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March 10, 2003

Judiciary Committee
Nevada State Assembly
Legislative Building
Carson City, Nevada 89710

Members of the Judiciary Committee:

My name is Estelle Murphy, and I am the Executive Director of Safe Nest, the largest domestic violence program in Nevada providing services in Clark County for over 25 years. I'm here to speak in favor of AB 160 and to specifically address the provisions regarding privileged communications between domestic violence victims and their advocates. I'm sure you already grasp the importance of this provision in insuring victims that their communications will be kept in confidence. I expect you'll receive numerous specific accounts of why victims need this. In some instances these provisions will also protect victim advocates. Last year, one of our advocates who was subpoenaed to testify about the victim was later stalked by the defendant who was in court at the time. AB 160 is a good start in putting some protections in place. However, I'm not sure the provisions in AB 160 go far enough in protecting victim confidentiality.

Last year Safe Nest received over a dozen legal documents requesting information on victims who were or had been our clients. We received an average of one subpoena, summons, or court order per month. While there were a number of "summonses to appear" directed at victim advocates, to which the provisions of AB 160 would clearly apply, other instances are not so clear. There were several subpoenas or court orders for client records sought by attorneys representing the victim's husband, or sometimes representing the victim. One was from an attorney for a non-custodial dad seeking records on the teen-age daughter he abused. Several were from the District Attorney's office seeking information or records on victims. In most cases, attorneys on the Safe Nest board helped negotiate around some of these confidentiality challenges. In one or two cases, we sought and obtained client releases to disclose limited information. In one case, the District Attorney's office filed a "Motion to Compel" when it was clear we were not complying with their subpoena for the client file. This action cost me a morning in court, not to mention the numerous days it took our volunteer attorney to research and draft the 17-page opposition to the motion. This particular case illustrates the possible inadequacy in AB 160 in protecting victim information because the DA's office withdrew their request for the client's file and limited their motion to just the dates the victim had been in shelter. They alleged that this did not violate any presumed confidentiality of communications. Our problem is that victims entering shelter or a domestic violence counseling program presume that their identities will be protected. In fact, several federal grants that fund domestic violence programs REQUIRE that we do not divulge the identities of clients AS A CONDITION OF FUNDING. How do we provide the dates of a client's stay without divulging that she was a client?

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ASSEMBLY JUDICIARY
DATE: 3/10/03 ROOM: 3138 EXHIBIT W
SUBMITTED BY: ESTELLE MURPHY

It's not clear in my mind that AB 160 would A) protect those portions of client records that do not set out confidential communications or that B) it would allow the custodian of records to claim privilege pursuant to these provisions. It is also not clear in my mind what is meant by the exception in Section 26 that "there is no privilege" ...if "disclosure of the communication is otherwise required by law." Can that be interpreted to mean that notwithstanding these provisions, a court order would force disclosure?

Certainly, the provisions in AB 160 recognizing privileged communications between victims and their advocates is long overdue. I stand in support of these provisions but ask that you consider if any amendments can be added or language clarified to ensure confidentiality in instances similar to those I have described.

Thank you for your time.

Respectfully submitted,

Estelle Murphy

Estelle Murphy
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