ALASKA STATE LEGISLATURE
CONFERENCE COMMITTEE ON HB 414
May 8, 2006
10:12 a.m.

MEMBERS PRESENT

Representative Pete Kott, Chair
Representative Lesil McGuire
Representative Max Gruenberg

Senator Ralph Seekins, Chair
Senator Hollis French
Senator Charlie Huggins

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 414
"An Act relating to allowing a parent or guardian of a minor to intercept the private communications of the minor and to consent to an order authorizing law enforcement to intercept the private communications of the minor."

- MOVED CCS HB 414 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 414
SHORT TITLE: INTERCEPTION OF MINOR'S COMMUNICATIONS
SPONSOR(s): REPRESENTATIVE(s) KOTT

02/01/06	(H)	READ THE FIRST TIME - REFERRALS
02/01/06	(H)	HES, JUD
02/14/06	(H)	HES AT 3:00 PM CAPITOL 106
02/14/06	(H)	Moved CSHB 414(HES) Out of Committee
02/14/06	(H)	MINUTE(HES)
02/17/06	(H)	HES RPT CS(HES) 4DP 1NR 2AM
02/17/06	(H)	DP: GARDNER, KOHRING, SEATON, WILSON;
02/17/06	(H)	NR: CISSNA;
02/17/06	(H)	AM: ANDERSON, GATTO
02/23/06	(H)	JUD AT 10:00 AM CAPITOL 120
02/23/06	(H)	Scheduled But Not Heard
02/24/06	(H)	JUD AT 2:00 PM CAPITOL 120

02/24/06	(H)	Heard & Held
02/24/06	(H)	MINUTE(JUD)
03/15/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/15/06	(H)	-- Meeting Canceled --
03/20/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/20/06	(H)	-- Meeting Canceled --
03/22/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/06	(H)	Moved CSHB 414(JUD) Out of Committee
03/22/06	(H)	MINUTE(JUD)
03/28/06	(H)	JUD RPT CS(JUD) 3DP 2NR 2AM
03/28/06	(H)	DP: KOTT, ANDERSON, MCGUIRE;
03/28/06	(H)	NR: GARA, COGHILL;
03/28/06	(H)	AM: WILSON, GRUENBERG
04/11/06	(H)	RLS AT 1:30 PM CAPITOL 106
04/11/06	(H)	Moved CSHB 414(RLS) Out of Committee
04/11/06	(H)	MINUTE(RLS)
04/12/06	(H)	RLS RPT CS(RLS) 3DP 4NR
04/12/06	(H)	DP: COGHILL, MCGUIRE, KOHRING;
04/12/06	(H)	NR: BERKOWITZ, HARRIS, GUTTENBERG, ROKEBERG
04/12/06	(H)	RETURNED TO RLS COMMITTEE
04/24/06	(H)	TRANSMITTED TO (S)
04/24/06	(H)	VERSION: CSHB 414(RLS) AM
04/25/06	(S)	READ THE FIRST TIME - REFERRALS
04/25/06	(S)	JUD
04/27/06	(S)	JUD AT 8:30 AM BUTROVICH 205
04/27/06	(S)	Scheduled But Not Heard
04/28/06	(S)	JUD AT 9:30 AM BUTROVICH 205
04/28/06	(S)	Scheduled But Not Heard
05/02/06	(S)	JUD RPT SCS 2DP 2NR NEW TITLE
05/02/06	(S)	DP: SEEKINS, HUGGINS
05/02/06	(S)	NR: FRENCH, GUESS
05/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205
05/02/06	(S)	Moved SCS CSHB 414(JUD) Out of Committee
05/02/06	(S)	MINUTE(JUD)
05/04/06	(S)	VERSION: SCS CSHB 414(JUD)
05/06/06	(H)	CONFERENCE COMMITTEE APPOINTED
05/06/06	(H)	KOTT (CHAIR), MCGUIRE, GRUENBERG
05/07/06	(S)	RECEDE MESSAGE READ AND HELD
05/07/06	(S)	CONFERENCE COMMITTEE APPOINTED
05/07/06	(S)	SEEKINS (CHAIR), HUGGINS, FRENCH
05/08/06	(H)	414 AT 9:30 AM BELTZ 211

WITNESS REGISTER

DEAN J. GUANELI, Chief Assistant Attorney General

Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Testified on HB 414.

ACTION NARRATIVE

CHAIR PETE KOTT called the Conference Committee on HB 414 meeting to order at 10:12:41 AM. Representatives Gruenberg, McGuire, and Kott and Senators Huggins, French, and Seekins were present at the call to order.

HB 414 - INTERCEPTION OF MINOR'S COMMUNICATIONS

10:12:41 AM

CHAIR KOTT announced that the only order of business would be CS FOR HOUSE BILL NO. 414(RLS)am, "An Act relating to the interception of the private communications of a minor."

CHAIR KOTT stated that three sections of the bill would be addressed for concurrence by the Conference Committee. He directed attention to the working documents before the committee, which were: CSHB 414(RLS)am, Version 24-LS1565\P.A, and SCS CSHB 414(JUD), Version 24-LS1565\R, as well as blank CSHB 414, Version 24-LS1565\U, Wayne, 5/7/06.

10:13:06 AM

CHAIR KOTT moved that the committee adopt the language on page 3, lines 24-26, of SCS CSHB 414(JUD), Version 24-LS1565\R. There being no objection, page 3, lines 24-26, of Version R were adopted.

CHAIR KOTT introduced Section 1, of both bills, and pointed out that the Senate version removes the language specifying probable cause.

SENATOR SEEKINS asked for an explanation for the inclusion of the language stipulating probable cause [page 1, lines 10-15, and page 2, lines 1 and 2, Version P.A].

REPRESENTATIVE GRUENBERG responded that the intent was to define probable cause, as specified on [page 1] line 9, [Version P.A], which the Senate Judiciary [Version R] fails to delineate. This point for definition had created some concern in subsequent

House discussion. He explained that subparagraphs (A), (B), and (C) list the probable cause sources as being communications by "a person who in the past, ... currently, or in the future, [has] either been a perpetrator, a victim, or a witness to a felony or misdemeanor." Further, he said that page 2, line 2 [paragraph (2)], establishes the probable cause as being a danger to the health or safety of the minor. Referring to page 2, line[s] 3[-5], he said:

> The intent of the bill ... is to allow a finding of probable cause solely on the fact that the minor's parent had consented in good faith to the interception of the communication, based upon the parent's objectively reasonable belief that it was necessary for the welfare of the minor, and was in the best interest of the minor.

10:15:40 AM

SENATOR FRENCH pointed out that the language on page 2, line 3-5, paragraph (3) [Version P.A], sets out the good faith intent, and opined that it supersedes the need for the aforementioned subparagraphs [(A),(B),(C)] and paragraph (2).

REPRESENTATIVE GRUENBERG explained that the referenced subparagraphs and paragraph appropriately and necessarily provide the specific and complete language for establishing the conditions to show probable cause.

10:16:29 AM

SENATOR FRENCH directed the committee's attention to page 1, line 11, [Version P.A], reading lines 10-12, he commented:

> You could read it ... that any person that ever committed a misdemeanor would be subject to a wiretap by a parent.

REPRESENTATIVE GRUENBERG interjected that such would not be the intent.

SENATOR FRENCH continued and said:

> The court may enter the order if the court has probable cause to believe that a party to the private communication has committed a misdemeanor.

REPRESENTATIVE GRUENBERG stated support for allowing the discretion of a presiding judge to determine what would serve for admissibility of probable cause.

REPRESENTATIVE MCGUIRE opined that perhaps the House version raises the threshold for proving probable cause too high, and she reminded the committee that the intent of this amendment is to address the issue of parental rights.

10:18:35 AM

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), commented that there is value to being specific as to what constitutes probable cause; having specific criteria for a court to follow is helpful. In regard to Senator French's point as to whether in the House version "a door [has] been opened ... wide", he opined that a court would apply "common sense to these matters" and would issue an order only in good faith of an actual crime being committed or suspicion of such.

REPRESENTATIVE MCGUIRE opined that the Senate version appears broad, calling for a "good faith objectively reasonable belief," versus the narrowed focus of the House version which requires "probable cause." She expressed support for the Senate version.

10:21:03 AM

SENATOR FRENCH said that this bill is to provide parents a safety factor avenue. He asked for clarity as to what legally constitutes eavesdropping versus wiretapping.

MR. GUANELI explained that eavesdropping is covertly listening-in on an extension telephone line to a conversation, and would include recording a specific conversation without an involved party's knowledge. Wiretapping involves the co-opting of the telephone companies equipment and intentionally creating a means to tape record any conversation of a particular telephone line. Additionally, he said, wiretapping is subject to federal restrictions.

SENATOR FRENCH referenced page 1, lines 6 and 7, [Version P.A], and asked what an authorized interception by ex parte order would include: eavesdropping, wiretapping, or both.

10:24:05 AM

MR. GUANELI answered that this language is to amend AS 12.37.030, which are the wiretapping statutes. Wiretapping, he expanded, requires a judicial order, involves law enforcement personnel, and is an action established with the consent of, but not undertaken unilaterally by, the parent. Eavesdropping, however, is quintessential to being an observant parent and discovering e-mail activity or over-hearing telephone conversations which arouse concern or create suspicion.

10:25:08 AM

SENATOR FRENCH asked if current law prohibits a concerned parent from eavesdropping and possibly recording his/her child's telephone conversations.

MR. GUANELI opined that the purpose of this bill is to exempt parental actions which would violate prohibitions on eavesdropping.

SENATOR FRENCH directed attention to page 3, lines 20-27, [Version P.A], and stated that this is the language providing the aforementioned exemption. This language stipulates an exception to take place without a court order and thus refers to eavesdropping, home recording, or any other type of private parental gathering of communications in which a minor has been engaged.

MR. GUANELI agreed that the referenced exception occurs in the eavesdropping statutes regarding actions that a parent could easily undertake in the context of monitoring what goes on in the privacy of his/her home.

SENATOR FRENCH reiterated for clarity, that currently a parent could be subject to potential prosecution for eavesdropping on a minor’s communication.

10:27:07 AM

SENATOR SEEKINS delineated that “interception,” page 3, line 20, Version P.A, serves to allow a parent to legally undertake actions of: printing e-mail, placing an automatic recording device on the home telephone, intercepting and retaining communications, and introducing the information garnered in a court, provided that it is deemed to have been gathered and presented in the best interest of the child.

10:27:37 AM

MR. GUANELI added that in this instance the phrase “interception of communication” is used synonymously in statute with the term eavesdropping, and he provided that existing statute defines wire, oral, and electronic communications.

10:28:06 AM

SENATOR SEEKINS inquired whether law would prohibit a parent from recording a conversation.

MR. GUANELI responded that state law prohibits the recording of a conversation when it occurs without the involved parties' consent.

10:28:32 AM

REPRESENTATIVE GRUENBERG stated his understanding that if there is such a prohibition, it would be covered in AS 42.20.320 and only apply to wire communications. He asked what the parameters are for tape recording a conversation.

MR. GUANELI clarified that a party to the conversation is allowed recording rights.

REPRESENTATIVE GRUENBERG provided a scenario of a child having an in-person conversation with someone other than a parent, and the parent, although not a participant in the conversation, makes a tape recording. He asked if that would currently be considered illegal.

MR. GUANELI responded that either version of the bill would exempt the parent from criminal status.

SENATOR SEEKINS clarified that a person may at any time record his/her own conversation.

MR. GUANELI concurred with Representative Seekins’ understanding, and added that Alaska is considered a one party consent state and said, “As long as one party of the conversation consents that is sufficient.”

REPRESENTATIVE GRUENBERG stated his understanding that the Fourth Amendment is only applicable to governmental activity, and said: “If it is a solely private person, and there is no wire ... is there a statute or something that says I can’t ....”

MR. GUANELI cited Title 42 as the statute that disallows such activity. He said that the issue with which the courts struggle is whether this statute was intended to apply to parents, and this bill will establish that clarity.

REPRESENTATIVE GRUENBERG stated his understanding that this statute would only apply to electronic types of communications. He asked for a statement regarding the scope of eavesdropping that the sponsor intended for this bill to encompass.

SENATOR SEEKINS stated that the intent is to allow a parent to be legally allowed to intercept any communication as long as it is in the best interest of the child.

10:31:59 AM

MR. GUANELI counseled that either bill version will provide legality to a parent to eavesdrop, but the difference is how evidence may be garnered in order to be considered admissible in court.

10:32:27 AM

CHAIR KOTT requested that the two sections, of each version, be considered separately, and he asked for the committee to focus attention on the probable cause aspect of the bill.

SENATOR HUGGINS suggested dispensing with the probable cause language.

REPRESENTATIVE MCGUIRE pointed out the need to consider a situation in which a parent would be directly pitted against his/her child, or a case of an abusive parent with an alternative motivation who would not be acting in good faith. She reiterated her concern for the “threshold being set too high.”

10:34:24 AM

CHAIR KOTT reminded the committee that the ex parte order is “governmental directed”.

MR. GUANELI explained that a wiretap is a type of search warrant and as such the court would apply a probable cause standard in order to approve a Fourth Amendment search. He suggested that the question to be addressed is how much legislative guidance will be provided to the courts to specify what factors are to be

considered as probable cause. To that extent, he opined, the House language provides appropriate guidance in setting out a number of factors for the court to consider as probable cause.

10:36:52 AM

SENATOR SEEKINS described a domestic scenario to illustrate why he is not concerned with the language as written in Section 1, [Version P.A]. He opined that it provides a nexus for a parent to take appropriate action, and allows the court to use discretion for evidentiary purposes.

REPRESENTATIVE GRUENBERG inquired about a pertinent statutory subsection, which specifies the relevancy of evidence obtained or sought to be obtained from a search/wiretap for prosecutorial purposes. He opined that if that subsection exists and needs to be written into this bill perhaps it could be identified.

MR. GUANELI responded that the evidence rules of the court would apply to communications intercepted in accordance with this bill. Further, he concurred with Senator Seekins that there does need to be a nexus between the possible crime and the act of securing evidence. The court will look at the probable cause presented, and other relevant issues prior to authorizing a wiretap. He reminded the committee that a wiretap carries significant legal weight and that there are many layers of protection and restrictions put in place for providing such an authorization.

SENATOR SEEKINS referenced page 2, line[s] [2]-5, paragraphs (2) and (3), and explained that the primary concern for the Senate version was to preserve this aspect of the House Judiciary version, which refers to taking action based on concern for the health, safety, welfare, and in the best interest of a minor.

10:42:34 AM

REPRESENTATIVE GRUENBERG stated that his reason for suggesting the first subsection was because, although not common, it has occurred that a minor would be a witness to a crime. He cited a case [McMaster v. State, 512 P.2d 879 (Alaska 1973)] in which the primary witness to a murder(s) was a five-year-old child, and the court held she was not too young to testify; they affirmed. He said:

> So it might be a circumstance where a child was a witness, or the other person on the line was a witness

and discussing it with the child, or it's conceivable that one of them was a perpetrator. Not having anything to do necessarily with the child's welfare. ... A court might very well, because of the age of the child, prefer to admit the tape ... [thus] the child would be kept off the stand.

10:44:34 AM

The committee took an at-ease from 10:44:34 AM to 10:46:30 AM.

10:46:30 AM

SENATOR SEEKINS directed attention to "only", page 1, line 7, [Version P.A], and he stated a preference to have it deleted from the text, thus allowing the language to be permissive rather than restrictive.

REPRESENTATIVE GRUENBERG explained that "only" was included to ensure that the court would find probable cause prior to issuing a warrant.

REPRESENTATIVE MCGUIRE agreed with Senator Seekins' concern regarding the inclusion of "only", in this context, and asked "[but] are we splitting hairs," provided the high threshold delineated for establishing probable cause.

MR. GUANELI pointed out that "only" appears in both versions of the bill. He opined that this particular phrase may not be of significance to the court, where the focus would be to identify the findings set out in subparagraphs (A), (B), and (C) [page 1, Version P.A], in making a determination for a court order.

REPRESENTATIVE MCGUIRE reiterated her concern for including the term "only", as well as the high threshold placed on determining probable cause. However, she said perhaps we can revisit this in the years to come, if necessary.

10:51:12 AM

CHAIR KOTT moved that the committee adopt the language of Section 1, CSHB 414(RLS)am, Version 24-LS1565\P.A. There being no objection, Section 1 of Version P.A was adopted.

10:51:37 AM

CHAIR KOTT announced that the final area of the bill to be addressed would be Section 2, addressing the evidentiary aspect of allowing information garnered to be entered into court.

10:52:05 AM

MR. GUANELI acknowledged that this section is difficult due to the acrimonious and emotional nature that often surrounds matters of divorce and child custody. He provided a description of why a court may decide to suppress evidence, thus not basing its judiciary findings on the sum of the relevant evidence. This is allowed because of the exclusionary rule, which serves primarily to enforce appropriate police conduct and encourage officers to follow due process; protecting against the abuse of an individual's constitutional rights. He stated support for the Senate's version of this section, and opined that the House version may cause evidence to be suppressed because a private party in an acrimonious situation did not follow the specific language of the bill to garner otherwise relevant evidence. The language, he pointed out, does not allow the parent room for error and hence evidence of a criminal act may be suppressed. He asked why the state should prohibit the court from considering any information gathered by a parent, and suggested that the court would be able to consider whether to allow such information as relevant and in the best interest of the child.

10:59:38 AM

REPRESENTATIVE GRUENBERG stated:

> The instance where this would become a key issue in a criminal case, ... is fairly rare. It would become an issue in ... a fair number of custody cases on a regular basis because people would be listening-in, in the context of a divorce or a custody, to get information that they could use against the other parent in a court. I don't have any problem with parents legitimately listening-in on ... telephone conversations of the children as part of the normal parents' duty. ... [However], the practice would be for good divorce lawyers ... to suggest to their clients ... to tap the phone or listen-in, ... because the fear would be the other side is doing it, and they will selectively try to introduce evidence of those calls. The issue that this would be used more often than not has nothing to do with criminal law. The statute for custody in the divorce ... says that the

court must look at the love and affection existing between the child and the one parent, and another factor is the other parent's willingness to foster an open, ... loving, [and] frequent relationship with the other parent and the child. ... The purpose of these calls would be to gather information on ... whether one parent was trying to influence the child against the other parent, and it would become ... a weapon to be used in the court. [It] would [serve to] put the [unwitting] child in ... the middle of these cases .... That's ... why they don't, in this state have children testify in court; why they don't interview children in chambers; why they use custody investigators and guardians ad litem to take the kids out of this. ... The admission of evidence in court is discretionary, and whether the trial judge admits a piece of evidence or denies its admission will not be overturned unless an abuse of discretion is found, and that means that there is a definite and firm conviction that a mistake has been made. This doesn't amend the rules of evidence, so the discretionary nature of the admission is ... ultimately the court's decision. This simply provides guidance, and it requires that before the evidence is admitted one party may object; and if that person raises an objection the court must rule that it is admissible. And these are the factors the court can consider.

11:04:59 AM

SENATOR SEEKINS paraphrased from the referenced statute [original punctuation provided]:

Sec. 42.20.310. Eavesdropping.
(a) A person may not
(1) use an eavesdropping device to hear or record all or any part of an oral conversation without the consent of a party to the conversation;

SENATOR SEEKINS interjected that without the consent of a party the single party rules. He then continued paraphrasing from AS 42.20.310:

(b) In this section "eavesdropping device" means any device capable of being used to hear or record oral conversation whether the conversation is conducted in person, by telephone, or by any other

> means; provided that this definition does not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing.

SENATOR SEEKINS stated that AS 42.20.390 provides a different more expansive definition. However, he related his understanding from AS 42.20.310 that an extension telephone would be considered "any instrument." Hence, if a parent listens-in on an extension line, he/she will have violated the law. Stressing his concern on this point, he said that the language in the Senate version allows a more unimpeded means to intercept conversations with fewer "hoops" for a parent to step through. For the benefit of the child it would be prudent to allow a parent the more lenient means to gather critical information.

11:07:34 AM

REPRESENTATIVE MCGUIRE opined that the discretion of the judge could go both ways, and expressed trust that a judge would act appropriately. She stated support for the Senate version of the bill, maintaining her initial concern that the House version is too restrictive for parents. Responding to Representative Gruenberg's point that divorce attorneys may encourage clients to record telephone conversations, she suggested that such action could be addressed by the family law bar as an ethics issue.

REPRESENTATIVE GRUENBERG explained how this is currently addressed in court, and said that cases with these types of arguments often rise to the circuit court level. He maintained that the Senate version allows for recorded messages to be routinely used as evidence in family court cases.

11:12:18 AM

SENATOR FRENCH stated:

> I see that the Conference version [P.A] would exclude inadvertent evidence; evidence where a parent just picks up a telephone and happens to hear something terrible. Whereas, the Senate version would allow the inclusion or the admission of evidence gathered in bad faith.

REPRESENTATIVE GRUENBERG interjected, "I didn't intend that."

SENATOR FRENCH continued:

> I understood you to say that the Senate version, without the hoops of the Conference version [P.A], would allow the admission into evidence that evidence gathered in bad faith. Either way the parent gets the evidence, if you're really worried about a predator or something terrible [that's] happened. Once the parent learns of it, no matter how he or she learns of it, ... they will take the steps necessary to safe out the situation.

11:14:23 AM

REPRESENTATIVE GRUENBERG suggested that it might be necessary to broaden the powers of the committee, and said that additional language might need to be crafted to address this unintended, inadvertent aspect of evidentiary discovery.

REPRESENTATIVE MCGUIRE stated her understanding that the issue appears to be a case of "all or nothing." She admitted that this has been a difficult issue throughout the drafting process of this bill.

11:16:02 AM

SENATOR SEEKINS agreed that parents can be manipulative, and disregard the best interest of a child when working to align that child on a particular side or the other in a divorce action or a custody dispute. However, he reiterated his concern that a parent may, in an inadvertent instance, eavesdrop and overhear something which may prove to be critical evidence. The parent should be allowed to document such a conversation without being hindered by requirements of prior belief, knowledge or suspicion, and the information garnered should be admissible in court. He asked:

> "When, in good faith, does a parent have a reasonable belief that it's necessary to be able to intercept [a conversation], and [furthermore] is an inadvertent interception going to be thrown out by the court. ... I don't want to see that happen."

REPRESENTATIVE GRUENBERG opined that if there is a criminal situation in which a parent overhears a reportable conversation, the court is going to err on the side of protecting the child and prosecute for the crime; hence, such situations will not be

a problem. However, he said the crime would be a child being used disparagingly in a vicious divorce situation, as previously discussed.

11:19:27 AM

REPRESENTATIVE MCGUIRE suggested:

> What if you were to keep it the way that we had it in Judiciary, in both Senate and House versions, and leave it open without the threshold[s] of good faith and objectively reasonable belief. ... Put in an (A) ... that related specific to those child custody cases. ... [Section 2, subparagraph](A) would then read: "considered by a guardian ad litem or a child custody investigator only if the guardian ad litem or child custody investigator determines that the parent acted in good faith and had an objectively reasonable belief;"

REPRESENTATIVE MCGUIRE explained that the intent of both the House and the Senate bill versions would be served by shifting the objectively reasonable belief aspect to this area of the bill.

11:20:44 AM

REPRESENTATIVE GRUENBERG stated: "That would be helpful."

SENATOR SEEKINS described a manipulative divorce situation, in which a parent uses a child for leverage, and opined that such behavior could be considered damaging to the child, possibly constituting psychological abuse. He inquired whether reporting this type of parental behavior to the court would not be in keeping with the best interest and welfare of the child.

REPRESENTATIVE GRUENBERG opined that if that type of a conversation were intercepted, it should be brought to the court's attention, and could be provided the language suggested by Representative McGuire [is included]. He maintained that the judge should make the determination for admissibility.

SENATOR SEEKINS pointed out that a judge retains discretion rights without the addition of Representative McGuire's suggested language. He said: "I'm just not trying to put as many handcuffs on that judge maybe as you are."

11:22:49 AM

REPRESENTATIVE GRUENBERG said that he wanted to eliminate the possible judiciary interpretation that such evidence would be required to be admissible.

SENATOR SEEKINS maintained that it would be important to err on the side of protecting the child and not protect information garnered by either party in a dispute from being considered by the court.

REPRESENTATIVE GRUENBERG agreed and reiterated that the suggested language by Representative McGuire would alleviate the situation.

11:25:12 AM

SENATOR SEEKINS stated:

> The broad brush fits me better than the narrow one. ... I do understand that there could be some abuse ... and [divorce/custody cases] can get ugly. ... But my primary concern is for that child, and the interception of a private communication, to which that minor is a party, by a parent should be exempt from [AS 42.20.]310 and that's what my concern is .... How the court treats that is another matter. I'm not wanting to try to be able to restrict ... how the court treats that information, I'm just wanting to allow the parent under our definition to be able to intercept that communication without breaking the law.

REPRESENTATIVE GRUENBERG suggested adopting the Senate language along with the following addition: "The admission of this evidence should be at the discretion of the court."

SENATOR SEEKINS pointed out that such language would be a restatement of the already existing truism "that I'm depending on."

REPRESENTATIVE GRUENBERG reiterated, "I don't want this language to indicate that ... [such evidence] must be admitted."

SENATOR SEEKINS stated:

> This bill ... is to allow parents to legally intercept communications of their minor children. How [the

information] is used ... is a different subject, ... maybe for a different bill.

11:27:02 AM

SENATOR FRENCH suggested:

I ... wonder whether we couldn't improve the Senate version by simply adding that the interception was made "in good faith". ... It puts some sideboards ... on the ugly divorces that Representative Gruenberg has been bringing to our attention.

CHAIR KOTT agreed to amend [page 3, line 13, paragraph] (9), of the Senate version, and suggested the language include "the good faith interception of".

REPRESENTATIVE GRUENBERG clarified the suggested amendment.

REPRESENTATIVE MCGUIRE concurred with the proposed change.

CHAIR KOTT moved to adopt Amendment 1, to SCS CSHB 414(JUD), Version 24-LS1565\R, to read as follows:

Page 3, line 13, following (9);
Insert **"the good faith"**

There being no objection, Amendment 1 was adopted.

11:29:46 AM

MR. GUANELI questioned how "good faith" would be defined for application in this context. "Probable cause" for a search warrant is clear, but he said "good faith" injects an uncertain term, and a criminal defense attorney defending a father charged with abuse of a child will be "arguing forever" whether the mother intercepted a conversation "in good faith." He provided some alternative suggestions for appropriate language.

11:31:54 AM

SENATOR SEEKINS stated his understanding that AS 42.20.310 charges a parent with a criminal offense for eavesdropping. He maintained that his primary concern is to exempt that action as a criminal offense, and how the information is used in court is a subject for a different day.

REPRESENTATIVE GRUENBERG directed attention to page 1, line 7, [Version P.A], and pointed out that this language stipulates the requirements not for the interception of questionable communications, but rather establishes the requirements for garnered evidence to be admitted in court.

11:33:53 AM

SENATOR SEEKINS read page 2, line 9, [Version P.A]: "(a) The following activities are exempt from the provisions of AS 42.20.300 and 42.20.310," and, he said that leads to the language of paragraph (9) being invoked, thus the inadvertent interception would have to be considered illegal.

REPRESENTATIVE GRUENBERG assured, "That was not the intent."

SENATOR SEEKINS maintained, "But I think it would be."

SENATOR FRENCH stated, "I beg to differ."

11:34:25 AM

MR. GUANELI suggested adopting the Senate version language of paragraph (9), and following that paragraph with the following two additional provisos:

> Evidence intercepted under this subsection may only be considered by a guardian ad litem, or child custody investigator if in the best interest of the minor. ... [Followed by:] Evidence intercepted under this subsection may be admitted in a judicial proceedings subject to the Alaska Rules of Evidence and in a matter relating to custody of the minor only if in the best interest of the minor.

MR. GUANELI explained that, with the addition of this language, in criminal proceeding the rules of evidence would govern and for civil child custody proceedings consideration would be given to both the rules of evidence as well as what is in the best interest of the minor. This eliminates the motivation of a parent inappropriately intercepting communications.

11:35:54 AM

SENATOR SEEKINS said he would agree to language which decriminalizes a parent who overhears a child's conversation.

SENATOR FRENCH called for a point of order.

CHAIR KOTT stated that a draft would need to be created to this effect prior to the committee proceeding.

REPRESENTATIVE GRUENBERG agreed with the proposed language. He said: "Then I would also suggest we use that same language under the [subparagraph] (C) in the official proceeding, too."

11:36:44 AM

CHAIR KOTT announced that the committee would stand in recess to a call of the chair.

3:07:53 PM

CHAIR KOTT called the Conference Committee on HB 414 back to order at 3:07:53 PM. Representatives Gruenberg and Kott, and Senators French and Huggins were present at the call to order.

CHAIR KOTT reported that the amendment being drafted meets the satisfaction of all the members.

SENATOR HUGGINS moved to adopt [and report from committee] the forthcoming CCS HB 414. There being no objection, CCS HB 414 was reported from the Conference Committee on HB 414.

3:08:26 PM

ADJOURNMENT

There being no further business before the committee, the Conference Committee on HB 414 meeting was adjourned at 3:09 p.m.