred between the parties unless the court finds  
22 that the conditions of (g)(1) - (3) of this section are met.

23 (g) A mediator who receives a referral or order from a court to conduct  
24 mediation under (a) of this section shall evaluate whether domestic violence has  
25 occurred between the parties. A mediator may not engage in mediation when either  
26 party has committed a crime involving domestic violence unless

27 (1) mediation is requested by the victim of the alleged domestic  
28 violence,

29 (2) mediation is provided by a mediator who is trained in domestic  
30 violence in a manner that protects the safety of the victim and any household member,  
31 taking into account the results of an assessment of the potential danger posed by the

1 perpetrator and the risk of harm to the victim; and

2 (3) the victim is permitted to have in attendance a person of the  
3 victim's choice, including an attorney.

4 \* Sec. 45. AS 25.24.140(b) is amended to read:

5 (b) During the pendency of the action, upon application, a spouse is entitled  
6 to necessary protective orders, including orders

7 (1) providing for the freedom of each spouse from the control of the  
8 other spouse;

9 (2) for protection under AS 18.66.100 - 18.66.180 [RESTRAINING  
10 EACH SPOUSE FROM SUBJECTING THE OTHER SPOUSE OR ANOTHER  
11 PERSON LIVING IN THE HOUSEHOLD TO DOMESTIC VIOLENCE,  
12 AS DEFINED IN AS 25.35.200];

13 (3) directing one spouse to vacate the marital residence or the home of  
14 the other spouse;

15 (4) restraining a spouse from communicating directly or indirectly with  
16 the other spouse;

17 (5) restraining a spouse from entering a propelled vehicle in the  
18 possession of or occupied by the other spouse; and

19 (6) prohibiting a spouse from disposing of the property of either spouse  
20 or marital property without the permission of the other spouse or a court order.

21 \* Sec. 46. AS 25.24.140(c) is amended to read:

22 (c) Except as provided in (d) and (e) of this section, after [AFTER] a  
23 hearing, if both parties agree, the court may also order that the parties engage in  
24 personal or family counseling or mediation. In the order, the court shall provide for  
25 the payment of the costs of the counseling or mediation.

26 \* Sec. 47. AS 25.24.140 is amended by adding new subsections to read:

27 (d) The court may not order or refer parties to mediation or family counseling  
28 under (c) of this section if a protective order issued or filed under AS 18.66.100 -  
29 18.66.180 is in effect. The court may not order or refer parties to mediation or family  
30 counseling if a party objects on the grounds that domestic violence has occurred  
31 between the parties unless the court finds that the conditions of (c)(1) - (3) of this

1 section are met.

2 (c) A mediator or family counselor who receives a referral or order from a  
3 court to conduct mediation under (c) of this section shall evaluate whether domestic  
4 violence has occurred between the parties. A mediator or family counselor may not  
5 engage in mediation when either party has committed a crime involving domestic  
6 violence unless

7 (1) mediation or family counseling is requested by the victim of the  
8 alleged domestic violence;

9 (2) mediation or family counseling is provided by a mediator or family  
10 counselor who is trained in domestic violence in a manner that protects the safety of  
11 the victim and any household member, taking into account the results of an assessment  
12 of the potential danger posed by the perpetrator and the risk of harm to the victim; and

13 (3) the victim is permitted to have in attendance a person of the  
14 victim's choice, including an attorney.

15 • Sec. 48. AS 25.24.210(e) is amended to read:

16 (e) If the petition is filed by both spouses under AS 25.24.200(a), the petition  
17 must state in detail the terms of the agreement between the spouses concerning the  
18 custody of children, child support, visitation, spousal maintenance and tax  
19 consequences, if any, and fair and just division of property, including retirement  
20 benefits. Agreements on spousal maintenance and property division must fairly  
21 allocate the economic effect of dissolution and take into consideration the factors listed  
22 in AS 25.24.160(a)(2) and (4). In addition, the petition must state

23 (1) the respective occupations of the petitioners;

24 (2) the income, assets, and liabilities of the respective petitioners at the  
25 time of filing the petition;

26 (3) the date and place of the marriage;

27 (4) the name, date of birth, and current marital, educational, and  
28 custodial status of each child born of the marriage or adopted by the petitioners who  
29 is under the age of 19.

30 (5) whether the wife is pregnant;

31 (6) whether either petitioner requires medical care or treatment;

1 (7) whether any of the following [A DOMESTIC VIOLENCE  
2 COMPLAINT] has been filed during the marriage by or regarding either spouse as  
3 defendant, participant, or respondent:

4 (A) a criminal charge of a crime involving domestic  
5 violence;

6 (B) a protective order under AS 18.66.100 - 18.66.180;

7 (C) injunctive relief under former AS 25.35.010 or  
8 25.35.020; or

9 (D) a protective order issued in another jurisdiction and  
10 filed with the court in this state under AS 18.66.140 [A MEMBER OF THE  
11 HOUSEHOLD];

12 (8) whether either petitioner has received the advice of legal counsel  
13 regarding a divorce or dissolution;

14 (9) other facts and circumstances that the petitioners believe should be  
15 considered;

16 (10) that the petition constitutes the entire agreement between the  
17 petitioners; and

18 (11) any other relief sought by the petitioners.

19 • Sec. 49. AS 25.24.220(h) is amended to read:

20 (h) In its examination of a petitioner under (d) of this section, the court shall  
21 use a heightened level of scrutiny of agreements if

22 (1) one party is represented by counsel and the other is not;

23 (2) there is evidence that a party committed a crime involving [A]  
24 domestic violence during the marriage or if any of the following [COMPLAINT]  
25 has been issued or filed during the marriage by or regarding either spouse as  
26 defendant, participant, or respondent:

27 (A) a criminal charge of a crime involving domestic  
28 violence;

29 (B) a protective order under AS 18.66.100 - 18.66.180;

30 (C) injunctive relief under former AS 25.35.010 or  
31 25.35.020; or

1 (D) a protective order issued in another jurisdiction and  
 2 filed with the court in this state under AS 18.66.140 [A MEMBER OF THE  
 3 FAMILY OR THERE IS EVIDENCE OF DOMESTIC VIOLENCE DURING  
 4 THE MARRIAGE];

5 (3) there is a minor child of the marriage; or

6 (4) there is a patently inequitable division of the marital estate.

7 \* Sec. 50. AS 25 is amended by adding a new chapter to read:

8 CHAPTER 90. GENERAL PROVISIONS.

9 Sec. 25.90.010. DEFINITIONS. In this title, "domestic violence" and "crime  
 10 involving domestic violence" have the meanings given in AS 18.66.990.

11 \* Sec. 51. AS 33.16.120 is amended by adding a new subsection to read:

12 (g) A victim of a crime involving domestic violence shall be informed by the  
 13 board at least 30 days in advance of a scheduled hearing to review or consider  
 14 discretionary parole for a prisoner. The board shall inform the victim of any decision  
 15 to grant or deny discretionary parole or to release the prisoner under AS 33.16.010(c)  
 16 If the prisoner is to be released, the victim shall be notified of the expected date of the  
 17 release, the geographic area in which the prisoner will reside, and any other  
 18 information concerning conditions of parole that may affect the victim. The victim  
 19 shall also be informed of any changes in the conditions of parole that may affect the  
 20 victim. The board shall send the notice required to the last known address of the  
 21 victim. A person may not bring a civil action for damages for a failure to comply  
 22 with the provisions of this subsection.

23 \* Sec. 52. AS 33.16.150 is amended by adding a new subsection to read:

24 (f) In addition to other conditions of parole imposed under this section, the  
 25 board may impose as a condition of special medical, discretionary, or mandatory parole  
 26 for a prisoner serving a term for a crime involving domestic violence (1) any of the  
 27 terms of protective orders under AS 18.66.100(c)(1) - (7); (2) a requirement that, at  
 28 the prisoner's expense, the prisoner participate in and complete, to the satisfaction of  
 29 the board, a program for the rehabilitation of perpetrators of domestic violence that  
 30 meets the standards set by the department under AS 44.28.020(b); and (3) any other  
 31 condition necessary to rehabilitate the prisoner. The board shall establish procedures

1 for the exchange of information concerning the parolee with the victim and for  
2 responding to reports of nonattendance or noncompliance by the parolee with  
3 conditions imposed under this subsection.

4 \* Sec. 53. AS 33.16.220(a) is amended to read:

5 (a) The board may revoke parole if the parolee

6 (1) engages in conduct in violation of AS 33.16.150(a), [OR] (b), or

7 (f); or

8 (2) has violated an order of the court to participate in or comply with

9 the treatment plan of a rehabilitation program under AS 12.55.015(a)(10).

10 \* Sec. 54. AS 33.16.220(c) is amended to read:

11 (c) In determining whether a parole violator should be released pending a final  
12 revocation hearing, the board or signee shall consider

13 (1) the likelihood of the parolee's appearance at a final revocation

14 hearing;

15 (2) the seriousness of the alleged violation;

16 (3) whether the parolee presents a danger to the community; [AND]

17 (4) whether the parolee is likely to further violate conditions of parole;

18 and

19 (5) whether the parolee is on parole for a crime involving domestic

20 violence; if the violation of the condition of parole involved an act of domestic

21 violence, the parolee may not be released pending the final revocation hearing.

22 \* Sec. 55. AS 33.16.900 is amended by adding a new paragraph to read:

23 (13) "crime involving domestic violence" and "domestic violence" have

24 the meanings given in AS 18.66.990.

25 \* Sec. 56. AS 33.20.080(b) is amended to read:

26 (b) If requested by the victim of a crime against a person, a crime involving  
27 domestic violence, or arson in the first degree, the board shall send notice of an  
28 application for executive clemency submitted by the state prisoner who was convicted  
29 of that crime. The victim may comment in writing to the board on the application for  
30 executive clemency.

31 \* Sec. 57. AS 33.20.080(d) is amended by adding a new paragraph to read:

1 (3) "crime involving domestic violence" has the meaning given in  
2 AS 18.66.990.

3 \* Sec. 58. AS 33.30.013(b) is amended to read:

4 (b) The commissioner is required to give notice of a change in the status of an  
5 offender under this section only if the victim has requested notice of the change,  
6 except that the commissioner is required to give notice, mailed to the last known  
7 address of the victim, in every case of a crime involving domestic violence.

8 \* Sec. 59. AS 33.30.101 is amended by adding a new subsection to read:

9 (c) The commissioner may release on furlough a prisoner convicted of a crime  
10 involving domestic violence only under conditions that would protect the victim of  
11 domestic violence or other household member.

12 \* Sec. 60. AS 33.30.111(f) is amended to read:

13 (f) Except as provided in (g) of this section, if [IF] the commissioner  
14 considers a prisoner convicted of a crime against a person or arson in the first degree  
15 for a prerelease furlough and the victim has requested notice under AS 33.30.013, the  
16 commissioner shall send notice of intent to consider the prisoner for a prerelease  
17 furlough to the victim. The victim may comment in writing on the commissioner's  
18 intent to release the prisoner on a prerelease furlough status. The commissioner shall  
19 consider the victim's comments before making a final decision to release a prisoner  
20 on a prerelease furlough status. The commissioner shall make a reasonable effort to  
21 notify the victim of an intent to release the prisoner on a prerelease furlough. The  
22 notice must contain the expected date of the prisoner's release, the geographic area in  
23 which the prisoner will reside, and other pertinent information concerning the  
24 prisoner's release that may affect the victim.

25 \* Sec. 61. AS 33.30.111 is amended by adding a new subsection to read:

26 (g) If the commissioner considers a prisoner convicted of a crime involving  
27 domestic violence for a prerelease furlough, the commissioner shall send notice of  
28 intent to consider the prisoner for prerelease furlough to the last known address of the  
29 victim. The victim may comment in writing on the commissioner's intention to release  
30 the prisoner on a prerelease furlough. The commissioner shall consider the victim's  
31 comments before making a final decision to release the prisoner on a prerelease

1 furlough. The commissioner shall make a reasonable effort to notify the victim of any  
 2 decision to release the prisoner on the prerelease furlough. The notice must include  
 3 the expected date of the furlough and any other information concerning the furlough  
 4 that may affect the victim. A person may not bring a civil action for damages for a  
 5 failure to comply with the provisions of this subsection.

6 \* Sec. 62. AS 33.30.901 is amended by adding a new paragraph to read:

7 (15) "crime involving domestic violence" has the meaning given in  
 8 AS 18.66.990.

9 \* Sec. 63. AS 43.23.065(b) is amended to read:

10 (b) An exemption is not available under this section for permanent fund  
 11 dividends taken to satisfy

12 (1) child support obligations required by court order or decision of the  
 13 child support enforcement agency under AS 25.27.140 - 25.27.220;

14 (2) court ordered restitution under AS 12.55.045 - 12.55.051, 12.55.100,  
 15 or AS 47.10.080(b)(4);

16 (3) claims on defaulted scholarship loans under AS 43.23.067;

17 (4) court ordered fines;

18 (5) writs of execution under AS 09.35 of a judgment that is entered

19 (A) against a minor in a civil action to recover damages;

20 (B) under AS 34.50.020 against the parent, parents, or legal  
 21 guardian of an unemancipated minor;

22 (6) a debt owed by an eligible individual to an agency of the state,  
 23 unless the debt is contested and an appeal is pending, or the time limit for filing an  
 appeal has not expired;

24 (7) a debt owed to a person for a program for the rehabilitation of  
 25 perpetrators of domestic violence required under AS 12.55.101,  
 26 AS 18.66.100(c)(15), AS 25.20.061(3), or AS 33.16.150(f)(2).  
 27

28 \* Sec. 64. AS 44.21.410(a)(5) is amended to read:

29 (5) provide legal representation and guardian ad litem services under  
 30 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on  
 31 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or

1 petitions for the termination of parental rights on grounds set out in  
2 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor  
3 under AS 09.55.590; in children's proceedings under AS 47.10.050(a); in cases  
4 involving appointments under AS 18.66.100(a) in petitions for protective orders  
5 on behalf of a minor; and in cases involving indigent persons who are entitled to  
6 representation under AS 18.85.100 and who cannot be represented by the public  
7 defender agency because of a conflict of interests;

8 \* Sec. 65. AS 44.28.020 is amended by adding a new subsection to read:

9 (b) The department shall, with the approval of the Council on Domestic  
10 Violence and Sexual Assault, adopt standards, by regulation, for rehabilitation  
11 programs for perpetrators of domestic violence as defined in AS 18.66.990. For  
12 purposes of AS 12.55.101, AS 18.66.100(c), and AS 33.16.150(f), the department shall  
13 determine whether a program meets the standards.

14 \* Sec. 66. AS 47.17.020(a) is amended to read:

15 (a) The following persons who, in the performance of their occupational duties,  
16 have reasonable cause to suspect that a child has suffered harm as a result of child  
17 abuse or neglect shall immediately report the harm to the nearest office of the  
18 department:

19 (1) practitioners of the healing arts;

20 (2) school teachers and school administrative staff members of public  
21 and private schools;

22 (3) social workers;

23 (4) peace officers, and officers of the Department of Corrections;

24 (5) administrative officers of institutions;

25 (6) child care providers;

26 (7) paid employees of domestic violence and sexual assault programs,  
27 and crisis intervention and prevention programs as defined in AS 18.66.990  
28 [AS 18.66.900];

29 (8) paid employees of an organization that provides counseling or  
30 treatment to individuals seeking to control their use of drugs or alcohol.

31 \* Sec. 67. AS 47.17 is amended by adding a new section to read:

1           Sec. 47.17.035. DUTIES OF DEPARTMENT IN DOMESTIC VIOLENCE  
2 CASES. (a) In consultation with the Council on Domestic Violence and Sexual  
3 Assault, the department shall develop written procedures for screening reports of harm  
4 for abuse and neglect of a child to assess whether there is domestic violence occurring  
5 within the family. The procedures must include the following factors:

6                   (1) inquiry concerning the criminal records of the parents or of the  
7 alleged abusive or neglectful person or the alleged perpetrator if not the parent of the  
8 child; and

9                   (2) inquiry concerning the existence of protective orders issued or filed  
10 under AS 18.66.100 - 18.66.180 involving either parent as a petitioner or respondent.

11           (b) If the department determines in an investigation of abuse or neglect of a  
12 child that

13                   (1) the child is in danger because of domestic violence or that the child  
14 needs protection as a result of the presence of domestic violence in the family, the  
15 department shall take appropriate steps for the protection of the child;

16                   (2) a person is the victim of domestic violence, the department shall  
17 provide the victim with a written notice of the rights of and services available to  
18 victims of domestic violence that is substantially similar to the notice provided to  
19 victims of domestic violence under AS 18.65.520.

20           (c) For purposes of obtaining access to information needed to conduct the  
21 inquiries required by (a)(1) and (2) of this section, the department is a criminal justice  
22 agency conducting a criminal justice activity.

23           (d) A person may not bring a civil action for damages for a failure to comply  
24 with the provisions of this section.

25           (e) In this section,

26                   (1) "criminal justice activity" has the meaning given in AS 12.62.900;

27                   (2) "criminal justice agency" has the meaning given in AS 12.62.900;

28                   (3) "domestic violence" has the meaning given in AS 18.66.990.

29           \* Sec. 68. Rule 3, Alaska Rules of Civil Procedure, is amended by adding a new  
30 subsection to read:

31                   (h) A petition or request for a protective order on domestic violence under

1 AS 18.66 may be filed in the judicial district

2 (1) where the petitioner currently or temporarily resides;

3 (2) where the respondent resides; or

4 (3) where the domestic violence occurred.

5 \* Sec. 69. Rule 100(a), Alaska Rules of Civil Procedure, is amended to read:

6 (a) Application. At any time after a complaint is filed, a party may file a  
7 motion with the court requesting mediation for the purpose of achieving a mutually  
8 agreeable settlement. The motion must address how the mediation should be  
9 conducted as specified in paragraph (b), including the names of any acceptable  
10 mediators. If domestic violence has occurred between the parties and mediation  
11 is requested in a matter covered by AS 25, mediation may only be ordered when  
12 permitted under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered  
13 by AS 25, the [THE] court may order mediation in response to such a motion, or on  
14 its own motion, whenever it determines that mediation may result in an equitable  
15 settlement. In making this determination, the court shall [MAY] consider whether  
16 there is a history of domestic violence between the parties which could be expected  
17 to affect the fairness of the mediation process or the physical safety of the domestic  
18 violence victim. Mediation may not be ordered between the parties to, or in, a case  
19 filed under AS 18.66.100 - 18.66.180 [AS 25.35.010 OR .020 AND CONDUCT  
20 WHICH CONSTITUTES DOMESTIC VIOLENCE UNDER THESE STATUTES  
21 MAY NOT BE THE SUBJECT OF MEDIATION UNDER THIS RULE].

22 \* Sec. 70. Rule 505(a)(2), Alaska Rules of Evidence, is amended to read:

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

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

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

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

- 1 (D) In a proceeding in which one spouse is charged with:  
2 (i) A crime against the person or the property of the  
3 other spouse or of a child of either, whether such crime was committed  
4 before or during marriage.  
5 (ii) Bigamy, incest, adultery, pimping, or prostitution.  
6 (iii) A crime related to abandonment of a child or  
7 nonsupport of a spouse or child.  
8 (iv) A crime prior to the marriage.  
9 (v) A crime involving domestic violence as defined in  
10 AS 18.66.990.

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

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

14 \* Sec. 71. AS 11.56.740(a)(2) is repealed.

15 \* Sec. 72. AS 12.25.030(d); AS 12.61.900(1); AS 18.65.520(c); AS 18.66.900;  
16 AS 25.35.010, 25.35.020, 25.35.030, 25.35.040, 25.35.050, and 25.35.200 are repealed.

17 \* Sec. 73. REVISOR'S CHANGES. The revisor of statutes is requested to remove  
18 AS 25.35.100 - 25.35.150 from AS 25 and place these provisions in AS 18, renumbered as  
19 AS 18.66.200 - 18.66.250, and as a whole described as "Article 3. Confidential  
20 Communications." The revisor is also requested to revise all statutory cross-references to  
21 these statutes.

22 \* Sec. 74. TRANSITION: EXISTING DOMESTIC VIOLENCE PROTECTIVE ORDERS.  
23 A domestic violence order issued under former AS 25.35.010 or 25.35.020 and in effect on  
24 the effective date of sec. 72 of this Act remains in effect until it expires under the terms of  
25 the order and former AS 25.35.010 or 25.35.020 or is dissolved by the court, whichever occurs  
26 earlier.

27 \* Sec. 75. TRANSITION: REGULATIONS. Notwithstanding secs. 81, 83, and 84 of this  
28 Act, the state agencies affected by this Act may proceed to adopt regulations necessary to  
29 implement changes affecting the state agency that are enacted by this Act. The regulations  
30 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
31 of the changes in law in this Act.

1 \* Sec. 76. AS 18.66.150(d) and 18.66.160(c), added by sec. 33 of this Act, have the effect  
2 of amending Rules 9(b)(11), 9(c)(3), and 9(e)(6), Alaska Rules of Administration, by  
3 eliminating filing fees and service of process fees in domestic violence actions for protective  
4 orders.

5 \* Sec. 77. AS 18.66.160, added by sec. 33 of this Act, has the effect of amending Rule 4,  
6 Alaska Rules of Civil Procedure, relating to service of process in domestic violence actions  
7 for protective orders.

8 \* Sec. 78. AS 18.66.110 - 18.66.130, added by sec. 33 of this Act, have the effect of  
9 amending Rule 65(b) - (d), Alaska Rules of Civil Procedure, relating to temporary restraining  
10 orders, the method of obtaining those orders, and the timing of those orders.

11 \* Sec. 79. AS 12.61.127, added by sec. 29 of this Act, has the effect of amending Rule  
12 613, Alaska Rules of Evidence, relating to impeachment of witnesses.

13 \* Sec. 80. Sections 68 - 70 and 76 - 79 of this Act take effect only if secs. 68 - 70 and 76  
14 - 79 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,  
15 Constitution of the State of Alaska.

16 \* Sec. 81. If secs. 68 - 70 and 76 - 79 of this Act take effect under sec. 80 of this Act,  
17 they take effect July 1, 1996.

18 \* Sec. 82. Section 75 of this Act takes effect immediately under AS 01.10.070(c).

19 \* Sec. 83. Except as provided in secs. 81, 82, and 84 of this Act, this Act takes effect  
20 July 1, 1996.

21 \* Sec. 84. Section 71 of this Act takes effect 90 days after the effective date of sec. 72 of  
22 this Act.

## *Alaska Network on Domestic Violence and Sexual Assault*

### April 1996 Summary

#### **DOMESTIC VIOLENCE PREVENTION ACT 1996**

1. The Act is primarily based on the Model Code on Domestic and Family Violence developed by the National Council of Juvenile and Family Court Judges, and aligns current Alaska law with the code.

#### **Definitions**

2. The Act defines a crime involving domestic violence as one of the following offenses that is directed to a household member:

- crimes against a person under AS 11.41
- burglary under AS 11.46.300-11.46.310
- criminal trespass under AS 11.46.320-11.46.330
- arson or criminally negligent burning under AS 11.46.400-11.46.430
- criminal mischief under AS 11.46.480-11.46.486
- terroristic threatening under AS 11.56.810
- violating a protective order under AS 11.56.740
- harassment under AS 11.61.120(a)(2-4)
- or similar ordinances in other jurisdictions

3. The Act defines "household member" as including adults or minors who currently or formerly were married, lived together, dated, or have engaged in a sexual relationship, adults or minors related by blood or adoption, current or former marriage, who have a child in common, and minor children of persons described above

#### **Protective Orders**

4. The Act provides the opportunity for victims to gain increased protection by expanding protective order provisions to include

- prohibiting the abuser from threatening to commit domestic violence
- prohibiting the abuser from harassing, telephoning, or contacting the victim
- directing the abuser to stay away from the residence, school, or place of employment of the victim or any specified place frequented by the victim or any designated family member
- prohibiting the abuser from using or possessing a deadly weapon
- directing the abuser to surrender firearms owned or possessed by the abuser
- requesting a peace officer to accompany the victim to her residence to ensure the victim safely obtains possession of the residence, vehicle, or personal items
- prohibiting the abuser from consuming alcohol or controlled substances
- when considering arrangements for visitation of any minor child, the safety of the child and the victim must be ensured

5. The Act provides for three types of protective orders that may be issued

- a protective order issued after notice to the respondent and a hearing
- an *ex parte* protective order
- an emergency protective order

A court may grant a protective order after notice and hearing if it finds by a preponderance of evidence that the abuser committed a crime involving domestic violence. A protective order issued after notice and hearing is effective until further order of the court for items 1,2,4,&5; and, for up to one year for the other provisions.

If the petition establishes probable cause that a crime involving domestic violence has occurred, and the court finds it necessary to protect the petitioner it shall, without notice or hearing, issue the order *ex parte*. An *ex parte* order may not order all protections available in a protective order; rather, the protections available focus on the immediate safety of the victim. An *ex parte* order expires 20 days after it is issued unless extended or dissolved by the court.

An emergency protective order may be obtained by a peace officer with the victim's consent. It may be obtained by a telephone call to a judicial officer, if there is probable cause to believe that a person is in imminent danger of domestic violence, based on the allegation of the recent commission of domestic violence toward the petitioner. The protections available in the order concern the immediate safety of the victim. It expires 72 hours after issuance.

6. The Act rewrites the crime of violating a protective order. In the Act it is a class A misdemeanor to knowingly violate a condition of a protective order which

- prohibits the abuser from committing further domestic violence
- prohibits the abuser from communicating with the victim
- removes the abuser from the home of the victim
- orders the abuser to stay away from the home, school, job, or other place where the victim may be found
- prohibits the abuser from entering a vehicle with the victim
- prohibits the abuser from possessing a deadly weapon
- requires the respondent to surrender a firearm

7. The Act creates a central protective order registry. The registry will assist both law enforcement and the court system in responding more effectively to violations of protective orders issued in the United States.

#### **Mandatory Arrest**

8. The Act provides for mandatory arrest if the violence has occurred within 12 hours of the call to law enforcement. AST and APD, as well as other law enforcement agencies in the state, have mandatory arrest protocols already in place. Placing mandatory arrest in statute provides for statewide consistency in responding to domestic violence.

9. The Act prohibits a peace officer from threatening to arrest all the persons present in an incident of domestic violence. The Act also clarifies who is to be arrested--the primary aggressor, not a victim trying to defend herself. A peace officer who does not make an arrest after a domestic violence incident, or who arrests more than one person from a single incident, must put in writing the reasons for the action.

#### **Courts and Victim Safety**

10. The Act adds domestic violence to the offenses where the court may decide that the threat to the victim prohibits the defendant, when representing himself, from obtaining the address and telephone number of the victim.

11. The Act requires the court to consider the safety of the victim and the victim's family in addition to the safety of the public before releasing the defendant either before trial, pending sentencing, and/or pending appeal.

12. The Act requires prosecutors to make a reasonable effort to confer with all victims of domestic violence before entering into a plea agreement in a case.

13. The Act requires the court to consider the safety of the victim before ordering probation for a domestic violence offender.

### **Corrections and Parole Board Responsibilities**

14. The Act allows the Commissioner of Corrections to release a domestic violence offender on prerelease and short-duration furloughs only under conditions which protect the victim and the victim's family.

15. The Act requires the Commissioner of Corrections to notify the victim and to accept and consider comments by a victim of domestic violence before deciding to release the prisoner on prerelease furlough. The victim must be notified of the decision to release the prisoner.

16. The Act requires the Department of Corrections to adopt standards for rehabilitation programs for perpetrators of domestic violence. The department must determine if a program meets the standards before a court may order a person to participate in the program.

17. The Act requires the Parole Board to inform a victim of domestic violence 30 days in advance of a hearing to consider discretionary parole for a prisoner. It also requires the board to inform the victim of its decision to grant or deny discretionary parole and to release the prisoner on mandatory parole. The victim must be informed of the area a parolee will reside and conditions on the parole of a prisoner, and of any changes in these conditions.

18. The Act addresses the factors which the Parole Board must consider in releasing the parolee from custody pending a decision on whether to revoke parole. It provides that if the person is on parole for a domestic violence crime, and the alleged violation is based on an act of domestic violence, the parolee may not be released pending the final revocation hearing.

19. The Act amends the definition of serious offense in the Criminal Justice Information Systems Security and Privacy Act by adding crimes involving domestic violence. This has the effect of allowing information about past convictions of domestic violence to be released to an interested person, if the information is requested to help decide if a person should be given supervisory or disciplinary power over a child or dependent adult.

### **Continuing Education**

20. The Act requires public employees who are required reporters of suspected child abuse or neglect to obtain continuing education in the dynamics of domestic violence which will include

- lethality assessments
- nature, extent, and causes of domestic violence
- procedures designed to promote the safety of victims of family members
- resources available to victims and perpetrators of domestic violence

21. The Act amends the Alaska Police Standards Council statute on minimum standards for permanent appointment as a police officer to include at least 12 hours instruction in domestic violence issues.
22. The Act requires correctional, probation, and parole officers to be trained in domestic violence issues in order to be certified.
23. The Act requires the court system and the Department of Law to provide continuing education to their employees who come into contact with domestic violence victims and perpetrators.
24. The Act requires the Department of Health and Social Services to adopt standards and procedures for health care to victims.

#### **Divorce, Child Custody, and Visitation**

25. Conditions which may be imposed on visitation where domestic violence occurred are provided, including supervised visitation.
26. The Act prohibits mediation in child custody cases where a domestic violence protective order is in effect.
27. The Act prohibits mediation in divorce actions if a protective order is in effect.
28. The Act allows mediation of child custody and divorce cases where domestic violence has occurred only when certain safeguards are met--the victim requests mediation, the mediator is trained in domestic violence cases, and the victim is allowed a supporting person to attend the mediation sessions.
29. The Act provides that a finding that domestic violence has occurred since the last child custody or visitation decision constitutes a change in circumstances. This allows for the modification of custody and visitation orders.

#### **Dissolutions**

30. The Act requires a petition for dissolution of marriage to state whether a criminal charge of domestic violence has been filed or whether a petition for a domestic violence protective order has been filed by a member of the household during the marriage. In such cases, the court must give heightened scrutiny to the dissolution agreement to ensure it is fair to both parties. The court must also give heightened scrutiny to a dissolution agreement if there is any evidence of domestic violence during the marriage.

#### **DFYS**

31. The Act requires the Department of Health and Social Services to develop procedures for screening reports of child abuse and neglect for the presence of domestic violence. The procedures must include criminal record checks of the alleged abusive or neglectful person and inquiry into whether a domestic violence protective order has been issued to either parent. The department must take action to protect the child if it determines that the violence is endangering the child whether directly or by exposure to domestic violence of another family member.
32. If the department determines a person is a victim of domestic violence, the department is required to provide written notice of the rights of domestic violence victims and the services available to them to the person.

### Prohibiting Surreptitious Taping

33. The Act requires a defendant or a person acting on his behalf to obtain consent prior to recording statements of a victim or witness of an offense for which the defendant is or could be charged.
34. The Act requires the defendant or his representative to clearly inform the victim or witness of 1) the person's identity and specific association with the defendant; 2) the victim does not have to talk to the person unless the victim wishes, 3) the victim may have a prosecuting attorney or other person present during an interview; 4) the statement will be recorded if consent is given, and, 5) the victim or witness may obtain a transcript or other copy of the recorded statement upon request.
35. The Act requires the person making the recording to indicate in the recording that the victim or witness has been clearly informed of their rights regarding the recording, and further requires that the victim or witness state in the recording that their consent has been given to the recording.
36. The Act prohibits the defendant accused of a sexual offense or anyone acting on his behalf to contact the victim or witness to the offense if the victim or witness has informed the defendant or his counsel in writing or in person that the victim or witness does not wish to be contacted by the defense.
37. If a defendant or anyone acting on his behalf can contact the victim or witness of a sexual offense to obtain a statement, the Act requires written authorization for obtaining statements other than recorded statements which must have consent stated in the recording.
38. The Act provides for referring violators of this section of the bill to the Disciplinary Board of the Alaska Bar Association as a grievance.
39. The Act provides for a presumption of inadmissibility of statements obtained from a victim or witness in violation of this section.

### Court Rules and Rules of Administration

40. The Act amends Court Rules 3, 4, 65(b)-(d), 100(a), 505(a)(2), Rules of Administration 3(b)(11), 9(c)(3), and 9(e)(6), and Alaska Rules of Evidence 613.

LAW OFFICES OF  
FRIEDMAN, RUBIN & WHITE

Richard H. Friedman  
Jeffrey K. Rubin  
Jeffrey A. Friedman  
Michael N. White  
Las Gera  
James H. McComas, Of Counsel  
H. Dee Taylor, Investigator

1227 West 9th Avenue, Second Floor  
Anchorage, Alaska 99501  
(907) 258-0704  
Telefax: (907) 278-6449

Date: April 12, 1996  
To: Senator Robin Taylor  
From: Rick Friedman  
Re: HB 314

Robin, I understand this bill has a provision requiring defense investigators, when interviewing witnesses, to identify who they are, and indicate if the conversation is being recorded. The investigator must also tell the witness that he may obtain a copy of the tape. None of these requirements apply to the police/prosecutors. In essence, this provision forbids an investigator from secretly recording an interview with a witness.

Were you aware this issue was the subject of heated debate before the Bar Association Board of Governors? Numerous witnesses testified: prosecutors, defense attorneys, investigators. The Board concluded that defense investigators should be allowed to secretly record conversations, as long as they are accurately identifying who they are and why they are interviewing a witness. I fear the Department of Law, having lost the debate before the Board of Governors, is trying to slip this issue through, attached to a domestic violence bill, and thereby avoid an open debate on the policy reasons against this provision.

Time does not permit me to go into those reasons now. I just heard about this provision today. Is there any chance of getting a hearing on this issue?

*Rick*