

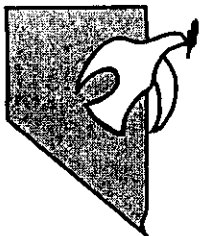
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# Nevada Network Against Domestic Violence

March 20, 2003

Assembly Judiciary Committee  
Sub-Committee on AB 160  
Nevada State Assembly  
Legislative Building  
Carson City, NV 89710

Chairman and Members of the Sub-Committee;

My name is Susan Meuschke. I am the Executive Director of the Nevada Network Against Domestic Violence (NNADV), the statewide coalition of domestic violence programs in Nevada. I am here today to speak in favor of AB 160 and to offer two amendments to improve the application of this significant piece of legislation.

As you are aware, this bill covers three very important areas 1) wage assignments as part of the protective order process, 2) name changes, and 3) extending privilege to cover communications between victims and advocates. I will limit my comments to Sections 18-26 which deal with privilege.

First, let me acknowledge that this section extends privilege and is not a matter that we have undertaken lightly. Extending privilege to communications between victims and advocates is not unlike the extension of such privilege to communications between an attorney and client or a doctor and patient; and is based on the same criteria. I have attached a copy of an article that clearly articulates those concepts.

Domestic violence and sexual assault advocates routinely assure victims that their communication will be kept in confidence. We are not only mandated by state and federal law to keep those communications confidential but we also understand that the victim's physical and emotional safety may hinge on that confidentiality. Without such

ASSEMBLY JUDICIARY SUBCOMMITTEE

DATE: 3/20/03 EXHIBIT D

SUBMITTED BY: Susan Meuschke

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assurances, few victims would contact domestic violence or sexual assault programs or open up to advocates. In coverage of a recent court decision that spoke directly to these issues the Review Journal wrote, "Victims turn to these shelters in their time of crisis and they do so trusting in the confidentiality that the shelters have worked hard to protect. How many victims would pour out their hearts to a stranger if they thought that person in a matter of weeks would be recounting the whole conversation in open court for the entire world to hear? And how many volunteers would shelters be able to recruit if testifying against allegedly violent people was part of the job? We believe maintaining confidentiality is vital for the continued success of domestic violence shelters. Judge Cherry was right to conclude, "We need to protect the program. It's too valuable to the community.'"

Concerns have been expressed by some in the legal community that this statute would deprive them of obtaining critical information for their case or that extending privilege to "advocates" would somehow dilute the significance of privilege. While we certainly understand and are sensitive to these concerns we want to underscore that the intent of this bill is to insure the integrity of our programs and the safety of victims **not** to dilute the importance of privilege or to deprive the defense or the prosecution of access to essential information for their case. Our role is to support the victims as they make difficult decisions about their life and their future. While we are advocates - we advocate for the right of the victim to make choices about the best direction for her life and do not advocate for any one particular direction. We advocate for choices to be available but not that any one particular choice is better than the other. Our communications, for the most part, would be neither admissible or helpful in court. The benefit of extending privilege to cover communications between victims and advocates far outweighs any perceived detriment.

At this point I want to go through each section of the bill, providing comment and explaining the two amendments that we are offering for this part of the bill. I have attached an amended version of the sections of this bill for your reference and review:

- Section 18 – identifies section of NRS being amended
- Section 19 – identifies the definitions
- Section 20 – defines domestic violence

- Section 21 – defines sexual assault
- Section 22 – defines victim advocate – want to be clear that this definition does not include advocates that work for law enforcement or prosecution offices, limited to advocates working in non-profit programs.
- New Section 23 – inserting a definition of “victim” to specify that anyone who consults a victim’s advocate for certain purposes. This amendment is necessary to remove any confusion as to whether victims must prove or be adjudged a victim to qualify for this privilege.
- Old Section 23 has been renumbered to Section 24 - establishes the type of communication that is to be kept confidential and provides certain exceptions for third party disclosure. We are also offering an amendment to this section to clarify that all records concerning the victim and the services provided are also covered under this privilege.
- Old Section 24 has been renumbered to Section 25 – provides for the victim to be the holder of privilege, which they can waive.
- Old Section 25 has been renumbered to Section 26 – provides a list of individuals who can claim the privilege on behalf of the victim. And clarifies that the presumption of privilege exists unless there is evidence to the contrary.
- Old Section 26 has been renumbered as Section 27 – Provides limited exceptions to this privilege including seeking services to enable another to commit a crime or fraud, child or elder abuse, breach of duty or other disclosure that would be required by statute.

I thank you for your time and attention to this testimony and I would be happy to answer any questions you might have for me.

6-20 Sec. 18. Chapter 49 of NRS is hereby amended by adding  
6-21 thereto the provisions set forth as sections 19 to 26, inclusive, of  
this  
6-21 act.

6-22 Sec. 19. *As used in sections 19 to 26, inclusive, of this act,*  
6-23 *the words and terms defined in sections 20, 21 and 22 of this*  
*act*  
6-24 *have the meanings ascribed to them in those sections.*

6-25 Sec. 20. *"Domestic violence" means an act described in*  
6-26 *NRS 33.018.*

6-27 Sec. 21. *"Sexual assault" means a violation of NRS 200.366*  
6-28 *or an attempt to violate or conspiracy to violate NRS 200.366.*

6-29 Sec. 22. *"Victim's advocate" means a person who works*  
*for*

6-30 *a nonprofit program that provides assistance to victims of*  
6-31 *domestic violence or sexual assault with or without*  
*compensation*

6-32 *and who has received at least 20 hours of relevant training.*

Sec. 23 "Victim" means any person who consults a victim's  
advocate for the purpose of securing advice, counseling or  
assistance.

6-33 Sec. 24. *A communication shall be deemed to be confidential*  
6-34 *if the communication is between a victim of domestic violence*  
*or*

6-35 *sexual assault and a victim's advocate and is not intended to be*  
6-36 *disclosed to third persons other than to:*

6-37 1. *A person who is present to further the interest of the*  
6-38 *victim;*

6-39 2. *A person reasonably necessary for the transmission of*  
*the*

6-40 *communication; or*

6-41 3. *A person who is participating in the advice, counseling or*  
6-42 *assistance of the victim, including, without limitation, a*  
*member of*

6-43 *the victim's family. This includes all records concerning the*  
6-44 *victim and the services provided kept by:*

*a. the victim's advocate, or*

*b. the non-profit program that provides assistance to victims*  
*of domestic violence or sexual assault.*

6-44 *Sec. 25. Except as otherwise provided in section 26 of this*  
6-45 *act, a victim of domestic violence or sexual assault who seeks*  
7-1 *advice, counseling or assistance from a victim's advocate has a*  
7-2 *privilege to refuse to disclose, and to prevent any other person*  
7-3 *from disclosing, confidential communications set forth in*  
*section 23 of this act.*

7-5 *Sec. 26. 1. The privilege provided pursuant to section 24*  
7-6 *of this act may be claimed by:*

7-7 *(a) The victim of domestic violence;*

7-8 *(b) The guardian or conservator of the victim;*

7-9 *(c) The personal representative of a deceased victim; and*

7-10 *(d) The victim's advocate, but only on behalf of the victim.*

7-11 *2. The authority of a victim's advocate to claim the privilege*  
7-12 *is presumed in the absence of evidence to the contrary.*

7-13 *Sec. 27. There is no privilege pursuant to section 24 of this*  
7-14 *act if:*

7-15 *1. The purpose of the victim in seeking services from a*  
7-16 *victim's advocate is to enable or aid any person to commit or*  
*plan*

7-17 *to commit what the victim knows or reasonably should have*  
7-18 *known is a crime or fraud;*

7-19 *2. The communication concerns a report of abuse or*  
*neglect*

7-20 *of a child or older person in violation of NRS 200.508 or*  
7-21 *200.5093, but only as to that portion of the communication;*

7-22 *3. The communication is relevant to an issue of breach of*  
7-23 *duty by the victim's advocate to the victim or by the victim to*  
*the*

7-24 *victim's advocate; or*

7-25 *4. Disclosure of the communication is otherwise required by*

7-26 *law.*

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danger of retaliation by the criminals against whom they testify. Some battered women desire to change their identities to escape their abusers. They and their children often face as much danger in leaving as informants do by testifying. The victim protection program should be expanded to protect these domestic violence victims and their children.

#### IV. Confidentiality Privileges

A number of states have enacted privileges to protect victim-counselor communications.<sup>123</sup> These privileges reflect sound public policy because counseling and shelter services offered by battered women's programs are the most effective means of protecting battered women. State legislatures have recognized the importance of battered women's shelters and service programs in ending violence by funding them. The National Organization for Victim Assistance noted in 1985 that forty-nine states provided subsidies for domestic violence shelters.<sup>124</sup>

Society has created certain privileges to protect the sanctity of certain relationships which it values, including the priest-penitent, attorney-client, and doctor-patient privileges. The victim-counselor privilege falls within this category. These privileges are justified on the theory that the societal utility of the relationship to be protected is considered more important than society's interest in having the evidence disclosed in court, and because the value of the relationship depends upon there being strict confidentiality between the parties. Professor Henry Wigmore described the four necessary conditions for the creation of these privileges:

1. The communication must originate in confidence that it will not be disclosed;
2. The element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties;
3. The relationship must be one which the community believes should be sedulously fostered; and
4. The injury that would inure to the relationship by the communication's disclosure must be greater than the benefit thereby gained for the correct disposal of litigation.<sup>125</sup>

Wigmore's four necessary conditions have also been used to create or uphold a privilege to keep shelter records confidential. This need is recognized by the federal government's requirements that any domestic

123. This section relies heavily on Confidentiality Manual, *supra* note 79.

124. See H. Bowker & L. Mauter, *The Medical Treatment of Battered Women*, 17 *Women & Health* 25, 29-30 (1987); D. J. Martin, *Battered Women* 197 (1976).

125. *CONFIDENTIALITY MANUAL*, *supra* note 79, at 39-40.

126. H. J. Wigmore, *EVIDENCE* § 2285 (McNaughton Rev. Ed. 1961).

violence program accepting Victims of Crime Act (VOCA) or Family Violence Prevention and Services Act funding have an attorney in place to keep shelter records confidential. These state confidentiality requirements show that state and federal governments recognize battered women's programs as vital to the community.

Furthermore, battered women expect confidentiality in their dealings with domestic violence hotlines, programs, and shelters. Most victims of domestic violence have been threatened with further assault or even death if they ever reveal what their abusers have done to them. Almost all battered women are terrified of these threats. Many victims of abusive behavior are embarrassed or ashamed about the abuse they have undergone, and/or their inability to control their abusers. Without assurances of confidentiality, few battered women would contact domestic violence programs or open up to battered women's counselors. Furthermore, domestic violence counselors perform many of the same functions with battered women as do clergy, attorney, and psychotherapists, whose relationships with the victims are usually protected as confidential. But most of these other professionals have failed battered women badly in the past by not understanding the dynamics of domestic violence, minimizing the abuse, blaming the victims for being abused, not knowing how to help the victims, or frequently using approaches which actually increase the likelihood that the abuse will escalate.<sup>126</sup>

Many states<sup>127</sup> have created victim-counselor privileges to protect

127. 42 U.S.C. § 10601-10607 (West Supp. 1993).

128. Pub. L. No. 98-457, Title III, §§ 302-313 (West Supp. 1995) (codified as reauthorized and amended at 42 U.S.C. §§ 10401-10413 (West Supp. 1995)).

129. But battered women cannot control the abuser's violence. See D. J. Martin, *supra* note 22, at 40.

130. Schechter & Gray, *supra* note 38, at 245-47.

131. See, e.g., ALA. CODE § 15-23-40 to 15-23-43 (1994); ALA. STAT. § 9-25-30, 12-45-049-25-35-052, 059 (Michie Supp. 1994); ARIZ. REV. STAT. ANN. § 13-4401, *et seq.* (West Supp. 1994); CAL. EVID. CODE § 1037.1-1037.7 (West Supp. 1995); CONN. GEN. STAT. ANN. § 52-146k (West Supp. 1995); FLA. STAT. ANN. § 90.5035 (West Supp. 1994); ILL. ANN. STAT. ch. 110, par. 1-307, 1-307.2, ch. 40, para. 2312-27 (West Supp. 1995); IND. CODE ANN. § 35-57-6-1, 35-57-6-2 (Michie Supp. 1994); IOWA CODE ANN. § 217.30 (West Supp. 1994); LA. REV. STAT. ANN. § 462:212 (West Supp. 1994); MD. REV. STAT. ANN. § 16, § 53-A (West Supp. 1994); MICH. GEN. STAT. § 233 § 201 & 206 (West Supp. 1995); MINN. CODE ANN. § 595.020 (West Supp. 1995); MINN. STAT. ANN. § 17C-01 (1994); N.J. STAT. ANN. § 23:24A, 23:24B, 23:24C, & § 2A:84A-37 (West Supp. 1995); N.M. STAT. ANN. § 31-21.3 (1995); N.D. GEN. CODE § 14-07, 14-18 (1994); 42 PA. CONST. STAT. ANN. § 5945 (West Supp. 1995) & 23 PA. CONST. STAT. ANN. § 6102 and 6116 (West Supp. 1995); R.I. GEN. STAT. ANN. § 78-36-14 (Michie Supp. 1994); WASH. REV. CODE ANN. § 10A-12-060 (West Supp. 1995); and WYO. STAT. §§ 1-12, 1-16 & 14-3-210 (1994).

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battered women, victims of rape, or victims generally. Other states have recognized these privileges judicially, typically basing their decisions on some or all of the following arguments: (1) Wigmore's four conditions; (2) the similarity of the victim-counselor relationship to that of other relationships protected by other privileges; (3) extending an already existing privilege to the counselor who works under the supervision or control of someone holding a statutory privilege; (4) denying the privilege to someone unable to afford a private therapist; (5) denying the victim equal protection; (6) victim-counselor communications fall within the "zone of privacy" which state and federal constitutions protect; (6) the fact that most states require rape and/or domestic violence counselors to undergo specified training to be certified; and (7) the privilege is implied by accepting and contracting with the state agencies that distribute VOCA or Family Violence Prevention and Services Act or funding by state programs with confidentiality requirements.

These victim-counselor privileges have been upheld in some states, even when challenged by defendants in criminal cases.<sup>137</sup> However, other states have required records to be turned over to the court in criminal cases for *in camera* review to determine which parts, if any, should be released after weighing whether the probative value of disclosing them outweighs the effect of its disclosure on the victim.<sup>138</sup> Of course, the testimony or records should be excluded if the matters are not relevant, highly prejudicial or available from other sources, or if the questioning is repetitious or harassing.<sup>139</sup>

137. Studies of battered women indicate that large numbers of them are raped by their abusers. Walter, *supra* note 10, at 48, found that 59% were raped. Jacquelyn Campbell, *Nursing Assessment for Risk of Homicide with Battered Women*, Community Health Nursing Department, Wayne State University College of Nursing, Michigan 1986, reports other studies showing that 59% of nonhomicidal to 75% (of homicidal) battered women experience marital rape.

138. See, e.g., *Marriage of Kelm*, D.R.L. No. 84-3-03105 (Super. Ct., Spokane Co., Wash. May 9, 1986) (holding that records of a domestic violence program are entitled to a qualified privilege); *People v. Penn*, 487 N.Y.S.2d 935 (N.Y. Sup. Ct. 1981) (recognizing a rape victim-counselor privilege); and *In re Pittsburgh Action Against Rape*, 428 A.2d 126 (Pa. 1981) (recognizing a qualified rape victim-counselor privilege).

139. See, e.g., *State v. J.O.*, 52 Crim. L. Rpt. (BNA) 1460 (No. A-5595-09074 N.J. Super. Ct. App. Div. 1/6/93); *People v. Foggy*, 521 N.E.2d 86 (Ill. 1988), *cert. denied*, 486 U.S. 1047 (1988); *Commonwealth v. Wilson*, 602 A.2d 1290 (Pa. 1992); *Pennsylvania v. Richie*, 480 U.S. 39 (1987).

140. See, e.g., *State v. Shiffa*, 499 N.W.2d 119 (Iowa Ct. App. 1993); *Advisory Opinion of the House of Representatives*, 469 A.2d 1161 (R.I. 1983); *Commonwealth v. Two Juveniles*, 49 N.E.2d 134 (Mass. 1986); *Commonwealth v. Stockhammer*, 570 N.E.2d 992 (Mass. 1991) (allowing defense counsel to review sexual assault records); *People v. Stano*, 321 N.W.2d 53 (Mich. 1994).

141. CONFIDENTIALITY MANUAL, *supra* note 79, at 272-27.

### A. Nondisclosure Law

To protect personal privacy, the federal government and many states prohibit disclosure of information or records of those seeking care or help for mental health, or public welfare, drug and alcohol abuse, or domestic violence problems.<sup>140</sup> These laws prohibit disclosure in the absence of the client's formal authorization. Even when there is litigation, Nondisclosure laws are often enforced by civil or criminal sanctions against the institution or person that unlawfully discloses the information. They apply to everyone working or volunteering at the institution, not just to the specified professional staff. Examples include the Family Violence Prevention and Services Act, domestic violence programs must provide assurance that the address or location of any shelter facility will not be disclosed except upon written authorization from the person responsible for operating the program, and no information that procedures have been developed and implemented, including copies of the policies and procedure, to ensure the confidentiality of records pertaining to any individual who is provided prevention or treatment services by any program assisted under the Act.<sup>141</sup>

At least eleven states have a statutory communication privilege for communications between the battered woman and her counselor. In addition, at least twenty-three states restrict disclosure of information about their shelters and their residents, clients of domestic violence programs, to the whereabouts of battered women, whether or not they are staying at a shelter, or information received by clients, criminal

137. See, e.g., CAL. WELF. & INST. CODE § 5428 (Supp. 1984).

138. See Robert Weisberg & Michael Wald, *Confidentiality Law and Social Efforts to Protect Abused and Neglected Children: The Need for Standard, Uniform Rules*, L. Q. 143, 174 (1994).

139. See 21 U.S.C. § 175 (1982); 42 U.S.C. § 4352 (1976).

140. CONFIDENTIALITY MANUAL, *supra* note 79, at 236.

141. 42 U.S.C. § 10408 and (b)(6) (1992) (a)(6) (West Supp. 1993).

142. CONFIDENTIALITY MANUAL, *supra* note 79, at 236.

143. ALA. CODE § 30-6-4 (1994); ARIZ. REV. STAT. ANN. § 13-3632 and 13-3636 (West Supp. 1994) (\$1,000 civil fine for disclosing shelter location); CAL. PENAL CODE § 273.7 (West Supp. 1995) (intentional or malicious disclosure of shelter location); CAL. PENAL CODE § 273.7 (West Supp. 1995) (intentional or malicious disclosure of shelter location); CAL. REV. STAT. § 360 (West Supp. 1995) (prohibiting disclosure of domestic violence shelter location); N.H. REV. STAT. ANN. § 169:1 (domestic violence shelter absolutely privileged); N.Y. SEC. 87(2)(b) (West Supp. 1995); N.Y. DOM. REL. LAW § 175 (West Supp. 1995) (party seeking shelter in shelter shall not disclose shelter location); OKLA. STAT. TITLE 63, § 1-10 (West Supp. 1995) (court may not order disclosure of domestic violence shelter location); OR REV. STAT. § 630.001 (1993) (domestic violence shelter location is confidential); PA. CONST. STAT. ART. IX, § 11.2 (West Supp. 1995) (nondisclosure statute); U.S. program address in processing under these act).

144. CONFIDENTIALITY MANUAL, *supra* note 79, at 237 (discussing shelter zone, Florida, Illinois, Massachusetts, New Jersey, New York, South Dakota, Utah, Washington and Wisconsin statutes).



the shelter often as a condition for receiving funding.<sup>145</sup> These laws, however, do not generally prohibit courts from compelling counselors to disclose records or testify about communications with battered women, although the *very* existence of a nondisclosure law and its legislative history may bolster the argument for the judicial creation of a battered woman-counselor communication privilege.<sup>146</sup>

Statutes differ as to who holds the privilege. California, Connecticut, Illinois, New Hampshire, Pennsylvania, and Wyoming make clear that the battered woman is the sole holder of the privilege.<sup>147</sup> Alaska and North Dakota give the privilege both to the battered woman and to those working in a domestic violence program.<sup>148</sup> New Hampshire and North Dakota protect the disclosure of a domestic violence shelter's location by also prohibiting the battered woman from revealing it, even if she so desires.<sup>149</sup> Other states prohibit who may be compelled to testify.<sup>150</sup> Statutes may also clarify whether the privilege survives the client's death or disability and, *in so*, who holds it.

#### B. Child Abuse Reporting Requirements

Although battered women's program privileges also cover information about children, other statutes provide exceptions to battered women's privilege or nondisclosure statutes when the information regards reports of suspected child abuse or neglect, or children in need of aid proceedings. However, Connecticut's and Pennsylvania's battered woman-counselor privilege statutes have no exception for reporting child abuse or neglect. North Dakota's statute makes reporting and testifying optional if the counselor deems it necessary to protect a child or if compelled to disclose by a court. Several states, including Alaska,

145. ARIZ. REV. STAT. ANN. § 36-303 (West Supp. 1994); CONN. GEN. STAT. § 46b-38c (West Supp. 1995); MINN. STAT. ANN. § 13.80 (West Supp. 1995); MISS. CODE ANN. § 91-21-107 (1994); MO. REV. STAT. § 455.230 (Vernon Supp. 1995); N.H. REV. STAT. § 42:918 (1994); N.Y. REV. STAT. § 217.470 (Michie 1995); N.J. REV. STAT. ANN. § 17:27-21 (1994); OHIO REV. CODE ANN. § 3113.36 (West Supp. 1993); OKLA. STAT. tit. 36, § 313 (West Supp. 1995); OR. REV. STAT. § 108.620 (1994); S.D. CODIFIED LAWS ANN. § 25-10-20 (1994).

146. See, e.g., ALASKA, S.A. P.24.412 (Alaska 1976) (creating a social worker-patient/psychotherapist testimonial privilege).

147. CONFIDENTIALITY MANUAL, *supra* note 79, at 266.

148. *Id.*

149. *Id.* at 267.

150. Pennsylvania and Wyoming prohibit the domestic violence counselor from testifying and Michigan makes the privileged information inadmissible.

151. See, e.g., ALASKA STAT. § 25.35.054 (Michie Supp. 1994); CAL. EVID. CODE § 1017.2 (West Supp. 1995); ILL. ANN. STAT. ch. 40, para. 2312-27 (West Supp. 1995); MICH. COMP. LAWS § 600.2157a (West Supp. 1995); MICH. STAT. ANN. § 27A.2157(1) (West Supp. 1995); WYO. STAT. § 14-3-21a (1994).

Louisiana, Massachusetts, and New Hampshire (hereinafter "these perpetrators" being prosecuted criminally) require the court to do a balancing test *in camera* before ruling on the admissibility of testimony or records.<sup>152</sup>

#### C. Waiver of Privilege

Privileges are often deemed waived when third parties are present at the conversation, even when the confidante was in a dominant or overheard by a bystander. But some third parties, such as a counselor, are considered reasonably necessary for the communication to take place, so their presence does not waive the privilege. In some states, rules establishing privileges for battered women's and crime victims' communications clarify that the privilege is meant to cover group counseling sessions.<sup>153</sup> But the presence of a police officer, especially during the privilege or confidentiality unless either the presence of a third party to the client<sup>154</sup> or the officer was required to be present.<sup>155</sup>

#### V. Jurisdiction, the UCCJA, and Discovery

Many battered women are faced with the terrifying obstacle of having to reveal their addresses in order to get help, as the court, often the only forum, which can even begin to give them the protection of custody, divorce, and/or permission to relocate with children, this they need in order for the court to ascertain whether it has jurisdiction. The person bringing the suit is expected to include his or her address right in the complaint or petition. When the complainant is not represented by counsel, this address informs the responding party where to answer the complaint or petition once served. Despite the myth that family all parties are represented in family court proceedings, the reality is that representation is the exception.<sup>156</sup>

Although some states have court rules or statutes permitting a battered woman to keep her address inaccessible to the respondent or his attorney, in the very fact that a case is brought in a particular state frequently

152. CONFIDENTIALITY MANUAL, *supra* note 79, at 312-313.

153. These states include Alabama, Alaska, California, Louisiana, Mississippi, Michigan, New Jersey, New Mexico and Pennsylvania, according to CONFIDENTIALITY MANUAL, *supra* note 79.

154. See *Perkins v. Harris*, 456 N.Y.S.2d 694 (N.Y. 1972), 507 A.2d 601 (1986).

155. 1047 (1983), *Blanchard v. State*, 653 P.2d 689 (Alaska 1982).

156. 417 A.2d 724 (N.J. 1984).

157. *See*, e.g., ALASKA, S.A. P.24.412 (Alaska 1976) (requiring that a battered woman be represented in domestic violence cases, and only 10% of women who are battered when their abusers were not married to them).

158. See, e.g., TEx. FAMIL. CODE ANN. § 71.11 (Michie Supp. 1994).

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