

CONFERENCE CS FOR HOUSE BILL NO. 414(Corrected)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered: 5/8/06

Sponsor(s): REPRESENTATIVES KOTT, Lynn, Elkins, Dahlstrom, Neuman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the interception of the private communications of a minor."**

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

3 *** Section 1.** AS 12.37.030 is amended by adding new subsections to read:

4 (b) In addition to exercising authority under (a) of this section, on
5 consideration of an application relating to a private communication of a minor, the
6 court may enter an ex parte order authorizing the interception of the private
7 communication. The court may enter the order only if the court determines, after
8 making appropriate findings of fact and on the basis of the application, that there is
9 probable cause to believe that

10 (1) a party to the private communication

11 (A) has committed, is committing, or is about to commit a
12 felony or misdemeanor;

13 (B) has been, is, or is about to be a victim of a felony or
14 misdemeanor; or

15 (C) has been, is, or is about to be a witness to a felony or

1 misdemeanor;

2 (2) the health or safety of a minor is in danger; or

3 (3) a parent of a minor has consented in good faith to the interception
4 of a communication of the minor based on the parent's objectively reasonable belief
5 that it is necessary for the welfare of the minor and is in the best interest of the minor.

6 (c) In (b) of this section, "minor" and "parent" have the meanings given in
7 AS 42.20.390.

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

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

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

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

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

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

26 (5) inadvertent interception of telephone conversations over party
27 lines;

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

30 (7) interception, listening, or recording of communications by a peace
31 officer, or a person acting under the direction or request of a peace officer, in an

1 emergency where the communications are received from a device that intercepts the
2 communications of a person

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

6 (B) holding another person hostage; or

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

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

12 (A) the interception and monitoring occurs

13 (i) during the investigation of a crime or the arrest of a
14 person for a crime; and

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

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

19 (C) the communication intercepted is not recorded;

20 **(9) interception of a private communication to which a minor is a**
21 **party by a parent of the minor, except that interception of a private**
22 **communication between a minor and the minor's attorney or guardian ad litem**
23 **or between a minor and a child-custody investigator is not exempt from the**
24 **provisions of AS 42.20.300 and 42.20.310; evidence obtained under this**
25 **paragraph may be**

26 **(A) considered by a guardian ad litem or a child custody**
27 **investigator only if the guardian ad litem or child custody investigator**
28 **determines that consideration of the evidence is in the best interests of the**
29 **minor;**

30 **(B) admitted in a judicial proceeding, subject to the Alaska**
31 **Rules of Evidence;**

1 **(C) admitted in a judicial proceeding relating to the custody**
2 **of a minor, subject to the Alaska Rules of Evidence and only if the court**
3 **determines that admission of the evidence is in the best interests of the**
4 **minor; or**

5 **(D) admitted in an official proceeding that is not a judicial**
6 **proceeding, subject to the rules of evidence governing the proceeding and**
7 **only if the official presiding over the proceeding determines that**
8 **admission of the evidence is in the best interests of the minor.**

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

10 (11) "minor" means a child under 18 years of age who has not had the
11 disabilities of a minor removed as described in AS 09.55.590;

12 (12) "parent" means a natural person who is the minor's natural or
13 adoptive parent, or who has been legally appointed as the minor's guardian, with
14 parental rights that are not terminated by court order and who is not prohibited by
15 court order from communicating with the minor, or a stepparent as defined in
16 AS 25.23.240 who is not prohibited by court order from communicating with the
17 minor.