

CS FOR HOUSE BILL NO. 414(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 4/12/06

Referred: Rules

Sponsor(s): REPRESENTATIVES KOTT, Lynn, Elkins

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to allowing a parent or guardian of a minor to intercept the private**
2 **communications of the minor and to consent to an order authorizing law enforcement to**
3 **intercept the private communications of the minor."**

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

5 *** Section 1.** AS 12.37.030 is amended by adding a new subsection to read:

6 (b) In addition to exercising authority under (a) of this section, on
7 consideration of an application relating to a private communication of a minor, the
8 court may enter an ex parte order authorizing the interception of the private
9 communication. The court may enter the order only if the court determines, on the
10 basis of the application, that there is probable cause, which may be based upon a
11 finding that a parent of a minor has consented in good faith to the interception of a
12 communication of the minor based on the parent's objectively reasonable belief that it
13 is necessary for the welfare of the minor and is in the best interest of the minor. In this
14 subsection, "minor" and "parent" have the meanings given in AS 42.20.390.

1 * **Sec. 2.** AS 42.20.320(a) is amended to read:

2 (a) The following activities are exempt from the provisions of AS 42.20.300
3 and 42.20.310:

4 (1) listening to a radio or wireless communications of any sort where
5 the same are publicly made;

6 (2) hearing conversation when heard by employees of a common
7 carrier by wire incidental to the normal course of their employment in the operation,
8 maintenance, or repair of the equipment of the common carrier by wire, provided the
9 information obtained is not used or divulged in any manner by the hearer;

10 (3) a broadcast by radio or other means whether it is a live broadcast or
11 recorded for the purpose of later broadcasts of any function where the public is in
12 attendance and the conversations that are overheard are incidental to the main purpose
13 for which the broadcast is then being made;

14 (4) recording or listening with the aid of any device to an emergency
15 communication made in the normal course of operations by a federal, state, or local
16 law enforcement agency or institutions dealing in emergency services, including
17 hospitals, clinics, ambulance services, fire fighting agencies, a public utility
18 emergency repair facility, civilian defense establishment, or military installations;

19 (5) inadvertent interception of telephone conversations over party
20 lines;

21 (6) a peace officer, or a person acting at the direction or request of a
22 peace officer, engaging in conduct authorized by or under AS 12.37;

23 (7) interception, listening, or recording of communications by a peace
24 officer, or a person acting under the direction or request of a peace officer, in an
25 emergency where the communications are received from a device that intercepts the
26 communications of a person

27 (A) barricaded and not exiting or surrendering at the direction
28 or request of a peace officer, in circumstances where there is an imminent risk
29 of harm to life or property;

30 (B) holding another person hostage; or

31 (C) threatening the imminent illegal use of an explosive;

1 (8) the interception by a peace officer of an oral communication by use
 2 of an electronic, mechanical, or other eavesdropping device that is concealed on or
 3 carried on the person of the peace officer and that transmits that oral communication
 4 by means of radio to a receiving unit that is monitored by other peace officers, if

5 (A) the interception and monitoring occurs

6 (i) during the investigation of a crime or the arrest of a
 7 person for a crime; and

8 (ii) for the purpose of ensuring the safety of the peace
 9 officer conducting the investigation or making the arrest;

10 (B) the peace officer who intercepts the oral communication is
 11 a party to the communication and has consented to the interception; and

12 (C) the communication intercepted is not recorded;

13 **(9) the interception of a private communication to which a minor**
 14 **is a party by a parent of the minor if the parent is acting in good faith and has an**
 15 **objectively reasonable belief that the interception is necessary for the welfare of**
 16 **the minor and is in the best interest of the minor; this paragraph does not exempt**
 17 **from the provisions of AS 42.20.300 and 42.20.310 the interception of a private**
 18 **communication between a minor and the minor's attorney, the minor's guardian**
 19 **ad litem, or a child custody investigator; evidence obtained under this paragraph**
 20 **may be**

21 **(A) considered by a guardian ad litem or a child custody**
 22 **investigator only if the guardian ad litem or child custody investigator**
 23 **determines that the requirements of this paragraph have been satisfied;**

24 **(B) admitted in a judicial proceeding, subject to the Alaska**
 25 **Rules of Evidence, only if the judicial officer finds that the requirements**
 26 **of this paragraph have been satisfied; or**

27 **(C) admitted in an official proceeding that is not a judicial**
 28 **proceeding only if the presiding official finds that the requirements of this**
 29 **paragraph have been satisfied.**

30 * **Sec. 3.** AS 42.20.390 is amended by adding new paragraphs to read:

31 (11) "minor" means a child under 18 years of age who has not had the

1 disabilities of a minor removed as described in AS 09.55.590;

2 (12) "official proceeding" means a proceeding heard before a
3 legislative, judicial, administrative, or other governmental body or official authorized
4 to hear evidence under oath;

5 (13) "parent" means a natural person who is the minor's natural or
6 adoptive parent, or who has been legally appointed as the minor's guardian, with
7 parental rights that are not terminated by court order and who is not prohibited by
8 court order from communicating with the minor.